

BEFORE THE
SURFACE TRANSPORTATION BOARD

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
--PETITION FOR DECLARATORY ORDER--

**UNION PACIFIC RAILROAD COMPANY'S REPLY
TO UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
PETITION FOR DECLARATORY ORDER**

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The Union Pacific Railroad Company ("UP") hereby replies to the Petition for Declaratory Order filed on January 24, 2014 ("Petition") by Region IX of the United States Environmental Protection Agency ("Region IX") and joins in the brief of the Association of American Railroads ("AAR").

Region IX asks the Board to institute a declaratory proceeding to examine whether certain local agency rules restricting locomotive operations would be preempted by the Interstate Commerce Commission Termination Act ("ICCTA") if they were incorporated into the California State Implementation Plan ("SIP").

We urge the Board to find that ICCTA precludes incorporation of these Local Idling Rules into the SIP for the reasons set forth in the brief submitted by the AAR. We submit this brief to provide additional background on two issues. First, we provide further detail concerning the comprehensive scheme of federal laws regulating locomotives, including the Locomotive Inspection Act ("LIA"), the Federal Railroad Safety Act ("FRSA") and the locomotive emissions provisions of the Clean Air Act ("CAA"). The Board must harmonize ICCTA with other federal laws, but here the task is not difficult. All of the relevant federal laws reveal that Congress could

not possibly have intended to permit local governments to impose a patchwork of divergent requirements governing the design and/or use of idling equipment on locomotives that travel from district to district and state to state. Whatever authority local governments might have to adopt and enforce environmental regulations through the CAA in other settings, Congress has made national uniformity paramount in the field of locomotive regulation.

Second, this reply provides additional background concerning the factual issues that must be addressed in a proceeding if the Board concludes that the statutory scheme does not establish that the Rules are impermissibly burdensome without further evidentiary inquiry. Those facts leave no doubt that the Rules at issue were designed to force railroads to modify their locomotive equipment to restrict idling and that failure to do so would require railroads to adopt procedures that expose them to increased safety risks and operational delays throughout the system. Nor can these burdens possibly be justified in the name of environmental necessity. As the EPA itself found, preemption of state locomotive regulation would have “no” adverse impacts on the environment because the federal rules already do all that is necessary.¹

SUMMARY OF ARGUMENT

Uniform Federal Regulation of Locomotives. Although the Board has recognized that railroads may be subject to environmental regulation, the targeted restriction of locomotives imposed by the Local Idling Rules is contrary to the most basic precepts of ICCTA—that uniform national regulation of railroads is of critical importance to our economy. And nothing in the CAA suggests that Congress intended to supersede ICCTA preemption to allow local idling rules that directly target and restrict the operation of locomotives in South Coast Basin. To the contrary, congressional mandates concerning uniform regulation of locomotives in the CAA and

¹ USEPA, Regulatory Announcement, Federal Preemption of State and Local Control of Locomotives, EPA420-F-97-050, December 1997, at 2-3.

the LIA reinforce the conclusion that ICCTA forecloses adoption and enforcement of these local rules, which aim squarely at the design and operation of locomotives. In addition, preemption of these rules would advance critical safety objectives addressed in the FRSA. All relevant federal law accordingly points to one conclusion: these local rules would unquestionably impose the type of burdens on the operation of locomotives that have long been categorically forbidden by federal law. The Board therefore can and should advise Region IX that EPA cannot incorporate these local rules into the SIP consistent with the requirements of federal law.

The mere fact that the Local Idling Rules have been submitted for SIP approval does not legitimize them for ICCTA purposes. It is not the packaging of such rules—whether as purely local rules or as part of the state’s SIP—that determines the integrity of the uniform federal scheme regulating railroad operations.² Rather, the Board must be guided by the purpose and intent of ICCTA section 10501(b), and Congress’s instruction that it seek “to ensure the development and continuation of a sound rail transportation system”³ Congress’s intent to fully occupy the field of locomotive regulation, including idling requirements, must be taken into account when administering the CAA. The Board should make clear to EPA that, as a matter of law, incorporating the Local Idling Rules into the SIP cannot be harmonized with the comprehensive federal legislative scheme governing railroad operations and would violate ICCTA.

² “[T]he point is that such laws cannot be applied without regard to the impact on interstate commerce ‘[N]othing in section 10501(b) is intended to interfere with the role of state and local agencies in implementing Federal environmental statutes such as the Clean Air Act, the Clean Water Act, and the Safe Drinking Water Act, unless the regulation is being applied in such a manner as to unduly restrict the railroad from conducting its operations or unreasonably burden interstate commerce.’ . . . But simply invoking Federal environmental statutes does not overcome section 10501(b).” *Joint Petition for Declaratory Order, Boston and Maine Corp. and Town of Ayer, MA*, STB Board Decision, STB Finance Docket No. 33971 (October 3, 2001), 2001 WL 1174385 at *3-4.

³ 49 U.S.C. § 10101(4).

Discriminatory and Burdensome Requirements. Rule 3502 requires the railroads to change the design of their locomotive engines or shorten the length of time they may lawfully idle their locomotives while operating in the South Coast Basin. Violations are subject to fines of up to \$75,000 per locomotive per day. These rules materially deviate from the uniform idling rules Congress authorized EPA to adopt, and such a local patchwork of regulations would impose undue burdens on the railroads, including aggravated safety risks and operational delays that could affect the efficiency of rail transportation nationwide.

Mandating the shutdown of an idling locomotive after 30 minutes can increase the risk of uncontrolled train movement because the locomotive's engine provides the pressure necessary to keep the air brakes functional. When the engine is shut off, air pressure "bleeds" out of the braking system, and the system is adversely affected. Locomotive shutdowns at these intervals also would inevitably lead to reductions in system velocity and could cause cascading delays throughout the rail network. In addition, Rule 3501 imposes burdensome recordkeeping requirements that could distract train crews from their key duties, increasing the potential for accidents. The evidence would establish that these rules create the type of operational hazards and interference with interstate operations, with no offsetting benefits, that led Congress to prohibit local regulation of locomotives from the outset.

REGULATORY FRAMEWORK

I. FEDERAL REGULATION OF LOCOMOTIVE OPERATIONS

In the discussion below we outline the various federal laws, which, taken together, evidence Congress's clear intent to craft a uniform federal regulatory program governing the design and operation of locomotives.

A. ICCTA

ICCTA contains an express preemption provision over regulation of rail transportation:

The jurisdiction of the Board over—

(1) transportation by rail carriers, and the remedies provided in this part with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services, and facilities of such carriers; and

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

is exclusive. Except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.⁴

We need not recite here the long history of Board and court decisions enforcing this congressional mandate for broad preemption. Suffice it to note that “[t]he language of the statute could not be more precise, and it is beyond peradventure that regulation of . . . train operations . . . is under the exclusive jurisdiction of the STB”⁵

B. The Locomotive Inspection Act

The LIA⁶ establishes that the preemptive scope of federal laws governing railroad operations is at its zenith when states seek to regulate locomotives. The Supreme Court recently confirmed that the LIA broadly preempts local regulation of locomotives and that Congress

⁴ 49 U.S.C. § 10501(b). Transportation is defined in ICCTA as including locomotives. 49 U.S.C. § 10102(9)(A).

⁵ *Friberg v. Kansas City Southern Ry. Co.*, 267 F.3d 439, 443 (5th Cir. 2001). See also *N.Y. Susquehanna & W. Ry. Corp. v. Jackson*, 500 F.3d 238, 252 (3d Cir. 2007) (quoting *Fla. E. Coast Ry. Co. v. City of W. Palm Beach*, 266 F.3d 1324, 1331 (11th Cir. 2001)); *CSX Transp., Inc. v. Georgia Pub. Serv. Comm'n*, 944 F. Supp. 1573, 1581 (N.D. Ga.1996); *City of Auburn v. U.S. Government*, 154 F.3d 1025, 1031 (9th Cir. 1998); *Chicago & Nw. Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 318 (1981). See also *CSX Transp., Inc.—Petition for Declaratory Order*, STB Board Decision, STB Finance Docket No. 34662 (Mar. 14, 2005), 2005 WL 584026, at *4-9 (“Although the ICA has long included a preemption clause, Congress further broadened the Act’s express preemption in 1995.”).

⁶ 49 U.S.C. § 20701, et. seq.

intended to fully preserve the principles of federal uniformity established early in the last century.⁷ In *Kurns v. Railroad Friction Products Corporation*,⁸ the Supreme Court held that state law personal injury and failure to warn claims arising from the repair and maintenance of locomotives were preempted by the LIA. In reaching this conclusion, the Supreme Court reasoned that the “common sense” interpretation of LIA preemption is that “[b]ecause those claims ‘are directed to the same subject’ as the LIA, *Napier* dictates that they fall within the preempted field.”⁹ The Supreme Court noted that this preemption extends not just to state legislation and regulation, but to the personal injury and failure to warn claims, which are “directed to the *subject of locomotive equipment*” even though they do not actually impose any direct limits on locomotive design or operation.¹⁰ Thus, LIA preemption extends not just to rules directly mandating devices such as idle controls, but to any claim or standard that relates to the “subject of locomotive equipment.”

C. The Clean Air Act

Consistent with the broad preemptive scope of ICCTA and the LIA, Congress left no doubt that environmental regulation of locomotive emissions must also adhere to the principles of uniformity that have always been paramount in this field. Congress expressly preempted “any” State or local “requirement relating to the control of emissions” for new or refurbished

⁷ *Napier v. Atl. Coast Line R. Co.*, 272 U.S. 605 (1926). In *Napier*, railroads challenged two state laws that “prohibit[ed] use within the State of locomotives not equipped with” certain prescribed devices, on the ground that the Interstate Commerce Commission (ICC) had not required the devices in question. *Id.* at 607, 609. The Court struck down the rules, stating that “[t]he broad scope of the authority conferred upon the [ICC]” by Congress is a “general one” that “extends to the design, the construction and the material of every part of the locomotive and tender and of all appurtenances.” *Id.* at 611. The Court found it dispositive that “[t]he federal and the state statutes are directed to the same subject — the equipment of locomotives.” *Id.* at 612. Cited with approval in *Kurns v. R.R. Friction Prods. Corp.*, -- US --, 132 S. Ct. 1261 (2012).

⁸ *Kurns v. R.R. Friction Prods. Corp.*, 132 S. Ct. 1261 (2012).

⁹ *Id.* at 1268.

¹⁰ *Id.* at 1268 n.4, 1269-70 (emphasis added).

locomotive engines.¹¹ With respect to older locomotive engines, Congress provided that States could seek a waiver from EPA to potentially permit some form of regulation but only if EPA determines, *inter alia*, that the proposed rule is “need[ed]” to “meet compelling and extraordinary circumstances.”¹² It bears emphasis that the local “requirement[s] relating to the control of emissions” at issue here nonetheless purport to apply to *all* locomotives, including the new and refurbished models that now represent the lion’s share of UP’s fleet in the South Coast Basin. Nor has California sought a waiver to regulate the un-refurbished locomotives.

Pursuant to this clear congressional mandate, in 2008, EPA required the installation of idle controls on newly manufactured and remanufactured locomotives. In addition to regulating idling through mandatory control technologies, EPA joined with all of the Class I railroads in the SmartWay Transport Program, under which all of the railroads committed “to reduce idling through a variety of technologies and strategies, including automatic engine stop-start systems, auxiliary power units or diesel-driven heating systems, electrical shorepower connections, and company idle-shutdown policies.”¹³ Thus, EPA has itself already addressed those aspects of locomotive idling it is authorized to regulate under the CAA.

EPA has repeatedly affirmed that the railroad industry is “unique” and that EPA’s preemption of state regulation of locomotives is more expansive than the preemption rules it has adopted to govern other nonroad engines.¹⁴ Indeed, EPA expressly acknowledged in its

¹¹ CAA § 209(e); 42 U.S.C. § 7543(e). *See also* Emission Standards for Locomotives and Locomotive Engines, 62 Fed. Reg. 6366, 6397 (Feb. 11, 1997).

¹² CAA § 209(e); 42 U.S.C. § 7543(e).

¹³ USEPA, Emission Facts: Control of Emissions from Idling Locomotives, EPA-420-F-08-014, March 2008 (Revised September 2012), at 3.

¹⁴ Emission Standards for Locomotives and Locomotive Engines, 63 Fed. Reg. 18978, 18994 (Apr. 16, 1998) (“Congress recognized the unique factual circumstances relating to this industry, and provided broader preemption for locomotives than for most other nonroad vehicles and engines.”); EPA, Response to the Petition of American Road and Transportation Builders Association to Amend Regulations

locomotive rulemaking that Congress had directed EPA to adopt uniform rules governing locomotive emissions because it had “‘balanced the need to control emissions from new locomotives against [its] belief that State efforts to regulate locomotive emissions or operations would impose an unconstitutional burden on interstate commerce.’”¹⁵

Accordingly, EPA developed preemption regulations specific to locomotives, explaining that “there are compelling policy reasons that support uniform, national regulation of locomotive emissions.”¹⁶ Under those regulations, “states would be preempted from adopting any emissions standards for in-use locomotives,” because, as EPA found, “there is little that a locomotive operator can do to reduce emissions from in-use locomotive engines, [such that] the action needed to comply with an in-use emission standard would in effect need to be taken by the manufacturer or remanufacturer of the engine.”¹⁷ Similarly, “a state retrofit requirement that applied during the period between each remanufacture . . . would be preempted because such a requirement would affect the design, manufacture and/or remanufacture of new locomotives.”¹⁸

Importantly, however, EPA has stated that its preemption regulations:

will not have any adverse impacts on the environment because of EPA’s aggressive control program that is designed to achieve the maximum possible environmental benefits. EPA has established emission standards that will apply both when a locomotive or locomotive engine is originally manufactured and each time that it is remanufactured.¹⁹

Regarding the Preemption of State Standards Regulating Emissions from Nonroad Engines, EPA-HQ-OAR-2004-0008-0921, 15-16 (Aug. 21, 2008) (“[U]niquely among nonroad engines, there is a long history of preemption of state and local regulation of locomotives. . . . Given these and other factors, . . . EPA determined that certain standards on in-use locomotives (which are not ‘new’ locomotives) would be preempted under 209(e)(1) because of their effect on the manufacture of new locomotives.”).

¹⁵ *Id.* at 6, 39 (quoting 136 Cong. Rec. H12848 (Oct. 26, 1990)).

¹⁶ Emission Standards for Locomotives and Locomotive Engines, 62 Fed. Reg. 6366, 6397 (Feb. 11, 1997).

¹⁷ *Id.* at 6399.

¹⁸ *Id.* at 6398.

¹⁹ USEPA, Regulatory Announcement, Federal Preemption of State and Local Control of Locomotives, EPA420-F-97-050, December 1997, at 2 (emphasis added).

EPA also stated that:

Given the inherent interstate nature of the railroad industry, EPA believes that a strong federal program that addresses manufacturing, remanufacturing and in-use compliance best achieves the necessary emissions reductions. This is especially true since many state governments lack the resources to control emissions from locomotives. Since EPA has established such a strong federal program, there is little that any state could do to further reduce locomotive emissions. Also, *a patchwork of state and local regulations would be inefficient, and could hinder EPA's ability to implement a uniform national control program.*²⁰

EPA also recognized that without uniform federal regulation of locomotives, air quality might actually be degraded:

Without preemption, on the other hand, there is more of a potential for some shift of freight traffic to more polluting forms of transportation that could occur if the costs of rail transportation increased significantly due to a patchwork of state and local regulations. (For example, transport by rail causes about one-third of the pollution as transport by truck per ton-mile of freight.)²¹

Thus, there can be no doubt that both Congress and EPA recognize that the regulation of locomotives is a uniquely federal domain.

D. The Federal Railroad Safety Act of 1970

The FRSA²² was enacted “to promote safety in all areas of railroad operations and to reduce railroad-related accidents.”²³ In order to ensure that regulations “relating to railroad safety . . . be nationally uniform to the extent practicable,” FRSA includes a specific preemption provision,²⁴ which allows states to regulate safety issues unless the Federal Railroad Administration (“FRA”) has adopted a law, regulation or order covering the subject matter of the state requirement. Once the FRA has acted, additional or more stringent state regulation is

²⁰ *Id.* at 3 (emphasis added).

²¹ *Id.*

²² 84 Stat. 971 (codified at 49 U. S. C. § 20101 et seq.).

²³ 49 U.S.C. § 20101.

²⁴ 49 U.S.C. § 20106.

permitted only where it is “necessary to eliminate or reduce an essentially local safety or security hazard,” *and* is neither incompatible with Federal law nor unduly burdensome to interstate commerce.²⁵

The Administrator of the FRA recently advised Region IX that the Local Idling Rules present “important safety and operational” issues because the Rules “define ‘unattended’ in a manner that potentially conflicts with FRA’s definition of ‘unattended equipment’ in 49 CFR 232.103(n).”²⁶ FRA also emphasized that the Rules “[i]ncrease the length of time that equipment is removed from a source of compressed air, which can negatively impact the integrity and operation of the brake system on a vehicle or train” and could create “time delays when restarting a locomotive where it is necessary to allow the airbrake systems to re-charge after the locomotive is shut down.”²⁷ FRA expressed concern that the Rules would also “[i]ncrease safety risks to railroad employees who will be required to manually set and release handbrakes.”²⁸ As discussed below, enforcement of the Local Idling Rules would prevent compliance with key safety practices required by the FRSA, including on-track worker safety rules and railroad operating rules.²⁹

²⁵ *Id.* This all-encompassing preemption provision resulted from intensive debate on the proper role of the States in rail safety matters. In rejecting the possibility that States might “adopt all Federal standards and, . . . enforce them at the State level,” the House Committee Report explained that “safety in the Nation’s railroads would (not) be advanced sufficiently by subjecting the national rail system to a variety of enforcement in 50 different judicial and administrative systems,” and that “such a vital part of our interstate commerce as railroads should not be subject to (a) multiplicity of enforcement by various certifying States as well as the Federal Government.” H.R. Rep. No. 1194, 91st Cong., 2d Sess. 11, 19 (1970).

²⁶ Letter from FRA Administrator Joseph C. Szabo to Region IX Administrator Jared Blumenfeld dated September 27, 2013, attached and incorporated herein as Exhibit 1.

²⁷ *Id.*

²⁸ *Id.*

²⁹ 49 C.F.R. §§ 214.303, 214.317, 214.327; 214.337, 214.343 (on-track worker safety rules); 49 C.F.R. § 217.7 (railroad operating rules). As just one example of how enforcement of the Local Idling Rules would prevent compliance with key safety practices under the FRSA, UP’s Air Brake and Train Handling

II. STATE AND LOCAL REGULATION OF AIR QUALITY

In California, the Air Resources Board (“CARB”) is charged with “control of emissions from motor vehicles and shall coordinate, encourage, and review the efforts of all levels of government as they affect air quality.”³⁰ CARB is the air pollution control agency for all purposes set forth in federal law³¹ and is responsible for the preparation of the SIP.³² Local air districts are charged with controlling emissions from other sources.³³ SCAQMD is one of 35 air quality management districts in California established to regulate sources of emissions within their regions, other than “mobile sources” such as cars, trucks and locomotives. SCAQMD encompasses the greater Los Angeles area, including the Ports of Los Angeles and Long Beach.³⁴ There are over 100 other such state and local agencies throughout the United States. Thus, the Board’s decision in this Petition will help to reduce uncertainty about such rules throughout the country.

III. PROCEDURAL BACKGROUND

A. The 2005 CARB/Railroad Agreements

In June 2005, CARB and the railroads entered into a voluntary agreement requiring, among other things, installation of idle-control devices on locomotives operating in California. This agreement, along with a similar voluntary agreement entered into in 1998, has been extremely effective in reducing locomotive emissions in Southern California. Since entering into

Rules require crews to leave the lead locomotive of an unattended train idling to maintain air brake pressure and help prevent unintended movement. Rule 3502(d)(l) would require UP crews to violate this well-considered safety rule. The consequences of such a shutdown could be very serious.

³⁰ Cal. Health & Saf. Code § 39500.

³¹ Cal. Health & Saf. Code § 39602.

³² *Id.*

³³ Cal. Health & Saf. Code § 40000.

³⁴ Cal. Health & Saf. Code § 40410.

these agreements, UP has reduced all locomotive emissions in the South Coast Basin by 24 percent; total emissions at major railyards in the basin are 65 percent lower today than they were in 2005.

SCAQMD objected to this voluntary agreement and argued that CARB should instead adopt regulations requiring even more stringent controls and limitations on railroad equipment and operations. Responding to these comments in October 2005, CARB stated that:

. . . . [T]here is little doubt that a state or district regulation requiring the installation of idling reduction devices on California-based locomotives would be preempted by CAA section 209(e), the ICCTA, and the Boiler Act. The commenters generally do not dispute this. However, they believe that a regulation could be crafted *having the effect of making the railroads install idling reduction devices without actually mandating the devices*, and that such a regulation would avoid preemption. [CARB]’s attorneys are not so confident that a regulation presenting installation of the devices as a more practical compliance option compared to a “default” option of resource-intensive operational and reporting requirements would be found to be safe from preemption.³⁵

Describing the legislative history of CAA section 209(e), CARB explained that “one of the few things made very clear by the comments of Senators Baucus and Chafee, is that Congress expressly intended that locomotives and locomotive engines are preempted.”³⁶ Addressing the specific preemption provisions of ICCTA, CARB stated:

As generally interpreted by the courts and the STB – the administrative agency entrusted by Congress to implement and interpret the Act in the first instance – the ICCTA broadly preempts states, and even conflicting federal programs, from adopting rules that affect national railroad transportation.³⁷

Thus, CARB made it clear to SCAQMD that the types of controls SCAQMD asked CARB to impose, and which SCAQMD later adopted in 2006, would be preempted under federal law.

³⁵ California Environmental Protection Agency Air Resources Board, June 2005 CARB/Railroad Statewide Agreement on Particulate Emissions from Rail Yards, Public Comments Raising Legal Issues and Agency Responses, October 24, 2005, at 1.

³⁶ *Id.* at 6.

³⁷ *Id.* at 10.

B. SCAQMD Adoption of the Local Idling Rules

In 2005, SCAQMD began the process of adopting the Local Idling Rules (Rules 3501 and 3502).³⁸ Rule 3502 is designed “to minimize emissions from unnecessary idling of a locomotive” and requires the railroads to limit idling of unattended locomotives to thirty minutes or less in certain circumstances. Revealing the true object of the regulation, the rule provides that the Railroads can escape the operational limits on idling if they alter their locomotives and install anti-idling devices that meet certain specifications. The rule alternatively permits the railroads to submit an emissions equivalency plan to SCAQMD for approval. The stated purpose of the companion Rule 3501 “is to record idling events to identify opportunities for reducing idling emissions and to assist in quantifying idling emissions.” Rule 3501 requires the Railroads to record specific, detailed information for certain incidents of idling as defined by the rule, and to report those idling events to the District on a weekly and an annual basis; the rule offers no environmental benefits. Here too, the rule allows the Railroads to avoid the extremely burdensome reporting scheme only by installing the specified anti-idling equipment—which is set for half the time of the federal idling rule—on their locomotives.

C. AAR v. SCAQMD

AAR, BNSF and UP filed a complaint in federal District Court on March 7, 2006, alleging that the Local Idling Rules were, among other claims, preempted by ICCTA and were not authorized by state law.³⁹ On April 30, 2007, the District Court held that the Local Idling Rules were preempted by ICCTA, and also found that SCAQMD lacked authority under state

³⁸ SCAQMD Rules 3501 and 3502 were adopted on February 3, 2006.

³⁹ Complaint (Dkt 1), *Ass'n of Am. R.R. v. S. Coast Air Quality Mgmt. Dist.*, No. CV 06-1416 –JFW, (C.D. Cal. Mar. 7, 2006).

law to promulgate the Local Idling Rules.⁴⁰ On May 17, 2007, the District Court entered its final judgment and permanent injunction enjoining implementation or enforcement of the Local Idling Rules by SCAQMD and any person acting in concert with SCAQMD, on the basis of ICCTA preemption and state law.⁴¹ The court found that the Local Idling Rules “are exactly the type of local regulation Congress intended to preempt by enacting the ICCTA in order to prevent a ‘patchwork’ of such local regulation from interfering with interstate commerce.”⁴²

On September 15, 2010, the Ninth Circuit Court of Appeals affirmed the decision of the District Court on the basis of ICCTA preemption, holding that “ICCTA preempts those rules unless they are rules of general applicability that do not unreasonably burden railroad activity. The District’s rules plainly cannot meet that test.”⁴³ On October 12, 2010, the Ninth Circuit issued a Mandate making the District Court’s permanent injunction final.⁴⁴ The permanent injunction remains in effect today and the District accordingly cannot lawfully enforce the Rules at issue. Nor could it do so even if the Rules were incorporated in the SIP. The terms of the injunction do not include any exceptions.

D. SCAQMD Submission of the Local Idling Rules for Inclusion in the SIP.

On November 2, 2011, SCAQMD submitted the Local Idling Rules to CARB, asking that CARB approve and forward to EPA as a potential SIP revision the exact Local Idling Rules the District adopted six years earlier, along with the same supporting materials that the District relied

⁴⁰ *Ass’n of Am. R.R. v. S. Coast Air Quality Mgmt. Dist.*, No. CV 06-1416 –JFW, 2007 WL 2439499 (C.D. Cal. Apr. 30, 2007).

⁴¹ Judgment and Permanent Injunction (Dkt 193), *Ass’n of Am. R.R. v. S. Coast Air Quality Mgmt. Dist.*, No. CV 06-1416 –JFW, (C.D. Cal. May 17, 2007).

⁴² *Ass’n of Am. R.R. v. S. Coast Air Quality Mgmt. Dist.*, No. CV 06-1416 –JFW, 2007 WL 2439499 (C.D. Cal. Apr. 30, 2007), at *8.

⁴³ *Ass’n of Am. R.R. v. S. Coast Air Quality Mgmt. Dist.*, 622 F.3d 1094, 1098 (9th Cir. 2010).

⁴⁴ Mandate (Dkt 61), *Ass’n of Am. R.R. v. S. Coast Air Quality Mgmt. Dist.*, 07-55804 (9th Cir. Oct. 12, 2010).

upon in 2006.⁴⁵ SCAQMD did not mention the District Court final judgment or permanent injunction—or the Ninth Circuit decision affirming the judgment—in its SIP submission to CARB.

On February 24, 2012, the District Court, which previously imposed a permanent injunction against SCAQMD’s implementation and enforcement of the Local Idling Rules, concluded that the injunction did not bar SCAQMD from submitting the Local Idling Rules to CARB for SIP consideration.⁴⁶ Although the District Court allowed SCAQMD to submit the Local Idling Rules to CARB as a proposed SIP revision, the Court did not alter its previous findings or the Injunction. Thus, the Local Idling Rules still cannot be included in the SIP because, as the District Court found, SCAQMD lacks authority to adopt and enforce them. As stated by the District Court, in submitting the Local Idling Rules, SCAQMD “blatantly ignored this Court’s determination that the District lacked authority to adopt the Rules.”⁴⁷ Contemplating that CARB and EPA would evaluate the submission under applicable California and federal laws and regulations, the District Court predicted that “the Court is confident that this

⁴⁵ Obviously, conditions have changed significantly since the Local Idling Rules were proposed, with more advanced locomotive technology reducing fleet average emissions by 24 percent. Similarly, UP has reduced total emissions at its two largest railyards in the South Coast Basin by 65 percent since 2005.

⁴⁶ Order Granting Defendants’ Motion to Vacate Order to Show Cause (Dkt 269), *Ass’n of Am. R.R. v. S. Coast Air Quality Mgmt. Dist.*, No. CV 06-1416 –JFW, (C.D. Cal. Feb. 24, 2012).

⁴⁷ *Id.* at 4 n.2. A provision may be incorporated into the SIP only if the state has current authority to enforce the rules. While the Board should certainly answer the question asked by Region IX, it is notable that under EPA’s own regulations, 40 C.F.R. § 51.230, each proposed SIP “must show that the State has legal authority to carry out the plan, including authority” to “[a]dopt emission standards and limitations,” and “[e]nforce applicable laws, regulations, and standards.” To satisfy this requirement, the state must “specifically identif[y]” the “provisions of law or regulation which the State determines provide the authorities required,” and must submit “copies of such laws or regulations” to EPA. *Id.* at § 51.231(a). Moreover, the proposed SIP “must show that the legal authorities specified in this subpart are available to the State at the time of submission of the plan [to EPA].” *Id.* at § 51.231(b) (emphasis added). Neither SCAQMD nor the state has such authority, as the District Court’s injunction unequivocally establishes, and accordingly neither has submitted the required documentation.

misrepresentation will be raised by [the Railroads] in any further regulatory proceeding relating to this matter.”⁴⁸

On August 30, 2012, CARB forwarded SCAQMD’s Local Idling Rules to Region IX as a proposed revision to the California SIP. CARB did not promulgate these Local Idling Rules. Instead, it simply submitted them to EPA with a *pro forma* request that EPA approve them as part of the SIP.

SCAQMD remains barred from implementing and enforcing these Local Idling Rules by a permanent federal district court injunction—in part because the Rules are illegal under California law. More fundamentally, however, the Board should advise Region IX that the Local Idling Rules would be wholly inconsistent with the uniform system of federal regulation of locomotive operations and accordingly forbidden by ICCTA.

ARGUMENT

I. THE LOCAL IDLING RULES CANNOT BE HARMONIZED WITH FEDERAL MANDATES FOR UNIFORM REGULATION AND ARE PREEMPTED BY ICCTA AS A MATTER OF LAW

Two federal courts have considered the Local Idling Rules and concluded that they are preempted under ICCTA. The trial court reasoned that “both the STB and a number of Courts have recognized that under the ICCTA, ‘state and local regulation is permissible where it does not interfere with interstate rail operations, and localities retain certain police powers to protect public health and safety. For example, non-discriminatory enforcement of state and local requirements such as building and electrical codes generally are not preempted.’”⁴⁹ However, based upon the evidence presented at trial, the court expressly found that “the rules at issue in

⁴⁸ Order Granting Defendants’ Motion to Vacate Order to Show Cause (Dkt 269), *Ass’n of Am. R.R. v. S. Coast Air Quality Mgmt. Dist.*, No. CV 06-1416 –JFW, (C.D. Cal. Feb. 24, 2012), at 4 n.2.

⁴⁹ *Ass’n of Am. R.R. v. S. Coast Air Quality Mgmt. Dist.*, No. CV 06-1416 –JFW, 2007 WL 2439499 (C.D. Cal. Apr. 30, 2007), at *7.

this case do not fall within that category of regulations, because the District is attempting to directly regulate rail operations.”⁵⁰ The court went on to find that the Local Idling Rules “are exactly the type of local regulation Congress intended to preempt by enacting the ICCTA in order to prevent a ‘patchwork’ of such local regulation from interfering with interstate commerce.”⁵¹

The Ninth Circuit Court of Appeals reached the same conclusion:

ICCTA preempts those rules unless they are rules of general applicability that do not unreasonably burden railroad activity. The District’s rules plainly cannot meet that test. The rules apply exclusively and directly to railroad activity, requiring the railroads to reduce emissions and to provide, under threat of penalties, specific reports on its emissions and inventory. Because ICCTA “preempts all state laws that may reasonably be said to have the effect of managing or governing rail transportation,” [citation omitted], ICCTA preempts the District’s rules here.⁵²

The very same Local Idling Rules, unchanged since they were rejected by the District Court and the Ninth Circuit, were submitted for inclusion in the SIP. But merely attempting to transform the Local Idling Rules from state law to federal law through inclusion in the SIP is not and cannot be the end of the analysis. Rather, the question is whether those Rules, even if they were included in the SIP, could be harmonized with ICCTA. In making this determination, the Board must be guided by congressional intent, and Congress has made its intentions concerning local regulation of locomotives crystal clear. Put simply, the only way to “harmonize” the Local Idling Rules with ICCTA is by precluding the Rules from taking effect.

As detailed above (*see supra* pages 4-10), Congress—through ICCTA and numerous other statutes—has carefully and consistently demanded national uniformity when it comes to the design and operation of locomotives. Congress’s treatment of emissions from locomotives

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Ass’n of Am. R.R. v. S. Coast Air Quality Mgmt. Dist.*, 622 F.3d 1094, 1098 (9th Cir. 2010).

has been no different.⁵³ Because the Local Idling Rules demonstrably depart from the uniformity intended by Congress, they irreparably conflict with ICCTA. Indeed, a contrary conclusion would be untenable. SCAQMD is merely one of 35 air quality management districts in a single state. If the Local Idling Rules were held not to be preempted by ICCTA, it would be an open invitation for state and local governments to start crafting their own preferred locomotive standards—a result completely at odds with Congress’s long-standing desire for uniformity. At least where, as here, the state has not even attempted to (and obviously could not) satisfy the highly restrictive waiver standards for deviation from the uniform federal rule on locomotive emissions, the Board should find that Congress did not intend to restrict the scope of ICCTA preemption through the SIP process.⁵⁴

CARB itself has recognized the preemptive force of ICCTA. In its response to comments discussed above (*see supra* at 11-12), CARB referred to the Board’s 2005 decision in *CSX Transportation, Inc. – Petition For Declaratory Order*,⁵⁵ stating:

If the STB believes that a state statute limiting the time a train may block a roadway is preempted by the ICCTA, it is apparent that there would be substantial preemption vulnerability for [CARB] or district regulations requiring the installation of idling reduction devices on locomotives, phasing out non-essential locomotive idling.⁵⁶

Permitting the Local Idling Rules to be included in the SIP would also run afoul of Congress’s intent as expressed by the LIA. As an initial matter, “the fact that the preemption

⁵³ CAA § 209(e); 42 U.S.C. § 7543(e).

⁵⁴ It bears emphasis that CAA preemption of state and local regulations directed at “new” locomotives (which includes refurbished locomotives) is absolute. CAA §209(e); 42 U.S.C. § 7543(e). California may apply for a waiver of CAA preemption only as to that small number of locomotives that are not classified by EPA as “new.” Over 95% of the locomotives UP operates in the SCAQMD are “new” and the Rules at issue here unquestionably apply to all locomotives.

⁵⁵ STB Decision, STB Finance Docket No. 34662 (Mar. 14, 2005), 2005 WL 584026, at *6.

⁵⁶ California Environmental Protection Agency Air Resources Board, June 2005 CARB/Railroad Statewide Agreement on Particulate Emissions from Rail Yards, Public Comments Raising Legal Issues and Agency Responses, October 24, 2005, at 18.

contained in section 10501(b) overlaps with the preemption[.]” expressed in other statutes “does not lessen the preemptive effect of section 10501(b) or vice-versa.”⁵⁷ Nor is it surprising that the Local Idling Rules, which seek to replace uniformity with patchwork requirements, would contravene other federal statutes that are also premised on establishing a national system of locomotive regulation. Indeed, the fact that the LIA also preempts these rules strongly reinforces the conclusion that harmonization of federal law in this setting requires the Board to give full effect to the broad preemption mandate in Section 10501(b).

As noted above, Rule 3502 requires that railroads either limit locomotive idling (subject to certain exceptions) or install anti-idling devices that are set at 15 minutes or less, which is more stringent than federal law requires.⁵⁸ Rule 3501 likewise provides railroads with an option for achieving compliance—they can either comply with the Rule’s burdensome recordkeeping and reporting requirements or install anti-idling devices with the same 15-minute settings set forth in Rule 3502.⁵⁹ Given the substance and structure of the Local Idling Rules, it is evident that SCAQMD’s true aim is to ensure that all locomotives entering the South Coast Basin are equipped with anti-idling devices set to SCAQMD’s preferred specifications. This is not speculation. CARB acknowledged that the purpose of these rules is to “*hav[e] the effect of making the railroads install idling reduction devices without actually mandating the devices*” in

⁵⁷ *CSX Transp., Inc.—Petition for Declaratory Order*, STB Board Decision, STB Finance Docket No. 34662 (Mar. 14, 2005), 2005 WL 584026, at *8 (citing *Tyrrell v. Norfolk S. Ry.*, 248 F.3d 517, 523 (6th Cir. 2001)).

⁵⁸ See Rule 3502(d).

⁵⁹ See Rule 3501(d).

order to escape the burdens imposed by the “resource-intensive operational and reporting requirements.”⁶⁰

For nearly a century, the Supreme Court has interpreted the LIA as evincing Congress’s intent “to occupy the entire field of regulating locomotive equipment.”⁶¹ As a result, state and local governments have long been prohibited from attempting to regulate locomotive equipment. Perhaps recognizing this fact, the District seeks to do indirectly what it plainly cannot do directly—that is, require locomotives passing through its region to be equipped with certain anti-idling equipment. But as the Supreme Court recently made clear in *Kurns*, such indirect regulation of locomotive equipment is likewise foreclosed by the preemptive sweep of the LIA.

In *Kurns*, the plaintiff pursued state-law defective design and failure to warn claims against (among others) two manufacturers of locomotive parts and equipment. Plaintiff, who had worked as a machinist for a railroad, claimed that he was exposed to asbestos while handling the defendants’ equipment. Plaintiff claimed the equipment was defectively designed because it contained asbestos and that defendants failed to warn of the dangers of asbestos. The Supreme Court in *Kurns* determined that both state-law claims fell within the preempted field of the LIA.

It bears emphasis that the United States unsuccessfully attempted to defend the failure to warn claims from preemption based on the same legal rationale advanced by SCAQMD here. The United States argued that such “claims are unlikely to be preempted because they would not *require* manufacturers of locomotives or railroads to alter the design or construction of their locomotives—and, therefore, would not conflict with the [LIA].”⁶² The Supreme Court held to

⁶⁰ California Environmental Protection Agency Air Resources Board, June 2005 CARB/Railroad Statewide Agreement on Particulate Emissions from Rail Yards, Public Comments Raising Legal Issues and Agency Responses, October 24, 2005, at 1 (emphasis added).

⁶¹ *Kurns*, 132 S. Ct. at 1266 (quoting *Napier v. Atlantic Coast Line R. Co.*, 272 U.S. 605, 611-13 (1926)).

⁶² Brief of United States as Amicus Curiae Supporting Petitioners at 26, *Kurns*, 132 S. Ct. 1261 (2012).

the contrary, and explained that failure to warn claims are preempted because the “duty to warn and the accompanying threat of liability will *inevitably influence* a manufacturer’s choice whether to use that particular design.”⁶³ In other words, even if a rule or regulation does not require a railroad (or manufacturer) to choose a certain design or particular piece of equipment, a rule or regulation that seeks to “influence” such choices are nonetheless preempted under the LIA.

The holding and reasoning of *Kurns* applies with equal force here. While the railroads may not be required to install and implement the anti-idling specifications set forth in the Rules, the Rules and their “accompanying [penalties]” will “inevitably influence” a railroad’s decisions about how to equip its locomotives. Indeed, as CARB confirmed in no uncertain terms, that was the very intent of the Rules, which is itself dispositive under preemption principles.⁶⁴ Accordingly, the Local Idling Rules also fall within the preempted field of the LIA.

Because the Local Idling Rules plainly destroy the uniformity required by Congress in this area, the Board need not undertake a detailed factual analysis of the burdens imposed by the Rules. The potential for the proliferation of local rules affecting the design and selection of locomotive equipment unquestionably represents an undue burden on interstate commerce. As the Supreme Court held in *Southern Pacific Co. v. Arizona*,⁶⁵ Arizona’s rules governing train lengths—even in furtherance of safety—could not survive scrutiny under the Commerce Clause. The Court explained that “[i]f one state may regulate” the configuration of the train, then “so may all the others,” and the “practical effect of such regulation is to control train operations beyond the boundaries of the State.” Congress has broadened and codified that mandate for

⁶³ *Kurns*, 132 S. Ct. at 1268 n.4 (emphasis added).

⁶⁴ *Gade v. Nat’l Solid Wastes Mgmt. Ass’n*, 505 U.S. 88 (1992).

⁶⁵ 325 U.S. 761, 775 (1945).

uniformity in the CAA, the LIA, and ICCTA. The Board should conclude that the Local Idling Rules—which are designed to affect the selection of locomotive equipment—simply cannot be harmonized with the comprehensive federal regulatory scheme governing locomotive operations and are preempted by ICCTA.

II. IF THE BOARD DECLINES TO FIND LOCAL RULES PREEMPTED AS A MATTER OF LAW IT SHOULD INITIATE A PROCEEDING BECAUSE SUBSTANTIAL EVIDENCE DEMONSTRATES THAT THE LOCAL IDLING RULES IMPOSE AN UNDUE BURDEN ON INTERSTATE COMMERCE

If the Board determines that further evidentiary inquiry is required to resolve the issue presented, then it should initiate a proceeding to develop a factual record on how intrusive the Local Idling Rules would be while delivering little or no incremental benefits. The facts will show that over the last ten years, through cooperative agreements with CARB and its own voluntary efforts, UP has achieved significant reductions in locomotive emissions. UP has reduced the emission rate for the 5,000 locomotives it currently operates in the South Coast Basin by more than 24 percent. In addition, nearly 100 ultra-low emitting switcher locomotives are now dedicated to operation in the Basin. These efforts are reflected locally at UP's two major intermodal railyards in the Basin. Irrespective of growth in business levels, UP has reduced total particulate matter emissions at those two yards by more than 65 percent since 2005. Emissions from locomotives at those two yards will only continue to decrease as newer, lower emitting locomotives are acquired and existing locomotives are remanufactured to reduce emissions. The evidence will show that enforcement of the Local Idling Rules would offer nothing approaching what UP has achieved through its own investments and its voluntary agreements with CARB.

The Local Idling Rules' severe restrictions raise three central concerns, which must be examined if a proceeding is initiated: (1) shutting down locomotives can result in significant

risks to the safety of trains; (2) shutdowns can cause delays that would cascade throughout the nation's rail network; and (3) effectively forcing the railroads to adopt locomotive equipment specifications dictated by local governments would destroy the uniformity essential for interstate operation of locomotives. As highlighted in the paragraphs that follow, the facts will show that the Local Idling Rules would impose undue burdens on commerce.

Unlike an automobile, which will start with the turn of a key, the time required to shut down and start up a locomotive may be anywhere from five to ten minutes. This time is exponentially greater for trains with distributed power.⁶⁶ UP's trains can be (and frequently are) over one mile in length.⁶⁷ If the crew is required to shut down a distributive power train, it must walk the entire length of the train and back—a total of two miles or more—to shut down, and potentially again to start up, the rear locomotives. UP operates as many as eight trains per day in the Los Angeles Basin⁶⁸ using distributive power.⁶⁹ In addition to delay, requiring the crew to walk the train inevitably involves an increased risk of accidents.

Shutting down locomotives on any grade, but especially on heavy grades in mountainous territory or during icy conditions, has the potential to create a safety hazard. Pressure in the air brakes of locomotives is maintained by the engine; if it shuts off, air pressure “bleeds” out of the

⁶⁶ Exh. 3, Declaration of Kenneth Hunt (“Hunt Dec.”) at ¶¶ 9, 12.; Exh. 4, Declaration of John M. Quilty (“Quilty Dec.”) at ¶¶ 12, 13. The Hunt Declaration was submitted as evidence for the trial before the District Court, and the Quilty Declaration was submitted in support of Plaintiffs’ motion for preliminary injunction before the District Court.

⁶⁷ Hunt Dec. at ¶ 10.

⁶⁸ The Los Angeles Basin is a sub-region of the air region regulated by the South Coast Air Quality Management District.

⁶⁹ *Id.* at ¶ 9.

braking system. SCAQMD is full of “heavy grade” territory, containing many miles of track with grades of 1% to 2% descending into the Los Angeles Basin.⁷⁰

Shutting down locomotives to comply with the Local Idling Rules would also delay trains attempting to leave terminals, attempting to leave sidings, and meeting or being passed by other trains. It would also delay crews involved in the building of other outbound trains because delayed trains which already have been fully assembled would occupy limited yard space, preventing arriving trains from entering the yard to be dismantled so new trains can be built. When trains have completed the required safety inspections prior to departing a station, the dispatcher must coordinate the timing and routing to be used when departing with the yardmaster or other yard supervisor along with the crew members. These communications may take several minutes and, once communicated, the signal system or other authority to proceed may again take several minutes to effect. Throughout the timeframe necessary to complete the required pre-departure communications, the locomotive(s) typically idle in anticipation of departure. The Local Idling Rules, however, could require train crews to shut down all trailing locomotives in the train or, if the crew leaves the train, would require a complete shutdown.⁷¹

If the crew has shut down the locomotives, its ability to then act upon instructions to move the train onto the main line would be dramatically impaired. It would not be able to move when given the ready instruction, but instead the crew would have to re-start each shut down locomotive.⁷² This additional delay could cause the train to miss its window of opportunity to move onto the main line, particularly since the time to simply move a 7,000 foot train onto the

⁷⁰ Exh. 5, Declaration of Douglas W. Wills (“Wills Dec.”) at ¶ 19; Quilty Dec. at ¶ 9; Hunt Dec. at ¶12. The Wills Declaration was submitted in support of Plaintiffs’ motion for preliminary injunction before the District Court.

⁷¹ *Id.* at ¶ 8.

⁷² *Id.*

line of track may exceed 15 minutes, thereby causing further delay, and possibly another shut down as it awaits another opportunity to proceed onto the main line. These delays would impact other trains waiting to use the same limited track within the yard, or the main tracks connecting the yard network in and around the Los Angeles Service Unit.⁷³

Dispatching is a juggling act that must be conducted within critical margins of safety for all involved. In addition to avoiding conflicts between trains, dispatchers must observe maintenance windows for track gangs or construction crews working on or in close proximity to the track. Frequently, dispatchers do not know how long the train or trains that are being held must wait until conditions will allow the train to continue movement. If dispatchers lost the flexibility to hold trains as necessary and were instead forced to order a complete shutdown it could increase railway congestion and cause a cascading delay to trains further down the track.

Under the agreements with the Alameda Corridor Transportation Authority, which controls operations in the Alameda Corridor used by almost all trains entering or leaving the ports, a train may not be left unattended nor may it be re-crewed while in the corridor. As a result of the large number of trains originating from or entering the ports each day, there is frequently significant queuing of trains to enter the corridor (as noted above UP shares the use of the corridor with BNSF and the harbor short line railroads). As such, crews often meet and/or exceed their FRA hours of service simply negotiating a train through the Alameda Corridor and out on to the main line. Because a crew cannot be replaced in the corridor, crews frequently stop a train after exiting the corridor onto the Los Angeles Subdivision so that they may be replaced. Many crew change events will exceed 30 minutes in length and may result in a train being left unattended awaiting a replacement crew. These delays would have a ripple effect back through

⁷³ *Id.* at ¶ 7.

the Alameda Corridor to the Ports of Los Angeles and Long Beach and could potentially create severe congestion.⁷⁴

Amtrak operates six trains per week in Los Angeles over the Alhambra Subdivision, and they are given priority over UP's freight traffic. Similarly, UP allows MetroLink to share the Los Angeles Subdivision. On average, MetroLink operates a total of 12 commuter trains each work day, six in each direction, on the entire length of the Los Angeles Subdivision. These commuter trains operate on roughly 30-minute intervals. Neither Amtrak nor MetroLink is subject to the Idling Rules, which apply only to Class I freight railroads. The priority enjoyed by Amtrak and MetroLink often requires freight trains to idle. If UP locomotives must shut down while they wait for passenger traffic, it will take them longer to get underway again, resulting in further system delays.⁷⁵

In order to accurately capture potential idling events of 30 minutes or more, crews would need to track and record every time a locomotive or train comes to a stop because the operator—whether in the yard or on the main lines—rarely knows exactly how long the locomotive or train will be stopped.⁷⁶ Locomotives stop literally hundreds of times per day in the Los Angeles Basin. Requiring train crews to record every stop of a locomotive would be time-consuming and would distract from essential safety functions.⁷⁷

⁷⁴ Hunt Dec. at ¶¶ 17, 18, 27.

⁷⁵ Hunt Dec. at ¶ 23.

⁷⁶ As observed by CARB, SCAQMD's goal in its recordkeeping rule is to have "the effect of making the railroads install idling reduction devices without actually mandating the devices. California Environmental Protection Agency Air Resources Board, June 2005 CARB/Railroad Statewide Agreement on Particulate Emissions from Rail Yards, Public Comments Raising Legal Issues and Agency Responses, October 24, 2005, at 1-2.

⁷⁷ Wills Dec. at ¶ 8.

Crew operations are regulated by the FRA, which strictly limits the hours of service that may be performed by railroad employees. The principal rail routes traveled by UP in the South Coast Basin were designed to be completed within the 12 hour limit on crew time. Crew change locations within these routes are agreed upon with the relevant railroad unions and are reflected in collective bargaining agreements. At the end of a shift, each crewman must enter detailed information into the UP computer system in order to record his hours of service and bill the railroad for his time. This computer action is called a “tie up.” Any change to the tie up data entry procedure (for example to record idling events) would require FRA approval since the FRA regulates the hours of service and tie up process. This additional time would be considered on-duty time under the FRA regulations, and would therefore count towards the employee's 12-hour service limit. This additional burden would require more frequent crew changes in order not to violate the FRA hours of service regulations. Additional crew changes not only add significant cost, but they inconvenience the crews and result in significant delays to the timely arrival of freight trains. Delays resulting from more frequent crew changes would have a system-wide impact, because each delay has the potential to have a cascading effect slowing traffic on other trains operating on the lines leading to the Los Angeles Basin.⁷⁸

The very structure of UP's route system would have to be changed in order to reduce the length of trips between tie-up points so that additional time would be available for recordkeeping. The railroad cannot move its yards and switch points closer together.

Of course, the Local Idling Rules permit the railroads to escape these unreasonable burdens by installing anti-idling devices designed to limit idling to 15 minutes. As explained above, the Rules were in fact designed to achieve that result. But there can be no question that

⁷⁸ Exh. 2, Declaration of Michael Brazytis (“Brazytis Dec.”) at ¶¶ 7, 8, 10, 11-14, 24. The Brazytis Declaration was submitted as evidence for the trial before the District Court.

local equipment mandates of this type impose impermissible burdens on interstate operations. By way of example, a locomotive that travels through Nevada with an anti-idling device set for 30 minutes, as required by federal regulations, *would not be compliant* with the Local Idling Rules when it entered the South Coast Basin. Nor could the engineer just flip a switch to easily reset the device to 15 minutes upon entering the South Coast Basin. The evidence would show that the railroads cannot automatically change the design or programming of the devices when traveling from one location to another. Instead, a trained technician would have to board the locomotive and make a software change to the equipment in order to comply with these rules. And in some cases, older idle control devices would have to be replaced in their entirety with new ones in order to allow for reprogramming. The net effect, of course, is that railroads operating in the South Coast Basin would have to use the equipment design required by the Local Idling Rules as the default when traveling through other districts and states—unless, of course, some other jurisdiction decided to impose even more stringent design standards. This is why such regulation of locomotives has never been permitted at the state or local level. The only workable rule is a uniform federal rule. Congress told EPA to adopt one and it did. That should be the end of the story.

This brief overview of the facts adduced at the trial in *AAR v. SCAQMD* provides only a snapshot of the issues that were addressed by the court in 2006. Were the Board to determine that it must evaluate the relative benefits and burdens of the Local Idling Rules, these issues would need to be thoroughly reevaluated in light of developments in technology, increased awareness of safety concerns that are raised by shutting down locomotives during tie-ups and other changes that have occurred over the last seven years. We have no doubt, however, that the

outcome would be the same. The burdens—and the safety risks—far outweigh any alleged environmental benefit.

If direct local regulation of railroad operations is permitted in this instance, there will be no end to the variety of requirements that other local authorities and states could impose in a patchwork of disparate regulations across the country, undermining the railroads' ability to provide the uniform, seamless service that is critical to interstate commerce. The Board should advise EPA that it must not allow the CAA to be used as a pretext for an assault upon the integrity of the uniform federal scheme of railroad regulation.

CONCLUSION

For all of the foregoing reasons, the Board should advise EPA that the Local Idling Rules would impermissibly interfere with the uniform regulatory scheme carefully crafted by Congress in adopting ICCTA, the LIA, the FRSA, and the CAA.

Respectfully submitted,



February 14, 2014

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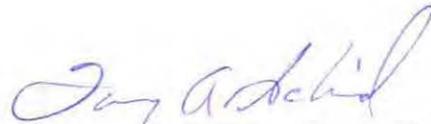
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VERIFICATION

I, Lanny A. Schmid, Director Environmental Management for Union Pacific Railroad Company, declare under penalty of perjury that I have read the foregoing Reply of Union Pacific Railroad Company and that the facts and information relating to Union Pacific's locomotive fleet, locomotive emissions and locomotive operations that are set forth therein are true and correct. Further, I certify that I am qualified and authorized to file this Verification.

Executed on February 13, 2014



Lanny A. Schmid

ATTACHMENTS

Exhibit 1: Letter from FRA Administrator Joseph C. Szabo to Region IX Administrator Jared Blumenfeld dated September 27, 2013

Exhibit 2: Declaration of Michael Brazytis, filed in *AAR v. SCAQMD*, 2007 WL 2439499 (C.D. Cal. 2007) (No. CV06-1416 JFW)

Exhibit 3: Declaration of Kenneth Hunt, filed in *AAR v. SCAQMD*, 2007 WL 2439499 (C.D. Cal. 2007) (No. CV06-1416 JFW)

Exhibit 4: Declaration of John M. Quilty, filed in *AAR v. SCAQMD*, 2007 WL 2439499 (C.D. Cal. 2007) (No. CV06-1416 JFW)

Exhibit 5: Declaration of Douglas W. Wills (without exhibits), filed in *AAR v. SCAQMD*, 2007 WL 2439499 (C.D. Cal. 2007) (No. CV06-1416 JFW)

Exhibit 1:

Letter from FRA Administrator Joseph C. Szabo to Region IX
Administrator Jared Blumenfeld dated September 27, 2013



U.S. Department
of Transportation

**Federal Railroad
Administration**

Administrator

SEP 27 2013

1200 New Jersey Avenue, SE
Washington, DC 20590

Mr. Jared Blumenfeld
Regional Administrator
United States Environmental Protection Agency
Region 9
75 Hawthorne Street
San Francisco, CA 94105

Dear Mr. Blumenfeld:

This letter is regarding the two proposed locomotive idling rules submitted to your office on August 30, 2012 by the California Air Resource Board (CARB) on behalf of the South Coast Air Quality Management District for inclusion in California's State Implementation Plan (SIP). The Association of American Railroads (AAR) has reached out to us about the proposed rules and provided us with some background materials and associated correspondence.

As you know, AAR has advanced a number of concerns with the two proposed locomotive idling rules, including that the proposed rules open the door to a patchwork of regulatory requirements throughout California, making industry compliance more difficult. While FRA does not have regulations specifically covering the subject matter of idling locomotives, I would like to take this opportunity to alert you to a few important safety and operational considerations related to the proposed CARB restrictions on locomotive idling. The proposed rules have the potential to:

- Cause confusion because the CARB proposed rules define "unattended" in a manner that potentially conflicts with FRA's definition of "unattended equipment" in 49 CFR 232.103(n);
- Increase the length of time that equipment is removed from a source of compressed air, which can negatively impact the integrity and operation of the brake system on a vehicle or train;
- Create time delays when restarting a locomotive where it is necessary to allow the airbrake systems to re-charge after the locomotive is shut down; and
- Increase safety risks to railroad employees who will be required to manually set and release handbrakes.

In providing this information, I understand that the decision on whether to adopt the two proposed rules ultimately rests with you and that there may be other compelling interests

that factor into your decision. We would be happy to discuss the safety and operational issues mentioned above with you if that would be helpful in informing your decision.

Thank you for considering this request and please contact Elizabeth Gross at (202) 493-1342 if you should have any questions or wish to discuss the issue further.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph C. Szabo". The signature is fluid and cursive, with the first name "Joseph" written in a larger, more prominent script than the last name "Szabo".

Joseph C. Szabo
Administrator

Exhibit 2:

Declaration of Michael Brazytis, filed in *AAR v. SCAQMD*, 2007 WL 2439499 (C.D. Cal. 2007) (No. CV06-1416 JFW)

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12 ASSOCIATION OF AMERICAN RAILROADS
13 AND UNION PACIFIC RAILROAD COMPANY

14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

17 ASSOCIATION OF AMERICAN
18 RAILROADS, BNSF RAILWAY
19 COMPANY, AND UNION PACIFIC
RAILROAD COMPANY,

20 Plaintiffs,

21 vs.

22 SOUTH COAST AIR QUALITY
23 MANAGEMENT DISTRICT; THE
24 GOVERNING BOARD OF SOUTH
COAST AIR QUALITY
MANAGEMENT DISTRICT,

25 Defendants.

CASE NO. CV06-1416 JFW (PLAx)

DECLARATION OF MICHAEL
BRAZYTIS

Trial Date: November 14, 2006

Time: 8:30 a.m.

Place: Courtroom of the Hon.
John F. Walter, U.S.
Dist. Judge

2006 NOV -3 PM 3:55
U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES

FILED

1 I, MICHAEL BRAZYTIS, declare as follows:

2 1. I make this declaration as my direct testimony in this case. I have
3 personal knowledge of the facts stated in this declaration and if called upon to
4 do so I could and would testify competently thereto.

5 2. I am employed by Union Pacific Railroad Company ("UP") as
6 General Director, Crew Management, with offices in Omaha, Nebraska. My
7 duties include calling all train crews to inform them when and where to report
8 for duty, manpower planning, crew transportation and lodging and crew
9 services, including lay-offs, return-to-work, seniority moves and other issues
10 that affect train, engine and yard employees.

11 3. My personal background and experience in railroad operations
12 covers 28 years, and includes working as a trackman and welder, track
13 inspector, train dispatcher, crew manager, shift manager, team leader, manager
14 in charge of dispatch integration following the merger with Southern Pacific
15 Railroad, Director of the Southern Region of the Union Pacific Railroad and,
16 since 2001, General Director, Crew Management. My responsibilities,
17 described earlier, extend over 24 states. UP is the largest freight railroad in
18 the United States. It has 3,455 miles of track and 5,859 employees in the State
19 of California.

20 4. I have reviewed and am generally familiar with the South Coast
21 Air Quality Management District's ("SCAQMD") Rules 3501 and 3502.

22 5. Rule 3501(d) and (e) imposes recordkeeping and reporting
23 requirements on train idling.

24 6. The recordkeeping reporting requirements imposed by Rule
25 3501(d) and (e) would be extremely burdensome and disruptive to UP crew
26 operations in the Los Angeles Service Unit which operates in the Los Angeles
27 Basin.

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1 7. Crew operations are regulated by the Federal Railroad
2 Administration ("FRA"). FRA regulations strictly limit the hours of service
3 that may be performed by railroad employees. The regulations can be found
4 in Title 49 of the Code of Federal Regulations, Part 228. These regulations
5 provide that:

6 (a) Limitations on Hours. There are two limitations on hours of
7 service. First, no employee engaged in train or engine service
8 may be required or permitted to work in excess of 12
9 consecutive hours. After working a full 12 consecutive hours, an
10 employee must be given at least 10 consecutive hours off duty
11 before being permitted to return to work.

12 Second, no employee engaged in train or engine service may be
13 required or permitted to continue on duty or go on duty unless
14 he has had at least 8 consecutive hours off duty within the
15 preceding 24 hours. This latter limitation, when read in
16 conjunction with the requirements with respect to computation
17 of duty time (discussed below) results in several conclusions:

18 (1) When an employee's work tour is broken or
19 interrupted by a valid period of interim release (4 hours or more
20 at a designated terminal), he may return to duty for the balance
21 of the total 12-hour work tour during a 24-hour period.

22 (2) After completing the 12 hours of broken duty, or at
23 the end of the 24-hour period, whichever occurs first, the
24 employee may not be required or permitted to continue on duty
25 or to go on duty until he has had at least 8 consecutive hours off
26 duty.

1 (3) The 24-hour period referred to in paragraphs 1 and 2
2 above begin upon the commencement of a work tour by the
3 employee immediately after his having received a statutory off-
4 duty period of 8 or 10 hours as appropriate.

5 (b) Duty time and effective periods of release. On-duty time
6 commences when an employee reports at the time and place
7 specified by the railroad and terminates when the employee is
8 finally released of all responsibilities. (Time spent in deadhead
9 transportation to a duty assignment is also counted as time on
10 duty. See discussion below.) Any period available for rest that is
11 of four or more hours and is at a designated terminal is off-duty
12 time. All other periods available for rest must be counted as
13 time on duty under the law, regardless of their duration.

14 8. To comply with the hours of service regulations, UP carefully
15 manages crew usage. In the Los Angeles Hub a sub designation for crew
16 routes that operate in and out of the Los Angeles Service Unit, UP currently
17 employs approximately 774 trainmen and 592 engineers. (The Los Angeles
18 Hub includes the Los Angeles Basin, but is larger, as indicated in paragraph 9
19 below.) The duties of these employees include the operation of trains both on
20 the line of track and within rail yards, and they are subject to the 12-hour
21 service limitation imposed by the FRA.

22 9. The principle routes or trips for trains operating in the Los
23 Angeles Hub are:

- 24 (a) West Colton/Yuma, AZ;
- 25 (b) Los Angeles/Yuma, AZ;
- 26 (c) West Colton/Yermo;
- 27 (d) Los Angeles/Yermo;

- 1 (e) West Colton/Dolores;
- 2 (f) Bakersfield/Los Angeles;
- 3 (g) Bakersfield/West Colton;
- 4 (h) Bakersfield/Yermo; and
- 5 (i) San Luis Obispo/Los Angeles.

6 Crew change locations within these routes are agreed upon with the relevant
7 railroad unions and are reflected in collective bargaining agreements.

8 10. These routes or trips vary in length from 295 miles to 74 miles,
9 but each trip requires just under 12 hours of crew time to complete. The
10 shorter distance routes usually occur in heavily congested urban areas with
11 frequent stops and heavy rail traffic.

12 11. The designation of crew change points reflected in paragraph 9
13 above is intended to maximize the safe and efficient use of crew resources,
14 while adhering to the FRA hours of service limitations.

15 12. The additional recordkeeping required under Rule 3501(d)(1) to
16 log idling events during the operation of a train could distract crews from their
17 basic duty to ensure the safe and efficient operation of trains. Such records
18 would likely be entered by hand into the crewman's notebook, and then
19 subsequently logged into UP's computer system at the end of the shift or hours
20 of service to comply with Rule 3501(d)(1).

21 13. At the end of a shift, each crewman must enter detailed
22 information into the UP computer system in order to record his hours of
23 service and bill the railroad for his time. This computer action is called a "tie
24 up." In my experience, a typical crewman takes 5 to 10 minutes to record this
25 information.

26 14. As a practical matter, the only effective way for idling events to
27 be recorded in UP's systems is to add such recording to the already-required
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1 data entry at the end of each trip as part of the tie up process. This approach
2 would result in a permanent, verifiable record made by the same person who
3 observed the idling event.

4 15. However, any change to the tie up data entry procedure would
5 require FRA approval since the FRA regulates the hours of service and tie up
6 process.

7 16. In other contexts, UP has studied alternative methods of reporting
8 data from the crew. For example, the FRA allows end of trip data to be
9 reported by telephone (one version of a "quick tie") under three specific
10 circumstances: (1) if the line at the computer terminal is too long and the
11 employee will therefore be unable to record his data within his hours of
12 service limit; (2) the switch location has no computer terminals; or (3) the
13 computer terminals are not working. UP has studied the accuracy of reports
14 taken by telephone in these circumstances and determined that there is an error
15 rate of approximately 50% when data is reported by telephone. These findings
16 reinforce my conclusion that the existing FRA hours of service reporting
17 system is the most reliable, efficient and effective way of recording idling
18 events pursuant to Rule 3501(d)(1), if such recording is to be required. It
19 would also provide the only accurate record for purposes of record retention
20 and auditing required by Rule 3501(d)(2).

21 17. Assuming that the average crew experiences several idling events
22 over a 12-hour shift, which is likely to occur in the Los Angeles Hub, I believe
23 that the transfer of additional idling information required by Rule 3501(d)(1)
24 from the crewman's notebook to the computer system would take the average
25 crewman approximately 10 to 15 minutes in addition to the 5 to 10 minutes
26 spent recording his time.

1 18. This additional time would be considered on-duty time under the
2 FRA regulations, and would therefore count towards the employee's 12-hour
3 service limit.

4 19. Although an additional 10 to 15 minutes may not appear to be a
5 significant added burden, the routes of service, set in accordance with FRA
6 regulations and reflected in collective bargaining agreements, allow very little
7 flexibility. Based on my review of our crew usage records for the Los
8 Angeles Basin, I believe that this additional burden would require more
9 frequent crew changes in order not to violate the FRA hours of service
10 regulations.

11 20. Additional crew changes not only add significant cost, but they
12 inconvenience the crews and result in significant delays to the timely arrival of
13 freight trains.

14 21. For example, if a crew on a 12-hour run is required to allow time
15 for Rule 3501(d)(1) data entry, it must stop the train before the end of the run.
16 If data entry requires 30 minutes, the train must be stopped early enough to
17 allow not only the data entry, but also transportation from the train to the
18 designated tie-up location where the crew will enter data in the UP system.
19 Assuming, for example, that it would take three hours to arrange for a van to
20 travel to the location of the stopped train, pick up the crew and transport them
21 to the designated tie-up location, the train would need to be stopped at least
22 three hours and 30 minutes before the end of the 12-hour run. In this example,
23 the crew that has been forced to stop the train would continue to be paid for all
24 of the time spent waiting and traveling to the designated tie-up location, even
25 though they had been forced to stop the train after only 8 hours and 30
26 minutes. If the crew member is required to input information as required by
27 Rule 3501(d)(1), or any other information at the "behest of the railroad," then
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1 all time would be considered on-duty, and if over the 12-hour limit, would
2 cause the crew member to violate the hours of service limitation.

3 22. In addition to the hours of service limitations described above, the
4 FRA imposes a mandatory rest time for crews. After completing 12 hours of
5 consecutive or broken duty, the crew must be allowed at least 10 consecutive
6 hours off duty rest time. In the example set forth above, the crew would work
7 for eight hours and 30 minutes, stop and tie down the train, wait three hours to
8 reach the designated tie-up point, input required data for Rule 3501(d)(1) and
9 then begin their rest period. The crew would be paid for 12 hours, even
10 though they only actually operated a train for 8 hours and 30 minutes.

11 23. In addition to these added costs, under the example above, the
12 train that was tied down in order to stay within the hours of service limits
13 would need to be manned by a new crew, which would have only a three hour
14 and 30 minute trip to complete, but would have to be paid for at least four
15 hours, or more, depending on travel time required to reach the stopped train.
16 Such trips are not cost-effective for either the crews or the railroad.

17 24. Delays resulting from more frequent crew changes would have a
18 system-wide impact, because each delay has the potential to have a cascading
19 effect slowing traffic on other trains operating on the lines leading to the Los
20 Angeles Basin. In the example I provided above, trains on the same line
21 would need to be metered into the Los Angeles Hub due to the train held up
22 for additional recordkeeping and crew changes. This metering would create a
23 staging effect that could hold trains as far back in the network as Salt Lake
24 City, Utah and El Paso, Texas. This delay, of course, could then cause the
25 waiting train crews to reach their hours of service limit, thus necessitating yet
26 another crew change, and so on down the line.

1 25. Hiring additional crews would not resolve the problems caused
2 by Rule 3501(d)(1) and (e)'s recordkeeping and reporting burden. The very
3 structure of UP's route system would have to be changed in order to reduce
4 the length of trips between tie-up points so that additional time would be
5 available for recordkeeping. The railroad cannot move its yards and switch
6 points closer together.

7 26. In addition, more crews mean more employee competition for
8 long runs and less income for the average crew member. This makes
9 attracting and retaining crews more difficult.

10 27. During the first 8 months of 2006, the average duty time for
11 crews on each of the routes or trips UP routinely operated in the Los Angeles
12 Basin was 11.47 hours. This average shows that there is very little flexibility
13 in our system, which is designed to adhere to FRA hours of service
14 requirements while maximizing crew usage. Adding 10-15 minutes of crew
15 time for additional recordkeeping would, for nearly half the trips over the last
16 eight months, cause a violation of the hours of service regulations and require
17 additional crews to complete these routes.

18 28. The problems described above also apply to crews operating
19 trains or locomotives in our rail yards. These crews, like the road crews
20 discussed above, must adhere to FRA hours of service limits, and must enter
21 end-of-shift data similar to what is entered by road crews. Although reducing
22 the time yard crews actually spend operating a train or locomotive would not
23 cause trains to stop in their tracks as it would on road trips, the impact of such
24 reduction would be to increase the number of crews required in the yards.

25 29. Separate from the impact of Rule 3501 regarding record-keeping
26 and reporting, I have reviewed Rule 3502(d)(1)(C)'s requirement to shut down
27 unattended locomotives in a rail yard and believe that this rule, in particular,
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1 will adversely impact the availability of UP crews. I note that other aspects of
2 Rule 3502(d)(1) and (2) could have impacts on crewing, but I do not address
3 those issues in detail. Instead, I merely address Rule 3502(d)(1)(C)'s
4 requirements since the impact is illustrative of the crew requirements imposed
5 by Rule 3502.

6 30. Rule 3502(d)(1)(C) requires the shut down of any unattended
7 locomotive in a rail yard after 30 minutes. This requirement will severely and
8 adversely inhibit yard and locomotive-related operations. UP employs a
9 limited number of engineers and hostlers approved to operate short haul and
10 other low horsepower locomotives for switching, hostling and other purposes.
11 These men and women are responsible for (1) driving short haul trains on the
12 branch lines to service local industry; (2) moving railcars around rail yards,
13 branch lines and sidings; and (3) building line haul consists and trains for
14 intermodal, manifest and auto shipping across the UP network.

15 31. The requirement that all locomotives be shut down in a rail yard
16 when unattended for more than 30 minutes will severely tax the crew
17 resources in doing their jobs of moving locomotives and cars around the rail
18 yards. For example, because UP originates numerous trains per day from its
19 Los Angeles Basin facilities, the yard crews must "build" these trains on
20 almost a daily basis. This work involves a small crew of two persons starting
21 all of the locomotives required to be hostled and then moving them around the
22 yard to build consists. In the course of building consists, it is often necessary
23 to leave a locomotive unattended in order to bring another locomotive to
24 connect the consist. It often takes more than 30 minutes to bring the other
25 locomotive to the consist. Requiring these crews to start and shut down
26 locomotives throughout this process because they will idle unattended for
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1 more than 30 minutes will be a severe impediment to the timely building of
2 consists for departing trains.

3 32. In order to allow for timely building of consists and the
4 management of locomotives in a congested rail yard, while complying with a
5 30-minute shut-down rule, it would be necessary to approximately double our
6 engineer/hostler crews in the Los Angeles Basin. The current engineer
7 applicant pool is not sufficient to meet such crewing goals. The increase in
8 workloads imposed upon individuals who are subject to federal hours of
9 service limitations and/or labor agreement limitations on their hours and scope
10 of services, as well as the need to hire additional engineers, will significantly
11 interfere with the operations of the Los Angeles Hub.

12 33. Hiring additional crews for either the rail yards or the line haul
13 trips in order to comply with Rules 3501 and 3502 is not feasible. As
14 described earlier, UP employs approximately 774 trainmen and 592 engineers
15 in the Los Angeles Hub. To comply with the recordkeeping and reporting
16 requirements of Rule 3501(d) and (e), UP would have to hire many more
17 locomotive engineers—perhaps hundreds. Qualified locomotive engineers can
18 not be hired “off the street.” UP’s collective bargaining agreements require
19 that all locomotive engineers be hired from the ranks of train service
20 employees in seniority order. The process to promote locomotive engineers
21 starts with hiring trainmen first. This process takes approximately six months
22 depending on location. The process continues with trainmen being promoted
23 to hostlers (duties generally include the movement and positioning of
24 locomotives in rail yards), which takes 4-6 weeks of classroom and 2-4 weeks
25 of on-the-job training. The collective bargaining agreement requires that once
26 a trainman is promoted to a hostler, within one year he or she must complete
27 the training for an engineer. The training for engineers in the Los Angeles
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1 Hub takes approximately another 12 months, and due to the grade issues, may
2 be even longer depending on the ability of the employee. Thus, even if UP
3 could hire enough people to expand the number of trainmen, these new hires
4 would not be qualified to operate locomotives for over two years. If UP is
5 required to comply with Rules 3501 and 3502 and this results in hiring an
6 additional 100 engineers, the process would take at least 200 additional
7 employees to complete the hiring needs (100 to first qualify as engineers and
8 then an additional 100 to train and go through the engineer promotion process
9 as they could not just stop at working as a hostler). UP simply cannot meet
10 this burden and comply with these rules.

11

12 I declare under the penalty of perjury under the laws of the United States that
13 the foregoing is true and correct.

14 Executed on this 3rd day of November, 2006, at Omaha, Nebraska.

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Michael Brazytis

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PROOF OF SERVICE BY MAIL

I, Sherette W. Duffus, the undersigned, hereby declare as follows:

1. I am over the age of 18 years and am not a party to the within cause. I am employed by Pillsbury Winthrop Shaw Pittman LLP in the County of Los Angeles, State of California.

2. My business address is 725 South Figueroa Street, Suite 2800, Los Angeles, CA 90017-5406.

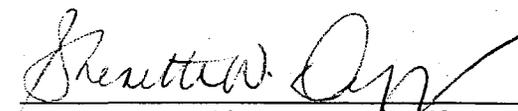
3. I am familiar with Pillsbury Winthrop Shaw Pittman LLP's practice for collection and processing of correspondence for mailing with the United States Postal Service; in the ordinary course of business, correspondence placed in interoffice mail is deposited with the United States Postal Service with first class postage thereon fully prepaid on the same day it is placed for collection and mailing.

4. On November 3, 2006, at 725 South Figueroa Street, Suite 2800, Los Angeles, California, I serve a true copy of the attached document titled exactly DECLARATION OF MICHAEL BRAZYTIS by placing it in addressed, sealed envelopes clearly labeled to identify the persons being served at the addresses shown on the attached Service List and placed in interoffice mail for collection and deposit in the United States Postal Service on that date following ordinary business practices:

See Attached Service List.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 3rd day of November, 2006, at Los Angeles, California.



Sherette W. Duffus

Service List

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Exhibit 3:

Declaration of Kenneth Hunt, filed in *AAR v. SCAQMD*, 2007 WL 2439499 (C.D. Cal. 2007) (No. CV06-1416 JFW)

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14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

16 ASSOCIATION OF AMERICAN
17 RAILROADS, BNSF RAILWAY
18 COMPANY, AND UNION PACIFIC
RAILROAD COMPANY,

19 Plaintiffs,

20 vs.

21 SOUTH COAST AIR QUALITY
22 MANAGEMENT DISTRICT; THE
23 GOVERNING BOARD OF SOUTH
COAST AIR QUALITY
MANAGEMENT DISTRICT,

24 Defendants.

CASE NO. CV06-1416 JFW (PLAx)

TRIAL DECLARATION OF
KENNETH HUNT

Trial Date: November 14, 2006

Time: 8:30 a.m.

Place: Courtroom of the Hon.
John F. Walter, U.S.
Dist. Judge

FILED
2006 NOV -3 PM 3:57
U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES

1 I, KENNETH H. HUNT, declare as follows:

2 1. I am employed by Union Pacific Railroad Company ("UP") as
3 Assistant Vice President -- Operations, Western Region. My office is located
4 in Colton, California. Among other areas, I am directly responsible for
5 operations in UP's Los Angeles Service Unit, the portion of UP's rail system
6 that will be most directly impacted by the South Coast Air Quality
7 Management District's Rules 3501 through 3503. I make this declaration in
8 support of Plaintiffs' (UP, Association of American Railroads ("AAR"), and
9 the BNSF Railway Company ("BNSF")) case-in-chief. I have personal
10 knowledge of the facts stated in this declaration, and if called at trial, I could
11 and would competently testify thereto.

12 2. I have been employed in the rail industry for over 26 years. I first
13 entered the management training program for the Missouri Pacific Railroad in
14 1981. Following completion of my training I held a series of positions in the
15 company's Engineering Department for the next ten years. During this time,
16 the Missouri Pacific Railroad was acquired by UP. After the acquisition, I
17 continued as a UP employee.

18 3. In November 1991 I was promoted to Manager of Train
19 Operations in Bloomington, Texas. I held this position for until 1994 at which
20 time I was promoted to Senior Manager of Terminal Operations in Missouri.
21 In this position, I was responsible for the operations of all rail terminals in St.
22 Louis, Missouri. In July 1995 I relocated to California and was promoted to
23 the position of the Director of Transportation for the Los Angeles Service
24 Unit. In this position I was responsible for all rail operations, including
25 terminals and the mainline between the Los Angeles, Oakland, California and
26 Salt Lake City, Utah (all of Southern California). I held this position until
27 January 1997 when I transferred to Roseville, California. There I was
28 responsible for the Roseville Service Unit including all transportation product

1 between Bakersfield, California, Oakland, California and Elko, Nevada (all of
2 Northern California).

3 4. On October 1, 1997, I was promoted to Superintendent in
4 Portland, Oregon. As Superintendent, I was responsible not only for all
5 transportation operations of terminals and mainlines within my district, but
6 also all aspects of rail operations including budgeting and safety. My district
7 included all UP operations from the California border to the Canadian border
8 to Pocatello, Idaho. I held this position for approximately five years until
9 April 2002 when I was promoted to General Superintendent. This promotion
10 expanded my responsibilities further east to include UP operations in all of
11 Idaho and Montana.

12 5. In August 2005 I was transferred back to the Los Angeles to
13 assume the position of Assistant Vice President – Operations. In my current
14 position, I am responsible for all UP operations in much of the Western United
15 States. I was transferred to Los Angeles specifically to assist with improving
16 service in one of UP's most heavily-congested and financially important
17 service units in the United States.

18 6. In this declaration, I provide testimony regarding issues specific
19 to rail operations in Southern California of which I have personal knowledge
20 and the interplay between these issues and the South Coast Air Quality
21 Management District's ("AQMD" or "District") Rules 3501 and 3502. My
22 testimony supplements that of several other UP employees, such as Doug
23 Wills, Mike Bryzatis, Tom Haley, Ben Ritter, and John Ready. Both Mr.
24 Ritter and Mr. Ready are responsible for operations in the Los Angeles
25 Service Unit and are therefore aware of the issues confronting UP rail traffic in
26 the Los Angeles Basin. As I will describe in more detail below, I believe
27 Rules 3501 and 3502 will substantially degrade rail service in the Los Angeles
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1 Service Unit and beyond and as such will significantly interfere with UP's rail
2 operations in the Los Angeles Basin and eastward.

3 7. My declaration is based upon my education, training and personal
4 business experience with UP and the rail industry. I reviewed the declarations
5 of Doug Wills of UP and John Quilty of BNSF prepared in April and May of
6 2006 and I generally agree with their conclusions regarding the impact of
7 Rules 3501 and 3502 on rail operations. While I am not personally licensed as
8 a locomotive engineer, my 26 years of experience in the industry makes me
9 intimately familiar with all manners of rail equipment and rail operations. In
10 the rest of this declaration I address my opinion that Rules 3501 and 3502 will
11 substantially interfere with rail operations in the Los Angeles Basin. I first
12 describe the current layout of the Los Angeles Service Unit and explain how
13 Union Pacific is limited in its rail operations by physical and operational
14 constraints which, while not necessarily limited to the Los Angeles Basin,
15 present significant challenges for timely freight rail operations. These acute
16 constraints arising largely from limited line of rail, limited rail terminals, high
17 current, and growing, freight traffic demand, the complexities of the Los
18 Angeles and Long Beach Ports, and the conflicts presented by shared rail lines
19 all impose capacity constraints that serve to delay existing rail service thereby
20 reducing rail capacity. I then explain why Rule 3502(d), imposing a strict 30-
21 minute idling limitation on locomotives, and Rule 3501(d)'s record-keeping
22 requirements will adversely affect UP's constrained rail operations.

23 8. **The Los Angeles Service Unit.** In order to comprehend the
24 adverse impacts of the District's Rules on UP's operations, it helps to
25 understand the physical constraints of rail operations in the Los Angeles
26 Basin. The Alhambra and Los Angeles Subdivisions are the two UP
27 subdivisions that service the Los Angeles Basin. Attached hereto to as Exhibit
28 A (Trial Exhibit No. 429) to my declaration is a Simplified Map of the Los

1 Angeles Basin which shows the operations of Los Angeles Service Unit in the
2 basin (the "LA Basin Map"). This map identifies the majority of UP's
3 mainlines and terminals (rail yards) between the Los Angeles and Long Beach
4 Harbors and the Inland Empire. Also included on the LA Basin Map are a
5 small number of UP's branch (or local) rail lines that service local industry.
6 Also depicted are some of the rail lines operated by the BNSF Railway
7 Company ("BNSF") and Metrolink.

8 9. The Alhambra Subdivision (shown in red on the LA Basin Map
9 as the "Alhambra Sub") carries the majority of westward freight traffic
10 arriving into the state from outside of California. As such, it carries much of
11 UP's inbound freight, whether that includes manifest (freight trains carrying
12 all manner of freight in rail, tank, and flat, etc. cars rather than intermodal
13 shipping or cargo containers), intermodal trains (carrying exclusively cargo
14 containers) or automobile trains (automobile transport for newly manufactured
15 automobiles domestically or internationally manufactured). A certain number
16 of trains arriving on this route are distributed power trains where there is a mix
17 of locomotives at the front and rear of the train. UP shares this route with
18 Amtrak who operates one or more passenger trains per day over the Alhambra
19 Subdivision. Passenger rail (whether Amtrak or Metrolink commuter rail) is
20 given priority over freight traffic to proceed on any given UP route. Shipping
21 of manifest, intermodal, agricultural products, natural resources (coal, oil,
22 natural gas), and automobiles comprises the vast majority of UP's freight
23 business in California and the Western United States.

24 10. The Los Angeles Subdivision (shown in yellow on the LA Basin
25 Map as the "Los Angeles Sub"), as with the Alhambra Subdivision, connects
26 UP's main lines leading eastward out of California with the Alameda Corridor
27 and the Ports of Los Angeles and Long Beach. This subdivision carries the
28 vast majority of UP's outward bound manifest, intermodal and automobile

1 trains. UP currently originates on average 14-18 trains per day from its
2 terminals or on-dock facilities in the Los Angeles and Long Beach ports which
3 are destined for out-of-state transport. Each of these trains is typically
4 comprised of a consist of 3-5 line locomotives and often exceed 7,000
5 thousand feet of railcars.

6 11. In addition to these mainline subdivisions, as depicted on the LA
7 Basin Map, UP operates, or shares service over, numerous branch rail lines
8 throughout the Los Angeles Basin. These local rail lines connect numerous
9 manifest customers with UP's main lines and terminals as well as servicing
10 certain areas of the ports. UP further has rights to operate over mainlines
11 operated by both BNSF and Metrolink. UP operates on BNSF mainline tracks
12 in BNSF's Cajon Subdivision between Riverside and Yermo, California
13 (shown in dotted green and yellow on the LA Basin Map) as well as in the
14 Alameda Corridor (shown in Blue on the LA Basin Map). UP operates on
15 Metrolink's Saugus Line to Palmdale and the Mojave Subdivision as well as
16 well as on its Coast Line running toward the North San Fernando Valley
17 (shown in red on the LA Basin Map). In the areas where UP operates on
18 another railroad's tracks, the dispatching for UP train on those subdivisions is
19 done by BNSF or Metrolink dispatchers as opposed to by UP dispatchers.

20 12. It is important to note that much of UP's main lines in and out of
21 the Los Angeles include steep grades. The basin is surrounded by mountains
22 on all sides (except, obviously, to the west) and all interstate traffic must enter
23 or exit through some grade territory. This steep grade territory begins just
24 outside of the West Colton Yard and is within the geographic limits controlled
25 by the District. Depending upon numerous factors, trains entering or exiting
26 the Los Angeles Basin may be assisted by additional helper locomotives or
27 may include distributed power. Significant grades are encountered almost
28 immediately upon exiting the West Colton Yard on the eastern periphery of

1 the Los Angeles Service Unit. Additional grades also exist within the basin.
2 For example, the stretches of main line on both the Los Angeles and Alhambra
3 Subdivisions between the San Gabriel and Pomona Valleys are grade territory
4 through the escarpments that divide these two valleys.

5 13. Los Angeles Service Unit Terminals/Rail Yards. Within the
6 Los Angeles Basin, UP operates several major terminals or rail yards
7 including the West Colton Yard, the Mira Loma Automobile Facility, the
8 Montclair Yard, the City of Industry Yard, the East Los Angeles Yard (a/k/a
9 Commerce), LATC, ICTF (including the Dolores Yard) and on dock staging
10 facilities in San Pedro and Long Beach. All of these rail yards can be seen on
11 the LA Basin Map in the labeled boxes. UP services 6 on-dock terminals
12 which disgorge intermodal cargo containers from incoming ships to out-going
13 trains and vice-versa. West Colton is a major hump yard and the main
14 manifest (e.g., freight) support yard for the Los Angeles Basin. Hump yards
15 are used to sort rail cars for the efficient building of manifest freight trains.
16 The City of Industry Yard is primarily a domestic intermodal facility with
17 some manifest and industry (local traffic) support activity. The East Los
18 Angeles Yard is mainly an international and domestic intermodal facility with
19 some manifest and industry support activity. LATC is a strictly domestic
20 intermodal facility including the premium (Z trains) traffic. Z trains are UP's
21 very time sensitive trains which, for example, carry United Parcel Service
22 mail. Montclair is a small manifest support yard for the LA Basin local traffic.
23 ICTF is a major, and primarily, international intermodal facility and its
24 adjacent Dolores Yard provides manifest support activity. Mira Loma is the
25 primary automotive handling facility in the basin. All of these yards are
26 located in urban or fully developed industrial areas. They are generally land
27 locked with no physical room for expansion. In addition, the company has a
28 small amount of sidings and additional branch lines and rights of way

1 throughout the basin designed to improve traffic volume and velocity as well
2 as service local industrial manifest customers.

3 14. Los Angeles Basin Rail Yard Constraints. Rail yards and
4 terminals serve numerous functions. Some are designed specifically to
5 address intermodal or car freight services, while others may be designed
6 primarily for locomotive maintenance. Still others may have multiple
7 operations and functions. No matter their function, rail terminals are critical to
8 the operation of UP's rail operations, in part because they are frequently called
9 upon to both accept incoming trains within a subdivision and to handle surge
10 capacity for train traffic which frequently bunches up within the Los Angeles
11 Basin.

12 15. Rail network fluidity and train velocity are critical to rail
13 operations. Trains simply do not have the routing flexibility available to other
14 forms of freight services such as maritime shipping, truck transport and air
15 transport. Freight trains must operate on lengthy, but ultimately, limited tracks
16 and rail yards. If a rail line or rail yard becomes slowed or congested due to
17 one of many potential constraints, this fact reduces the ability of UP to move
18 trains and freight over and through its network. Essentially, these constraints
19 reduce the capacity of the rail line to move freight as quickly as possible. In
20 general, UP operations in the Air Basin area are constrained due to increasing
21 freight volumes and scarce resources to handle UP's customers' rail cars. This
22 constraint arises not only from the volume of freight, but also the limited
23 resources in the form of terminal capacity, mainline capacity, and crew. With
24 respect to terminals, it appears in the Los Angeles Basin that terminal capacity
25 has not kept pace with the growth of train volume nor the terminal activity that
26 derives from the train volume. Under current UP operations in the Los
27 Angeles Basin, congestion (i.e., not enough capacity for the number of trains,
28 cars and locomotives located within the yard at any one time) at each of the

1 main terminals contributes to any increase in the overall transit time of trains
2 translating into reduced velocity. Despite the rapid growth in freight rail
3 traffic over the past decade there has been no significant expansion of any yard
4 capacity. As a result, the work in the major yards in terms of the numbers of
5 trains, numbers of cars handled, number of industry holds, classification work
6 and switchers to serve the local industry has increased significantly.

7 16. **Los Angeles Basin Constraints – Shared Tracks.** These
8 terminal problems are compounded by the need to manage train movement on
9 BNSF subdivisions through Riverside to the Cajon Subdivision on the east
10 side of the basin and in the Alameda Corridor on the west. Attached hereto to
11 as Exhibit B (Trial Exhibit No. 430) to my declaration is a map entitled, Los
12 Angeles Basin Alameda Corridor” which shows the BNSF and UP routes
13 through the Alameda Corridor (“Alameda Corridor Map”) in and out of the
14 ports. To assist in the sharing of resources, UP and BNSF operate a joint
15 dispatch center for the Los Angeles Basin in San Bernardino, California. The
16 UP and BNSF dispatchers work in the same room to permit more cohesive
17 dispatching and management of train movements in the basin. The majority of
18 the UP trains entering and leaving the Los Angeles Basin must either share the
19 BNSF right of way on the Cajon Subdivision or cross the Diamond with
20 BNSF. The Diamond is a location where the Alhambra Subdivision crosses
21 BNSF’s Cajon Subdivision. This juncture is the start of UP’s Yuma
22 Subdivision which connects Los Angeles with the Sunset Corridor leading
23 toward Yuma, Phoenix, Tuscon, and Texas. Attached hereto to as Exhibit C
24 (Trial Exhibit No. 431) to my declaration is a map entitled, “Sunset Route
25 West Colton to El Paso” which shows the UP route between the of Los
26 Angeles Service Unit and El Paso (the “Sunset Corridor Map”). UP has rights
27 to use BNSF’s tracks between the terminus of the Los Angeles Subdivision at
28 Riverside and the Alhambra Subdivision located several mile north. However,

1 access to this track is at the dispatch direction of BNSF. Prior to crossing the
2 BNSF tracks at the Diamond or use of BNSF tracks between Riverside, the
3 Alhambra Subdivision and through the Cajon Pass on the Cajon Subdivision,
4 UP trains must wait for BNSF's dispatchers to line the signals to permit UP
5 trains to access and cross BNSF's tracks.

6 17. Similarly, intermodal trains originating or destined for ICTF/On
7 Dock facilities must operate on the Alameda Corridor (also utilized by BNSF
8 and other local railroads). See Alameda Corridor Map. Each train is typically
9 in excess of 7,000 feet long. Waiting for a slot to access BNSF tracks or in the
10 Alameda Corridor results in daily delays to UP trains. Staging (i.e., placing
11 trains in order to allow them to efficiently follow their schedules through
12 congested lines) a train near the Diamond, or the connection with a BNSF
13 track through the Cajon Subdivision, or for the Alameda Corridor currently
14 creates cascading effects on other trains by requiring train holds in various
15 locations up and down the main lines. Ultimately, UP lacks sufficient holding
16 capacity at terminals in the Los Angeles Basin to hold arrive out-of-state trains
17 and has insufficient staging capacity near the ports to allow timely access to
18 the Alameda Corridor and BNSF's right of ways when the mainline opens up
19 for train movement. This is the reason why UP keeps its locomotives running
20 when train are held for short periods – so that they can quickly move onto the
21 line when a space opens for a train.

22 18. **Los Angeles Basin Constraints – Ports of Los Angeles and**
23 **Long Beach**. The Ports of Long Beach and Los Angeles further compound
24 the congestion through the Alameda Corridor by their operating practices. UP
25 serves 6 on-dock terminals in the ports. Each of these facilities can only
26 handle a limited number of trains at any one time leading to congestion and
27 timing problems for arrivals and departures. Moreover, ingress and egress to
28 the terminals is over the same tracks. Due to labor agreements with the

1 dockworker unions, the ports only permit the release of trains from the docks
2 two times per day – at 5 AM and 5 PM. Unfortunately, these release times
3 coincide with the morning and evening commute by Metrorail which is
4 discussed below. UP attempts to stage its intermodal traffic out of the ports on
5 an hourly basis so that the trains may negotiate the Los Angeles Subdivision
6 with minimum delays. Therefore, trains are built and lined up to begin
7 departing the ports at 5 AM and again at 5 PM. This results in an immediate
8 backlog of trains which are forced to hold as they wait to negotiate the
9 corridor. If a train is delayed in leaving ICTF or another on dock facility, it
10 delays the trains lined up to depart behind it. If a train delay occurs on the
11 main line within the Alameda Corridor, it will not only delay the trailing UP
12 trains, but potentially also BNSF trains. If, as a result of delay, a train misses
13 the periods of time permitted for entry or exit of freight from the ports, it must
14 wait until access is granted later in the day/night. Congestion in the ports and
15 the adjacent rail yards and main lines do not provide sufficient room to hold
16 numerous trains for extended periods.

17 19. **Los Angeles Basin Constraints – Main Line and Passenger**
18 **Rail**. UP's main lines in the Los Angeles Basin present their own capacity
19 problems. The Alhambra and Los Angeles Subdivisions run parallel to each
20 other in the east/west direction for much of their length. The Alhambra
21 Subdivision is 56 miles in length, but only ten miles of that is double tracked.
22 That means that 46 miles of this subdivision is comprised of single track with
23 limited siding capacity for train meets (passing trains)¹(this subdivision has
24 less than 11 miles of siding over its entire length). The Los Angeles
25 Subdivision is 55 miles long but again suffers from single track segments.

26 _____
27 ¹ Train meets are significant events which consume large amounts of time. A
28 meets with a Metrolink train or other freight train typically takes 30 minutes
or more.

1 Twelve miles (e.g., 22%) of this subdivision is comprised of single track and
2 over its entire 55 mile length there are less than two miles of siding. Limited
3 siding means that there is little room to hold trains during train meets and for
4 other reasons. For example, during the hours that Metrolink uses the Los
5 Angeles Subdivision, UP can only hold four trains on sidings along this entire
6 stretch of track. As explained above, the Alhambra and Los Angeles
7 Subdivisions are connected on the east end by the BNSF Diamond and right of
8 way and on the west end by the Alameda Corridor. In fact, resources available
9 to move freight as a general rule on the UP system are being taxed on a daily
10 basis. Any disruption has the effect of causing delays that will ripple
11 throughout the system.

12 20. It is important to note that the main lines are the ones of the keys
13 to the increased congestion and reduced rail capacity that will arise from the
14 application of the District's rules. At the present time UP's subdivisions in the
15 Los Angeles Basin are operating under significant capacity constraints due to
16 the high levels of traffic, among other reasons, which is expected to grow
17 significantly in the next few years. Any event or application that slows
18 velocity on these subdivisions has the effect of reducing rail capacity to the
19 detriment of UP, its customers, and the public at large. Its important to note
20 that when a network is stressed by existing capacity constraints, the addition
21 of new constraints can result in significantly increased negative impacts. This
22 is similar to the impact of an automobile accident on a busy highway versus a
23 seldom used country lane. The impact of an accident on a busy highway can
24 significantly impact the capacity of the highway while the impact on the
25 country lane may not even be noticed.

26 21. The main lines are primarily used by line haul locomotives
27 which, unlike many of the locals and switchers that are dedicated to local
28 service in different regions of California, are generally not equipped with anti-

1 idling devices. While locals and switchers do occupy the main lines, the more
2 powerful line haul locomotives do not typically operate on the branch lines.
3 Therefore, it is often the case that the majority of trains running on the
4 Alhambra and Los Angeles Subdivisions on a daily basis will be subject to
5 regulation under the District's rules, particularly Rule 3502(d)(1) and (d)(2)'s
6 prohibition against idling most trailing locomotives and some lead or
7 unattended locomotives in excess of 30 minutes. The significant volume of
8 freight (and passenger) rail traffic flowing along these subdivisions creates
9 delays that will be severely compounded by the application of the District's
10 Rule 3502(d)(1) and (d)(2). Freight through the ports is increasing each year.
11 The combination of high volumes of rail traffic, track impediments such as
12 limited track, and the inability of terminals to readily accept trains all
13 contribute to the congestion currently present in the Los Angeles Basin.

14 22. The Los Angeles Basin currently experiences high volumes of
15 train traffic. Volume varies on the different segments of the two subdivisions.
16 However, volume is always increasing. Excluding local manifest traffic
17 serving local industry and passenger rail, the highest train density on the two
18 subdivision is currently approximately 39-40 trains per day. This train
19 composition is 12 manifest freight trains that terminate at West Colton and up
20 to 28 intermodal and other manifest freight trains. The majority of the traffic
21 on the Alhambra and Los Angeles Subdivisions is high speed, time sensitive,
22 intermodal and automobile trains. Most intermodal and automobile trains
23 arriving and departing the Los Angeles Basin are through trains and do not
24 add or drop freight or cars en route. Inbound and outbound manifest,
25 intermodal and automobile traffic is forecast to grow steadily over the next
26 several years and decades.

27 23. As noted above, UP permits passenger traffic to operate on its
28 two Los Angeles Basin subdivisions. By agreement, passenger rail has

1 priority in seizing the line. There is on average one intercity (Amtrak) train
2 per day on the Alhambra Subdivision and a total of 12 commuter (Metrolink)
3 trains each work day, six in each direction, on the Los Angeles Subdivision.
4 These commuter trains operate along the entire length of the Los Angeles
5 Subdivision from the CP East Redondo Junction on the west to the West
6 Riverside station on the east on both tracks. The commuter service consists of
7 five westbound trains into Los Angeles during the morning commute and one
8 train in the mid-afternoon. The east bound service includes one afternoon
9 train and five late-afternoon/evening trains. These commuter trains operate on
10 roughly 30-minute intervals. These intervals can make it very difficult to
11 permit the movement of UP trains due to the high frequency of train meets.
12 The total period of time these commuter trains seize both of tracks on the Los
13 Angeles Subdivision is eight or more hours per day. Due to track and rail yard
14 constraints, UP cannot run trains on the Los Angeles Subdivision during these
15 eight hours so as to not obstruct or slow passenger on-time service (which
16 generally runs in excess of 95% on time and is guaranteed by contract to be
17 96%). All UP trains are either relegated to rail terminals or the few sidings on
18 the subdivision during these hours. As a result of this limitation, UP is forced
19 to essentially move 24 hours of freight in 16 hours each work day. One of the
20 obvious side effects of this arrangement with Metrolink is that the main lines
21 and yards on the Los Angeles Subdivision appear abnormally quiet during the
22 commute hours while UP's operations are sidelined.

23 24. UP is planning to implement measures to improve, as much as
24 possible, its terminal and mainline capacity. However, there are significant
25 cost issues, physical limitation issues, and other impediments to expansion,
26 not to mention public opposition to rail yard and line expansion, which will
27 necessarily slow down improvements designed to improve capacity. Given
28 the estimated increase in freight traffic through the ports, it is unlikely that UP

1 will be able to significantly improve capacity in the next few years. As such,
2 the company is working very hard to improve its capacity and train velocity
3 within existing physical constraints.

4 25. Adverse Impacts from Rule 3502. As previously described by
5 Mr. Wills in his prior declarations in this case, delays occur during rail
6 transportation. Delays due to weather, crew availability, locomotive or car
7 mechanical break down, track repairs or signal delays due to electronic or
8 other causes do occur. Railroad personnel respond and eliminate these types
9 of delays as quickly as possible. However, other delays beyond the railroads'
10 control may also occur -- such as the availability of customers to receive or
11 unload cars, vandalism, motor vehicle and grade crossing accidents, labor
12 shortages or disruptions at customer or vender locations. All of these may and
13 do contribute from time to time to delays. Minimization of delay is critical to
14 allowing the constrained rail system to operate in such a manner as to prevent
15 gridlock.

16 26. The Los Angeles Basin, as described above, presents its own
17 peculiar, and strategically important, delay situations. Additional delays
18 caused by onerous shut down rules such as Rule 3502 will impact all of these
19 rail operations in the entire basin area.

20 27. Rule 3502 would have serious adverse effects on the Los Angeles
21 Basin and the Sunset Route. Mr. Wills has accurately described the impacts of
22 shutting down locomotives and the delays this will create. However, the
23 delays engendered by frequent shut downs and re-starts of line haul
24 locomotives in the basin are compounded by the existence of the Alameda
25 Corridor and passenger rail on the Los Angeles Subdivision. Under the
26 agreements with the Alameda Corridor Transportation Authority which
27 control operations in the Alameda Corridor, through which essentially all UP
28 trains entering or leaving the ports must travel, a train may not be left

1 unattended nor may it be re-crewed while in the corridor. As a result of the
2 large number of trains originating from or entering the ports each day, there is
3 frequently significant queuing of trains to enter the corridor (as noted above
4 UP shares the use of the corridor with BNSF and the harbor short line
5 railroads). As such, crews often meet and/or exceed their Federal Rail
6 Administration ("FRA") hours of service simply negotiating a train through
7 the Alameda Corridor and out on to the main line. Because a crew cannot be
8 replaced in the corridor, crews frequently stop a train after exiting the corridor
9 onto the Los Angeles Subdivision so that they may be replaced via a re-crew
10 or a schedule crew change event. Many crew change events will exceed 30
11 minutes in length and may result in a train being left unattended awaiting a
12 replacement crew. The shut down of these locomotives as a result of Rule
13 3502 during crew changes or other necessary idling events will have a
14 disastrous effect on the trains following that idled train. As previously
15 described by Mr. Wills, this shut down will likely result in a significant delay
16 to re-start the consist and potentially longer if the lead locomotive is shut
17 down and a significant number of car hand brakes are tied. The delay in
18 starting again will have a ripple effect back through the Alameda Corridor to
19 the Ports of Los Angeles and Long Beach and could potentially create severe
20 congestion. Los Angeles has already seen the affect of severe congestion of
21 the ports in 2004 as a result of the dock workers strikes and havoc that it
22 played with freight transportation through the Los Angeles Basin and the
23 United States.

24 28. The delays generated by compliance with Rule 3502 will also
25 adversely effect the relationship between passenger and freight rail. As I
26 described above, UP essentially stops its freight service for four hours each
27 week day morning and four hours each night along the Los Angeles
28 Subdivision to allow passenger rail to seize both tracks on the entire

1 subdivision. As such, the company must move all of its intermodal,
2 automobile and manifest trains over the subdivision, which is also shared by
3 local haulers, in essentially 16 hours. As mentioned above, compliance with
4 Rule 3502 will result in significant train delays rippling along this subdivision
5 each day given the fact that the company has numerous road delays, crew
6 changes and late train originations, among other delays each day which will
7 result in forced shut downs. These delays will adversely affect UP's
8 operations but will also adversely impact the timeliness of passenger rail. On
9 time service will quickly degrade as freight traffic ends up stopping on the
10 mainline during commute hours.

11 29. Separate and apart from the impact on freight rail service I
12 believe there will be another significant impact arising from the shut down
13 requirements of Rule 3502. As currently drafted, Rule 3502(d)(1) requires the
14 shut down of any unattended locomotive in a rail yard after 30 minutes. This
15 requirement will severely and adversely inhibit yard and locomotive-related
16 operations. UP employs a limited number of engineers/hostlers approved to
17 operate short haul locomotives and other low horsepower locomotives for
18 switching, hostling and other local purposes. These men and women are
19 responsible for driving short haul trains on the branch lines to service local
20 industry. They are also responsible for the movement of railcars around
21 railyards, branch lines and sidings. Further they are responsible for building
22 line haul consists and trains for intermodal, manifest and auto shipping across
23 the UP network. The requirement that all locomotives be shut down in a rail
24 yard when unattended for more than 30 minutes will severely tax the crew
25 resources in doing their jobs of moving locomotives and cars around the rail
26 yards. For example, because UP originates numerous trains per day from its
27 Los Angeles Basin terminals, the yard crews must "build" these trains on a
28 daily basis. At the outset, they build the line haul consist that will serve as the

1 power for the train by assembling pre-set number of locomotives into a single
2 power unit. Again, few of the line haul locomotives are equipped with anti-
3 idling devices. UP yard crews build a consist on the ready or service track
4 with several specific locomotives which may be located on a single track
5 within the yard or in different locations throughout the yard. If the
6 locomotives are located on a single track, the crew (comprised of one
7 engineer/hostler and one ground man assigned to walk with the locomotive in
8 part to prevent accidents or injuries) must start all of the locomotives and,
9 essentially, juggle them to extract the assigned locomotives for the train. At
10 times there may be up to ten locomotives on a single track which must be
11 started and moved to isolate and remove the required locomotives intended for
12 a consist. Once a locomotive is extracted, it is driven to the service track and
13 left idling awaiting the attachment of the next locomotive in the consist. If the
14 lead locomotive is shut down, it will need to be re-started to test the proper
15 connection of the two when the second locomotive is joined to it. This
16 process is repeated until a consist of three to five locomotives is built. The
17 need to start and shut down locomotives throughout this process because they
18 will idle unattended for more than 30 minutes will be a severe impediment to
19 the timely building of consists for departing trains. It will further impair the
20 assembling of rail cars for a train. Finally it will create additional congestion
21 in rail yards to the detriment of other yard operations as well as line haul trains
22 waiting to enter the yard. I anticipate that compliance with Rule 3502(d)(1)'s
23 requirements regarding unattended locomotives, so as to avoid significant
24 delays in building trains, will force UP to hire numerous additional engineers
25 at each facility. I don't believe that the current engineer applicant pool has
26 sufficient available engineers to allow the company to continue its current
27 levels of freight rail service. This is but one example of the impact of Rule
28 3502(d)(1) on terminal operations. The need to frequently start up and shut

1 down line locomotives on the yard premises, since they are frequently in use
2 but often unattended, will dramatically contribute to the work load of hostlers,
3 maintenance people and other responsible employees throughout the day and
4 night. This increase in workloads imposed upon individuals who are generally
5 subject to federal hours of service limitations and/or labor agreement
6 limitations on their hours and scope of services will significantly interfere with
7 the operations of the Los Angeles Service Units rail terminals.

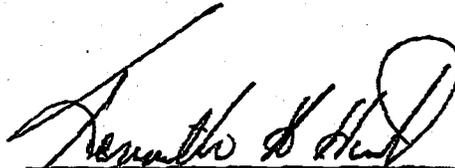
8 30. Adverse Impacts from Rule 3501. Similarly, Rule 3501(d), as
9 one could surmise from my description above, will be extremely problematic
10 and difficult for a rail yard. Throughout the day numerous hostlers and other
11 employees may be in contact with and responsible for operation of a single
12 locomotive. It will be extremely difficult to devise a tracking program to
13 comply with Rule 3501(d)'s record keeping and reporting requirements for
14 idling locomotives within a rail yard or on branch lines. Because one
15 employee may start a locomotive and then leave it unattended, it will be
16 difficult for the next employee to track its period of idling for either shut-down
17 or record-keeping purposes. Critical time will be lost to employees tracking
18 this issue which will be further degraded by the need for the responsible
19 employees to input or otherwise electronically track the idling locomotives
20 pursuant to Rule 3501(d) and (e) on a daily basis for computerized record-
21 keeping and reporting to the SCAQMD. Every employee who is required to
22 track an idling locomotive could lose a several minutes or more per day to
23 capture the rule 3501 information. The net effect on hundreds of employees in
24 the Los Angeles Service Unit will be an overall reduction of actual work
25 performed by men and women who are constrained to limited hours of service.

26 31. The shutting down of locomotives under the 60-minute shut-
27 down rules embodied in UP's rules and the recent Memorandum of
28 Understanding with the State of California (the "MOU") under certain

1 circumstances can also cause delay. This delay is in one of the constraints on
2 capacity currently experienced in the Los Angeles Service Unit. However, the
3 MOU, as incorporated in UP Rule 32.20 necessarily strike a balance between
4 operational flexibility, fuel savings and emissions reductions. A strict 30-
5 minute rule removes virtually all operational flexibility and significantly
6 impairs the Los Angeles Service Units ability to timely and efficiently operate
7 a rail system. I believe that compliance with the District's Rules 3501 and
8 3502 will be very detrimental to UP's network and will result in significant
9 delays, disruptions and reduced rail capacity in the Los Angeles Basin and
10 beyond.

11 I declare under the penalty of perjury under the laws of the United States
12 that the foregoing is true and correct.

13 Executed on this 3rd day of November, 2006, at Bloomington,
14 California.

15 
16 _____
17 Kenneth H. Hunt

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EXHIBIT A

TRIAL EXHIBIT 429

EXHIBIT PAGE 21

Simplified Map of the Los Angeles Basin

To Palmdale & Mojave Sub via SCRR Valley Sub

To Palmdale, Mojave & Bakersfield

To Yermo via BNSF

Saugus Line

To Coast Line

Mojave Sub "Palmdale Cut-Off"

BNSF / UP

SE Quad Connection MP 538.7

Yuma Sub to El Paso

Alhambra Sub

SCRR

Pomona MP 514.3

SCRR

West Colton Yard MP 536

Los Angeles Sub

Montclair Yard MP 36

Mira Loma Auto Facility

Alameda Corridor

BNSF

ICTF Dolores

Los Alamitos

BNSF

San Pedro

Long Beach

UP_SCAQMD 06042657

Tunnel 25

Burbank Jct

Aurant

San Gabriel MP 491.5

SCRR

East LA Yard MP 2.5

El Monte MP 495

Bassett MP 498.5

City of Industry MP 502

Alhambra Sub

Walnut MP 507.8

Spadra MP 27.8

MP 31.9

Montclair MP 518.2

Ontario MP 520.8

Kaiser MP 527.5

Guasti MP 523.5

South Fontana MP 530.5

SCRR

BNSF / UP

SE Quad Connection MP 538.7

Yuma Sub to El Paso

Redondo Jct

Watts Jct

Firestone

Los Nietos

Bartolo MP 11.4

Puente Jct MP 18.4

Los Angeles Sub

Brea Chemical

Montclair Yard MP 36

Mira Loma Auto Facility

MP 45.7

Riverside MP 56.6

Alameda Corridor

BNSF

ICTF Dolores

Los Alamitos

BNSF

San Pedro

Long Beach

UP_SCAQMD 06042657

Tunnel 25

Burbank Jct

Aurant

San Gabriel MP 491.5

SCRR

East LA Yard MP 2.5

El Monte MP 495

Bassett MP 498.5

City of Industry MP 502

Alhambra Sub

Walnut MP 507.8

Spadra MP 27.8

MP 31.9

Montclair MP 518.2

Ontario MP 520.8

Kaiser MP 527.5

Guasti MP 523.5

South Fontana MP 530.5

SCRR

BNSF / UP

SE Quad Connection MP 538.7

Yuma Sub to El Paso

Redondo Jct

Watts Jct

Firestone

Los Nietos

Bartolo MP 11.4

Puente Jct MP 18.4

Los Angeles Sub

Brea Chemical

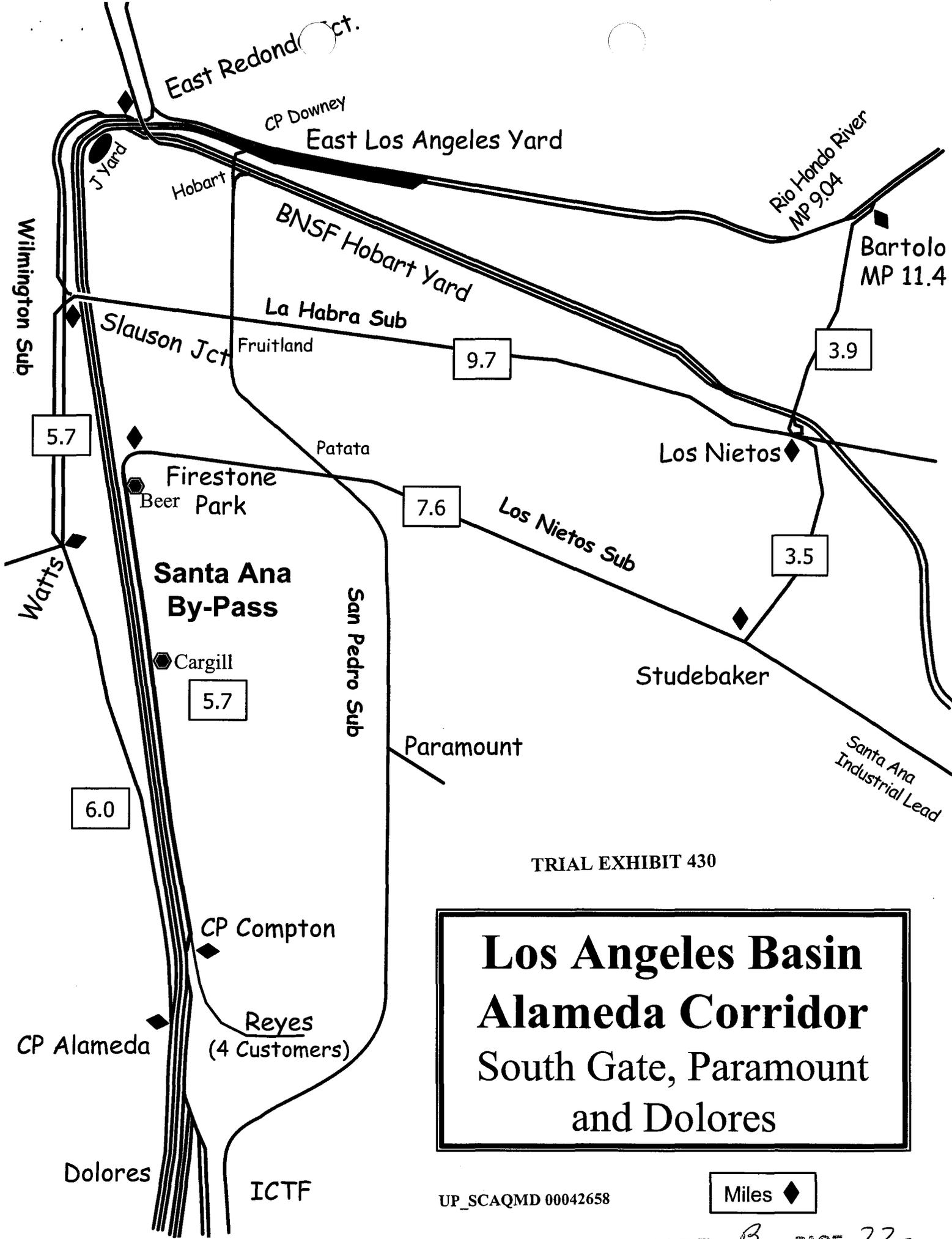
Montclair Yard MP 36

Mira Loma Auto Facility

MP 45.7

Riverside MP 56.6

EXHIBIT B



TRIAL EXHIBIT 430

**Los Angeles Basin
Alameda Corridor
South Gate, Paramount
and Dolores**

UP_SCAQMD 00042658

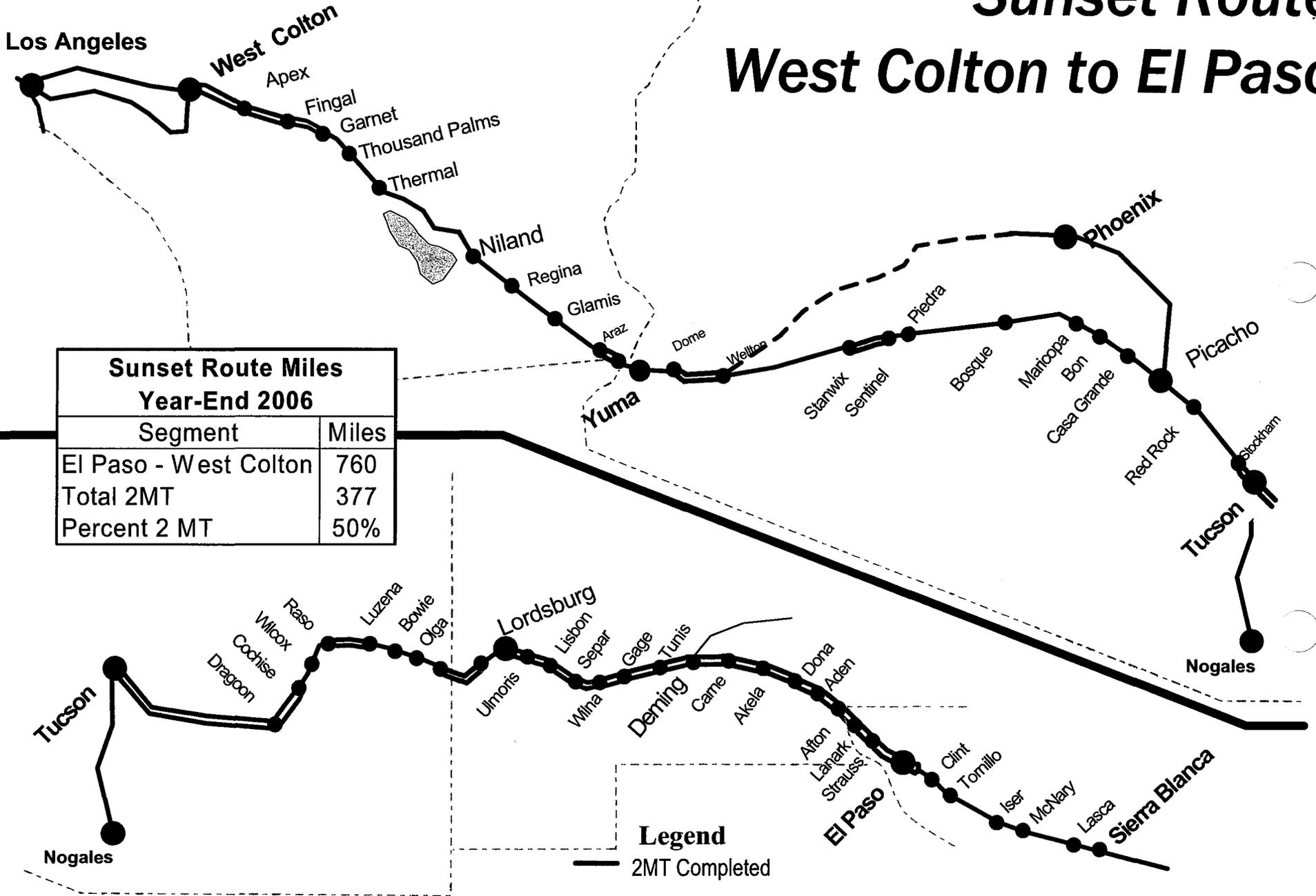
Miles ♦

EXHIBIT C

Sunset Route West Colton to El Paso

TRIAL EXHIBIT 431

UP_SCAQMD 00042659



Sunset Route Miles Year-End 2006	
Segment	Miles
El Paso - West Colton	760
Total 2MT	377
Percent 2 MT	50%

Legend
 2MT Completed

22

2 PROOF OF SERVICE BY MAIL

3 I, Sherette W. Duffus, the undersigned, hereby declare as follows:

4 1. I am over the age of 18 years and am not a party to the within cause. I
5 am employed by Pillsbury Winthrop Shaw Pittman LLP in the County of Los
6 Angeles, State of California.

7 2. My business address is 725 South Figueroa Street, Suite 2800, Los
8 Angeles, CA 90017-5406.

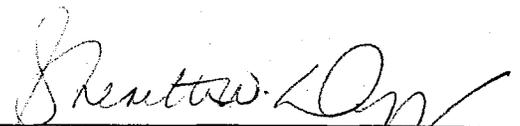
9 3. I am familiar with Pillsbury Winthrop Shaw Pittman LLP's practice for
10 collection and processing of correspondence for mailing with the United States
11 Postal Service; in the ordinary course of business, correspondence placed in
12 interoffice mail is deposited with the United States Postal Service with first class
13 postage thereon fully prepaid on the same day it is placed for collection and mailing.

14 4. On November 3, 2006, at 725 South Figueroa Street, Suite 2800, Los
15 Angeles, California, I serve a true copy of the attached document titled exactly
16 TRIAL DECLARATION OF KENNETH HUNT by placing it in addressed,
17 sealed envelopes clearly labeled to identify the persons being served at the addresses
18 shown on the attached Service List and placed in interoffice mail for collection and
19 deposit in the United States Postal Service on that date following ordinary business
20 practices:

21 *See Attached Service List.*

22 I declare under penalty of perjury that the foregoing is true and correct.

23 Executed this 3rd day of November, 2006, at Los Angeles, California.

24
25
26 
27 _____
28 Sherette W. Duffus

Service List

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Exhibit 4:

Declaration of John M. Quilty, filed in *AAR v. SCAQMD*, 2007 WL 2439499 (C.D. Cal. 2007) (No. CV06-1416 JFW)

COPY

1 MAYER, BROWN, ROWE & MAW LLP
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11 Washington, DC 20006-1101
12 Telephone: (202) 263-3000
13 Facsimile: (202) 263-3300

14 Attorneys for
15 BNSF RAILWAY COMPANY

16
17
18 UNITED STATES DISTRICT COURT
19 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

20 ASSOCIATION OF AMERICAN
21 RAILROADS, BNSF RAILWAY
22 COMPANY, and UNION PACIFIC
23 RAILROAD COMPANY,

24 Plaintiffs.

25 vs.

26 SOUTH COAST AIR QUALITY
27 MANAGEMENT DISTRICT; THE
28 GOVERNING BOARD OF SOUTH
COAST AIR QUALITY MANAGE-
MENT DISTRICT,

Defendants.

CASE NO. CV06-1416 JFW (PLAx)

DECLARATION OF JOHN M. QUILTY
IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION

Date: April 3, 2006

Time: 1:30 p.m.

Place: Courtroom of the Honorable John
F. Walter, United States District
Judge

I, JOHN M. QUILTY, declare as follows:

1. I make this declaration in support of Plaintiffs' Motion for a Preliminary Injunction. I have personal knowledge of the facts stated in this Declaration and, if called as a witness, could and would competently testify thereto.

2. I am presently Assistant Vice President, Operating Practices of the BNSF Railroad Company ("BNSF"). In this position, I am responsible, *inter alia*,

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- Once the air brake system is charged up, the brakes must be applied to a 20 pound reduction;
- One the reduction is in effect, the train crew must walk the entire train to see that the brakes are applied on each car. This may require the crew member to crossover to the other side of the train to determine if the brake did apply on a car;
- Then the crew has to release the brake application, to determine that the brake releases on each car;
- If the brake does not apply or release on one of the cars, then the crew has to take that car out of the train, which is a very time consuming process;
- In addition to the air brake test a safety inspection of the train must also be complete.

7. All of these steps expose BNSF employees to additional safety risks which they are not presently exposed to. All of this is also very time consuming and will prevent a train from moving when it would otherwise be able to move but for the requirements of Rule 3502(d)(1) and would therefore interfere with, delay and impair BNSF's operations. The delay of one train because it requires an air brake test not only delays that train but also causes delays for other trains in the system because of the interconnectedness of the railway system.

8. Even if an air brake test is not required under federal regulations, the effect of Rule 3502 is to require start-ups of locomotives which would not otherwise be required under BNSF's standard operating practices. However, even without an air brake test, it can often take 20 minutes or more to restart a locomotive consist. The effect of the Rule is to prevent a train from moving when it would otherwise be able to move but for the requirement of the Rule, and would therefore interfere with, delay and impair BNSF's operations. The delay of one train because it is required to start up not only delays that train but also causes

1 delays for other trains because of the interconnectedness of the railway system.

2 9. The effect of Rule 3502 is also to require locomotive shut-downs
3 which would otherwise not be required under BNSF's standard operating practices.
4 Locomotive shutdown (instead of idling) raises a number of additional safety
5 concerns, especially on heavy and mountain grades or during icy conditions.
6 Pressure in the air brakes of locomotives is maintained by the engine; if it shuts off,
7 air pressure "bleeds" out of the system. Moreover, because most locomotive
8 engines do not use anti-freeze, many cannot be shut down if the temperature falls
9 below 40 degrees Fahrenheit. Grades as low as 1% may tax the air brakes of many
10 commercial trains and lead to a potentially unsafe condition should the brake air
11 pressure fall below safe levels. Under some circumstances, it may be necessary for
12 crew members to exit the train to secure train hand brakes to prevent movement.
13 Doing so exposes crew members to injuries and accidents that could occur,
14 especially when trying to secure a train on a steep grade or in icy conditions.

15 10. Rule 3502(d)(2): Rule 3502(d)(2) requires in a number of situations
16 that BNSF manually shut down the engines of trailing locomotives which are not
17 equipped with AESS. As an initial matter, it is unclear whether and how the Rule
18 applies, because BNSF often cannot determine beforehand whether or not a delay
19 will last more than 30 minutes. A delay might be predicted to last more than 30
20 minutes but actually not last more than 30 minutes. The result of this is that BNSF
21 might be required to shut down the engines of trailing locomotives unnecessarily
22 under the Rule. However, it could take 30 minutes or more to restart the engines of
23 the trailing locomotives, which would prevent BNSF's trains from moving when
24 the opportunity arises. Because this would lead to unnecessary delays, compliance
25 with Rule 3502(d)(2) would interfere with and impair BNSF's operations.

26 11. Another consequence of Rule 3502(d)(2) is that it would require BNSF
27 to shut down the power to trailing locomotives and therefore to cut off all air
28 conditioning and heating in trailing locomotives. This could have deleterious

1 effects on the health and safety of crews traveling in trailing locomotives.

2 12. Another point is that in California, including the South Coast Air
3 Basin, BNSF uses a number of distributed power trains interspersed within the
4 train. These are not manned but are operated by radio signals. Rule 3502(d)(2)
5 would require BNSF to manually shut down the engines of these distributed power
6 trains and then go through an extensive re-linking process of the distributed power
7 equipment. These engines cannot be shut down or started up by radio signals.

8 13. Compliance with Rule 3502(d)(2) would require BNSF to spend
9 significant time in manually restarting the engines of trailing locomotives,
10 including distributed power trains, after the cause for the delay has passed. This
11 would cause further delay for both the train that has stopped and other trains using
12 the rail system and thereby interfere with and impair BNSF's operations. Failure
13 of the locomotive(s) to re-start would result in more delays while waiting on relief
14 locomotive(s). This would increase idling time in order to maintain the air brake
15 system.

16 Rule 3501

17 14. Rule 3501(d): Rule 3501(d) would require BNSF to keep and maintain
18 certain records which it does not presently keep. The information that Rule 3501
19 seeks to collect is not currently captured in any one location, and indeed, some
20 aspects of the information are not currently documented. The additional activities
21 required by Rule 3501 increase the potential for an unsafe condition. Rule 3501's
22 recordkeeping and reporting requirements will essentially require crew members to
23 maintain written logs of all stops and starts of their locomotives, while performing
24 other safety intensive responsibilities. Each stop and start is preceded by a series of
25 required activities, each followed in sequence to allow for safe completion of the
26 task. For example, crew members engaged in switching operations at local client
27 industries or in switching yards may be stopped for periods of time. Under these
28 circumstances, the crew's attention must be dedicated to other safety concerns and

1 activities, such as plant employees moving about the equipment or other rail
2 switching work. Any distraction for record-keeping purposes during these times
3 could lead to unsafe conditions and additional delay. Attention to surroundings
4 while making preparation to perform switching in industries and yards is critical to
5 safety of the crew members and customers.

6 15. Once the events required to be recorded by Rule 3501(d) are recorded,
7 the Rule requires that the data be made available electronically. This will require
8 that crew members perform additional administrative duties at the end of each shift,
9 and/or at the beginning of their next tour of duty. The reporting procedures will
10 decrease the time employees are available to actually provide the job function for
11 which they are responsible, i.e., to move trains safely and efficiently. Any
12 disruption of crew schedules has a cascading effect on schedules throughout the
13 system; if a crew is delayed in one location, it may not be available for its next
14 assignment, causing delay at the next assignment, and so on throughout the system.

15 16. In certain circumstances, it is unclear who is supposed to comply with
16 Rule 3501(d): for example, when there is a changeover of crew during idling (or
17 during the first 15 minutes of idling) it is unclear who is responsible for making or
18 keeping a record or deciding whether or not a record should be made or kept.

19 17. In order to comply with the overall record keeping requirements of
20 Rule 3501(d), BNSF would be require to add a number of additional employees to
21 administer this requirement and to modify BNSF's operational and informational
22 systems, which are designed to enhance safety and efficiency and comply with
23 various federal regulations affecting BNSF.

24 I declare under penalty of perjury under the laws of the Unites States of
25 America that the above is true and correct and that this Declaration was executed in
26 Fort Worth, Texas on March 7, 2006.

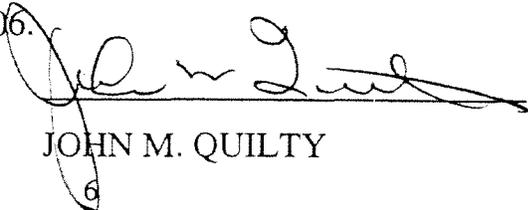
27 
28 JOHN M. QUILTY

Exhibit 5:

Declaration of Douglas W. Wills (without exhibits), filed in *AAR v. SCAQMD*, 2007 WL 2439499 (C.D. Cal. 2007) (No. CV06-1416 JFW)

1 I, DOUGLAS W. WILLS, declare as follows:

2 1. I make this declaration as my direct testimony in this case. I have
3 personal knowledge of the facts stated in this declaration and if called upon to
4 do so I could and would testify competently thereto.

5 2. I recently retired from employment with Union Pacific Railroad
6 Company ("UP") but have agreed to continue to assist the company with this
7 matter. At the time of my retirement, I was the Senior Director, Operating
8 Practices/FRA (i.e., the Federal Railroad Administration), with offices in
9 Omaha, Nebraska. My primary duties in that position involved acting as a
10 liaison for issues involving rail safety regulation with the FRA on the one
11 hand, and the company's operating officers, on the other hand. My
12 department was responsible for developing safe operating rules and
13 establishing a formal program of employee training to ensure compliance with
14 the operating rules as well as oversight over state rail safety regulatory
15 activity.

16 3. My personal background and experience in railroad operating
17 matters extends back 39 years, and includes various supervisory and
18 managerial positions in the Operating Department of one of UP's predecessor
19 railroads, Southern Pacific Transportation Company ("SP"). Some of my
20 positions have included Assistant Trainmaster and Trainmaster, Terminal
21 Superintendent, Division Superintendent, Assistant Vice President - Quality,
22 and Superintendent of Operating Practices. As Superintendent of Operating
23 Practices I was responsible for system train accident prevention and reporting,
24 operating rules administration, and operating employee training. My career
25 included a number of years as a line supervisor, responsible for rail operations
26 in California, Oregon, Nevada, Arizona, New Mexico, Texas, Louisiana,
27 Kansas, Oklahoma, and Utah. After UP's acquisition of SP in 1996, I was

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1 transferred to Omaha, where I was promoted to my most recent position in
2 which I had system-wide responsibilities over 24 states.

3 4. At the start of my career at SP, I held the positions of brakeman
4 and locomotive fireman in northern and central California. After I joined the
5 ranks of management and was promoted to an operating department line
6 manager in 1973, I was qualified as a conductor and engineer. I have operated
7 trains in each of those capacities in California and other locations on the
8 former SP system during periods of crew shortages and in emergencies.

9 5. I have reviewed and am familiar with the South Coast Air Quality
10 Management District's ("District" or "SCAQMD") Rules 3501, 3502, and
11 3503, and Proposed Rule 3504. The SCAQMD recently imposed Rules 3501,
12 3502, and 3503 (collectively, "Rules"). True and correct copies of Rules 3501
13 and 3502 are attached hereto as Exhibits A and B, respectively (bearing Trial
14 Exhibit Nos. 1 and 2, respectively) and the District's Final Staff Reports Rules
15 3501 and 3502 are attached consecutively as Exhibits C and D (bearing Trial
16 Exhibit Nos. 5 and 6, respectfully.)

17 6. In this declaration I provide testimony regarding the significant
18 burdens to UP's operations that will be imposed by Rules 3501(d)-(e) and
19 3502(d). It is my understanding that Rule 3501 imposes record-keeping and
20 reporting requirements on train idling and that Rule 3502(d)(1)-(2) imposes a
21 strict 30 minute locomotive idling rule and Rule 3502(i) imposes heavy fines
22 for non-compliance.

23 7. If Rules 3501(d)-(e) and 3502(d) and (i) were implemented, UP
24 would not simply instruct its employees to comply with them. The
25 photocopying and distribution of these rules would lead to confusion and is
26 not how railroads, as regulated by the FRA, control their operations. Instead,
27 UP would develop and implement internal practices and rules to allow UP to
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1 comply with the District's Rules given the requirements of UP's Los Angeles
2 Service Unit operations. This is UP's typical practice with regard to
3 implementing externally imposed rules and regulations. For the last 3 years I
4 worked at UP, I was the individual responsible for creating and implementing
5 such internal practices and rules and I am personally familiar with the process
6 UP employs to comply with externally imposed rules and regulations. I have
7 personally been involved in numerous internal rule makings in response to
8 federal operational regulations.

9 8. The first step in developing internal policies and rules to comply
10 with the District's Rules 3501 and 3502 would be to have the Senior Director
11 of Operational Practices and other members of the UP Rules Department
12 review and analyze the District Rules. The UP Rules Department would then
13 attempt to craft policies that would satisfy the requirements of the Rules but
14 remain within the confines of UP's operational limitations, and would draft
15 internal rules to implement those practices. These internal rules would be
16 incorporated in one of several operating practices books like UP's Train
17 Handling and Air Brake Rules which control all aspects of UP-specific train
18 handling requirements. UP's engineers in the Los Angeles Service Unit
19 follow these rules and guidelines as well as UP-specific special instructions
20 for their assigned routes. Before undertaking such an effort, however, the UP
21 rulemakers would first have to clarify any ambiguities in the Rules as drafted,
22 which in my opinion are many.

23 9. For example, among other ambiguities, the District has suggested
24 that a railroad can avoid violating Rule 3502(d)(2)'s 30 minute shut down
25 requirement for trailing locomotives when informed by dispatch that a delay
26 will likely exceed 30 minutes, by instructing dispatchers not to inform crews
27 about idling events anticipated to be longer than 30 minutes. Since this
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1 interpretation contradicts the stated purpose of the Rules (to reduce emissions
2 from idling) (*see* Rule 3502(a)) the Rules are ambiguous as to when a
3 dispatcher must communicate what information with a crew. Before creating
4 its internal rule, UP would first attempt to clarify this and the many other
5 ambiguities in the Rules.¹

6 10. The draft internal UP rules would then go to a steering committee
7 within UP made up of regional Vice Presidents and Assistant Vice Presidents
8 who would review and comment upon the draft internal rules. It also would
9 be typical for draft rules to be circulated to people working in the field as an
10 audit procedure to determine if UP's draft internal rules make sense to the
11 people who will be required to follow them. Necessary changes might then be
12 made based on the feedback received. Once finalized, a General Order
13 amending the existing rules would be issued for the Los Angeles Service Unit.

14 11. Given the complexity of the District Rules and the likelihood that
15 any UP internal rules would therefore be quite involved, training materials
16 also would need to be developed and training provided to the people subject to
17 the Rule prior to the issuance of a General Order.

18 _____
19 ¹ Even if this Rule were to be clarified by the District to apply only when a dispatcher has
20 provided notice that a locomotive will be stopped for 30 minutes or more, UP's internal
21 rules have to take into account the most conservative interpretation in order to avoid
22 incurring the stiff penalties imposed by the Rule. Under an interpretation where the
23 railroad would not be in violation of 3502(d)(2) for leaving locomotives idling for more
24 than 30 minutes because the locomotive crew was not provided notice from dispatch of a
25 delay exceeding 30 minutes, UP will be responsible for proving the lack of such
26 communication. Similarly, in a case where a UP crew either knew, without dispatcher
27 information that a stop would exceed 30 minutes (for example a lengthy train meet) or
28 where a crew is informed after 30 minutes of additional delay, both situations (which
frequently occur) would result in UP violating Rule 3502(d)(2) if the trailing locomotives
were not shut down by 30 minutes. Given the difficulties inherent in proving a negative,
UP's internal rule for compliance would have to impose a requirement upon dispatch to
provide such information, or for crews to shut down at a certain point regardless of
instruction from dispatch. To interpret this Rule 3502(d)(2) otherwise also invites the
railroad to attempt to circumvent the rules by never informing the crew of an anticipated
delay. This would be a likely violation of law and would contradict current operating
practices and UP internal rules.

1 12. The process I have described for implementing changes to current
2 operating rules is time-consuming, costly and complicated and would need to
3 be undertaken for each of the District's Rules.

4 **Rule 3501 Places an Undue Burden on Rail Operations and Presents**
5 **Potential Safety Concerns.**

6 13. Rule 3501(d)(1) would require UP to undertake recordkeeping of
7 several pieces of information for every "idling event" of 30 minutes or more
8 for every locomotive, whether in the yard or on the line. Rule 3501(e)(1)
9 mandates that such information be electronically reported to the District on a
10 weekly basis for each idling event. Rule 3501(e)(2) contains annual reporting
11 requirements. And, the records created pursuant to Rule 3501 are subject to
12 verification by the District's Executive Officer under section 3501(e)(4).

13 14. Rule 3501(d) and (e) will interfere with UP's operations in
14 several ways. First, the information required to be collected by the Rule is, in
15 many instances, not readily available, and even where it is available, the
16 information is not currently tracked in any single location or by any one
17 computer or other system. Gathering it, recording it, reporting it and
18 maintaining it as required by Rule 3501(d)-(e) would be burdensome and
19 would require new operating practices as well as new systems that do not
20 presently exist. Second, the new recordkeeping requirements of Rule 3501(d)
21 will distract from essential job duties of crews, dispatchers and yardmasters.
22 Third, the additional tasks required by crews in order to create electronic
23 records of the data collected pursuant to Rule 3501(d) will deplete regulated
24 crew working hours causing a cascading shortage of crew hours available for
25 essential crew functions. Fourth, the ripple effect of crew shortages will cause
26 delays, potentially on a system-wide basis.

27 15. The information sought by Rule 3501(d)(1) is not currently
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1 captured by UP in any one location or by any single computer or other system,
2 and, indeed, some of it is not currently documented at all because it is
3 considered non-essential to safe and efficient rail operations.

4 16. Due to the lack of any single or combined computer system to
5 accurately track locomotive and/or train movement and engine status (i.e.,
6 running or shut down) Rule 3501(d) and (e)'s recordkeeping and reporting
7 requirements will require UP crews to maintain written logs of all stops and
8 starts of locomotives – on the line and in the yard - including the times and
9 exact location of each stop and start. In order to accurately capture potential
10 idling events of 30 minutes or more, it will be necessary for crews to track and
11 record every time a locomotive or train comes to a stop because the operator -
12 whether in the yard or on the main lines - rarely knows exactly how long the
13 locomotive or train will be stopped. Locomotives stop literally hundreds of
14 times per day in the Los Angeles Basin due to significant rail constraints and
15 the densely urban area. To ensure compliance with Rule 3501(d) and (e), UP
16 will have to record the required data for every one of those stops, for every
17 locomotive. UP's likely internal protocol for gathering the information
18 required by Rule 3501 would be to require the train crew to undertake this
19 function on the line, and the yard crew to do so in the yard.

20 17. Since no electronic systems currently exist for crews to input the
21 required data, it would likely be done manually at the time of each stop/start
22 and would then have to be input into UP's computer system. This practice
23 will require that crew members perform additional administrative duties at the
24 end of each shift, and/or at the beginning of the next shift to enter the data
25 collected into an electronic system. The only current electronic system which
26 might be capable of expansion to allow reporting of idling is the federal Hours
27 of Service system. Adding the necessary input fields to track idling events to
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1 this system may require FRA approval.

2 18. The District pre-supposes that having crews gather the
3 information required by Rule 3501(d) is an easy process that can be
4 accomplished when the rail crew signs off of its shift. The District fails to
5 consider the impact the reporting procedures will have on crew members'
6 covered service limitations. This presents problems for crewing (discussed
7 below), as well as difficulties with the verification requirement of the Rule
8 (also discussed below).

9 19. Moreover, Rule 3501(d) assumes that a single crew is responsible
10 for a given locomotive during the crew's shift. In reality, any number of
11 persons of disparate authority, skill and responsibility may be responsible for
12 an idling locomotive during any given time period. The simple scenario of a
13 two-person train crew recording an idling event that occurs on the line (i.e.,
14 the main tracks) is not an accurate picture. For example, many idling events
15 occur not when a locomotive is being operated by an assigned train crew, but
16 rather while a locomotive is performing tasks or is located within a rail yard.
17 In many of these instances, one person (for example a maintenance employee,
18 switch crew or a yard hostler) may stop and idle a locomotive within a rail
19 yard and then return to his or her other responsibilities. This idling event may
20 occur, for example, when the locomotive is moved to the ready or service
21 track to build a locomotive consist (one or more coupled locomotives) or when
22 the locomotive is brought in for fueling, maintenance, inspection or some
23 other activity directed at the locomotive. Rather than the first operator
24 remaining responsible for the locomotive, it may become the responsibility of
25 another individual to take control of the locomotive. This repeated turnover of
26 responsibility for locomotives, which may occur numerous times per day,
27 makes it difficult if not impossible to determine when a locomotive or
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1 locomotive consist will be idling for the requisite thirty minute period.
2 Assigning responsibility for recording and inputting idling events will be
3 complicated, and potentially will result in confusion and over or under
4 reporting, which in turn presents problems for verification.

5 20. Even assuming a methodology could be created whereby each
6 idling event could be recorded, the information gathering aspect of Rule
7 3501(d) is very burdensome. A crew may encounter several idling events
8 covered by Rule 3501(d) during a typical 12 hour shift, necessitating separate
9 entries for each event at the end of the duty shift. Entry of this information
10 could take several minutes or more per crew member at the end of every shift
11 (especially considering the hunt and peck typing skills of most crews), cutting
12 into their covered work time. Thus, they would either have to stop their shift
13 early or cut into the beginning of their next shift to undertake the data entry
14 required to comply with Rule 3501(d). This will decrease the amount of time
15 employees are available to do the jobs they are responsible to do, i.e., to move
16 trains safely and efficiently.

17 21. Employees engaged in activities that are considered "covered" by
18 the Hours of Service of Railroad Employees (49 U.S.C. §§21101-21108) must
19 not perform any required activities beyond the time allowed by the type of
20 service that they are performing. Train dispatchers, train crews and yard
21 crews all fall under this regulation. Each employee is required to submit a
22 record in a prescribed manner for each duty tour during which they perform a
23 covered service. These records must include any time that co-mingles with the
24 covered duty time. Co-mingled time would include additional recordkeeping,
25 such as that required by Rule 3501(d).

26 22. The issue with crew availability will become particularly
27 problematic in scenarios where the crew already is delayed. Crews that are
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1 unable to cover their assigned territories or routes on the line of track within
2 their covered Hours of Service must stop the train and wait to be relieved (a
3 “re-crew” event), even if the train is between terminals. These already tardy
4 crews would not be able to meet the reporting requirements of Rule 3501(d)
5 on that tour of duty, and would then be required to perform these
6 recordkeeping duties when next assuming duty, further limiting their time on
7 the next tour and causing delay in moving or marshalling freight. Any
8 disruption of crew schedules will have a cascading effect on schedules
9 throughout the system; if a crew is delayed in one location, it may not be
10 available for its next assignment, causing delay at the next assignment, and so
11 on throughout the system. These delays will have significant impacts on
12 system velocity (a key performance benchmark for railroads), and attendant
13 costs associated with rail delays.

14 23. Additionally, many of the employees who would be recording
15 idling events are not rail crews assigned to the movement of trains or even
16 locomotives on a full time basis who log out at the end of each shift in the
17 same fashion as a rail crew. UP’s maintenance and other yard employees who
18 could be responsible for recordkeeping in rail yards, merely log out with a
19 description of their job responsibilities, and are not responsible to input
20 information relating to their work activities involving train movements. In
21 order to capture every idling event, UP would therefore likely be forced to
22 develop a new computerized reporting system accessible to all employees to
23 allow them to record idling events.

24 24. Additionally, in some instances the required information – such
25 as the locomotive owner - may not be readily available to a crew. For
26 example, UP sometimes leases locomotives from leasing companies, and also
27 operates other railroad’s locomotives on its trains (e.g., “foreign power”). A
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1 crew operating leased or foreign power may not, in some instances, be able to
2 readily identify the owner of that locomotive.

3 25. The District suggests that the recordkeeping requirements of Rule
4 3501(d) alternatively could be captured and/or recorded by dispatchers, or that
5 locomotive event recorders could be modified to capture this information.
6 Neither of these alternatives presents a feasible method of compliance with
7 Rule 3501(d)-(e).

8 26. It would be even more difficult for dispatchers than for crews to
9 undertake the recordkeeping tasks required by Rule 3501. Dispatchers oversee
10 multiple trains (not to mention how many locomotives might be on a given
11 train) within their area of responsibility within or outside of the District at a
12 single time. In addition to UP trains, dispatchers must also monitor other
13 trains sharing track within the District, including The Burlington Northern and
14 Santa Fe Railway Company's ("BNSF") trains, and commuter and passenger
15 trains like Metrolink and Amtrak. Additionally, dispatchers monitor other
16 outside influences on track such as maintenance away teams or accidents.
17 Requiring dispatchers to record the hundreds of idling events that may occur
18 over a 24-hour period in an area as large as the Los Angeles Basin as set forth
19 in Rule 3501(d) would be crippling to their ability to safely and efficiently
20 dispatch trains. Moreover, dispatchers do not have access to much of the
21 information required to be recorded under 3501, including locomotive location
22 to the level of specificity (i.e., milepost marker) required by Rule
23 3501(d)(A)(iii).

24 27. Furthermore, like train crews, dispatchers are covered by federal
25 law in terms of work service hours except that they are limited to 9 not 12
26 hours of work. Cascading effects on dispatchers' hours of service similar to
27 those described above for crews, could be felt within the dispatcher ranks if
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1 dispatchers were required to undertake the recordkeeping required by Rule
2 3501(d).

3 28. Another suggestion by the District is that locomotive event
4 recorders could be used to track the information required by Rule 3501(d).
5 This is not a reasonable option. Event recorders do not, per se, capture the
6 data required by Rule 3501(d). And they do not download such information
7 into any system which could generate the reports contemplated by Rule
8 3501(d) and (e). Furthermore, event recorders used on leased and foreign
9 power may not be compatible with UP systems. And, even if (a fact which UP
10 does not concede is possible) the various event recorders could be
11 programmed to capture and download some of the data required to be
12 collected by Rule 3501, they are not capable of capturing all of it.

13 29. For example, locomotive location as determined by an event
14 recorder is keyed to the number of rotations of the locomotive's wheels. In
15 order to use an event recorder's data to determine the location of a given
16 locomotive, that event recorder must be calibrated to the number of rotations
17 of its wheels. However, friction between a locomotive's steel wheels and the
18 steel track causes significant wear on locomotive wheels and actually shrinks
19 the size of the wheels. Accordingly, to get an accurate reading from an event
20 recorder about a locomotive's location, the wheels of the locomotive will have
21 to be measured and the data collected from the recorder must be manually
22 recalculated to account for the wheel size. A discrepancy in wheel size as
23 small as 3/8 of an inch can cause a locomotive event recorder's location
24 information to be significantly inaccurate. Thus, to use the event recorder to
25 track locomotive location – just one of the pieces of information required by
26 the Rule - would require calibration and calculation for every locomotive in
27 the District on a daily basis, for every idling event of 30 minutes or more.

1 This would involve analysis of hundreds of event recorders every day of the
2 week consuming enormous man hours and potentially disrupting the efficient
3 operation of locomotives and trains.

4 30. Obtaining and recording the information required by Rule
5 3501(d) will significantly distract from essential crew, dispatcher and/or
6 yardmaster functions.

7 31. The interface between a dispatcher and a train operator is, by
8 necessity, brief and to the point. Generally, crew to dispatcher conversations are
9 limited to essential topics, meaning those necessary for the safe and fluid
10 operation of the railroad. In my experience, the duration of, and the need for,
11 an instruction by dispatch to stop and start a locomotive is rarely discussed
12 between the engineer and dispatcher because it is non-essential. Moreover,
13 given the number of reasons a train may be required to stop and hold, and how
14 few of those are within a dispatcher's control, in many (if not most) instances,
15 a dispatcher cannot reasonably predict the time of the hold. Accordingly,
16 because it is impossible to know for certain at the outset of any stop whether it
17 will exceed 30 minutes, Rule 3501(d) effectively requires the specified data to
18 be communicated and recorded for every stop. The communication between
19 crews and dispatchers (and yardmasters for locomotives in the yard) of this
20 unnecessary information could interfere with essential crew, dispatching and
21 yardmaster responsibilities of ensuring the efficient and safe flow of freight.

22 32. Inter-cab communications between the engineer and conductor
23 require situational awareness during periods of starting and stopping. Signal
24 systems and dispatching instructions are carefully arranged and communicated
25 in a prescribed manner that limits conversation and possible confusion. Crew
26 members must clearly communicate each instruction with each other and, to
27 the extent required, the actions to be taken in response to the instructions must

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1 be conveyed by the signal system, written instructions, or orally by the train
2 dispatcher. For example, in “red zones” crew communications are limited to
3 discussions focusing on the rules, operations and signals they are dealing with
4 at that moment. The communication of non-essential information or shifting
5 of focus to write down stop and start times could interfere with these essential
6 inter-cab communications and potentially could create unsafe conditions for
7 the crew and the train, other trains on the line or on sidings, or even vehicles at
8 crossings.

9 33. In certain circumstances such as during scheduled meets with
10 other trains, one crew member is required to detrain (generally the conductor)
11 and inspect the passing train from a safe location at ground level. Such
12 circumstances require focus by the crew member remaining in the locomotive
13 cab (generally the engineer). Such focus will be split if the crew is required to
14 undertake additional communications with dispatch, or if the crew is distracted
15 by filling out forms solely for recordkeeping purposes.

16 34. Additionally, Rule 3501(d) presents another series of concerns for
17 trains in yards and at customers’ facilities. Locomotives may be stopped for
18 periods of time at local customer industries or in switching yards. Under these
19 circumstances, the crew’s attention must be dedicated to safety concerns and
20 activities, such as plant employees moving about the equipment or other rail
21 switching work and not to unnecessary recordkeeping. A crew’s attention to
22 surroundings while making preparations to perform switching in industries
23 and yards is critical to the safety of the crew members, customers, and other
24 railroad workers and should not be diverted to unnecessary recordkeeping
25 activities.

26 35. In addition to the difficulties in gathering, recording and
27 communicating the information required by Rule 3501(d), the verification and
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1 reporting requirement of Rule 3501(e)(4) is problematic. The information
2 required for verification purposes is voluminous in nature and either does not
3 currently exist, or is maintained in either hard or electronic copies in numerous
4 disparate locations. Additional personnel and systems would be required to
5 track and maintain this information in a fashion that would permit the audit
6 compliance anticipated by Rule 3501(d) and (e). These changes cannot be
7 initiated without significant modification to UP's operational and dispatch
8 functions. To implement 3501(d) and (e) would require changes to existing
9 electronic operating systems such as train consist, crew management,
10 locomotive management, employee payroll, hours of duty, dispatch
11 recordkeeping for all train movements, and dispatchers' personnel records.
12 Each of these systems has been designed to enhance safety and efficiency, and
13 to be in compliance with various federal regulations affecting the railroad.
14 Layering additional requirements on these systems may cause confusion and
15 errors. Additionally, training of employees on these recordkeeping
16 requirements while operating within the boundaries of the systems outlined
17 above would be extremely burdensome.

18 36. The verification component of Rule 3501(e)(4) is also
19 problematic particularly insofar as it applies to areas of shared track and
20 borrowed or foreign locomotives. Some areas of this shared track are
21 controlled by UP. In other areas, it is the responsibility of the BNSF or
22 passenger rail dispatchers to regulate rail traffic. UP does not have access to
23 the dispatch records of BNSF and passenger rail, and vice versa. Therefore, in
24 those situations where dispatch records are required to validate a location, time
25 and reason for an idling event, and those records are in, for example, the
26 possession of Metrolink, UP has no way to provide backup for its idling
27 reporting. Likewise, UP may not be able to verify ownership of leased or

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1 foreign power.

2 37. Additionally, it is not possible under current UP systems to verify
3 the information collected in a yard. Yardmasters are assigned to give
4 instructions to crews concerning tasks to be performed which involve multiple
5 movements involved in the through-put and switching of the cars and
6 locomotives within the terminal or yard. For the vast majority of these
7 movements no record is maintained. As a result, movements of this nature
8 cannot readily be verified as required by Rule 3501(e) and (e)(4).

9 38. Also, the crews switching customers' locations in the basin often
10 work in locations that are not controlled or supervised directly by dispatchers
11 or yardmasters. These industrial switchers are on tracks located away from the
12 terminals and outside of the direction of both yardmasters and dispatchers but
13 are nevertheless subject to verification. No records for these switchers are
14 maintained electronically or are able to be verified by either the yardmaster or
15 dispatcher.

16 **Rule 3502 Presents Significant Problems for Operations and Safety**
17 **and Will Cause Undue System Delay.**

18 39. Rule 3502(d)(1) and (2) generally prohibits trailing locomotives
19 from idling for more than 30 minutes, and prohibits unattended locomotives
20 from idling for more than 30 minutes under several circumstances. Rule 3502
21 presents even greater burdens than its recordkeeping / reporting counterpart.
22 The imposition of Rule 3502(d)(1) and (2) will burden and negatively impact
23 UP's operations, create safety hazards and ultimately lead to significant
24 system delay.

25 40. As with Rule 3501, UP will be required to develop its own
26 internal operating rules in order to ensure compliance with Rule 3502(d). For
27 example, although on its face Rule 3502(d) prohibits idling of 30 minutes or
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1 more in the described circumstances, in practice, a locomotive which has been
2 idling for 30 minutes will be in violation of the rule at the 30 minute mark.
3 Given the practical constraints on shutting down and re-starting locomotives,
4 especially on the couple of distributed power trains run by UP in the Los
5 Angeles Basin each day, locomotives will need to be shut down in advance of
6 30 minutes in order to avoid violating the rule.

7 41. Unlike a car which will start with the turn of a key, the time
8 required to shut down and start up a locomotive may be anywhere from 5 to
9 10 minutes. This time is exponentially greater for trains with distributed
10 power. Distributed power trains utilize locomotives at various points along
11 the consist. A typical example of distributive power on a UP train would be
12 locating the lead locomotive consist at the front of the train, and another
13 locomotive consist at the end of the train. UP's long haul trains can be (and
14 frequently are) over one mile in length. If the crew is required to shut down a
15 distributive power train, it would be required to walk the entire length of the
16 train – as far as a mile – to shut down, and potentially again to start up, the
17 rear locomotives. UP operates approximately 6-8 trains per day in the Los
18 Angeles Air Basin utilizing distributive power.

19 42. Rule 3502(d)(1) and (2)'s shut down requirements raise
20 operational and safety concerns. These concerns include the fact that if a
21 dispatcher does not inform a crew as to the "predicted" amount of time a train
22 will be delayed en route, the crew will have to attempt to contact the
23 dispatcher to determine if a locomotive shut down will be necessary. With
24 existing dispatcher workload and train volume, it frequently takes up to 30
25 minutes to establish this communication. Even if communication with
26 dispatch is established, as noted above, the dispatcher does not have time – or
27 in many instances, the ability - to explain the rationale for the delay and to
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1 calculate the potential time of the delay.

2 43. Moreover, train "running times" are hard for dispatchers to
3 predict and will cause estimates in train delays to be in error. Time spent
4 waiting for another train movement to occur can vary for several unpredictable
5 reasons, outside of the dispatcher's control. Issues such as grade crossing
6 accidents, near misses with pedestrians or vehicles, air brake tests and
7 inspections, signal warning devices at crossings malfunctioning due to
8 automobile traffic interference, vandalism, weather conditions contributing to
9 signal issues, track maintenance, and locomotive or equipment problems all
10 can cause variability. Also, individual operation of the train and the
11 characteristics of each train (e.g., the size of the trains in terms of tonnage and
12 number of cars, or the individual equipment on each train) can cause trains to
13 move with various speeds over the same track segments. The "estimated time
14 of departure" will also be difficult to predict, possibly causing unnecessary
15 shut down of locomotives. This variability and unpredictability is magnified
16 by the interconnected nature of rail travel where a single unexpected delay
17 generally leads to cascading or "snowballing" train delays across the system
18 and an increase in overall idling of locomotives in the vicinity as well as a
19 delay in rail service.

20 44. Rule 3502(d)(1) and (2) is also likely to reduce the margin for
21 error maintained in rail operations. Currently, dispatchers oversee the
22 movement of trains all over the country and conduct traffic accordingly,
23 similar to how air traffic controllers monitor and direct air traffic. Train
24 dispatchers, however, are more constrained than air traffic controllers because
25 they operate with pre-existing track infrastructure and switching points. Re-
26 routing trains is far more difficult than re-routing planes or automobiles
27 because of limited track capacity, the lack of acceleration and braking

1 capabilities of large trains, and the amount of time it takes many locomotives
2 to re-start after a shut down (often 20 minutes or more, and possibly as long as
3 90 or 120 minutes if an air test is required). As trains cannot “circle” or divert
4 to a different route where no logical alternative route is available, dispatchers
5 are often forced to hold a given train or trains to avoid interference with other
6 trains sharing the same track. While endeavoring to keep rail operations as
7 fluid and efficient as possible, dispatchers must build in margins of error and
8 ensure that trains do not approach too close to one another.

9 45. Most trains are held by dispatch for logistical reasons so as to
10 move as many trains as possible over a single track or pair of tracks. But, as
11 mentioned above, holds may also be required to accommodate passenger and
12 commuter train schedules, or due to legal or contractual obligations to
13 expedite passenger trains or highly time-sensitive freight trains. For example,
14 track in many places within the Los Angeles Basin is shared by UP, BNSF and
15 passenger operations. Because long distance Amtrak passenger trains and
16 Metrolink commuter trains operate over some of UP’s lines in Southern
17 California on fixed schedules which take priority over freight trains on the
18 same tracks, dispatchers must frequently hold freight trains to allow these
19 passenger trains to pass unimpeded. Often, dispatchers must arrange for
20 opposing trains on the same track to “meet and pass” each other through use of
21 sidings, and must give trains carrying passengers or highly time-sensitive
22 goods (for example, produce and mail) priority over other trains traveling in
23 the same direction. Coordination between these rail operations is critical to
24 the fluid operation of the system. Dispatching is a juggling act that must be
25 conducted within critical margins of safety for all involved. In addition to
26 avoiding conflicts between trains, dispatchers must observe maintenance
27 windows for track gangs or construction crews working on or in close

1 proximity to the track. Frequently, dispatchers do not know how long the train
2 or trains that are being held must wait until conditions will allow the train to
3 continue movement. If dispatchers lost the flexibility to hold trains as
4 necessary and were instead forced to order a complete shut down it could
5 increase railway congestion and cause a cascading delay to trains further down
6 the track.

7 46. In order to avoid accidents, dispatchers will sometimes request a
8 train or trains to idle for safety reasons – to avoid coming too close to another
9 train that has not yet gotten out of the way, for example. Involving the train
10 dispatcher in idling restrictions and recordkeeping requirements could
11 adversely affect the margin for error in other actual safety related activities by
12 distracting the train dispatcher. That is the risk that is created by imposing
13 external requirements on an already very complex and safety critical set of
14 operations. Such degradation of the margins of error and safety procedures
15 that are currently in place nationwide could lead to close calls or even
16 catastrophic accidents. Even one such accident could be devastating in terms
17 of loss of human life and harm to the train industry and its public perception.

18 47. Furthermore, locomotive shut down (in lieu of idling), on heavy
19 grades in mountainous territory or during icy conditions, has the potential to
20 create a safety hazard. Pressure in the air brakes of locomotives is maintained
21 by the engine; if it shuts off, air pressure “bleeds” out of the system. The
22 District is full of “heavy grade” territory, containing miles of track with grades
23 of 1% to 2% descending into the Los Angeles Basin, including the BNSF
24 route through the Cajon Pass, where UP has operating rights; the Cima grade
25 located on UP’s line from Las Vegas, Nevada; and over Beaumont Hill on
26 UP’s line from Yuma, Arizona. Grades as low as 1% can demand careful
27 attention to use and proper functioning of the air brakes. Care must be used in
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1 assuring that the locomotive keeps the train properly supplied with air pressure
2 for the equipment to work safely. An unsafe condition would develop in
3 heavy or mountain grade territory should the engine shut down and the brake
4 air pressure fall below safe levels. Shut downs in such situations would also
5 cause even more severe delays than described above if train hand brakes need
6 to be applied and removed before getting back under way, or if a stopped train
7 was unable to re-start.

8 48. UP's Air Brake and Train Handling Rules require crews to leave
9 the lead locomotive of an unattended train idling to maintain air brake pressure
10 and help prevent unintended movement. Rule 3502(d)(1) would require UP
11 crews to violate this well-considered safety rule. The District's counter -- that
12 railroads never leave trains unattended on a grade so Rule 3502(d)(1) would
13 never require total shut down in such risky situations -- is wrong. UP crews
14 can leave trains unattended on a grade. In a few mountain grade locations, UP
15 has a "local instruction" against leaving trains unattended. One location where
16 the instruction applies has grades over 1.75 % and all the other locations have
17 grades of 2% or greater. But since a train could experience unintended
18 movement on even the slightest grade, UP's rule to leave the lead locomotive
19 of an unattended consist running when necessary to maintain the air supply on
20 the train applies to any grade. Rule 3502(d)(1) abrogates this safety rule.

21 49. At the least, Rule 3502(d)'s requirements are likely to create
22 excessive train delay when it is time for the train to perform the slow process
23 of starting up and getting under way. For example, when leaving a train
24 unattended UP requires its crews to leave a locomotive, usually the lead, idling
25 to maintain air brake pressure and to set sufficient hand brakes under federal
26 and UP rules. More importantly, if the crew expected the train to move within
27 60 minutes, under the current UP rule and the 2005 Memorandum of

1 Understanding ("2005 MOU") with the California Air Resources Board
2 ("CARB") they would also leave all of the trailing locomotives idling. In such
3 a circumstance, the train could be readied for movement in less than 15
4 minutes. Rule 3502(d)(1)(A-C), however, would require this same crew to
5 shut down all of its locomotives. Before this train could be readied to move, a
6 crew would have to restart the locomotives and recharge and test the air brakes
7 before releasing any of the handbrakes. Rule 3502's application would delay
8 this train at least 45 minutes and likely more.

9 50. The frequency of operational delays will increase if the 30 minute
10 shut down requirement of Rule 3502(d) is implemented. Delays are already a
11 frequent occurrence in freight rail transportation. Delays due to weather, crew
12 availability, locomotive or car mechanical problems, track repairs or signal
13 delays due to electronic or other causes occur regularly, despite the railroads'
14 best efforts to minimize such problems. Railroad personnel are trained to
15 respond and eliminate these delays as quickly as possible, however such
16 delays cannot be wholly eliminated. Moreover, other delays beyond the
17 railroads' control may also occur. For example, the unavailability of
18 customers to receive or unload rail cars, vandalism, motor vehicle and grade
19 crossing accidents, and labor shortages or disruptions at customer or vendor
20 locations all create uncontrollable delays. The additional delays imposed by
21 the imposition of a 30 minute shut down rule could be crippling.

22 51. Shutting down locomotives as required by Rule 3502(d) will
23 delay trains attempting to leave terminals, attempting to leave sidings, and
24 meeting or being passed by other trains. It will even delay crews involved in
25 the building of other outbound trains because delayed trains which already
26 have been fully assembled will occupy limited yard space, preventing arriving
27 trains from entering the yard to be dismantled so new trains can be built.

1 Ultimately, these delays will impact customers.

2 52. To cite one example, Rule 3502(d) will disrupt the fluid
3 movement of trains from the yard to the main line. When trains have
4 completed the required safety inspections prior to departing a station, the
5 dispatcher must coordinate the timing and routing to be used when departing
6 with the yardmaster or other yard supervisor along with the crew members.
7 Due to the nature of the business and the nature of radio communications, the
8 coordination and attendant communications do not occur instantaneously.
9 These communications may take several minutes and, once communicated, the
10 signal system or other authority to proceed may again take several minutes to
11 effect. Throughout the timeframe necessary to complete the required pre-
12 departure communications, the locomotive(s) typically idle in anticipation of
13 departure. If this process is likely to take longer than 30 minutes, Rule
14 3502(d)(2)(A) would require train crews to shut down all trailing locomotives
15 in the train or, if the crew leaves the train, 3052(d)(1)(C) would require a
16 complete shut down. Once the crew has shut down the locomotives, its ability
17 then act upon instructions to move the train on to the main line will be
18 dramatically impaired. It will not be able to move when given the ready
19 instruction, but instead the crew will have to re-start each shut down
20 locomotive. This additional delay could cause the train to miss its window of
21 opportunity to move onto the main line, particularly since the time to simply
22 move a 7,000 foot train onto the line of track may exceed 15 minutes thereby
23 causing further delay, and possibly another shut down as it awaits another
24 opportunity to proceed onto the main line. These delays will impact other
25 trains waiting to use the same limited track within the yard, or the main tracks
26 connecting the yard network in and around the Los Angeles Service Unit.

27 53. The window of opportunity for a train to depart a yard and enter
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1 the main line is very real and finite. The dispatcher responsible for the
2 departing train and the yardmaster (responsible for the yard engines, other
3 trains and hostlers as well as mechanical and engineering crews in yards,
4 among other things) must coordinate the departure of any given train. To
5 estimate and communicate any given departure time is very difficult. Rule
6 3502(d)(1) and (2) would subject the railroad to significant fines for any error
7 in estimate. The alternative would be to risk missing a train's window because
8 of an over-cautious direction to shut down.

9 54. Localized delays would have a ripple effect throughout the rail
10 system. This ripple effect is far from speculative or hypothetical, as evidenced
11 by UP's experience in the late 1990s when a line and yard in Houston, Texas
12 became jammed. The effects of that event reverberated not only through UP's
13 system but through the rest of the nation's rail system and ultimately to the
14 shipping public. It took months for UP's system to recover from that event.

15 55. The delays caused by Rule 3502(d) also will have secondary
16 effects on rail operations due to scarce resources. For example, locomotives,
17 track and crew are all limited resources. Delaying trains will tax scarce
18 locomotive availability, will take up limited track space preventing its use by
19 other trains. It also will tax crew working hours which are limited by federal
20 regulation and impair the scheduling of equipment needed for customers to
21 load or unload freight.

22 56. Maintaining a fluid rail system that will enable railroads to
23 operate efficiently and provide reliable service to their customers at a
24 competitive price is critical to the viability of the rail industry – especially in
25 the State of California where most freight that is moved by rail is truck
26 competitive. UP operations in the Los Angeles Basin already are constrained
27 due to heavy business volumes and scarce resources to handle customer
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1 demand. In fact, as a general rule, resources available to move freight on the
2 UP system are being taxed on a daily basis. Local regulation, such as Rules
3 3501 and 3502, that creates unnecessary distractions for railroad personnel,
4 interferes with railroads' ability to achieve efficiencies, and undermines safety
5 would be very detrimental to the rail industry.

6 57. The District suggests that the current 60 minute shut down rule
7 agreed to by UP as part of the 2005 MOU with CARB and further embodied
8 in UP's Train Operating Rule 32.20, is hardly distinguishable from the
9 requirements of Rule 3502, and in particular, that there is little difference
10 between a 30 and 60 minute shut down rule. What this argument fails to
11 recognize is that the shut down of locomotives under the 60-minute rule
12 embodied in the 2005 MOU can and does cause delay. However, the 60
13 minute rule as crafted necessarily strikes a balance between operational
14 flexibility and fuel and emissions saving. UP's Rule 32.20 and the 2005 MOU
15 do not strictly mandate shut down of locomotives at 60 minutes. For example,
16 Rule 32.20 does not mandate shut down of a lead locomotive when necessary
17 to maintain the air supply on the train brake system, which in practice means a
18 lead locomotive is rarely required to be shut down. Similarly, Rule 32.20 does
19 not require shut down of distributed power locomotives unless instructed by a
20 dispatcher or local supervisor. Again, this means UP's distributed locomotives
21 are rarely shut down. UP's Rule 32.20 also builds in operational flexibility as
22 to when other locomotives are to be shut down, and in many instances they
23 validly are not. Thus, if idling is essential for operational or safety constraints,
24 Rule 32.20 and the 2005 MOU permit UP to idle locomotives beyond one
25 hour. In contrast, the strict 30-minute rule contained in Rule 3502(d) removes
26 virtually all operational flexibility and will impose significantly greater
27 burdens on UP's operations, as well as significant penalties for failure to
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1 comply.

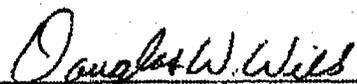
2 58. Furthermore, contrary to the District's interpretation, the "choice"
3 provided by Rule 3502(d) – limit idling to 30 minutes or install anti-idling
4 devices - is not a real choice. There is substantial cost involved in
5 implementing idle-reduction technology in locomotives. High horsepower
6 freight locomotives used to power long haul freight trains are very expensive,
7 costing about \$2,500,000 each. These locomotives are therefore used for a
8 long time – as long as 40 years – before they are retired, and at any given time
9 most railroads will operate with a mix of older and newer equipment. The
10 cost to install or retrofit idle-reduction devices on every locomotive
11 nationwide (see below) in terms of equipment cost, labor cost, training cost,
12 and opportunity cost from loss of service and disruption of efficient railway
13 operations, is extremely difficult to calculate, but could run into the hundreds
14 of millions of dollars or more. Moreover, idle-reduction technologies have
15 only recently been included on the newer locomotives; therefore, in order to
16 retrofit older locomotives, those units will need to be taken out of service,
17 disrupting operations and incurring substantial opportunity costs. Removing
18 locomotives from service would lead to cascading delays, damaging the
19 efficiency, profitability, and reputation of the railroad industry.

20 59. Most freight cargo carried by Class I railroads, such as UP and
21 BNSF, is carried across several states. Most long-distance locomotives are not
22 assigned to any exclusive geographic area, but instead are sent where the
23 demands of interstate commerce require them. Generally, they are not captive
24 to any one locality. Therefore, railroads do not know where any given
25 locomotive will operate on a given date, and each locomotive may operate
26 throughout the railroad's entire territory over its time in service. Imposition of
27 regulations for locomotives traveling in a single district of a single state of the
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1 interstate transportation network would require essentially every long-distance
2 locomotive to meet the requirements of that one district. Accordingly,
3 compliance with Rule 3502(d) by way of installing of anti-idling devices
4 would require blanket installation of such devices on UP's entire nationwide
5 fleet. Doing so is not possible from a cost perspective, especially not on the
6 District's timeframe, giving UP no real "choice" as to how to comply with the
7 Rule. To comply with Rule 3502(d) therefore requires compliance with the
8 30-minute shut down rules contained therein.

9
10 I declare under the penalty of perjury under the laws of the United
11 States that the foregoing is true and correct.

12 Executed on this 3d day of November, 2006, at Georgetown, Texas.

13
14 
15 Douglas W. Wills
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CERTIFICATE OF SERVICE

I hereby certify that I have served all parties of record in this proceeding with this document by United States mail.

A handwritten signature in black ink, appearing to read "Michael Steel", enclosed within a thin black rectangular border.

Michael Jacob Steel

February 14, 2014