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Wichita the environmental impacts are limited to the effects of an increase in traffic on existing rail lines. Also, the mitigation conditions that we are imposing now assure that, while SEA conducts these studies, the environmental status quo will essentially be preserved in Reno and Wichita.²⁶⁴

As the EA and Post EA show, SEA already has carefully assessed the impact of the merger on Reno and Wichita and identified its likely environmental effects. Based on its analysis, SEA concluded that, with the systemwide and corridor-specific mitigation already imposed and the conditions to be arrived at following the independent mitigation studies, there will be no significant environmental impacts to Reno and Wichita, and we agree.

The sole purpose of the mitigation studies will be to arrive at specifically tailored mitigation plans that will ensure that localized environmental issues unique to these two communities are effectively addressed. For example, with respect to vehicular and pedestrian safety, SEA has determined that separated grade crossings and pedestrian overpasses and/or underpasses will be needed to address safety concerns on the existing rail lines in Reno and Wichita. Accordingly, the studies will identify the appropriate number and precise location of highway/rail grade separations and rail/pedestrian grade separations in Reno and Wichita. With respect to air quality, we have imposed mitigation measures that reduce locomotive fuel consumption and air pollution, call for more efficient railroad equipment and operating practices, and require consultation with air quality officials.²⁶⁵ As further insurance, the studies will consider additional mitigation to address the air quality effects unique to Reno and Wichita. In this merger, noise impacts would result from more frequent exposure to horn noise rather than greater intensity of sound. No additional types of noise would be introduced. To address noise impacts, we are requiring UP/SP to consult with affected counties to develop focused noise abatement plans. As the Post EA notes, however, safety dictates that railroads sound their horns at grade crossings.²⁶⁶ Any attempt significantly to reduce noise levels

²⁶³ (...continued)

Utilities Comm'n of California v. FERC, 900 F.2d 269, 282-3 (D.C. Cir. 1990). NEPA "does not require agencies to adopt any particular internal decisionmaking structure." Baltimore Gas & Electric Co. v. NRDC, 462 U.S. 87, 100 (1983). It is well settled that NEPA does not repeal other statutes by implication and that if the agency meets NEPA's basic requirements, it may fashion its own procedural rules to discharge its multitudinous duties. Vermont Yankee v. NRDC, 435 U.S. 519 (1978); United States v. SCRAP, 412 U.S. 669, 694 (1973).

²⁶⁴ The courts have recognized that there is no violation of NEPA where proposed actions will not effect a change in the status quo. See Sierra Club v. FERC, 754 F.2d 1506, 1509-10 (9th Cir. 1985).

²⁶⁵ Because trains are mobile, rather than stationary sources, air quality impacts associated with locomotive emissions are spread over a large area. Therefore, the impacts at any individual location are typically relatively minor.

²⁶⁶ SEA indicates that FRA has been directed by the Swift Act generally to require that horns be sounded at all grade crossings.

at grade crossings would jeopardize safety, which we consider to be of paramount importance.

The studies will be conducted by SEA with the assistance of an independent third party contractor. Although retained by UP/SP, SEA will select the contractor. The contractor will work under the sole supervision, direction, and control of SEA.

The mitigation studies will include consultations with the affected communities, counties, and states, Native American tribes, the FRA, and other appropriate agencies, as well as UP/SP. There will be public notice and participation. The public will be consulted regarding the range of additional mitigation to most effectively address increased rail traffic on the existing rail lines in Reno and Wichita. SEA will prepare draft mitigation studies and make them available to the public for review and comment. After SEA assesses the comments, it will design the most effective mitigation for these particular communities to add to the mitigation that has already been imposed.

SEA's final mitigation studies and its recommended mitigation plans for Reno and Wichita will be made available to the public and will be submitted to us for our review and approval. We will then issue a decision imposing specific mitigation measures. This entire process will be completed within 18 months of consummation of the merger.

In the meantime, as explained in the Post EA, during the 18-month study period UP/SP will be permitted to add only an average of two additional freight trains per day to the affected rail line segments (Chickasha, OK, to Wichita and Roseville, CA, to Sparks, NV),²⁶⁷ which is below the threshold level for environmental analysis.²⁶⁸ UP/SP will be prohibited from increasing traffic to the levels they projected under the merger (11.3 daily trains for Reno and 7.4 trains for Wichita) without our approval.²⁶⁹ Thus, there will be no significant adverse environmental impacts to these communities while SEA, the Board,

²⁶⁷ For nonattainment areas such as Reno, our rules permit railroads to operate up to three additional trains per day. The threshold for attainment areas such as Wichita is normally an increase of eight trains or more a day. Here, we are taking a more conservative approach and will permit for Wichita only an average increase of two trains per day. In short, these limited increases for Reno and Wichita are at or below the threshold levels, and the environmental status quo will essentially be maintained. This addition of an average of two trains a day includes BNSF trains but does not include Amtrak trains, which are unrelated to the merger.

²⁶⁸ We note that an existing railroad can increase its level of operations without coming to us, and without limitation. Thus, if UP and SP had not proposed this merger, SP on its own could have increased the number of trains on its line in Reno to any level it considered appropriate. Allowing an increase of up to two trains per day during the interim period takes into account that the number of trains going through Reno and Wichita might have been increased even without the merger.

²⁶⁹ UP/SP will be required to file verified copies of station passing reports of train movements for Reno and Wichita on a monthly basis with SEA for the duration of the study period. We will review them to ensure compliance.

and the parties work to arrive at additional tailored mitigation for those cities.

It should be noted that the studies will focus only on the mitigation of the environmental effects of additional rail traffic through Reno and Wichita resulting from the merger. Mitigation of conditions resulting from the preexisting development of hotels, casinos, and other tourist-oriented businesses on both sides of the existing SP rail line in Reno, or the preexisting switching operations that are a primary source of the congestion associated with the existing UP line in Wichita, are not within the scope of the studies. Similarly, the construction of a new rail line now under consideration by Reno is too preliminary to be assessed now.²⁷⁰

The studies will carefully examine private and public funding options, as we believe that the cost of mitigation for Reno and Wichita should be shared. Finally, the studies will provide the parties with additional time to pursue and agree to independent and innovative mitigation plans (such as the memorandum of understanding executed by UP/SP and Truckee, CA, whereby UP/SP will share in the cost of an underpass construction project and contribute to a fund to buy back obsolete wood burning stoves).

In sum, pending determination of the exact mitigation measures to be required for Reno and Wichita, UP/SP will be subject to a traffic cap on the affected rail lines to ensure that no adverse effects to the environment will occur and existing environmental conditions will essentially remain unchanged. Because we already know the nature and general parameters of the appropriate mitigation measures for Reno and Wichita, based on our analysis of the environmental impacts and imposition of systemwide and regional mitigation, we find that, with the more specific mitigation that will be developed, the merger will not significantly affect the quality of the environment in those two locations.

Comments of EPA. On July 12, 1996, we received comments from the United States Environmental Protection Agency (EPA) on various aspects of the EA and the Post EA.²⁷¹ EPA notes that, in analyzing air quality, the EA failed specifically to identify "maintenance" areas,²⁷² which it believes may have caused air

²⁷⁰ Plans for such a line are only in the development stage. SEA indicates that such a project could take up to 10 years to finalize. If the contemplated construction reaches the stage of an actual proposal requiring our approval, SEA would prepare an appropriate environmental document at that point. See Kleppe v. Sierra Club, 427 U.S. 390, 410 n.20 (1976); Crounse Corp. v. ICC, 781 F.2d 1176, 1193-96 (6th Cir. 1986).

²⁷¹ SEA agreed to EPA's request for an extension of time to comment on the Post EA. We welcome EPA's input after reviewing our environmental analysis, since, as EPA notes, it generally does not comment on EAs.

²⁷² There are three classifications for air quality: attainment areas, in which levels of certain pollutants are considered equal to or better than federal and state ambient air quality standards; nonattainment areas, in which levels of one or more pollutants do not meet federal and state ambient air quality standards; and maintenance areas, which were at one time nonattainment areas but have subsequently improved their air quality and are now in attainment for the relevant pollutant(s).

quality concerns to be overlooked.²⁷³ But maintenance areas were not ignored in SEA's analysis. For those areas that were not classified as nonattainment, SEA applied the EPA conformity emission threshold levels applicable to maintenance areas. This means that SEA analyzed both attainment and maintenance areas under the more rigorous standards applicable to maintenance areas, and that, if anything, the anticipated effects of the proposed merger on air quality are conservative. We believe that air quality has been thoroughly analyzed, and that the mitigation we are imposing here, along with the more specific measures which will be arrived at in the further mitigation studies for Reno and Wichita,²⁷⁴ adequately mitigates any potential adverse air impacts.

EPA further states that the EA used the terms NO₂ and NO_x incorrectly. We recognize that NO_x is not a criteria pollutant under EPA and state ambient air quality standards. In assessing air quality emissions, SEA looked at emission factors applicable to NO_x, instead of NO₂, because NO_x emission factors are readily available through EPA documents and other sources, while NO₂ emissions are not. SEA based its calculations on the conservative assumption that all NO_x emissions are composed of NO₂. This conservative approach, which is widely accepted, ensured that the criteria pollutant NO₂ was adequately assessed in SEA's analysis. Moreover, by using this approach, SEA used higher NO₂ emissions than would actually be emitted.

EPA also expressed some difficulty understanding SEA's estimates of the projected net increase and decrease in air emissions with the mitigation measures we are imposing. While we believe that the text of the Post EA adequately explains the data in Tables 3-5 and 4-4, we have generated and attached as Appendix H an additional table to further clarify the net emissions reflecting mitigation.

EPA notes that some of the proposed rail line abandonments in Colorado run through or near EPA-designated Superfund sites. EPA is troubled that soil in and around the railroad lines could require remediation, that UP/SP might not be obligated to honor a consent decree, and that possible future trail use could expose the public to hazardous substances. These concerns are premature because, as discussed above, we are permitting only the discontinuance of rail service, and not abandonment of the involved lines. Thus there will be no salvage of these lines or opportunity for trail use unless and until UP/SP obtains our authority to abandon these lines.²⁷⁵

²⁷³ We note that EPA does not disagree with SEA's determination that the proposed merger is not subject to EPA's regulations entitled "Determining Conformity of General Federal Actions to State or Federal Implementation Plans" (General Conformity). The General Conformity criteria do not apply directly to railroad operations, except for future locomotive emission standards. SEA properly concluded that the proposed merger does not meet the definitions in the General Conformity regulations at 40 CFR 51.852 because, as a regulatory agency, the Board does not maintain program control over railroad emissions as part of its continuing responsibilities.

²⁷⁴ SEA will take into account EPA's concerns and consult with them in conducting its mitigation studies for Reno and Wichita.

²⁷⁵ At that point, we will analyze the potential environmental impacts of the proposed abandonments.

While trail use requests can be made if the abandonments are granted, any trail arrangement would not supersede the requirements of the specific laws that govern Superfund sites.²⁷⁶ Nor would we thereby become involved in negotiating or enforcing consent decrees involving remediation of those sites.

EPA does not view requiring UP/SP to comply with existing federal, state, and local regulation as mitigation. We believe, however, that requiring compliance with other laws and regulations, such as FRA's safety regulations, can assist in reducing the potential environmental impacts of the actions before us. If the railroad fails to comply with conditions that we have imposed, parties can notify us and request that we (as well as the agency that has promulgated the regulation) take appropriate action.

In any event, the mitigation we are imposing here goes well beyond requiring compliance with other laws and regulations. For example, it includes more frequent track and train car inspections to reduce anticipated safety impacts and reduced idling of locomotives and the use of more efficient locomotives to offset air pollution emissions associated with the merger. Moreover, to enhance safety, UP/SP will be required to equip certain trains carrying hazardous materials with two-way end-of-train devices to improve braking capabilities on particular line segments.

EPA suggests that we failed to discuss the environmental impacts associated with the handling and disposal of waste materials for the proposed abandonments and constructions. But we have included detailed mitigation for these actions. See Appendix G, including conditions #26, #27, #62 and #63.

EPA questions whether SEA considered all the settlement agreements reached with competing railroads and trade associations. SEA specifically took all settlement agreements into account in its analysis, as the EA and Post EA show.

Finally, we disagree with EPA's suggestion that SEA should revisit its consultation efforts with Native American tribes. SEA's efforts to contact and consult with Native American tribes have been extensive. As part of its outreach activities, SEA contacted approximately 11 area offices of the Bureau of Indian Affairs to inform them about the proposed merger; three offices commented and provided the names of tribes that should be contacted. Both the EA and Post EA were distributed to 31 American Indian tribes. In addition, there was newspaper and Federal Register notice to inform all affected tribes and communities about the proposed merger and how they could participate. To ensure continued participation, SEA will contact the affected Native American tribes when initiating its mitigation studies for Reno and Wichita and invite them to participate.

FINDINGS

In Finance Docket No. 32760, we find: (a) that the acquisition by UPC, UPRR, and MPRR of control of SPR, SPT, SSW, SPCSL, and DRGW through the proposed transaction, as conditioned herein, is within the scope of 49 U.S.C. 11343 and is consistent

²⁷⁶ See Union Pac. R.R. -- Abandonment -- Wallace Branch, ID, Docket No. AB-33 (Sub-No. 70) (ICC served Dec. 2, 1994).

with the public interest; (b) that the transaction will not adversely affect the adequacy of transportation to the public; (c) that no other railroad in the area involved in the transaction has requested inclusion in the transaction, and that failure to include any such railroad will not adversely affect the public interest; (d) that the transaction will not result in any guarantee or assumption of payment of dividends or of fixed charges, or any increase in total fixed charges, except as specifically approved herein; (e) that the interests of employees affected by the proposed transaction does not make such transaction inconsistent with the public interest, and any adverse effect will be adequately addressed by the conditions imposed herein; (f) that the transaction, as conditioned herein, will not significantly reduce competition in any market; and (g) that the terms of the transaction are just, fair, and reasonable. We further find that the competitive conditions imposed in Finance Docket No. 32760, including but not limited to those embraced in the BNSF,²⁷⁷ CMA, and URC agreements, and further including but not limited to the various modifications we have required with respect to the terms of the BNSF and CMA agreements (particularly with respect to new facilities, transloading facilities, build-out/build-in options, contracts at 2-to-1 points, and SIT facilities), are consistent with the public interest. We further find that the oversight condition imposed in Finance Docket No. 32760 is consistent with the public interest. We further find that any rail employees of applicants or their rail carrier affiliates affected by the transaction authorized in Finance Docket No. 32760 should be protected by the conditions set forth in New York Dock Ry.--Control--Brooklyn Eastern Dist., 360 I.C.C. 60, 84-90 (1979), unless different conditions are provided for in a labor agreement entered into prior to consummation of the transaction authorized in Finance Docket No. 32760, in which case protection shall be at the negotiated level, subject to our review to assure fair and equitable treatment of affected employees.

In Finance Docket No. 32760 (Sub-No. 1), we find that the trackage rights provided for in the BNSF agreement and included in the Sub-No. 1 notice filed November 30, 1995, are exempt from prior review and approval pursuant to 49 CFR 1180.2(d)(7). We further find that any rail employees of applicants or their rail carrier affiliates or of BNSF or its rail carrier affiliates affected by the transaction authorized in Finance Docket No. 32760 (Sub-No. 1) should be protected by the conditions set forth in Norfolk and Western Ry. Co.--Trackage Rights--N., 354 I.C.C. 605, 610-15 (1978), as modified in Mendocino Coast Ry., Inc.--Lease and Operate, 360 I.C.C. 653, 664 (1980), unless different conditions are provided for in a labor agreement entered into prior to consummation of the transaction authorized

²⁷⁷ Again, by BNSF agreement, we mean the agreement dated September 25, 1995 (UP/SP-22 at 318-347), as modified by the supplemental agreement dated November 18, 1995 (UP/SP-22 at 348-359), and as further modified by the second supplemental agreement dated June 27, 1996 (UP/SP-266, Exhibit A). We wish to clarify, however, that in imposing the BNSF agreement as a condition to this merger, we will require applicants to honor all of the amendments, clarifications, modifications, and extensions thereof described in: (1) the April 18th CMA agreement (UP/SP-219); (2) the April 29th rebuttal filings (UP/SP-230 at 12-21; UP/SP-231, Part C, Tab 18 at 5-11; see also UP/SP-260 at 8-9, summarizing the clarifications and amendments described in the April 29th rebuttal filings); (3) the June 3rd brief (UP/SP-260 at 23 n.9); and (4) the June 28th filing that accompanied the second supplemental agreement (UP/SP-266 at 3).

in Finance Docket No. 32760 (Sub-No. 1), in which case protection shall be at the negotiated level, subject to our review to assure fair and equitable treatment of affected employees.

In Finance Docket No. 32760 (Sub-No. 2), we find that the three line sales provided for in the BNSF agreement, and operation by BNSF of these lines, are exempt from prior review and approval pursuant to 49 U.S.C. 10505 because such review is not necessary to carry out the transportation policy of 49 U.S.C. 10101a or to protect shippers from the abuse of market power. We further find that any rail employees of applicants or their rail carrier affiliates or of BNSF or its rail carrier affiliates affected by the transaction authorized in Finance Docket No. 32760 (Sub-No. 2) should be protected by the conditions set forth in New York Dock Ry.--Control--Brooklyn Eastern Dist., 360 I.C.C. 60, 84-90 (1979), unless different conditions are provided for in a labor agreement entered into prior to consummation of the transaction authorized in Finance Docket No. 32760 (Sub-No. 2), in which case protection shall be at the negotiated level, subject to our review to assure fair and equitable treatment of affected employees.

In Finance Docket No. 32760 (Sub-Nos. 3, 4, 5, 6, and 7), we find that acquisition and exercise of control of A&S, CCT, OURD, PTRR, and PTRC, respectively, by applicants is exempt from prior review and approval pursuant to 49 U.S.C. 10505 because each such control transaction is limited in scope, and because, in each instance, review is not necessary to carry out the transportation policy of 49 U.S.C. 10101a or to protect shippers from the abuse of market power. We further find that any rail employees of applicants or their rail carrier affiliates affected by the transactions authorized in Finance Docket No. 32760 (Sub-Nos. 3, 4, 5, 6, and 7) should be protected by the conditions set forth in New York Dock Ry.--Control--Brooklyn Eastern Dist., 360 I.C.C. 60, 84-90 (1979), unless different conditions are provided for in a labor agreement entered into prior to consummation of the transactions authorized in Finance Docket No. 32760 (Sub-Nos. 3, 4, 5, 6, and 7), in which case protection shall be at the negotiated level, subject to our review to assure fair and equitable treatment of affected employees.

In Finance Docket No. 32760 (Sub-No. 8), we find that (i) common control of UP and the two motor carriers controlled by SP, and (ii) common control of SP and the one motor carrier controlled by UP, is exempt from prior review and approval pursuant to 49 U.S.C. 10505 because each such control transaction is limited in scope, and because, in each instance, review is not necessary to carry out the transportation policy of 49 U.S.C. 10101a or to protect shippers from the abuse of market power.

In Finance Docket No. 32760 (Sub-No. 9), we find that the terminal area trackage rights sought therein are practicable and in the public interest and will not substantially impair the ability of the rail carrier owning the facilities or entitled to use the facilities to handle its own business.

In Finance Docket No. 32760 (Sub-No. 10), we find that the responsive application filed by CMTA is not consistent with the public interest.

In Finance Docket No. 32760 (Sub-No. 11), we find that the responsive application filed by MRL is not consistent with the public interest.

In Finance Docket No. 32760 (Sub-No. 12), we find that the responsive application filed by Entergy is consistent with the

public interest to the extent the application seeks to require that the BNSF agreement be amended to allow BNSF to transport coal trains to and from White Bluff via the White Bluff-Pine Bluff build-out line. In all other respects, we find that the responsive application filed by Entergy is not consistent with the public interest.

In Finance Docket No. 32760 (Sub-No. 13), we find that the responsive application filed by Tex Mex is consistent with the public interest with respect to traffic having a prior or subsequent movement on the Laredo-Robstown-Corpus Christi line. We further find that the responsive application filed by Tex Mex is not consistent with the public interest with respect to traffic not having such a prior or subsequent movement. We further find that any rail employees of Tex Mex affected by the trackage rights authorized in Finance Docket No. 32760 (Sub-No. 13) should be protected by the conditions set forth in Norfolk and Western Ry. Co.--Trackage Rights--BN, 354 I.C.C. 605, 610-15 (1978), as modified in Mendocino Coast Ry., Inc.--Lease and Operate, 360 I.C.C. 653, 664 (1980), unless different conditions are provided for in a labor agreement entered into prior to commencement of operation of the Finance Docket No. 32760 (Sub-No. 13) trackage rights, in which case protection shall be at the negotiated level, subject to our review to assure fair and equitable treatment of affected employees.

In Finance Docket No. 32760 (Sub-No. 14), we find that the terminal area trackage rights sought therein are practicable and in the public interest, with respect to traffic having a prior or subsequent movement on the Laredo-Robstown-Corpus Christi line, and, with respect to such traffic, will not substantially impair the ability of the rail carrier owning the facilities or entitled to use the facilities to handle its own business.

In Finance Docket No. 32760 (Sub-No. 16), we find that the responsive application filed by WEPCO is not consistent with the public interest.

In Finance Docket No. 32760 (Sub-No. 17), we find that the responsive application filed by MCC and its rail affiliates is not consistent with the public interest.

In Docket No. AB-3 (Sub-No. 129X), we find that the abandonment by MPRR of railroad lines between MP 428.3 near Gurdon, AR, and MP 457.0 near Camden, AR, is exempt from prior review and approval pursuant to 49 U.S.C. 10505 because such review is not necessary to carry out the transportation policy of 49 U.S.C. 10101a, regulation is not necessary to protect shippers from the abuse of market power.

In Docket Nos. AB-3 (Sub-No. 130) and AB-8 (Sub-No. 38), we find that the abandonment by MPRR of, and the discontinuance of trackage rights by DRGW on, railroad lines between MP 747.0 near Townier, CO, and MP 869.4 near NA Junction, CO, is permitted by the present or future public convenience and necessity and will not have a serious adverse impact on rural and community development. The property may be suitable for recreation and trail use. However, we note that no party has requested a public use condition, and we will not impose one at this time.

In Docket Nos. AB-3 (Sub-No. 131) and AB-8 (Sub-No. 37), we find that the abandonment by MPRR of, and the discontinuance of trackage rights by DRGW on, railroad lines between MP 459.20 near Hope, KS, and MP 491.20 near Bridgeport, KS, is permitted by the present or future public convenience and necessity and will not have a serious adverse impact on rural and community development.

The property may be suitable for recreational use as an extension of a trail. However, we note that no party has requested a public use condition, and we will not impose one at this time.

In Docket No. AB-3 (Sub-No. 132X), we find that the abandonment by MPRR of railroad lines between MP 485.0 near Newton, KS, and MP 476.0 near Whitewater, KS, is exempt from prior review and approval pursuant to 49 CFR 1152.50.

In Docket No. AB-3 (Sub-No. 133X), we find that the abandonment by MPRR of railroad lines between MP 680.0 near Iowa Junction, LA, and MP 688.5 near Manchester, LA, is exempt from prior review and approval pursuant to 49 U.S.C. 10505 because such review is not necessary to carry out the transportation policy of 49 U.S.C. 10101a, regulation is not necessary to protect shippers from the abuse of market power.

In Docket No. AB-3 (Sub-No. 134X), we find that the abandonment by MPRR of railroad lines between MP 0.50 near Troup, TX, and MP 8.0 near Whitehouse, TX, is exempt from prior review and approval pursuant to 49 CFR 1152.50.

In Docket Nos. AB-8 (Sub-No. 36X) and AB-12 (Sub-No. 189X), we find that the discontinuance by DRGW and SPT, respectively, of operations on railroad lines (1) between MP 335.0 near Sage, CO, and MP 271.0 near Malta, CO, and (2) between MP 271.0 near Malta, CO, and MP 276.1 near Leadville, CO, is exempt from prior review and approval pursuant to 49 U.S.C. 10505 because such review is not necessary to carry out the transportation policy of 49 U.S.C. 10101a, regulation is not necessary to protect shippers from the abuse of market power. In Docket No. AB-12 (Sub-No. 189X), however, we further find that the abandonment by SPT of railroad lines (1) between MP 335.0 near Sage, CO, and MP 271.0 near Malta, CO, and (2) between MP 271.0 near Malta, CO, and MP 276.1 near Leadville, CO, is not exempt from prior review and approval because review is necessary to carry out the transportation policy of 49 U.S.C. 10101a.

In Docket Nos. AB-8 (Sub-No. 39) and AB-12 (Sub-No. 188), we find that the discontinuance by DRGW and SPT, respectively, of operations on railroad lines between MP 271.0 near Malta, CO, and MP 162.0 near Cañon City, CO, is permitted by the present or future public convenience and necessity and will not have a serious adverse impact on rural and community development. In Docket No. AB-12 (Sub-No. 188), however, we further find that the abandonment by SPT of railroad lines between MP 271.0 near Malta, CO, and MP 162.0 near Cañon City, CO, is not permitted by the present or future public convenience and necessity.

In Docket No. AB-12 (Sub-No. 184X), we find that the abandonment by SPT of railroad lines between MP 360.1 near Wendel, CA, and MP 445.6 near Alturas, CA, is exempt from prior review and approval pursuant to 49 U.S.C. 10505 because such review is not necessary to carry out the transportation policy of 49 U.S.C. 10101a, regulation is not necessary to protect shippers from the abuse of market power.

In Docket No. AB-12 (Sub-No. 185X), we find that the abandonment by SPT of railroad lines between MP 117.6 near Suman, TX, and MP 105.07 near Benchley, TX, is exempt from prior review and approval pursuant to 49 U.S.C. 10505 because such review is not necessary to carry out the transportation policy of 49 U.S.C. 10101a, regulation is not necessary to protect shippers from the abuse of market power.

In Docket No. AB-12 (Sub-No. 187X), we find that the abandonment by SPT of railroad lines between MP 30.0 near Seabrook, TX, and MP 40.5 near San Leon, TX, is exempt from prior review and approval pursuant to 49 CFR 1152.50.

In Docket No. AB-33 (Sub-No. 93X), we find that the abandonment by UPRR of railroad lines between MP 0.0 near Whittier Junction, CA, and MP 5.18 near Colima Junction, CA, is exempt from prior review and approval pursuant to 49 CFR 1152.50.

In Docket No. AB-33 (Sub-No. 94X), we find that the abandonment by UPRR of railroad lines between MP 5.8 near Magnolia Tower, CA, and MP 10.7 near Melrose, CA, is exempt from prior review and approval pursuant to 49 CFR 1152.50.

In Docket No. AB-33 (Sub-No. 96), we find that the abandonment by UPRR of railroad lines between MP 51.0 near Barr, IL, and MP 89.4 near Girard, IL, is permitted by the present or future public convenience and necessity and will not have a serious adverse impact on rural and community development.

In Docket No. AB-33 (Sub-No. 97X), we find that the abandonment by UPRR of railroad lines between MP 119.2 near DeCamp, IL, and MP 133.8 near Edwardsville, IL, is exempt from prior review and approval pursuant to 49 CFR 1152.50.

In Docket No. AB-33 (Sub-No. 98X), we find that the abandonment by UPRR of railroad lines between MP 133.8 near Edwardsville, IL, and MP 148.78 near Madison, IL, is exempt from prior review and approval pursuant to 49 U.S.C. 10505 because such review is not necessary to carry out the transportation policy of 49 U.S.C. 10101a, regulation is not necessary to protect shippers from the abuse of market power.

In Docket No. AB-33 (Sub-No. 99X), we find that the abandonment by UPRR of railroad lines between MP 0.0 near Little Mountain Junction, UT, and MP 12.0 near Little Mountain, UT, is exempt from prior review and approval pursuant to 49 CFR 1152.50.

In Docket Nos. AB-3 (Sub-Nos. 129X, 130, 131, 132X, 133X, and 134X), AB-8 (Sub-Nos. 36X, 37, 38, and 39), AB-12 (Sub-Nos. 184X, 185X, 187X, 188, and 189X), and AB-33 (Sub-Nos. 93X, 94X, 96, 97X, 98X, and 99X), we further find that any employees affected by the abandonments and discontinuances authorized therein should be protected pursuant to Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91, 98-103 (1979), unless different conditions are provided for in a labor agreement entered into prior to consummation of the relevant abandonment or discontinuance, in which case protection shall be at the negotiated level, subject to our review to assure fair and equitable treatment of affected employees.

We further find that this action, as conditioned by the environmental mitigation conditions set forth in Appendix G, will not significantly affect the quality of the human environment or the conservation of energy resources.

We further find that all conditions requested by any party to this proceeding but not granted herein are not in the public interest and should not be imposed.

It is ordered:

1. The UP/SP-262 motion to strike (and request for sanctions) is denied.
2. The BN/SF-61 motion to strike is denied.
3. BNSF's request (BN/SF-54 at 32-33) that a certain document relied upon by KCS (KCS-33 at 72) be stricken from the record is denied.
4. The EBT/KCOSA joint motion dated May 10, 1996, is granted, and the new evidence tendered therewith is made part of the record in this proceeding.
5. Charles W. Downey is permitted to intervene in this proceeding and to become a party of record.
6. In Finance Docket No. 32760, the application filed by UPC, UPRR, MPRR, SPR, SPT, SSW, SPCSL, and DRGW is approved, subject to the imposition of the conditions discussed in this decision. Such conditions include but are not limited to those embraced in the BNSF, CMA, and URC agreements, and further include but are not limited to the various modifications we have required with respect to the terms of the BNSF and CMA agreements (particularly with respect to new facilities, transloading facilities, build-out/build-in options, contracts at 2-to-1 points, and SIT facilities). The Board expressly reserves jurisdiction over the Finance Docket No. 32760 proceeding and all embraced proceedings in order to implement the oversight condition imposed in this decision and, if necessary, to impose further conditions or to take such other action, including the ordering of divestiture, as may be warranted.
7. If applicants consummate the approved transaction, they shall confirm in writing to the Board, within 15 days after consummation, the date of consummation. Where appropriate, applicants shall submit to the Board three copies of the journal entries recording consummation of the transaction.
8. All notices to the Board as a result of any authorization shall refer to this decision by date and docket number.
9. No change or modification shall be made in the terms and conditions approved in the authorized application without the prior approval of the Board.
10. Applicants are hereby directed to file a progress report and an implementing plan on or before October 1, 1996, as discussed in this decision, and to file further progress reports on a quarterly basis thereafter.
11. BNSF is hereby directed to file a progress report and an operating plan on or before October 1, 1996, as discussed in this decision, and to file further progress reports on a quarterly basis thereafter.
12. In Finance Docket No. 32760 (Sub-No. 1), the trackage rights referenced in the Sub-No. 1 notice filed November 30, 1995, are exempted pursuant to 49 CFR 1180.2(d)(7).
13. Applicants and BNSF are hereby directed to file, no later than September 4, 1996, a 49 CFR 1180.2(d)(7) class exemption notice covering the trackage rights added to the

BNSF agreement in accordance with the amendments required by the CMA agreement.

14. Applicants and URC are hereby directed to file, no later than September 4, 1996, a 49 CFR 1180.2(d)(7) class exemption notice covering the trackage rights provided for in the URC agreement.

15. In Finance Docket No. 32760 (Sub-No. 2), the petition for exemption is granted.

16. In Finance Docket No. 32760 (Sub-No. 3), the petition for exemption is granted.

17. In Finance Docket No. 32760 (Sub-No. 4), the petition for exemption is granted.

18. In Finance Docket No. 32760 (Sub-No. 5), the petition for exemption is granted.

19. In Finance Docket No. 32760 (Sub-No. 6), the petition for exemption is granted.

20. In Finance Docket No. 32760 (Sub-No. 7), the petition for exemption is granted.

21. In Finance Docket No. 32760 (Sub-No. 8), the petition for exemption is granted.

22. In Finance Docket No. 32760 (Sub-No. 9), the application for terminal area trackage rights is approved. BNSF and KCS shall jointly submit, by August 22, 1996, the agreed-upon terms respecting implementation of the Sub-No. 9 terminal trackage rights. In the event and to the extent these parties are unable to agree to such terms, they shall submit, by such date, separate proposals respecting implementation of such terminal trackage rights. The Board will then choose the better of the proposals, or some variation thereof, and make it effective on September 11, 1996.

23. In Finance Docket No. 32760 (Sub-No. 10), the responsive application filed by CMTA is denied.

24. In Finance Docket No. 32760 (Sub-No. 11), the responsive application filed MRL is denied.

25. In Finance Docket No. 32760 (Sub-No. 12), the responsive application filed by Entergy is approved to the extent the application seeks to require that the BNSF agreement be amended to allow BNSF to transport coal to and from White Bluff via the White Bluff-Pine Bluff build-out line. In all other respects, the Sub-No. 12 responsive application is denied.

26. In Finance Docket No. 32760 (Sub-No. 13), the responsive application filed by Tex Mex is approved, subject to this restriction: all freight handled by Tex Mex pursuant to its Sub-No. 13 trackage rights must have a prior or subsequent movement on the Laredo-Robstown-Corpus Christi line. Tex Mex and UP/SP shall jointly submit, by August 22, 1996, the agreed-upon terms respecting implementation of the Sub-No. 13 trackage rights. In the event and to the extent these parties are unable to agree to such terms, they shall submit, by such date, separate proposals respecting implementation of such trackage rights. The Board will then choose the better of the proposals, or some variation thereof, and make it effective on September 11, 1996.

27. In Finance Docket No. 32760 (Sub-No. 14), the terminal trackage rights application filed by Tex Mex is approved, subject to this restriction: all freight handled by Tex Mex pursuant to its Sub-No. 14 terminal trackage rights must have a prior or subsequent movement on the Laredo-Robstown-Corpus Christi line. Tex Mex and HB&T shall jointly submit, by August 22, 1996, the agreed-upon terms respecting implementation of the Sub-No. 14 terminal trackage rights. In the event and to the extent these parties are unable to agree to such terms, they shall submit, by such date, separate proposals respecting implementation of such terminal trackage rights. The Board will then choose the better of the proposals, or some variation thereof, and make it effective on September 11, 1996.

28. In Finance Docket No. 32760 (Sub-No. 16), the responsive application filed by WEPCO is denied.

29. In Finance Docket No. 32760 (Sub-No. 17), the responsive application filed by MCC and its rail affiliates is denied.

30. With respect to the conditions imposed in this decision respecting CPSB, the interested parties (CPSB, UP/SP, and BNSF) shall jointly submit, by August 22, 1996, the agreed-upon terms respecting implementation of such conditions. In the event and to the extent these parties are unable to agree to such terms, they shall submit, by such date, separate proposals respecting implementation of such conditions. The Board will then choose the better of the proposals, or some variation thereof, and make it effective on September 11, 1996.²⁷⁸

31. With respect to the condition imposed in this decision respecting CMTA, the interested parties (CMTA, Longhorn, UP/SP, and BNSF) shall jointly submit, by December 10, 1996, agreed-upon terms respecting implementation of such condition. In the event and to the extent these parties are unable to agree to such terms, they shall submit, by such date, separate proposals respecting implementation of such condition.

32. With respect to the condition imposed in this decision respecting TUE, the interested parties (TUE, UP/SP, BNSF, and KCS) shall jointly submit, by December 10, 1996, agreed-upon terms respecting implementation of such condition. In the event and to the extent these parties are unable to agree to such terms, they shall submit, by such date, separate proposals respecting implementation of such condition.

33. In Docket No. AB-3 (Sub-No. 129X), the petition for exemption is granted.

34. In Docket Nos. AB-3 (Sub-No. 130) and AB-8 (Sub-No. 38), the application is granted.

35. In Docket Nos. AB-3 (Sub-No. 131) and AB-8 (Sub-No. 37), the application is granted.

36. In Docket No. AB-3 (Sub-No. 132X), the notice is accepted.

37. In Docket No. AB-3 (Sub-No. 133X), the petition for exemption is granted, and an NITU is hereby issued.

²⁷⁸ As previously noted, CPSB and UP/SP may jointly request, by August 22nd, an extension of the August 22nd deadline.

38. In Docket No. AB-3 (Sub-No. 134X), the notice is accepted.

39. In Docket No. AB-8 (Sub-No. 36X), the petition for exemption is granted. In Docket No. AB-12 (Sub-No. 189X), the petition for exemption is granted in part (discontinuance authority is granted) and denied in part (abandonment authority is denied).

40. In Docket No. AB-8 (Sub-No. 39), the application is granted. In Docket No. AB-12 (Sub-No. 188), the application is granted in part (discontinuance authority is granted) and denied in part (abandonment authority is denied).

41. In Docket No. AB-12 (Sub-No. 184X), the petition for exemption is granted, and an NITU is hereby issued.

42. In Docket No. AB-12 (Sub-No. 185X), the petition for exemption is granted.

43. In Docket No. AB-12 (Sub-No. 187X), the notice is accepted.

44. In Docket No. AB-33 (Sub-No. 93X), the notice is accepted.

45. In Docket No. AB-33 (Sub-No. 94X), the notice is accepted.

46. In Docket No. AB-33 (Sub-No. 96), the application is granted.

47. In Docket No. AB-33 (Sub-No. 97X), the notice is accepted, and an NITU is hereby issued.

48. In Docket No. AB-33 (Sub-No. 98X), the petition for exemption is granted, and an NITU is hereby issued.

49. In Docket No. AB-33 (Sub-No. 99X), the notice is accepted, and an NITU is hereby issued.

50. In Docket Nos. AB-3 (Sub-Nos. 132X and 134X), AB-12 (Sub-No. 187X), and AB-33 (Sub-Nos. 93X, 94X, 97X, and 99X), notice will be published in the Federal Register on August 12, 1996. In these proceedings:

(a) Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, the exemptions will be effective on September 11, 1996, unless stayed pending reconsideration.

(b) Petitions to stay, formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2), and trail use/rail banking requests under 49 CFR 1152.29²⁷⁹ must be filed by August 22, 1996.

(c) Petitions to reopen must be filed by September 3, 1996. Except in Docket No. AB-33 (Sub-Nos. 94X, 97X, and 99X), requests for public use conditions must be filed by September 3, 1996.

²⁷⁹ The Board will accept late-filed trail use requests so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

(d) In Docket Nos. AB-33 (Sub-Nos. 94X, 97X, and 99X), applicants shall leave intact all of the rights-of-way underlying the track, including bridges, culverts, and similar structures, for a period of 180 days from the effective date of this decision to enable any state or local government agency or other interested person to negotiate the acquisition of the rights-of-way for public use.

(e) In Docket Nos. AB-3 (Sub-No. 134X) and AB-12 (Sub-No. 187X), applicants shall leave intact all of the rights-of-way underlying the track, including bridges, culverts, and similar structures, for a period of 90 days from the effective date of this decision to enable any state or local government agency or other interested person to negotiate the acquisition of the rights-of-way for public use.

51. In Docket Nos. AB-3 (Sub-Nos. 129X and 133X), AB-8 (Sub-No. 36X), AB-12 (Sub-Nos. 184X, 185X, and 189X), and AB-33 (Sub-No. 98X), notice will be published in the Federal Register on August 12, 1996. In these proceedings:

(a) Provided no formal expression of intent to file an OFA has been received, the exemptions will be effective on September 11, 1996, unless stayed pending reconsideration.

(b) Petitions to stay, formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2), and [except in Docket Nos. AB-8 (Sub-No. 36X) and AB-12 (Sub-No. 189X)] trail use/rail banking requests under 49 CFR 1152.29²⁸⁰ must be filed by August 22, 1996.

(c) Petitions to reopen must be filed by September 3, 1996. In Docket Nos. AB-3 (Sub-No. 129X) and AB-12 (Sub-No. 185X), requests for public use conditions must be filed by September 3, 1996.

(d) In Docket Nos. AB-3 (Sub-No. 133X), AB-12 (Sub-No. 184X), and AB-33 (Sub-No. 98X), applicants shall leave intact all of the rights-of-way underlying the track, including bridges, culverts, and similar structures, for a period of 180 days from the effective date of this decision to enable any State or local government agency or other interested person to negotiate the acquisition of the rights-of-way for public use.

(e) In Docket No. AB-12 (Sub-No. 185X), applicants shall leave intact all of the rights-of-way underlying the track, including bridges, culverts, and similar structures, for a period of 90 days from the effective date of this decision to enable any State or local government agency or other interested person to negotiate the acquisition of the rights-of-way for public use.

52. In Docket Nos. AB-3 (Sub-Nos. 130 and 131) and AB-33 (Sub-No. 96), notice of the findings made with respect to the abandonment authorizations sought therein will be published in the Federal Register on August 12, 1996. In these proceedings:

(a) An OFA to allow rail service to continue must be received by the railroad and the Board by August 22, 1996.

²⁸⁰ The Board will accept late-filed trail use requests so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

The offeror must comply with 49 U.S.C. 10905 and 49 CFR 1152.27(c)(1).

(b) OFAs and related correspondence to the Board must refer to the appropriate abandonment proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **"Office of Proceedings, AB-OFA."**

(c) Subject to any conditions set forth and provided no offer for continued rail operations is received, an appropriate certificate will be issued. An abandonment may not be effected prior to the effective date of the certificate.

(d) In Docket No. AB-33 (Sub-No. 96), applicants shall leave intact all of the rights-of-way underlying the track, including bridges, culverts, and similar structures, for a period of 180 days from the effective date of this decision to enable any State or local government agency or other interested person to negotiate the acquisition of the rights-of-way for public use.

(e) In Docket No. AB-3 (Sub-Nos. 130 and 131), requests for public use conditions must be filed by September 3, 1996.

53. In Docket Nos. AB-8 (Sub-Nos. 37, 38, and 39) and AB-12 (Sub-No. 188), notice of the findings made with respect to the discontinuance authorizations sought therein will be published in the Federal Register on August 12, 1996. In these proceedings:

(a) An OFA to allow rail service to continue must be received by the railroad and the Board by August 22, 1996. The offeror must comply with 49 U.S.C. 10905 and 49 CFR 1152.27(c)(1).

(b) OFAs and related correspondence to the Board must refer to the appropriate abandonment proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **"Office of Proceedings, AB-OFA."**

(c) Subject to any conditions set forth and provided no offer to subsidize continued rail operations is received, an appropriate certificate will be issued. Discontinuance may not be effected prior to the effective date of the certificate.

54. In Docket Nos. AB-3 (Sub-No. 133X), AB-33 (Sub-Nos. 96, 97X, 98X, and 99X), and AB-12 (Sub-No. 184X), the exemption authority granted is subject to the additional condition that the carrier(s) comply with the following terms and conditions for implementing trail use/rail banking:

(a) If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad from any potential liability), and the payment of any and all taxes that may be levied or assessed against the right-of-way.

(b) Interim trail use/rail banking is subject to the future restoration of rail service and to the user's

continuing to meet the financial obligations for the right-of-way.

(c) If interim trail use is implemented, and subsequently the user intends to terminate trail use, the user must (i) send the Board a copy of the cover page of this decision and the page(s) containing this Ordering Paragraph 56, and (ii) request that Ordering Paragraph 56 be vacated in relevant part on a specified date.

(d) If an agreement for interim trail use/rail banking is reached by the 180th day after the date of service of this decision, interim trail use may be implemented. If no agreement is reached by that time, the carrier may fully abandon the line, provided any conditions imposed are met.

55. In Docket Nos. AB-3 (Sub-Nos. 130 and 131) and AB-33 (Sub-No. 96), subject to the conditions set forth above and provided no offer for continued rail operations is received, a CITU will be issued. Applicant may not effect abandonment and material salvage until permitted under the terms of the CITU.

56. Approval of the application in Finance Docket No. 32760 is subject to the labor protective conditions set out in New York Dock Ry.--Control--Brooklyn Eastern Dist., 360 I.C.C. 60, 84-90 (1979).

57. The trackage rights exempted in Finance Docket No. 32760 (Sub-No. 1) are subject to the labor protective conditions set out in Norfolk and Western Ry. Co.--Trackage Rights--BN, 354 I.C.C. 605, 610-15 (1978), as modified in Mendocino Coast Ry., Inc.--Lease and Operate, 360 I.C.C. 653, 664 (1980).

58. The line sales exempted in Finance Docket No. 32760 (Sub-No. 2) are subject to the labor protective conditions set out in New York Dock Ry.--Control--Brooklyn Eastern Dist., 360 I.C.C. 60, 84-90 (1979).

59. The terminal railroad control transactions exempted in Finance Docket No. 32760 (Sub-Nos. 3, 4, 5, 6 and 7) are subject to the labor protective conditions set out in New York Dock Ry.--Control--Brooklyn Eastern Dist., 360 I.C.C. 60, 84-90 (1979).

60. The trackage rights approved in Finance Docket No. 32760 (Sub-No. 13) are subject to the labor protective conditions set out in Norfolk and Western Ry. Co.--Trackage Rights--BN, 354 I.C.C. 605, 610-15 (1978), as modified in Mendocino Coast Ry., Inc.--Lease and Operate, 360 I.C.C. 653, 664 (1980).

61. The abandonments and discontinuances authorized in Docket Nos. AB-3 (Sub-Nos. 129X, 130, 131, 132X, 133X, and 134X), AB-8 (Sub-Nos. 36X, 37, 38, and 39), AB-12 (Sub-Nos. 184X, 185X, 187X, 188, and 189X), and AB-33 (Sub-Nos. 93X, 94X, 96, 97X, 98X, and 99X), are subject to the labor protective conditions set out in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91, 98-103 (1979).

62. Approval of the transactions authorized in the Finance Docket No. 32760 proceeding and in the various embraced proceedings are subject to the environmental mitigation conditions set forth in Appendix G.

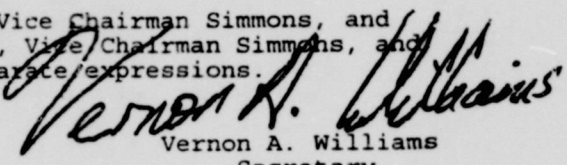
63. All conditions that were requested by any party in the Finance Docket No. 32760 proceeding and/or in the various embraced proceedings but that have not been specifically approved in this decision are denied.

64. This decision shall be effective on September 11, 1996.

65. With respect to the proceedings docketed in Finance Docket Nos. 32760 and 32760 (Sub-Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, and 17):

The requirement of an initial decision is waived pursuant to 49 U.S.C. 11345(f). The decisions embraced herein are final decisions within the meaning of 49 U.S.C. 10327. Any administrative appeal will be entertained only under 49 U.S.C. 10327(g), which permits appeal only on the basis of material error, new evidence, or substantially changed circumstances.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen. Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen commented with separate expressions.


Vernon A. Williams
Secretary

CHAIRMAN MORGAN, commenting:

Introduction

The proposed merger of the Union Pacific (UP) and the Southern Pacific (SP) railroad systems -- creating the Nation's largest rail system -- stands as a true test of the statutory authority of the Surface Transportation Board (Board) to permit transportation-related transactions that are in the public interest. In determining the public interest in a rail merger case, the Board must carefully balance the benefits flowing from the consolidation against the anticompetitive consequences that may result. In this case, the transportation benefits are clear. And although the anticompetitive effects of approving this merger without conditions could be significant, the Board, through the conditioning authority granted by Congress, can and has imposed conditions to address the potentially significant adverse consequences of the merger.

Throughout this merger proceeding, the Board has heard from a broad cross-section of interests about the potential impacts, both positive and negative, associated with this merger. We have heard from shippers who support the merger and shippers who oppose the merger. We have heard from railroads that are for the merger and railroads that are against it. We have heard from some state and other governmental officials who are for it and some who are against it. We have heard from employees who support it and employees who do not. The Board's challenge has been to weigh all of the extensive evidence and to arrive at a balanced decision that addresses the potentially significant harm while preserving the significant transportation benefits that this merger will produce. I believe that the Board has met that challenge in this decision.

Outright Denial

Some parties have argued that this case should be easy to decide: if there is a competitive problem, you "just say no" and deny the whole application, leaving it to the private parties to attempt to work out a solution more acceptable to the government. With all due respect, while that may be the easy answer here, particularly given the opposition, I do not believe that it is

the right answer in this case. Government's role in today's world, in my view, should be to work in partnership with industry to empower it to take the steps necessary to compete. When private industry comes forward in good faith with what it believes to be a stimulus for economic growth and development, we should not presume collusion in the first instance and dismiss the proposal altogether. Rather, we must attempt to craft a response that balances the many competing interests.

There are clear and real pluses to this merger. First, the merger permits UP and SP to realize tremendous transportation efficiencies and other benefits. History has shown that restructuring in the rail industry has strengthened the rail transportation system in the form of better service and lower rates, and this merger should be no exception.

Second, the merger ensures that shippers on the SP system will continue to receive competitive service. Some parties have argued that we should not be concerned about SP's financial condition. However, the State of California, on behalf of its shippers, and the United Transportation Union, on behalf of its employee members, are worried, and the record, as discussed in our decision, supports their concerns. Denying the merger and risking a downsized SP or an SP broken up into pieces is not what they want. And it is not a risk that we, as guardians of the public interest under our statute, should be willing to take. Rather, consistent with the statute, the Board should strive to allow the far-reaching benefits promised by this merger and to save the SP system as a viable competitive force.

Divestiture

Some parties have argued that there is another simple, quick, and obvious way to fix the potentially significant competitive problems associated with this merger: divestiture. Divestiture may be an obvious fix to some, but it is not an obvious fix for me in this case. First, as presented, it would be a drastic solution in this case, and one that we should pursue only if there is clearly no other viable alternative. Railroads, with their network economies, are different from other industries, and taking away part of their network takes away part of their economies of operation. As the Board's decision demonstrates, there is clear evidence on this record that divestiture of the sort suggested by some of the parties would significantly undercut the transportation benefits and efficiencies associated with this merger.

Moreover, the divestiture proposals discussed in this case are far-reaching, with one proposal even suggesting the divestiture of 1200 miles. This remedy goes beyond the harm to be addressed, and it does not distinguish between those shippers that will lose direct and indirect competition and those whose competitive position will not be substantially affected by the merger. Government remedies, under our statute or any other law, should not overreach and must be specifically tailored to the identifiable harm.

Furthermore, divestiture is not necessarily simple and quick. To the contrary, it could lead to more government intrusion, more regulatory oversight, and, ultimately, more litigation when the unsuccessful suitors seek relief. This is particularly true given the fact that certain divestiture proposals were not even formally presented in the record of this proceeding. Divestiture here could mean another proceeding and more delay, creating the type of uncertainty and unpredictability

for business that the government of today, and certainly this Board, are trying to avoid.

In short, divestiture poses substantial problems of its own in this case.

Appropriate Conditions

Divestiture, with all of these potential problems, might be more palatable if there were no other way to fix the competitive harm in this case. However, there are other ways.

The applicants admit that there is much overlapping track, and they have sought to address this competitive issue by providing a private sector solution through the granting to Burlington Northern Santa Fe (BNSF) of extensive trackage rights. Parties have complained that those trackage rights will not produce as much competition as an independent SP. I disagree. BNSF is a strong competitor that wants to compete and that knows how to compete. Trackage rights are used successfully throughout the industry, and there is no evidence that, because of their nature and scope, the trackage rights here would not be an effective competitive alternative. Furthermore, as the record shows, the trackage rights agreement provides significant transportation benefits of its own. If managed properly -- and the Board has the means and the mandate to make sure that they are -- these trackage rights can replicate SP's existing competitive presence and can provide market discipline for the merged UP/SP system.

The BNSF agreement is clearly strengthened by the privately negotiated agreement with the Chemical Manufacturers Association (CMA). However, the Board has concluded, and rightly so, that more is needed to address the potential competitive harm. The Board has augmented conditions in the important areas of build-ins and build-outs, transloads, new facilities, storage-in-transit facilities, and contract service. We have responded to the concerns of various shipper groups and specific shippers, particularly western coal interests, plastic and chemical shippers, and grain and other NAFTA trade. Our conditions are carefully crafted to preserve competitive alternatives existing today without undermining the benefits of the merger.

We also provide for 5 years of oversight. Parties have attacked oversight on the one hand as a meaningless gesture. On the other hand, they have criticized oversight as burdensome overregulation. Which is it? The answer is that it is neither. The conditions that the Board has imposed require the applicants and BNSF to report periodically to demonstrate to the Board that the protective conditions are in fact working. The Board will not depend upon shippers and affected parties to do its monitoring. If competitive harm becomes a problem, we can and will act. The divestiture option will remain available during the entire oversight period. The Board has taken this case very seriously from the beginning and will continue to do so.

Closing

I believe that our decision is a balanced one that recognizes the many competing issues in this case. It preserves the transportation benefits of the transaction, benefits that the Board has a mandate not to ignore. It ensures a strong and effective competitive alternative for shippers and communities served by SP -- we owe them no less. It recognizes the importance of the transaction to the employees, for it is they who have much at stake. It mitigates as appropriate the

competitive harm without the risk of potentially more intrusive governmental action. It recognizes and affirms the importance and the benefit of market-based proposals and private sector negotiations among the various sectors of the transportation community, including management and labor. On balance, this decision is a sound one; it represents good government; it is good for transportation; and it is good for the economy.

VICE CHAIRMAN SIMMONS, commenting:

I was a member of the Interstate Commerce Commission when, in 1986, that body denied the application of the Santa Fe Southern Corporation to acquire and merge with the Southern Pacific Railroad (SF/SP). Arguably, many of the competitive problems of the ill-fated SF/SP merger exist in this case, leading one to conclude that the two cases are similar. However, I believe that it was irresponsible for some parties to conclude, summarily, that the proposed merger here is anti-competitive and ill-advised merely because applicants' lines are parallel.

Such an inflexible view with respect to this industry is abhorrently narrow minded. More important, such an unyielding view ignores the economic realities of this present day industry and the economic realities that favor a merger in this instance, but that did not favor a merger in SF/SP.

There are striking material differences between the two cases that require additional examination or analysis. First, unlike the applicants in SF/SP, here, at the outset, UP and SP have identified areas that will face a reduction in competition and have voluntarily negotiated settlements that offer remedial solutions. Second, the applicants have factually demonstrated, persuasively, that the economic forces in play today demand such a merger. Now more than ever, shippers are requiring railroads to provide seamless, single-line service, free of costly interchanges and reciprocal switching.

Thus, no one should be misled by opposing shippers who refuse to see beyond their singular concerns, thereby pitting their parochial interests against a broader public interest that demands increased efficiencies throughout the surface transportation system.

Likewise, we should also not be misled by the self-serving and centralized views of opposing railroads, who, after all, are merely bartering for a greater slice of the economic pie.

Here, as in similar cases, the analysis must be -- what as a whole is in the public interest. It is this analysis and none other that controls the debate.

Railroads have made significant productivity gains as a result of the Staggers Act, ICC actions, and improved labor agreements. However, there is sufficient evidence to credit railroad consolidations with many of the efficiency gains. This merger will further the productivity gains already achieved in the rail industry. Mergers reduce interchanges and excess equipment. Mergers also, as preferred by shippers, traditionally result in single-line operations capable of providing uninterrupted, seamless service.

Today, the single fastest growth segment for railroads is intermodal and its transportation requires certain characteristics that UPSP can deliver. This will continue to be the growth segment for the industry. While carriers can limp

along on the strength of their traditional commodities of coal, lumber, grain, automobiles, etc., and have increases in revenues and profits, they need new sources of traffic and revenues in order to grow and attract capital. Intermodalism is that source. Granted, there are no large profits in intermodal service, but that will change as the traffic increases and railroads become expert and efficient in delivering this type of service. In order for the benefits of intermodalism to realize their full potential, this merger should be approved.

Simply offering single-line service, however, is not enough in the long run to attract and hold intermodal traffic. Intermodal transportation requires substantial capital investments to operate efficiently, including large funds for clearances, double-tracking, constant maintenance of track, modernization of yards, and labor improvements, all to move this traffic at top-notch speed. The Board's analysis places emphasis on the important role this merger would play in advancing those goals of promoting intermodalism. As railroads increasingly attract this traffic, there will be less highway congestion, improvements in air quality, reduction in accidents, and better time management, as workers spend less time in costly highway tie-ups.

Intermodalism requires capacity and infrastructure. The UPSP merger will provide synergies, network efficiencies, and financial capability that are necessary to develop intermodal service. A combined UPSP will have thousands of route miles that could be exploited for high quality intermodal service. Recognizing that intermodalism is the key for future growth, applicants have committed to invest \$250 million in intermodal terminals, and \$500 million to upgrade key routes for intermodal movements: the Sunset, Texas and Pacific, and Tucumcari routes.

I agree with the applicants' insistence that their market coverage is incomplete. As a result of the merger, however, UPSP will have improved and shorter routes throughout the West, and will operate on a level playing field equal to BNSF. The railroad will be able to reduce hundreds of miles in travel time in such areas as California's I-5 corridor, SP's Chicago-Southern California route, and so on.

UPSP makes much of the fact that the catalyst for this merger was the consolidation of the Burlington Northern and the Santa Fe. Indeed, I tend to agree that the BNSF merger was the event that altered the competitive situation of the rail industry in the West. It particularly changed conditions for SP as that carrier was not fully positioned to deal with the competitive impacts of the BNSF. SP can continue the current situation, but given the low costs and operating ratios of BNSF and UP, the old strategy developed by SP cannot achieve the intended results and keep pace with the BNSF. It cannot just cut rates to maintain existing traffic or attract new traffic, that strategy would only further cause SP's deterioration. SP would continue to exist, but for the most part, it would effectively be eliminated as a market force, and would no longer be a significant player in the market. UP and BNSF, because of their sheer sizes, will continue to lower costs, attract traffic and investment, while SP will simply fall further behind.

Parties opposing the merger argue that SP does not need this merger to survive, that it can continue to operate on a stand alone basis and attract the necessary capital to prosper. In order to remain a stand alone railroad, however, SP would probably abandon those areas where SP has little to no negotiating leverage and focus on areas where the carrier can make a return decent enough to satisfy investors, that is in those areas where SP is the dominant or sole carrier, and need not compete as vigorously. This strategy, while economically

sound, would only further marginalize SP and prevent it from being a competitive market force in the territories it serves. SP could provide service in a few narrowly defined markets, and not play much of a competitive role in the broader markets of the West. The restructuring of the SP would mean less competition in some markets, and the possibility of abandonment of marginal lines.

Some of the opponents are calling for divestiture of key SP routes as a way to satisfy competitive problems. Conrail, Kansas City Southern, National Industrial Traffic League (NITL), Montana Rail Link, and others seek divestiture of various SP routes. History reflects that the ICC has never used divestiture of portions of an existing network as a method to preserve competition. This is so, in part, because experience shows that divestiture is not a proper remedy in the context of the rail industry. Divestiture has been ordered in other industries, where the merging partners are generally required to divest themselves of a subsidiary or some other business not necessary for the operation of the core business.

Here, by contrast, proponents of divestiture seek to destroy a unified SP system consisting of routes and corridors that are vital to its core business of providing railroad transportation. I have strong reservations against such a divestiture here, as it would cause more problems than it would actually solve. Specifically, the SP's value is as a single system, and because of the value of what is referred to as system integration, a break up of SP would not make sense. Furthermore, on the whole, divestiture would not benefit shippers, inasmuch as many current single-line moves would become two-line or three-line moves, wiping out the efficiencies of single-line service. With a merger, shippers will have the option of using two financially sound rail systems, UPSP and BNSF. I am confident that the two mega systems will compete fiercely. One only need look for evidence in the Powder River Basin and the intermodal business from the Pacific Northwest to Chicago. The competition to serve automobile plants is a constant battle between rail carriers. Western shippers can best benefit from two railroads with equal ability, resources, geographic coverage and reach, as opposed to a weak SP, whose competitiveness in the future is doubtful.

In my view, the proponents of divestiture have imprudently and irresponsibly narrowed their focus on the preservation of competition. But in so doing, they have ignored the special role overall that healthy railroads play in promoting the public interest. This perhaps can be said of no other industry. Indeed, the surface transportation industry case law, agency precedent, and common experience, requires that no one, including Federal regulators, should exalt or substitute the preservation of competition, just for the sake of having it, over the combination of other factors contributing to the public interest.

We should not forget that with respect to this industry, the Nation's antitrust laws do no more than help form the debate. They do not control the debate, as the public interest standard is much broader. See Northern Merger Lines Case, 396 U.S. 491, at 506-516 (1970). Indeed, it is well settled that federal regulators can approve rail consolidations that violate the antitrust laws. See generally United States v. I.C.C., 361 U.S. 491 (1970).

No one should be that alarmed or dismayed that the merger may produce a lessening of competition, as some lessening of competition is a logical and natural consequence of any merger. However, as history has shown, the primary concern of this federal body must be the effects of the rail consolidation on the adequacy of transportation services available to the public. Thus, since modern times the agency has been encouraged to favor

mergers, consolidations, and joint use of facilities that tend to rationalize and improve the Nation's rail system. See Missouri-Kansas-Texas R. Co. v. United States, 632 F.2d 392, 396 (5th Cir. 1980).

In this case, competition will be preserved with the settlement agreements and the additional conditions recommended by this Board. Burlington Northern Santa Fe has the ability to offer vigorous competition to shippers at 2-to-1 points. Thus, I find arguments that trackage rights cannot work as a substitute for real competition extremely unpersuasive. Properly structured and their terms reviewed by the Board, trackage rights can provide effective competition. Both history and common experience upholds this position.

Nevertheless, opponents imprudently argue that trackage rights here will not be feasible and that the competition offered thereby is illusory, because of the so-called unprecedented length in miles involved in the trackage rights.

Such arguments not only defy good business logic, they also miss the pro-competitive public benefits to be derived from such trackage rights. Here, the trackage rights will not just allow BNSF to compete with the merged carriers for local traffic, they will also allow BNSF to fill links within its own system and provide it with the opportunity to add SP served shippers on to its existing hauls.

To the contrary, some parties argue trackage rights compensation here is set so high that BNSF will become less than enthusiastic, and as such, it will not truly offer competitive alternatives to the merged UPSP. Whether that is so remains to be seen. But agency policy has always been to encourage parties to voluntarily negotiate compensation. It is difficult to accept the notion that BNSF would have agreed to a level of compensation high enough so as to effectively cut-off its competitive options and additional sources of revenue. Why agree to the deal? BNSF could have joined others in protesting the merger and as such been a formidable foe. Because of its financial strengths and routes, BNSF is the best choice to serve those shippers in the 2-to-1 markets. If UPSP wanted little to no competition, it could have chosen weaker carriers with limited geographic reach.

The Department of Justice is concerned that the trackage rights compensation is based on usage, and would rather see BNSF make a substantial payment up-front to serve as an inducement to vigorously compete in order to recoup its investment. While initially a provocative idea, I see no need to worry under these circumstances about BNSF competing. It should be noted that BNSF has substantial fixed and common costs on its own system. That system will connect or fill in the gaps with the trackage rights, and hence additional traffic will help defray BNSF's existing costs.

Merger opponents also insist that there is not sufficient density for BNSF to compete. Again, I reject this assertion. In their rebuttal, applicants thoroughly demolish this argument by demonstrating that opponents presented flawed studies to prove their point with regard to traffic density. For example, they exclude all intermodal, grain and coal traffic from the study. Besides being misleading on available commodities, the opponents also impose geographic restrictions, failing to include local traffic flowing within Texas, Arkansas, and Louisiana. Furthermore, as UPSP point out, protestants to the merger exclude all traffic between Mexico and Texas, Louisiana, Arkansas, as well as all traffic between Mexico or those States and points in the Western United States and Canada. BNSF could use a lot of this traffic in conjunction with the western portion of its rail.

network, but the opponents' study excludes all of this traffic from their calculations.

All in all, the handicaps cited -- trackage rights compensation and lack of sufficient traffic -- have not been validated. Opponents assert that BNSF will be unable to develop significant market shares, which will render it unable to develop the volumes necessary to achieve economies of density and scale. It is my view that the opposition ignores what I view as a crucial point: whether BNSF will be able to be at least as competitive as SP is on those routes. According to the best evidence of record, where there are parallel lines, and UP and SP compete head-to-head, SP has the low market share. BNSF, which has lower costs than SP, could garner at least the same amount of traffic as SP. With BNSF's larger system, financial strength, and market share, BNSF has the ability to develop even greater market share than SP currently possesses.

Nevertheless, in keeping with the congressional mandates of past and present, to ensure that competition is meaningful, the Board will actively monitor the transaction for the next five years. I want the applicants, BNSF, and all shippers to know that we are very serious about monitoring. This Board is prepared to take further action should the BNSF not live up to its common carrier obligation to effectively compete or if UPSP undertakes actions that impede BNSF's ability to compete.

Overall, the positions of DOJ and other commenting federal regulators appear to be based on the following premise: prices become higher as the number of competitors decrease. But as aforementioned, this premise is predicated on theories that do not readily apply to the railroad industry.

The evidence is conclusive, that although the number of Class I railroads have fallen, prices, for the most part have declined since enactment of the Staggers Act. There is no clearer an example of this point than the healthy competitive environment in the Southeast, where there are only two Class I railroads.

By contrast, for the West, UPSP and the State of California have presented persuasive evidence (much of which concurs with the Board's own tracking over the years) that SP is the 3rd place rail carrier in many markets, and as such it contributes very little to the level of competition in those markets where it is the third carrier.

Similarly, much as been made of the fact that Southern Pacific is not a "failing firm". Whether it is a failing firm or not, SP is certainly a very weak competitor. It cannot come near to investing the huge sums UP and BNSF will spend on capital expenditures. Without investments in plant and equipment, SP will continue to fall further behind its competitors. There is evidence that in many markets where SP competes with BNSF and UP, it is simply a marginal player. Not only are SP's shippers threatened with continuing poor service, but its thousands of employees risk losing their jobs. That possibility is why SP unionized employees support this merger.

Shipper testimony confirms that in many markets, SP is unable to meet the service demands of shippers. This merger will produce efficiencies that would increase the competitive significance of SP's assets in the marketplace. This point is key to understanding what drives this merger and the strong shipper support. Undoubtedly, SP has very attractive assets and key routes, that with shrinking capital and the intense competition offered by BNSF (as witnessed by the number of SP shippers BNSF has acquired since its merger), the current management is not in a position to fully exploit. To let SP

linger and hope for better times to appear, I believe, weakens the carrier further, and as traffic patterns adjust or alter as a consequence of BNSF and UP's relentless competitive activity at the expense of SP, the value of its assets would greatly diminish. DOJ claims that SP can continue to offer the same price-quality combinations it offers now, and that SP's position relative to the two other carriers would not change if we deny the merger. However, logic dictates that without substantial infusion of capital, SP will be unable to continue to provide those services in the few markets it has been able to do so. A rational SP would concentrate on those markets and routes where it has a competitive advantage and limit capital spending, while BNSF grows even more efficient.

Lastly, I believe that the transaction will strengthen the country's national defense. The Department of Defense supports the merger realizing that it will result in the creation of a strong rail network whose key routes will remain intact. Because of its weak financial condition over the last few years, SP has been an unreliable provider of rail service for DOD. A lack of capital investments have hampered SP's ability to provide efficient and timely service to the military. The merger will improve quality while also offering an alternative to the service of the BNSF.

In sum, I believe that this merger will result in tremendous benefits and enhancements to the Nation's economy. The founders of the Nation's railroads were individuals of vision. Because of their foresight, the country went on to create the world's most efficient transportation system, which in turn helped to create the world's most powerful industrial base and strong agricultural economy. This merger will continue to advance our strong manufacturing and agriculture sectors, and strengthen this nation's competitiveness in the global economy. The benefits enunciated are real and will produce shorter routes, new services, lower costs, better car supply, and more efficient operations. Farmers served by UP will find new markets for their wheat. Coal producers in Utah and Colorado will be able to market their coal to utilities because the SP has already invested heavily in expanding the market for western coal, and UP will not do anything to jeopardize that success, especially since a substantial amount of that coal goes to Asian markets. Chemical and plastic shippers faced with the loss of a competitive alternative, will have the services of BNSF through the settlement agreement. Although many of those manufacturers fear the consequences of the merger, BNSF will want to provide service just to increase its own market share and revenues. Besides, these captive shippers have the added protection of being able to file a rate complaint against the UPSP with the Board. Add that to the fact that the Board will monitor the transaction for the next five years to determine if BNSF is offering viable competition.

Finally, I want to personally commend the applicants here in an additional area. Specifically, I am confident that in the future we will look back at this entire episode -- at the continued advancement of the surface transportation industry -- as a sterling example of a moment in time where railroads, shippers, and labor²⁹¹ met at the conference table beforehand,

²⁹¹ I believe that the Labor Unions deserve a special commendation here. Labor should take special pride in the level of commitment it exacted from UPSP in reconciling competing interests. The level of commitment made by the railroads to Labor is a credit to Labor's diligent efforts in striking a proper balance between its interests and the overall compelling public benefits of the merger. History will show that here,

(continued...)

and forged a marvelous market based private solution to further the industrial interests of this nation. That, coupled with the very special measured expertise of the dedicated staff of a beleaguered but valiant Federal agency, has produced an excellent result that will benefit the public for decades to come.

COMMISSIONER OWEN, commenting:

Since passage of the Transportation Act, 1920, it has been the public policy of the United States to encourage railroad mergers and consolidations that are in the public interest.²⁸² The 1920 congressional directive was restated by the Transportation Act of 1940, which provided that railroad mergers and consolidations be "consistent" with the public interest.²⁸³ Again in 1976, Congress encouraged "efforts to restructure the [rail] system on a more economically justified basis, including . . . an expedited procedure" for mergers and consolidations.²⁸⁴ And in 1980 and again in 1995, Congress voted to retain in the Interstate Commerce Act the provision that mergers and consolidations among two or more Class I railroads "shall" be approved if they are found by the Surface Transportation Board to be "consistent with the public interest."²⁸⁵

The recurring term "public interest" may be found in the National Transportation Policy, which instructs the Surface Transportation Board to promote safe and efficient rail transportation and to foster sound economic conditions.²⁸⁶ The Supreme Court has held:²⁸⁷

The term public interest . . . is not a concept without ascertainable criteria, but has direct relation to adequacy of transportation service . . . [and to] best use of transportation facilities . . .

Congress provides us with additional direction -- specifically, that five factors be considered when reviewing railroad merger and consolidation applications:²⁸⁸

²⁸¹(...continued)

Labor's participation in the debate resulted in a win-win situation for everybody.

²⁸² Transportation Act, 1920, 41 Stat. 456 (1920).

²⁸³ Transportation Act of 1940, 54 Stat. 899, 905 (1940).

²⁸⁴ Railroad Revitalization and Regulatory Reform (4-R) Act of 1976, 90 Stat. 31 (1976) at Section 101(a)(2). See also Report of the Committee on Conference on S. 2718, S. Rep. No. 94-595, 94th Cong., 2d Sess., January 27, 1976, at 34.

²⁸⁵ Staggers Rail Act, 94 Stat. 1895 (1980), and ICC Termination Act of 1995, 109 Stat. 803 (1995), now codified at 49 U.S.C. 11324(c).

²⁸⁶ 49 U.S.C. 10101.

²⁸⁷ New York Central Securities v. United States, 287 U.S. 12, 25 (1932).

²⁸⁸ 49 U.S.C. 11324(b).

1) The effect of the proposed transaction on the adequacy of transportation to the public; 2) the effect on the public interest of including, or failing to include, other rail carriers in the area involved in the proposed transaction; 3) the total fixed charges resulting from the proposed transaction; 4) the interest of rail carrier employees affected by the proposed transaction, and; 5) whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region or in the national rail system.

Railroads were the first major industry where merger and consolidation was promoted by the federal government. Noted Justice Brandeis as to the reason:²⁸⁹

The new purpose was expressed in unequivocal language . . . to secure a fair return on capital devoted to the transportation service.

The Court later held:²⁹⁰

Congress has long made the maintenance and development of an economical and efficient railroad system a matter of primary national concern.

Moreover, Congress repeatedly has directed that railroad merger and consolidation applications be measured by a different standard than is used by the Justice Department. As the Supreme Court explained:²⁹¹

[T]here can be little doubt that the [Surface Transportation Board] is not to measure proposals for all-rail or all-motor [mergers and consolidations] by the standards of the antitrust laws. Congress authorized such [mergers and] consolidations because it recognized that in some circumstances they were appropriate for effectuation of the National Transportation Policy.

With regard to this alternative test for railroad mergers and consolidations, the Court observed:²⁹²

[The Surface Transportation Board] must estimate the scope and appraise the effects of the curtailment of competition which will result from the proposed consolidation and consider them along with the advantages of improved service, safer operation, lower costs, etc., to determine whether the consolidation will assist in effectuating the over-all transportation policy.

Indeed, the Supreme Court repeatedly has instructed the Justice Department to leave to the Interstate Commerce Commission and its successor Surface Transportation Board the complex and specialized task of weighing the public benefit of railroad

²⁸⁹ New England Divisions, 261 U.S. 184, 189 (1923).

²⁹⁰ Seaboard Air Line R. Co. v. Daniel, 333 U.S. 118, 124 (1948).

²⁹¹ McLean Trucking Co. v. United States, 321 U.S. 67, 84-85 (1944).

²⁹² Id., at 87.

mergers and consolidations against the competitive harm. For example, in 1965 the Court ruled:²⁹³

It matters not that the merger might otherwise violate the antitrust laws; the [Interstate Commerce] Commission has been authorized by the Congress to approve the merger of railroads if it makes adequate findings in accordance with the criteria . . . that such a merger would be 'consistent with the public interest.'

Again in 1970 the Court held:²⁹⁴

We do not enquire whether the merger satisfies our own conception of the public interest. Determination of the factors relevant to the public interest is entrusted by the law primarily to the [Interstate Commerce] Commission, subject to the standards of the governing statute.

In fact, twice in recent years -- in 1980 and again in 1995 -- Congress rejected suggestions that it shift to the Justice Department regulatory authority over railroad mergers and consolidations.²⁹⁵ In rejecting Justice Department oversight in 1980, Congress agreed with the Senate Commerce Committee's former chief counsel who had become chairman of the Interstate Commerce Commission, A. Daniel O'Neal:²⁹⁶

[The Justice Department approach] would likely be quite different, as it probably would assume that [more railroads rather than fewer railroads] produces the best service for users. This is not always true. In some rail markets there may not be sufficient traffic to support multiple carriers, in which case service to all shippers may suffer.

The Supreme Court agrees that railroad mergers and consolidations be approved not just to protect financially weak railroads, but to make rail operations more efficient and more competitive with trucks and barges. As the Court observed in 1970, rail mergers and consolidations are not to be confined "to combinations by which the strong rescue the halt and the lame," adding:²⁹⁷

[A] rail merger that furthers the development of a more efficient transportation unit and one that results in the joining of a 'sick' with a strong carrier serve equally to promote the long-range objectives of Congress . . .

When railroad operations can be made more efficient and less costly, the savings are shared through lower freight rates -- or

²⁹³ Seaboard Air Line R. Co. v. United States, 382 U.S. 154, 156-157 (1965).

²⁹⁴ Penn-Central Merger and N&W Inclusion Cases, 389 U.S. 486, 498-499 (1968).

²⁹⁵ "Administration's Rail Merger Position Hit by AAR, ICC in Senate Hearing," Traffic World, June 25, 1979, at 10; and "DOT Says Justice Should Review Rail Mergers," Traffic World, January 30, 1995, at 10.

²⁹⁶ "Administration's Rail Merger Position Hit by AAR, ICC in Senate Hearing," Traffic World, June 25, 1979, at 10.

²⁹⁷ Northern Lines Merger Cases, 396 U.S. 491, 508 (1970).

a forbearance to raise those rates -- which are reflected in lower consumer prices for everything from electricity to automobiles to food to clothing.

These public benefits, however, must be balanced against competitive harm, and the Surface Transportation Board has the authority to mitigate competitive harm by imposing a broad range of reasonable conditions, such as trackage rights.²⁹⁸

In this decision, the Surface Transportation Board has balanced the verifiable public benefits of the proposed transaction against the potential competitive harm; and while determining that the competitive harm is outweighed by the public benefits has nonetheless addressed each allegation of competitive harm and imposed conditions to mitigate that harm.

Overwhelming evidence was presented that this merger will result in broad public benefits such as substantial operating cost savings, improved rail service, renewed financial strength for Southern Pacific and more effective rail competition. This is important to existing and future customers of these railroads as well as the ultimate consumers of the products hauled who will reap the lower consumer prices stemming from transportation-cost savings. More efficient, lower-cost railroads also make American industry more competitive in world markets and make American jobs more secure. Furthermore, efficient railroads attract freight from the highway, relieve traffic congestion, reduce highway accidents, save lives, decrease pavement damage caused by heavy trucks, conserve fuel and improve the environment. Each is a worthy public goal.

Nonetheless, this agency is obliged to consider the likelihood of competitive harm. Indeed, competitive harm is likely to be substantial in certain important markets. Therefore, we imposed extensive conditions to mitigate that competitive harm. Among the conditions is a five-year oversight provision and a requirement that both the merged railroads as well as Burlington Northern Santa Fe -- which is being given extensive trackage rights -- make periodic progress reports to this agency. During this oversight period we have authority to impose additional conditions and we will be an alert and aggressive policeman.

With regard to oversight, there are two specific issues that are perennial problems in the railroad industry and that I do not intend to treat lightly if they recur as a result of this merger. One is the freight railroads' treatment of Amtrak passenger trains; the other is the railroads' respect for their unionized employees.

I remind the applicants that the Rail Passenger Service Act of 1970 requires that Amtrak trains have preference over freight traffic and that the conditions we have imposed temporarily limiting rail traffic in certain corridors applies to freight trains only and not to Amtrak passenger trains.²⁹⁹

Furthermore, I remind the applicants' of their assurances given during oral argument that their merged railroad will move immediately to correct persistent Amtrak service problems on Southern Pacific lines. I encourage Amtrak to keep this agency

²⁹⁸ 49 U.S.C. 11324(c).

²⁹⁹ The requirement that Amtrak passenger trains receive priority handling by freight railroads is found at Rail Passenger Service Act of 1970, 84 Stat. 1327, as amended through 1982, Section 402(e) (1).

aware of every failure on the part of the applicants to translate those words into deeds.

With regard to labor relations, I note that this is the only railroad merger in recent history to receive widespread labor-union support. Railroads operate the largest outdoor factory in America, often stretching tens of thousands of miles. The existence of a well-trained, motivated and loyal workforce is essential to safe and efficient train operations. Employee support of this transaction will be a crucial factor in its economic success. The applicants are to be applauded for their sincere efforts at reaching out toward their employees and including them in the planning process. All too often, in recent years, labor relations in the railroad industry have been unnecessarily acrimonious.

The applicants entered into a number of good-faith agreements with their dedicated employees in which both sides vowed to cooperate in implementing this merger. Specific pledges were made in a series of letters exchanged between the applicants and their unions.

Among those pledges is that the applicants will use the immunity provision of 49 U.S.C. 11341(a), now 49 U.S.C. 11321(a), only to seek those changes in collective bargaining agreements that are actually "necessary" -- and I read the word "necessary" to mean "required" -- to implement the transaction and not merely as a convenient means of achieving cost savings or, as a federal appeals court noted, "merely to transfer wealth from employees to their employer."³⁰⁰

The very fact that the applicants addressed this matter positively in their agreement with the United Transportation Union is evidence that the issue has merit. The purpose of implementing agreements is to permit consummation of a merger or consolidation, not to achieve other objectives properly handled through collective bargaining under the Railway Labor Act.

Finally, there is an interest group that rarely is recognized but is essential to making our capitalist system function. They are the investors who make possible more efficient transportation, American competitiveness in world markets and more secure jobs.

It is the investors who spend less than they earn and lend the difference -- their savings -- to companies such as railroads so that they might build, renew and expand and become more efficient.

In recent months, Union Pacific stockholders repeatedly have been asked to give up portions of the projected merger savings -- to share them with shippers, unionized employees and communities.

Union Pacific has negotiated in good faith and entered into concessionary agreements. They have gone the extra mile with regard to environmental concerns.

The stockholders and management of Union Pacific -- the capitalists -- are to be congratulated. Capitalism is about building and creating. It always has been; it always will be.

³⁰⁰ See, e.g., Railway Labor Executives Association v. United States, 987 F.2d 806, 814, 815 (D.C. Cir. 1993). The D.C. Circuit held (at 814) that, "at a minimum," an arrangement cannot be considered fair if it modifies a collective bargaining agreement more than is necessary to effectuate the transaction.

APPENDIX A: EMBRACED PROCEEDINGS

This decision covers both the Finance Docket No. 32760 lead proceeding and the following embraced proceedings: Finance Docket No. 32760 (Sub-No. 1), Union Pacific Railroad Company, Missouri Pacific Railroad Company, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company--Trackage Rights Exemption--Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company; Finance Docket No. 32760 (Sub-No. 2), Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company--Petition for Exemption--Acquisition and Operation of Trackage in California, Texas, and Louisiana; Finance Docket No. 32760 (Sub-No. 3), Union Pacific Corporation, Union Pacific Railroad Company, Missouri Pacific Railroad Company, Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company--Control Exemption--The Alton & Southern Railway Company; Finance Docket No. 32760 (Sub-No. 4), Union Pacific Corporation, Union Pacific Railroad Company, Missouri Pacific Railroad Company, Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company--Control Exemption--Central California Traction Company; Finance Docket No. 32760 (Sub-No. 5), Union Pacific Corporation, Union Pacific Railroad Company, Missouri Pacific Railroad Company, Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company--Control Exemption--The Ogden Union Railway & Depot Company; Finance Docket No. 32760 (Sub-No. 6), Union Pacific Corporation, Union Pacific Railroad Company, Missouri Pacific Railroad Company, Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company--Control Exemption--Portland Terminal Railroad Company; Finance Docket No. 32760 (Sub-No. 7), Union Pacific Corporation, Union Pacific Railroad Company, Missouri Pacific Railroad Company, Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company--Control Exemption--Portland Traction Company; Finance Docket No. 32760 (Sub-No. 8), Union Pacific Corporation, Union Pacific Railroad Company, Missouri Pacific Railroad Company, Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company--Control Exemption--Overnite Transportation Company, Southern Pacific Motor Trucking Company, and Pacific Motor Transport Company; Finance Docket No. 32760 (Sub-No. 9), Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company--Terminal Trackage Rights--Kansas City Southern Railway Company; Docket No. AB-3 (Sub-No. 129X), Missouri Pacific Railroad Company--Abandonment Exemption--Gurdon-Camden Line In Clark, Nevada, and Ouachita Counties, AR; Docket No. AB-3 (Sub-No. 130), Missouri Pacific Railroad Company--Abandonment--Towner-NA Junction Line In Kiowa, Crowley, and Pueblo Counties, CO; Docket No. AB-3 (Sub-No. 131), Missouri Pacific Railroad Company--Abandonment--Hope-Bridgeport Line In Dickinson and Saline Counties, KS; Docket No. AB-3 (Sub-No. 132X), Missouri Pacific Railroad Company--Abandonment Exemption--Whitewater-Newton Line In Butler and Harvey Counties, KS; Docket No. AB-3 (Sub-No. 133X), Missouri Pacific Railroad Company--Abandonment Exemption--Iowa Junction-Manchester Line In Jefferson Davis and Calcasieu Parishes, LA; Docket No. AB-3 (Sub-No. 134X), Missouri Pacific Railroad Company--Abandonment

Exemption--Troup-Whitehouse Line In Smith County, TX; Docket No. AB-8 (Sub-No. 36X), The Denver and Rio Grande Western Railroad Company--Discontinuance Exemption--Sage-Leadville Line In Eagle and Lake Counties, CO; Docket No. AB-8 (Sub-No. 37), The Denver and Rio Grande Western Railroad Company--Discontinuance of Trackage Rights--Hope-Bridgeport Line In Dickinson and Saline Counties, KS; Docket No. AB-8 (Sub-No. 38), The Denver and Rio Grande Western Railroad Company--Discontinuance of Trackage Rights--Towner-NA Junction Line In Kiowa, Crowley, and Pueblo Counties, CO; Docket No. AB-8 (Sub-No. 39), The Denver and Rio Grande Western Railroad Company--Discontinuance--Malta-Cañon City Line In Lake, Chaffee and Fremont Counties, CO; Docket No. AB-12 (Sub-No. 184X), Southern Pacific Transportation Company--Abandonment Exemption--Wendel-Alturas Line In Modoc and Lassen Counties, CA; Docket No. AB-12 (Sub-No. 185X), Southern Pacific Transportation Company--Abandonment Exemption--Suman-Bryan Line In Brazos and Robertson Counties, TX; Docket No. AB-12 (Sub-No. 187X), Southern Pacific Transportation Company--Abandonment Exemption--Seabrook-San Leon Line In Galveston and Harris Counties, TX; Docket No. AB-12 (Sub-No. 189), Southern Pacific Transportation Company--Abandonment--Malta-Cañon City Line In Lake, Chaffee, and Fremont Counties, CO; Docket No. AB-12 (Sub-No. 189X), Southern Pacific Transportation Company--Abandonment Exemption--Sage-Leadville Line In Eagle and Lake Counties, CO; Docket No. AB-33 (Sub-No. 93X), Union Pacific Railroad Company--Abandonment Exemption--Whittier Junction-Colima Junction Line In Los Angeles County, CA; Docket No. AB-33 (Sub-No. 94X), Union Pacific Railroad Company--Abandonment Exemption--Magnolia Tower-Melrose Line In Alameda County, CA; Docket No. AB-33 (Sub-No. 96), Union Pacific Railroad Company--Abandonment--Barr-Girard Line In Menard, Sangamon, and Macoupin Counties, IL; Docket No. AB-33 (Sub-No. 97X), Union Pacific Railroad Company--Abandonment Exemption--DeCamp-Edwardsville Line In Madison County, IL; Docket No. AB-33 (Sub-No. 98X), Union Pacific Railroad Company--Abandonment Exemption--Edwardsville-Madison Line In Madison County, IL; Docket No. AB-33 (Sub-No. 99X), Union Pacific Railroad Company--Abandonment Exemption--Little Mountain Jct.-Little Mountain Line In Box Elder and Weber Counties, UT; Finance Docket No. 32760 (Sub-No. 10), Responsive Application--Capital Metropolitan Transportation Authority; Finance Docket No. 32760 (Sub-No. 11), Responsive Application--Montana Rail Link, Inc.; Finance Docket No. 32760 (Sub-No. 12), Responsive Application--Entergy Services, Inc., Arkansas Power & Light Company, and Gulf States Utility Company; Finance Docket No. 32760 (Sub-No. 13), Responsive Application--The Texas Mexican Railway Company; Finance Docket No. 32760 (Sub-No. 14), Application for Terminal Trackage Rights Over Lines of The Houston Belt & Terminal Railway Company--The Texas Mexican Railway Company; Finance Docket No. 32760 (Sub-No. 15), Responsive Application--Cen-Tex Rail Link, Ltd./South Orient Railroad Company, Ltd.;³⁰¹ Finance Docket No. 32760 (Sub-No. 16), Responsive Application--Wisconsin Electric Power Company; and Finance Docket No. 32760 (Sub-No. 17), Responsive Application--Magma Copper Company, The Magma Arizona Railroad Company, and The San Manuel Arizona Railroad Company.

³⁰¹ In Decision No. 29 (served April 12, 1996), the responsive application filed by Cen-Tex Rail Link, Ltd./South Orient Railroad Company, Ltd. was rejected as incomplete.

APPENDIX B: ABBREVIATIONS

A&S	The Alton & Southern Railway Company
AAR	Association of American Railroads
ACC	Arizona Chemical Company
Acquisition	UP Acquisition Corporation
AEPCO	Arizona Electric Power Cooperative
AFL-CIO	American Federation of Labor and Congress of Industrial Organizations
AGNC	Associated Governments of Northwest Colorado
ALK	ALK Associates, Inc.
AP&L	Arkansas Power & Light Company
ARU	Allied Rail Unions
ASARCO	ASARCO Incorporated
ATDD	American Train Dispatchers Department, BLE
AUNW	Austin Railroad Company, d/b/a Austin Northwest Railroad
BC Rail	BC Rail Ltd.
BCI	Brandt Consolidated, Inc.
BEA	Business Economic Area
BLE	Brotherhood of Locomotive Engineers
BMWE	Brotherhood of Maintenance of Way Employees
BN	Burlington Northern Railroad Company
BNSF	BN and SF
Board	Surface Transportation Board
BRGI	The Brownsville and Rio Grande International Railroad
BRS	Brotherhood of Railroad Signalmen
Cargill	Cargill, Incorporated
CBA	Collective Bargaining Agreement
CBRY	Copper Basin Railway Company
CC&P	Chicago Central & Pacific Railroad Company
CCRT	Coalition for Competitive Rail Transportation
CCT	Central California Traction Company
CDPHE	Colorado Department of Public Health and Environment
Cen-Tex	Cen-Tex Rail Link, Ltd., and South Orient Railroad Company, Ltd.
CIC	Champion International Corporation
CIPSC	Central Illinois Public Service Company
CITU	Certificate of Interim Trail Use or Abandonment
CMA	Chemical Manufacturers Association
CMTA	Capital Metropolitan Transportation Authority
CMW	Chicago, Missouri & Western Railway Company
CN	Canadian National
CNW	Chicago and North Western Railway Company
CNWT	Chicago and North Western Transportation Company
CO&PR	Central Oregon and Pacific Railroad
COFC	Container-on-flatcar
COGA	COGA Industries, L.L.C.
Conrail	Consolidated Rail Corporation
CP	Canadian Pacific Limited
CP&L	Central Power & Light Company
CPSB	City Public Service Board of San Antonio
CPUC	Public Utilities Commission of the State of California
CRA	The Corn Refiners Association, Inc.
CRD	Crop Reporting District
CSX	CSX Corporation, CSX Transportation, Inc., CSX Intermodal, Inc., and Sea-Land Service, Inc.
CTC	Centralized Traffic Control
CWAC	Colorado Wheat Administrative Committee
DM&E	Dakota, Minnesota & Eastern Railroad Corporation
DOD	United States Department of Defense
DOL	United States Department of Labor
DOJ	United States Department of Justice
DOT	United States Department of Transportation
Dow	The Dow Chemical Company

DRGW	The Denver and Rio Grande Western Railroad Company
EA	Environmental Assessment
EBT	The Enid Board of Trade
EDC	Economic Development Council for Greater Springfield
EJE	Elgin, Joliet and Eastern Railway
EIS	Environmental Impact Statement
Entergy	ESI, AP&L, and GSU
EPA	United States Environmental Protection Agency
EPA Region VIII	United States Environmental Protection Agency, Region VIII
EPC	Enterprise Products Company
ESI	Entergy Services, Inc.
FCP	Ferrocarriles Nacionales de Mexico - Region Pacifico
FEAM	Farmers Elevator Association of Minnesota
FERC	Federal Energy Regulatory Commission
FNM	Ferrocarriles Nacionales de Mexico
FPC	Formosa Plastics Corporation, USA
FPP	Fayette Power Project
FRA	Federal Railroad Administration
Freeman	Freeman United Coal Mining Company
FTC	Federal Trade Commission
Geon	The Geon Company
GNBC	Grainbelt Corporation
GSU	Gulf States Utilities Company
GTRR	Georgetown Railroad Company
GTW	Grand Trunk Western Railroad
GWWR	Gateway Western Railway Company
HB&T	Houston Belt & Terminal Railway
HC	Huntsman Corporation
HCC	Hoisington Chamber of Commerce
HCJDC	Harvey County Jobs Development Council, Inc.
HHI	Herfindahl-Hirschman Index
Ia/DOT	Iowa Department of Transportation
IBC/IWC	Idaho Barley Commission/Idaho Wheat Commission
IBP	IBP, Inc.
IBT	International Brotherhood of Teamsters
IC	Illinois Central Railroad Company
ICC	Interstate Commerce Commission
ICTF	Intermodal Container Transfer Facility
IDPC	Idaho Power Company
IES	IES Utilities
ILP	Illinois Power Company
IPA	Intermountain Power Agency
IPC	The International Paper Company
ISRI	The Institute of Scrap Recycling Industries, Inc.
IUDA	Industry Urban-Development Agency
JIT	Joint Intermodal Terminal
JSC	Joint Shippers Coalition
Ka/DOT	Kansas Department of Transportation
Kal Kan	Kal Kan Foods, Inc.
KCOSA	Kansas-Colorado-Oklahoma Shippers Association
KCS	The Kansas City Southern Railway Company
KCSI	Kansas City Southern Industries, Inc.
KJRY	Keokuk Junction Railway
L&D	Louisiana and Delta Railroad
LCRA/Austin	Lower Colorado River Authority and the City of Austin, TX
Longhorn	Central of Tennessee Railway & Navigation Company Incorporated, d/b/a Longhorn Railway Company
LP&N	Longview, Portland & Northern Railroad
MAA	Magma Arizona Railroad Company
Mars	Mars, Incorporated
MCC	Magma Copper Company
MCT	Madison County Transit
MFU	Montana Farmers Union
MKT	Missouri-Kansas-Texas Railroad Company

Mn/DOT	Minnesota Department of Transportation
Monsanto	Monsanto Company
Montell	Montell USA Inc.
MP	Milepost
MPCSC	Mountain-Plains Communities & Shippers Coalition
MPRR, MP	Missouri Pacific Railroad Company
MRL	Montana Rail Link, Inc.
MRLAC	MRL's Acquisition Company
MWBC	Montana Wheat and Barley Committee
NAFTA	North American Free Trade Agreement
NALS	North American Logistic Services
NCGA	National Corn Growers Association
NCRA	North Coast Railroad Authority
NEPA	National Environmental Policy Act
NITL	The National Industrial Transportation League
NITU	Notice of Interim Trail Use or Abandonment
NS	Norfolk Southern Corporation
NVS	North Valmy Station
OFA	Offer of Financial Assistance
OKT	Oklahoma-Kansas-Texas Railroad Company
Olin	Olin Corporation
Or/DOT	Oregon Department of Transportation
OSM	Oregon Steel Mills
OURD	The Ogden Union Railway & Depot Company
Overnite	Overnite Transportation Company
PE	Polyethylene
PMT	Pacific Motor Transport Company
Post EA	Post Environmental Assessment
PP	Polypropylene
PPG	PPG Industries, Inc.
PRA	Proportional Rate Agreement
PRB	Powder River Basin
PRC	Pioneer Railcorp
PSCN	Public Service Commission of the State of Nevada
PSCo	Public Service Company of Colorado
PTRA	Port Terminal Railway Association
PTRC	Portland Traction Company
PTRR	Portland Terminal Railroad Company
QCC	Quantum Chemical Corporation
RCAF	Rail Cost Adjustment Factor
RCT	Railroad Commission of Texas
Rio Bravo	Rio Bravo Poso and Rio Bravo Jasmin
RLA	Railway Labor Act
Rock Island	Chicago, Rock Island and Pacific Railroad Company
ROI	Return on Investment
RTC	Rails to Trails Conservancy
SCC	Shell Chemical Company
SCRRA	Southern California Regional Rail Authority
SDIV	San Diego & Imperial Valley Railroad
SEA	Section of Environmental Analysis
SF	The Atchison, Topeka and Santa Fe Railway Company
SFETF	Serenata Farms Equestrian Therapy Foundation
SIT	Storage-In-Transit
SLC	Stimson Lumber Company
SMA	San Manuel Arizona Railroad Company
Soo	Soo Line Railroad Company
Southern Pacific	SPR, SPT, SSW, SPCSL, and DRGW
SP	SPT, SSW, SPCSL, and DRGW
SpPl	Springfield Plastics, Inc.
SPBC	Springfield Plastics, Inc. and Brandt Consolidated, Inc.
SPCSL	SPCSL Corp.
SPI	The Society of the Plastics Industry, Inc.
SPLC	Standard Point Location Code
SPMT	Southern Pacific Motor Trucking Company
SPP	Sierra Pacific Power Company
SPP/IDPC	SPP and IDPC
SPR	Southern Pacific Rail Corporation
SPRB	Southern Powder River Basin

SPT	Southern Pacific Transportation Company
SSACC	South San Antonio Chamber of Commerce
SSW	St. Louis Southwestern Railway Company
STB	Surface Transportation Board
STCC	Standard Transportation Commodity Code
STRICT	Save the Rock Island Committee, Inc.
TCSC	Texas Crushed Stone Company
TCU	Transportation•Communications International Union
Tex Mex	The Texas Mexican Railway Company
TMM	Transportacion Maritima Mexicana
TOFC	Trailer-on-flatcar
TP&W	Toledo, Peoria & Western Railway Corporation
TRA	Trackage Rights Agreement
TTD	Transportation Trades Department, AFL-CIO
TUE	Texas Utilities Electric Company
TUMC	Texas Utilities Mining Company
UCC	Union Carbide Corporation
Union Pacific	UPC, UPRR, and MPRR
UP	UPRR and MPRR
UPC	Union Pacific Corporation
UPMF	Union Pacific Motor Freight Corporation
UPRR, UP	Union Pacific Railroad Company
URC	Utah Railway Company
URCS	Uniform Railroad Costing System
USDA	United States Department of Agriculture
USG	United States Gypsum Company
UTU	United Transportation Union
Viacom	Viacom International Inc.
WC	Wisconsin Central Ltd.
WCTL	The Western Coal Traffic League
WEPCO	Wisconsin Electric Power Company
Weyerhaeuser	Weyerhaeuser Company
WIFE	Women Involved in Farm Economics
WLP RR	Willamette Pacific Railroad
WP&L	Wisconsin Power & Light Company
WPRR, WP	The Western Pacific Railroad Company
WPS	Wisconsin Public Service Corporation
WSC	Western Shippers Coalition
WT&J	Wichita, Tillman & Jackson Railway
WVRR	Willamette Valley Railroad
Yolo	Yolo Shortline Railroad Company

APPENDIX C: SUB-NO. 1 TRACKAGE RIGHTS

The trackage rights provided for in the BNSF agreement (not including the additional trackage rights provided for in the CMA agreement) are covered by the notice of exemption filed in Finance Docket No. 32760 (Sub-No. 1), and are divided into six categories: Western Trackage Rights; South Texas Trackage Rights; Eastern Texas/Louisiana Trackage Rights; Houston, TX, to Memphis, TN, Trackage Rights; St. Louis Area Coordinations; and Trackage Rights Grants to UP/SP.

Western Trackage Rights. BNSF will receive trackage rights over UP: between Salt Lake City, UT, and Ogden, UT; between Salt Lake City, UT, and Alazon, NV; between Alazon, NV, and Weso, NV; between Weso, NV, and Stockton, CA; between Riverside, CA, and Ontario, CA; and between Basta, CA, and Fullerton and La Habra, CA. BNSF will receive trackage rights over SP: between Denver, CO, and Salt Lake City, UT; between Ogden, UT, and Little Mountain, UT; between Alazon, NV, and Weso, NV; between Weso, NV, and Oakland, CA (via the "Cal-P" line between Sacramento and Oakland); and between Oakland, CA, and San Jose, CA. The trackage rights specified in this paragraph are bridge rights for the movement of overhead traffic only, except for local access to industries served by UP and SP and no other railroad at the following points: Provo, UT; Salt Lake City, UT; Ogden, UT; Ironton, UT; Gatex, UT; Pioneer, UT; Garfield/Smelter/Magna, UT (access to Kennecott private railway); Geneva, UT; Clearfield, UT; Woods Cross, UT; Relico, UT; Evona, UT; Little Mountain, UT; Weber Industrial Park, UT; points on paired track between Weso, NV, and Alazon, NV; Reno, NV (intermodal and automotive only); Herlong, CA; Johnson Industrial Park at Sacramento, CA; Farmers Rice at West Sacramento, CA; Port of Sacramento, CA; points between Oakland, CA, and San Jose, CA (including Warm Springs, CA, Fremont, CA, Shinn, CA, Elmhurst, CA, Kohler, CA, and Melrose, CA); San Jose, CA; Ontario, CA; La Habra, CA; Fullerton, CA; and access to the Oakland Joint Intermodal Terminal (JIT), or similar public intermodal facility, at such time as the JIT is built.

South Texas Trackage Rights. BNSF will receive trackage rights over UP: between Ajax, TX, and San Antonio, TX; between Houston (Algoa), TX, and Brownsville, TX; between Odem, TX, and Corpus Christi, TX; between Ajax, TX, and Sealy, TX; between Kerr, TX, and Taylor, TX; between Temple, TX, and Waco, TX; between Temple, TX, and Taylor, TX; and between Taylor, TX, and Smithville, TX. BNSF will receive trackage rights over SP: between San Antonio, TX, and Eagle Pass, TX; and between El Paso, TX, and Sierra Blanca, TX. The trackage rights specified in this paragraph are bridge rights for the movement of overhead traffic only, except for local access to industries served by UP and SP and no other railroad at the following points: Brownsville, TX; Port of Brownsville, TX; Harlingen, TX; Corpus Christi, TX; Port of Corpus Christi, TX; Sinton, TX; San Antonio, TX; Halsted, TX (LCRA plant); Waco, TX; and points on the Sierra Blanca, TX - El Paso, TX, line.

Eastern Texas/Louisiana Trackage Rights. BNSF will receive trackage rights over UP: between Avondale, LA, and West Bridge Jct., LA; and between West Bridge Jct., LA (MP 10.2), and the Westwego, LA, intermodal facility (MP 9.2). BNSF will receive trackage rights over SP: between Houston, TX, and Iowa Jct., LA; between Dayton, TX, and Baytown, TX; between Avondale, LA (MP 16.9), and West Bridge Jct., LA (MP 10.5); and over Bridge No. 5-A at Houston, TX. The trackage rights specified in this paragraph are bridge rights for the movement of overhead traffic only, except for local access to industries served by UP and SP

and no other railroad³⁰² at the following points: Baytown, TX; Amelia, TX; Orange, TX; Mont Belvieu, TX (Amoco, Exxon, and Chevron plants); Eldon, TX (Bayer plant); and Harbor, LA.

Houston, TX, to Memphis, TN, Trackage Rights. BNSF will receive trackage rights over UP: between Fair Oaks, AR, and Bridge Jct., AR; and between North Little Rock, AR, and Pine Bluff, AR. BNSF will receive trackage rights over SP: between Houston, TX, and Fair Oaks, AR (via Cleveland, TX, and Pine Bluff, AR); and between Brinkley, AR, and Briark, AR. The trackage rights specified in this paragraph are bridge rights for the movement of overhead traffic only, except for local access to industries served by UP and SP and no other railroad³⁰³ at the following points: Camden, AR; Pine Bluff, AR; Fair Oaks, AR; Baldwin, AR; Little Rock, AR; North Little Rock, AR; East Little Rock, AR; and Forrest City, AR.

St. Louis Area Coordinations. BNSF will receive overhead trackage rights over UP in St. Louis, MO (between Grand Avenue and Gratiot Street).

Trackage Rights Grants to UP/SP. UP/SP will receive trackage rights over BNSF: between Chemult, OR, and Bend, OR (overhead rights only); between Barstow, CA, and Mojave, CA (overhead rights only); between West Memphis-Presley Jct., AR (overhead rights only); between Saunders, WI, and Superior, WI (overhead rights only, with access to MERC Dock in Superior); and over the Pokegama connection at Saunders, WI (i.e., the southwest quadrant connection at Saunders, including the track between BN MP's 10.43 and 11.14). UP/SP will retain trackage rights over BNSF: at Keddie, CA (MP 0 to MP 2; to turn equipment; UP/SP will retain trackage rights between these mileposts over the Bieber-Keddie Line to be sold to BNSF); between Dallas, TX, and Waxahachie, TX (overhead rights and exclusive right to serve local industries; UP/SP will retain trackage rights after sale of the Dallas Line to BNSF); and between Iowa Jct., LA, and Avondale, LA (overhead rights and the right to serve all local industries, with right for Louisiana and Delta Railroad to serve as UP/SP's agent between Iowa Jct. and points served by L&D; UP/SP will retain trackage rights after sale of the Avondale Line to BNSF).

³⁰² As respects the Eastern Texas/Louisiana trackage rights, the Sub-No. 1 notice filed by applicants refers to "local access to industries served by UP/SP and no other railroad," see UP/SP-26 at 004-005 and 060-061 (*italics added*). The context, however, indicates, and all concerned have understood, that the reference was intended to be to local access to industries served by UP and SP and no other railroad, see, e.g., UP/SP-22 at 325.

³⁰³ As respects the Houston, TX, to Memphis, TN, trackage rights, the Sub-No. 1 notice filed by applicants refers to "local access to industries served by UP/SP and no other railroad," see UP/SP-26 at 005 and 061 (*italics added*). The context, however, indicates, and all concerned have understood, that the reference was intended to be to local access to industries served by UP and SP and no other railroad, see, e.g., UP/SP-22 at 327.

APPENDIX D: DETAILS OF PUBLIC BENEFITS

Summary. As explained below, the merger will result in clear transportation benefits that will ensure competitive rail service for commodities that are sensitive to intermodal competition, and improved service to all the commodities affected by the merger.

1. Improved Routings:

California-Dallas-Memphis. UP/SP will be able to assemble segments of UP and SP lines via El Paso to create the shortest route from Los Angeles to Memphis, as well as fully competitive routes from Oakland and Stockton to the South Central region, in competition with BNSF, which previously had the best routes in those corridors.

Northern California-Midwest. SP has the most direct route between Northern California and Ogden, UT, while UP has the most direct routes from Ogden to the Midwest. The merged system will assemble these segments into a through route 180 miles shorter than either existing route, permitting UP/SP to match BNSF's now-dominant intermodal service.

BNSF will gain a new trunk line traversing the Central Corridor between Northern California and Denver, providing access to western natural resources industries and shippers to and from Nevada and Utah, and routing flexibility for intermodal and other traffic between California and the Midwest.

Southern California-Midwest. The merger will make SP's route between Southern California and the Midwest more competitive. Between Los Angeles and El Paso, SP's current route is severely congested, and SP has not been able to provide adequate capacity to meet its shippers' needs. From El Paso into Kansas, SP's route lacks Centralized Traffic Control and adequate sidings. To upgrade the entire route, UP/SP will spend more than \$360 million--funds that SP has not generated, and cannot generate, on its own.

Pacific Northwest-Texas. BNSF now has the only direct route between the Pacific Northwest and Texas. The merged carrier will link the UP and SP route networks in Texas with SP's route from Ft. Worth to Denver and UP's routes from Denver to Utah, Idaho, Montana, Oregon and Washington. This will make UP/SP a real competitor for this traffic and provide entirely new single-line services to shippers in the Intermountain West.

Colorado/Utah Coal Route. SP carries growing volumes of coal from Colorado and Utah to the Midwest on two alternate circuitous routes. One route climbs Tennessee Pass, the nation's steepest main line grade, while the other uses a crowded joint line with BNSF along the Front Range of the Rockies. Both routes require helper locomotives. UP/SP will be able to reroute this traffic directly east from Denver to Kansas City.

Kansas City Bypass. UP currently must handle increasing volumes of PRB coal and heavy grain unit trains through the congested Kansas City terminal area. By using an SP line in Central Kansas and upgrading UP's OKT line from north of Wichita to Ft. Worth, UP/SP can reroute this traffic out of Kansas City and speed shipments, not only for coal and grain shippers, but also for other shippers now using the Kansas City gateway.

California-Laredo. Trade between California and Mexico offers great promise under NAFTA. UP's route from California to Laredo, the premier Mexican gateway, via Utah and Wyoming can be reduced by 1,000 miles. SP does not reach Laredo and had tried, ineffectively, to move intermodal traffic by truck from San

Antonio. The merger will permit UP/SP to link SP's line from Los Angeles to San Antonio with UP's line to Laredo, providing a very efficient route for this growing business.

2. Expanded Single-line Service:

Canada/Pacific Northwest-California/Mexico. Western Canada will receive much-improved rail links with the United States and Mexico. Substantial parts of the Pacific Northwest, including Seattle/Tacoma and the Vancouver/Alberta Canadian gateways, have never been connected to California by a direct single-line rail route. The merger and BNSF agreement will create both a UP/SP through route and a BNSF through route in the I-5 Corridor, offering new rail options to shippers and a competitive alternative to water and truck transportation.

UP/SP will offer new single-line service between many UP points in the Northwest and many UP and SP points throughout California, Arizona, New Mexico, and West Texas (including the Mexican gateways of Calexico, Nogales, and El Paso). Eastbound traffic will also gain a shorter route, via Colorado and the Texas Panhandle, to Dallas, Houston and New Orleans. BNSF will have new single-line routes from the Vancouver and Sumas gateways to California, the Southwest, and the San Diego and El Paso gateways to Mexico.

Competition will also be stronger for traffic moving in interchange with CN via Duluth/Superior and CP via the Twin Cities because all SP points will now be accessible on a single-line basis from those interchanges.

California-Gulf Coast-Midwest. As a result of this merger, California will be connected to the New Orleans gateway and large parts of the Texas Gulf Coast by a second single-line rail route, as BNSF will gain its own line to New Orleans and access to Corpus Christi, Brownsville, and numerous competitive points along the Texas coast.

BNSF also will gain direct routes between Houston and Memphis and Houston and East St. Louis. These routes, which will link with existing routes in the South Central United States, will make BNSF better able to compete for Gulf Coast petrochemical shipments to the Midwest and Northeast. BNSF will also have extensive new access to customers in Arkansas.

Mexican Gateways. (Brownsville, Eagle Pass, Laredo, El Paso, Nogales, and Calexico). Laredo is the premier Eastern Mexico gateway because of its excellent infrastructure and customs facilities. Shippers will gain single-line access between Laredo and SP points. Shippers will have access also to the new Tex Mex trackage rights connection with KCS at Beaumont, TX, and to BNSF as a replacement for SP for Laredo traffic routed over Tex Mex. There will also be new single-line intermodal and carload service between Laredo and the West Coast. Shippers via El Paso will have two strengthened rail alternatives, with UP/SP and BNSF single-line service to the Pacific Northwest and Western Canada, upgrading of the SP lines west to Colton and northeast to Kansas City, new BNSF single-line service to New Orleans, and shorter routes for Southern Idaho grain, Wyoming soda ash and other products. Finally, shippers via the Western Mexico gateways that are solely served by SP--Nogales and Calexico--will gain single-line access to hundreds of UP points, including Midwest grain origins, Pacific Northwest points and Canada gateways.

BNSF will also gain trackage rights access to Brownsville, and shippers will gain single-line access to BNSF points via that gateway, rather than having single-line access only to UP and SP points. At Eagle Pass, the settlement will convert BNSF's access from haulage via a Caldwell junction to more direct trackage

rights, efficiently linking Eagle Pass with all points on the BNSF system, including New Orleans. BNSF will also serve San Antonio en route to Eagle Pass, which will allow it to mount a more effective operation.

3. Expanded Market Coverage

The expanded coverage that common control promises will have numerous beneficial impacts.

International Markets. The UP/SP merger transaction will foster the goal of North American economic integration embodied in the NAFTA agreement by greatly strengthening competition for traffic to and from both Canada and Mexico. The proportional rate arrangement will allow UP/SP to compete via Portland for traffic to and from BNSF's Western Canada gateways, including lumber originating on BC Rail and Alberta grain and chemicals originating on CN. There will be stronger rail competition at every UP and SP gateway to Mexico as a result of the merger and the BNSF agreement, and the Tex Mex trackage rights we have imposed. Overall, BNSF's much-expanded access to Mexico, as well as within Texas and at New Orleans, will bring greater balance to the competition for Mexican rail traffic, which at present is largely handled by SP to and from points to the west and UP to and from points to the north and east.

The more efficient Mexican routings for both UP/SP and BNSF will help improve the rail share of traffic to and from Mexico. Today, trucks dominate this traffic. Even at Laredo, the most efficient Mexican rail gateway, trucks handle approximately 86% of the cross-border traffic. Upgrading the Southern Corridor lines, instituting new Laredo-California intermodal service, and greatly improving the efficiency of operations in the Laredo-Memphis-St. Louis-Chicago corridor will give rail a much better ability to capture a larger share of this market.

Intermodal. The merger and the BNSF agreement will create competitive benefits for intermodal shippers: third-morning services that will for the first time challenge BNSF's dominance in the Midwest-California markets; the ability of both UP/SP and BNSF to link all the West Coast ports with short, fast routes to all the midcontinent gateways from Chicago to New Orleans; construction of a new Inland Empire terminal east of Los Angeles; two new, truck-competitive, single-line services in the I-5 Corridor from Seattle/Tacoma to Los Angeles, where none exists now; new Pacific Northwest-Phoenix-El Paso-Texas service, made possible in part by the ability to support train connections at the new Inland Empire terminal near Colton rather than at Los Angeles; better terminal access for UP/SP in Chicago, Portland and Seattle, and for BNSF in Oakland and Los Angeles; better equipment availability, thanks to new repositioning capability and other efficiencies; new California-Laredo service; much-improved Twin Cities-Kansas City-Texas service; new Upper Midwest-Phoenix service; faster and more frequent Los Angeles-Dallas and Los Angeles-Memphis service; higher-quality service in many lanes as a result of combining and improving UP and SP terminals; and improved schedules, train frequency, and reliability in virtually every rail corridor in the West.

Intermodal is perhaps the area where BN and SF gained their greatest competitive advantage by merging, and where a UP/SP merger is most needed to meet the competitive challenge of the new BNSF system. By merging, BNSF created a rail system that serves all major West Coast ports, with superior service to Chicago, Kansas City, St. Louis, Memphis, Dallas and Houston, new single-line service to Birmingham, outstanding terminals at all of those points (e.g., the new SF Alliance terminal near Dallas/Fort Worth), and the financial strength to invest in further technological and service improvements.

SP is especially vulnerable in this area. Because of its service weaknesses, it has been unable to compete for high-end transcontinental intermodal traffic. In part because of the advantageous location of its ICTF facility in Los Angeles, SP has held on to a large share of its international container business, particularly in the Southern Corridor, but now major shipping companies have created, or are in the process of creating, on-dock loading capability at the Ports of Los Angeles and Long Beach, which will undercut the advantage that the well-located, state-of-the-art ICTF facility has conferred on SP since it opened in 1984.

Food Products. Competition will be stronger for food products shipments throughout the West. California and Pacific Northwest perishables, frozen foods, canned goods and other food products will move over shorter, faster routes to the Midwest, and on new north-south single-line routes in the I-5 Corridor. Equipment supply, which is crucial to food products shippers, will be greatly improved. With the rectification of SP's inadequate service and the institution of new carload train services such as a new direct Roseville-Chicago carload train and a second daily North Platte-Conrail run-through train, large volumes of food products will return to boxcar handling on the merged system. Upper Midwest food products producers will gain single-line access to SP markets in the West and Southwest, and to additional Mexican gateways. And, BNSF, which is already a very strong competitor for this traffic, will be even stronger after the settlement, with new I-5 and Central Corridor routes.

Forest Products. Lumber and wood products originate primarily in the Pacific Northwest and Western Canada, and in the Southeast. Canadian products, handled to the Midwest by CN, CP and BNSF, have increasingly been eclipsing Pacific Northwest products. South Central and Southeastern output has also been making inroads against the Pacific Northwest. SP's service in Oregon and Northern California has deteriorated, and much SP volume has been lost to reload centers and trucks.

The merger will greatly benefit lumber and wood products producers. SP Pacific Northwest producers will gain much shorter routes to the Midwest and the South Central region, and single-line service to UP destinations in the Midwest and elsewhere. UP Pacific Northwest producers will gain new access to California and Arizona, a shorter route to Texas, Louisiana and Eastern Mexico, and single-line access to SP receivers. SP's poor service and equipment supply problems will be remedied, enabling lumber shippers to avoid the added expense of truck-rail reload programs. South Central and Southeastern producers will gain shorter routes to Southern California, better service in the Houston-Memphis-St. Louis-Chicago corridor, better equipment supply, and wider access to end markets. The BN/SF merger is further strengthening BNSF's already very strong position as a competitor for lumber and wood products traffic, and the efficiencies of the merged UP/SP will enable it to meet that competitive challenge.

There will be a similar enhancement of competition for paper and paper products traffic. New paper production tends to be concentrated in the South Central and Southeast regions (where KCS, IC and BNSF, among others, are strong competitors) and in the Upper Midwest and Canada. South Central and Southeastern paper mills will enjoy the same service and equipment benefits as lumber producers in those regions, and 2-to-1 mills will receive stronger competition from UP/SP and BNSF as a result of the settlement. Upper Midwest paper producers will have shorter, faster routes to Northern California and better service to the South Central region. Scrap paper moves in a variety of markets, and will benefit from the elimination of interchanges between UP and SP and better equipment supply.

Autos. Two decades ago, SP was the dominant automotive carrier in the West, with large volumes to Portland, the Bay Area, Los Angeles, Phoenix, and Texas, and direct service to and from four automobile assembly plants in California. Since then, SP has fallen to a very small share of western rail-handled auto movements (less than 10% of automotive business handled by western railroads in 1994) as a result of the closure of three of the four California plants, deregulation (which has allowed for more creative contracting by the auto companies), the general decline in SP's service levels, and its financial inability to make major investments in new auto facilities and auto-handling freight cars.

As in the intermodal arena, the UP/SP merger will create a real competitive contest of equals for automotive traffic, rather than one in which BNSF is dominant and SP is a weak third. UP/SP will be able to tie points such as Seattle and Phoenix into an efficient, comprehensive transportation network for auto shippers, as BNSF already can. Shorter routes and expanded single-line service will speed the handling of motor vehicles, yielding major savings in inventory and equipment costs. For example, UP/SP will run a new through 70-hour auto train from Chicago to the merged system's Milpitas facility in the Bay Area, with blocks of automobile-carrying freight cars for Denver, Salt Lake City, Martinez (to serve the Benicia facility) and Milpitas, and a similar through train from Kansas City to the Bay Area.

The upgrading of the Tucumcari line, and of the Colton-El Paso line, will make UP/SP more competitive in the key Kansas City-Los Angeles corridor, with new through auto trains both from Kansas City to Southern California and from Chicago to Southern California. There will also be dedicated auto trains from Dallas/Fort Worth to Conrail destinations; from Chicago to San Antonio, including Mexican business; and from GTW at Chicago to the major auto facilities at Reisor, Louisiana, and Arlington, Texas.

The merged system will be able to offer the combined strengths of UP's and SP's auto ramps, and will have the financial wherewithal to make improvements in those ramps and to invest in new ones. The merged system will be better able to invest in improved bi-level and other specialized cars, and to reduce shippers' equipment costs by improving cycle times and efficiently repositioning equipment. Service to and from Mexico, where many of the auto companies have located manufacturing facilities, will be improved and, under the BNSF agreement and Tex Mex trackage rights, competition for Mexican traffic will be strengthened. Shipper concerns about the quality of SP service will be overcome.

Chemicals/Plastics. The merger and the BNSF agreement will greatly increase UP/SP competitiveness for chemical and plastic traffic, both in the Gulf Coast and elsewhere, enhancing the position of UP/SP-served chemical and plastic producers in their end markets. A particular concentration of chemical and plastic production is on the Texas/Louisiana Gulf Coast, where UP and SP, as well as BNSF, KCS and IC, each serve numerous plants. Most of the Texas and Louisiana plants are located on water, and can and do use low-cost water transportation for their incoming and outgoing product in lieu of rail if rail is not fully competitive.

Both UP and SP producers will gain greatly improved operations, including new run-through operations to eastern roads in the Houston-Memphis-St. Louis-Chicago corridor, shorter routes to the Pacific Northwest, faster turn times on costly, shipper-owned equipment, and additional SIT yard opportunities. Gulf Coast shippers will save a day in transit time to and from both the Memphis/St. Louis/Chicago gateways and the West Coast. Also,

under the BNSF agreement and additional conditions we have imposed, BNSF will be a much stronger competitor for Gulf Coast traffic with new access to major chemical and plastic plants at, among other locations, Mont Belvieu, Eldon, Bayport, Corpus Christi, Orange, and Amelia, TX, and Lake Charles, LA; new single-line access to New Orleans; a new direct route to Memphis; and shorter routes to the key gateways of St. Louis and Chicago.

Chemical producers elsewhere also will benefit competitively. For example, Wyoming soda ash producers will gain shorter routes to Northern California markets, Texas and Louisiana markets, and new single-line service to Arizona, New Mexico, SP-served Mexican gateways, and other SP destinations not served by UP.

Grain. UP is a major originator of wheat, corn, barley and other grains, whereas SP, which originates very little grain, serves major end markets for grain that UP cannot reach. Among these are the feeder markets in California's San Joaquin and Imperial Valleys, Arizona, the Texas Panhandle, and Mexico. BNSF is a major grain originator and serves all of these end markets. Thus, the merger will create new single-line service opportunities for UP grain producers and SP grain consumers, and will provide stronger competition to BNSF in grain markets it already serves on a single-line basis. The merger also will create a new capability to move 286,000-lb. cars of wheat and feed grains to Houston and other ports for export, another capability that BNSF already has.

Coal. The merger, by creating new single-line routing opportunities and operating efficiencies, will benefit producers and consumers of both the Utah and Colorado coals that SP originates and the PRB coal that UP originates.

Utah and Colorado coal will particularly benefit. Smoother operations in Utah and a direct single-line route to the Ports of Los Angeles and Long Beach will promote Utah and Colorado coal exports to Pacific Rim countries. There will also be a much shorter single-line route from Utah to domestic coal users in Southern Nevada and Southern California. Single-line access to UP-served consumers in the Midwest and South Central regions and to Mississippi River barge terminals will promote additional domestic and export opportunities. Handling of eastbound movements of Utah and Colorado coal via Denver, and thence on either UP's "KP" line across Kansas or the UP mainline from North Platte to Chicago, will provide much better service than SP's current route via Pueblo, Topeka, and Kansas City, which is mountainous, slow, and congested. Also, coal producers on the URC will have access to BNSF, which will open up new domestic and export opportunities.

PRB coal users will benefit also from the new Kansas City bypass and from other efficiencies that will shorten cycle times and increase reliability.

Metals and Minerals. Metals and minerals producers throughout the West will enjoy more competitive rail service as a result of the merger. The Arizona and New Mexico copper industry will benefit from the upgrading of the Colton-El Paso and El Paso-Dallas lines and shorter routes to Memphis and the Southeast. The varied minerals producers in Wyoming, Utah and Nevada will benefit from improved operations of the merged system across the Central Corridor, and in other ways as well. Nevada barites producers and Utah and Nevada copper producers will be served by both UP/SP and BNSF, opening up new single-line opportunities for their production and inputs. Midwest steel producers will benefit from shorter routes to Northern California and improved service to the South Central region. Traders and consumers of metal scrap will gain a multiplicity of new single-

line service opportunities. SP metals shippers will benefit from access to UP's gondola fleet. More metals and minerals will move at lower cost as a result of the merged system's expanded triangulation and backhaul opportunities.

APPENDIX E: DUOPOLY ISSUES

OVERVIEW

It is true that tacit collusion is more likely in two-firm markets, where one firm can anticipate the other's response, than in multi-firm markets. Multi-market contact, which will take place here, can also facilitate tacit collusion. Nevertheless, other important factors indicate that these carriers are more likely to compete than tacitly collude. One significant factor here is the heterogeneity of rail service,³⁰⁴ which would make it very difficult to maintain a tacitly agreed rate level.

Another factor making tacit collusion unlikely is the secrecy about rail price and service offerings that now characterizes the rail industry. Contracts between railroads and shippers for major movements are now the rule, and railroads are no longer required to file public tariffs for the remainder of their traffic. Contracts often incorporate detailed specifications for a wide variety of service aspects. Confidentiality clauses in those contracts effectively deter collusive action because information about these competitive actions is shielded from competitors.³⁰⁵

The significant economies of density and of scope exhibited by railroads also make tacit collusion less likely. A given increment of traffic represents not only the contribution to be earned from that increment, but additional contribution on other traffic, whose average costs are reduced. These economies create strong incentives for railroads to compete for all profitable volumes, rather than tacitly agreeing to an above-market rate level that restricts service. Given all these factors, we do not think that tacit collusion is a likely outcome for this traffic.

We do not believe that trackage rights agreements tend to facilitate collusion either. Although the landlord is in a position to be somewhat better informed than it might otherwise be--it knows the tenant's capacity limitations and some elements of its cost structure, and it can more readily observe its market participation--trackage rights tenants and landlords do keep secret many aspects of service from each other in bidding for traffic. We do not believe that trackage rights, even on the scale involved here, will dampen competition.

EMPIRICAL RATE STUDIES

Studies Aimed At Measuring 3-to-2 Effects. Here we assess a number of studies submitted by parties and aimed at estimating whether shippers whose rail alternatives are reduced from three to two by this merger are likely to face increased rates. In general, the studies compare rates in markets served by three railroads with rates in markets served by two. One common problem with these studies is the use of a static context to project post-merger rate increases. Protestants' studies neglect to account for a key dynamic element of this merger, the dramatic cost reductions it will make possible. They generally fail to acknowledge that any limited ability this merger creates to raise

³⁰⁴ Service dimensions include car types and supply, schedules, terminal support, and car repositioning for customers. The various dimensions of service constitute different avenues of response available to rivals, complicating any one firm's efforts at inflicting retaliatory losses on the other to enforce non-competitive rate levels.

³⁰⁵ Indeed, this is the main reason for the protective orders that we have entered in this proceeding.

rates over costs will be offset to the extent the merger results in significant reductions in applicants' costs. Another dynamic element of this merger, the deteriorating condition of SP and the effect this has on rail pricing, is discussed in a separate section.

As we explain below, each study also suffers from specific infirmities. McDonald's study (for KCS) has limited utility because it is based solely on rail grain movements. Even for that commodity, certain data limitations have led to an upward bias in its 3-to-2 rate projections. Majure's study (for DOJ) updates certain of McDonald's results for western wheat originations. This study is so inherently flawed that it cannot be given much substantial weight. KCS witness Grimm's 1992 study does not present sufficient information for us to use its results to measure merger-related competitive harm in this proceeding. Further, it contains key findings that were recently rejected by the ICC in BN/SE, slip. op. at 73 n.94. And Kwoka's study (for Dow) must be given little weight because it is not based on rail industry data.

a. **MacDonald.** KCS witness MacDonald analyzed rail movements of wheat, corn, and soybeans. His analysis resulted in estimates of rate differentials between markets served by three carriers and markets served by two carriers: of 6.7% for corn, 10.9% for wheat, and intermediate results for soybeans. To put these numbers in perspective, we note that, even under DOJ's broad definition, there would be only \$129 million of 3-to-2 wheat traffic, and \$50 million of 3-to-2 corn traffic that could be affected by this merger.

MacDonald used 1983 ICC Waybill Sample data for one study, and 1981-85 data for another. The origin areas were Crop Reporting Districts (CRDs), criticized by applicants as unrealistically large. MacDonald's objective was to determine the statistical relationship between the number of origin rail carriers and rates. Another important feature of his analysis was the use of a variable representing distance from waterways.

MacDonald's use of the Waybill Sample was proper, despite strong criticism on this point from applicants.³⁰⁶ Of somewhat greater concern is his use of CRDs, which may be so large that where MacDonald counts them as two railroad areas, they may be closer to one railroad area. This would tend toward overstatement of 3-to-2 effects.³⁰⁷

³⁰⁶ One charge was that MacDonald ignored this agency's guidelines respecting level of detail at which inferences can be drawn given sample variability. MacDonald replies, correctly, that his statistical analysis took proper cognizance of this in performing significance tests. The other was that waybill data mask true contract movement revenues. MacDonald not only replied, again correctly, that his data came from years when this was not a problem, but also performed special tests to verify lack of masking.

³⁰⁷ An empirical analysis that overstates the geographic scope of rail markets understates the true level of concentration affecting rates. The way this bias affects estimates of rate changes in going from three to two railroads is as follows: the analysis classifies some markets as having three railroads when the underlying structure is that of two railroads; likewise, it classifies some markets as duopolies when the true underlying structure is monopoly. Then, rather than estimating the change from three to two railroads, as intended, the analysis actually measures a change from, say, 2.5 to 1.5 railroads. All the studies presented in this record indicate that 2-to-1 price

(continued...)

Another error that could result in overstatement of impacts on rates is his failure adequately to account for transit movements. In such movements, a first waybill is cut, based on a local rate that is normally relatively high on a per-mile basis, for the movement to the transit point. Because the destination has not yet been determined, it is impossible to determine what through rate might be applicable. When the grain is shipped from the transit point to its ultimate destination, the movement is rebilled, usually at a lower rate per mile, as a through movement from origin to destination. When the second bill of lading is cut, only the transit balance, the difference between the original local rate and the ultimate through rate, is shown on the bill. This balance may be very low, and in some cases will be negative. And as applicants point out, there tend to be more railroads providing service associated with these movements from transit points, that are in turn attributed with deceptively low transit balance rates. The net effect is to accord too strong a rate effect to a reduction in the number of participating railroads. It also should be kept in mind that MacDonald's study is only useful for analyzing grain transportation markets.

b. **Majure.** Although Majure predicts more than \$800 million of competitive harm from the merger, his study contains major conceptual errors that make it totally unreliable. Majure derives his estimate by predicting a 19.4% rate increase estimate for \$1.5 billion of 2-to-1 traffic, and by predicting a 10.9% increase for \$4.75 billion of 3-to-2 traffic. Even if we assume that those projected increases correctly predict the price effects of going from 2-to-1 and 3-to-2, and that DOJ has correctly measured the amount of 2-to-1 and 3-to-2 traffic at risk, there are still major problems with Majure's calculations. A basic flaw is that the \$291 million rate increase predicted for 2-to-1 traffic presumes either total ineffectiveness of BNSF service under trackage rights or full collusion between UP/SP and BNSF, allowing both carriers to implement pure monopoly pricing. Because the conditions we are imposing will ensure that BNSF will be an effective replacement for SP with respect to this traffic, we cannot give any weight to Majure's estimate of 2-to-1 harm.

Concerning 3-to-2 traffic, we would begin by removing from the traffic base that Majure assumes will be affected the intermodal and automotive traffic, comprising over 70% of the total 3-to-2 traffic by DOJ's estimates. Shippers moving this traffic, which enjoys vigorous motor competition,³⁰⁸ uniformly support the merger. There is simply no basis for assuming that these shippers will be charged higher rates after the merger.

We also reject Majure's application of the updated MacDonald study results, which were based only on wheat and corn traffic, to 3-to-2 traffic with markedly different transportation

³⁰⁷ (...continued)

effects are much larger than 3-to-2. For this reason, overstating the geographic scope of rail markets will tend to overstate 3-to-2 pricing effects.

³⁰⁸ Evidence submitted by DOT shows why DOJ's assumption that trucks do not compete with rails at distances exceeding 500 miles even for truck-competitive intermodal traffic is incorrect:

A well-received 1990 study commissioned by DOT's Federal Railroad Administration determined that this [rail intermodal] service does not begin to compete with trucks (on a cost basis) until the rail linehaul exceeds 730 miles, and that assumes a dray of only 30 miles at either end of the move.

characteristics. The geographic market definition that is selected for a particular study strongly influences its estimated pricing results. Although applicants' definition focuses on carriers to which shippers have direct access, Majure and other protestants advocated a broader geographic definition intended to reflect distances that shippers can truck to competing railroads.³⁰⁹ In the case of corn and wheat, we agree that the broader definition more accurately reflects the grain shippers' transportation options. (For some unexplained reason, however, in his own study Majure did not use the broad definition he advocates, but used a narrow definition, the 6-digit SPLC, in deriving his rate projections.)

Almost all grain is trucked from the farm to grain elevators on rail sidings or to waterways for barge transport. This means that, within certain limits, a farmer can ordinarily truck the grain to whatever available carrier offers the price and service that it desires. If there are three railroads in a particular geographic area, it is likely that, all things being equal, they will compete on an equal basis for grain traffic. Although almost all grain shipments originate with a truck movement, truck movements of grain do not tend to be competitive over very long distances, and barge and rail options usually have a significant advantage for long hauls. The transportation market for other 3-to-2 commodities is very different from that for grain, and price effects derived from 3-to-2 grain studies will dramatically overstate 3-to-2 price effects for other commodities. As we have noted, some of these commodities are extremely truck competitive. In those cases, the number of available railroads is a much less important variable in the pricing equation, and any 3-to-2 pricing effect will be negligible. Further, for movements that are not truck competitive, the number of nearby railroads will provide far less effective competition, primarily via potential build-outs or transloading operations, than is the case for grain. In such situations, any 3-to-2 pricing impact derived from grain studies will again dramatically overstate the likely 3-to-2 price effect.

Majure merely updated MacDonald's study of western wheat originations, using 6-digit SPLCs rather than CRDs. He was unable to incorporate an explanatory variable for distance from waterways, as MacDonald did. He ran tests with data from those railroads that do not mask contract rate information.³¹⁰ His estimate of percentage rate impact of going from 3-to-2 railroads is 10.9%. Majure's study is undermined by his omission of a factor adjusting for distance from waterways. This omission results in an overstatement of 3-to-2 impacts. Nearby waterways significantly lower grain transportation rates. Majure has speculated that fewer railroads operate near waterways, since "whenever water transportation is in the market, fewer railroads could afford the fixed costs of participating in that market." DOJ-8 at 34 n.33. But, applicants have shown that areas near waterways are served by a greater number of railroads. Majure has failed to recognize that much of our nation's early urban growth centered on the confluence of rail and water transportation. UP/SP-231, VS Caron, at 3-5. Thus, the lower rail rates Majure ascribes to the presence of more railroads could just as well be caused by the presence of nearby barge competition. In sum, there are many reasons to conclude that his entire 3-to-2 traffic analysis is inherently flawed.

³⁰⁹ Protestants have used the available geographic standards for collecting and disseminating relevant data (BEAs, SPLCs, or CRDs) that they believe most accurately reflect the ability of shippers to reach alternative carriers.

³¹⁰ The railroads that mask their data by reporting coded contract revenues are CNW, Conrail, NS, CSX, and UP.

c. **Grimm.** Some of KCS Witness Grimm's studies come under attack for relying on pre-Staggers Act data, but he has also conducted studies using post-Staggers Act data. Unlike MacDonald's study, Grimm's studies are not limited to grain. They use the number of independent routings between origin and destination as an explanatory variable. His 1992 published study was based on rate data obtained from railroads directly rather than from the Waybill Sample. He concluded that the number of independent routings affects rail rates. The study does not present sufficient information for us to use its results to measure merger-related competitive harm in this proceeding. Further, it contains key findings that were recently rejected by the ICC in BN/SF, slip. op. at 73 n.94.

d. **Peterson.** Applicants' witness Peterson contributes a study based on a 100% UP traffic data base. It compares UP's average revenue per ton-mile where (1) UP is the sole carrier serving; (2) UP and one other carrier serve; and (3) UP and two other carriers serve. The greatest differential, as expected, is between the one and two-railroad categories. But from 3-to-2 the differential was minimal: less than 1%. This result is not surprising to us. If a shipper has direct access to three railroads and must go down to two, it still has alternative rail service to which it can switch at low (if any) cost.

e. **Kwoka.** Dow's witness Kwoka reported on a 1979 cross-industry study showing that the market share of the top two firms better explains price/cost margins than more commonly used concentration measures such as the HHI. To Kwoka this underscores the need to inject a third mid-ranked firm more likely to compete than coordinate with the other two. Because Kwoka's approach is outside the realm of the rail industry, we find it difficult to make relevant inferences. The focus in this case is effects of fewer rail participants in individual markets, not of higher concentration across whole industries.

Studies About The Role Of SP In The Pricing Equation.

Though all the foregoing studies bear on the question of 3-to-2 pricing impacts generally, others focus on SP's role in particular 3-to-2 markets.³¹¹ This is of special interest because it is SP's competitive presence that is being lost. There is much discussion in the record as to how aggressive a

³¹¹ The studies by Peterson and by Majure discussed above do include an ancillary analysis of the difference made by SP. Peterson breaks down his 2-to-1 category of traffic (from the 100% UP 1994 traffic data) into a UP/SP category and a UP and one other railroad category. The category involving SP as the second competitor has a revenue per ton-mile that is higher than the category involving other carriers (UP/SP-231, RVS Peterson, at 92). A caveat to this analysis is that it does not correct for movement characteristics that might affect the level of rates but might differ between SP and other railroads (e.g., commodity, costs, length of haul, etc.).

Majure included SP's identity as originating carrier as an explanatory variable in his analysis. He found essentially that SP was a less effective competitive restraint in two carrier markets than other carriers. (DOJ-8, VS Majure, at 36 n.37).

Applicants' witness Bernheim has explained that any lower prices offered by SP are likely due to its inferior service. He also notes that Majure's estimating equations contain a variable to adjust for cost differences among carriers. He asserts that this means that Majure has merely estimated that SP's rates would be lower than those other carriers if its costs were the same as the costs of other carriers. But, its costs are about 20% higher. UP/SP-260 (App. E), Bernheim Dep., at 139-42.

competitor SP is today. Applicants view SP as a constrained competitor, one unable to replicate the quality levels of competing railroads and whose effectiveness is further hampered by the higher cost structure associated with an antiquated plant. Protestants describe SP as a maverick, aggressively offering rate reductions in markets that would otherwise be much less competitive. We agree with applicants and interpret lower rate levels offered by SP in certain examples as indicative of the lower quality product it has been constrained to offer. Moreover, SP cannot continue to maintain its existing competitive presence in the long run because the revenues generated from its current pricing structure are not sufficient for it to maintain or replace its capital.

a. **Ploth.** A study was submitted by Ploth for KCS concerning military traffic, on which very detailed bidding information is accessible where similar information from the private sector is highly secretive. Ploth used a DOD data base concerning its movements, which showed rail transport bids of various competing carriers. Ploth shows point-to-point summaries of pricing bids and routings. He finds SP to rank highest in average savings per bid. These results are not surprising, because, as applicants point out, special circumstances govern DOD procurement. DOD must award contracts to the lowest bidder. For repetitive business, however, the procedure is to line up back-up providers that can keep supplying if the initial provider fails to deliver. This happens often with SP; it runs out of equipment for a move, and other carriers are relied on for the balance of the business (UP/SP-231, RVS Gazzetta, at 11).

Bernheim for applicants criticizes Ploth's data. He argues that the number of independent routes, not the number of bids, should be the prime explanatory variable (to allow for potential as well as actual bids). In general, Bernheim's results show that rates are nearly 30% lower where there are two fully independent routes rather than just one. Beyond that, especially with inclusion of SP, Bernheim notes, the effect is negligible. The results do not show aggressive pricing on the part of SP. Bernheim's results appear in line with the general pattern we discern of SP as working under constraints making it unable to exert significant competitive pressure on other participants in the same market.

b. **Bernheim.** In addition to assessing other parties' rate studies, Bernheim also submitted, on behalf of applicants, a study that focuses on 3-to-2 impacts on automotive traffic, with special focus on SP's competitive influence. He used UP's 1994 100% traffic data base to explain the effects on UP's revenue per ton-mile of various categories of market participation. Bernheim found that the 2-to-1 differential is much greater when UP competes against a carrier other than SP. Where SP appears as a third competitor, rates are on average higher than when UP competes with a second carrier only, not SP (24%). Bernheim infers that three carrier markets likely involve dilution of density and higher unit costs and that SP's presence, again, is ineffective in pressuring rates down. This study seems to indicate that the loss of SP's competitive presence in 3-to-2 markets is relatively unimportant because of SP's poor service quality and high cost levels.

c. **Conrail.** Conrail adduces specific rate comparisons to demonstrate that SP is an aggressive competitor (CR-22, VS Bridges, at 2-3; CR-22, VS McNeil, at 5-6). It reports from the vantage point of a co-bidder on joint movements, where shippers receive bids for individual legs of the movements. The focus is on international container traffic from Southern California, through the Southwest, to the East Coast (land bridge movements) and automotive traffic moving West Coast to Midwest and Midwest to Mexico. Conrail claims SP has the best routes for

such traffic and that its lower bids do put pressure on others, specifically, UP, to come up with lower bids than otherwise. Conrail's anecdotal evidence here is not very persuasive, especially when compared to applicants' rate study of all its 3-to-2 automotive traffic, which reaches the contrary result.

APPENDIX F: FINANCIAL RATIOS

Table 1
UPC/SPR
Various Pro Forma Results
(Dollars in millions)

	Base Year	Year 1	Year 2	Year 3	Year 4	Year 5	Normal Year
I. Pro Forma Fixed Charge Coverage Ratio							
1. Income Available for Fixed Charges	\$1,798.0	\$1,862.0	\$2,094.3	\$2,226.2	\$2,257.5	\$2,275.0	\$2,275.6
2. Fixed Charges	594.1	722.6	761.8	777.1	765.9	744.9	711.4
3. Times Fixed Charge Coverage (L1/L2)	3.0	2.6	2.7	2.9	2.9	3.1	3.2
II. Pro Forma Cash Throw-Off-To-Debt Ratio							
1. Net Income	\$744.2	\$704.0	\$823.7	\$896.0	\$922.4	\$946.2	\$967.3
2. Depreciation & Amortization	831.3	918.9	945.5	959.2	966.3	967.8	966.1
3. Deferred Income Taxes	253.9	247.5	292.5	283.2	274.6	259.4	246.2
4. Gain on Property Sales, Other, Etc.	19.1	(84.6)	(64.2)	3.2	10.3	11.2	12.3
5. Cash Flow From Operations (L1+L2+L3-L4)	1,848.5	1,785.8	1,997.5	2,141.6	2,173.6	2,184.6	2,191.9
6. Long-Term Debt Due Within One Year	581.7	581.7	581.7	581.7	581.7	581.7	581.7
7. Cash Throw-Off-To-Debt Ratio (L5/L6)	3.2	3.1	3.4	3.7	3.7	3.8	3.8
III. Pro Forma Operating Ratio							
1. Operating Revenues	\$10,629.1	\$10,698.7	\$10,791.4	\$10,814.6	\$10,838.6	\$10,861.0	\$10,861.0
2. Operating Expenses	8,810.6	8,846.1	8,687.2	8,569.0	8,561.7	8,566.6	8,564.8
3. Operating Ratio (L2/L1)	82.9%	82.7%	80.5%	79.2%	79.0%	78.9%	78.9%
IV. Pro Forma Return on Equity							
1. Net Income	\$744.2	\$704.0	\$823.7	\$896.0	\$922.4	\$946.2	\$967.3
2. Shareholders' Equity	7,423.6	7,383.4	7,463.0	7,614.9	7,793.1	7,995.2	8,218.3
3. Return on Equity (L1/L2)	10.0%	9.5%	11.0%	11.8%	11.8%	11.8%	11.8%
V. Pro Forma Debt to Debt Plus Equity Ratio							
1. Long-Term Debt Due After One Year	\$7,447.5	\$7,902.1	\$8,074.8	\$7,936.0	\$7,682.4	\$7,282.2	\$6,884.5
2. Shareholders' Equity	7,423.6	7,383.4	7,463.0	7,614.9	7,793.1	7,995.2	8,218.3
3. Total Debt Plus Equity	14,871.1	15,285.5	15,537.8	15,550.9	15,475.5	15,277.4	15,102.8
4. Ratio of Debt to Debt Plus Equity (L1/L3)	50.1%	51.7%	52.0%	51.0%	49.6%	47.7%	45.6%

NOTES TO TABLE 1

Sources of Data

The data in this table were derived and computed from information contained in the following submissions by applicants: (1) Volume 1 of the Application, Appendix B (pro forma balance sheets for the base year, the first 5 years after the merger, and the normal year); and (2) Volume 1 of the Application, Appendix C (pro forma income statements for the base year, the first 5 years after the merger, and the normal year).

Base Year Data

The data shown in this table for the base year are from the 1994 10-K Annual Reports for UPC, CNWT, and SPR. These data were adjusted to account for the UP/CNW merger, which occurred during 1995. They were also adjusted to record after-tax losses and benefits associated with the BN/SF merger, elimination of CNWT's 1994 special charges, elimination of losses from discontinued operations associated with UPC's waste management operation (sold at year-end 1994), recordation of the spin-off of Union Pacific Resources, elimination of SP's after-tax gains on property sales, and elimination of the cumulative effect of accounting changes recorded by SPR in 1994.

Data Subsequent to Base Year

Data subsequent to the base year (i.e., data for the first 5 years after the merger and the normal year) give effect to the estimated benefits from the merged operations, including net revenues from diverted traffic and net receipts from trackage rights which, while not recognized as public benefits, are private benefits realizeable from the merger. These data also incorporate changes to equipment costs, debt and interest expense, deferred income taxes, revenues, expenses, and income resulting from the merger.

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6 of 6

APPENDIX G: ENVIRONMENTAL MITIGATING CONDITIONS

The environmental mitigating conditions imposed in Finance Docket No. 32760 are categorized as follows: (A) Systemwide, (B) Corridor-Specific, (C) Rail Line Segments, (D) Rail Yards and Intermodal Facilities, (E) Proposed Abandonments, and (F) Construction Projects. These mitigation conditions are numbered sequentially.

A. SYSTEMWIDE MITIGATION

The following systemwide mitigation conditions apply to rail line segments, rail yards, intermodal facilities, and rail line construction projects on new right-of-way.

1. UP/SP shall adopt UP's existing formula-based standards for track inspection for all rail lines of the merged system, which will increase the frequency of inspections on SP rail lines.
2. UP/SP shall adopt UP's existing tank car inspection programs for all appropriate facilities on the merged system.
3. For all highway grade crossing signals, UP/SP shall provide visible instructions designating an 800 number to be called if signal crossing devices malfunction.
4. UP/SP shall provide 800 numbers to all emergency response forces in all communities. These numbers shall provide access to UP/SP supervisors who shall provide train movement information and work cooperatively with communities in emergency situations. These numbers are not to be disclosed to the general public.
5. UP/SP shall participate on a systemwide basis in the TRANSCARE program to develop hazardous material and emergency response plans in cooperation with communities.
6. UP/SP shall redistribute personnel to respond to hazardous materials emergencies in unprotected areas on the SP rail lines, such as in Arizona, New Mexico, and West Texas.
7. UP/SP shall adopt UP's training program for community and emergency response personnel for locations on the SP rail lines, and include personnel from SP served locations in UP's school at Pueblo, CO, for additional emergency response training.
8. UP/SP shall adopt existing UP training and operating practices that are designed to reduce locomotive fuel consumption and air pollution. These include: throttle modulation, use of dynamic braking, increased use of pacing and coasting trains, isolating unneeded horsepower, shutting down locomotives when not in use for more than an hour when temperatures are above 40 degrees, and maintaining and upgrading SP locomotives to UP standards.
9. As suggested by UP/SP, UP/SP shall extend to SP rail lines UP's program of closing boxcar doors on empty cars before movement on the system in order to reduce wind resistance and, thereby, fuel consumption.
10. As suggested by UP/SP, UP/SP shall use its own security forces to conduct its own arrests and bookings, reducing reliance on local police forces.
11. UP/SP shall convert all railroad locomotives to the standards for visible smoke reduction that are established in the South Coast Air Quality Basin.
12. UP/SP shall adopt UP's existing policy of using head-hardened rail on curves in mountainous territory for SP rail lines to promote safer operations.

13. UP/SP shall comply with all applicable FRA rules and regulations in conducting rail operations on the merged system.

B. CORRIDOR MITIGATION

General

The following mitigation conditions apply to the Central, Southern, Northern, Illinois-Gulf Coast, and Pacific Coast (I-5) Corridors.

14. UP/SP shall implement the draft emissions standards for diesel-electric railroad locomotives that the Environmental Protection Agency (EPA) has developed. It is the Board's understanding that EPA plans to propose these standards and make them available for public comment in December 1996. Under these standards, UP/SP shall utilize newly manufactured or re-built locomotives that are more fuel efficient and produce less emissions. When this equipment becomes available, UP/SP shall assign these locomotives on a priority basis to the corridors or portions thereof specified below:

● **Southern Corridor:**

- Fort Worth, TX, to West Colton, CA.

● **Central Corridor:**

- Cheyenne, WY, to Hinkle, OR.
- Chicago, IL, to Fremont, NE.
- Ogden, UT, to Roseville, CA.
- Denver, CO, to Grand Junction, CO.

● **Pacific Coast (I-5) Corridor:**

- Seattle, WA, to West Colton, CA.
- Sacramento, CA, to Bakersfield, CA.

15. To further facilitate the improvement of air quality for specific locations, UP/SP shall consult with appropriate state and local air quality officials in the States of Arizona, California, Colorado, Illinois, Nevada, Oregon, Texas, Washington, and Wyoming, through which the Pacific (I-5), Southern, Central, and Northern Corridors extend in part. UP/SP shall advise SEA as to the status and the results of these consultations.
16. To address noise impacts, UP/SP shall consult with the affected counties that have communities that would experience an increase of 3 dBA or more as a result of the increased rail traffic over rail lines in the States of California, Colorado, Illinois, Kansas, Louisiana, Nebraska, Nevada, Oklahoma, and Texas. If appropriate, UP/SP shall develop a noise abatement plan. UP/SP shall submit the result of these consultations to SEA who will review these findings with FRA.

Specific

The following mitigation conditions apply to specific rail line segments within the Central, Southern, and Illinois-Gulf Coast Corridors.

17. UP/SP shall give priority to equipping key trains, as defined by Union Pacific Railroad Form 8620, on the corridor segments listed below with two-way end of train devices. This requirement also applies to BNSF key trains operating between Iowa Junction, LA, and Avondale, LA.

● **Central Corridor**

- North Platte, NE, to Oakland, CA (UP and SP).
- Cheyenne, WY, to Denver, CO (UP).

● **Southern Corridor**

- Houston, TX, to Avondale (New Orleans), LA (SP).
- Iowa Junction, LA, to Avondale, LA, via Kinder and Livonia (UP).
- Houston, TX, to West Colton, CA (SP).

● **Illinois-Gulf Coast Corridor**

- St. Louis, MO, and East St. Louis/Salem, IL, to Houston, TX, and Avondale, LA (UP and SP).

C. RAIL LINE SEGMENT MITIGATION

General

The following mitigation conditions apply to all of the rail line segments in the states identified below.

18. UP/SP shall consult with the states and appropriate local officials as well as FRA to develop a priority list for upgrading grade crossing signals, where necessary, due to increases in rail traffic resulting from the proposed merger. This process shall be undertaken for all rail line segments in the States of Arkansas, California, Colorado, Kansas, Nevada, Oregon, and Texas. UP/SP shall advise SEA as to the status and the results of these consultations.

Specific

The following detailed mitigation conditions apply to the specific rail line segments and/or locations identified below.

Martinez, CA, to Oakland, CA:

East Bay Regional Park District

19. UP/SP shall comply with the terms of the Memorandum of Understanding executed with the East Bay Regional Park District and UP/SP.

Roseville, CA, to Sparks, NV:

Town of Truckee

20. UP/SP shall comply with the terms of the Memorandum of Understanding executed with the Town of Truckee and UP/SP.

Placer County

21. UP/SP shall comply with the terms of the Memorandum of Understanding executed with Placer County and UP/SP.

City of Reno

- 22a. UP/SP shall operate no more than a daily average count of 14.7 freight trains per day through the City of Reno. (This reflects the Base Year daily average of 13.8 trains -- 12.7 freight trains and 1.1 passenger trains -- plus 2 additional freight trains.) The addition of two freight trains per day does not exceed the Board's threshold for environmental analysis at 49 CFR 1105.7(e)(5)(ii). The 14.7 average freight train count per day does not include the following types of movements: (1) maintenance-of-way trains, (2) light locomotive movements, (3) local and industry switching train movements, (4) emergency trains operated under detour authority, for snow removal, for fire or other natural disaster purposes, and wreck removal purposes. This condition will be effective upon consummation of the merger and will continue in effect for 18 calendar months in total.

- 22b. For the purpose of monitoring the preceding condition, UP/SP shall file on a monthly basis with the Board verified copies of station passing reports of train movements through Reno, NV, for each day of each preceding month in the specified 18-month period. These reports shall also identify those train movements, specified in the above condition, that are excluded from the 14.7 trains per day average count.
- 22c. UP/SP, in consultation with and subject to the approval of SEA, shall retain an independent, third-party consultant to prepare a specific mitigation study to address the environmental effects on the City of Reno of the additional rail freight traffic projected as a result of the proposed merger. This study shall be prepared under the sole direction and supervision of SEA. It shall include a final mitigation plan based on a further study of the railway, highway, and pedestrian traffic flows and associated environmental effects on the City of Reno. This study would tailor mitigation to address environmental effects such as safety, hazardous materials transport, air quality, noise and water quality. UP/SP shall comply with the final mitigation plan developed under this study.

The study, which shall be completed within 18 months from the date of consummation of the merger, shall include the following:

- Projected post-merger increases in rail freight traffic on the Sparks to Roseville line segment.
- Consultations with the City of Reno, Washoe County, the Federal Railroad Administration, affected Native American Tribes, and other appropriate Federal, state and local agencies, and other interested parties.
- Consultations with UP/SP.
- Review of all existing information and studies including those prepared by the City of Reno, Washoe County and UP/SP.
- Independent analyses.
- With respect to vehicular and pedestrian safety, mitigation measures that identify the number and location of highway/rail grade separations and rail/pedestrian grade separations in downtown Reno.
- Funding options.
- Submission of a draft study to the public for review and comment and then issuance of a final mitigation study.

- 22d. SEA will submit the final mitigation study and its recommendations to the Board, which shall then issue a decision imposing mitigation. In the event UP/SP and the City of Reno and other appropriate parties reach agreement on a final mitigation plan, UP/SP and the City of Reno shall immediately notify SEA, and the Board will take appropriate action consistent with such an agreement.

Chickasha, OK, to Wichita, KS:

City of Wichita, Kansas

- 23a. UP/SP shall operate no more than a daily average count of 6.4 trains per day through the City of Wichita. (This reflects the Base Year daily average of 4.4 trains plus 2 additional trains.) The addition of two trains per day essentially maintains the environmental status quo. The 6.4 average train count per day does not include the following types of movements:
- (1) maintenance-of-way trains, (2) light locomotive movements, (3) local and industry switching train movements, (4) emergency trains operated under detour authority, for snow removal, for fire or other natural disaster purposes, and wreck removal purposes.
- This condition will be effective upon consummation of the merger and will continue in effect for 18 calendar months in total.

23b. For the purpose of monitoring the preceding condition, UP/SP shall file on a monthly basis with the Board verified copies of station passing reports of train movements through Wichita, KS, for each day of each preceding month in the specified 18-month period. These reports shall also identify those train movements, specified in the above condition, that are excluded from the 6.4 trains per day average count.

23c. UP/SP, in consultation with and subject to the approval of SEA, shall retain an independent, third-party consultant to prepare a specific mitigation study to address the potential environmental effects on the City of Wichita of the additional rail freight traffic projected as a result of the proposed merger. This study shall be prepared under the sole direction and supervision of SEA. It shall include a final mitigation plan based on a study of the railway, highway, and pedestrian traffic flows and associated environmental effects on the City of Wichita. This study would tailor mitigation to address environmental effects such as safety, hazardous materials transport, air quality, and noise. UP/SP shall comply with the final mitigation plan developed under this study.

The study, which shall be completed within 18 months from the date of consummation of the merger, shall include the following:

- Projected post-merger increases in rail freight traffic on the Chickasha to Wichita line segment.
- Consultations with the City of Wichita, Sedgwick County, the Federal Railroad Administration, affected Native American Tribes, and other appropriate Federal, state and local agencies, and other interested parties.
- Consultations with UP/SP.
- Review of all existing information and studies including those prepared by the City of Wichita, Sedgwick County and UP/SP.
- Feasibility of a bypass route.
- With respect to vehicular and pedestrian safety, mitigation measures that identify the number and location of highway/rail grade separations in Wichita.
- Funding options.
- Submission of a draft study to the public for review and comment and then issuance of a final mitigation study.

23d. SEA will submit the final mitigation study and its recommendations to the Board, which shall then issue a decision imposing mitigation. In the event UP/SP and the City of Wichita and other appropriate parties reach agreement on a final mitigation plan, UP/SP and the City of Wichita shall immediately notify SEA, and the Board will take appropriate action consistent with such an agreement.

D. RAIL YARDS AND INTERMODAL FACILITIES

24. UP/SP shall consult with appropriate state and local agencies to develop noise abatement plans for rail yards in the following cities: Herington, KS; Salem, IL; and Bellmead, TX. UP/SP shall advise SEA of the results of these consultations and provide SEA with a copy of any resulting noise abatement plans.

25. To further facilitate the improvement of air quality in the States of California and Illinois, UP/SP shall consult with appropriate state and local air quality officials concerning the intermodal facilities in East Los Angeles, CA, and the Global II and Canal Street intermodal facilities in Chicago, IL. UP/SP shall advise SEA as to the status and the results of these consultations.

E. ABANDONMENTS

The following 15 abandonments and two related discontinuances are subject to the mitigation conditions specified below:

- Gurdon to Camden, AR (UP) - Docket No. AB-3 (Sub-No. 129X).
- Whittier Junction to Colima Junction, CA (UP) - Docket No. AB-33 (Sub-No. 93X).
- Magnolia Tower to Melrose, CA (UP) - Docket No. AB-33 (Sub-No. 94X).
- Alturas to Wendel, CA (SP) - Docket No. AB-12 (Sub-No. 184X).
- Towner to NA Junction, CO (UP):
 - Docket No. AB-3 (Sub-No. 130) - UP Abandonment.
 - Docket No. AB-8 (Sub-No. 38) - Discontinuance of Service by SP.
- Edwardsville to Madison, IL (UP) - Docket No. AB-33 (Sub-No. 98X).
- DeCamp to Edwardsville, IL (UP) - Docket No. AB-33 (Sub-No. 97X).
- Barr to Girard, IL (UP) - Docket No. AB-33 (Sub-No. 96).
- Whitewater to Newton, KS (UP) - Docket No. AB-3 (Sub-No. 132X).
- Hope to Bridgeport, KS (UP):
 - Docket No. AB-3 (Sub-No. 131) - UP Abandonment.
 - Docket No. AB-8 (Sub-No. 37) - Discontinuance of Service by SP.
- Iowa Junction to Manchester, LA (UP) - Docket No. AB-3 (Sub-No. 133X).
- Seabrook to San Leon, TX (SP) - Docket No. AB-12 (Sub-No. 187X).
- Suman to Benchley, TX (SP) - Docket No. AB-12 (Sub-No. 185X).
- Troup to Whitehouse, TX (UP) - Docket No. AB-3 (Sub-No. 134X).
- Little Mountain Junction to Little Mountain, UT (UP) - Docket No. AB-33 (Sub-No. 99X).

General

At all abandonment locations, the general mitigation conditions listed below apply to reduce or avoid potential environmental impacts.

26. UP/SP shall observe all applicable Federal, state, and local regulations regarding handling and disposal of any waste materials, including hazardous waste, encountered or generated during salvage of the proposed rail line.
27. UP/SP shall dispose of all materials that cannot be reused in accordance with state and local solid waste management regulations.
28. UP/SP shall restore any adjacent properties that are disturbed during right-of-way salvaging activities to pre-salvaging conditions.
29. Before undertaking any salvage activities, UP/SP shall consult with any potentially affected American Indian Tribes adjacent to, or having a potential interest in, the right-of-way.
30. UP/SP shall use Best Management Practices to encourage regrowth in disturbed areas and to stabilize disturbed soils.
31. UP/SP shall use appropriate signs and barricades to control traffic disruptions during salvage operations at or near grade crossings.
32. UP/SP shall restore roads disturbed during salvage activities to conditions as required by state or local jurisdictions.
33. UP/SP shall comply with all applicable Federal, state, and local regulations regarding the control of fugitive dust. Fugitive dust emissions created during salvage operations shall be minimized by using such control methods as water spraying, installation of wind barriers, and chemical treatment during salvaging.

34. UP/SP shall control temporary noise from salvage equipment through the use of work hour controls and maintenance of muffler systems on machinery.
35. If previously unknown archaeological remains are found during salvage operations, UP/SP shall cease work in the area and immediately contact the appropriate State Historic Preservation Officer.
36. As appropriate, UP/SP shall use appropriate technologies, such as silt screens, to minimize soil erosion during salvaging. UP/SP shall disturb the smallest area possible around streams and tributaries and shall revegetate disturbed areas immediately following salvage operations.
37. As appropriate, UP/SP shall transport all hazardous materials generated by salvage activities in compliance with U.S. Department of Transportation Hazardous Materials Regulations (49 CFR parts 171 to 180).
38. As appropriate, UP/SP shall assure that all culverts are clear from debris to avoid potential flooding and stream flow alteration, in accordance with Federal, state and local regulations.
39. As appropriate, UP/SP shall obtain all necessary Federal, state, and local permits if salvaging activities require the alteration of wetlands, ponds, lakes, streams, or rivers, or if these activities would cause soil or other materials to wash into these water resources. UP/SP shall use appropriate techniques to minimize impacts to water bodies and wetlands, such as positioning salvaging equipment on barges, matting, or skids.

Specific

The following mitigation conditions specifically apply to the abandonment under which they appear.

**Gurdon to Camden, AR (UP)
Docket No. AB-3 (Sub-No. 129X)**

40. UP/SP shall limit salvage activities within 1,000 feet of residences to daytime hours to mitigate noise impacts on nearby receptors.
41. To further assess the potential occurrence of threatened and endangered plants, UP/SP shall coordinate with U.S. Fish & Wildlife Service and the Arkansas Department of Game and Fish, prior to salvage activities, to determine whether surveys of vegetation types in areas of potential disturbance due to salvage activities are needed and shall conduct any such surveys during an appropriate time of year.
42. UP/SP shall retain its interest in and take no steps to alter the through-plate girder bridge at MP 436.70, until the Section 106 process of the National Historic Preservation Act (16 USC 470f, as amended) has been completed for this structure.
43. Prior to the start of salvage operations in the vicinity of the three Emergency Response Notification System (hazardous waste) spill sites, UP/SP shall contact the Arkansas Pollution Control and Ecology Department, Hazardous Waste Division, to confirm that remediation has been completed to agency satisfaction.

**Whittier Junction to Colima Junction, CA (UP)
Docket No. AB-33 (Sub-No. 93X)**

No specific mitigation is imposed.

Magnolia Tower to Melrose, CA (UP)
Docket No. AB-33 (Sub-No. 94X)

44. UP/SP shall retain its interest in and take no steps to alter the Magnolia Tower or WP Oakland Depot until the Section 106 process of the National Historic Preservation Act (16 U.S.C. 470f, as amended) has been completed for these structures.

Alturas to Wendel, CA (SP)
Docket No. AB-12 (Sub-No. 184X)

45. UP/SP shall retain its interest in and take no steps to alter the integrity of the 9 eligible and 11 potentially eligible prehistoric sites along this abandonment until the Section 106 process of the National Historic Preservation Act (16 U.S.C. 470f, as amended) has been completed for these sites.

Sage to Leadville, CO (SP)
Docket No. AB-8 (Sub-No. 36X) - Discontinuance of Service by SP

46. UP/SP shall provide continued access for Viacom International, Inc. to the Eagle Mine site to facilitate ongoing remediation activities.

Malta to Cañon City, CO (SP)
Docket No. AB-8 (Sub-No. 39) - Discontinuance of Service by SP

No specific mitigation is imposed.

Towner to NA Junction, CO (UP)
Docket No. AB-3 (Sub-No. 130) - Abandonment by UP
Docket No. AB-8 (Sub-No. 38) - Discontinuance of Service by SP

47. To further assess the potential occurrence of the seven threatened and endangered species of plants and animals, UP/SP shall coordinate with U.S. Fish & Wildlife Service and the Colorado Department of Natural Resources to determine if surveys in areas of potential disturbance due to salvage activities are needed and shall conduct any such surveys during an appropriate time of the year.

48. UP/SP shall consult with the Colorado Department of Public Health and Environment to confirm that assessment and remediation has been completed to the agency's satisfaction.

Edwardsville to Madison, IL (UP)
Docket No. AB-33 (Sub-No. 98X)

49. Prior to the start of abandonment activities in the vicinity of any known hazardous waste sites, UP/SP shall consult with the Illinois Environmental Protection Agency to assess procedures necessary to address issues related to the sites.

DeCamp to Edwardsville, IL (UP)
Docket No. AB-33 (Sub-No. 97X)

50. UP/SP shall retain its interest in and take no steps to alter the historic integrity of the one historic bridge until the Section 106 process of the National Historic Preservation Act (16 U.S.C. 470f, as amended) is completed.

Barr to Girard, IL (UP)
Docket No. AB-33 (Sub-No. 96)

51. UP/SP shall retain its interest in and take no steps to alter the historic integrity of the three historic bridges until the Section 106 process of the National Historic Preservation Act (16 U.S.C. 470f, as amended) is completed.

Whitewater to Newton, KS (UP)
Docket No. AB-3 (Sub-No. 132X)

No specific mitigation is imposed.

Hope to Bridgeport, KS (UP)
Docket No. AB-3 (Sub-No. 131) - UP Abandonment
Docket No. AB-8 (Sub-No. 37) - Discontinuance of Service by SP

No specific mitigation is imposed.

Iowa Junction to Manchester, LA (UP)
Docket No. AB-3 (Sub-No. 133X)

No specific mitigation is imposed.

Seabrook to San Leon, TX (SP)
Docket No. AB-12 (Sub-No. 187X)

52. U.S. Fish & Wildlife Service indicated a possible desire to obtain permission to determine if Windmill-grass is present along the rail line. Should U.S. Fish & Wildlife Service follow up with such a request, UP/SP shall cooperate in granting the necessary authorizations.
53. UP/SP shall retain its interest in and take no steps to alter the historic integrity of the through-plate girder bridges at MPs 31.99 and 38.77 until the Section 106 process of the National Historic Preservation Act (16 U.S.C. 470f, as amended) has been completed for these structures.
54. UP/SP shall continue Section 106 consultation with the Texas State Historic Preservation Officer to determine the need and extent of a recovery and treatment program for the three known archaeological sites along this segment.
55. Prior to the start of abandonment activities in the vicinity of any known hazardous waste sites, UP/SP shall contact the Texas Natural Resources Conservation Commission, Waste Management Office, to assess procedures necessary to address issues related to the sites.
56. UP/SP shall limit construction work within 1,000 feet of residences to daytime hours to mitigate noise impacts on nearby receptors.

Suman to Benchley, TX (SP)
Docket No. AB-12 (Sub-No. 185X)

57. To further assess the potential occurrence of Navasota Ladies'-tresses (*Spiranthes parksii*), a federally listed endangered species, UP/SP shall conduct a survey and consult with the U.S. Fish & Wildlife Service and the Texas Parks and Wildlife Department prior to salvage operations to determine if this species is present in any areas to be cleared or modified by the proposed abandonment.

58. UP/SP shall continue Section 106 consultation with the Texas State Historic Preservation Officer to determine the need and extent of a recovery and treatment program for the known archaeological site.
59. Prior to the start of abandonment activities in the areas containing copper slag ballast, UP/SP shall contact the Texas Natural Resources Conservation Commission, Waste Management Office, as required to assess procedures necessary to address issues related to the sites.
60. UP/SP shall retain its interest in and take no steps to alter the historic integrity of the three deck plate girder bridges at MPs 109.73, 112.96, and 117.55, until the Section 106 process of the National Historic Preservation Act (16 U.S.C. 470f, as amended) has been completed for these structures.

Troup to Whitehouse, TX (UP)
Docket No. AB-3 (Sub-No. 134X)

61. Prior to the start of abandonment activities in the vicinity of any known hazardous waste sites, UP/SP shall contact the Texas Natural Resources Conservation Commission, Waste Management Division, and other appropriate agencies as necessary to assess procedures for addressing issues related to the sites.

Little Mountain Junction to Little Mountain, UT (UP)
Docket No. AB-33 (Sub-No. 99X)

No specific mitigation is imposed.

F. CONSTRUCTION PROJECTS

General

The following mitigation conditions apply to all new construction sites not on existing right-of-way and also apply to the new construction projects that result from the BNSF agreement.

62. UP/SP shall observe all applicable Federal, state, and local regulations regarding handling and disposal of any waste materials, including hazardous waste, encountered or generated during construction of the proposed rail line connection.
63. UP/SP shall dispose of all materials that cannot be reused in accordance with state and local solid waste management regulations.
64. UP/SP shall consult with the appropriate Federal, state and local agencies if hazardous waste and/or materials are discovered at the site.
65. UP/SP shall transport all hazardous materials in compliance with U.S. Department of Transportation Hazardous Materials Regulations (49 CFR parts 171 to 180). UP/SP shall provide, upon request, local emergency management organizations with copies of all applicable Emergency Response Plans and participate in the training of local emergency staff for coordinated responses to incidents. In the case of a hazardous material incident, UP/SP shall follow appropriate emergency response procedures contained in its Emergency Response Plans.
66. UP/SP shall use appropriate signs and barricades to control traffic disruptions during construction.
67. UP/SP shall restore roads disturbed during construction to conditions as required by state or local jurisdictions.

68. UP/SP shall obtain all necessary Federal, state, and local permits if construction activities require the alteration of wetlands, ponds, lakes, streams, or rivers, or if these activities would cause soil or other materials to wash into these water resources. UP/SP shall use appropriate techniques to minimize impacts to water bodies and wetlands.
69. UP/SP shall use Best Management Practices to control erosion, runoff, and surface instability during construction, including seeding, fiber mats, straw mulch, plastic liners, slope drains, and other erosion control devices. Once the track is constructed, UP/SP shall establish vegetation on the embankment slope to provide permanent cover and prevent potential erosion. If erosion develops, UP/SP shall take steps to develop other appropriate erosion control procedures. UP/SP shall use Best Management Practices to encourage regrowth in disturbed areas and to stabilize disturbed soils.
70. UP/SP shall use only EPA-approved herbicides and qualified contractors for application of right-of-way maintenance herbicides, and shall limit such application to the extent necessary for rail operations.
71. UP/SP shall comply with all applicable Federal, state, and local regulations regarding the control of fugitive dust. Fugitive dust emissions created during construction shall be minimized by using such control methods as water spraying, installation of wind barriers, and chemical treatment.
72. UP/SP shall control temporary noise from construction equipment through the use of work hour controls and maintenance of muffler systems on machinery.
73. UP/SP shall restore any adjacent properties that are disturbed during construction activities to their pre-construction conditions.
74. Before undertaking any construction activities, UP/SP shall consult with any potentially affected American Indian Tribes adjacent to, or having a potential interest in, the right-of-way.
75. If previously undiscovered archaeological remains are found during construction, UP/SP shall cease work and immediately contact the State Historic Preservation Officer to initiate the appropriate Section 106 process.

Specific

The following mitigation conditions apply to the specific construction sites identified below.

Arkansas - Camden

76. UP/SP shall restrict mechanized equipment to upland areas to complete construction activities. UP/SP shall obtain and comply with all applicable permits for any construction activity within streams or wetlands. Also, UP/SP shall submit its final construction plans to appropriate state and local agencies for review.
77. Prior to construction, UP/SP shall provide final plans to the Arkansas Department of Transportation (Arkansas DOT) and appropriate local agencies for review.

Arkansas - Fair Oaks

78. Prior to construction, UP/SP shall provide final plans to the Arkansas DOT and appropriate local agencies for review.

Arkansas - Pine Bluff (East)

79. Prior to construction, UP/SP shall provide final plans to the Arkansas DOT and appropriate local agencies for review.

Arkansas - Pine Bluff (West)

80. Prior to construction, UP/SP shall provide final plans to the Arkansas DOT and appropriate local agencies for review.

Arkansas - Texarkana

81. Prior to construction, UP/SP shall provide final plans to the Arkansas DOT and appropriate local agencies for review.

California - Lathrop

82. UP/SP shall retain its interest in and take no steps to alter the historic integrity of the Sharpe Army Depot, until the Section 106 process of the National Historic Preservation Act (16 U.S.C. 470f, as amended) has been completed for this property.

California - Stockton (El Piñal)

83. UP/SP shall monitor noise resulting from train operations over the connection and implement mitigation measures to control excessive wheel squeal.

California - West Colton (UP to SP)

No specific mitigation is imposed.

California - West Colton (SP to UP)

No specific mitigation is imposed.

Colorado - Denver (Utah Jct.)

84. UP/SP shall retain its interest in and take no steps to alter the historic integrity of the North Yard water tower, until the Section 106 process of the National Historic Preservation Act (16 U.S.C. 470f, as amended) has been completed for this property.

Colorado - Denver

85. In and near the South Platte River and associated wetland areas, UP/SP shall restrict mechanized equipment to the area required to complete construction activities.
86. UP/SP shall perform hydrologic and hydraulic analyses for any modifications to the South Platte River bridge, to ensure the changes would have no effect on the 100-year floodplain.
87. Prior to construction, UP/SP shall consult with the Army Corps of Engineers and obtain and comply with any permits under Section 404 of the Clean Water Act.

Illinois - Girard

88. UP/SP shall consult with the District Soil Scientist of the U.S. Department of Agriculture, Natural Resources Conservation Service, for recommendations to reduce impacts to prime farmland soils.
89. Prior to construction, UP/SP shall consult with the Army Corps of Engineers and obtain and comply with any permits under Section 404 of the Clean Water Act.

Illinois - Salem

90. Prior to construction, UP/SP shall consult with the Army Corps of Engineers and obtain and comply with any permits under Section 404 of the Clean Water Act.

Kansas - Hope

91. Prior to construction, UP/SP shall consult with the Army Corps of Engineers and obtain and comply with any permits under Section 404 of the Clean Water Act.

Louisiana - Kinder

92. In and near the areas of Kinder Ditch and the fringe wetlands, UP/SP shall restrict mechanized equipment to the area required to complete construction activities.
93. UP/SP shall design all drainage structures to maintain existing flows for the Kinder Ditch.

Louisiana - Shreveport

94. UP/SP shall coordinate the design and construction of the U.S. Highway I-71 overpass pier replacement with the Louisiana Department of Transportation and the Louisiana Division of the Federal Highway Administration.
95. UP/SP shall monitor noise resulting from trains operating over the curved section of the connection and implement mitigation measures to control excessive wheel squeal.
96. Prior to construction, UP/SP shall consult with the Army Corps of Engineers and obtain and comply with any permits under Section 404 of the Clean Water Act.

Missouri - Dexter

97. Prior to construction, UP/SP shall consult with the Army Corps of Engineers and obtain and comply with any permits under Section 404 of the Clean Water Act.
98. In and near the two small wetland areas, UP/SP shall restrict mechanized equipment to the area required to complete construction activities.

Missouri - Paront

99. Prior to construction, UP/SP shall consult with the Army Corps of Engineers and obtain and comply with any permits under Section 404 of the Clean Water Act.
100. In and near the wetland areas, UP/SP shall restrict mechanized equipment to the upland areas to complete construction activities.
101. UP/SP shall coordinate with the Missouri Department of Conservation prior to final design of the project to avoid adverse impacts to the state-endangered gold-striped darter. UP/SP shall not conduct in-stream construction activities during the breeding season of this species.

Texas - Carrollton

102. UP/SP shall monitor noise from train operations over the new connection and implement mitigation measures to control excessive wheel squeal.

Texas - West Point

No specific mitigation is imposed.

Texas - Houston (Tower 26)

103. UP/SP shall monitor noise resulting from train operations over the new connection and implement mitigation measures to control excessive wheel squeal.

Texas - Houston (Tower 87)

104. UP/SP shall store all construction equipment, petroleum products, and other hazardous materials outside the area of the 100-year floodplain.
105. Prior to construction, UP/SP shall consult with the Army Corps of Engineers and obtain and comply with any permits under Section 404 of the Clean Water Act.

Texas - Houston (SP to UP)

106. UP/SP shall monitor noise resulting from train operations over the new connection and implement mitigation measures to control excessive wheel squeal.

Texas - Fort Worth (Ney Yard)

107. UP/SP shall monitor noise resulting from train operations over the new connection and implement mitigation measures to control excessive wheel squeal.

Texas - Fort Worth (UP to SP)

108. UP/SP shall monitor noise resulting from train operations over the new connection and implement appropriate mitigation measures to control excessive wheel squeal.

Constructions That Result from the BNSF Agreement

Richmond, CA

No specific mitigation is imposed.

Stockton, CA

No specific mitigation is imposed.

Robstown, TX

No specific mitigation is imposed.

APPENDIX H: NET EMISSIONS (AIR QUALITY)

NET EMISSIONS CONSIDERING MITIGATION MEASURES

AQCR	STATE NAME	HC	CO	NOX	SO2	PM-10
20	AR Northeast Arkansas	49.07	152.56	1142.00	82.75	24.76
501	AZ Southeast Arizona	10.17	52.99	159.83	28.74	5.71
502	AZ Pima	15.31	71.35	270.73	38.70	8.37
503	AZ Mohave-Yuma	10.89	64.29	143.86	34.87	6.32
504	AZ Maricopa	11.41	62.65	151.93	30.93	7.04
505	AZ Central Arizona	13.21	65.40	219.61	35.48	7.32
24	CA Metropolitan Los Angeles	14.61	80.34	32.67	7.84	14.79
27	CA Northeast Plateau	-4.30	-9.39	-114.36	-5.09	-2.06
28	CA Sacramento Valley	-18.23	-39.90	-484.66	21.64	-8.74
30	CA San Francisco Bay Area	10.78	39.39	184.33	12.43	7.22
31	CA San Joaquin Valley	12.69	124.73	-43.70	61.38	9.85
33	CA Southeast Desert	37.83	180.82	652.62	98.08	20.80
508	CA Mountain Counties	-5.29	64.50	-446.54	28.72	0.66
34	CO Commanche	-3.07	-9.54	-71.44	-5.18	-1.55
35	CO Grand Mesa	-80.91	-195.49	-2084.93	-106.04	-39.31
36	CO Metropolitan Denver	41.51	148.26	877.82	76.69	22.14
37	CO Pawnee	22.61	70.29	526.11	38.12	11.41
40	CO Yampa	15.93	76.06	275.03	41.25	8.75
88	IA Northeast Iowa	-35.68	29.73	-1337.25	16.13	-14.20
91	IA Southeast Iowa	-5.43	4.82	-204.60	2.61	-2.15
93	IA Southwest Iowa	-37.70	102.52	-1669.40	55.60	-13.08
65	IL Burlington-Keokuk	-4.93	-15.33	-114.74	-8.31	-2.49
66	IL East Central Illinois	12.26	38.12	285.34	20.68	6.19
67	IL Metropolitan Chicago	2.01	100.68	-508.98	12.22	11.24
69	IL Metropolitan Quad Cities	-28.46	29.78	-1088.57	16.15	-11.16
70	IL Metropolitan St. Louis	-2.64	-1.11	-142.00	-11.41	0.82
71	IL North Central Illinois	-9.39	23.57	-408.83	12.79	-3.31
73	IL Rockford-Janesville-Beliot	-7.48	32.22	-373.86	17.47	-2.27
74	IL Southeast Illinois	37.05	115.19	862.25	62.48	18.69
94	KS Metropolitan Kansas City	39.20	-114.95	-990.68	-72.88	-17.68
95	KS Northeast Kansas	-64.72	-201.23	-1506.28	-109.15	-32.66
96	KS North Central Kansas	-28.66	-89.11	-667.05	-48.33	-14.46
97	KS Northwest Kansas	3.00	9.33	69.81	5.06	1.51
99	KS South Central Kansas	57.98	180.28	1349.43	97.78	29.26
100	KS Southwest Kansas	-42.10	-130.90	-979.81	-71.00	-21.24
138	MO Southeast Missouri	8.53	26.53	198.55	14.39	4.30
85	NE Metro Omaha-Council Bluffs	-19.99	-15.28	-634.30	-8.29	-8.82
145	NE Lincoln-Beatrice-Fairbury	1.72	5.35	40.05	2.90	0.87
146	NE Nebraska	58.10	211.58	1240.49	114.76	30.15
12	NM New Mexico Southern Border	29.47	147.27	485.37	79.88	16.37
154	NM Northeastern Plains	11.88	36.94	276.50	20.04	5.99
155	NM Pecos-Permian Basin	7.64	23.75	177.75	12.88	3.85
147	NV Nevada	-22.61	152.87	-1330.41	82.92	-5.37
148	NV Northwest Nevada	-10.17	0.83	-353.66	0.45	-4.25
184	OK Central Oklahoma	34.84	108.31	810.77	8.75	17.58
185	OK North Central Oklahoma	22.23	69.11	517.32	37.49	11.22
187	OK Northwestern Oklahoma	13.39	41.64	311.72	22.59	6.76
189	OK Southwestern Oklahoma	20.69	64.32	481.44	34.89	10.44
190	OR Central Oregon	13.59	48.21	294.93	26.15	7.02
191	OR Eastern Oregon	-50.35	42.63	-1889.72	23.12	20.02
193	OR Portland	36.77	139.61	679.92	59.05	22.25
22	TX Shreveport-Texarkana-Tyler	49.69	154.49	1156.43	83.80	25.07
106	TX So. Louisiana-SE Texas	18.90	58.75	439.80	31.87	9.53
153	TX El Paso-Las Cruces-Almagordo	13.78	122.61	33.33	66.50	9.11
210	TX Abilene-Wichita Falls	45.00	194.89	849.01	105.71	24.19
211	TX Amarillo-Lubbock	39.51	122.85	919.59	66.63	19.94
212	TX Austin-Waco	-27.02	-84.00	-628.74	-45.56	-13.63
215	TX Metropolitan Dallas-Ft. Worth	-4.37	21.72	-260.23	5.64	-0.14
217	TX Metropolitan San Antonio	-43.63	-131.00	-1067.91	-78.12	-20.61
218	TX Midland-Odessa-San Angelo	28.03	159.27	392.35	86.39	16.09
219	UT Utah	15.97	108.60	159.18	58.91	9.65
220	UT Wasatch Front	-85.51	-257.43	-2020.39	-139.63	-42.92
228	WA Olympic-Northwest Washington	0.79	3.42	15.03	1.86	0.43
229	WA Puget Sound	4.58	19.99	67.68	7.25	3.12
239	WI Southeastern Wisconsin	0.81	2.51	18.82	1.36	0.41
242	WY Metropolitan Cheyenne	8.89	110.03	-89.92	59.68	6.72
243	WY Wyoming	-27.81	158.91	-1531.43	86.19	-7.39

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