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32760

(Sub 24)

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COVINGTON & BURLING

1201 PENNSYLVANIA AVENUE, N. W.

P.O. BOX 7566

WASHINGTON, D.C. 20044-7566

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TELEX: 89-593 (COVING WSH)

CABLE: COVING

MICHAEL L. ROSENTHAL

DIRECT DIAL NUMBER

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(202) 778-5448

September 17, 1997

FILED

SEP 17 1997

LECONFIELD HOUSE

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ENGLAND

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BRUSSELS CORRESPONDENT OFFICE

44 AVENUE DES ARTS

BRUSSELS 1040 BELGIUM

TELEPHONE: 32-2-512-9890

TELEFAX: 32-2-502-1598

BY HAND

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Room 711
Washington, D.C. 20423-0001
Attention: Ann Quinlan



Re: Finance Docket No. 32760 (Sub-No. 24), Union
Pacific Corp., et. al. -- Control & Merger --
Southern Pacific Rail Corp., et al.

Dear Secretary Williams:

Enclosed please find a check for \$750.00 for the
filing fee in the above-captioned matter. Please call me if you
have any questions.

Sincerely,

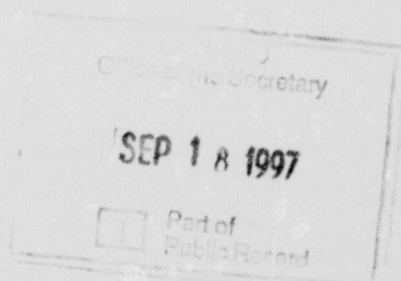
Michael L. Rosenthal

Enclosure

FEE RECEIVED

SEP 17 1997

SURFACE
TRANSPORTATION BOARD



COVINGTON & BURLING

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BRUSSELS CORRESPONDENT OFFICE

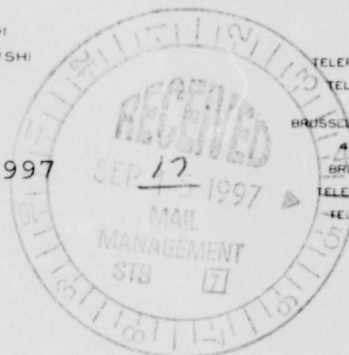
44 AVENUE DES ARTS

BRUSSELS 1040 BELGIUM

TELEPHONE: 32-2-511-9890

TELEFAX: 32-2-502-1598

September 15, 1997



BY HAND

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Room 711
Washington, D.C. 20423-0001

Re: Finance Docket No. 32760 (Sub-No. 24), Union
Pacific Corp., et. al. -- Control & Merger --
Southern Pacific Rail Corp., et al.

Dear Secretary Williams:

Enclosed for filing in the above-captioned matter
are the original and 10 copies of a Notice of Exemption and
Caption Summary, pursuant to the Board's Decision No. 46 in
Finance Docket No. 32760 and the class exemption at 49 C.F.R.
§ 1180.2(d)(7).

The exemption involves Burlington Northern and Santa Fe
Railway Company trackage rights over Union Pacific Railroad
Company and Southern Pacific Transportation Company between Craig
Junction, Texas, and SP Junction (Tower 112) in San Antonio,
Texas, and between SP Tower 105 and SP Junction (Tower 112) in
San Antonio, Texas. Twenty unbound copies of the Exhibit 1 map
are enclosed as required by 49 C.F.R. § 1180.6(a)(6).

Sincerely,

Michael L. Rosenthal

Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD

ORIGINAL

Finance Docket No. 32760 (Sub-No. 24)

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
UNION PACIFIC RAILROAD COMPANY AND
SOUTHERN PACIFIC TRANSPORTATION COMPANY



NOTICE OF EXEMPTION FOR TRACKAGE RIGHTS

The trackage rights that are the subject of this exemption notice are granted pursuant to a trackage rights agreement between Missouri Pacific Railroad Company and Southern Pacific Transportation Company, on the one hand, and Burlington Northern Railroad Company and The Atchison, Topeka & Santa Fe Railway Company, on the other hand, dated June 1, 1996 (the "Sealy Agreement"), and the First Supplement to the Sealy, Texas to Waco and Eagle Pass, Texas Trackage Rights Agreement, between Union Pacific Railroad Company and Southern Pacific Transportation Company, on the one hand, and The Burlington Northern and Santa Fe Railway Company ("BNSF"), on the other hand, dated August 28, 1997 (the "First Supplement").

In Decision No. 44 in Finance Docket No. 32760, served August 12, 1996, the Board required that Applicants fulfill their representation that BNSF would be permitted directly to serve CPSB's Elmendorf, Texas, facilities, and also required that Applicants preserve CPSB's ability to use

its existing trackage rights over SP by allowing BNSF to serve CPSB using the CPSB trackage rights.

The majority of the trackage rights required to permit BNSF to serve CPSB's Elmendorf, Texas, facilities were the subject of a Notice of Exemption that the Board granted in Decision No. 44 in Finance Docket No. 32760 (Sub-No. 1). Applicants also granted BNSF trackage rights over an additional segment of track necessary to access CPSB's Elmendorf facilities in the Second Supplemental Agreement, dated June 27, 1996 (the "Second Supplemental Agreement"), to the Agreement between Applicants and BNSF, dated September 25, 1995 ("the Settlement Agreement"), which was not a subject of the Notice of Exemption in Finance Docket No. 32760 (Sub-No. 1).

On August 23, 1996, Applicants and CPSB reached an agreement regarding further trackage rights to be granted to BNSF in order to meet the conditions the Board had set in Decision No. 44, and submitted that agreement to the Board. Applicants agreed to grant BNSF trackage rights over a short segment of SP track between Tower 105 and SP Junction (Tower 112) that had been inadvertently omitted from Applicants' settlement agreement with BNSF, but that was required for BNSF to serve CPSB's Elmendorf facilities. Applicants also agreed to grant BNSF additional trackage rights between Craig

Junction, Texas, and SP Junction (Tower 112), via Fratt, Texas (the "Track No. 2 routing").

In Decision No. 46 in Finance Docket No. 32760, served Aug. 26, 1996, the Board granted a BNSF request for additional time to review the Joint Submission of the Applicants and CPSB. The Board noted that, once the scope of the trackage rights was clear, Applicants and BNSF would be required to file a class exemption notice with regard to the trackage rights.

In Decision No. 52 in Finance Docket No. 32760, served Sept. 10, 1996, the Board indicated that Applicants' agreement with CPSB satisfied the conditions imposed on Applicants in Decision No. 44, but reserved judgment on BNSF's argument that BNSF should be allowed to serve new facilities and site transloading facilities along the Track No. 2 routing.

In Decision No. 61 in Finance Docket No. 32760, served Nov. 20, 1996, the Board ruled that the new facilities and transload conditions imposed in Decision No. 44 applied to the lines along the Track No. 2 routing, and indicated that the parties should make any necessary conforming amendments to the Settlement Agreement and the related trackage rights implementing agreement.

This Notice of Exemption is being filed in accordance with the Board's orders in Decisions Nos. 44, 52 and 61.

This Notice of Exemption, with accompanying Verification, is submitted pursuant to the Board's trackage rights class exemption at 49 C.F.R. § 1180.2(d)(7). The trackage rights are bridge rights granted to BNSF by UP and SP for movement of overhead traffic, with local access rights as specified in Decision Nos. 44 and 61.

The Board's trackage rights class exemption applies if specified criteria are met. Railroad Consolidation Procedures -- Trackage Rights Exemption, 1 I.C.C.2d 270 (1985), aff'd sub ncm. Illinois Commerce Commission v. ICC, 819 F.2d 311 (D.C. Cir. 1987). Because a written agreement forms the basis of these trackage rights and the trackage rights are not being filed or sought in a responsive application in a rail consolidation proceeding, the Board's exemption criteria are met.

Pursuant to the Board's regulations at 49 C.F.R. § 1180.4(g), in order to qualify for an exemption, a verified Notice of Exemption must be filed with the Board containing the information in 49 C.F.R. § 1180.6(a)(1)(i)-(iii), (5), (6) and (7)(ii), and indicating the level of labor protection to be imposed. Responses to these requirements are provided below.

Section 1180.6(a)(1) - Description of Proposed Transaction

SP owns a line of railroad extending from milepost 212.7 near Tower 105 in San Antonio, Texas, to milepost 211.0 near SP Junction (Tower 112) in San Antonio, Texas, and will grant trackage rights to BNSF. These trackage rights are to close a gap in trackage rights previously granted to allow BNSF to serve CPSB's Elmendorf facilities. The rights are for the movement of overhead traffic, with additional local access rights as specified in Decision No. 44.

Union Pacific Railroad Company owns a line of railroad extending from milepost 235.9 near Craig Junction, Texas, to milepost 259.8 near SP Junction (Tower 112), via Fratt, Texas, and will grant trackage rights to BNSF. These trackage rights are for the movement of overhead traffic to CPSB's Elmendorf facility, with additional local access rights as specified in Decision Nos. 44 and 61.

Section 1180.6(a)(1)(i) - Summary of the proposed transaction, the name of applicants, their business address and telephone number, and the name of counsel to whom questions can be addressed

The trackage rights are overhead trackage rights with local access as specified, and extend for a distance of approximately 25.6 miles in the state of Texas.

The exact name, address and telephone number of the parties are:

Union Pacific Railroad Company
Southern Pacific Transportation Company
1416 Dodge Street
Omaha, Nebraska 68179
(402) 271-5000

The Burlington Northern and Santa Fe Railway
Company
6th Floor
1700 East Golf Road
Schaumburg, Illinois 60173-5860
(847) 995-6000

Questions regarding this transaction can be
addressed to the counsel named below:

Paul A. Conley, Jr.
Assistant Vice President-Law
Union Pacific Railroad Company
Southern Pacific Transportation Company
1416 Dodge Street, #830
Omaha, Nebraska 68179
(402) 271-4229

Richard E. Weicher
Vice President and General Counsel
Burlington Northern Santa Fe Corporation
6th Floor
1700 East Golf Road
Schaumburg, Illinois 60173-5860
(847) 995-6887

Section 1180.6(a)(1)(ii) - Consummation Date

The transaction is expected to be consummated on, or
soon as possible after, September 22, 1997.

Section 1180.6(a)(1)(iii) - Purpose of the Transaction

The trackage rights are designed to meet concerns
regarding BNSF's access to CPSB's Elmendorf facilities and to
comply with Decisions Nos. 44, 52 and 61 in Finance Docket No.
32760.

Section 1180.6(a)(5) - States in Which the Party Operates

Following are the states in which any part of the real property of each railroad carrier is situated:

<u>State</u>	<u>Rail Carrier</u>	<u>State</u>	<u>Rail Carrier</u>
AL	BNSF	MO	UP, SP, BNSF
AR	UP, SP, BNSF	MT	UP, BNSF
AZ	SP, BNSF	ND	BNSF
CA	UP, SP, BNSF	NE	UP, BNSF
CO	UP, SP, BNSF	NM	SP, BNSF
FL	BNSF	NV	UP, SP
ID	UP, BNSF	OK	UP, SP, BNSF
IL	UP, SP, BNSF	OR	UP, SP, BNSF
IA	UP, BNSF	SD	BNSF
KS	UP, SP, BNSF	TN	UP, SP, BNSF
KY	BNSF	TX	UP, SP, BNSF
LA	UP, SP, BNSF	UT	UP, SP
MN	UP, BNSF	WA	UP, BNSF
MS	BNSF	WI	UP, BNSF
		WY	UP, BNSF

Section 1180.6(a)(6) - Map (Exhibit 1)

A map is provided as Exhibit 1 hereto. As required by 49 C.F.R. § 1180.6(a)(6), 20 unbound copies of the map are enclosed.

Section 1180.6(a)(7)(ii) - Agreement (Exhibit 2)

The Sealy Agreement and the First Supplement are submitted as Exhibit 2 hereto.

Section 1180.4(g)(1)(i) - Labor Protection

Each party is responsible for any and all costs relating to providing employee protection benefits, if any, to its employees. The parties are agreeable to the labor protection conditions generally imposed in trackage rights proceedings as required by 49 U.S.C. § 11326.

Section 1180.4(g)(2)(i) - Car ion Summary (Exhibit 3)

A proposed caption summary is submitted as Exhibit 3 hereto.

49 C.F.R. § 1105.6(c)(4) - Environmental

Environmental impacts associated with trackage rights proceedings generally are considered to be insignificant. Therefore, an environmental report and documentation normally need not be submitted for these types of transactions, pursuant to 49 C.F.R. § 1105.6(c)(4).

Respectfully submitted,

Jeffrey R. Moreland
Richard E. Weicher
Michael E. Roper
Sidney L. Strickland
Burlington Northern Santa Fe
Corporation
3017 Lou Menk Drive
P.O. Box 961039
Fort Worth, Texas 76161-0039
(817) 352-2353

and

1700 East Golf Road
Schaumburg, Illinois 60173
(847) 995-6887

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Attorneys for The Burlington
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Railway Company

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Transportation Company
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(202) 662-5388

Attorneys for Union Pacific
Corporation, Union Pacific
Railroad Company, Southern
Pacific Rail Corporation,
Southern Pacific
Transportation Company,
and St. Louis Southwestern
Railway Company

September 15, 1997

VERIFICATION

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

Richard E. Weicher, Vice President and General Counsel of Burlington Northern Santa Fe Corporation, being first duly sworn, deposes and says that he has read the foregoing Notice of Exemption For Trackage Rights in Finance Docket No. 32760 (Sub-No. 24), knows the contents thereof, and that the same are true as stated to the best of his knowledge, information and belief.

Richard E. Weicher
Richard E. Weicher

Subscribed and sworn to before me this 12th day of September, 1997.

Nadine M. Grandi
Notary Public

My Commission Expires:

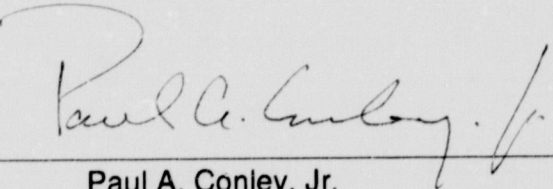
03/18/00



VERIFICATION

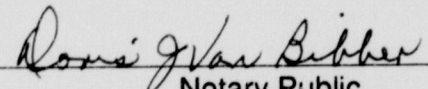
STATE OF NEBRASKA)
) ss:
COUNTY OF DOUGLAS)

PAUL A. CONLEY, JR., Assistant Vice President-Law of Union Pacific Railroad Company, being first duly sworn, deposes and says that he has read the foregoing Notice of Exemption For Trackage Rights in Finance Docket No. 32760 (Sub-No. 24), knows the contents thereof, and that the same are true as stated to the best of his knowledge, information and belief.



Paul A. Conley, Jr.

SUBSCRIBED and sworn to before me this 10th day of September, 1997.

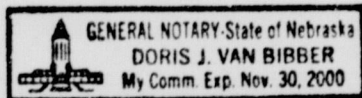


Notary Public

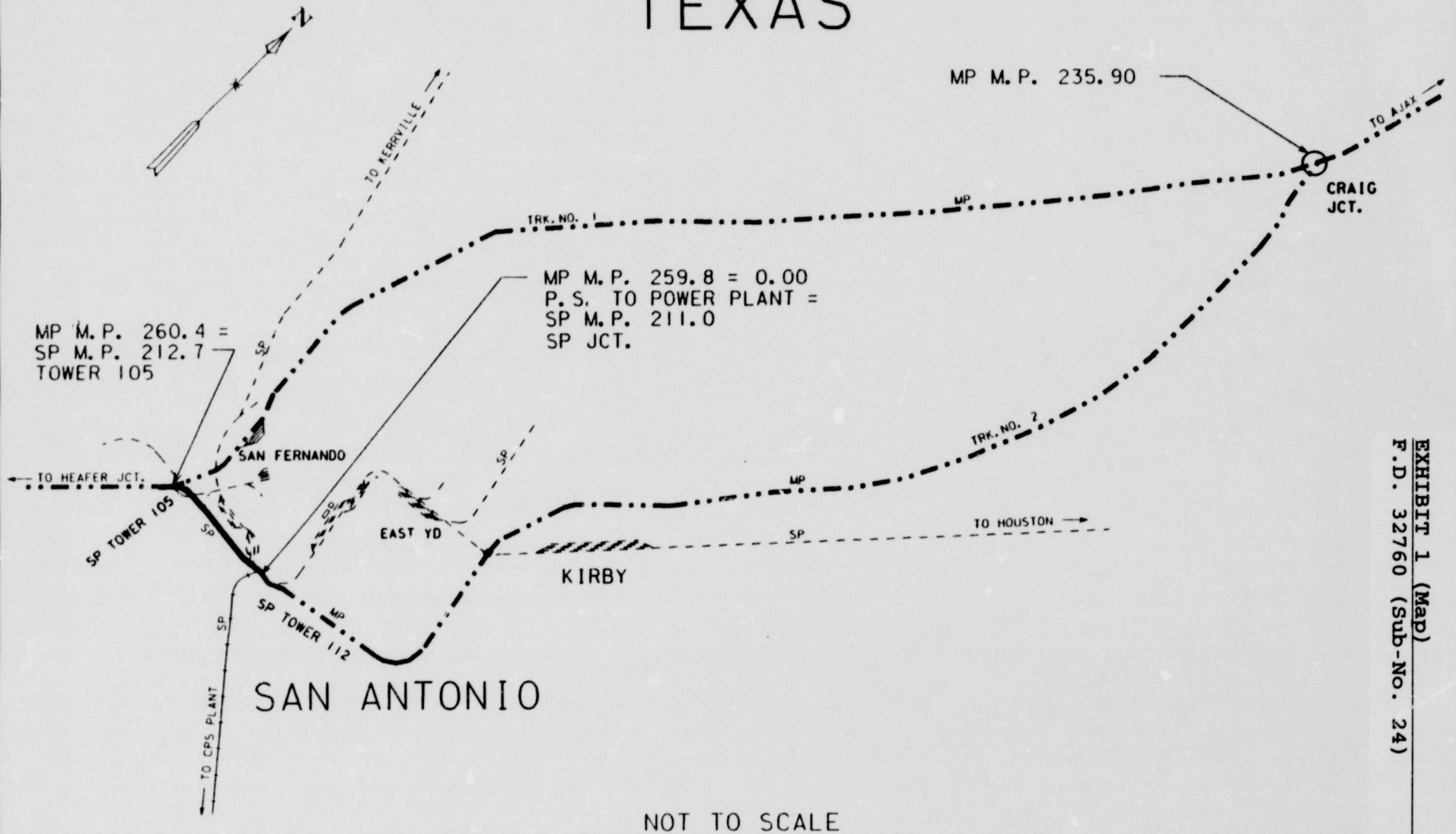
My Commission expires:

Nov. 30, 2000

(SEAL)



TEXAS



LEGEND:

- BNSF TRACKAGE RIGHTS ON MISSOURI PACIFIC RR
- BNSF TRACKAGE RIGHTS ON SOUTHERN PACIFIC RR
- - - - CPSB AND BNSF TRACKAGE RIGHTS ON SOUTHERN PACIFIC RR
- SOUTHERN PACIFIC RR

EXHIBIT 1 (Map)
F.D. 32760 (Sub-No. 24)

EXHIBIT A
BNSF TRACKAGE RIGHTS
SAN ANTONIO TO CRAIG JCT.
09/11/96 FIGURE 4-3
REVISED: 05/07/97

**SEALY, TEXAS TO WACO AND EAGLE PASS, TEXAS
TRACKAGE RIGHTS AGREEMENT**

THIS AGREEMENT made as of this 1st day of June, 1996, between MISSOURI PACIFIC RAILROAD COMPANY, a Delaware corporation ("MPRR") SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation ("SPT") (MPRR and SPT are hereinafter referred to collectively as "Owner"), on the one hand, and BURLINGTON NORTHERN RAILROAD COMPANY, a Delaware corporation ("BN"), and THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Delaware corporation ("Santa Fe") (BN and Santa Fe are hereinafter referred to collectively as "User"), on the other hand.

WITNESSETH:

WHEREAS, Owner owns lines of railroad consisting of track structure extending between:

Sealy, Texas, in the vicinity of MPRR's Milepost 135.3, and Smithville, Texas, in the vicinity of MPRR's Houston Subdivision Milepost 69.4 ("Sealy-Smithville Route");

Smithville, in the vicinity of MPRR's Houston Subdivision Milepost 969.4, and Waco, Texas, in the vicinity of MPRR's Houston Subdivision Milepost 842.9 ("Smithville-Waco Route") which shall include:

Taylor, Texas, in the vicinity of MPRR's Austin Subdivision Milepost 144.0 (MPRR's Smithville-Waco Route Milepost 919.35) and Round Rock (Kerr), Texas, in the vicinity of MPRR's Austin Subdivision Milepost 161.79 ("Taylor-Round Rock Line");

Smithville, in the vicinity of MPRR's San Antonio Subdivision Milepost 0.00, and Ajax, Texas, in the vicinity of MPRR's Milepost 51.9 (MPRR's Austin Subdivision Milepost 209.1) ("Smithville-Ajax Route");

Ajax, Texas, in the vicinity of MPRR's Austin Subdivision Milepost 209.1, and San Antonio, Texas in the vicinity of MPRR's Milepost 265.7 via Adams ("Ajax-San Antonio Route");

San Antonio, in the vicinity of SPT's Del Rio Line Milepost 219.10, and Spofford, Texas, in the vicinity of SPT's Del Rio Line Milepost 340.39 (SPT's Eagle Pass Branch Milepost 0.0), and Eagle Pass, Texas, in the vicinity of SPT's Eagle Pass Branch Milepost 34.64 ("San Antonio-Eagle Pass Route"), which shall include:

a line of railroad of SPT between San Antonio, in the vicinity of SPT's Del Rio Line Milepost 211.0 (SPT's Rockport Branch Milepost 0.00) and CPS (Elmendorf), Texas, in the vicinity of SPT's Rockport Branch Milepost 12.6 ("San Antonio-CPS Line"),

as shown by bold and dashed lines on the attached print dated June 1, 1996 (and identified as Exhibit "A") (Figures 4-1 and 4-2) and further described in Section 1.7 of Exhibit "B", which shall be referred to herein as the "Joint Trackage"; and

WHEREAS, pursuant to an agreement dated September 25, 1995, as amended (the "Settlement Agreement"), between Union Pacific Corporation ("UPC"), Union Pacific Railroad Company ("UPRR"), MPRR (UPC, UPRR and MPRR are collectively referred to hereinafter as "UP"), Southern Pacific Rail Corporation ("SPC"), SPT, The Denver and Rio Grande Western Railroad Company ("DRGW"), St. Louis Southwestern Railway Company ("SSW") and SPCSL Corp. ("SPCSL") (SPC, SPT, DRGW, SSW and SPCSL are hereinafter referred to collectively as "SP") (UP and SP are hereinafter referred to collectively as "UP/SP"), on the one hand, and BN and Santa Fe, on the other hand, Owner granted certain rights to User, including overhead bridge trackage rights between Sealy and Waco and Eagle Pass, Texas, and the right to access all industries which are presently served either directly or by reciprocal switching, joint facility or other arrangement by both UP and SP and no other railroad except as may be otherwise herein provided, such rights to be effective upon UP's acquisition of control of SP pursuant to the application currently pending before the STB in Finance Docket No. 32760.

WHEREAS, pursuant to the Settlement Agreement, Owner and User wish to more specifically define the terms and conditions under which said trackage rights shall be exercised.

NOW, THEREFORE, it is mutually agreed by and between the parties:

1. General Conditions:

The General Conditions set forth in Exhibit "B" attached hereto are hereby made a part of this Agreement. All capitalized terms used and not otherwise defined in this Agreement shall have the meaning ascribed to them in the General Conditions. If any conflict between the General Conditions and this Agreement shall arise, the provisions of this Agreement shall prevail.

2. Rights of User:

(a) Subject to the terms and conditions contained herein, Owner grants to User the nonexclusive right to use the Joint Trackage for the limited operation of Equipment in User's account over the Joint Trackage in common with Owner and such other railroad company or companies as Owner has heretofore admitted or may hereafter at any time in the future admit to the joint use of all or part of the Joint Trackage (provided that such future admittance shall not materially hinder or obstruct the fair and reasonable exercise of the rights granted in this Agreement), such other railroad company or companies to hereinafter be considered Owner for the purposes of this Agreement, it being understood and agreed that User shall not have the right to:

- (i) Switch industries upon the Joint Trackage, except as hereinafter provided;
- (ii) Set out, pick up or store Equipment upon the Joint Trackage, or any part thereof, except as otherwise provided in this Section 2 and in Sections 2.12, 2.13 and 2.14 of Exhibit B;
- (iii) Serve any industry, team or house track, intermodal or auto facility now existing or hereafter located along the Joint Trackage, except as otherwise provided in this Section 2;
- (iv) Permit or admit any third party to the use of all or any portion of the Joint Trackage, nor, under the guise of doing its own business, contract or make any agreement to handle as its own Equipment over or upon the Joint Trackage, or any portion thereof, the Equipment of any such third party which in the normal course of business would not be considered the Equipment of User; provided, however, that the foregoing shall not prevent User, pursuant to a run-through agreement with any railroad, from using the locomotives and cabooses of another railroad as its own under this Agreement; or
- (v) Connect with or interchange with any other railroad except as hereinafter provided.

(b) The rights granted in Section 2 (a) shall be for rail traffic of all kinds and commodities, both carload and intermodal, of all commodities, except that the rights granted to User on the San Antonio-CPS Line and on the line serving the LCRA plant at Halsted, Texas ("LCRA") shall be limited to the operation of loaded and empty unit coal trains destined to or returning from the City Public Service Board of San Antonio, Texas plant at Elmendorf and LCRA as the case may be.

(c) User shall have the right to interchange with the Longhorn Railroad Company at Elgin, Texas on the Smithville-Waco Route, Georgetown Railroad Company at Kerr and Granger (in the event interchange at Granger is possible in the future) on the Taylor-Round Rock Line, and the Ferrocarriles Nacionales de Mexico ("FNM") at Eagle Pass on the San Antonio-Eagle Pass Route.

(d) At Eagle Pass, User shall have parity with SPT and shall have equal access to the Mexican border crossing at Eagle Pass; provided, however, movements to and from the border crossing bridge and within Eagle Pass shall be under the direction and control of the authorized representative of SPT. The parties also agree that:

- (i) User shall be responsible for issuing all shipment notifications; preparation and rendition of all assessorial billing; performing all collections; and provide all rail car tracing in connection with rail cars of User going to or from Mexico, as described in tariffs, transportation agreements and circulars published by User.
- (ii) User shall be responsible for instructing importers, exporters and brokers on processes required on the rail cars of User in order to comply with United States and Mexican customs regulations, agricultural regulations and other United States and Mexican federal regulatory agency regulations required to move rail cars of User between the United States and Mexico.
- (iii) User shall be responsible for the preparation and submission of all Inward Cargo Manifests, United States Customs Form 7533, and In-Bond Documents, United States Customs Form 7512, required by United States Customs on rail cars of User entering the United States. Further, User shall be responsible for submitting all In-Bond T&Es, United States Customs Form 75330-C, on all rail cars of User transiting the United States and exporting via User to Mexico.
- (iv) User shall be responsible for surrendering all Shippers Export Declarations, Form 7525, to United States Customs on United States export shipments of User.
- (v) User shall be responsible for providing, at its sole cost and expense, grain rail car cleaning, fumigation or other services that may be required to prepare a conveyance or its commodity for compliance with regulatory requirements for entry into the United States or Mexico.

- (vi) User shall be responsible for providing, at its sole cost and expense, all labor and equipment required to comply with United States Customs conveyance and/or commodity inspection requirements relative to rail cars of User moving north and south across the United States/Mexican border.
 - (vii) User shall be responsible for determining and supplying, at its sole cost and expense (if it chooses to supplement the rail car supply needs of the Mexican railroads), empty rail cars for all rail car orders for northbound loading out of Mexico when User is designated the first United States linehaul carrier in the route.
 - (viii) any switching required by User relative to the interchange of Equipment with FNM at Eagle Pass shall be performed at the Storage Tracks (as defined in Section 2(e)(ii) below) by User unless directed otherwise by the authorized representative of SPT. Such switching shall include, but not be limited to, immediately moving any Equipment that is refused, rejected, or set-back by FNM from the interchange tracks at Eagle Pass to the Storage Tracks (as defined in Section 2(e)(ii) below).
- (e) (i) User shall have the right to set out and pick up traffic on MPRR's line at Adams, Texas, MPRR Milepost 254.0, Smithville, Texas and at the LCRA plant at Halsted.
- (ii) SPT shall make available to User, without monetary consideration, two (2) storage tracks at Eagle Pass of approximately ten thousand (10,000) feet each in length at approximately SPT's Eagle Pass Branch Milepost 22 ("Storage Tracks") on which User shall have the right to set out, pick up, stage and/or switch rail cars as necessary relative to the industrial and interchange rights granted in this Agreement. The use of the Storage Tracks without charge is conditioned on User's compliance with the terms of its agreement with SP dated April 13, 1995.

In addition to the Storage Tracks, User shall have the right to set out and pick up at other locations in the vicinity of Eagle Pass as directed by the authorized representatives of SPT to facilitate an efficient operation between the parties.

If, at a later date, User wishes, at its sole cost and expense, to construct or have constructed additional trackage in the vicinity of Owner's Milepost 22 at Eagle Pass in connection with its operations

at Eagle Pass, and if in the reasonable opinion of Owner, property of Owner is available for such purpose, Owner shall convey to User, such property at its then fair market value. User agrees that the portions of connections(s) or crossover(s) (from point(s) of switch(es) to clear point(s)) ("Portions of Connection(s)") and diverging from the trackage of Owner shall be conveyed, without monetary consideration, by User to Owner. Such Portions of Connection(s) shall thereafter be maintained by Owner at the sole cost and expense of User on a flat rate basis to be agreed upon between Owner and User no later than six (6) months after the completion of the construction of the Portions of Connection(s).

(f) User shall have the right to establish crew change points at San Antonio and Eagle Pass, or such other points as from time to time may be mutually agreed to by Owner and User.

However, User agrees that if sufficient trackage is not available at such locations(s) to facilitate crew changes of User, Owner may require User to construct additional trackage ("Improvements") in the vicinity of such location as may be required in the reasonable judgement of Owner, the cost and expense of which shall be borne by User. In the event such Improvements are constructed at the cost and expense of User, and Owner shall choose to use such Improvements, Owner shall pay User fifty-percent (50%) of the cost of constructing such Improvements. Should Owner decline to participate, Owner shall be denied access to such Improvements. However, should Owner elect at a later date to use such Improvements, such right shall be granted to Owner by User upon payment of fifty percent (50%) of User's initial costs plus per annum interest thereon at a rate equal to the average paid on 90-day Treasury Bills of the United States Government as of the date of completion until the date of use by User commences. Per annum interest shall be adjusted annually on the first day of the twelfth (12th) month following the date of completion and every year thereafter on such date, based on the percentage increase or decrease, in the average yield of 30-year U.S. Treasury Notes for the prior year compared to their average yield in first year of completion of the Improvements. Each annual adjustment shall be subject, however, to a "cap" (up or down) of two percentage points of the prior year's interest rate (i.e. the adjustment may not exceed an amount equal to two percentage points of the immediately preceding year's interest rate).

In addition, Owner shall lease to User by separate written agreement, existing facilities, for office, locker, change and lunchroom purposes by User's personnel upon request of User to Owner, and as reasonably available, or property of Owner as reasonably available for User to establish its own facilities.

(g) User shall have the right to (a) access all existing industries which are served by UP and SP and no other railroad directly, by reciprocal switching, joint facility or other

arrangements, (b) serve any new shipper facility on any SP-owned line over which BNSF receives trackage rights pursuant to this Agreement, and (c) subject to the geographic limitations set forth below, serve new shipper facilities, future transloading facilities and to establish and exclusively serve intermodal and auto facilities at points listed on Exhibit A to the Settlement Agreement. The geographic limitations applicable to subparagraph (c) above shall generally correspond to the territory within which, prior to the merger of UP and SP, a new customer could have constructed a facility that would have been open to service by both UP and SP either directly or through reciprocal switch. Where switching districts have been established they shall be presumed to establish these geographic limitations.

User shall participate in fifty percent (50%) of Owner's cost and expense of any Improvements constituting connecting and access tracks and switches for such new shipper facilities upon User's election to directly serve such new shipper facility which then shall become part of the Joint Trackage. Should User decline to participate in the cost and expense of Improvements required to serve any new shipper facility, User shall be denied access to such new shipper facility and the Improvements then shall not be part of the Joint Trackage; provided, however, should User elect at a later date to serve such new shipper facility, such right shall be granted to User by Owner upon payment of fifty percent (50%) of Owner's initial cost and expense of the Improvements plus interest as calculated pursuant to Section 2 (f) above.

If User wishes to provide rail service to any new shipper facility at the locations set forth in this Section 2 (g), User shall provide Owner with written notice of its plans including a proposed rail service plan to the new shipper facility and Owner shall, within thirty (30) days of its receipt of such notice and plan, notify User of its approval or disapproval of User's plans for construction, which approval Owner shall not unreasonably withhold. In the event a request is approved by Owner, Owner shall construct and maintain the Improvements at User's sole cost and expense, provided, that Owner, subject to the provisions of the second paragraph of this Section 2(g) regarding payment of fifty percent (50%) of the cost thereof plus interest, if applicable, may elect to participate in the cost of Improvements at that time or in the future.

Forty-five (45) days before initiating service to a customer, User must elect, in writing, whether its service shall be (i) direct, (ii) through reciprocal switch, or (iii) with UP/SP's prior written agreement, using a third party contractor to perform switching for User alone or both User and UP/SP. User shall have the right, upon one hundred eighty (180) days' prior written notice to UP/SP, to change its election; provided, however, that User shall (x) not change its election more often than once every five (5) years and (y) shall reimburse UP/SP for any costs incurred by UP/SP in connection with such changed election.

(h) It is the intent of the parties that User shall, where sufficient volume exists, be able to utilize its own terminal facilities to handle local traffic. Facilities or portions thereof presently utilized by UP/SP shall, pursuant to a separate written agreement entered into between the parties, be provided by UP/SP to User by lease or purchase at normal and customary charges. Upon request of User and subject to availability and capacity, UP/SP shall, pursuant to a separate written agreement entered into between the parties, provide User with terminal support services, including fueling, running repairs and switching. UP/SP shall be reimbursed by User for such services at UP/SP's normal and customary charges. Where terminal support services are not required, User shall not be assessed additional charges for train movement through a terminal.

MPRR, pursuant to a separate written agreement, shall provide User emergency fueling and minor or emergency mechanical repairs at San Antonio.

(i) User may, subject to Owner's written consent, use agents for limited feeder service on the Joint Trackage.

(j) User shall have the right to inspect the Joint Trackage and require Owner to make such reasonable improvements as User deems necessary to facilitate its operations at User's sole cost and expense. Any such inspection must be completed and improvements identified to Owner within one (1) year of the effectiveness of this Agreement.

(k) User shall have the right to connect, for movements in all directions, with its present lines (including existing trackage rights) at points where its present lines (including existing trackage rights) intersect with lines it will purchase or be granted trackage rights over pursuant to the Settlement Agreement.

(l) User agrees that when entering, exiting, setting out or picking up from its existing lines of railroad or trackage rights lines ("User's Operations"), it shall do so without unreasonable interference or impairment of the Joint Trackage. However, User agrees that if sufficient trackage is not available at such location(s) to facilitate User's Operations, Owner may require User to construct additional trackage in the vicinity of such location(s) as may be required in the reasonable judgment of Owner, the cost and expense of which shall be borne solely by User. In the event such trackage is constructed at the cost and expense of User, and Owner shall choose to use such trackage, Owner shall pay User fifty percent (50%) of the cost of constructing such trackage plus interest as calculated pursuant to Section 2 (f) above.

3. GTM Rates:

(a) In addition to other payments to be made under this Agreement, User shall remit to Owner for the use of the Joint Trackage in the operation of its Equipment therealong and thereover, the total amount of the following sums monthly, which sums per

GTM ("GTM Rates") shall be deemed to include ordinary and programmed maintenance of the Joint Trackage, Changes in and/or Additions to the Joint Trackage (to the extent required by the first sentence of Section 2.2 of the General Conditions), operating expenses, interest rental, depreciation and taxes:

- (i) 3.1 mills per GTM for all Equipment, except as provided in Subsection (a)(ii) of this Section 3.
- (ii) 3.0 mills per GTM for unit trains (trains consisting entirely of sixty-seven (67) or more rail cars of bulk freight of a single commodity (except for intermodal shipments, unless of a single commodity), loaded or empty ("Unit Trains").

(b) For the purpose of computing the GTM Rates under this Section 3, it is mutually agreed that the distance between the designated points of the Joint Trackage shall be determined by reference to UPRR's EPMS Engineering Mileage Master and SPT's Station Pair Master File which shall be subject to verification by User.

(c) The GTM Rates set forth in Section 3 (a) of this Agreement shall be subject to adjustment annually, commencing as of July 1, 1997, as follows:

The GTM Rates shall be adjusted upward or downward effective July 1 of each year during the term of this Agreement by the percentage difference in the two (2) preceding years in UP/SP's system average URCS costs for the categories of maintenance and operating costs covered by the GTM Rates. "URCS Costs" shall mean costs developed using the Uniform Rail Costing System.

Upon every fifth anniversary of the effective date of this Agreement ("Anniversary Date"), either party may request, on ninety (90) days' written notice, that the parties jointly review the operations of the adjustment mechanism and renegotiate its application. If the parties do not agree on the need for or extent of adjustment to be made upon such renegotiation, either party may request binding arbitration under Section 6 of the General Conditions. It is the intention of the parties that rates and charges for trackage rights and services granted under this Agreement reflect the same basic relationship to operating costs as upon execution of this Agreement.

4. Reciprocal Switching Charges:

In addition to the other payments to be made under this Agreement, User shall remit to Owner the following amounts for reciprocal switching User elects to be performed by Owner under this Agreement.

(a) Except as provided in Subsection 4(b) below, Owner shall receive One Hundred Thirty Dollars (\$130) per rail car for rail cars of certain commodities switched to

and from an industry directly served by either SP or UP (such charge to apply once for the movement in and out).

(b) Owner shall receive Sixty Dollars (\$60) per rail car for rail cars constituting part of a Unit Train switched to and from an industry directly served by either SP or UP (such charge to apply once for the movement in and out) that contain commodities within the following Standard Transportation Commodity Codes ("STCC"): 01131, 01132, 01133, 01135, 01136, 01137, 01139 and 01144.

Charges set forth in this Section 4 shall be adjusted July 1 of each year during the term of this Agreement to reflect fifty percent (50%) of increases or decreases in the Rail Cost Adjustment Factor ("Index"), not adjusted for changes in productivity ("RCAF-U"), published by the STB or successor agency or other organization. In the event the RCAF-U is no longer maintained, the parties shall select a substantially similar index and failing to agree on such an index, the matter shall be referred to binding arbitration under Section 6 of the General Conditions. The ratio between the Index for the year immediately prior to any year in which an increase or decrease is to be made effective and the Index for the year 1995 shall be developed, and the reciprocal switching charge shall be increased or decreased in direct proportion to 50% of such ratio, but under no circumstances shall the adjusted rate be less than the initial reciprocal switching charges provided in this Agreement.

5. Additions:

(a) Owner and User shall conduct a joint inspection to determine what connections ("Connections") and sidings or siding extensions associated with Connections ("Sidings") are necessary to implement the rights granted under Section 2 of this Agreement. User, at its sole cost and expense, shall pay the cost of such Connections and Sidings. In the event Owner shall elect to use such Connections and Sidings, Owner shall pay to User fifty percent (50%) of the cost to User of constructing the Connections and Sidings, plus interest as calculated pursuant to Section 2 above. Owner shall maintain the part of any Connection or Siding on its property at its sole cost and expense, and User, at its sole cost and expense, shall maintain the part of any Connection or Siding on its property or property of others.

(b) Except as provided in Section 5 (a) above, expenditures for any future Changes in and/or Additions to the Joint Trackage, such as, but not limited to, sidings (other than Improvements), Centralized Traffic Control, grade separations, and future connections (other than Connections), shall be handled as follows:

- (i) Owner shall bear the cost of all Changes in and/or Additions to the Joint Trackage that are necessary to achieve the benefits of the consolidation of UP and SP as outlined in the application filed with the STB in Finance Docket No. 32760 for UP to control SP. The operating plan filed by UP and SP in support of that application shall

be given presumptive weight in determining what Changes in and/or Additions to the Joint Trackage are necessary to achieve these benefits.

- (ii) Any Changes in and/or Additions to the Joint Trackage other than those covered by subparagraph (b)(i) of this Section 5 above shall be shared by Owner and User on the basis that the parties' respective GTMs operated over the Joint Trackage bear to total GTMs operated over the Joint Trackage for the twelve (12) month period immediately prior to the month work on the project is commenced; provided, that User shall not be required to share in the cost of any Changes in and/or Additions to the Joint Trackage under the provision of this subparagraph (ii) for eighteen (18) months following UP's acquisition of control of SP as outlined in the application filed with the STB in Finance Docket No. 32760. The use of Joint Trackage by any third party shall be attributed to Owner for purposes of computing respective GTMs for purposes of this Section 5 (b).

6. Notices:

All notices, demands, requests, submissions and other communications which are required or permitted to be given pursuant to this Agreement shall be given by either party to the other in writing and shall be deemed properly served if delivered by hand, or mailed by overnight courier or by registered or certified mail, return receipt requested, with postage prepaid, to such other party at the address listed below:

If intended for UP/SP:

Executive Vice President-Operation
Room 1206
1416 Dodge Street
Omaha, Nebraska 68179

With a copy to:

Director Joint Facilities
Room 1200
1416 Dodge Street
Omaha, Nebraska 68179

If intended for User:

Sr. Vice President-Operations
2600 Lou Menk Drive
P.O. Box 961034
Fort Worth, Texas 76161-0034

With a copy to:

General Director Contracts
and Joint Facilities
2600 Lou Menk Drive
P.O. Box 961034
Fort Worth, Texas 76161-0034

Notice of address change may be given any time pursuant to the provisions of this Section 6.

7. Settlement Agreement.

The provisions, rights and obligations set forth in the Settlement Agreement, as amended and supplemented from time to time, shall survive, and nothing herein shall be deemed to repeal or supersede the Settlement Agreement, as amended and supplemented. If any conflict between the Settlement Agreement and this Agreement shall arise, the provisions of the Settlement Agreement, as amended and supplemented, shall govern.

8. Other Agreements.

This Agreement shall not become effective unless and until each and every truckage rights, haulage, purchase/sale and proportional rate agreement between and among the parties to the Settlement Agreement (collectively, the "Other Agreements") necessary to implement the Settlement Agreement becomes effective in accordance with the terms of each such Other Agreement and the Settlement Agreement; and in the event that one or more of such Other Agreements for any reason does not become effective, this Agreement shall be of no force and effect and shall terminate.

[illegible]

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**SOUTHERN PACIFIC TRANSPORTATION
COMPANY**

By: _____
Its: _____

MISSOURI PACIFIC RAILROAD COMPANY

By: James V. Dean
Its: Vice President - Law

**BURLINGTON NORTHERN RAILROAD
COMPANY**

By: _____
Its: _____

**THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY**

By: _____
Its: _____

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

SOUTHERN PACIFIC TRANSPORTATION
COMPANY

By:

Its: VP

MISSOURI PACIFIC RAILROAD COMPANY

By: _____

Its: _____

BURLINGTON NORTHERN RAILROAD
COMPANY

By: _____

Its: _____

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY

By: _____

Its: _____

JUN 27 '96 04:15PM B/N SHOP SUPT.

JUN 27 '96 14:56 FR UPRR OMAHA LAW DEPT 482 271 5518 TO 814824584352

P.24.24/26

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

SOUTHERN PACIFIC TRANSPORTATION
COMPANY

By: _____
Its: _____


MISSOURI PACIFIC RAILROAD COMPANY

By: _____
Its: _____

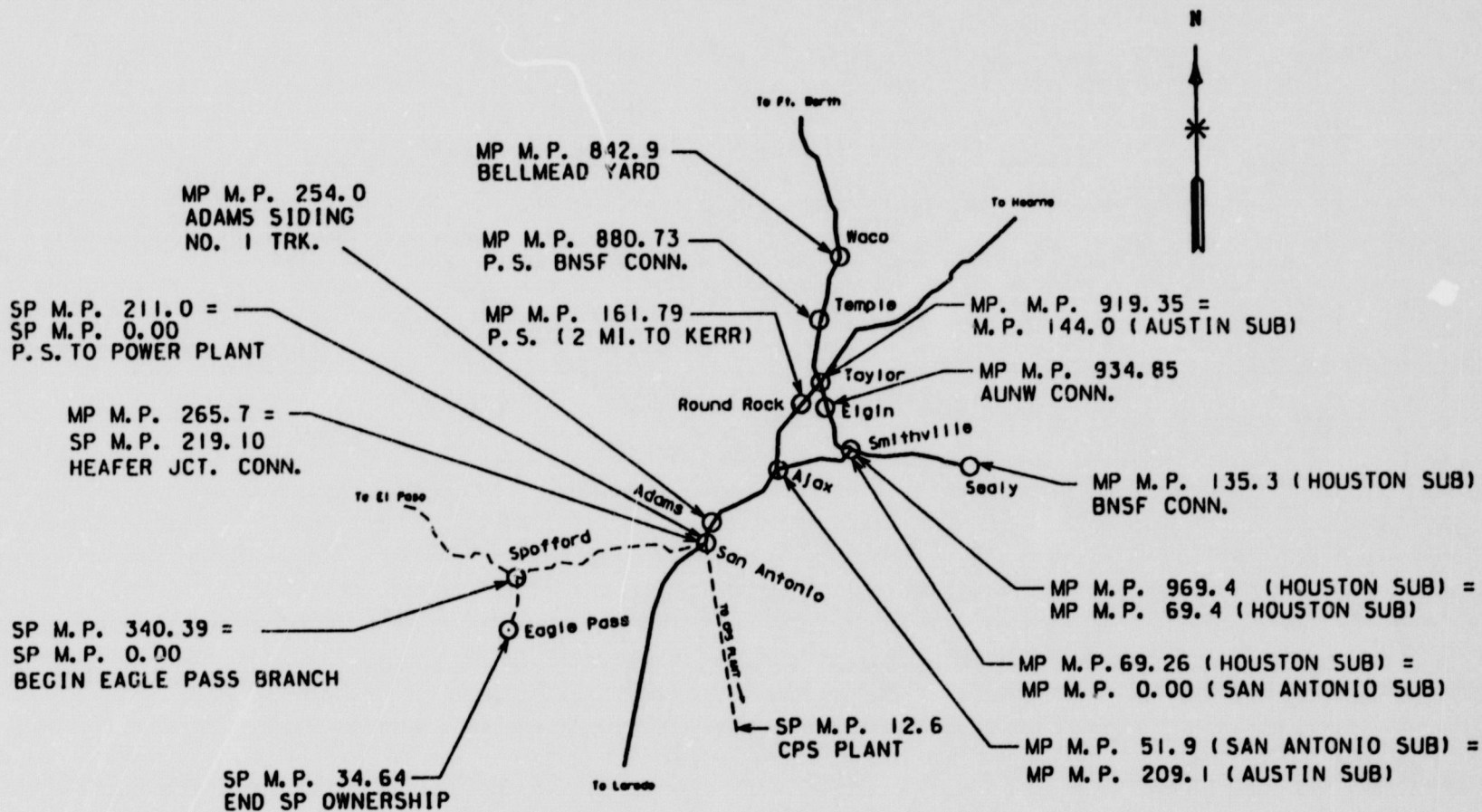
BURLINGTON NORTHERN RAILROAD
COMPANY

By: 
Its: _____

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY

By: 
Its: _____

CH/RECEIVED/SP/RY/AST



LEGEND:

— MISSOURI PACIFIC RR
 - - - SOUTHERN PACIFIC RR
 + + + OTHER RR

EXHIBIT A
 BNSF TRackage RIGHTS
 CENTRAL TEXAS
 06/01/96 FIGURE 4-1

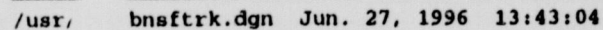


EXHIBIT "B"
GENERAL CONDITIONS

Section 1. DEFINITIONS

1.1 "Agreement" shall mean that certain agreement dated June 1, 1996 to which this Exhibit "B" is appended.

1.2 "Annual" shall mean a calendar year.

1.3 "Changes in and/or Additions to" shall mean work projects and retirements, the cost of which is chargeable in whole or in part to Property Accounts during the term of this Agreement.

1.4 "Equipment" shall mean trains, locomotives, rail cars (loaded or empty), intermodal units (loaded or empty), cabooses, vehicles, and machinery which are capable of being operated on railroad tracks or on right-of-way for purpose of the maintenance or repair of such railroad tracks.

1.5 "GTM" shall mean gross ton mile which is all tonnage for Equipment transported over one (1) mile of track included in the Joint Trackage.

1.6 "GTM Handled Proportion" shall mean the GTMs handled over the Joint Trackage by or for a party divided by the total number of GTMs handled by or for all parties using the Joint Trackage, during the same period. For the purpose of computing such GTM's Handled Proportion, Equipment engaged in work service pertaining to construction, maintenance or operation of the Joint Trackage or Changes in and/or Additions to the Joint Trackage shall not be counted.

1.7 "Joint Trackage" shall mean the track structure of Owner as described in the Agreement including necessary right-of-way and all appurtenances, signals, communications, and facilities of Owner and all Changes in and/or Additions to now or in the future located as are required or desirable for the operation of the Equipment of the parties hereto.

1.8 "Mill" shall mean one-tenth of a cent (\$0.001 US).

1.9 "Owner" shall have the meaning given to it in the Agreement.

1.10 "Property Accounts" shall mean accounts so designated under the Uniform System of Accounts for Railroad Companies prescribed by the Interstate Commerce Commission, or any replacement of such system prescribed by the applicable federal regulatory agency, if any, and used by the parties hereto.

1.11 "STB" means the Surface Transportation Board of the United States Department of Transportation or any successor agency.

1.12 "User" shall have the meaning given to it in the Agreement.

Section 2. MAINTENANCE, ADDITIONS, OPERATION, AND CONTROL

2.1 Owner shall have sole charge of the maintenance and repair of the Joint Trackage with its own supervisors, labor, materials and equipment. Owner, from time to time, may make such Changes in and/or Additions to the Joint Trackage as shall be required by any law, rule, regulation or ordinance promulgated by any government body having jurisdiction, or as Owner, in its sole discretion, shall deem necessary, subject to Section 2.2. Such Changes in and/or Additions to the Joint Trackage shall become a part of the Joint Trackage or in the case of retirements shall be excluded from the Joint Trackage.

2.2 Unless otherwise mutually agreed to by the parties in writing, Owner shall, (i) keep and maintain the Joint Trackage on a consistent basis at no less than the track standard designated in the timetable in effect on the date of the Agreement, including special instructions for the Joint Trackage as of the date of the Agreement, (ii) maintain at least the physical capacity of the Joint Trackage as of the date of the Agreement (i.e., number of main tracks, support tracks, signal systems, rail weight, line clearances, etc.), and (iii) be responsible for any Changes in and/or Additions to the Joint Trackage as shall be necessary to accommodate the traffic of Owner and User while maintaining existing service standards (including transit times) in effect on the date of the Agreement. In the event that User desires that the Joint Trackage be improved to a condition in excess of the standard set forth in this Section 2.2, or desires that other Changes in and/or Additions to be made to the Joint Trackage, Owner agrees to make such Changes in and/or Additions to the Joint Trackage if funded in advance by User. Thereafter, such Changes in and/or Additions to the Joint Trackage shall become part of the Joint Trackage and shall be maintained by Owner in such improved condition.

2.3 Owner shall employ all persons necessary to construct, operate, maintain, repair and renew the Joint Trackage. Owner shall be bound to use reasonable and customary care, skill and diligence in the construction, operation, maintenance, repair and renewal of the Joint Trackage and in managing of the same. Owner shall make its best effort to ensure that User is given the same advance notice of maintenance plans and schedules as is provided to Owner's personnel.

2.4 The trackage rights granted hereunder shall give User access to and joint use of the Joint Trackage equal to that of Owner. The management, operation (including dispatching) and maintenance of the Joint Trackage shall, at all times, be under the exclusive direction and control of Owner, the movement of Equipment over and along the Joint Trackage shall at all times be subject to the exclusive direction and control of Owner's authorized representatives and in accordance with such reasonable operating rules as Owner shall from time to time institute, but in the management, operation (including dispatching) and maintenance of the Joint Trackage, Owner and User shall be treated equally. All operating, dispatching and maintenance decisions by Owner affecting the movement of Equipment on the Joint Trackage shall be made pursuant to the BNSF-UP/SP Dispatching Protocols attached hereto as Attachment 1.

2.5 If the use of the Joint Trackage shall at any time be interrupted or traffic thereon or thereover be delayed for any cause, neither party shall have or make any claim against the other for loss, damage or expense caused by or resulting solely from such interruption or delay.

2.6 Owner may from time to time provide any track or tracks on the Joint Trackage other than those delineated in Exhibit A to the Agreement for use by User provided there shall at all times be afforded User a continuous route of equal utility for the operations of its Equipment between the termini of the Joint Trackage. When such tracks which are not part of the Joint Trackage are used as provided herein, the Agreement shall govern for purposes of direction and control and liability as if all movement had been made over the Joint Trackage.

2.7 Each party shall be responsible for furnishing, at its sole cost and expense, all labor, fuel and train and other supplies necessary for the operation of its own Equipment over the Joint Trackage. In the event a party does furnish such labor, fuel or train and other supplies to another party, the party receiving the same shall promptly, upon receipt of billing therefor, reimburse the party furnishing the same for its reasonable costs thereof, including customary additives.

2.8 User shall be responsible for the reporting and payment of any mileage, per diem, use or rental charges accruing on Equipment in User's account on the Joint Trackage. Except as may be specifically provided for in this Agreement, nothing herein contained is intended to change practices with respect to interchange of traffic between the parties or with other carriers on or along the Joint Trackage.

2.9 Except as otherwise may be provided in the Agreement, User shall operate its Equipment over the Joint Trackage with its own employees, but before said employees are assigned or permitted to operate Equipment over the Joint Trackage as herein provided, and from time to time thereafter as and when reasonably requested by Owner, they shall be required to pass the applicable rules examinations required by

Owner of its own employees. Owner shall delegate to specified User's officers the conduct of such examinations in the event User chooses to conduct such examinations. If an Owner officer conducts such examinations of employees of User, User shall pay Owner a reasonable fee for each employee so examined, such fee to be mutually agreed upon by the parties from time to time in a separate agreement. Notwithstanding any such examination, User shall be responsible for ensuring that its employees are qualified and have taken all such rules examinations. During the initial start-up period, User shall allow Owner's pilot, at User's sole cost and expense, to accompany User over the Joint Trackage as Owner may in its reasonable judgment deem necessary. Should Owner ever require a pilot on User's Equipment after the initial start-up period on a frequent basis, that matter shall be referred to the Committee for resolution.

2.10 If any employee of User shall neglect, refuse or fail to abide by Owner's rules, instructions and restrictions governing the operation on or along the Joint Trackage, such employee shall, upon written request of Owner, be prohibited by User from working on the Joint Trackage. If either party shall deem it necessary to hold a formal investigation to establish such neglect, refusal or failure on the part of any employee of User, then upon such notice presented in writing, Owner and User shall promptly hold a joint investigation in which the parties concerned shall participate and bear the expense for their respective officers, counsel, witnesses and employees. Notice of such investigations to User's employees shall be given by User's officers, and such investigation shall be conducted in accordance with the terms and conditions of schedule agreements between User and its employees. If, in the judgment of Owner, the result of such investigation warrants, such employee shall, upon written request by Owner, be withdrawn by User from service on the Joint Trackage, and User shall release and indemnify Owner from and against any and all claims and expenses arising from such withdrawal.

If the disciplinary action is appealed by an employee of User to the National Railroad Adjustment Board or other tribunal lawfully created to adjudicate such cases, and if the decision of such board or tribunal sustains the employee's position, such employee shall not thereafter be barred from service on the Joint Trackage by reason of such disciplinary action.

2.11 If any Equipment of User is bad ordered enroute on the Joint Trackage and (i) it is necessary that it be set out, and (ii) only light repairs to the Equipment are required, such bad ordered Equipment shall be promptly repaired, and, thereafter, be promptly removed from the Joint Trackage by User. Owner may, upon request of User and at User's sole cost and expense, furnish the required labor and material and perform light repairs to make such bad ordered Equipment safe for movement. The employees and Equipment of Owner while in any manner so engaged or while enroute to or returning to Owner's terminal from such an assignment shall be considered Sole Employees (as hereinafter defined) of User and Sole Property (as hereinafter defined)

of User. However, should Owner's employees after repairing such bad ordered Equipment for User move directly to perform service for Owner's benefit rather than return to Owner's terminal, then User's exclusive time and liability will end when Owner's employees depart for work to be performed for Owner's benefit. In the case of such repairs by Owner to freight cars in User's account, billing therefor shall be in accordance with the Field and Office Manuals of the Interchange Rules, adopted by the Association of American Railroads, hereinafter called "Interchange Rules", in effect on the date of performance of the repairs. Owner shall then prepare and submit billing directly to and collect from the car owner for car owner responsibility items as determined under said Interchange Rules, and Owner shall prepare and submit billing directly to and collect from User for handling line responsibility items as determined under said Interchange Rules. Owner also shall submit billing to and collect from User any charges for repair to freight cars that are User's car owner responsibility items as determined under said Interchange Rules, should said car owner refuse or otherwise fail to make payment therefor. Repairs to locomotives shall be billed as provided for in Section 3 of these General Conditions.

2.12 If Equipment of User shall become derailed, wrecked, or otherwise disabled while upon the Joint Trackage, it shall be rerailed or cleared by Owner, except that employees of User may rerail User's derailed Equipment on the Joint Trackage whenever use of motorized on or off track equipment is not required; however, in any such case, employees of User shall consult with and be governed by the directions of Owner. Owner reserves the right to rerail Equipment of User when, in the judgment of Owner, Owner deems it advisable to do so to minimize delays and interruptions to train movement. The reasonable costs and expenses of rerailing or clearing derailed, wrecked or disabled Equipment shall be borne by the parties in accordance with Section 5 of these General Conditions. Services provided under this section shall be billed in accordance with Section 3 of these General Conditions.

2.13 In the event Equipment of User shall be forced to stop on the Joint Trackage, and such stoppage is due to insufficient hours of service remaining among User's employees, or due to mechanical failure of User's Equipment (other than bad ordered Equipment subject to light repairs pursuant to Section 2.12), or to any other cause not resulting from an accident or derailment (including the failure of User to promptly repair and clear bad ordered Equipment pursuant to Section 2.12), and such Equipment is unable to proceed, or if a train of User fails to maintain the speed required by Owner on the Joint Trackage, or if, in emergencies, disabled Equipment is set out of User's trains on the Joint Trackage, Owner shall have the option to furnish motive power or such other assistance (including but not limited to the right to recrew User's train) as may be necessary to haul, help or push such Equipment, or to properly move the disabled Equipment off the Joint Trackage. The reasonable costs and expenses of rendering such assistance shall be borne by User. Services provided

under this section shall be billed in accordance with Section 3 of these General Conditions.

2.14 User shall pay to Owner reasonable expenses incurred by Owner in the issuance of timetables made necessary solely by changes in the running time of the trains of User over the Joint Trackage. If changes in running time of trains of Owner or third parties, as well as those of User, require the issuance of timetables, then User shall pay to Owner that proportion of the expenses incurred that one bears to the total number of parties changing the running time of their trains. If changes in running time of trains of Owner or third parties, but not those of User, require the issuance of timetables, then User shall not be required to pay a proportion of the expenses incurred in connection therewith.

2.15 User, at Owner's request, shall be responsible for reporting to Owner the statistical data called for in the Agreement, which may include, but is not limited to, the number and type of Equipment and GTMs operated on the Joint Trackage.

Section 3. BILLING

3.1 Billing shall be accomplished on the basis of data contained in a billing form mutually agreed to between the parties. Such billing forms shall contain sufficient detail to permit computation of payments to be made hereunder. Billing shall be prepared according to the rules, additives, and equipment rental rates as published by the Owner. User shall pay to Owner at the Office of the Treasurer of Owner, or at such other location as Owner may from time to time designate in writing, all the compensation and charges of every name and nature which in and by the Agreement User is required to pay in lawful money of the United States within sixty (60) days after the rendition of bills therefor. Bills shall contain a statement of the amount due on account of the expenses incurred, properties and facilities provided and services rendered during the billing period.

3.2 Errors or disputed items in any bill shall not be deemed a valid excuse for delaying payment, but shall be paid subject to subsequent adjustment; provided, no exception to any bill shall be honored, recognized or considered if filed after the expiration of three (3) years from the last day of the calendar month during which the bill is rendered and no bill shall be rendered later than three (3) years (i) after the last day of the calendar month in which the expense covered thereby is incurred, or (ii) in the case of claims disputed as to amount or liability, after the amount is settled and/or the liability is established. This provision shall not limit the retroactive adjustment of billing made pursuant to exception taken to original accounting by or under authority of the STB or retroactive adjustment of wage rates and settlement of wage claims.

3.3 So much of the books, accounts and records of each party hereto as are related to the subject matter of Agreement shall at all reasonable times be open to inspection by the authorized representatives and agents of the parties hereto.

All books, accounts, and records shall be maintained to furnish readily full information for each item in accordance with any applicable laws or regulations.

3.4 Should any payment become payable by Owner to User under the Agreement, the provisions of Sections 3.1 and 3.2 of these General Conditions shall apply with User as the billing party and Owner as the paying party.

3.5 Either party hereto may assign any receivables due it under this Agreement; provided, however, that such assignments shall not relieve the assignor of any rights or obligations under the Agreement.

Section 4. COMPLIANCE WITH LAWS

4.1 With respect to operation of Equipment on the Joint Trackage, each party shall comply with all applicable federal, state and local laws, rules, regulations, orders, decisions and ordinances ("Standards"), and if any failure on the part of any party to so comply shall result in a fine, penalty, cost or charge being imposed or assessed on or against another party, such other party shall give prompt notice to the failing party and the failing party shall promptly reimburse and indemnify the other party for such fine, penalty, cost or charge and all expenses and attorneys' fees incurred in connection therewith, and shall upon request of the other party defend such action free of cost, charge and expense to the other party.

4.2 User agrees to comply fully with all applicable Standards concerning "hazardous waste" and "hazardous substances" ("Hazardous Materials"). User covenants that it shall not treat or dispose of Hazardous Materials on the Joint Trackage. User further agrees to furnish Owner (if requested) with proof, satisfactory to Owner, that User is in such compliance.

In the event any accident, bad ordered Equipment, derailment, vandalism or wreck (for purposes of this Section 4.2 and 4.3 hereinafter called collectively "Derailment") involving Equipment of or a train operated by User carrying Hazardous Materials shall occur on any segment of the Joint Trackage, any report required by federal, state or local authorities shall be the responsibility of User. User shall also advise the owner/shipper of the Hazardous Materials involved in the Derailment, and Owner, immediately.

In the event of a Derailment, Owner shall assume responsibility for cleaning up any release of Hazardous Materials from User's Equipment in accordance with all

federal, state, or local regulatory requirements. User may have representatives at the scene of the Derailment to observe and provide information and recommendations concerning the characteristics of Hazardous Materials release and the cleanup effort. Such costs shall be borne in accordance with Section 5 of these General Conditions.

If a Hazardous Materials release caused by a derailment involving Equipment of User, or on a train operated by User, results in contamination of real property or water on the Joint Trackage or on real property or water adjacent to the Joint Trackage (whether such real property or water is owned by Owner or a third party), Owner shall assume responsibility for emergency cleanup conducted to prevent further damage. User shall be responsible for performing cleanup efforts thereafter. Any costs associated with cleaning up real property or water on or adjacent to the Joint Trackage contaminated by Hazardous Materials shall be borne in accordance with Section 5 of these General Conditions.

If Hazardous Materials must be transferred to undamaged Equipment or trucks as a result of a release caused by a derailment involving Equipment of User, or on a train operated by User, User shall perform the transfer; PROVIDED, HOWEVER, that if the Hazardous Materials are in damaged Equipment that is blocking the Joint Trackage, Owner, at its option, may transfer the Hazardous Materials with any costs associated with such transfer borne in accordance with Section 5 of these General Conditions. Transfers of Hazardous Materials by User shall only be conducted after being authorized by Owner.

4.3 The total cost of clearing a Derailment, cleaning up any Hazardous Materials released during such Derailment, and/or repairing the Joint Trackage or any other property damaged thereby shall be borne by the party or parties liable therefor in accordance with Section 5 of these General Conditions.

4.4 In the event of release of Hazardous Materials caused by faulty Equipment or third parties, cleanup will be conducted as stated in Sections 4.2 and 4.3 of these General Conditions.

Section 5. LIABILITY

5.1 General. The provisions of this Section 5 shall apply only as between the parties hereto and are solely for their benefit. Nothing herein is intended to be for the benefit of any person or entity other than the parties hereto. It is the explicit intention of the parties hereto that no person or entity other than the parties hereto is or shall be entitled to bring any action to enforce any provision hereof against any of the parties hereto, and the assumptions, indemnities, covenants, undertakings and agreements set forth herein shall be solely for the benefit of, and shall be enforceable only by, the parties hereto. Notwithstanding anything contained in this Section 5, no

provisions hereof shall be deemed to deprive Owner or User of the right to enforce or shall otherwise restrict any remedies to which they would otherwise be entitled under other provisions of this Agreement as a result of the other party's failure to perform or observe any other obligation or duty created by this Agreement. The provisions of this Section 5 shall apply as between the parties hereto irrespective of the terms of any other agreements between the parties hereto and other railroads using the Joint Trackage, and the allocation of liabilities provided for herein shall control as between the parties hereto.

5.2 Definitions and Covenants. The parties agree that for the purposes of this Section 5:

(a) The term "Employee(s)" of a party shall mean all officers, agents, employees and contractors of that party. Such Employees shall be treated either as "Sole Employees" or "Joint Employees", as hereinafter specified;

(b) "Sole Employees" and "Sole Property" shall mean one or more Employees, Equipment, tools and other equipment and machinery while engaged in, en route to or from, or otherwise on duty incident to performing service for the exclusive benefit of one party. Pilots furnished by Owner to assist in operating Equipment of User shall be considered the Sole Employees of User while engaged in such operations. Equipment shall be deemed to be the Sole Property of the party receiving the same at such time as deemed interchanged under AAR rules or applicable interchange agreements, or when such party is responsible for the car hire or per diem for the Equipment under agreement between the parties;

(c) "Joint Employee" shall mean one or more Employees while engaged in maintaining, repairing, constructing, renewing, removing, inspecting or managing the Joint Trackage or making Changes in and/or Additions to the Joint Trackage for the benefit of both of the parties hereto, or while preparing to engage in, en route to or from, or otherwise on duty incident to performing such service for the benefit of both parties;

(d) "Joint Property" shall mean the Joint Trackage and all appurtenances thereto, and all Equipment, tools and other equipment and machinery while engaged in maintaining, repairing, constructing, renewing, removing, inspecting, managing or making Changes in and/or Additions to the Joint Trackage for the benefit of both of the parties hereto, or while being prepared to engage in, en route to or from, or otherwise incident to performing such service;

(e) "Loss and/or Damage" shall mean injury to or death of any person, including Employees of the parties hereto, and loss or damage to any property, including property of the parties hereto and property being transported by the parties, which arises out of an incident occurring on, the Joint Trackage and shall include liability for any and all claims, suits, demands, judgments and damages resulting from or arising out of such injury, death, loss or damage, except liability for punitive and exemplary damages as specified in the next following sentence. Loss and/or Damage shall include all costs and expenses incidental to any claims, suits, demands and judgments, including attorneys' fees, court costs and other costs of investigation and litigation, but Loss and/or Damage shall not include exemplary or punitive damages (any such exemplary or punitive damages arising out of an incident occurring on, or taking place on, the Joint Trackage being hereinafter referred to as "Other Liability"). Loss and/or Damage shall further include the expense of clearing wrecked or derailed Equipment and the costs of environmental protection, mitigation or clean up necessitated by such wreck or derailment and shall include any liabilities for any third-party claims for personal injury or death, property damage, natural resource damage, or any penalties, judgments or fines associated with a release of any contaminants resulting from such wreck or derailment. Loss and/or Damage shall be reduced by any amount recovered from third parties;

(f) Operating Employees of Owner whose service may be jointly used by the parties hereto for the movement of trains over the Joint Trackage, including, but not limited to, train dispatchers, train order operators, operator clerks and watchmen shall at the time of performing their services be deemed to be Sole Employees of the party hereto for whose benefit said services may be separately rendered (during the time they are so separately rendered) and be deemed to be Joint Employees of the parties hereto at such time as their services may be rendered for the parties' joint benefit;

(g) All Employees, Equipment, tools and other equipment and machinery other than as described in (b), (c), (d) or (f) above or in Section 5.4. shall be deemed the Sole Employees of the employing party and the Sole Property of the using party;

(h) Any railroad not a party to this Agreement heretofore or hereafter admitted to the use of any portion of the Joint Trackage, shall, as between the parties hereto, be regarded in the same light as a third party. Without limiting the generality of the foregoing, neither of the parties hereto assumes any responsibility to the other under the

provisions of this Agreement for any Loss and/or Damage or Other Liability occasioned by the acts or omissions of any employees of any such other railroad, or for any Loss and/or Damage or Other Liability which such other railroad shall be obligated to assume in whole or in part pursuant to law or any agreement relating to such other railroad's use of any portion of the Joint Trackage;

(i) For the purpose of this Section 5, Equipment of foreign lines being detoured over the Joint Trackage, and all persons other than Joint Employees engaged in moving such Equipment, shall be considered the Equipment and Employees of the party hereto under whose detour agreement or other auspices such movement is being made.

5.3 Reimbursement and Defense. The parties agree that:

(a) Each party hereto shall pay promptly Loss and/or Damage or Other Liability for which such party shall be liable under the provisions of this Section 5, and shall indemnify the other party against such Loss and/or Damage or Other Liability, including reasonable attorneys' fees and costs. If any suit or suits shall be brought against either of the parties hereto and any judgment or judgment shall be recovered which said party is compelled to pay, and the other party shall under the provisions of the Agreement be solely liable therefor, then the party which is so liable shall promptly repay on demand to the other party paying the same any monies which it may have been required to pay, whether in the way of Loss and/or Damage, Other Liability, costs, fees or other expenses; and if the Loss and/or Damage or Other Liability in such case or cases is joint or allocated between the parties to the Agreement, the party defendant paying the same or any costs, fees or other expenses shall be reimbursed by the other party as allocated pursuant to this Agreement;

(b) Each party covenants and agrees with the other party that it will pay for all Loss and/or Damage or Other Liability, both as to persons and property, and related costs which it has herein assumed, or agreed to pay, the judgment of any court in a suit by third party or parties to the contrary notwithstanding, and will forever indemnify and save harmless the other party, its successors and assigns, from and against all liability and claims therefor, or by reason thereof, and will pay, satisfy and discharge all judgments that may be rendered by reason thereof, and all costs, charges and expenses incident thereto;

(c) Each party hereto shall have the sole right to settle, or cause to be settled for it, all claims for Loss and/or Damage and Other

Liability for which such party shall be solely liable under the provisions of this Section 5, and the sole right to defend or cause to be defended all suits for the recovery of any such Loss and/or Damage or Other Liability for which such party shall be solely liable under the provisions of this Section 5;

(d) User shall provide written notice to Owner of any accidents or events resulting in Loss and/or Damage or Other Liability within seven (7) days of its discovery or receipt of notification of such occurrence;

(e) In the event both parties hereto may be liable for any Loss and/or Damage or Other Liability under the provisions of this Section 5 ("Co-Liable"), and the same shall be settled by a voluntary payment of money or other valuable consideration by one of the parties Co-Liable therefor, release from liability shall be taken to and in the name of all the parties so liable; however, no such settlement in excess of the sum of One Hundred Thousand Dollars (\$100,000) shall be made by or for any party Co-Liable therefor without the written consent of the other parties so liable, but any settlement made by any party in consideration of One Hundred Thousand Dollars (\$100,000) or a lesser sum shall be binding upon the other parties and allocated in accordance with Section 5.5; and no party shall unreasonably withhold its consent to a settlement proposed by the other party; **[failure by a party to secure consent from the other shall not release such other party except to the extent such other party was prejudiced by the failure.]**

(f) In case a claim or suit shall be commenced against any party hereto for or on account of Loss and/or Damage or Other Liability for which another party hereto is or may be solely liable or Co-Liable under the provisions of this Section 5, the party against whom such claim or suit is commenced shall give to such other party prompt notice in writing of the pendency of such claim or suit, and thereupon such other party shall assume or join in the defense of such claim or suit as follows: If the claim or suit involves Loss and/or Damage to the Sole Employees or Sole Property of a party or its invitee or property in its care, custody or control, that party shall assume and control the investigation and defense of such claim or suit; if the claim or suit involves Loss and/or Damage to third parties, Joint Employees or the Joint Trackage, the party whose Sole Employees or Equipment were involved in the incident shall investigate and defend such claim or suit; and if such claim or suit involves Loss and/or Damage to third parties, Joint Employees or the Joint Trackage and neither or both party's Equipment and Sole Employees were involved in the incident, Owner shall investigate and defend such claim or suit;

provided that the other party also may participate in the defense of any of the foregoing if it may have liability as a result of such incident;

[failure by a party to secure consent from the other shall not release such other party except to the extent such other party was prejudiced by the failure.]

(g) No party hereto shall be conclusively bound by any judgments against the other party, unless the former party shall have had reasonable notice requiring or permitting it to investigate and defend and reasonable opportunity to make such defense. When such notice and opportunity shall have been given, the party so notified and the other party shall be conclusively bound by the judgment as to all matters which could have been litigated in such suit, including without limitation a determination of the relative or comparative fault of each and the fault resulting in Other Liability.

5.4 Wrecks and Derailment. The cost and expense of repairing bad ordered Equipment, clearing wrecks or otherwise disabled Equipment or rerailing Equipment (and the costs of repair or renewal of damaged Joint Trackage or adjacent properties) shall be borne by the party whose Equipment was wrecked, disabled, or derailed or caused such damage. All Employees or Equipment, while engaged in, en route to or from, or otherwise incident to operating wrecker or work trains clearing wrecks, disabled Equipment or Derailments or engaged in repair or renewal of the Joint Trackage subsequent to any such wreck, disability or Derailment, shall be deemed to be Sole Employees and/or Sole Property of the party whose Equipment was wrecked, disabled or derailed. However, such Employees or Equipment, while en route from performing such clearing of wrecks, disabled Equipment or Derailments or repairing or renewing the Joint Trackage to perform another type of service, shall not be deemed to be performing service incident to the instant wreck, disability or Derailment.

5.5 Allocation.

(a) Each party shall bear all costs of Loss and/or Damage to its Sole Employees or its Sole Property, or property in its care, custody or control or its invitees without regard to which party was at fault.

(b) Loss and/or Damage to third parties (i.e., any person or entity other than a party hereto, a Sole Employee of either party, a Joint Employee or an invitee of either party) or their property, to Joint Employees or their property or to Joint Property shall be borne by the parties hereto as follows:

(i) If the Loss and/or Damage is attributable to the actions or omissions of only one party hereto, that party shall bear and pay all of such Loss and/or Damage.

(ii) If such Loss and/or Damage is attributable to the acts or omissions of more than one party hereto, such Loss and/or Damage shall be borne and paid by those parties in accordance with a comparative negligence standard, whereby each such party shall bear and pay a portion of the Loss and/or Damage equal to the degree of causative fault or percentage of responsibility for the Loss and/or Damage attributable to that party without regard to laws limiting recovery if one party is more than fifty percent (50%) at fault.

(iii) Loss and/or Damage to third parties or Joint Employees occurring in such a way that it cannot be determined how such Loss and/or Damage came about shall be apportioned equally between the parties, provided that, without limitation, User shall not bear or incur any liability for claims, suits, demands, judgments, losses or damages resulting from environmental contamination of or hazardous material on or released from the Joint Trackage, except contamination or a release of hazardous materials from User's own Equipment or caused by or arising from the actions or omissions of User or User's Employees, and then only in accordance with the other provisions hereof.

(c) Other Liability shall be borne by the parties hereto as follows:

(i) If the Other Liability is based upon the act or omission of only one party hereto, that party shall bear and pay all of such Other Liability.

(ii) If the Other Liability is based upon the acts or omissions of more than one party hereto, such Other Liability shall be borne and paid by the Parties in accordance with a comparative negligence standard whereby each party shall bear and pay a portion of the Other Liability equal to the degree of causative fault or percentage of responsibility for the Other Liability attributable to that party without regard to laws limiting recovery if one party is more than fifty percent (50%) at fault.

The allocation of Other Liability between the parties shall be determined solely on bases applicable to punitive or exemplary

damages and separately from any determination of responsibility for Loss and/or Damage.

(d) The parties agree that the characterization herein of certain Employees as "Sole Employees" or "Joint Employees" is only for the purpose of allocating Loss and/or Damage suffered by those Employees. Except as specified in subsection (a) of this Section 5.5. (which provides for the allocation of certain Loss and/or Damage between the parties without regard to fault), no party shall be liable for the acts or omissions (negligent or otherwise) of any other party's Employee.

5.6 OWNER AND USER EXPRESSLY INTEND THAT WHERE ONE PARTY IS TO INDEMNIFY THE OTHER PURSUANT TO THE TERMS OF THIS AGREEMENT, SUCH INDEMNITY SHALL INCLUDE (1) INDEMNITY FOR THE NEGLIGENCE OR ALLEGED NEGLIGENCE, WHETHER ACTIVE OR PASSIVE, OF THE INDEMNIFIED PARTY WHERE THAT NEGLIGENCE IS A CAUSE OF THE LOSS OR DAMAGE; (2) INDEMNITY FOR STRICT LIABILITY OF THE INDEMNIFIED PARTY RESULTING FROM A VIOLATION OR ALLEGED VIOLATION OF ANY FEDERAL, STATE OR LOCAL LAW OR REGULATION BY THE INDEMNIFIED PARTY, INCLUDING BUT NOT LIMITED TO THE FEDERAL EMPLOYERS LIABILITY ACT ("FELA"), THE SAFETY APPLIANCE ACT, THE BOILER INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT ("OSHA"), THE RESOURCE CONSERVATION AND RECOVERY ACT ("RCRA"), THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT ("CERCLA"), THE CLEAN WATER ACT ("CWA"), THE OIL POLLUTION ACT ("OPA"), AND ANY SIMILAR STATE STATUTE IMPOSING OR IMPLEMENTING SIMILAR STANDARDS; AND (3) INDEMNITY FOR ACTS OR ALLEGED ACTS OF GROSS NEGLIGENCE OF THE INDEMNIFIED PARTY, OR OTHER CONDUCT ON THE PART OF THE INDEMNIFIED PARTY FOR WHICH PUNITIVE DAMAGES MIGHT BE SOUGHT.

Section 6. ARBITRATION

6.1 If at any time a question or controversy shall arise between the parties hereto in connection with the Agreement upon which the parties cannot agree, such question or controversy shall be submitted to and settled by arbitration. Unless other procedures are agreed to by the parties, arbitration between the parties pursuant to this Section 6 shall be governed by the rules and procedures set forth in this Section 6.

6.2 If the parties to the dispute are able to agree upon a single competent and disinterested arbitrator within twenty (20) days after written notice by one party of its desire for arbitration to the other party, then the question or controversy shall be submitted to and settled by that single arbitrator. Otherwise, any party (the notifying party) may notify the other party (the noticed party) in writing of its request for

arbitration and nominating one arbitrator. Within twenty (20) days after receipt of said notice, the noticed party shall appoint an arbitrator and notify the notifying party in writing of such appointment. Should the noticed party fail within twenty (20) days after receipt of such notice to name its arbitrator, said arbitrator may be appointed by the Chief Judge (or acting Chief Judge) of the United States District Court for the District of Columbia upon application by either party after ten (10) days' written notice to the other party. The two arbitrators so chosen shall select one additional arbitrator to complete the board. If the arbitrators so chosen fail to agree upon an additional arbitrator, the same shall, upon application of a party, be appointed by said judge in the manner heretofore stated.

6.3 Upon selection of the arbitrator(s), said arbitrator(s) shall, with reasonable diligence, determine the questions as disclosed in said notice of arbitration, shall give both parties reasonable notice of the time and place (of which the arbitrator(s) shall be the judge) of hearing evidence and argument, may take such evidence as the arbitrator(s) shall deem reasonable or as either party may submit with witnesses required to be sworn, and hear arguments of counsel or others. If an arbitrator declines or fails to act, the party (or parties in the case of a single arbitrator) by whom the arbitrator was chosen or said judge shall appoint another to act in the arbitrator's place.

6.4 After considering all evidence, testimony and arguments, said single arbitrator or the majority of said board of arbitrators shall promptly state such decision or award and the reasoning for such decision or award in writing which shall be final, binding, and conclusive on all parties to the arbitration when delivered to them. The award rendered by the arbitrator(s) may be entered as a judgment in any court having jurisdiction thereof and enforced as between the parties without further evidentiary proceeding, the same as entered by the court at the conclusion of a judicial proceeding in which no appeal was taken. Until the arbitrator(s) shall issue the first decision or award upon any question submitted for arbitration, performance under the Agreement shall continue in the manner and form existing prior to the rise of such question. After delivery of said first decision or award, each party shall forthwith comply with said first decision or award immediately after receiving it.

6.5 Each party to the arbitration shall pay all compensation, costs, and expenses of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, exhibits, and counsel. The compensation, cost, and expenses of the single arbitrator or the additional arbitrator in the board of arbitrators shall be paid in equal shares by all parties to the arbitration.

6.6 The parties may obtain discovery and offer evidence in accordance with the Federal Rules of Civil Procedure Rules 26 - 37, and Federal Rules of Evidence, as each may be amended from time to time.

6.7 Interest compounded annually, at a rate equal to the average then paid of 90-day Treasury Bills of the United States Government, shall be applied to any and all arbitrator's awards requiring the payment of money and shall be calculated from the date of the applicable arbitration decision.[?]

Section 7. GOVERNMENTAL APPROVAL and ABANDONMENT

7.1 Owner and User shall, at their respective cost and expense, initiate by appropriate application or petition and thereafter diligently prosecute proceedings for the procurement of all necessary consent, approval or authority from any governmental agency for the sanction of the Agreement and the operations to be carried on or conducted by User thereunder. User and Owner agree to cooperate fully to procure all such necessary consent, approval or authority.

7.2 In the event Owner shall be involuntarily dispossessed, including by threat of condemnation by competent public authority, of the right to operate upon and maintain any portion of its Joint Trackage and Owner fails or declines to replace said Joint Trackage, Owner shall have no obligation hereunder to provide tracks in replacement of such Joint Trackage for User's use, and User shall have and shall make no claim of any kind, legal or otherwise, against Owner for failure to provide such Joint Trackage for User's use.

7.3 To the extent that Owner may lawfully do so, Owner reserves to itself the exclusive right, exercisable at any time during the life of the Agreement without concurrence of User, to elect to abandon all or any part of the Joint Trackage by giving six (6) months' prior written notice to User of its intention so to do ("Notice of Abandonment").

Owner shall, concurrent with its Notice of Abandonment, if legally able to do so, give to User the option to purchase the part or parts of the Joint Trackage thereof to be abandoned at the Net Liquidation Value thereof, on the date of said notice. "Net Liquidation Value" shall mean fair market value of land and salvage value of track components and other facilities less estimated cost of removal. User shall have three (3) months from the date of receipt of Owner's notice to exercise its option and shall evidence the exercise of its option by giving Owner written notice thereof. Thereafter User shall immediately make appropriate application to secure all necessary governmental authority for such transaction. Within thirty (30) days following the effective date of all requisite governmental approval of the transaction, User shall pay to Owner the amount of money required to purchase said Joint Trackage to be abandoned at the aforesaid Net Liquidation Value. Upon the receipt of payment of such sum, the Agreement shall terminate as to the part of the Joint Trackage so purchased by User. Contemporaneously with such payment, by instrument or instruments, Owner shall convey and assign by good and sufficient quit claim deed or deeds, bills of sale or

other instruments, all of Owner's right, title, interest and equity, in and to the Joint Trackage so purchased. Owner agrees that it shall promptly take all necessary action to obtain from the trustees of its mortgages all releases or satisfactions covering the same and shall deliver to User such instruments.

If User fails to exercise the option herein granted within the time and in the manner above specified, Owner may forthwith proceed free of all obligation to User to abandon the portion of Joint Trackage or make appropriate application, if necessary, to secure all necessary governmental authority for such abandonment. User agrees that at such time it shall concurrently make application for all necessary governmental authority for abandonment of its right to operate over such Joint Trackage. The Agreement shall terminate as to the section of Joint Trackage so abandoned upon the effective date of such approval by governmental authority.

7.4 Owner and User each shall be responsible for and shall bear labor claims, and employee protection payable to, its own respective employees (and employees of its respective affiliated companies) including any amounts that either Owner or User may be required to pay to its own respective employees pursuant to labor protective conditions imposed by the STB.

Section 8. CATASTROPHIC EXPENSE

Catastrophic expense to the Joint Trackage, such as, but not limited to, that arising from flood, earthquake or acts of God, etc., in excess of One Hundred Thousand Dollars (\$100,000) for each occurrence shall be billed in addition to the GTM Rates and apportioned on the basis of the parties' GTMs operated over the Joint Trackage for the twelve (12) month period ending immediately prior to the first day of the month of occurrence.

Section 9. TERM

9.1 The Agreement shall be effective upon execution for a term of ninety-nine (99) years, provided, however, the trackage rights granted to User pursuant to the Agreement shall not become effective until the acquisition of control of SP by UP pursuant to STB Finance Docket No. 32760, and provided also that in the event the acquisition by UP of control of SP is finally disapproved by the STB and the time for any appeal has passed or, if the disapproval was appealed, the disapproval was affirmed on appeal, the trackage rights granted pursuant to the Agreement shall be of no force and effect. User shall have the right to terminate the Agreement upon twelve (12) months' prior written notice to Owner. Liabilities created under this Agreement, if it becomes effective and is later terminated, shall survive such termination.

9.2 Upon termination of the Agreement, or any partial termination, as the applicable case may be, however the same may occur, User shall be released from any and all manner of obligations and shall be deemed to have forever relinquished, abandoned, surrendered and renounced any and all right possessed by User to operate over that part of the Joint Trackage to which such termination applied, and as to such part, User shall forever release and discharge Owner of and from any and all manner of obligations, claims, demands, causes of action, or suits which User might have, or which might subsequently accrue to User growing out of or in any manner connected with, directly or indirectly, the contractual obligations of Owner under the Agreement, in all events provided, however, the aforesaid relinquishment, abandonment, surrender, renunciation, release and discharge by User shall not in any case affect any of the rights and obligations of either Owner or User which may have accrued, or liabilities accrued or otherwise, which may have arisen prior to such termination or partial termination. Upon any termination, Owner shall remove from Owner's right of way any connecting track, and any exclusive facility of User, at User's expense with salvage to be delivered to and retained by User. Upon any partial termination of the Agreement, however the same may occur, the terms and conditions hereof shall continue and remain in full force and effect for the balance of the Joint Trackage.

Section 10. ASSIGNMENT

Except as provided in Section 3.5 and in the sentence immediately following, the Agreement and any rights granted hereunder may not be assigned in whole or in part by Owner or User without the prior written consent of the other. The Agreement may be assigned by Owner or User without the prior written consent of the other only (i) as a result of a merger, corporate reorganization, consolidation, change of control or sale of substantially all of its assets, or (ii) to an affiliate of the assigning party where the term "affiliate" means a corporation, partnership or other entity controlled, controlling or under common control with the assigning party. In the event of an authorized assignment, the Agreement and the operating rights hereunder shall be binding upon the successors and assigns of the parties.

Section 11. DEFAULT

11.1 Notwithstanding the provisions of Section 3 of these General Conditions, either party hereto claiming default of any of the provisions of the Agreement (including these General Conditions) shall furnish notice and written demand to the other party for performance or compliance with the covenant or condition of the Agreement claimed to be in default, which notice shall specify wherein and in what respect such default is claimed to exist and shall specify the particular Section or Sections of the Agreement under which such claim of default is made.

11.2 If the default shall continue for an additional period of thirty (30) days after receipt of such written notice and demand, and such default has not been remedied within said thirty (30) day period, or reasonable steps have not been nor continue to be taken to remedy a failure or default which cannot reasonably be remedied within said thirty (30) day period, and such default relates to the provisions and terms of the Agreement, either party shall resort to binding arbitration provided that the arbitrator shall not have the authority to amend, modify or terminate the Agreement.

11.3 Failure of a party to claim a default shall not constitute a waiver of such default. Either party hereto entitled to claim default may waive any such default, but no action by such party in waiving such default shall extend to or be taken to effect any subsequent defaults or impair the rights of either party hereto resulting therefrom.

Section 12. OTHER CONSIDERATIONS

12.1 The Agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right in any third person to recover by way of damages or otherwise against any of the parties hereto.

12.2 If any covenant or provision of the Agreement not material to the right of User to use the Joint Trackage shall be adjudged void, such adjudication shall not affect the validity, obligation or performance of any other covenant or provision which is in itself valid. No controversy concerning any covenant or provision shall delay the performance of any other covenant or provision. Should any covenant or provision of the Agreement be adjudged void, the parties shall make such other arrangements as will effect the purposes and intent of the Agreement.

12.3 In the event there shall be any conflict between the provisions of these General Conditions and the Agreement, the provisions of the Agreement shall prevail, except that the definition of Joint Trackage set forth in Section 1.7 of these General Conditions shall prevail.

12.4 All section headings are inserted for convenience only and shall not affect any construction or interpretation of the Agreement.

END OF EXHIBIT "B"

**FIRST SUPPLEMENT TO THE
SEALY, TEXAS TO WACO AND EAGLE PASS, TEXAS
TRACKAGE RIGHTS AGREEMENT**

THIS FIRST SUPPLEMENTAL AGREEMENT, made and entered into as of the 28th day of August, 1997, by and between UNION PACIFIC RAILROAD COMPANY, a Utah corporation ("UPRR") and SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation ("SPT") (UPRR and SPT are hereinafter referred to collectively as "Owner"), on the one hand, and THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY, a Delaware corporation ("BNSF") (BNSF is hereinafter referred to collectively as "User"), on the other hand.

WITNESSETH:

WHEREAS, pursuant to an agreement dated September 25, 1995, as amended (the "Settlement Agreement"), between Union Pacific Corporation ("UPC"), Union Pacific Railroad Company ("UPRR"), Missouri Pacific Railroad Company ("MPRR") (UPC, UPRR and MPRR are hereinafter referred to collectively as "UP"), Southern Pacific Rail Corporation ("SPC"), SPT, St. Louis Southwestern Railway Company ("SSW"), The Denver and Rio Grande Western Railroad Company ("DRGW"), and SPCSL Corp. ("SPCSL") (SPC, SPT, SSW, DRGW and SPCSL are hereinafter referred to collectively as "SP") (UP and SP are hereinafter referred to collectively as "UP/SP"), on the one hand, and Burlington Northern Railroad Company ("BN") and The Atchison, Topeka & Santa Fe Railway Company ("Santa Fe"), on the other hand, UP/SP agreed to grant certain rights to User, including overhead bridge rights between Sealy and Waco and Eagle Pass, Texas, and the right to access industries presently served either directly or by reciprocal switching, joint facility or other arrangement by both UP and SP and no other railroad at points listed in the Settlement Agreement, as well as the right to access City Public Service Board of San Antonio ("CPSB") plants at Elmendorf, TX, except as otherwise provided, such rights to be effective upon UP's acquisition of control of SP pursuant to the application to the STB in Finance Docket No. 32760.

WHEREAS, there is now in effect an agreement dated June 1, 1996 (the "Original Agreement"), entered into between the parties in compliance with the Settlement Agreement, pursuant to which Owner granted to User trackage rights over certain of Owner's tracks between Sealy, Waco and Eagle Pass, Texas (hereinafter referred to as the "Joint Trackage"), including the right to access CPSB's Elmendorf plants under certain specified terms.

WHEREAS, in the STB's Decision No. 44 in Finance Docket No. 32760 (served August 12, 1996) approving the merger of UP and SP, the STB imposed a condition in favor of CPSB that required Owner to modify the trackage rights that had been granted to

allow User to access CPSB's Elmendorf plants (the "CPSB Condition").

WHEREAS, UP/SP and CPSB reached an agreement on amendments to the Original Agreement to allow User the right to access CPSB's Elmendorf Plants, that was (i) submitted to the STB on August 23, 1996, and (ii) accepted by the STB in Decision No. 52 in Finance Docket No. 32760 (served September 10, 1996), as fulfilling the CPSB Condition.

WHEREAS, the STB ruled in Decision No. 61 in Finance Docket No. 32760 (served November 20, 1996) ("Decision No. 61") that the new facilities and transload conditions imposed in Decision No. 44 applied to the lines over which Owner had agreed to grant User trackage rights to access CPSB's Elmendorf facilities.

WHEREAS, Owner has agreed to grant BNSF trackage rights over UPRR's line between Craig Junction and SP Junction (SP Tower 112), and over SPT's line between SP Tower 105 and SP Junction (SP Tower 112) to satisfy the CPSB Condition and comply with Decision No. 61.

NOW, THEREFORE, it is mutually agreed, by and between the parties hereto, as follows:

I. AMENDMENTS TO THE ORIGINAL AGREEMENT.

The Original Agreement is hereby amended as follows:

(a) The first "WHEREAS" clause shall be amended, by adding after the fifth subparagraph:

"UPRR's main track no. 2 at Craig Junction, Texas, in the vicinity of UPRR's Milepost 235.9 and SP Junction (Tower 112) in the vicinity of UPRR's Milepost 259.8."

(b) The first "WHEREAS" clause shall be amended, by inserting at the beginning of the seventh subparagraph after the colon:

"a line of railroad of SPT between San Antonio, in the vicinity of SPT's Del Rio Subdivision, Milepost 212.7 (Tower 105) and SP Junction (Tower 112), in the vicinity of SPT's Milepost 211.0, and"

(c) The first "WHEREAS" clause shall be amended by deleting the three lines following the seventh subparagraph and replacing them with the following:

"as shown by bold and dash lines on the attached prints (identified as Exhibit "A") (Figures, 4-1, 4-2 and 4-3), and further described in Section 1.7 of Exhibit "B", which shall be referred to herein as the "Joint Trackage"; and"

(d) Subparagraph (b) of Section 2 of the Original Agreement shall be deleted in its entirety and replaced with the following:

"(b) The rights granted in Section 2(a) shall be for all rail traffic of all kinds and commodities, both carload and intermodal, of all commodities."

(e) Section 2(g) is amended by striking the first two sentences and inserting:

"(g) User shall have the right to (a) access all existing industries which are served by UP and SP and no other railroad directly, by reciprocal switching, joint facility or other arrangements, (b) access City Public Service Board of San Antonio ("CPSB") facilities at Elmendorf, Texas, including expansions of or additions to these facilities and any new CPSB facilities at Elmendorf, (c) serve any new shipper facility (including any new transloading facility), to the extent permitted by STB Decision No. 44 in Finance Docket No. 32760 (served August 12, 1996) and STB Decision No. 61 in Finance Docket No. 32760 (served November 20, 1996), on any SP-owned or UP-owned line over which BNSF received trackage rights pursuant to Section 2(a) of this Agreement, and (d) subject to the geographic limitations set forth below, serve new shipper facilities and existing and future transloading facilities and establish and exclusively serve intermodal and auto facilities at points listed in Exhibit A to the Settlement Agreement. The geographic limitations applicable to subparagraph (d) above shall generally correspond to the territory within which, prior to the merger of UP and SP, a new customer could have constructed a facility that would have been open to service by both UP and SP either directly or through reciprocal switch."

(f) Section 2 shall be amended by adding after subparagraph (l):

"(m) User shall also have the right, at City Public Service Board of San Antonio, Texas' option, to connect for movement to and from Elmendorf, TX, where its trackage rights granted pursuant to this Agreement intersect at SP Junction (Tower 112) with the existing trackage rights SP has granted to City Public Service Board of San Antonio, TX."

(g) Exhibit "A" to the Original Agreement shall be amended by adding the revised Figures 4-1, 4-2 and 4-3.

(h) A new Section 9 shall be added to the Original Agreement immediately following Section 8, as follows:

"9. Pending Appeal.

Owner has appealed to the United States Court of Appeals for the District of Columbia Circuit the STB's denial in Decision No. 61 of Owner's Petition for Clarification as to the applicability of certain of the STB conditions. The parties agree that the provisions of subsection (c) of Section 2(g) of this Agreement shall be null and void and of no force and effect to the extent the STB conditions challenged by Owner are overturned or modified on appeal."

II. EFFECT ON ORIGINAL AGREEMENT.

This First Supplement is supplemental to the Original Agreement and nothing herein contained shall be construed as amending or modifying the same except as herein specifically provided.

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[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this First Supplement to be duly executed as of the day and year first above written.

UNION PACIFIC RAILROAD COMPANY

By: James V. Dean
Its: Vice President - Law

SOUTHERN PACIFIC TRANSPORTATION
COMPANY

By: James V. Dean
Its: Vice President - Law

THE BURLINGTON NORTHERN AND SANTA
FE RAILWAY COMPANY

By: _____
Its: _____

IN WITNESS WHEREOF, the parties hereto have caused this First Supplement to be duly executed as of the day and year first above written.

UNION PACIFIC RAILROAD COMPANY

By: _____
Its: _____

SOUTHERN PACIFIC TRANSPORTATION
COMPANY

By: _____
Its: _____

THE BURLINGTON NORTHERN AND SANTA
FE RAILWAY COMPANY

By: *J.W. Woolley*
Its: *Assistant Controller & Joint Facilities*

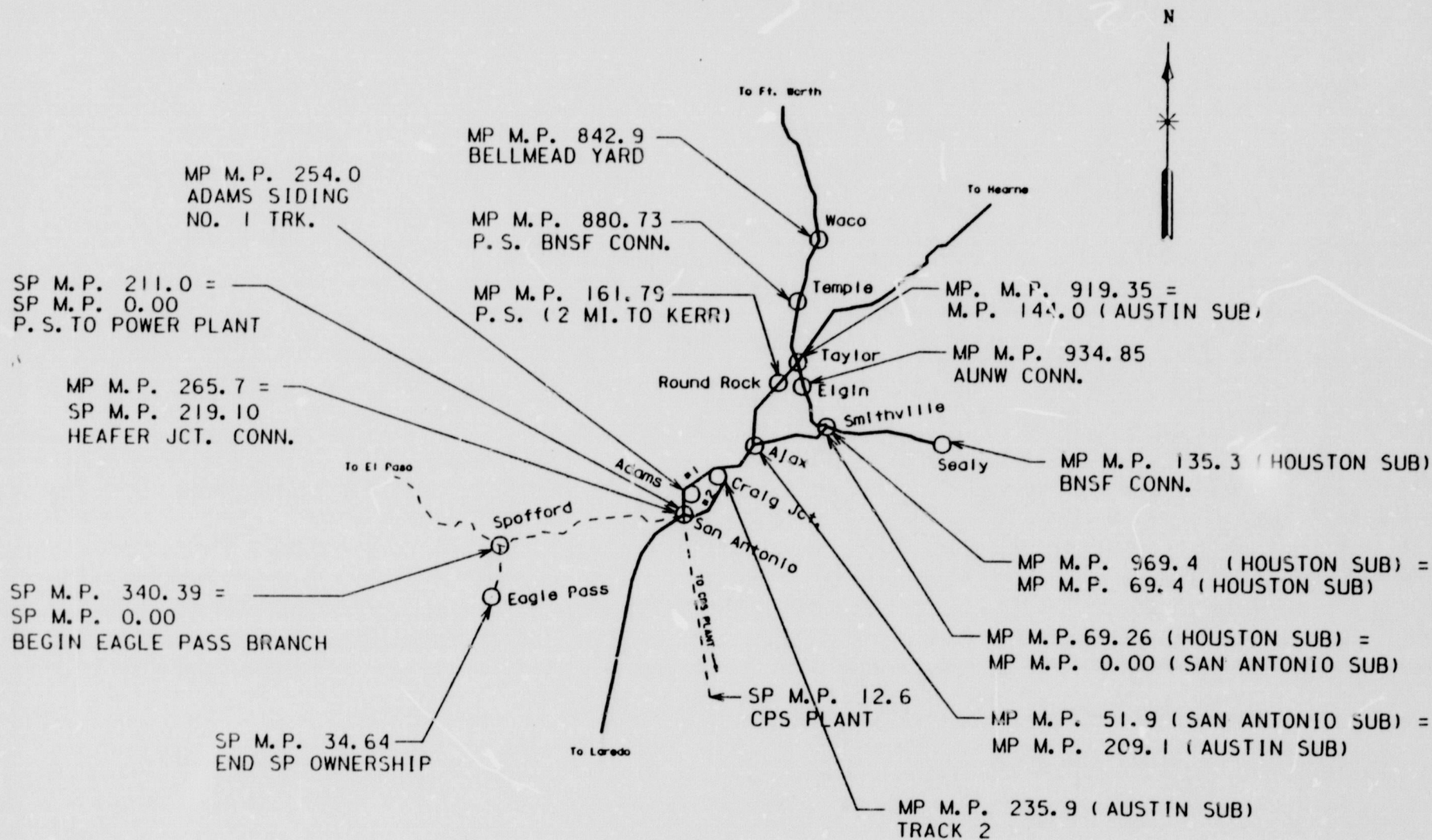
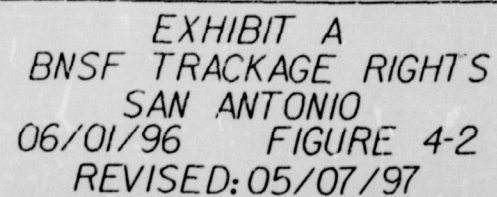
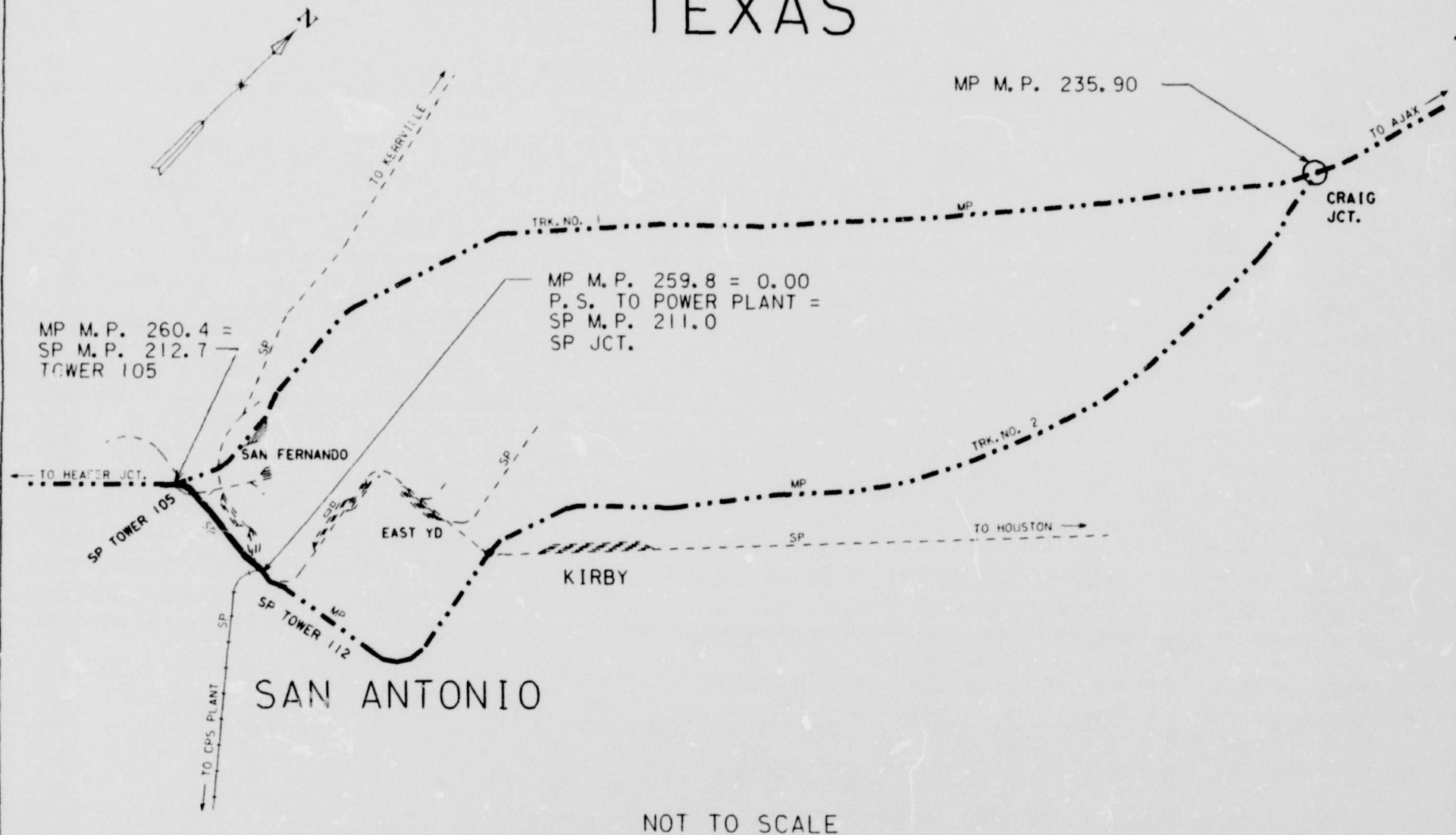


EXHIBIT A
 BNSF TRACKAGE RIGHTS
 CENTRAL TEXAS
 06/01/96 FIGURE 4-1
 REVISED: 05/07/97



STB FD 32760 (Sub 24) 9-17-97 A 182027 2/2

TEXAS



LEGEND:

- BNSF TRACKAGE RIGHTS ON MISSOURI PACIFIC RR
- BNSF TRACKAGE RIGHTS ON SOUTHERN PACIFIC RR
- - - - - CPSB AND BNSF TRACKAGE RIGHTS ON SOUTHERN PACIFIC RR
- - - - - SOUTHERN PACIFIC RR

EXHIBIT A
BNSF TRACKAGE RIGHTS
SAN ANTONIO TO CRAIG JCT.
09/11/96 FIGURE 4-3
REVISED: 05/07/97

EXHIBIT 3 (Caption Summary)
F.D. No. 32760 (Sub-No. 24)

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FINANCE DOCKET NO. 32760 (SUB-NO. 24)

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
UNION PACIFIC RAILROAD COMPANY,
SOUTHERN PACIFIC TRANSPORTATION COMPANY

Applicants in Finance Docket No. 32760, UP -- Merger
-- SP, have agreed to grant overhead trackage rights, and
local access as specified, over (a) UPRR's line between Craig
Junction, Texas, and SP Junction (Tower 112), via Fratt,
Texas, and (b) SPT's line between Tower 105 in San Antonio,
Texas, and SP Junction (Tower 112), to The Burlington Northern
and Santa Fe Railway Company. The trackage rights will be
effective September 22, 1997.

The Notice is filed under 49 C.F.R. § 1180.2(d)(7).
Petition to revoke the exemption under 49 U.S.C. § 10505(d)
may be filed at any time. The filing of a petition to revoke
will not stay the transaction.

Dated:
By the Board,

Vernon A. Williams
Secretary