181172

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

APPLICANTS' REPLY TO JOINT PETITION OF BNSF AND LCRA

Applicants UPC, UPRR, SPR, SPT and SSW[1] hereby reply to the joint petition of BNSF and LCRA seeking the Board's determination that BNSF has the present right to provide rail service to LCRA's Fayette Power Project coal-fired station at Halsted, Texas, using trackage rights granted in the BNSF settlement agreement.[2] The joint petition asks the Board to adopt a position that is inconsistent with the BNSF settlement agreement and inconsistent with the Board's

[1] Acronyms used herein are the same as those in Appendix B of Decision No. 44. On January 1, 1997, Applicant MPRR merged into Applicant UPRR. On June 30, 1997, Applicants DRGW and SPCSL also merged into Applicant UPRR.

[2] Applicants are waiving the arbitration provision of the BNSF settlement agreement and responding to the joint petition, but are doing so without prejudice to their right to insist on arbitration of other disputes that may arise regarding the agreement.

Decision No. 57, served Nov. 20, 1996, and it should be rejected.

The BNSF settlement agreement was designed to preserve rail competition for all customers who, prior to the merger, were served by both UP and SP and no other railroad ("2-to-1" shippers). See Decision No. 44, served Aug. 12, 1996, pp. 121-22. Unlike other shippers whose competitive options were protected by the agreement, LCRA's Halsted facility did not have rail competition prior to the merger -- it was a UP-exclusive facility. At the time LCRA entered into its current transportation services contract with UP, however, it also entered into a separate trackage rights agreement granting SP access to the plant, effective only upon the termination of the transportation services contract, well in the future. The trackage rights agreement, when it took effect, would allow LCRA, which burns Powder River Basin ("PRB") coal transported by UP, to receive PRB coal via a BN-SP routing.

Because the Halsted facility was not served by both UP and SP prior to the UP/SP merger, it did not fall within the definition of a "2-to-1" shipper. Nonetheless, in structuring the BNSF settlement agreement, Applicants recognized that, while LCRA was not like other "2-to-1" shippers, the merger would eliminate LCRA's ability to benefit from the future UP-SP competition that would have been created

when the trackage rights agreement allowing SP access became effective. Applicants thus sought to preserve this future competition by listing the Halsted facility among the points identified in the BNSF settlement agreement.[3/]

LCRA's concern from the beginning of this proceeding has been for the preservation of this future competition. As LCRA explained in its very first filing:

> "Currently, coal is transported to [the Fayette Power Project] under a rail transportation contract, executed in 1988 between LCRA/Austin and Applicants UP and Missouri Pacific Railroad Company ("MP") and Western Railroad Properties, Incorporated. In conjunction with entering that contract and the settlement of certain litigation, LCRA/Austin entered a separate Trackage Rights Agreement ("TRA") with the Missouri-Kansas-Texas Railroad Company ("MKT"). This TRA provides access at a future time, specified in the agreement, over 18 miles of track between Halsted, Texas (the site of FPP) and West Point, Texas, which is a junction point between the MKT line (now owned by Applicant MP) serving FPP and a line of Applicant SP.
>
> The purpose of the TRA was to protect LCRA/Austin's interests in obtaining competitive rail transportation service and rates for coal moving to FPP. The trackage rights provided LCRA/Austin with access to SP which could (in combination with Burlington Northern Railroad Company) provide service from origin coal fields in the PRB, as well as from other possible origins such as ports, in competition with UP and its connections. In the absence of these trackage rights, LCRA/Austin would have been captive to UP upon the expiration of the rail contract.
>
> LCRA/Austin are vitally interested in the proposed merger. The proposed merger would place UP

[3/] In fact, this improves LCRA's competitive position, because it will be able to receive PRB coal directly via BNSF, instead of via a BNSF-SP interline route.

> and SP under common control, thus depriving LCRA/Austin of access to competitive rail service and nullifying the purpose of the TRA. Accordingly, to the extent that they are unable to resolve their concerns with the merger through negotiations with Applicants, LCRA/Austin intend to participate actively in the forthcoming merger proceeding in order to preserve competition for their FPP coal movements."

LCRA-1, pp. 2-3 (emphasis added). LCRA's request for immediate BNSF access is simply not justified by the position it maintained throughout the merger proceeding.

Applicants have consistently maintained that LCRA is to be treated differently from shippers that would have lost existing two-railroad competition as a result of the merger. As Applicants' witness Peterson explained when discussing his traffic study in his rebuttal testimony:

> "Traffic at the UP-served LCRA plant at Halsted, Texas, does not become available to SP until the expiration of the pending contract [when the trackage rights agreement takes effect]. It is not '2-to-1' traffic until that time, and it was never intended that BN/Santa Fe would access it until that time."

UP/SP-231, Peterson, p. 193 n.63.

As John H. Rebensdorf, UP's Vice President-Strategic Planning, who led the UP team that negotiated the BNSF settlement agreement, confirms in a verified statement (attached hereto as Exhibit A), Applicants never attempted to mislead either BNSF or LCRA about the status of the Halsted facility. As Mr. Rebensdorf explains, to allow BNSF to serve LCRA's Halsted facility before LCRA's trackage rights would

have taken effect would give LCRA more competition than it had prior to the merger. That was never his intention or the intention of the parties to the BNSF settlement agreement. Rebensdorf V.S., p. 4. The Halsted facility was listed in order to ensure that LCRA's competitive status would not change as a result of the merger.

The joint petition relies heavily on a dialogue between Mr. Rebensdorf and LCRA counsel during his deposition. As Mr. Rebensdorf explains in his verified statement, in responding to LCRA counsel, he was focusing on putting to rest LCRA counsel's apparent concerns that LCRA's competitive status would be worsened as a result of the merger. Mr. Rebensdorf was trying to assure LCRA counsel that, even though the Halsted facility was not technically a "2-to-1" point, the BNSF settlement agreement was all that was necessary to remedy LCRA's loss of future SP competition. Id., p. 3. Mr. Rebensdorf framed his answers based on his understanding that 100% of LCRA traffic was committed to UP until the trackage rights took effect, and that BNSF would not gain access to any LCRA this traffic until that time. Id., pp. 3-4.[4/] As Mr. Rebensdorf explains in his verified statement, if it had been

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[4/] Joint petitioners claim (p. 3) that Mr. Rebensdorf stated that "BNSF would have access to LCRA's Halsted facility immediately after the UP/SP merger to move any volumes not under UP contract." This is not true. Mr. Rebensdorf understood that all volumes were under UP contract, and he never stated otherwise.

put to him at his deposition that part of the LCRA traffic in question was not under contract with UP, he would have responded that the BNSF settlement agreement was not intended to improve LCRA's competitive status. Id., p. 4.[5/] Mr. Rebensdorf's intent was clear: the competition LCRA expected SP to provide once its trackage rights agreement became effective would be provided by BNSF instead. And Mr. Rebensdorf's view of the BNSF settlement agreement has been clear throughout this proceeding: "The focus of UP/SP's efforts was to preserve competition for '2-to-1' customers." Application, Vol. 1, UP/SP-23, Rebensdorf, p. 296 (emphasis added).

None of this can come as a surprise to BNSF or LCRA. Aside from certain commercial and operational quid pro quo's, the BNSF settlement agreement was designed to allow BNSF to remedy the loss of SP competition that would have otherwise resulted from the UP/SP merger. Applied to LCRA, this basic

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[5/] At the deposition, LCRA counsel framed his question in hypothetical terms, and Mr. Rebensdorf responded based on his (mis)understanding of the actual circumstances:

> "Q. Ignoring whether LCRA is in a position to take advantage of [BNSF's settlement agreement trackage rights] by virtue of other contractual obligations, they're exercisable immediately upon consummation of the merger?
>
> A. That's correct."

Rebensdorf Dep., Jan. 23, 1996, pp. 345-46. Applicants acted to eliminate any possible confusion through the rebuttal testimony of Mr. Peterson, quoted at page 4 above.

intent clearly dictates that BNSF should not be allowed to serve LCRA's Halsted facility until LCRA's trackage rights would have taken effect well in the future.

The Board has already rejected a very similar opportunistic attempt by LCRA to improve its competitive position relative to pre-merger levels. In Decision No. 57, served Nov. 20, 1997, the Board rejected LCRA's claim that it should be treated as a "2-to-1" shipper for purposes of the Board's contract modification condition. The principles the Board relied upon in that decision squarely govern the present petition.

In Decision No. 57, the Board recognized that, although "at a future date [LCRA's] Halsted-West Point trackage rights would have become effective and it would, at that future date, have become a 2-to-1 shipper, it was not a 2-to-1 shipper immediately prior to the consummation of the merger." Id., p. 6 (footnote omitted). Thus, the Board explained, "[t]here is a difference between LCRA/Austin, on the one hand, and a pre-merger 2-to-1 shipper on the other," and that difference is "the lack of access by SP." Id., p. 7.

When it issued Decision No. 57, the Board had all of the same relevant evidence it has before it now. LCRA pointed to Mr. Rebensdorf's deposition testimony; Applicants explained it; and the Board rejected LCRA's arguments. The Board recognized that LCRA's Halsted facility was not a "2-to-1"

facility that, before the merger, was served by both UP and SP, and that this difference justified Applicants' treating LCRA differently. As the Board explained, a "representation must be taken in the context in which it was made." Id., pp. 6-7. In the case of LCRA, the context in which BNSF was granted access to its Halsted facility was as the replacement for a competitive option that would not arise until a future date. Applicants of course stand by their commitment to preserve that competition. However, Applicants will not agree, because it was not the intent of the BNSF settlement agreement, to place LCRA in a better competitive position than it would have occupied without the merger.

Joint petitioners' other arguments for granting BNSF immediate access to the Halsted facility are unpersuasive. First, they argue (Petition, pp. 7-8, & Kuehn, p. 3) that BNSF should be permitted to access the Halsted facility today to move coal volumes not covered by the UP contract to allow it to "gauge the commercial and operational effectiveness of the subject trackage rights lines" and "put it in a better position to compete vigorously for the larger volumes when they become available." They claim (p. 7) that their argument is "consistent with the intent of the Board to promote effective competition between BNSF and UP." This is simply another form of the same argument for a windfall that the Board firmly rejected when LCRA sought to have its Halsted

facility declared a "2-to-1" point for purposes of the contract modification condition. SP would have had no right to move any coal to Halsted until the trackage rights took effect, and BNSF has no need to practice moving coal to Halsted in order to compete once the trackage rights take effect and UP's current contract expires. BNSF certainly understands "the commercial and operational effectiveness of the trackage rights" -- it has already demonstrated that it can conduct successful operations using those rights. BNSF is competing vigorously all across the trackage rights it received as conditions to the merger -- and it is an understatement to say that BNSF has an established history of moving PRB coal to facilities like LCRA's Halsted facility. BNSF certainly understands the economics involved. The simple fact is that BNSF will have no trouble competing for LCRA's business when it becomes available; it is not necessary to give it a head start by creating <u>new</u> competition that did not exist pre-merger.

Second, joint petitioners argue (p. 2, & Kuehn, pp. 3-5) that BNSF access is justified because of recent declines in UP's service to the Halsted facility. UP acknowledges that it has been experiencing service difficulties, particularly in the Gulf area, and that LCRA's Halsted facility has been affected (although LCRA's cycle time data are incorrect and significantly overstate those difficulties). UP is, however,

taking the steps necessary to remedy service issues, as will be described in Applicants' August 20 oversight filing. These service difficulties do not provide a legitimate basis for expanding the reach of the BNSF settlement agreement.

Finally, joint petitioners argue (p. 4, & Woolley) that even if the BNSF settlement agreement is unclear, the Sealy, Texas to Waco and Eagle Pass, Texas Trackage Rights Agreement, dated June 1, 1996 (the "Sealy Agreement"), gives BNSF the right to serve Halsted today. They even submit a verified statement to the effect that, in negotiating the Sealy Agreement, Applicants never mentioned that BNSF could not make immediate use of its trackage rights to the Halsted facility. The Sealy Agreement, however, merely implements the intentions of the parties to the BNSF settlement agreement, which, as discussed above, were clear. It explicitly provides that the BNSF settlement agreement governs in the case of a conflict. Sealy Agreement § 7.

* * *

The simple response to BNSF and LCRA is that the BNSF settlement agreement entitles them only to what Applicants promised and the Board held necessary -- the preservation of the same two-railroad competition that existed prior to the merger.

Respectfully submitted,

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August 12, 1997

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that, on this 12th day of August, 1997, 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

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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

EXHIBIT A

VERIFIED STATEMENT

OF

JOHN H. REBENSDORF

My name is John H. Rebensdorf. I am Vice President-Strategic Planning for Union Pacific Railroad Company ("UP"). I led the UP team that negotiated the BNSF settlement agreement. I previously submitted a verified statement describing that agreement and its background, which was included in Volume 1 (UP/SP-22) of the UP/SP Merger Application filed with the Board on November 30, 1995. I submitted a second verified statement in that proceeding in the Applicants' Rebuttal (UP/SP-231), filed April 29, 1996, in which I addressed a number of arguments raised by critics of the merger and the BNSF settlement agreement.

The purpose of this statement is to address BNSF's and LCRA's claims that UP has wrongfully refused to allow BNSF to provide service to LCRA's Fayette Power Project, a coal-fired electric generating station located at Halsted, Texas. I understand that BNSF and LCRA claim that the BNSF settlement agreement and trackage rights implementing agreements provide BNSF immediate access to the Halsted facility.

The BNSF settlement agreement was designed to preserve rail competition for all customers who, prior to the merger, were served by both UP and SP and no other railroad ("2-to-1" customers). Unlike other shippers whose competitive options were protected by the agreement, LCRA's Halsted facility did not have rail competition prior to the merger --

it was a UP-exclusive facility. At the time LCRA entered into its current long-term transportation services contract with UP, however, it also entered into a trackage rights agreement that would have provided LCRA with competitive rail service from SP when the trackage rights agreement took effect at a future date -- the same date on which the transportation services contract expires.

Because the Halsted facility was not served by both UP and SP prior to the UP/SP merger, it did not fall with the definition of a "2-to-1" point. Nonetheless, in structuring the BNSF settlement agreement, Applicants recognized that, while LCRA was not like other "2-to-1" shippers, the merger would eliminate LCRA's ability to benefit from the competition that would have been created when its trackage rights agreement became effective. Applicants thus sought to preserve this future competition by listing the Halsted facility among the points identified in the BNSF settlement agreement.

Applicants listed the Halsted facility in order to assure LCRA that its competitive status would not change as a result of the merger. Our intention was clear: the competition LCRA expected SP to provide once its trackage rights agreement became effective would be provided instead by BNSF.

The decision to list the Halsted facility in the BNSF settlement agreement apparently caused some confusion, which was reflected in my deposition taken in the UP/SP proceeding on January 23, 1996. At that deposition, I was asked several questions by counsel for LCRA, who appeared to be concerned whether LCRA's competitive status would be preserved by the BNSF settlement agreement. The agreement said, in Section 4b, that BNSF would be permitted to serve only those industries along its trackage rights lines "which are presently served . . . only by both UP and SP and no other railroad at points listed on Exhibit A to this Agreement." Although the Halsted facility was listed on Exhibit A, it was in fact not an industry "presently served" by both UP and SP.

When answering LCRA counsel's questions, my main focus was thus on reassuring him that LCRA was covered by the BNSF agreement and that LCRA's competitive status would not be worsened as a result of the merger. My understanding at the time was that UP's long-term contract with LCRA governed 100% of LCRA's existing traffic, and that, as a practical matter, BNSF would not gain access to any LCRA traffic until the time when UP's contract expired and LCRA's trackage rights would have taken effect. Thus, counsel's questions about BNSF access to LCRA in the absence of the UP contract were, in my mind, completely academic.

I now understand that UP's contract with LCRA does not cover 100% of LCRA's traffic, and that LCRA and BNSF are asserting that BNSF is entitled to serve LCRA today -- several years before LCRA would have been able to take advantage of its trackage rights to obtain service from SP. It is apparent from these developments that none of the questions posed by LCRA counsel focused adequately on the issue here. Had it been put to me at my deposition that part of the LCRA traffic in question was not under contract with UP, I would have responded that the BNSF settlement agreement was not intended to improve LCRA's competitive status in advance of contract expiration.

The basic intent of the parties to the BNSF settlement agreement was clear. Aside from certain commercial and operational quid pro quo's -- and the LCRA rights were not of that nature -- the agreement was designed to allow BNSF to remedy the loss of SP competition that would have otherwise resulted from the UP/SP merger. Applied to LCRA, this basic intent clearly dictates that BNSF should not be allowed to serve LCRA's Halsted facility until LCRA's trackage rights would have taken effect.

None of this should come as a surprise to BNSF or LCRA. To allow BNSF to serve LCRA before LCRA's trackage rights would have taken effect would give LCRA more competition than it had prior to the merger. That was never the intention of the parties to the BNSF settlement agreement.

VERIFICATION

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

I, John H. Rebensdorf, being duly sworn, state that I have read the foregoing statement, that I know its contents and that those contents are true as stated.

JOHN H. REBENSDORF

SUBSCRIBED and sworn to before me this 11th day of August, 1997.

Notary Public

GENERAL NOTARY-State of Nebraska
ELAINE H. MYERS
My Comm. Exp. May 31, 1998

My Commission Expires: 5/31/98

181600

UP/SP-315

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

APPLICANTS' REPLY TO JOINT PETITION OF BNSF AND R.R. DONNELLEY

Applicants UPC, UPRR, SPR, SPT and SSW[1/] hereby reply to the joint petition of BNSF and R.R. Donnelley & Sons Company ("Donnelley") seeking the Board's determination that a warehouse that Donnelley intends to use to store and ship paper products is a "new facility" that BNSF may serve under the BNSF settlement agreement and the conditions the Board imposed on the UP/SP merger. Joint petitioners ask the Board to adopt a definition of "new facility" that is contrary to the term's plain meaning and that would expand the scope of the "new facilities" condition far beyond the concerns the condition was intended to address. The petition should be denied.

As part of Applicants' settlement agreement with CMA, Applicants modified the BNSF settlement agreement to give

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1/ Acronyms used herein are the same as those in Appendix B of Decision No. 44.

BNSF the right to serve any "new shipper facility" on the SP-owned lines over which BNSF received trackage rights. The term "new shipper facility" was specifically defined to exclude "expansion of or additions to an existing facility or loadouts or transload facilities." BNSF Settlement Agreement § 1b.

In Decision No. 44, served August 12, 1995, the Board augmented the new facilities provision in two ways: first, by giving BNSF the right to serve new facilities on UP-owned as well as SP-owned trackage rights lines; and second, by including new transloading facilities within the definition of "new facility." Decision No. 44, pp. 106, 145-46. At the same time, the Board explicitly confirmed that "the term 'new facilities' does not include expansions of or additions to existing facilities." Id., p. 146.

The Board need look no further than the joint petition itself to conclude that the facility at issue (the "Donnelley facility") is not a "new facility." The Donnelley facility is a portion of a multi-tenant warehouse (designated on the maps attached to the joint petition as "Building 8") located in a Sparks, Nevada, industrial park which, prior to the UP/SP merger, was served exclusively by SP. Although the present lessee of the Donnelley facility has not used rail service, the previous tenant did receive shipments by rail. The facility "contains four existing rail doors that access an

adjacent industrial spur track." BN/SF-81/RRD-1, Kalb, p. 4. In fact, the rail spur serving the Donnelley facility was installed in 1983, and was used by the facility's original tenant, Consumers Products, Inc., for boxcar shipments of appliances and other products. All of the track remains in place and is operational.[2/]

The Donnelley facility cannot be said to be a "new facility" without doing violence to the English language. This is not a new rail-served facility: the facility pre-dates the merger and has received direct rail service in the past. Joint petitioners say that they intend to modify three of the facility's four rail doors and construct three new doors (BN/SF-81/RRD-1, Kalb, p. 4), but these modifications cannot change an existing facility into a "new facility." Rather, they are merely "expansions of or additions to existing facilities." Decision No. 44, p. 146. In fact, these modifications are very modest ($50,000) and commonplace any time a new tenant moves into an existing structure.

[2/] The spur serving the Donnelley facility is not dormant, contrary to joint petitioners' suggestion. Joint Petition, p. 2. The spur branches south from a siding along the Applicants' main line between Fernley and Reno, and splits at a switch at the corner of Building 8, with a western branch serving the Donnelley facility and an eastern branch serving a separate facility (which joint petitioners do not show on their maps). Although the current occupants of Building No. 8 report that they do not use the spur, the shipper on the eastern branch of the spur has been using the spur to receive rail shipments since August 1991, and receives approximately 50 cars per year.

Absent from joint petitioners' plans is any provision either to construct a new facility or to install track attendant upon such construction.

Joint petitioners never confront the simple fact that the Donnelley facility is not new, and therefore falls outside the Board's requirement that BNSF be allowed to serve "new facilities." Instead, joint petitioners assert various arguments in support of what amounts to a request for a new condition on the merger -- that BNSF be allowed to serve "vacant or existing rail-served facilities that undergo a change of ownership or lessee and (a) change the product shipped from or received at the facility, or (b) have not shipped or received by rail for at least 12 months prior to the resumption or proposed resumption of rail service." See BNSF-1 in Finance Docket 32760 (Sub-No. 21), p. 13 n.3.[3/] But it is far too late for BNSF or any other party to be making such a request. See Decision No. 66, served Dec. 31, 1996, pp. 13-14.[4/]

[3/] Applicants have previously noted the irony of BNSF's arguing for this broad definition of "new facility" in light of its efforts to expand the definition of "existing facility" when arguing about Applicants' obligation to open existing shipper facilities to BNSF competition at "2-to-1" points. See UP/SP-311, pp. 29-30. Applicants' general position as to the proper definition of a new facility is set forth in UP/SP-311, pp. 26-31, and is not accurately characterized in the joint petition.

[4/] Moreover, it is contrary to BNSF's contractual agreement not to seek additional conditions. See BNSF Settlement Agreement § 14.

Joint petitioners' arguments regarding "the Board's stated intent and purposes" in imposing the new facilities condition (Joint Petition, pp. 8-12) ignore a more basic point: the Board has refused throughout this proceeding to impose conditions that would open SP-exclusive or UP-exclusive points to new competition. See, e.g., Decision No. 44, p. 107 ("Giving another carrier direct access to this [solely served] traffic would unnecessarily affect a great deal of traffic not harmed by the merger."). In fact, the Board's concern for preventing the opening of exclusive points was explicitly built into the new facilities condition, which makes clear that "expansions of or additions to" existing facilities do not make them "new" facilities.

Prior to the UP/SP merger, the Donnelley facility and the other facilities within the Sparks industrial park were served exclusively by SP. Joint petitioners' proposed interpretation of the "new facilities" condition would open the industrial park to new competition. Moreover, joint petitioners' interpretation, if accepted, could very quickly lead to the creation of new competition at similar exclusively served industrial parks and warehousing facilities all along the trackage rights lines -- the precise result the Board sought to avoid.

Furthermore, and contrary to joint petitioners' claims, Applicants' view of the new facilities condition would

not reduce Donnelley's pre-merger competitive options. Even without the "new facilities" condition, the merger and BNSF Settlement Agreement actually significantly expanded Donnelley's competitive options. As joint petitioners' witness Staab explains, prior to the UP/SP merger, Donnelley received paper at its UP-served Reno plant either via UP direct service or by BNSF in conjunction with a truck transload from McCloud, California, some 203 miles away. SP was never a competitor for delivering inbound paper to Donnelley's Reno plant; the plant is solely served by UP, and the traffic that is trucked to the plant originates on BNSF. The BNSF settlement agreement allowed BNSF to locate a new transloading facility, or use an existing transload facility in Reno, eliminating the 203 miles of drayage required for its pre-merger transloading operation, and the Board's augmentation to the "new facilities" condition further added to BNSF's siting options.

Finally, joint petitioners attempt to distract the Board from considering whether the Donnelley facility is a "new facility" by focusing instead on an unrelated issue -- whether the facility qualifies as a "legitimate transload operation." See Joint Petition, pp. 6-7, & Kalb, pp. 4-5. In Decision No. 61, served November 20, 1996, the Board responded to Applicants' concerns that a literal interpretation of the new facilities condition would effectively allow BNSF to serve

all exclusively-served shippers along trackage rights lines. The Board explained that BNSF could use the condition to handle the traffic of shippers only if it established a "legitimate transload operation," which the Board defined as one that would "entail both the construction of a rail transload facility as that term is used in the industry and operating costs above and beyond the costs that wold be incurred in providing direct rail service." Decision No. 61, p. 12. This definition, however, did not provide BNSF a separate right to serve "new transloading facilities" apart from its right to serve "new facilities": a new transloading facility must still qualify as a "new facility" in order for BNSF to gain access. See Decision No. 44, p. 146 ("the term 'new facilities' shall include transloading facilities").[5/]

In any case, the Donnelley facility would not qualify as a "legitimate transload operation" under the Board's definition in Decision No. 61. Joint petitioners' plans for the Donnelley facility do not involve "construction of a rail transload facility." Joint petitioners contemplate using an existing facility, and the minor modifications that they propose can hardly be considered construction of a "legitimate" rail transload facility. The Board never held

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5/ Moreover, as shown above, the Donnelley facility had previously been put to use similar to the one joint petitioners propose -- that is why it has rail doors already in place.

that modifying an existing rail-served facility to be used for transloading would make the transloading facility a "new facility." As discussed above, the Board's explicit recognition that "expansion of or additions to an existing facility" do not create a new facility demonstrates that the Board's intention was to the contrary.

Respectfully submitted,

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August 28, 1997

VERIFICATION

STATE OF CALIFORNIA)
) ss.
CITY AND COUNTY OF SAN FRANCISCO)

I, Charles F. Penner, Director-Industrial Development of Union Pacific Railroad Company, state that the information regarding prior rail service to the Donnelley facility and current rail service on the spur that serves the Donnelley facility contained in Applicants' Reply to Joint Petition of BNSF and R.R. Donnelley (UP/SP-315) in STB Finance Docket No. 32760 was compiled by me or individuals under my supervision, and that to the best of my knowledge and belief the information is true as stated.

Charles F. Penner
CHARLES F. PENNER

SUBSCRIBED and sworn to before me by Charles F. Penner this 26th day of August 1997.

Robert McCaffrey
Notary Public

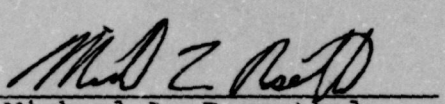
ROBERT MC CAFFREY
COMM. # 997760
Notary Public — California
SAN FRANCISCO COUNTY
My Comm. Expires SEP 24, 1997

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that, on this 28th day of August, 1997, 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

181172

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

APPLICANTS' REPLY TO JOINT PETITION OF BNSF AND LCRA

Applicants UPC, UPRR, SPR, SPT and SSW[1/] hereby reply to the joint petition of BNSF and LCRA seeking the Board's determination that BNSF has the present right to provide rail service to LCRA's Fayette Power Project coal-fired station at Halsted, Texas, using trackage rights granted in the BNSF settlement agreement.[2/] The joint petition asks the Board to adopt a position that is inconsistent with the BNSF settlement agreement and inconsistent with the Board's

1/ Acronyms used herein are the same as those in Appendix B of Decision No. 44. On January 1, 1997, Applicant MPRR merged into Applicant UPRR. On June 30, 1997, Applicants DRGW and SPCSL also merged into Applicant UPRR.

2/ Applicants are waiving the arbitration provision of the BNSF settlement agreement and responding to the joint petition, but are doing so without prejudice to their right to insist on arbitration of other disputes that may arise regarding the agreement.

Decision No. 57, served Nov. 20, 1996, and it should be rejected.

The BNSF settlement agreement was designed to preserve rail competition for all customers who, prior to the merger, were served by both UP and SP and no other railroad ("2-to-1" shippers). See Decision No. 44, served Aug. 12, 1996, pp. 121-22. Unlike other shippers whose competitive options were protected by the agreement, LCRA's Halsted facility did not have rail competition prior to the merger -- it was a UP-exclusive facility. At the time LCRA entered into its current transportation services contract with UP, however, it also entered into a separate trackage rights agreement granting SP access to the plant, effective only upon the termination of the transportation services contract, well in the future. The trackage rights agreement, when it took effect, would allow LCRA, which burns Powder River Basin ("PRB") coal transported by UP, to receive PRB coal via a BN-SP routing.

Because the Halsted facility was not served by both UP and SP prior to the UP/SP merger, it did not fall within the definition of a "2-to-1" shipper. Nonetheless, in structuring the BNSF settlement agreement, Applicants recognized that, while LCRA was not like other "2-to-1" shippers, the merger would eliminate LCRA's ability to benefit from the future UP-SP competition that would have been created

when the trackage rights agreement allowing SP access became effective. Applicants thus sought to preserve this future competition by listing the Halsted facility among the points identified in the BNSF settlement agreement.[3/]

LCRA's concern from the beginning of this proceeding has been for the preservation of this future competition. As LCRA explained in its very first filing:

> "Currently, coal is transported to [the Fayette Power Project] under a rail transportation contract, executed in 1988 between LCRA/Austin and Applicants UP and Missouri Pacific Railroad Company ("MP") and Western Railroad Properties, Incorporated. In conjunction with entering that contract and the settlement of certain litigation, LCRA/Austin entered a separate Trackage Rights Agreement ("TRA") with the Missouri-Kansas-Texas Railroad Company ("MKT"). This TRA provides access at a future time, specified in the agreement, over 18 miles of track between Halsted, Texas (the site of FPP) and West Point, Texas, which is a junction point between the MKT line (now owned by Applicant MP) serving FPP and a line of Applicant SP.
>
> The purpose of the TRA was to protect LCRA/Austin's interests in obtaining competitive rail transportation service and rates for coal moving to FPP. The trackage rights provided LCRA/Austin with access to SP which could (in combination with Burlington Northern Railroad Company) provide service from origin coal fields in the PRB, as well as from other possible origins such as ports, in competition with UP and its connections. In the absence of these trackage rights, LCRA/Austin would have been captive to UP upon the expiration of the rail contract.
>
> LCRA/Austin are vitally interested in the proposed merger. The proposed merger would place UP

[3/] In fact, this improves LCRA's competitive position, because it will be able to receive PRB coal directly via BNSF, instead of via a BNSF-SP interline route.

> and SP under common control, thus depriving LCRA/Austin of access to competitive rail service and nullifying the purpose of the TRA. Accordingly, to the extent that they are unable to resolve their concerns with the merger through negotiations with Applicants, LCRA/Austin intend to participate actively in the forthcoming merger proceeding in order to preserve competition for their FPP coal movements."

LCRA-1, pp. 2-3 (emphasis added). LCRA's request for immediate BNSF access is simply not justified by the position it maintained throughout the merger proceeding.

Applicants have consistently maintained that LCRA is to be treated differently from shippers that would have lost existing two-railroad competition as a result of the merger. As Applicants' witness Peterson explained when discussing his traffic study in his rebuttal testimony:

> "Traffic at the UP-served LCRA plant at Halsted, Texas, does not become available to SP until the expiration of the pending contract [when the trackage rights agreement takes effect]. It is not '2-to-1' traffic until that time, and it was never intended that BN/Santa Fe would access it until that time."

UP/SP-231, Peterson, p. 193 n.63.

As John H. Rebensdorf, UP's Vice President-Strategic Planning, who led the UP team that negotiated the BNSF settlement agreement, confirms in a verified statement (attached hereto as Exhibit A), Applicants never attempted to mislead either BNSF or LCRA about the status of the Halsted facility. As Mr. Rebensdorf explains, to allow BNSF to serve LCRA's Halsted facility before LCRA's trackage rights would

have taken effect would give LCRA more competition than it had prior to the merger. That was never his intention or the intention of the parties to the BNSF settlement agreement. Rebensdorf V.S., p. 4. The Halsted facility was listed in order to ensure that LCRA's competitive status would not change as a result of the merger.

The joint petition relies heavily on a dialogue between Mr. Rebensdorf and LCRA counsel during his deposition. As Mr. Rebensdorf explains in his verified statement, in responding to LCRA counsel, he was focusing on putting to rest LCRA counsel's apparent concerns that LCRA's competitive status would be worsened as a result of the merger. Mr. Rebensdorf was trying to assure LCRA counsel that, even though the Halsted facility was not technically a "2-to-1" point, the BNSF settlement agreement was all that was necessary to remedy LCRA's loss of future SP competition. Id., p. 3. Mr. Rebensdorf framed his answers based on his understanding that 100% of LCRA traffic was committed to UP until the trackage rights took effect, and that BNSF would not gain access to any LCRA this traffic until that time. Id., pp. 3-4.[4/] As Mr. Rebensdorf explains in his verified statement, if it had been

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[4/] Joint petitioners claim (p. 3) that Mr. Rebensdorf stated that "BNSF would have access to LCRA's Halsted facility immediately after the UP/SP merger to move any volumes not under UP contract." This is not true. Mr. Rebensdorf understood that all volumes were under UP contract, and he never stated otherwise.

put to him at his deposition that part of the LCRA traffic in question was not under contract with UP, he would have responded that the BNSF settlement agreement was not intended to improve LCRA's competitive status. Id., p. 4.[5/] Mr. Rebensdorf's intent was clear: the competition LCRA expected SP to provide once its trackage rights agreement became effective would be provided by BNSF instead. And Mr. Rebensdorf's view of the BNSF settlement agreement has been clear throughout this proceeding: "The focus of UP/SP's efforts was to preserve competition for '2-to-1' customers." Application, Vol. 1, UP/SP-23, Rebensdorf, p. 296 (emphasis added).

None of this can come as a surprise to BNSF or LCRA. Aside from certain commercial and operational quid pro quo's, the BNSF settlement agreement was designed to allow BNSF to remedy the loss of SP competition that would have otherwise resulted from the UP/SP merger. Applied to LCRA, this basic

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[5/] At the deposition, LCRA counsel framed his question in hypothetical terms, and Mr. Rebensdorf responded based on his (mis)understanding of the actual circumstances:

> "Q. Ignoring whether LCRA is in a position to take advantage of [BNSF's settlement agreement trackage rights] by virtue of other contractual obligations, they're exercisable immediately upon consummation of the merger?
>
> A. That's correct."

Rebensdorf Dep., Jan. 23, 1996, pp. 345-46. Applicants acted to eliminate any possible confusion through the rebuttal testimony of Mr. Peterson, quoted at page 4 above.

intent clearly dictates that BNSF should not be allowed to serve LCRA's Halsted facility until LCRA's trackage rights would have taken effect well in the future.

The Board has already rejected a very similar opportunistic attempt by LCRA to improve its competitive position relative to pre-merger levels. In Decision No. 57, served Nov. 20, 1997, the Board rejected LCRA's claim that it should be treated as a "2-to-1" shipper for purposes of the Board's contract modification condition. The principles the Board relied upon in that decision squarely govern the present petition.

In Decision No. 57, the Board recognized that, although "at a future date [LCRA's] Halsted-West Point trackage rights would have become effective and it would, at that future date, have become a 2-to-1 shipper, it was not a 2-to-1 shipper immediately prior to the consummation of the merger." Id., p. 6 (footnote omitted). Thus, the Board explained, "[t]here is a difference between LCRA/Austin, on the one hand, and a pre-merger 2-to-1 shipper on the other," and that difference is "the lack of access by SP." Id., p. 7.

When it issued Decision No. 57, the Board had all of the same relevant evidence it has before it now. LCRA pointed to Mr. Rebensdorf's deposition testimony; Applicants explained it; and the Board rejected LCRA's arguments. The Board recognized that LCRA's Halsted facility was not a "2-to-1"

facility that, before the merger, was served by both UP and SP, and that this difference justified Applicants' treating LCRA differently. As the Board explained, a "representation must be taken in the context in which it was made." Id., pp. 6-7. In the case of LCRA, the context in which BNSF was granted access to its Halsted facility was as the replacement for a competitive option that would not arise until a future date. Applicants of course stand by their commitment to preserve that competition. However, Applicants will not agree, because it was not the intent of the BNSF settlement agreement, to place LCRA in a better competitive position than it would have occupied without the merger.

Joint petitioners' other arguments for granting BNSF immediate access to the Halsted facility are unpersuasive. First, they argue (Petition, pp. 7-8, & Kuehn, p. 3) that BNSF should be permitted to access the Halsted facility today to move coal volumes not covered by the UP contract to allow it to "gauge the commercial and operational effectiveness of the subject trackage rights lines" and "put it in a better position to compete vigorously for the larger volumes when they become available." They claim (p. 7) that their argument is "consistent with the intent of the Board to promote effective competition between BNSF and UP." This is simply another form of the same argument for a windfall that the Board firmly rejected when LCRA sought to have its Halsted

facility declared a "2-to-1" point for purposes of the contract modification condition. SP would have had no right to move any coal to Halsted until the trackage rights took effect, and BNSF has no need to practice moving coal to Halsted in order to compete once the trackage rights take effect and UP's current contract expires. BNSF certainly understands "the commercial and operational effectiveness of the trackage rights" -- it has already demonstrated that it can conduct successful operations using those rights. BNSF is competing vigorously all across the trackage rights it received as conditions to the merger -- and it is an understatement to say that BNSF has an established history of moving PRB coal to facilities like LCRA's Halsted facility. BNSF certainly understands the economics involved. The simple fact is that BNSF will have no trouble competing for LCRA's business when it becomes available; it is not necessary to give it a head start by creating <u>new</u> competition that did not exist pre-merger.

Second, joint petitioners argue (p. 2, & Kuehn, pp. 3-5) that BNSF access is justified because of recent declines in UP's service to the Halsted facility. UP acknowledges that it has been experiencing service difficulties, particularly in the Gulf area, and that LCRA's Halsted facility has been affected (although LCRA's cycle time data are incorrect and significantly overstate those difficulties). UP is, however,

taking the steps necessary to remedy service issues, as will be described in Applicants' August 20 oversight filing. These service difficulties do not provide a legitimate basis for expanding the reach of the BNSF settlement agreement.

Finally, joint petitioners argue (p. 4, & Woolley) that even if the BNSF settlement agreement is unclear, the Sealy, Texas to Waco and Eagle Pass, Texas Trackage Rights Agreement, dated June 1, 1996 (the "Sealy Agreement"), gives BNSF the right to serve Halsted today. They even submit a verified statement to the effect that, in negotiating the Sealy Agreement, Applicants never mentioned that BNSF could not make immediate use of its trackage rights to the Halsted facility. The Sealy Agreement, however, merely implements the intentions of the parties to the BNSF settlement agreement, which, as discussed above, were clear. It explicitly provides that the BNSF settlement agreement governs in the case of a conflict. Sealy Agreement § 7.

* * *

The simple response to BNSF and LCRA is that the BNSF settlement agreement entitles them only to what Applicants promised and the Board held necessary -- the preservation of the same two-railroad competition that existed prior to the merger.

Respectfully submitted,

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August 12, 1997

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that, on this 12th day of August, 1997, 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
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Suite 500
Department of Justice
Washington, D.C. 20530

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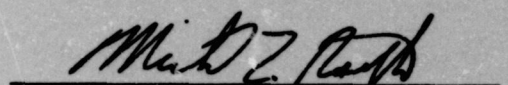

Michael L. Rosenthal

EXHIBIT A

VERIFIED STATEMENT

OF

JOHN H. REBENSDORF

My name is John H. Rebensdorf. I am Vice President-Strategic Planning for Union Pacific Railroad Company ("UP"). I led the UP team that negotiated the BNSF settlement agreement. I previously submitted a verified statement describing that agreement and its background, which was included in Volume 1 (UP/SP-22) of the UP/SP Merger Application filed with the Board on November 30, 1995. I submitted a second verified statement in that proceeding in the Applicants' Rebuttal (UP/SP-231), filed April 29, 1996, in which I addressed a number of arguments raised by critics of the merger and the BNSF settlement agreement.

The purpose of this statement is to address BNSF's and LCRA's claims that UP has wrongfully refused to allow BNSF to provide service to LCRA's Fayette Power Project, a coal-fired electric generating station located at Halsted, Texas. I understand that BNSF and LCRA claim that the BNSF settlement agreement and trackage rights implementing agreements provide BNSF immediate access to the Halsted facility.

The BNSF settlement agreement was designed to preserve rail competition for all customers who, prior to the merger, were served by both UP and SP and no other railroad ("2-to-1" customers). Unlike other shippers whose competitive options were protected by the agreement, LCRA's Halsted facility did not have rail competition prior to the merger --

it was a UP-exclusive facility. At the time LCRA entered into its current long-term transportation services contract with UP, however, it also entered into a trackage rights agreement that would have provided LCRA with competitive rail service from SP when the trackage rights agreement took effect at a future date -- the same date on which the transportation services contract expires.

Because the Halsted facility was not served by both UP and SP prior to the UP/SP merger, it did not fall with the definition of a "2-to-1" point. Nonetheless, in structuring the BNSF settlement agreement, Applicants recognized that, while LCRA was not like other "2-to-1" shippers, the merger would eliminate LCRA's ability to benefit from the competition that would have been created when its trackage rights agreement became effective. Applicants thus sought to preserve this future competition by listing the Halsted facility among the points identified in the BNSF settlement agreement.

Applicants listed the Halsted facility in order to assure LCRA that its competitive status would not change as a result of the merger. Our intention was clear: the competition LCRA expected SP to provide once its trackage rights agreement became effective would be provided instead by BNSF.

The decision to list the Halsted facility in the BNSF settlement agreement apparently caused some confusion, which was reflected in my deposition taken in the UP/SP proceeding on January 23, 1996. At that deposition, I was asked several questions by counsel for LCRA, who appeared to be concerned whether LCRA's competitive status would be preserved by the BNSF settlement agreement. The agreement said, in Section 4b, that BNSF would be permitted to serve only those industries along its trackage rights lines "which are presently served . . . only by both UP and SP and no other railroad at points listed on Exhibit A to this Agreement." Although the Halsted facility was listed on Exhibit A, it was in fact not an industry "presently served" by both UP and SP.

When answering LCRA counsel's questions, my main focus was thus on reassuring him that LCRA was covered by the BNSF agreement and that LCRA's competitive status would not be worsened as a result of the merger. My understanding at the time was that UP's long-term contract with LCRA governed 100% of LCRA's existing traffic, and that, as a practical matter, BNSF would not gain access to any LCRA traffic until the time when UP's contract expired and LCRA's trackage rights would have taken effect. Thus, counsel's questions about BNSF access to LCRA in the absence of the UP contract were, in my mind, completely academic.

I now understand that UP's contract with LCRA does not cover 100% of LCRA's traffic, and that LCRA and BNSF are asserting that BNSF is entitled to serve LCRA today -- several years before LCRA would have been able to take advantage of its trackage rights to obtain service from SP. It is apparent from these developments that none of the questions posed by LCRA counsel focused adequately on the issue here. Had it been put to me at my deposition that part of the LCRA traffic in question was not under contract with UP, I would have responded that the BNSF settlement agreement was not intended to improve LCRA's competitive status in advance of contract expiration.

The basic intent of the parties to the BNSF settlement agreement was clear. Aside from certain commercial and operational quid pro quo's -- and the LCRA rights were not of that nature -- the agreement was designed to allow BNSF to remedy the loss of SP competition that would have otherwise resulted from the UP/SP merger. Applied to LCRA, this basic intent clearly dictates that BNSF should not be allowed to serve LCRA's Halsted facility until LCRA's trackage rights would have taken effect.

None of this should come as a surprise to BNSF or LCRA. To allow BNSF to serve LCRA before LCRA's trackage rights would have taken effect would give LCRA more competition than it had prior to the merger. That was never the intention of the parties to the BNSF settlement agreement.

VERIFICATION

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

I, John H. Rebensdorf, being duly sworn, state that I have read the foregoing statement, that I know its contents and that those contents are true as stated.

JOHN H. REBENSDORF

SUBSCRIBED and sworn to before me this 11th day of August, 1997.

Elaine N. Myers
Notary Public

GENERAL NOTARY-State of Nebraska
ELAINE N. MYERS
My Comm. Exp. May 31, 1998

My Commission Expires: 5/31/98

STB FD-32760 ID-181154 8-11-97 D

181154

UP/SP-308

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

APPLICANTS' REPLY TO "PETITION OF MONTELL USA, INC.
FOR DETERMINATION OF WEST LAKE CHARLES AS A 2-TO-1 POINT"

Applicants UPC, UPRR, SPR, SPT and SSW[1/] hereby reply to Montell's petition seeking the Board's determination that its West Lake Charles, Louisiana, facility should be treated as a "2-to-1" facility for purposes of the contract modification condition the Board imposed when it approved the UP/SP merger. Montell's petition seeks a windfall that is unrelated to any harmful effect of the merger on competition, and is unnecessary to ensure that BNSF is a fully effective competitor for "2-to-1" traffic. It should be denied.

Applicants' settlement agreements with BNSF and CMA, as expanded by the Board's decision approving the merger, remedied any harmful competitive effect the merger might have on Montell -- and in fact substantially increased rail

1/ Acronyms used herein are the same as those in Appendix B of Decision No. 44. On January 1, 1997, Applicant MPRR merged into Applicant UPRR. On June 30, 1997, Applicants DRGW and SPCSL also merged into Applicant UPRR.

competition for Montell's traffic. Prior to the merger, both SP and KCS served Montell's West Lake Charles facility. Although Montell thus was not a "2-to-1" shipper, Applicants agreed, as part of their settlement with CMA, to allow BNSF to handle traffic moving between, on the one hand, Montell and other Lake Charles area shippers open to SP and KCS (and in some cases UP) and, on the other hand, New Orleans and the eastern Mexican gateways. Applicants agreed to this arrangement after CMA argued that KCS was not an effective competitor for certain Lake Charles area traffic flows and the merger would eliminate competition between alternative SP and KCS-UP routings.

In its decision approving the merger, the Board responded to the arguments of Montell and others by ordering Applicants to expand further, in certain specific respects, BNSF's access to Lake Charles area shippers. The Board ordered Applicants to allow BNSF to use its Houston-to-Memphis trackage rights to interchange with KCS at Shreveport and Texarkana in order to substitute a KCS-BNSF joint-line routing for the existing KCS-UP joint-line routing via Texarkana. The Board also required Applicants to remove the geographic restriction on direct BNSF service to Lake Charles area shippers and permit BNSF to serve all destinations, and not

just New Orleans and the eastern Mexican gateways, from those points. Decision No. 44, served Aug. 12, 1996, p. 153.[2/]

As a result of the CMA and BNSF settlements, and the Board's expansion of the terms of those settlements, not only was the existing competitive situation preserved for Montell and other Lake Charles area shippers served only by SP and KCS, but these shippers now enjoy head-to-head single-line competition between UP/SP and BNSF where before the merger their only alternative to SP was a KCS-UP joint-line route.[3/] In fact, by granting BNSF direct access to Montell's West Lake Charles facilities, the Board provided Montell a stronger post-merger competitive option than it had requested: Montell had asked only that KCS be allowed to interchange with BNSF at Lake Charles and Shreveport. MONT-9, p. 2.

Apparently not satisfied with achieving more than it even sought, Montell now asks the Board to expand its competitive alternatives still more, in a way it never once mentioned during the merger proceeding. Montell suggests (Petition, p. 1 n.1) that its request is proper because the Board has indicated that it would be available to resolve disputes about application to particular cases of the contract

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[2/] The Board also required Applicants to eliminate a fee that had been designed to make the costs of direct BNSF service comparable to the costs of the KCS-UP joint line service that BNSF was replacing.

[3/] In addition, Lake Charles area shippers with traffic destined to locations served by KCS now have a third competitive option.

modification condition. But Montell does not ask the Board to resolve whether it was previously served by UP and SP and only those two railroads, nor does it ask the Board to resolve any particular dispute regarding the modification of one of its contracts. In other words, Montell is not raising the type of technical question regarding actual implementation of the condition that the Board indicated it would resolve. See Decision No. 57, served Nov. 20, 1996, pp. 13-14.

Rather than seeking to apply or clarify[1/] the contract modification condition, Montell is seeking to change it. Beginning with Volume I of the merger application, "2-to-1" shippers have been defined as those "who now have rail service from UP and SP and no other railroad." UP/SP-22, p. 18. In Decision No. 44, the Board adopted the same definition. See Decision No. 44, p. 16. It is thus abundantly clear that Montell is not a "2-to-1" shipper as

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1/ The due date for seeking clarification of Decision No. 44 has long passed. See Decision No. 66, served Dec. 31, 1996, p. 14 (denying Railco's request for reconsideration or clarification).

that term has been used throughout this proceeding.[5/] What Montell seeks is to change this definition.

Montell's petition is thus in fact a petition to reopen the merger proceeding in order to obtain a new form of relief. As such, it is untimely. See 49 C.F.R. § 1115.3(e). It also does not come close to satisfying the Board's rigorous standards for reopening a final decision. See 49 C.F.R. § 1115.3(b); Docket No. AB-33 (Sub-No. 55), Union Pacific R.R. -- Abandonment -- Between Echo & Park City & Between Keetley Junction & Phoston, In Summit & Wasatch Counties, UT, Decision

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[5/] Lake Charles area shippers, including Montell, have never been considered or referred to as "2-to-1" shippers. Applicants have been careful throughout these proceedings to make this clear. In both the CMA agreement and the BNSF agreement, Applicants placed Lake Charles area shippers in a separate category. The one reference to Applicants' statements that Montell cites conclusively demonstrates this fact. Montell quotes language from the CMA agreement providing that BNSF is to receive access to Lake Charles area shippers "on the same basis as is provided for . . . for '2-to-1' points." Petition, p. 4 (emphasis added). This choice of language clearly shows that Applicants did not consider Lake Charles area shippers actually to be "2-to-1" shippers. Applicants never represented that Lake Charles area shippers would be treated as "2-to-1" shippers for the purposes of the CMA contract modification provision. Cf. Decision No. 57, p. 7 (rejecting LCRA's request for a declaration that it was entitled to "2-to-1" status for purposes of the contract modification condition). Even BNSF, which is now arguing that the contract modification provision should apply to these shippers, has explicitly acknowledged that they do not fall in the "2-to-1" category. See BNSF Progress Report and Operating Plan, Oct. 1, 1996, p. 13 n.8 ("because Lake Charles, Westlake, and West Lake Charles, LA, are not defined as 2-to-1 points, it is not clear that the literal terms of the contract reopener provision apply"). Nor does Montell contest this most basic point. Thus, there can be no question that Montell does not fall within the terms of the CMA agreement or the Board's contract modification condition, both of which make specific reference to "2-to-1" shippers.

served July 11, 1990, p. 11 (petitions to reopen are granted "only in the most extraordinary circumstances"). Montell does not even attempt to allege material error, new evidence or changed circumstances, and its petition should be denied on that ground alone. See Finance Docket No. 31231, IC Industries, Inc. -- Securities Notice of Exemption Under 49 CFR 1175, Decision served Apr. 3, 1989, p. 1 n.3.

Montell's argument fails on the merits as well. Montell argues that, as a matter of "logic" (Petition, p. 5), its West Lake Charles facility should be subject to the contract modification provision of the CMA agreement, which the Board extended to all "2-to-1" shippers in its decision approving the merger. Decision No. 44, p. 146. But the Board has made clear that its reasons for granting Lake Charles area shippers direct access to BNSF were very different from its reasons for imposing the contract modification condition. As discussed above, the Board expanded BNSF's access to Lake Charles area shippers to ensure that those shippers would not suffer competitive harm from the merger. The Board provided Lake Charles area shippers a new BNSF direct routing option to replace the existing KCS-UP joint line option,[6/] thus guaranteeing that in future rail contract negotiations, Lake

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[6/] The Board also explained that it removed the geographic restriction on BNSF access because otherwise "shippers might be hesitant to use BNSF services for any shipments requiring SIT." Decision No. 44, p. 153.

Charles area shippers would benefit from vigorous competition between UP/SP and BNSF.

By contrast, the Board did not impose the contract modification condition in order to prevent any future competitive harm. Rather, it explained that it was imposing the condition "to help ensure that BNSF has immediate access to a traffic base sufficient to support effective trackage rights operations." Decision No. 44, p. 146; see also Decision No. 57, p. 5. For shippers, the contract modification condition was a windfall. The shippers subject to the condition had negotiated their contracts under the competitive conditions that existed prior to the merger. The merger would not have altered these contracts, and future competition was guaranteed through BNSF trackage rights. Nonetheless, to ensure BNSF would have an ample potential traffic base, these shippers were permitted immediately to divert to BNSF up to 50% of the traffic subject to contractual commitments. The Board has explained this very clearly:

> "The contract modification condition was not imposed to rectify competitive problems faced by 2-to-1 shippers who are parties to long-term contracts. Rather, that provision amounts to somewhat of a windfall for any shipper whose traffic it covers."

Decision No. 57, p. 6.

Montell is thus wrong to suggest that the same considerations that led the Board to grant BNSF direct access to its West Lake Charles facilities also require that it be allowed to reopen its contracts that were negotiated under

pre-merger competitive conditions. The contract modification condition was not designed to preserve pre-merger competition in the same way as the expanded Lake Charles area access (or BNSF's right to serve "2-to-1" shippers in general). Montell's "logic" compares apples to oranges.

Moreover, nothing in Montell's petition, or in any of the evidence that the Board has received in connection with the merger, suggests that granting the petition is necessary to further the Board's goal, in imposing the contract modification condition, of ensuring that BNSF has an adequate traffic base to support trackage rights operations. Montell does not even address that point. In fact, the record demonstrates that BNSF trackage rights operations in the areas that would be impacted if Montell were able to exercise the contract modification condition -- the Houston-New Orleans and Houston-Memphis corridors -- are firmly established and providing highly competitive service today. See UP/SP-303, pp. 93-94; BNSF-PR-4, Rickershauser V.S., Atts. 14, 15. Significantly, although BNSF has also suggested that the Board should extend the contract modification condition to Lake Charles area shippers, it merely repeats Montell's flawed arguments from supposed "logic" -- that these customers had "only two effective competitive options" prior to the merger. BNSF-PR-4, Rickershauser V.S., pp. 23-24. BNSF does not even pretend that extension of the contract modification condition to Lake Charles area shippers is needed to supply volume for

BNSF's trackage rights lines. It could not possibly do so, given the multiple trains per day it is already operating via its rights across southern Louisiana.

In developing the contract modification condition, the Board attempted to balance two objectives: it wanted to expand the traffic base immediately available to BNSF, but it was also careful not to expand willy-nilly "the amount of traffic that UP/SP runs the risk of losing." Decision No. 57, p. 5. Limiting the contract modification condition to actual "2-to-1" locations provides a clear, bright-line limitation on the arbitrary transfer to BNSF of contractually-committed traffic that is <u>already</u> enjoying the full benefit of pre-merger competition. This limitation should be respected -- particularly absent a shred of evidence that expanding the contract modification condition is necessary to ensure BNSF's competitiveness.

Respectfully submitted,

CARL W. VON BERNUTH
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Union Pacific Corporation
Martin Tower
Eighth and Eaton Avenues
Bethlehem, Pennsylvania 18018
(610) 861-3290

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PAUL A. CONLEY, JR.
LOUISE A. RINN
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Union Pacific Railroad Company
Southern Pacific Transportation Company
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Omaha, Nebraska 68179
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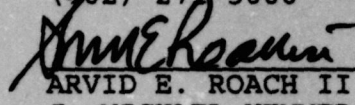

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(202) 662-5388

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

August 11, 1997

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that, on this 11th day of August, 1997, I caused a copy of the foregoing document to be served by hand upon:

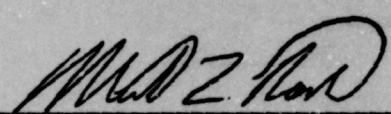
Martin W. Bercovici, Esq.
Keller and Heckman LLP
Suite 500 West
1001 G Street, N.W.
Washington, D.C. 20001

Erika Z. Jones, Esq.
Mayer, Brown & Platt
2000 Pennsylvania Ave., N.W.
Washington, D.C. 20006

and 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

Item No. 62121

Page Count 1

Mar #572

APR 0 2 1996

Part of Public Record

HOBSON RANCH, INC.

2083 Hobson RD
Pueblo CO 81007-6101

March 16, 1996

Office of the Secretary
Surface Transportation Board
Room 1324
1201 Constitution AV NW
Washington DC 20423-0001

FD 32760

RECEIVED MAR 28 1996 MAIL MANAGEMENT I.C.C.

Attention: Finance Docket #32760

Dear Sirs:

I write as Manager of Hobson Ranch, Inc., a business founded in 1868 by Charles Jacob Hobson, my great-grandfather when he homesteaded 160 acres west of Pueblo. It was a real boon to him when the nacent Denver and Rio Grande Railroad Company approached him about a right-of-way .

RIGHT OF WAY Charles J. Hobson — to — The Denver and Rio Grande Railway Company, Recorded in Book 4, page 295 Right of Way Deed Dated 2 Nov. 1872, Consideration: In consideration that second party shall construct and maintain in good repair across the Right of Way as hereinafter conveyed necessary and suitable cattle guards and crossings for roads and ditches, and in further consideration of $1. Filed for record 11 Nov. 1872. Acknowledged 2 Nov. 1872 before Wilbur F. Stone, a Notary Public, Pueblo Co. Colo. Ty.

Conveys: The Right of Way over the lands hereinafter described — that is to say 50 ft. Wide on each side of the centre of the track of the Denver and Rio Grande Railway, as the same is now located and constructed, extending through the W½ of the SW¼ of Sec. 5 and the N½ of the SE¼ of Sec. 6 of T. 20 S. Of R. 67 W. To have and to hold the same for the uses and purpose of the said Railway Company, and its lines of Telegraph so long as said Railway shall be kept and operated on the said location, otherwise to revert to the said part of the first, his heirs and assigns.

Neighbors conveyed rights-of-way with the same reversion clause and differing considerations:

Fred Rohrer: ...& of $150 and a passenger ticket for 1000 miles travel over the Railway of said Company

William H. Greenwood: Quit Claim Deed of 1 Nov 1875 ...$1...

Conley, Moore, Chilcott, Carlisle, Mersereau, Holbrooke—RIGHT OF WAY DEED .25 June 1872, ...$5.00 ...

Though passenger service has been reported to be part of the easement stipulations I am not able to document the same in these deeds, but Carlisle/ later Hobson was a station on the Railroad Passenger schedule, being a "red flag" stop. This service was used extensively in the early years and was the preferred method of travel of my father and his friends to college in Fort Collins.

Hobson Ranch, Inc., now holds these promises made in good faith as well as others in the NW¼ Section 8, [redacted] Section 5, [redacted] Section 6 Township 20 South Range 67 West in Pueblo County and NE¼ Section 1 Township 20 South Range 68 West in Fremont County.

Therefore, I advise Southern Pacific, Union Pacific, and all other interested parties of the contractual obligations to Hobson Ranch and affirm our expectations of compliance with the letter and spirit of the contracts.

Sincerely,

C. Jacob Hobson

C. Jacob Hobson
Vice President & Manager

ADVISE OF ALL PROCEEDINGS

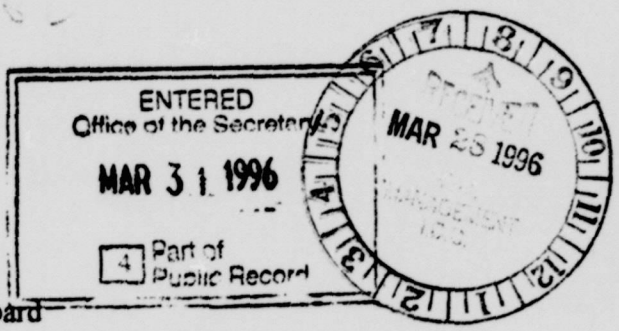
STB FD 32760 3-28-96 D 62120

Item No. 62120

Page Count 2
Mar # 573

r Corporation
cago, Illinois 60601-7568 312.346.6600

FD 32760



March 22, 1996

The Honorable Vernon A. Williams
Secretary Surface Transportation Board
Case Control Branch
12th St. and Constitution Ave. NW
Washington, DC 20423

62120

Dear Sir:

On October 19, 1995, Stone Container Corporation, 150 North Michigan Avenue, Chicago, Illinois 60601-7568, filed a statement in support of the proposed Union Pacific/Southern Pacific merger. Subsequent to our filing we have learned that an entity controlled by the majority shareholder of Montana Rail Link, will be filing with the Surface Transportation board an inconsistent or responsive application in which that entity will propose acquiring one of the Union Pacific or Southern Pacific routes between California and Kansas City (the "MRL Proposal"). In our opinion, without the MRL or a comparable solution, the UP/SP proposal eliminates rail competition in the Central Corridor of the United States. The trackage rights UP/SP have agreed to grant to BNSF are unlikely to result in BNSF's providing meaningful competition in the Central Corridor. It will cost BNSF nothing if it elects not to use those rights. Competition can only be assured with an independent third party owner/operator acquiring one of the Union Pacific or Southern Pacific routes between California and the Kansas City area. We, therefore, condition our support of the merger on sale of a Central Corridor route to an independent party that would have to provide competitive service in order to justify its investment in that rail line.

Stone Container strongly supports Montana Rail Link's proposed acquisition of the Union Pacific line between Silver Bow, Montana, and Pocatello, Idaho as a strategic element of the Central Corridor solution. The Silver Bow - Pocatello line ties together the present MRL system with the Central Corridor route at Odgen, Utah, providing important traffic to support the new Central Corridor system and affording the economic synergies of tying both MRL systems together. The MRL Central Corridor solution will provide routing options on both Union Pacific and Burlington Northern Santa Fe as well as direct routing via their own proposed system.

ADVISE OF ALL PROCEEDINGS

The Central Corridor plays a vital role in our ability to remain competitive in southwest markets.

As mentioned in our previous filing, there are many benefits to the Union Pacific's proposed merger with Southern Pacific. The MRL proposal maintains the benefits of both the UP/SP merger including the proposed trackage rights agreement with Burlington Northern Santa Fe, and at the same time ensures true competition in the Central Corridor through sale of one of the routes to an independent operator.

Our company conditions its support of the UP/SP merger application on sale of a Central Corridor route as described in the MRL Proposal.

Wayne Scott
Director, Transportation
Stone Container Corporation

WS:bjb
cc: Mr. Alex Jordan
Western Shippers Coalition
136 South Main Street
Salt Lake City, US 84101

STB FD . 32760 3-28-96 D . 62109

62109

Item No. _____

Page Count 1

Mar #595

FILE OF ALL

PROCEEDINGS

TO THE STB

DERAIL THE UP/SP MERGER

DEAR MR. SECRETARY,

I urge the Surface Transportation Board to reject the merger of the Union Pacific and Southern Pacific Railroads. It is far more anti-competitive than the Santa Fe/Southern Pacific merger rejected in 1988. A hundred years ago, America cracked down on railroads that ripped off families, small businesses and consumers. Don't bring those monopolies back again!

As a worker whose job is threatened by this merger, I can tell you thousands of communities, consumers and shippers will be abused by corporate giants once rail competition is destroyed. Don't decimate jobs so that greedy owners can get richer. This merger is bad for our country. It should be rejected.

Name: Patrick Ferguson

Address: 57 Rhoda Ave

Smithtown N.Y. 11787

Retired.

Employer: Long Island R.R.

No more Vanderbilt Mentality Please

62109

Item No. _____ 62106

Page Count 1

Mar #598

E OF REPRESENTATIVES
STATE OF UTAH

REP. FRANK R. PIGNANELLI
MINORITY LEADER
24TH DISTRICT
(SALT LAKE COUNTY)
598 WEST CAPITOL STREET
SALT LAKE CITY, UTAH 84103
RES. 328-2282 / BUS. 481-6658

COMMITTEES: EXECUTIVE APPROPRIATIONS; BUSINESS, LABOR AND ECONOMIC DEVELOPMENT; TRANSPORTATION AND PUBLIC SAFETY APPROPRIATIONS SUBCOMMITTEE

March 26, 1996

Vernon A. Williams, Secretary
Surface Transportation Board
Room 1324
Twelfth Street & Constitution Avenue NW
Washington, DC 20423

FD 32760

Re: UP/SP pending merger

ADVISE OF ALL PROCEEDINGS

Dear Secretary Williams:

Through hard work and compromise the many concerns associated with this potential merger have been addressed to the satisfaction of most of the interests involved. As a member of the Business, Labor and Economic Development Committee in the Utah House of Representatives, I have closely watched as competition issues were satisfactorily resolved through negotiation and new agreements.

Over the last several weeks opposition to this merger from several key unions, which had been of concern to me, was withdrawn and members were urged to support the proposal. I now feel comfortable giving my strong support to this merger. I believe that Utah has been assured that our state will not lack for competition on those rail lines which have traditionally had access to multiple shippers. Naturally, in a state with a viable coal industry the threat of a single rail transport provider was a chilling concept.

Utah has a long, productive and satisfying history with railroading. I can't help but think that with all parties cooperating and competition assured that this merger will continue the tradition into the next millennium. I urge your support of the Union Pacific/Southern Pacific merger.

Sincerely,

Frank R. Pignanelli
Minority Leader

62106

STB FD . 32760 3-28-96 D . 62105

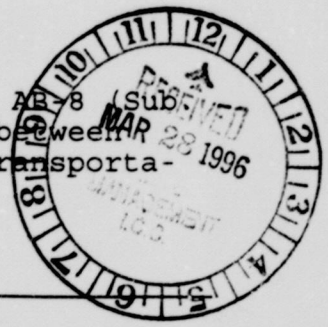
62105 2

Item No. _____

Page Count 15

Mar #599

SPORTATION BOARD



Case No. ICC Dockets AB-12 (Sub-Nos. 188 AND 189X and AB-8 (Sub-Nos 32,36X and 39) and/or the Proposed Consolidation between Union Pacific Railroad Company and Southern Pacific Transportation Company.
Finance Docket No. 32760.

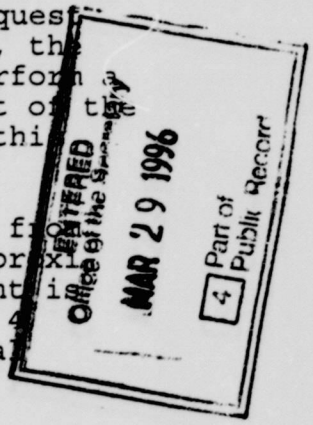
JOINT COMMENTS OF THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION VIII

62105

The Colorado Department of Public Health and [illegible] ("CDPHE") and the United States Environmental Region VIII ("EPA Region VIII") hereby submit regarding the proposed consolidation of Union Company ("UP") and Southern Pacific Railroad C their respective subsidiaries (collectively, " well as the proposed abandonment of the Malta [illegible] lines located in the State of Colorado. The proposed abandonment and discontinuance of service of these lines can be found in Docket Nos. AB-12 (Sub Nos. 188 and 189X) and AB-8 (Sub-Nos. 32, 36X and 39).

I. GENERAL COMMENTS

1. By filing these comments, neither CDPHE nor EPA Region VIII take any position regarding the merits of the proposed consolidation of the companies and the proposed abandonment of the rail lines. Our primary concern is that should the consolidation and abandonment application be granted, any potential releases of hazardous substances, pollutants or contaminants, and any other associated environmental problems, must be handled appropriately, in a manner protective of human health and the environment. As explained more fully below, CDPHE and EPA Region VIII request that as a condition for the granting of this application, the Surface Transportation Board require the Companies to perform a remedial investigation to determine the nature and extent of the environmental issues as a condition for the granting of this application.



2. The current rail line proposed for abandonment runs from Sage, Colorado to Canon City, Colorado, a distance of approximately 190 miles. The Sage to Leadville, Colorado segment is 69.1 miles. Railroad Merger Application, Volume VI, Part 4 (Environmental Report-(Exhibit 4)) at 136. ("Environmental Report")

3. The Sage to Leadville segment has been the site of several railroad accidents which may have caused, and may be continuing

to cause environmental damage. In the most recent incident, which occurred on February 21, 1996, two tank cars carrying 27,000 gallons of sulfuric acid ruptured as the result of a train derailment near Camp Hale, along the line proposed for abandonment. That segment of the line has been the site of two other railroad accidents in the past 7 years. One accident, in November, 1994 resulted in the dumping of 1500 gallons of diesel fuel in a wetlands area, and the other, in February, 1989, spilled sulfuric acid down a steep embankment. See, Denver Post, February 22, 1996 at 1A.

4. Much of the land which borders on the railroad right-of-way is Federal land; thus, the merger and ultimate abandonment of these railroad lines may result in a reversion of this property to the State of Colorado or the United States.[1] EPA Region VIII and CDPHE, therefore, believe that the Companies must characterize and investigate any contamination along the railroad lines and commit to remedy it, if necessary, before title passes or reverts to the State or the United States. It would be entirely inappropriate for taxpayers of the State of Colorado or the United States to pay for an environmental clean-up, if one is required, when the damage was caused by the operation of the railroad for the past hundred years.

5. The line proposed for abandonment, moreover, passes through two sites that are currently being remediated pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601, et. seq., ("CERCLA") the California Gulch and Eagle Mine Superfund Sites. Both of these Sites are listed on the National Priorities List (NPL), set forth at 40 CFR Part 30, Appendix B. See, 48 Fed. Reg. 40,658, 40,670, published September 8,, 1983 (California Gulch), and 51 Fed. Reg. 21054-21077, published June 10, 1986 (Eagle).

6. In filing this Application for Merger and Abandonment, the Companies were required to prepare an Environmental Assessment. 49 CFR §1105.6(b)(2). The Environmental Assessment is required to contain certain information, including, but not limited to, information regarding whether the rail land is suitable for an "alternative public use" pursuant to 49 U.S.C. § 10906, (Offering abandonment rail properties for sale for public purposes), the impact on land use, the possible effect, if any, on endangered or threatened species, effects on National or State parks or Forests, and, if any hazardous waste sites are involved or any hazardous materials spills on the right of way, discuss the location and the materials involved. The Companies are also

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[1] An estimated 1,645 acres of land bordering the rail corridor is currently controlled by the railroad; of this, approximately one half is federal land.

required to provide information on plans for mitigation of any environmental problems. 49 CFR § 1105.7(3-10). Although the Companies did prepare an Environmental Report, the Report contains only a cursory outline of the existence of the two NPL sites noted above, and no mention of the spills. There is moreover, no discussion of the details of the environmental problems posed by these sites, or how the Companies plan to address or undertake any remediation.

7. EPA Region VIII and CDPHE maintain, therefore, that it is the Companies' responsibility to characterize all environmental conditions along the rights-of-way of the rail lines proposed for abandonment, and to agree to remediate any of these environmental conditions that pose a threat to human health or the environment prior to the approval of the merger and abandonment by the Surface Transportation Board.

II. SITE SPECIFIC COMMENTS

1. **EAGLE MINE SUPERFUND SITE**

A. Background

1. The Eagle Mine Site is located near Minturn, Colorado., See, Exhibit A, attached.

2. Ore deposits in the Eagle Mine area were first mined in the 1870's. From approximately 1916 to 1983, lead-zinc and copper-silver ores were mined from the Eagle Mine. From approximately 1929 to 1931 and then again from approximately 1941 to December, 1977, lead ores were processed through an underground flotation mill at Belden which produced lead and zinc concentrates for shipment by rail to smelters. A tailings product was also discharged by gravity flow to disposal areas several miles from the mine. Tailings were placed in two tailings ponds at the site. Waste material was also deposited in areas known as the Roaster Piles. See, Exhibit B, attached hereto.

3. The rail line was originally constructed in the 1880's. Additional track was laid in this area between 1903 and 1909. In the late 1920's, the Denver and Rio Grande Railroad, a subsidiary of SP, undertook a major reconstruction to improve alignment. The original construction and grades were changed as part of that process.

4. According to maps provided by SP, much of the land which abuts the rail line operated by SP is operated by SP pursuant to a grant from the United States Congress. The rest of the land is owned in fee simple by SP.

5. The current rail line runs along, and is parallel to, the Eagle River, a tributary of the Colorado River. The Eagle River,

a major water source as well as a source of fish and other aquatic life, was adversely impacted by the mining activities of the last century.

6. Viacom International Inc., under the oversight of CDPHE, has been conducting a remediation of the site, pursuant to a Consent Decree and Remedial Action Plan entered by the United States District Court in 1988.[2] In September, 1990, EPA Region VIII undertook a Feasibility Study Addendum to determine if additional work should be required. That document resulted in the issuance of a Record of Decision in 1993. The State of Colorado, EPA Region VIII and Viacom have entered into a three-party Consent Decree for the completion of additional work at the site; the three-party Consent Decree is awaiting entry by the U.S. District Court.

7. One of the primary focuses of the remediation of the Eagle Mine Site has been the restoration of water quality and associated aquatic community in the Eagle River.

8. Another major focus of the ongoing remediation at the Eagle Mine Site has been the removal of mine waste from areas known as the Old Tailings Pile, the New Tailings Pile and the Roaster Piles. The mine waste and other contaminated materials were removed and placed in what is known as the Consolidated Tailings Pile. As portions of the Consolidated Tailings Pile are regraded, those portions are covered with a multi-layer clean soil cover. The areas from which contamination has been removed have been regraded, treated to lower the acidity, and reseeded.

B. Specific Comments

1. **The Belden area.**

a. The Belden area lies along the banks of the Eagle River, immediately adjacent to a portion of the railroad line which is proposed for abandonment. Belden is comprised of several buildings that were used during the mining operations. The primary structures are the Copper Tipple, the Belden drying house build-

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[2] The mining activities which caused the environmental damage were caused primarily by the Empire Zinc Company, a subsidiary of the New Jersey Zinc Company. New Jersey Zinc merged in 1966 with Gulf & Western Industries, Inc. That company changed its name to Paramount Communications, Inc. in 1989. Paramount in turn merged with Viacom in 1995, with Viacom as the surviving corporation. Viacom therefore succeeded to the original rights and liabilities relating to the site under CERCLA. For simplicity, these comments will refer only to Viacom.

ings, storage tanks and other miscellaneous buildings. The Belden drying house buildings were used to dry and store the lead and zinc product from the underground milling process. These buildings are on land owned by the United States, but managed and operated by SP pursuant to a land grant from the United States Congress.

b. Currently, the Belden area is not readily accessible to the public. In order to access the area, it is necessary to drive down a dirt road and pass through a locked gate. This access is intentionally limited, so as to protect public health and safety. The area is patrolled by railroad employees, who attempt to prevent trespassers and vandals. In addition to concerns about exposure to contamination, there are numerous mine-related safety hazards in the area such as rock falls, deteriorating buildings, and mine adits near the rail lines. There is also very expensive monitoring equipment relating to the ongoing remediation in that area.

c. In October, 1991, CDPHE and EPA Region VIII conducted a comprehensive site investigation to identify any improperly disposed of materials in the Belden area. Substantial spillage of the milling product was observed in the drying house buildings. Additionally, approximately 150 cubic yards of milling product was observed in the storage bins. A grab sample of the milling product was collected and sent to the CDPHE laboratory for analysis. The results showed extremely high levels of heavy metals such as lead, iron, zinc, manganese and cadmium, as well as arsenic and copper. This contamination needs to be further characterized and remediated by the Companies prior to approval of the merger.

d. There is also considerable solid waste along the siding in the Belden area. This solid waste consists of empty buckets and barrels, old railroad ties and hardware and various other materials. These objects have been observed migrating into the Eagle River. In addition, some of the buildings in Belden may contain asbestos insulation or siding. All solid waste associated with property owned or operated by the railroad must be identified and disposed of properly.

e. None of the parties involved in the ongoing remediation have performed a risk assessment of the Belden area. Because of its relatively limited access and public use, that was not considered necessary prior to this time. If the railroad line is abandoned, however, and the railroad either no longer patrols this area, and/or this area becomes a recreational trail pursuant to the National Trails System Act Amendments of 1983, 16 U.S.C. §1247(d), then all future and potential uses must be evaluated, and this area may require remediation so as to protect public health and the environment. EPA Region VIII and CDPHE are concerned that the Environmental Report does not provide any

discussion or evaluation of the potential impacts such a future use would have on human health and sensitive ecological populations in the vicinity of the abandoned line.[3]

2. **Roaster Pile No. 3**

a. Roaster Pile No. 3 was located along the south bank of the Eagle River slightly west of the Belden mill complex. Roaster Pile No. 3 was removed and transported to the Consolidated Tailings Pile in 1989. Approximately 38,000 cubic yards of mine waste and underlying soils were excavated. Part of Roaster Pile No. 3 was observed during the removal activities to extend under the railroad grade to the east of the pile location. The roaster material was observed against the east end of the railroad abutment and continued beneath the main line towards the Belden railroad tunnel. The lateral extent of the Roaster Pile is unknown.

b. At the time of the excavation of Roaster Pile No. 3, the railroad expressed concern about further excavation to completely remove the mine waste. The State and the consultant for Viacom who performed the remediation, agreed to excavate as much of the contaminated material as possible, but leave a stable embankment adjacent to the abandoned railroad grade.

c. Roaster material is believed to continue under the railroad main line and is contained by wooden cribbing on the Eagle River side. The cribbing appears stable, but may require maintenance to prevent further migration of mine waste.

d. EPA Region VIII and CDPHE believe that there could be as much as 1000 cubic yards of mine waste material present in the Roaster Pile No. 3 area. This contamination is believed to be contributing to the metal levels in the Eagle River, although the full nature and extent of the impact from this source is not known. If the railroad line is abandoned, there is the potential that this mine waste may become exposed and migrate into the Eagle River if not properly managed. EPA Region VIII and CDPHE maintain that the Companies need to determine the areal extent of Roaster Pile No. 3 to determine what if any impacts the remaining

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[3] Every year, the State of Colorado Division of Wildlife, under contract with CDPHE samples the fish population in the Eagle River. In the 1995 sampling, one of the fish collected was a Colorado River Cutthroat Trout; the U.S. Fish & Wildlife Service has designated this species as a Category I species, meaning that it could easily become a threatened or endangered species under the Endangered Species Act, 16 U.S.C. § 1533. The Colorado Division of Wildlife considers the Colorado River Cutthroat a species of "special concern."

waste has on the water quality of the Eagle River. If the railroad line is abandoned, this waste should be removed and transported to an acceptable repository.

3. **Roaster Pile No. 5**

a. Roaster Pile no. 5 was a historic tailings pile located approximately 200 yards into the mouth of the Eagle River canyon near the confluence with Bishop Gulch. See Exhibit B. Approximately 5,000 cubic yards of mine waste and underlying contaminated soils were excavated from this area in the fall of 1988. Mine waste and other forms of contamination were observed under the abandoned railroad grade along the east side of the Eagle River. This contamination was not removed at that time because of concern by the railroad that further excavation would impact the abandoned grade which serves as an access road to the Belden area. If the railroad line is abandoned pursuant to the instant action, CDPHE and EPA Region VIII believe that this material should be removed and transported to an appropriate repository.

4. **Rock Creek**

a. There are two railroad grades that access the Eagle River canyon and continue to the Belden area. The west grade currently carries the railroad main line. The east grade has been abandoned and currently functions as an access road to the Rock Creek and Belden areas. During construction of the Rock Creek culvert in 1989, several crushed drums were uncovered along the abandoned grade south of the mouth of Rock Creek, on a railroad right of way. The railroad was notified. Conversations with railroad employees revealed that the railroad had used this area to dispose of similar waste in the past. Analytical results of the residual materials determined them to be primarily lubricants, but solvents were also present. EPA Region VIII and CDPHE are concerned that there may be additional buried drums in Rock Creek and other areas of the canyon. This area needs to be further investigated by the Companies to ensure that no other drums and associated waste have been disposed of improperly. If additional drums are found, these need to removed and disposed of appropriately.

5. **Spillage**

a. There are several railcar wheel oilers along the active railroad grade in the canyon segment. These oilers mechanically pump lubricants onto the rails to minimize friction as the cars negotiate the tight turns. Appreciable spillage has been observed around these oiling stations. Each of the oiling stations should be investigated to determine whether the underlying soil has become contaminated; if it has, then it should be cleaned-up.

6. **Railroad Grade construction**

a. Historic mining operations in the Gilman district preceded the construction of the railroad through the river canyon. It is believed that the railroad grade may have been built on top of waste rock as well as refined mining waste. Neither EPA Region VIII nor CDPHE have characterized the railroad grades. If the railroad lines are abandoned and removed, these grades need to be characterized both surficially and to depth to determine the nature and extent of the contamination, and any contamination needs to be remediated.

2. CALIFORNIA GULCH SUPERFUND SITE

A. Background

1. The California Gulch Superfund Site (the "Site") is located in and near Leadville, Colorado, a mining town approximately 100 miles southwest of Denver.

2. Between the 1860's and the present, the area has supported a variety of mining and mineral processing activities, including the mining, milling, and smelting of silver, gold, zinc, lead, and copper. Hundreds to thousands of mining and processing operations have been undertaken in the vicinity of the Site. Currently, only a few medium-sized facilities are operating.

3. The past 130 years of mining activity have extensively altered the area, both above and below ground. The key subsurface feature at the Site is the Yak Tunnel, a drainage tunnel built to dewater, allow exploration of, and provide access to, underground mines in the area.

4. The land surface in the area has also been disturbed with abandoned mining structures and surface workings dotting the landscape surrounding Leadville. Additionally, extensive shallow placer mining in the stream bed and floodplains of California Gulch has completely overturned and reworked the upper layers of soil and rock. The major surface features at the California Gulch Site are the numerous waste piles produced by mining and mineral processing activities. Three types of waste piles are present: waste rock, tailings and slag. Waste rock is rock with little economic value produced during mine excavation. Tailings are wastes created by milling of mineralized rock for extraction of the commercially valuable minerals. Slag is a waste product from smelting operations. These three waste types have different physical and chemical properties.

5. The United States filed a complaint on August 6, 1986 under Sections 106 and 107 of CERCLA for injunctive relief and the recovery of response costs. The United States named ASARCO,

Inc., Resurrection Mining Co., and its parent, Newmont Mining Corp., Inc, and the RES-ASARCO Joint Venture, as well as the Denver & Rio Grande Western Railroad (D&RGW), a corporate subsidiary of SP and Hecla Mining Company Co. in its complaint.[4]

6. D&RGW owns and has owned property within the Site containing waste piles which have released various hazardous substances into the environment. D&RGW acquired miles of railroad easements throughout the Site and a substantial portion of the "Poverty Flats" area as a railyard. In 1962, D&RGW acquired three slag piles in the Site with an aim to use the slag in its ballast operations: the main pile associated with ASARCO's Arkansas Valley smelter, the pile associated with the LaPlata/Bi-Metallic smelter, and the slag pile and adjacent property of the prior Harrison Reduction Works.

7. D&RGW subsequently arranged with a salvage contractor, Orin Dietrich, to screen material at the Arkansas Valley pile. D&RGW then used the larger sized material for railroad ballast on its rail lines throughout the region. Dietrich was allowed to keep the leftover "fines" for his own purposes; Dietrich in turn sold the fines for use as road sanding material within the Site.

8. On December 15, 1993, the United States District Court for the District of Colorado entered a Consent Decree between the United States and D&RGW which settled D&RGW's potential CERCLA liabilities for the California Gulch Superfund Site.[5] Under the terms of this decree, D&RGW agreed to perform a Feasibility Study ("FS) on its three slag piles, and on a number of slag piles it does not own, as well as remediating its three slag piles, performing a reconnaissance on the Harrison Reduction Works property, and performing a field reconnaissance, FS and remediation on the railroad easement through town, if necessary.

9. In the Consent Decree, the United States reserves its claims against D&RGW for any recontamination which might occur in other

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[4] The State of Colorado initiated a civil action on December 9, 1983, by filing a claim against ASARCO, Inc., Resurrection Mining Co. and its parent, Newmont Corp., and the Res-ASARCO Joint Venture under Section 107 of CERCLA for natural resource damages associated with acid mine drainage from the Yak Tunnel. On April 8, 1985, the State amended its complaint seeking to recover its costs of responding to releases of hazardous substances under Section 107 at the Site. The state and federal cases were consolidated on February 3, 1987.

[5] A copy of the Consent Decree is available through the EPA Region VIII Superfund Records Center, 999 Eighteenth Street Denver, Colorado 80202. Telephone number is (303) 312-6473.

areas of the Site due to releases from D&RGW's work area, and groundwater contamination, if any, underlaying their work area.

B. Specific Comments

1. EPA Region VIII and CDPHE are concerned that D&RGW's commitments and contingent liabilities are not assessed or even discussed in the Companies' Environmental Report. Risk assessment and remedial investigation data shows that slag "fines," the small particles which result from the breaking or splintering of large slag pieces, may present a risk to sensitive human and ecological populations in the Leadville community. Fortunately, to date, health risk to recreational and commercial/industrial users of D&RGW properties at the California Gulch Site has been shown to be minimal.

2. EPA Region VIII has been working with D&RGW/SP to ensure that a recreational use such as the creation of the Mineral Belt Bike Path continues to keep this health and environmental risk small. However, should the future use of the rail line transecting the Town of Leadville change to a residential use, EPA and CDPHE are concerned that the concentration of heavy metals from slag fines in the soil within or adjacent to the rail line right-of-way would require remediation. The Companies' Environmental Report does not discuss or analyze this potential environmental impact.

3. The field reconnaissance of easement soils was conducted consistent with the Consent Decree. This field survey showed that slag fines are indeed present in the easement soils. A Feasibility Study and selection of an appropriate remedy, however, were deferred until such time as the use of the rail line and right-of-way changed. Abandonment of the rail line is a changed use that triggers the need for conducting a remedial investigation and possibly a clean-up of this portion of D&RGW's operable unit at the Site. Reasonably foreseeable future land uses would be required to be taken into account when conducting any FS and issuing any Record of Decision. (See, 40 C.F.R. §300.430(d) and OSWER Directive No. 9355.7-04).

4. EPA Region VIII and CDPHE are also troubled by the fact that D&RGW's commitments under the consent decree, including the remediation of the AV, La Plata and Harrison Street slag pile footprints and addressing any release of hazardous substances from these piles into sitewide surface and groundwater, are not mentioned in the Environmental Report.

5. With regard to the California Gulch Superfund Site, therefore, EPA Region VIII and CDPHE ask that the Surface Transportation Board require D&RGW/SP to live up to its Consent Decree commitments and to more fully analyze the existing contamination in light of all reasonably foreseeable future land uses, includ-

ing any new uses which may result from the proposed merger and abandonment.

WHEREFORE, EPA Region VIII and CDPHE request that the Surface Transportation Board require the Companies to perform a remedial investigation to determine the nature and extent of contamination at and emanating from the railroad lines along the entire railroad corridor to be abandoned as a condition precedent for the granting of this application.

Dated this 22nd day of March, 1996.

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

By Janet Feldman

Jane T. Feldman
Assistant Attorney General
Natural Resources Section
CERCLA Litigation Unit
Colorado Department of Law
1525 Sherman Street
Denver, Colorado 80203
(303) 866-5073

Dated this 22nd day of March, 1996

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VIII

By Michael T. Risner for

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STATE • OF • COLORADO

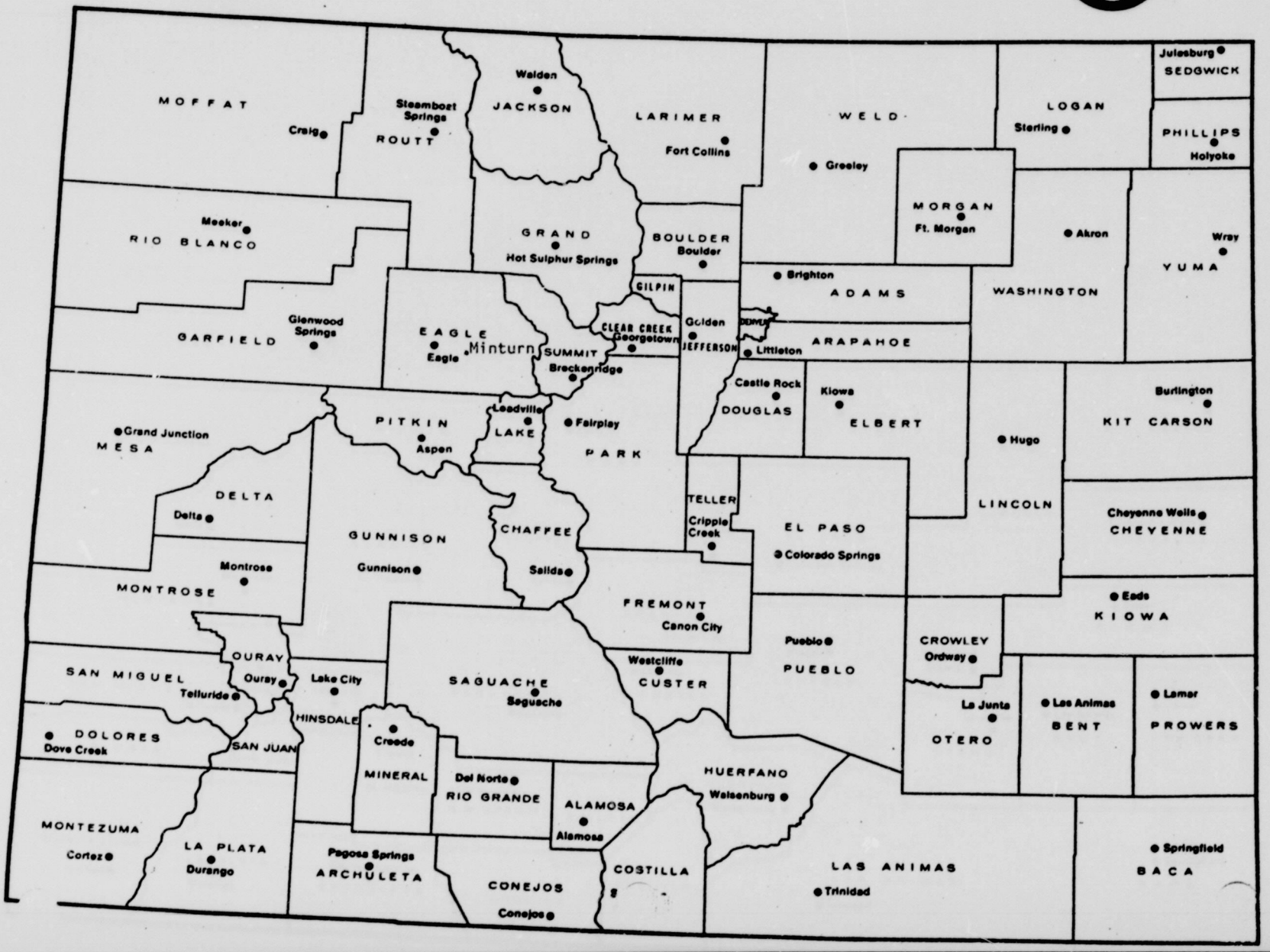

Exhibit A

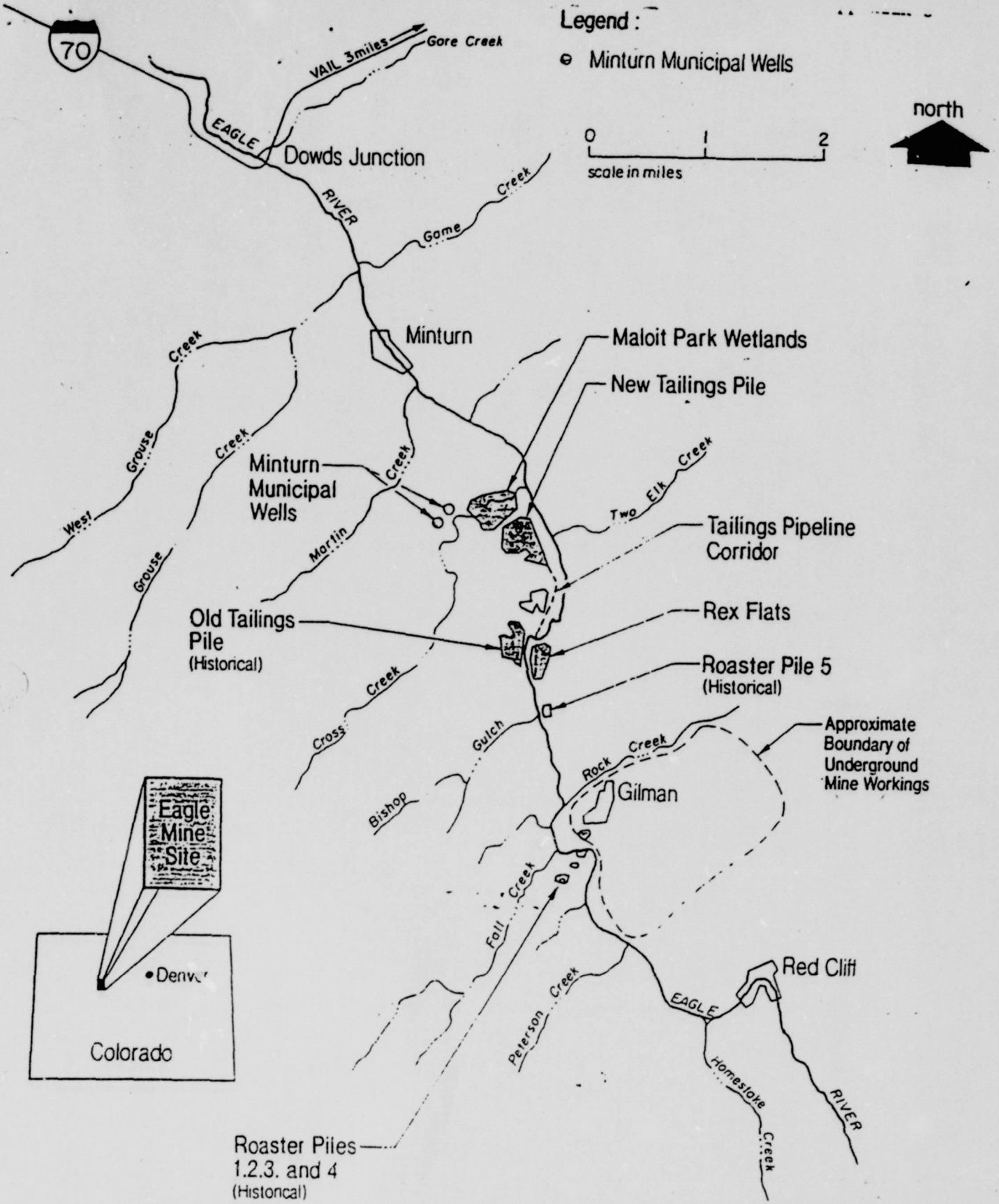

Figure 1.1

Site Location Map.
Eagle Mine Super Fund Site

Exhibit B

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of March, 1996, true and correct copies of the within **Joint Comments of the Colorado Department of Public Health and the Environment and the United States Environmental Protection Agency Region VIII** were deposited in the United States mail, at Denver, Colorado postage prepaid as follows:

An original and 20 copies and a 3.5" WordPerfect diskette of the **Joint Comments** was sent to:

Office of the Secretary
Case Control Branch
Attn: Finance Docket No. 32760
Surface Transportation Board
1201 Constitution Avenue, N.W.
Washington, D.C. 20423

Additionally, one (1) copy of the **Joint Comments** was sent to each of the parties of record.

Margaret K. Sumner
Office of the Colorado Attorney General

62104

Item No. _____

Page Count 1

Mar # 600

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62104

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March 22, 1996

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

FD 32760

Dear Mr. Williams:

I am writing to express my concern over the proposed Southern Pacific Corporation and Union Pacific Corporation railroad merger. Despite the claims of those supporting the merger, it appears inevitable that this conglomerate would lead to an increase in prices for consumer goods due to higher transportation costs.

This is of particular concern for shippers of chemical and plastic products along the Gulf Coast, who would be guaranteed rate increases under the proposal. The proposed merger would leave only one major competitor, which would be smaller than the conglomerate. Agreements to allow this competitor access to the same rail lines contain no guarantees of future competition, and the merger would create a virtual monopoly for shipping across the Texas-Mexico border.

Many questions remain about the impact the proposal would have on jobs for railroad workers, as well as the potential increase of heavy truck traffic on the already overburdened Texas highway system. For these and the above mentioned reasons, I support the request of my colleagues Texas State Representatives Juneli, Cook, and Saunders for conditions (JRC-2, RAJ-2, RMS-2) regarding finance docket no. 32760.

Respectfully,

Jessica Farrar

Jessica Farrar
State Representative

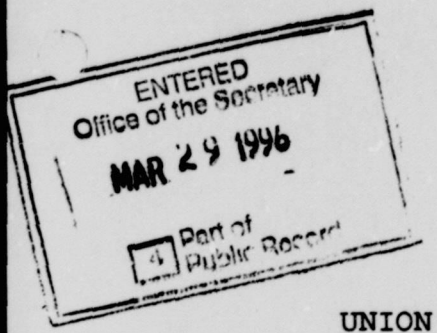
ADVISE OF ALL PROCEEDINGS

cc: Carole Keeton Rylander, Texas Railroad Commissioner

COMMITTEES: CORRECTIONS • CRIMINAL JURISPRUDENCE

-- 62102

ORIGINAL 5



BEFORE THE
SURFACE TRANSPORTATION BOARD

FI[illegible] 60

62102

UNION PACIFIC C[illegible] CIFIC RAILROAD
COMPANY, AND M[illegible] ROAD COMPANY

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

RAILROAD CONTROL AND MERGER APPLICATION

COMMENTS OF
PIONEER RAILCORP
AND KEOKUK JUNCTION RAILWAY

KJRY-2

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20 pp.

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Attorneys for Pioneer Railcorp
and Keokuk Junction Railway

DATED: MARCH 28, 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, SPSCL CORP., AND THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

RAILROAD CONTROL AND MERGER APPLICATION

COMMENTS OF
PIONEER RAILCORP
AND KEOKUK JUNCTION RAILWAY

KJRY-2

INTRODUCTION

On November 30, 1995, Applicants Union Pacific Corporation, Union Pacific Railroad Company, Missouri Pacific Railroad Company, Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPSCL Corp., and The Denver And Rio Grande Western Railroad Company[1] filed an application with the former Interstate Commerce Commission ("ICC") for permission for UP to control and

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[1] Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad are collectively referred to here as "Union Pacific" or "UP." Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and the Denver And Rio Grande Western Railroad Company are collectively referred to here as "Southern Pacific" or "SP." Collectively, all of these entities are identified as "Applicants."

merge with SP. On December 27, 1995, the ICC served a decision establishing a procedural schedule for the merger and setting March 29, 1996, as the due date for filing both public comments and requests for protective conditions as well as for Responsive Applications. In accordance with that schedule, Pioneer Railcorp ("Pioneer") and its subsidiary Keokuk Junction Railway ("KJRY") file these comments supporting the merger, subject to certain conditions discussed at length below.

BACKGROUND

KJRY is a small class III shortline railroad serving Keokuk in Lee County in southeastern Iowa, and adjoining areas in Hancock County in western Illinois. Originally established in 1981 and expanded in 1986,[2] KJRY currently owns and operates over 33 miles of railroad. Its principal line connects Keokuk, where it intersects the Burlington, IA, to West Quincy, MO, line of the Burlington Northern Santa Fe Railway ("BNSF"), with La Harpe, IL, where it connects with the mainline of the Toledo, Peoria & Western Railway ("TP&W"), another class III shortline railroad. As relevant, TP&W's line extends from La Harpe to Lomax, IL, on the west, connecting with BNSF's former Santa Fe Railway ("ATSF") Chicago-California mainline, and from La Harpe to Peoria, IL, on

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[2] See, Ex Parte No. 395 (Sub-No. 1), Keokuk Northern Real Estate Company and Keokuk Junction Railway Company -- Notice of Election of Exemption (served September 10, 1981); Finance Docket No. 30918, KNRECO, Inc., d/b/a Keokuk Junction Railway -- Acquisition and Operation Exemption -- The Atchison, Topeka and Santa Fe Railway Company (served January 9, 1987).

the east. Approximately 24 miles east of La Harpe at Bushnell, IL, TP&W's mainline crosses the BNSF's former Burlington Northern ("BN") Chicago-Kansas City mainline over which SP has trackage rights permitting it to interchange with the TP&W.

Pioneer is a publicly traded company which presently owns 9 class III shortline railroads and a rail equipment leasing company. Pursuant to a decision served March 26, 1996,[3] Pioneer acquired control of KJRY through a stock purchase consummated on March 12, 1996.

Prior to the consummation of the BNSF merger, KJRY formed part of the link through which ATSF provided significant rail competition in the Keokuk market. Specifically, ATSF marketed Keokuk as a point on its railroad using a switching agreement with KJRY and a haulage agreement with the connecting TP&W to reach Keokuk. Under those arrangements, KJRY handled the traffic from Keokuk to La Harpe where it turned the cars over to the TP&W for movement to Lomax, IL, and then by trackage rights over the ATSF Chicago-California mainline to Ft. Madison for interchange with ATSF.

KJRY serves a large plant at Keokuk operated by Roquette America, Inc., as well as various other shippers physically located on BNSF's lines in Keokuk but served through reciprocal switch and some small shippers located on its line between Keokuk and La Harpe. Traditionally, these customers

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[3] See, Finance Docket No. 32877, Pioneer Railcorp -- Acquisition of Control Exemption -- KNRECO, Inc., d/b/a Keokuk Junction Railway.

enjoyed competitive service by either BN direct or through KJRY in connection with TP&W and ATSF. Thus Keokuk shippers had access to either of two strong class I railroads. Upon consummation of the merger, the SP (through TP&W) essentially replaced ATSF as the competitive rail connection for the Keokuk market. Today Keokuk shippers have the semblance of competitive connections to SP via the TP&W through Bushnell as well as connections with several eastern railroads at Peoria.

As the Board will recall, KJRY had filed a Responsive Application in the Burlington Northern Santa Fe merger case.[4] KJRY urged the ICC to impose protective conditions to preserve competition in and around Keokuk, IA. During the course of the BNSF merger proceedings, KJRY clarified and narrowed its request for protective conditions as follows:

I. Trackage Rights

A. To grant overhead trackage rights to KJRY on BN's Hannibal Subdivision between approximately MP 177.9 at Keokuk, IA, and approximately MP 136.9 at West Quincy, MO, a distance of about 41 miles, with full right of interchange there with SP, and to either West Quincy at the same location or to approximately MP 119.7 at Hannibal, MO, roughly an additional 17.2 miles, for the

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[4] Finance Docket No. 32549 (KJRY-3), Responsive Application of Keokuk Junction Railway and Opposition to Primary Application.

purpose of interchanging with the Norfolk Southern Railway ("NS"). So long as TP&W retains and operates its connecting line from La Harpe to Peoria and provides a reliable, satisfactory level of service, KJRY will not exercise these trackage rights to interchange with NS. Furthermore, so long as NS is able to interchange with KJRY at West Quincy, KJRY will not exercise these trackage rights south of that point.

B. To direct Applicants to allow SP to interchange with KJRY at West Quincy and to allow NS to interchange with KJRY at either West Quincy or Hannibal in the event the NS rights are required.

C. With the Commission to retain jurisdiction to set reasonable compensation at not more than $.40 per car mile for these trackage rights in the event that the parties are unable to set compensation through negotiation.

II. Terminal Access

A. Require BN to sell to KJRY at fair market or going value (subject to joint appraisal and arbitration in the event the parties cannot agree upon the terms) all BN terminal tracks and facilities in Keokuk including yard trackage, buildings, and the Mooar Line. KJRY would assume all industrial

switching in Keokuk currently provided by BN. KJRY will enter into a long-term contract with Applicants on switch rates and service, thereby ensuring competitive access at reasonable charges, on a nondiscriminatory basis.

B. Require Applicants to absorb KJRY's switch charges at a level no higher than BN's current switch charges in Keokuk subject to inflationary adjustments.

C. Require Applicants to open Quincy, IL, to traffic originating or terminating on KJRY.

(KJRY-3 at pp. 2-3.)

Initially numerous class I railroads appeared in opposition to the BNSF merger: Union Pacific, Southern Pacific, Kansas City Southern Railway, and Illinois Central Railroad. Aside from KJRY, several shortline and regional railroads, including, as relevant here, the Gateway Western Railway and the TP&W opposed the merger. The National Industrial Transportation League ("NITL") and the United States Department of Justice ("Justice") all expressed their reservations.[5] But, one by one, BN and ATSF picked off most of their railroad opposition with

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[5] Justice stated that the unconditioned merger of BN and Santa Fe would substantially lessen competition in several markets, including all products reliant on rail transportation in and out of Fort Madison and Keokuk, IA. See, Finance Docket No. 32549, Decision No. 38 at 49-50 (Decision No. 38 will hereinafter be referred to as the "Decision.")

minimal settlement proposals involving trackage and haulage rights.

In the end, only the Illinois Central Railroad, KJRY, and three other small carriers remained as opponents. Under the settlement proposals negotiated between BN/ATSF and NITL, BN/ATSF would grant an unaffiliated class I railroad access to the TP&W at Bushnell, IL. Under BN/ATSF's settlement agreement with the SP, BN/ATSF chose SP as their "anointed" independent competing class I carrier. Thus, in KJRY's eyes, BN/ATSF picked the SP as the weakest western class I carrier to carry the mantle of competition up against the likes of the huge BN/ATSF mega railroad system. Moreover, for Keokuk shippers, KJRY believed that BN/ATSF had cobbled together a "competitive solution" involving the worst of all worlds: a weak class I railroad [SP], a marginal shortline railroad [TP&W], and an untried, operationally difficult interchange facility [Bushnell].

KJRY told the ICC that the merger would harm Keokuk area shippers by reducing from two to one the number of available class I railroad connections. It presented testimony from several supporting shippers that, absent the requested relief, the merger would put them at a serious competitive disadvantage as respects competitors. Vigorous rail competition, these shippers testified, would assure responsive service at reasonable rates. KJRY also told the ICC that a commonly controlled BNSF would divert to BN (at Keokuk) the substantial amount of traffic it currently interchanges with Santa Fe at Fort Madison. Because

this traffic can be handled at Keokuk by either BN direct or KJRY through ATSF, KJRY feared that the merged company could now handle this traffic directly without any need to use KJRY.

KJRY predicted that the loss of this revenue would jeopardize its ability to provide shippers with essential rail service because it could not afford to retain the line between Keokuk and La Harpe without the overhead traffic flowing between KJRY and ATSF over that line. KJRY showed through expert testimony that the vast majority of the TP&W's traffic west of Peoria consisted of intermodal freight moving to Fort Madison, IA, for movement via ATSF to western points, that this traffic could easily be rerouted via Galesburg (IL) over trackage rights BN/ATSF were granting TP&W, and that the remaining traffic on the line west of Peoria was too small to justify its retention for KJRY connecting traffic and local shippers. KJRY further testified that the Bushnell interchange was not viable in large part because TP&W was a weak carrier both financially and operationally. Moreover, KJRY documented the fact that for westbound traffic moving via Kansas City the proposed Bushnell routing (328 miles) was significantly inferior to either the KJRY/ATSF routing via La Harpe and Fort Madison (270 miles) or the BN/ATSF routing via West Quincy (236 miles).

In approving the merger, the ICC found that, subject to certain conditions, common control of BN and ATSF would be consistent with the public interest and would generate substantial public benefits. The ICC further found that, subject

to certain competitive conditions, common control of BN and ATSF will cause no meaningful reduction in the transportation competition in any of the markets in which either BN or ATSF operates. The agency did however acknowledge that "unconditioned common control would generate anticompetitive impacts at ...Keokuk...," but nonetheless concluded that the rights provided in the NITL settlement agreement would effectively eliminate the anticompetitive impacts in Keokuk, among other markets. Decision at 58-59. The ICC therefore determined that it would not impose any of the conditions KJRY had requested. Id.

In denying KJRY's requested conditions, the ICC found that the merger will not eliminate intramodal competition at Keokuk, and that the KJRY itself will not experience any appreciable traffic diversions because the NITL settlement agreement effectively preserves the existing competitive situation. The only real change, the agency reasoned, was that the SP will have replaced the ATSF as part of the KJRY joint-line routing. The KJRY/TP&W joint-line routing will remain an important competitive factor in Keokuk and there would be no change at all as respects eastern routings. After considering KJRY's assertions, the ICC found that the future TP&W/SP interchange at Bushnell would not be appreciably inferior to the TP&W/ATSF interchange at Fort Madison and that the mileage via Bushnell -- while somewhat greater than via other routings -- was insignificant considering that most of the Keokuk traffic moving to or from Kansas City actually originated or terminated at

points far away. Finally, the ICC concluded that most of the competitive alignments created by the BN/ATSF common control would lead TP&W to downgrade or abandon its line to Bushnell. In any event, the agency stated, KJRY could always buy a line proposed for abandonment through 49 U.S.C. 10905. Decision at 96-97.

It is now seven months after the ICC's approval of the BNSF merger, and KJRY has the ability to look back and tell the Board exactly what has happened to rail service options in the Keokuk market. KJRY tells that story through the testimony of its former majority owner and Chairman, John J. Warfield, whose testimony is attached hereto. As Mr. Warfield states, his outlook for vigorous competitive rail service at Keokuk -- or perhaps any competitive rail service at all -- would be quite pessimistic but for three significant developments.

First, just a few weeks ago, on March 12, 1996, Pioneer acquired virtually all of KJRY's stock. Through its ownership of numerous other shortline railroads, Pioneer has relationships with virtually every major western and midwestern class I railroad which strengthens its bargaining power. Headquartered in nearby Peoria, Pioneer is better able to reduce overhead and other costs without affecting the quantity or quality of train service provided over KJRY. Pioneer has a national marketing department which is better able to develop new business than an independent operator.

Second, early this year, New York based Delaware Otsego Corp. ("DO"), finally consummated its proposed acquisition of control of the TP&W. Again, as a national company and, like Pioneer, a publicly held corporation, DO has numerous strengths which the independent TP&W lacked. DO has a national marketing presence and an ability to deal from a more equal bargaining position with other larger carriers. DO also has the financial resources and staying power to correct many of the shortcomings of the former TP&W.

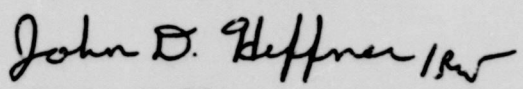
Third, and most important, UP announced its intentions to acquire control of and merge with the SP. Approval of this merger proposal totally changes the complexion of and prospects for competitive rail service in many markets, possibly including Keokuk. KJRY believes that UP can infuse SP with the imagination, financial resources, operating abilities, and market presence that SP presently lacks. The competitive balance will at last be restored through a reinvigorated SP.

As Mr. Warfield states, in order for Keokuk shippers to have the same level of competition that exists in other western cities, UP must (1) assume SP's obligations to market and serve the Bushnell interchange with TPW as set forth in SP's settlement agreement with BNSF: (2) continue to use the SP trackage rights through Bushnell for the purpose of interchange with TP&W (and KJRY), and (3) aggressively price and market Keokuk traffic. Then, at last, the competitive balance at Keokuk which the BN/ATSF merger had upset will be restored.

CONCLUSION

Accordingly, Pioneer and KJRY request that the Board approve the control and merger of the Southern Pacific and its affiliates by the Union Pacific as being in the public interest as conditioned upon Union Pacific's acceptance of the terms of the BNSF/SP settlement agreement (as described above), continued use of the SP trackage rights through Bushnell for the purpose of interchange with TP&W (and KJRY), and willingness to price and market a competitive service to Keokuk area shippers.

Respectively submitted,



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Its attorneys

Dated: March 28, 1996

VERIFIED STATEMENT OF JOHN J. WARFIELD

KEOKUK JUNCTION RAILWAY

I am John Warfield, Consultant to Keokuk Junction Railway. I am the same John Warfield who, as President of KNRECO, Inc. d/b/a Keokuk Junction Railway, prepared and filed a verified statement as part of Keokuk Junction's Responsive Application in the BNSF merger proceeding. I recently sold my stock, which represented a controlling interest the Keokuk Junction Railway, to Pioneer Railcorp and am testifying here as a consultant to Keokuk Junction. Keokuk Junction supports the Union Pacific-Southern Pacific merger on the condition that the merged Union Pacific Railroad maintains the Bushnell interchange with the Toledo, Peoria and Western Railway.

Keokuk Junction filed a Responsive Application opposing the BNSF merger because protective conditions were needed to protect Keokuk shippers. Because the BNSF merger would eliminate ATSF as a competitor in the Keokuk market, substitute viable competitive routes with Keokuk Junction were needed to maintain competition. Keokuk Junction feared the routes proposed by the BNSF would prove inadequate to maintain viable rail competition in the Keokuk market. It was for this reason that Keokuk Junction sought certain trackage rights in the BNSF merger proceeding. The Interstate Commerce Commission did not extend to Keokuk Junction any of the relief it sought. Now that BNSF is

moving forward with implementing this merger, Keokuk Junction is experiencing the effects of its reduced competitive abilities.

In my verified statement I testified that the ATSF traffic that the Keokuk Junction handled via La Harpe would disappear. On January 2nd, 1996 with the expiration of various pre-merger contracts, the majority of business via ATSF routes was in fact rerouted via BNSF direct. Thus, Keokuk Junction lost all corn syrup business to the east via Chicago and virtually all ATSF business to the west via Kansas City. The only traffic remaining is a contract expiring in October, 1996. The substitute competitive route devised by the BNSF using the Toledo, Peoria and Western's proposed connection with the Southern Pacific at Bushnell, IL has not proved to be an effective alternative.

Traffic via the TPW-SP Bushnell route has declined due to delays at the Bushnell interchange. In addition, BNSF was able to underbid a major corn syrup contract that replaced the expiring ATSF contract. BNSF secured this new traffic to the detriment of the KJRY-TPW-SP. This business loss was by no means the result of lack of effort on the part of Keokuk Junction. It occurred solely because of circumstances completely outside Keokuk Junction's control. Keokuk Junction priced its traffic via La Harpe at the same rate previously used by KJRY/ATSF. Clearly the TPW-SP made decisions in their perceived self interest which caused the Bushnell route to be non competitive.

This loss of traffic since January 1996 (amounting to over 100 carloads per month) shows the Bushnell-SP route is competitively inferior to the BNSF route to Kansas City for traffic to the west. It is essential that steps be taken to mitigate these adverse effects on Keokuk Junction. I believe that a UP-SP merger would be a step in the right direction provided there is a commitment to maintain and promote Bushnell as a service route.

At the moment KJRY is operating its La Harpe branch line as it always has but with substantially reduced business levels. However, it must be clear that the loss of a major amount of traffic is the first step in what could be a slippery slope that leads to further reductions in traffic and the loss of the viability of the La Harpe line. The abandonment of the La Harpe line would result in the monopoly of the Keokuk market by the BNSF.

In view of these developments I would normally be quite pessimistic concerning the La Harpe line and the future of competition in Keokuk. However, three events have taken place that can work to ensure future competition in the Keokuk market.

The first is the sale of the Keokuk Junction to Pioneer Railcorp. Pioneer Railcorp is a strong public company with the management resources necessary to develop business on the branch line. In addition Pioneer deals regularly with the SP and UP railroads and can better work on cooperative ventures

with those companies than the previously independent Keokuk Junction management.

The second is the acquisition of the Toledo, Peoria and Western Railway by the Delaware Otsego Corp. Delaware Otsego brings to the TPW additional financial and management resources that should strengthen their abilities to offer competitive intermediate transportation between La Harpe and Bushnell.

The third, and most important, change would be the merger of the Southern Pacific and Union Pacific Railroads. This merger will increase the financial strength of the Southern Pacific and will breathe new life into the Southern Pacific by increasing its financial, marketing and operating resources.

The BNSF merger created a large more efficient railroad that combinations of smaller carriers such as Keokuk Junction, Toledo, Peoria and Western and even the Southern Pacific cannot easily equal. The route over Bushnell needs each one of its component railroads to be strong so that the route as a whole is strong and competitive. The TPW and the Keokuk Junction have combined with stronger carriers to strengthen the route. Now the Southern Pacific must do the same.

Just as the BNSF became more efficient and was able to divert traffic away from Keokuk Junction's La Harpe line and the alternative Bushnell route, so the Southern Pacific must become more efficient. Only an efficient merged UP-SP can

provide the competitive strength that can pull traffic back to the Bushnell route.

Many other commentators have cited why a merged UP-SP will create a stronger company. I subscribe to those arguments. The competitive strength resulting from the BNSF merger speaks to the benefits of railroad mergers. Keokuk Junction needs those competitive benefits to work effectively as a "friendly connection" to compete against a tough mega-competitor in BNSF.

Not only do Keokuk Junction and Keokuk shippers need a merged UP-SP, they also need assurance that the UP-SP will operate via Bushnell and will interchange traffic with the TPW at Bushnell after the merger. The only way Keokuk Junction can provide effective competition to the BNSF in the Keokuk market is for the Union Pacific to honor the Southern Pacific's commitment to use the Bushnell connection. The Union Pacific must also be willing to establish competitive prices and aggressively promote service over that junction. Keokuk Junction requests that the merger be approved subject to that condition.

VERIFICATION

CITY OF WASHINGTON)
: ss:
DISTRICT OF COLUMBIA)

John J. Warfield being duly sworn, deposes and says that he has read the foregoing statement, knows the facts asserted therein and that the same are true as stated.

John J. Warfield

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

Notary Public

My Commission Expires:

LYNN GOTTSCHALK
Notary Public, District of Columbia
My Commission Expires: November 30, 1999

STB FD 32760 3-28-96 D 52101

MAR 28 '96 14:22 FROM VVZ PAGE.001

Item No.

Page Count 3

Mar #603

62101

Office of the Governor

Office of Governor Pete Wilson, State Capitol, Sacramento, CA 95814 (916) 445-2841

62101

RECEIVED
Mar 28 5 35 PM '96
OFFICE OF SECRETARY
ICC

Date: March 28, 1996

Facsimile Phone Number: (202) 927-6107

To: Chairperson Linda Morgan

At: Surface Transportation Board

ADVISE OF ALL PROCEEDINGS

From: Dr. Philip J. Romero
Deputy Cabinet Secretary and
Chief Economist

Number of Pages (including this cover page): 3

Message:

ENTERED
Office of the Secretary
APR 0 2 1996
4 Part of Public Record

If you do not receive all pages of this facsimile, please contact:
Name: Michael T. Esquivel **Phone:** (916) 445-6131

GOVERNOR PETE WILSON

March 27, 1996

The Honorable Linda Morgan
Chair, Surface Transportation Board
United States Department of Transportation
1201 Constitution Avenue, N.W.
Washington, D.C. 20423

Re: Proposed Union Pacific/ Southern Pacific Railroad Merger Finance Docket No 32762

Dear Chairperson Morgan,

I am pleased to express the state of California's support of the proposed merger of Union Pacific (UP) and Southern Pacific (SP) railroads.

The major consolidation of the UP and the SP would represent a major long-term realignment of railroads in California that could result in improved service and a positive economic impact on the state for many years to come, assuming certain concerns relating to competition and shortline service are addressed. We believe these concerns are reasonable and in the best interests of the state.

The California Public Utilities Commission is the state's designated lead agency in this proceeding and filed formal comments on March 28, 1996. Generally, we are now requesting the Board condition the merger on the inclusion of certain protections as a "safety net" for continued and adequate competition and service. Specific concerns and conditions are spelled out in the CPUC's comments. The CPUC will also soon be reviewing the further submissions in this proceeding, including the announced inconsistent applications and the anticipated independent filing by the California Attorney General. Upon such review, it will set forth our final formal position in subsequent filings.

This merger clearly strengthens competition in key markets by creating a financially strong railroad that can afford to continuously modernize in its infrastructure. Many of our shippers rely on rail and trucks to distribute their goods domestically, as do many foreign goods transshipped through

California. If conditioned to assure that effective competition between UP/SP and Burlington Northern-Santa Fe (BN/SF), or another carrier, is maintained, the merger will benefit California shippers and our exporting economy.

Sincerely,

PETE WILSON

STB FD 32760 3-28-96 D 62099

62099

Item No. _____

MADISON COUNCIL Page Count 2
Mar #605

County Government Center
Box 36
16 East Ninth Street
Room 100
Anderson, Indiana 46016
(317) 641-9482
FAX: 641-9486

ADVISE OF ALL PROCEEDINGS

March 26, 1996

Honorable Vernon A. Williams, Secretary
Interstate Commerce Commission
12th Street and Constitution Avenue
Washington, D.C. 20423

62099

RE: **Finance Docket 32760**

Dear Secretary Williams:

Our agency, the Madison County Council of Governments (MPO), is extremely concerned about the competitive aspects on local and regional businesses as a result of the proposed acquisition of the Southern Pacific Lines (SP) by the Union Pacific Railroad (UP). While we are familiar with the proposed agreement between Union Pacific and the Burlington Northern-Santa Fe (BNSF), intended to remedy those effects, we are not persuaded that this arrangement will produce effective competition for rail traffic in the Mid-South region of the United States. This is significant to our regional area due to two existing industrial parks, one proposed industrial park, and our rail linkages to the mid-southern region.

We also have reviewed the proposal from Conrail to acquire a significant portion of the eastern lines of SP in connection with the merger, especially the lines running from Chicago and St. Louis, to Arkansas, to Texas, and to Louisiana. We find this proposal to be far more appropriate and effective in addressing the above noted concerns, specifically in regard to trade carried over land. The Conrail proposal calls for ownership of the lines, whereas the UP-BNSF agreement mainly involves the granting of trackage right. Our agency believes that trackage rights provide only limited benefits and limited guarantees which can be easily lost if railroads disagree over whose traffic has priority and who is in charge of operations of the line. Furthermore, it is our belief that rail ownership is a far superior position than that of a renter regarding the encouragement of economic development activities on its lines.

Additionally, the Madison County Council of Governments favors the Conrail proposal due to the fact that it would provide more efficient service for rail customers in our area for movement of goods and raw materials to and from the Mid-South and Texas Gulf. The Conrail proposal would provide the fastest, one-line service to these markets; it also would be the most direct route involving the fewest car handlings.

Our agency is exceedingly worried about the recent trend of rail mergers in the United States. This trend seems to be leading our nation toward a few gigantic railroads, thus further limiting competition and reducing productivity. For all the reasons expressed above, the

Madison County Council of Governments is actively opposing the Union Pacific-Southern Pacific merger at the ICC unless it is conditioned upon acceptance of the Conrail proposal.

We would like to thank you for allowing our voice to be heard on this matter. It is with concerned anticipation that we await the decision of the Interstate Commerce Commission. If you have any questions pertaining to our concerns, please do not hesitate to contact me at (317) 641-9482.

Respectfully,

Jerrold L. Bridges

Jerrold L. Bridges
Executive Director

cc: David M. Levan, Conrail, President & CEO
Senator Richard G. Lugar
Senator Daniel R. Coats
Representative David McIntosh

STB FD • 32760 3-28-96 D • 62098

62098

Item No. ____

Page Count 1

Mar #1606

E OF REPRESENTATIVES
STATE OF UTAH

REPRESENTATIVE MARDA DILLREE
ASSISTANT SPEAKER OF THE THIRD HOUSE
17TH DISTRICT
(DAVIS COUNTY)
379 SHEPARD RIDGE ROAD
FARMINGTON, UTAH 84025
RES. 451-2773 / BUS. 560-4455

STANDING COMMITTEES: TRANSPORTATION AND PUBLIC SAFETY, VICE CHAIR; EDUCATION
APPROPRIATIONS: TRANSPORTATION AND PUBLIC SAFETY

March 27, 1996

Vernon A. Williams, Secretary
Surface Transportation Board, Room 1324
Twelfth 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 Corp, et al

Dear Secretary Williams:

As chair and member of several transportation committees, I would like to voice my opinion and express my support for the proposed merger between the Union Pacific Railroad and the Southern Pacific Railroad. I am a State Representative representing the 17th District in Davis County. I have worked with transportation issues in Davis County for many years. . While I am aware that the merger may have negative impacts for some, the immediate benefits for the public in my area are very apparent.

1. There are many rail crossings, and the merger would reduce by nearly half the number of trains going through the area, thus reducing the potential for crossing accidents.

2. We are facing tremendous growth in the Salt Lake Valley, and the geography in our area is forcing more development towards the existing UP and D&RG tracks. This encroaching development is creating incompatible land uses.

3. I am the Chair of a steering committee which is undertaking a Major Investment Study between Salt Lake and Ogden to select an alignment for a new transportation facility. This Study includes the analysis of rail relocation and consolidation. Our study efforts would be simplified by working with one rail company instead of two.

4. With the merger, there is a potential abandonment for one of the rail corridors in the study area. With encroaching development, finding a new corridor for transportation is very difficult. So the abandoned corridor which could be used for a different transportation mode is a great opportunity.

I have greatly enjoyed working with the all rail industry representatives in Utah, and would be happy to assist you further in this matter. If you have any questions, please call me at 801-451-2773.

Sincerely,

Marda Dillree

Rep. Marda Dillree

STB FD. 32760 3-28-96 D. 62094

Item No. _____ Helped Build These Healthy Branch Line Communities—Mutually 62094.
Page Count 1 ...me Seventy Years—the Basic Principles Have Not Changed
MAR #611

B. L. E.

MARY NIELSEN, Exec. Sec.

— Association for Branch Line Equality —

BEFORE THE SURFACE TRANSPORTATION BOARD.
U.S. DEPARTMENT OF TRANSPORTATION
Comments on the Proposed Merger of the Union Pacific Railroad
and the Southern Pacific Transportation Company.
Finance Docket No. 32760

The above organization is in opposition to the merger unless Conditioned as proposed in the responsive application of MONTANA RAIL LINK, INC.

The Association for Branch Line Equality was formed shortly after the Staggers Act was passed in order to endeavor to keep rail service on this 148 mile line in N.E.Montana. In spite of valiant efforts by area shippers, various businesses and community leaders, as well as many grain producers, we lost 48 miles of the line in a hard-fought battle with the railroad and the I.C.C. Subsequently, several small communities have almost entirely disappeared because of the effects of the abandonment. Now we have become aware of the efforts of Montana Rail Link to provide service to the shippers of the Central Corridor to the West Coast.

A.B.L.E. still is vitally interested in preserving the remaining section of this branch line, and find ourselves in strong support of shippers who are in danger of becoming captive to one rail entity. This group supports Montana Rail Link's proposed acquisition of the Union Pacific line between Silver Bow, Montana, and Pocatello, Idaho as a strategic element of the Central Corridor solution. It is in support of the proposed BNSF/UP-SP merger only if this condition is approved by the STB.

Orvill Nash

Orvill Nash, President,
Association for Branch Line Equality,
255, Daleview,
Redstone, MT. 59257

March 26th 1996

62094

STB FD 32760 3-28-96 D. 62093

Item No. 1D 32760 62093

Page Count 1

Mar #610

DORCHESTER FARMERS COOPERATIVE
P.O. Box 263 - 208 W Depot
DORCHESTER, NEBRASKA 68343-0263
PHONE: 946-2211
TOLL FREE: 1-800-642-6439 FAX: 1-402-946-2062

March 27, 1996

ADVISE OF ALL PROCEEDINGS

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

My name is Ron Velder, General Manager of Dorchester Farmers Cooperative located at 208 W. Depot, Dorchester, NE 68343. I have been General Manager for two years; and, have worked at Dorchester Farmers Cooperative for nineteen years prior to becoming the General Manager.

Dorchester Farmers Cooperative has six locations of which two locations are located on a main Burlington Northern line. Our Cooperative operates a licensed public grain warehouse, provides grain marketing services, and supplies feed, fertilizer, chemicals, petroleum, and other merchandise for approximately 2,000 patrons.

Our Cooperative ships 2,000 cars of grain per year in addition to handling 30 to 40 cars of fertilizer.

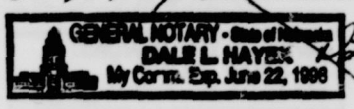
Dorchester Farmers Cooperative supports the Union Pacific merger; however, we are concerned about certain competitive problems, and we feel the BN - Santa Fe is the railroad with the expertise to handle these problems set forth in Finance Docket 32760. Therefore, we support Finance Docket No. 32760 Union Pacific Corporation and Soutnern Pacific Rail Corporation merger.

I declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct. Executed this 27th day of March, 1996.

Ronald Velder
Shippers Signature

62093

Dale L Hayek
Witness



Item No. _____

Page Count 1

Mar #591

6 2095

3405 Cherry St.
Beaumont, Tx 77703

March 26, 1996

The Hon. Vernon A. Williams
Surface Transportation Board
12th and Constitution Ave.
Washington, DC

Dear Hon. Williams:

We feel that the merger proposed between Union Pacific and Southern Pacific Railroads would have a harmful effect on the economy of Texas.

With the large area that Texas encompasses and the great amount of products moved by railroads, we feel that competition between them is most essential.

Please keep in mind that free enterprise and competition are the heart blood of America, and consider the jobs that might be lost by this merger as well.

We appreciate your consideration in this matter and hope that you will oppose "Finance Docket 32760". Thank you very much.

ADVISE OF ALL PROCEEDINGS

Yours truly,
Robert R Robinson
Judith G Robinson

cc: Railroad Commission of Texas

6 2095

Item No. _____

Page Count 82

Mar #583

62129

URBAN-DEVELOPMENT AGENCY

Administrative Offices
15651 East Stafford Street
Post Office Box 7089
City of Industry, California 91744
(818) 961-6341

VIA EXPRESS MAIL

March 27, 1996

62129

Vernon A. Williams, Secretary
Case Control Branch; Attn: Finance Docket Nº 32760
Surface Transportation Board
United States Department of Transportation
1201 Constitution Avenue, N.W.
Washington, D.C. 30423

Re: Application of Union Pacific Corporation, et al.,
Finance Docket Nº 32760

Dear Mr. Secretary:

Transmitted herewith for filing and the attention of the Surface Transportation Board are an original and twenty (20) copies of the Notice of Request for Conditions in the subject proceeding, filed on behalf of the Industry Urban-Development Agency, a body politic and corporate. A Certificate of Service confirming service by mail upon the appointed Administrative Law judge and all parties of record is attached to the original copy. Also enclosed is a 3.5" diskette containing the text of this pleading in Wordperfect 5.1 format.

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

UPRR/SPRR\UPC-AP.GR

If you have any questions or comments concerning this filing, please contact me at the address or telephone number set forth above. Thank you.

Sincerely,

John D. Ballas
Agency Engineer

JDB:kat
Enclosure
xc: Carl B. Burnett, Ex. Dir,IUDA
Graham Ritchie, City Attorney

BEFORE THE SURFACE TRANSPORTATION BOARD

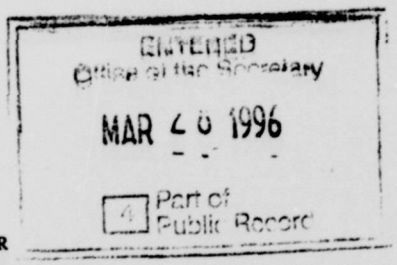
Finance Docket No. 32760

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 CORPORATION AND THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

COMMENTS OF:

INDUSTRY URBAN-DEVELOPMENT AGENCY
AND REQUEST FOR CONDITIONS AND
VERIFIED STATEMENT OF JOHN D. BALLAS, CITY
ENGINEER, CITY OF INDUSTRY

DATE: MARCH 29, 1996



UPRR/SPRR\UPC-AP.GR

BEFORE THE SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760

VERIFIED STATEMENT OF JOHN D. BALLAS

In connection with the above referenced proposed merger and pursuant to the provisions of 49 C.F.R. § 1180.4(d)(1), as modified by Decision No. 6 in this proceeding (effective October 24, 1995), the Industry Urban-Development Agency ("Agency") hereby submits its comments, evidentiary submission and request for conditions, and asks the Surface Transportation Board ("Board") to grant the subject request relative to Finance Docket No. 32760.

I. INTRODUCTION

My name is John D. Ballas. I am employed by the City of Industry ("City") as its City Engineer, and I also serve as Engineer of the Agency which is a redevelopment agency of the City. My business address is 15651 East Stafford Street, city of Industry, California 91744. I am familiar with the Agency's facilities and transportation requirements, having been employed by the City and Agency for the past six (6) years. I am authorized to represent Agency's interest before federal and state regulatory bodies and I am authorized to present this verified statement on behalf of Agency.

II. INDUSTRY URBAN-DEVELOPMENT AGENCY

The Agency is a redevelopment agency of the City of Industry, formed in 1971 for the purpose of redeveloping large tracts of farming land for industrial and commercial development purposes. In pursuit of that policy, the Agency acquired two contiguous parcels of land which are located easterly of Grand Avenue, between the Union Pacific ("UP") and Southern Pacific ("SP") mainline tracks in the City of Industry, County of Los Angeles, State of California, as shown on the map marked Exhibit "A". These properties, and others, were acquired by the

Agency by the use of real property taxes made available to the Agency, for the purpose of pimproving the transportation system serving the properties in question, grading the property and resubdividing the property for industrial purposes.

III AGENCY POSITION WITH RESPECT TO MERGER

Agency has no objection to the proposed merger except that Agency is concerned that it was not included as a "2-to-1" parcel included in Exhibit "A" to the agreement between UP and SP on the one hand and Burlington Northern Railroad Company and the Atchison, Topeka and Santa Fe Railway Company ("BNSF") (Volume I, Railroad Merger Application, p. 318, filed herein). Agency believes that it qualifies as a "2-to-1" customer and should have been included as such in Exhibit "A" to the above reference agreement.

Agency is concerned that if the merger is approved without including Agency as a "2-to-1" customer with the privileges related thereto as set forth in the above referenced agreement, Agency will be seriously damaged financially and its ability to redevelop the properties in question will be significantly impaired if the competitive rail service provided to such customers by the agreement is not extended to Agency.

IV. REASONS FOR CLASSIFICATION AS A "2-TO-1" CUSTOMER

As stated hereinabove, the Agency presently owns two (2) contiguous parcels of land which are located easterly of Grand Avenue, in between the UP and SP mainline tracks in the City of Industry. A continuous rail line traverses both parcels offering connections to both the UP and SP. The westerly parcel, being 36.6 acres in size, was purchased by the Agency from the Roy F. Benton Feed Yard, a limited partnership on February 5, 1982 for $9,740,000 (identified as Los Angeles County Assessors parcel number 8719-005-902). The prior owners of this parcel were Mr. John Ruether, Mr. Fred Ruether and Mr. Thomas S.H. Graham, doing business as the Ruether-Graham Feed Company. The Agency purchased the easterly parcel, being 37.6 acres, from Central California Livestock, Incorporated, commonly known or described as the "Machlin Parcel" on February 15, 1991 for $7,754,700 (identified as Los Angeles County Assessor's parcel numbers 8719-004-905,906,907,908 and 909. The prior owner of this last mentioned parcel was Mr. Frank Hill. Attached as exhibit "A" is a map identifying the subject parcels and the interconnecting rail spur line as shown on this exhibit and also on a

copy of the U.S. Geological Survey quadrangle map for the subject area.

Both parcels of land have direct frontage on the UP and SP rail lines. For the past 50 years, the Roy Benton Feed Yard received shipments of barley, corn, hominy, wheat, lecithin, soapstock, etc for use in the production of livestock feed from both the UP and SP rail carriers. The Machlin Feed Lot received similar shipments of raw goods from the UP switch only. These shipments were permissible under agreements entered into between the Ruether-Graham Feed Company and the Southern Pacific Company dated February 3, 1930 and a subsequent agreement between the Ruether-Graham Feed Company, Frank Hill and the Los Angeles and Salt Lake Railroad Company (known as Union Pacific Railroad), dated January 23, 1931 (see Exhibits "B" and "C").

The Agency purchased the Benton and Machlin parcels with the knowledge that direct rail service by UP and SP independently to each parcel was possible. In fact, each parcel has a minimum of 1,700 feet of frontage along the main line trackage of each railroad allowing the installation a connecting switch almost anywhere on either carrier.

In the early 1930's, the present interconnecting spur track (technically named an "industrial lead track") was constructed from a switch on the UP main line at the Machlin parcel. Within a year, this industrial lead track was extended northwesterly across the Benton parcel to the SP line. The described agreements for rail service were in effect at the time the Agency purchased each parcel and copies of the same were given to the Agency by the seller of the Benton parcel. Shipments of raw materials used in the production of livestock feed at the Benton Feed Lot continued by both rail carriers up to about 1989. Attached as exhibit "D" are just a few shipping manifests and cancelled checks documenting the service to the Roy F. Benton Feed Yard by both the UP and SP. In 1990, the Agency constructed Grand Avenue, as shown on Exhibit "A", as a major arterial roadway to serve the transportation requirements for the developing vicinity properties. Due to the proximity of this roadway, the Agency requested that the connecting spur track from the Benton parcel to the SP main line be removed. However, the existing main line switch was not removed and is still intact.

In October, 1993, the City of Industry initiated a project to be developed on the Benton Feed Lot parcel and a portion of the Machlin Feed Lot. This project, identified as the Industry Materials Recovery Facility ("IMRF"), is a municipal solid waste transfer and recycling plant which at full capacity would be entirely rail dependent for the outbound shipment of municipal waste to distant landfills. Notices that The City of Industry was undertaking the preparation of the required environmental documentation for this project were sent via return receipt mail to representatives of both the Southern Pacific and Union Pacific Rail Lines (see Exhibit "E"). These notices discuss the proposed connections to both rail carriers and the expected shipment of one train per day of municipal refuse to distant landfills.

This project was further discussed with representatives from each railroad on several occasions and in October, 1994 the Union Pacific Railroad in conjunction with East Carbon Development Corporation ("ECDC") submitted a proposal to provide railhaul service to the proposed IMRF (see Exhibit "F").

A check of the present agreement between the UP and SP and the BNSF, whereby trackage rights are granted to BNSF for those customers served by both UP and SP and no other railroad ("2-to-1"), does not identify the Benton or the Machlin parcels as a "2-to-1" site. (Exhibit "A" on page 341, Vol I of the subject Railroad Merger Application).

To fulfill the intent of the UP and SP agreement with the BNSF to provide competitive service for "2-to-1" customers, the Agency respectively requests that any approval by the Surface Transportation Board of the applicants request for merger, be subject to the condition that the Agency owned parcels identified herein be added to the list of "2-to-1" customers as set forth in Exhibit "A" to the UP and SP agreement with BNSF or that within 90 days after the merger is complete, UP shall prepare and submit an agreement to the satisfaction of the Agency for trackage rights extended to the BNSF for service to the Benton and Machlin sites. It is anticipated that sufficient volume of rail traffic will be generated at Agency property, presently estimated to be one train daily, to allow BNSF to utilize its own terminal facilities in providing competitive rail service.

VERIFICATION

STATE OF CALIFORNIA)
) SS:
COUNTY OF LOS ANGELES)

I, John D. Ballas, being duly sworn, do hereby state that I have read the foregoing document, have knowledge of the contents thereof, and that all facts therein are true to the best of my knowledge and belief.

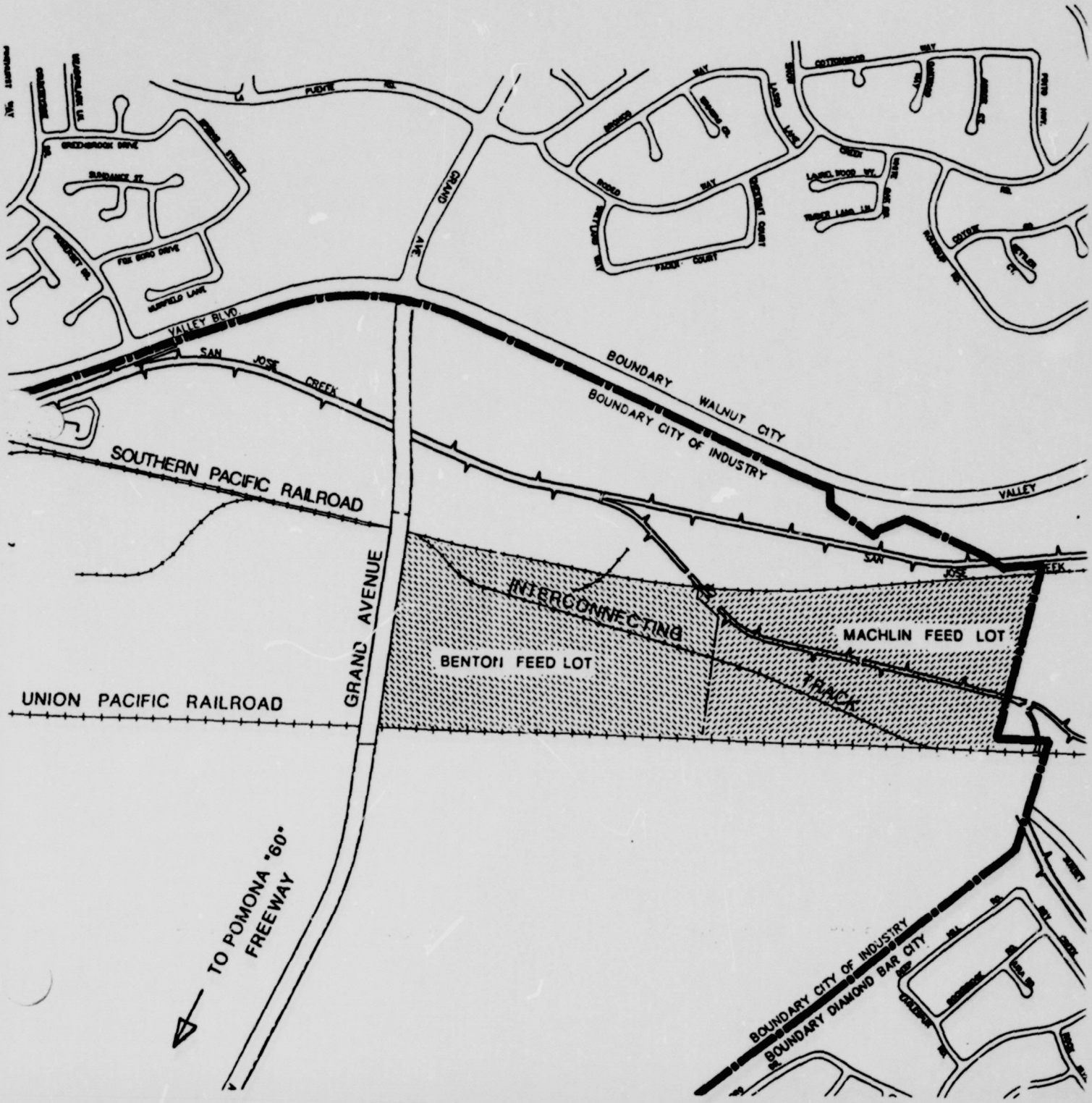
John D Ballas

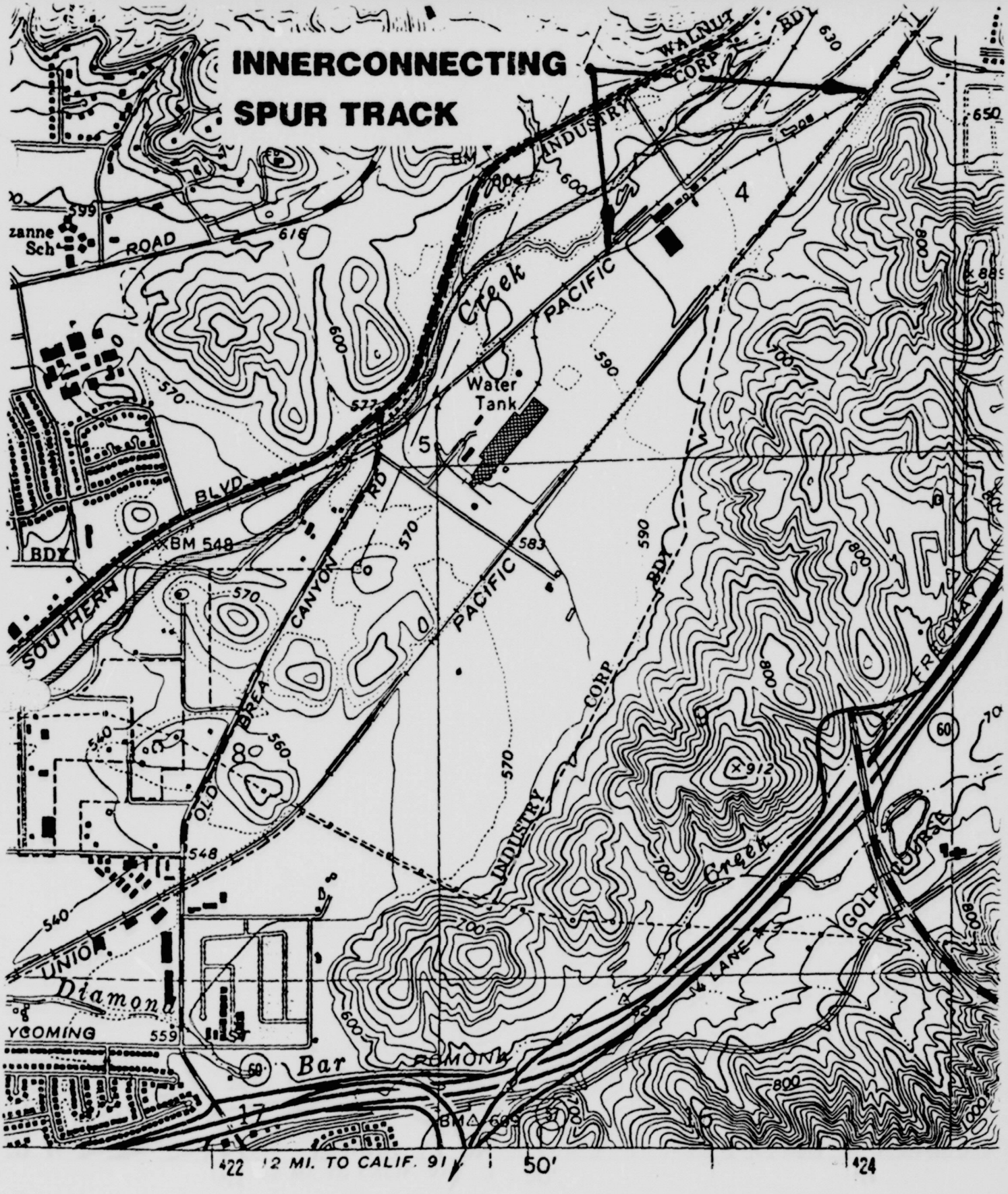
John D. Ballas

Subscribed to and sworn to before me, a Notary Public, in and for the State of California, this 26TH day of MARCH, 1996.

Notary Public

EXHIBIT "A"


VALLEY BLVD
SAN JOSE CREEK
BOUNDARY WALNUT CITY
BOUNDARY CITY OF INDUSTRY
SOUTHERN PACIFIC RAILROAD
GRAND AVENUE
INTERCONNECTING
BENTON FEED LOT
MACHLIN FEED LOT
TRACK
UNION PACIFIC RAILROAD
TO POMONA "60" FREEWAY
BOUNDARY CITY OF INDUSTRY
BOUNDARY DIAMOND BAR CITY


INNERCONNECTING
SPUR TRACK
WALNUT
CORP
BDY
630
650
INDUSTRY
4
599
ROAD
616
Creek
PACIFIC
600
590
700
Water
Tank
577
5
570
BLVD
BDY
BM 548
583
SOUTHERN
CANYON
RD
PACIFIC
BDY
800
CORP
FREEWAY
912
60
70
540
560
OLD
BREA
548
INDUSTRY
Creek
GOLF COURSE
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422
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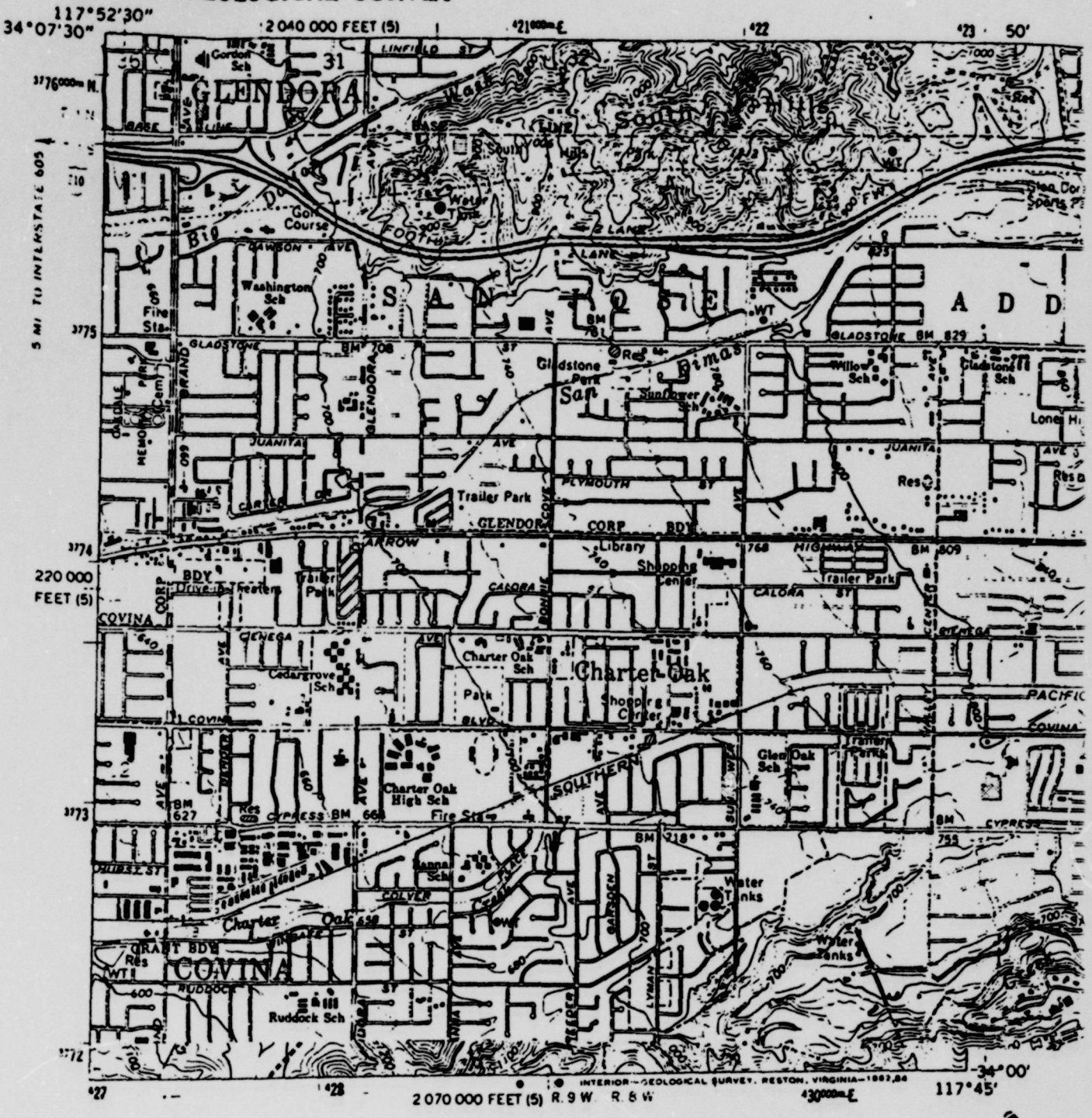
UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY



ROAD CLASSIFICATION

Heavy-duty ——— Light-duty ——— —

Medium-duty ——— Unimproved dirt - - - - - -

Interstate Route U. S. Route State Route

QUADRANGLE LOCATION

SAN DIMAS, CALIF.

N3400—W11745/7.5

1966
PHOTOREVISED 1981
DMA 2452 III SE—SERIES V895

EXHIBIT "B"

AGREEMENT FOR INDUSTRIAL SPUR TRACK
SERVICE TO BENTON PARCEL
DATED FEBRUARY 3, 1930

SOUTHERN PACIFIC COMPANY — PACIFIC LINES

Approved as to form by General Solicitor
August 25, 1925.

DOCUMENT T 6753

I-1080
GMO-8494

INDUSTRIAL TRACK AGREEMENT

This Agreement, made this 3rd day of February, 1930,
by and between SOUTHERN PACIFIC COMPANY, a corporation, hereinafter called "Railroad", and

[illegible] OIL COMPANY

6758

hereinafter called "Industry",

RECITALS:

Industry has requested Railroad to construct, maintain and operate industrial track facilities, hereinafter called "track", described as follows: Spur track, approximately 1275 feet in length, at or near Spadra Station, County of Los Angeles, State of California. The location of said track is shown by red line upon the blueprint map hereto attached and made a part hereof.

Railroad estimates that the approximate cost to Industry for construction of said track and appurtenances, under the terms and conditions hereinafter specified, will be $ 1140.00 for approx. 400' [illegible] tie. Initially east of clearance point exclusive of grading and ballast tie.

AGREEMENT: 800' of track on end of spur to be built by Industry with own forces and material.

NOW, THEREFORE, in consideration of the agreements hereinafter contained to be kept and performed by the parties hereto, it is mutually agreed that the said track and appurtenances shall be constructed, maintained and operated under the following terms, covenants and conditions:

1. Industry will secure and furnish at its expense all necessary franchises, permits and right of way beyond the boundary line of the land of Railroad for the construction and maintenance of said track and its appurtenances and for the operation of locomotives, motors, trains and cars thereon and thereover, except in the event that any State or Municipal body from which it is necessary to obtain franchises or permits shall require that the application be made by Railroad, in which event application therefor shall be made by Railroad. In the event Railroad applies for and secures said franchises or permits, Industry expressly agrees to pay any and all expenses incurred by Railroad in obtaining said franchises or permits, and all sums which may be expended at any time by Railroad under the provisions of said franchises or permits.

The term "said track and its appurtenances" as used herein shall designate the plural number if there is more than one track, and shall include the rail and fastenings, switches and frogs complete, bumpers, ties, ballast, roadbed, embankment, trestles, culverts and any other structures and things necessary for the support of and entering into the construction of said track, and if said track is located in a thoroughfare, it shall include the construction, installation, maintenance and renewal of pavements, culverts, drainage facilities and all other work required by lawful authority in connection with the construction, renewal, maintenance and operation of said track.

Industry will pay the entire cost of constructing and maintaining said track and its appurtenances, except that Railroad will pay the cost of constructing and maintaining that portion or portions of said track from the points of the initial switch or switches thereof to the clearance point in the center line thereof, which said clearance point is thirteen (13) feet distant, measured at right angles, from the center line of the track from which said track will diverge. It is understood, however, that if said track is an extension of or will diverge from an industrial track, Industry will pay the entire cost of constructing said track and its appurtenances and also the entire cost of maintaining said track and its appurtenances. Railroad shall maintain said track and its appurtenances in good condition and repair, and Industry agrees to pay Railroad Industry's share of the cost of maintaining said track and its appurtenances.

Industry shall, upon request of Railroad, and before any work of construction or maintenance covered by this agreement is commenced, deposit with Railroad the estimated cost of the work to be performed by Railroad at expense of Industry. If the actual cost of said work shall prove more or less than said deposit, the difference shall be promptly paid by Industry or refunded by Railroad, as the case may be. If Railroad shall perform any work hereunder which Industry is obligated to perform or pay for without first obtaining deposit from Industry, Industry agrees to pay Railroad the cost of said work promptly upon receipt of bills therefor.

2. All material in said track and its appurtenances, furnished at the expense of Railroad, whether in original construction or by way of replacements or repairs, shall be and remain the exclusive property of Railroad. In the event said track is disconnected, as provided for in Section 3 hereof, or by mutual consent of the Railroad and the Industry, Railroad may recover from the land of the Industry all the material owned by Railroad, and Industry will, if said track or any portion thereof is located in a thoroughfare, pay the cost of removing all material owned by Industry, and restoring the thoroughfare in good condition, satisfactory to the proper lawful authority, and Industry may, provided no default shall then exist as to any covenants or agreements to be kept and performed by Industry, recover all material owned by Industry and located on land of Railroad; provided, however, Railroad may, at its option, perform at the [illegible] expense of Industry all work of dismantling, taking up and removing said material owned by Industry and placing the land in its original condition. Notwithstanding anything to the contrary herein contained, Railroad shall have the [illegible] right, to purchase at its then value any or all material in said track and its appurtenances owned by Industry and located on the land of Industry.

[illegible]. Railroad shall have the right to disconnect the said track or refuse to operate over the same in the event [illegible] Industry shall cease to do business on said track in an active and substantial way for a continuous period of [illegible] unless prevented from so doing by law, strikes or any causes beyond the control of the Industry; (b) Industry [illegible] fail to observe and perform each and every of the covenants and promises herein contained which are by Industry to be observed and performed, or (c) Railroad is required by law, ordinance, regulation or order of the Federal, State [illegible] Municipal governments or any lawfully constituted public authority having jurisdiction in the premises, to discontinue the operation of said track or to change its tracks in such manner as to render it impracticable, in the judgment of Railroad, to continue to operate said track.

[illegible]. Railroad agrees to operate said track and to serve Industry thereon, subject to any lawful charges that may be made by Railroad for such service; said track shall be under full control of Railroad and may be used at direction of Railroad for its business or for shipment or delivery of any freight, but not to the detriment of the business of the Industry.

5. Industry agrees that without the written consent of Railroad first had and obtained no building, [illegible] tramway, cable, wire or other structure, or material or other obstruction of any kind or character shall be erected, placed, stored, stacked or maintained over or upon the premises of Railroad, and that no pipe, conduit, structure, opening or excavation of any kind whatsoever shall be made or placed beneath any track upon the premises of Railroad without such written consent. In the event such written consent is given, Industry further agrees that no building, platform, pole or other structure shall be erected or maintained and no material or other obstruction of any kind or character shall be stored, stacked or maintained within six (6) feet measured horizontally of outside of nearest track rail, provided, however, if such written consent is given, platforms and their appurtenances four (4) feet or less in height measured vertically from top of nearest track rail may be placed and maintained at a distance of not less than four (4) feet eight (8) inches measured horizontally from outside of nearest track rail; and provided, further, that no structure, tramway, cable or wire shall be erected or maintained over or across any track and for a distance of at least six (6) feet from the outside rails thereof at a distance of less than twenty-two (22) feet measured vertically above the tops of rails in any track. If, however, by statute or order of competent public authority, greater clearances than those specified in this section shall be required, Industry expressly agrees to strictly comply with such statute or order. Industry further agrees that under no circumstances shall any gun powder, dynamite or other explosive material be piled or stored by Industry or others upon the premises of Railroad. Industry also agrees to comply with all the provisions of this Section 5 with respect to clearances on the property beyond the boundary line of the land of Railroad, and that no pipe, conduit, structure, opening or excavation of any kind whatsoever shall be made or placed beneath any track beyond the boundary line of the land of Railroad without first giving Railroad written notice thereof.

In the event that said track is used by Industry for the loading or unloading of oils or other inflammable liquids, Industry agrees to observe Railroad's Rules governing the location of new loading and new unloading points for Casinghead gasoline, Refinery gasoline, Naphtha and Inflammable Liquids, and Practice Rules for the protection of oil sidings or spurs where inflammable liquids are loaded or unloaded, from danger due to stray electrical currents and static electricity. A copy of said Rules will be furnished by Railroad to Industry upon request of Industry, and Industry agrees to be bound by and carry out each and every provision set forth in said Rules.

6. Industry hereby releases and discharges and agrees to indemnify and save harmless said Railroad, its agents, successors and assigns, from all liability for destruction of, or damage to any property of the Industry and any property in the possession or custody of Industry by fire, resulting directly or indirectly from the operation of said track by Railroad, its agents, successors or assigns.

7. Industry hereby acknowledges the title of Railroad in and to the land of Railroad shown within brown lines on said blueprint map, and agrees never to assail or resist said title.

This agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in duplicate the day and year first hereinabove written.

SOUTHERN PACIFIC COMPANY,

By [signature]

Superintendent.

WITNESSED BY:

[signature]

John Ruether

[illegible]

Fred Ruether

[illegible]

[illegible] attach blueprint showing the proposed track or tracks by red [illegible] and indicate thereon the portion and [illegible] of the track to be paid for by Industry.

[illegible]

EXHIBIT "C"

AGREEMENT FOR INDUSTRIAL LEAD
TRACK FOR SERVICE TO BOTH
BENTON PARCEL AND MACHLIN PARCEL
DATED JANUARY 23, 1931

CONTRACT DEPT. 1957

Control Audit No. X 1971
L.A. & S.L.R.R. Co.

AGREEMENT

Between

LOS ANGELES & SALT LAKE RAILROAD COMPANY

and

RUETHER-GRAHAM FEED CO., LTD.,

and

FRANK HILL,

Dated January 23 1931,

Covering acquisition of right of way and construction, maintenance and operation of industrial lead and industry spur tracks between stations of Spadra and Walnut, Los Angeles County, California.

1/13/31.

-Original-
(For R-G Feed Co., Ltd.)

UNION PACIFIC SYSTEM

UNION PACIFIC RAILROAD COMPANY
OREGON SHORT LINE RAILROAD COMPANY
OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY
LOS ANGELES & SALT LAKE RAILROAD COMPANY

DEPARTMENT OF TRAFFIC

W. E. RAUCH,
INDUSTRIAL AGENT

PACIFIC ELECTRIC BUILDING
LOS ANGELES, CALIFORNIA

March 20th, 1931

File X-12-1578

Mr. John Ruether,
Ruether-Graham Feed Co.,
Walnut, Calif.

Dear John:

I hand you herewith, for the records of your company, fully executed industry track contract covering trackage recently constructed to serve your plant operations near Walnut.

There is also enclosed for your file counterpart of agreement between your company, Frank Hill and our company covering industrial lead track and acquisition of right of way in connection with your operations.

Very truly yours,

W. E. Rauch

THIS AGREEMENT, made and entered into this 23rd day of January, 1931, by and between LOS ANGELES & SALT LAKE RAILROAD COMPANY, a corporation of the State of Utah, party of the first part, and RUETHER-GRAHAM FEED CO., LTD., a California corporation with principal place of business at Walnut, Los Angeles County, California, and FRANK HILL, an individual whose address is 209 East Alvarado Street, Pomona, California, hereinafter collectively referred to as parties of the second part.

Recitals.

Inasmuch as the parties of the second part are desirous of having constructed a certain industrial lead track and certain industry spur tracks between the stations of Spadra and Walnut in Los Angeles County, California, and for these purposes the parties of the second part have agreed to furnish to the party of the first part, without any cost or expense to the said party of the first part,

First, a twenty (20) foot strip of land shown in red on blue print map, attached hereto and marked "Exhibit A", and by reference made a part hereof, as a right of way for the construction, maintenance and operation by said party of the first part of an industrial lead track connecting with the main line of the party of the first part at Mile Post 27, in the vicinity of Spadra, Los Angeles County, California;

Second, easements over two strips of land shown in

shaded green on "Exhibit A", for the construction, maintenance and operation of industry spur tracks connecting with the said industrial lead track to be constructed on parcel first above mentioned;

Agreement.

NOW, THEREFORE, it is mutually agreed between the parties hereto as follows, to wit:

1. Parties of the second part shall furnish to the party of the first part, without cost or expense to said party of the first part, fee title to the following described premises:

Parcel A. A parcel of land 20.0 feet in width and being that portion of Section 4, Township 2 south, Range 9 west, S.B.B.&M., situated in the County of Los Angeles, State of California, described as follows:

Commencing at a point in the north and south center line of said Section 4, distant S. 0° 05' 20" E. 1324.92 feet from the north quarter corner of said Section 4, said point being marked by a 2" iron pipe set on the south line of Pomona Boulevard; thence S. 0° 05' 20" E. 377.57 feet; thence S. 61° 31' 10" W. 97.24 feet; thence S. 56° 15' 20" W. 254.26 feet; thence S. 36° 59' 20" W. 125.44 feet; thence S. 13° 58' 20" W. 89.17 feet; thence S. 30° 17' 30" E. 198.47 feet;

thence S. 89° 39' E. 279.59 feet; thence N. 60° 21' 40" E. 183.35 feet; thence N. 42° 15' E. 164.02 feet; thence S. 75° 40' E. 63.45 feet; thence S. 47° 45' 50" E. 117.38 feet; thence N. 85° 43' 50" E. 138.38 feet; thence S. 39° 39' 50" E. 151.91 feet to the true point of beginning; thence N. 60° 55' E. 191.48 feet to a point in a curve, tangent to said last mentioned course concave southeasterly and having a radius of 957.48 feet; thence northeasterly along said curve 95.81 feet; thence tangent to said curve N. 66° 39' E. 45.28 feet to a point in a curve tangent to said last mentioned course, concave northwesterly and having a radius of 937.48 feet; thence northeasterly along said curve 93.81 feet; thence tangent to said curve N. 60° 55' E. 682.43 feet to a point in a curve tangent to said last mentioned course, concave northwesterly and having a radius of 754.49 feet; thence northeasterly along said curve 102.52 feet to a point on the westerly line of the 100 foot right of way of main track of L.A.&S.L.R.R.; thence along said right of way line S. 39° 14' W. 70.61 feet to a point in a curve, concave northwesterly and having a radius of 774.49 feet, the tangent to said curve at said last mentioned point bearing N. 58° 12' 32" E.; thence southwesterly along said last mentioned curve 36.60 feet; thence

tangent to said curve S. 60° 55' W. 682.43 feet to a point in a curve tangent to said last mentioned course, concave northwesterly and having a radius of 957.48 feet; thence southwesterly along said curve 95.81 feet; thence tangent to said curve S. 66° 39' W. 45.28 feet to a point in a curve tangent to said last mentioned course, concave southeasterly and having a radius of 937.48 feet; thence southwesterly along said curve 93.81 feet; thence tangent to said curve S. 60° 55' W. 193.82 feet to a point in a curve tangent to said last mentioned course concave southeasterly, and having a radius of 937.48 feet; thence southwesterly along said curve 93.81 feet; thence tangent to said curve S. 55° 11' W. 45.28 feet to a point in a curve tangent to said last mentioned course, concave northwesterly and having a radius of 957.48 feet; thence southwesterly along said curve 95.81 feet; thence tangent to said curve S. 60° 55' W. 258.88 feet; thence N. 29° 05' W. 20.0 feet; thence N. 60° 55' E. 258.88 feet to a point in a curve tangent to said last mentioned course, concave northwesterly and having a radius of 937.48 feet; thence northeasterly along said curve 93.81 feet; thence tangent to said curve N. 55° 11' E. 45.28 feet to a point in a curve tangent to said last mentioned course, concave southeasterly and

having a radius of 957.48 feet; thence northeasterly along said curve 95.81 feet; thence tangent to said curve N. 60° 55' E. 2.34 feet to the true point of beginning.

2. Parties of the second part shall furnish to the party of the first part, without cost or expense to said party of the first part, easements covering rights of way for the construction, maintenance and operation of industry spur tracks over and across the following described premises:

Those two certain parcels of land and being those portions of Section 4, Township 2 south, Range 9 west, S.B.B.&M., situated in the County of Los Angeles, State of California, described as follows:

Parcel B. Commencing at a point in the north and south center line of said Section 4, distant S. 0° 05' 20" E. 1324.92 feet from the north quarter corner of said Section 4, said point being marked by a 2" iron pipe set on the south line of Pomona Boulevard; thence S. 0° 05' 20" E. 377.57 feet; thence S. 61° 31' 10" W. 97.24 feet; thence S. 56° 15' 20" W. 254.26 feet; thence S. 36° 59' 20" W. 125.44 feet; thence S. 13° 58' 20" W. 89.17 feet; thence S. 30° 17' 30" E. 198.47 feet; thence S. 89° 39' E. 279.59 feet; thence N. 60° 21' 40"

E. 183.35 feet; thence N. 42° 15' E. 164.02 feet; thence S. 75° 40' E. 63.45 feet; thence S. 47° 45' 50" E. 117.38 feet; thence N. 85° 43' 50" E. 138.38 feet; thence S. 39° 39' 50" E. 151.91 feet to the true point of beginning; thence N. 60° 55' E. 191.48 feet to a point in a curve tangent to said last mentioned course, concave southeasterly and having a radius of 957.48 feet; thence northeasterly along said curve 95.81 feet; thence tangent to said curve N. 66° 39' E. 45.28 feet to a point in a curve tangent to said last mentioned course concave northwesterly and having a radius of 937.48 feet; thence northeasterly along said curve 93.81 feet; thence tangent to said curve N. 60° 55' E. 682.43 feet to a point in a curve tangent to said last mentioned course concave northwesterly and having a radius of 754.49 feet; thence northeasterly along said curve 102.52 feet to a point on the westerly line of the 100 foot right of way of main track of L.A.&.S.L.R.R.; thence along said right of way line N. 39° 14' E. 62.33 feet to a point in a curve concave northwesterly and having a radius of 741.99 feet, the tangent to said curve at said last mentioned point bearing N. 48° 27' 15" E.; thence along said curve southwesterly 161.39 feet; thence

tangent to said curve S. 60° 55' W. 682.43 feet to a point in a curve tangent to said last mentioned course, concave northwesterly and having a radius of 924.98 feet; thence southwesterly along said curve 92.56 feet; thence tangent to said curve S. 66° 39' W. 45.28 feet to a point in a curve tangent to said last mentioned course, concave southeasterly and having a radius of 969.98 feet; thence southwesterly along said curve 97.06 feet; thence tangent to said curve S. 60° 55' W. 193.82 feet to a point in a curve tangent to said last mentioned course concave southeasterly and having a radius of 969.98 feet; thence southwesterly along said curve 97.06 feet; thence tangent to said curve S. 55° 11' W. 45.28 feet to a point in a curve tangent to said last mentioned course concave northwesterly and having a radius of 924.98 feet; thence southwesterly along said curve 92.56 feet; thence tangent to said curve S. 60° 55' W. 258.88 feet; thence S. 29° 05' E. 12.5 feet; thence N. 60° 55' E. 258.88 feet to a point in a curve tangent to said last mentioned course concave northwesterly and having a radius of 937.48 feet; thence northeasterly along said curve 93.81 feet; thence tangent to said curve N. 55° 11' E. 45.28

feet to a point in a curve tangent to said last mentioned course, concave southeasterly and having a radius of 957.48 feet; thence northeasterly along said curve 95.81 feet; thence tangent to said curve N. 60° 55' E. 2.34 feet to the true point of beginning.

Parcel C. Commencing at a point in the north and south center line of said Section 4, distant S. 0° 05' 20" E. 1324.92 feet from the north quarter corner of said Section 4, said point being marked by a 2" iron pipe set on the south line of Pomona Boulevard; thence S. 0° 05' 20" E. 377.57 feet; thence S. 61° 31' 10" W. 97.24 feet; thence S. 56° 15' 20" W. 254.26 feet; thence S. 36° 59' 20" W. 125.44 feet; thence S. 13° 58' 20" W. 89.17 feet; thence S. 30° 17' 30" E. 198.47 feet; thence S. 89° 39' E. 279.59 feet; thence N. 60° 21' 40" E. 183.35 feet; thence N. 42° 15' E. 164.02 feet; thence S. 75° 40' E. 63.45 feet; thence S. 47° 45' 50" E. 117.38 feet; thence N. 85° 43' 50" E. 138.38 feet; thence S. 39° 39' 50" E. 181.92 feet to the true point of beginning; thence N. 60° 55' E. 327.55 feet to a point in a curve concave northwesterly and having a radius of 957.48 feet, the tangent to said curve at said point bearing N. 66° 28' 25" E.; thence northeasterly along said curve

92.87 feet; thence tangent to said curve S. 60° 55' E. 682.43 feet to a point in a curve tangent to said last mentioned course, concave northwesterly and having a radius of 774.49 feet; thence northeasterly along said curve 36.60 feet to a point on the westerly line of the 100 foot right of way of L.A.&.S.L.R.R.; thence along said right of way line S. 39° 14' W. 36.16 feet to a point in a curve concave northwesterly and having a radius of 786.99 feet the tangent to said curve at said point bearing S. 60° 41' 56" W.; thence southwesterly along said curve 2.99 feet; thence tangent to said curve S. 60° 55' W. 1603.73 feet; thence N. 29° 05' W. 12.5 feet; thence N. 60° 55' E. 258.88 feet to a point on a curve tangent to said last mentioned course concave northwesterly and having a radius of 957.48 feet; thence northeasterly along said curve 92.87 feet; thence N. 60° 55' E. 149.43 feet to the true point of beginning.

3. It is agreed that conveyances of Parcels A, B and C, hereinbefore referred to, shall be made subject to the following reservation:

"The grantors hereby except and reserve unto themselves, their heirs, executors, administrators, successors and assigns, the perpetual right to construct, maintain and use a roadway, or roadways over

and across, but not longitudinal to, said Parcels A, B and C in such location or locations as may be deemed advisable by the grantors, with the right to construct, maintain and use sanitary sewers, storm drains, water and gas pipe lines, telegraph and telephone pole lines, and pole lines for the transmission of light and power over and along said roadway or roadways, together with the right to dedicate said roadway or roadways for public use; provided, however, that such roadway, roadways and said sanitary sewers, storm drains, water and gas pipe lines, telegraph and telephone pole lines and pole lines for the transmission of light and power shall be so constructed, maintained and operated as not to interfere with the grantee's tracks to be located upon said Parcels A, B and C, nor with the maintenance, use or operation thereof."

4. Parties of the second part shall, co-incident with the execution of this agreement and delivery of conveyances to Parcels A, B and C, execute separate agreements with the party of the first part for the construction of industry spur tracks, in the approximate locations as indicated by green and yellow lines on "Exhibit A". Said industry track agreements shall, among other things, provide:

(a) First party, at its own cost, shall construct and maintain and shall own those portions of in-

dustry spur tracks between switch points and fee right of way line.

(b) First party shall construct, at expense of each of the parties of the second part, and at its own expense shall maintain, those portions of the industry spurs beyond first party's fee right of way line. Trackage beyond fee right of way line shall be owned by respective parties of the second part.

(c) Each of the parties of the second part shall, upon date of execution of agreement covering construction of industry spur tracks, deposit with first party, the estimated cost of constructing portion of tracks beyond the first party's fee right of way.

5. Upon delivery to the party of the first part of:

(a) This agreement executed by the parties of the second part;

(b) Industry track agreements executed by the parties of the second part, together with deposits to cover estimated cost of constructing said tracks;

(c) Deed of conveyance and guarantee of title covering fee to right of way for industrial lead track, and easements covering rights of way for industrial spur tracks;

party of the first part shall construct, maintain and operate, at its sole cost and expense, an industrial lead track upon and along the premises described in Parcel A to serve the premises outlined by pink lines on "Exhibit A".

Said industrial lead track shall be used to serve the premises of the parties of the second part, and such other industries as may now or hereafter be located thereon or adjacent thereto, requiring industrial spur or side track service, provided, however, that before any such industrial or side tracks are constructed any party desiring the same shall execute the first party's standard form of industry track agreement.

6. This agreement shall imure to the benefit of and be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in triplicate the day and year first hereinabove written.

LOS ANGELES & SALT LAKE RAILROAD COMPANY,

Witness: M L Hayworth

By W M Jeffers
President.

Attest:
C. B. Wauthan
Secretary.

RUETHER-GRAHAM FEED CO., LTD.,

Witness: W. H. Johnson

By John Ruether
Its President.

Attest: Ted Tunnicliff
Secretary.

Witness: A. F. Rountree

Frank T. Hill

EXHIBIT "D"

EVIDENCE OF RAIL SERVICE BY THE
SOUTHERN PACIFIC AND UNION PACIFIC RAIL LINES.

-Original-
(For Industry)

C. S.
6-30 4,000

Form 2287

.....No..... Audit No. 8194 Cont. Dept. No. 17955-A

INDUSTRY TRACK CONTRACT

Parties. **THIS AGREEMENT**, made and entered into this 23rd day of January 1931, by and between LOS ANGELES & SALT LAKE RAILROAD COMPANY, a corporation of the State of Utah (hereinafter called "Railroad Company"), party of the first part and RUETHER-GRAHAM FEED CO., LTD., a California corporation with principal place of business at Walnut, California, (hereinafter called "Industry"), party of the second part, WITNESSETH:

Location. WHEREAS, the Industry desires the construction, maintenance and operation of an industry spur track - - - - - - - - - - - - - - - - - - (hereinafter referred to as "Track") 1105 feet in length, commencing at switch point marked "A" in the center line of the Railroad Company's proposed lead track and extending westerly to end of track marked "C", near Spadra, in Los Angeles County, California, in the location indicated by yellow and green lines between points marked A and C on the map hereto attached, marked "Exhibit A", identified as Industrial Engineer's Drawing No. 437 Rev. and hereby made a part hereof, which Track the Railroad Company is willing to construct, maintain and operate upon the terms and conditions hereinafter set forth;

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

Right of Way. Section 1. The Industry shall first procure and furnish without expense to the Railroad Company all public authority and permission and all right of way outside the limits of the property of the Railroad Company which are necessary for the construction, maintenance and operation of the Track.

Construction. Section 2. The Railroad Company shall construct, ★ at its own expense, so much of that portion of the Track between the switch point (marked A) and the ~~clearance point~~ fee right of way line (marked B) ~~as is located within its right of way,~~ being a distance of 135 feet as indicated by yellow line between points marked A and B on Exhibit A.

The Railroad Company shall construct, at the cost of the Industry, that portion of the Track lying beyond the ~~clearance point (or beyond the boundary line of the right of way of the Railroad Company, if the clearance point~~ falls outside said boundary line) as indicated by a fee green line between points marked B and C on Exhibit A.

The Industry shall also bear the cost of such incidental work (including changes in, or additions to, the Railroad Company's existing tracks and structures other than track changes connected with the turnout) as may be necessitated by the construction and operation of the Track.

Maintenance. The Railroad Company shall, at its own expense, maintain the Track, except such portion thereof (if any) as may be used for intraplant switching, which portion shall be maintained at the expense of the Industry.

In the construction of that portion of the track between the points B and C the Industry shall, at its sole cost and expense, furnish all necessary cross ties and ballast and do all necessary grading.

★ If the Industry is to bear initially the expense of the construction between the switch point and clearance point fill in the words "at the expense of the Industry subject to a refund as hereinafter provided". If the Railroad Company is to bear the expense, fill in the words "at its own expense".

Operation. Upon the completion of the construction of the Track the Railroad Company shall operate the same for the term of this agreement, subject to, and to the extent as contemplated by, lawful tariffs applicable thereto.

Deposit. Section 3. Before any construction is begun, the Industry shall deposit with the Railroad Company

★ (a) the sum of.....

dollars ($.....), being the estimated amount of the cost of the construction by the Railroad Company of that portion of the Track between the switch point and the clearance point within the right of way of the Railroad Company, which amount shall be refunded to the Industry at the rate of two dollars ($2.00) for each car of carload freight yielding road haul revenue to the Railroad Company delivered on or shipped from the Track during the period of three (3) years next ensuing after the date of completion of the Track unless the aggregate amount of such refund payments shall sooner equal the said amount, and

(b) the sum of..Nineteen Hundred Thirty and No/100 - - - - - -

dollars ($..1930.00...), being the estimated amount of that portion of the cost incident to the construction of the Track by the Railroad Company which the Industry is to bear as herein provided;

amounting in all to....Nineteen Hundred Thirty and No/100 - - - - - -

dollars ($...1930.00...). If the actual amount shall prove to be more or less than the estimated amount, the difference shall be promptly paid by the Industry or refunded by the Railroad Company as the case may be.

Payment of Bills. Bills for expense properly chargeable to the Industry, other than that for which the above mentioned deposit is made, shall be paid by the Industry within thirty (30) days after presentation by the Railroad Company.

Definition of Cost. Section 4. "Cost" for the purpose of this agreement shall be all assignable costs, plus 10% (except on value of second-hand material and amounts representing full tariff freight charges on material) to cover elements of expense not capable of exact ascertainment. Material shall be charged at its current value when and where used.

Expense for Privilege. Section 5. The Industry shall pay all compensation and assessments required at any time by any municipality, public authority, corporation, firm or person for the privilege of constructing, maintaining and operating the Track.

Ownership of Track. Section 6. The Railroad Company shall own all that portion of the Track located within the limits of its fe right of way and within the limits of any public streets and/or alleys where the strip of land occupied by the Track in such streets and/or alleys forms one continuous area with the right of way of the Railroad Company; but, upon the discontinuance of the use of the Track for handling shipments to and from the Industry, the Railroad Company shall pay to the Industry the then salvage value of the usable material originally paid for by the Industry contained in that part of the Track owned by the Railroad Company beyond the clearance point, less the cost of recovering it.

The portion of the Track to be owned by the Railroad Company is indicated by..yellow..line between points marked...A and B....on Exhibit A.

The remainder of the Track (if any) shall be owned by the Industry.

Right of Railroad Company to use. Section 7. The Railroad Company shall have the right to use the Track when not to the detriment of the Industry.

Clearances. Section 8. No building, platform or other structure shall be erected or maintained and no material or obstruction of any kind or character shall be placed, piled, stored, stacked or maintained closer than eight (8) feet six (6) inches to the center line of the Track; PROVIDED, however, that in the case of platforms not higher than four (4) feet above the top of the rail a minimum clearance of seven (7) feet three (3) inches from the center line of the Track will be permitted; and PROVIDED further that along and adjacent to, and for one car length beyond, all portions of the Track having a curvature greater than ten (10) degrees the clearances hereinbefore provided shall, with reference to platforms four (4) feet or less in height, be increased horizontally six (6) inches, and with reference to all buildings, platforms, structures and other obstructions greater than four (4) feet in height, shall be increased horizontally one (1) foot; and PROVIDED further that if by statute or order of competent public authority greater clearances shall be required than those provided for in this Section 8, then the Industry shall strictly comply with such statute or order. All doors, windows or gates shall be of the sliding type or shall open toward the inside of the building or enclosure when such building or enclosure is so located that the said doors, windows or gates if opening outward, would, when opened, impair the clearances in this section prescribed.

The Industry shall not locate or permit the location or erection of any beams, pipes, wires or other obstructions over or under the Track without the written consent of the Railroad Company.

Liability. Section 9. It is understood that the movement of railroad locomotives involves some risk of fire, and the Industry assumes all responsibility for and agrees to indemnify the Railroad Company against loss or damage to property of the Industry or to property upon its premises, regardless of the Railroad Company's negligence, arising from fire caused by locomotives operated by the Railroad Company on the Track, or in its vicinity, for the purpose of serving the Industry, except to the premises of the Railroad Company and to rolling stock belonging to the Railroad Company or to others, and to shipments in the course of transportation.

The Industry also agrees to indemnify and hold harmless the Railroad Company for loss, damage or injury from any act or omission of the Industry, its employees or agents, to the person or property of the parties hereto and their employees and agents, and to the person or property of any other person or corporation, while on or about the Track; and if any claim or liability other than from fire shall arise from the joint or concurring negligence of the parties hereto (or of any two or more of them if there be more than two), it shall be borne equally by the parties at fault.

Rearrangement of Track. Section 10. The Railroad Company may rearrange or reconstruct the Track or modify the elevation thereof whenever necessary or desirable in connection with the improvement of its property or changes in its tracks at or near the location of the Track, provided that the Industry shall continue to have similar trackage without additional cost to the Industry. In the event, however, that a rearrangement or reconstruction of the Track, or modification of the elevation thereof, is required by reason of or as a result of any law, ordinance or other public enactment or

---

★ Subdivision (a) is to be disregarded if it is provided in Section 2 that the Railroad Company shall construct at its expense that portion of the Track between the switch point and the clearance point.

regulation, or by reason of the happening of any contingency over which the Railroad Company has no control, then the Industry shall bear the cost of such rearrangement, reconstruction or modification. Nothing in this section contained shall in any way affect the right of the Railroad Company to terminate this agreement under the conditions set forth in subparagraph (c) of Section 11.

Termination. Section 11. The Railroad Company, after giving sixty (60) days' written notice to the Industry of its intention so to do, may terminate this agreement and take up and remove that portion of the Track owned by it, if

(a) the Industry ceases for a continuous period of one year the doing of business in an active and substantial way over the Track;

(b) the Industry shall fail to keep each and every obligation, condition and stipulation stated in or resulting under this agreement; or

(c) the Railroad Company is required by law, ordinance or police regulations, or changed conditions, to elevate or depress or otherwise change its tracks at or near the location of the Track, so as to make it impracticable, in the judgment of the Railroad Company, to continue the operation of the Track.

Assignment. Section 12. The Industry shall not assign this agreement or any interest therein without the written consent of the Railroad Company and for any departure in this respect, the Railroad Company may terminate this agreement.

Successors and Assigns. Section 13. Subject to the provisions of Section 12 hereof, this agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed in duplicate as of the date first herein written.

LOS ANGELES & SALT LAKE RAILROAD COMPANY,

Witness: M. L. Hogarth

By Wm Jeddeloh

Its Vice President.

RUETHER-CRAHAM FEED CO., LTD.,

Witness: W. H. Johnson

By John Ruether

Attest: Fred Grunwall

Its President.

Secretary.

LEGEND

Trackage to be owned by R. R. Co.
Trackage to be owned by Industry.
Easement Right of Way.
Fee Right of Way.

UNION PACIFIC SYSTEM
Los Angeles & Salt Lake Railroad Company
"Exhibit A"
To accompany agreement and showing location of trackage to serve
RUETHER - GRAHAM FEED CO., LTD.
MP 16.7 (Near Spadra) California

APPROVED:	APPROVED:	APPROVED:
Industrial Engineer	Gen. Superintendent	Chief Engineer

Office of Indus. Engr.,
Los Angeles, Calif.,
January 8th, 1931

Scale 1" - 200'
Dwg. No. 437 Rev.

EXHIBIT "E"

NOTICE OF PREPARATION FOR PROPOSED
RAIL SERVED PROJECT ON SUBJECT PARCELS

E

10707

010707

09/05/89
UNION PACIFIC RAILROAD
FRT. ON SOYA - 020715
*****$5,595.05

2000-00 5,595.05

RUMILIX
BENTON FEED YARD, INC.
P.O. BOX 410, WALNUT, CA 91789
TELE. 714-595-1411

BANK OF AMERICA NT & SA
WALNUT BRANCH 0782
P.O. BOX 300 WALNUT, CA 91789

16-66
1220

010707

PAY: FIVE THOUSAND FIVE HUNDRED NINETY-FIVE AND 5/100 DOLLARS

[redacted]

THE ORDER OF
UNION PACIFIC RAILROAD
DEPT. NUMBER 2913
SCF PASADENA, CA.
91051-2913

Bette S. Bookout

⑈010707⑈ ⑆122000661⑆ 07822⑈05179⑈

FORM 34868 REV. 12-86

08/30/89 :29 802--UNION PACIFIC RAILROAD CO.--802

ORIGINAL FREIGHT BILL (NOT GOOD FOR TRANSIT)

STOP

FREIGHT BILL NO.	CUSTOMER NO.	PAGE
20715	10811	1

EQUIPMENT INITIAL & NUMBER	RECEIVED TIME	DATE OF SHIPMENT	WAYBILL NUMBER
TATX 020715	05/17 18:52	04 25 89	20715

FLATCAR ID	CAR KIND	TOFC PLAN	LENGTH CU-FT	BILL OF LADING NO.
	T19			1509

PAYOR

BENTON ROY F FEED YARD L
P O BOX 410

WALNUT CA 91789

BILLED AT STB | ORIGIN | CITY | ST
9 CHICAGO IL

SHIPPER | CODE
AGRI-FINE CORP

DESTINATION | CITY | ST
9506 WALNUT CA

ROUTE
BN, KCITY SSW, CORSC SP, COLTN UP

CONSIGNEE | CODE
BENTON FEED 10811
WALNUT CA

PATTERN NUMBER	COMMODITY CODE NO.
221	2093990

TARIFF AUTHORITY
TCFB 03001J 011195

RATE/CODE CLERK
79 66

SPECIAL INSTRUCTIONS
WEIGHT AGREEMENT

NO PLACARD REQUIRED

PACKAGES	LADING DESCRIPTION	WEIGHT	RATE	FREIGHT	ADVANCES	PREPAID
1	T/COIL FOOTS AND SEDIMENTS ACCOUNT MUNICIPAL CONSTRUCTION AT SP TRACK SERVING BENTON FEED UNABLE TO SPOT CAR ON SP TRACK MOVE TO UNION PACIFIC AT WALNUT CA FOR DELVY R.J.CORTEZ R/A RATE 3.53 CWT 150000 MIN LBS. 7 DAY TRIP LEASE TARIFF TC-3001J ITEM 11195	158,500	353 ¢	5,595.05		
	TOTALS	158,500		5,595.05		

DIRECT RATE QUESTIONS TO:
G. MCDOUGAL EXTN 2431

DIRECT OTHER QUESTIONS TO:
V. FITZPATRICK EXTN 4874

REMIT TO
UNION PACIFIC RAILROAD
DEPT. NUMBER 2913
SCF PASADENA, CA 91051-2913

5,595.05
PAY THIS AMOUNT

ORIGINAL FREIGHT BILL

3983

FOR ASSISTANCE CALL TOLL FREE 1-800-392-7087 (IN MISSOURI) OR 1-800-325-7779 (ALL OTHERS)

FORM 15566C
REV. 11-86

C- 00724 UNION PACIFIC RAILROAD PAGE 1

ORIGINAL

Enclosed bills covering freight and other charges are payable under I.C.C. Regulations on or before 09/14/89 unless otherwise specified by contract.

STATEMENT NUMBER

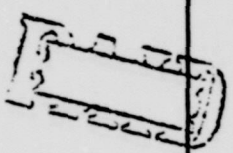
10811-89/08/30

To assure proper credit of your account REMIT WITH COPY OF THIS STATEMENT TO

BENTON ROY F FEED YARD L
P O BOX 410
WALNUT CA 91789

UNION PACIFIC RAILROAD
DEPT. NUMBER 2913
SCF PASADENA, CA 91051-2913

ACCT	REPORTING STATION		CAR REFERENCE		AMOUNT	REMARKS (If exception is taken to any item please quote tariff or contract reference)
Rev Acct	Audit Number	Freight Bill Number	Initial	Number		
1	9506	020715	TATX	20715	5,595.05	



STATEMENT NUMBER	PAY THIS AMOUNT	CHECK NUMBER	AMOUNT
20 10811-89/08/30	$5,595.05		

REMIT WITH COPY of THIS STATEMENT

We do not require "receipted" freight bills for claim purposes and they will be furnished only on request. Claims should be accompanied by original freight bill with reference to our statement number and date paid.
If receipted freight bill is required, attach original to returned statement and place X here. ☐

FOR ASSISTANCE CALL TOLL FREE 1-800-392-7087 (IN MISSOURI) OR 1-800-325-7779 (ALL OTHERS)

EXHIBIT "F"

UNION PACIFIC PROPOSAL TO PROVIDE
RAIL HAUL SERVICE

PLEASE REMIT TO

AMERICAN SHORTENING & OIL

P.O.BOX 898 HUNTINGTON BEACH, Ca. 92648 (714) 960-5423

BROKERAGE

INVOICE #: 9587

DATE: 7/31/87

TERMS: DUE ON RECEIPT OF PRODUCT

ORDER #: Verbal-Al Benton

DATE WANTED: 7/27/87

F.O.B.: Chicago,Ill.

Roy F. Benton Feed Yard
P.O. BOX 410
Walnut,CA. 91789

---

1 Tank car Acidulated Soy Corn Soapstock @ .1250/lb. $18,009.55

T.F.A. 94.2%

Gross wt.	Tare	Net
216800	71500	145300

Car#TATX20704

Pd Check 8/26/87 9/2/87

TOTAL DUE: $18,009.55

AGRI-FINE CORP.

2701 EAST 100th ST. • CHICAGO, IL 60617
(312) 978-5130
"IT'S OUR PRODUCT"

UNIFORM STRAIGHT BILL OF LADING — **Original — Not Negotiable** — Shipper's Company Agent's No. **№ 1108**

RECEIVED, subject to the classifications and tariffs in effect on the date of the issue of this Bill of Lading.

at CHICAGO, IL JULY ~~XXX~~ 14, 19 87 from AGRI-FINE CORP., 2701 E. 100TH

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

(Mail or street address of consignee — For purposes of notification o

Consigned to ROY F. BENTON FEED YARD

Destination U.P. MACHLIN SPUR, WALNUT, State of CA. County of

Route CWP&S-BRC-BN(KANSAS CITY)-UP

Delivering Carrier UP Car Initial TATX Car No. 20704

No. Packages	Description of Articles, Special Marks, and Exceptions		*Weight (Sub. to Cor.)	Class or Rate	Check Column
1	TANK CAR OIL FOOTS & SEDIMENTS				
	COMMODITY CODE: 2093990				
	7-DAY TRIP LEASE				
	(PROTECTED LOWEST RATE)				
	(BN PLEASE WEIGH IN ROUTE AND	GROSS	216800		
	NOTIFY AGRI-FINE CORP. WITH	TARE	71500		
	WEIGHTS)	NET	145300		
	(RECEIVED COPY OF WEIGHT CERTIFICATE 7-27-870				
	SEAL #: AGRI-FINE CORP. ~~XXXX~~ 1406				
	~~XXXX~~ 1407				

Subject to Section 7 of condition this shipment is to be delivered to consignee without recourse on consignor, the consignor shall sign following statement:
The carrier shall not make delivery this shipment without payment of fre and all other lawful charges.

(Signature of Consignor)

If charges are to be prepaid, write stamp here, "To be prepaid."

Received $ COLLECT
*to apply in prepayment of the charges the property described hereon.

Agent or Cashier

Per
(The signature here acknowledges only the amount prepaid.)

Charges Advanced:
$

*If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."
NOTE — Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property. The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding.

per

†"The fibre boxes used for this shipment conform to the specifications set forth in the box maker's certificate thereon, and all other requirements of Uniform Freight Classification."
†Shipper's imprint in lieu of stamp; not a part of bill of lading approved by the Interstate Commerce Commission.

RECEIVED
JUL 14
C. W. P. & S. RR. CO.
GENERAL OFFICE

AGRI-FINE CORP.
2701 E. 100TH ST. Shipper, Per

Agent, Per

Permanent post-office address of shipper.

(This Bill of Lading is to be signed by the shipper and agent of the carrier issuing same.)

X02 P15 P15 063653B003
O I H K200009 *** VIA C19 [illegible]
K200009 0020 1509 07/22/87 0459 ON N05
****TASK 05 Y200009 Y200009 GWP ON056 TP

TATX 20704 L GROSS-216800 TARE-0715 NET-145300
SNOW ALLOWANCE 00000 TARE WT IS STENCIL
WEIGHED AT KANCITY MO ON 07/19/87 W/R
END

RECD
JUL 27 87
AGRI-FI[illegible]E CORP.

PLEASE REMIT TO:

AMERICAN SHORTENING & OIL

P.O. BOX 2291, OAKHURST, CA 93644-2291 (209) 683-8472

U.P. 1-800-272-8777

BROKERAGE

INVOICE #: 8015

DATE: 4/26/89

TERMS: NET UPON RECEI

ROY. F. BENTON FEED YARD

P.O. BOX 410

Walnut, CA 91789

ORDER #: Al Benton

DATE WANTED 4/26/89

F.O.B.: Chicago, Ill.

---

1 Jumbo car Acid. soycorn Soapstock @.1425/lb. ~~$22,336.60~~ ~~$22,~~

~~6.60~~

PAID CK 10463 5/30/12

T.F.A. 93.95%

TOTAL DUE; $22,336.60

Gross wt.-229000 ; Tare wt.- 70500 ; Net wt.- 158500
Car # TATX 20715 via SP

[calculation: 158,500 lbs. × (93.95 / 95.00) × .1425/lb. = $22,336.60]

sold on 95.00 TFA basis

AGRI-FINE CORP.

2701 EAST 100th ST. • CHICAGO, IL 60617

(312) 978-5130

"IT'S OUR PRODUCT"

UNIFORM STRAIGHT BILL OF LADING — **Original — Not Negotiable** — Shipper's Company Agent's No. **№ 1509**

RECEIVED, subject to the classifications and tariffs in effect on the date of the issue of this Bill of Lading.

at CHICAGO, IL APRIL XX, 25, 19 89 from AGRI-FINE CORP., 2701 E. 100TH

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

(Mail or street address of consignee — For purposes of notification o

Consigned to ROY F. BENTON FEED YARD

Destination S.P. MACHIN SPUR, WALNUT, State of CA. County of

Route BN(KANSAS CITY)-SSW-SP

Delivering Carrier SP Car Initial TATX Car No. 20715

No. Packages	Description of Articles, Special Marks, and Exceptions		*Weight (Sub. to Cor.)	Class or Rate	Check Column
1	TANK CAR OIL ROOTS & SEDIMENTS				
	COMMODITY CODE: 2093990				
	TARIFF TC-3001-J				
	ITEM 11195				
	RATE $ 3.53 CWT	GROSS	229000		
	150,000 MIN. LBS.	TARE	70500		
	7 - DAY TRIP LEASE	NET	158500		
	SEAL #: AGRI-FINE CORP. 2236				
	2240				

Subject to Section 7 of conditions, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

(Signature of Consignor)

If charges are to be prepaid, write or stamp here, "To be prepaid."

Received $ COLLECT to apply in prepayment of the charges on the property described hereon.

Agent or Cashier

Per (The signature here acknowledges only the amount prepaid.)

Charges Advanced: $

*If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."

NOTE — Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property. The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding.

per

†"The fibre boxes used for this shipment conform to the specifications set forth in the box maker's certificate thereon, and all other requirements of Uniform Freight Classification."

‡Shipper's imprint in lieu of stamp; not a part of bill of lading approved by the Interstate Commerce Commission.

RECEIVED
APR 25 1989
C. W. P. & S. RR. CO.
GEN'L OFFICE

AGRI-FINE CORP.
2701 E. 100TH ST. Shipper, Per

Permanent post-office address of shipper.

CHGO., IL 60617

Agent, Per

(This Bill of Lading is to be signed by the shipper and agent of the carrier issuing same.)

Charge Gross Amount	
Discount	
Amount Payable	

Endorsement of this check acknowledges receipt in full for the above accounts

CENTRAL MANUFACTURING DISTRICT OFFICE
4490 Downey Road • Vernon, California

CROCKER-CITIZENS NATIONAL BANK

THIS CONTRIBUTION TO YOUR ECONOMY IS FROM THE CALIFORNIA BEEF INDUSTRY

57

Oct 10 19 66

20-1033 / 1223

Pay to the order of Southern Pacific Company $ 319 43

ROY F. BENTON FEED YARD 319 and 43 cts Dollars

ROY F. BENTON FEED YARD

⑆1223⑆1033⑆ 322 003259⑈ ⑈0000031943⑈

Description	Amount
SP 493287	

Charge Gross Amount
Discount
Amount Payable

Endorsement of this check acknowledges receipt in full for the above accounts

ROY F. BENTON FEED YARD
BOX 337, WALNUT, CALIF. 91789

No 8579

W.D.B.

Nov. 22 19 66

20-1033 / 1223

Pay to the order of Southern Pacific Company $ 413 93

ROY F. BENTON FEED YARD 413 and 93 cts Dollars

CENTRAL MANUFACTURING DISTRICT OFFICE
4490 Downey Road • Vernon, California

CROCKER-CITIZENS NATIONAL BANK

115 THIS CONTRIBUTION TO YOUR ECONOMY IS FROM THE CALIFORNIA BEEF INDUSTRY

ROY F. BENTON FEED YARD

⑆1223⑆1033⑆ 322 003259⑈ ⑈0000041393⑈

Description	Amount
109818	
SP 491037	

Charge Gross Amount
Discount
Amount Payable

Endorsement of this check acknowledges receipt in full for the above accounts

ROY F. BENTON FEED YARD
BOX 337, WALNUT, CALIF. 91789

No 8574

W.D.B.

Nov. 23 19 66

20-1033 / 1223

Pay to the order of Southern Pacific Company $ 462 44

ROY F. BENTON FEED YARD 462 and 44 cts Dollars

CENTRAL MANUFACTURING DISTRICT OFFICE
4490 Downey Road • Vernon, California

CROCKER-CITIZENS BANK

THIS CONTRIBUTION TO YOUR ECONOMY IS FROM THE CALIFORNIA BEEF INDUSTRY

4

ROY F. BENTON FEED YARD

⑆1223⑆1033⑆ 322 003259⑈ ⑈0000046244⑈

Description	Amount
Billing	
11/7 Demurrage	

Charge Gross Amount
Discount
Amount Payable

Endorsement of this check acknowledges receipt in full for the above accounts

ROY F. BENTON FEED YARD
BOX 337, WALNUT, CALIF. 91789

No 8538

Nov. 12 19 66

20-1033 / 1223

Pay to the order of Southern Pacific Co. $ 60 00

ROY F. BENTON FEED YARD 60 and 00 cts Dollars

PAY TO THE ORDER OF

Bank of America 3991

PACIFIC ELECTRIC RY.
P. N. GARRETT
SOUTHERN PACIFIC R. R.
SOUTHERN PACIFIC RY.
REGIONAL PAYMENT PLANS
LOS ANGELES

30 NOV 1961

PAY TO THE ORDER OF

Bank of America

PACIFIC ELECTRIC
P. N. GARRETT
SOUTHERN PACIFIC
SOUTHERN PACIFIC
REGIONAL PAYMENT PLANS
LOS ANGELES

PAY TO THE

Bank of

PACIFIC ELECT
P. N. GARI
SOUTHERN PAC
SOUTHERN PA
REGIONAL PAYM
LOS ANG

BY ENDORSEMENT THIS CHECK WHEN PAID IS ACCEPTED IN FULL PAYMENT OF THE FOLLOWING ACCOUNT

DATE		AMOUNT	

IF INCORRECT PLEASE RETURN NO RECEIPT NECESSARY

ROY F. BENTON FEED YARD
P. O. BOX 410
WALNUT, CALIFORNIA 91789

№ 33452

11/9 19 79 16-8/1220

PAY TO THE ORDER OF Union Pacific Railroad $100 00

REGISTERED ONE HUNDRED DOLS 00 CTS DOLLARS

CROCKER NATIONAL BANK
CENTRAL MANUFACTURING DISTRICT OFFICE
4480 DOWNEY RD., VERNON, CALIF. 90058

ROY F. BENTON FEED YARD

Bette S. Benton

⑈033452⑈ ⑆122000⑈8⑆

322003259⑈3333 ⑈00000100000

NOTICE OF PREPARATION

CITY OF INDUSTRY SOURCE REDUCTION AND RECYCLING ELEMENT,HOUSEHOLD HAZARDOUS WASTE ELEMENT AND INDUSTRY MATERIALS THE RECOVERY FACILITY (IMRF) PROJECT ENVIRONMENTAL IMPACT REPORT

TO: Mr. Rodney G. Anderson
Union Pacific Railroad Co.
5500 Ferguson Drive, Room D
Los Angeles, CA 90022

FROM: CITY OF INDUSTRY
15651 East Stafford Street
City of Industry

Attention: John D. Ballas

The City of Industry will be the Lead Agency for this project. The City of Industry will prepare, in conformance with section 15146 of the California Environmental Quality Act (CEQA): a program-level Environmental Impact Report (EIR) for the City of Industry's Source Reduction and Recycling Element (SRRE) and Household Hazardous Waste Element (HHWE); and a project-level analysis for the Industry materials Recycling Facility (IMRF). This notice is being sent to individuals who have requested all correspondence relative to the IMFR project and those responsible agencies that may issue discretionary permits for the project. We need to know the views of your agency as to the scope and content of the environmental information which is germane to your agency's statutory responsibilities in connection with the proposed project. Your agency will need to use the EIR prepared by our agency when considering your permit or other approval for the project.

The Project would involve adoption of policy documents (the SRRE and HHWE) relative to reducing municipal solid waste from the wastestream, including the construction of a facility (the IMRF) for the receipt and sorting of municipal solid waste, removal of recyclable materials, and disposal of residual waste by truck and/or by rail in local and/or remote landfills. The relationship between the SRRE/HHWE and the IMRF and the program-level and project-level aspects of the EIR are described as follows. A detailed project description and location is contained in the attached materials. A copy of the Initial Study is not attached, but is available for review at the City of Industry City Hall.

- A program-level EIR will be prepared assessing the potential environmental impacts associated with adopting the City of Industry's SRRE and HHWE. The

SRRE and HHWE are city-wide policy documents and identify how the City of Industry will meet AB 939 requirements, which includes the recommendation that the IMRF be constructed in the City of Industry.

- A project-level EIR will be prepared assessing the environmental impacts associated with the construction and operation of the IMRF.

Two previous Notices of Preparation (designated as state Clearinghouse No.'s 92061073 and 93081102) have been issued for the IMRF portion of this EIR. However, no previous environmental documents have been issued for the SRRE and HHWE. Comments recently received for the Notice of Preparation designated as state Clearinghouse Nº 93081102 and dated August 2, 1993 will be incorporated into the scoping of the EIR. Any additional comments on the IMRF, as well as any comments on the SRRE and HHWE, will also be considered in the scope of this document.

Due to time limits mandated by State law, your response must be sent at the earliest possible date, but *no later than 30 days* after receipt of this notice.

Please send your response to Mr. John Ballas at the address shown above. We will need the name for a contact person in your agency.

Date: October 28, 1993

Signature: _____
Chris Rope, City Manager

SENDER:

1. Complete items 1, and/or 2 for additional services.
2. Complete items 3, and 4a & b.
3. Print your name and address on the reverse of this form so that we can return this card to you.
4. Attach this form to the front of the mailpiece, or on the back if space does not permit.
5. Write "Return Receipt Requested" on the mailpiece below the article number.
6. The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

Mr. Rodney G. Anderson
Union Pacific Railroad Co.
5500 Ferguson Drive, Rm D
Los Angeles, CA 90022

4a. Article Number
P 220 441 036

4b. Service Type
☐ Registered ☐ Insured
☑ Certified ☐ COD
☐ Express Mail ☑ Return Receipt for Merchandise

7. Date of Delivery
NOV 3 1993

5. Signature (Addressee)

8. Addressee's Address (Only if requested and fee is paid)

6. Signature (Agent)

PS Form 3811, December 1991 *U.S. GPO: 1992—323-402 DOMESTIC RETURN RECEIPT

Thank you for using Return Receipt Service.

to your RETURN ADDRESS completed on the reverse side?

P 220 441 036

Receipt for Certified Mail

No Insurance Coverage Provided
Do not use for International Mail
(See Reverse)

UNITED STATES POSTAL SERVICE

Sent to: Rodney Anderson
Street and No.: UP Railroad
P.O., State and ZIP Code:

Postage	$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, and Addressee's Address	
TOTAL Postage & Fees	$
Postmark or Date	

PS Form 3800, June 1991

NOTICE OF PREPARATION

CITY OF INDUSTRY SOURCE REDUCTION AND RECYCLING ELEMENT,HOUSEHOLD HAZARDOUS WASTE ELEMENT AND INDUSTRY MATERIALS THE RECOVERY FACILITY(IMRF) PROJECT ENVIRONMENTAL IMPACT REPORT

TO: Regional Engineer
Southern Pacific Transportation Co.
1200 Corporate Center Drive
Monterey Park, CA 91754

FROM: CITY OF INDUSTRY
15651 East Stafford Street
City of Industry, California 91744

Attention: John D. Ballas

The City of Industry will be the Lead Agency for this project. The City of Industry will prepare, in conformance with section 15146 of the California Environmental Quality Act (CEQA): a program-level Environmental Impact Report (EIR) for the City of Industry's Source Reduction and Recycling Element (SRRE) and Household Hazardous Waste Element (HHWE); and a project-level analysis for the Industry materials Recycling Facility (IMRF). This notice is being sent to individuals who have requested all correspondence relative to the IMFR project and those responsible agencies that may issue discretionary permits for the project. We need to know the views of your agency as to the scope and content of the environmental information which is germane to your agency's statutory responsibilities in connection with the proposed project. Your agency will need to use the EIR prepared by our agency when considering your permit or other approval for the project.

The Project would involve adoption of policy documents (the SRRE and HHWE) relative to reducing municipal solid waste from the wastestream, including the construction of a facility (the IMRF) for the receipt and sorting of municipal solid waste, removal of recyclable materials, and disposal of residual waste by truck and/or by rail in local and/or remote landfills. The relationship between the SRRE/HHWE and the IMRF and the program-level and project-level aspects of the EIR are described as follows. A detailed project description and location is contained in the attached materials. A copy of the Initial Study is not attached, but is available for review at the City of Industry City Hall.

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SRRE and HHWE are city-wide policy documents and identify how the City of Industry will meet AB 939 requirements, which includes the recommendation that the IMRF be constructed in the City of Industry.

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Due to time limits mandated by State law, your response must be sent at the earliest possible date, but *no later than 30 days* after receipt of this notice.

Please send your response to Mr. John Ballas at the address shown above. We will need the name for a contact person in your agency.

Date: October 28, 1993

Signature: _____
Chris Rope, City Manager

P 220 441 013

Receipt for Certified Mail

No Insurance Coverage Provided
Do not use for International Mail
(See Reverse)

Sent to
Regional Engineer

Street and No.	
P.O., State and ZIP Code	
Postage	$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, and Addressee's Address	
TOTAL Postage & Fees	$
Postmark or Date	

PS Form 3800, June 1991

IMRF

Southern Pacific Transportation Company

1200 Corporate Center Drive • Monterey Park, California 91754

004

June 30, 1992

Mr. Chris R. Rope
City Manager
City of Industry
P.O. Box 3366
City of Industry, CA 91744-3366

Dear Mr. Rope:

We have received your Notice of Preparation for the Industry Materials Recovery Facility dated June 15, 1992.

Please be advised that future notices of this nature or any official notice from the City of Industry should be sent to the following address:

Regional Engineer
Southern Pacific Transportation Co.
1200 Corporate Center Drive
Monterey Park, CA 91754

We are no longer located at 610 South Main Street in Los Angeles.

Sincerely,

R. A. Branstetter
Regional Engineer

RAB:cla

c: Carl Burnett
John Ballas
Mike Kissell

NOTICE OF PREPARATION

CITY OF INDUSTRY SOURCE REDUCTION AND RECYCLING ELEMENT, HOUSEHOLD HAZARDOUS WASTE ELEMENT AND THE INDUSTRY MATERIALS RECOVERY FACILITY (IMRF) PROJECT ENVIRONMENTAL IMPACT REPORT

SRRE AND HHWE PROJECT LOCATION

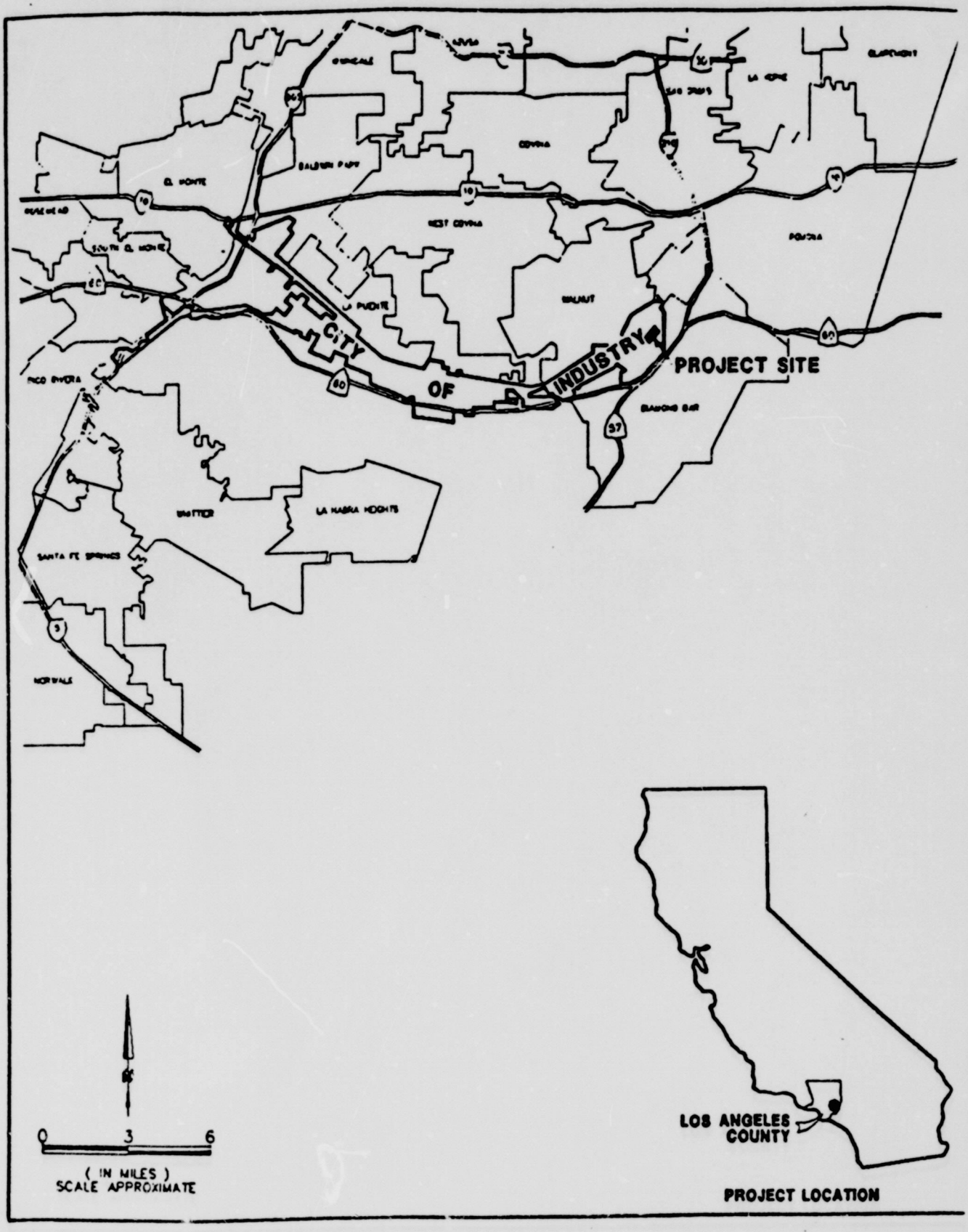
The City of Industry is an incorporated city located in the San Gabriel Valley in Los Angeles County, California. The City is served by several major freeways, and maintains rail service from the Southern Pacific and Union Pacific railroads. The City provides an employment base for approximately 60,000 residents living in the San Gabriel Valley. The City is noted for a significant amount of existing commercial and industrial developments.

Projects and programs recommended by the City of Industry's Source Reduction and Recycling Element (SRRE) and Household Hazardous Waste Element (HHWE) are predominantly within the City of Industry. However, some aspects of the SRRE and HHWE, such as the development of a Materials Recovery Facility (MRF), participating in a county-wide Household Hazardous Waste program, and the ultimate disposal of waste in a landfill will have impacts outside of the City of Industry's city limits. This notice addresses the specific projects and programs located both within and under the jurisdiction of the City of Industry.

SRRE AND HHWE PROJECT DESCRIPTION

The City of Industry is currently preparing its SRRE and HHWE, the potential environmental impacts of which will be addressed by the draft EIR. This will include an evaluation of the SRRE's and HHWE's impacts on: Land Use; Aesthetics/Light and Glare; Public Services and Utilities; Public Health and Safety; Traffic and Circulation; Air Quality; Noise; Natural Resources and Energy; Geology and Seismicity; Hydrology and Water Quality; Biological Resources; Cultural Resources; and Socioeconomics.

The principle purpose of the SRRE and HHWE is to identify the waste diversion goals mandated by AB 939 to achieve 25% waste diversion from landfills by 1995 and 50% diversion by the year 2000. To achieve AB 939 objectives, the City of Industry's SRRE and HHWE outlines a variety of projects which the City proposes to undertake. Some of these projects are small, costing little and lasting for a year or two; but some are very large and involve considerable effort. The most significant large project is the development of the IMRF. Figure 1 shows the location of the City of Industry and the approximate location of the proposed IMRF.



EBA

CITY OF INDUSTRY
MATERIAL RECOVERY AND TRANSFER FACILITY

VICINITY MAP

FIGURE 1

JULY 1993
338FVIC2.DWG

A summary of the existing conditions and future policies and programs contained in the City of Industry SRRE and HHWE is as follows:

Existing Conditions

Waste Generation - In 1990, the City of Industry generated 217,330 tons of municipal solid waste.

Waste Disposal - 134,320 tons of waste was disposed of by the City of Industry. All disposed waste was sent to either the Spadra, Puente Hills or BKK Landfills.

Waste Diversion - 83,010 tons of the City's total waste stream (38.19%) was diverted.

Future Conditions

Summarized below are the diversion programs selected to be implemented by the City. Program selection decisions are based on discussions with City personnel and the City's desire to provide technical assistance to commercial and industrial generators on a volunteer basis. The selected alternatives are the following:

SOURCE REDUCTION AND RECYCLING ELEMENT

Commercial Waste Evaluations and Waste Minimization

This program has been selected for implementation in the short-term planning period and will be directed and monitored by the City. The primary purpose of this alternative is to increase commercial awareness of the need for and the benefits of waste reduction programs and to assist businesses in designing and implementing programs to reduce waste generation. Waste evaluations during the short-term planning period will focus on large commercial and industrial waste generators. This program will be offered on a voluntary basis and will be funded by the City.

The quantity of waste which can be diverted through this alternative is uncertain; however, this alternative would serve to reinforce educational programs, act as a catalyst in the implementation of company source reduction and recycling programs, and demonstrate the City's commitment to waste diversion activities.

Non-Procurement Source Reduction Programs by the City Government

This program will be implemented in the short-term planning period and will target materials

generated from City Administrative Offices. This alternative will allow the City to set the example for local businesses and encourage the implementation of similar programs in the private sector. Source reduction techniques identified by the City to be implemented in the short term include the following:

- Re-use of office paper. Office paper collected for recycling near photocopying machines will be used again for internal notices or by third parties. Manila file folders and large envelopes will also be reused
- Posting and routing of inter-office memos to minimize the use of paper
- Use of white ledger paper for office memos to facilitate recycling
- Use of electronic mail for office memos
- Use of fax machines which utilize recyclable non-thermal paper
- Use of durable dishes and silverware rather than disposable products

City Government Procurement Policies

This program will be implemented in the short-term planning period. The purpose for this alternative is to reduce the quantity of waste generated through City operations and provide an example of source reduction programs to the private sector. The main focus of this alternative will be to reduce the quantity of waste generated by City offices and contract services work by establishing a procurement policy for materials or supplies which have greater durability, are reusable, have minimal packaging, and meet recycled material content specifications.

It is uncertain as to the quantity of waste which can potentially be diverted through this program; however, this alternative will serve to encourage source reduction and recycling activities in the private sector and provide for stronger markets for recycled materials.

RECYCLING COMPONENT

Commercial/Industrial Recycling Assistance Program

The recycling assistance program has been selected for implementation in the short term planning period to facilitate and document ongoing recycling activities by commercial and industrial businesses. Program activities will include technical assistance to the private sector in the development of source reduction and recycling programs, market development, and implementation of public education.

Mixed Waste Materials Recovery/Transfer Facility

The mixed waste processing alternative has been selected for implementation during the medium-term planning period to maximize diversion and ensure that long term waste disposal needs are satisfied. The facility is expected to be operational at approximately the same time local area landfills begin to reach capacity. The facility is also anticipated to be designed to process waste material from other jurisdictions in the region.

The City has proposed a site within its city limits which meets the criteria necessary for a solid waste recycling and transfer facility with access to rail transportation. The proposed site is located within an 80 acre parcel of land situated easterly of Grand Avenue between Southern Pacific and Union Pacific Railroad mainlines.

COMPOSTING COMPONENT

Due to the limited quality of yard waste within the jurisdiction, the City has not selected any alternative for the diversion of yard waste from the wastestream.

SPECIAL WASTE COMPONENT

Due to the limited quality of special waste disposed within the jurisdiction, the City has not selected any alternative for implementation.

EDUCATION AND PUBLIC IMPLEMENTATION COMPONENT

Commercial/Industrial Brochures and Manuals

The City of Industry will develop a manual and series of brochures outlining source reduction and recycling options for the commercial/industrial businesses. These materials will also define technical services provided by the City of Industry to facilitate the development of private in-house waste diversion programs. Brochures will include an explanation of AB 939 requirements, information about the necessity to conserve landfill space and natural resources, and an introduction of the concept of the IMRF facility. Information materials are to be distributed annually.

HOUSEHOLD HAZARDOUS WASTE ELEMENT

The City of Industry's HHWE has only one recommended project that would potentially impact the environment. This is participation in the Los Angeles County Household Hazardous Waste Facility, which will not be located in the City of Industry, but in some other Los Angeles area jurisdiction. The specific environmental impacts of a household hazardous waste facility will be addressed in detail by the host jurisdiction's (lead agency) HHWE environmental review and not by this document.

IMRF PROJECT LOCATION

The project site is located easterly of Grand Avenue and southerly of Valley Boulevard between the Southern Pacific (SP) and Union Pacific (UP) railroad tracks in the City of Industry, Los Angeles County, California. Figure 1 depicts the project site location in a regional context. Figures 2 and 3 depict the site locally. The relatively flat subject property is owned by the Industry Urban-Development Agency and is surrounded primarily by vacant lands, with exception of an existing livestock feed processing and storage facility immediately to the northeast. The site is comprised of one approximately 40-acre parcel previously known as the Benton property. An additional approximately 5-acre portion of the adjacent property (formerly the Machlin Feed lot), is also owned by the Agency and could be used, depending on which of the four potential designs will be selected to interface with rail service. This property is approximately half of the 80 acres identified in the SRRE as the potential IMRF site. The project is described below.

IMRF PROJECT DESCRIPTION

The City of Industry is proposing to construct the IMRF, the potential environmental impacts of which will be addressed by the draft EIR. This will include an evaluation of the IMRF's impacts on: Land Use; Aesthetics/Light and Glare; Public Services and Utilities; Public Health and Safety; Traffic and Circulation; Air Quality; Noise; Natural Resources and Energy; Geology and Seismicity; Hydrology and Water Quality; Biological Resources; Cultural Resources; and Socioeconomics.

The IMRF will consist of a multi-building solid waste recycling and transfer facility. With a maximum processing capacity of 5,700 tons per day (tpd), the IMRF will process source-separated recyclables and materials from selected commercial loads and will separate material from selected loads of mixed residential municipal solid waste (MSW). This capacity will serve the City of Industry, with a waste generation rate of 500 to 600 tons per day (tpd), and a service area anticipated to include surrounding cities and unincorporated areas. About 1,000 tpd may be sent to the IMRF from other transfer facilities in the region. The exterior storage area for rail cars will utilize one of the following three possible options:

> *Option A* (see Figure 2) would have a total track length of about 12,000 feet and involve four sets of parallel tracks each about 3,000 feet long. Empty rail cars will be held on these tracks until individual waste containers, which will be filled inside the processing building, are loaded onto the rail cars. The tracks would extend from the vicinity of Grand Avenue for about 3,000 feet northeastward. This option would use a 120 foot-wide, approximately 1,500 foot-long portion of the Machlin site extending from the project site immediately adjacent and northwest of the UP Railroad right-of-way.

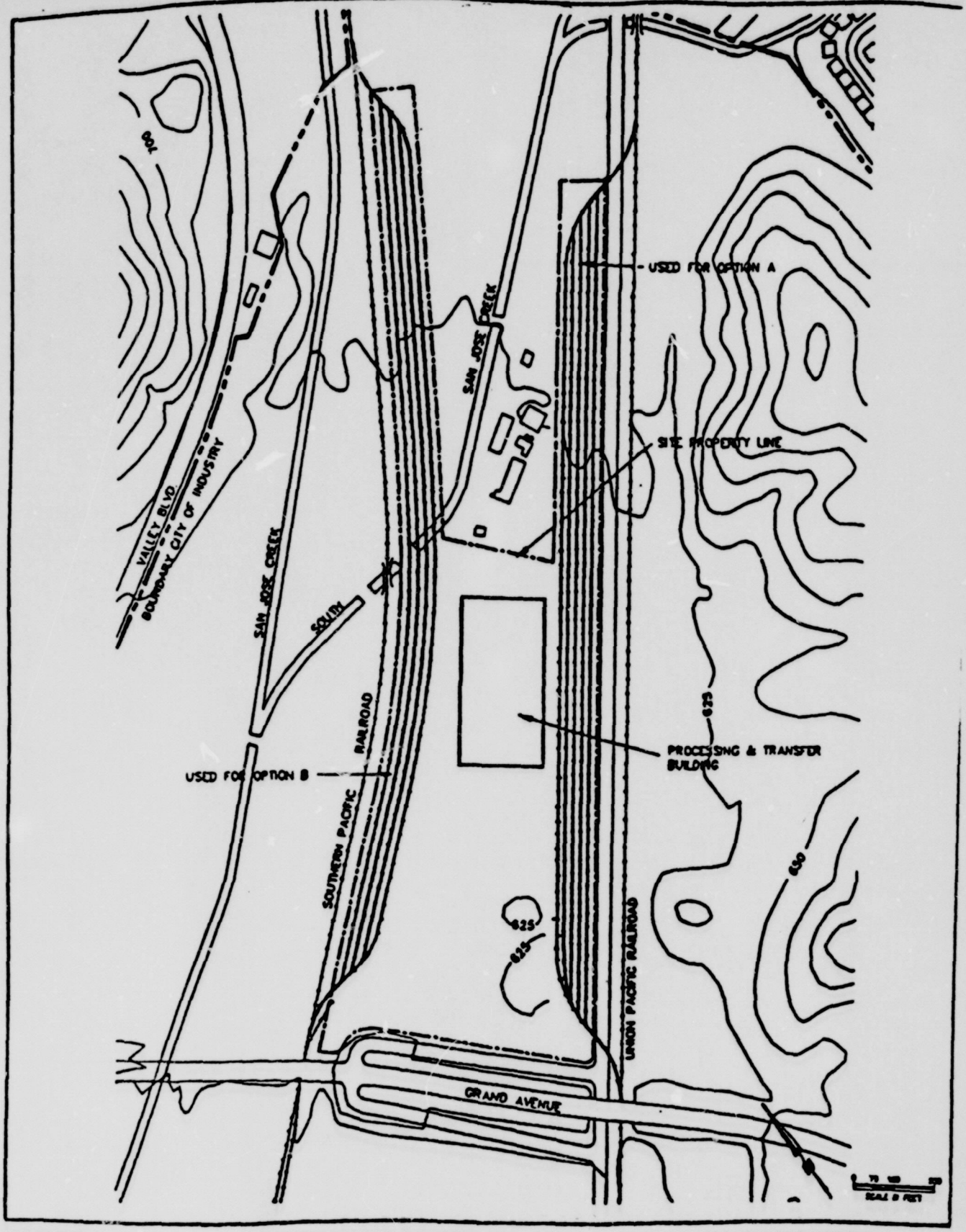
Option B (see Figure 2) would be similar to Option A, using the SP Railroad, and would involve a similar size portion of the Machlin property immediately adjacent and southeast of the SP Railroad right-of-way.

Option C (see Figure 3) would involve positioning empty rail cars with waste containers on the UP Railroad right-of-way for up to 6,500 feet northeast of the site. Empty cars would then be moved onto the site to be filled and covered in the waste processing building. Filled rail cars would be returned to the existing UP Railroad right-of-way for temporary storage on up to 6,500 feet of track extending southwest from the project site under the existing Grand Avenue bridge.

Option D (see Figure 3) would be similar to Option C, using the SP Railroad on the northwest side of the property.

The facility is expected to be operational at approximately the same time that local area landfills begin to reach capacity and closure. It is anticipated to have an indefinite life-span.

The expected service area includes yet to be determined cities and unincorporated areas within the San Gabriel Valley. The combined population of this area is approximately 1,208,000 persons (1990 US Census). It is expected that existing haulers of MSW, which now use transfer stations, material recovery facilities, material transformation facilities, and sanitary landfills, will continue to service these areas, and that many will deliver collected MSW directly to the IMRF.



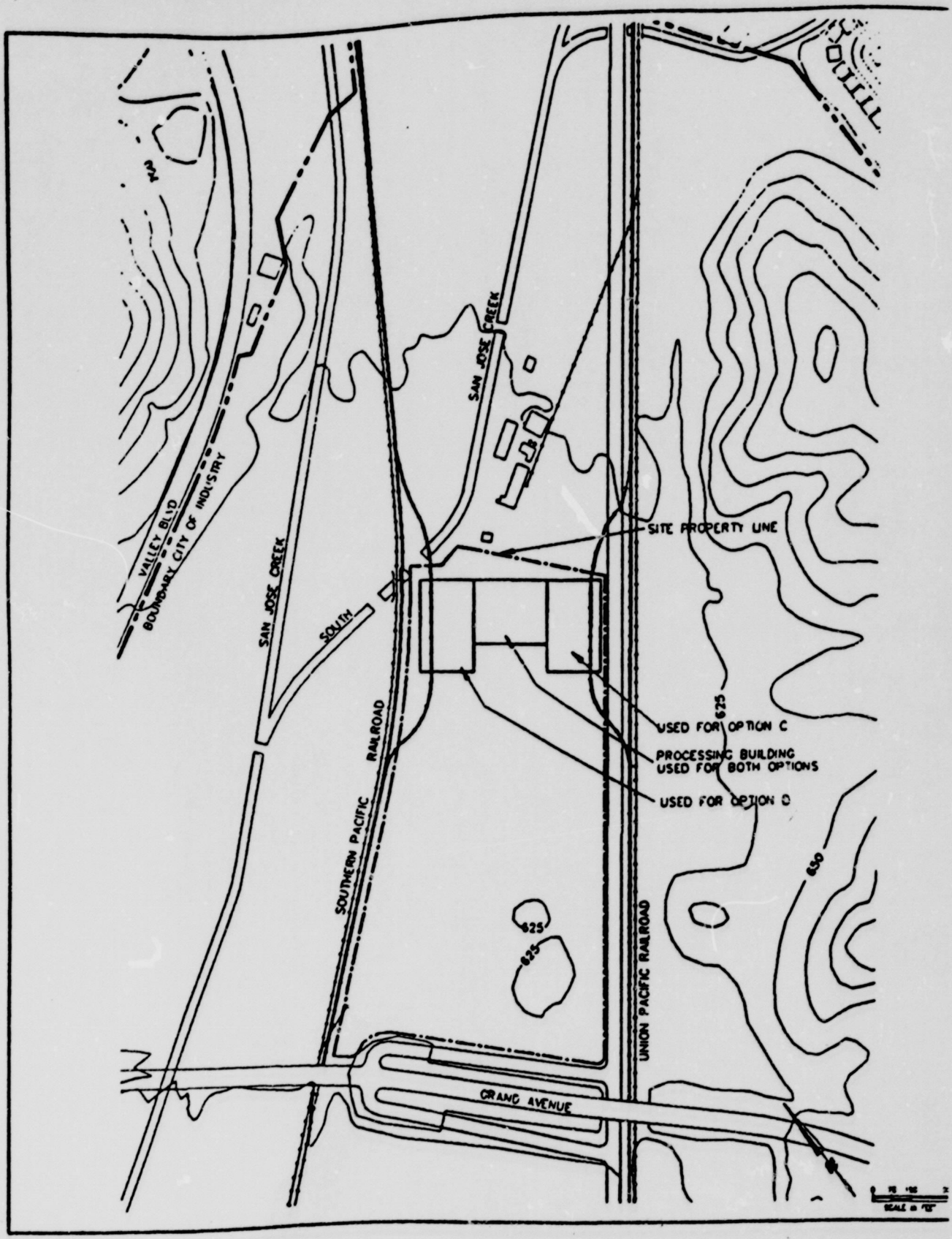
EBA

CITY OF INDUSTRY

PRELIMINARY SITE MAP
OPTIONS A & B

FIGURE
2

JULY 1993
3381276C DWG



EBA

CITY OF INDUSTRY

PRELIMINARY SITE MAP
OPTIONS C & D

FIGURE

3

CITY OF INDUSTRY

Incorporated June 18, 1957

October 25, 1994

Mr. David Gavrich
Western Regional Manager
East Carbon Development Corporation
220 Montgomery Street, Suite 1200
San Francisco, California 94104

SUBJECT: RAIL HAUL PROPOSAL

Dear David:

In March of 1992, the East Carbon Development Corporation (ECDC) together with the Union Pacific Railroad (UPRR) submitted a written proposal to the City of Industry for rail haul/disposal services for the proposed Industry Materials Recovery Facility (IMRF). Your proposal is now approximately two years old.

The City is still very interested in the railhaul capabilities of the UPRR with ultimate disposal at the ECDC landfill in East Carbon County, Utah. Please take a moment to update your proposal to reflect any changes in your assumptions which may have occurred since 1992.

Sincerely,

John Ballas

John D. Ballas
City Engineer

JDB:kat
xc: Chris Rope, City Manager

C:\Gravich.Ltr

NOV 15 1994

Chip Clements - Fax copy

ECDC
ENVIRONMENTAL, L.C.

220 Montgomery Street, Suite 1200
San Francisco, California 94104
Telephone 415-421-2044
Facsimile 415-421-1462

October 28, 1994

Mr. Chris Rope
City Manager
City of Industry
P.O. Box 3366
City of Industry, CA 91744

Dear Mr. Rope:

Union Pacific Railroad and ECDC Environmental have developed this proposal to jointly work with the City of Industry to implement an efficient and cost-effective railhaul project.

The cornerstone of our proposal is the fully-permitted, state-of-the-art ECDC railhaul landfill which has been operating in Utah since 1992. The landfill has 3.5 miles of rail into the site and is accessible from the Union Pacific track located directly on your proposed MRF/Transfer facility site.

We propose to work closely with your MRF facility design team to integrate the most efficient rail loading system at your City of Industry site. We have attached a recommended conceptual site plan which shows how the loading operation might integrate with your MRF/Transfer facility.

Against that background, we believe the City of Industry has an excellent opportunity to implement a premier railhaul project. We also believe the Union Pacific-ECDC proposal has the following advantages :

1. We are fully-permitted and operating with 300 million cubic yards of state-of-the-art railhaul landfill capacity. Our project is real.

2. Union Pacific's track located on your site will allow the City to ship maximum payloads from the transfer station without DOT overweight problems. This will save the project substantial dollars.

3. The fact that Utah is more distant than other proposed projects is not a major cost factor; several other factors make the Union Pacific-ECDC proposal more economical.

The Proposed System Options

The proposed Union Pacific-ECDC Railhaul System for the City of Industry is designed to handle at least 4200 tons per day of non-hazardous solid waste. After appropriate recycling at the City of Industry MRF/Transfer Facility, residual waste may be handled in one of two ways: (1) top-loaded from the transfer station floor into 48-foot containers on truck trailers waiting in the tunnel below; or (2) pushed into backhaul coal hopper cars waiting in the transfer tunnel below. Each of the two options is discussed below.

Option #1 - Use of Containers:

Under the container option, tractors will shuttle loaded containers out of the transfer tunnel to the adjacent Union Pacific track. At the U.P. loading area, two or three spur tracks paralleling the current U.P. mainline will be dedicated to the project. A container crane with rubber tires will straddle the loading tracks. The shuttle tractor with container will drive under the crane which will lift the full container from the chassis and place it on a waiting rail car. The crane will then remove an empty container from the waiting train of empties and load it onto the chassis. The tractor with empty container will then return to the transfer tunnel.

The total time for a container to be loaded with waste in the transfer tunnel, shuttled to the crane, lifted onto the train, and returned to the transfer station with an empty container is projected to be 12 minutes for the full cycle. Two or three tractors should be sufficient to handle the entire container shuttle operation. The crane and rail loading area will also be designed to handle containers arriving from "satellite" transfer stations throughout the L.A. area. The hours of operation to accept these transfer loads can be set to coincide with off-peak traffic hours.

Although we do not plan to solidify our rail loading design until we coordinate with your MRF/Transfer Facility design team, based on the size and configuration of the site, we have developed a preliminary rail loading scenario. Each of two parallel spur tracks at U.P.'s rail loading area will accommodate at least 44 double-stack rail cars with 88 containers holding a minimum of 2100 tons of solid waste per track or a total of at least 4200 tons. Each train will leave the City of Industry and arrive at the landfill two days later. At any given time of the week, a unit train will be loading at the City of Industry site, a unit train will be unloading at the ECDC landfill, and a unit train will be in transit to or from the City of Industry. Three unit trains of rail cars and containers will be utilized for this project, in addition to 88 spare containers in both Utah and the City of Industry.

Option #2 - Use of Backhaul Coal Trains:

In 1993, Union Pacific transported millions of tons of coal from near the ECDC landfill in Utah to destinations in Southern California. Virtually all of the coal hopper cars returned empty from California. This unused capacity in rail cars may be a major opportunity for the proposed City of Industry project. Not only can the City of Industry benefit from cost savings with this efficient use of backhaul capacity, but the project can also enhance the environment through a reduction in fuel usage and air emissions.

Under the coal train option, regularly scheduled unit trains of hopper cars will be routed from their coal drop-off points to the City of Industry for loading at the MRF/transfer station. Each coal train will have 84-88 cars, with a 148 cubic yards of capacity in each car. Each rail car will hold approximately 50 tons of residual MSW. Thus, each train will hold between 4200-4400 tons. The empty train will arrive on U.P.'s main line and will be switched onto a long siding located on the MRF facility side of the main line. The siding will be sized so as to accommodate an entire length of train on either side of the MRF, allowing the full train to be pulled through the tunnel beneath the transfer floor for loading. Residual waste will be pushed by loader from the transfer floor into the waiting rail cars. Each of the cars will be covered to prevent odors and vectors. Once the last car of the train is loaded, the train will depart for ECDC, where it will arrive approximately two days later.

The rail loading options outlined above will apply once your MRF/Transfer facility is in full operation. For the early years of the facility operation, when you will likely be receiving lower daily tonnage of waste, U.P. and ECDC will work with you on a program to dispatch fewer rail cars of your waste.

We believe that the benefits of rail hauling solid waste from the City of Industry to ECDC are numerous. They relate to the environment, economics and long-term capacity for cities in the San Gabriel Valley. We briefly explore those benefits below.

<u>Environmental Benefits</u>

Currently, more than 16,000 tons per day of solid waste arrives at the Puente Hills and Spadra landfills in hundreds of trucks which originate from points throughout the L.A. Basin. Trucks arrive at these landfills from distant points in the basin, adding congestion to the roadways and emissions to the air. The proposed project will be the first step in developing a system which allocates either landfill space or rail transfer station capacity to every collector

in the Los Angeles metropolitan area. This will not only increase the capacity of the current disposal system but, more importantly, will create a much more efficient and more environmentally sound collection system throughout Los Angeles County. In contrast to thousands of trucks scurrying around the Basin searching for landfill space, the City of Industry will be able to provide nearby cities and their haulers with assured long-term recycling and disposal capacity. We believe this to be a much more efficient and less polluting way of collecting and transporting solid waste.

Regarding the environmental benefits of the ECDC landfill, the site is technically ideal for a landfill. The climate has annual "negative rainfall", whereby evaporation exceeds precipitation. This results in little, if any, leachate generation. The geology of the site is such that there is over 500 feet of clay and no potable groundwater below. Moreover, the landfill has been constructed with multiple liners (two synthetic and one additional clay), specified to meet the most stringent standards under the law. The site is one of the safest and most environmentally sound in the country.

Economic Benefits

As we all know, the future of landfill disposal costs in the L.A. area is uncertain. One thing, however, is fairly certain -- prices will not be going down. In fact, if the EPA and NSWMA national trends are correct, disposal costs could rise over the next 5-10 years at a steady 15-20% annual rate. ECDC and Union Pacific Railroad can structure an economic proposal to the City of Industry which will offer long-term disposal capacity at a cost which should be politically attractive and very competitive over the life of the agreement.

We can offer the City a total rail transport and disposal first year cost that can be extremely competitive (depending on the type of early year discounting required, as well as the tonnage from your project), and index that price for as long as 30 years to allow you to offer participating cities a predictable, long-term cost scenario. For the container option, that price can include shuttling containers from the transfer station and loading them onto rail cars. For both options, the price will include transporting via rail, all capital for rail cars and containers, disposing in our site, and all Utah state and local host fees and taxes. We would be happy to discuss a structure whereby we would discount the tip fees in early years and use a higher-than-inflation index for subsequent years. We believe that, when combined with the cost of the transfer operation, our proposal will represent very economical long-term disposal of residuals from your MRF.

Long-Term Capacity for Cities

One of the great benefits of our working together is that, unlike any other project, *today* we have all of the elements necessary to implement a premier project: the City is currently developing a recycling and rail transfer station at probably the best site in the L.A. Basin; Union Pacific has track in-place which runs from your site and feeds into our landfill; and ECDC has a fully-permitted and operational rail landfill with a very receptive host community and State. The State of Utah, the local county government, and the public have all been extremely supportive of what they believe to be a long-term generator of revenue and employment for local residents. In fact, the State has allocated to the project $40 million of Industrial Revenue Bonds (IRB's) for the purchase of capital equipment, a portion of which could be used for the City of Industry project.

We at Union Pacific Railroad and ECDC believe that, along with the City of Industry, we presently have the necessary components to create a very real project. Of course, it will require a concerted effort to market the project to cities in the San Gabriel Valley and to deal with the low landfill pricing of the L.A. Sanitation Districts. Nonetheless, we are committed to making this a reality.

We look forward to working with you on this important project.

Sincerely,

David A. Gavrich
ECDC Environmental, L.C.

Rodger Dolson
Union Pacific Railroad

SURFACE TRANSPORTATION BOARD
Washington, D.C.

Finance Docket No. 32760

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

NOTICE OF REQUEST FOR CONDITIONS

CERTIFICATE OF SERVICE

I hereby certify that this 27th day of March, 1996, I caused a copy foregoing document, to be served, by first class mail, postage pre-paid, on all of the parties of record in this proceeding, per attachment No. 1, pursuant to Decision No. 17 of the Surface Transportation Board.

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John D. Ballas, Agency Engineer

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Item No.

Page Count 9

Mar #555

62088

PPG Industries, Inc. One PPG Place Pittsburgh, Pennsylvania 15272 (412) 434-3628

Michael E. Petruccelli
Director
Distribution and Transportation
Chemicals Group

March 26, 1996

Vernon A. Williams, Secretary
Attn: Finance Docket 32760
Surface Transportation Board
1201 Constitution Avenue, N.W.
Washington D. C. 20423

Re: 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, SPSCL Corp. and The Denver and Rio Grande Western Railroad Company.

Dear Sir:

Enclosed please find the original and twenty (20) copies of Michael E. Petruccelli's verified statement , filed on behalf of PPG, under F. D. 32760 and the Certificate of Service to certify that the statement has been served on all parties of record.
Also the additional copies requested by Applicants counsel have been sent by expediated delivery.

Please receipt duplicate copy of this transmittal and return to above address in the enclosed self addressed envelope

Very truly yours,

M. E. Petruccelli
Director Distribution and Transportation
Chemicals
(412) 434-3628

BEFORE THE

SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760

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

CONTROL AND MERGER

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

VERIFIED STATEMENT OF

PPG INDUSTRIES, INC
ONE PPG PLACE
PITTSBURGH, PA 15272

BY: M. E. PETRUCCELLI
DIRECTOR OF DISTRIBUTION AND
TRANSPORTATION.

MARCH 26, 1996

VERIFIED STATEMENT

OF

MICHAEL E. PETRUCCELLI

My name is Michael E. Petruccelli. I am the Director of Distribution and Transportation Chemicals for PPG Industries Inc., One PPG Place, Pittsburgh, PA 15272 ("PPG") I have been employed by PPG for 31 years in various capacities, including 23 years in rail distribution of its products. My duties include responsibility for the rail, highway and water needs of PPG Chemicals throughout North America. I am authorized to make this statement on behalf of PPG.

PPG is a multi-division, multi plant corporation with manufacturing plants and other interests throughout much of the free world. In 1995 world wide sales were in excess of seven billion dollars, of which approximately 4.7 billion was generated in the United States. Worldwide in 1995, PPG had approximately 31,000 employees. PPG owns and leases approximately 2800 rail cars to transport various commodities including rail dependent commodities such as chlorine and vinyl chloride

As a major manufacturer and consumer of bulk chemicals, PPG is very dependent on competitive rail transportation services and costs. We are concerned that the pending acquisition of the Southern Pacific Railroad ("SP") by the Union Pacific Railroad ("UP"), including the agreement with the Burlington Northern/Santa Fe Railroad ("BNSF"), effectively eliminates competition in several key corridors.

While the merger may offer significant operating efficiencies to the railroads, the expectation that these benefits would accrue to customers is only a possibility if competition is preserved. Productivity and cost improvement are primarily driven by competition and are reflected in freight rates only when competition is present. Approval of the UP/SP merger without conditions creates a duopoly in the western part of the United States and eliminates genuine competition.

One of our major production facilities is located at Westlake, LA. Today this facility is jointly served by the SP and Kansas City Southern Railroad ("KCS") with the UP gaining access through reciprocal switching. If the merger is approved as proposed, PPG would have only two carriers providing service to the Westlake plant.

Presently we have three railroads providing such service. Thus competition would be reduced even though we would still have two carriers. There are several lanes in which we are able to negotiate with all three carriers to obtain competitive pricing and service. A major area of concern is shipments to the southeast moving over the New Orleans Gateway. PPG is able to maintain competition with all three carriers. However, because of the KCS's circuitous route the UP and SP provide the most effective competition. Combining the two carriers would obviously eliminate this.

Rather than resolve this competitive concern the trackage rights agreement between the UP and BNSF actually exacerbates it. Competition would be preserved by having the BNSF serve PPG's Westlake facility. However, we have been advised that because of the agreement the BNSF would not seek such access nor would the UP grant it.

This is but one example that trackage rights are no substitute for ownership since they are selectively controlled by the track owner. Trackage rights do not provide for access to shippers or receivers along the lines. In fact Mr. Grinstein prior to retiring from the BNSF stated "that trackage rights do not provide true competition".

Maintaining physical connections with other railroads or the establishment of reasonable proportional rates to junctions or gateways is one way to retain reasonable competition. A more effective solution to ensuring rail competition is for the Surface Transportation Board ("Board") to require divestiture of parallel lines in the Texas and Louisiana region and the SP eastern lines.

As part of the merger, PPG would ask the Board to give consideration to two similar issues that are of concern . The first is a PPG plant located at Bacon, TX, This facility is currently served by the Wichita, Tillman & Jackson Railway (Wichita, Tillman"). Service to our plant is restricted to an interchange with the UP even though the BNSF has a physical connection with the Wichita, Tillman. A similar situation exists at two of our customers located in Lebanon and Corvallis, Or. Lebanon is served by the Willamette Valley Railroad and Corvallis by the Willamette Pacific Railroad. To reach these two destinations, it is our understanding that the interchange is restricted to the SP, although a physical connection exists with the BNSF. PPG realizes that we are restricted to one carrier today. Approval of the merger would not change that. However, because of the merger, consideration should be given to require an interchange with both the UP and BNSF.

Shipments from and to Mexico could also be monopolized by the merged railroad. Both the SP and UP provide competitive service into Mexico. In conjunction with the Tex-Mex Railroad ("Tex-Mex") the SP provided a viable competitor to the UP at Laredo, TX. Approval of the merger would surely jeopardize the Tex-Mex's existence. PPG exports goods into Mexico, and is building a new facility in Mexico that could be exporting to the United States. It is imperative that competition be retained. We believe Tex-Mex should be granted authority to extend their operation to connect with other railroads. Further a physical interchange should be required and maintained between the Tex-Mex and the new railroad.

PPG feels that the Board has the duty and responsibility to preserve the competitive environment. The feasibility of divestiture of track segments to other carriers with competitive access, maintaining interchanges or proportional rates should be evaluated and where appropriate, required as conditional to approval of the merger.

Without imposing the conditions requested in PPG's statement and maintaining other competition as required by other rail users, the proposed UP/SP merger should be denied.

VERIFICATION

Michael E. Petruccelli , being duly sworn, deposes and says that he has read the foregoing Verified Statement, knows the contents thereof, and that the same are true and correct.

Michael E. Petruccelli

Subscribed and sworn to before me by

Michael E. Petruccelli this 22nd

day of March , 1996

Witness my hand and official seal.

My commission expires 4-8-96

Susan D. Harris
NOTARY PUBLIC

Notarial Seal
Susan D. Harris, Notary Public
Pittsburgh, Allegheny County
My Commission Expires April 8 1996
Member, Pennsylvania Association of Notaries

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the forgoing PPG's Industry, Inc, VERIFIED STATEMENT OF MICHAEL E. PETRUCCELLI, on all parties of record on the service list in this proceeding, Finance Docket No. 32760, and an original plus five copies on the Secretary of the Surface Transportation Board by first class mail, postage prepaid this 26th day of March 1996.

Michael E. Petruccelli.

Michael E. Petruccelli
Director Distribution and Transportation
Chemicals

Item No. _____

Page Count 1

Mar #559

62084

March 23,1996

Finance Docket 32760

The Honorable Vernon A. Williams
Secretary Surface Transportation Board
12th Street & Constitution Ave.
Washington D.C. 20423

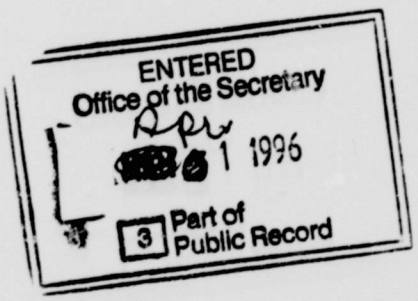
Dear Sir:

I am a retired railroad worker and am definitely againist a rail merger between the Union Pacific and Southern Railroads. It would eliminate proper rail competition and jobs. Working people promote economic growth of all communities.

When is big business and Wall St. going to realize they are killing the goose that lays the golden egg(the working employee) by eliminating economic growth with every job that is cut off to create profits for a few in the increase of stock shares.

Yours Truly,
Ernest F. Hoffmann
Ernest F.Hoffmann
2101 Magnolia Dr.,
Tyler,Texas 75701

cc:Railroad Commission of Texas
P.O. Box 12967
Austin,Texas 78711-2967



ADVISE OF ALL PROCEEDINGS

62083

Item No. .

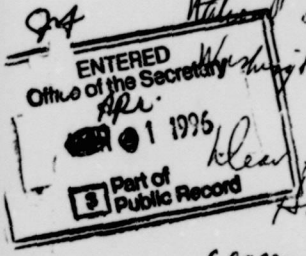
Page Count 1

Mar #560

OF ALL PROCEEDINGS

604 West 31st Avenue
Pine Bluff Arkansas 71603
March 1996

Secretary
Surface Transportation Board
Washington, D.C.



Re: FD#32760

Dear Sir.

Having waited till March to write this letter concerning the (Merger) Buy out of Southern Pacific by Union Pacific Rail.

After careful inquiry from several people and some rail customers I would like to ask that this merger proposed or buy out be denied at present.

The Reasons are simple it does away with the Competitive spirit of the law of Supply and demand. It also cause the state of Arkansas to become a one main line rail road or at least 98% that way.

If the UP supports one way traffic on Cotton Belt - North East to South west - why does the merger agreement want to abandon the Cotton Belt from Memphis Tenn west to Brinkley Ark, Why is the Tennisville Arkansas to Shreveport, La. branch not supported.

The work force in Pine Bluff does some of the best work on any rail road in the U.S.A.

By the way I have not worked for Rail road since 1940's but on a Retired employee of the Post Office.

Your attention to this matter is appreciated.

Thank You,

Sincerely,
John B. Conner

Copy to Sen Pryor
Sen Burpers
Bill Pollard
Ark Rail Assn
Conway, Ark 72032

62082

Item No. _____

Page Count 1

Mar #561

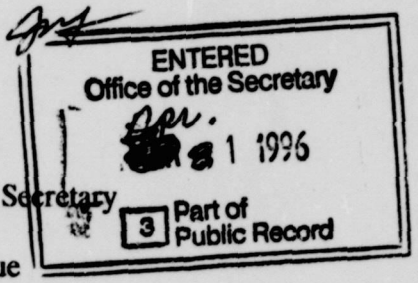
City of Bay Village

350 DOVER CENTER ROAD
BAY VILLAGE, OHIO 44140-2299

PHONE: 216/871-2200
FAX: 216/871-5751

FD 32760

March 25, 1996



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

Dear Secretary Williams:

We in Bay Village, Ohio are concerned that the proposed Union Pacific/Southern Pacific Railroad merger is not in the best interest of our community or that of Northeast Ohio. Since we have the current railroad extending the entire length of our community's border and it is a major taxpayer in the City of Bay Village, Ohio, we would feel much more comfortable if these eastern routes were controlled by eastern rail companies which, we feel, would act in our best interest.

A proposed leasing to another western railroad could be something that would eventually result in major changes and job losses and lesser use of the routes. A purchase by an eastern rail company such as Conrail would assist the Northeastern Ohio economies and make certain that they were adequately served.

Thank you for your consideration.

Very truly yours,

T. Richard Martin

T. Richard Martin, President
Bay Village City Council

ADVISE OF ALL
PROCEEDINGS

4 Tyler Morning Telegra
Editorial

Item No. _____

Page Count 2

Mar #568

Voices Of Texans Needed On Proposed Rail Deal

A proposed rail merger between the Union Pacific and Southern Pacific has been in the planning stages for some time, and a current campaign is urging Texans to be aware of the potential impact of such a change.

Texans for Competitive Rail is a coalition of companies and individuals who are concerned about the merger as proposed. The group has launched a campaign to inform Texans about the impact of the merger.

The Surface Transportation Board in Washington, D.C. is considering the merger.

A damaging effect on the economy would result if the merger succeeds as proposed, the competitive rail coalition contends. Upon approval of the change, Union Pacific would control 90 percent of the rail traffic between Mexico and Texas and 70 percent of the petrochemical rail shipments plus 88 percent of the plastics storage capacity in the Gulf Coast region, it is pointed out.

This would constitute an obvious threat to competition, fair rates and jobs.

Texas State Comptroller John Sharp said that Southern Pacific moves about a third of Texas chemicals and food products and about a quarter of Texas Agricultural Products. Union Pacific, he said, has an even greater market share. The merger would give one company tremendous control in those areas.

Union Pacific has acknowledged potential competitive problems the merger as proposed, and has offered its version of a "solution." That would be to grant what are called "trackage rights" to Burlington Northern-Santa Fe over segments of the merged system. In trackage rights agreements, one railroad owns all the tracks and allows another to rent them.

But the coalition said that this is no substitute for all-out competition, citing a quote from Gerald Grinstein, retired chairman of Burlington-Santa Fe in a recent issue of "Forbes Magazine:" "It's service with some disability. You've got track maintenance issues and dispatch issues. It's quite different from owning your own track."

When UP announced its plans to merge with SP, it acknowledged that rail competition would be reduced. Service and pricing options also would be reduced for thousands of rail shippers in Texas. This adds up to bad news for the state and its people, according to Texans for Competitive Rail.

"Texas needs another owning railroad, not another merger, to ensure effective rail competition," the coalition said in newspaper advertisements calling for Texans to send their opinions on the topic to the Surface Transportation Board. "An owning railroad that will provide quality service and investment is the best solution for shippers, communities and economic development officials."

There are two types of mergers, said Robert Early, a spokesman for the coalition, in a recent Tyler appearance. One type puts two geographic divisions together and the other goes along parallel lines. The proposed UP merger with SP involves parallel lines, which creates competitive problems.

Another owning railroad, such as Conrail, would offer a better alternative, according to the coalition. That option would keep competition alive and serve in the interest of fair rates and better service. Citizens are being urged to register their opinion on the merger proposal by writing: The Honorable Vernon A. Williams, Secretary; Surface Transportation Board, 12th Street & Constitution Avenue, Washington, DC 20423, with reference to "Ex Parte Docket 21760".

Public input on the issue is being taken until March 29, Early said. It is pointed out that the Surface Transportation Board has the responsibility to act in the best interests of the State of Texas, its citizens and the industry. The type of response it gets from concerned citizens on the proposed merger should carry significant weight.

62080
FD 32760

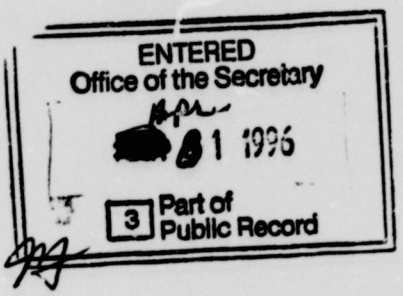
Finance Docket 32760

Honorable Vernon A. William
Surface Transportation Board
Washington, D. C. 20423

I hope you will not go for the merger, of the [illegible] and Southern Pacific . Texas is trying to keep, [illegible] competitive line, not to loose jobs and service. This merger will cause a stellate, for our State, and the people who are interested in the growth, Please remember us, when you vote on this merger.

Charles E. Gentry
500 E. Granville
Tyler, Texas 75702
(903) 592-0110

Charles E. Gentry



ADVISE OF ALL PROCEEDINGS

62079

Ashtabula Township Trustees

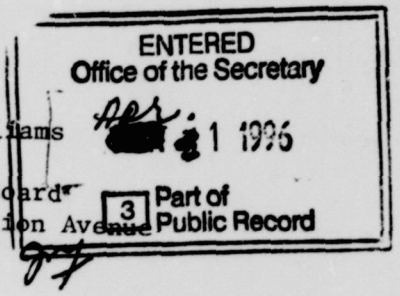
Item No. _____

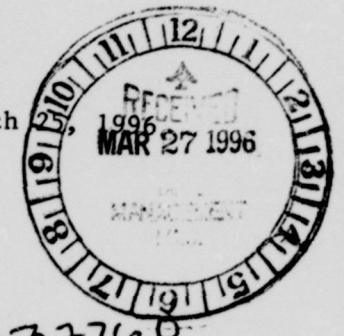
Page Count 1

MAR #567

Ashtabula, Ohio 44004 ÷ Dial 993-8351

RALPH McQUAIDE, Clerk





March 1996

FD 32760

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

Dear Secretary Williams:

We are concerned that the proposed Union Pacific-Southern Pacific railroad merger is not in the public interest in Northeast Ohio. We would be far better served if the UP-SP's eastern routes were, as part of the proposed merger, sold to Conrail, not leased to another western railroad.

Our reasoning is straightforward. First, our industrial companies, particularly in the booming polymers sector, need direct service to raw materials and markets in the Gulf "chemical coast" region and to Mexico. Second, we believe that an owner-carrier, such as Conrail, would have greater incentive to improve markets along the route. Third, by keeping Conrail strong, we ensure a variety of service options and strong price competition among the major railroads in our region, namely CSX, Norfolk and Southern and Conrail.

Finally, we are concerned that railroad "mega mergers" cost hard-working citizens jobs --- as they have in other industries. Conrail is a major Ohio employer, and their sucess is in the public interest here.

For those reasons, we would oppose the proposed merger unless it includes the Conrail purchase of the eastern lines of the old Southern Pacific. Only with the Conrail acquisition will Northeast Ohio economics be maximally served.

Thank you for your consideration.

Sincerely,

Ashtabula Township Trustees

Ralph McQuaide

Ralph McQuaide, Clerk
Ashtabula Township

ADVISE OF ALL

RECORDATION

STB FD 32760 3-27-96 D 62078

62078

Item No. _____

Page Count 2.
Mar #566

C.P.G.CO.

AREA CODE 312 226-7010

CONTINENTAL PAPER GRADING CO.

PAPER MILL SUPPLIES

1623 LUMBER ST.
CHICAGO, ILLINOIS 60616

MAR 27 1996

March 22, 1996
ENTERED
Office of the Secretary
Apr 1 1996
3 Part of Public Record

Mr. Vernon Williams
Surface Transportation Board
Room 3315
12th and Constitution, N.W.
Washington, D.C. 20423-0001

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

I have held the position of Transportation Manager at Continental Paper Grading for three years. Continental Paper Grading is a major national scrap paper broker. Our company ships more than 200 carloads of scrap paper annually from all over the country in to Mexico via Laredo, Texas.

Our company has been a major user of rail service for transportation between the United States and Mexico. Continental Paper Grading has a strong interest in competitive rail transportation between the United States and Mexico. The Laredo / Nuevo Laredo gateway is the primary route for shipments between the two countries for the majority of international traffic. This gateway possesses the strongest infrastructure of customs brokers. It also provides the shortest routing between major Mexican industrial and population centers and the Midwest and Eastern United States.

Our company depends on competition to keep prices down and to spur improvements in products and services. For many years Union Pacific and Southern Pacific have competed for our traffic via Laredo, resulting in substantial cost savings and a number of service innovations. TexMex has been Southern Pacific's partner in reaching Laredo in competition with Union Pacific, as Southern Pacific does not reach Laredo directly.

A merger of Union Pacific and Southern Pacific will seriously reduce, if no eliminate, our competitive alternatives via the Laredo gateway. Although these railroads have recently agreed to give certain trackage rights to the new Burlington Northern Santa Fe Railroad, we do not believe the BNSF, as the only other major rail system remaining in the Western United States, will be an effective competitive replacement for an independent Southern Pacific on this important route.

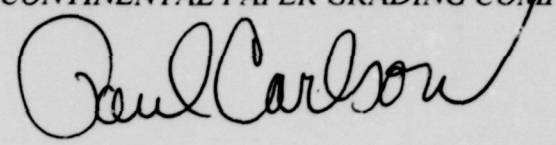
ADVISE OF ALL PROCEEDINGS

I understand there is an alternative that will preserve effective competition for my traffic. TexMes has indicated a willingness to connect with other carriers via trackage rights to provide efficient competitive routes. Trackage rights operating in such a way as to allow TexMex to be truly competitive are essential to maintain the competition at Laredo that would otherwise be lost in the merger. Thus I urge the Surface Transportation Board to correct this loss of competition by conditioning this merger with a grant of trackage rights via efficient routes between Corpus Christi and these connecting railroads.

Economical access to international trade routes should not be jeopardized when the future prosperity of both countries depends so strongly on international trade.

Yours truly,

CONTINENTAL PAPER GRADING COMPANY



Paul Carlson

cc: Texas Mexican Railway Co.

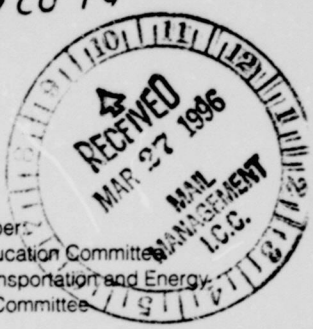
Item No. _____

Page Count 2

Mar # 564

62076

FD 32760



State Representative
BRAD YOUNG
8 Sage Lane
Lamar, Colorado 81052
Home: (719) 336-7967
Capitol: (303) 866-2940

Member:
Education Committee
Transportation and Energy Committee

COLORADO
HOUSE OF REPRESENTATIVES
STATE CAPITOL
DENVER
80203

BEFORE THE SURFACE TRANSPORTATION BOARD
ICC FINANCE DOCKET NO. 32760
UNION PACIFIC CORP., ET AL-CONTROL AND MERGER-SOUTHERN PACIFIC RAIL CORP., ET AL.

STATEMENT OF STATE REPRESENTATIVE BRADLEY J. YOUNG
OPPOSING THE UP--SP MERGER

March 26, 1996

I am Bradley J. Young, State Representative from House District 63, State of Colorado. I reside at 8 Sage Lane in Lamar, Colorado, 81052. My home phone number is (719)-336-7967, and my number at the State Capitol is (303)-866-2940. The district I represent include: Kiowa, Prowers, Cheyenne, Kit Carson, Yuma, Lincoln, Elbert Counties, and part of Arapahoe County.

I am writing this verified statement to oppose the merger of the UP and SP Railroads.

The Kiowa County commissioners and many residents of the county have written in detail the effect the abandonment of the railroad will have on their county. Not only will the loss of the service cause difficulty with the shipment of grain from the area, it will also cause additional deterioration of the highways due to additional truck traffic, and cause a significant reduction in their property tax base.

It is not the role of our legislature to dictate the private conduct of business within the state. My request is only that you consider the result of the merger on the lives of the people who live in the affected area, and that you do your utmost to make it possible to have the line operational in an economically sound manner. My family farmed in Kiowa County for many years. The railroad has always played an important role in the county.

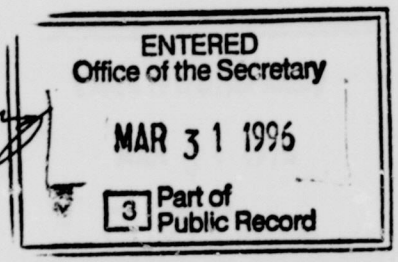
Other individuals with a much greater knowledge than mine have written statements concerning the merger. However, with a railroad of such importance to a segment of the state of Colorado, I would urge that you give consideration to maintaining a competitive railroad industry in southeastern Colorado.

Respectfully submitted,

Bradley J. Young

Bradley J. Young
State Representative
House District 63

BJY/gm



ADVISE OF ALL
PROCEEDINGS

VERIFICATION

STATE OF COLORADO

I, Bradley J. Young, declare that the foregoing statement is true and correct.

Respectfully Yours,

Bradley J. Young
Bradley J. Young, Representative

Helen Pitchford
Helen Pitchford, Notary

Yana M. Wells
Witness

Yana M. Wells
Witness

MY COMMISSION EXPIRES

Item No. _____

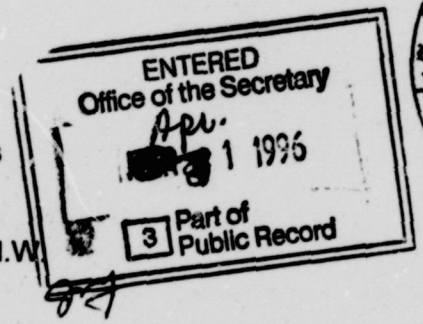
62075

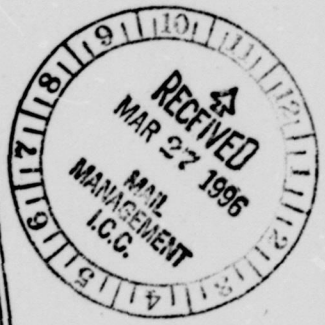
Page Count 2

Mar # 563

Box 3529, Portland, Oregon 97208
503/231-5000

March 22, 1996





Honorable Vernon A. Williams
Secretary
Surface Transportation Board
12th & Constitution Avenue, N.W.
Washington, DC 20423-0001

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

Dear Secretary Williams:

The Port of Portland supports the merger between Union Pacific (UP) and Southern Pacific (SP) lines, along with the agreement reached between Union Pacific and Burlington Northern Santa Fe Railroad (BNSF).

Port facilities rely on intermodal, motor, water, air and rail transportation to supply and support the region's international freight movements. Rail transportation accounts for over 60 percent of the nearly 13 million tons of cargo shipped yearly through Port of Portland facilities. Today, 26 percent of all cargo flowing through Portland is handled by rail. In the next 30 years, that share is expected to grow to more than 36 percent.

Because of the large international cargo volumes handled by rail carriers through Port facilities, we fully support UP's application to merge with SP. The Port also supports the agreement UP reached with BNSF to be imposed as a condition of the merger. We believe this merger will provide many shippers and customers improved access to markets, and the railroads with operational benefits that will enhance rail competition in the Pacific Northwest.

We appreciate the opportunity to express full support for the merger as outlined above.

L.L.

Sincerely,

Mike Thorne
Executive Director

ADVISE OF ALL PROCEEDINGS

R:\LEVIE\CVICC4.DOC

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 22nd day of March, 1996.

THE PORT OF PORTLAND

By: _____
Mike Thorne
Executive Director

STATE OF OREGON)
: ss.
County of Multnomah)

Signed and affirmed before me on March 22, 1996, by Mike Thorne, Executive Director of the Port of Portland.

_____
Notary Public for Oregon
My Commission Expires: 2-20-99

OFFICIAL SEAL
MARY E. SHINN
NOTARY PUBLIC - OREGON
COMMISSION NO.040747
MY COMMISSION EXPIRES FEB. 20, 1999

STB FD 32760 3-27-96 D 62074

Item No. _____

Page Count. 1

Mar #562

62074

COUNCIL

CITY OF GREEN

1900 Steese Road • P.O. Box 278
Greensburg, Ohio 44232-0278

Roger Gallagher
Member of Council

Office (216) 896-6604
Home (216) 896-0940
Fax (216) 896-6620

32760

ENTERED
Office of the Secretary
Apr 1 1996
3 Part of Public Record

RECEIVED
MAR 27 1996

March 20, 1996

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

Dear Secretary Williams;

I am concerned that the proposed Union Pacific - Southern Pacific railroad merger is not in the public interest in Northeast Ohio. We would be far better served if the UP-SP's eastern routes were, as part of the proposed merger, sold to Conrail, not leased to another western railroad.

My reasoning is straightforward. First, our industrial companies, particularly in the booming polymers sector, need direct service to raw materials and markets in the Gulf "chemical coast" region and to Mexico. Second, We believe that an owner-carrier, such as Conrail, would have greater incentives to improve markets along the route. Third, by keeping Conrail strong, we insure a variety of service options and strong price competition among the major railroads in our region, namely CSX, Norfolk and Southern, and Conrail.

Finally, and most important, we believe the Conrail proposal is in the best interest of the industrial, manufacturing and transportation workers of our region. It combines efficient transportation, economic development, and continued employment opportunities. These are key to the public interest.

For those reasons I would oppose the proposed merger unless it includes the Conrail purchase of the eastern lines of the old Southern Pacific. Only with the Conrail acquisition will Northeast Ohio economies be maximally served

Thank you for your consideration.

Sincerely

Roger L. Gallagher

Roger L. Gallagher , Council at large
Chair, InterGov. & Utilities Committee, City of Green, Ohio

ADVISE OF ALL PROCEEDINGS

Item No. _____

Page Count 1

Mar #554

62073

TO THE STB

DERAIL THE UP/SP MERGER

DEAR MR. SECRETARY:

I urge the Surface Transportation Board to reject the merger of the Union Pacific and Southern Pacific Railroads. It is far more anti-competitive than the Santa Fe-Southern Pacific merger rejected in 1988. A hundred years ago, America cracked down on railroads that robbed families, small businesses and consumers. Don't bring those monopolies back again!

As a worker whose job is threatened by this merger, I can tell you thousands of communities, consumers and shippers will be abused by corporate giants once rail competition is destroyed. Don't decimate jobs so that greedy owners can get richer. This merger is bad for our country. It should be rejected.

Name: William J. Dailey

Address: 824 Phillips St

Shamokin, Pa.

Emplove: Conrail Retired

62072

Item No.

Page Count 1

Mar # 553

VILLAGE OF KIRTLAND HILLS

8026 CHILLICOTHE ROAD, KIRTLAND HILLS, OHIO 44060 • (216) 974-3030

ENTERED
Office of the Secretary
Apr 1 1996
Part of
Public Record

RECEIVED
MAR 27 1996

March 1996

Honorable Vernon Williams
Secretary
Surface Transportation Board
12th Street and Constitution Ave.
Washington, D.C. 20423

FD 32760

Dear Secretary Williams:

As some one who represents the working families and consumers, I am concerned about the proposed Union Pacific-Southern Pacific merger. I do not believe this is in the best interest
of the people of Ohio for the following basic reasons:

A. I believe it would result in unnecessary job layoffs and job losses among the effected railroad workers.

b. It would further weaken Northeast Ohio's economy by weakening the eastern and midwestern railroad systems, and threatening other industrial, clerical, white and blue collar jobs throughout the area. It would definitely have a snowball effect.

C. By concentrating so many resources, it could or would negatively effect pricing and service levels, potentially hurting our area families in the workplace and at the market.

I therefore find that the merger is not in my our the public best interest, and ask that it be disallowed by the Surface Transportation Board.

Respectfully

Wayne Beidle

Wayne Beidle
Councilman

ADVISE OF ALL PROCEEDINGS

STB / FD. 32760 3-27-96 D .62071

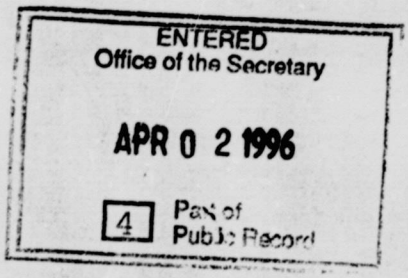
Item No. _____

Page Count 5

Mar #552

62071

PS



March 26, 1996

The Honorable Vernon A. Williams
Secretary Surface Transportation Board
Case Control Branch
12th St. and Constitution Ave. NW
Washington, DC 20423

Dear Sir:

Enclosed is my corrected statement concerning the Union Pacific - Southern Pacific merger. I still believe that there are many benefits to the merger of the Union Pacific and Southern Pacific, however, I also believe the issue of trackage rights needs to be re-addressed. My enclosed statement deals with this issue.

Sincerely,

Raymond L. Sanford

Raymond L. Sanford
Director of Transportation

encl.

ADVISE OF ALL PROCEEDINGS

P.O. Box 160 Columbia Falls, Montana 59912-0160 (406) 892-2141

PC PlumCreek

VERIFIED STATEMENT OF:

RAYMOND L. SANFORD

DIRECTOR OF TRANSPORTATION

PLUM CREEK MANUFACTURING, INC.

My name is Raymond L. Sanford. I am employed by Plum Creek Manufacturing, Inc., 500 12th Avenue West, Columbia Falls, Montana 59912 as their Director of Transportation. I am familiar with Plum Creek's facilities and transportation requirements having held my current position for almost ten years. Prior to my employment with Plum Creek, I was Corporate Traffic Manager for Slaughter Brothers Inc. of Dallas, Texas for ten years. I have thirty years experience in lumber traffic management. I am authorized to represent and empowered to speak on behalf of Plum Creek Manufacturing, Inc. before federal and state regulatory bodies.

Plum Creek Manufacturing, Inc. is one of the leading producers of timber products. We are the second largest owner of private timberland in the Pacific Northwest and one of the largest in the nation. Our eleven plants consist of five lumber mills, two plywood mills, one medium density fiberboard plant, one chip plant, and two remanufacturing facilities.

P.O. Box 160 Columbia Falls, Montana 59912-0160 (406) 892-2141

Plum Creek utilizes all modes of transportation in the movement of its lumber related products. We ship approximately seven thousand carloads per year to most parts of the United States with an annual expenditure in excess of $25 million. Our industry is extremely competitive and transportation plays a very important role in the profitable merchandising of our products.

On September 15, 1995, we filed a statement in support of the proposed Union Pacific/Southern Pacific merger. We have since learned that an entity controlled by the majority shareholder of Montana Rail Link has filed with the Surface Transportation Board an inconsistent or responsive application in which the entity will propose acquiring one of the Union Pacific or Southern Pacific routes between California and Kansas City (the "MRL Proposal"). I feel that, without (the "MRL proposal"), the UP/SP proposal eliminates rail competition in the Central Corridor of the United States. Even though the UP/SP have agreed to grant the BNSF trackage rights, there is no guarantee that they will operate over these lines. We need a carrier that will have to make an investment in order to operate over this corridor. This investment will guarantee operation. Competition can only be guaranteed if a third party operates over this route. We, therefore, condition our support of the merger on the sale of a Central Corridor route to an independent party that would have to provide competitive service in order to justify its investment in that line.

Plum Creek also supports the proposed acquisition of the Union Pacific line from Silver Bow, Montana, and Pocatello, Idaho. Looking at a rail map, one can see the importance of this acquisition to the state of Montana. It would give us rail access to Idaho and northern Utah. This line would also tie the present MRL system with the Central Corridor route at Ogden, Utah.

As we stated in our previous filing, the Union Pacific and Southern Pacific merger has many benefits. However, the MRL proposal insures that there will be competition in the Central Corridor.

Our company conditions its support of the UP/SP merger application on the sale of a Central Corridor route as described in the MRL Proposal.

Respectfully submitted

Raymond Stanford

Raymond L. Sanford
Director of Transportation
Plum Creek Manufacturing, Inc.
Columbia Falls, Montana 59912

VERIFICATION

STATE OF MONTANA)
) SS
COUNTY OF FLATHEAD)

Raymond L. Sanford, being duly sworn, deposes and says that he is Director of Transportation for Plum Creek Manufacturing Co. Inc.; that he has read the foregoing statement and knows the facts asserted therein, and that the same are true as stated.

Raymond L. Sanford

Raymond L. Sanford

SUBSCRIBED AND SWORN to before me this 26th day of March, 1996.

M T Holton

Notary Public

STB FD 32760 3-27-96 D 62068

Item No. 6

Page Count 1

Mar #549

62068

TO THE STB

DERAIL THE UP/SP MERGER

DEAR MR. SECRETARY:

I urge the Surface Transportation Board to reject the merger of the Union Pacific and Southern Pacific Railroads. It is far more anti-competitive than the Santa Fe Southern Pacific merger rejected in 1988. A hundred years ago, America cracked down on railroads that ripped off families, small businesses and consumers. Don't bring those monopolies back again!

As a worker whose job is threatened by this merger, I can tell you thousands of communities, consumers and shippers will be abused by corporate giants once rail competition is destroyed. Don't decimate jobs so that greedy owners can get richer. This merger is bad for our country. It should be rejected.

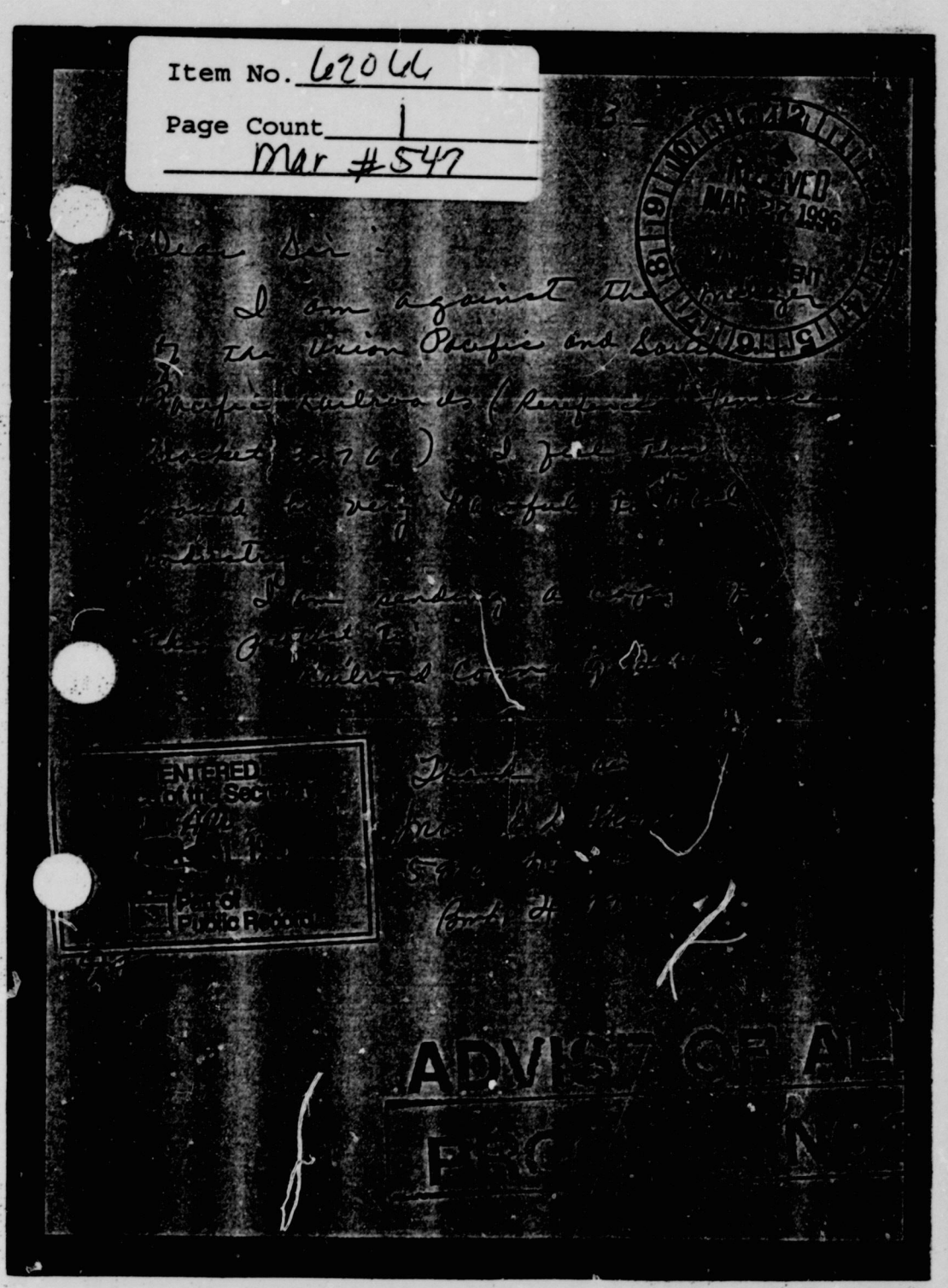
Name: DAVID L. PRITT

Address: 1st OEMLER CT. W

SAVANNAH, GA 31410

Employer: CSX Railroad

STB FD. 32760 3-27-96 D . 62066


Item No. 6206
Page Count 1
Mar #547
Dear Sir :
I am against the
of the Union Pacific and
Pacific railroads (
ENTERED
Public Reading

62065

Item No. ____

Page Count 1

Mar #546

March 21, 1996

The Honorable Vernon A. Williams, Secretary
Surface Transportation Board
12th and Constitution Avenue
Washington, DC 20423

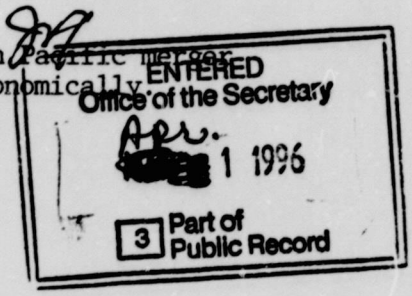
RE: FINANCE DOCKET 32760

Dear Mr. Williams:

I am opposed to the proposed Union Pacific and Southern Pacific merger.

As a casualty left on the battlefield of downsizing, a result of the Burlington Northern/Santa Fe merger, I know firsthand what will happen to railroad employees. Many will lose their jobs, and as people lose their jobs their way of living changes, which directly affects the economy.

In my opinion, should the Union Pacific/Southern Pacific merger succeed, the ultimate result will hurt Texas economically.



Sincerely,

Nancy Roberts

Nancy Roberts
P. O. Box 224
Teague, Texas 75860

c: Railroad Commission of Texas

ADVISE OF ALL PROCEEDINGS