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April 15, 1996

VIA HAND DELIVERY
Honorable Vernon A. Williams
Secretary
Surface Transportation Board
12th Street & Constitution Ave., NW
Room 2215
Washington, DC 20423

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

Dear Secretary Williams:

Enclosed please find the original plus twenty (20) copies of Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company's Reply to the Joint Motion of The National Industrial Transportation League, The Society of Plastics Industry, Inc., The Western Shippers' Coalition, Dow Chemical Company, International Paper Company, Kennecott Energy Company, The Kansas City Southern Railway Company, and Consolidated Rail Corporation for Clarification of Decision No. 6 (BN/SF-52). Also enclosed is a 3.5 inch disk containing the text of BN/SF-52 in WordPerfect 5.1 format.

I would appreciate it if you would date-stamp the enclosed extra copy and return it to the messenger for our files.

Sincerely,

Kelley E. O'Brien

Kelley E. O'Brien

Enclosures

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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY

-- CONTROL AND MERGER --

SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP. AND THE DENVER AND
RIO GRANDE WESTERN RAILROAD COMPANY

REPLY TO THE JOINT MOTION OF
THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE,
THE SOCIETY OF THE PLASTICS INDUSTRY, INC.,
THE WESTERN SHIPPERS' COALITION, DOW CHEMICAL COMPANY,
INTERNATIONAL PAPER COMPANY, KENNECOTT ENERGY COMPNAY,
THE KANSAS CITY SOUTHERN RAILWAY COMPANY, AND
CONSOLIDATED RAIL CORPORATION
FOR CLARIFICATION OF DECISION NO. 6

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April 15, 1996

BN/SF-52

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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY

-- CONTROL AND MERGER --

SOUTHERN PACIFIC RAIL CORPORATION,
SOUTHERN PACIFIC TRANSPORTATION COMPANY, ST. LOUIS
SOUTHWESTERN RAILWAY COMPANY, SPCSL CORP. AND THE
DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

REPLY TO THE JOINT MOTION OF
THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE,
THE SOCIETY OF THE PLASTICS INDUSTRY, INC.,
THE WESTERN SHIPPERS' COALITION, DOW CHEMICAL COMPANY,
INTERNATIONAL PAPER COMPANY, KENNECOTT ENERGY COMPANY,
THE KANSAS CITY SOUTHERN RAILWAY COMPANY, AND
CONSOLIDATED RAIL CORPORATION
FOR CLARIFICATION OF DECISION NO. 6

Burlington Northern Railroad Company ("BN") and The Atchison, Topeka and Santa Fe Railway Company ("Santa Fe") (collectively, "BN/Santa Fe") hereby reply to the Joint Motion of the National Industrial Transportation League, the Society of the Plastics Industry, Inc., the Western Shippers' Coalition, Dow Chemical Company, International Paper Company, Kennecott Energy Company, the Kansas City Southern Railway Company, and Consolidated Rail Corporation (collectively, the "Movants") for Clarification of

Decision No. 6. Under the guise of a request for a clarification of the procedural rules in this proceeding, the Movants seek to have the Board promulgate a novel rule of procedure pursuant to which "non-Applicant parties do not have the right to file comments or evidence on April 29, 1996, in response to comments or requested conditions that were submitted on March 29, 1996." Joint Motion at 2. The Joint Motion should be denied.

I. THE MOVANTS' ARGUMENT IS INCONSISTENT WITH BOARD PRECEDENT AND THE TEXT OF THE PROCEDURAL SCHEDULE IN THIS CASE

The Board's predecessor, the Interstate Commerce Commission, has consistently **permitted** parties other than the primary Applicants to file comments responding to other parties' comments. In 1989, for example, the Commission construed the meaning of a procedural schedule containing language nearly identical to the schedule at issue here. In Finance Docket No. 31505, the procedural schedule established a due date for "[r]esponse to comments, protests, conditions and rebuttal in support of primary application." In explaining what could be filed on that date, the Commission stated that "[p]rimary and responsive applicants and **other parties**" may file evidence in rebuttal to any opposition evidence. <u>See</u> <u>Rio Grande Indus., Inc., et al. -- Purchase and Related Trackage Rights -- Soo Line Railroad Company Line Between Kansas City, MO and Chicago, IL</u>, Fin. Dkt. No. 31505, 1989 WL 239012, at *3 (Decided July 31, 1989) (setting forth procedural schedule) and 1989 WL 239579 at *7 (Decided Oct. 13, 1989) (explaining schedule).

In the recent Burlington Northern-Santa Fe merger and control proceeding (Fin. Dkt. No. 32549), numerous commenters submitted reply comments responding to comments filed by others.1/ Several of these reply commenters submitted new evidence with their responsive filings.2/ Significantly, both UP and SP filed comments on June 9th (the due date in that proceeding for reply comments). By that date, both UP and SP had entered into settlement agreements with BN and Santa Fe to address competitive

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1/ The Commission accepted the June 7th Response of the Attorney General of the State of California to Comments, Protests and Proposed Conditions; the June 8th Response of the Oklahoma Dept. of Transportation to Various Comments and Responsive Applications; the June 9th Comments of Southern Pacific Lines on the Comments and Request for Conditions of Central Power & Light Co., Keokuk Junction Ry., and Western Fuels Association, Inc. (SP-39); the June 9th Union Pacific Response to May 10 Filings (UP-7); the June 9th Response of the Department of Justice to Comments (along with its Response to Responsive and Inconsistent Applications (DOJ-3); the June 9th Response of Bunge Corporation to Certain Comments and Requested Conditions (BUNG-3); the June 9th Comments of John D. Fitzgerald for and on behalf of the General Committee of Adjustment (JDF-6); the June 9th Comments of Patrick W. Simmons for and on behalf of United Transportation Union-Illinois Legislative Board (UTUI-4); and the June 9th Comments of the Public Utility Commission of Oregon and the Oregon Department of Transportation.

In other proceedings, non-Applicant parties have also commented on other parties' comments. See, e.g., Rio Grande Industries, Inc. et al. -- Purchase and Related Trackage Rights -- Soo Line Railroad Company Line Between Kansas City, MO and Chicago, IL, Fin. Dkt. No. 31505, 6 I.C.C.2d 854, 870 (Decided July 16, 1990) (noting that the Minnesota Department of Transportation's comments addressed non-Applicant railroads' criticisms of the proposed transaction); Blackstone Capital Partners, L.P. -- Control Exemption -- CNW Corporation and Chicago and North Western Transportation Company, Fin. Dkt. No. 31493, 5 I.C.C.2d 1015, 1018 (Decided Sept. 28, 1989) (describing comments of non-petitioning parties (UP and IMC Fertilizer, Inc.) in response to other parties' comments).

2/ Bunge Corporation, SP, and the Department of Justice.

concerns, and were permitted to file comments addressing the settlement agreements on the reply comment due date.

In the Burlington Northern-Santa Fe proceeding, none of the dire consequences predicted by the Movants resulted from the filing of opposition to comments by non-Applicants. The focused June 9th filings in that proceeding were modest in size and contributed to the development of a record from which the Commission could reach fully informed decisions concerning the conditions proposed by various parties. The Movants are, therefore, asking for this Board to change -- retroactively -- an established practice upon which BN/Santa Fe has justifiably relied and which worked well in the Burlington Northern-Santa Fe merger and control proceeding, a proceeding that was successfully carried to conclusion by the Commission on an expedited basis and that utilized a procedural schedule virtually identical to the one governing this proceeding.

The Movants' argument that only the Applicants may file a response to March 29th comments and requests for conditions on April 29th is also inconsistent with the language of Decision No. 9 in this proceeding and the text of the Procedural Schedule itself. Decision No. 9 clearly states that the evidentiary record in this proceeding will remain open until May 14, 1996. Decision No. 9, at 13. Moreover, the Procedural Schedule states, *inter alia*, that on March 29, 1996, "comments, protests, requests for conditions, **and other opposition** evidence and argument [are] due." Decision No. 9, at 15 (emphasis added). It is clear that, under the Procedural Schedule, March 29th was the final date for the submission of evidence and comments **in opposition to** the primary application. Nothing in the Procedural Schedule suggests that the Board intended to preclude BN/Santa Fe from filing a **response** to the opposition comments on April 29th.3/

The text of the Procedural Schedule's description of the April 29th due date confirms BN/Santa Fe's interpretation of what may be filed on April 29th. There is no express restriction in the Procedural Schedule on **who** may file on the April 29th due date, even though it would have been a simple matter for the Commission in Decision No. 9 to have specified any restrictions it desired. The Procedural Schedule, however, states only that April 29th is the due date for filing "[r]esponse[s] to comments, protests, requested conditions, and other opposition." Decision No. 9, at 15. It does **not** say "**Applicants'** responses to comments . . ." If

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3/ In their Joint Motion, the Movants claim that there is a conflict between the language of the text of Decision No. 6 and the language of the Procedural Schedule, and that the former overrides the latter. See Joint Motion at 3 ("Thus, although the Procedural Schedule attached to Decision No. 6 refers to '[r]esponse to comments, protests, requested conditions and other opposition" . . . the text of Decision No. 6 makes abundantly clear that the Board did not contemplate filings by non-Applicant parties on April 29."). But there is no conflict. The Movants' analysis of Decision No. 6 and the Procedural Schedule confuses two different types of submissions, i.e., (i) opposition to the Primary Application, and (ii) responses to comments and requested conditions; and then takes language restricting when opposition to the Primary Application may be filed and applies that language to responses to comments and requested conditions. If there were, in fact, a conflict between the language of the Procedural Schedule and what the Commission intended, the Commission would surely have changed that language when it reissued the Procedural Schedule in Decision No. 9. But it did not do so. The reason is clear: what the Procedural Schedule says is what the Commission meant.

the Board had intended to limit the right to file reply comments only to the Applicants, it could easily have done so.

The Movants' own petition concedes that "any party" may respond to a responsive application filed on March 29th. See Joint Motion at 6. Yet, such an interpretation of the Procedural Schedule requires the Movants to assume that the Board intended to distinguish between responses to inconsistent/responsive applications on the one hand, which the Movants agree may be filed by any party, and responses to opposition comments on the other, which the Movants believe may be filed only by Applicants. The Movants offer no textual or logical support for such a distinction.

Indeed, a recent Board decision in this proceeding regarding discovery issues provides further textual support for the BN/Santa Fe interpretation of the Procedural Schedule. In Decision No. 23 (decided March 25, 1996), the Board summarized the Procedural Schedule as follows (in pertinent part):

> On April 29, 1996, responses to inconsistent and responsive applications are due; responses to comments, protests, requested conditions, and other opposition are also due. **Applicants'** rebuttal in support of the primary application and related applications is also due on April 29, 1996.

Decision No. 23 at 1, n.2 (emphasis added). If the Board believed that only the Applicants could file responses to comments and other opposition filings, it would not have crafted the summary as it did. Instead, the Board's summary makes clear that, contrary to the view expressed by the Movants, parties other than the Applicants may file responses to inconsistent and responsive applications, as well as responses to comments and other opposition filings.

Moreover, the Movants admit that BN/Santa Fe may file "rebuttal and response" to comments upon its "related applications" (Joint Motion at 6), apparently referring to the "Related Applications, Petitions for Exemptions, and Notices of Exemption" that were filed in this proceeding as sub-dockets with BN/Santa Fe as a captioned party. See UP/SP-26. But the Movants' acknowledgement of BN/Santa Fe's right to submit rebuttal in support of its sub-dockets leaves the point of their motion -- at least with respect to what BN/Santa Fe may file on April 29th -- unclear. Since the settlement agreement is integral to BN/Santa Fe's sub-dockets, any comments relating to the settlement agreement are, in fact, comments addressed to the content of those sub-dockets, regardless of the characterization given to such comments by the parties submitting them. Therefore, by the logic of the Movants' own concessions, BN/Santa Fe may respond to such comments. Thus, it is not clear **what** the Movants want to preclude BN/Santa Fe from filing on April 29.

II. THERE IS NO PUBLIC POLICY JUSTIFICATION FOR THE MOVANTS' PROPOSED RULE

As a matter of public policy, the novel rule advocated by the Movants makes no sense. The effect of a rule that only the Applicants may file comments and evidence on April 29th (in response to comments and requests for conditions) would be to deprive BN/Santa Fe of **any opportunity** to submit comments and evidence on the various requests for conditions and other comments that criticize the BN/Santa Fe settlement with the Applicants or seek substantial alterations in the terms of that settlement. Further, the Movants' proposed rule would preclude BN/Santa Fe from in any way challenging the factual underpinnings of any of the opposition comments or requests for conditions. Thus, were the Movants' suggestion to be accepted, BN/Santa Fe could not offer comments or evidence to counter arguments to which **only** BN/Santa Fe can respond, such as arguments that BN/Santa Fe is not interested in various types of traffic, such as traffic connecting with Mexican carriers, or that BN/Santa Fe cannot resolve operational difficulties associated with the rights granted under the settlement agreement, such as lack of storage-in-transit facilities for plastics traffic.

Such a result not only would violate the right of interested parties to be heard, but also would deprive this Board of valuable evidence and insights necessary for informed deliberation and decision-making with respect to requests for conditions made in the proceeding. The only policy justification offered by the Movants for the radical step they urge on this Board is that it will prevent a "geometric proliferation of filings in this already gargantuan record." Joint Motion at 2.

The Movants' concern with the size of the record is misplaced. If the Movants' proposed new rule of procedure had governed this proceeding, the rule would have resulted in much larger March 29th submissions that would have needed to anticipate and attempt to respond to every possible adverse comment or request for condition.

Accordingly, instead of encouraging reply comments that focus specifically on the opposition comments and requests for conditions that are actually filed on March 29th, the rule proposed by the Movants would encourage unwieldy initial comments, laden down with arguments written in anticipation of the pleadings that would be due to be filed that very same day. Such a rule encouraging anticipatory responses to arguments that might never be made will not reduce the size of the record in any future proceeding.

III. THE MOVANTS' PROPOSAL IS INCONSISTENT WITH ARGUMENTS THEY THEMSELVES HAVE MADE IN THIS PROCEEDING

In March, a majority of the Movants took the position that they should not have to respond to BN/Santa Fe's affirmative discovery until after their opposition comments had been filed.4/ See, e.g., Letter of A. Stephen Hut, Jr. (counsel for Conrail) to Administrative Law Judge Nelson, March 6, 1996, at 1 (asserting that discovery requests of the Applicants and BN/Santa Fe were premature) (A copy of Mr. Hut's March 6, 1996 letter is attached hereto as Attachment A.). For instance, in Mr. Hut's March 6, 1996 letter, Conrail argued that the discovery requests were overbroad "in large part precisely because the requests are, at best, premature, served before Conrail has even prepared, let alone filed, its comments." Id. at 1 (emphasis in original). Conrail's counsel urged the Judge to order that the "premature discovery be withdrawn and that 'upon th[e] filing' of Conrail's comments and

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4/ Movants taking this position were the National Industrial Transportation League, the Western Shippers' Coalition, Dow Chemical Company, Kennecott Energy Company, the Kansas City Southern Railway Company, and Consolidated Rail Corporation.

verified testimony on March 29, Applicants and BNSF resubmit discovery requests that are actually based on the comments Conrail actually files on that date." Letter at 4-5 (emphasis in original). Conrail characterized this approach as the "proper" and "logical" sequence in which to proceed with discovery. Id. at 3. Accordingly, Conrail and other parties argued for the suspension of BN/Santa Fe's discovery efforts until after March 29th, when the parties were to file their comments and evidence. Yet, under the Movants' proposed rule, BN/Santa Fe would have no opportunity to file further evidence in this case, and thus, would have no opportunity to make use of the results of the discovery efforts. Thus, the Movants' proposed rule, coupled with their success in deferring substantial discovery efforts to the post-comment period, would have the effect of depriving BN/Santa Fe of any effective discovery rights in this proceeding. Such a result is manifestly unfair to BN/Santa Fe, and serves no conceivable public policy purpose.

IV. THE MOVANTS' PROPOSED RULE WOULD RETROACTIVELY DEPRIVE BN/SANTA FE OF THE RIGHT TO BE HEARD

The procedural change sought by the Movants here would also violate fundamental principles of due process and fairness. As noted, BN/Santa Fe (and, no doubt, other parties) justifiably relied on the plain language of the decisions in this proceeding and on prior Commission practice in determining when and how to file its submissions in this proceeding. The change in procedure urged by the Movants would deprive BN/Santa Fe of its sole chance in this proceeding to submit evidence in opposition to the Movants' evidentiary submissions of March 29th, many of which are critical of BN/Santa Fe's proposed operations under the settlement agreement or seek conditions that are inconsistent with the rights negotiated by BN/Santa Fe with the Applicants. Yet, the Movants are now seeking to insulate their evidence and comments from any scrutiny or response by BN/Santa Fe. The Board should reject the Movants' attempt to deprive BN/Santa Fe of its right to be heard on matters of such importance to it.5/

* * *

For the foregoing reasons, the Board should refuse to adopt the novel rule of procedure urged by the Movants. If the Board believes that any clarification is warranted to avoid the accumulation of late opposition evidence, it could instruct parties that April 29th comments and evidence must be specifically responsive to opposition comments, and that cumulative comments and evidence in further opposition to the Primary Application are not proper and will not be accepted on April 29th.

5/ To the extent that the Movants are denying that non-Applicants may respond at all to comments and submissions of other non-Applicants, whether on April 29th or even on March 29th (see Joint Motion at 5), they are taking a position to which they themselves have not adhered. Even a cursory review of the comments and evidence filed by the Movants on March 29th will show that the Movants seized the opportunity afforded by BN/Santa Fe's early filing of comments to offer extensive opposition comments to BN/Santa Fe's comments.

Respectfully submitted,

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Attorneys for Burlington Northern Railroad Company
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April 15, 1996

CERTIFICATE OF SERVICE

I hereby certify that copies of Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company's Reply to the Joint Motion of The National Industrial Transportation League, The Society of Plastics Industry, Inc., The Western Shippers' Coalition, Dow Chemical Company, International Paper Company, Kennecott Energy Company, The Kansas City Southern Railway Company, and Consolidated Rail Corporation for Clarification of Decision No. 6 (BN/SF-52) have been served this 15th day of April, 1996, by first-class mail, postage prepaid on all parties of record in Finance Docket No. 32760.

Kelley E. O'Brien

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April 15, 1996

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BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

UNION PACIFIC CORP., UNION PACIFIC RAILROAD CO. AND MISSOURI PACIFIC RAILROAD CO.-- CONTROL AND MERGER -- SOUTHERN PACIFIC RAIL CORP., SOUTHERN PACIFIC TRANSPORTATION CO., ST.LOUIS SOUTHWESTERN RAILWAY CO., SPCSL CORP. AND THE DENVER AND RIO GRANDE WESTERN RAILROAD CO.	)	FINANCE DOCKET NO. 32760

COMMENTS OF THE UNITED STATES
DEPARTMENT OF JUSTICE

VOLUME I

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April 12, 1996

DOJ-8

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

UNION PACIFIC CORP., UNION PACIFIC RAILROAD CO. AND MISSOURI PACIFIC RAILROAD CO.-- CONTROL AND MERGER -- SOUTHERN PACIFIC RAIL CORP., SOUTHERN PACIFIC TRANSPORTATION CO., ST.LOUIS SOUTHWESTERN RAILWAY CO., SPCSL CORP. AND THE DENVER AND RIO GRANDE WESTERN RAILROAD CO.	FINANCE DOCKET NO. 32760

COMMENTS OF THE UNITED STATES
DEPARTMENT OF JUSTICE

The Union Pacific Corporation (UP) and Southern Pacific Rail Corporation (SP) have applied to the Board for authority to merge their railroad operations. The United States Department of Justice hereby submits comments as to the likely competitive impact of the proposed transaction, along with the testimony of three witnesses: Dr. W. Robert Majure, Dr. Laurits R. Christensen, and Eileen Zimmer, CFA.[1]

PRELIMINARY POSITION OF THE DEPARTMENT OF JUSTICE

Based on the information currently in the record and on its own investigation, the Department has concerns that the unconditioned merger of UP and SP raises significant competitive

[1] The Department's comments are in two volumes: DOJ-8 contains the verified statements of the Department's three witnesses. DOJ-9 contains data attachments supporting the testimony of Dr. Majure.

problems in a large number of markets. The evidence suggests that the proposed transaction would adversely affect a large number of markets throughout the West where the number of competitors would decline from two to one or from three to two.

The evidence also suggests that the remedy proposed by the Applicants, an agreement granting extensive trackage rights to the Burlington Northern/Santa Fe (BNSF), will be ineffective to prevent the widespread anticompetitive effects likely to arise from the proposed transaction. The agreement with BNSF appears inadequate to prevent rate increases in two-to-one markets, and does not and cannot remedy the effects of the transaction in three-to-two markets. The evidence also indicates that Applicants' claimed efficiencies are vastly overstated, and in any event are not enough to outweigh the probable rate increases, and that claims that SP will not be a viable competitor absent the merger are unfounded.

The Department therefore has concerns that approval of the transaction as proposed is likely to result in a substantial reduction in competition in numerous markets, and may not be in the public interest. The Department reserves judgment on any remedies or conditions proposed by other parties in their March 29 filings, as well as on any other conditions that appear necessary, until the record is complete.

These comments describe the proposed transaction and the applicable legal standards, discuss the economic framework in which we have analyzed the proposed merger, and summarize the results of the Department's analysis, which is described in greater detail in the testimony of our witnesses.

DESCRIPTION OF THE PROPOSED TRANSACTION

UP and SP are two of only three Class I railroads in the western half of the United States. UP operates approximately 22,000 miles of track and SP about 16,700 miles. The merged system, after planned abandonments and line sales, would have about 36,200 miles of track. UP and SP had combined revenues of $10.6 billion in 1995. The merged UP/SP would be the largest U.S. railroad in terms of both physical size and revenues.

The Applicants' systems have significant overlaps, including parallel lines through the Central Corridor and from Texas to Chicago. In an attempt to remedy the acknowledged competitive concerns raised by the proposed merger, the Applicants have entered into a trackage rights agreement with BNSF. The agreement, which is unprecedented in scope, would give BNSF trackage rights over more than 3,800 miles of the merged UP/SP system.

LEGAL STANDARD

The Interstate Commerce Act ("ICA" or "the Act") sets out the framework under which the Board must review and analyze this merger. 49 U.S.C. §§ 11341-44. In proceedings involving the proposed merger of two Class I railroads, the Act requires the Board to consider a number of factors in making its essential finding of whether the transaction is in the public interest. 49 U.S.C. 11344(b)(1). These factors include whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region. 49 U.S.C. § 11344(b)(1)(E).

It is thus necessary that the Board determine whether a proposed merger will produce an anticompetitive effect in any defined market. Although the Board does not sit as an antitrust court in determining compliance with the antitrust laws, the Board must define the economic markets that would be affected by a proposed transaction and then evaluate its competitive effects in order to reach its ultimate public interest determination. The policies embodied in the antitrust laws must be considered in conducting an appropriate balancing test to determine the public interest. See FMC v. Aktiebolaget Svenska Amerika Linien, 390 U.S. 238, 244 (1968); Northern Lines Merger Cases, 396 U.S. 491, 510-13 (1970).

It is in this framework that the United States Department of Justice offers its preliminary comments and the testimony of its three witnesses. The testimony of Dr. W. Robert Majure, an economist with the Department of Justice, analyzes the competitive effects of the proposed transaction, including the remedy offered by the BNSF Agreement. The testimony of Dr. Laurits R. Christensen, of Christensen Associates, analyzes the efficiency claims of the Applicants. Eileen Zimmer, a financial analyst with the Department of Justice, analyzes the financial condition of SP.

FRAMEWORK FOR ANALYSIS

The core issue in the competition analysis is whether the proposed merger would be likely to create or enhance market power or facilitate its exercise. Market power is the ability of a seller profitably to maintain prices above competitive levels (or reduce quality or service below competitive levels) for a significant period of time. The result of the exercise of market power is a transfer of wealth from buyers to sellers and/or a misallocation of resources. A merger can facilitate the exercise of market power by increasing the likelihood of coordinated interaction among competing firms, or by creating a market structure in which firms find it profitable to unilaterally raise prices or reduce output.

It is a fundamental tenet of economic theory, and hence of antitrust enforcement policy, that mergers short of merger to monopoly may have significant anticompetitive effects. For this reason, both the courts and the antitrust enforcement agencies presume that a merger resulting in a significant increase in concentration in a highly concentrated market will enhance market power or facilitate its exercise. United States v. Philadelphia National Bank, 374 U.S. 321, 363 (1963); Merger Guidelines § 1.51.

The first step in determining whether a proposed merger would be likely to create, enhance, or facilitate the exercise of market power is to define the markets within which the merging parties compete. In this case, the definition of a market begins with the basic service provided by the railroad -- the transportation of a particular commodity from a particular origin to a particular destination. UP and SP compete for significant amounts of traffic in a large number of markets, and in some of the markets where they compete, UP and SP are the only rail carriers providing service.

The market, however, may not be limited to rail carriers. Intermodal competition in the form of truck, barge, or sometimes pipeline movements may allow shippers with few rail alternatives to substitute another mode of transportation for the shipment of a commodity from a particular origin to a particular destination. If another mode of transportation is a close substitute for rail, a single rail carrier alone likely would not possess market power in the movement of that commodity; the rail carrier's ability to raise rates would be constrained by the shippers' ability to use another mode.

For some commodities, however, transportation by truck cannot compete with rail because the distance the commodity is shipped is great, the volume of the commodity shipped is large, or the value of the commodity as compared to its weight is small. Water competition is often limited by the geographic location of the shipper or receiver, and sometimes by seasonal factors.

Source competition is also an important factor in market definition. Source competition allows a shipper to avoid a supra competitive rail rate between two points by using alternative rail carriers to ship a commodity from a different source or to a different destination. Where there is neither effective intermodal competition nor source competition, the proposed transaction, by reducing the number of rail competitors, likely will increase the merged carrier's market power and result in competitive harm.

In some situations, it may be in the public interest to allow a merger that reduces competition if the transaction is necessary to achieve significant efficiencies, and those efficiencies are great enough to outweigh the higher prices or lower quality that would otherwise occur from the loss of competition. The burden of proving such efficiencies is on the proponents of the merger. FTC v. University Health, Inc., 938 F.2d 1206, 1222-23 (11th Cir. 1991). Given the difficulty of accurately predicting merger benefits, efficiency claims should be carefully examined, particularly where the potential competitive harm from the merger is great. Claimed efficiencies should be rejected if equivalent or comparable savings can be achieved by other means. University Health, 938 F.2d at 1222 n.30; Merger Guidelines § 4.

A merger that otherwise would raise a presumption of illegality may also be approved if the imminent failure of one of the parties would result in the assets of the firm exiting the market. International Shoe v. FTC, 280 U.S. 291 (1930). The "failing firm" test is narrowly construed, Citizen Publishing Co. v. United States, 394 U.S. 131, 139 (1969), and requires a showing that the alleged failing firm will not be able to meet its financial obligations in the short term, that it will not be able t reorganize in bankruptcy, that there is no less anticompetitive alternative purchaser for its assets, and that absent the transaction its assets will exit the industry. United States v. General Dynamics Corp., 415 U.S. 486, 507 (1974); Merger Guidelines § 5.1. See also Santa Fe Southern Pacific Corporation - Control - Southern Pacific Transportation Co., 2 I.C.C. 2d 709, 828-33 (1986)(rejecting SP's failing firm claim and finding no support in the case law for a "weakened competitor" defense).

SUMMARY OF EVIDENCE

As the Applicants recognize, an unconditioned merger of UP and SP raises significant competitive concerns. Dr. Majure identifies hundreds of markets in which the number of competitors will decline from two to one following the merger. These markets involve commodities such as wood products, intermodal traffic, agricultural products, iron and steel, and plastics, moving in hundreds of traffic corridors throughout the West. The total volume of traffic in two-to-one markets is over $1.5 billion. Dr. Majure also identifies hundreds of markets in which the number of competitors will decline from three to two following the merger. Again, these markets involve commodities such as intermodal traffic, agricultural products, wood products, iron and steel, and plastics moving in hundreds of traffic corridors throughout the West. The total volume of traffic in three-to-two markets is over $4.75 billion.

Dr. Majure analyzes the adequacy of the BNSF Agreement as a competitive remedy in the two-to-one markets. He concludes that BNSF is unlikely to be an effective competitor in the affected markets for several reasons, including an excessive compensation rate, inadequate guarantees to ensure BNSF service quality, and other factors that reduce BNSF's incentive to compete using the trackage rights.

The Applicants have made no attempt to remedy the loss of competition in markets going from three railroads to two as a result of the merger. Dr. Majure analyzes the Applicants' claims that there will be no competitive harms in such markets. He concludes that there is strong empirical evidence that rates are lower in markets with three railroads than in markets with two railroads, and that evidence advanced by the Applicants purporting to show decreases in post-merger rates in three-to-two markets is flawed. Dr. Majure also concludes that competitive conditions in the railroad industry make it likely that after the proposed merger the two remaining western railroads will each find it in their interest to raise prices and that the danger of a price increase or quality reduction resulting from coordination between the merged UP/SP and BNSF will increase. Dr. Majure's rough estimate of the total harm to shippers and consumers from post-merger price increases is about $800 million.

The Applicants claim that the proposed transaction will result in public benefits totaling about $751 million per year. Dr. Christensen evaluates the claimed efficiencies and finds that they are significantly overstated. He concludes that Applicants claim as merger benefits many efficiencies that would likely accrue even absent the merger due to industry trends, that they erroneously count as public benefits many transfers that are actually private benefits, and that they ignore the potential benefits of non-merger alternatives. In addition, Dr. Christensen finds that many of the claimed benefits are so poorly documented that it is impossible to assess the accuracy of Applicants' efficiency projections. He concludes that the claimed annual efficiencies of $751 million are overstated by at least $246 million and perhaps by as much as $678 million, so that the range of possible efficiencies is $73 million to $505 million.

Although Applicants do not assert that SP is a failing firm within the well-established antitrust definition, they do assert that SP's weak financial condition will make it an increasingly ineffective competitor absent the merger. It appears that a great deal of shipper support for the transaction is based at least in part on fears about the continued viability of SP. Eileen Zimmer examines the financial condition of SP and its prospects for obtaining funds in the future for capital investments. She notes that although it has had financial difficulties for a number of years, SP has successfully raised capital to pursue a number of major efforts in recent years to rejuvenate the company and that SP's operations in fact have already shown some improvement. She concludes that SP has alternatives to the UP merger to provide funding for further capital expenditures, and that SP is likely to survive for the foreseeable future and remain a significant competitor.

CONCLUSION

The Department submits for the record the testimony of (1) Dr. W. Robert Majure, who describes the competitive harms likely to occur in an unconditioned merger and evaluates the effectiveness of the BNSF agreement in remedying those harms, (2) Dr. Laurits R. Christensen, who evaluates the benefit claims of the Applicants, and (3) Eileen Zimmer, who evaluates claims that the SP may not be a viable competitor absent the proposed transaction.

Based on the evidence in the record to date and its own investigation, the Department has concerns that the merger as proposed, including the BNSF agreement, likely will result in a significant reduction in competition in a large number of markets, and therefore may not be in the public interest.

The Department reserves final judgment on the anticompetitive effects and the adequacy of conditions proposed by other parties or other potential remedial actions until the evidentiary record is complete.

Respectfully submitted,

Michael D. Billiel

Joan S. Huggler

Robert L. McGeorge

Angela L. Hughes

Michele B. Felasco

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Constance K. Robinson
Director of Operations

Roger W. Fones
Chief, Transportation,
Energy & Agriculture Section

Donna N. Kooperstein
Assistant Chief, Transportation
Energy & Agriculture Section

April 12, 1996

CERTIFICATE OF SERVICE

I hereby certify that I have caused a copy of the COMMENTS OF THE UNITED STATES DEPARTMENT OF JUSTICE (DOJ-8 and DOJ-9) to be served on counsel for the Applicants, Arvid E. Roach II (Covington & Burling, 1201 Pennsylvania Ave., N.W., Washington, D.C. 20044) and Paul A. Cunningham (Harkins Cunningham, 1300 Nineteenth St., N.W., Washington, D.C. 20036), by hand, and on all other parties of record in this proceeding by first class mail or more expeditious means, this 12th day of April, 1996.

April 12, 1996

Michael D. Billiel

STB FD 32760 4-8-96 81490 D

Item No.________________

Page Count 3

Apr #218

81490

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WILLIAM P. QUINN

RECEIVED
APR 8 1996
MAIL
MANAGEMENT
I.C.C.

April 3, 1996

Office of the Secretary
Case Control Branch
ATTN: Finance Docket No. 32760
Surface Transportation Board
1201 Constitution Ave., N.W.
Washington, DC 20423

Re: Finance Docket No. 32760
Union Pacific Corporation, et al.--Control and Merger
--Southern Pacific Rail Corporation, et al.

Dear Sir or Madam:

Because of time constraints, the verification attached to the Comments of Toledo, Peoria & Western Railway Corporation, TPW-4, was a facsimile. Please attach the original verification enclosed to the original of TPW-4.

Thank you for your assistance.

Very truly yours,

William P. Quinn /bah

WILLIAM P. QUINN

Enclosure

ENTERED
Office of the Secretary
APR 10 1996
5 Part of Public Record

WPQ/bah
TPW\UP-SP\STB05.LTR

VERIFICATION

I, Gordon R. Fuller, Executive Vice President, have the responsibility for Marketing and Sales for the Toledo, Peoria & Western Railway Corporation. I verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing Comments.

Executed on March 28, 1996.

Gordon R. Fuller

STB FD 32760 4-2-96 62475 D

04/02/96 WCP 62475 002

Item No.

Page Count 10

Apr #103

CR-24

RECEIVED APR 2 1996 MAIL MANAGEMENT I.C.C.

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY

-- CONTROL AND MERGER --

SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP. AND THE DENVER AND
RIO GRANDE WESTERN RAILROAD COMPANY

CONSOLIDATED RAIL CORPORATION'S SUPPLEMENTAL RESPONSES TO APPLICANTS' FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

Constance L. Abrams
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APR 4 1996
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Daniel K. Mayers
A. Stephen Hut, Jr.
Joseph E. Killory, Jr.
WILMER, CUTLER & PICKERING
2445 M Street, N.W.
Washington, D.C. 20037

April 1, 1996

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY AND MISSOURI PACIFIC RAILROAD COMPANY

-- CONTROL AND MERGER --

SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, SPCSL CORP. AND THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

CONSOLIDATED RAIL CORPORATION'S SUPPLEMENTAL RESPONSES TO APPLICANTS' FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

Consolidated Rail Corporation ("Conrail") hereby provides its supplemental response to the First Set of Interrogatories and Document Requests served on Conrail by Applicants on February 26, 1996, as modified by the rulings of Judge Nelson at the March 8, 1996 Discovery Conference. Specifically, this Supplemental Response addresses each document request as to which Judge Nelson ruled that a response was to be deferred until April 1, 1996.

GENERAL RESPONSE

Conrail makes the following general response to all of the interrogatories and document requests:

1. Conrail has conducted a reasonable search for information and documents responsive to the discovery requests by searching files reasonably believed to contain responsive

materials and inquiring of personnel reasonably believed to have responsive information. Subject to the general and specific objections set forth herein, all non-privileged, responsive documents located by that search are being or will soon be made available for inspection and copying at Conrail's document depository, to be located at the offices of Wilmer, Cutler & Pickering in Washington, D.C. Copies of identified documents from the depository will be supplied upon payment of reproduction costs.

2. Provision of information or production of documents in response to these requests shall not be construed as a concession as to the relevance of that request, or of the subject matter underlying that request, to the issues in this proceeding, nor shall it be construed as a waiver of any objection set forth herein.

3. To the extent that Conrail is producing responsive documents that contain confidential information, any such production is subject to the limitations and restrictions set forth in the protective order that has been entered in this proceeding.

GENERAL OBJECTIONS

The general objections set forth below apply to all of the discovery requests.

1. Conrail objects to the production of, and is not producing, documents or information protected by the attorney-client privilege.

2. Conrail objects to the production of, and is not producing, documents or information protected by the work product doctrine.

3. Conrail objects to the production of, and is not producing, documents or information protected by the settlement privilege.

4. Conrail objects to the production of, and generally is not producing, public documents that are readily available such as documents on file at the Securities and Exchange Commission, filings in this proceeding, clippings from newspapers or other public media, or documents that are otherwise readily available to the party propounding the request.

5. Conrail objects to the production of, and is not producing, drafts of verified statements or studies.

6. Conrail objects to any request that would require the preparation of a special study.

7. Conrail objects to any request as to which responding would impose an undue burden including, but not limited to, any request seeking information from before January 1, 1993.

8. Conrail objects to the production of any documents or information unrelated to the issues to be addressed in Conrail's comments and related filings in this proceeding.

9. Conrail objects to the extent that any request calls for the disclosure of information that is highly confidential, such as information subject to disclosure

restrictions imposed in other proceedings or by contractual obligation to third parties, and that is of insufficient relevance to warrant production even under a protective order.

SPECIFIC RESPONSES AND ADDITIONAL OBJECTIONS TO INDIVIDUAL DOCUMENT REQUESTS

1. Produce no later than April 1, 1996 (a) all workpapers underlying any submission that Conrail makes on or about March 29, 1996 in this proceeding, and (b) all publications, written testimony and transcripts of any witnesses presenting testimony for Conrail on or about March 29, 1996 in this proceeding.

RESPONSE: Conrail objects to part (b) of this request on the grounds that it is not relevant to the subject matter of this proceeding. In accordance with the rulings of Judge Nelson at the March 8, 1996 Discovery Conference limiting the scope of part (b) of this request, however, Conrail is producing responsive documents. All documents responsive to this request are included in the workpapers of the witnesses who submitted verified statements on behalf of Conrail.

8. Produce all documents relating to conditions that might be imposed on approval of the UP/SP merger.

RESPONSE: Conrail objects to this request on the grounds that it is not relevant to the subject matter of this proceeding and is unduly burdensome. Subject to and without waiving its objections, and in accordance with the rulings of Judge Nelson at the March 8, 1996 Discovery Conference limiting the scope of this request, Conrail is producing non-privileged responsive documents. Non-privileged documents responsive to this request, as limited by Judge Nelson, are included in the workpapers of the witnesses who submitted verified statements on behalf of Conrail or in Conrail's response to Applicant's other document requests.

14. Produce all presentations, solicitation packages, form verified statements, or other materials used to seek support from shippers, public officials, railroads or others for the position of Conrail or any other party in this proceeding.

RESPONSE: Conrail objects to this request on the grounds that it is not relevant to the subject matter of this proceeding and is unduly burdensome. Subject to and without waiving this objection, and in accordance with the rulings of Judge Nelson at the March 8, 1996 Discovery Conference limiting the scope of this request, Conrail is producing non-privileged, responsive documents.

15. Produce all presentations, letters, memoranda, white papers or other documents sent or given to DOJ, DOT, any state Governor's, Attorney General's or Public Utilities Commission's (or similar agency's) office, any Mexican government official, any other government official, any security analyst, and bond rating agency, any consultant, any financial advisor or analyst, any investment banker, any chamber of commerce, or any shipper or trade organization relating to the UP/SP merger.

RESPONSE: As noted in Conrail's earlier response to the portion of this request due March 12, 1996, Conrail objects to the request on the grounds that it is not relevant to the subject matter of this proceeding. At the March 8, 1996 Discovery Conference, Judge Nelson limited this request to presentations made to financial analysts and advisors (to which Conrail already has responded) and documents relating to presentations to Mexican government officials (to be placed in Conrail's depository with its workpapers on April 1, 1996).

Subject to and without waiving this objection, Conrail is producing non-privileged documents responsive to this request.

16. Produce all notes of any meetings with DOJ, DOT, any state Governor's, Attorney General's or Public Utilities Commission's (or similar agency's) office, any Mexican government official, any other governmental official, any security analyst, any bond rating agency, any consultant, any financial advisor or analyst, any investment banker, any chamber of commerce, or any shipper or trade organization relating to the UP/SP merger.

RESPONSE: As noted in Conrail's earlier response to the portion of this request due March 12, 1996, Conrail objects to the request on the grounds that it is not relevant to the subject matter of this proceeding. At the March 8, 1996 Discovery Conference, Judge Nelson limited this request to notes of meetings with financial analysts and advisors and notes of meetings with Mexican government officials (the latter of which are to be placed in Conrail's depository with its workpapers on April 1, 1996).

Subject to and without waiving this objection, Conrail has searched for documents responsive to this request, as limited by Judge Nelson, and has identified no non-privileged, responsive documents.

17. Produce all documents relating to shipper surveys or interviews concerning (a) the UP/SP merger or any possible conditions to approval of the merger, or (b) the quality of service or competitiveness of any railroad.

RESPONSE: Conrail objects to this request on the grounds that it is not relevant to the subject matter of this proceeding and is unduly burdensome. Subject to and without waiving this objection, and in accordance with the rulings of Judge Nelson at the March 8, 1996 Discovery Conference limiting this request to shipper survey materials referenced in part (a) of the request, Conrail is producing non-privileged, responsive documents.

22. Produce all presentations to, and minutes of, the board of directors of Conrail relating to the UP/SP merger or conditions to be sought by any party in this proceeding.

RESPONSE: Conrail objects to this request on the grounds that it is not relevant to the subject matter of this proceeding. Subject to and without waiving this objection, and in accordance with the rulings of Judge Nelson at the March 8, 1996 Discovery Conference limiting this request to conditions that Conrail is seeking in its March 29, 1996 filing in this proceeding, Conrail will search for and produce non-privileged, responsive documents.

26. Produce all computerized 100% Conrail traffic data for 1994, containing at least the fields listed in Attachment A hereto, a Rule 11 or other rebilling indicator, gross freight revenue, and freight revenue net of allowances, refunds, discounts or other revenue offsets, together with documentation explaining the record layout and the content of the fields. To the extent particular items are unavailable in machine-readable form, (a) provide them in hard-copy form, and (b) provide any similar machine-readable data.

RESPONSE: Conrail objects to this request on the grounds that it is not relevant to the subject matter of this proceeding and is unduly burdensome. Conrail also notes that the scope of the request was limited by the rulings of Judge Nelson at the March 8, 1996 Discovery Conference. Subject to and without waiving its objections, Conrail is making available the requested traffic data.

28. Produce all studies, reports or analyses relating to competition for traffic to or from Mexico (including but not limited to truck competition) or competition among Mexican gateways.

RESPONSE: Conrail objects to this request on the grounds that it is not relavant to the subject matter of this proceeding and is unduly burdensome. Conrail also notes that the scope of the request was limited by the rulings of Judge Nelson at the March 8, 1996 Discovery Conference. Subject to and without waiving its objections, Conrail is producing non-privileged, responsive documents.

Constance L. Abrams
Jonathan M. Broder
Anne E. Treadway
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Joseph E. Killory

Daniel K. Mayers
A. Stephen Hut, Jr.
Joseph E. Killory, Jr.
WILMER, CUTLER & PICKERING
2445 M Street, N.W.
Washington, D.C. 20037

April 1, 1996

CERTIFICATE OF SERVICE

I certify that on this 1st day of April, 1996, a copy of the foregoing Consolidated Rail Corporation's Supplemental Responses to Applicants' First Set of Interrogatories and Requests for Production of Documents was served by hand delivery to:

Arvid E. Roach II
S. William Livingston, Jr.
Michael L. Rosenthal
Covington & Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, D.C. 20044

Paul A. Cunningham
Richard B. Herzog
James M. Guinivan
Harkins Cunningham
1300 Nineteenth Street, N.W.
Washington, D.C. 20036

and served by facsimile transmission on all parties on the Restricted Service List.

Joseph E. Killory, Jr.
Joseph E. Killory, Jr.

STB FD 32760 4-1-96 62398 D

Item No.__________

Page Count 11

Apr #23

62398

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April 1, 1996

VIA HAND DELIVERY

RECEIVED APR 1 1996 MAIL MANAGEMENT I.C.C.

Mr. Vernon A. Williams
Interstate Commerce Commission
Case Control Branch
Room 1324
1201 Constitution Avenue, N.W.
Washington, D.C. 20423

Re: Finance Docket No. 32760, Union Pacific Corporation, et al. -- Control and Merger -- Southern Pacific Corporation, et al.

Dear Secretary Williams:

Enclosed for filing in the above-captioned case are one original and twenty copies of Consolidated Rail Corporation's Supplemental Responses to Applicants' First Set of Interrogatories and Requests For Production of Documents, designated as document CR-24.

Also enclosed is a 3.5-inch WordPerfect 5.1 disk containing the texts of CR-24.

Sincerely,

Joseph E. Killory, Jr.
Attorney for Consolidated Rail Corporation

Enclosures

ENTERED
Office of the Secretary
APR 2 1996
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CR-24

BEFORE THE
SURFACE TRANSPORTATION BOARD

RECEIVED APR 1 1996 MAIL MANAGEMENT I.C.C.

Finance Docket No. 32760

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY

-- CONTROL AND MERGER --

SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP. AND THE DENVER AND
RIO GRANDE WESTERN RAILROAD COMPANY

CONSOLIDATED RAIL CORPORATION'S SUPPLEMENTAL RESPONSES TO APPLICANTS' FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

Constance L. Abrams
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2445 M Street, N.W.
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ENTERED
Office of the Secretary

APR 2 1996

5 Part of
Public Record

April 1, 1996

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY

-- CONTROL AND MERGER --

SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP. AND THE DENVER AND
RIO GRANDE WESTERN RAILROAD COMPANY

CONSOLIDATED RAIL CORPORATION'S SUPPLEMENTAL RESPONSES TO APPLICANTS' FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

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3. To the extent that Conrail is producing responsive documents that contain confidential information, any such production is subject to the limitations and restrictions set forth in the protective order that has been entered in this proceeding.

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6. Conrail objects to any request that would require the preparation of a special study.

7. Conrail objects to any request as to which responding would impose an undue burden including, but not limited to, any request seeking information from before January 1, 1993.

8. Conrail objects to the production of any documents or information unrelated to the issues to be addressed in Conrail's comments and related filings in this proceeding.

9. Conrail objects to the extent that any request calls for the disclosure of information that is highly confidential, such as information subject to disclosure

restrictions imposed in other proceedings or by contractual obligation to third parties, and that is of insufficient relevance to warrant production even under a protective order.

SPECIFIC RESPONSES AND ADDITIONAL OBJECTIONS TO INDIVIDUAL DOCUMENT REQUESTS

1. Produce no later than April 1, 1996 (a) all workpapers underlying any submission that Conrail makes on or about March 29, 1996 in this proceeding, and (b) all publications, written testimony and transcripts of any witnesses presenting testimony for Conrail on or about March 29, 1996 in this proceeding.

RESPONSE: Conrail objects to part (b) of this request on the grounds that it is not relevant to the subject matter of this proceeding. In accordance with the rulings of Judge Nelson at the March 8, 1996 Discovery Conference limiting the scope of part (b) of this request, however, Conrail is producing responsive documents. All documents responsive to this request are included in the workpapers of the witnesses who submitted verified statements on behalf of Conrail.

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14. Produce all presentations, solicitation packages, form verified statements, or other materials used to seek support from shippers, public officials, railroads or others for the position of Conrail or any other party in this proceeding.

RESPONSE: Conrail objects to this request on the grounds that it is not relevant to the subject matter of this proceeding and is unduly burdensome. Subject to and without waiving this objection, and in accordance with the rulings of Judge Nelson at the March 8, 1996 Discovery Conference limiting the scope of this request, Conrail is producing non-privileged, responsive documents.

15. Produce all presentations, letters, memoranda, white papers or other documents sent or given to DOJ, DOT, any state Governor's, Attorney General's or Public Utilities Commission's (or similar agency's) office, any Mexican government official, any other government official, any security analyst, and bond rating agency, any consultant, any financial advisor or analyst, any investment banker, any chamber of commerce, or any shipper or trade organization relating to the UP/SP merger.

RESPONSE: As noted in Conrail's earlier response to the portion of this request due March 12, 1996, Conrail objects to the request on the grounds that it is not relevant to the subject matter of this proceeding. At the March 3, 1996 Discovery Conference, Judge Nelson limited this request to presentations made to financial analysts and advisors (to which Conrail already has responded) and documents relating to presentations to Mexican government officials (to be placed in Conrail's depository with its workpapers on April 1, 1996).

Subject to and without waiving this objection, Conrail is producing non-privileged documents responsive to this request.

16. Produce all notes of any meetings with DOJ, DOT, any state Governor's, Attorney General's or Public Utilities Commission's (or similar agency's) office, any Mexican government official, any other governmental official, any security analyst, any bond rating agency, any consultant, any financial advisor or analyst, any investment banker, any chamber of commerce, or any shipper or trade organization relating to the UP/SP merger.

RESPONSE: As noted in Conrail's earlier response to the portion of this request due March 12, 1996, Conrail objects to the request on the grounds that it is not relevant to the subject matter of this proceeding. At the March 8, 1996 Discovery Conference, Judge Nelson limited this request to notes of meetings with financial analysts and advisors and notes of meetings with Mexican government officials (the latter of which are to be placed in Conrail's depository with its workpapers on April 1, 1996).

Subject to and without waiving this objection, Conrail has searched for documents responsive to this request, as limited by Judge Nelson, and has identified no non-privileged, responsive documents.

17. Produce all documents relating to shipper surveys or interviews concerning (a) the UP/SP merger or any possible conditions to approval of the merger, or (b) the quality of service or competitiveness of any railroad.

RESPONSE: Conrail objects to this request on the grounds that it is not relevant to the subject matter of this proceeding and is unduly burdensome. Subject to and without waiving this objection, and in accordance with the rulings of Judge Nelson at the March 8, 1996 Discovery Conference limiting this request to shipper survey materials referenced in part (a) of the request, Conrail is producing non-privileged, responsive documents.

22. Produce all presentations to, and minutes of, the board of directors of Conrail relating to the UP/SP merger or conditions to be sought by any party in this proceeding.

RESPONSE: Conrail objects to this request on the grounds that it is not relevant to the subject matter of this proceeding. Subject to and without waiving this objection, and in accordance with the rulings of Judge Nelson at the March 8, 1996 Discovery Conference limiting this request to conditions that Conrail is seeking in its March 29, 1996 filing in this proceeding, Conrail will search for and produce non-privileged, responsive documents.

26. Produce all computerized 100% Conrail traffic data for 1994, containing at least the fields listed in Attachment A hereto, a Rule 11 or other rebilling indicator, gross freight revenue, and freight revenue net of allowances, refunds, discounts or other revenue offsets, together with documentation explaining the record layout and the content of the fields. To the extent particular items are unavailable in machine-readable form, (a) provide them in hard-copy form, and (b) provide any similar machine-readable data.

RESPONSE: Conrail objects to this request on the grounds that it is not relevant to the subject matter of this proceeding and is unduly burdensome. Conrail also notes that the scope of the request was limited by the rulings of Judge Nelson at the March 8, 1996 Discovery Conference. Subject to and without waiving its objections, Conrail is making available the requested traffic data.

28. Produce all studies, reports or analyses relating to competition for traffic to or from Mexico (including but not limited to truck competition) or competition among Mexican gateways.

RESPONSE: Conrail objects to this request on the grounds that it is not relevant to the subject matter of this proceeding and is unduly burdensome. Conrail also notes that the scope of the request was limited by the rulings of Judge Nelson at the March 8, 1996 Discovery Conference. Subject to and without waiving its objections, Conrail is producing non-privileged, responsive documents.

Constance L. Abrams
Jonathan M. Broder
Anne E. Treadway
CONSOLIDATED RAIL CORPORATION
2001 Market Street
Philadelphia, PA 19101

Daniel K. Mayers
A. Stephen Hut, Jr.
Joseph E. Killory, Jr.
WILMER, CUTLER & PICKERING
2445 M Street, N.W.
Washington, D.C. 20037

April 1, 1996

CERTIFICATE OF SERVICE

I certify that on this 1st day of April, 1996, a copy of the foregoing Consolidated Rail Corporation's Supplemental Responses to Applicants' First Set of Interrogatories and Requests for Production of Documents was served by hand delivery to:

Arvid E. Roach II
S. William Livingston, Jr.
Michael L. Rosenthal
Covington & Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, D.C. 20044

Paul A. Cunningham
Richard B. Herzog
James M. Guinivan
Harkins Cunningham
1300 Nineteenth Street, N.W.
Washington, D.C. 20036

and served by facsimile transmission on all parties on the Restricted Service List.

Joseph E. Killory, Jr.

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62397

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Apr #22

PORTATION CONSULTING, INC.

1609 N. BROADWAY, SUITE H, WICHITA, KANSAS 67214 (316) 264-9630

RECEIVED APR 1 1996

March 26, 1996

Secretary Vernon Williams
Case Control Branch
Surface Transportation Board
Room 3315
12th & Constitution N.W.
Washington, D.C. 20423-0001

Re: Enid Board of Trade Comments in Docket No. 32760

Honorable Secretary Williams,

There is enclosed the original and twenty copies of the Enid Board of Trade comments. A copy is directed to Judge Nelson herein with a separate envelope.

There is also enclosed a floppy with a W.P. 5.1 dos format on it with the comments and also the corrected Tri-State comments. We are sending this priority mail. Applicants requested their copy by priority mail and all parties who requested a copy will be sent by first class mail.

In addition, please accept corrected copies of pages 14 and 27 of Tri-States comments.

Respectfully yours,

J.J. Irlandi
STB Practitioner

JJI/sl

ENTERED
Office of the Secretary

APR 2 1996

5 Part of Public Record

"There is something else bothering me concerning this merger, and the past merger, which gave operating rights over the mainline of the SSW to the , now BNSF. Both railroads, the UP and the BNSF, will use our mainline to capacity. They will ship all of the trainloads over this shorter route to the California markets. How am I going to get service? In addition, there is a spread between the Liberal and West Coast rate on SSW and our rate. The ATSF railroad was given operating rights out of Liberal and Guymon, Oklahoma."

E. **To summarize the concern of this Tri-State Shippers Group, Chairman Joe Strecker has stated it simply, but with special emphasis. Please refer to Joe Strecker's statement at page 1:**

"Concerning the forthcoming UP-SP merger, our SSW Shippers members are concerned with the additional overhead traffic, which will be placed on this mainline due to the conditions of the SP granted in Finance Docket No. 32549 (the BN-ATSF merger case).

"How will we be served when container trains and trainloads of grain, of both the UP-SP and BNSF railroads, his this mainline? We are also concerned, because the SP granted access to the BNSF at Liberal, Guymon, Oklahoma and McPherson, providing extra competition for us. Not only are we concerned with the former SP grants, now the combined BNSF will get operation rights to about 4,000 miles of UP-SP destinations."

UP-MP MAINLINE

There is a new company that is expressing opposition to abandonment.

A. **Gary L. Mills, Vice President of Transportation with Bartlett and Company has indicated that his company is protesting the abandonment of the MP line from the Kansas state line to Pueblo.**

Gary Mills has extensive experience in the transportation field of U. S. grain and processing markets. He was employed at Cargill, Inc. for 32 years, obtaining an official position of Assistant Vice President. At Cargill, he managed the export grain terminals, as well as a soybean processing plant with management of interior facilities. He has knowledge of the need for rail service at Eads and Towner because of his experience as Cargill's Grain Division Transportation Manager.

Bartlett has need of rail service at Eads and Towner in order to move wheat and other grains to Bartlett Flour Mills for milling wheat into flour and for merchandising other grains to feed mills in other states such as Kansas. Additional comments will be provided uner the heading "UP-MP Line Abandonment".

A. Don Briggs of Haswell, Colorado expressed at page 2 of his statement:

Would your problems be solved if another railroad like the KCS, Wisconsin Central, or Montana Rail Link buys the line from Kansas City to California?

"Yes!"

B. Rancher Burl Scherler expressed his opinion on page 3 of his statement:

"If the grain elevator in Sheridan Lake received the proper service from the MP railroad, this line wouldn't be scheduled for abandonment. Sheridan Lake is a small elevator compared to Cheyenne Wells, Commerce City, and Denver. However, if the entire route of the old MP from Kansas City to Pueblo, Colorado and possibly on to Salt Lake City were to be sold to another operator, competition could be greatly enhanced and my objection to the merger would no longer be valid."

C. Kelly Davidson, in his statement, declares his preference for a Class I carrier, but would accept a short line as another possibility. At page 4 he states:

"The Surface Transportation Board has the largest merger proceeding before it during my grain career. If the UP and SP railroads wish to merge and do not need this Herington to Pueblo line, then let a Class I carrier like the KCS operate it. President Haverty is a Kansan, therefore he would have knowledge of the competitive nature of the agricultural business. A short line railroad is another possibility."

D. Gary Mills' company has a facility at Eads and Towner, Colorado. As stated supra, his company opposes the abandonment of the Pueblo to Kansas state line. Bartlett joins other Colorado shippers in protesting this abandonment.

There is a need for an additional carrier to supply service equipment and rates. Montana Rail Link has indicated a desire to purchase this line and provide the necessary service. Bartlett supports Montana Rail Link, Inc. in it's bid to buy the MP line involved in lieu of the abandonment of the line by the UP roalroad.

THE RADIUM BRANCH LINE ABANDONMENT

Farmers who utilize the grain elevator at Hudson are concerned with the potential abandonment by the lease line proponent KSW and the MP railroad. These are small business-type farmers and one of the largest utilizes all of his fields for the planting of wheat, corn, milo, and soybeans.

In order to express the plight of these farmers we are reproducing part of the statement of Maryln Spare, whose home is at 801 North Main Street, St. John, Kansas 67576.

Item No._______________

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~~Apr # 22~~

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423

Finance Docket No. 32760

UNION PACIFIC CORPORATION, et al.,
-- CONTROL AND MERGER --
SOUTHERN PACIFIC CORPORATION, et al.,

STATEMENT OF THE ENID BOARD OF TRADE IN OPPOSITION TO THE UP-SP MERGER

PREFACE

The Enid Board of Trade is a corporation existing with and by the authority of the State of Oklahoma. Its business address is 2309 N. 10th Street, Suite E, Enid, Oklahoma 73701, with telephone and fax numbers: 405-233-1528 and 405-237-2131, respectively. It will utilize the acronym EBT and hereafter be called EBT in this statement of protest.

On March 11, 1996, EBT filed a "motion to intervene" in this proceeding. Copies of said motion were mailed to all parties of record. As stated in the motion, its intervening herein will not burden the applicants because of the need for an additional Class I carrier is already in issue from shippers in the states of Kansas and Colorado. Our members are concerned with the lack of competition which is present in Enid today when heretofore Enid was served by three competitive rail carriers, namely, the Frisco, Rock Island and ATSF railroads. This and other facts will be treated infra.

BACKGROUND INFORMATION

What is a board of trade? What are the functions of the present Board of Trade? How has this Board of Trade survived when small cities like Wichita and Hutchinson has lost their Board of Trades?

In the early 1900's, Oklahoma wheat farmers were producing approximately 20 plus a million bushels of wheat. This was dryland farming and an approximate 1.5 million acres were planted. New technology and better techniques of farming caused the production of wheat to attain a 50 million bushel figures in 1915. A group of Enid grain men looking to the future and seeing the development of conflict in Europe which would curtail production thereat, felt that

Enid could become a grain marketing center for Oklahoma wheat. In 1916, the Board of Trade was founded and their prediction was correct. Enid was served by three railroads; the Rock Island, Frisco and ATSF railroads. The Rock Island opened up Oklahoma for settlement, the ATSF brought with it stability and growth, and the Frisco provided the additional competition. Oklahoma was served by local trains which also carried passengers.

STEPS TAKEN TO BECOME A GOOD BOARD OF TRADE

The first priority was to secure direct communication with the Kansas City Board of Trade's wheat futures market. The U. S. Department of Agriculture, in 1920, granted Enid as an official grain inspection point. It was also necessary to obtain better test weights for grain and the AAR granted to Enid the privilege of weighing box cars of grain. Eighteen years later a protein testing laboratory was established in our city. In 1925, a traffic department was established to assist members because of the importance of rail service, which is critical to a market like ours today.

GRAIN ELEVATORS ESTABLISHED

In 1925, the first grain elevator was built in Enid. It is currently owned by Goodpasture, Incorporated. Additional terminal elevators were built by Continental Grain Company, Feuquay Elevator Company, W. B. Johnston Grain Company, General Mills, Inc., and Union Equity Coop. The storage capacity exceeded 65 million bushels. The EBT had seven corporate members

RAILROAD MERGERS AND ABANDONMENTS HAVE REDUCED THE ENID MARKET

The Rock Island went into bankruptcy. The BN. Railroads purchased the Frisco line. The ATSF was the only stable railroad in Enid. It helped the EBT grow in the 1980's through storage privileges and competitive rates to a capacity of 80 million bushels. With over 100 million bushels and 50.000 plus cars of grain passing through the market annually, we were the third largest market in the U.S. EBT members employed approximately 650 persons during this period.

Today, things are quite different. The Enid market has 30 million bushels of its 77 million bushels total storage space left open. There are three firms remaining [Farmland, ADM Milling Co., and W.B. Johnston Grain Co.], whose combined employment is approximately 250 persons. General Mills, Continental, and Feuquay have ceased operations. The name Union Equity is now history. They are now part of Farmland Industries, and have two of their four terminal elevators closed. The EBT has discontinued its protein laboratory service and has the smallest number of employees in its history.

RAILROAD MERGERS AND THE STATE OF OKLAHOMA TRANSPORTATION HELP

We would be remiss not to mention that the State of Oklahoma helped with the growth mentioned supra. The State purchased the Rock Island line and leased it to the MKT Railroad. The MKT helped with equipment and rates, which prompted the growth. The purchase of the Frisco by the BN had the opposite effect. While the Frisco valued our business, it seems that the BN Railroad caused the greatest animosity amongst the three railroads. The MP purchased the MKT line and received lease rights from our state to operate in Oklahoma. Service perfomed a big drop, cars were not available and the MP hardly called on the small or larger shippers.

Loss of transit privileges caused an upheaval on our market. Grain south and southwest of Enid could no longer be shipped to Enid for storage without a penalty price. The railroads changed their grain marketing structure such that grain could no longer "move" into Enid as it once did. Grain south and west was forced to the Amarillo or Ft. Worth grain terminals (it could no longer be shipped to Enid without a rate penalty), and grain north was forced to stop in the Hutchinson and Wichita grain terminals. Enid was left high and dry. Why? The railroads were picking and choosing which markets would survive in this highly competitive grain business. The railroad operating officers were running the railroads and their choice only to serve mainlines.

RAILROAD ABANDONMENTS

Approximately 1,000 miles of rail lines have been abandoned in Oklahoma in 1980. These include all railroads except some lines which have been sold or leased to short line railroads. These short line railroads have the same problems which we have heard from our Kansas friends to the north. The UP and now BNSF control the freight rates, car supply, and publish rates for the short line accounts. The rail abandonments have also allowed some grain in Eastern, Northern and Central Oklahoma to utilize the Arkansas River Navigation System.

SURVIVAL OF THE ENID BOARD OF TRADE

How is the EBT surviving? By diversification, belt tightening and a more direct focus on operations ... the same as what the remaining grain firms in Enid have done. Our diversification was accomplished through the **branching out into association management**. The EBT manages the trade Associations of the state's grain, feed, seed, fertilizer, and ag chemical industry through the OGFA, OFCA and OSTA. We try to be the "chamber of commerce" you might say for these industries, always striving to promote and protect their interests. Our main management thrust for the members of these organizations has been representation and active participation in the legislative and regulatory areas. **This participation in this merger proceeding is the result of the State's grain firms' experience with various mergers and railroad abandonments.** They have related this information to the EBT.

OPPOSITION TO THIS MERGER

OPPOSITION TO THIS MERGER

Some members of the OGFA have provided information which reveals that the UP has not helped Enid or the small grain elevators on its line in Oklahoma to the degree the MKT railroad did. In addition, when the BN took over the Frisco railroad, service deteriorated and car supply became a problem. The BN wanted the grain elevators to accept its version of car service, Rule 15. Please refer to ICC Docket No. 39507, Continental Grain Company Petition for Declaratory Order. The BN attempted to supply its equipment rather than the ATSF railroad equipment. The BN had published an item in its Switching Tariff, ICC BN 8069-I, effective 10/14/81, which would charge for switching ATSF cars into Continental's facility. Previously to the above publication, the BN had switched cars in under reciprocal switching agreement. In January 1983, BN notified Continental that it was terminating its past practice to open switching to Continental and the BN would only switch empty Santa Fe cars for Continental's loading at BN's discretion. The BN refused to switch in cars at various times.

Continental sued the BN in U.S.D.C.W.D. Oklahoma in Continental Grain Co. V. BN Inc., et al, No. Civ-83-118-E. BN cross sued claiming no liability. The case was referred to ICC for an interpretation of Car Service Rule 15 concerning the issues related above. The ICC, in its decision dated 5/30/94, ruled in favor of Continental and intervenors, including the ATSF Railroad.

This act has caused the grain industry of Oklahoma to question the attitude of the BNSF Railroad since the takeover of the ATSF by the BN. In fact, the new BNSF has already caused problems of poor service and inadequate car supply at the times needed by the shippers. Chairman of the Board, Lew Meibergen of Johnston Grain, expressed it well in the Tri-State statement. Please refer to Issue No. 5 - G. There it states, in part:

> **'Our service has greatly deteriorated since the BN/Santa Fe merger, and I am fearful of what may happen with the UP-SP merger.'**

He is on the Board of Directors of EBT. Lew Meibergen also echoes the sentiment of short line shippers. We find in Issue 5 -G:

> **'We have been told by various short line railroads that if allowed, they could offer rates that would be very competitive to truck rates, but unfortunately, most of these short lines connect with only 1 large Class I carrier and thus serve as feeder carriers. As feeder carriers, their traffic and rates depend upon their connecting Class I carriers. Even if there is a short line that connects with two carriers, for example, UP and SP, as those carriers merge, these short lines and the shippers located on these short lines lose the ability to benefit from UP and SP competition.'**

In the March 13, 1996 issue of the Journal of Commerce, there was an article by Larry Starkey entitled "Traders' Views Mixed on Railroad Mergers". EBT agrees with one industry executive who refused to be identified. He stated:

> **'It's very difficult to have an open mind if you get corn on the ground or no train to pick it up.'**

Duane A. Fisher, President of Scoular Grain, stated in the same article:

> **'Still, the harshest critics see little relief from the seamless transit made possible by either Burlington Northern's combining with Santa Fe or Union Pacific's purchase of Chicago Northwestern and its pending merger with Southern Pacific.**
>
> ***'Simply put, where grain is concerned service has gone to hell,*** **another grain executive said on condition of anonymity.** ***The lines' priorities place coal and intermodal first, knowing grain can be taken for granted. And the management bureaucracies are worse than in Washington.'***

Another executive also stated the following:

> **'Critics point to an essential management difference between shippers and carriers.** ***The prices of stock in railroad companies isn't based on futures considerations,*** **said one anonymously.** ***We've done some tracking that shows hopper car velocity is running about 1.3 cycles per car per month, and all this new technology so far is a farce.'***

The following statistical information on carloads from the Enid Board of Trade reflects the above statements.

Total Rail Receipts & Shipments (No. of Cars)

Year	Railcars Received	Railcars Shipped	Total
FY 1994-95	1,197	9,645	10,842
FY 1993-94	2,969	11,157	14,126
FY 1992-93	5,793	13,325	19,118
FY 1991-92	3,689	8,750	12,439
FY 1990-91	5,299	12,983	18,282
FY 1989-90	5,121	14,074	19,195
FY 1988-89	12,197	12,197	37,424

Year	Railcars Received	Railcars Shipped	Total
FY 1987-88	13,682	32,119	45,801
FY 1986	14,349	17,921	32,270
FY 1985	15,339	14,229	29,568
FY 1984	21,640	31,060	52,700

Total Rail Receipts & Shipments (No. of Bushels)

Year	Railcars Received	Railcars Shipped	Total
FY 1994-95	4,036,741	32,122,211	36,158,952
FY 1993-94	10,092,472	37,248,469	48,638,089
FY 1992-93	19,594,501	43,746,573	63,341,074
FY 1991-92	12,115,237	26,174,856	38,290,093
FY 1990-91	17,131,310	43,240,488	60,371,798
FY 1989-90	15,768,789	45,482,552	61,251,341
FY 1988-89	39,285,419	82,141,806	121,427,225
FY 1987-88	42,942,212	101,664,514	144,606,726
FY 1986	47,453,957	58,172,948	105,626,905
FY 1985	50,212,480	46,743,593	96,956,073
FY 1984	70,976,015	102,441,879	173,737,894

ADDITIONAL COMPETITION NEEDED IN THE STATE OF OKLAHOMA

The KCS Railway recently visited the EBT and Enid Grain companies. They informed us of the Kansas Shippers group inviting them to Wichita to address their Board of Directors on the competitive aspects of this merger. This group asked that the KCS Railway provide additional Class I railroad service when the UP-SP merge to replace the SP trackage rights over the BNSF lines. If this is one plan, we need the KCS to operate over the BNSF line between Perry, Oklahoma to Enid. The UP-SP have agreed to have the BNSF operate over 4,000 miles of their tracks. It should be inconsequential act to negotiate trackage rights of 37 miles between Perry and Enid. See ICC BN 6003-E, page 500, Enid L to Perry 37.

Another route which would not involve the BNSF railroad would be also an effective manner to give both Kansas and Oklahoma the needed Class I carrier. The KCS's purchase of the Herington line to Fort Worth. The UP-SP may still utilize the ATSF route which is a better line for heavier trains. The UP plans to spend millions of dollars to upgrade this line to be as efficient as the BNSF line. Signals, welded tracks, and passing tracks are needed to withstand the numerous coal trains. There will be no need to upgrade the tracks if the KCS purchases this line. Coal trains could operate over the more efficient BNSF line.

Another route which will be helpful to short lines in Kansas, as well as a friendly connection to work with is the Geneseo to Wichita MP line. Purchase of this line by the KCS coupled with the purchase of the UP OKT line south to the Oklahoma border, a lease of the line from the state of Colorado to operate to the Texas border and a purchase of the line to Fort Worth would give the states of Kansas and Oklahoma the Class I competition they need in this mega carrier marriage.

When the MP purchased the MKT lines, it received the Kansas City-Muskogee line as well as the OKT line. This line at that time of purchase was the main line of that railroad. It was in better shape than the OKT line.

Why should a combined mega carrier have two main lines in the states of Oklahoma and Kansas, and by merger, obtain a third line to operate over from Kansas origins? In fact, the merger will give the UP-SP four major lines to operate over in the North-South Corridor and one in the East-West corridor, namely the MKT line in Southeast Kansas, the OKT line in Central Kansas, the ATSF line with operating rights via the present SP, and the SSW line running across Southwest Kansas.

In addition, the combined BNSF will have the BN line in Southeast Kansas, the ATSF main line in Central Kansas, the ATSF southwest line via Kiowa, Kansas, and the east-west Pueblo line and the SSW line over which it has operating rights. We haven't mentioned the Joplin, Missouri to Valley Center line which is on the selling block.

In our state, we will have the BNSF railroad operating over the old Frisco line running from Avard, Oklahoma east-west to Tulsa; Springfield, Missouri to Mobile and Pensacola. From Tulsa to Fort Worth; Dallas to Houston and Galveston. It now has the ATSF running from Newkirk, Oklahoma to the Texas state line and south to Fort Wort, Dallas and Gulf Ports. The ATSF line over the SP in the Panhandle of Oklahoma; the ATSF Denver line from Boise City, as well as the Kiowa to Shattuck, Oklahoma.

The UP has a section of the SP line running through the Oklahoma Panhandle route; the old Rock Island line running from Caldwell, Kansas to Waurika; the MKT line from Kansas City through Parsons, Kansas; Vinita, Oklahoma to Durant, Oklahoma; thence, south to Fort Worth and Dallas. These two mega railroads will control all the business in Kansas and Oklahoma. From information received from OGFA and past practices of both lines it is apparent that they will not compete with one another.

In the comments of the OGFA, Executive Vice President Joe Hampton has commented in his statement:

> **'Our members located in Enid are especially concerned because with their past relationships with the BN, and now the BNSF, they need a customer oriented carrier to serve their facilities. The UP does not appear to wish to give us the service it provides to Fort Worth, Texas; Kansas City, Missouri Lincoln and Superior, Nebraska; Topeka and Salina, Kansas; and Cheyenne Wells, Colorado.**
>
> **'In this proceeding the UP is alleging to your Board that competition will be provided by the BNSF so that two carriers will help the competitive aspects of this North-South Corridor. We question this commitment based on the past service record of the UP to our member companies. To my knowledge, no one from the UP has visited with this office nor any EBT member companies as to how this merger will improve service. At least in the BN-ATSF merger case we were contacted by the ATSF employees. Many of our members learned about the proposed merger of the UP-SP by reading newspapers, magazines and watching television. This non-contact reveals that the UP does not care for the smaller shippers who are located on its lines. In addition, the Enid market or many of the Enid terminals have received less than satisfactory supply of cars when needed.'**

TRUCK COMPETITION TO WEST COAST, MEXICO AND GULF PORTS NOT AVAILABLE

What other mode of competition is there available to us in the Enid area to ship to the Gulf Ports, Mexico or the West Coast? Are trucks competitive? With the volumes shipped in multi car rail grain shipments, trucks cannot compete to any of these destinations mentioned supra. For example, 3 ½ truckloads are necessary to replace one hopper car shipment. A 25 car shipment would require 25 x 3 ½ truckloads or 87.5 truckloads. A 50 car shipment would require 175 truckloads, while a 75 car shipment would require 262.5 truckloads. A 110 car shipment would require 385 truckloads.

There are very few shipments moving to the Gulf Ports, Mexico or the West Coast in one or two hopper loads In merchandising grain, you may draw draft on a rail shipment immediately for 90 percent of the value of the invoice. In those shipments there are official WTS and grain inspection certificates which allow the drawing draft for the known quantity and quality.

On truck shipments, usually, the terms of the contract for sale include destinations, weights and grades. Who is going to wait a week to receive payment when, on rail shipments, "money changes hands" in a short time.

CONCLUSION

The Enid Board of Trade is not alone in protesting this merger. It joins shippers from Kansas, Colorado and Texas to bring to STB's attention that two railroads will control the future of these shippers and will have a monopoly in each portion of these states. Past mergers have proven this fact and we cannot stress it enough for your consideration. When another Class I carrier is willing to provide the competition needed that carrier, the KCS, should be allowed to do so. We hope your Board so orders in the final decision.

Respectfully Yours,

Joe N. Hampton
General Manager
Enid Board of Trade

By:

James J. Irlandi
James J. Irlandi
STB Practitioner

I, James J. Irlandi, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified to file this statement on behalf of the Enid Board of Trade.

James J. Irlandi
James J. Irlandi

CERTIFICATE OF SERVICE

I certify that I have on this 26th day of March served the original and 20 copies of this Statement Of Opposition upon the Surface Transportation Board with a WP5.1 floppy copy is also mailed to Honorable Jerome Nelson and parties of record who have requested same by first class mail, postage pre-paid in accordance with the Board's Rules of Practice.

James J. Irlandi
James J. Irlandi

STB FD 32760 4-1-96 62387 D

Item No.____________

Page Count 2

Apr #12

62387

SLOVER & LOFTUS

ATTORNEYS AT LAW

1224 SEVENTEENTH STREET, N. W.

WASHINGTON, D. C. 20036

WILLIAM L. SLOVER
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FRANK J. PERGOLIZZI
ANDREW B. KOLESAR III
PATRICIA E. KOLESAR
EDWARD J. McANDREW*

*ADMITTED IN PENNSYLVANIA ONLY

RECEIVED APR 1 1996 MAIL MANAGEMENT I.C.C.

202 347-7170

April 1, 1996

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Office of the Secretary
APR 3 1996
5 Part of Public Record

BY HAND DELIVERY

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Case Control Branch
12th Street & Constitution Avenue, N.W.
Washington, D.C. 20423

Re: Finance Docket No. 32760, Union Pacific Corporation, et al. -- Control and Merger -- Southern Pacific Rail Corporation, et al.

Dear Mr. Secretary:

In accordance with the Board's Decision No. 26 in the above-captioned proceeding, enclosed please find an original and five (5) copies of a Certificate of Service which indicates that service of a list of all numbered pleadings and discovery requests which have been filed or served by City Utilities of Springfield, Missouri was served upon each additional party of record to the captioned proceeding.

An extra copy of this letter and Certificate of Service is enclosed. Kindly indicate receipt and filing by time-stamping this extra copy and returning it to the bearer of this letter.

Thank you for your attention to this matter.

Sincerely,

John LeSeur

John H. LeSeur
An Attorney for City Utilities of
Springfield, Missouri

Enclosure

CERTIFICATE OF SERVICE

In accordance with the Board's Decision No. 26 in Finance Docket No. 32760, Union Pacific Corporation, et al. -- Control and Merger -- Southern Pacific Rail Corporation, et al., the undersigned attorney hereby certifies that on the 1st day of April, 1996, a list of all numbered pleadings and discovery requests which were filed or served on behalf of City Utilities of Springfield, Missouri was served via first class mail, postage prepaid, upon each additional party of record.

Patricia E. Kolesar

Patricia E. Kolesar

STB FD 32760 4-1-96 62464 D

Item No. ____________

Page Count 2

Apr #92

62464

[...]SPORTATION CONSULTING, INC.
[...]DWAY, SUITE F, WICHITA, KANSAS 67214
(316) 264-9630 FAX: (316) 264-9735

March 27, 1996

RECEIVED
APR 1 1996
MAIL MANAGEMENT
I.C.C.

Vernon A. Williams
Secretary
Surface Transportation Board
12th & Constitution Avenue, N.W.
Washington, D.C. 20423

Re: Enid Board of Trade comments.

FD 32760

Honorable Secretary Williams,

The attorneys for the applicants and the BNSF have requested expedited mailing of the Tri-State and Enid Board of Trade comments. In order for both comments to be mailed early, we sent our originals to a printing firm in Wichita.

The printing firm did not call us when it discovered two page 3's of the Enid comments and printed the one copy you received by expedited mail. The correct page 3 was printed twice with consecutive page numbers. Consequently, we received two incorrect sets of the comments. We are mailing a corrected copy of the page to the applicants and today, a corrected copy to the BNSF's attorneys. The page 3 correction does not affect any other party of record.

Attached you will find 21 copies of the corrected page 3.

Respectfully Yours,

James J Irlandi

James J. Irlandi

c/c: Applicants' Attorneys

ENTERED
Office of the Secretary
APR 4 1996
5 Part of Public Record

JJI/ef

EBT - 3 RECEIVED APR 1996 MANAGEMENT

RAILROAD MERGERS AND THE STATE OF OKLAHOMA TRANSPORTATION HELP

We would be remiss not to mention that the State of Oklahoma helped with the growth mentioned supra. The State purchased the Rock Island line and leased it to the MKT Railroad. The MKT helped with equipment and rates, which prompted the growth. The purchase of the Frisco by the BN had the opposite effect. While the Frisco valued our business, it seems that the BN Railroad caused the greatest animosity amongst the three railroads. The MP purchased the MKT line and received lease rights from our state to operate in Oklahoma. Service perfomed a big drop, cars were not available and the MP hardly called on the small or larger shippers.

Loss of transit privileges caused an upheaval on our market. Grain south and southwest of Enid could no longer be shipped to Enid for storage without a penalty price. The railroads changed their grain marketing structure such that grain could no longer "move" into Enid as it once did. Grain south and west was forced to the Amarillo or Ft. Worth grain terminals (it could no longer be shipped to Enid without a rate penalty), and grain north was forced to stop in the Hutchinson and Wichita grain terminals. Enid was left high and dry. Why? The railroads were picking and choosing which markets would survive in this highly competitive grain business. The railroad operating officers were running the railroads and their choice only to serve mainlines.

RAILROAD ABANDONMENTS

Approximately 1,000 miles of rail lines have been abandoned in Oklahoma in 1980. These include all railroads except some lines which have been sold or leased to short line railroads. These short line railroads have the same problems which we have heard from our Kansas friends to the north. The UP and now BNSF control the freight rates, car supply, and publish rates for the short line accounts. The rail abandonments have also allowed some grain in Eastern, Northern and Central Oklahoma to utilize the Arkansas River Navigation System.

SURVIVAL OF THE ENID BOARD OF TRADE

How is the EBT surviving? By diversification, belt tightening and a more direct focus on operations ... the same as what the remaining grain firms in Enid have done. Our diversification was accomplished through the **branching out into association management**. The EBT manages the trade Associations of the state's grain, feed, seed, fertilizer, and ag chemical industry through the OGFA, OFCA and OSTA. We try to be the "chamber of commerce" you might say for these industries, always striving to promote and protect their interests. Our main management thrust for the members of these organizations has been representation and active participation in the legislative and regulatory areas. **This participation in this merger proceeding is the result of the State's grain firms' experience with various mergers and railroad abandonments.** They have related this information to the EBT.

STB FD 32760 4-1-96 86523 D

86523

DONELAN, CLEARY, WOOD & MASER, P.C.

ATTORNEYS AND COUNSELORS AT LAW
SUITE 750
1100 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-3934

OFFICE: (202) 371-9500

TELECOPIER: (202) 371-0900

Item No.________________

Page Count 8

April #93A

April 1, 1996

RECEIVED
APR 1 1996
MAIL MANAGEMENT
I.C.C.

VIA HAND DELIVERY
Honorable Vernon A. Williams, Secretary
Surface Transportation Board
Department of Transportation
Room 1324
12th Street & Constitution Avenue, NW
Washington, DC 20423

Re: Finance Docket No. 32760, *Union Pacific Corporation et al.—Control and Merger—Southern Pacific Rail Corporation et al.*

Dear Secretary Williams:

Enclosed for filing in the above-captioned case are an original and twenty (20) copies of THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE'S ADDITIONAL RESPONSES TO APPLICANTS' FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS, designated NITL-11. A 3.5-inch diskette containing this pleading in Word Perfect 5.1 is also enclosed. Additionally, an extra copy of this pleading is enclosed for the purpose of date stamping and returning to our office.

Respectfully submitted,

Frederic L. Wood

Frederic L. Wood
Nicholas J. DiMichael
Attorneys for The National Industrial Transportation League

ENCLOSURES
0124-480

ENTERED
Office of the Secretary
10-3-1996
~~APR 2 1996~~
5 Part of Public Record

NITL-11

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY

— CONTROL AND MERGER —

SOUTHERN PACIFIC RAIL CORPORATION,
SOUTHERN PACIFIC TRANSPORTATION COMPANY, ST. LOUIS
SOUTHWESTERN RAILWAY COMPANY, SPCSL CORP. AND THE
DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

RECEIVED
APR 1 1996
MAIL MANAGEMENT
I.C.C.

THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE'S ADDITIONAL RESPONSES TO APPLICANTS' FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

Nicholas J. DiMichael
Frederic L. Wood
Karyn A. Booth
DONELAN, CLEARY, WOOD & MASER, P.C.
1100 New York Avenue, N.W.
Suite 750
Washington, D.C. 20005-3934
(202) 371-9500

Attorneys for The National Industrial Transportation League

ENTERED
Office of the Secretary
APR 2 1996
5 Part of Public Record

April 1, 1996

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY

— CONTROL AND MERGER —

SOUTHERN PACIFIC RAIL CORPORATION,
SOUTHERN PACIFIC TRANSPORTATION COMPANY, ST. LOUIS
SOUTHWESTERN RAILWAY COMPANY, SPCSL CORP. AND THE
DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

**THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE'S
ADDITIONAL RESPONSES
TO APPLICANTS'
FIRST SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS**

The National Industrial Transportation League ("NIT League") submits the following Initial Responses to the First Set of Interrogatories and Requests for Production of Documents propounded by Applicants on February 27, 1996. On March 4, 1996, NIT League submitted Objections to this First Set of Interrogatories and Requests for Production of Documents. On March 8, 1996, in a discovery conference, the Administrative Law Judge ("ALJ") in this proceeding ruled that certain of the discovery propounded by Applicants on February 27, 1996 was appropriate, but that certain of the discovery should be reformulated and resubmitted under an accelerated procedural schedule after the filing of evidence in this proceeding on March 29, 1996.

More specifically, in the March 8 discovery conference, the ALJ ruled that the February 27 discovery should be conducted in two "phases," with "Phase I" discovery to be propounded on March 12, 1996 and on April 1, 1996, and "Phase II" discovery appropriate for resubmission and reformulation in light of the filings on March 29. NIT League responded as appropriate to certain Phase I discovery on March 12, 1996, and hereby provides its responses to additional Phase I discovery, as identified by the ALJ to be answered on April 1, 1996.[1]

NIT League's Additional Responses

Document Request No. 1

> Produce no later than April 1, 1996 (a) all workpapers underlying any submission that the NIT League makes on or about March 29, 1996 in this proceeding, and (b) all publications, written testimony and transcripts, without limitation as to date, of any witnesses presenting testimony for the NIT League on or about March 29, 1996 in this proceeding.

Response

In the discovery conference on March 8, the ALJ ruled that workpapers underlying submissions made in filings on March 29, 1996 should be produced in Phase I discovery and that such documents are due on April 1. The ALJ also ruled on that date that written testimony and transcripts regarding railroad matters related to issues in the pending proceeding should be produced by April 1. Subject to the objections set forth on March 4, 1996, NIT League states that relevant and nonprivileged documents responsive to the ALJ's limitations will be placed in the document depository established at the offices of Donelan, Cleary, Wood & Maser, P.C.

---

1 The NIT League's March 12, 1996 filing included responses to Applicants' Interrogatory No. 2 and Documents Request Nos. 15, 16, and 23.

Document Request No. 8

Produce all documents in the possession of the NIT League or its members relating to conditions that might be imposed on approval of the UP/SP merger.

Response

In the discovery conference on March 8, the ALJ ruled that documents relating to particular conditions being sought by the parties in this proceeding are Phase I discovery that should be produced by April 1. Subject to the objections set forth on March 4, 1996, NIT League states that it will produce relevant and nonprivileged documents in the document depository established at Donelan, Cleary, Wood & Maser, P.C.

Document Request No. 14

Produce all presentations, solicitation packages, form verified statements, or other materials used by the NIT League or its members to seek support from shippers, public officials, railroads or others for the position of the NIT League or any other party in this proceeding.

Response

In the discovery conference on March 8, the ALJ ruled that presentations, solicitation packages, form verified statements, or other materials used to seek support from shippers or non-party railroads or other non-party non-governmental persons are Phase I discovery that should be produced on April 1. Subject to the objections set forth on March 4, 1996, NIT League states that, except for its publication it has no documents responsive to this request.

Document Request No. 17

Produce all documents relating to shipper surveys or interviews concerning (a) the UP/SP merger or any possible conditions to approval of the merger, or (b) the quality of service or competitiveness of any railroad.

Response

In the discovery conference on March 8, the ALJ ruled that documents relating to shipper surveys or interviews concerning the UP/SP merger or particular conditions are Phase I discovery that should be produced by April 1. Subject to the objections set forth on March 4, 1996, NIT League states that it will produce relevant and nonprivileged documents in the document depository established at Donelan, Cleary, Wood & Maser, P.C.

Document Request No. 22

Produce all presentations to, and minutes of, the boards of directors (or other governing bodies) of the NIT League or its members relating to the UP/SP merger or conditions to be sought by any party in this proceeding.

Response

In the discovery conference on March 8, the ALJ ruled that presentations to, and minutes of, the boards of directors or other governing bodies relating to the UP/SP merger or particular conditions being sought are Phase I discovery that should be produced by April 1. Subject to the objections set forth on March 4, 1996, the NIT League states that relevant and nonprivileged documents, if any, will be placed in the document depository established at the offices of Donelan, Cleary, Wood & Maser, P.C.

Document Request No. 24

Produce all studies, reports, analyses, compilations, calculations or evaluations of market or competitive impacts of the UP/SP merger or the BN/Santa Fe Settlement, or of trackage rights compensation under the BN/Santa Fe Settlement, prepared by L.E. Peabody & Associates, and all workpapers or other documents relating thereto.

Response

Subject to the objections set forth on March 4, 1996, the NIT League states that relevant and nonprivileged documents will be placed in the document depository established at the offices of Donelan, Cleary, Wood & Maser, P.C.

Respectfully submitted,

Frederic L Wood

Nicholas J. DiMichael
Frederic L. Wood
Karyn A. Booth
DONELAN, CLEARY, WOOD & MASER, P.C.
1100 New York Avenue, N.W., Suite 750
Washington, D.C. 20005-3934
(202) 371-9500

Attorneys for The National Industrial Transportation League

April 1, 1996

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing ADDITIONAL RESPONSES OF THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE TO APPLICANTS' FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS has been served by First Class Mail, postage prepaid, on all parties on the restricted service list in this proceeding on this 1st day of April 1996, and by facsimile to Washington, D.C. counsel for Applicants.

Aimee L. DePew

Aimee L. DePew

STB FD 32760 3-25-96 61964 D

61964

UP/SP-187

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY
-- CONTROL AND MERGER --
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP. AND THE DENVER AND
RIO GRANDE WESTERN RAILROAD COMPANY

FURTHER ERRATA TO PETERSON STATEMENT

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(202) 973-7601

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(610) 861-3290

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P.O. Box 7566
Washington, D.C. 20044-7566
(202) 662-5388

Attorneys for Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company

March 25, 1996

UP/SP-187

RECEIVED
MAR 25 1996
MAIL MANAGEMENT
I.C.C.

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY
-- CONTROL AND MERGER --
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP. AND THE DENVER AND
RIO GRANDE WESTERN RAILROAD COMPANY

FURTHER ERRATA TO PETERSON STATEMENT

Applicants UPC, UPRR, MPRR, SPR, SPT, SSW, SPCSL and DRGW submit the following errata to the verified statement of Richard B. Peterson. These errata are purely for clarification of the text of the statement. They do not change any of the calculations in the Traffic Study, the Operating Plan or the Summary of Benefits:

Page	Line	Change
291	1	Change "These and" to "The new marketing opportunities discussed under b. above, plus""
291	3	Add comma after "salt" and change "122,803" to "128,775"
291	4	Change "$235.3" to "$240.7"
291	5	Change "36,266" to "42,238" and "$74.8" to "$80.2"
291	12	Start a new paragraph at "The"
291	13	Add "from <u>all</u> of our new marketing opportunities" after "millions)"

Respectfully submitted,

CANNON Y. HARVEY
LOUIS P. WARCHOT
CAROL A. HARRIS
Southern Pacific
Transportation Company
One Market Plaza
San Francisco, California 94105
(415) 541-1000

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Washington, D.C. 20036
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1416 Dodge Street
Omaha, Nebraska 68179
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Arvid E. Roach

ARVID E. ROACH II
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MICHAEL L. ROSENTHAL
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1201 Pennsylvania Avenue, N.W.
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Washington, D.C. 20044-7566
(202) 662-5388

Attorneys for Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company

March 25, 1996

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that, on this 25th day of March, 1996, I caused a copy of the foregoing document to be served by first-class mail, postage prepaid, or by a more expeditious manner of delivery on all parties of record in Finance Docket No. 32760, and on

Director of Operations
Antitrust Division
Suite 500
Department of Justice
Washington, D.C. 20530

Premerger Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
Washington, D.C. 20580

Michael L. Rosenthal

STB FD 32760 3-22-96 61960 D

EN Office: MAR

Item No. ______________

Page Count ___7___

Mar #424

4 Part of Public Record

61960

UP/SP-186

BEFORE THE
[SURF]ACE TRANSPORTATION BOARD

Finance Docket No. 32760

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY
-- CONTROL AND MERGER --
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP. AND THE DENVER AND
RIO GRANDE WESTERN RAILROAD COMPANY

NOTICE OF FILING OF DEPOSITION TRANSCRIPTS

CANNON Y. HARVEY
LOUIS P. WARCHOT
CAROL A. HARRIS
Southern Pacific
Transportation Company
One Market Plaza
San Francisco, California 94105
(415) 541-1000

PAUL A. CUNNINGHAM
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Attorneys for Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp. and The Denver and Rio Grande Western Railroad Company

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Washington, D.C. 20044-7566
(202) 662-5388

Attorneys for Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company

March 22, 1996

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY AND MISSOURI PACIFIC RAILROAD COMPANY
-- CONTROL AND MERGER --
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, SPCSL CORP. AND THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

NOTICE OF FILING OF DEPOSITION TRANSCRIPTS

For the convenience of the Board and the parties, Union Pacific Corporation ("UPC"), Union Pacific Railroad Company ("UPRR"), Missouri Pacific Railroad Company ("MPRR"),[1] Southern Pacific Rail Corporation ("SPR"), Southern Pacific Transportation Company ("SPT"), St. Louis Southwestern Railway Company ("SSW"), SPCSL Corp. ("SPCSL"), and The Denver and Rio Grande Western Railroad Company ("DRGW")[2] are filing this day the transcripts and exhibits of the depositions taken to date in this action, as listed in the Attachment hereto.

Where any part of a deposition transcript is subject to the "Highly Confidential" or "Confidential" designations, the original transcript is being filed under

[1] UPC, UPRR, and MPRR are referred to collectively as "Union Pacific." UPRR and MPRR are referred to collectively as "UP."

[2] SPR, SPT, SSW, SPCSL and DRGW are referred to collectively as "Southern Pacific." SPT, SSW, SPCSL and DRGW are referred to collectively as "SP."

seal, and the sealed envelope and cover page are appropriately marked. In such instances, an additional copy of the transcript from which all "Highly Confidential" and "Confidential" material has been redacted is being filed, not under seal. The Attachment notes those transcripts for which redacted versions are being filed.

Applicants expect to file very shortly the Gehring transcript as well as the errata and signature pages that are not presently available, as listed in the column "Supplemental Filing" in the Attachment hereto.

Copies of all errata and confidentiality designations for these depositions have been or are being served on the parties on the restricted service list.

Respectfully submitted,

CARL W. VON BERNUTH
RICHARD J. RESSLER
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Martin Tower
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Bethlehem, Pennsylvania 18018
(610) 861-3290

JAMES V. DOLAN
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Attorneys for Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company

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(202) 973-7601

Attorneys for Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp. and The Denver and Rio Grande Western Railroad Company

March 22, 1996

ATTACHMENT

Date of Deposition	Witness	Redacted Version Filed	Supplemental Filing
1/16	Runde	Y	
1/17,18	Spero	Y	
1/19	Ainsworth	Y	
1/22, 23, 2/12, 3/20	Rebensdorf	Y except 3/20	Original of 3/20 signature page
1/24, 25, 27	Barber	Y	
1/29	La Londe		Errata and signature page
1/30	Month	Y	Original of signature page
1/31	Roberts	Y	
2/1,2	Willig		
2/5,6,7,8,9,10	Peterson	Y	
2/8-10	King & Ongerth	Y	Signature page
2/12	Yarberry	Y	
2/13,14	Sharp	Y	
2/14, 3/4	Ice	Y	Errata and signature page
2/16	Grinstein	Y	Errata and signature page
2/16	Anschutz		Redacted version
2/20	Hartman	Y	
2/22	Draper & Salzman	Y	Errata and signature page
2/23	Owen	Y	

Date of Deposition	Witness	Redacted Version Filed	Supplemental Filing
2/26,27	Gray	Y	Errata and signature page
2/28	Davidson	Y	
2/29	Kauders	Y	Errata and signature page
2/29	Lawrence	Y	
3/8	Bredenberg	Y	Errata and signature page

CERTIFICATE OF SERVICE

I, Teresa M. Gillis, certify that, on this 22nd day of March, 1996, I caused a copy of the foregoing Notice of Filing Deposition Transcripts to be served by first-class mail, postage prepaid, or by a more expeditious manner of delivery on all parties of record in Finance Docket No. 32760, and on

Director of Operations
Antitrust Division
Suite 500
Department of Justice
Washington, D.C. 20530

Premerger Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
Washington, D.C. 20580

Teresa M. Gillis

Teresa M. Gillis

STB FD 32760 3-29-96 62254 D

62254

Item No. 30

Page Count

Mar #751 ... & AUSTIN
...PROFESSIONAL CORPORATIONS

...TREET, N.W.
WASHINGTON, D.C. 20006
TELEPHONE 202: 736-8000
TELEX 89-463
FACSIMILE 202: 736-8711

FOUNDED 1866

CHICAGO — LOS ANGELES — NEW YORK

LONDON — SINGAPORE — TOKYO

WRITER'S DIRECT NUMBER

202: 736-8198

RECEIVED
MAR 29 1996
MAIL
MANAGEMENT
I.C.C.

March 29, 1996

BY MESSENGER

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Room 2215
12th Street and Constitution Avenue, N.W.
Washington, D.C. 20423

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

Dear Mr. Williams:

Enclosed for filing in the above-captioned proceeding are the original and twenty (20) copies of the Comments and Evidence of the City of Pueblo, Colorado (PBLO-2). A 3.5" diskette containing PBLO-2 is also enclosed.

Please stamp the two (2) extra copies enclosed and return them to our messenger.

Sincerely,

Terence M Hynes

Terence M. Hynes

Enclosures

ENTERED
Office of the Secretary

MAR 29 1996

8 Part of Public Record

TMH96A15.SED (3/28/96 2:47pm)

RECEIVED
MAR 29 1996
MAIL
MANAGEMENT
S.T.B.

PBLO-2

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760 (and related Sub-Dockets)

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY AND MISSOURI PACIFIC RAILROAD COMPANY -- CONTROL AND MERGER -- SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, SPCSL CORP. AND THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

COMMENTS AND EVIDENCE OF
THE CITY OF PUEBLO, COLORADO

ENTERED
Office of the Secretary
MAR 29 1996
8 Part of Public Record

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Dated: March 29, 1996

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760 (and related Sub-Dockets)

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY AND MISSOURI PACIFIC RAILROAD COMPANY -- CONTROL AND MERGER -- SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, SPCSL CORP. AND THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

COMMENTS AND EVIDENCE OF
THE CITY OF PUEBLO, COLORADO

Pursuant to the procedural schedule established by the Surface Transportation Board's (the "Board's") Decision No. 9 (served December 27, 1995), the City of Pueblo, Colorado ("Pueblo" or "the City") hereby submits the following comments concerning the application filed on November 30, 1995 by Union Pacific Corporation, Union Pacific Railroad Company ("UPRR") and Missouri Pacific Railroad Company ("MPRR") (referred to collectively hereinafter as "UP"), seeking Board authorization for the acquisition of control of, and merger with, Southern Pacific Rail Corporation, Southern Pacific Transportation Company ("SPT"), St. Louis Southwestern Railway Company, SPCSL Corp. and

The Denver and Rio Grande Western Railroad Company ("DRGW") (referred to collectively hereinafter as "SP").[1]

Pueblo takes no position with respect to the issue whether the merger and control transaction proposed in the Primary Application, as a whole, is consistent with the public interest. However, Pueblo opposes the actions proposed by Applicants in the following related applications:

1. Docket No. AB-3 (Sub-No.130) and Docket No. AB-8 (Sub-No. 38), pursuant to which Applicants seek authorization pursuant to 49 U.S.C. § 10903 for MPRR to abandon, and DRGW to discontinue its trackage rights over, MPRR's line between Milepost 869.4 near NA Junction, CO and Milepost 747.0 near Towner, CO;

2. Docket No. AB-8 (Sub-No. 39) and Docket No. AB-12 (Sub-No. 188), pursuant to which Applicants seek authorization pursuant to 49 U.S.C. § 10903 for SPT to abandon, and DRGW to discontinue its trackage rights over, SPT's line between Milepost 271.0 near Malta, CO and Milepost 162.0 near Canon City, CO; and

3. Docket No. AB-8 (Sub-No. 36X) and Docket No. AB-12 (Sub-No. 189X), pursuant to which Applicants seek an exemption from the prior approval requirements of 49 U.S.C. § 10903 _et seq._ to enable SPT to abandon, and DRGW to discontinue its trackage rights over, SPT's line between Milepost 335.0 near Sage, CO and Milepost 271.0 near Malta, CO.

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[1] UP and SP are referred to collectively hereinafter as "Applicants."

As the Verified Statements of Fay B. Kastelic, President of the City Council of Pueblo (attached hereto as Exhibit 1), and Dr. Richard A. Martinez, Chairman of the Board of County Commissions of Pueblo County, Colorado (attached hereto as Exhibit 2), demonstrate, these proposed abandonments, and certain other operational changes proposed by Applicants, would harm Pueblo (and other Colorado communities) in a number of ways:

First, abandonment of the line segments described above, which form part of SP's existing east-west transcontinental route via Pueblo, would deprive Pueblo of access to the direct, efficient transcontinental rail service that the City has enjoyed for more than a century. Applicants' plan to divert traffic from the SP route to an alternate east-west route via Denver (which lies more than 100 miles to the north) would harm shippers and receivers in the Pueblo area by subjecting their traffic to more circuitous routing, longer transit times and higher costs. See V.S. Kastelic at 2-3.

Second, the proposed abandonments would increase truck traffic on roads serving Pueblo and neighboring communities. The substitution of less energy efficient truck service would be detrimental to the environment. Moreover, the affected roads are, for the most part, two lane highways with no median protection and limited shoulders and passing lanes that traverse steep grades over mountainous terrain. The prospect of additional freight movements over these roads, particularly during periods of heavy tourist traffic, raises significant public safety concerns for Pueblo and neighboring communities. See V.S. Kastelic at 3.

Third, the proposed abandonments, and other operational changes planned by Applicants, would result in the elimination or transfer of 139 full-time positions in the Pueblo area. Pueblo has historically experienced a higher level of unemployment than the State of Colorado as a whole. V.S. Kastelic at 4. Indeed, one-fifth of Pueblo County's population receives some type of public assistance. V.S. Martinez at 2. The loss of these railroad positions -- many of which are higher paying jobs than those generally available in Pueblo -- would adversely impact the City's economy and tax base. Id. See also V.S. Martinez at 2. The proposed abandonments could also have negative consequences for rail-related vendors located in Pueblo. V.S. Kastelic at 4.

Fourth, the loss of access to direct east-west service via SP's line could place the City at a disadvantage in competing for future industrial development projects. The proposed abandonments would make Pueblo less attractive to businesses that regularly utilize rail service. Any loss of industrial development opportunities would, in turn, adversely affect the City's tax base and employment levels. See V.S. Kastelic at 4-5; V.S. Martinez at 2-3.

These harmful effects of the proposed UP/SP merger upon the City of Pueblo (and other Colorado communities) are confirmed in a study recently conducted by the Rail Corridor Use Committee appointed by Colorado Governor Romer in December 1995.[2] The Committee found that the abandonments proposed by Applicants in Colorado would adversely impact the transportation of local rail traffic, reduce employment opportunities in affected communities (including Pueblo), erode local tax revenues, and increase highway use and maintenance costs. See Exhibit 3 at 4-8. The Committee urged the Governor to support the preservation of SP's transcontinental rail line.[3]

For these reasons, Pueblo opposes Applicants' proposal to abandon MPRR's line between NA Junction and Towner, and SP's lines between Sage and Malta, and between Malta and Canon City.

Montana Rail Link, Inc. ("MRL") has indicated its intention to file an inconsistent application to acquire a number of rail lines from Applicants, including each of the above-described segments proposed for abandonment by Applicants. MRL's proposal would enable MRL to preserve east-west transcontinental rail service via Pueblo, and would offset to some degree the adverse impact of the proposed merger on railroad employment

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[2] A copy of the Committee's report is attached hereto as Exhibit 3.

[3] Notwithstanding the Committee's strong recommendations, Governor Romer recently announced that the State has reached an agreement with Applicants pursuant to which the State will support the proposed UP/SP merger. The agreement between Applicants and the State does not address the concerns of Pueblo (or of other communities) adversely affected by the abandonments and other operational changes discussed above.

opportunities in the Pueblo area. Pueblo supports MRL's proposal, and requests that the Board condition any authorization of the proposed UP/SP merger by approving MRL's inconsistent application.

Respectfully submitted,

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Attorneys for City of Pueblo, Colorado

Dated: March 29, 1996

VERIFIED STATEMENT
OF
FAY B. KASTELIC

My name is Fay B. Kastelic. My business address is 1 City Hall Place, Pueblo, Colorado 81003. I am President of the City Council of Pueblo, Colorado ("Pueblo" or "the City"). In that capacity, I perform the functions usually associated with the office of a municipal mayor.[1]

I earned a Bachelor of Arts degree in Social Science from Southern Colorado State College (now known as the University of Southern Colorado) in 1965, and a Masters Degree in Social Science and English from the University of Colorado (Boulder) in 1973. I have been a member of the Pueblo City Council since 1990, and served as Council President in 1992 and 1993. I was elected to my present term as Council President in January 1996. Prior to holding these public offices, I have had a 25 year career in the Pueblo School District No. 70 as a classroom teacher, principal and District administrator.

The City of Pueblo is located in southeastern Colorado, approximately 110 miles south of Denver. The population of Pueblo County is approximately 125,000 (of which slightly more than 100,000 live within the City). Pueblo has been a rail transportation crossroads for more than a century, with north-south and east-west lines operated by several carriers

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[1] Pueblo has a council-manager form of municipal government. The City Council consists of seven members, who elect a President from among their number each year. The City Council appoints a City Manager, who is responsible for the supervision of city services.

intersecting in the City. A number of rail-related businesses, and a testing facility operated by the Association of American Railroads, are also located in or near Pueblo.[2]

The merger of the Union Pacific ("UP") and Southern Pacific ("SP") rail systems, as proposed, would have serious adverse consequences for the Pueblo area. As Applicants acknowledge, "UP/SP operations at Pueblo will be significantly reduced" as a result of the merger. UP/SP-24, Operating Plan at 176. Specifically, Applicants plan to abandon several portions of the east-west rail line that serves Pueblo, including UP's line east of Pueblo between Towner and NA Junction (which is heavily used by SP today), and SP's line west of Pueblo between Canon City and Sage. As a result of these abandonments, and other operational changes proposed by Applicants, 139 full-time railroad jobs in Pueblo would be abolished or transferred to other locations. UP/SP-24, Labor Impact Exhibit at 407-421.

These elements of the proposed merger would harm Pueblo in several ways. Abandonment of SP's east-west route via Pueblo would eliminate the direct transcontinental rail service that the City has enjoyed for more than a century. Applicants state that they would provide service between Pueblo and points to the west via Denver. However, this would require that freight originating (or terminating) in Pueblo move more than 100 miles to the north

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[2] Local companies engaged in rail-related business activities include ABC Rail Corporation (a manufacturer of various rail products), Progress Rail Services Corporation (which repairs and rebuilds rail wheelsets), Wheelstar Corporation, Genwest Rail Services, Inc., Liberty Railway Services, Inc. (which repairs and maintains rail cars) and R&H Enterprises.

(or south) prior to east-west movement. The diversion of such traffic from SP's more direct east-west line would result in longer transit times and, in all likelihood, higher costs to the shipper.

Abandonment of SP's east-west route would also increase truck traffic on roads serving Pueblo and other Colorado communities. The substitution of less fuel-efficient motor carrier service would have an adverse impact on the environment in these areas. Furthermore, except for limited stretches of Highway 50 and Highway 24, the roads in the vicinity of SP's current rail route are two lane roads with no median protection and only limited shoulders and passing lanes. Many portions of these roads have steep grades over rugged terrain. For example, Highway 24 passes through elevations exceeding 14,000 feet between Salida and Leadville, as well as the 10,400-foot Tennessee Pass near Redcliff. Highway 9 traverses the 11,500-foot high Hoosier Pass between Alma and Breckenridge. These highways have historically experienced tragic truck accidents involving loss of life and major property damage.[3] The possibility of increased freight movements on these roads, particularly during periods of heavy tourist traffic, raises significant public safety concerns.

Perhaps the area of greatest concern for Pueblo is the effect of the proposed abandonments and merger-related operating

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[3] Recently, a bridge had to be replaced at Parkdale, CO after it was destroyed in an accident involving a tractor-trailer carrying grain. Four lives were lost in another incident involving a tanker truck and tractor-trailer near Cotapaxi, CO.

changes on employment. Applicants have announced that they will abolish or transfer 139 jobs currently located in Pueblo. When considered in the context of Pueblo's longstanding struggle to provide adequate employment for its citizens, these job losses represent a substantial blow to the community. The collapse of steel and heavy manufacturing industries raised Pueblo's unemployment rate to near 20 percent in the early 1980's. While we have recovered considerably from the conditions of that period, the unemployment rate in Pueblo continues to be 1 to 1.5 percent higher than the statewide rate. Thus, any action that results in the loss of jobs must be viewed with concern. This is especially true for railroad jobs, many of which offer rates of pay and benefits substantially better than those typically available in the Pueblo area. (The average per capita annual wage in Pueblo is only slightly more than $21,000.) The adverse impact of Applicants' proposals could be further magnified, to the extent that the planned reduction in operations in the Pueblo area results in reduced business opportunities for rail-related vendors located in the City.[4] The loss of employment resulting from the merger, as proposed, would adversely affect Pueblo's economy and tax base.

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[4] Likewise, Pueblo, which is the "hub" city for a wide area to the east, south and west, would feel collaterally the economic impact of the proposed abandonments on neighboring communities. For example, if abandonment of UP's line east of Pueblo results in reduced wheat production in the counties served by that line, retailers and other business establishments in Pueblo could experience lower sales (as farmers from neighboring counties to the east saw their incomes reduced).

The proposed abandonments could also hamper the City's industrial development efforts. Through the Pueblo Economic Development Corporation, the City has striven to attract new businesses to our community. The availability of efficient, competitive rail service is often a key consideration for a firm evaluating potential facility sites. The loss of our direct transcontinental rail link would make Pueblo less attractive to any business that regularly utilizes rail service. The loss of industrial development opportunities, in turn, would diminish the prospects for enhancing Pueblo's tax base, and would reduce the number of jobs available to our citizens in the future.

In short, abandonment of SP's transcontinental route via Pueblo, and other operational changes contemplated by Applicants, would be detrimental to the interests of the City of Pueblo.

However, approval of the UP/SP merger need not harm Pueblo and the other Colorado communities currently served by SP's east-west transcontinental line. I understand that Montana Rail Link, Inc. ("MRL"), a regional railroad operator, plans to file an application seeking to acquire that line (as well as a number of Applicants' other lines) for continued freight service. Approval of MRL's proposal would address the concerns of Pueblo by preserving east-west transcontinental service via the City, and by providing new railroad employment opportunities that would offset, to a degree, the job losses stemming from the merger. Pueblo vigorously supports MRL's proposal, and asks the Board to condition any approval of the UP/SP merger by requiring

Applicants to sell SP's east-west route to MRL for continued freight operations.

VERIFICATION

COUNTY OF PUEBLO)
) ss:
STATE OF COLORADO)

I, FAY B. KASTELIC, being duly sworn, depose and state that I am President of the City Council of Pueblo, Colorado; that my business address is 1 City Hall Place, Pueblo, Colorado, 81003; that I am authorized to verify the foregoing VERIFIED STATEMENT on behalf of the City of Pueblo, Colorado; that I have examined all of the statements contained in the Verified Statement; and that all such statements are true and correct to the best of my knowledge, information and belief.

Fay B. Kastelic
Fay B. Kastelic

Subscribed and sworn to before me this 27th day of March, 1996.

My commission expires: May 9, 1996.

[SEAL]

Shelley Medina
Notary Public

EXHIBIT 2

VERIFIED STATEMENT
OF
DR. RICHARD A. MARTINEZ

My name is Dr. Richard A. Martinez. My business address is 215 West 10th Street, Pueblo, Colorado 81003. I am Chairman of the Board of County Commissioners of Pueblo County, Colorado [1].

I have been a Pueblo County Commissioner since 1993. Currently, I am serving my second year as Chairman of the Board of County Commissioners and was elected to that position most recently on January 1, 1996. I have a Doctor of Optometry degree from Southern California College of Optometry. I am a graduate of Harvard University School of Public Health and hold a Masters Degree in Public Health Administration. In addition, I have held or am currently serving in numerous positions on a community or statewide basis, including Chairman of the Colorado Chemical Demilitarization Citizens Advisory Commission, a member of the Pueblo Army Deport Reuse Commission, President of Colorado State Board of Health, a member of the Pueblo Economic Development Corporation Board of Directors, and a member of the Pueblo Latino Chamber and Pueblo Chamber of Commerce Board of Directors.

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[1] Pueblo County is a political subdivision of the State of Colorado with governmental powers conferred upon it by the Constitution and statutes of Colorado. The administrative and policy-making body of Pueblo County is the Board of County Commissioners. That Board consists of three elected commissioners, and the Board chooses a Chairperson each year from its membership.

I have been directed by the Board of County Commissioners of Pueblo County, Colorado, as the duly-elected chairman of that Board for 1996, to state the Board's support of the Comments of the City of Pueblo, Colorado, as set forth in the document to which this Verified Statement is attached. The Board concurs with the City of Pueblo in their comments and finds that the proposed abandonment of the east-west rail line through Pueblo resulting from the merger of the Union Pacific and Southern Pacific rail systems, and certain other operational changes proposed by these Applicants, would harm Pueblo County and numerous other Colorado communities in a number of ways. The merger of the Union Pacific and Southern Pacific rail systems, which includes the abandonment of the Southern Pacific's east-west route via Pueblo, eliminates transcontinental rail service that will have a significant negative impact to the Pueblo community relevant to employment and economic development.

The Union Pacific and Southern Pacific merger will result in the elimination of more than 130 jobs in Pueblo County. These jobs include the positions of trainmen, engineermen, and machinists. The Pueblo community has made consistent and concerted efforts to attract and maintain these and other similar types of quality jobs. In addition, one-fifth of Pueblo County's population receives some type of public assistance, and any loss of employment negatively impacts this community's public assistance caseload. For these reasons, the loss of the jobs that will result from the merger is of a significant nature and of great concern to the Board of County Commissioners of Pueblo County.

The Pueblo community, particularly through the efforts of the Pueblo Economic Development Corporation, has been recognized on a state and national basis for its economic development efforts. The abandonment of the Southern Pacific's east-west route through Pueblo restricts those economic development efforts to the extent that potential employers often desire the availability of east-west rail transportation.

The County's property tax base is impacted by the abandonment of Southern Pacific's east-west rail line, as the County collects property tax for the value of the rails in the County. Pueblo County will lose $1.51 million in assessed valuation associated with an abandonment of the railroad tracks, which is a loss of $153,500.00 in revenue to the County's tax base.

Montana Rail Link's (MRL) Responsive Application to acquire Southern Pacific's east-west transcontinental line would mitigate the negative effects of abandonment of the east-west rail system that could result from the merger. MRL is an established and regional carrier operating in the West. MRL's acquisition of the east-west transcontinental route would be an effective method for this community to continue to attract rail traffic and industry requiring east-west rail transportation.

VERIFICATION

COUNTY OF PUEBLO)
) ss:
STATE OF COLORADO)

I, Dr. Richard A. Martinez, being duly sworn, depose and state that I am Chairman of the Board of County Commissioners of Puebio County, Colorado; that my business address is 215 West 10th Street, Pueblo, Colorado 81003; that I am authorized to verify the foregoing VERIFIED STATEMENT on behalf of the County of Pueblo, Colorado; that I have examined all of the statements contained in the Verified Statement; and that all such statements are true and correct to the best of my knowledge, information and belief.

Dr. Richard A. Martinez

Dr. Richard A. Martinez

Subscribed and Sworn To
Before Me This 27th
Day of March, 1996.

[illegible signature]

Notary Public

My Commission Expires: 06/16/99

EXHIBIT 3

March 19, 1996

Governor Roy Romer
State Capitol
Denver, CO 80203

Dear Governor Romer:

Here is the report of the Rail Corridor Use Committee. Our recommendations to you are contained in the first two pages, with supporting analysis and minutes from Committee meetings following.

As you requested, we have analyzed the opportunities for rail service and the value of the corridors to the state and communities. In particular, we have worked closely with communities impacted by the abandonment, and you will find local input is a key component of our report.

We thank you for the opportunity to serve on this important committee. Affected communities appreciate your sponsorship of a group to respond to the critical issue of railroad abandonment. This committee is proud to have played an important role in raising the awareness of Coloradans about this issue.

Thanks again for the opportunity to serve, and for your careful consideration of our report.

Sincerely,

Bill Haight, Chair
Rita Avalos
Cardon Berry
Kathy Farley
James Johnson
Joe Larkin
Steve Madone
Kelly Spitzer

Members, Governor's Rail Corridor Use Committee
(signature page attached)

Kelly K. Sitzell [illegible]

Kathy Farley [illegible]

Joseph A. Larkin Carlton G. Berry

William A. Albright Rita Avalos

WHEREAS, the Union Pacific and the Southern Pacific Railroads have submitted an application for merger and consolidation to the Interstate Commerce Commission (now Surface Transportation Board); and

WHEREAS, this application includes three petitions for the abandonment of railroad lines in Colorado – 69 miles from Sage to Leadville, 109 miles from Malta to Canon City, and 122 miles from Pueblo east to Towner; and

WHEREAS, the abandonments have been identified by impacted residents and local governments as a critical economic development issue for their communities, with present and future impacts on tourism, agriculture and economic development opportunities; and

WHEREAS, counties will experience significant negative impact to local property tax revenue as a result of abandonment, which will have an adverse effect on local communities' ability to provide necessary services for the education, health, safety, and welfare of their citizens; and

WHEREAS, the people of the State of Colorado have invested considerable money, time and effort in these rail corridors; and

WHEREAS, in his Smart Growth and Development Initiative, Governor Roy Romer emphasized the importance of regional cooperation between communities with shared interests and pledged the responsiveness of the state to such efforts, and regional Smart Growth visions have emphasized the importance of preserving transportation and continued economic development; and

WHEREAS, Governor Romer convened the Rail Corridor Use Committee in December, 1995 to provide necessary assistance, expertise and guidance to communities and state agencies as they attempt to develop a coordinated strategy for each corridor, by recommending aid for local interests attempting to recruit a short-line operator or implement the Colorado Rail District Act to maintain rail service or trackage on some or all of the abandoned route, preserving the right-of-way corridor for future public uses, or allowing the corridor to be broken up according to land ownership; and

WHEREAS, the Committee has convened on six occasions in communities affected by the proposed merger and abandonments, sought input from impacted producers and local governments, met with representatives of UP and SP, conducted on-site visits to alternative opportunities, and heard citizens' concerns; and

WHEREAS, the Committee has analyzed the information gathered since the Committee's formation and as presented by state agencies according to its mission as defined by Governor Romer;

THEREFORE, BE IT RESOLVED, THE GOVERNOR'S RAIL CORRIDOR USE COMMITTEE RECOMMENDS THAT:

The Governor support the preservation of all transcontinental railroad links in Colorado, which would provide opportunities for a competitive grain export market, tourist, commuter or passenger rail, or other possible railroad uses.

THE COMMITTEE FURTHER RECOMMENDS THAT:

- The Governor work toward securing a 24-month window between approval of the UP-SP merger and the removal of any track abandoned associated with the merger, in order to give communities and private interests adequate time to pursue other opportunities for rail operation.

- The Governor work to establish that, at any time in the future, the State or its subdivisions will have the right of first refusal to purchase any railroad corridor and associated track in Colorado before it is abandoned and removed.

- The Governor support legislation to create a revolving loan fund from the general fund surplus, which would be available for holding and/or purchasing abandoned rail corridors for future rail use and/or interim public uses.

- The Governor designate a permanent policy group associated with CDOT which would participate in all future railroad abandonment proceedings and develop a state railroad policy.

Analysis.

Impacts of abandonment:

1. County property tax base.[1] Seven counties are impacted by the abandonment of railroad tracks as a result of the Union Pacific merger (the impacts on individual counties are detailed below). In total, the State will lose $2.96 million in assessed value from Southern Pacific and $10.83 million from Union Pacific, or an estimated $1,375,000 in dollar impacts to Colorado counties.
   - 1.1. Kiowa County will lose an estimated $6.86 million in assessed valuation, or roughly 23% of the entire assessed valuation in the county.[2] The dollar impacts to the county will be $711,700.
   - 1.2. Crowley County will lose $2.46 million in assessed valuation, or $210,000 in revenue.
   - 1.3. Pueblo County will lose $1.51 million in assessed valuation, or $153,500 in revenue.
   - 1.4. Fremont County will lose $809,000 in assessed valuation, or $79,100 in revenue.
   - 1.5. Chaffee County will lose $771,300 in assessed valuation, or $$73,900 in revenue.
   - 1.6. Lake County will lose $459,000 in assessed valuation, or $69,200 in revenue.[3]
   - 1.7. Eagle County will lose $915,700 in assessed valuation, or $65,200 in revenue.[4] (This could be offset if the railroad yard in Minturn is developed).
2. Grain producers. The eastern corridor runs through productive farmland in southeastern Colorado. The primary grain marketing and storage facilities for wheat in Kiowa County are located on the line.[5]
   - 2.1. Competition. The largest grain buyer in the region is Cargill, which owns a facility in Cheyenne Wells to the north. The Cargill facility has an elevator with capacity for 1.7 million bushels of grain and a unit loader on the Union Pacific line to Denver and Kansas City. This facility handles grain more

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[1] Information in section 1. was provided by Richard Timberlake, Colorado Division of Property Taxation, unless otherwise indicated. Counties collect property tax for the value of rails in their counties, as well as of the private railroad cars which run over those rails. The numbers in this section include both factors. Any public entity which acquired and maintained abandoned railroad lines, for example as provided for by the Colorado Rail District Act (C.R.S. 32-12-101 to 120), would not be liable for replacing lost property tax revenue.

[2] Abstract of Assessment for Kiowa County, prepared by County Assessor Jimmy Bendorf.

[3] The revenue total for Lake County was calculated by taking 8% (the property tax rate) of $2[illegible],000 (the assessed value of private cars through the county), and adding it to the revenue from the railroad tracks.

[4] See note 3. The total for Eagle County is 8% of $385,800, multiplied by .446 to account for the miles of railroad track in the county which would continue to carry rail traffic post-abandonment.

[5] Information in section 2. was gathered by Colorado Department of Agriculture, contact Tim Larsen. Committee members were additionally informed by public comment received in Eads, Colorado on February 16, 1996.

quickly and efficiently than smaller elevators to the south; however, many grain producers in Kiowa County express the belief that the UP has helped to force grain to the north by providing poor service and non-competitive shipping rates on the Towner line to the south. There is increasing concern in the area about what will happen to the loading and shipping rates at Cheyenne Wells with the loss of competition to the south.

2.2. Time. Critical to the harvest and marketing of Colorado wheat is access to storage during harvest. The Towner line and Cheyenne Wells elevator facilities cannot handle all the wheat harvested from Kiowa County without rail access at all elevators. The loss of rail access along the Towner line would critically impact the handling and marketing of Colorado wheat.

2.3 Export. The Colorado wheat industry has developed a large worldwide market for Colorado wheat. Colorado exports 80% of its wheat annually. This market depends on the ability of Colorado grain producers to ship wheat to export ports competitively. Farmers and state agriculture officials express concern that the loss of a competing railroad link through Colorado makes Colorado wheat captive to the Union Pacific.

2.4. Local businesses.

2.4.1. Eastern corridor. Grain handlers in Kiowa County offer elevator and train loading capacity to area producers. If producers have to rely on Cargill exclusively for railroad access, their trucking costs will increase dramatically – all wheat above Cargill's elevator capacity will need to be trucked once for storage in Kiowa, and then again to Cheyenne Wells for shipment. In addition, Newsham Hybrids employs 125 people in Kiowa and Prowers counties. They are building a feed mill in Brandon to serve their hog farming operation. Rail access on the Towner line was one factor in site selection for that project; the loss of the railroad makes the planned expansion of that facility unlikely.

2.4.2. Western corridor. There are only two regularly active shippers along this line. The Holnam-Ideal Cement Company in Florence ships and receives 125,000 tons of cement and gypsum annually. While this company prefers to ship by rail, Holnam-Ideal had made arrangements to ship by truck prior to the petition for abandonment, because rail service has been so poor. ASARCO, based in Leadville, ships close to 500 cars annually. However, ASARCO will make no commitments to increasing its demand for railcars in the future.

3 Employment. The Union Pacific and Southern Pacific certified to the ICC/STB in their merger application that they would be eliminating or transferring several thousand jobs nationally as a result of the merger. Some of these employment impacts are directly attributable to the proposed abandonments in Colorado. The railroads assume that impacted employees will be protected by federally-established standard protective conditions. They also plan to offer some affected

employees severance packages which they anticipate many accepting and voluntarily leaving the company.[6]

3.1. Pueblo. Including trainmen, engineermen, carmen, clerks, laborers, machinists and "non-agreement" (non-union) employees, Union Pacific projects cutting 134 jobs in Pueblo, and transferring 6 more (to Denver, Cheyenne and Omaha).

3.2. Eads. One signalman and one non-agreement employee are scheduled to be laid off.

3.3. Mintum. One non-agreement employee is scheduled to be laid off.

3.4. Denver. Although not directly related to the abandonment, the merger indicates some employment impacts in Denver as well. In the merger application, UP estimates a total of 6 jobs lost and 36 transferred from Denver. In addition, the application is not clear as to the fate of 1800 Southern Pacific employees located at the SP dispatch headquarters downtown.

4. Highway maintenance. Some of the traffic diverted from abandoned railroad lines will end up on Colorado's highway system, for at least part of its travel.[7]

4.1. Towner line. If this line is abandoned, traffic will increase on SH 71, SH 96, US 287, and US 385 (combined) by 904 heavy trucks per year, representing an average 0.75% increase in heavy truck traffic in the area. If a railroad purchased the Towner line, supplied enough rail cars to meet demand and offered freight rates competitive with the Cargill operation in Cheyenne Wells, the Towner line could see an increase in rail freight traffic ranging from 1000 cars to 4000 cars per year, which translates to a decrease in current heavy truck traffic ranging from 4000 to 16,000 trucks per year. If all of these trucks currently travel the state highway system, the region's state highways would see a decrease in heavy truck traffic ranging from 3.5% to 13.8%.

4.2. Malta - Canon City line. If this rail line is abandoned, traffic will increase on US 24, US 285 and US 50 (combined) by over 1800 heavy trucks per year, representing an average 2.5% increase in heavy truck traffic in the region.

4.3. Sage - Leadville line. Traffic on area highways would not increase appreciably due to this abandonment.

4.4. Shipping costs. Loss of rail access in Kiowa increases the length of a truck trip to the railhead by at least three times for farmers in Kiowa. That

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[6] See Verified Statement of Michael Hartman, UP Director of Employee Relations and Planning. Impacts broken out by location throughout section 4. are from schedule "Effects on Applicant Carriers' Employees" which is attached to Michael Hartman's statement.

[7] Information in section 4. provided by the Colorado Department of Transportation, Intermodal Unit.

increase will lead to a significant increase in the harvest-to-first-storage transportation cost.

Opportunities for economic development along railroad corridors proposed for abandonment.[8]

1 Agriculture. 70% of Kiowa County's economy is built around agriculture and agri-business, and the largest piece of the agricultural base there is based on wheat. Kiowa County produced over 5 million bushels of wheat last year. The Department of Agriculture projects that number will increase when the federal Conservation Reserve Program which limits wheat production begins to expire this year.[9]

1.1. Last year, about 400 railcars were used to move freight in and out for agricultural producers along this corridor. Active grain handlers between Haswell and Towner argue that they would fill 880-1030 cars annually with current business, if enough railcars were available and rates were competitive. They also point to an additional 750,000 bushels of grain between Haswell and Towner which could be shipped by rail.

2 Tourism. The Tennessee Pass line runs from the Royal Gorge up into Eagle County, linking some of Colorado's most spectacular mountain scenery. This rail corridor has attracted the interest of two established members of the tourism industry. Both have requested that the committee recommend a delay of at least 12 months from approval of the merger and abandonment before any track is removed in order to allow them to arrange for the eventual purchase of the line, and that any future owner of the line be willing to have tourist operation along it. Neither interest has requested financial support from the state for their venture.

2.1 Royal Gorge Scenic Railway, Canon City. Greg Tabuteau, owner of the Royal Gorge Scenic Railway and Buckskin Joe, has plans to operate a 20-mile round-trip through the Royal Gorge, if he can acquire trackage rights from the eastern end of the Tennessee Pass abandonment through the Parkdale siding. He has presented to the committee a letter from the Canon National Bank in Canon City which promises financing, "in the low-to-medium seven figure range."[10]

2.2 Rader Railcars, Denver. Tom Rader owns a company with experience in cruise and rail tours of Alaska. The group currently has invested millions of dollars to start up and operate a tourist-aimed railroad line in Florida, and has been retained by Marlboro to construct and operate a recreational train which the cigarette company is using as a promotion. Rader sees potential for a successful cruise-line-by-rail along the Tennessee Pass line, offering tourists a three- or four-day trip with access to many of the tourist activities in various communities along the line.

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[8] The Colorado Department of Transportation is developing a more detailed analysis to assist with the potential recruitment of short-line operators. Contact Ted Pascoe, Intermodal Unit.

[9] Information in section 2. provided by Colorado Department of Agriculture, contact Tim Larsen.

[10] Letter from Daniel L. Tanner, President of Canon National Bank to the Colorado Railroad Corridor Use Committee, dated February 26, 1996.

2.3. Colorado State Parks. Any stretch of the corridor from Canon City to Sage offers the potential for spectacular recreational access to some of Colorado's great natural resources, including the Arkansas and Eagle Rivers and several of the national forests and wilderness areas along the Rocky Mountains. State Parks has been awarded a planning grant from Great Outdoors Colorado in order to prepare a development and management plan for a trail through that corridor, and they have recruited a steering committee for that planning grant from local interests.[11] It should be noted that the Rail Corridor Use Committee believes a trail should be developed only if all efforts to maintain railroad tracks through the corridor fail.

3. Railroad operation applicants. The Committee is aware of three entities which have submitted "Anticipated Inconsistent or Responsive Applications" regarding the proposed merger to the STB. By March 29, 1996, each applicant plans to propose to acquire most or all of the former D&RGW system, as well as additional Union Pacific track connecting to Stockton, CA. Union Pacific has made clear to the committee that they do not plan to sell such a large portion of their system. As a result, the success of any of these responsive applications depends on the surface transportation board requiring union pacific to enter negotiations for the sale of specified pieces of its system. Other such proposals which have not come to the Committee's attention may exist and also should be considered.

3.1. Montana Raillink (MRL). MRL is a regional railroad which emphasizes local service in Montana and Idaho. Its current system connects to the Burlington Northern at both ends. MRL originally planned to propose the purchase of Union Pacific track from Kansas city to Pueblo (over the Towner line), from Pueblo to Denver, west to Salt Lake City through the Moffat Tunnel, and additional track in Utah, Nevada, Idaho and California in order to connect to the west coast and the existing MRL system. MRL has since updated the maps it filed with the STB to include the Tennessee Pass line.

3.2. Wisconsin Central (WCL). WCL owns and operates regional railroads in the USA, Canada and New Zealand. In the Midwest, WCL connects Chicago to Minneapolis through Wisconsin, and runs through Michigan into Ontario. As a result of the proposed merger, WCL may lose a lucrative backhaul arrangement with Southern Pacific which brings iron ore from Minnesota into Utah and coal back to the Midwest. WCL plans to propose the purchase of Union Pacific track from Salt Lake City through the Moffat Tunnel to Denver, from Denver east to Kansas City, and connections from Utah to California. WCL's preliminary STB filing does not identify Colorado's imminent abandonments as a part of the primary business plan; however, it is possible that the eventual application will include those lines. Ed Burkhardt, president of the Wisconsin Central

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[11] Contact Stuart MacDonald and Steve Reese, Colorado State Parks

Transportation Corp., owns and operates a seasonal short-line railroad in the San Luis Valley.

3.3. LSBC holdings. LSBC is a new, Delaware-based company which plans to propose the purchase of the former D&RGW system as well as the Union Pacific track from NA Junction to Kansas City over which SP currently has trackage rights. While the Illinois-based principals have no experience in the railroad business, one of them, Tim Eklund, has assured local and regional groups in Colorado of his group's confidence in their ability to start and operate a new regional railroad successfully.

Speculative future opportunities of abandoned corridors.

1. Passenger Rail. The Colorado Department of Transportation has commissioned a $267,500 Passenger Rail Feasibility Study to be completed by early 1997. This study targets 15 heavily-traveled transportation corridors around the state which have nearby railroad access. It will attempt to determine whether state investment in the development of passenger rail alternatives along any of the 15 corridors is justified. One of the corridors to be studied follows the Tennessee Pass line from Leadville to Vail. Many who work in the resort communities in Eagle County live down the road in Leadville and commute each day. This traffic is particularly heavy during the winter tourist season, when the roads are especially difficult to maintain. Passenger rail may prove to be a viable alternative for transportation along this corridor. However, abandonment would make the eventual development of this mode cost-prohibitive.
2. Agricultural production. A single elevator, even the size of the Cheyenne Wells facility, does not have enough capacity to serve the entire region reliably. However, guaranteed rail service along the Towner line during harvest season might attract investment in larger grain handling infrastructure along that line, such as a larger elevator or a unit train loader. These improvements could attract a higher percentage of the 11.6 million bushels of wheat produced annually in southeastern Colorado.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, this 29th day of March, 1996, copies of the foregoing COMMENTS AND EVIDENCE OF THE CITY OF PUEBLO, COLORADO were served via hand delivery, Federal Express, U.S. Mail, postage prepaid, to all parties of record.

Terence M Hynes

Terence M. Hynes

STB FD 32760 3-29-96 62153 D

Item No. ______________

Page Count 10 .

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62153

WILLIAM L. SLOVER
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202 347-7170

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March 29, 1996

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BY HAND DELIVERY

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Case Control Branch
12th Street & Constitution Avenue, N.W.
Washington, D.C. 20423

Re: Finance Docket No. 32760, Union Pacific Corporation, et al. -- Control and Merger -- Southern Pacific Rail Corporation, et al.

Dear Mr. Secretary:

Enclosed please find an original and twenty (20) copies of the Statement of the Lower Colorado River Authority and the City of Austin, Texas Regarding the Proposed UP/SP Merger (LCRA-3). This document is being served upon parties of record in the manner described in the Certificate of Service attached thereto. In accordance with the Board's order in this proceeding, we have also enclosed a Wordperfect 5.1 diskette containing the enclosed Statement.

An extra copy of this filing is enclosed. Kindly indicate receipt and filing by time-stamping this copy and returning them to the bearer of this letter.

Thank you for your attention to this matter.

Sincerely,

C. Michael Loftus

C. Michael Loftus
An Attorney for the Lower Colorado River Authority and the City of Austin Texas

CML/raw
Enclosures

cc: Arvid E. Roach II, Esq.
Paul Cunningham, Esq.
The Honorable Jerome Nelson

BEFORE THE
SURFACE TRANSPORTATION BOARD

LCRA-3

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY, AND MISSOURI PACIFIC RAILROAD COMPANY -- CONTROL AND MERGER -- SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, SPCSL CORP., AND THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

Finance Docket No. 32760

STATEMENT OF THE LOWER COLORADO RIVER AUTHORITY AND THE CITY OF AUSTIN, TEXAS REGARDING THE PROPOSED UP/SP MERGER

THE LOWER COLORADO RIVER AUTHORITY
AND THE CITY OF AUSTIN, TEXAS

By: C. Michael Loftus
Donald G. Avery
Patricia E. Kolesar
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1224 Seventeenth Street, N.W.
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(202) 347-7170

Attorneys for the Lower
Colorado River Authority
and the City of Austin, Texas

OF COUNSEL:

Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

Dated: March 29, 1996

BEFORE THE
SURFACE TRANSPORTATION BOARD

LCRA-3

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY, AND MISSOURI PACIFIC RAILROAD COMPANY -- CONTROL AND MERGER -- SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, SPCSL CORP., AND THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY	Finance Docket No. 32760

**STATEMENT OF THE
LOWER COLORADO RIVER AUTHORITY
AND THE CITY OF AUSTIN, TEXAS
REGARDING THE PROPOSED UP/SP MERGER**

Pursuant to the procedural orders issued by the Surface Transportation Board ("STB" or "Board") in this proceeding, the Lower Colorado River Authority ("LCRA") and the City of Austin, Texas ("Austin")(jointly, "LCRA/Austin") hereby submit this statement regarding the application filed by the Applicants Union Pacific Railroad Company ("UP") and the Southern Pacific Transportation Company ("SP")(jointly, "Applicants" or "UP/SP"),[1] which application seeks the Board's approval and authorization under 49 U.S.C. §§ 11343-11347 for UP's acquisition of control and merger with SP, the consolidation of the rail operations of UP and SP, and the resulting common control of UP and SP.

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[1] "Applicants" include UP and SP, and other related corporate entities which have been identified as Applicants in the Board's Decision No. 1 in this proceeding (at 1 n.1).

IDENTITY AND INTEREST

LCRA/Austin have previously filed (1) Comments on Applicants' Proposed Procedural Schedule (dated September 18, 1996) and (2) a Notice of Intent to Participate in this proceeding (dated January 16, 1996). In their Comments on Applicants' Proposed Procedural Schedule (LCRA-1), LCRA/Austin stated in detail their identity and interest in this proceeding.

STATEMENT OF POSITION

LCRA/Austin's principal concern in this merger is the preservation of competitive access at LCRA/Austin's jointly owned and operated Fayette Power Project ("FPP"), a coal-fired electric generating station located at Halsted, Texas. It appears to LCRA/Austin, based on the best information available to them at this time, that competitive access for FPP should be effectively preserved under the Settlement Agreement, dated September 25, 1995, as amended on November 18, 1995, between Applicants and the Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company ("BNSF"), assuming that BNSF is truly able to operate efficiently and economically over the trackage rights lines in providing service to FPP.

However, LCRA/Austin continue to have more general concerns regarding the overall anti-competitive effects of the proposed UP/SP merger. The Comments of the Western Coal Traffic League on the Proposed Merger ("WCTL"), filed on March 29, 1996, address these concerns and LCRA/Austin adopt and support WCTL's positions as set forth in those Comments.

Respectfully submitted,

THE LOWER COLORADO RIVER AUTHORITY
AND THE CITY OF AUSTIN, TEXAS

C. Michael Loftus

By: C. Michael Loftus
Donald G. Avery
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Attorneys for the Lower
Colorado River Authority
and the City of Austin, Texas

OF COUNSEL:

Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

Dated: March 29, 1996

CERTIFICATE OF SERVICE

I certify that I have this 29th day of March, 1996, served copies of the foregoing Statement of the Lower Colorado River Authority and the City of Austin, Texas Regarding the Proposed UP/SP Merger by hand upon Applicants' counsel:

Arvid E. Roach II, Esq.
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20044

Paul A. Cunningham, Esq.
Harkins Cunningham
1300 Nineteenth Street, N.W.
Washington, D.C. 20036

and by hand upon:

Michael D. Billiel, Esq.
Joan S. Huggler, Esq.
U.S. Department of Justice
Antitrust Division, Suite 500
325 Seventh Street, N.W.
Washington, D.C. 20530

I further certify that copies of the foregoing document were served by first class mail, postage prepaid on:

The Honorable Federico Pena
Secretary
U.S. Department of Transportation
400 7th Street, S.W., Suite 10200
Washington, D.C. 20590

The Honorable Janet Reno
Attorney General of the United States
U.S. Department of Justice
10th & Constitution Ave., N.W., Room 4400
Washington, D.C. 20530

and upon all other parties of record in Finance Docket No. 32760.

Patricia E. Kolesar
Patricia E. Kolesar

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Item No.

Page Count 23

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Hadermacher, Whiteside & Associates
Transportation & Marketing Consultants

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March 28, 1995

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
12th & Constitution Avenue N.W.
Washington, D.C. 20423

Re: Finance Docket No. 32760, *Union Pacific Corporation, et al -- Control and Merger – Southern Pacific Rail Corporation, et al*

Dear Sir:

Enclosed please find the original and 20 copies of the Montana Wheat And Barley Committee Request for Conditions, Protest and Comments in the above-styled proceeding. I am also enclosing a diskette on which are copied this pleading in Word Perfect 5.1 format.

Please receipt duplicate copy of this transmittal and return to address below in the SASE.

Sincerely,

Terry Whiteside

Terry Whiteside, Registered Practitioner

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3203 Third Avenue North, Suite 301
Billings, Montana 59101
Phone: (406) 245-5132
FAX: (406) 252-3778

MWBC - 4

Before The
Surface Transportation Board

Finance Docket No. 32760

Union Pacific Corporation, Union Pacific Railroad Company,
and Missouri Pacific Railroad Company
-Control and Merger-
Southern Pacific Rail Corporation, Southern Pacific Transportation Company,
St. Louis Southwestern Railway Company, SPCSL Corporation.,
and The Denver Rio Grande Western Railroad Company

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Request for Conditions,
and
Comments

submitted on behalf of
the
Montana Wheat and Barley Committee

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Montana Wheat and Barley Committee, (MWBC) pursuant to the procedural schedule adopted by the Interstate Commerce Commission and thereafter by the Surface Transportation Board in this proceeding, and the Commission's regulations, hereby submits the following evidence and argument in support of (1) the specific protective conditions MWBC has requested the Commission place on its approval of the Railroad Control and Merger Application ("Application") submitted by Union Pacific Corporation (UP) et al, and Southern Pacific Rail Corporation (SP) et al.(Applicant); and (2) MWBC's Comment on the Application.

applicable to the Commission's consideration of this question; and the reasons why the Commission must eliminate those adverse effects.

(3) Section 3, "Relief Requested," pursuant to 49 U.S.C. § 11344 (c), the Board's regulations at 49 C.F.R. 1180, the procedural orders issued in this docket by the Board, and decisions of the Commission applying its authority to condition its approval of rail mergers, MWBC requests that, if the Board approves the merger that is the subject of the Application in this docket, such approval be expressly subject to the following conditions in order to eliminate the adverse effect of this proposed merger upon the transportation of goods from Montana.

1. The establishment of a UP Interchange to interchange all traffic designated in the Pre-Merger agreement, as amended therein, including the right by UP, to solicit movement and price competitively, at the Silver Bow, MT gateway, a shipping point located on the UP railroad. This UP interchange will be in addition to the proposed gateway in Portland, OR which is outlined in the Pre-Merger Agreement filed within the Application. This request for condition will not require additional connections, crossings or related rail facilities to facilitate the exercise and use of this interchange.

2. In the alternative, MWBC seeks the sale of the line between Pocatello, ID and Silver Bow, MT to Montana Rail Link (MRL) together with the granting of a proportional rate agreement similar to the agreement between UPSP and BNSF for all traffic moving over Silver Bow, MT from all Montana origins to Portland, OR and points south of Portland, OR.

3. Modification of the Pre-Merger Agreement, and the trackage rights contained therein, to allow UP access to solicit, competitively price and move traffic, under the pre-merger proportional agreement, made up of all commodities whose shipments originate in Montana, not just a limited number of commodities.

newly-formed system. This allowance of UP into the Montana market, albeit limited, directly affects the agricultural shippers of the state of Montana and demands that this Board hear their concerns and consider their REQUEST FOR CONDITIONS in the deliberation of this, the last of the great western railroad mergers in the West.

Montana's Economy Is Founded on Base Industries

The history of Montana's transportation system and infrastructure development, mirrors changing demand for Montana's products. When Montana was settled, the Northern Pacific Railroad (NP) was constructed through the southern part of the state, utilizing land grants provided by the Federal and State governments. A second transcontinental railroad was constructed through the Northern part of the state, and was known as the "high line," namely the Great Northern Railway Company (GN). Finally, a third major transcontinental line was built through the state in the 1930's and 1940's, the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (MILW). The Union Pacific, trying to tap into the riches of the Butte/Anaconda, MT mining region extended their line from Idaho Falls, ID (located north of Pocatello, ID) into Silver Bow, MT, thus providing very limited competition for products of Montana that needed a north-south transportation haul.

The major railroads in Montana, during the first half of this century, provided transportation to move the bulk commodities from Montana to markets located in the east, where the population centers were located. So there was a predominant movement to the east for Montana goods. Today, however, with the major development of overseas markets, over the last 30 years, causes virtually all Montana wheat to move to the Pacific Northwest Coast (PNW), i.e. in a westerly direction and into international commerce to fulfill the growing demands for export wheat in the Pacific Rim markets. Montana's barley market is characterized by both domestic rail and export rail movements.

In 1970, the Interstate Commerce Commission (ICC), after many years of deliberation and on again/off again starts, finally approved the merging of the Northern

Modification of the Pre-Merger Agreement, and the trackage rights contained therein, to allow UP access to solicit and move traffic, under the Pre-Merger proportional agreement, to Portland and points south of Portland, OR would provide real and effective competition. This Board must consider the real and actual movement of rail transported commodities from Montana.

The conditions sought by MWBC are reasonable and necessary to ameliorate the competitive harm to the transportation users of the Montana. As will be demonstrated, approval of this merger, as proposed, will result in the segregation of areas and commodities in Montana from access to competitive rail under this Pre-Merger agreement. Consequently, any conditions that merely allow only part of Montana's commodities access to the proportional rate structures will not preserve competition and will create competitive damage to Montana farm producers. It will have the effect of further stratifying and isolating Montana shippers from traditional markets while positioning their competitors, in Washington and Oregon, with unfettered access to compete.

OUTLINE OF INDUSTRY IN MONTANA

1. The wheat industry in Montana is characterized by an export-dominant rail movement.
2. The barley industry in Montana is characterized by both an export and domestic market dominated by rail.

MONTANA WHEAT RATES HAVE BEEN JUDGED 'MARKET DOMINANT'

In 1980, under Section 229 of the Staggers Rail Act, the State of Montana together with a number of farm producers, including the MWBC, filed what has now become known as the 'McCarty Farm' case (ICC Docket No. 37809). The allegation that the rates on Montana grain were too high has resulted in the ICC declaring that the whole state of Montana grain rail rate structures are too high and that the BN railroad is a 'market dominant' railroad and further, all grain shippers in the state of Montana are 'captive.' This complaint action, by the Montana producers, has cost the producers and the State over $2.5 million in out-of-pocket costs for economic modeling, and that figure doesn't include any attorney costs. The case is still being progressed at the STB as the for its wheat traffic going to the same destination - Portland, but in Montana the BN has no competition on its shipments from Montana to Portland, OR.

The cruel fact is that Billings, MT is only 992 miles from Portland and yet the cost of a carload of wheat is $128 higher from Billings than from Alliance, NE (1,471.5 miles) while the distance is 48% shorter. The trains, from Alliance or Sidney, ultimately, passes through Billings on its way to Portland after traveling 40+% of the miles to its destination. This is modern, 1996-style, rate discrimination that has gone on for many decades.

SECTION 2 - SUMMARY OF EVIDENCE AND ARGUMENT

III. THE INTERSTATE COMMERCE ACT, AS AMENDED BY INTERSTATE COMMERCE TERMINATION ACT AND THE STAGGERS ACT, REQUIRES THE SURFACE TRANSPORTATION BOARD TO BROADLY IDENTIFY POTENTIALLY HARMFUL COMPETITIVE EFFECTS OF A PROPOSED MERGER AND TO MITIGATE THOSE EFFECTS WHEREVER POSSIBLE

Under Section 11343 of the IC Act, a consolidation or merger of two carriers may be carried out only with the approval and authorization of the Board. 49 U.S.C. § 11343 (a). The agency must carefully and broadly consider the potential adverse effects on competition among rail carriers in an affected region. Where a proposed merger results in harmful competitive effects, the Board must impose conditions on the merger to eliminate those effects, as long as the conditions are operationally feasible and will produce benefits which are of greater benefit to the public than they are detrimental to the transaction.

A. The Statutory Standard

The Interstate Commerce Act, in 49 U.S.C. § 11344 (b)(1), requires the Commission to consider, in a proceeding involving the merger of two or more Class I railroads, at least the following:

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 that result from the proposed transaction.

B. <u>The Board Must Identify Potentially Harmful Competitive Effects and Mitigate Those Effects Wherever Possible</u>

The Commission at 363 I.C.C. 786-87 stated that in rail merger consideration of anti-competitive effects, "we are necessarily also concerned about any significant 'lessening' or 'reduction' in competition caused by a consolidation."

In 49 C.F.R. § 1180.1(c), the Board's policy statement on major rail mergers states that: "...In some markets the Commission's focus will be only preservation of effective intermodal competition, while in other markets (such as long-haul movements of bulk commodities) effective intramodal competition may also be important."

C. <u>The ICC's (now STB's) case law is clear that, in examining a proposed transaction, the Commission must look at specific instances where a lessening or reduction in competition is alleged to take place</u>

The Board must broadly consider all types of restrictions on competition, including direct preclusion of competitive transportation alternatives, as a result of the merger, as well as, indirect effects such as the lessening of source competition or the possibility of traffic diversion from and foreclosure of "upstream" competitors.

D. <u>The Board's power to condition a Proposed Merger in order to eliminate anti-competitive effects is broad, especially where protection of the public from anti-competitive effects of the Proposed Merger is concerned</u>

The Board's power to attach conditions to its approval of a major rail merger is, under the statute, unqualified, and the Commission has indicated that it considers its authority as 'broad.' *UP/MP*, 366 I.C.C. 462, 562. The Commission has generally issued conditions to protect the interests of the competing carrier and to protect the public from anti-competitive consequences. *UP/MP*, 366 I.C.C. 462, 562.

C. The Pre-Merger Agreement Will Alter Traditional Cross-Country Relationships in Montana Between Grain Elevators

This merger and its provision in the Pre-Merger agreement would alter the present competitive situations in areas like Montana, such that cross-country differential relationships will be altered. Within the state of Montana, all of the wheat traditionally is marketed to the west or south. Grain from North Dakota, to the east of Montana, moves predominantly east to the Minneapolis and Great Lakes markets. Grain from Montana moves west to the Pacific Northwest Markets. Because traditional marketing areas east of a Billings-Havre, MT line will not be included in the Pre-Merger proportional rate agreement, the potential exists for significant anti-competitive effects on the farm producers of Eastern Montana. This Pre-Merger agreement selectively cuts Montana in half. The Application makes no attempt to analyze the anti-competitive effects of this merger on particular shipping locations in Montana east of the Billings-Havre, MT line.

Approximately 45% of Montana's grain is grown in the area east of the Billings-Havre line or about 86,492,140 bushels, the contiguous Montana area which is excluded from the Pre-Merger Agreement.

The granting of the proportional rate access to UP/SP by BNSF over the northern part of its system appears to be a payback to Applicants for the granting of extensive trackage rights in the Central Western U.S. to BNSF. The establishment of an arbitrary 'west of Billings-Havre line;' inclusion, effectively cuts the eastern half of Montana out of consideration of these conditions, a territory that is integrally and economically tied to the rest of Montana.

D. The Proposed Trackage Rights Agreement (Pre-Merger Agreement) Will Not Provide Sufficient Competition and Did Not Seek Shipper Involvement In The Process of Selection of Carriers

The selection by UP/SP of the BNSF to provide 'competition' and 'competitive balance' to overcome the massive anti-competitive aspects of this proposed rail merger creates great concern here in Montana. After the UP merged with the Chicago and Northwestern last year, the decline in service levels on the newly merged railroad has

In short, the Applicants have provided this Board with virtually no means by which to develop competitive alternatives to the two major carriers that will exist in the West, if this merger is approved. Surely, a better way exists to encourage and foster competitive rail in the West. We, in Montana, know first hand, the effects of losing competitive transcontinental rail and facing no intra-modal competition.

V. EVIDENCE REGARDING THE ANTI-COMPETITIVE IMPACT OF THE MERGER ON MONTANA

A. The Merger of the UP and SP Will Eliminate Competitive Rail Transportation Alternatives From About ½ of Montana's Origins

The ability of a shipper to obtain competitive rail access from its origin, despite being captive at origin, is a recognized competitive advantage to the shipper. Especially, when compared to, a situation in which the shipper is served by a single carrier, origin to destination, but conceivably has access to other origin carriers through joint line movement (or proportional rates) with carriers. In the latter case, the carrier with single line access will have the economic incentive to keep traffic on its own lines, and a corresponding disincentive to enter into joint line movements, thus limiting the shippers alternative to origins served only by the single-line carrier. For those Montana shippers located east of the Billings-Havre arbitrary line, they will not have access to proportional rate structure proffered in the Pre-Merger agreement.

The effect of the Pre-Merger proportional rate agreement disadvantages Montana producers when compared with producers located in Western Canada, Washington, Northern Idaho and Oregon. By artificially establishing Portland, OR as the only gateway, the proposed proportional movement will require Montanans to haul 40+% further mileage than is necessary. Montana producers will be effectively embargoed from participating in the markets they traditionally participates and compete in today.

This Board should strongly consider development of both an alternative gateway at Silver Bow, MT to shorten the distances to California and Arizona markets for Montana farm producers and, thus, bring the comparable distances from Washington and Northern addition to the proposed gateway in Portland, OR, which is outlined in the Pre-Merger Agreement filed within the Application. This request for condition will not require additional connections, crossings or related rail facilities to facilitate the exercise and the use of this interchange. The interchange already exists and has been in constant use for many years.

The effect of the inclusion of this additional interchange at Silver Bow, MT in the Pre-Merger Agreement will be to shorten the distance to California markets by 45%! For example, after the proposed merger, the rail distance from Great Falls, MT to Los Angeles via the Portland Gateway outlined in the Pre-Merger Agreement will be 1,955.3 miles (using mileage numbers supplied by UP, reflecting post-merger operations). However, with the establishment of the Silver Bow, MT gateway, the rail distance from Great Falls, MT to Los Angeles will be <u>reduced by 604.8 miles</u> to 1,350.5 miles, a savings of 45%! Likewise, the distance from Billings, MT to San Francisco over the Portland, OR gateway will be 2,098.3 miles and via the Silver Bow, MT gateway 1,493.5 miles. The mileage over <u>Portland Gateway is 40.5% further than over the proposed Silver Bow, MT gateway</u>!

In the alternative, MWBC requests the Commission require that requested conditions and responsive/inconsistent application filed by Montana Rail Link (MRL) be approved and that portions of the Pre-Merger agreement applying proportional rate agreements to UP/SP in Montana including the proposed protective conditions outlined herein (including the Silver Bow, MT gateway), be similarly applied to MRL in Montana.

Only by establishing the Silver Bow, MT gateway in addition to the Portland, OR gateway in the Pre-Merger agreement will some of the anti-competitive effects of this agreement and the proposed merger on Montana transportation users, be remedied by preserving the competitive benefits, albeit limited. <u>To not grant the Silver Bow, MT gateway</u>, the Board is <u>penalizing Montana transportation shipper's access to markets</u> in the Southwest and Central West by adding an additional 40+% rail mileage to the haul. This will have the effect of disadvantaging Montana shippers against competitive shippers in Washington, Idaho, and Oregon.

and upgrades without the potential or eventual threat of abandonment. MWBC seeks, from this Board, the continuing oversight of this merger for 20 years, to insure that the above line guarantee is honored, and the competitive position , albeit limited, of the UP is adequately maintained in Montana. In the alternative, MWBC seeks the sale of the line between Pocatello, ID and Silver Bow, MT to Montana Rail Link (MRL) together with the granting of a proportional rate agreement similar to the agreement between UPSP and BNSF for all traffic moving over Silver Bow, MT gateway from all Montana origins.

In the event, that UP/SP do not want or intend to give long term assurance to continued service, and thus the limited competition such access provides, then the Board must consider with favor, all other applications to acquire the Silver Bow to Pocatello line.

D. Modification of the Pre-Merger Agreement to Allow the Portland, OR Gateway to Be Utilized for Competitively Priced Traffic Destined for Portland, OR as Well as Points Beyond Portland Will Ameliorate The Anti-competitive Effects of This Pre-Merger Agreement

As stated above, but most important - This Board should grant a modification of the Pre-Merger agreement to allow Montana producers to utilize the Portland, OR gateway, giving the ability to the Applicant to competitively solicit for wheat and other grains, destined to Portland, OR itself. This would potentially offset the anti-competitive effects of the Pre-Merger agreement that requires use of the longer Portland, OR gateway by allowing Montana farm producers to have access to local markets with potentially competitive priced rail. Over 94% of Montana's wheat movement moves to the west, therefore a grant of utilization of the Portland, OR gateway for Portland, OR destined traffic as well as traffic beyond, would go a long way to solving the potential anti-competitive effects of this Pre-Merger Agreement and indeed the merger itself.

E. The Conditions Sought are Operationally Feasible and Desirable

The conditions sought by MWBC are clearly operationally feasible and could be implemented by requiring relatively little or no change to operations contemplated by UP/SP. The station of Silver Bow is presently served by the Union Pacific on a routine

MWBC has determined that it is necessary and required that it file this, its Request for Protective Conditions to accomplish the necessary protection of the Montana shippers interests.

Accordingly, based upon the Interstate Commerce Act and the Board's Railroad Consolidation Procedures, it is clear that a non-railroad party need not file a responsive application in order to request trackage rights or protective conditions.

SECTION 3 - RELIEF REQUESTED

VIII. THE BOARD MUST REQUIRE APPLICANTS TO AMEND THEIR PRE-MERGER AGREEMENT WITH BNSF TO ESTABLISH AND PERMIT SILVER BOW, MT TO BE ADDED AS AN ADDITIONAL GATEWAY FOR TRAFFIC SOLICITATION BY THE MERGED CARRIER FROM ALL POINTS IN MONTANA, COVERING ALL COMMODITES. THE BOARD MUST ALSO GRANT MONTANA PRODUCERS ACCESS TO PORTLAND, OR IN THE PRE-MERGER AGREEMENT AND PROTECT THE INTEGRITY OF THE SILVER BOW, MT LINE

MWBC herein requests.

1. The establishment of a UP Interchange to interchange all traffic designated in the Pre-Merger agreement, as amended therein, including the right by UP, to solicit movement and price competitively, at the Silver Bow, MT gateway, a shipping point located on the UP railroad. This UP interchange will be in addition to the proposed gateway in Portland, OR which is outlined in the Pre-Merger Agreement filed within the Application. This request for condition will not require additional connections, crossings or related rail facilities to facilitate the exercise and use of this interchange.

2. In the alternative, MWBC seeks the sale of the line between Pocatello, ID and Silver Bow, MT to Montana Rail Link (MRL) together with the granting of a proportional rate agreement similar to the agreement between UPSP and BNSF for all traffic moving over Silver Bow, MT from all Montana origins to Portland, OR and points south of Portland, OR.

3. Modification of the Pre-Merger Agreement, and the trackage rights contained therein, to allow UP access to solicit, competitively price and move traffic, under the pre-merger proportional agreement, made up of all commodities whose shipments originate in Montana, not just a limited number of commodities.

4. Modification of the Pre-Merger Agreement, and the trackage rights contained therein, to allow UP access to solicit, competitively price and move traffic, under the pre-merger proportional agreement, from all points in Montana, not just the western half of the state.

5. MWBC further seeks, from this Board, the modification of the Pre-Merger agreement to allow the Applicant to solicit and price competitively agricultural commodities to Portland, OR as well as points south of Portland.

6. For all conditions, herein requested, the merged carrier must guarantee service intentions on the line from Pocatello, ID to Silver Bow, MT for a period of 20 years.

Respectfully submitted,

Terry C. Whiteside

Terry C. Whiteside
Registered Practitioner
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Billings, MT 59101
Phone: (406) 245-5132
for Montana Wheat and Barley Committee

Certificate of Service

I HEREBY CERTIFY that a copy of the foregoing REQUEST FOR CONDITIONS AND COMMENTS has been served upon all parties of record, as amended, by U.S. mail, postage prepaid, this 28th day of May, 1996.

Susie Sprague

Susie Sprague

basis. Consequently, little or no operational changes should be required to effectuate the requested conditions.

As discussed previously, the proposed Responsive Application by Montana Rail Link could provide an alternative means, by which the competitive harm to MWBC and the Montana transportation users, caused by this merger, as proposed, could be alleviated or minimized, albeit only partially.

F. The Proposed Conditions Will Produce Substantial Public Benefits Outweighing Their Effect on the Merger

Clearly, the proposed conditions will produce substantial public benefits outweighing any detrimental effect on the merging carriers. The rail transportation policy of the Board indicates that competition, not regulation, should be the touchstone of the Board's regulatory approach. e.g. 49 U.S.C. § 10101a(1). Montana shippers of grain have already been judged by the Commission as being captive and in a 'market dominant' position, in which direct rate regulation is the only alternative, *McCarty Farms Case*, Docket Nos. 37809, 37809 (Sub-No. 1). Here, with the UP being the last vestige of intra-modal competition, imposition of the requested condition will permit, limited but viable competition, to offset the gains made by other shippers in the Pacific Northwest under this Application.

VII. A RESPONSIVE APPLICATION IS NOT REQUIRED IN ORDER FOR A NON-RAILROAD TO SEEK A TRACKAGE RIGHTS CONDITION

Under the Board's *Railroad Consolidation Procedures* (49 C.F.R. 1180), a request for trackage rights may be properly maintained as a request for protective conditions and need not be asserted in a responsive application. The procedure for filing responsive applications applies only to railroads and not to shippers or members of the general public who may comment or seek protective conditions as a result of a proposed merger.

B. The Establishment of the Right Under the Proportional Rate Calculation Outlined in the Pre-Merger Agreement to Solicit all Agricultural Commodities Located in Montana Including all Grains

In this proceeding, MWBC requests that the Board condition its approval of the merger of the UP and SP on the establishment of the right of the selected carrier to solicit and competitively price, all commodities located in Montana including all grains. To arbitrarily limited the type of commodities that can be subject to the proportional solicitation will disrupt tradition and established movement patterns.

Modification of the Pre-Merger Agreement, and the trackage rights contained therein, to allow UP access to solicit and move traffic, under the pre-merger proportional agreement, to Portland, OR and all points south thereof will provide real and meaningful competition. To provide real and effective competition, this Board must consider the real movement of rail transported commodities from Montana.

C. In this proceeding, MWBC Requests that the Board Condition its Approval of the Merger of the UP and SP on the Establishment of Continued Oversight of the Last Vestiges of Intramodal Competition in Montana by Maintaining Oversight of the Merger for the Next 20 Years or, in the Alternative, MWBC Seeks the Sale of the Line between Pocatello, ID and Silver Bow, MT to Montana Rail Link (MRL) Together with the Granting of a Proportional Rate Agreement Similar to the Agreement between UPSP and BNSF for all Traffic Moving over Silver Bow, MT from all Montana origins

The Commission in the *Northern Lines Merger*, 331 I. C. C. 228 was concerned enough with anti-competitive effects of this parallel merger that it held it should "retain jurisdiction over these proceedings for a like period of 5 years ..." 331 I.C.C. 288. The reality was that 5 years was insufficient! The Milwaukee Road failed in 1978, eight years after the merger and three years after the Commission gave up jurisdiction over the Northern Lines Merger of 1970. The Commission granted protections to Milwaukee Road to protect it from the anti-competitive effects of the merger and to provide competitive balance for this basic parallel railroad merger.

The maintenance of limited competitive balance requires and necessitates, in this merger, the assurance of guaranteed continuation of service with on-going maintenance

Idaho in line compared with this out-of-route hauling procedure suggested by Applicants in their Pre-Merger Agreement.

This Board should also grant a modification, of the Pre-Merger agreement, to allow Montana producers to utilize the Portland, OR gateway proportional rate solicitations by Applicant for wheat destined to Portland, OR itself through the issuance of trackage rights from Montana origins to Portland, OR on the UP. This would potentially offset the anti-competitive effects of the Pre-Merger agreement requiring use of the longer Portland, OR gateway by allowing Montana farm producers to have access to local markets with potentially competitive rail. The UP/SP should be allowed to competitively price to Portland, over this gateway. Over 94% of Montana's wheat movement moves to the west, therefore a grant of utilization of the Portland, OR gateway for Portland, OR destined traffic as well as traffic beyond, would go a long way to solving the potential anti-competitive effects of this Pre-Merger Agreement and indeed the merger itself.

VI. EVIDENCE SUPPORTING MWBC'S SPECIFIC REQUEST FOR CONDITIONS

In its past decisions on merger and control applications, the Commission has stated that a party seeking protected conditions on a proposed merger must show:

1. that the requested conditions are operationally feasible
2. that the requested conditions ameliorate or eliminate the harm threatened by the transaction, and
3. that they *(the protective conditions)* are of greater benefits to the public than they are detrimental to the transaction. (emphasis added) *UP/MP*, 366 I.C.C. 462, 564.

The conditions sought by MWBC clearly meet this criteria.

A. The Establishment of a UP Interchange at Silver Bow, MT in the Pre-Merger Agreement is Necessary and Appropriate to Ameliorate the Competitive Harm

In this proceeding, MWBC requests that the Board condition its approval of the merger of the UP and SP on the establishment of a UP Interchange to interchange all traffic designated in the Pre-Merger agreement, as amended therein, at the Silver Bow, MT gateway, a shipping point located on the UP railroad. This UP interchange will be in become legend in their own time. MWBC is advised the UP/SP did not consult with shippers in Montana, Montana State Government, or according to news reports, other shippers or railroads either, prior to selecting the BNSF as its competitor through the use of trackage rights. Selection of alternative competitive carriers, by affected shippers, would most certainly result in selection of carriers to best meet the needs of affected shippers, and service levels equal to greater than that proposed by UP/SP in this merger proposal.

The selection, by the merging railroads, of its future competitor on its merged system, by granting trackage rights to a single railroad, thereby closing out any other viable options, by affected shippers, does not, on-the-surface, serve the public interest. It is this Board's responsibility to analyze and solicit alternatives to the anti-competitive effects of this proposed merger.

The second consequence of the UP/SP action in selecting BNSF, is to make it difficult on shippers to suggest and support alternative proposals to overcome the anti-competitive effects of this merger. Shippers, large and small, are concerned with railroad reprisals from the UP/SP and BNSF, if they publicly support alternative proposals that are not ultimately accepted by this Board. Therefore, the effect of the pre-merger agreement is to stifle creative shipper-based solutions designed to combat the anti-competitive effects of this, the largest of parallel railroad merger in U.S. history. Never, in the history of the Commission, has a major parallel railroad merger not been conditioned by establishment of one or more major intramodal competitors to provide competitive balance to the anti-competitive aspects of a parallel merger.

In fact, the selection of the BNSF as the only future competitor to the newly formed UP/SP, did not allow other smaller railroads a chance to develop proposals. It is widely reported that many smaller railroads had made proposals to the UP while negotiations were being conducted by the UP with the BN. Alas, to no avail. In this modern day of shortline railroads, it is incumbent upon the Board to provide competitive alternatives to the 'Big Two' railroads who will control the west.

IV. THE PRE-MERGER AGREEMENT FILED AS PART OF THE APPLICATION CREATES ANTI-COMPETITIVE EFFECTS ON MONTANA TRANSPORTATION SHIPPERS

A. Grain Is a Unique and Important Commodity on the Merging Carriers

The transportation of grain by rail is among the most lucrative segment of transportation provided by the BNSF, when compared with rates anywhere on their system. The rates charged on the movement of wheat to Portland, OR from Montana are among the highest per ton-mile in the nation. The rail transportation of grain is characterized by many loading points, shipping large volumes of grain in unit trains to a limited number of destinations. This movement, while varying due to supply and demand, occurs each year with consistency. As outlined previously, virtually all of Montana grain shipments move to the west. Less than 4% of the Montana grain shipments moved east by rail in 1995.

Montana grain movement is predominantly westbound and its pricing is controlled by the Portland Grain Exchange pricing.

B. Transportation of Grain From Montana is a Significant Cost to Farm Producers and Montana's Economy.

For the farm producer, the cost of transporting grain can represent as much as one third the overall price received for the grain. The key to understanding the uniqueness of the farm producers plight is to understand: unlike virtually every other industry, the farm producers bear the freight charges and cannot pass them on to any other party in the distribution chain, and yet the farm producer does not physically pay the freight charges.

In Montana, due to the 1970 *Northern Lines Merger* and its anti-competitive effects, Montanan's are faced with no effective rail competition on east-west grain movement.

4) the interest of carriers employees affected by the proposed transaction.

5) whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region.

The statute directs the Board to "approve and authorize a transaction...when it finds the transaction consistent with the public interest." 49 U.S.C. § 11344 (c). The same section also provides that "[t]he Commission may impose conditions governing the transaction." *Id.*

The history of rail mergers that have been approved, show that the anti-competitive effects of mergers have not been adequately addressed and have caused long-lasting hardships on many classes of transportation users. Currently the Board is relying on criteria for imposing conditions to remedy anti-competitive effects as set out in *Union Pacific –Control—Missouri Pacific; Western Pacific*, 366 I.C.C. 462, 562-65 (1982).

The Commission in that decision stated:

- that it would not impose conditions on a railroad consolidation unless it found that the consolidation may produce effects harmful to the public interest (such as a significant reduction of competition in an affected market),
- that the conditions to be imposed will ameliorate or eliminate the harmful effects,
- that the conditions will be operationally feasible, and
- that the conditions will produce public benefits (through reduction or elimination of possible harm) outweighing any reduction to the public benefits produced by the merger.

The Commission, in that same decision, recognized that "the rail transportation policy emphasizes the importance of the relationship between ensuring adequacy of transportation and the retention of competition." *Union Pacific–Control—Missouri Pacific; Western Pacific*, 366 I.C.C. 462, 484 (1982).

complainants are now developing CMP models. The rail rate burden placed upon Montana grain producers by the BN, results in some of the most profitable rail traffic anywhere on the BN system. The reason this excessive rate burden exists is the lack of effective rail competition.

MONTANA RAIL TRANSPORTATION IS PREDOMINATED BY ONE CARRIER

Montana's rail infrastructure is controlled by the Burlington Northern Railroad. That railroad together with, Montana Rail Link (MRL), control over 90% of all rail miles, over 97% of all grain elevator and terminal sites and move 98%+ of all wheat movements from the state. It should be noted that MRL cannot reach any market for Montana grain without BN participation; thus BN controls and dictates the rail rates in nearly all movements from Montana eastbound or westbound. The BN charges more from Montana points today (where it has no competition) to Portland, than it does from western and central Nebraska points (where it does have competition) to the same destination - Portland, OR even though the Nebraska points are 25-40% greater in distance than Montana origins. Annually, the Montana producers move about 100 million+ bushel of farm grain production that is handled by rail from Montana and bear about $150+ million in freight transportation charges per year.

Montana grain rail rates are the highest in the nation. The ICC recognized this fact 10 years ago. Montana grain shippers have been judged as "captive" and the Burlington Northern Railroad has been judged as a 'market dominant' railroad in its movement of grain traffic from Montana. The grain rate disparity, between those growing areas where there is rail-to-rail competition, such as Nebraska origins, and those growing areas where there is no rail-to-rail competition, such as Montana, is continuing to widen.

From Plentywood, Montana to Portland, Oregon, it is 1,203 miles on the BN. From Nebraska origins, e. g. Alliance and Sidney, Nebraska to Portland, it is 1,471 and 1,535 miles, respectively, on the BN. To ship a carload of wheat from Plentywood to Portland, is $888 more than to ship a carload of wheat from Alliance, NE *even though Alliance is 268 miles further from Portland than is Plentywood*, and even though the trains from Alliance pass right through Montana on there way to Portland. Why? In Central Nebraska, e. g. Alliance and Sidney, NE, the BN has rail competition from the UP

Pacific, the Great Northern, and the Chicago, Burlington and Quincy into what is known today as the Burlington Northern Railroad.

The ICC in its decision in the *Northern Lines case*, 331 ICC 228, thought the Milwaukee Road and Union Pacific would provide responsible competitive balance for the state of Montana transportation users for many years to come. However, the Union Pacific could only offer limited competitive influence and the Milwaukee Road filed for bankruptcy in 1978. Subsequently, it abandoned all of its lines in Montana and ceased to exist in Montana in 1981.

Today, in Montana, we have one major railroad, the Burlington Northern Railroad, operating as a monopoly in the transportation of bulk commodities from the farm to market, a situation the Commission has deemed a 'market dominant' transportation condition in the *McCarty Farms Case*, Docket Nos. 37809, 37809 (Sub-No.1). The farm producers of this State together with Montana State Government have spent over 15 years at the Commission attempting to get the excessive rate levels extracted by the BN from the Montana producers, adjudicated by this Commission, (now Board). To date, this Board has yet to complete the case.

Montana is a landlocked state, with no direct access to waterborne transportation. Other than rail, Montana products must travel by motor carrier, which, for most bulk commodities, is prohibitively expensive and not practical for the large tonnage involved.

In fact, in 1994, just over 90% of the wheat produced in Montana moved out of state with over 94% of that wheat moving west. Over 88% of Montana wheat was exported at the coast through Portland, (in excess of 100,000,000 bushels), with over 95% moving via rail (BN) *(Source: Montana Grain Movement Report)*. Montana is a large producer of grains. Montana ranks 3rd in all wheat production, 7th in winter wheat production, 4th in durum wheat production, 2nd in spring wheat production, 3rd in barley production, and 15th in oats production in the U.S *(Source: Montana Agricultural Statistics Service - 1994)*. Montana farm producers bear over $150 million/year in transport costs.

4. Modification of the Pre-Merger Agreement, and the trackage rights contained therein, to allow UP access to solicit, competitively price and move traffic, under the pre-merger proportional agreement, from all points in Montana, not just the western half of the state.

5. MWBC further seeks, from this Board, the modification of the Pre-Merger agreement to allow the Applicant to solicit and price competitively agricultural commodities to Portland, OR as well as points south of Portland.

6. For all conditions, herein requested, the merged carrier must guarantee service intentions on the line from Pocatello, ID to Silver Bow, MT for a period of 20 years.

SECTION 1 - STATEMENT OF FACTS

II. STATEMENT OF FACTS

The Montana Transportation Environment Has Eroded from Three TransContinental Railroads to One

The Montana transportation environment and infrastructure, has changed from multiple transcontinental railroads to one railroad to handle its outbound bulk traffic, all with regulatory concurrence by the former Interstate Commerce Commission. Montana's primary transportation movements are bulk materials requiring movement to domestic and foreign destinations. Timely, economical movement depends on having essential transportation facilities adequately available to move, with dispatch, the goods of commerce from Montana. Yet, with the concurrence of the Commission, the Burlington Northern was created and allowed to dominate the Montana transportation market place.

Now, this Board is faced with creating the largest railroad in history with tremendous anti-competitive effects. The Applicant has even suggested that this Board consider amelioration of the anti-competitive effects by allowing the Applicant access to Pacific Northwest (PNW) origins through proportional rate agreements in exchange for granting to the BNSF, massive amounts of trackage rights throughout the Applicants

1. INTRODUCTION AND SUMMARY OF RELIEF REQUESTED

MWBC represents the wheat and barley producers of the state of Montana. Montana is a natural resources state with the main economies built upon products of the mine, lumber and agriculture as well as tourism. In order for our bulk products of the mine, lumber and agriculture to have value, they require bulk transportation (rail) to points outside Montana and, in many cases, outside the U.S.

The proposed merger and consolidation of the Union Pacific and Southern Pacific will further exacerbate the captive shipper status of Montana farm producers.

There will be serious detrimental adverse effects on existing competition among rail carriers who serve Montana if this Application is not conditioned by this Board to ameliorate the anti-competitive effects. Specifically, the Pre-Merger agreement filed with this application could alter long standing regional cross-country competitive relationships between Montana and surrounding states as well as Western Canada, thus further increasing the monopolistic control of the Burlington Northern (BN) over Montana transportation. Accordingly, MWBC respectfully requests the Board, pursuant to its authority under 49 U.S.C. § 11344 (c) of the Interstate Commerce Act, impose conditions requiring the Applicants, upon consummation of their proposed merger and consolidation, to establish and maintain a rail competitive balance within the State of Montana. Those requested conditions, and the reasons why such conditions must be imposed, are specified in detail in this submittal.

A. <u>Outline of MWBC's Submittal</u>

This Request for Conditions and Comment is divided into three Sections:

(1) Section 1 - entitled "Statement of Fact"

(2) Section 2, entitled "Summary of Evidence and Argument," generally summarizes the facts relating to transportation in Montana; the adverse effect on competition that will be caused by this merger; the legal standards

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santo

The Chemical Group
800 N. Lindbergh Boulevard
St. Louis, Missouri 63167
Phone: (314) 694-1000

March 26, 1996

RECEIVED MAR 29 1996 MAIL MANAGEMENT I.C.C.

Ms. Linda J. Morgan, Chair
Surface Transportation Board
Department of Transportation
1201 Constitution Ave., Room 4126
Washington, D.C. 20423

ENTERED
Office of the Secretary
MAR 29 1996
8 Part of Public Record

Mr. Vernon A. Williams, Secretary
Surface Transportation Board
12th and Constitution Ave.,N.W.
Washington, D.C. 20423

Re: Finance Docket No. 32760 - UP/SP Merger

Dear Ms. Morgan & Mr. Williams:

This is Monsanto's verified statement submitted because of our concern that the UP/SP merger will significantly reduce rail competition. This statement will identify Monsanto as a rail user, provide the writers credibility to comment, highlight why this merger is important, offer opinions on what is believed to be wrong with the merger, and last of all recommend possible remedies.

Monsanto is a global company producing chemicals, fibers, consumer lawn care products, food additives, agricultural chemicals, agricultural seed, pharmaceutical, and specialty products. Monsanto has production facilities throughout the United States and Ex USA. Domestically we purchase numerous raw materials from vendors numbering in the thousands, and use rail transportation service in all of the continental US states as well as into and out of Canada and Mexico.

My name is David A. Pins. I am Manager Rail Transportation. A Monsanto employee for twenty three (23) years, with experience in all modes of transportation. Prior to employment with Monsanto I was employed with Missouri Pacific Railroad for approximately three (3) years in a Management Trainee and ultimately a sales capacity. I have experience with rail service, operations, and economics prior to and after passage of the Staggers Act of 1980.

The UP/SP merger is important to Monsanto, and the entire shipping public, because it is the "mother of all rail mergers". This isn't the Burlington Northern merging with the SantaFe, or Southern merging with the Norfolk Western, or SCL merging with the CO/BO. The UP/SP merger is essentially parallel track coverage. Currently, Monsanto benefits from competition between UP and SP for our rail movements.

For example, our facility in Luling, Louisiana is served by both the UP and SP for inbound and outbound shipments. We use competitive service and pricing to award business to the carrier who offers the best package for our needs. Vigorous competition between UP and SP results in a competitive, fair economics and customer responsive service to move our raw materials and finished goods to customers. When not satisfied with the economics or service we currently receive from one of these two carriers, we have the ability to switch carriers (or merely threaten to switch carriers) in order to secure improvements. Another example is Monsanto's Chocolate Bayou facility which is captive to the UP; however SP lines are nearby. For shipments out of Chocolate Bayou, we currently can choose to load directly to the UP, or transload by barge to railcar or truck to railcar at nearby SP lines. Competition between UP and SP for these movements prevents monopoly pricing strategies and tactics while assuring competitive service. If the merger is approved by the Surface Transportation Board, Monsanto will lose the benefit of competition between UP and SP, along with a competitive bidding process and the ability to threaten switching carriers.

Monsanto is concerned that the BNSF trackage rights agreement may not cure the lack of competition created if the BNSF chooses not to operate or is slow to startup operations over the trackage rights it stands to gain. The question of dispatching priorities for through train service, crewing issues, or too high of rates for the trackage rights all come together and could result in the BNSF choosing not to exercise its option to operate under the trackage rights. The disadvantaged railroad could fail to quote a transportation price to a prospective shipper. The scenario starts with a shipper calling the tenant railroad for a price and service quote, and the railroad taking an inordinate time to respond. The long response time is a not so subtle way a railroad has of communicating that they just don't want the business. It may be that the BNSF, because of digesting the merger with ATSF, is at risk of not being in a position to pursue business over the trackage rights in question, potentially for a long time to come.

Monsanto urges the Surface Transportation Board to give due diligence to maintaining competition and balance in an industry where large railroads have concentrated monopoly power over huge geographical locations and numerous shippers of varying sizes. Why would a non revenue adequate railroad want to merge with another non-revenue adequate railroad? The reason must be the measure for revenue adequacy cannot be right. I think the Surface Transportation Board, prior to allowing any further reduction in an otherwise minimal head-to-head rail competitive market place, should make a special effort to survey only captive shippers of the subject railroads in order to determine the railroads business practices with these captive shippers. If history shows captive shipper abuse in terms of service or economics it would suggest future railroad behavior. History, if ignored, will repeat itself.

Since the reduction of rail competition beginning in the early 1980's, it has become clear that being captive can lead to higher costs and sometimes worse service. I know of no examples where merging railroads have shared cost reduction efficiencies with captive customers. Although railroads always claim that a merger is the only way to achieve efficiency, that is simply not the case as proven by the "Great Midwest Flood of 1993". Railroads often complain about interchange from one railroad to another. Service at interchange points is always poor, often taking an inordinately long time and sometimes even misroute of the car. During the "Great Flood of 1993" midwest railroads demonstrated what they are capable of doing through unprecedented cooperation in the areas of interchange, crews, equipment, communications, and service in general. There were less service difficulties during this flood than there have been with the merger of the UP/CNW. The 1993 midwest flood validates that bigger is not always better, or the only answer, and that railroad mergers or not the only way to achieve operating efficiencies.

Monsanto supports the following remedies as conditions to be met in order for any further rail mergers to occur:

- Support of the Chemical Manufactures Association comments as they relate to the Louisiana and Texas Gulf Coast area.

- If BNSF fails to exercise its trackage rights within ninety (90) days, from the effective date of granting of the rights, then there should be a track sale of Houston, Tx. to St. Louis, Mo.; Houston, Tx. to Eagle Pass, Tx.; Houston, Tx. to New Orleans, La.

- Track sale should be granted in the Central Corridor between Oakland through Salt Lake City and onto Pueblo, Co. Trackage rights should be granted to shortline and connecting lines along this Corridor route in order to bring head-to-head rail competition to as many shippers as possible.

- ExParte 347 (sub No.2) rate reasonableness for non-coal traffic using simplified methodology, as proposed by several shipper groups and trade associations, should be adopted and made effective by the Surface Transportation Board prior to any granting of track sales, trackage rights, or any additional mergers.

I certify under the penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement on behalf of Monsanto, executed on March 25, 1996.

Sincerely,

David A Pins

David A. Pins
Manager, Rail Transportation

cc: K. J. Wulfert, Monsanto
T. J. Zuerlein, Monsanto
W. D. Lambert, Monsanto
D. A. Samford, Monsanto
G. E. Dewel, Monsanto
G. L. Brasier, Monsanto
T. L. Clark, Monsanto
C. M. McCullough, Monsanto

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Page Count 2

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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY
-- CONTROL AND MERGER --
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP. AND THE DENVER AND
RIO GRANDE WESTERN RAILROAD COMPANY

SECOND ERRATA TO
COMMENTS OF
THE SOCIETY OF THE PLASTICS INDUSTRY, INC.

Verified Statements/Section II	Should Read
V.S.-6 Fred E. Watson, Transp. Supervisor, Phillips Petroleum Company	
Second paragraph, sixth line reads: "more than % higher than the middle of the three bids."	"more than % higher than the lowest of the three bids and more than than % higher than the middle of the three bids."

Respectfully submitted,

Martin W. Bercovici
Douglas J. Behr
Arthur S. Garrett, III
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Attorneys for The Society of the Plastics Industry, Inc.

ENTERED
Office of the Secretary
APR 23 1996
4 Part of Public Record

April 19, 1996

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Errata to Comments of The Society of the Plastics Industry, Inc. was served by first-class mail, postage prepaid, this 19th day of April, 1996, upon all parties of record.

Martin W. Bercovici

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TVA

Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902

Edward S. Christenbury
General Counsel

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March 28, 1996

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
Department of Transportation
1201 Constitution Avenue, NW, Room 2215
Washington, D.C. 20423

Attention: Case Control Branch

Re: Finance Docket No. 32760, *Union Pacific Corp., et al. — Control & Merger — Southern Pacific Rail Corp., et al. — Comments and Request for Conditions*

Dear Secretary Williams:

Enclosed for filing in the above-captioned docket are an original and twenty copies of the Tennessee Valley Authority's (TVA) comments and request for conditions with respect to the subject proposed merger (TVA-2). Also enclosed is a 3.5-inch disk containing the text of this filing in Word Perfect 5.1 format. Should you have any questions, please do not hesitate to contact the undersigned.

Respectfully submitted,

Charles G. Young

for Edward S. Christenbury

Enclosures
cc: See page 2

cc (Enclosure):

Arvid E. Roach, II, Esq.
Covington & Burling
1201 Pennsylvania Avenue, NW
P.O. Box 7566
Washington, D.C. 20044

The Honorable Jerome Nelson
Administrative Law Judge
Federal Energy Regulatory
Commission
825 North Capitol Street, NE
Washington, D.C. 20426

Paul A. Cunningham, Esq.
Harkins Cunningham
1300 Nineteenth Street, NW
Washington, D.C. 20036

Parties of Record

TVA-2

BEFORE THE
SURFACE TRANSPORTATION BOARD
DEPARTMENT OF TRANSPORTATION

RECEIVED MAR 29 1996 MAIL MANAGEMENT I.C.C.

Finance Docket No. 32760

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY

---Control and Merger---

SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, SPCSL CORP. AND THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

COMMENTS AND REQUEST FOR CONDITIONS OF:

TENNESSEE VALLEY AUTHORITY
400 West Summit Hill Drive
Knoxville, Tennessee 37902

ENTERED
Office of the Secretary
MAR 29 1996
8 Part of Public Record

Edward S. Christenbury
General Counsel

Charles L. Young
Senior Attorney

Tennessee Valley Authority
400 West Summit Hill Drive
Knoxville, Tennessee 37902
Telephone No. 423-632-7304
Facsimile No. 423-632-2422

Attorneys for Tennessee Valley Authority

Dated: March 28, 1996

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

COMMENTS AND REQUEST FOR CONDITIONS OF THE TENNESSEE VALLEY AUTHORITY

Pursuant to the procedural schedule issued by the Interstate Commerce Commission ("ICC")[1] in Decision No. 6[2] and the procedural regulations contained at 49 C.F.R. § 1180.4(d), all interested parties who wish to file written comments and requests for conditions must do so by March 29, 1996. The Tennessee Valley Authority ("TVA") provides the following comments and request for conditions to all parties of record.

COMMENTING PARTY'S POSITION

As more particularly described in the attached Verified Statement of Gregory M. Vincent, on the basis of the proposed UP/SP merger's potential adverse effects on

---

[1] The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, took effect on January 1, 1996 (the "Act"). The Act Abolished the ICC and transferred certain functions and proceedings, including this proceeding, to the Surface Transportation Board ("STB").

[2] *Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company--Control and Merger--Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company,* Finance Docket No. 32760. "Applicants" are defined as consisting of the Union Pacific Railroad Corporation, Union Pacific Railroad Company, Missouri Pacific Railroad Company (collectively "UP"), and Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company (collectively "SP"). Decision No. 6 at 2. 3.

competition with respect to rail transportation of bituminous coal from origins in Utah and Colorado to utilities located in the eastern United States, TVA conditionally opposes the proposed UP/SP merger and requests the STB to impose conditions as specified in the attached Verified Statement.

SERVICE

Service upon TVA in this proceeding may be made upon TVA's representative:

Edward S. Christenbury
General Counsel
Tennessee Valley Authority
400 West Summit Hill Drive
Knoxville, Tennessee 37902
Phone: 423/632-7304

Respectfully submitted,

Edward S. Christenbury
General Counsel

Charles L. Young
Senior Attorney

Attorneys for Tennessee Valley Authority

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

COMMENTS AND REQUEST FOR CONDITIONS OF THE TENNESSEE VALLEY AUTHORITY AND VERIFIED STATEMENT OF

Gregory M. Vincent

My name is Gregory M. Vincent. I am the Vice President of the Tennessee Valley Authority's (TVA) Fuel Supply and Engineering division. I am responsible for fuel supply planning, fuel acquisition, contract administration, transportation services, engineering, and environmental affairs for TVA's Fossil and Hydro organization and for corporate management of fuel operations. I joined TVA in June 1992 from Niagara Mohawk Power Corporation, Syracuse, New York. While at Niagara Mohawk, I was the Director of Fuel Supply. I also served as Superintendent, Methods and Performance, Fossil Operations, and Manager, Fossil and Hydro Engineering. I hold a B. S. degree in Electrical Engineering from Northeastern University and an M.B.A. degree from Syracuse University.

My statement in this proceeding[1] consists of four parts: (1) Background, in which I briefly describe what TVA is and what its recent experience with purchasing Western coal rail

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[1] *Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company--Control and Merger--Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company*, Finance Docket No. 32760. "Applicants" are defined as consisting of the Union Pacific Railroad Corporation, Union Pacific Railroad Company, Missouri Pacific Railroad Company (collectively "UP"), and Southern Pacific Railroad Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company (collectively "SP"). Decision No. 6 at 2, 3.

transportation has been; (2) TVA's concerns, in which I state why TVA is concerned that the proposed merger will have adverse effects on competition for rail transportation of bituminous coal originating in Utah and Colorado; (3) Request for Conditions, in which I set forth the conditions that TVA proposes the STB impose upon the applicants as a condition of its approval of the proposed merger; and (4) Conclusion.

BACKGROUND

TVA is a wholly-owned corporate agency and instrumentality of the United States Government. As one of its statutory roles under the Tennessee Valley Authority Act of 1933, as amended (16 U.S.C. sections 831-831dd (1994)), TVA operates the nation's largest public electric power system. TVA is the primary source of power supply for an area which includes most of Tennessee, northern Alabama, northeastern Mississippi, southwestern Kentucky, and parts of Georgia, North Carolina, and Virginia. TVA's customers are divided into three principle groups: (1) 160 distributors; (2) 60 industrial customers; and (3) 9 Federal agency installations, including the Department of Energy plants at Oak Ridge, Tennessee; United States Enrichment Corporation's plant at Paducah, Kentucky; the Department of the Army's Redstone Arsenal at Huntsville, Alabama; and the Air Force's Arnold Engineering Development Center at Tullahoma, Tennessee. TVA's power generating facilities include 29 hydroelectric plants, 3 nuclear plants (5 units), 1 pumped storage plant, 4 gas turbine plants, and 11 coal-fired plants (59 units). Coal consumption at TVA plants during fiscal year 1995 was 39.3 million tons. Of these tons, approximately 17.5 million were transported wholly or in substantial part by rail, making TVA one of the largest shippers of rail coal in the United States.

As a wholly-owned corporate agency and instrumentality of the United States, TVA maintains and operates its electric power system as part of a program to fulfill its statutory mission for the development of the Tennessee Valley region's resources and economy. Unlike investor-owned utilities, which supply power for profit, TVA's congressionally mandated objective as a supplier of power is the advancement of the national defense and the physical, social, and economic development of the area in which it conducts its operations by providing that area with an ample supply of electric power at rates as low as feasible, consistent with maintaining a financially sound power system.

TVA has operated coal-fired generating stations for approximately 50 years, and for most of that period it purchased all of its coal needs from Eastern mines (those located in the Illinois Basin and Appalachian coal fields). During the period 1990 to 1993, TVA purchased relatively small amounts of Powder River Basin (PRB) coals for purposes of conducting test burns. In 1993, TVA made its first short-term purchases of coal from mines located in Colorado and Utah and in the Hanna Basin of Wyoming, in order to supply its needs during a period when many Eastern sources were unable to ship coal because of a strike by the United Mine Workers of America. This coal was transported by rail or rail/barge under short-term agreements with the SP, UP, and Burlington Northern Railroad Company. All these various Western coals can be substituted for one another in many of TVA's plants (with some modifications to the plants in the case of PRB coal).

In late 1993, TVA negotiated transportation arrangements with the SP for transportation of one million tons of Colorado and Utah coals (during 1994) to TVA's Shawnee Fossil Plant, located near Paducah, Kentucky (which is served by the Illinois Central Railroad Company) and to other TVA coal-fired plants.

In 1994, TVA submitted a bid to purchase rail transportation services in response to a request for bids issued by SP in connection with a back-haul arrangement involving the movement of taconite pellets from Minnesota to Utah. In response to TVA's bid, SP agreed to enter into a contract with TVA to transport up to 2 million tons of coal per year for five years (starting in 1995) from SP origins in Colorado to TVA's Shawnee Fossil Plant. In the course of preparing its bid to SP, TVA solicited offers for Western and Eastern low-sulfur bituminous coals under its Requisition 29. The response from Utah and Colorado coal suppliers, when coupled with SP's aggressive pricing, was such that TVA not only purchased Colorado coal to match the 2 million ton, 5-year back-haul contract offered by SP for Shawnee, but also determined it was advantageous to convert its Allen Fossil Plant from

Illinois and west Kentucky coal to Western bituminous coal as well. TVA and SP negotiated a second contract for up to 2.1 million tons per year for 5 years covering this coal, at the same attractive rates as SP had agreed to for the back-haul. TVA's coal transportation staff was favorably impressed by SP's willingness to play a key part in bringing Western bituminous coal in excess of 1000 miles to compete with Eastern and other Western coals in the TVA market. In discussions regarding transportation of coal from the PRB and Hanna Basin to TVA plants, TVA has not seen a comparable level of interest demonstrated by UP and BN/SF.

TVA'S CONCERNS

It is TVA's concern that the proposed merger will eliminate an effective rail transportation competitor from the Western coal market and will, thus, have an adverse effect on competition in the region. TVA is concerned that the merged UP/SP will not aggressively market the transportation of coal from the Utah and Colorado coal fields, thereby eliminating important sources which have competed for TVA's low-sulfur coal needs. TVA's experience with UP and TVA's understanding of UP's significant investment of its attention and resources in the PRB traffic leave TVA concerned that the UP/SP will focus its energies on the latter traffic, to the detriment of bituminous coal producers in Utah and Colorado and to the ultimate detriment of TVA if these bituminous coal producers are lost to TVA's markets because of high-cost transportation.

While the BN/SF settlement agreement included in the UP/SP application affords the apparent potential for BN/SF marketing of transportation for some of the Utah coal origins, TVA is concerned that because the BN/SF is an even bigger player in the PRB transportation market than is UP, the BN/SF's energies will likewise be concentrated on that coal producing region. Moreover it appears that none of the origins through which TVA is currently receiving Western bituminous coal—Valcam, ARCO, Energy, and Savage—will be opened directly to the BN/SF, and only one of these origins—Savage—will be accessible via another railroad.

On March 4, 1996, TVA took offers to supply up to six million tons of coal to its Gallatin, Johnsonville, Colbert, Paradise and Widows Creek Fossil Plants, with deliveries starting in 1997. The solicitation specifications permitted the offer of bituminous coal (Western or Eastern) and sub-bituminous coal, which would permit PRB producers to offer their coals. TVA is currently evaluating these coal offers, and is engaging in preliminary discussions with the various railroads who might transport this coal. The cost of any modifications to TVA facilities necessary to permit the use of offered coals will be taken into account in evaluating the offers received, and various coals (PRB, Western bituminous, and Eastern) will be evaluated on a head-to-head basis to determine the low delivered cost coals for our several plants. Transportation rates and service available from the UP/SP could have a significant impact on whether the Western bituminous coals offered will be competitive under this and future solicitations.

REQUEST FOR CONDITIONS

In light of the concerns stated above, TVA requests the STB to impose such conditions as the STB deems appropriate to ensure that the healthy competition promised in UP/SP's application for the Utah and Colorado coal origins will be realized. Such conditions could take the form of one of the following, expressed in the order of TVA's preference:

(1) The STB should condition its approval of the merger on the UP/SP's sale of lines and the granting of trackage rights and interchange rights to an independent railroad in the manner described in Montana Rail Link, Inc.'s (MRL) Description of Anticipated, Inconsistent, or Responsive Application, filed with the STB on January 29, 1996, with the qualifications that (i) such transaction would be accomplished by competitive negotiation and (ii) UP/SP would be granted local trackage rights with respect to the Utah and Colorado coal origins currently served by SP and UP, singly or together, as well as the overhead trackage rights described in the MRL application; or

(2) UP/SP should be required to grant such overhead and local trackage rights and interchange access as would be necessary to permit an independent railroad that does not currently have a significant share of the Western coal transportation market to have access to all Utah and Colorado coal origins that are currently served by the SP and/or the UP and to a Central Corridor route to eastern destinations at rates and under conditions that will reasonably ensure effective competition by such independent railroads.

CONCLUSION

In summary, TVA conditionally opposes the proposed UP/SP merger because of its potential adverse effect on competition in the Western coal transportation market, particularly with respect to transportation of bituminous coal from Utah and Colorado origins to eastern utility markets. TVA would not be opposed to the merger if the STB were to approve the merger subject to conditions as requested herein.

Respectfully submitted,

Gregory M. Vincent
Vice President
Fuel Supply and Engineering
Tennessee Valley Authority

VERIFICATION

STATE OF TENNESSEE)
) ss.
COUNTY OF HAMILTON)

Gregory M. Vincent, being duly sworn, deposes and says that he is the Vice President of Fuel Supply and Engineering at the Tennessee Valley Authority, and has read the foregoing statement, knows the contents thereof, and that the same is true and correct.

GM Vincent
Gregory M. Vincent

Subscribed and sworn to before me by Gregory M. Vincent, this 26th day of March, 1996.

Lois A. Young
Notary Public

My commission expires 4-11-98.

CERTIFICATE OF SERVICE

I, Charles L. Young, certify that, on this 28th day of March, 1996, I caused a copy of the foregoing document to be served by first-class mail, postage prepaid, or by a more expeditious manner of delivery on all parties of record in Finance Docket No. 32760, and on

Director of Operations
Antitrust Division
Room 9104-TEA
Department of Justice
Washington. D.C. 20530

Premerger Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
Washington, D.C. 20580

The Honorable Federico F. Pena
Secretary of Transportation
400 Seventh Street, SW
Washington, D.C. 20590

Charles L. Young
Charles L. Young

STB FD 32760 3-29-96 62342 1/2 D

Item No.________________

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:RSON & WERSON
PROFESSIONAL C RPORATION
ATTORNEYS AT LAW
NE EMBA ADERO CENTER
SAN FRANCISCO, CALIFORNIA 94111

FAX (415) 956-0439
TELEPHONE (415) 398-3344

62342 134

MAR 29 1996

LARRY W. TELFORD
DIRECT NO. (415) 677-5605

M rch 28, 1996

VIA FEDERAL EXPRESS

ENTERED
Office of the Secretary
MAR 30 1996
8 Part of Public Record

Vernon A. Williams, Secretary
Case Control Branch; Attn: Finance Docket 32760
Surface Transportation Board
1201 Constitution Ave., N.W.
Washington, D.C. 20423

Re: Application of Union Pacific Corporation, et al., Finance Docket 32760

Dear Mr. Secretary:

Transmitted herewith for filing and the attention of the Board are original and twenty copies of Verified Statements of Mr. Stephen L. Wright, Town Manager of the Town of Truckee, a California municipal corporation ("TRCK-1"), Mr. Gordon R. Shaw, Vice President of Leigh, Scott & Cleary, Inc. ("TRCK-2"), and Mr. Michael R. Christensen, Vice President of Nolte and Associates, Inc. ("TRCK-3"). A Certificate of Service is attached to each Verified Statement confirming service by mail upon The Honorable Jerome Nelson, Erika Z. Jones, Esq., Arvid E. Roach II, Esq., Paul A. Cunningham, Esq. and the other parties designated "POR" on the service list attached to Decision No. 15, as amended and supplemented by Decision No. 17.

Also enclosed are three 3 1/2 inch computer diskettes, one for each Verified Statement, containing the contents of the respective Verified Statements in WordPerfect 5.1 format, except that as to TRCK-2, certain tables and figures are presented in the printed document which are not convertible to WordPerfect format. The material on that diskette indicates where each such table or figure occurs.

Please confirm your receipt and acceptance of this filing by returning the attached copy of this letter the Notice of Intent, endorsed with your "Filed" stamp, in the enclosed stamped self addressed envelope.

Should there be any question about this filing please call me collect at the number set forth above.

Very truly yours,

LARRY W. TELFORD

cc: Mr. Don McCormack, Mayor, Town of Truckee
Ms. Kathleen Eagan, Council Member, Town of Truckee
Mr. Breeze Cross, Council Member, Town of Truckee
Mr. Stephen L. Wright, Town Manager, Town of Truckee
Mr. Gordon R. Shaw, Vice President, Leigh, Scott and Cleary, Inc.
Mr. Michael R. Christensen, Vice President, Nolte and Associates.

BEFORE THE

SURFACE TRANSPORTATION BOARD

UNITED STATES DEPARTMENT OF TRANSPORTATION

In the matter of the Application of	)	
Union Pacific Corporation, Union	)	
Pacific Railroad Company, Missouri	)	
Pacific Railroad Company, Southern	)	
Pacific Rail Corporation, Southern	)	Finance Docket No. 32760
Pacific Transportation Company, St.	)	
Louis Southwestern Railway Company,	)	
SPCSL Corp., and the Denver and Rio	)	
Grande Western Railroad Company	)	

VERIFIED STATEMENT

OF

GORDON R. SHAW, P.E.

Larry W. Telford, Esq.
Severson & Werson, a
Professional Corporation
One Embarcadero Center, 26th Fl.
San Francisco, CA 94111
Tel. (415) 398-3344
Fax. (415) 956-0439

Attorneys for the Town of Truckee

TRCK-2

ORIGINAL

Verified Statemant of Gordon R. Shaw

My name is Gordon R. Shaw. I am Vice President of the Transportation Engineering firm of Leigh, Scott, and Cleary, Inc. (hereinafter "LSC, Inc."). LSC, Inc. is a multidisciplinary engineering firm specializing in traffic, transportation, and transit planning and engineering. LSC, Inc. is the successor firm of Leigh Associates, which was formed in October, 1975. We have offices located in Tahoe City, California, Colorado Springs, Colorado, and Denver, Colorado. I began working for LSC, Inc. in 1983, and became Vice President in 1990. In 1992, I opened the Tahoe City branch office of LSC, Inc. I have provided transportation related engineering services to local, county, state and federal agencies throughout the country including Lake Tahoe area communities and the Town of Truckee. Prior to assuming my current position, I was a traffic engineer for PRC Voorhees in Berkeley, California from 1982 to 1983, a Planning Engineer with the San Francisco District of the Army Corps of Engineers in 1981, and a Field Engineer for the Burlington Northern Railroad in 1979. I received a Bachelor of Science in Civil Engineering from Purdue University in May, 1980, a Master of Science Degree in Infrastructure Planning from Stanford University in June, 1981, and an Engineers Degree in Civil Engineering from Stanford University in September, 1982. I am currently a Registered Professional Engineer in the states of California (1992), Colorado (1986), and Nevada (1992). I am also a member of the American Planning Association, the Institute of Transportation Engineers, and the American Institute of Certified Planners.

I make the within Verified Statement in my capacity as Vice President of LSC, Inc., and as Project Manager of the Town of Truckee Railroad Merger Traffic Impact Analysis, performed by myself and members of my staff. The Town of Truckee Railroad Merger Traffic Impact Analysis was performed, under contract to the Town of Truckee, in order to quantify traffic impacts within the Town of Truckee associated with the proposed merger of the Union Pacific and Southern Pacific Railroads. All statements are based on current engineering calculations and procedures, as well as field surveys performed by myself and my staff.

CHAPTER 1
Introduction

The proposed merger of the Southern Pacific and Union Pacific Railroads has the potential to generate serious impacts on vehicular circulation in Truckee particularly within the historic downtown area. The following information is provided to document the impact that existing train activity has on vehicular circulation within the historic downtown area and on regional access roadways. The purpose of this report is to present information regarding the impact of the planned merger, and the traffic benefits of various roadway construction alternatives.

Introduction

The Southern Pacific Railroad main line between Salt Lake City and Oakland passes directly through the center of Truckee, creating a very significant barrier to north-south highway traffic. At present, there are only two roadways that provide access across these tracks in the area: California State Route 89 (which is provided with an underpass of the tracks) to the west, and the at-grade California State Route 267 (Bridge Street) crossing in Truckee's central commercial area. Through these two highways flow all of the traffic between Interstate 80 to the north and the California portion of the Lake Tahoe area to the south, as well as a large proportion of traffic within Truckee itself. Figure 1 provides a project area location map. In addition, these crossings provide the regional access between Northern California and the Nevada portion of the Tahoe Basin's North Shore.

At present, approximately 14 trains per day pass through Truckee (not including "light" engine movements). With the proposed merger (and associated track-sharing arrangements with the Burlington Northern/Santa Fe), this number is expected to double, and could potentially rise to 36 trains per day. Even at current levels, the passage of trains causes substantial traffic impacts on State Route 267 and nearby roadways.

As an at-grade crossing, the impact of this additional rail activity will occur at the State Route 267 crossing. This roadway provides major access to downtown Truckee, I-80, and the Tahoe Forest Hospital to the north, and Northstar Ski Area, Truckee-Tahoe Airport, Sierra Meadows, Kings Beach and Incline Village areas to the south. At present, this roadway carries an average of 7,970 northbound vehicles and 8,910 southbound vehicles, for a total of 16,880 vehicles per day during a peak month. During peak periods, the passage of a train causes substantial congestion on the highway and throughout the commercial core area. Local residents have reported railroad track blockages, in extreme cases, of up to 20 minutes long. In light of the substantial impact of existing train activity, there will be a serious negative traffic impact resulting from increased rail traffic through the downtown core. The following information is provided as a quantitative evaluation of the traffic impacts caused by existing and potential rail activity through the downtown area.

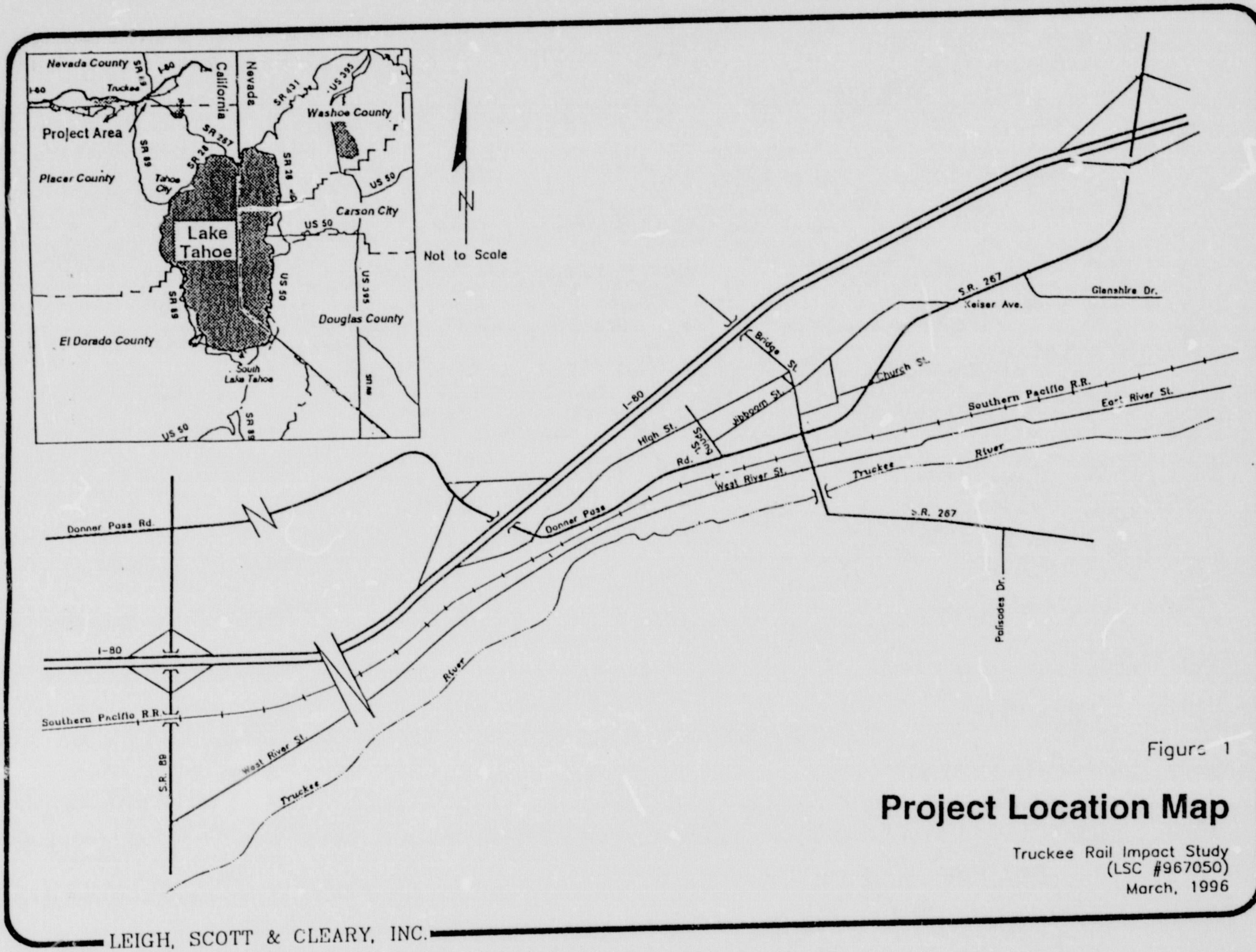


Figure 1

Project Location Map

Truckee Rail Impact Study
(LSC #967050)
March, 1996

CHAPTER 2
Existing Conditions

Vehicular Queuing

Vehicular queuing and resulting delay caused by the passage of trains through the downtown area has been evaluated for a typical summertime PM peak hour. Queue length and resulting vehicular delay has been calculated for all impacted roadways in the downtown area assuming 4.0, 7.5, 10.0, and 20.0 minute railroad "gate down" times at the State Route 267/Southern Pacific Railroad at-grade crossing. The 4.0 minute "gate down" time represents an average train crossing event in the downtown area. The 7.5 minute "gate down" time represents a typical crossing in which two trains pass through the crossing, usually in opposite directions, during a single closure of the railroad gates. These values were obtained from the Railroad Merger Study Report prepared for the Town of Truckee by Nolte and Associates in March, 1996. The ten and twenty minute "gate down" scenarios represent "worst case" conditions consistent with roadway blockages observed by local residents. Sunday PM peak hour queuing was also determined based upon field observations.

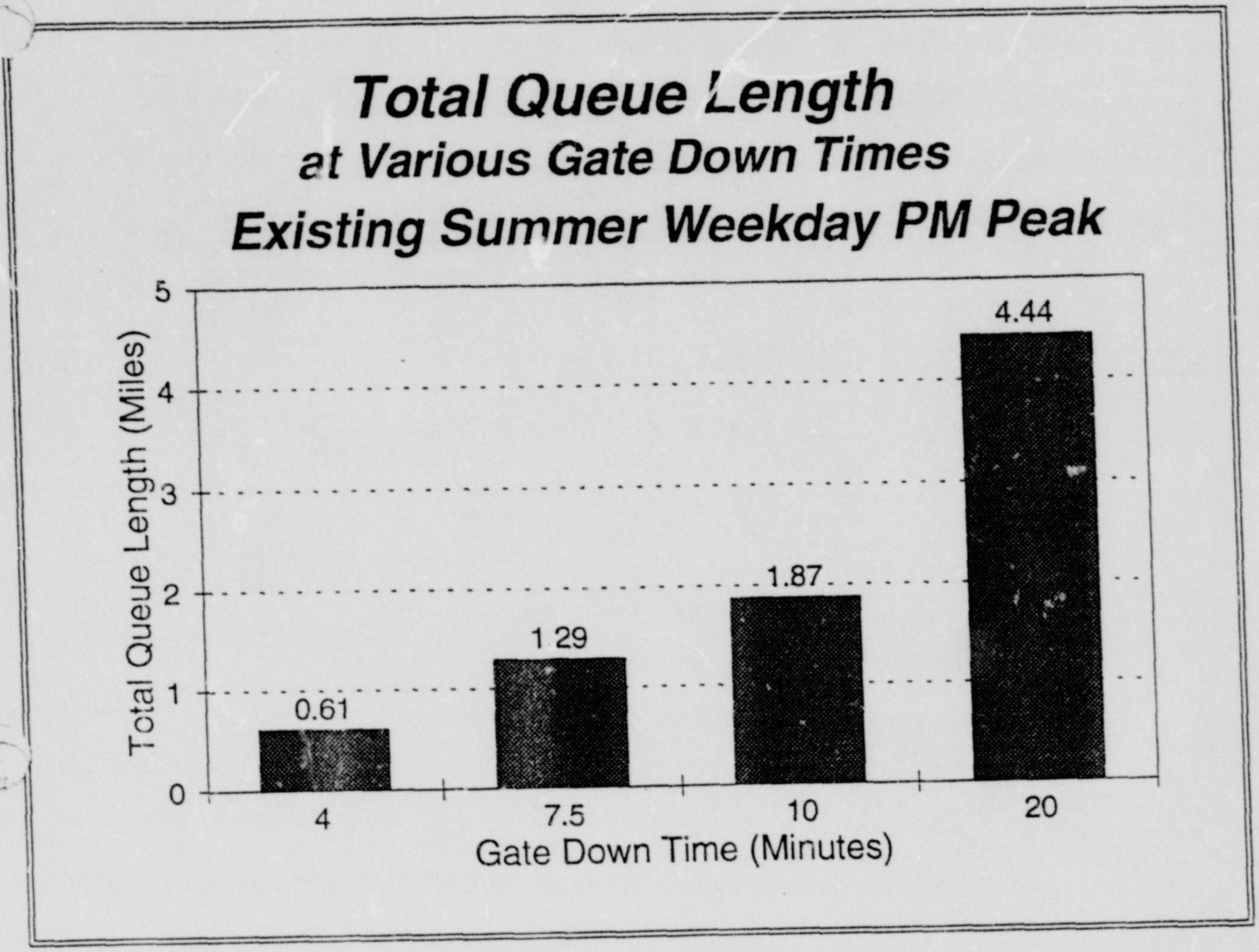
Vehicular queuing was calculated by determining the number of vehicles that would arrive at the railroad crossing during the "gate down" times. These vehicles were then assumed to stack or queue onto the adjacent street network. Under both 4.0 minute and 7.5 minute daily "gate down" scenarios, vehicle queues block the intersections of Bridge Street/West River Street, Bridge Street/Donner Pass Road, Bridge Street/Riverside Avenue, and Bridge Street/South River Street, causing gridlock in the downtown area. Under the 7.5 minute "gate down" time scenario, the intersections of Donner Pass Road/Church Street, and State Route 267/Palisades Drive also become blocked. Under extreme conditions (20.0 minute gate down times), the Donner Pass Road/Interstate 80 interchange, Reynolds Drive/State Route 267, Estates Drive/State Route 267, and Martis Valley Road/State Route 267 intersections also become blocked. The magnitude of gridlock caused by the passage of trains was determined by calculating the amount of time that nearby intersections are blocked and the resulting vehicular queuing. Figure 2 presents a comparison of queuing which occurs for 4.0, 7.5, 10, and 20.0 minute "gate down" times. Figures 3 through 6 present locations of queuing for each of the "gate down" scenarios.

Figure 7 presents locations of vehicle queuing which has been observed to occur on peak season weekend PM peak hours during train crossing episodes. It should be pointed out that these queues are caused by a combination of two capacity constraints. The first is inadequate intersection capacity to handle peak recreational traffic demands which occur at the Bridge Street/Commercial Row intersection. The second is the passage of trains across the State Route 267 at-grade crossing, which completely eliminates intersection capacity during train crossing episodes. The combination of these two factors can cause vehicles to queue on State Route 267, as far south as the Northstar Drive intersection in extreme instances.

Delay

Delay was calculated for 4.0, 7.5, 10.0, and 20.0 minute "gate down" times. Delay was quantified in terms of both average and total vehicle delay and person delay. Average vehicle and average person delay is the average amount of time that each vehicle and person which is delayed by a train crossing is forced to wait before crossing the railroad tracks. Total vehicle and total person delay is defined as the total amount of delay incurred by all vehicles and persons delayed during train crossing episodes. One vehicle-hour of delay is equivalent to one vehicle delayed for one hour because its travel path is impeded. To determine person hours of delay, an occupancy ratio of 1.82 persons per vehicle was assumed. This value is documented in the Regional Transportation Plan - Air Quality Plan for the Lake Tahoe Region prepared in May, 1992 by the Tahoe Regional Planning Agency as being an observed average for the region. Table 1 presents total vehicular and person delay for the four "gate down" time scenarios considered.

Figure 2



Total Queue Length
at Various Gate Down Times
Existing Summer Weekday PM Peak
Total Queue Length (Miles)
0
1
2
3
4
5
0.61
1 29
1.87
4.44
4
7.5
10
20
Gate Down Time (Minutes)

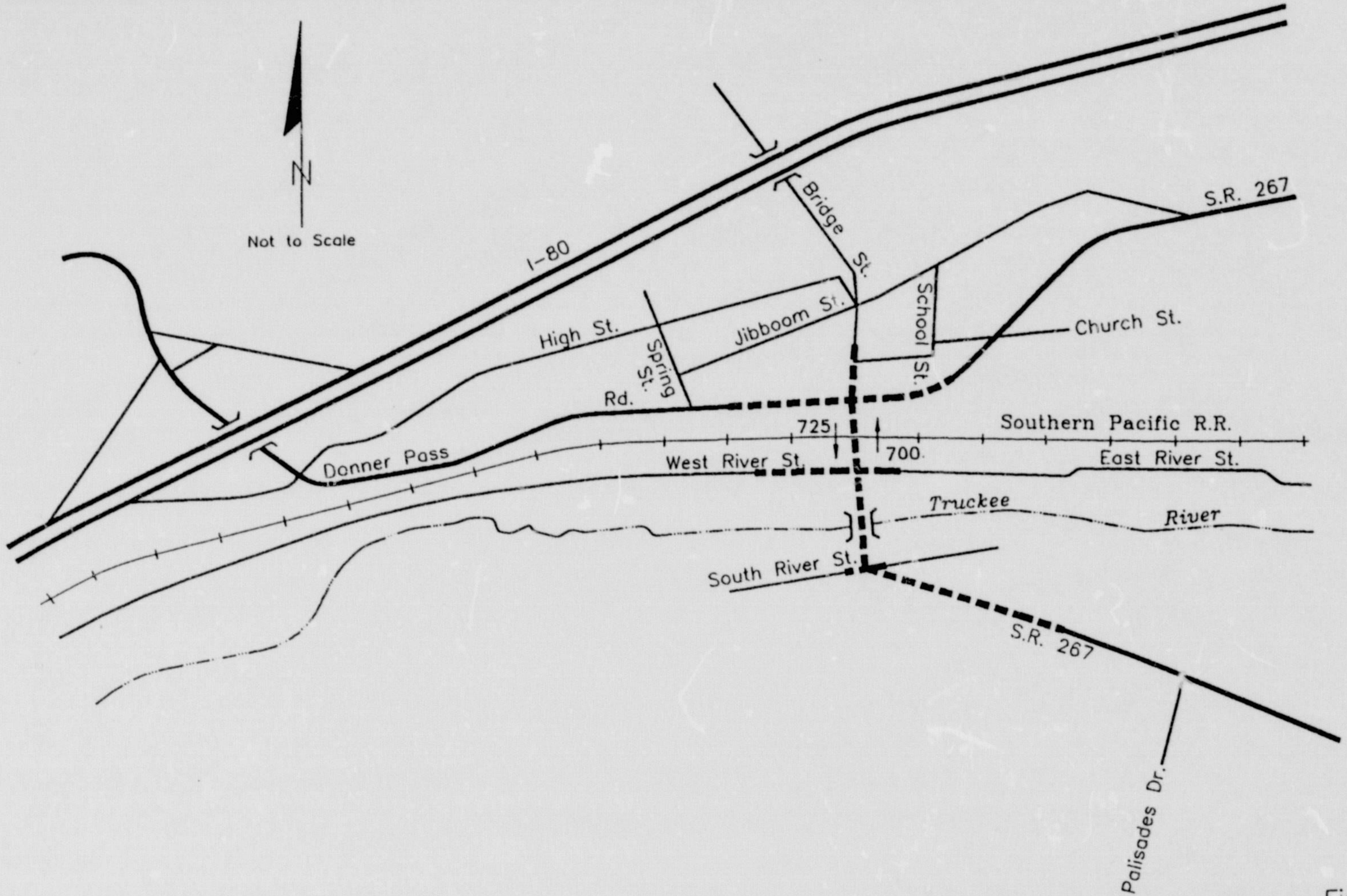


Figure 3

Existing Traffic Queues

Assuming 4 Minute "Gate Down" Time

Truckee Rail Impact Study
(LSC #967050)
March, 1996

LEGEND:

▬ ▬ ▬ ▬ = Locations of vehicle queues

700 = Summer Midweek PM Peak-Hour Traffic Volume Across Rail Road Tracks

LEIGH, SCOTT & CLEARY, INC.

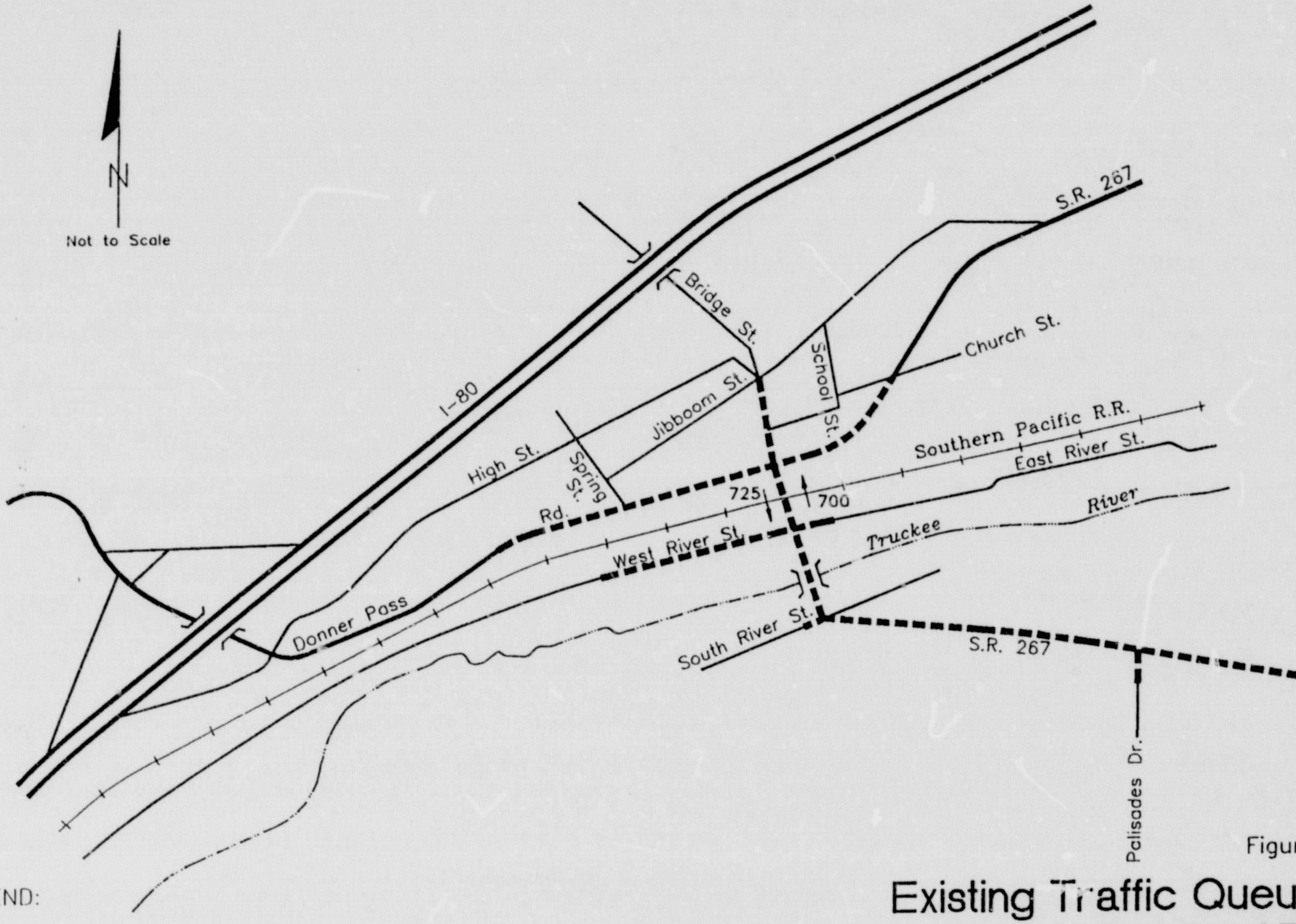


Figure 4

Existing Traffic Queues

Assuming 7.5 Minute "Gate Down" Time

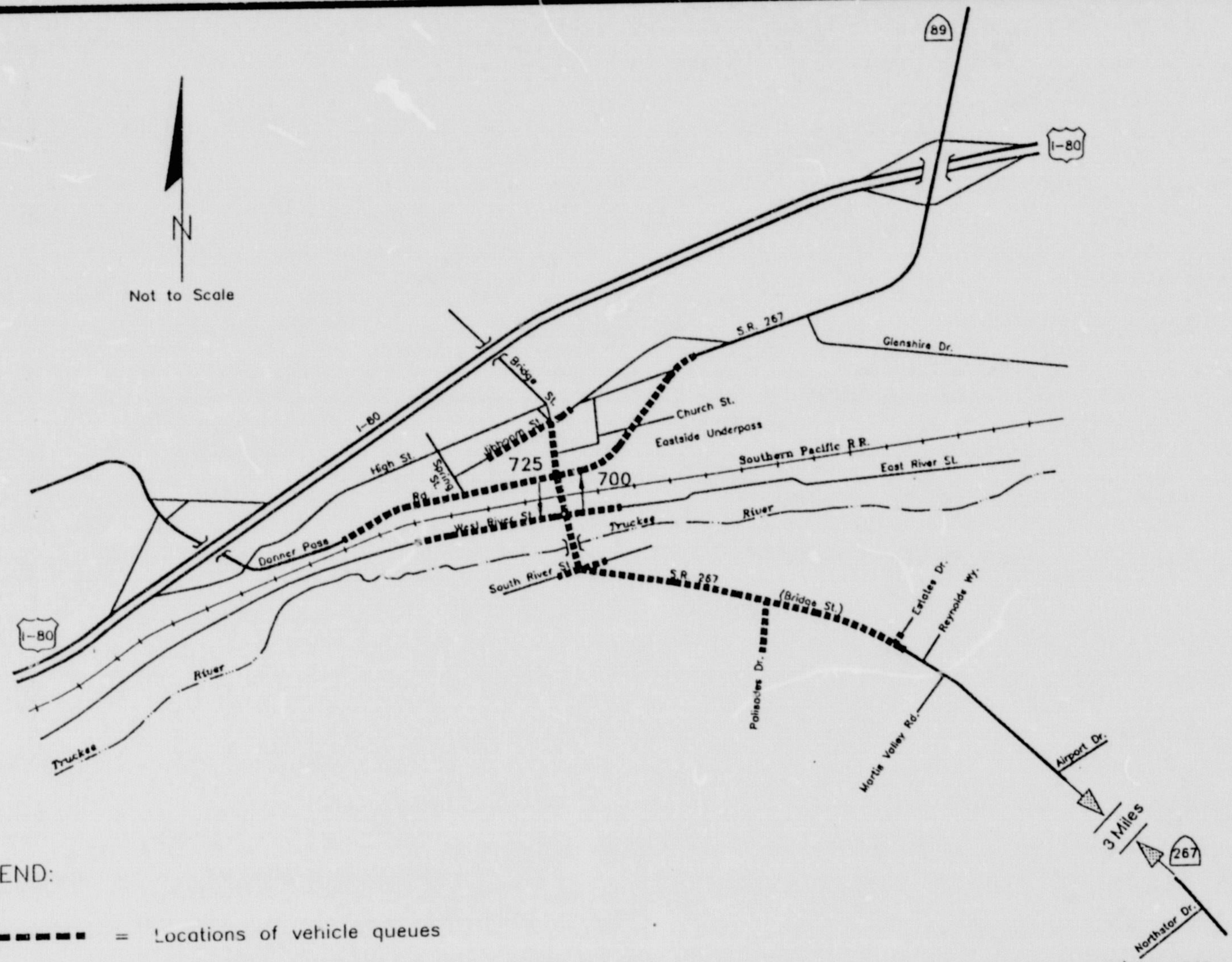
Truckee Rail Impact Study
(LSC #967050)
March, 1996

LEGEND:

▬ ▬ ▬ ▬ = Locations of vehicle queues

700 = Summer Midweek PM Peak-Hour Traffic Volume Across Rail Road Tracks

LEIGH, SCOTT & CLEARY, INC.



LEGEND:

▪▪▪▪▪▪▪ = Locations of vehicle queues

700 = Summer Midweek PM Peak-Hour Traffic Volume Across Rail Road Tracks

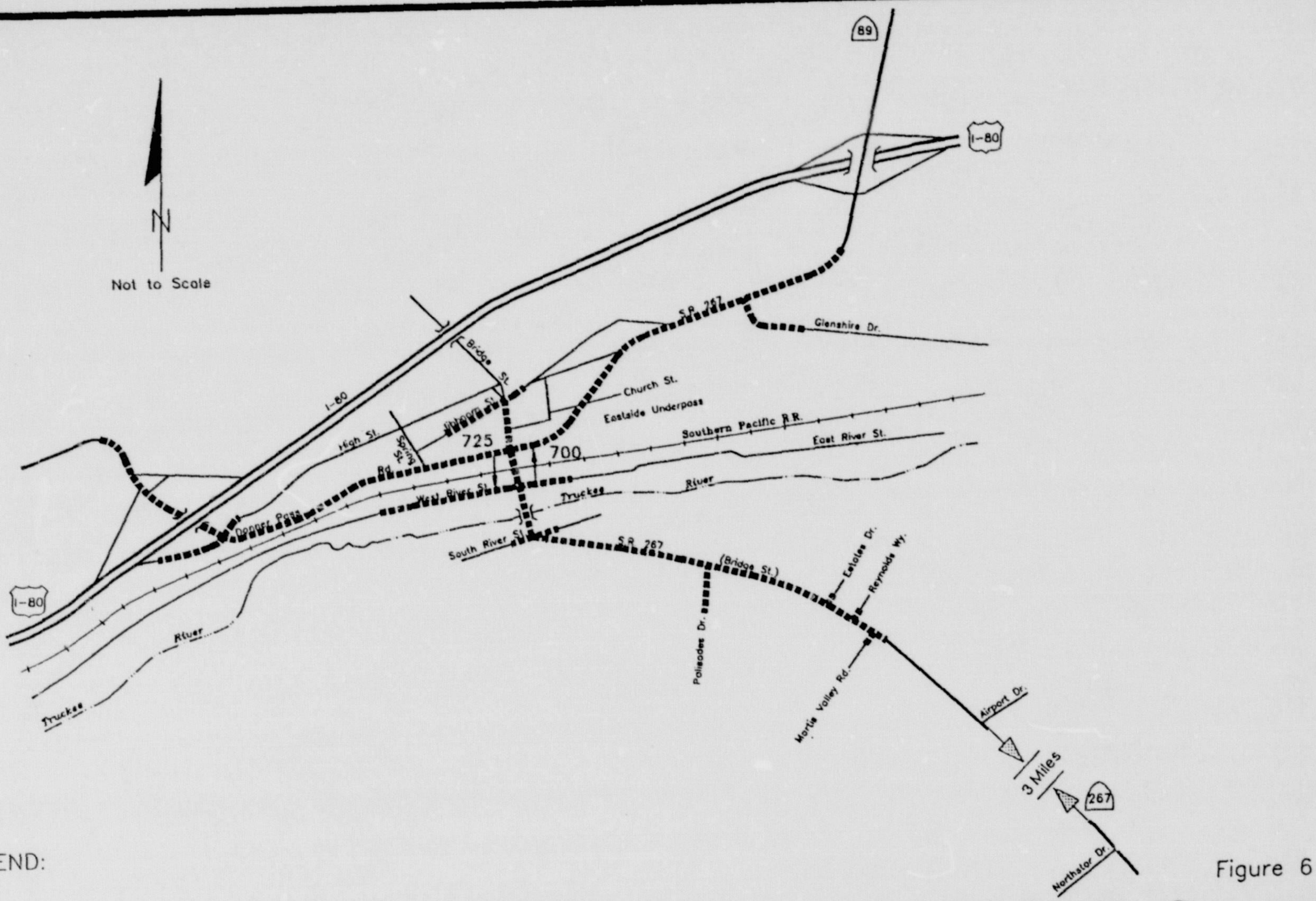
Figure 5

Existing Traffic Queues

Assuming 10 Minute "Gate Down" Time

Truckee Rail Impact Study
(LSC #967050)
March, 1996

LEIGH, SCOTT & CLEARY, INC.



LEGEND:

▬ ▬ ▬ ▬ = Locations of vehicle queues

700 = Summer Midweek PM Peak-Hour Traffic Volume Across Rail Road Tracks

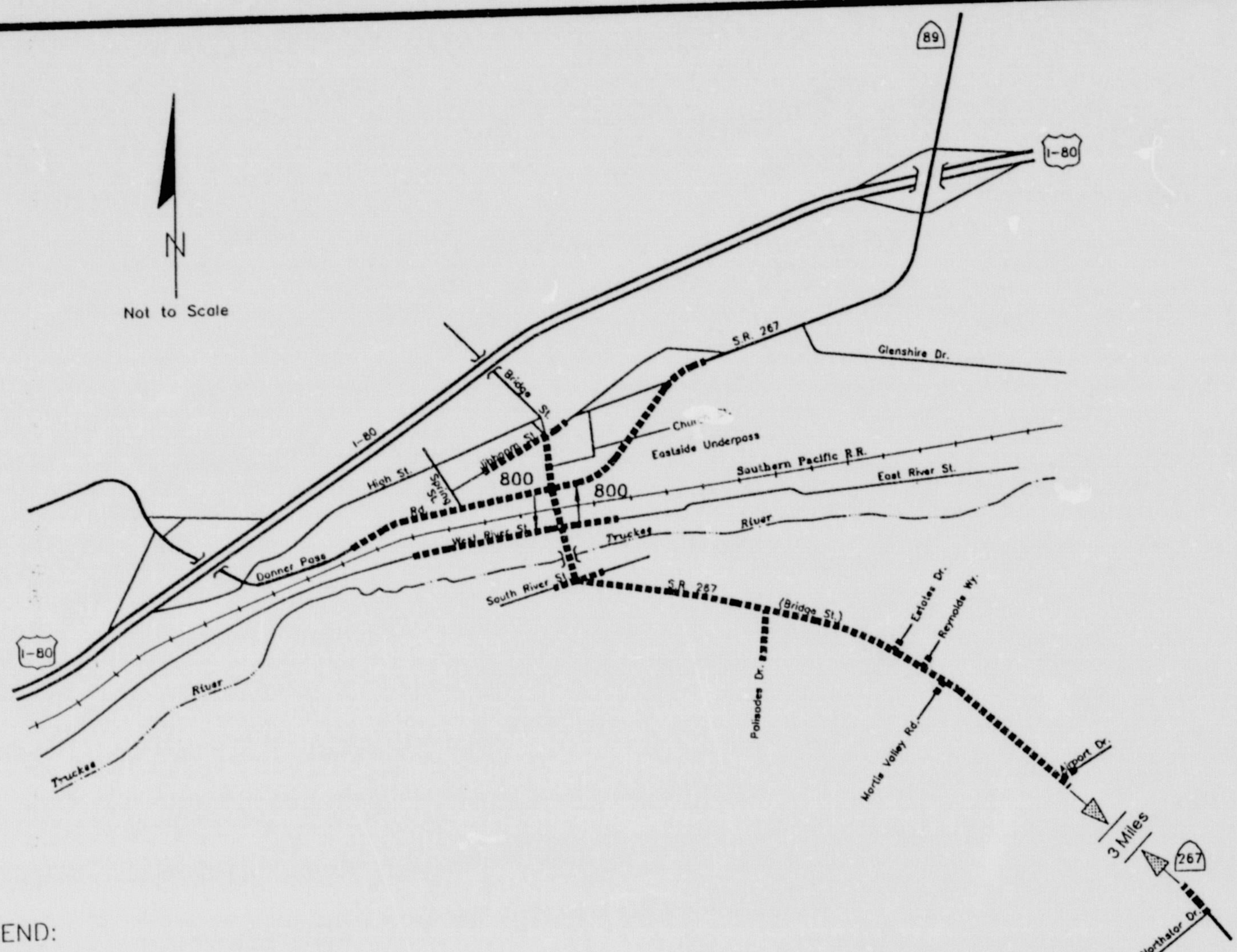
Figure 6

Existing Traffic Queues

Assuming 20 Minute "Gate Down" Time

Truckee Rail Impact Study
(LSC #967050)
March, 1996

LEIGH, SCOTT & CLEARY, INC.



LEGEND:

▬ ▬ ▬ ▬ = Locations of vehicle queues

800 = Sunday Weekend PM Peak-Hour Traffic Volume Across Rail Road Tracks

Figure 7

Existing Sunday PM Peak-Hour Traffic Queues

Truckee Rail Impact Study
(LSC #967050)
March, 1996

TABLE 1: Delay Due to Railroad Crossing "Gate Down" Time

Vehicular Delay (Vehicle-hours)

Delay Type	4.0 Minute "gate down" time	7.5 Minute "gate down" time	10 Minute "gate down" time	20 Minute "gate down" time
Gate Down	3.8	15.0	28.7	135.9
Queue Clearance	1.6	6.0	11.5	54.3
Secondary Queue	1.3	5.2	10.0	47.1
Total	**6.7**	**26.2**	**50.2**	**237.2**

Person Delay (Person-Hours)

Delay Type	4.0 Minute "gate down" time	7.5 Minute "gate down" time	10 Minute "gate down" time	20 Minute "gate down" time
Total	**12.2**	**47.7**	**91.4**	**431.7**

Source: LSC

Delay was calculated in five steps. The first step determines "gate down" vehicular delay, defined as vehicular delay during the period of time that the railroad gates are down. The second step determines queue clearance delay defined as delay caused by queue clearance experienced by drivers in the queue at the time the railroad gates are raised. The third step determines secondary queue delay, defined as delay due to queue clearance experienced by drivers that enter the queue after the gates are raised. The fourth step is to total the three delay types and multiply by the occupancy ratio of 1.82 to determine total vehicular and person delay. The fifth and final step was to determine average vehicle and person delay by dividing the total vehicle hours and person hours of delay by the total number of vehicles and persons which are delayed. Table 2 presents each of these component delays, as well as the total vehicular delay and total person delay for average, maximum daily, and extreme queuing conditions. Figure 8 presents average vehicle delay for various "gate down" times. Figure 9 presents total vehicle and total person delay.

As shown in Table 1 and Figure 9, increasing from 4.0 to 7.5 minute "gate down" time results in a factor of four delay increase. As the 7.5 minute "gate down" time is only 87.5 percent greater than the 4.0 minute "gate down" time, longer trains resulting in longer "gate down" time have a disproportionately large impact on vehicular delay.

Table 1 represents delay which would be incurred as a result of one train passing through the Bridge Street at-grade crossing during a typical summertime PM peak hour. To determine existing average daily delay as a result of train activity, it is assumed that 14 trains per day will pass through the at-grade crossing, distributed evenly throughout the day. An average 4.0 minute "gate down" time is assumed for each of the train crossing episodes. Average daily delay is calculated by determining vehicular delay that occurs for each of the 14 train crossing episodes at the given time of day. This is variable for each crossing episode because traffic demand across the railroad tracks varies by time of day. Person delay is then determined by applying the occupancy ratio to the total vehicle delay. Post-merger daily and annual measures of performance were determined assuming 36 trains per day across the at-grade crossing, as documented in the Railroad Merger Study Report. Table 2 presents total vehicle and person hours of delay, total number of cars delayed, and total number of persons delayed, for an average day, and a full year, for both existing conditions and anticipated post-merger conditions.

TABLE 2: Existing and Post-Merger Measures of Performance

Scenario	Vehicle-Hours Delay		Person-Hours Delay		Total Cars Delayed		Total Persons Delayed	
	Daily	Annually	Daily	Annually	Daily	Annually	Daily	Annually
Existing	46	14,000	84	25,000	1,463	448,000	2,663	815,000
Post-Merger	118	36,000	215	66,000	3,762	1,152,000	6,847	2,097,000

Source: LSC

Travel time and distance between the West River Street/Bridge Street/State Route 267 intersection and Donner Pass Road/State Route 89 intersection were determined through field surveys for both eastbound and westbound traffic along two alternate travel routes. Travel time and distance between the West River Street/Bridge Street/State Route 267 intersection and State Route 267/Interstate 80 Ramp intersection were also determined through field surveys for two alternate travel routes. The travel routes identified represent two alternate routes between the same points, one of which requires crossing the railroad tracks via an at-grade crossing, and the second utilizes the State Route 89 grade separated crossing. The travel times represent peak hour conditions which are not influenced by railroad activity. Results of the travel time survey are presented in Table 3, and Figure 10.

TABLE 3: Travel Time Summary

Origin	Destination	Travel Route	Travel Time (Min:sec)	Distance (Miles)
West River Street/Bridge Street Intersection	Donner Pass Road/SR 89 Intersection	Bridge Street to Donner Pass Road to State Route 89	4:29	1.4
		West River Street to SR 89 to Donner Pass Road	4:18	2.4
Donner Pass Road/SR 89 Intersection	West River Street/Bridge Street Intersection	Donner Pass Road to Bridge Street to West River Street	3:17	1.4
		SR 89 to West River Street to Bridge Street	4:34	2.4
West River Street/Bridge Street Intersection	SR 267/Interstate 80 Interchange	Bridge Street to SR 267 to Interstate 80	1:43	1.0
		West River Street to NB SR 89 to EB Interstate 80 to SR 267	6:17	4.3

Source: LSC

Figure 8

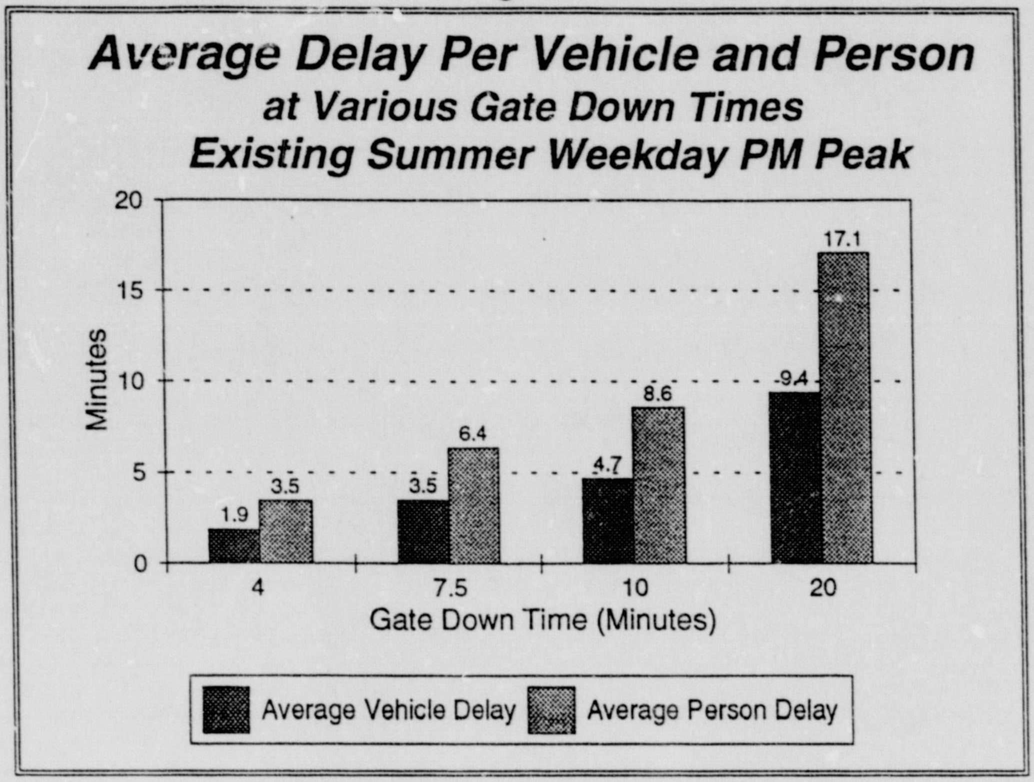
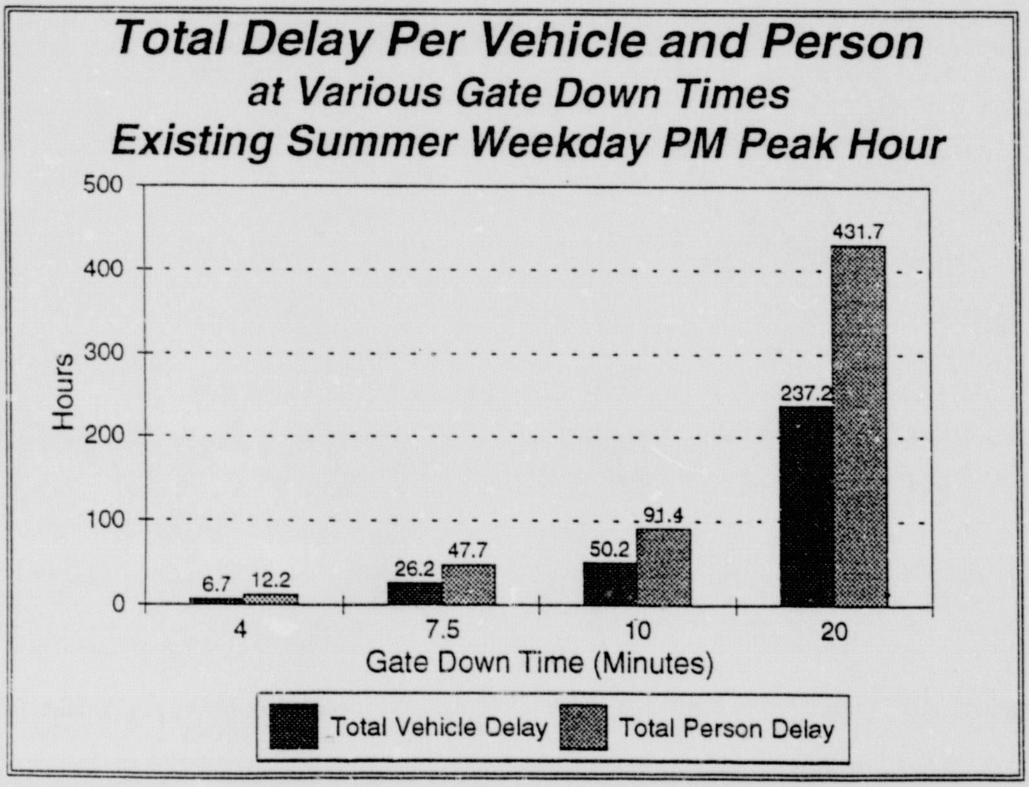


Figure 9



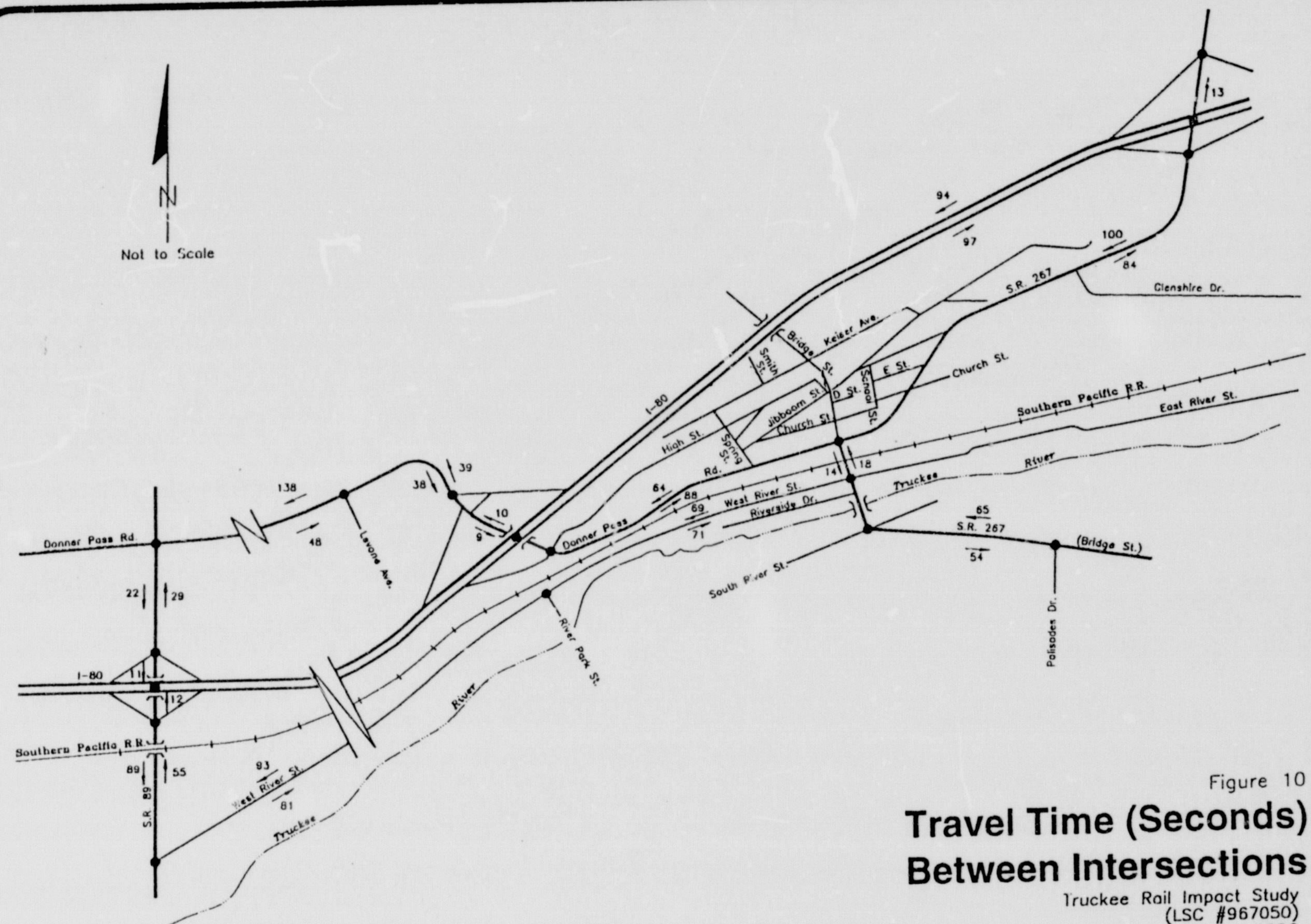


Figure 10

Travel Time (Seconds) Between Intersections

Truckee Rail Impact Study
(LSC #967050)
February, 1996

Source: LSC, Inc.

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As shown in Table 3, travel time for traffic traveling from the West River Street/Bridge Street intersection to the Donner Pass Road/State Route 89 intersection is approximately equal whether using West River Street or Donner Pass Road. Travel time in the opposite direction (from Donner Pass Road/State Route 89 to West River Street/Bridge Street) is approximately one minute and seventeen seconds faster when using Donner Pass Road as opposed to West River Street. This travel time difference is due primarily to delay incurred at the traffic signals and intersections along the southbound State Route 89 leg of this travel route.

The similarities in travel times between the Bridge Street/Donner Pass Road/State Route 267 intersection and the Donner Pass Road/State Route 89 intersection, whether using Donner Pass Road or West River Street, indicate that West River Street serves as a convenient diversion route for vehicles traveling to and from these points. This diversion becomes more pronounced during times that trains are crossing at Bridge Street, as a result of motorists avoiding delays caused by the train crossing. Following is a discussion of diversion potential for each of the major traffic movements through the downtown Truckee area.

Northbound State Route 267 traffic bound for the Donner Pass Road/State Route 89 Intersection

The West River Street diversion route provides comparable travel time to the Donner Pass Road travel route. However, this diversion route becomes blocked at the West River Street/Bridge Street intersection by queued vehicles within approximately one minute of the time that the railroad gates are lowered.

Donner Pass Road/State Route 89 intersection traffic bound for State Route 267 south of the railroad tracks

The West River Street diversion route requires approximately one minute and seventeen seconds of additional travel time for this movement than the Donner Pass Road route. This still makes this a viable diversion option; however, it requires the driver to make a decision on travel routes at the Donner Pass Road/State Route 89 intersection, where it is impossible to tell whether or not there is train activity occurring. Additionally, the West River Street approach to the West River Street/Bridge Street intersection becomes blocked by vehicles queuing at the rail crossing on Bridge Street.

Northbound State Route 267 traffic bound for Downtown Truckee

There is no good diversion route for this traffic. The only possible route would be to travel west on West River Street, then north on State Route 89, then east on Donner Pass Road or Interstate 80 back into the downtown area. This route, however, requires approximately six minutes to complete using the interstate and 7.4 minutes using Donner Pass Road, which are both greater than the average delay that would be experienced by waiting for a typical train to pass. This route would also be affected by blockage of the approaches to the West River Street/Bridge Street intersection.

Northbound State Route 267 traffic bound for the Interstate 80/State Route 267 interchange

There is no good diversion route for this traffic. The only possible route would be to travel west on West River Street, then north on State Route 89, then east on Donner Pass Road or Interstate 80 to the State Route 267 interchange. This route, however, requires approximately 4.6 minutes of additional travel time than would be required of a vehicle crossing the railroad tracks and making a right turn onto State Route 267 at the Bridge Street/Donner Pass Road/State Route 267 intersection. This route would also be affected by blockage of the approaches to the West River Street/Bridge Street intersection.

Interstate 80/State Route 267 interchange traffic bound for State Route 267 south of the railroad tracks

There is no good diversion route for this traffic. Since it is impossible to know whether or not train activity is occurring at the at-grade crossing from the Interstate 80/State Route 267 interchange, the only possible route would be to travel west on Donner Pass Road to Interstate 80 westbound to State Route 89 southbound to West

River Street eastbound to Bridge Street. This travel route, however, would require an additional 6.7 minutes to complete than the direct route. This route would also be affected by blockage of the approaches to the West River Street/Bridge Street intersection.

Traffic Distribution

The Town of Truckee transportation model and existing traffic counts were used to determine origins and destinations of traffic crossing the Southern Pacific Railroad at the State Route 267 crossing, as shown in Figure 11. This information indicated that, of the traffic traveling northbound over the railroad tracks, 80 percent originates from Bridge Street to the south of West River Street, with the remaining 20 percent originating from East and West River Streets. Fifty percent of this traffic is bound for State Route 267 to the east of the Bridge Street/Donner Pass Road/ State Route 267 intersection with the remaining 50 percent bound for Donner Pass Road to the west of the Bridge Street/Donner Pass Road/State Route 267 intersection and the downtown Truckee area.

- 15 percent of northbound traffic at the rail crossing is bound for State Route 89 north of the Interstate 80 Interchange,
- 14 percent is bound for Interstate 80 eastbound: 12 percent is bound for Interstate 80 westbound,
- 14 percent is bound for Donner Pass Road west of State Route 89,
- 21 percent is destined for the Glenshire area and areas along State Route 267, and
- the remaining 24 percent is bound for destinations along Donner Pass Road between Bridge Street and State Route 89.

The above information was considered to determine what percentage of traffic can divert around the State Route 267 rail crossing without experiencing large travel time increases. Traffic bound for Donner Pass Road to the west of State Route 89 and for Interstate 80 westbound could reasonably divert along West River Street during times that the State Route 267 railroad crossing is blocked. This represents 26 percent of total northbound traffic at the railroad crossing. It should be noted, however, that approximately two-thirds of this traffic is not able to take advantage of the diversion route because the West River Street/Bridge Street intersection becomes blocked by queued vehicles within approximately one minute of the time that the railroad gates are lowered. Southbound traffic at the State Route 267 railroad crossing bound for State Route 89 could reasonably divert to Donner Pass Road during times that State Route 267 is blocked. This represents nine percent of the total southbound traffic at the State Route 267 railroad crossing. Convenient diversion routes are therefore severely limited in the area of this crossing due to both the regional traffic distribution and the lack of a grade separated crossing in the downtown area.

Intersection Control

The existing intersection of Bridge Street/Donner Pass Road/State Route 267 is controlled by a non-standard three-way stop. Stop signs are located on the Donner Pass Road approaches and the southbound Bridge Street approach. The northbound Bridge Street approach is uncontrolled, to prevent the possibility of vehicles being trapped in a queue which would extend from the Bridge Street intersection south onto the railroad tracks if stop control was present. The non-standard three-way stop is necessary to reduce the risk of rail/auto collisions (absent the provision of a traffic signal that is coordinated with the railroad crossing gates to clear the northbound queue prior to gate activation). However, this results in reduced intersection capacity, resulting from confusion among motorists regarding assignment of right-of-way.

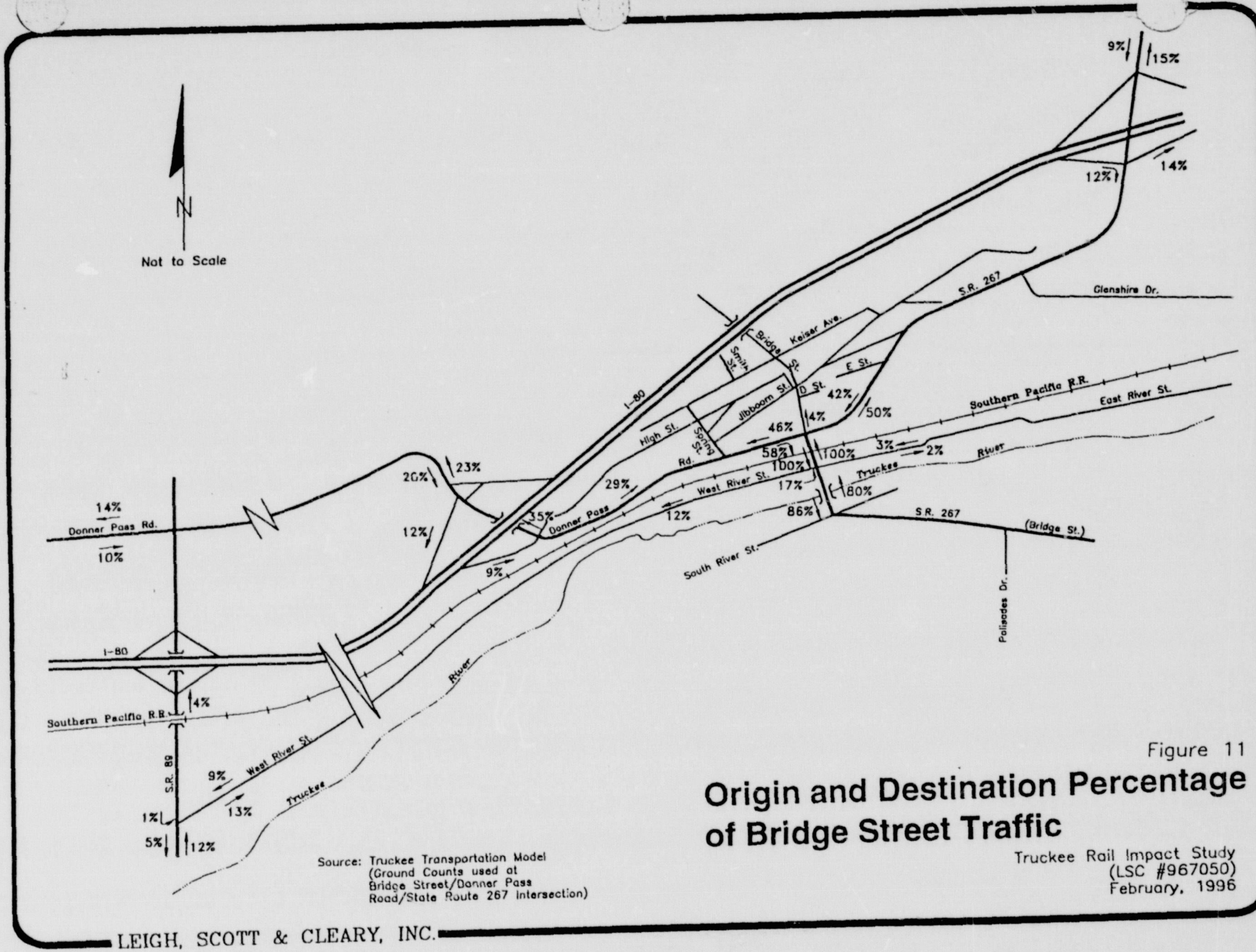

Figure 11

Origin and Destination Percentage of Bridge Street Traffic

Truckee Rail Impact Study
(LSC #967050)
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Accident Data

Accident data has been compiled for an eleven year time period from January, 1985 to December, 1995 at the West River Street/Bridge Street intersection and the Bridge Street/Donner Pass Road/State Route 267 intersection. This data indicates a total of 37 accidents occurred over the eleven year time period at the West River Street/Bridge Street intersection, and a total of 57 accidents occurred at the Bridge Street/Donner Pass Road/State Route 267 intersection. Table 4 presents a summary of accidents by location and type at these two intersections. None of the accidents which were investigated involved train/vehicle collisions. Most accidents at the Bridge Street/Donner Pass Road/State Route 267 intersection were due to right-of-way violations, which are probably caused by confusion associated with the intersection control at this location. Rear-end type accidents typically occur at intersections where vehicles are sitting in queue. These types of accidents are probably exacerbated by the train activity in the area which causes substantial queuing above what would typically occur.

TABLE 4: Accident Data Summary, January 1, 1985 through December 31, 1995

Accident Type	West River Street/Bridge Street	Bridge Street/Donner Pass Road/State Route 267
Rear-end	9	14
Broadside	15	22
Sideswipe	4	9
Hit object	2	5
Head-on	2	3
Overturn	0	1
Pedestrian	2	0
Other	3	3
Total	37	57

Source: Caltrans accident data

CHAPTER 3
Mitigation Alternatives

Review of existing conditions has identified a series of negative traffic impacts associated with the passage of trains through downtown Truckee. To potentially mitigate these impacts, the following roadway construction alternatives have been considered in and around the downtown area:

1. Construction of the State Route 267 Bypass.
2. Construction of the State Route 267 Bypass, widening of West River Street, and widening of State Route 89.
3. Construction of the State Route 267 Bypass, and construction of a railroad underpass connecting Donner Pass Road to West River Street in the vicinity of the Donner Pass Road/Interstate 80 interchange. This alternative is referred to as the West Side Underpass.
4. Construction of the State Route 267 Bypass, and construction of a railroad underpass connecting East River Street to State Route 267, in the vicinity of the existing Church Street intersection. This alternative is referred to as the East Side Underpass.
5. For the year 2015 only, an alternative was considered which assumes construction of both the East and West Side Underpasses, with closure of the existing State Route 267 at-grade crossing. This alternative was evaluated assuming both with and without the State Route 267 Bypass.

Figure 12 presents the four construction alternatives that were considered in these five combinations. Each construction alternative was evaluated for existing traffic demand conditions (ie. what would happen if the alternative were present today), and future year (estimated 2015) traffic demand conditions. Each construction alternative was evaluated using the Town of Truckee Transportation demand model to determine shifts in travel patterns resulting from each of the construction alternatives. To provide a comparison basis for each of the construction alternatives, the assumed maximum daily "gate down" time of 7.5 minutes was used to determine measures of performance for a single train crossing episode during the summer PM peak demand period. Each alternative was also evaluated to determine average daily and annual measures of performance. The following six measures of performance were quantified for each construction alternative:

1. Total vehicle delay - measured in vehicle-hours of delay.
2. Total person delay - measured in person-hours of delay.
3. Total number of vehicles delayed.
4. Total number of people delayed.
5. Total length of vehicle queuing - measured in miles.
6. Total number of intersections which become blocked.

Table 5 presents the above measures of performance for each of the construction alternatives assuming a single 7.5 minute train crossing episode. Table 6 presents existing and post-merger performance measures for each of the construction alternatives. Figures 13 through 15, present a comparison of total vehicle delay, total person delay, and total queue length for each of the construction alternatives. Following is a description of each of the roadway improvement alternatives which were considered, and the impact on both existing and future year (2015) traffic volumes and queues in and around the historic downtown area generated by each alternative.

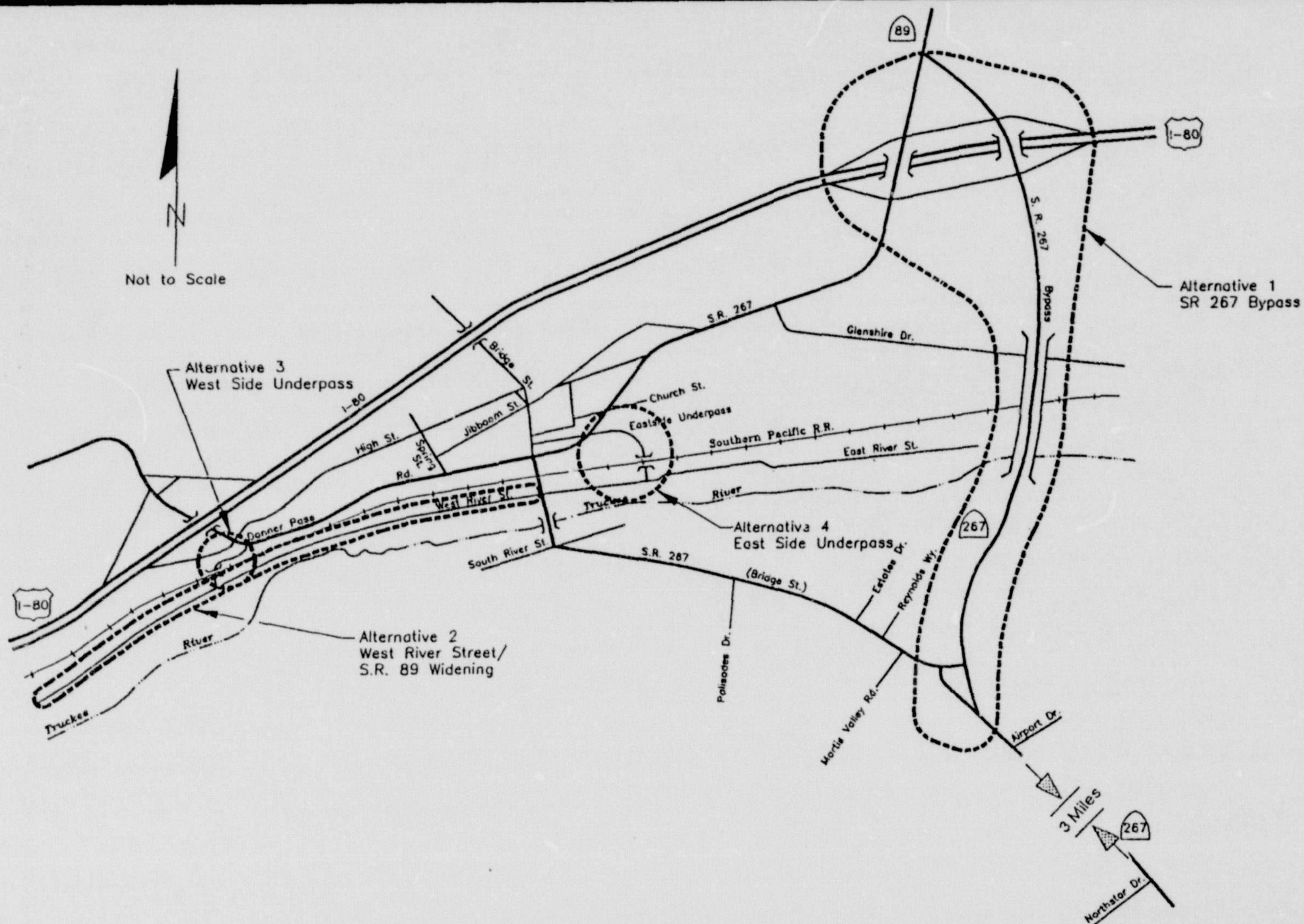

Figure 12

Alternatives

Truckee Rail Impact Study
(LSC #967050)
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Note: Alternatives 2, 3 & 4 assume construction of State Route 267 Bypass

TABLE 5: Construction Alternatives Performance Measures

Roadway Alternatives(1)	Vehicle Delay (veh-hours)	Number of Vehicles Delayed	Person Delay (pers-hrs)	Number of Persons Delayed	Total Length of Queues (miles)	Number of Intersections Blocked
Existing Conditions						
1 No-Build	26.2	447	47.7	814	1.29	8
2 SR 267 Bypass Only	16.1	266	29.3	484	0.74	5
3 State Route 89 and West River Street Improvements	11.2	182	20.4	331	0.49	5
4 West Side Underpass	3.2	52	5.8	95	0.13	1
5 East Side Underpass	4.2	67	7.6	122	0.17	1
2015 Conditions						
1 No-Build	71.9	1,451	130.9	2641	4.34	12
2 SR 267 Bypass Only	61.3	1,110	111.6	2020	3.21	12
3 State Route 89 and West River Street Improvements	50.0	853	91.0	1552	2.43	11
4 West Side Underpass	18.4	299	33.5	544	0.81	5
5 East Side Underpass	20.8	340	37.9	619	0.89	5

Note 1: Performance measures are for a single 7.5 minute "gate down" time during a summer midweek PM peak hour.
Source: LSC

rralts1

TABLE 6: Pre and Post Merger Performance Measures								
Alternatives	Vehicle-Hours Delay		Person-Hours Delay		Total Vehicles Delayed		Total Persons Delayed	
	Daily	Annually	Daily	Annually	Daily	Annually	Daily	Annually
1. No Build								
Pre-Merger	46	14,000	84	25,000	1,463	448,000	2,663	815,000
Post-Merger	118	36,000	215	66,000	3,762	1,152,000	6,847	2,097,000
2. SR 267 Bypass								
Pre-Merger	26	8,000	48	15,000	810	248,000	1,474	451,000
Post-Merger	68	21,000	124	38,000	2,083	638,000	3,791	1,161,000
3. SR 89/West River Street Improvements								
Pre-Merger	19	6,000	35	11,000	580	178,000	1,056	323,000
Post-Merger	49	15,000	89	28,000	1,492	456,000	2,715	831,000
4. West Side Underpass								
Pre-Merger	6	2,000	11	3,000	174	53,700	317	97,000
Post-Merger	15	4,000	27	8,000	448	137,000	815	249,000
5. East Side Underpass								
Pre-Merger	8	3,000	14	4,000	233	71,000	424	130,000
Post-Merger	20	6,000	36	11,000	599	184,000	1,091	334,000

Note: Assumes Existing Traffic Demands
Note: Daily delay based upon peak month traffic volumes.
Note: Annual delay based upon average annual daily traffic volumes.
Source: LSC

Figure 13

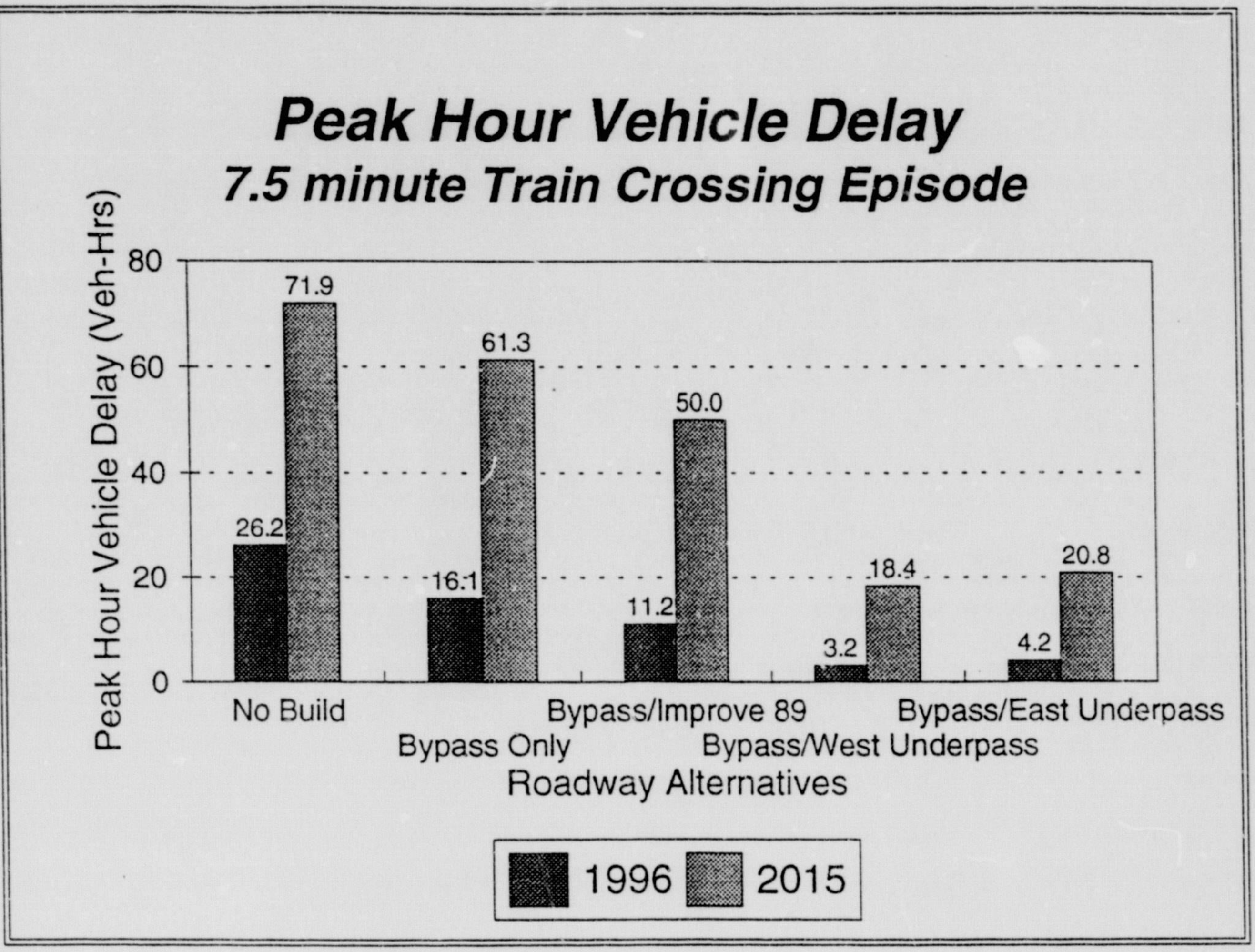
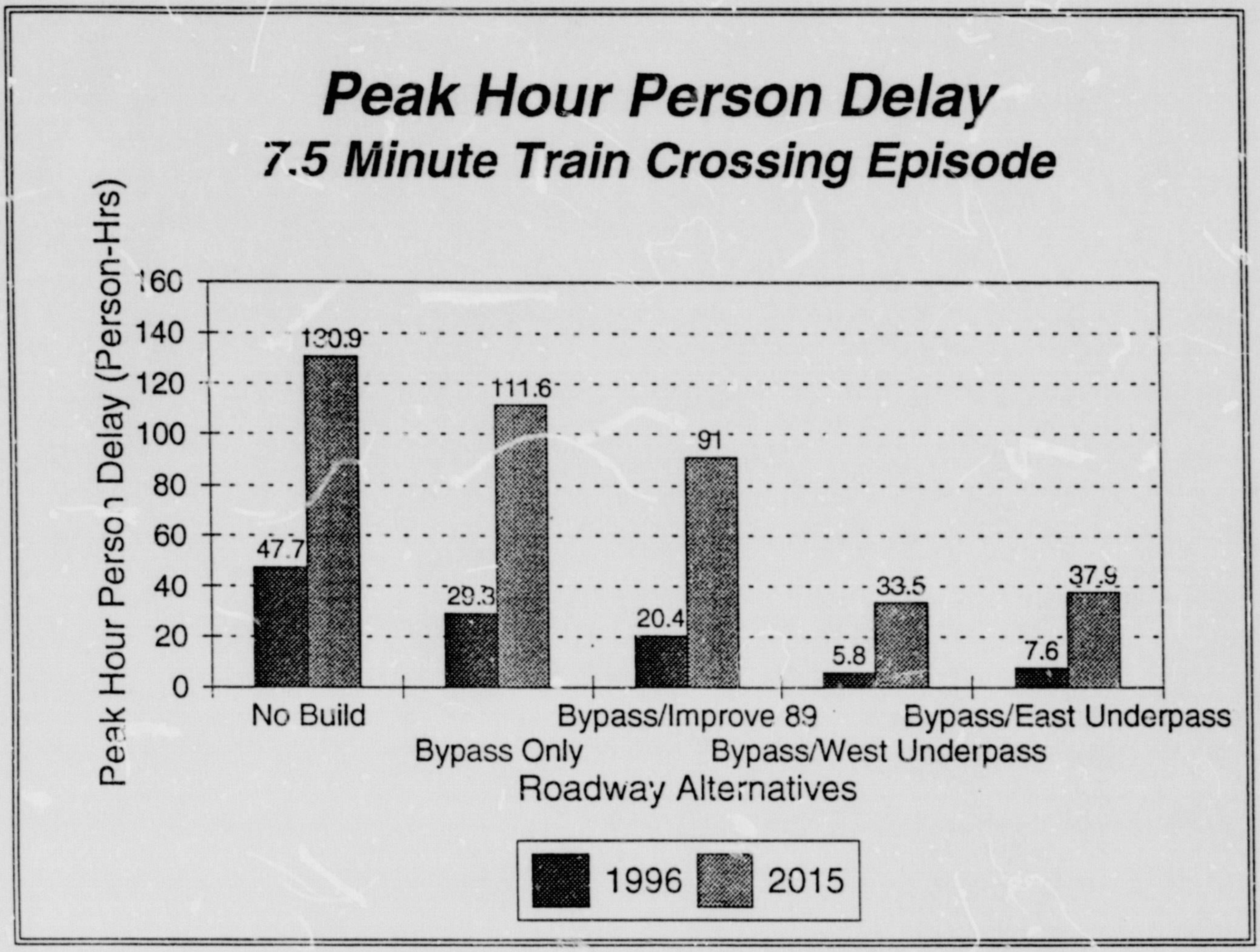
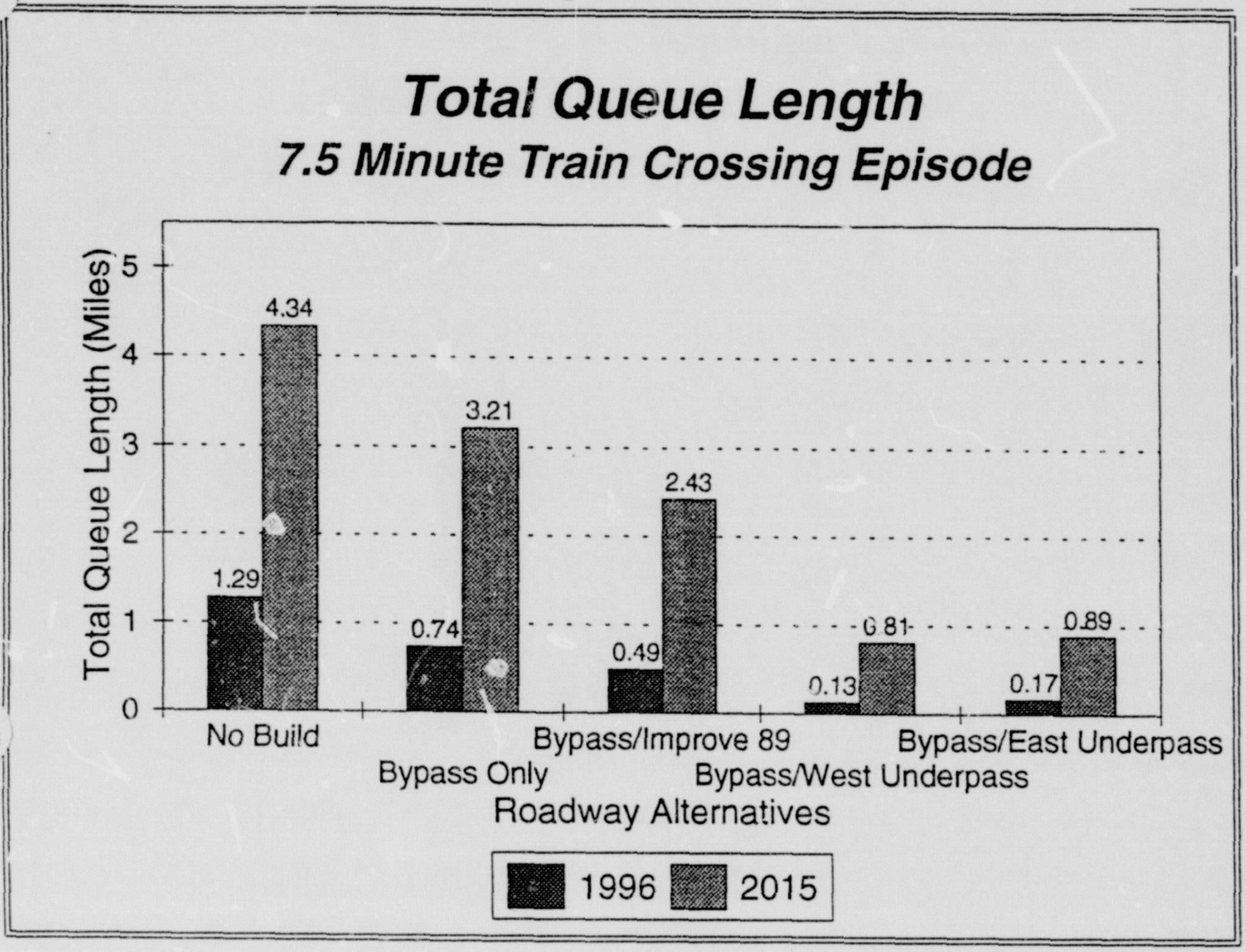

Peak Hour Vehicle Delay
7.5 minute Train Crossing Episode
Peak Hour Vehicle Delay (Veh-Hrs)
80
60
40
20
0
71.9
26.2
61.3
16.1
50.0
11.2
18.4
3.2
20.8
4.2
No Build
Bypass Only
Bypass/Improve 89
Bypass/West Underpass
Bypass/East Underpass
Roadway Alternatives
1996
2015

Figure 14



Peak Hour Person Delay
7.5 Minute Train Crossing Episode
Peak Hour Person Delay (Person-Hrs)
160
140
120
100
80
60
40
20
0
47.7
130.9
29.3
111.6
20.4
91
5.8
33.5
7.6
37.9
No Build
Bypass Only
Bypass/Improve 89
Bypass/West Underpass
Bypass/East Underpass
Roadway Alternatives
1996
2015

Figure 15



Total Queue Length
7.5 Minute Train Crossing Episode
Total Queue Length (Miles)
5
4
3
2
1
0
4.34
1.29
3.21
0.74
2.43
0.49
0.81
0.13
0.89
0.17
No Build
Bypass Only
Bypass/Improve 89
Bypass/West Underpass
Bypass/East Underpass
Roadway Alternatives
1996
2015

Existing Traffic Demand

Alternative 1 - Construction of State Route 267 Bypass

This alternative assumes construction of the State Route 267 bypass as a two-lane limited access roadway facility. Figure 16 presents traffic volumes and locations of vehicle queues which would occur if the State Route 267 Bypass were built under existing traffic demand conditions.

Construction of the bypass would reduce the existing northbound traffic volume across the railroad tracks by approximately 50 percent from No-Build Conditions. Southbound traffic volumes at the at-grade crossing would be reduced approximately 35 percent from No-Build conditions. Vehicular queuing resulting from passage of trains through the downtown area would also be reduced as a result of the reduced traffic demand at the existing at-grade crossing. Vehicular delay during the PM peak hour, assuming 7.5 minute "gate down" times, would be reduced from 26.2 vehicle-hours in the No-Build scenario to 16.1 vehicle-hours in the State Route 267 Bypass Alternative, a reduction of 39 percent. Total daily and annual delay is reduced from 118 vehicle-hours/day and 36,000 vehicle-hours/year in the No-Build post-merger scenario , to 68 vehicle-hours/day and 21,000 vehicle-hours/year with construction of this alternative assuming post-merger conditions.

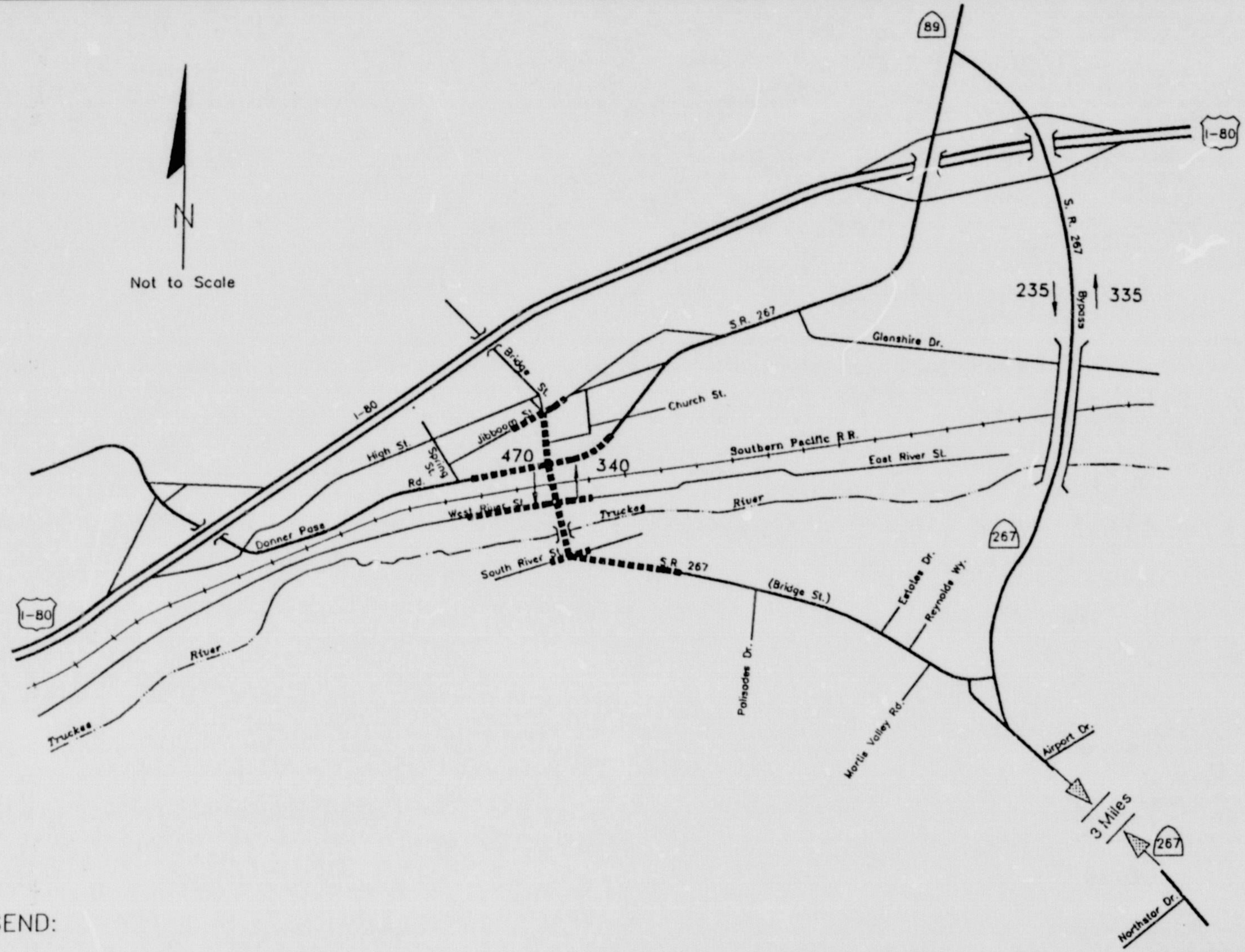
The primary benefit of the bypass is to reduce regional traffic flow through the downtown area, and across the existing at-grade crossing. The bypass also provides an additional grade separation of the Truckee River and the existing railroad tracks. While this alternative will effectively solve the impact of the rail merger on regional traffic load between the I-80 corridor and Martis Valley/North Tahoe, substantial delay will still be experienced for local traffic.

Funding for construction of the State Route 267 Bypass is currently programmed for the 1998/1999 time frame; however, funding for this project has been uncertain, since the State of California has shifted emphasis on construction expenditures in recent years from new roadway construction to seismic retrofit of existing structures. The California Transportation Commission (CTC) recently held hearings regarding the 1996 Surface Transportation Improvement Program (STIP), in which programming for the State Route 267 Bypass was discussed. Final programming decisions are expected back from the CTC in April of 1996.

Alternative 2 - Construction of SR 267 Bypass, with West River Street and State Route 89 Widening

This alternative assumes construction of the State Route 267 Bypass, as described above, as well as widening of West River Street to a four-lane arterial from the West River Street/Bridge Street intersection in downtown Truckee to the West River Street/State Route 89 intersection south of the Lucky-Longs Center. This alternative also assumes widening of State Route 89 from West River Street to Deerfield Drive, with associated intersection improvements at the West River Street/State Route 89 intersection and Deerfield Drive/State Route 89 intersection. This would also require reconstruction and widening of the State Route 89 railroad underpass commonly referred to as the "mousehole". Figure 17 presents traffic volumes and locations of vehicle queues that would occur with this alternative under existing traffic demand.

Construction of these alternatives elements together would reduce the existing northbound traffic volume across the at-grade crossing by approximately 55 percent from No-Build conditions. Southbound traffic volumes would be reduced approximately 45 percent at the at-grade crossing from No-Build conditions. Vehicular delay during the PM peak hour, assuming 7.5 minute "gate down" time, would be reduced from 26.2 vehicle-hours in the No-Build scenario to 11.2 vehicle-hours in the State Route 267 Bypass and West River Street/State Route 89 widening alternative. Total daily and annual delay is reduced from 118 vehicle-hours/day and 36,000 vehicle-hours/year in the No-Build post-merger scenario, to 49 vehicle-hours/day and 15,000 vehicle-hours/year with construction of this alternative assuming post-merger conditions.



LEGEND:

▬ ▬ ▬ ▬ ▬ ▬ = Locations of vehicle queues

340 = Summer Midweek PM Peak-Hour Traffic Volume Across Rail Road Tracks

Note: Assumes 7.5 minute "Gate Down" Time.

Figure 16

Impact of State Route 267 Bypass on Existing Traffic Queues

Truckee Rail Impact Study
(LSC #967050)
March, 1996

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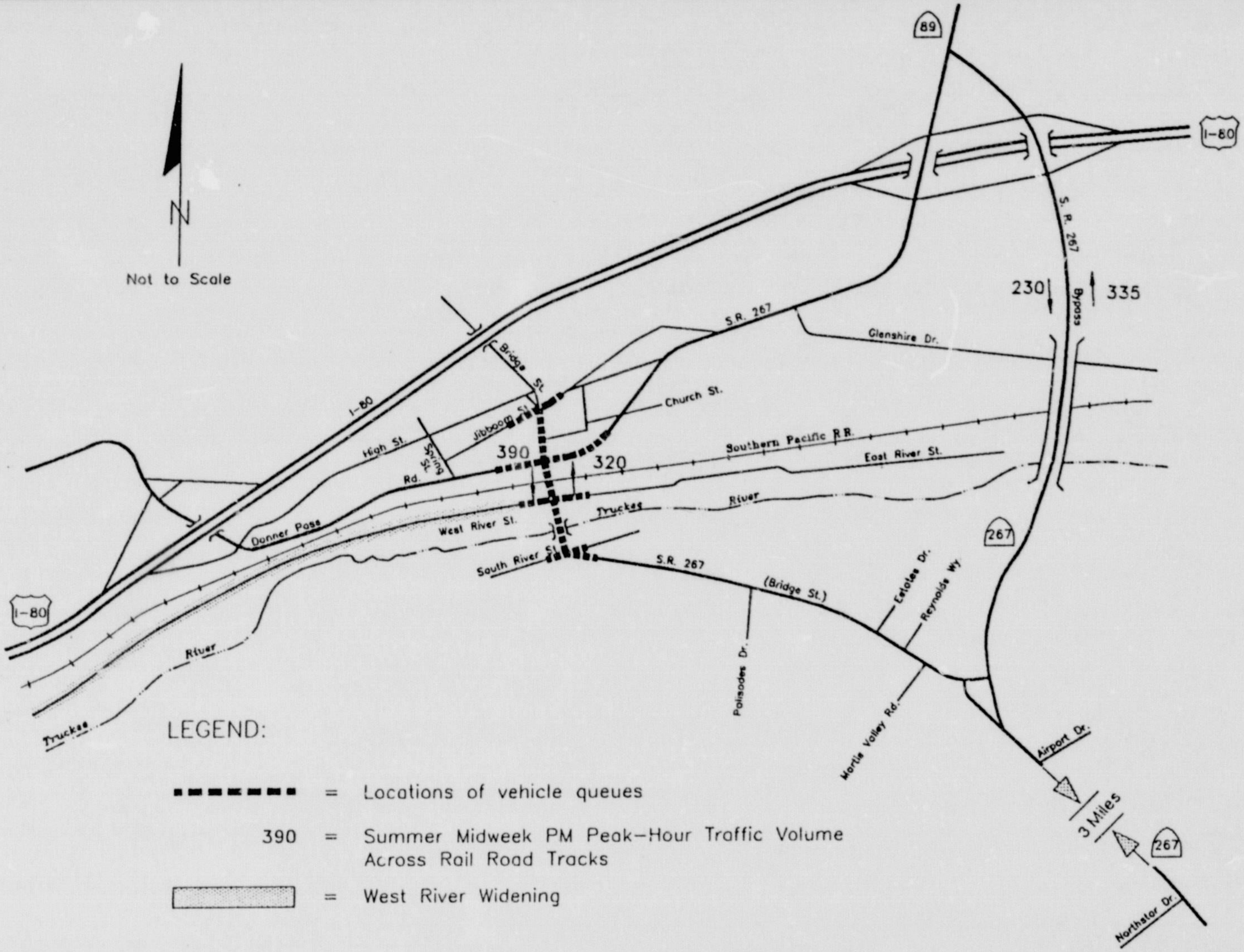

LEGEND:

▪▪▪▪▪▪▪	=	Locations of vehicle queues
390	=	Summer Midweek PM Peak-Hour Traffic Volume Across Rail Road Tracks
(shaded)	=	West River Widening

Figure 17

Impact of State Route 267 Bypass and West River St./ S.R. 89 Improvements on Existing Traffic Queues

Truckee Rail Impact Study
(LSC #967050)
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Note: Assumes 7.5 Minute "Gate Down" Time.

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The primary benefit of this alternative is to improve the West River Street diversion route for traffic traveling to and from State Route 267 south of downtown and the Gateway Center area. For northbound State Route 267 traffic bound for the Gateway Center area, widening of the Bridge Street/West River Street intersection, which would be a necessary component of this alternative, would allow for easier diversion around the railroad crossing during train episodes. Traffic originating from the Gateway Center area bound for State Route 267 south of downtown would be more likely to use West River Street than Donner Pass Road, thereby reducing the southbound traffic demand across the existing at-grade crossing.

The combination of reduced traffic demand and improved diversion access provides partial relief of blockages associated with train activity. However, this alternative does not provide any new diversion options during periods of train crossing activity, but instead simply makes it easier to use an existing diversion route. As discussed in the existing conditions analysis, this diversion route is desirable to only a limited proportion of traffic crossing the railroad tracks. Therefore, the improvements associated with this alternative do help to reduce queuing and delay, but only for a limited portion of the traffic.

Since the State Route 267 Bypass has not yet been constructed, it is important to consider this alternative without construction of the bypass, in the event that funding is lost. If this were to occur, traffic queuing and delay for this construction alternative would increase approximately 80 percent over what is presented in Figure 17. Widening of West River Street and the "mousehole" would only result in traffic volumes and delays approximately 10 percent less than No-Build conditions. This is because most traffic that would use the bypass would be forced back through the at-grade crossing, thereby increasing queuing and delay without bypass construction. This alternative would also likely require substantial right-of-way acquisition and relocation of historic structures, particularly in the area of the West River Street/Bridge Street intersection.

Alternative 3 - Construction of SR 267 Bypass and West Side Underpass

This alternative assumes construction of the State Route 267 Bypass, as described above, as well as a new roadway which would connect Donner Pass Road to West River Street in the vicinity of the Donner Pass Road/Interstate 80 interchange. This roadway would pass beneath the railroad tracks via an underpass, and connect to Donner Pass Road and West River Street via Stop controlled intersections. As a portion of this alternative, the northbound left turn pocket on State Route 267 at the State Route 267/West River Street intersection and the eastbound right turn pocket on West River Street would be improved to insure adequate access to and from the proposed underpass. Figure 18 presents traffic volumes and locations of vehicle queues which would occur with this alternative under existing traffic demand.

Construction of this alternative reduces northbound traffic demand across the at-grade crossing approximately 55 percent compared to No-Build conditions, and reduces southbound traffic demand across the at-grade crossing by approximately 65 percent. Depending on the design of this alternative, some traffic could also divert from the State Route 267 Bypass onto this new roadway segment. Vehicular delay during the PM peak hour, assuming 7.5 minute "gate down" time, is reduced from 26.2 vehicle-hours in the No-Build scenario to 3.2 vehicle-hours in the State Route 267 Bypass and West Side Underpass alternative. Total daily and annual delay is reduced from 118 vehicle-hours/day and 36,000 vehicle-hours/year in the No-Build post-merger scenario, to 15 vehicle-hours/day and 4,000 vehicle-hours/year with construction of this alternative assuming post-merger conditions.

The primary benefit of this alternative is to provide an alternate diversion route in the downtown area around blockages of the existing at-grade crossing. A secondary benefit of this alternative is to provide an alternate route around congestion which occurs on Commercial Row. It should be pointed out that construction of this alternative is contingent upon the existing State Route 267 at grade crossing remaining open. If this crossing were to be closed with construction of the est side underpass, vehicular flow through the downtown area would become circuitous. Vehicle Miles of travel would increase, and signalization of the underpass intersections with Donner Pass Road and West River Street would be required. The required intersection turn-lane storage

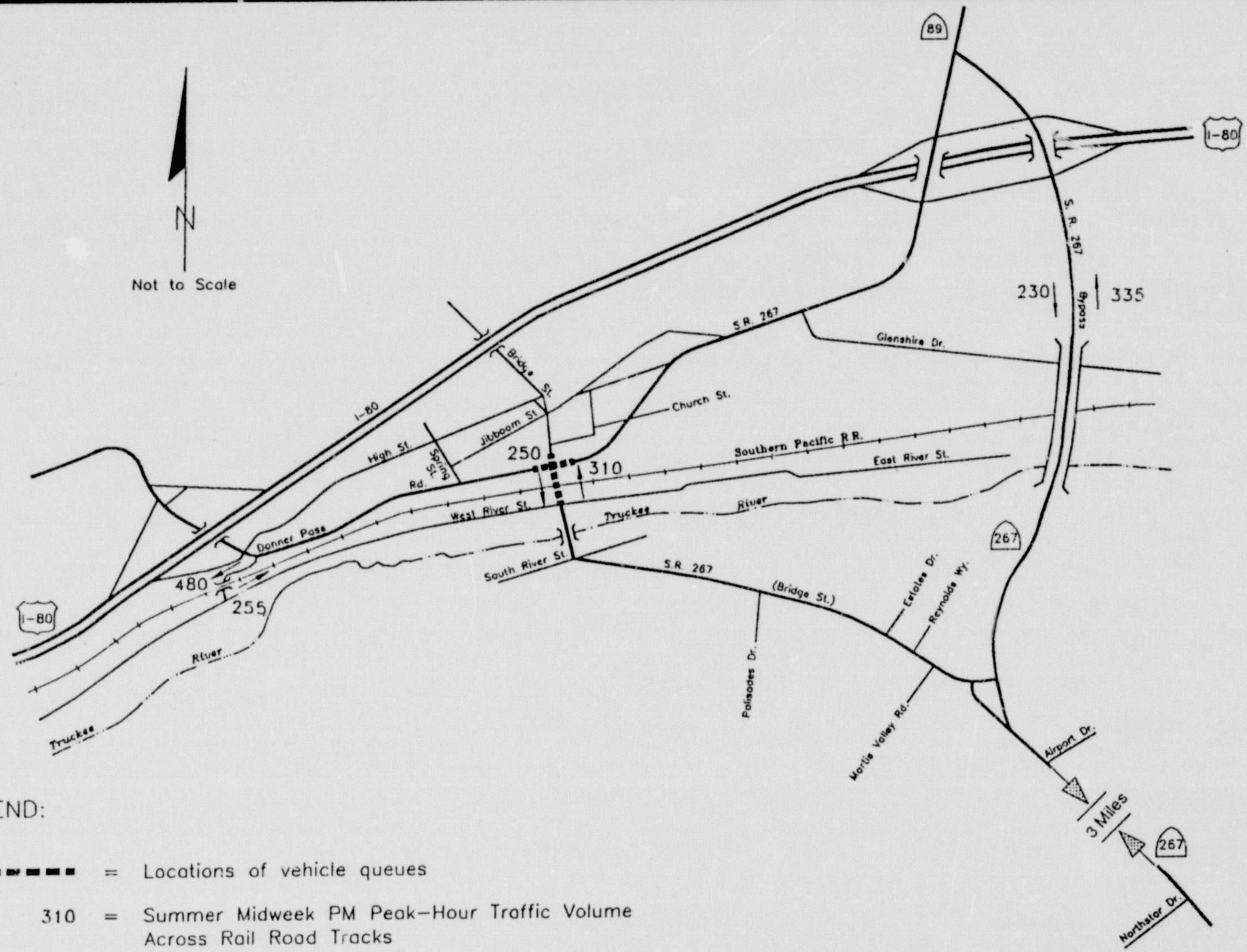

Figure 18

Impact of State Route 267 Bypass and West Side Underpass on Existing Traffic Queues

Truckee Rail Impact Study
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March, 1996

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requirements would also likely require the underpass to be constructed as a four lane facility, due to the increased traffic demand which would be generated by closure of the existing at-grade crossing.

The combination of reduced traffic demand and improved diversion options provides near total elimination of blockages associated with train activity. By providing a grade seperated diversion route across the railroad tracks in the downtown area, drivers would have much lower diversion times than what currently exists during times that the railroad tracks are blocked. This alternative will still cause some delay and limited queuing as a result of motorists who are unfamiliar with the area not realizing the convenience of the diversion route. Delay will also be incurred as a result of motorists being forced to alter their natural travel paths to avoid train blockages. However, the delay would be greatly reduced over existing conditions. The improvements associated with this alternative reduce queuing and delay for all traffic which wishes to cross the existing at-grade crossing by supplying a downtown diversion alternative.

Since the State Route 267 Bypass has not yet been constructed, it is important to consider this alternative without construction of the bypass, in the event that funding is lost. If this were to occur, traffic queuing and delay for this construction alternative would increase only marginally over what is presented in Figure 18. Because there is an alternate diversion route in the downtown area, traffic that would have been on the State Route 267 Bypass which is forced through downtown would have a diversion route around train blockages, preventing delay and queuing from increasing substantially.

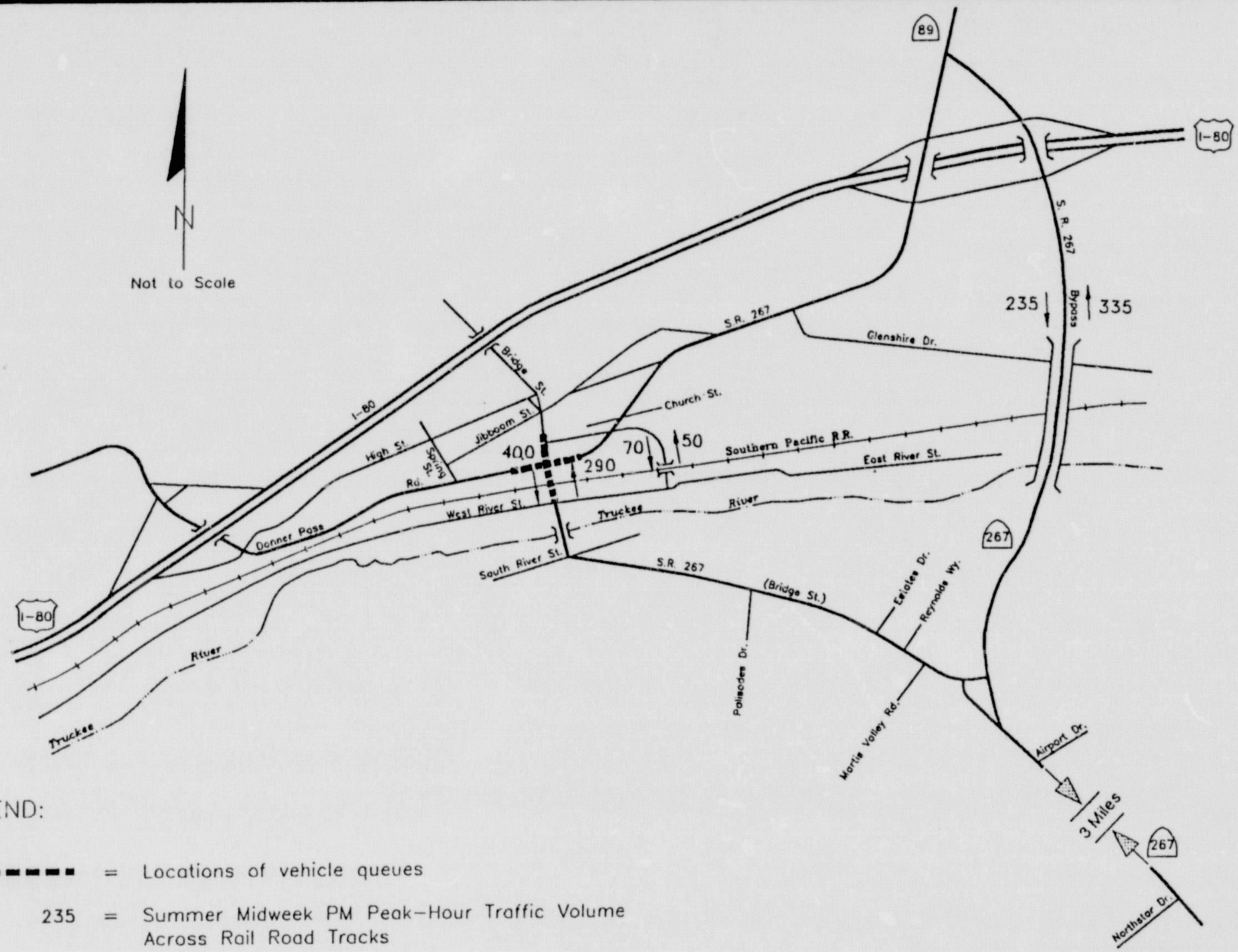
Design of this alternative would be constrained by the limited space in which to fit the railroad underpass. Design speeds would likely need to be 25 MPH or less in order to accomplish the horizontal curvature which would be required to construct this alternative. Proximity of the Interstate 80 eastbound off-ramp to the underpass access point on Donner Pass Road would also present intersection spacing design issues which would need to be addressed. Most of the right-of-way for this alternative appears to be located on existing railroad and Caltrans property.

Alternative 4 - Construction of SR 267 Bypass and East Side Underpass

This alternative assumes construction of the State Route 267 bypass, as described above, as well as a new roadway which would connect East River Street to State Route 267 in the vicinity of the existing Church Street/State Route 267 intersection. This roadway would pass beneath the railroad tracks via an underpass. As a portion of this alternative, a westbound left turn pocket on East River Street at the State Route 267/East River Street intersection should be constructed, as well as a northbound right turn pocket on State Route 267, to insure adequate access to and from the proposed underpass. Figure 19 presents traffic volumes and locations of vehicle queues which would occur with this alternative under existing traffic demand.

Construction of this alternative reduces northbound traffic demand across the at-grade crossing approximately 60 percent over No-Build conditions, and reduced southbound traffic demand across the tracks by approximately 45 percent. This reduction is due primarily to the State Route 267 Bypass. The East Side Underpass is too circuitous to existing traffic for demand patterns to be significantly affected during periods when train activity is not occurring. When train activity is occuring, the underpass becomes much more desirable as a bypass of the existing at-grade crossing. Vehicular delay during the PM peak hour, assuming 7.5 minute "gate down" times, is reduced from 26.2 vehicle-hours in the No-Build scenario to 4.2 vehicle-hours in the State Route 267 Bypass and East Side Underpass alternative. Total daily and annual delay is reduced from 118 vehicle-hours/day and 36,000 vehicle-hours/year in the No-Build post-merger scenario , to 20 vehicle-hours/day and 6,000 vehicle-hours/year with construction of this alternative assuming post-merger conditions.

The primary benefit of this alternative is to provide an alternate diversion route in the downtown area, around blockages of the existing at-grade crossing. Unlike the West Side Underpass alternative, this alternative does not provide an alternate route around congestion that occurs on Commercial Row. It should be pointed out



LEGEND:

▬ ▬ ▬ ▬ = Locations of vehicle queues

235 = Summer Midweek PM Peak-Hour Traffic Volume Across Rail Road Tracks

Note: Assumes 7.5 Minute "Gate Down" Time.

Figure 19

Impact of State Route 267 Bypass and East Side Underpass on Existing Traffic Queues

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that construction of this alternative is contingent upon the existing State Route 267 at-grade crossing remaining open. If this crossing were to be closed with construction of the east side underpass, vehicular flow through the downtown area would become circuitous. Vehicle Miles of travel would increase, and signalization of the underpass intersections with State Route 267 and East River Street would be required.

The improved diversion access provides near total relief of blockages associated with train activity. By providing a grade seperated diversion route across the railroad tracks in the downtown area, drivers would have much lower diversion times than what currently exists during times that the railroad tracks are blocked. This alternative will still cause some delay and limited queuing as a result of motorists who are unfamiliar with the area not realizing the convenience of the diversion route. Delay will also be incurred as a result of motorists being forced to alter their natural travel paths to avoid train blockages. However, the delay would be greatly reduced over existing conditions. The improvements associated with this alternative reduce queuing and delay for all traffic which wishes to cross the existing at-grade crossing by supplying a downtown diversion alternative.

Since the State Route 267 Bypass has not yet been constructed, it is important to consider this alternative without construction of the bypass, in the event that funding is lost. If this were to occur, traffic queuing and delay for this construction alternative would increase marginally over what is presented in Figure 19. Because there is an alternate diversion route in the downtown area, traffic that would have been on the State Route 267 Bypass which is forced through downtown would have a diversion route around train blockages, preventing delay and queuing from increasing substantially. This alternative does not, however, provide improvements to circulation when train blockages are not present in the downtown area. Due to the circuity of this alternative, the primary benefits are realized only during periods when train blockages are occurring. An advantage of this alternative is that all or nearly all of the required right-of-way appears to be located on existing railroad property.

Future Year (2015) Traffic Demand

To evaluate future year (2015) traffic demand for the various construction alternatives, the Town of Truckee transportation demand model was used in conjunction with projected year 2015 land use supplied by the Town of Truckee Planning Department. The land use assumptions provided assume approximately 75 percent of total general plan residential growth, and 40 percent of total general plan employment growth will have occurred by the year 2015. This information was used to determine projected year 2015 trip generation and distribution for each of the construction alternatives. Table 7 presents of performance measures for each of the year 2015 alternatives considered. The following provides a description of each of the construction alternatives for year 2015 traffic demand levels.

It should be pointed out that in determining the assignment of traffic for the year 2015, it was assumed that there would be no widening of State Route 267. The resulting level of traffic demand, however, could not realistically occur without providing four lanes on State Route 267 from south of the downtown area to the State Route 267/State Route 89/Interstate 80 interchange in the No-Build Alternative. For the Construction alternatives, this is the case for State Route 267 south of the Commercial Row/Bridge Street/State Route 267 intersection only. For purposes of performing queuing and delay analysis, it was assumed that these improvements would have to occur; otherwise, the traffic volumes across the existing at-grade crossing could not realistically occur.

No-Build

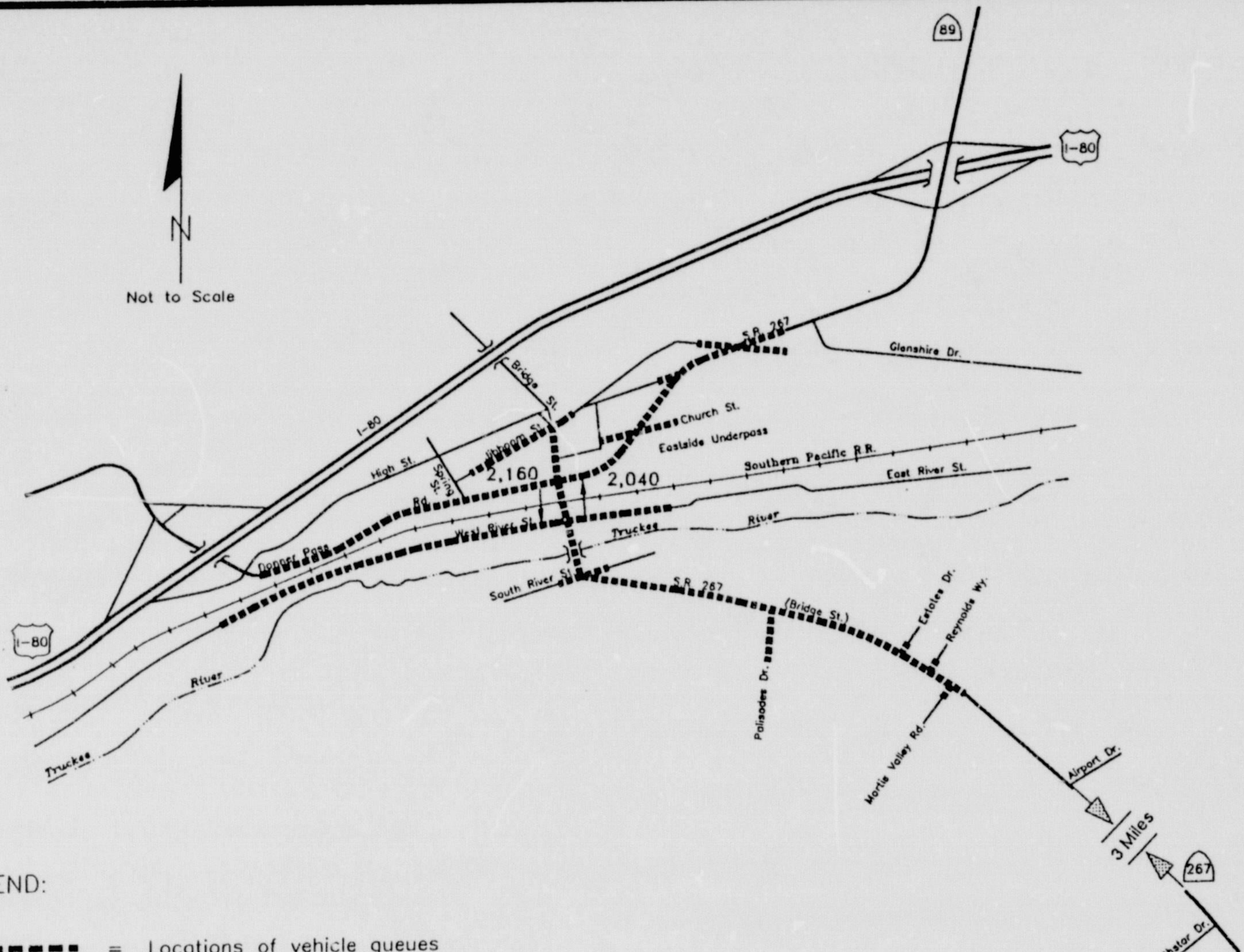
This alternative assumes no major roadway improvements in the downtown area with year 2015 traffic demand levels. Figure 20 presents traffic volumes and locations of vehicle queues which would occur in the year 2015.

This alternative results in an increase of northbound traffic volumes across the at-grade crossing of approximately 290 percent over existing conditions. Similarly, southbound traffic volumes would increase approximately 300 percent at the at-grade crossing from existing conditions. Vehicular queuing resulting from passage of trains through the downtown area would also increase substantially over existing conditions as a result of the increased traffic demand across the railroad tracks. Vehicular delay during the PM peak hour, assuming 7.5 minute "gate down" times, is increased from 26.2 vehicle-hours under existing conditions, to 71.9 vehicle-hours with 2015 traffic demand levels. Total daily and annual delay increases from 118 vehicle-hours/day and 36,000 vehicle-hours/year in the No-Build post-merger scenario, to 323 vehicle-hours/day and 99,000 vehicle-hours/year with year 2015 No-Build post-merger conditions.

TABLE 7: 2015 Traffic Demand
Pre- and Post-Merger Performance Measures

Alternatives	Vehicle-Hours Delay		Person-Hours Delay		Total Vehicles Delayed		Total Persons Delayed	
	Daily	Annually	Daily	Annually	Daily	Annually	Daily	Annually
1. No Build								
Pre-Merger	126	39,000	229	70,000	4,705	1,440,000	8,563	2,622,000
Post-Merger	323	99,000	589	180,000	12,099	3,705,000	22,019	6,742,000
2. SR 267 Bypass								
Pre-Merger	97	29,000	177	54,000	3,248	995,000	5,912	1,810,000
Post-Merger	249	76,000	454	139,000	8,353	2,558,000	15,202	4,655,000
3. SR 89/West River Street Improvements								
Pre-Merger	77	23,000	140	43,000	2,448	749,000	4,455	1,364,000
Post-Merger	198	60,000	360	110,000	6,294	1,927,000	11,455	3,508,000
4. West Side Underpass								
Pre-Merger	25	8,000	46	14,000	762	233,000	1,387	424,000
Post-Merger	65	20,000	118	36,000	1,960	600,000	3,567	1,092,000
5. East Side Underpass								
Pre-Merger	29	9,000	53	17,000	893	273,000	1,626	497,000
Post-Merger	76	23,000	137	42,000	2,297	703,000	4,180	1,280,000

Note: Assumes 2015 Traffic Demand.
Note: Daily delay based upon peak month traffic volumes.
Note: Annual delay based upon average annual daily traffic volumes.
Source: LSC



LEGEND:

▬ ▬ ▬ ▬ = Locations of vehicle queues

2,160 = Year 2015 Summer Midweek PM Peak-Hour Traffic Volume Across Rail Road Tracks

Note: Assumes 7.5 Minute "Gate Down" Time.

Figure 20

Year 2015 No Build Traffic Queues

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Alternative 1 - Construction of State Route 267 Bypass

This alternative assumes construction of the State Route 267 Bypass as described in the existing conditions analysis. Figure 21 presents traffic volumes and locations of vehicle queues that would occur if the State Route 267 Bypass were built under 2015 traffic demand conditions.

Construction of the bypass would reduce the projected 2015 northbound traffic volume across the at-grade crossing by approximately 40 percent from 2015 No-Build conditions. Southbound traffic volumes would be reduced approximately 20 percent at the at-grade crossing from 2015 No-Build conditions. Vehicular queuing resulting from passage of trains through the downtown area would also be reduced as a result of the reduced traffic demand at the existing at-grade crossing. Vehicular delay during the PM peak hour, assuming 7.5 minute "gate down" time, is reduced from 71.9 vehicle-hours in the 2015 No-Build scenario to 61.3 vehicle-hours with the State Route 267 Bypass. Total daily and annual delay is reduced from 323 vehicle-hours/day and 99,000 vehicle-hours/year in the No-Build post-merger scenario, to 249 vehicle-hours/day and 76,000 vehicle-hours/year with construction of this alternative assuming post-merger conditions.

As described in the existing conditions analysis, the primary benefit of the bypass is to reduce regional traffic flow through the downtown area, and across the existing at-grade crossing. The bypass also provides an additional grade seperation of the Truckee River, and the existing railroad tracks.

Alternative 2 - Construction of SR 267 Bypass with West River Street and State Route 89 Widening

This alternative assumes construction of the State Route 267 Bypass, and the West River Street and State Route 89 widening, as described in the existing conditions analysis. Figure 22 presents traffic volumes and locations of vehicle queues that would occur with this alternative under projected year 2015 traffic demand.

Construction of this alternative would reduce the existing northbound traffic volume across the at-grade crossing by approximately 45 percent from 2015 No-Build conditions. Southbound traffic volumes would be reduced approximately 35 percent at the at-grade crossing from No-Build conditions. Vehicular delay during the PM peak hour, assuming 7.5 minute "gate down" times, is reduced from 71.9 vehicle-hours in the 2015 No-Build scenario to 50.0 vehicle-hours in the with State Route 267 Bypass and West River Street/State Route 89 widening alternative. Total daily and annual delay is reduced from 323 vehicle-hours/day and 99,000 vehicle-hours/year in the No-Build post-merger scenario, to 198 vehicle-hours/day and 60,000 vehicle-hours/year with construction of this alternative assuming post-merger conditions.

As described in the existing conditions analysis, the primary benefit of this alternative is to improve the diversion route of traffic traveling to and from State Route 267 south of downtown, and the Gateway Center area of Truckee (and beyond). The limitations of this improvement for the year 2015 are similar as for existing conditions.

Since the State Route 267 Bypass has not yet been constructed, it is important to consider this alternative without construction of the bypass, in the event that funding is lost. If this were to occur, traffic queuing and delay for this construction alternative would increase approximately 70 percent over what is presented in Figure 22. Widening of West River Street and the "mousehole" would only result in traffic volumes and delays approximately 10 percent less than No-Build conditions. This is because most traffic which is using the bypass would be forced back through the at-grade crossing, thereby increasing queuing and delay without bypass construction.

Alternative 3 - Construction of SR 267 Bypass and West Side Underpass

This alternative assumes construction of the State Route 267 Bypass and the West Side Underpass, as described in the existing traffic demand conditions analysis. To accommodate year 2015 traffic demand, the

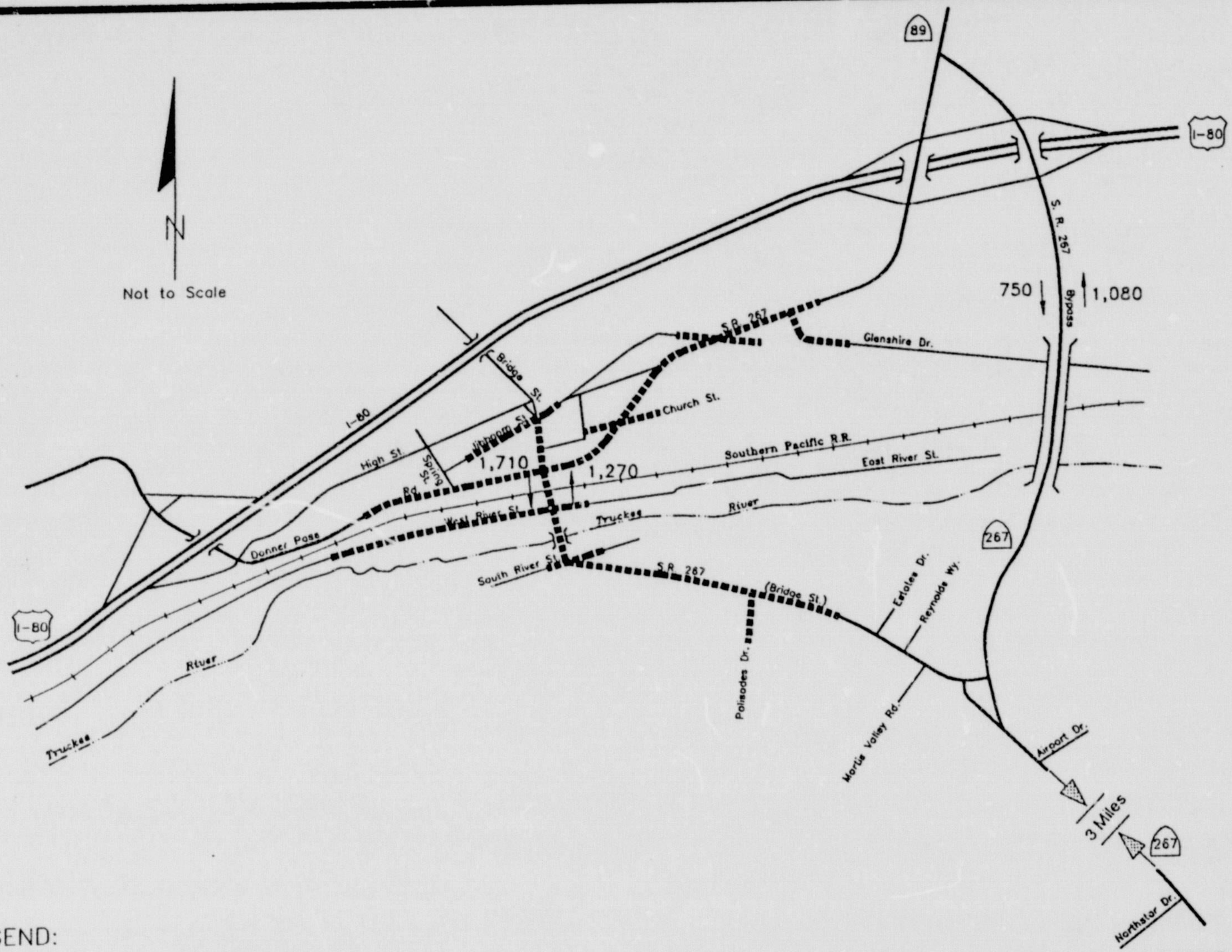

Figure 21

Impact of State Route 267 Bypass on Year 2015 Traffic Queues

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LEGEND:

▬ ▬ ▬ ▬ = Locations of vehicle queues

750 = Year 2015 Summer Midweek PM Peak-Hour Traffic Volume Across Rail Road Tracks

Note: Assumes 7.5 minute "Gate Down" Time.

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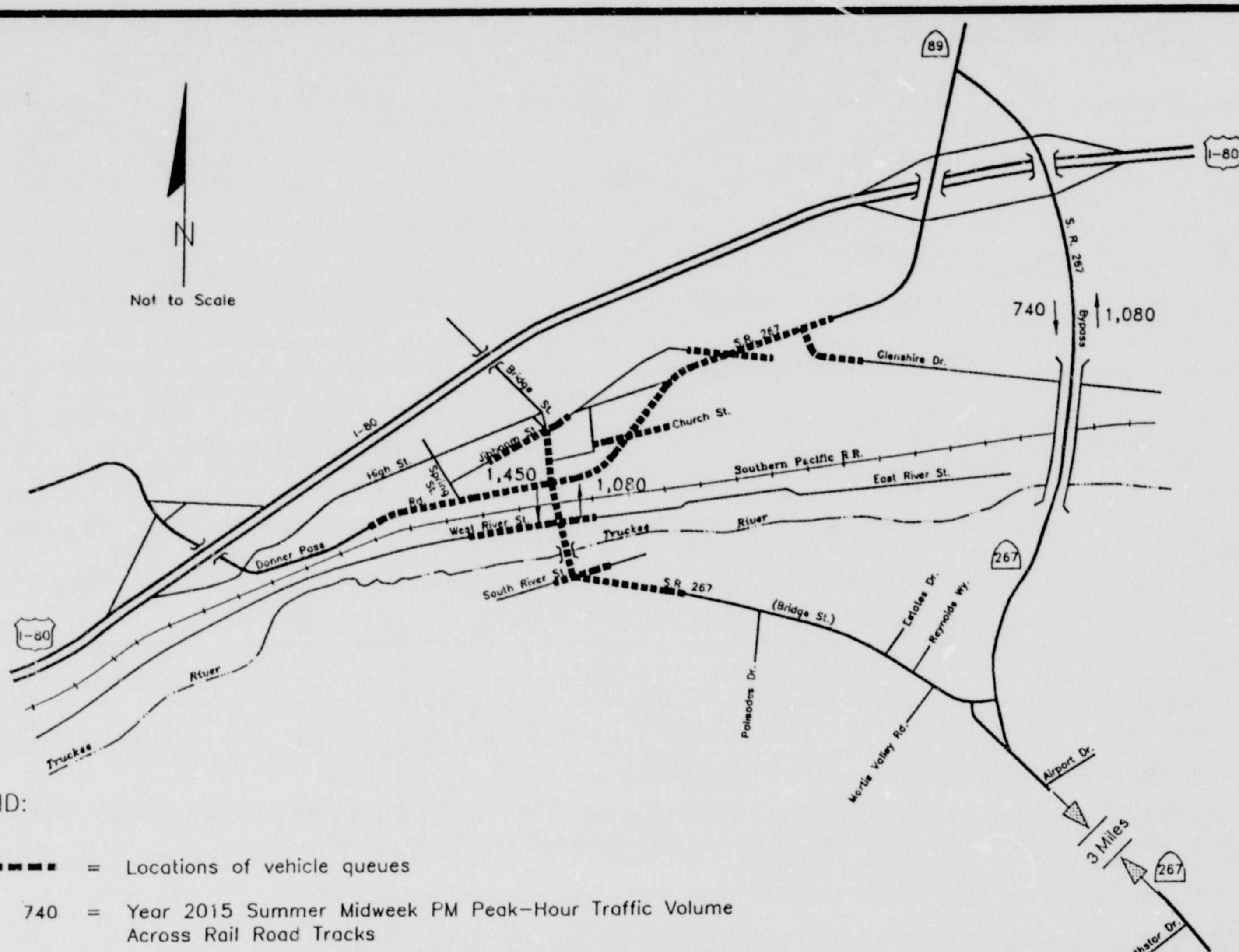

LEGEND:

■■■■■■■ = Locations of vehicle queues

740 = Year 2015 Summer Midweek PM Peak-Hour Traffic Volume Across Rail Road Tracks

Figure 22

Impact of State Route 267 Bypass and West River St./ S.R. 89 Improvements on Year 2015 Traffic Queues

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Note: Assumes 7.5 Minute "Gate Down" Time.

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portion of West River Street between the grade separation intersection and the West River Street intersection may also require widening. Figure 23 presents traffic volumes and locations of vehicle queues that would occur with this alternative under year 2015 traffic demand.

This alternative reduces northbound traffic demand across the at-grade crossing approximately 45 percent over 2015 No-Build conditions, and reduces southbound traffic demand at the at-grade crossing by approximately 40 percent. Vehicular delay during the PM peak hour, assuming a 7.5 minute "gate down" time, is reduced from 71.9 vehicle-hours in the 2015 No-Build scenario to 18.4 vehicle-hours in the State Route 267 Bypass and West Side Underpass alternative. Total daily and annual delay is reduced from 323 vehicle-hours/day and 99,000 vehicle-hours/year in the No-Build post-merger scenario, to 65 vehicle-hours/day and 20,000 vehicle-hours/year with construction of this alternative assuming post-merger conditions. This is less than existing delays that would occur at the at-grade crossing with post merger conditions. Relative benefits of this alternative are similar to those described in the existing traffic demand analysis of this alternative, although they are slightly more pronounced due to the increased traffic demand which occurs in the year 2015, generating an even greater need for diversion alternatives.

Alternative 4 - Construction of SR 267 Bypass and East Side Underpass

This alternative assumes construction of the State Route 267 Bypass and the East Side Underpass as described in the existing traffic demand analysis of this alternative. Figure 24 presents traffic volumes and locations of vehicle queues that would occur with this alternative under year 2015 traffic demand.

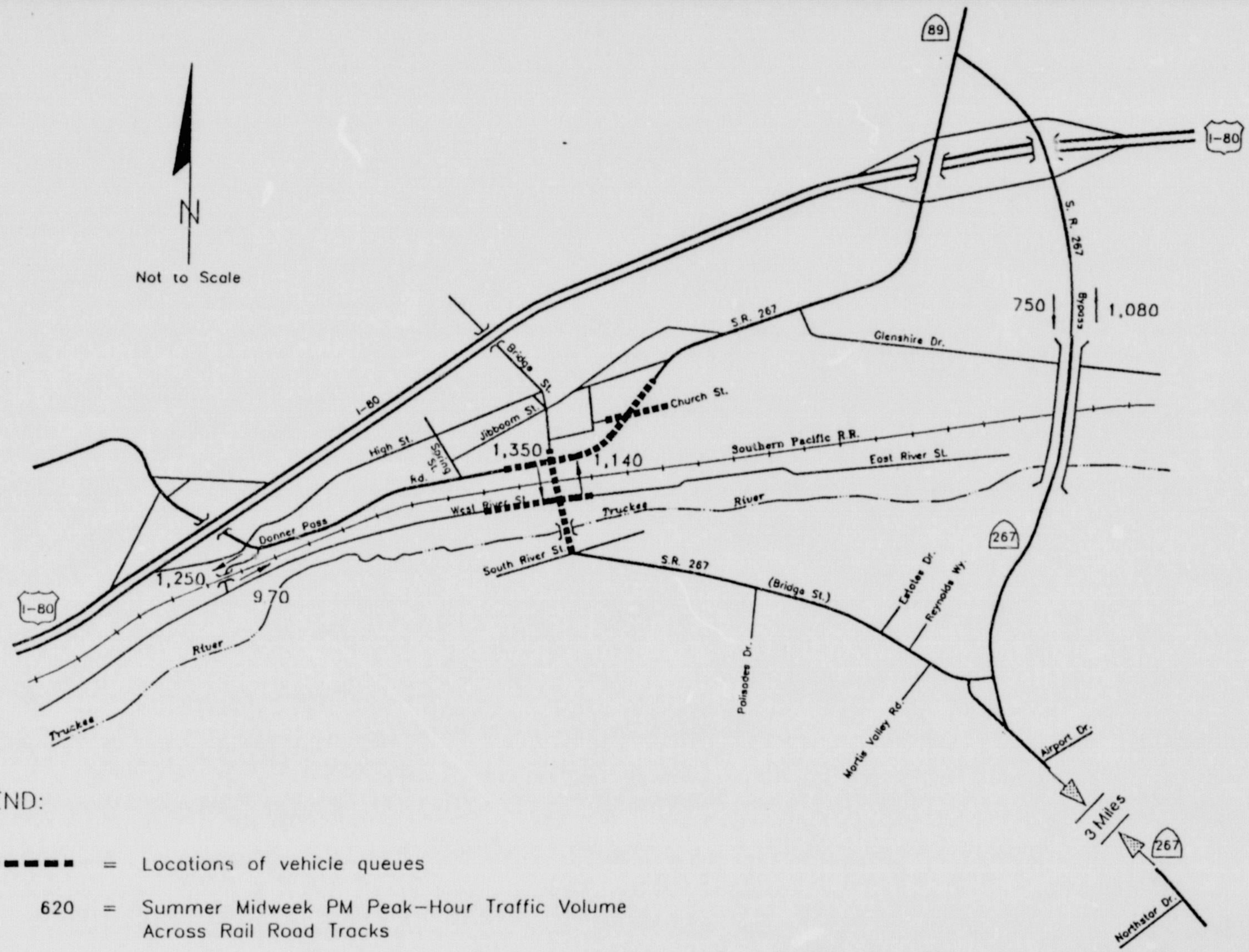
This alternative reduces northbound traffic demand across the at-grade crossing approximately 55 percent over 2015 No-Build conditions, and reduces southbound traffic demand at the at-grade crossing by approximately 30 percent. Vehicular delay during the PM peak hour, assuming 7.5 minute "gate down" times, is reduced from 71.9 vehicle-hours in the 2015 No-Build scenario to 20.8 vehicle-hours in the State Route 267 Bypass and East Side Underpass alternative. Total daily and annual delay is reduced from 323 vehicle-hours day and 99,000 vehicle-hours/year in the No-Build post-merger scenario, to 76 vehicle-hours/day and 23,000 vehicle-hours/year with construction of this alternative assuming post-merger conditions. This is less than existing delays that would occur at the at-grade crossing for post merger conditions.

Relative benefits of this alternative are similar to those described in the existing traffic demand analysis of this alternative, although they are slightly more pronounced due to the increased traffic demand that occurs in the year 2015 generating an even greater need for diversion alternatives. The year 2015 alternative would also allow traffic to access the Old Mill Site from the proposed underpass alignment.

Alternative 5 - Construction of East and West Side Underpasses with Closure of the Existing At-grade Crossing

This alternative assumes construction of the East and West Side Underpasses, as described in the existing traffic demand analysis. This alternative was reviewed both with and without construction of the State Route 267 Bypass, as described previously. Figures 25 and 26 present traffic volumes across the railroad tracks for scenarios with and without the State Route 267 Bypass.

This alternative eliminates all rail-auto conflicts by providing only grade separated crossings of the railroad tracks, thereby eliminating delay and queuing associated with passage of trains through the downtown area. This alternative was evaluated for the year 2015 only, because construction of this alternative under existing conditions is marginally feasible and not necessary to accommodate existing traffic demand. Under future conditions, however, this alternative could become more feasible by tying development of the Old Mill Site and downtown area to funding of the East Side Underpass as traffic demand increases with time and development.



LEGEND:

▪▪▪▪▪▪▪ = Locations of vehicle queues

620 = Summer Midweek PM Peak-Hour Traffic Volume Across Rail Road Tracks

Note: Assumes 7.5 Minute "Gate Down" Time.

Figure 23

Impact of State Route 267 Bypass and West Side Underpass on Year 2015 Traffic Queues

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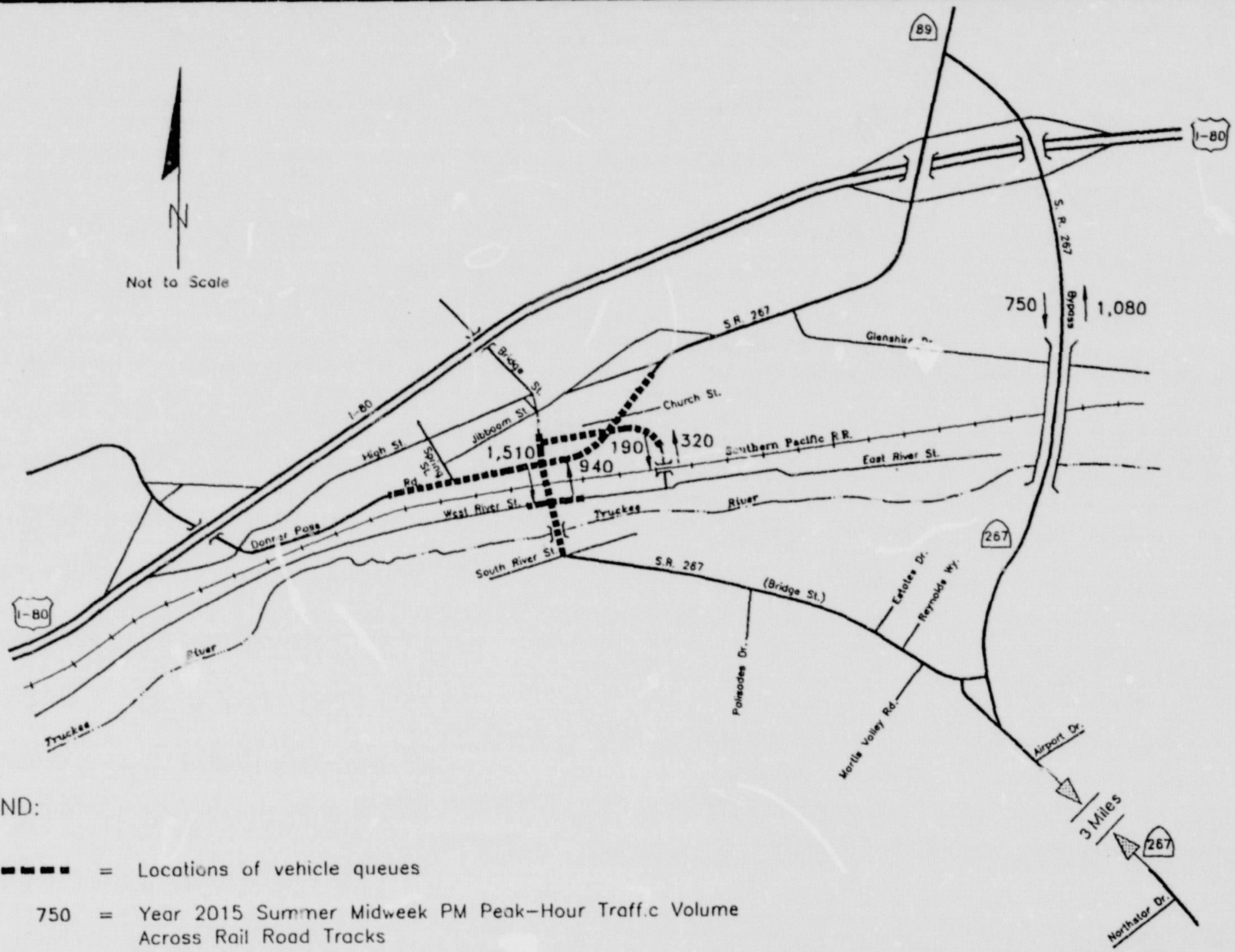

LEGEND:

▬ ▬ ▬ = Locations of vehicle queues

750 = Year 2015 Summer Midweek PM Peak-Hour Traffic Volume Across Rail Road Tracks

Note: Assumes 7.5 Minute "Gate Down" Time.

Figure 24

Impact of State Route 267 Bypass and East Side Underpass on Year 2015 Traffic Queues

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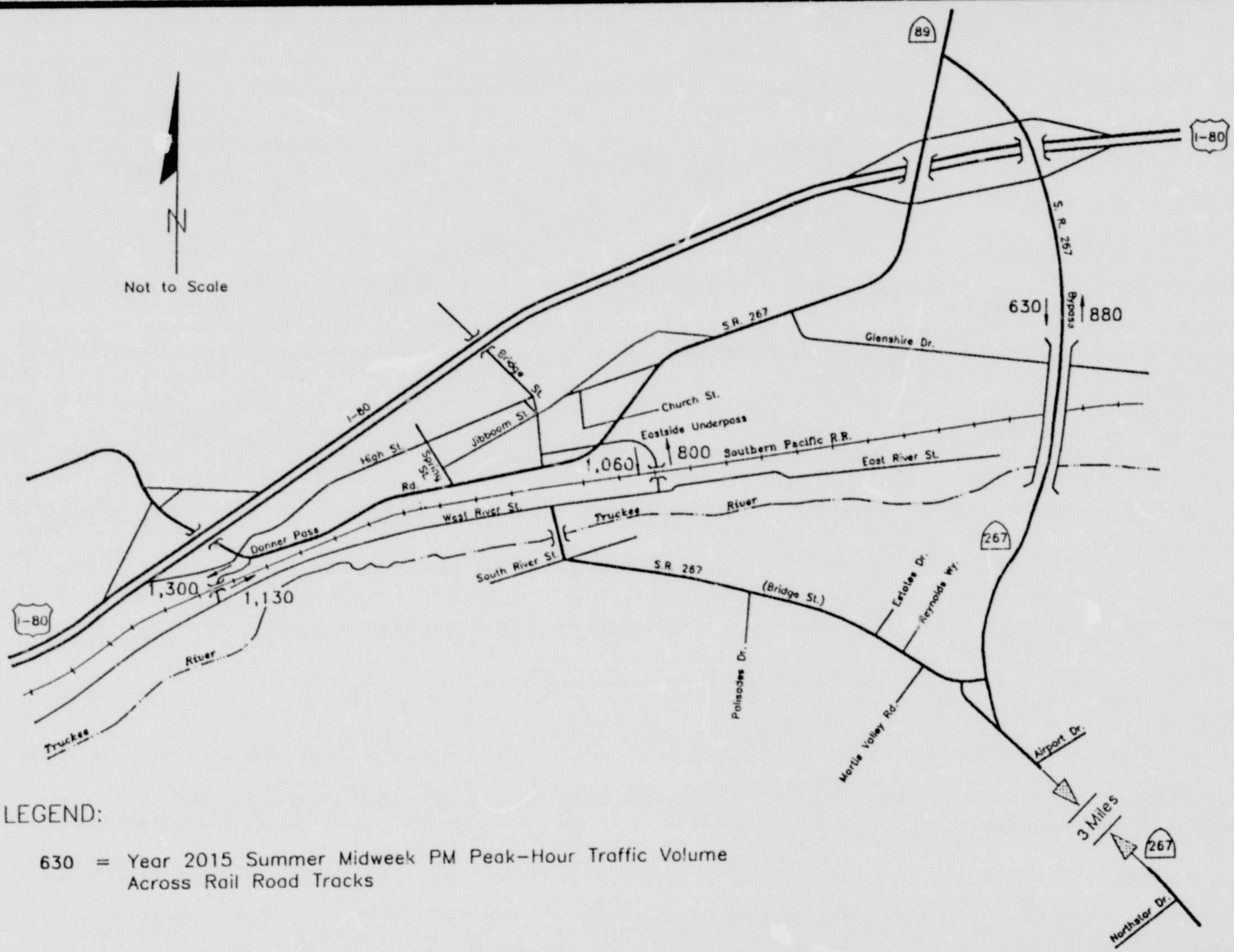

LEGEND:

630 = Year 2015 Summer Midweek PM Peak-Hour Traffic Volume Across Rail Road Tracks

Figure 25

Impact of State Route 267 Bypass, Construction of East and West Side Underpasses, and Closure of Existing Crossing on Year 2015 Traffic Queues

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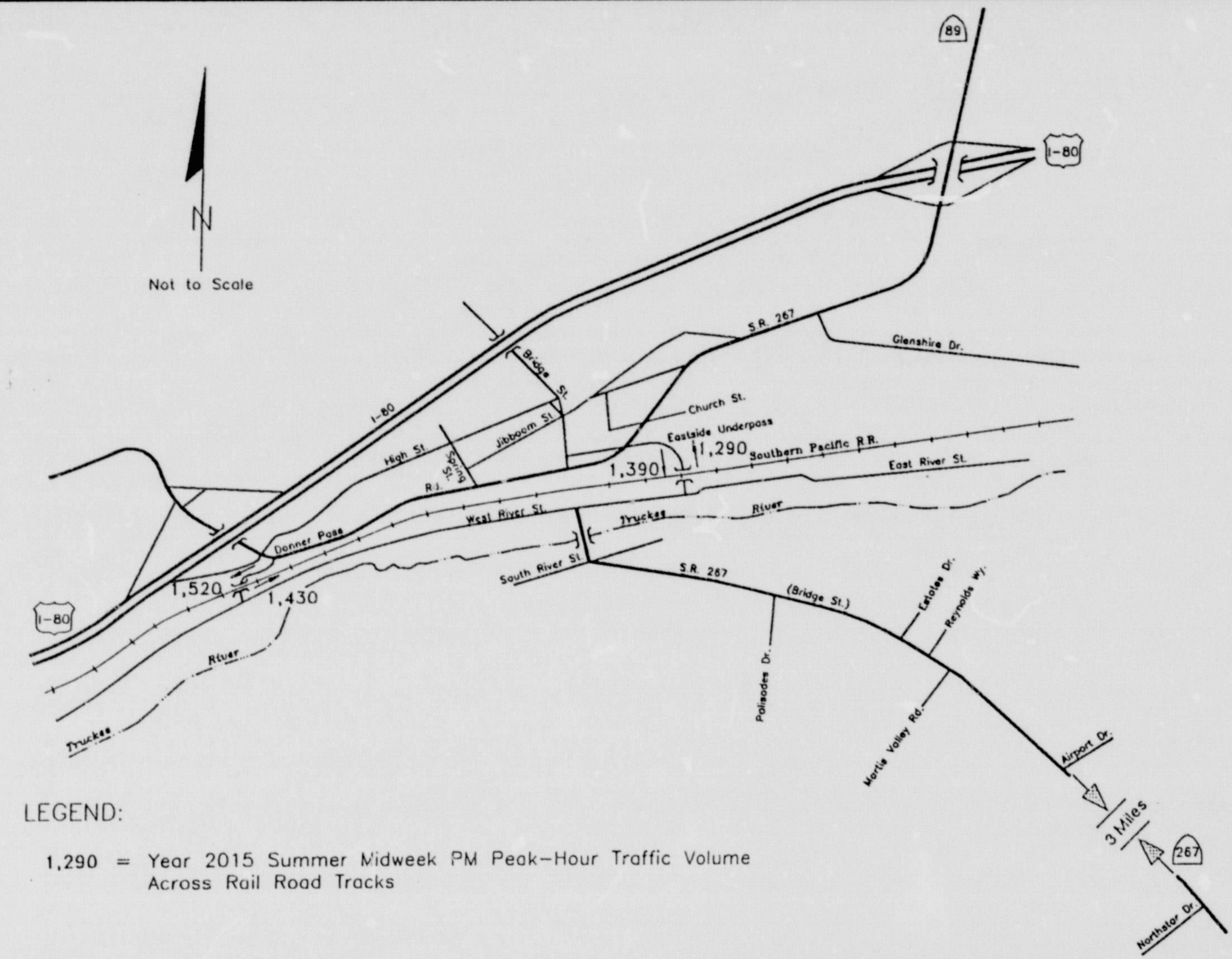

Figure 26

Impact of Construction of East and West Side Underpasses and Closure of Existing Crossing on Year 2015 Traffic Queues (No S.R. 267 Bypass)

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March, 1996

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Benefits of this alternative are profound in that all rail/vehicle conflicts would be eliminated. This alternative effectively brackets the downtown area with railroad grade separations and diverts regional pass-by traffic to the outskirts of the existing commercial core. As shown in Figure 25, traffic demand in the north-south direction across the railroad tracks is evenly balanced between the East Side and West Side Underpasses and the State Route 267 Bypass. This indicates balanced usage of the primary north-south transportation facilities in the downtown area. This is desirable from a circulation and capacity standpoint in that the transportation facilities are being efficiently utilized.

Another benefit of this alternative is that it can be constructed in phases. For instance, the first phase could be to construct the West Side Underpass to accommodate existing traffic demand. The second phase could be to construct the East Side Underpass as both downtown and regional development occurs and warrants additional north-south capacity in the area. After the East Side underpass has been constructed, the existing at-grade crossing could then be closed. At some point in the future, additional north-south roadway capacity will be required across the Truckee River. This could be an additional phase that would connect the East-Side Underpass to a bridge which spanning the Truckee River and a roadway continuing to the south, intersecting with State Route 267. This would provide for even further separation of the major north to east and north to west traffic movements in the downtown area.

As shown in Figure 26, north-south traffic demand without the State Route 267 Bypass is still relatively balanced between the East and West Side grade separations. Traffic demand is slightly higher on each of the underpasses as a result of traffic that would have utilized the bypass being forced onto the two underpasses.

CHAPTER 4
Conclusions

Existing train activity in the downtown Truckee area has a significant impact on traffic circulation. Traffic queues along State Route 267 caused solely by train crossings of Bridge Street, extend to the south of the Palisades Drive/State Route 267 intersection during some time periods. Similarly, traffic queuing on Donner Pass Road extends from west of the intersection with Spring Street to the intersection with Church Street. Queues on West River Street can extend up to 1,000 feet west of the intersection with Bridge Street during maximum "gate down" scenarios.

On average, 6.7 vehicle-hours of delay occur during an average train crossing during the PM peak hour. Motorists incur 46 vehicle-hours of delay per day, or 14,000 vehicle-hours delay per year in the downtown Truckee area as a result of freight and passenger trains crossing Bridge Street. This translates into 84 person-hours of daily delay and 25,000 person-hours of yearly delay. With the railroad merger, vehicle delay will rise to 118 vehicle-hours daily and 36,000 vehicle hours annually. Person-delay will rise to 215 person-hours daily, and 66,000 person-hours annually. This is a substantial impact to traffic operations in the downtown area.

Diversion potential around the State Route 267 at-grade railroad crossing is severely limited. West River Street provides the only potential diversion route for northbound State Route 267 traffic around train blockages. Due to the close proximity of the Bridge Street/West River Street intersection to the rail crossing on Bridge Street, access to West River Street quickly becomes blocked by vehicles queuing along Bridge Street, which then eliminates this diversion potential.

The atypical three-way Stop traffic control at the Bridge Street/Donner Pass Road/State Route 267 intersection causes a great deal of confusion to motorists unfamiliar with the intersection. This reduces intersection capacity, and increases the likelihood of accidents. The three-way Stop control is driven by the close proximity of the railroad crossing to this intersection. Accident history, which was investigated in the area of the rail crossing, reveals that the non-standard intersection control at the Bridge Street/Donner Pass Road/State Route 267 intersection appears to be causing right-of-way violations that result in vehicular collisions. Additionally, some of the rear end type accidents that occur in this area are likely caused by queuing associated with train blockage at the State Route 267 railroad crossing.

Four construction alternatives were considered to mitigate existing traffic demand levels, and five mitigation alternatives were considered for year 2015 traffic demand levels. Of the alternatives considered, the West Side Underpass alternative, in conjunction with construction of the State Route 267 Bypass, provides the greatest benefit to traffic flow and circulation for existing conditions. Under existing (pre-merger) conditions, this alternative would reduce train related delay from 46 vehicle-hours per day and 14,000 vehicle-hours per year in the No-Build scenario to 6 vehicle-hours per day and 2,000 vehicle-hours per year with construction of this alternative. This represents an 85 percent reduction in existing delay caused by railroad activity. This alternative also provides benefits to traffic during time periods when trains are not present by providing a diversion route around congestion which currently occurs along Commercial Row and at the Commercial Row/Bridge Street/State Route 267 intersection. If the State Route 267 Bypass were to lose funding, and this alternative were forced to function as an underpass only, the benefits of this alternative would be even more pronounced as an alternate route across the railroad tracks and through the downtown area. This is because traffic that would have been on the bypass would be forced back into downtown, causing even greater congestion during train crossing episodes than what is assumed for calculations in this report.

For the year 2015, the West Side Underpass continues to provide marked improvements to traffic circulation in the downtown area. However, due to both local and regional traffic growth, the available capacity of roadways through the downtown area will be exceeded based on current growth projections. For this reason, construction of a second underpass of the railroad, connecting East River Street to State Route 267 in the vicinity of the existing Church Street intersection, should be planned. This would effectively bracket the downtown area with two rail/highway grade separations. The East Side Underpass could also be used to provide access to the Old Mill Site as development of this property occurs. This would also effectively bracket the downtown with two railroad grade separations. Another benefit of this alternative is that it could be expanded over time to tie into another north/south bridge crossing of the Truckee River in the downtown area.

Respectfully Submitted,

Gordon R. Shaw, P.E.

Verification

I, Gordon R. Shaw, declare under penalty of perjury that the foregoing is true and correct as to all matters stated therein of my own knowledge, and as to matters stated therein on knowledge and belief, believe the same to be true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on March 26, 1996, at Tahoe City, California.

Gordon R. Shaw

CERTIFICATE OF SERVICE

I certify that on this 28th day of March, 1996 a copy of the foregoing Verified Statement of Gordon R. Shaw was served by Federal Express Overnight delivery to:

The Honorable Jerome Nelson
Federal Energy Regulatory Commission
888 First Street, N.E.
Room 11F-21
Washington, D.C. 20426

Erika Z. Jones
Mayer, Brown & Platt
2000 Pennsylvania Avenue, N.W.
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Arvid E. Roach II, Esq.
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Washington, D.C. 20044

Paul A. Cunningham, Esq.
Harkins Cunningham
1300 19th Street, N.W.
Washington, D.C. 20036

and by first class mail to all other parties of record listed on the service list attached to Decision No. 15, as amended and supplemented by Decision No. 17.

Larry W. Telford

CERTIFICATE OF SERVICE

I certify that on this 28th day of March, 1996 a copy of the foregoing Verified Statement of Gordon R. Shaw was served by Federal Express Overnight delivery to:

The Honorable Jerome Nelson
Federal Energy Regulatory Commission
888 First Street, N.E.
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Erika Z. Jones
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1300 19th Street, N.W.
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and by first class mail to all other parties of record listed on the service list attached to Decision No. 15, as amended and supplemented by Decision No. 17.

Larry W. [illegible]

STB FD 32760 3-21-96 61929 D

Item No.____________

Page Count 9

Mar # 385

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March 21, 1996

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MAIL MANAGEMENT
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Honorable Vernon A. Williams
Secretary
Surface Transportation Board
12th Street and Constitution Avenue, N.W.
Room 2215
Washington, D.C. 20423

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

Dear Mr. Secretary:

Enclosed please find for filing the original and twenty (20) copies of the Verified Statement of Laurence J. Stern, on behalf of Sunkist Growers, Inc. in the above-referenced finance docket. A copy of this Verified Statement has been served upon all parties of record. In addition, in response to the March 19, 1996 request from Applicant's counsel, three (3) copies of this statement have been sent by expedited delivery to the various counsel for applicants listed in Arvid Roach's letter.

If you have any questions regarding this filing, please do not hesitate to contact the undersigned counsel.

Very truly yours,

HOLLAND & Knight

David H. Baker
Attorney for
Sunkist Growers, Inc.

DHB:jkp
Enclosure

WAS-157299

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SURFACE TRANSPORTATION BOARD
FINANCE DOCKET #32760
VERIFIED STATEMENT OF
LAURENCE J. STERN

My name is Laurence J. Stern. I am Director of Transportation and Special Projects for Sunkist Growers, Inc. ("Sunkist"). I am responsible for the management of all modes of domestic transportation for Sunkist fresh and products citrus. As Director of Transportation and Special Projects, I am authorized to submit this Verified Statement in support of the proposed Union Pacific/ Southern Pacific merger.

Sunkist is an agricultural marketing cooperative responsible for selling the fresh and processed citrus of 6500 California/Arizona growers. We have 65 member packinghouses located throughout California and Arizona and two processing plants located in Ontario and Tipton, California. In recent years, Sunkist annual sales have been in excess of $1 billion. Our member packinghouses pack 83 million cartons of fresh oranges, grapefruit, lemons and tangerines for shipment to destinations throughout the world and our two processing plants convert approximately 600,000 tons of citrus into products such as concentrate, citrus oils, and chilled juice. These processed products are likewise sold to destinations throughout the world.

With respect to the aforementioned annual volume of fresh and processed citrus, approximately 55 million cartons of fresh citrus and 450,000 tons of processed citrus products move to destinations throughout the U. S. and Canada. Approximately eighty-five percent of this volume moves via refrigerated motor carrier, thirteen percent by refrigerated intermodal service and two percent by refrigerated boxcar. Approximately sixty percent of Sunkist fresh citrus packinghouses are located on the Southern Pacific and forty percent are located on the Burlington Northern Santa Fe railroad. The Sunkist Ontario, California citrus products processing facility is located on the Southern Pacific; the Tipton facility does not have rail access.

As recently as 1990, over fifteen percent of Sunkist domestic shipments moved in refrigerated rail car service. Our distribution of business followed our origin locations, which meant that the Southern Pacific handled slightly in excess of sixty percent of our car volume and the Santa Fe handled the remaining forty percent. However, since 1991, Southern Pacific service to virtually all destinations in the U.S. and Canada has steadily deteriorated.

Table #1 attached compares present and prior Southern Pacific service to major U.S. and Canadian destinations. Note the substantially lengthened transit times to all destinations. Because fresh citrus is a perishable commodity requiring high speed, on time service, the service offered by Southern Pacific simply was not acceptable. In fact, effective 1995 Sunkist has discontinued almost all use of the Southern Pacific for fresh fruit shipments (only 50 cars in 1995 and 5 cars thus far in 1996). While Santa Fe service to the destinations shown in Table #1 has generally been good, the added cost of handling fruit from Southern Pacific loading locations to Santa Fe served facilities has discouraged increased use of the Santa Fe to fill our rail shipping needs. Further, the Southern Pacific's poor service has tarnished the image of refrigerated rail car service in the eyes of many of our buyers regardless of origin railroad and many have refused to accept shipment of our fresh citrus in refrigerated rail cars. Although frozen products can withstand much longer transit times than fresh fruit, the poor service quality and extreme variability in schedules offered by the Southern Pacific is now causing us to seek alternative rail shipping arrangements from our Ontario processing plant.

Sunkist strongly believes that refrigerator car transportation could have a prominent place in our shipping program. Fresh and processed citrus are high volume retail products that lend themselves to in store promotion and incentive pricing. The large carrying capacity of refrigerator cars and resulting low per unit freight rates associated with this equipment fits the marketing and sales characteristics of citrus extremely well. However, without adequate service, Sunkist (and other shippers of perishible commodities) will not use refrigerated car transportation.

Sunkist believes that if the Union Pacific purchases the Southern Pacific railroad, there is a strong probability that service levels will substantially improve. It is also our understanding that the Union Pacific has over 3900 refrigerated cars in active service, that this equipment is in generally good to excellent condition and that the Union Pacific is planning to improve the present poorly maintained 1200 car Southern Pacific refrigerated car fleet to Union Pacific car quality standards. Should the Union Pacific improve service on the former Southern Pacific lines and provide Sunkist with a higher quality, more accessible car fleet, we strongly believe that we can begin rebuilding our use of rail transportation. Greater use of rail transportation will lower our delivered cost, thus making

our fresh and processed citrus products a better value for the consumer.

In summary, Sunkist believes that the acquisition of the Southern Pacific by the Union Pacific will be of economic benefit to our grower members and to the consuming public at large and urges that the Surface Transportation Board approve the Union Pacific application.

Respectfully submitted,

Laurence J. Stern
Director of Transportation
and Special Projects
Sunkist Growers, Inc.

TABLE 1

SOUTHERN PACIFIC REFRIGERATED RAIL CAR TRANSIT TIMES TO U.S. AND CANADIAN DESTINATIONS
(Times shown in days)

CITIES	1990	1995
CHICAGO	6-8	10-12
PHILADELPHIA NEW YORK BOSTON	10-12	18-21
MONTREAL	10-12	18-21

SOURCE: SUNKIST SHIPMENT RECORDS

VERIFICATION

I, Laurence J. Stern, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on March 19, 1996.

Laurence J. Stern

Laurence J. Stern

CERTIFICATE OF SERVICE

I, David H. Baker, certify that, on this 21st day of March, 1996, I caused a copy of the foregoing document to be served by first-class mail, postage prepaid on all parties of record in Finance Docket No. 32760.

David H. Baker

WAS-157320

STB FD 32760 3-18-96 61865 D

Item No.________

Page Count: 5

Mar #333

61865

SCH, MORSE & GARFINKLE, P.C.

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March 18, 1996

WRITER'S DIRECT DIAL NUMBER

(202) 342-6750

VIA MESSENGER

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MAR 18 1996
I.C.C. BUILDING GUARD DESK

Mr. Vernon A. Williams
Surface Transportation Board
Case Control Branch
Room 1324
1201 Constitution Ave., N.W.
Washington, D.C. 20423

Re: **Finance Docket No. 32760, Union Pacific Corporation, et al.**
-- Control and Merger -- Southern Pacific Corporation, et al.

Dear Secretary Williams:

Enclosed for filing in the above-captioned case is one original and twenty copies of International Paper Company's Supplemental Response to Applicants' First Set of Interrogatories and Requests for Production of Documents, designated as document IP-9.

Also enclosed is a 3.5" WordPerfect 5.1 disk containing the text of IP-9.

Very truly yours,

Andrew T. Goodson
Attorney for International Paper Company

Enclosures
cc: Arvid E. Roach II, Esq.
Paul Cunningham, Esq.
Restricted Service List

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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY
-- CONTROL MERGER --
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP. AND THE DENVER AND
RIO GRANDE WESTERN RAILROAD COMPANY

INTERNATIONAL PAPER COMPANY'S SUPPLEMENTAL RESPONSE TO APPLICANTS FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

Edward D. Greenberg
Andrew T. Goodson
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Second Floor
Washington, D.C. 20007
(202) 342-5200

Attorneys for International Paper Company

STB FD 32760 61834

D

Item No.______________

Page Count 6

Mar #307

61834

WSTR-10

BEFORE THE
SURFACE TRANSPORTATION BOARD

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Finance Docket No. 32760

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY

— CONTROL AND MERGER —

SOUTHERN PACIFIC RAIL CORPORATION,
SOUTHERN PACIFIC TRANSPORTATION COMPANY, ST. LOUIS
SOUTHWESTERN RAILWAY COMPANY, SPCSL CORP. AND THE
DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

WESTERN RESOURCES, INC.'S INITIAL RESPONSES TO APPLICANTS' FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

Nicholas J. DiMichael
Thomas W. Wilcox
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Suite 750
Washington, D.C. 20005-3934
(202) 371-9500

Attorneys for Western Resources, Inc.

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March 12, 1996

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY

— CONTROL AND MERGER —

SOUTHERN PACIFIC RAIL CORPORATION,
SOUTHERN PACIFIC TRANSPORTATION COMPANY, ST. LOUIS
SOUTHWESTERN RAILWAY COMPANY, SPCSL CORP. AND THE
DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

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MAR 15 1996
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**WESTERN RESOURCES, INC.'S
INITIAL RESPONSES
TO APPLICANTS'
FIRST SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS**

Western Resources, Inc. ("Western") submits the following Initial Responses to the First Set of Interrogatories and Requests for Production of Documents propounded by Applicants on February 27, 1996. On March 4, 1996, Western submitted Objections to this First Set of Interrogatories and Requests for Production of Documents. On March 8, 1996, in a discovery conference, the Administrative Law Judge in this proceeding ruled that certain of the discovery propounded by Applicants on February 27, 1996 was appropriate, but that certain of the discovery should be reformulated and resubmitted under an accelerated procedural schedule after the filing of evidence in this proceeding, currently scheduled for March 29, 1996. In other words, in the March 8 discovery conference, the ALJ ruled that the February 27 discovery should be conducted in two "phases," with "Phase I" discovery generally to be propounded now, and "Phase II" discovery appropriate for resubmission and reformulation in light of the filings on March 29.

Consequently, Western hereby responds to the Phase I discovery identified by the ALJ to be answered on March 12, 1996.[1]

Interrogatory No. 2

> For each utility plant operated by Western Resources, separately for each year 1993 through 1995, identify the originating mines for all coal burned at the plant and, as to each such mine, state: (a) the tonnage of coal from that mine burned at the plant; (b) the average delivered price of coal from that mine; (c) the average minehead price of that coal; (d) the rail transportation routings (including origination and interchange points) for all coal shipped from that mine to the plant; and (e) any transportation routings or modes other than rail used in shipping coal to the plant.

Initial Response to Interrogatory No. 2

Western repeats the general and specific objections to this Interrogatory set forth in its March 4, 1996 Objections. Subject to those objections, Western is willing to discuss with Applicants means by which to narrow the scope of this interrogatory and ascertain the extent to which responsive information is already in the possession of Applicants or readily available from public sources.

Document Request No. 15

> Produce all presentations, letters, memoranda, white papers or other documents sent or given by Western or its members to DOJ, DOT, any state Governor's, Attorney General's or Public Utilities Commission's (or similar agency's) office, any Mexican government official, any other government official, any security analyst, any bond rating agency, any consultant, any financial advisor or analyst, any investment banker, any chamber of commerce, or any shipper or trade organization relating to the UP/SP merger.

Initial Response to Document Request No. 15

In the discovery conference on March 8, the ALJ ruled that presentations, letters, etc. to "security analysts" and other financial addressees are Phase I questions for which answers are due on March 12. Subject to the objections set forth by Western on March 4, 1994, Western states it

---

1 As noted in the transcript of the discovery conference, certain of the "Phase I" discovery is required to be answered on March 12, 1996, while other "Phase I" discovery is required to be answered on April 1, 1996. The responses encompassed in these Initial Responses by Western are limited to the discovery that is required to be answered on March 12, 1996. These Initial Responses will be supplemented on April 1 for all interrogatories and document requests identified by the ALJ for response on that date.

has sent or given no presentations, solicitations, etc. to security analysts or other financial addresses relating to the UP/SP merger as sought in the Document Request.

Document Request No. 16

> Produce all notes of, or memoranda relating to, any meetings with DOJ, DOT, any state Governor's, Attorney General's or Public Utilities Commission's (or similar agency's) office, any Mexican government official, any other government official, any security analyst, any bond rating agency, any consultant, any financial advisor or analyst, any investment banker, any chamber of commerce, or any shipper or trade relating to the UP/SP merger.

Initial Response to Document Request No. 16

In the discovery conference on March 8, the ALJ ruled that presentations, letters, etc. to "security analysts" and other financial addressees are Phase I questions for which answers are due on March 12. Subject to the objections set forth by Western on March 4, 1996, Western states it has no notes or memoranda relating to any meetings with security analysts or other financial addressees relating to the UP/SP merger as sought in the Document Request.

Document Request No. 24

> Produce all studies, reports or analyses relating to collusion among competing railroads or the risk thereof.

Initial Response to Document Request No. 24

In the discovery conference on March 8, the ALJ ruled that studies, reports, or analyses relating to collusion (as defined in the discovery conference) among competing railroads and the risk thereof is an appropriate Phase I question. Subject to the objections set forth by Western on March 4, Western states that it has no such studies, reports or analyses.

Document Request No. 25

> Produce all studies, reports or analyses relating to the terms for or effectiveness of trackage rights.

Initial Response to Document Request No. 25

In the discovery conference on March 8, the ALJ ruled that studies, reports, analyses relating to the effectiveness of trackage rights (but not to the terms for trackage rights) is an appropriate Phase I question. Subject to the objections set forth by Western on March 4, Western states that it has no such studies, reports or analyses.

Document Request No. 28

Produce all filings made with state utility commissions or state regulatory agencies that discuss sources of fuel.

Initial Response to Document Request No. 28

This Document Request was not specifically ruled upon by the ALJ on March 8, 1996. Western believes this Document Request is clearly a Phase II request that should be propounded in more focused form after the submission of evidence on March 29, 1996. To the extent that there is disagreement on this point, Western repeats the objections set forth on March 4, 1996.

Respectfully submitted,

Thomas W. Wilcox

Nicholas J. DiMichael
Thomas W. Wilcox
DONELAN, CLEARY, WOOD & MASER, P.C.
1100 New York Avenue, N.W., Suite 750
Washington, D.C. 20005-3934
(202) 371-9500

Attorneys for Western Resources, Inc.

March 12, 1996

CERTIFICATE OF SERVICE

I hereby certify that a copy of WESTERN RESOURCES, INC.'S INITIAL RESPONSES TO APPLICANTS' FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS has been served by first class mail, postage prepaid, on all parties on the restricted service list in this proceeding on this 12th day of March, 1996, and by facsimile to Washington, D.C. counsel for Applicants.

Jacqueline A. Spence

Jacqueline A. Spence

STB FD 32760 2-6-96 61195 D

6/195

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Page Count 7

Feb # 34

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February 6, 1996

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RAIL MANAGEMENT
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BY HAND

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Twelfth Street and Constitution Avenue, N.W.
Room 2215
Washington, D.C. 20423

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

Dear Secretary Williams:

Enclosed for filing in the above-captioned docket are the original and twenty copies of Applicants' Additional Errata to Peterson Statement (UP/SP-75). Also enclosed is a 3.5-inch disk containing the text of this pleading in WordPerfect 5.1 format.

Please note that two versions of this pleading are being filed. One version contains errata that relate to material that appears in both the redacted and the Highly Confidential versions of Peterson's statement. The other version contains one additional errata to Highly Confidential material in Peterson's statement. The Board is being provided with 20 copies of both versions. The "Highly Confidential" version is clearly marked and is being separately filed with the Board under seal. The public version of this pleading is being served on all parties to this proceeding. The "Highly Confidential" version is also being served on parties that have requested it and have indicated that they will adhere to the restrictions of the protective order.

I would appreciate it if you would date-stamp the enclosed extra copy of the pleading and return it to the messenger for our files.

Sincerely,

Michael L. Rosenthal

Michael L. Rosenthal

Enclosures

cc: Hon. Jerome Nelson
Parties of Record

UP/SP-75

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY
-- CONTROL AND MERGER --
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP. AND THE DENVER AND
RIO GRANDE WESTERN RAILROAD COMPANY

ADDITIONAL ERRATA TO PETERSON STATEMENT

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Attorneys for Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company

February 6, 1996

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY
-- CONTROL AND MERGER --
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP. AND THE DENVER AND
RIO GRANDE WESTERN RAILROAD COMPANY

ADDITIONAL ERRATA TO PETERSON STATEMENT

Applicants UPC, UPRR, MPRR, SPR, SPT, SSW, SPCL and DRGW submit the following additional errata to the verified statement of Richard B. Peterson:

Page	Line	Change
9	23	Add "the Central Corridor" before "the"
151	9	Change "#7" to "#10"
192	9	Change "between" to "among"
225	13	Change "main lines" to "mainlines"
225	25	Change "main line" to "mainline"
268	table	Change UP/SP entry from "$87.9" to "$86.0" (previously changed from "$90.5", *see* UP/SP-63). (Correction of treatment of WC ore movement; and failure to reflect certain KCS losses in compilation.)
268	table	Change KCS line from "(11.5)" to "(11.6)" (Failure to reflect certain KCS losses in compilation.)
268	table	Change WC line from "(2.0)" to "-0-" (Correction of treatment of WC ore movement.)

290	23	Change "$6.5" to "$5.5"
291	4	Change "$236.3" to "$235.3"
291	table	Change UP/SP line from "$430.0" to "$429.0" (previously changed from "$419.6", <u>see</u> UP/SP-36). (Correction of mathematical error in compiling new marketing opportunities.)
299	top table	Change BN/Santa Fe line from "439.8" to "433.9" (previously changed from "$438.5", <u>see</u> UP/SP-63). (Correction of computer error that charged certain Tex Mex gains to UP instead of BN/Santa Fe.)
299	top table	Change KCS line from "(10.3)" to "(9.5)" (Failure to include KCS gains as a result of BN/Santa Fe settlement.)
299	top table	Change Tex Mex line from "4.6" to "6.9" (previously changed from "6.0", <u>see</u> UP/SP-63). (Failure to include certain Tex Mex gains as a result of BN/Santa Fe trackage rights to Corpus Christi.)
299	top table	Add a WC line, reading "(2.0)" (Correction of treatment of WC ore movement.)
299	top table	Change UP/SP line from "$(444.0)" to "$(439.2)" (previously changed from "$(444.5)", <u>see</u> UP/SP-63). (Reflect four preceding corrections.)
299	bottom table	Change UP/SP line from "$73.9" to "$75.8" (previously changed from "$65.6", <u>see</u> UP/SP-36 & UP/SP-63).
299	bottom table	Change BN/Santa Fe line from "118.3" to "112.4" (previously changed from "119.0", <u>see</u> UP/SP-36 & UP/SP-63).
299	bottom table	Change KCS line from "(25.7)" to "(25.0)"

299	bottom table	Change Tex Mex line from "1.6" to "3.9" (previously changed from ""0.4", <u>see</u> UP/SP-63). (Effect of corrections noted above.)

Respectfully submitted,

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<u>Attorneys for Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company</u>

February 6, 1996

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that, on this 6th day of February, 1996, I caused a copy of the foregoing document to be served by first-class mail, postage prepaid, or by a more expeditious manner of delivery on all parties of record in Finance Docket No. 32760, and on

Director of Operations
Antitrust Division
Room 9104-TEA
Department of Justice
Washington, D.C. 20530

Premerger Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
Washington, D.C. 20580

Michael L. Rosenthal

Michael L. Rosenthal