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September 14, 2007

## Expedited Handling and Consideration Requested

### By Messenger

The Honorable Vernon A. Williams  
Secretary, Surface Transportation Board  
395 E. Street, S.W.  
Washington, DC 20024

ENTERED  
Office of Proceedings

SEP 14 2007

Part of  
Public Record

Re. Finance Docket No. 7467, Operations of Port Railroad Facilities at Corpus Christi, TX; Finance Docket No. 32760 (Sub-No. 13), Responsive Application, The Texas Mexican Railroad Company 22-0256

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceedings are the original and ten copies of the "Petition of the Port of Corpus Christi Authority of Nueces County, TX for Clarification and for Expedited Consideration." Given that Union Pacific Railroad Company has taken the position that Kansas City Southern Railway Company may not have access to facilities in the area of the Port of Corpus Christi, despite prior orders of the ICC and the STB permitting the same, we are seeking expedited consideration and handling of this Petition.

Respectfully submitted,

*M. F. McBride*  
by A. Tryon

Michael F. McBride  
Ahren S. Tryon

*Attorneys for Port of Corpus Christi  
Authority of Nueces County, TX*

cc (w/encl) All Persons on Service List

**EXPEDITED HANDLING, RESPONSES, AND DECISION REQUESTED**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

\_\_\_\_\_  
Finance Docket No. 7467  
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**ENTERED**  
Office of Proceedings  
**SEP 14 2007**  
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Public Record

**OPERATION OF PORT RAILROAD FACILITIES AT CORPUS CHRISTI, TX**

\_\_\_\_\_  
Finance Docket No. 32760 (Sub-No 13)  
\_\_\_\_\_

220256

**RESPONSIVE APPLICATION--THE TEXAS MEXICAN RAILWAY COMPANY**

**PETITION OF  
PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS  
FOR CLARIFICATION AND FOR EXPEDITED CONSIDERATION**

**INTRODUCTION**

Pursuant to 5 U.S.C. § 554(e) and 49 U.S.C. § 721, the Port of Corpus Christi Authority of Nueces County, Texas ("the Port Authority") respectfully petitions the Surface Transportation Board ("Board" or "STB") to maintain the status quo by clarifying that, now that the Fulton Trade Corridor rail line is ready for operation and will replace the Iule Lake Lift Bridge ("Lift Bridge") (because the Lift Bridge will be removed from service for safety reasons), the three Railroads now serving the Port of Corpus Christi ("Port") (BNSF Railway Company ("BNSF"), Kansas City Southern Railway Company ("KCS"), and Union Pacific Railroad Company ("UP")) (collectively, the "three Railroads") will continue to have equal access to the Port pursuant to authority granted herein by the Interstate Commerce Commission ("ICC") in 1929 (154 I.C.C. 193 (1929)).

("the 1929 Order")), which authority<sup>1</sup> remains in effect to this day, and pursuant to trackage rights granted by the Board in its 1996 order<sup>2</sup> approving the merger of UP and Southern Pacific Railroad Company ("SP") (the "1996 Merger Order")<sup>3</sup>

For the reasons explained herein, time is of the essence with respect to this dispute, and therefore the Port Authority respectfully requests expedited replies to, and resolution of, this Petition

Until recently, the Lift Bridge provided the *only* access to rail lines crossing from the South side to the North side and vice versa of the Inner Harbor of the Port, but all three Railroads had equal access to the Lift Bridge and to the short-line railroad serving the Port in accordance with the 1929 Order. However, due to the geography of the Port and the location of the various rail lines leading to it, physical access to the new Fulton Trade Corridor rail line will require access to the Odem-to-Corpus Christi segment of UP's Corpus Christi Subdivision line (and a detailed operating agreement among the railroads involved), which access is already provided for via KCS's and BNSF's trackage rights over that segment of UP's line pursuant to the 1996 Merger Order. To assist in understanding the geography and respective locations of the Inner Harbor and its Port facilities, a basic map of the Inner Harbor Port Related District of the Port of Corpus Christi is attached hereto as Exhibit A. Important points along the Inner Harbor are marked thereon.

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<sup>1</sup> See also *Nueces County Navigation District No. 1 et al., Construction and Operation in Nueces County*, Tex., 330 I.C.C. 717-729-30, 735 (1967) (current means of operations and service are most efficient and in the public interest)

<sup>2</sup> *Union Pacific/Southern Pacific Merger*, 1 S.I.B. 233 (1996), *aff'd sub nom., Western Coal Traffic League v. STB*, 169 F.3d 775 (D.C. Cir. 1999), *Union Pacific/Southern Pacific Merger*, 3 S.I.B. 1030 (1998)

<sup>3</sup> In the event the Board may determine that this Petition is more appropriately considered as a petition for a declaratory order, the Port Authority hereby requests such a declaratory order, and a determination that no filing fee is due for this Petition because the Port Authority is a "government entity" within the meaning of 49 C.F.R. § 1002.2(e)

Despite continuing maintenance of the Lift Bridge by the Port Authority at its considerable expense, the Lift Bridge is now in a very deteriorated condition. Because of the condition of the Lift Bridge, on September 15, 2007, the Port Authority intends to replace it with 7.1 miles of track that will connect to the existing rail lines along the north side of the Port's Inner Harbor to create the Fulton Trade Corridor. The Trade Corridor rail line is now ready for service and will commence operation when the Lift Bridge is removed from service.

The Lift Bridge is in such a precarious condition that it could have failed in any number of ways, as described in the Affidavit of Frank C. Brogan, attached hereto as Exhibit B. Such failure could have occurred at any time, potentially leaving (because of a dispute between two of the three Railroads, UP and KCS, discussed below) one or more of the three Railroads without a means to reach the North side of the Inner Harbor to service their customers on the North side of the Inner Harbor.

Mr. Brogan's Affidavit also explains that a failure of the Lift Bridge poses safety concerns and potential obstacles to shipping in the Inner Harbor. The Affidavit of Arthur Frederick Babin, attached hereto as Exhibit C, further explains that, if the Lift Bridge becomes an obstacle to shipping a substantial amount of the Nation's supply of petroleum products which are produced by three refineries with facilities located east and west of the Lift Bridge (and thus not accessible to tankers bringing crude oil to the refineries), the Nation's supplies of gasoline and other vital petroleum products will be placed in jeopardy in a matter of days. Other substantial Port users' facilities that are dependent on rail service, such as the terminal grain elevator operated by Archer Daniels Midland ("ADM") and the Port Authority's Bulk Terminal, could also suffer adversely.

Previous Resolutions adopted by the Port Authority's governing body, the Port Commission, prohibited the removal of the Lift Bridge from service, absent for reasons of safety, until all necessary agreements were in place with the three Railroads serving the Port to permit each of them to have equal access to the Port, as each now does pursuant to the 1929 Order. Despite efforts by all parties, agreement among them on the principle of equal and unfettered access to all Port rail facilities by all three Railroads when the Fulton Trade Corridor replaces the Lift Bridge has not been accomplished

The Lift Bridge recently reached such a state of deterioration (due to serious structural cracking in the lifting mechanism) that the Port Commission ordered the Port Authority to remove the Lift Bridge from service, effective September 11, 2007. After removal of the Lift Bridge from service, the Fulton Trade Corridor will provide the sole method of rail access to the North side of the Inner Harbor of the Port. Resolution of the issues described herein related to the Railroads' equal and unfettered access to all of the facilities in the Port has therefore become critical to ensure that the Port and its customers continue to receive rail service as contemplated by the 1929 Order.

Therefore, the Port Authority reluctantly comes to the Board seeking clarification of the 1929 Order of the ICC herein (which remains in effect to this day) that, when the Fulton Trade Corridor replaces the Lift Bridge, each of the three Railroads will continue to have equal and unfettered access to all Port Authority rail facilities, and may exercise or continue to exercise certain trackage rights granted under the 1996 Merger Order in furtherance of such equal and unfettered access to those Port facilities

In view of the extreme urgency of this situation, and for the reasons stated in more detail below, the Port Authority respectfully requests expedited consideration of this

Petition, and an order that the three Railroads' replies hereto (if any) be filed within five business days of the filing date of this Petition.

### **STATEMENT OF FACTS**

**1. The Port Authority, the Three Railroads, and Their Equal and Unfettered Access to the Port.** The Port Authority is a Navigation District and political subdivision of the State of Texas Under the Texas Constitution, Texas Water Code, and related state laws, the Port Authority is a separate and distinct entity of Nueces and San Patricio Counties governed by its Port Commission (comprised of seven appointed Commissioners) It operates the Port, one of the deepest along the Gulf of Mexico coast, and is a major intermodal shipping and trade center, ranking sixth among all ports in the United States in terms of total tonnage handled per year. BNSF, KCS, and UP all serve the Port, through interchanges with the Corpus Christi Terminal Railroad, Inc. ("CCTR"), a short-line railroad independent of all three Railroads.

**2. Facilities in the Port.** Major chemical manufacturers and numerous other industries operate in, or regularly use, the Port to facilitate national and international transportation of their products. Exhibit C at ¶¶ 2-11 Three large petroleum refineries, owned and operated by Valero, Flint Hills Resources and Citgo, operate within the Inner Harbor of the Port, the Port Authority believes that the petroleum refineries provide approximately 5% of the Nation's gasoline and other vital petroleum products Examination of Exhibit A reveals that the three refineries are to the southwest and southeast of the Lift Bridge, with other facilities to the north of the Lift Bridge, and that in the event the Lift Bridge is disabled so as to be an obstruction to navigation, the tankers that otherwise provide crude oil to the three refineries will not be able to do so

Exhibit C at ¶¶ 3-4 The refineries operate on a just-in-time basis, so that if the tankers cannot provide the crude oil on a timely basis, the refiners will be shut down. Shut-down of the three refineries in the Port would send a shock wave through the oil markets. Given the present market conditions for gasoline in the Nation, the ripple effect of the shut-down of the three refineries is obvious and need not be discussed at length. In addition, ADM currently operates a terminal grain elevator on the north side of the Inner Harbor that loads large quantities of export grain to ships and rail, and the Port Authority operates a Bulk Terminal where large amounts of locally produced petroleum coke is loaded to ships for overseas markets and also loaded on rail for export to Mexico.<sup>4</sup>

Any or all of these elements of the operation of the Port depend on the efficient operation of the three Railroads serving the Port. Accordingly, a partial or complete shut-down of the Port operations, due to a dispute between two of the three Railroads, could have a serious effect upon the economy of the State of Texas and the Nation.

**3 Port Authority Rail Facilities.** The Port Authority owns approximately 35 miles of terminal rail facilities within the Port to facilitate rail transportation originating and terminating at the Port.<sup>5</sup> The Port receives service from the three Railroads through interchanges with CCR over Port Authority rail facilities.<sup>6</sup> The Lift Bridge was the sole method of access for all railroads to move traffic to and from the north side of the Port's Inner Harbor and the Common Interchange Yard. This configuration of rail service to

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<sup>4</sup> Moreover, the Port Authority is designated as a Strategic Seaport by the United States Army. During the build-up for the Iraq war and thereafter, enormous amounts of war material and many support personnel were shipped from the Port. In the event of an emergency requiring the Army to use the three Railroads to move units from their Forts (Hood and Bliss in Texas, Carson in Colorado, Riley in Kansas, Sill in Oklahoma and Polk in Louisiana) from which they previously shipped units to the Port by rail, a disruption of rail facilities or the Port itself could create a serious logistical problem for the Army.

<sup>5</sup> The Port Authority-owned tracks are identified as solid dark blue lines on the map attached hereto as Exhibit D.

<sup>6</sup> The portion of the Corpus Christi Subdivision line that enters the Port area is depicted in Exhibit D as an orange line.

and from the Port has remained virtually the same since 1960, and the rights conferred by the 1929 Order remain in effect. Certain changes since 1960 in control of the three Railroads providing service to and from the Port are described next.

4 **The 1929 ICC Order** In the 1929 Order, the ICC granted a certificate of public convenience and necessity to (1) Tex Mex, (2) a predecessor of UP,<sup>7</sup> and (3) the SP, so that each could operate over the railroad facilities of the Port Authority (which was then known as the Nueces County Navigation District No. 1 ("Navigation District")) Prior to issuance of the 1929 Order, the ICC denied a rail carrier's application to be the sole operator of the Navigation District's railroad properties because the ICC found that "such operation would not properly serve the present and future public convenience and necessity, but that each of the carriers entering Corpus Christi should have the right to equal access to the port facilities at that point." *Id.* at 194. Deciding in favor of equal access for all three railroads then serving Corpus Christi (MP, SP, and Tex Mex), the ICC found that the joint application it approved in the 1929 Order represented "the solution of the problem reached by all of the parties at interest." *Id.* Accordingly, the 1929 Order allowed the three railroads then serving the Port—MP, SP, and Tex Mex—to jointly operate over the Navigation District's rail facilities. This was done through the Corpus Christi Terminal Association ("CCTA").<sup>8</sup> Under the 1929 Order, each railroad that was a member of the CCTA, and any railroad that subsequently became a party to the CCTA agreement, was to be granted access to the Port rail lines "without discrimination." *Id.* at 195.

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<sup>7</sup> In 1929, Missouri Pacific Railroad Company ("MP") was UP's predecessor-in-interest serving the Port.

<sup>8</sup> The CCTA was formed pursuant to an agreement between Tex Mex, MP, and SP, and the Navigation District. *Id.* Each of the railroads that signed the agreement creating the CCTA would operate the Navigation District's rail lines for revolving one-year terms for the mutual benefit of all CCTA members.

**5. Tule Lake Lift Bridge.** In the late 1950s, the City of Corpus Christi commenced construction of the Lift Bridge to replace an older bascule bridge that provided access to the north side of the Port Ship Channel. In 1960, CCA members entered into an agreement, entitled the "Corpus Christi Railroad Relocation Project Primary Agreement" ("1960 Agreement"). The 1960 Agreement provided for removal of the bascule bridge and use of the then-new Lift Bridge (then called the Upper Harbor Bridge) for rail service to the North side of the Inner Harbor, and for realignment or transfer of trackage to provide access to the new Lift Bridge. The Navigation District then constructed the Savage Lane Line<sup>9</sup> to connect Tex Mex's lines to the south and west of the Lift Bridge, and established a Navigation District-owned common interchange yard where each of the Railroads serving the Port could interchange traffic.

The 1960 Agreement and the resultant switching and interchange operations of the Railroads serving the Port, via the Savage Lane Line and the line owned by MP to the west of the Port (now UP's Corpus Christi Subdivision line), were approved in a series of ICC orders dating from 1960: *Texas & New Orleans Railroad Company Abandonment in Corpus Christi, Nueces County, Tex.*, Finance Docket No. 21325, 317 I.C.C. 245 (1960); *Nueces County Navigation District No. 1, et al., Construction and Operation in Nueces County, Tex.*, Finance Docket No. 21326, 330 I.C.C. 717 (1967). None of these orders altered the rights and responsibilities of the Railroads created by the 1929 Order.

Tex Mex traffic to and from the Port facilities and the Lift Bridge historically traveled via a Tex Mex line between Corpus Christi and Laredo, Texas. MP (now UP) traffic to and from the Port area and Lift Bridge traveled via what is now UP's Corpus Christi Subdivision rail line, between Corpus Christi and San Antonio, Texas.

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<sup>9</sup> The Savage Lane Line is depicted in Exhibit D as a north-south oriented solid green line

**6 The Tex Mex/KCS and UP/SP Mergers.** In 1995, KCS acquired a controlling interest in Tex Mex. When the STB allowed UP and SP to merge, the Board granted trackage rights to Tex Mex over certain UP lines.<sup>10</sup> In the 1996 Merger Order, the Board, recognizing the potentially deleterious effects the UP/SP merger could have on competition throughout Texas and upon U.S.-Mexico rail traffic, "crafted specific remedies addressing particular problems . . .," including "trackage rights for the Tex Mex from Corpus Christi to Beaumont to ensure that this small carrier can continue to play its important role in international service " 1 S.T.B. at 373. As is relevant to the instant proceeding, the Board granted trackage rights to Tex Mex over the Odem-to-Corpus Christi segment of UP's Corpus Christi Subdivision line. UP then requested that the Board limit Tex Mex's trackage rights on that segment of UP's line to Tex Mex freight moving to or from Laredo or to points on the line that were not already served by MP or SP.<sup>11</sup> However, the Board recognized the importance of Tex Mex's continued access to the Port facilities and thus refused to limit Tex Mex's trackage rights to and from the Port.<sup>12</sup>

Subsequently, KCS filed a notice of exemption with respect to its acquisition of all of the trackage and operating rights of Tex Mex.<sup>13</sup> On that same date, KCS also filed a notice of exemption stating that Tex Mex had granted KCS local and overhead trackage

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<sup>10</sup> *Union Pacific/Southern Pacific Merger*, 1 S.T.B. 233 (1996), *aff'd sub nom. Western Coal Traffic League v. STB*, 169 F.3d 775 (D.C. Cir. 1999), *Union Pacific/Southern Pacific Merger*, 3 S.T.B. 1030 (1998)

<sup>11</sup> *Union Pacific/Southern Pacific Merger [Decision No. 47]*, 1 S.T.B. 591, 609-10 (1996)

<sup>12</sup> *Id.* at 610 ("The limitation proposed by UP/SP would effectively prevent Tex Mex from using its trackage rights to handle freight moving from/to shippers or port facilities in Corpus Christi.")

<sup>13</sup> *Kansas City Southern, The Kansas City Southern Railway Company, and The Texas Mexican Railway Company—Exemption for Transactions Within a Corporate Family*, STB Finance Docket No. 34849 (March 29, 2006)

rights over its entire 157-mile rail line between Laredo, Texas and Corpus Christi.<sup>14</sup>

Pursuant to those notices, KCS took over all Tex Mex rail service to and from the Port.

**7 The 1997 Agreement** In 1997, the members of the CCTA agreed to allow Port terminal operations over Port Authority-owned track to be provided by a short-line railroad, the CCTR (the "1997 Agreement"). The 1997 Agreement replaced the original CCTA agreement, as amended, because there was no longer a need for the CCTA members to operate Port Authority-owned tracks on yearly terms

Under the 1997 Agreement, the CCTA became the Corpus Christi Railroad Association ("CCRA"), of which UP, BNSF, KCS, and the Port Authority became members.<sup>15</sup> The 1997 Agreement did not alter any trackage rights or rights of access to Port rail facilities that had been granted in ICC or STB orders or assigned through agreements made prior to 1997 (nor could it have done so without the STB's approval).

**8 The Need to Replace the Lift Bridge.** After more than 40 years of operation, as stated, the Lift Bridge has deteriorated and must be removed from service for safety reasons Exhibit B. For that reason, in 2004, so as to eventually replace the sole means of rail access now provided to the north side of the Inner Harbor via the Lift Bridge, the Port Authority began construction of the Fulton Trade Corridor.<sup>16</sup> As explained above, the Fulton Trade Corridor contains a surface rail line that traverses the North side of the

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<sup>14</sup> *The Kansas City Southern Railway Company--Trackage Rights Exemption--The Texas Mexican Railway Company*, STB Finance Docket No. 34848 (March 29, 2006)

<sup>15</sup> The Port Authority also assumed responsibility for the operation and maintenance of the Lift Bridge, which is owned by the City of Corpus Christi, in a separate agreement dated February 23, 1999

<sup>16</sup> The Fulton Trade Corridor rail line was built to replace existing rail access to the Port that was provided by the Lift Bridge and associated track and, as such, is not subject to regulation either because (1) it is merely non-jurisdictional replacement track or (2) it is exempt from regulation under 49 U.S.C. § 10906, or both. See, e.g., *Brotherhood of Locomotive Engineers v. United States*, 101 F.3d 718, 728 (D.C. Cir. 1996) (explaining "tenant-use" test and focus on "extension of the railroad" when considering whether STB has jurisdiction under 49 U.S.C. §§ 10901 and 10906), *Hugh v. Consol-Pennsylvania Coal Co.*, 945 F.2d 594 (3d Cir. 1991)

Inner Harbor Channel (conveniently, without the necessity of any bridge over the Inner Harbor) but necessarily connects with UP's Corpus Christi Subdivision line slightly inland (and northwest) of the west end of the Inner Harbor, at a point called the Fulton Wye Connection (at Mileposts 140.62 and 141.01) <sup>17</sup>

The Port Authority's intention was to remove the deteriorated Lift Bridge from service now that the Fulton Trade Corridor is ready for operation, but only after the necessary agreements were in place with all three Railroads, to ensure safe rail operations and to ensure efficient rail service to the Port facilities including its rail facilities on the north side of the Inner Harbor. However, recent engineering surveys of the condition of the Lift Bridge indicated such serious structural cracking in the lifting machinery that, on September 4, 2007, the Port Authority notified users of the Port that it intended to remove the Lift Bridge from service as of October 1, 2007 (or earlier if the condition of the Lift Bridge so required), due to the safety risks posed by the structural cracking in the lifting mechanism. Exhibit K. On September 11, concerned about the "safety and business risks" associated with continued operation of the Lift Bridge, the Port Commission ordered the Port Authority to remove the Lift Bridge from service as of that day. Exhibit N. Without an agreement between the Railroads or clarification from the STB of the Railroads' continued right of access to the Port facilities vis-à-vis the Odem-to-Corpus Christi segment of UP's line, one or more of the Railroads may be unable to enjoy its right to equal access to the Port and facilities therein at such time as the Lift Bridge is removed from service. This may adversely affect users of the Port that are dependent upon rail service.

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<sup>17</sup> The Fulton Trade Corridor and Fulton Wye Connection are depicted by dotted blue lines on Exhibit D

9 **Equal and Unfettered Access to the Port** The 1929 Order and related agreements assure equal access to all three Railroads. At present, despite the best efforts of the Port Authority, as discussed *infra*, there is a dispute between UP and KCS preventing KCS's equal access to the Fulton Trade Corridor. This impasse, which is unrelated to the Port Authority and not of its making, compelled the filing of this Petition.

10 **The Impasse.** The Port Authority has attempted to secure the agreement of the three Railroads to discontinue operation of the Lift Bridge and remove it once the Fulton Trade Corridor is ready for operation. Apparently because of another issue between UP and KCS (unrelated to anything of concern to the Port Authority) that UP and KCS have been unable to resolve,<sup>18</sup> UP will not agree that KCS will continue to have equal access to the Port facilities once the Lift Bridge is removed. Accordingly, KCS advised the Port Authority that it cannot agree to the cessation of rail operations over the Lift Bridge " . . . unless and until [KCS's] equal access to the new Fulton Corridor rail line is guaranteed" or unless and until this Board so declares. Exhibit I

Consistent with the STB's oft-stated preference for "private-sector solutions," the Port Authority has continued to seek agreement of the three Railroads to equal access to the Port facilities as demonstrated by its letter dated July 12, 2007 sent to each of the three Railroads (Exhibits E, F, and G). The letter explained the Hobson's choice the Port Authority finds itself in, and in order to resolve the problem, asked the three Railroads to *agree to the same equal and unfettered access that has existed in the Port of Corpus*

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<sup>18</sup> Apparently, UP does not object to BNSF having equal access to all of the facilities in the Port, even though KCS and BNSF are in comparable roles with respect to the Port (i.e., they are dependent in whole or in part on trackage rights over UP lines), thereby demonstrating that UP's position vis-a-vis KCS's equal access to the Port of Corpus Christi is due to an issue UP has with KCS that is unrelated to the Port, because otherwise UP would be taking the same position with respect to both BNSF and KCS.

Christi since 1929 because of the ICC's 1929 Order. The Port Authority's efforts have been to no avail, at least with respect to UP.

By letter dated August 10, 2007 ("UP Letter"), UP informed the Port Authority of its interpretation of the 1929 Order and the impasse with KCS. Exhibit H. The UP Letter referred to an "agreement" between UP and KCS dated November 17, 2006, which UP admitted was never implemented, but asserted that it would "remain willing to give KCS access to the Fulton Corridor from the west under the terms" of that purported agreement. *Id.* at 1. The Port Authority is unaware of all of the terms of the purported "agreement" or the status of its implementation, because the Port Authority had no knowledge of or involvement in the development of that document, but understands that it was not agreed to by KCS (and therefore it never went into effect). The Port Authority also has been informed by KCS that UP agreed, in a letter dated January 2, 2007, that the purported "agreement" did not go into effect.

The UP Letter also asserted (incorrectly) that, in the 1929 Order, the ICC "was simply describing the terms of the agreement it was being asked to approve, and was not imposing any requirements on the applicants." *Id.* at 2.<sup>19</sup> The UP Letter claimed that "UP is not denying KCS access to the Fulton Corridor, or any other Port owned rail facilities. KCS has full access to all of these facilities (including the Fulton Corridor) via Tule Lake Lift Bridge, which is the routing KCS has used since the bridge was opened in 1959." *Id.* Contrary to UP's claim that it is not denying access to KCS, and as it appears to admit in its letter, under the trackage rights granted to Tex Mex in 1996, KCS has access to the Fulton Trade Corridor over UP's Odem-to-Corpus Christi segment of its

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<sup>19</sup> Actually, the ICC approved an application granting equal access to all of the facilities in the Port to all three Railroads' predecessors and ordered the same, after denying an application for sole access by a single railroad.

Corpus Christi Subdivision line. The UP Letter claimed that the Port Authority will be eliminating KCS's access to facilities in the Port by removing the Lift Bridge from service. *Id.* However, as explained above, the Port Authority is not eliminating KCS's access, because KCS has trackage rights over the Odem-to-Corpus Christi segment of UP's Corpus Christi Subdivision line, pursuant to the 1996 Merger Order, and therefore has access to the Fulton Trade Corridor.

Based on the UP Letter (Exhibit II at 2), it appears that UP disagrees with the Port Authority's interpretation of the ICC's prior finding that "each of the carriers entering Corpus Christi should have the right to equal access to the port facilities at that point." 154 I.C.C. at 194. However, as discussed herein, the 1929 Order is still in effect, so that each of the three Railroads continues to have equal access to the Port and all facilities therein. The UP Letter stated that UP is willing to allow KCS access to the Fulton Trade Corridor over the Odem-to-Corpus Christi line at such time as the Lift Bridge is removed from service, provided that the parties implement the November 17, 2006 purported "agreement." That statement confirms that UP would not suffer any operational interference by allowing KCS such access.

KCS and BNSF have agreed (Exhibits I and J) with the Port's position concerning the continuing effect of the 1929 Order, but KCS will not agree to allow the Lift Bridge to be removed from rail service until the impasse with UP is resolved.<sup>20</sup> Following the Port Authority's notice to Port customers, dated September 4, 2007, that it would have to suspend Lift Bridge operations on or before October 1, 2007 (Exhibit K) for safety reasons, the Port Authority became aware that UP and KCS had not resolved the impasse.

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<sup>20</sup> The Port Authority does not agree that KCS may prevent the Lift Bridge from being removed from service, but it is not necessary to resolve that issue to decide this Petition.

On September 7, 2007, KCS sent a letter to certain of its customers (Exhibit L) stating that "if the Tule Lake Lift Bridge is taken out of service as planned, KCS will not be able to maintain rail access to the Inner Harbor shippers . . . ." KCS's letter urged the shippers to voice their opposition to the Port Authority's plan to remove the Lift Bridge from service (despite the potential safety implications). KCS also asked the shippers to "request the Port [Authority] to quickly reach an accommodation with UP to ensure that KCS can access the Fulton Corridor Rail connection." While the Port Authority does not believe it bears the responsibility for resolving a dispute between UP and KCS that was not of its making, it is clear that the parties' inability to reach a resolution of their differences about a matter unrelated to the Port could have serious effects on shippers that are within the Port

Also on September 7, 2007, UP sent a letter to the Executive Director of the Port Authority (Exhibit M) in which UP stated that it is unwilling to provide KCS even emergency access over its Odem-to-Corpus Christi segment of line unless KCS will "carry out its side" of the purported November 17, 2006 "agreement," once the Port Authority removes the Lift Bridge from service. Although UP agreed to ensure such temporary access to the other Railroads in a letter agreement dated May 9, 2006, UP's September 7, 2007 letter asserted that the agreement provided for that access only until the appropriate authority decided not to repair or replace the Lift Bridge. The Port Authority is unable to repair the Lift Bridge because it does not have the necessary parts, it would be too costly to repair, and the removal of the Lift Bridge from service without commencing service on the Fulton Trade Corridor rail line would cause a disruption in rail service so long as UP refuses to cooperate with KCS so that KCS may have to the

Fulton Corridor rail line. In any event, UP's position is not consistent with the 1929 Order and the trackage rights granted to KCS and BNSF in the 1996 Merger Order.

Accordingly, the dispute between UP and KCS and UP's failure to agree that KCS will continue to have equal access to the Port facilities (and KCS's understandable, if mistaken, requirement in response of a "guarantee" of equal access before the Lift Bridge may be removed from rail service, even for safety reasons) have created a controversy where none needs to exist. This impasse has required that the Port Authority file this Petition to eliminate the uncertainty that UP's unwillingness to agree to KCS's equal and unfettered access has created, because the STB is, arguably, the only entity which can clarify both that the rights granted under the 1929 Order remain in effect and continue to assure each of the three Railroads equal access to all of the facilities in the Port, and that the trackage rights granted to Tex Mex and BNSF in the 1996 Merger Order further ensure such equal access over the Odem-to-Corpus Christi segment of UP's Corpus Christi Subdivision line.

**11 Need for an Expedited Board Ruling.** An unfortunate result of the impasse is that there is no question that it could adversely affect railroad operations and competition in the Port to the ultimate (and potentially irreparable) harm to users of railroad services in the Port.<sup>21</sup> Accordingly, in the circumstances, the Port Authority (as the entity charged with ensuring proper operations of the Port) is filing this Petition to seek an expedited order clarifying that KCS, BNSF and UP (the latter two of whose rights of equal access to the Port are not disputed by the Port Authority or any other entity, so far as is known to counsel) have equal and unfettered access to serve the Port.

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<sup>21</sup> See, e.g., *Nueces County Navigation District*, 330 I.C.C. at 729-30, 735 (current operations are efficient and serve the public interest)

and will have the same equal and unfettered access over the Fulton Trade Corridor, once it is put into operation.

### ARGUMENT

The Port Authority herein requests clarification of the three Railroads' rights to equal access to the Port and all facilities therein conferred by the 1929 Order, and clarification of KCS's trackage rights over UP's Odem-to-Corpus Christi segment of line providing access to the Port, so that the Port Authority may remove the Lift Bridge (which poses significant safety concerns) from rail service and commence operations of the Fulton Trade Corridor with continued service from all three Railroads. This clarification is necessary due to the controversy between UP and KCS over the issue of whether KCS will continue to have equal access to Port facilities.<sup>22</sup>

Without UP's agreement that KCS will have equal access to the Port (and especially to all of the facilities and the Common Interchange Yard on the north side of the Inner Harbor accessible only via UP's Corpus Christi Subdivision), and given KCS's position that for it to agree that the Lift Bridge may be taken out of rail service, KCS's "equal access to the new Fulton Corridor trackage [must be] guaranteed," there is an impasse that requires the good offices of the Board to resolve it with an order clarifying that each of the three Railroads will continue to have equal access to the Port facilities and that such equal access is ensured for the Railroads over UP's Odem-to-Corpus Christi *segment of rail line*

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<sup>22</sup> In the event the STB considers this Petition as a "Petition for Declaratory Order," the Port Authority satisfies the STB's criteria for issuance of such an order. "Under 5 U.S.C. 554(e) and 49 U.S.C. 721, the Board may issue a declaratory order to terminate a controversy or remove uncertainty." *I. g. Union Pacific Railroad Company Petition for Declaratory Order*, Finance Docket No. 35021 (served May 16, 2007), slip op. at 2. Here, declaratory relief is appropriate because there is a controversy between UP and KCS over the issue of whether KCS will continue to have equal access to Port facilities, that controversy makes it necessary to remove the uncertainty that the controversy has created, and the controversy threatens to disrupt vital Port operations and the operations of the critical facilities in the Port as well as Port users.

It should be clear that the Port Authority is not seeking any expansion of any existing right that any of the three Railroads has at the Port. On the contrary, the Port Authority is simply seeking an order clarifying that the three Railroads continue to have equal and unfettered access to the Port as they now have and have had since 1929, and that they will have the same right of equal and unfettered access over the Fulton Trade Corridor via UP's Corpus Christi Subdivision.<sup>23</sup>

Continued operation of the Lift Bridge could have had major implications for various facilities in the Port, which facilities should not, in effect, be held captive because of the inability of any railroad to continue to have rights of equal access to the Port. If the Lift Bridge were to have become inoperable, for example (a very real possibility, as Mr. Brogan's Affidavit explains), there may have been no rail access to the Common Interchange Yard and to facilities along the North side of the Inner Harbor. Many of those vital facilities depend on continuing rail service. Moreover, if the Lift Bridge were to become stuck in the "down" position or otherwise obstruct the ability of maritime traffic to and from the refineries in the Port, the three refineries would quickly be forced to shut down, and shortages of the Nation's fuel supplies, especially gasoline and diesel fuel, would develop within a matter of days.

Despite the Port Authority's obligation to remove the Lift Bridge from service for safety reasons, as ordered by the Port Commission (Exhibit N), the Port Authority was nevertheless unable to secure KCS's agreement for operations of the Lift Bridge to cease until such time as KCS has been guaranteed its continued rights of equal access to the

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<sup>23</sup> Due to the fact that the Fulton Trade Corridor rail line necessarily connects with UP's line, UP fortuitously found itself in a position to refuse to grant KCS equal and unfettered access to the Port after that Railway goes into operation, unless the STB orders otherwise. This accident of geography should not alter the continuing effect of the 1929 Order or the STB's grant of trackage rights to Tex Mex in 1996.

Port (Exhibit I)<sup>24</sup> The UP/KCS dispute over KCS's equal access to the Port therefore has ominous implications for the ability of the three Railroads to work out a detailed operational agreement with respect to rail operations involving the Fulton Trade Corridor and access thereto.<sup>25</sup>

The Port Authority believes, as it has indicated to the three Railroads in its July 13, 2007 letter and previously (in oral discussions), that each of them should continue to have equal and unfettered access to the Port rail facilities that they now have under the 1929 Order.<sup>26</sup> The Port Authority believes it is clear that the ICC and the STB have long recognized that equal access by the three Railroads servicing the Port was important. Indeed, at the time of the UP/SP merger, the Board provided Tex Mex with additional trackage rights over the Corpus Christi Subdivision line in order to ensure that Tex Mex's equal access to the Port would be unaffected by the merger, so that not only BNSF but also Tex Mex would provide effective competition with UP for rail service at the Port.

Competitive rail service and continuing equal access to all three Railroads is now even more important than in the past to the Port and the shippers it serves, especially in light of the impending completion of the Fulton Trade Corridor, which will provide more

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<sup>24</sup> Moreover, from a practical standpoint, because KCS must route traffic over UP's Corpus Christi Subdivision track for access to the Fulton Trade Corridor once the Lift Bridge is removed, KCS would have no effective access to much of the Port if it did not have continued trackage rights over that track of UP. Accordingly, despite KCS having the right to operate over UP's Odem-to-Corpus Christi line, KCS must have UP's cooperation to continue to have equal access to the Port and to serve some of its customers. But because of the impasse between UP and KCS, securing such cooperation from UP unfortunately requires the involvement of the STB.

<sup>25</sup> When the Port Authority asked each of the three Railroads to agree that each of them would have equal access to the Port, it did so while stating that there would be no need immediately for the three Railroads now to agree on a detailed operational agreement for the rail operations in the Port once the Fulton Trade Corridor was put into operation, so long as such an agreement were entered into by the time the Lift Bridge was removed from service. Exhibits E, F, and G. So, UP's apparent refusal to agree to KCS's equal access to the Port could not be based on the need for such an operating agreement, because no party disputed that such an agreement would need to be reached. This Petition is, therefore, addressed solely to the right of each of the three Railroads to have equal access to the Port via UP's Corpus Christi Subdivision.

<sup>26</sup> The 1929 Order requires that all CCA (and now CCRA) member Railroads be afforded equal and unfettered access to the Port and facilities therein.

efficient access to Port rail facilities on the North side of the Inner Harbor, and help to alleviate some of the capacity problems that have developed in recent years on most railroad systems throughout the Nation, including BNSF, KCS, and UP (as each of them has expressed to the Board in various forums and proceedings). Those capacity problems have been the subject of numerous proceedings before the STB, and they will only become more serious over time, according to projections of DOI and others.<sup>27</sup> The construction of the Fulton Trade Corridor and replacement of the more inefficient Lift Bridge is an important improvement in both the rail infrastructure of the Nation and for the operation of one of its most important Ports.

The Port Authority is unaware of any reason why KCS should not continue to have equal access to the Port facilities. Moreover, nothing has happened since 1929 that should alter the equal access granted the three Railroads to the Port facilities (or that should affect the trackage rights granted by the STB in 1996 to KCS over the Odem-to-Corpus Christi segment of UP's Corpus Christi Subdivision). The same competitive and operational interests in having the three Railroads serve the Port with equal and unfettered access thereto that applied in 1929, and that were the basis for the Board's action upholding access for all three Railroads again in 1996, still apply. If anything, given the substantial increase in efficiency of the Port rail facilities to be provided by the Fulton Trade Corridor and given the condition of the Lift Bridge, it is more important today. Therefore, the removal from service of the Lift Bridge and its replacement with the Fulton Trade Corridor should have no effect on those rights, because the Fulton Trade

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<sup>27</sup> See Ex Parte Nos. 670, 671 and 672, in which the STB and interested parties, including many railroads, have expressed concern about the need for additional railroad infrastructure and capacity Nation-wide. Those concerns are an added reason why it is vital to ensure continued access by all three Railroads to the Port, so that any operational problems that might occur on any one of the three Railroads might be offset by service from the other two Railroads serving the Port.

Corridor rail line is simply replacement track for access to Port rail facilities on the north side of the Inner Harbor.

Accordingly, the STB should clarify that the 1929 Order, and the trackage rights granted to Tex Mex and BNSF in the UP/SP merger proceeding in 1996 with respect to the Odem-to-Corpus Christi segment of the Corpus Christi Subdivision line providing access to the Port and facilities therein, are still in effect. The STB should further clarify that BNSF, KCS, and UP will have continued rights of equal and unfettered access to the Port facilities and to any existing, newly developed, or hereafter constructed Port railroad facilities, via the Fulton Trade Corridor and the Fulton Wye Connection, via UP's Corpus Christi Subdivision. Because UP has thus far declined to recognize the rights of KCS (apparently because of an unrelated dispute between the two carriers), and given the fortuitous location of UP's Corpus Christi Subdivision (providing the sole physical access to the Fulton Trade Corridor), we respectfully submit that the Board must act upon this Petition to clarify that KCS's rights of access to the Port facilities continue to be valid, regardless of any unrelated dispute between KCS and UP. The Port and its facilities and customers should not be held hostage to a dispute between UP and KCS that does not involve the Port.

Given the urgency and importance of this matter to the Port Authority, to the users of facilities located therein, to the three major Railroads serving the Port, to CCTR, to the economy of Texas, and to the Nation, we respectfully submit that the issuance of clarification by the Board in this matter is a necessity, and that the matter also requires expeditious handling, prompt response to this Petition by the three Railroads, and an expeditious determination by the Board.

## **CONCLUSION**

In order to facilitate the cessation of rail service over (and ultimately removal of) the Tule Lake Lift Bridge (the continued operation of which may pose safety and economic concerns for rail traffic over it, and may cause possible interference with or obstruction of shipping in the Inner Harbor of the Port), and to facilitate the commencement of operations over the Fulton Trade Corridor so as to continue (and indeed improve) rail operations in the Port, the Port Authority respectfully requests that the Board clarify that BNSF, KCS and UP continue to possess the right of equal and unlettered access to all the Port facilities granted by the ICC in 1929 via access to UP's Corpus Christi Subdivision to connect to the Fulton Trade Corridor, including use of the trackage rights granted by the STB in the 1996 Merger Order over the Odem-to-Corpus Christi segment of UP's Corpus Christi Subdivision line

The Port Authority further respectfully requests expedited handling of this Petition, and an expedited decision thereon, so that it may avoid disruption to Port operations that might otherwise occur from any interruption of rail service to the Port and facilities therein. Moreover, given the three Railroads' extensive familiarity with the issues addressed herein, the Port Authority respectfully requests that the Board issue an order as soon as possible requiring that replies to this Petition, if any, be filed by each of the three Railroads within five business days of the filing of this Petition.

Respectfully submitted.

*M. F. McBride* by *A. Tryon*

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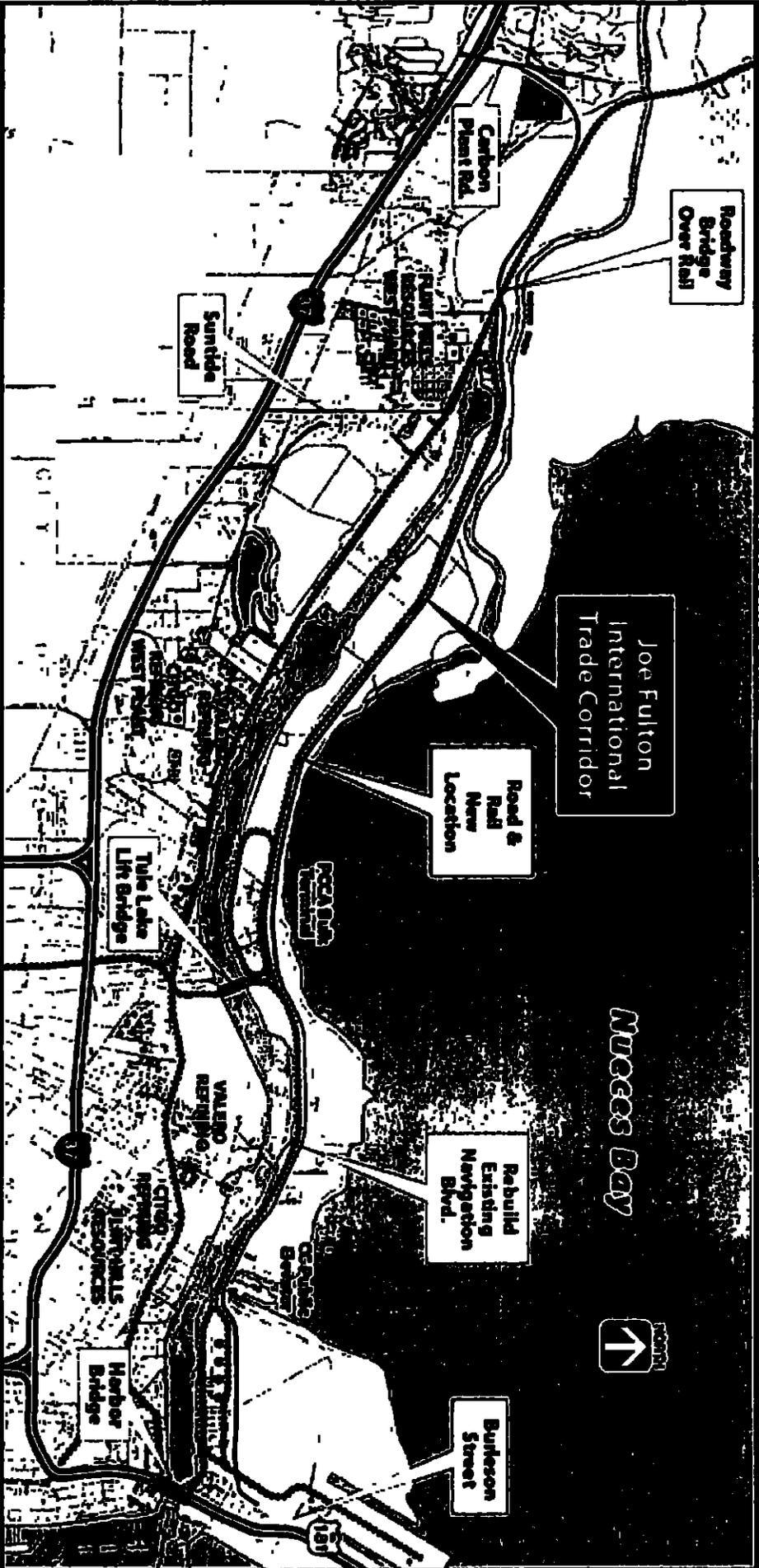
*Attorneys for Port of Corpus Christi Authority of Nueces County, Texas*

*Of Counsel*

Leo James Welder, Jr.  
Welder Leshin LP  
800 North Shoreline Boulevard,  
Suite 300 North  
Corpus Christi, Texas 78401

# **EXHIBIT A**

**Map of Inner Harbor Port**



Roadway Bridge Over Rail

Carbon Plant Rd.

Sunble Road

Joe Fulton International Trade Corridor

Road & Rail New Location

Tule Lake Lift Bridge

NUECES BAY

REBUILD EXISTING NAVIGATION Blvd.



Burleson Street

Harbor Bridge

161

# **EXHIBIT B**

**Executed Affidavit of Frank C. Brogan**

STATE OF TEXAS           §  
  §  
COUNTY OF NUECES       §

**AFFIDAVIT OF FRANK C. BROGAN**

Frank C. Brogan, being duly sworn, deposes and says

1 I am employed by the Port Authority of Corpus Christi Nueces County, Texas, as the Director of Engineering Services. My responsibilities include the construction of the new Joe Fulton International Trade Corridor road and rail line, as well as the maintenance of the Tule Lake Lift Bridge ("Lift Bridge"). I have a Bachelor of Science degree in Civil Engineering with honors from the University of Texas at Austin and a Master of Engineering degree (specializing in structural engineering) from Texas A&I University in Kingsville, Texas. I am both a licensed Professional Engineer (P.E.) and a Registered Professional Land Surveyor (R.P.L.S.) in the State of Texas. I have over 33 years of experience in the design and management of industrial projects. I am over 18 years of age and am competent to execute this Affidavit.

2 The Lift Bridge was built in 1959 at the same time as the Harbor Bridge at a cost of \$6.5 million. The purpose was to replace rail service provided by the old Bascule Bridge. The 1959 construction allowed the Port of Corpus Christi Authority ("Port") to continue growing. The Joe Fulton International Trade Corridor ("Fulton Corridor") rail line will provide a replacement route for rail traffic to and from the Port. Under the Truman Hobbs Act, the U.S. Army Corps of Engineers determined (in August 1953) that the Bascule Bridge was an "unreasonable obstruction to free navigation."

3 The Federal government contributed \$4.1 million for the cost of a new rail bridge to be built at the same location. Local governments paid \$2.4 million to cover the added costs of relocating the replacement bridge to the west in the following amounts:

Port of Corpus Christi Authority	\$920,000
City of Corpus Christi	\$886,500
Nueces County	\$551,700

Operation of the Lift Bridge costs an average of about \$1.1 million per year.

4 The Lift Bridge is owned by the City of Corpus Christi. The County operated the Lift Bridge from 1959 until 1998. The Port has operated it since 1998.

5 Cost-sharing for the Lift Bridge has changed over the years:

<u>Time Period</u>	<u>Cost Share %</u>	<u>By Entity</u>
1959 - 1984	33.3%/33.3%/33.3%	(Port, City, County)
1984 - 1990	50%/25%/25%	(Port, City, County)
1990 - 1998	70%/15%/15%	(Port, City, County)
1998 - Present	100%	(Port)

The Lift Bridge was overhauled in the early 1990s at a cost of \$11.5 million.

6 Prior to September 29, 2006, the Lift Bridge went up and down an average of 35 times a day (10,562 times in 2005). In 2005, major structural cracking was discovered in the lifting system (South Tower sheaves and shafts).

7 Concerned that the Lift Bridge could fail and block the channel for ships as well as railroads and trucks, replacement parts were ordered for the South Tower in November 2005. Parts for the South Tower are currently in stock. Now cracking has been discovered in the North Tower sheaves. Cracks have nearly doubled in size since September 2006. The largest crack (depth) has grown from 0.465' to 0.867'. Combined lengths of the cracks now cover 71% of total shaft circumference (55.8" cracked versus 70.7" total). Cracks in sheave and shafts (in the South Tower) have continued to grow. Now cracking in the North Tower (east sheave) is also a concern. We do not have parts on hand for the North Tower.

8 The original 20" shaft has lost 17% of its cross-sectional area and 23% of its strength (torsional). When the cracks double in size again, the shaft will then have lost 44% of its strength (torsional). Failure is certain to occur by then. As a result of the deterioration experienced with the Lift Bridge, we have examined all repair alternatives (up position, down position, remove and reinstall). We also coordinated with industry, the City of Corpus Christi, Nueces County, and the Texas Department of Transportation. All repair options required lengthy channel closures, which would shut down local industry.

9 Accordingly, a decision was made to discontinue road traffic, allow only rail (approximately five trains per day). The change went into effect on September 29, 2006. We also decided to expedite the Fulton Corridor rail construction. Also, we have been monitoring the Lift Bridge's condition on a daily basis since September 2006.

10 Industry has adapted to the removal of truck traffic from the Lift Bridge. However, until the Fulton Rail Corridor was completed on September 6, 2007, there was no way to provide rail access to facilities in the Port on the north side of the Ship Channel without the use of the Lift Bridge.

11 Failure of the Lift Bridge is certain, if it continues to operate. It is only a question of "when," not "if." The worst-case scenario is for the Lift Bridge to fail and jam in the partway-up position. In that event, ship traffic would be blocked and rail traffic would be halted. It may take one or more months to remove the Lift Bridge span if it is allowed to fail.

12 On June 12, 2007, Port staff briefed the Port Commission on the following:

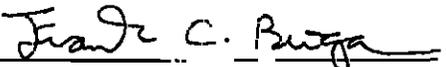
- A The Lift Bridge has reached the end of its economic life.
- B Continued operation of the Lift Bridge poses an unacceptable risk to the safe and efficient operation of the Port.
- C Removal is now necessary for the continued growth of the Port.

13 Accordingly, on June 12, 2007, the Port Commission directed staff to prepare plans for the removal of the Lift Bridge and to proceed with removal as soon as all agreements are in place.

14. On September 11, 2007 due to the safety risks involved in continuing to operate the Lift Bridge detailed above, the Port Commission ordered the Port Authority to cease operation of the Lift Bridge and lock it in the up position, as of that day

15. A recent PowerPoint presentation I prepared for briefings on these matters is attached for the convenience of the reader. It contains some pictures that will illustrate many of the points I have discussed in this Affidavit

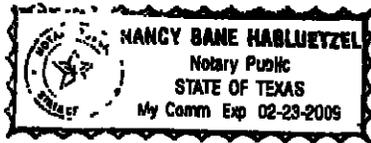
FURTHER AFFIANT SAITH NOT

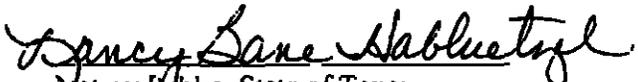
  
Frank C. Biogan, P.E., R.P.L.S.

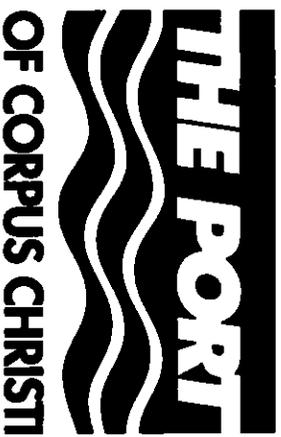
State of Texas  
County of Nueces

Sworn to and subscribed before me on the 12<sup>th</sup> day of September 2007

(Seal)



  
Notary Public, State of Texas



**Presented by the  
Port of Corpus Christi Authority**

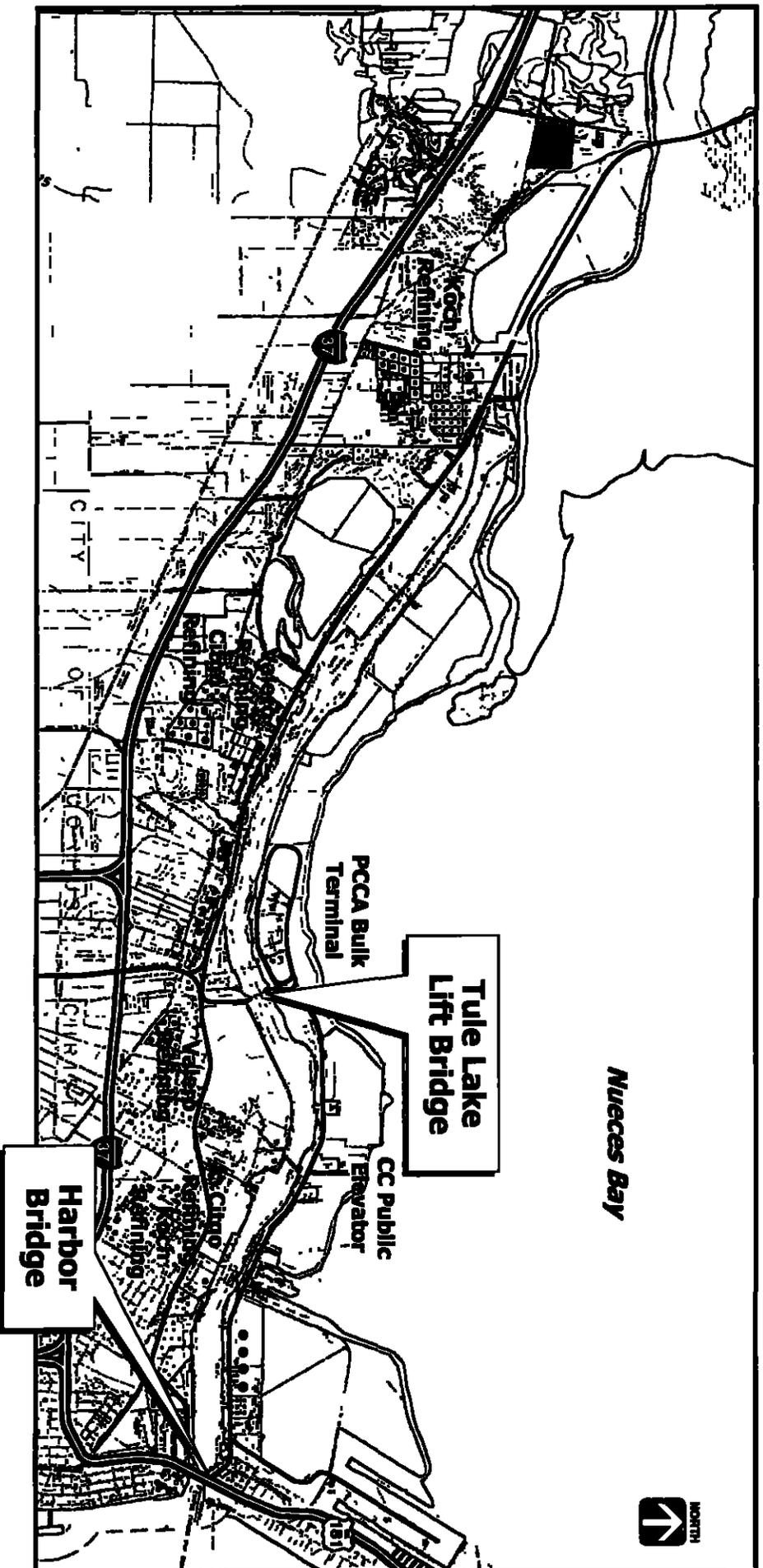
**Tule Lake Lift Bridge  
& Rail Service to the Port  
Presentation to the  
Port Commission  
September 11, 2007**

# Lift Bridge and Rail Service Presentation

- **Location of the Inner Harbor, refineries, railroads and highways.**
- **Current rail access to the Port.**
  - **Union Pacific**
  - **BNSF**
  - **KCS**
- **History of the Lift Bridge.**
- **Condition of the Bridge.**
- **Need to remove the Bridge.**
- **Replacement access via the Fulton Corridor.**
- **Unresolved rail access issue (KCS vs. UP).**

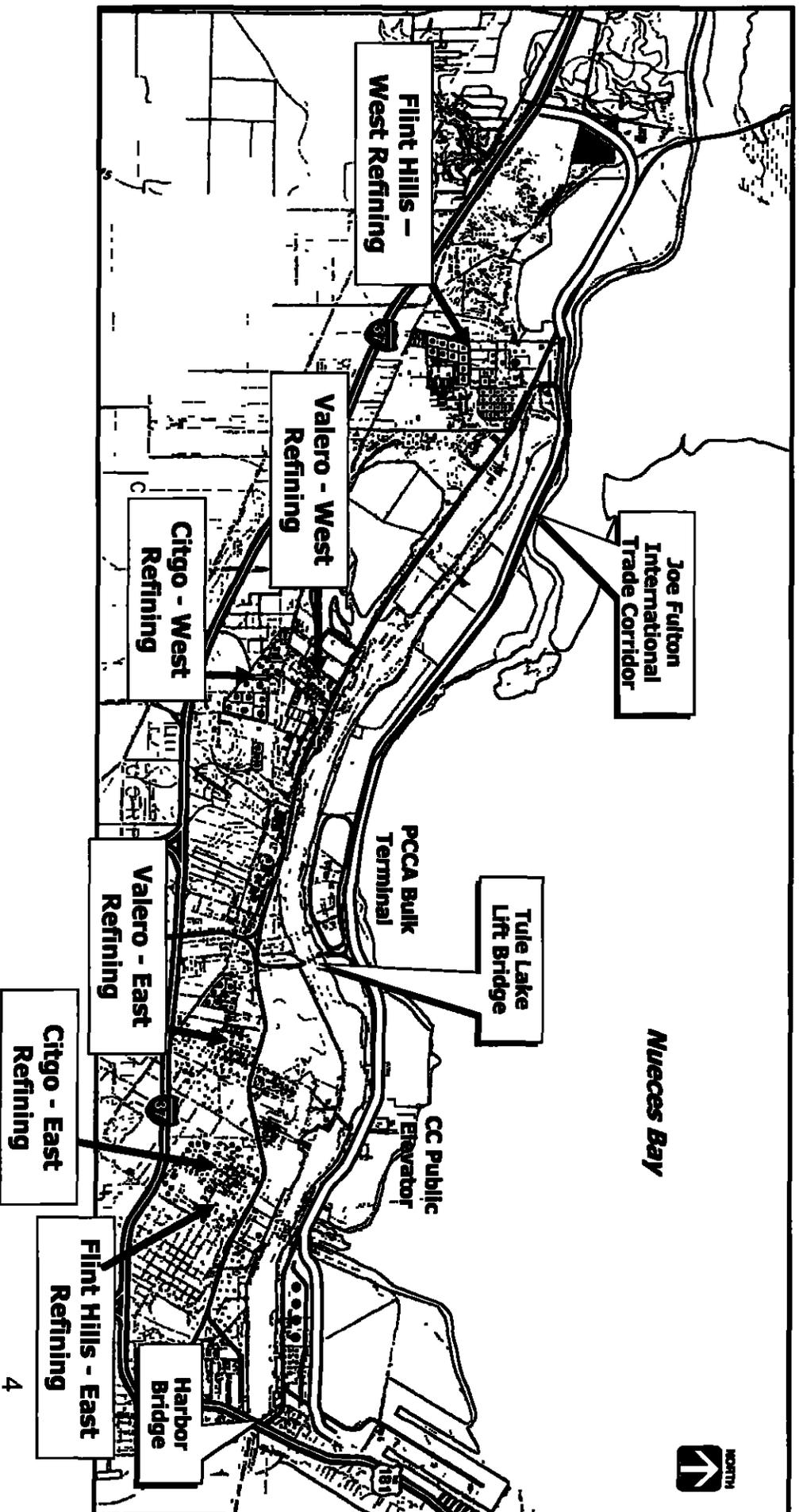
# Port of Corpus Christi Inner Harbor

## Tule Lake Lift Bridge Location



# Port of Corpus Christi Inner Harbor

## Major Industry Location



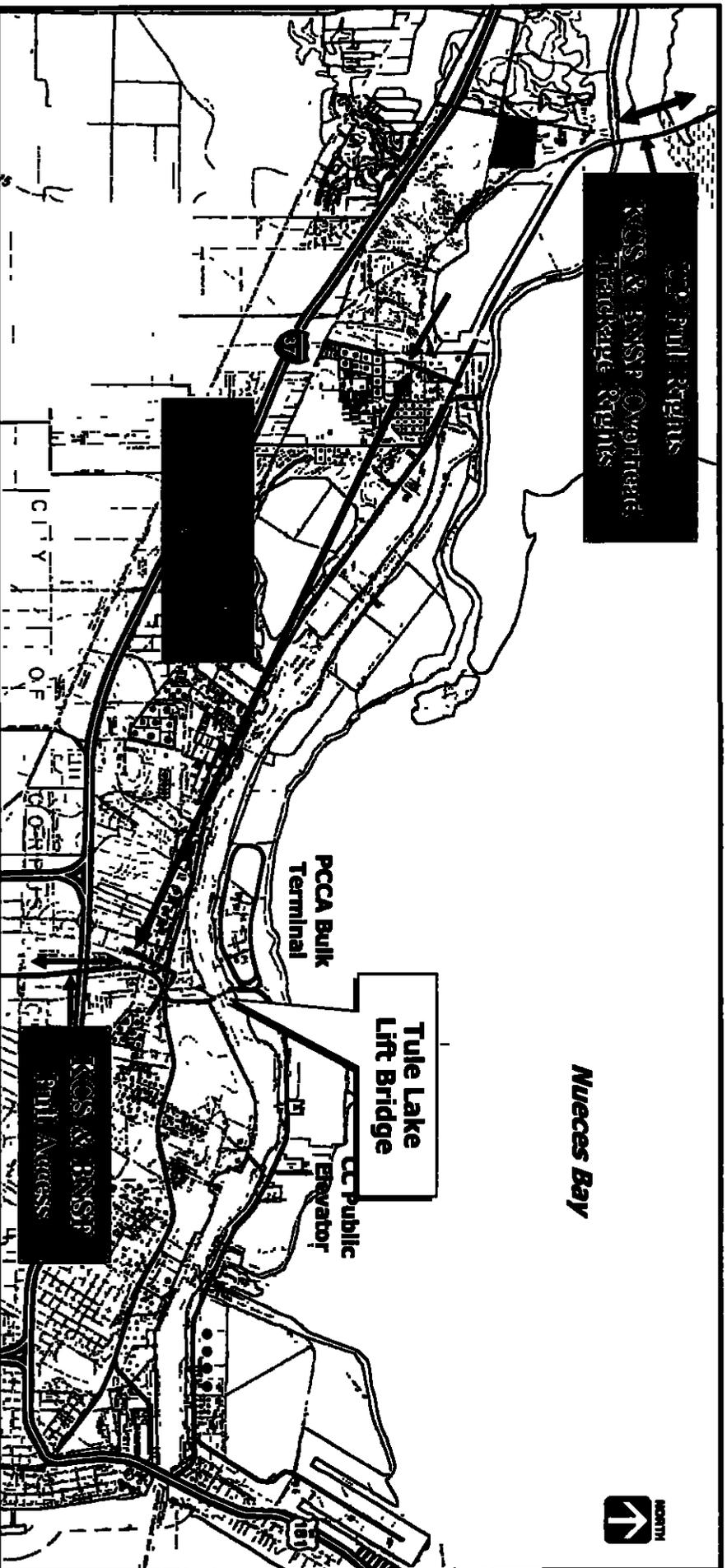
# **Port of Corpus Christi Inner Harbor**

## **Key Issues**

- **All three refineries have interconnected operations on both sides of the Lift Bridge.**
- **Refineries located “outside” the bridge depend on processes located “inside” the bridge.**
- **Lift Bridge previously provided the only means of access to the north side of the channel for railroads.**
- **Completion of Fulton Corridor provides a replacement means of access.**

# Port of Corpus Christi Inner Harbor

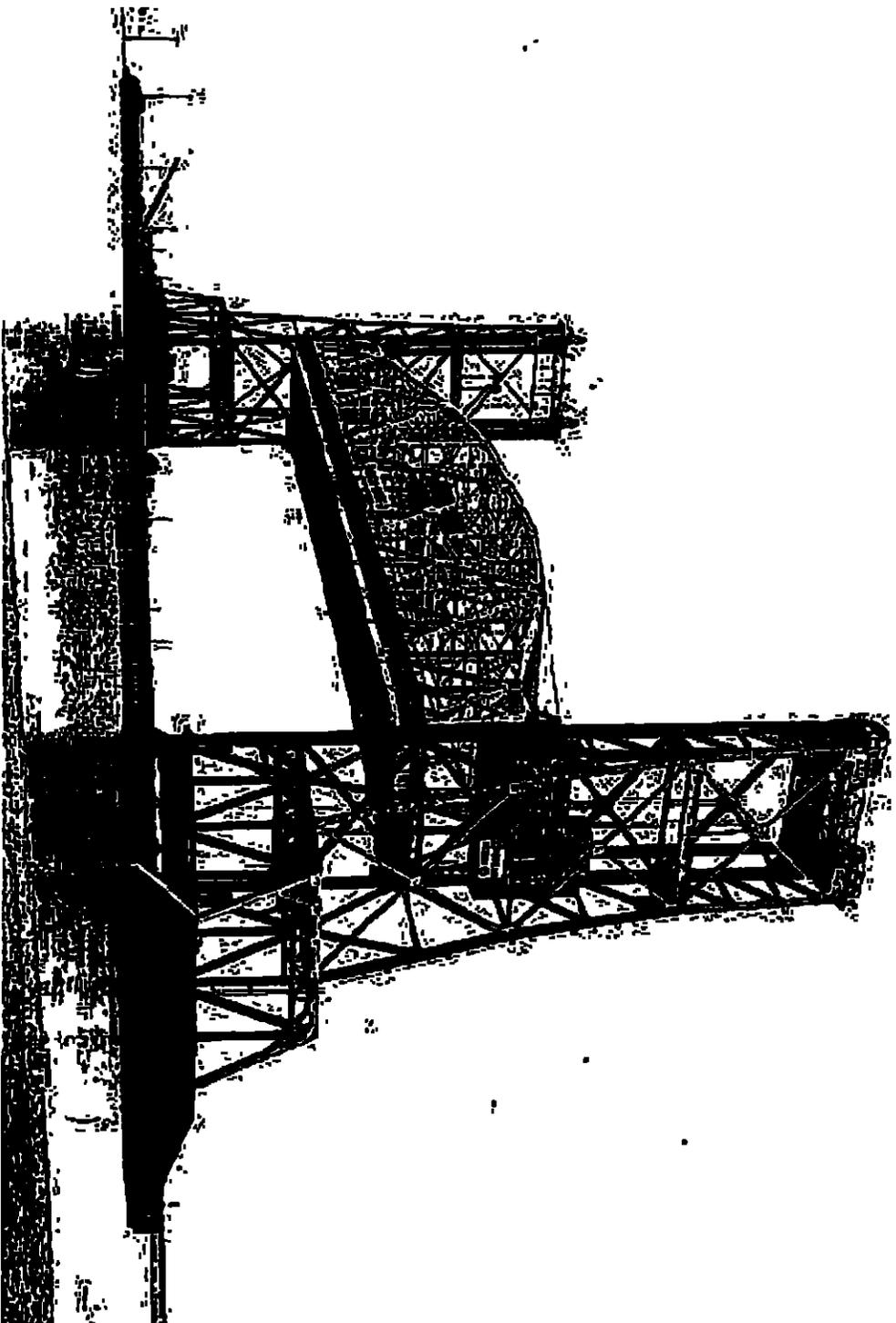
## Current Rail Access\*



\* In accordance with 1929 ICC Order all three railroads have equal access to north side of the Inner Harbor

# **Tule Lake Lift Bridge**

**(Circa 1959)**



# **Tule Lake Lift Bridge**

- **Built in 1959 along with the Harbor Bridge at a cost of \$6.5 million.**
- **Purpose was to replace rail service provided by the old Bascule Bridge.**
- **Tule Lake Lift Bridge provides the only rail access to the north side of the channel for all three railroads**
- **Allowed the Port to continue growing.**
- **Fulton Corridor will provide a replacement route for rail traffic.**

# Tule Lake Lift Bridge

- Under the Truman Hobbs Act, the Corps of Engineers determined (August 1953) that the Bascule Bridge was an “unreasonable obstruction to free navigation.”
- Federal government contributed \$4.1 million for the cost of a new rail bridge to be built at the same location.
- Local governments paid \$2.4 million to cover added cost of relocating the replacement bridge to the west.
  - Port of Corpus Christi Authority      \$920,000
  - City of Corpus Christi                      \$886,500
  - Nueces County                                  \$551,700

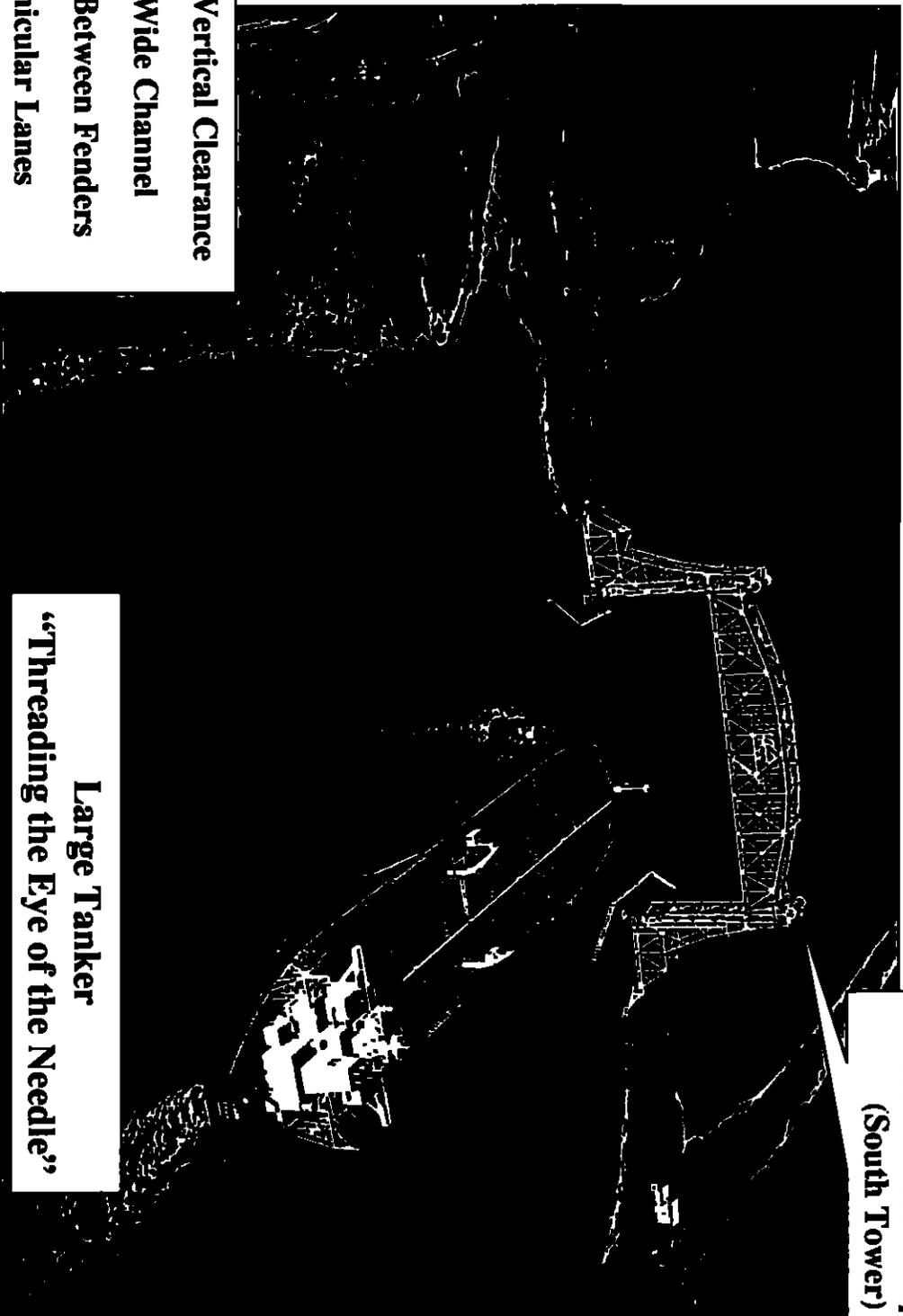
## Tule Lake Lift Bridge

- **Operation costs average \$1.1 million per year.**
- **Owned by the City.**
- **County operated the bridge from 1959 – 1998.**
- **Port has operated the bridge since 1998.**
- **Cost-sharing has changed over the years.**
  - **1959 - 1984**      **33.3%/33.3%/33.3%**      **(Port, City, County)**
  - **1984 - 1990**      **50%/25%/25%**      **(Port, City, County)**
  - **1990 - 1998**      **70%/15%/15%**      **(Port, City, County)**
  - **1998 - Present**      **100%**      **(Port)**

# Tule Lake Lift Bridge

- Lift Bridge was overhauled in early 1990s at a cost of \$11.5 million.
- Prior to Sept. 29, 2006, bridge went up and down 35 times a day (10,562 times in 2005).
- In 2005, major structural cracking discovered in the lifting system (sheaves and shafts).
- Concerned that bridge could fail and block channel for ships as well as rail and trucks.
- Replacement parts were ordered for South Tower in November 2005. Parts have been ordered and received.
- Cracking has been discovered in the North Tower sheave. Parts are not in stock.

# Tule Lake Lift Bridge

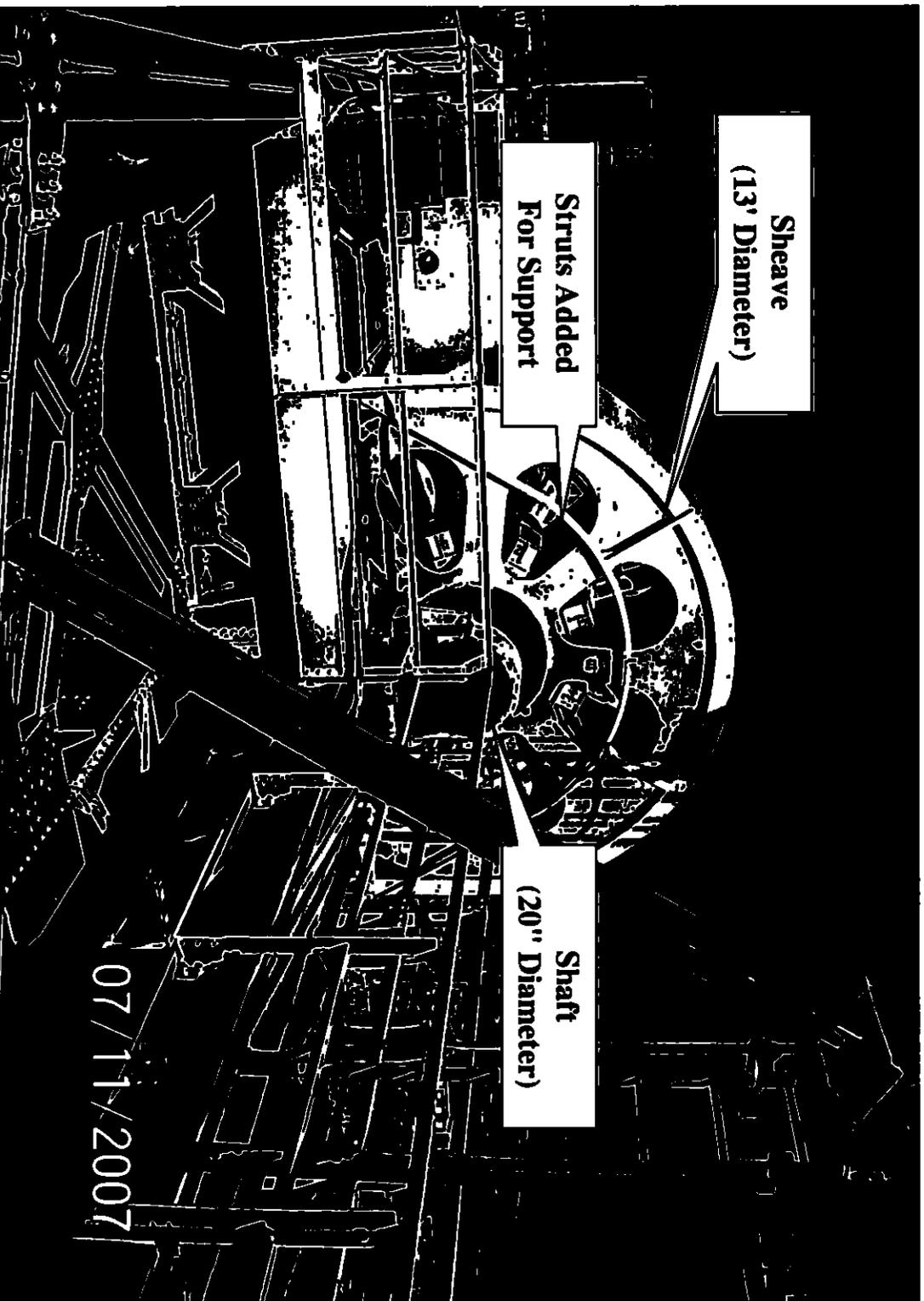


**Sheave & Shaft Repairs  
(South Tower)**

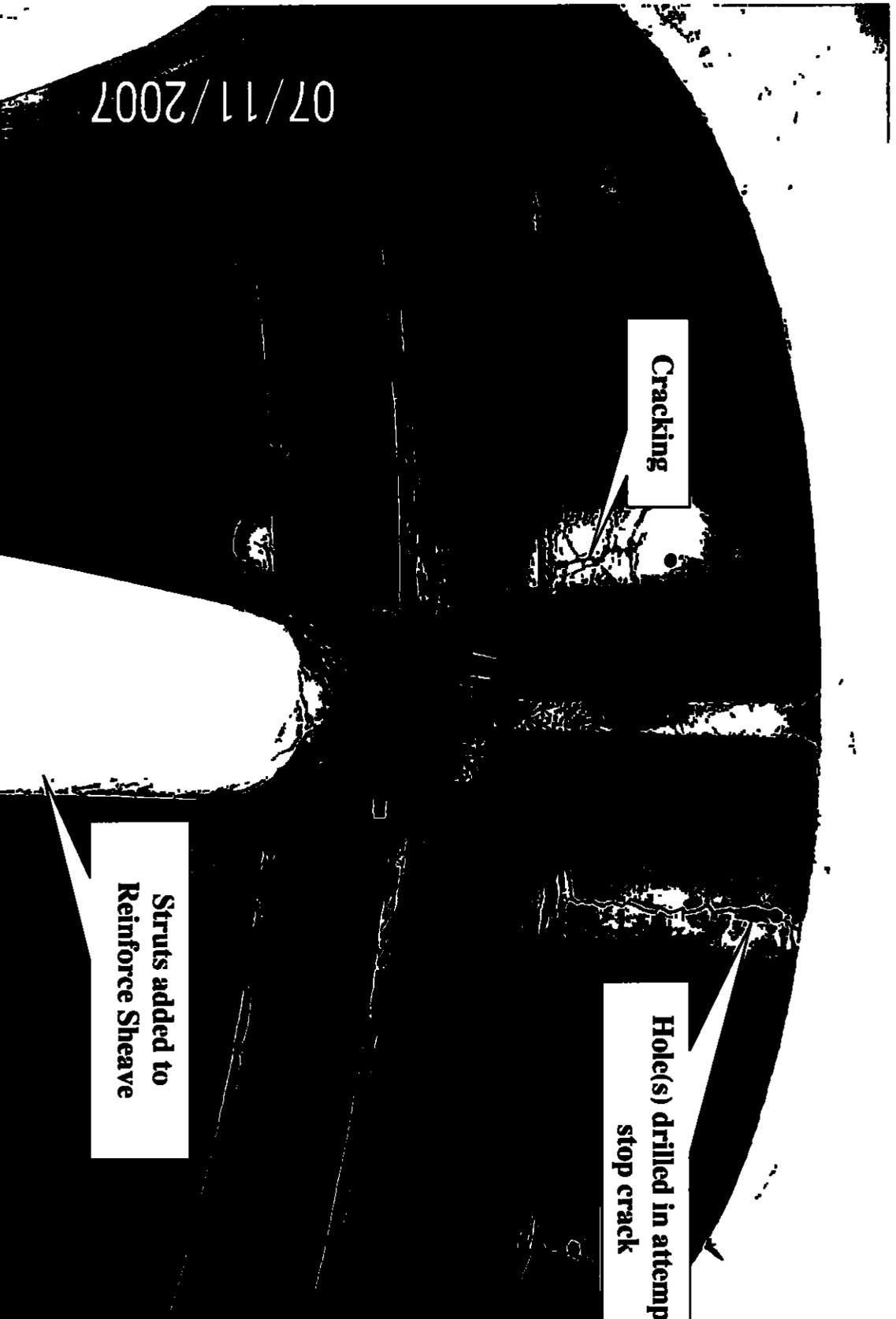
- 138' Vertical Clearance**
- 200' Wide Channel**
- 300' Between Fenders**
- 2 Vehicular Lanes**
- 1 Railroad Track**

**Large Tanker  
“Threading the Eye of the Needle”**

# Tule Lake Lift Bridge



# Inside a Sheave



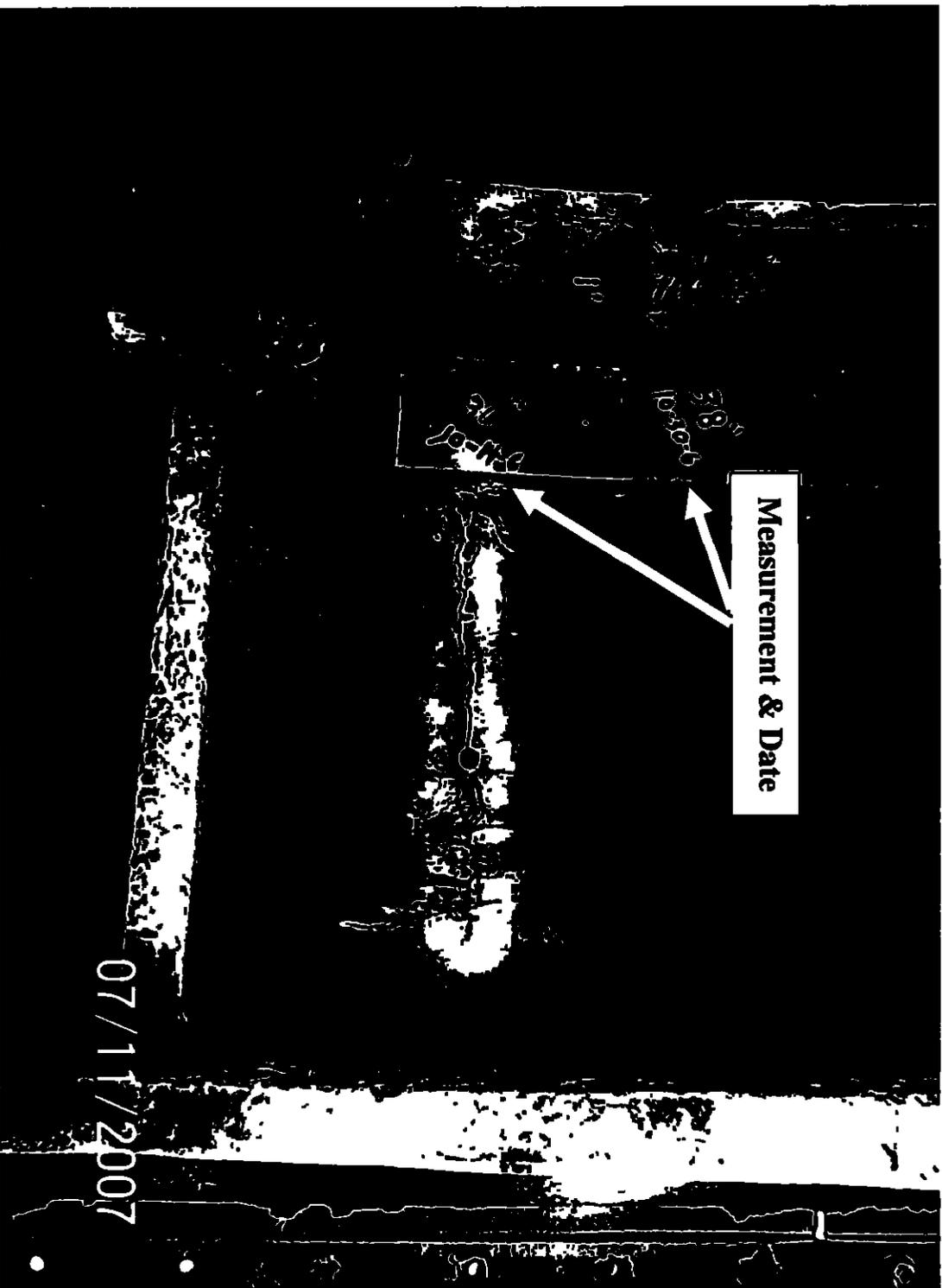
**Cracking**

**Hole(s) drilled in attempt to  
stop crack**

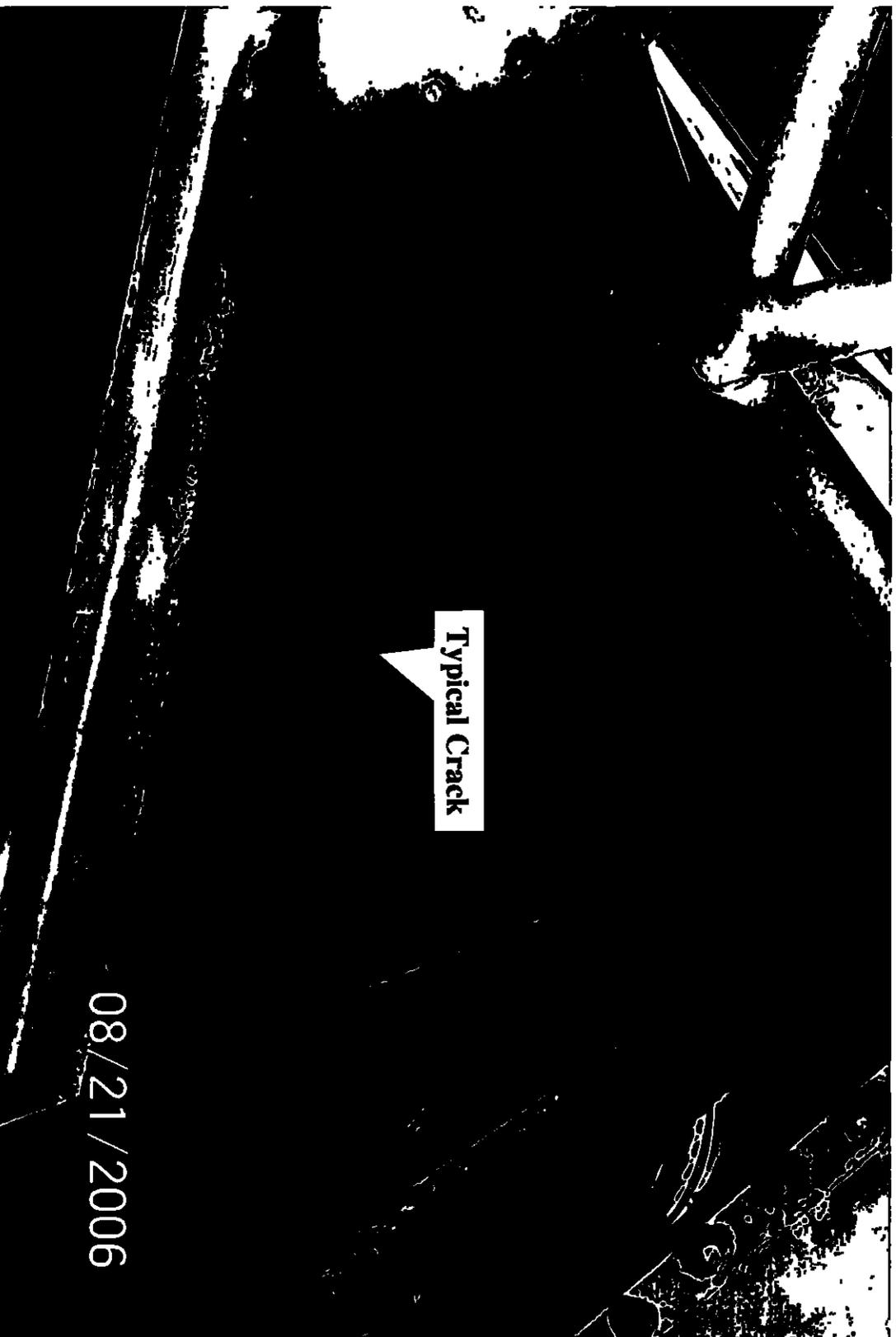
**Struts added to  
Reinforce Sheave**

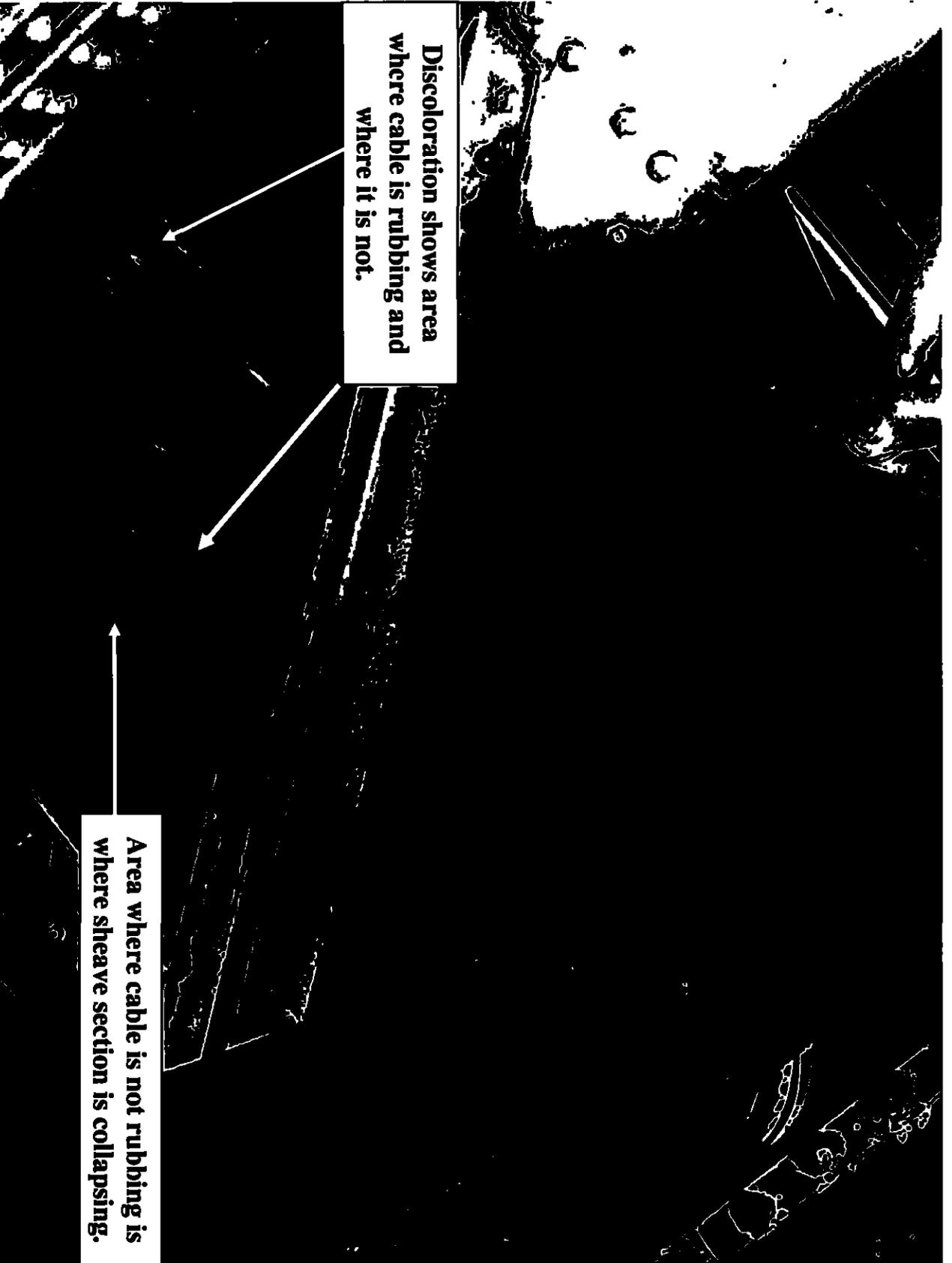
07/11/2007

# Growth in Sheave Crack



# Cracks in Sheave

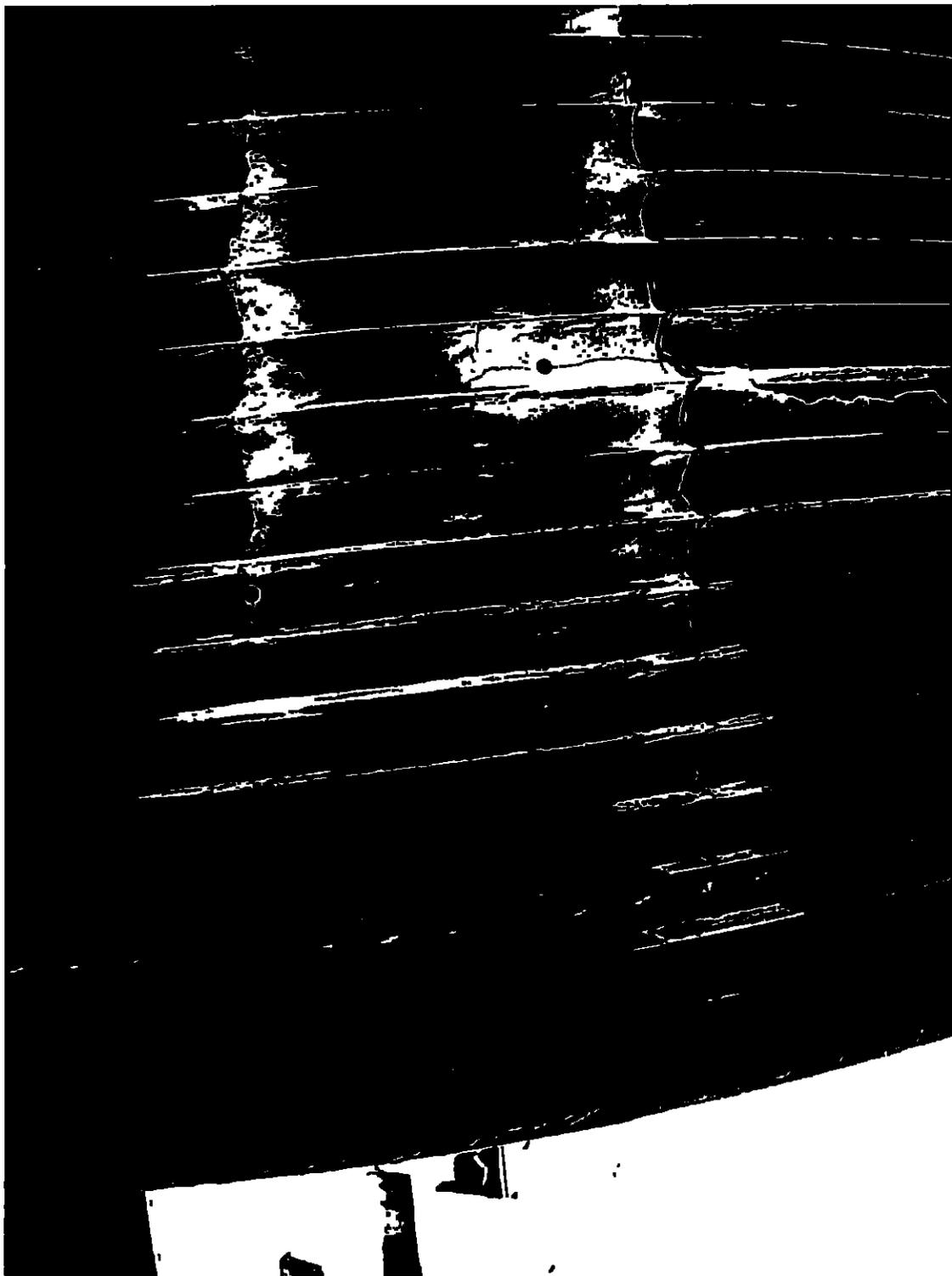




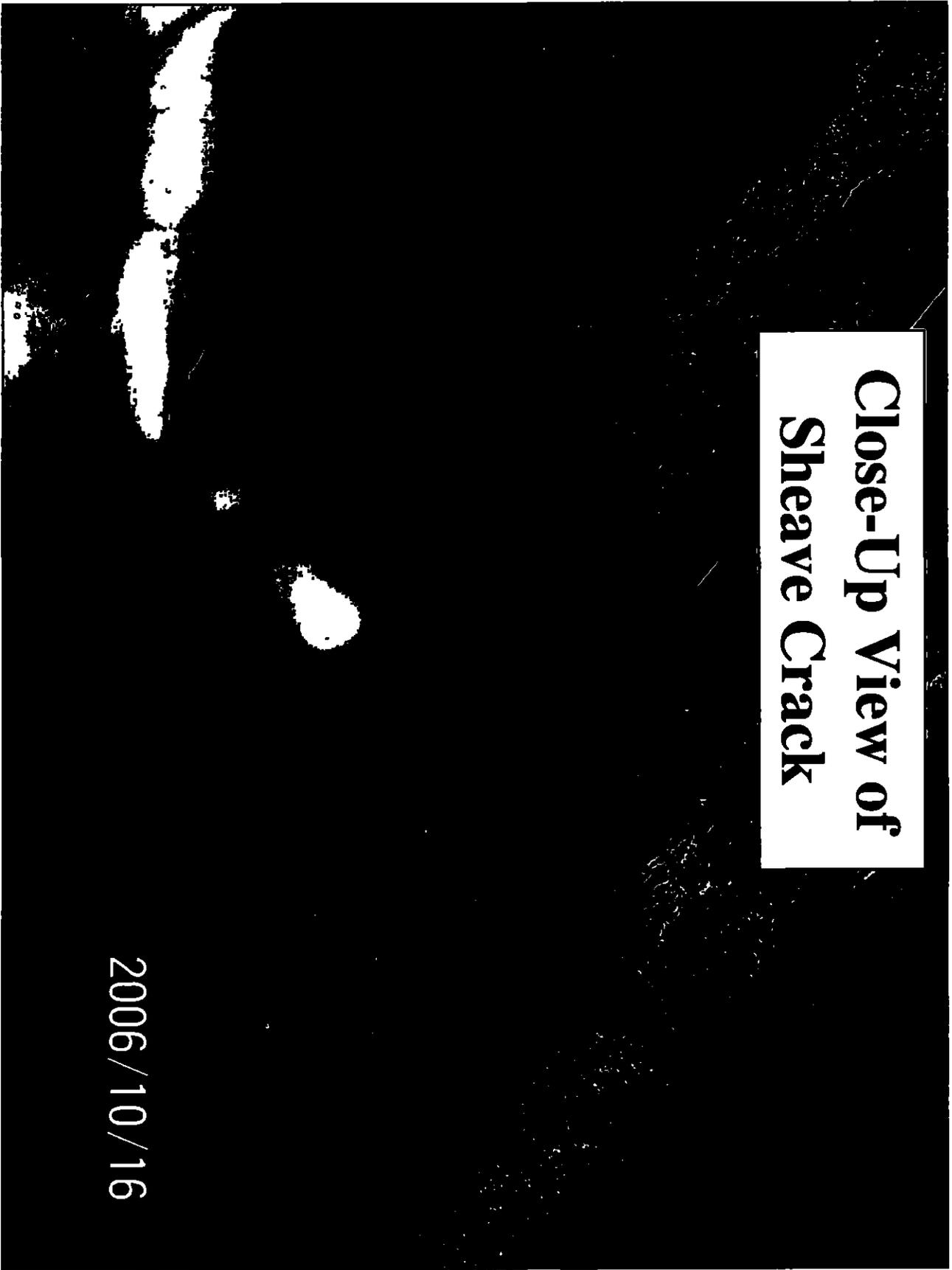
**Discoloration shows area where cable is rubbing and where it is not.**

**Area where cable is not rubbing is where sheave section is collapsing.**

# Outside a Sheave



**Close-Up View of  
Sheave Crack**



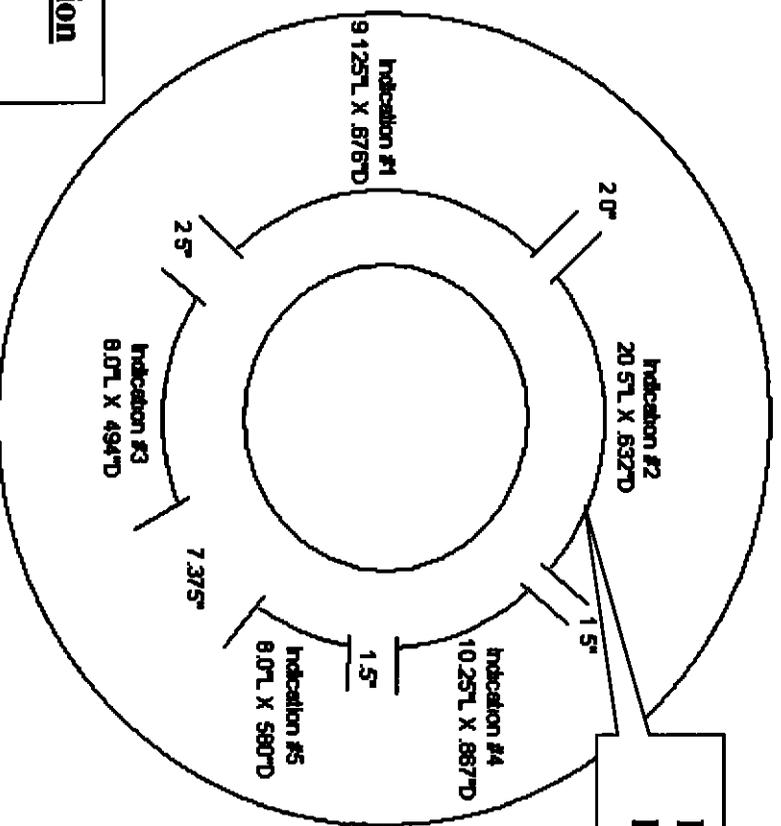
2006/10/16

**Cracking in Main  
Support Shaft**



# Southwest Outboard Sheave

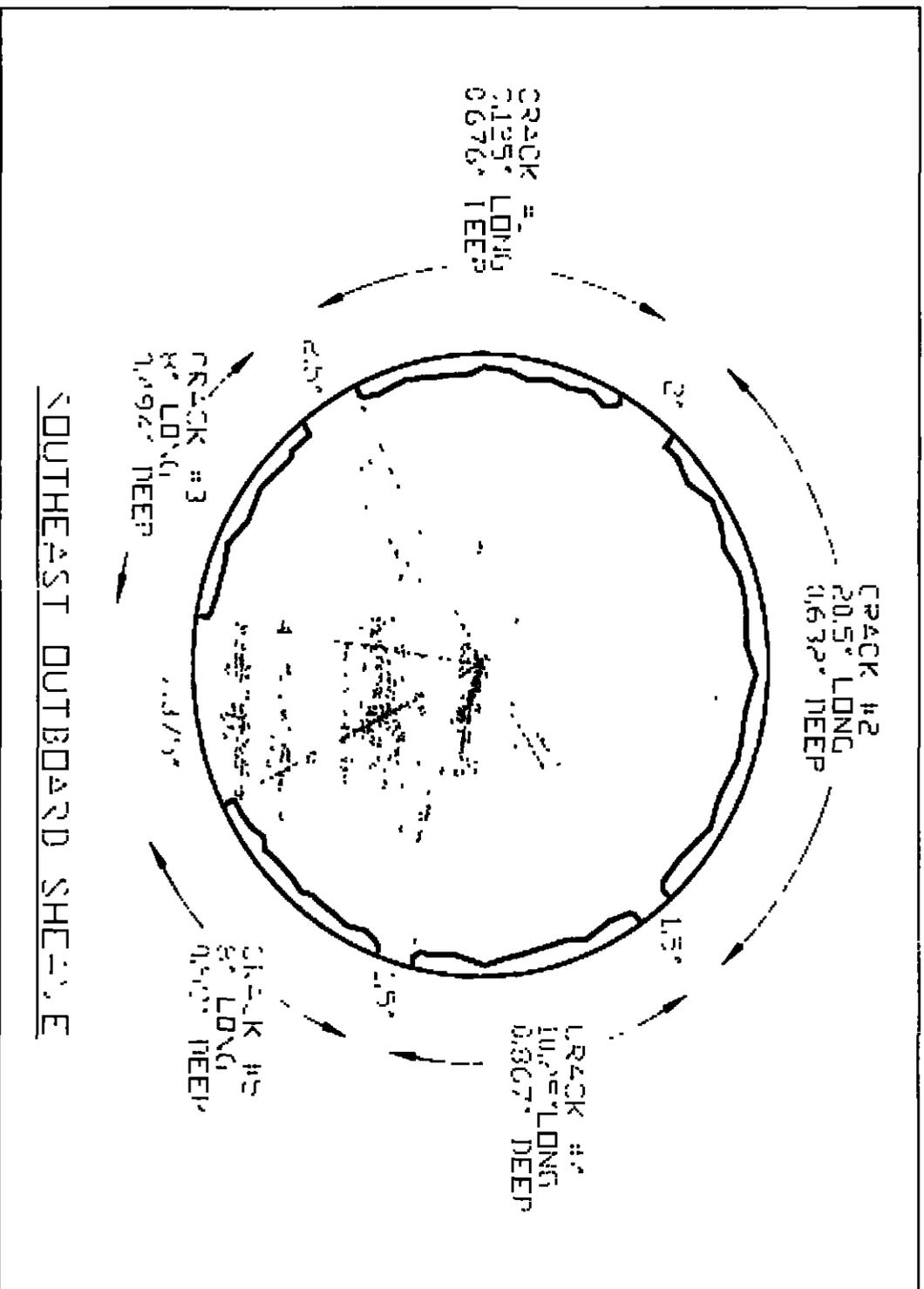
## Crack Location & Depth



Length of Crack 20.5"  
Depth of Crack 0.632"

**Notes from Conam Inspection**  
**Report June 19, 2007**  
**Five Cracks Around Shaft**  
**Depth Ranges from .5" to .9"**  
**Length Ranges from 8" to 20.5"**

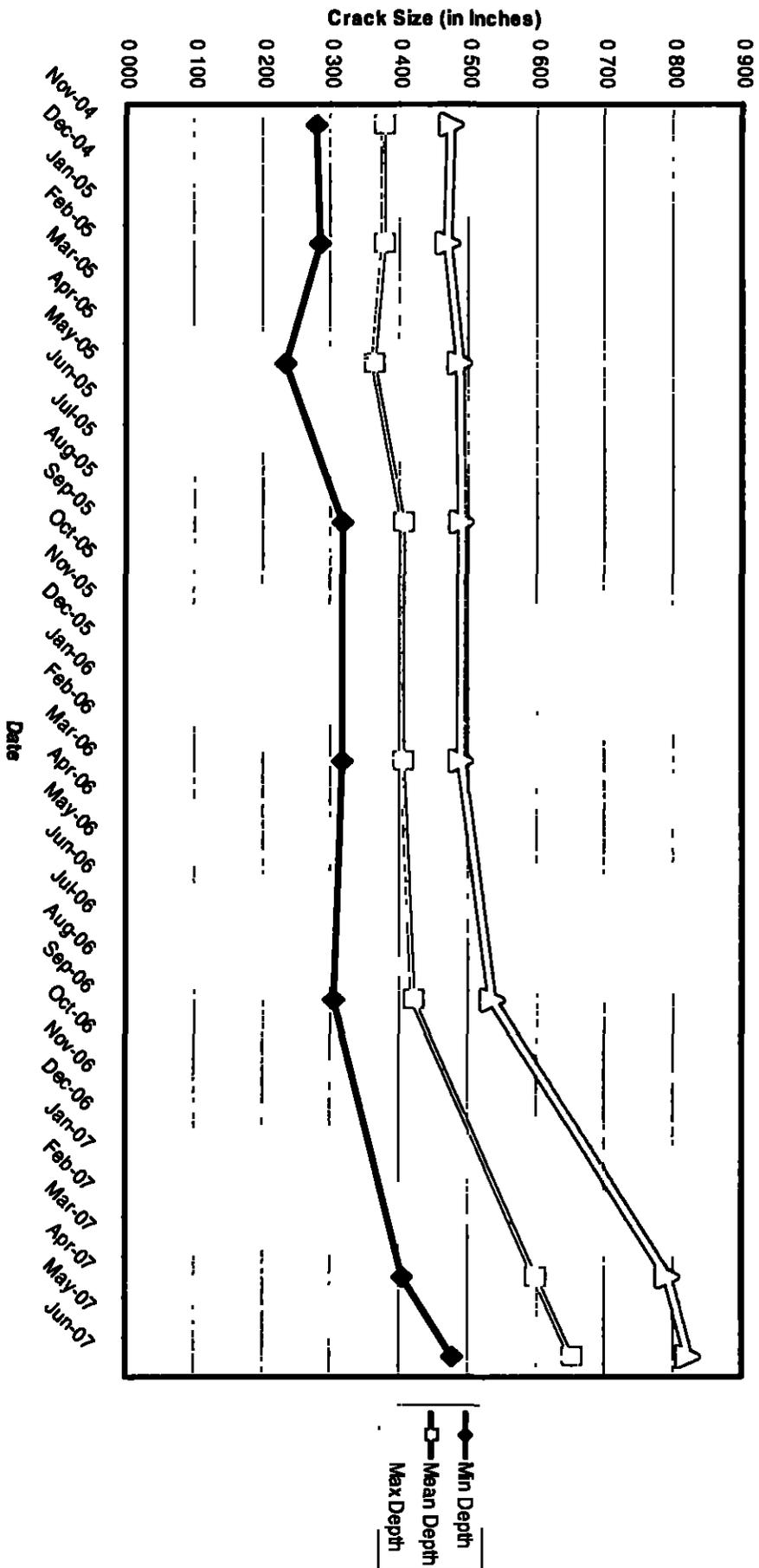
# Cracks in Southeast Shaft



## Cracks in Southeast Shaft

- Cracks have nearly doubled in size since Sept. 2006.
- Largest crack (depth) has grown from 0.465" to 0.867".
- Combined lengths of cracks now cover 71% of total shaft circumference (55.8" cracked versus 70.7" total).
- Original 20" shaft has lost 17% of cross sectional area and 23% of its strength (torsional).
- When the cracks double in size again, the shaft will then have lost 44% of its strength (torsional).
- Failure is certain to occur before then.

# Southwest Shaft Crack Depth Growth



## Tule Lake Lift Bridge

- Examined all repair alternatives (up position, down position, remove & reinstall). Estimated time one week to ten days for each support tower.
- Coordinated with industry, City, County and TxDOT.
- All repair options require lengthy channel closures which would shut down local industry.
- Decision was made to:
  - Discontinue road traffic; allow only rail (approx. 5/day).
  - Change went into effect on Sept. 29, 2006.
  - Expedite Fulton Corridor rail construction.
  - Monitor bridge condition.

# **Tule Lake Lift Bridge**

**(Since Sept. 2006)**

- **Industry has adapted to removal of truck traffic.**
- **Cracks in sheave and shafts (South Tower) have continued to grow.**
- **Now cracking in North Tower (east sheave) is also a concern.**
- **Do not have parts on hand for North Tower.**
- **Fulton Corridor rail will be complete by Sept. 2007.**

## Tule Lake Lift Bridge

- Bridge failure is certain — only a question of **“when” not “if.”**
- Worst case scenario is for bridge to fail and jam in the part-way up position.
- Ship traffic will be blocked; rail traffic will be halted.
- May take two or more months to remove the span if allowed to fail.
- This is the Port’s **“Levee around New Orleans.”**

# **Tule Lake Lift Bridge**

- **On June 12, 2007, Port staff briefed the Port Commission on the following:**
  - **The bridge has reached the end of its economic life.**
  - **Continued operation poses an unacceptable risk to the safe and efficient operation of the Port.**
  - **Removal is now necessary for the continued growth of the Port.**
- **The Port Commission directed staff to:**
  - **Prepare plans for the removal of the bridge.**
  - **Proceed with removal as soon as all agreements are in place.**
- **Plans for removal will be ready in September and bids should be available in October.**
- **Removal could begin in November.**

## **Tule Lake Lift Bridge**

- **A similar type lift bridge in LaSalle, Illinois, failed in July 1970.**
- **Mode of failure was a break in the shaft.**
- **This break occurred in the inboard side of the shaft.**
- **Report stated that had the break occurred in the outboard side of the shaft, “a catastrophic failure could have occurred.”**
- **The cracking occurring in the Tule Lake Lift Bridge is on the outboard side of the shaft.**
- **The Tule Lake Lift Bridge could experience a catastrophic failure that would close the Corpus Christi Ship Channel for a long period of time, perhaps months.**

# Impact on Local Industry & Nation

- All three local refineries have production on both sides of the bridge.
- Failure of the bridge in the part way up or down position would cripple all refineries.
- Local refineries provide:
  - 5% of nation's refining capacity
- Local refineries supply:
  - 90% of jet fuel to Dallas- Fort Worth airport
  - 100% of gasoline to Austin
- Refinery closures would have a nationwide impact.

# Tule Lake Lift Bridge

## Removal is Necessary



- 138' Vertical Clearance
- 200' Wide Channel
- 300' Between Fenders
- 2 Vehicular Lanes
- 1 Railroad Track

Sheave & Shaft Repairs  
(South Tower)

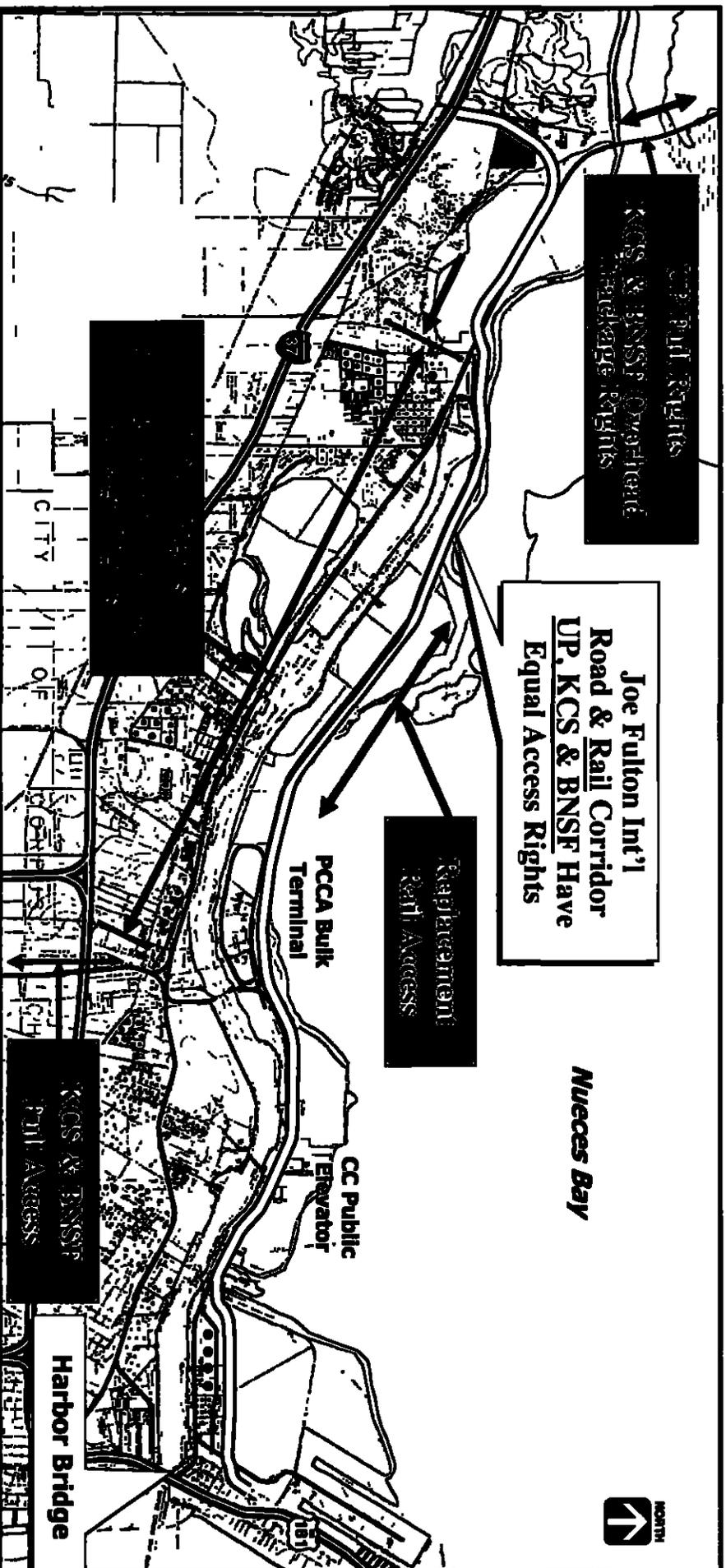
Large Tanker  
“Threading the Eye of the Needle”

## **Unresolved Issue**

- **UP and BNSF have access to the north side of the channel.**
- **The Tule Lake Lift Bridge has to be removed.**
- **Fulton Corridor provides alternative to the Lift Bridge.**
- **KCS needs “equal access\*” (replacement access) to north side.**
- **UP’s rights to serve south side customers will not be diminished.**

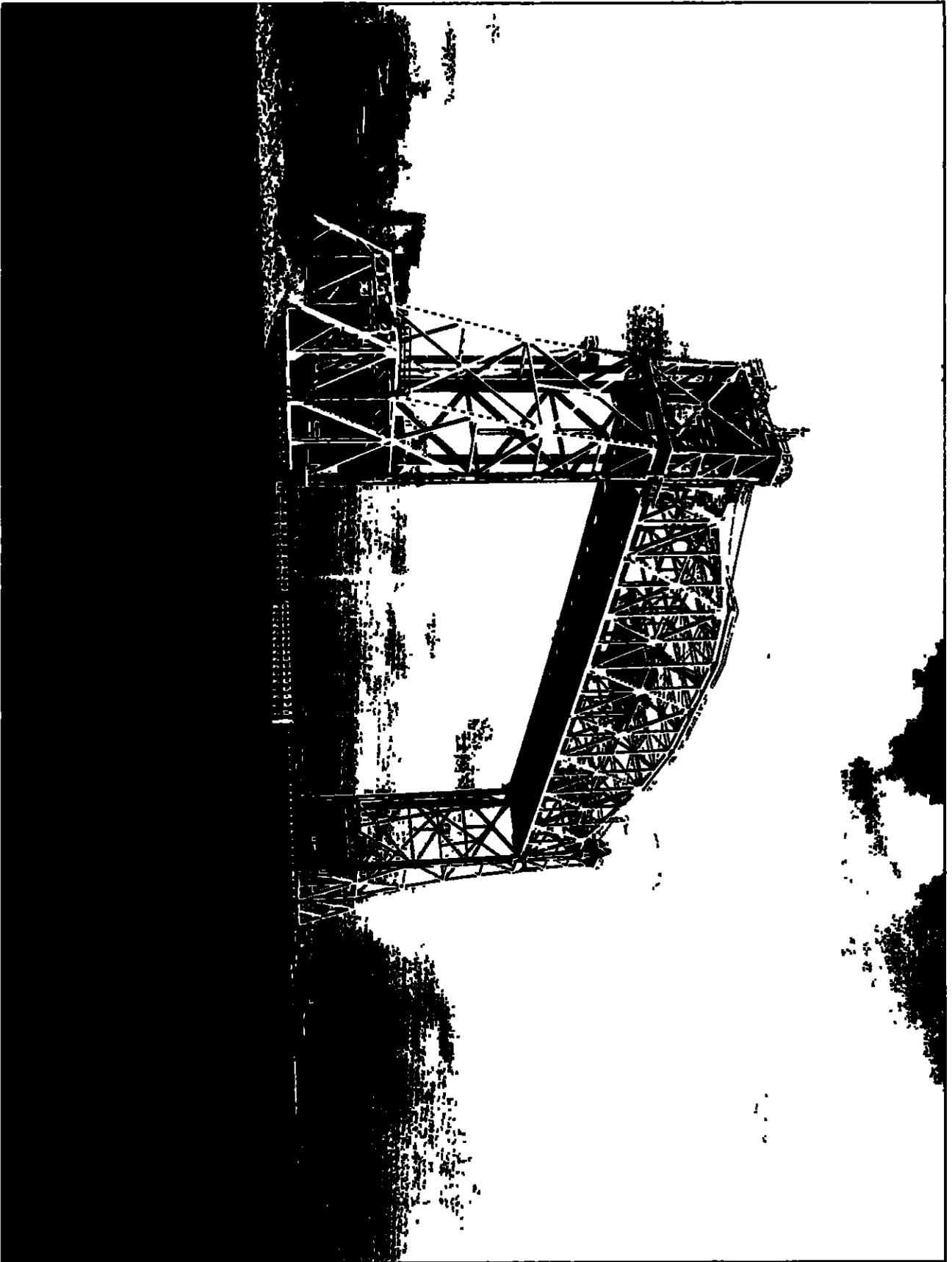
**\* 1929 Interstate Commerce Commission Order**

# Port of Corpus Christi Inner Harbor Replacement Rail Access



## **Tule Lake Lift Bridge**

- Port Industries of Corpus Christi (PICC) have been consulted with about closure
- PICC supports closure & removal of the bridge
- Kansas City Southern (KCS) Railroad has commissioned their own inspection
- KCS's engineer has stated:
  - “Cracking has reached critical status”
  - “Bridge should be taken out of service”
- PCCA Staff recommends bridge be closed to all traffic effective October 1, 2007



# **EXHIBIT C**

**Executed Affidavit of Arthur Frederick Babin**

STATE OF TEXAS

§

COUNTY OF NUECES

AFFIDAVIT OF ARTHUR FREDRICK BABIN

ARTHUR FREDRICK BABIN, being duly sworn, deposes and says

1 I am employed by the Port of Corpus Christi Authority of Nueces County, Texas ("Port") as Manager of Transportation. My responsibilities include day-to-day dealing with the three railroads that serve the Port (the BNSF, Kansas City Southern, and Union Pacific), as well as the other carriers (waterborne and over-the-road) that serve the Port and the facilities in the Port. I have a BBA degree in Management and Transportation from Texas Tech College. I am over 18 years of age and am competent to execute this Affidavit.

2 There are three refineries at the Port of Corpus Christi, owned by CILGO, Flint Hills Resources (which in turn is owned by Koch) and Valero. Each operates facilities located on the South Side of the Inner Harbor Ship Channel, east and west of the Tule Lake Lift Bridge. Generally these facilities are referred to as "east" and "west" plants. In some instances a "west" plant may produce a product that is finished by an "east" plant and vice versa.

3 Within each corporate family, pipelines for shipping and receiving products between them connect these plants. In one case however, a company's east plant moves product twice per day by barge to its west plant for further processing. There is no option other than to barge the product. If that company were unable to move this product by barge due to the Lift Bridge being stuck in the "down" position, the result would be the cessation of a vital refining process at the west plant with catastrophic financial results for the refinery due to its inability to

complete the refining process for fuels, particularly gasoline and diesel. Additionally, pipeline movements from east to west for certain semi-finished products would cease if the west plant were unable to ship the finished product by water due to inoperability of the Lift Bridge. Given the tight supplies of petroleum products (including gasoline and diesel fuel) at the present time, such a disruption would quickly cause prices to rise and perhaps shortages to occur.

4. While any such disruption of Port traffic by the Lift Bridge being stuck in the "down" position would particularly impact on inbound crude oil, the movement by water of crude oil, feed stocks, refined and semi-refined products must also be considered as a whole. For example, if gasoline, diesel, lube oil, petrochemicals, and other products could not be loaded to ships and barges for outbound movement from a west plant, storage capacity would soon be filled, east plants would be unable to forward products to west plants and the whole refinery infrastructure would quickly become so congested that nothing would move.

5. The impact of such a disruption caused by the Lift Bridge being stuck in the "down" position on the Port's Bulk Terminal must also be considered. The Bulk Terminal is located immediately west of the Lift Bridge. The Terminal handles both import and export dry bulk products. The Bulk Terminal regularly unloads ships of the following: rutile, sand, barite, ore, furnace slag and coal.

6. Some of the rutile is discharged directly to trucks for immediate delivery to a local company for processing into a base ingredient for paint pigments. Food-grade rutile is also used in consumer products. This firm would be forced to shut down or, alternatively, be faced with extremely increased transportation expenses for trucking from another port if the material was unable to be received from the Bulk Terminal. A much larger volume of rutile is discharged directly from ships into covered hopper rail cars for movement to a company that produces

titanium metal, a strategic material. Delays of any significance or the inability to receive the rutile would jeopardize the production of titanium metal.

7. Barite is processed into the primary base ingredient for drilling fluids required in the drilling and maintenance of oil and gas wells. Three local receivers of barite are located in Corpus Christi and depend on receiving regular shipments via the Bulk Terminal.

8. Furnace slag is a major component in certain types of cement produced in the San Antonio/Austin, Texas area.

9. Also, occasional shipments of import coal through the Port supplement domestic coal for generation of electricity.

10. Approximately 1.5 million short tons per year of petroleum coke, produced by the three local refineries, are handled through the Bulk Terminal. This includes product loaded directly into deep-sea ships for overseas markets, and to open hopper rail cars to move in unit train quantities to Mexico. Locally produced pet coke is used as a fuel for cement manufacturing and the production of electricity.

11. In summary, without access to the Fulton Corridor, if the Lift Bridge becomes stuck in the "up" position, rail operations by all three Railroads serving the Port would cease, if stuck in the "down" position, vessel operations would cease. In either event, there would be catastrophic effects on the Port, the facilities within the Port area, the local economy, and in my judgment very quickly, on the economy of Texas and likely the national economy. Accordingly, it is vitally important to the Port that the issue of equal and unfettered access by all three Railroads to the Port and to the facilities within the Port area be resolved. The Port has been advised and believes that the SIB is the only governmental entity that can resolve this matter.

under the law, and therefore it respectfully requests that the STB act favorably and expeditiously on the Petition being filed simultaneously herewith.

12 I have reviewed the Petition of the Port of Corpus Christi Authority of Nueces County, Texas for Clarification and for Expedited Consideration and, except for legal argument contained therein, I am both personally knowledgeable about the facts and hereby attest to the accuracy of the factual statements therein to the best of my information, knowledge and belief

FURTHER AFFIANT SAITH NOT.

*A. F. Babin*

ARTHUR FREDRICK BABIN

Date September 14, 2007

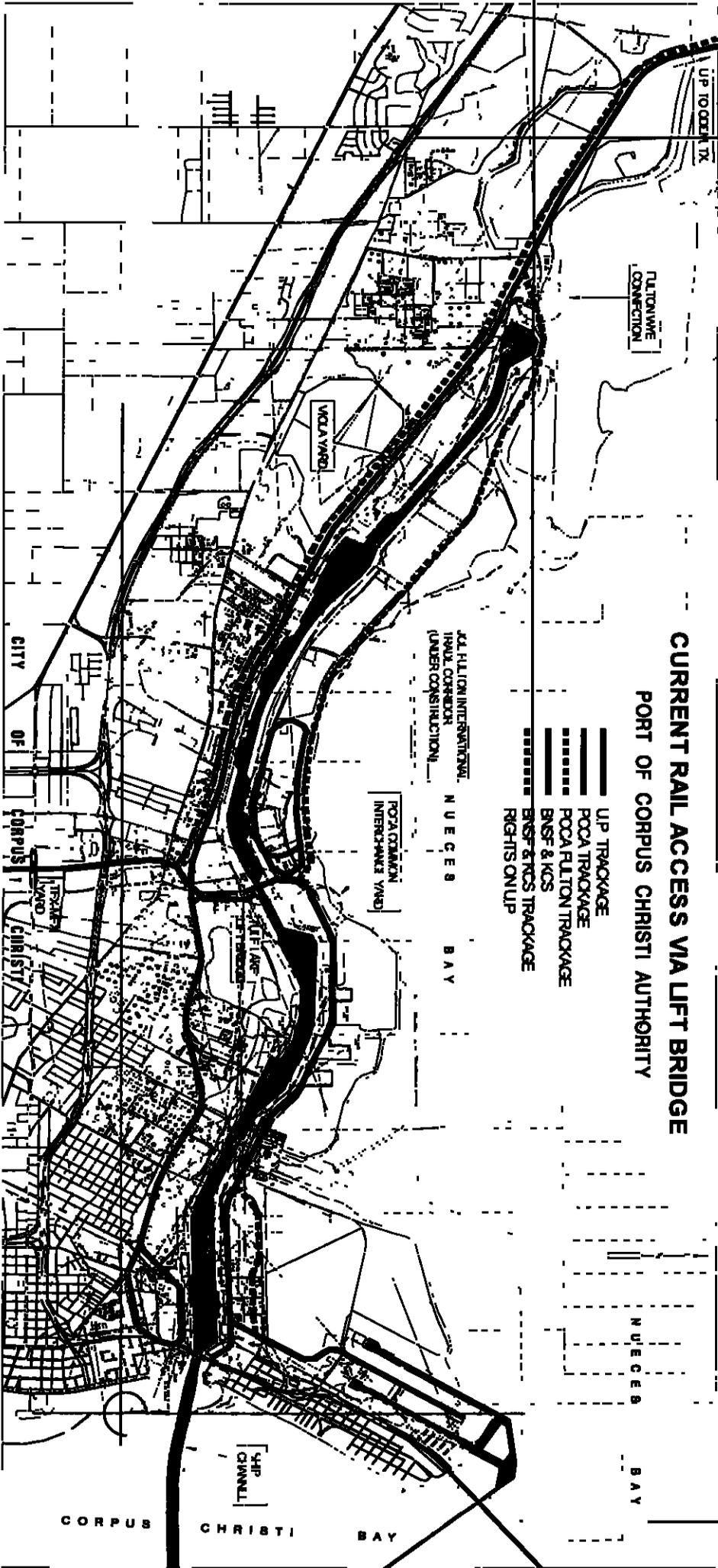
*Teresa A. Lukas*  
Notary Public

My commission expires 14 DEC 08



# **EXHIBIT D**

## **Map of Rail Access to Port**



# **EXHIBIT E**

**July 12, 2007 Letter to KCS**



July 12, 2007

M. Michael Haverty, Chairman & CEO  
The Kansas City Southern Rwy Co  
P O Box 219335  
Kansas City, MO 64121-9335

**Rail Operations On The Joe Fulton Corridor**

Dear Mr. Haverty:

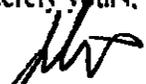
As you are aware, the Port of Corpus Christi is currently constructing the Joe Fulton Corridor that will provide new rail and highway access to the north side of the Corpus Christi ship channel. Due to the rapidly deteriorating condition of the Tule Lake Lift Bridge, construction of the Fulton Corridor rail line has been accelerated and completion is expected by the end of September of this year.

Currently the Lift Bridge remains in the raised position for vessel traffic and is lowered only for rail movements as required. Should the Lift Bridge become stuck in the up position, rail traffic would be unable to move to or from the north side. Should it become stuck in the down position the results would be catastrophic for the three local refineries who receive crude oil and feed stocks and ship finished products by water. Upon completion of the Fulton Corridor rail line it will become necessary to remove the Lift Bridge from service for all rail movements. At that time rail traffic will be able to move to and from the north side only via the new Fulton Corridor.

Based on the 1929 I C C decision we believe all the railroads currently serving Corpus Christi, or who may enter here in the future, have unfettered access to the north side via the Fulton Corridor. (*Operation of Port Railroad Facilities at Corpus Christi, Texas*, Finance Docket 7467, 154 I C C 193). The decision states in part "that each of the carriers entering Corpus Christi should have the right to equal access to the port facilities" and "publicly owned railroad facilities now existing or hereafter constructed on any properties of the Navigation District so as thereby to afford every railroad entering Corpus Christi access thereto without discrimination" (Decision at 194, 195 respectively). In our view, the Fulton Corridor will simply provide a new, viable alternative for continuing north side access for all the railroads.

If you disagree with our position that all railroads have equal access to Port rail facilities, we request you state your disagreement in a written response to this letter. Please let us hear from you by not later than July 30, 2007.

Sincerely yours,

  
John P. LaRue  
Executive Director

cc: Mr. Michael Chapman, Sr VP Operations

# **EXHIBIT F**

**July 12, 2007 Letter to UP**



July 12, 2007

Mr. John Gray, Exec Dir Interline Marketing  
Union Pacific Railroad  
1400 Douglas-Stop 1380  
Omaha NE 68179

**Rail Operations On The Joe Fulton Corridor**

Dear Mr. Gray 

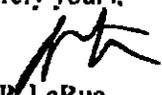
As you are aware, the Port of Corpus Christi is currently constructing the Joe Fulton Corridor that will provide new rail and highway access to the north side of the Corpus Christi ship channel. Due to the rapidly deteriorating condition of the Tule Lake Lift Bridge, construction of the Fulton Corridor rail line has been accelerated and completion is expected by the end of September of this year.

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Based on the 1929 ICC decision we believe all the railroads currently serving Corpus Christi, or who may enter here in the future, have unfettered access to the north side via the Fulton Corridor. (*Operation of Port Railroad Facilities at Corpus Christi, Texas*, Finance Docket 7467, 154 ICC 193). The decision states in part: "that each of the carriers entering Corpus Christi should have the right to equal access to the port facilities," and "publicly owned railroad facilities now existing or hereafter constructed on any properties of the Navigation District so as thereby to afford every railroad entering Corpus Christi access thereto without discrimination." (Decision at 194, 195 respectively). In our view, the Fulton Corridor will simply provide a new, viable alternative for continuing north side access for all the railroads.

If you disagree with our position that all railroads have equal access to Port rail facilities, we request you state your disagreement in a written response to this letter. Please let us hear from you by not later than July 30, 2007.

Sincerely yours,

  
John P. LaRue  
Executive Director

cc Mr. Jack Koraleski, Exec VP Marketing & Sales

# **EXHIBIT G**

**July 12, 2007 Letter to BNSF**



July 12, 2007

Mr Peter Rickershauser, VP network Development  
BNSF Railway Company  
P O Box 961034  
Ft Worth, Tx 76161-0034

**Rail Operations On The Joe Fulton Corridor**

Dear Mr Rickershauser 

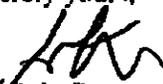
As you are aware, the Port of Corpus Christi is currently constructing the Joe Fulton Corridor that will provide new rail and highway access to the north side of the Corpus Christi ship channel. Due to the rapidly deteriorating condition of the Tule Lake Lift Bridge, construction of the Fulton Corridor rail line has been accelerated and completion is expected by the end of September of this year.

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Based on the 1929 I.C.C. decision we believe all the railroads currently serving Corpus Christi, or who may enter here in the future, have unfettered access to the north side via the Fulton Corridor (*Operation of Port Railroad Facilities at Corpus Christi, Texas*, Finance Docket 7467, 154 I.C.C. 193). The decision states in part: "...that each of the carriers entering Corpus Christi should have the right to equal access to the port facilities" and "publicly owned railroad facilities now existing or hereafter constructed on any properties of the Navigation District so as thereby to afford every railroad entering Corpus Christi access thereto without discrimination" (Decision at 194, 195 respectively). In our view, the Fulton Corridor will simply provide a new, viable alternative for continuing north side access for all the railroads.

If you disagree with our position that all railroads have equal access to Port rail facilities, we request you state your disagreement in a written response to this letter. Please let us hear from you by not later than July 30, 2007.

Sincerely yours,

  
John LaRue  
Executive Director

cc Mr Rollin Bredenberg,  
VP Service Design & Performance

# **EXHIBIT H**

**UP Response to July 12, 2007 Letter**

**GEORGE M. STURM**  
General Manager Joint Facilities  
Tele (402) 544-2292  
gsturm@UP.com



MS 1180  
1400 Douglas Street  
Omaha, Nebraska 68179  
Fax (402) 501-2313

August 10, 2007

**Mr. John P. La Rue**  
Executive Director  
Port of Corpus Christi  
222 Power Street  
Corpus Christi, Texas 78401

**RE: Tule Lake Lift Bridge**

**Dear John:**

This is in response to your July 12, 2007 letter to Mr. John Gray of Union Pacific. As I understand your letter, your position is that UP is required by a 1929 ICC decision (154 I C C. 193) to allow KCS to access the west end of the Fulton Corridor from UP's Corpus Christi-Odem line instead of KCS' current access via the Port's Tule Lake Lift Bridge, if the Port removes the bridge from service.

First of all, you should be aware that UP and KCS entered into an agreement dated November 17, 2006 which provided for KCS access to the Fulton Corridor from the west (Art Shoener, KCS' President, signed the agreement for KCS). This agreement would have permitted the Port to remove the bridge from service without affecting KCS access to the Port facilities. However, after the agreement was signed, KCS indicated that it was not willing to carry out its side of the bargain, apparently at the direction of its Chairman, Michael Haverly, so the agreement was never implemented. We remain willing to give KCS access to the Fulton Corridor from the west under the terms of the November 17, 2006 agreement. As such, you need to be discussing this with KCS.

Turning to the substance of your letter, there is nothing in the 1929 ICC decision which requires UP to grant KCS access to the Fulton Corridor from the west if the Port removes the bridge:

- First, your letter selectively quotes partial sentences from the 1929 decision out of context, apparently to create the impression that the ICC was imposing some mandatory "access" requirements on the

railroads serving Corpus Christi. In fact, the ICC was simply describing the terms of the agreement it was being asked to approve, and was not imposing any requirements on the applicants (154 I.C.C. at 194-195).

- Second, neither the decision nor the 1929 agreement purport to impose any obligations on UP or its predecessors for the UP owned track which is the subject of your letter. This track is not part of the "publicly owned railroad facilities now existing or hereafter constructed on any properties of the Navigation District". It is solely owned UP trackage, and was constructed and owned by UP's predecessors long before the 1929 agreement and decision. Further, KCS' predecessors did not obtain any access to this trackage under the 1929 agreement or decision. KCS' predecessors had no rights to use this trackage for any purpose until 1996, when the TexMex railroad, (now part of KCS) received overhead trackage rights on it in the UP-SP merger.
- Third, and most importantly, UP is not denying KCS access to the Fulton Corridor, or any other Port owned rail facilities. KCS has full access to all of these facilities (including the Fulton Corridor) via Tule Lake Lift Bridge, which is the routing KCS has used since the bridge was opened in 1959. It is the Port, not UP, which is proposing to eliminate this access, by removing the bridge from service. As you know, we have an existing agreement with the Port (May 9, 2006) which allows KCS to temporarily access the Fulton Corridor from the west when necessitated by bridge repairs. However, we have no obligation under this agreement to allow KCS access from the west if the Port eliminates KCS' existing access by removing the bridge rather than repairing it. The November 17, 2006 agreement, of course, would have provided KCS with permanent access from the west had KCS been willing to implement it.

Please call me if you have any questions or if you wish any further information for your discussions with KCS

Sincerely,

A handwritten signature in black ink, appearing to read "A. M. Star", with a long horizontal flourish extending to the right.

# **EXHIBIT I**

**KCS Response to July 12, 2007 Letter**

# KANSAS CITY SOUTHERN

MAILING ADDRESS PO BOX 219335 • KANSAS CITY MO 64121-9335



MICHAEL R. HAVERTY  
CHAIRMAN AND  
CHIEF EXECUTIVE OFFICER

July 18, 2007

Mr. John P. LaRue  
Executive Director  
The Port of Corpus Christi  
P.O. Box 1541  
Corpus Christi, TX 78403

Dear Mr. LaRue,

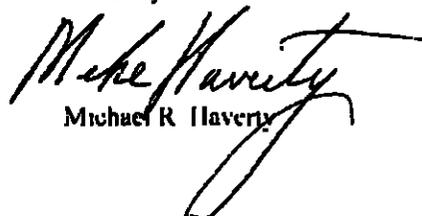
The Kansas City Southern Railway Company ("KCSR") is in receipt of your letter of July 12, 2007 regarding "Rail Operations On The Joe Fulton Corridor." We are aware of the efforts of the Port of Corpus Christi ("Port") to construct the Joe Fulton Corridor ("Fulton Corridor") so as to provide rail access to the north side of the Corpus Christi ship channel when the Tule Lake Lift Bridge ("Lift Bridge") is either removed or locked in the upright position. As you know, we have had several conversations with representatives of the Port regarding this issue and look forward to continued cooperation with the Port on this project.

Your letter accurately depicts the holding of the 1929 ICC decision. Indeed, the notion of equal access to all Port facilities and tracks for all railroads that enter Corpus Christi is a consistent theme in the numerous contracts and ICC/STB decisions governing rail operations at the Port. It should come as no surprise then that KCSR fully supports equal access to the Port facilities for all railroads now serving Corpus Christi, and this equal access should include the Fulton Corridor. We hope that the Port is working diligently to ensure that tracks connecting with and controlling access to the Fulton Corridor are available for equal usage by all railroads serving Corpus Christi.

While KCSR is supportive of the Fulton Corridor project, as we have told numerous Port representatives, KCSR cannot support the removal (or locking) of the Lift Bridge unless and until KCSR's equal access to the new Fulton Corridor trackage is guaranteed. Unfortunately, your letter does not specifically address that concern. Instead, your letter states that the Port will "[u]pon completion of the Fulton Corridor rail line... remove the Lift Bridge from service for all rail movements." KCSR cannot and will not allow that to occur merely "upon completion of the Fulton Corridor line." The Fulton Corridor trackage must be completed and KCSR's equal access (in terms of cost and time) to that trackage must be guaranteed before KCSR will acquiesce to the removal of the Lift Bridge from rail service.

KCSR appreciates our very important relationship with the Port. We stand willing to work with the Port and the other railroads serving Corpus Christi to develop a plan that ensures equal access to the Fulton Corridor by all railroads. Please let us know if we can be of assistance.

Sincerely,



Michael R. Haverly

# **EXHIBIT J**

**BNSF Response to July 12, 2007 Letter**



Peter J Rickershauser  
Vice President  
Network Development

Burlington Northern  
Santa Fe Corporation  
2500 Lou Mark Drive  
Fort Worth Texas 76131 3528

tel 817 352 6686  
fax 817 352-7154  
pete.rickershauser@bnsf.com

July 27, 2007

Mr John P. LaRue  
Executive Director  
Port of Corpus Christi  
222 Power Street  
Corpus Christi, TX 78401

Dear John:

Please reference your letter to me dated July 12, 2007 regarding railroad rights to use to the Joe Fulton Corridor that is presently being constructed as a replacement for the Tule Lake Lift Bridge for access to the north side of the ship channel in Corpus Christi, TX.

We have reviewed the terms and conditions of the relevant agreements, including the January 23, 1929 agreement, as supplemented and amended, and other related agreements and concur with your conclusion that all the railroads currently serving Corpus Christi have equal access to Port rail facilities, including the north side of the ship channel via the Joe Fulton Corridor. In addition, BNSF has an independent right to such access pursuant to the terms of the Settlement Agreement between BNSF and Union Pacific imposed as a condition to the UP/SP merger by the Surface Transportation Board.

If you have any questions, please feel free to call me at (817) 352-6686 to discuss this issue further

Sincerely,

Peter J Rickershauser

cc: Rollin D Brodenberg, BNSF  
Larry Lawrence, KCS  
George Sturm, UP

# **EXHIBIT K**

**Notice of Lift Bridge Closure**

## Tryon, Ahren

---

To: Teresa Betzold

Subject: RE Re Lift Bridge Notice

----- Original Message -----

From: Teresa Betzold

To: Amado Saenz, M\_Shuyler@admworld.com, Steve Yates, Jim Franceschi, Kevin Miller, Armador Vela, Chad Chapman, Larry McLeroy, J\_Slubar, Kathy, Brian Pillinger, pwallesen@aol.com, Rick Castillo, John Stapp, Bill Wagner, Rick Lawrence, Rick Rewaniszyk, Larry Perryman, Biehl Company, Richard Ludwig, pete rickershauser@bnsf.com, ncharl roby@bnsf.com, rollin brederberg@bnsf.com, Sonny Boyd, John Rooney, georgen@cctexas.com, lindale@cctexas.com, Stacy Moore, Richard White, Tim Trimble, Capt Jim Dooley, Adin Batson, Charles Milstead, Dennis Calhoun, David Cave, Mark Barrger, Shelly Hacker, Tom Fanning, Jeff Logue, claudia lobell@co.nueces.tx.us, Jeff Holley, Rudy Garcia, Edith Clarke, michaelostos@dix-fairway.com, Cecil Avila, Howard Gillespie, Dean Coulson, Charles Brough, Alvin Saathoff, Ana Abarca, Diane LaRoe, Kenny Ragsdale, Mike Cain, Richard Faris, Timothy Leitzell, David Stone, Dean Leber, Diane Tamez, Jason Tucker, Jimmy Moulds, Roger Tennapel, Thomas Lancaster, Fillette Green, Mauricio Rosales, Sherman Estes, Shermin Estes, Pat Lynch, Raymond Oliveira, Fred Ortiz, Walter Kittelburger, Susan Nelson, Gilbert Ortega, achunko@gwrr.com, bjasper@gwrr.com, jbenz@gwrr.com, John Slubar, Orlando Perez, Raymond Butler, iss.corpuschristi@iss-shipping.com, Gaspar D'Anna, ashoener@kcsouthern.com, dfreeman@kcsouthern.com, jriney@kcsouthern.com, mchapman@kcsouthern.com, mhaverty@kcsouthern.com, Pat Fisher, Wayne Boid, Frank Wiseman, Mike Wike, Mike Wike, Stacey Brown, Kevin Kauk, Ben Bentley, Dion Fudge, Robert Hanson, Wes O'Neil, Wes O'Neil, Greg Bezdek, Doug Wampler, Jon Sheridan, Scott Walker, Pete Peterson, Homer Hines, Frank Bulges, Kristin Malone, Alan Bunn, John Metz, Larry Maifeld, Mike Gittinger, Michael Vest, Don Higginbotham, David Crawford, Jack Rice, Bob Bailey, Al Speight, David Solis, Jerry Cotter, Jim Burns, John LaRue, David Krams, Luther Kim, Paul Carangelo, Ray Harrison, Raymond Kadlecek, Tom Curlee, Tony Alejandro, Vicki Mercado, Ray Ramirez, Carlos Garcia, dcurtiss@railworks.com, Lonnie Bartlett, Mauricio Rosales, Roger Sanderfer, Sue, Dennis Hansell, Tony Tedesco, Frank Newchurch, Jerry Hooper, Captain Eddie Rendon, Barry Snyder, Jackie Yardley, lhanna1@stx.fr.com, Johnny Rozsypal, Ralph Rubalcaba, aberrera@texaslehigh.com, Gary Eddins, Kenny Hucker, Ron Renz, Trigeant, Dimitrios Gavakis, Patnck Beam, gsturm@up.com, jkoraleski@up.com, jrebensd@up.com, jtgray@up.com, OJDURKIN@up.com, rmjohnso@up.com, Richard Bailey, Timothy McDaniel, Diane Kalina, Lt Jay, John Zarbock, Michael Warner, LTJG Patrick Marshall, Peter Simons, Robert Lefeyers, Captain Paulison, Lt Travis Collier, Tyler McGill, Bill Magness, Dennis Payne, Don Parker, Glen Merritt, Gregory Anderson, Ins Haese, Joe Harrington, Pat Newman, Steven Payne, ivalls@valls gourp.com, Valls Shipping, Frank McNiff, Niels Aalund, Raymond Duget, Robert Cornelison, Ron Rowe

Sent: Tuesday, September 04, 2007 3:40 PM

Subject: Lift Bndge Notice

**This is to notify all customers of the Port of Corpus Christi and users of the Tule Lake Lift Bridge that the Port of Corpus Christi is planning to stop operation of the Tule Lake Lift Bridge beginning on October 1, 2007, or before should its condition, which is deteriorating, so require. Rail access to the north side of the Inner Harbor will be available via the Fulton Corridor Rail connection. The Lift Span will remain in the up position for an indefinite period of time while plans are being made to remove the bridge.**

**The Port Commission will formally consider this action at the September 11, 2007 Commission meeting which will start at 9:00 am at the Ortiz Center. This notice is being sent to give everyone as much notice as possible.**

**We regret any inconveniences that this may cause. As you are aware the Tule Lake Lift Bridge has serious structural cracking in the lifting machinery and is**

**being closed for safety reasons."**

**If you should have any questions regarding this project, please contact Frank Brogan, Director of Engineering Services @ 885-6133.**

**Port of Corpus Christi**  
[www.portofcorpuschristi.com](http://www.portofcorpuschristi.com)

Teresa Betzold  
Port of Corpus Christi Authority  
Operations Administrative Assistant  
(PH) 361-885-6178  
(FX) 361-881-5162

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No virus found in this incoming message.  
Checked by AVG Free Edition.  
Version: 7.5.485 / Virus Database: 269.13.5/988 - Release Date: 9/4/2007 9:14 AM

# **EXHIBIT L**

**KCS Letter to Customers Regarding Lift Bridge Closure**

'10/2007 10:20 3618841584  
09/10/2007 11:25 18662142256  
SEP-10-2007 05:59A FROM:  
SEP. 0. 2007 10:49AM CEC

CCTRR  
RAILLINK

PAGE 01  
PAGE 01/01

TD.18662142256 P 1  
NO. 2220 1. 1/1

## KANSAS CITY SOUTHERN

4801 SHREVEPORT-BLANCHARD HIGHWAY • SHREVEPORT, LOUISIANA 71107



September 7, 2007

Dear Valued Customer,

On September 4, you received an e-mail from Teresa Beards on behalf of the Port of Corpus Christi ("Port"). According to that e-mail, the Port is planning to stop operation of the Tule Lake Lift Bridge beginning on or before October 1, 2007, lock it into the upright position for an indefinite period, and eventually remove the bridge. Despite the Port claiming that "rail access to the north side of the Inner Harbor will be available via the Fulton Corridor Rail connection," that statement is not accurate.

KCS does not have a direct connection to the Fulton Corridor Rail connection. KCS does have overhead trackage rights over UP's line that connects with the Fulton Corridor, but UP claims those rights do not allow KCS to access the Fulton Corridor. The Port and KCS have been unable to convince UP otherwise. Accordingly, if the Tule Lake Lift Bridge is taken out of service as planned, KCS will not be able to maintain rail access to the Inner Harbor shippers (i.e. those on the north side of the ship channel); contrary to the Port's representations in their September 4 e-mail. Without access to the Fulton Corridor or some alternative arrangement, KCS will be forced to embargo service to such shippers.

If you desire continued service by KCS, you need to notify the Port immediately of your opposition to its plans to remove the bridge from service and request that the Port take immediate action to repair and rehabilitate the bridge. In the meantime, while the bridge is being repaired and rehabilitated, which may in fact require a temporary closing of the bridge, please notify the Port of your need for KCS service and request the Port to quickly reach an accommodation with UP to ensure that KCS can access the Fulton Corridor Rail connection. The Port Commission will formally consider its proposed action at its September 11, 2007 Commission meeting, which starts at 9:00 am at the Ortiz Center. Your presence and comments at that hearing would be helpful. If you are unable to provide your comments directly to the Port, please put your comments in a letter or e-mail directed to me and I will attempt to have those comments inserted into the record at the Port's hearing.

David Reeves  
[DReeves@KCSouthern.com](mailto:DReeves@KCSouthern.com)  
816/983-1387

## **EXHIBIT M**

**UP Letter to Port Authority Regarding Notice of Lift Bridge Closure**

GEORGE M. STURM  
General Manager Joint Facilities  
Tele (402) 544-2292  
gsturm@UP.com



MS 1180  
1400 Douglas Street  
Omaha, Nebraska 68179  
Fax (402) 501-2313

September 7, 2007

Mr. John P. La Rue  
Executive Director  
Port of Corpus Christi  
222 Power Street  
Corpus Christi, Texas 78401

RE. Tule Lake Lift Bridge

Dear John,

This is in regard to the notice put out by the Port of Corpus Christi on September 4, 2007 related to the Port's decision to discontinue operation of the Tule Lake Lift Bridge (Lift Bridge) effective October 1, 2007. UP believes it is necessary to make sure that there are no misunderstandings regarding access to the north side of the Inner Harbor via the Fulton Corridor Rail Connection subsequent to that closure by the Port.

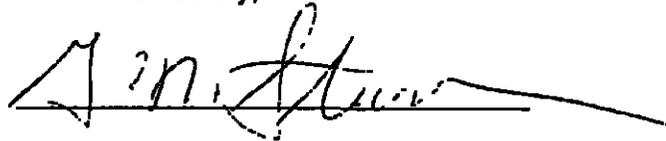
Item #2 of our letter agreement dated May 9, 2006 governs UP's obligations to provide KCS with temporary, alternate access to the Fulton Corridor Connection in the event the bridge is removed from service. It provides that "Temporary access will continue until .. the appropriate governing authority makes a decision not to repair/replace the Lift Bridge." The Port's September 4 notice states that the Lift Bridge will be held out of service "...in the up position for an indefinite period of time while plans are being made to remove the Bridge." Therefore, it is clear that the governing body of the Port has already decided not to repair/replace the Lift Bridge. As such, UP has no obligation under the May 9 agreement to provide KCS with alternate access via the Fulton Corridor Rail Connection.

As I stated in my letter of August 10, 2007, UP and KCS executed an agreement dated November 17, 2006 which would have provided KCS with permanent, alternate access to the Corridor via UP. But, after the agreement was signed by both parties (KCS' president signed for KCS), KCS unilaterally

refused to carry out its side of the bargain UP remains willing to provide KCS access to the Corridor under the terms of this agreement However, UP is not willing to reward KCS' sudden and inexplicable rejection of its agreement with UP by providing access on terms which are different than those to which KCS previously agreed

Please call me if you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Stewart", written over a horizontal line. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

# **EXHIBIT N**

**Port Commission Resolution to Cease Operating the Lift Bridge**

## **RESOLUTION TO CEASE OPERATING THE TULE LAKE LIFT BRIDGE**

**WHEREAS**, the Port of Corpus Christi Authority of Nueces County, Texas ("PCCA"), the City of Corpus Christi ("City"), and the County of Nueces ("County") entered into an Agreement effective as of October 1, 1998, regarding the ownership, operation, and maintenance of the Tule Lake Lift Bridge (the "Operating Agreement"); and

**WHEREAS**, under the terms of the Operating Agreement, the parties agreed that the City would continue to own the Tule Lake Lift Bridge (the "Bridge"), but PCCA would operate and maintain the Bridge; and

**WHEREAS**, the Port Commission believes that continued operation of the Bridge presents an unacceptable safety risk to persons, vehicles, railcars, and vessels passing over and under the lift span of the Bridge (the "Lift Span"); and

**WHEREAS**, the Port Commission also believes that continued operation of the Bridge is likely to result in the Lift Span becoming an unreasonable obstruction to navigation of the Inner Harbor of the Corpus Christi Ship Channel (the "Inner Harbor") west of the Bridge; and

**WHEREAS**, the Joe Fulton International Trade Corridor (the "Fulton Corridor") will provide railroad and vehicular access to the north side of the Inner Harbor; and

**WHEREAS**, rail access to the north side of the Inner Harbor is now available via the Fulton Corridor rail; and

**WHEREAS**, PCCA has prepared and is ready to file a petition with the United States Surface Transportation Board seeking clarification that all railroads now serving Corpus Christi have equal access to the north side of the Inner Harbor;

**NOW, THEREFORE, BE IT RESOLVED** that, due to the safety and business risks involved in continuing to operate the Bridge, the Port Commission hereby orders PCCA to cease operating the Bridge on September 11, 2007; and

**FURTHER RESOLVED**, that the Lift Span of the Bridge be locked in the up position until such time as plans are implemented to remove the Bridge; and

**FURTHER RESOLVED**, that the appropriate persons at the City and County be notified that PCCA has elected to cease operating the Bridge due to the unsafe condition of the Bridge; and

**FURTHER RESOLVED**, that the Executive Director and Director of Engineering, or either of them, are hereby authorized and directed to enter into negotiations with the City and any other parties they deem appropriate for the removal of the Bridge and related structures as soon as possible.

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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Finance Docket No 7467

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Finance Docket No 32760 (Sub-No. 13)

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**PETITION OF  
PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS  
FOR CLARIFICATION AND FOR EXPEDITED CONSIDERATION**

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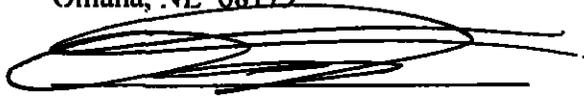
I hereby certify that I have served this 14th day of September, 2007, one copy of the foregoing "Petition of Port of Corpus Christi Authority of Nueces County, Texas for Clarification and for Expedited Consideration." by hand delivery or Federal Express, and by electronic mail, to the following

Paul Hoterer, Esq  
Vice President and General Counsel  
Attn.: Jake DeBoever, Esq  
Burlington Northern Santa Fe Corporation  
2650 Lou Menk Drive  
Fort Worth, TX 76161-2830

William Mullins, Esq  
Baker & Miller PLLC  
2401 Pennsylvania Avenue, N.W., Suite 300  
Washington, DC 20037

William Wochner, Esq  
Vice President and Interim General Counsel  
The Kansas City Southern Railway  
Company  
Attn: David Reeves  
427 West 12<sup>th</sup> Street, Canal Square  
Kansas City, MO 64105

J. Michael Hemmer, Esq  
Senior Vice President Law and General  
Counsel  
Attn: Lawrence Wzorek  
Union Pacific Railroad  
1400 Douglas Street  
Omaha, NE 68179



Ahren S. Tryon

*Attorney for Port of Corpus Christi Authority of  
Nueces County, Texas*