November 18, 1996

Mr. Harold McNulty, Study Director
Surface Transportation Board
Section of Environmental Analysis
12th and Constitution Ave., N.W.
Washington, DC 20423

RE: Railroad Merger Environmental Mitigation Study Task Force

Dear Mr. McNulty:

This letter is in response to the Surface Transportation Board’s (STB) suggestion that the City of Reno consider the formation of a Railroad Merger Environmental Task Force to assist the Section of Environmental Analysis (SEA) with preparation of the Environmental Mitigation Study. The City of Reno supports maximizing public participation in any decision or program which will have an effect on the citizens of Reno. In order to facilitate the formation of an effective Task Force, the City has structured a working group composed of a cross-section of the community. The structure of this Task Force/Working Group is shown on the attached chart, with the City Manager’s office serving as the primary conduit for information flow between the Task Force and the SEA. As shown, the Task Force is composed of ten (10) primary participants representing a broad cross-section of the community and a Union Pacific Railroad representative. Each primary participant on the Task Force/Working Group will have several sub-groups providing important input which will be incorporated into the preparation of an adequate and acceptable full disclosure Environmental Mitigation Study.

The primary focus of the Task Force will be an integrated working group that is solution oriented. The mission of the Task Force/Working Group will be to ensure that all adverse impacts associated with the merger are mitigated to less than significant levels, and that mitigation proposals do not in and of themselves create additional adverse impacts. Technical expertise will be provided to the Task Force/Working Group by the Environmental and Engineering Consulting Teams retained by the City of Reno, which have participated in the
entirety of the merger process.

The City of Reno proposes that the Task Force/Working Group meet a minimum of two times per month due to the proposed scheduling/phasing of the Environmental Mitigation Study. Specific procedures and protocol for the Task Force/Working Group will be developed over the next week and forwarded to the SEA for concurrence. The first meeting of the Task Force/Working Group will be scheduled for late November of this year.

The City of Reno appreciates the opportunity to actively participate in the development of the Environmental Mitigation Study, and looks forward to the implementation of innovative solutions to reduce the merger related adverse impacts to less than significant levels.

Please contact me at your convenience should you have any questions or comments relating to formation of the Railroad Merger Environmental Task Force.

Sincerely,

Charles McNeely
City Manager

enclosure: Railroad Merger Environmental Task Force Chart

cc: Merri Belaustegui-Traficanti
    Barbara McKenzie
    Mark A. Demuth
Union Pacific/Southern Pacific Railroad Merger Environmental Compliance Program
<table>
<thead>
<tr>
<th>SENDER:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Complete Items 1 and/or 2 for additional services.</td>
</tr>
<tr>
<td>2. Complete Items 3, 4a, and 4b.</td>
</tr>
<tr>
<td>3. Print your name and address on the reverse of this form so that we can return this card to you.</td>
</tr>
<tr>
<td>4. Attach this form to the front of the mailing, or on the back if space does not permit.</td>
</tr>
<tr>
<td>5. Write &quot;Return Receipt Requested&quot; on the mailing below the article number.</td>
</tr>
<tr>
<td>6. The Return Receipt will show to whom the article was delivered and the date delivered.</td>
</tr>
<tr>
<td>I also wish to receive the following services (for an extra fee):</td>
</tr>
<tr>
<td>1. ☐ Addressee’s Address</td>
</tr>
<tr>
<td>2. ☐ Restricted Delivery</td>
</tr>
<tr>
<td>Consult postmaster for fee.</td>
</tr>
<tr>
<td>3. Article Addressed to:</td>
</tr>
<tr>
<td>Mr. Harold McNulty,</td>
</tr>
<tr>
<td>Study Director J.</td>
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<tr>
<td>Surface Transportation Board</td>
</tr>
<tr>
<td>14th and Constitution Ave.</td>
</tr>
<tr>
<td>N.W. Washington, DC 20423</td>
</tr>
<tr>
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</tr>
<tr>
<td>4b. Service Type</td>
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<td>☐ Registered</td>
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<td>☐ Express Mail</td>
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<tr>
<td>11/3/96</td>
</tr>
<tr>
<td>5. Received By: (Print Name)</td>
</tr>
<tr>
<td>Harold McNulty</td>
</tr>
<tr>
<td>6. Signature: (Addressee or Agent)</td>
</tr>
<tr>
<td>X Harold McNulty</td>
</tr>
<tr>
<td>8. Addressee’s Address (Only if requested and fee is paid)</td>
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<tr>
<td>Domestic Return Receipt</td>
</tr>
</tbody>
</table>

PS Form 3811, December 1994
UNITED STATES POSTAL SERVICE

Print your name, address, and ZIP Code in this box.

Barbara MacKay
CITY MANAGER'S OFFICE
CITY OF RENO
P. O. Box 1900
Reno, Nevada 89505
December 2, 1996

Elaine Kaiser, Chief
Surface Transportation Board
Section of Environmental Analysis
12th and Constitution Ave NW Room 3219
Washington DC 20423

RE: Letter of November 4, 1996

Dear Elaine:

The purpose of this letter is to document items the City of Reno is awaiting from the Surface Transportation Board's Section of Environmental Analysis (STB/SEA) to move the Environmental Mitigation Study forward. To that end, we request your response to the following items listed on the November 4, 1996, letter's attachment entitled UP/SP Merger Mitigation Studies Memorandum (pages 1 - 3):

Bullet 1 on page 1:

- List of Subcontractors and signed disclosures as outlined in Mr. Paul Lamboley letter to the STB/SEA dated November 22, 1996.

Bullet 2 on page 1:

- Plan for Public Meetings in Reno including dates and times.

Bullet 3 on page 1:

- Updated project schedule by month based on progress to date.
Bullet 4 on page 1:

- List of Assumptions and Methodologies from SEA and all contractors to be used for the *Environmental Mitigation Study*.

Bullet 5 on page 1 and Bullet 4 on page 2:

- Definition of Study Process for the following topics and assurance that SEA will consider comments and information pertaining to the following issues:

  Air Quality  
  Biological Resources  
  Cultural Resources  
  Hazardous Materials Transport  
  Land Use  
  Noise  
  Safety  
  Socioeconomics  
  Traffic  
  Water Quality

Bullet 2 on page 2:

- Complete copy of all consultation/correspondence with U.S. Fish and Wildlife Service related to endangered species.

Bullet 7 on page 3:

- Plan for local third-party independent Native American consultation including consultation to date.

Bullet 8 on page 3 and Bullet 3 on page 2:

- SEA's input on how systemwide mitigation measures will be implemented and effective in Reno, specifically:
3. 800 number for signal malfunctions.
4. 800 number for emergency response forces.
5. Development of hazardous material and emergency response plans.
7. Emergency response training program for communities.
10. Implementation plan for UP security forces in the Truckee Meadows.

Please contact me at your convenience should you have any questions or comments relating to these requests. The City of Reno looks forward to closely working with you and your staff/consultants on the *Environmental Mitigation Study*.

Sincerely,

Charles E. McNeely
City Manager

cc: Barbara McKenzie
    Merri Belaustegui-Traficanti
    Mark A. Demuth
    Paul Lamboley
December 2, 1996

Elaine Kaiser, Chief
Surface Transportation Board
Section of Environmental Analysis
12th and Constitution Ave NW Room 3219
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Ms. Elaine K. Kaiser  
Surface Transportation Board  
Section of Environmental Analysis  
December 2, 1996  
Page 2 of 3

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  - Biological Resources
  - Cultural Resources
  - Hazardous Materials Transport
  - Land Use
  - Noise
  - Safety
  - Socioeconomics
  - Traffic
  - Water Quality

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Ms. Elaine K. Kaiser  
Surface Transportation Board  
Section of Environmental Analysis  
December 2, 1996  
Page 3 of 3

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Sincerely,

Charles E. McNeely  
City Manager

cc: Barbara McKenzie  
    Merri Belaustegui-Traficanti  
    Mark A. Demuth  
    Paul Lamboley
Ms. Vicki Rutson  
Counsel  
Section of Environmental Analysis  
Surface Transportation Board  
12th & Constitution Avenue, N.W.  
Washington, DC 20423

Re: UP/SP Merger-Finance Docket No. 32760  
Section 106 Compliance

Dear Ms. Rutson:

I am enclosing a copy of a letter from McGinley Hart & Associates to De Leuw, Cather & Company which identifies a number of sites proposed for Section 106 mitigation measures. The letter raises a number of questions about the process and UP/SP’s obligation to fund Section 106 mitigation measures not identified as conditions in the Board’s decision approving the Application.

The following are issues of concern:

1) The letter identifies six bridges in Illinois subject to Section 106, whereas, the STB’s decision identifies one bridge on the De Camp-Edwardsville line and three bridges on the Barr-Girard line.

2) Neither the Ridgely Tower nor the Valley Yard Turntable is identified by the STB decision as subject to Section 106 mitigation.

3) The Avondale Yard Tower at Westbridge Junction is not identified by the STB decision as subject to Section 106 mitigation.

4) The letter of November 1, 1996 from the Colorado Historical Society to SEA indicates that SEA is of the opinion that the Towner-NA Junction Line is eligible for inclusion in the National Register. There is no discussion of this issue in the Board’s decision nor is Union Pacific aware of any subsequent documentation or other evidence supporting this assertion.
We would appreciate clarification of these issues so that the Section 106 process can be completed for appropriately designated historical resources that are affected by merger-related activities.

Very truly yours,

Thomas E. Greenland
Environmental Counsel
cc Paul McGinley
October 31, 1996

Mr. Stephen Brooks
Deputy Project Manager
De Leuw, Cather & Company
11320 Random Hills Road, Suite 100
Fairfax, VA 22030

Re: Mitigation Plan
Union Pacific / Southern Pacific Railroad Merger
STB / Section of Environmental Analysis
990

Dear Steve:

We are pleased to submit this cost proposal to undertake historic mitigation measures applicable to states for which we conducted Section 106 review activities under the above referenced project.

Our estimates for each of the required mitigation measures are as follows:

- **Arkansas**

  **Camden to Gurdon AB**

  Historical documentation to STB Standards of the 1896 bridge over the Little Missouri River at MP 436.70. Negotiate with the Arkansas SHPO for sign-off for removal of conditions.

<table>
<thead>
<tr>
<th>Personnel</th>
<th>Rate</th>
<th>Hours</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Paul McGinley</td>
<td>$125</td>
<td>8</td>
<td>$1,000</td>
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<tr>
<td>Thompson Lingel</td>
<td>90</td>
<td>32</td>
<td>2,880</td>
</tr>
<tr>
<td>Lola Bennett</td>
<td>70</td>
<td>40</td>
<td>2,800</td>
</tr>
</tbody>
</table>

Total Labor: 80 hours $6,680

Travel & Expenses (2 people, 1 site visit): $1,520

Total Estimate: $8,200
McGinley Hart & Associates

Mr. Stephen Brooks

Page 2

October 31, 1996

Illinois

Madison AB

Review with Railroad to determine whether six (6) bridges will be demolished. Negotiate with Illinois SHPO and obtain sign-off if no demolition. Historical documentation to STB standards for any bridges to be demolished. (Budget assumes worst case scenario - all to be demolished.)

<table>
<thead>
<tr>
<th>Personnel</th>
<th>Rate</th>
<th>Hours</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
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<td>Thompson Lingel</td>
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<td>Lola Bennett</td>
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<td><strong>Total Estimate</strong></td>
<td></td>
<td></td>
<td><strong>$11,000</strong></td>
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Ridgely Tower, Springfield Sub. MP 182.9

Determine NR eligibility and develop historic documentation to STB Standards on behalf of Railroad and obtain SHPO sign-off.

<table>
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<td>90</td>
<td>24</td>
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<td>70</td>
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<td><strong>Total Labor</strong></td>
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<td>62</td>
<td><strong>$5,150</strong></td>
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<tr>
<td>Travel &amp; Expenses</td>
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<td></td>
<td>750</td>
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<td><strong>Total Estimate</strong></td>
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<td><strong>$5,900</strong></td>
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Valley Yard Turntable, East St. Louis

Determine NR eligibility and develop historic documentation to STB Standards on behalf of Railroad and obtain SHPO sign-off.

<table>
<thead>
<tr>
<th>Personnel</th>
<th>Rate</th>
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<th>Cost</th>
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<tbody>
<tr>
<td>Paul McGinley</td>
<td>$125</td>
<td>6</td>
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<td>2,160</td>
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<tr>
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<td>2,240</td>
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<tr>
<td><strong>Total Labor</strong></td>
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<td>62</td>
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<td>Travel &amp; Expenses</td>
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<td><strong>Total Estimate</strong></td>
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<td><strong>$5,800</strong></td>
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</table>

Architecture, Planning, Historic Preservation, Interior Design
McGinley Hart & Associates

Mr. Stephen Brooks

October 31, 1996

Louisiana

Avondale Yard Tower at Westbridge Junction, UP Alex. Sub. MP 10.2

Determine NR Eligibility and develop historic documentation to STB Standards on behalf of Railroad and obtain SHPO sign-off.

<table>
<thead>
<tr>
<th>Personnel</th>
<th>Rate</th>
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<th>Cost</th>
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<tbody>
<tr>
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<td>125</td>
<td>12</td>
<td>1,500</td>
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<tr>
<td>Thompson Lingel</td>
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<td>32</td>
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<tr>
<td>Lola Bennett</td>
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<tr>
<td><strong>Total Estimate</strong></td>
<td></td>
<td></td>
<td>6,800</td>
</tr>
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</table>

Colorado (If Required)

Hoisington Sub. - Towner to NA Junction Abandonment

If required, negotiate with Colorado SHPO on scope of work to be performed in further developing historical documentation on behalf of the Railroad for the portion of the line to be abandoned. With approval of the Railroad, perform such agreed upon research and prepare documentation for submission to SHPO. Obtain SHPO sign-off on behalf of STB.

<table>
<thead>
<tr>
<th>Personnel</th>
<th>Rate</th>
<th>Hours</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
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<tr>
<td>Thompson Lingel</td>
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<td>40</td>
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<td>Lola Bennett</td>
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<td>Travel &amp; Expenses (2 people, 2 site visits)</td>
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<tr>
<td><strong>Total Estimate</strong></td>
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<td></td>
<td>11,800</td>
</tr>
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</table>

**TOTAL MITIGATION ESTIMATE**

$49,500

These estimates of time and costs are based upon careful and efficient scheduling of field trips and additional background research. We will combine field trips wherever appropriate to minimize both time and costs.

We can begin this work as soon as you can authorize it and can complete all tasks prior to the end of December, 1996.

If you have any questions, please call me.

Very truly yours,

Paul J. McGinley, AICP
Principal

Architecture, Planning, Historic Preservation, Interior Design
November 1, 1996

Elaine E. Kaiser  
Chief, Section of Environmental Analysis  
Surface Transportation Board  
Washington, D.C. 20423-0001

Re: Union Pacific and Southern Pacific (UP/SP) Railroads Merger  
Proposed Abandonment of the Tennessee Pass Line  
Abandonment of the Towner-NA Junction Line (Hoisington Subdivision)

Dear Ms. Kaiser:

Thank you for your October 15, 1996, correspondence concerning the above activities.

Tennessee Pass

We look forward to further consultation when and if this proposed abandonment again becomes subject to action by your agency.

Towner-NA Junction

We are pleased to learn that you have concurred with the opinion that the Towner-NA Junction Line is eligible for inclusion in the National Register of Historic Places. We assume from the discussion of mitigation of the impacts of abandonment in your correspondence that it is now your opinion that abandonment of this line will constitute an adverse effect. We concur with this determination. With this determination, it will be necessary to develop a Memorandum of Agreement (MOA) in consultation with our office and the Advisory Council on Historic Preservation (Council). However, it may be possible to avoid an adverse effect determination, and, consequently, the need to develop an MOA, if your agency incorporates adequate restrictions or conditions to ensure preservation of the line’s significant features, pursuant to Section 800.9(c)(3) of the Council’s regulations (36CFR800). We appreciate the cooperative commitment made between the State of Colorado and the Union Pacific Railroad Company to explore alternative uses of the above lines proposed for abandonment. However, this Letter of Intent, by itself, does not represent a commitment by your agency to insure the preservation of this historic property and, consequently, in our opinion does not fulfill the Surface Transportation Board’s responsibilities under Section 106 of the National Historic Preservation Act.

OFFICE OF ARCHAEOLOGY AND HISTORIC PRESERVATION  
303-866-3392. Fax 303-866-4464
Elaine K. Kaiser  
November 1, 1996  
Page 2

Please provide documentation of this effect finding to the Advisory Council on Historic Preservation. The Council's address is:

Western Office of Review  
12136 West Bayard Avenue, Suite 330  
Lakewood, CO 80226

We look forward to further consultation on this matter. If we may provide additional assistance, please contact Karen Hardy-Hunt, our intergovernmental services Director, at (303) 866-3944.

Sincerely,

[Signature]

James E. Hartman  
State Historic Preservation Officer

JEH/KH
Ms. Elaine K. Kaiser  
Chief, Section of Environmental Analysis  
Surface Transportation Board  
1201 Constitution Avenue, NW  
Washington, DC 20423

Re: F.D. 32760 UP/SP Merger

Dear Ms. Kaiser:

The City of Reno has asked that I respond directly to your November 4 letter seeking clarification of its request for conflict of interest information about third party contractor and sub-contractors relations, if any, with merger applicants, Union Pacific (UP) and/or Southern Pacific (SP) (UP/SP), in F.D. 32760:

The City requests the following information concerning the third party contractor, and each sub-contractor engaged in the environmental investigation process in F.D. 32760:

1. Identity (name or entity and address of principle office).

2. Person in charge.

3. Prior contracts with or engagements for the merger applicants UP/SP or related companies during a period of three (3) years preceding the date of filing of applicants' notice of intent, detailing the date, duration and scope of work, as well as compensation received or expected if still pending.

4. Current contracts with or engagements for the merger applicants UP/SP or related companies during the period following the date of filing of notice of intent, detailing the date, duration and scope of work as well as compensation received or expected if still pending.
5. Whether future contracts or engagements may be anticipated, will be sought or accepted from merger applicants or related companies within three (3) years following completion of the STB environmental investigation in which each is presently engaged for the STB.

6. Details of the present contract or engagement for the STB environmental investigation, including but not limited to:

(a) date of inception, date of anticipated completion;
(b) scope of activity/responsibility;
(c) job description(s) and number(s) of personnel directly engaged in investigation;
(d) job description(s) and number(s) of personnel indirectly engaged in investigation;
(e) entity(s) to which billing statements for costs and fees is (are) presented, and frequency or period of each billing;
(f) compensation received to date.

Any questions concerning this request may be directed to my office or that of the Reno City Attorney. Thank you for your courtesy and cooperation in this matter.

Very truly yours,

Paul H. Lamboley

PHL:fcr
Ms. Elaine K. Kaiser
Chief, Section of Environmental Analysis
Surface Transportation Board
Room 3219
12th and Constitution Avenue, N. W.
Washington, D.C. 20423

Re: Union Pacific/Southern Pacific Control Proceeding - Reno Mitigation Study

Dear Ms. Kaiser:

I understand that an allegation has been lodged with SEA that UP/SP recently increased the length of trains operating through Reno, Nevada, in order to create the artificial impression that UP/SP is moving fewer trains or less freight traffic through Reno than is actually the case.

In order to investigate this allegation, we asked SP personnel to review FRA-mandated train sheets showing movements through Reno for the last full week of July, 1996 (before the merger was approved) and the last full week of October, 1996 (the most recent week available at the time of my request). SP officials confirm that the latter part of July was a normal operating period for SP through Reno. At that time, UP was not authorized to exercise any form of control over SP, and it did not exercise any form of control.

The SP comparison shows that the average length of trains operating through Reno during the week of July 22-28, 1996 was 4,817 feet. The average length of trains operating through Reno during the week of October 21-27, 1996 was 4,608 feet. Thus, contrary to the allegation made to SEA, trains through Reno were, on average, somewhat shorter in October than they were in July.

After hearing of this allegation, I also contacted UP/SP's senior operating officials to determine whether any change in train lengths had been ordered for the Reno
Ms. Kaiser  
November 13, 1996  
Page 2

corridor in recent months. No such instructions have been issued, and none are planned. SEA should be aware, however, that during periods of extreme cold in the Sierra Nevada mountains and northern Nevada, it is sometimes necessary to shorten train lengths (and, accordingly, to operate more trains) for safety reasons. That pattern has been followed for many years, and it is almost certain to be repeated this winter.

In short, there is no substance whatsoever to the allegation that UP/SP has lengthened trains through Reno. Please let me know if you need additional information.

Sincerely,

[Signature]

J. Michael Hemmer
November 13, 1996

Mr. Steven J. Kahn
McCarthy, Sweeney & Harkaway, P.C.
1750 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Re: Finance Docket No. 32760

Dear Steven:

We have reviewed your letter dated November 7, 1996 listing five new topics on which UP/SP would reciprocally share written documents with your clients. We have no objection to the additions and understand, unless you disagree, that we are in agreement on the basis of my October 17 letter and your November 7 response.

Sincerely,

J. Michael Hemmer
November 13, 1996

HAND DELIVERY

Ms. Elaine K. Kaiser
Chief, Section of Environmental Analysis
Surface Transportation Board
Room 3219
12th and Constitution Avenue, N.W.
Washington, D.C. 20423

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Dear Ms. Kaiser:

I understand that an allegation has been lodged with SEA that UP/SP recently increased the length of trains operating through Reno, Nevada, in order to create the artificial impression that UP/SP is moving fewer trains or less freight traffic through Reno than is actually the case.

In order to investigate this allegation, we asked SP personnel to review FRA-mandated train sheets showing movements through Reno for the last full week of July, 1996 (before the merger was approved) and the last full week of October, 1996 (the most recent week available at the time of my request). SP officials confirm that the latter part of July was a normal operating period for SP through Reno. At that time, UP was not authorized to exercise any form of control over SP, and it did not exercise any form of control.

The SP comparison shows that the average length of trains operating through Reno during the week of July 22-28, 1996 was 4,817 feet. The average length of trains operating through Reno during the week of October 21-27, 1996 was 4,608 feet. Thus, contrary to the allegation made to SEA, trains through Reno were, on average, somewhat shorter in October than they were in July.

After hearing of this allegation, I also contacted UP/SP’s senior operating officials to determine whether any change in train lengths had been ordered for the Reno
corridor in recent months. No such instructions have been issued, and none are planned. SEA should be aware, however, that during periods of extreme cold in the Sierra Nevada mountains and northern Nevada, it is sometimes necessary to shorten train lengths (and, accordingly, to operate more trains) for safety reasons. That pattern has been followed for many years, and it is almost certain to be repeated this winter.

In short, there is no substance whatsoever to the allegation that UP/SP has lengthened trains through Reno. Please let me know if you need additional information.

Sincerely,

J. Michael Hemmer
November 13, 1996

Mr. Steven J. Kalish  
McCarthy, Sweeney & Harkaway, P.C.  
1750 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006

Re: Finance Docket No. 32760

Dear Steven:

We have reviewed your letter dated November 7, 1996 listing five new topics on which UP/SP would reciprocally share written documents with your clients. We have no objection to the additions and understand, unless you disagree, that we are in agreement on the basis of my October 17 letter and your November 7 response.

Sincerely,

J. Michael Hemmer
November 7, 1996

Elaine Kaiser, Esq.
Mike Dalton
Surface Transportation Board
Room 3219
12th and Constitution Ave., N.W.
Washington, D.C. 20423

Winn Frank
Philip Braum
De Leuw Cather & Co.
Suite 800
1133 15th Street, N.W.
Washington, D.C. 20005

Re: Finance Docket No. 32760,
Wichita/Sedgwick Mitigation Study

Dear Elaine, Mike, Winn, and Philip:

Following our meetings in Wichita, we’ve had an opportunity
to more fully consider the "Summary Of Draft Scope Of Work For
Wichita, KS" you distributed and would like to offer the
following thoughts. A number of our suggestions may well have
been contemplated in your summary, but, given the importance of
this study to our community, we’ve included them out of an
abundance of caution.

Task 2 - Review Existing Data

While we recognize the Board’s jurisdictional difficulties
with regard to the BNSF, we believe that SEA should be
encouraging BNSF to participate fully in the study and related
public and private meetings. Along these lines, we’d suggest
that De Leuw Cather attempt to obtain: (1) BNSF "passing
reports"; (2) maps of BNSF trackage in Wichita/Sedgwick; and (3)
copies of any existing BNSF plans for reconfiguration,
rehabilitation, etc. of its Wichita/Sedgwick trackage. We
believe this information to be useful not only for meetings, but
also to avoid considering the UPSP rerouting proposals in a
vacuum.

As outlined in our brief in this proceeding,
Wichita/Sedgwick have substantial questions as to the number,
length, and speed of the trains UPSP proposes to run through
Wichita. By way of example, (1) we still do not know why UPSP says that it will be running fewer new trains on one of the affected segments than it will be running over the other segment, and (2) we see no reflection in the UPSP projections of the increased number and length of coal trains frequently reported in the trade press. We believe that, at an absolute minimum, SEA should be obtaining data through the year 2000 on these questions and that, if any reasonable question exists as to numbers of trains, train length, and train speed, quantifications of environmental harm should reflect ranges of likely UPSP activity.

With specific regard to questions as to speed of trains, we believe that De Leuw Cather should be obtaining data for each of the affected grade crossings, as opposed to "average" speed data. We also think it important to compare apples with apples. That is, if short-term data is to be used to determine the number and length of trains, short-term data also should be used to determine the speed of the trains.

Task 3 - Define Mitigation Options To Be Explored

Under the heading of "bypass route", it seems important for SEA to have a clear picture of the likely origins and destinations of the traffic the UPSP proposes to route through Wichita/Sedgwick. Once these origins and destinations are established, UPSP should be required to explain why alternative, existing routes are not practical alternatives to the Wichita/Sedgwick route. Similarly, since the principal purpose of the Wichita/Sedgwick route is to reduce congestion in Kansas City, UPSP should be required to explain why other traffic currently routed through Kansas City cannot be rerouted to obtain the same benefits. Under the assumption that UPSP objections to alternative routes are premised on claimed capital or operational costs associated with those routes, we'd also like to see an explanation as to how SEA proposes to evaluate such claims against the environmental degradation that would result from the proposed Wichita/Sedgwick routing.

Task 4 - Establish Criteria for Evaluating Mitigation Options

We understand that SEA may be considering a number of quantitative measurements in order to determine the need for mitigation, including the need for grade separations. We believe that all considered criteria should be identified at the earliest possible date and that the rationale(s) for rejecting certain criteria should be listed. We are particularly interested in knowing how SEA proposes to measure the need for grade separations created by (i) air quality degradation; (ii) noise degradation; (iii) traffic congestion; (iv) likelihood of train-motor vehicle collisions; (v) delays to emergency vehicles; and (vi) the combination of (i-v). We also wish to know what
standards SEA considers to determine how, if at all, grade separation at one location changes the need for grade separation at another location. By way of example, if SEA considers grade separation to be necessary at a crossing in order to permit emergency vehicles to continue moving, how will that determination be factored into SEA's consideration of other crossings?

Task 5 - Conduct Public Review of Phase 1

We have a number of suggestions for the conduct of public meetings and the receipt of public comments. For example, we'd like to see speeches limited to 4-5 minutes; we'd like to see speeches limited to statements as opposed to cross-examination and/or debates; we'd suggest that a month's notice be provided before meetings; and we believe that written comments should be provided no later than 10 days after meetings. Bill Stockwell has substantial experience in holding public meetings in Wichita/Sedgwick and we'd suggest that he be called before you finalize your plans.

Task 10 - Evaluate Cost of Mitigation Options

With regard to "design" issues, we believe that De Leuw Cather should be identifying aesthetic standards considered. Stated another way, we'd like to know whether any proposed construction is of the "bare-bones" variety, or whether the estimated costs include work necessary to maintain "quality of life" factors.

Without waiving our frequently-stated concerns (which are identical to the concerns expressed by USDOT) over any cost sharing, we believe that De Leuw Cather again should be required to provide a full explanation of all formulae/methodologies considered and the rationale(s) for the rejection of any formula/methodology. Given our current understanding that no federal, state, or local funds are available to share in the cost of mitigation required as a result of the UPSP rerouting proposals, we'd also like a clear picture as to what SEA proposes to do if, for example, it defines a "fair share" for the federal government and the federal government has not budgeted any funds for such purposes.

Yours,

Steven J. Kalish
Attorney for
City of Wichita
Sedgwick County

cc: M. Hemmer
Ms. Elaine K. Kaiser  
UP/SP Environmental Project Director  
Section of Environmental Analysis  
Surface Transportation Board  
12th and Constitution Avenue, Room 3219  
Washington, D.C. 20423-0001  

ATTN: Finance Docket 32760--Comments  

Dear Ms. Kaiser:  

Thank you for the information regarding your agency’s environmental review of the  
proposed merger of the Union Pacific and Southern Pacific Railroads.  

Governor Bush has requested the Railroad Commission of Texas to coordinate the State  
of Texas’ response to the merger. They are in the process of developing comments for  
filing later in March. Railroad Commission Chair Carole Keeton Rylander will be  
responding soon to your request for comments on your environmental review.  

Thank you for giving our state the opportunity to participate in this important proceeding.  
If you have any further questions about the state’s response to the proposed merger,  
please contact Mr. Allan Rutter, Governor Bush’s Transportation Policy Director, at (512)  
463-1933.  

Sincerely,  

Albert Hawkins, Director  
Office of Budget and Planning  

cc: The Honorable Carole Keeton Rylander, Railroad Commission of Texas
February 15, 1996

Operations Division
Regulatory Branch

Mr. Steven J. Brooks
De Leuw, Cather & Company of Virginia
11320 Random Hills Road, Suite 100
Fairfax, VA 22030

Dear Mr. Brooks:

Please reference your letter of February 9, 1996, soliciting comments on potential environmental impacts of the Control and Merger Application between the Union Pacific and Southern Pacific Railroads (Finance Docket No. 32760).

The merger, as proposed, will not involve excavation or fill material placement in any waters of the United States. Therefore, your proposal is not subject to regulation pursuant to Section 404 of the Clean Water Act.

Although Department of the Army authorization is not required, this does not preclude the possibility that other Federal, state, or local permits may be required.

Your project has been assigned Identification Number 6912. Please refer to this number during future correspondence. If further assistance is required, contact Ms. Helen J. Williams of my staff at 918-669-7402.

Sincerely,

[Signature]

Larry D. Hogue, P.E.
Chief, Operations Division
Dear Ms. Kaiser;

Grady County has submitted an environmental impact study to Dames & Moore, Inc. some time ago. However, should you need additional information from Grady County in regard to this merger please do not hesitate to contact us.

Yours Truly,

Ealmer R. Klippel
Chairman of the Board
Planning Division
Environmental Analysis Branch

Ms. Elaine K. Kaiser
UP/SP Environmental Project Director
Section of Environmental Analysis
Surface Transportation Board
12th and Constitution Avenue, Room 3219
Washington, DC 20423-0001

Dear Ms. Kaiser:

This letter is in response to your correspondence dated January 29, 1996, addressed to our Dallas, U.S. Army Corps of Engineers office, concerning the Control and Merger Application between the Union Pacific and Southern Pacific Railroads (Finance Docket Number 32760). The correspondence was forwarded to me for reply.

You are correct in that the railroads' environmental consultant, Dames and Moore, Incorporated, has previously contacted this office. We have advised that firm of the possible need for Department of the Army permits and identified appropriate points of contact.

Sincerely,

R. H. Schroeder, Jr.
Chief, Planning Division
Ms. Elaine K. Kaiser  
Surface Transportation Board  
Washington, D.C. 20423-0001

Dear Ms. Kaiser:

This is in reference to your letter dated January 29, 1996, concerning the merger of Union Pacific Railroad and Southern Pacific Railroad.

In review of the information you submitted, it appears that some of the proposed projects will involve work in wetlands and waters of the United States. Therefore, we recommend that prior to commencing work in association with the expansion of rail yards, that you contact this office for permitting requirements. However, the rails that will only have increased traffic do not require further coordination with this office.

Should you need further assistance, please contact the Project Manager, Mona G. Coleman, at the letterhead address or by telephone at 409-766-3936.

Sincerely,

Bruce H. Bennett  
Leader, North Evaluation Unit
Elaine K. Kaiser, Chief  
Section of Environmental Analysis  
Surface Transportation Board  
Washington, D.C. 20423-0001

RE: Surface Transportation Board Request for Environmental Comments on the Potential Environmental Impacts of the Control and Merger Application between the Union Pacific and Southern Pacific Railroads (Finance Docket No. 32760)

Dear Ms. Kaiser:

We have received your letter of January 29, 1996. The U.S. Fish and Wildlife Service offers no comment at this time. Should issues of concern arise, we may provide comments at a later date.

Sincerely,

Reed E. Harris  
Utah Field Supervisor
Ms. Elaine Kaiser  
UP/SP Environmental Project Director  
Section of Environmental Analysis  
Surface Transportation Board  
12th and Constitution Avenue, Room 3219  
Washington, D.C. 20423-0001

Dear Ms. Kaiser:

This responds to your January 29, 1996 letter regarding requested comments on the environmental impacts of the proposed merger of the Union Pacific and Southern Pacific Railroads, Finance Docket No. 32760.

The U.S. Fish and Wildlife Service, due to staffing and budgetary constraints, is unable to provide any comments.

We recommend that you contact the Colorado Division of Wildlife to address any concerns it may have for the State of Colorado.

If the Service can be of further assistance, contact Clay Ronish of this office at (303) 231-5280.

Sincerely,

LeRoy W. Carlson  
Colorado Field Supervisor

cc: Reading file  
Project file

Reference: Clay: Species/RRMERGE.LTR
Elaine K. Kaiser  
UP/SP Environmental Project Director  
Section of Environmental Analysis  
Surface Transportation Board  
12th and Constitution Ave., Room 324A  
Washington, DC  20423-0001

February 14, 1996

Dear Ms. Kaiser:

I was forwarded your letter of January 29, which was sent to our Denver Regional Office, describing a proposed merger between the Union Pacific Railroad Company and the Southern Pacific Transportation Company, affecting rail line services in at least nine states. I received your letter on February 8, and was asked to respond with Service comments for the State of Kansas. The proposed merger would result in changes in traffic volume for several Kansas line segments, changes in rail yard activity at two sites, abandonment of two line segments totalling 40 miles of existing railway line in southcentral Kansas, and construction of 2,000 feet of new rail line connection in Dickinson County. We have reviewed the various aspects of this proposal and conclude that there should be no adverse impacts to fish and wildlife resources, including threatened and endangered species. Therefore, the U.S. Fish and Wildlife Service has no objection to the proposed merger.

The Service encourages the Union Pacific Railroad Company to keep the right-of-way of abandoned line segments in a natural condition for the benefit of native wildlife, plants, and the public. Mary Mae Hardt, National Park Service, Omaha, Nebraska (402) 221-3350, should be contacted for more information on the "Rails to Trails" Program. I also recommend contacting the Kansas Department of Wildlife and Parks in Pratt, Kansas (316-672-5911) to determine their interest in acquiring a nature trail.

Thank you for this opportunity to comment on the proposal.

Sincerely,

William H. Gill
Field Supervisor

cc: FWS/ES, Denver, CO (Section 7 Coordinator)  
KDWP, Pratt, KS (Environmental Services)
Elaine K. Kaiser  
UP/SP Environmental Project Director  
Section of Environmental Analysis  
Surface Transportation Board  
12th and Constitution Avenue, Room 3219  
Washington, D.C. 20423-0001

Dear Ms. Kaiser:

This responds to your January 29, 1996 letter requesting comments on the potential environmental impacts of the proposed merger of Union Pacific Railroad Company and Southern Pacific Transportation Company into a single Union Pacific Railroad Company. The proposed merger would result in increased traffic on some rail line segments, changes in local truck traffic as a result of consolidating rail yards and intermodal facilities, rail line abandonments, rail line construction projects and the construction, consolidation, or phaseout of intermodal facilities as well as the closure of existing rail yards.

We have reviewed those identified projects associated with the proposed merger that are located within our area of responsibility. We have no comments on these projects other than those already provided to Dames and Moore.

We do believe that the proposed construction of a rail line from Union Pacific Railroad's main track in McNair, Texas to three plastics manufacturing facilities located near Mont Belvieu, Texas should be included in this environmental review process. The stated purpose of this proposed rail construction is to provide competitive rail service to three existing petrochemical plants who had expressed dissatisfaction with Southern Pacific Railroad's poor service, delays, and costs. In light of the proposed merger between these two companies, this rail line project may no longer satisfy its stated purpose. However, it may still have environmental impacts that may or may not be successfully mitigated for over time.

Union Pacific has worked to minimize project impacts and proposes to compensate for unavoidable wetland losses. The mitigation plan calls for 18.83 acres of agricultural land to be graded, planted, managed, and monitored as a forested wetland. However, this is a long-term process and there is no guarantee that the result will be a viable, functioning system.

If you have any questions, or we can be of further assistance, please contact Edith Erfling at 713/286-8282.

Sincerely,

Frederick T. Warner  
Chief, Regulatory Activities
Environmental Materials

Elaine K. Kaiser
UP/SP Environmental Project Director
Section of Environmental Analysis
Surface Transportation Board
12th & Constitution Ave., Room 3219
Washington, D.C. 20423-0001

Dear Ms. Kaiser:

We have reviewed the materials on the Control and Merger Application between the Union Pacific and Southern Pacific Railroads (Finance Docket No. 32760).

Since there will be no rail line abandonments nor construction in Arizona, we have no comments on this proposal.

Thank you for the opportunity to comment.

Sincerely,

Michael Somerville
State Conservationist
Ms. Elaine K. Kaiser
US/SP Environmental Project Director
Attn: Finance Docket No. 32760-Comments
Section of Environmental Analysis
Surface Transportation Board
12th and Constitution Avenue, Room 3219
Washington, DC 20423-0001

Dear Ms. Kaiser:

We have reviewed potential impacts of the proposed merger of the Union Pacific Railroad Company and the Southern Pacific Transportation Company.

It is our opinion this proposed merger will have no significant adverse impacts on agricultural lands in Texas.

We strongly recommend that all trackage abandonments include plans to prevent soil erosion during and after track removal.

Thank you for allowing us to comment on this proposal.

Sincerely,

Harry W. Oneth
State Conservationist

cc: Bob Leerskov, ASTC for Field Operations, NRCS, Terrell
Charles R. Terrell, Nat’l Envir. Coord, Washington, DC
Ms. Elaine K. Kaiser  
UP/SP Environmental Project Director  
Section of Environmental Analysis  
Surface Transportation Board  
12th and Constitution Avenue, Room 3219  
Washington, D.C. 20423-0001

Dear Ms. Kaiser:

To the best of my knowledge I do not believe Kaufman County has any environmental impact areas with regard to the Merger Application between the Union Pacific and Southern Pacific Railroads.

Very truly yours,

Maxine Darst  
Kaufman County Judge
February 12, 1996

Ms. Elaine K. Kaiser  
UP-SP Environmental Project Director  
Section of Environmental Analysis  
Surface Transportation Board  
12th and Constitution Avenue, Rm. 3219  
Washington, D.C. 32043-0001

ATT: Finance docket 32760 - Comments

Dear Ms. Kaiser:

Thank you for the opportunity to comment on the proposed merger of the Union Pacific and Southern Pacific railroads.

Clackamas County would like to have more information regarding the proposed increase in traffic volumes on the Southern Pacific line which runs through the county. We are concerned that increased train traffic will have an adverse safety impact at all at grade crossings in the county, specifically, the Railroad Avenue and Harmony Road crossings east of Milwaukie.

I assume that the cities of Canby, Oregon City, and Milwaukie have been given the same opportunity to comment. We suspect that they may express similar concerns with the at grade crossings in their communities.

If you have any questions or can send us additional information on traffic volume impact, please contact Tom VanderZanden, Director, Clackamas County Department of Transportation and Development, 906 Main Street Oregon City, OR 97045. He can be reached by telephone at 503-655-8581.

Sincerely yours,

Darlene Hooley, Chair  
Clackamas County Board of Commissioners

RS/dp
Elaine K. Kaiser
UP/SP Environmental Project Director
Section of Environmental Analysis
Surface Transportation Board
12th and Constitution Avenue, Room 3219
Washington D.C. 20423-0001

Re. Surface Transportation Board Request for Environmental Comments on the Potential Environmental Impacts of the Control and Merger Application between the Union Pacific and Southern Pacific Railroads (Finance Docket No. 32760)

Mz Kaiser,

My concerns about the proposed merger between the Union Pacific and the Southern Pacific are economic and how it will affect the economic stability of Sweetwater County:

1. How sure can I be that there will be no loss of jobs on the Union Pacific line who is a major employer in Sweetwater County?

2. How sure can I be that the number of trains will not be decreased during the cold months of the year?

3. How can I be sure that the majority of the trains that run through Sweetwater County will not be decreased because of the high mountains that the trains must traverse to get to California?

4. How can I be sure that the railroad will not enter a price cutting "war" against the trucking industry and then raise their rates when the trucking industry has been eliminated?

I am concerned, knowing the Union Pacific past history concerning the industry in our County. They are mostly unwilling to be competitive and in fact some of our coal mines can't be competitive because of the unwillingness of the Union Pacific to adjust their freight rates.

Sincerely,
John E. Radosevich, Commissioner
February 12, 1996

Elaine K. Kaiser
UP/SP Environmental Project Director
Section of Environmental Analysis
Surface Transportation Board
12th and Constitution Ave., Room #3219
Washington, D.C. 20423-0001

Dear Ms. Kaiser:

Thank you for notifying Lewis County of the proposed rail merger between Union Pacific Railroad Company (UP) and Southern Pacific Transportation Company (SP). Right now, the county has no environmental comments for the NEPA process. But, for the SEPA process we'll have plenty of comments.

Just a reminder for the upcoming SEPA review process, a Lewis County Shoreline Substantial Development permit is required for projects that fall within 200' of floodway or ordinary high water mark (whichever is greater), plus the entire 100-year flood plain. This only applies to Washington State Department of Ecology designated "Shorelines of the State." Depending on where the rail line exists through Lewis County a permit may be required.

Enclosed is a business card to contact me with any questions and to keep me updated as this merger progresses.

Sincerely,
LEWIS COUNTY PLANNING DEPARTMENT
Marc Dubois, Transportation Planner/Shorelines Administrator

Enclosure
Dear Elaine:

At yesterday's meeting of the Dodge County Board of Supervisors, the Board unanimously passed a motion to notify you that Dodge County has at this time no objection to the proposed merger of the Union Pacific Railroad Company and the Southern Pacific Transportation Company.

Sincerely,

Fred Mytty
Dodge County Clerk

Elaine K. Kaiser
UP/SP Environmental Project Director
Section of Environmental Analysis
Surface Transportation Board
12th & Constitution Avenue, Room 3219
Washington, DC 20423-0001
Elaine K. Kaiser
UP/SP Environmental Project Director
Section of Environmental Analysis
Surface Transportation Board
12th & Constitution Avenue, Room 3219
Washington, D.C. 20423-0001

RE: DEADLINE FOR SUBMITTING COMMENTS

Dear Ms. Kaiser,

I have tried most of this morning to call you and there was no answer. I then called Steve Brooks and got your fax number and tried it and it rang several times with no answer.

I have contacted Dorothy Mercer and she was willing to walk a fax copy to your office. I will be sending a hard copy by mail to you today. I hope that this will be sufficient since I was unable to reach you.

Sincerely,

Cathy Rabe
Administrative Assistant
February 9, 1996

Ms. Elaine K. Kaiser
UP/SP Environmental Project Director
Section Of Environmental Analysis
12th. And Constitution Avenue, Room 3219
Washington, D.C. 20423-0001

RE: Multi-County - General
Section 106 Review - ICC Tracking No. #26035
Proposed Merger Of Union Pacific And Southern Pacific And Railine Abandonment
(Finance Docket No. 32760)

Dear Ms. Kaiser:

This letter is written in response to your inquiry, regarding properties of architectural, historical, or archeological significance in the area of the proposed referenced project.

In order for the Arkansas Historic Preservation Program (AHPP) to complete its review of the proposed project, we will need the additional information checked below:

- a 7.5 topographic project location map delineating the project boundary.
- a project description detailing all aspects of the proposed project.
- the location, age, and photographs of structures (if any) to be renovated, removed, demolished, or abandoned as a result of this project.
- photographs of any structures on property directly adjacent to the project area.

Once we have received the above information, we will complete our review as expeditiously as possible. If you have any questions, please contact me at (501) 324-9785.

Sincerely,

Randy Jeffery
106 Review Coordinator

1500 Tower Building • 323 Center • Little Rock, Arkansas 72201 • Phone (501) 324-9880
Fax (501) 324-9154
A Division of the Department of Arkansas Heritage
Dear Ms. Kaiser,

Because a "rail banking" petition has been circulating through the community since November 29, 1995, we are sending you a copy of the Position our Chapter is taking on the "rail banking" proposal. We are asking that the SP/UP merger address the impacts of disposal and any potential for an alternative use of abandoned railbeds in its Environmental Analysis.

Presently, the Board's Environmental Analysis Fact Sheet omits any reference to the "rails to trails" alternative use proposed. We solicit your help in assuring that the economic impact on ranchers be thoroughly considered, and that the sanctity of covenants between railroads and adjacent landowners be acknowledged and preserved. We think NEPA requires significant economic impacts on the affected community be taken into account in environmental assessments and decisions. We think the "rail banking", or "rails to trails," proposal will have a significant economic impact on our rural community. The proposal must be addressed in your Environmental Assessment.

Thanks for addressing our concerns in your assessment of the SP/UP merger.

Sincerely,

[Signature]

Jack Gillespie, Vice President
3404 Morris
Pueblo, CO 81008

enclosure: Chapter Position
Arkansas Valley Chapter, "PEOPLE FOR THE WEST", was organized to promote those common interests most immediately impacted by organized, insidious encroachment on the Western economic culture. Presently, the Chapter represents some 85 members—predominantly ranchers, yet include a sprinkling of miners and interested recreationists.

Over the past 20 years, nearly all members have suffered the unintended consequences of fickle public decisions deficient in rational scientific and economic analyses. Many directly experience a growing measure of economic burden by the closure of access to the public domain, excessive environmental regulatory demands, the arbitrary overloading of the public domain with wildlife, the destruction of livestock by hungry predators, the extortion of their right to use water they develop, the trespass by recreationists devoid a respectable perception of rangeland etiquette, . . . (adverse consequences of impetuous public decisions go on and on).

While we can empathize with the frustrations of clustered urban dwelling and the resultant urbanite impulse to periodically commune with nature, we are also cognizant of the nuisance imposed on rural landowners in those instances that railroad rights-of-way have been converted to unrestricted trails use by the public. On the following grounds, we oppose the "rails to trails" proposal; herein, we counterpropose that upon abandonment for rail use, right-of-way easements revert to the ownership status from which the easement was carved:

- Sufficient public recreational opportunities already exist within the Arkansas River corridor.
- The principle of eminent domain is sufficient assurance a railroad can be restored if, in fact, such easement is ever needed.
- Proposed conversion of rail easements to public trail use exposes contiguous land owners to unwarranted liability and exhaustive litigation over those instances of damage due to public trespass and misbehavior; thus, supplanting those time-tested covenants to promote harmony between railroads and adjacent landowners.
- Public funding required to construct, to maintain and to police the public use of such a trail can be utilized for more beneficial public purposes.
- "Rail banking", purported to be a "legal term", is likely an illegal shenanigan contrived and utilized to circumvent, rather than conform to, provisions of Amendment V of the U.S. Constitution.

We urge public decision makers to rigorously examine the adverse implications of such proposal. We submit that no compelling benefit derives to the public that would outweigh the inherent mischief imposed on the rural community. We believe an objective cost/benefit analysis would surely expose the proposal as an unwarranted extravagance that tramples over private property rights and inhibits rural productivity, which extravagance the rural public can ill afford. The proposal for converting the 109-mile, D&RGW rail bed into a subsidized trail should be rejected.

Executive Committee:

Rod Carpenter
1280 County Rd 32
Texas, Creek, CO 81223

Jack Gillespie
3404 Morris
Pueblo, CO 81008

Beneta Canterbury
4821 County Rd 9
Canon City, CO 81212

Betty Chess
5005 County Rd 9
Canon City, CO 81212

The National Coalition for Public Lands and Natural Resources
Planning Division
Environmental Analysis Branch

Ms. Elaine K. Kaiser
UP/SP Environmental Project Director
Section of Environmental Analysis
Surface Transportation Board
12th and Constitution Avenue, Rm 3219
Washington, D.C. 20423-0001

Dear Ms. Kaiser:

This is in response to your correspondence of January 29, 1996 to Colonel Alexander R. Jansen, Commander, Ohio River Division.

After review of the information provided, it does not appear that any of the activities associated with the proposed merger of the Union Pacific Railroad Company and the Southern Pacific Transportation Company fall within the jurisdictional boundaries of the Ohio River Division Corps of Engineers.

Sincerely,

Robert W. Woodyard
Chief, Environmental Analysis Branch
The Historic Preservation Program has reviewed the information submitted on the above referenced project. Based on this review, we have made the following determination:

☐ The project area has been previously disturbed or has a low potential for the occurrence of cultural resources. A cultural resource survey, therefore, is not warranted.

X None of the structures involved are eligible for inclusion in the National Register of Historic Places.

☐ The proposed undertaking will have "no effect" on properties listed on or determined eligible for listing in the National Register of Historic Places.

☐ An adequate cultural resource survey of the project area has been made. We agree that the proposed undertaking will have "no effect" on significant cultural resources.

☐ An adequate cultural resource survey of the project area has been made. We agree with the report's recommendation that the following potentially eligible sites should be avoided. If these sites are avoided, the proposed undertaking will have "no effect" on significant cultural resources.

Sites:

For the above checked reason, the Historic Preservation Program has no objection to the initiation of project activities. PLEASE BE ADVISED THAT IF THE CURRENT PROJECT AREA OR SCOPE OF WORK ARE CHANGED, A BORROW AREA IS INCLUDED IN THE PROJECT, OR CULTURAL MATERIALS ARE ENCOUNTERED DURING CONSTRUCTION, APPROPRIATE INFORMATION MUST BE PROVIDED TO THIS OFFICE FOR FURTHER REVIEW AND COMMENT. Please retain this documentation as evidence of compliance with Section 106 of the National Historic Preservation Act, as amended.

By: Claire F. Blackwell, Deputy State Historic Preservation Officer

MISSOURI DEPARTMENT OF NATURAL RESOURCES
HISTORIC PRESERVATION PROGRAM
P.O. Box 176, Jefferson City, Missouri 65102
For additional information, please contact Judith Davis © 662-7862

Page 1 of 2
June 17, 1996

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1201 Constitution Avenue, N.W., Room 3248
Washington, D.C. 20423

Attn: Ms. Elaine Kaiser, Chief
Section of Environmental Analysis

Subject: Union Pacific/Southern Pacific Railroad Merger Environmental Assessment

As a follow-up to your site visit to the City of Reno and in response to your conversation on May 22, 1996, with our Environmental Team, please find attached a copy of a memorandum from Mike Christensen, Nolte and Associates, Inc. to Tom Ogee, Union Pacific dated May 13, 1996, elaborating on projected rail traffic through Reno.

This memorandum explains both the Nolte and Associates, Inc. use of the 38 trains number in their March 15, 1996, and May 3, 1996, reports, as well as the use in the City of Reno's Comments on Preliminary Draft Environmental Assessment, submitted to the STB, dated May 3, 1996, and our Comments and Verified Statement, submitted to the STB, on March 29, 1996.

If we can provide any additional information or clarification on the City of Reno's comments please do not hesitate to call.

Sincerely,

Mr. Ralph Joecck
Assistant City Manager
Acting Director of Redevelopment Agency

cc: Colleen Bathker, Summit Envirosolutions, Inc.
Eric Ruby, WESTEC, Inc.
Mark A. Demuth, MADCON Consultation Services
Mike Christensen, Nolte and Associates, Inc.
Jerry Hall, Strategic Project Management, Inc.
MEMORANDUM

TO: Tom Ogee, UPRR
FROM: Mike Christensen
SUBJECT: Projected Rail Traffic Through Reno

DATE: May 13, 1996

PROJ #: WC0335

Reno RR Mitigation

Following is an explanation of our 38 train/day estimate of future rail traffic through Reno as we discussed last Friday. This is a long-term projection that we used in the report to generate railroad-caused traffic delays in the year 2015. These numbers are in line with the March 15, 1996 and May 3, 1996 reports.

<table>
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<tr>
<th>Daily Through Freight Trains</th>
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<th>SP Freight Trains currently operating through Reno</th>
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<tr>
<td>34</td>
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| 13                            | 9                                                               | 6 BNSF Freight trains to operate through Reno as presented in BNSF’s verified statement and as discussed in our 5/10/96 FAX
| 6                             | 6 additional trains per day representing future growth in traffic, both UP and BNSF (1 train could start immediately from the 50,000 container/year increase in Port of Oakland lifts due to post-merger changes in the Port according to UP rationalization study. A conservative 3% increase in intermodal traffic over 20 years could increase total intermodal trains by 80%) |

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<tr>
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<tr>
<th>Daily Passenger Trains</th>
<th>1 daily Amtrak intercity passenger train</th>
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<th>1 additional passenger train such as the “Fun” train, Ski train, or other excursion train</th>
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</table>

TOTAL 38

These train count estimates could be reduced by a number of factors including

- one less passenger train when “Fun”, ski, or other excursion trains aren’t running
- fewer freight trains due to reduced growth
MEMORANDUM (cont.)

- fewer freight trains due to periodic seasonal drops in traffic
- temporary service interruptions on the Donner Pass route (derailment, slide, snow removal, maintenance or construction programs, etc.)

These figures could also be increased due to a number of factors including:

- higher levels of growth (both UP and BNSF)
- more BNSF trains diverted to the Overland Route
- more UP trains diverted from the Feather River route to the Donner Pass route

1. temporary diversions due to service interruptions

2. longer-term diversions due to decisions to run traffic on the shorter route to reduce train-miles (offset by increased costs of helper locomotives & crews)

These train traffic estimates are based on our assessment of what we think will happen on this route over the next 2 decades and are by necessity quite rough. We recognize that they can be considerably refined with your assistance. We also realize that they will be subject to changes as the post-merger operations of the route evolve.
MEMORANDUM

TO: SURFACE TRANSPORTATION BOARD
ERRATA TO ENVIRONMENTAL STATEMENT
AZ960426800030

FROM: Arizona State Clearinghouse

DATE: May 24, 1996

This sign-off letter is in response to the above project submitted to the Arizona State Clearinghouse for review, and may be filed with the original completed proposal. Please reference the State Application Identifier (SAI) Number in any further correspondence related to this project.

The appropriate review time has elapsed pursuant to the Executive Order 12372 and certain Arizona State officials and/or Regional Councils of Government have reviewed and supported this project as written. All written comments submitted by the reviewers will be enclosed with this letter, should comments of concern be written, you will be immediately informed and permitted to reply. Federal agencies have been notified of this signoff letter; however, their review may remain in progress.

If you are a state agency and are granted federal moneys send a copy of the federal award letter with the State Application(SAI) Number assigned to that application. If you are to administer these funds (subgrants) through an application process, you are obligated to submit a notice or sample of the application to the Clearinghouse prior to the application period, and advise your applicants of Clearinghouse requirements.

Thank you.

Joni Saad,
Manager Arizona State Clearinghouse
The Surface Transportation Board's Section of Environmental Analysis submits the following errata to their Environmental Assessment served on April 12, 1996:

<table>
<thead>
<tr>
<th>Page</th>
<th>Subject</th>
<th>Line</th>
<th>Change</th>
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<tr>
<td></td>
<td>Volume 1 (Environmental Overview)</td>
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<td>ES-15</td>
<td>Change “38” to “39”</td>
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<td>Substitute attached map</td>
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<td>Substitute attached map</td>
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<td>Change sentences to: The U.S.</td>
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<td>Environmental Protection Agency (EPA)</td>
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<td>has developed National Ambient Air Quality</td>
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<td>Standards (NAAQS) for air pollutants.</td>
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<td>These pollutants include Sulfur Dioxide</td>
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<td>(SO₂), Nitrogen Dioxide (NO₂), Ozone (O₃),</td>
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<td>Carbon Monoxide (CO), Lead (Pb), Total</td>
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<td>Suspended Particulates (TSP) and Particulate</td>
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<td>Matter less than ten microns in diameter</td>
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<td>(PM-10).</td>
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</tbody>
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MEMORANDUM

TO: SURFACE TRANSPORTATION BOARD
ENVIRONMENTAL ASSESSMENT
AZ960419800028

FROM: Arizona State Clearinghouse

DATE: June 7, 1996

This sign-off letter is in response to the above project submitted to the Arizona State Clearinghouse for review, and may be filed with the original completed proposal. Please reference the State Application Identifier (SAI) Number in any further correspondence related to this project.

The appropriate review time has elapsed pursuant to the Executive Order 12372 and certain Arizona State officials and/or Regional Councils of Government have reviewed and supported this project as written. All written comments submitted by the reviewers will be enclosed with this letter, should comments of concern be written, you will be immediately informed and permitted to reply. Federal agencies have been notified of this signoff-letter; however, their review may remain in progress.

If you are a state agency and are granted federal moneys send a copy of the federal award letter with the State Application(SAI) Number assigned to that application. If you are to administer these funds (subgrants) through an application process, you are obligated to submit a notice or sample of the application to the Clearinghouse prior to the application period, and advise your applicants of Clearinghouse requirements. Thank you.

Joni Saad,
Manager Arizona State Clearinghouse

3800 North Central Avenue, Suite 1500, Phoenix, Arizona 85012, (602) 280-1300, TDD: (602) 280-1301, Fax: (602) 280-1305
June 14, 1996

VIA FACSIMILE

Ms. Elaine Kaiser
Chief
Section of Environmental Analysis
Surface Transportation Board
Room 3219
1201 Constitution Avenue, NW
Washington DC 20423-0001

RE: Finance Docket No. 32760 -- District/UP Mitigation Plan

Dear Ms. Kaiser:

Pursuant to the recommendations set out in the Surface Transportation Board’s ("Board") Environmental Assessment by the Section of Environmental Analysis ("SEA"), the East Bay Regional Park District ("District"), the Union Pacific Railroad Company ("UP"), and the Southern Pacific Rail Corporation have been negotiating to reach a mutually agreeable mitigation plan.

Since the District and UP have reached agreement on the terms of a Memorandum of Understanding ("MOU"), the District advises that at this time the SEA need not make recommendations to the Board in the Post Environmental Assessment concerning environmental mitigation conditions for the District. Nevertheless, the District requests that the SEA retain or extend jurisdiction over the environmental mitigation conditions the District seeks in the event the parties are unable to finalize their MOU.

Thank you for your time and consideration regarding this matter.

Very truly yours,

GRAHAM & JAMES LLP

By

Susan B. Gerson
Attorneys for East Bay Regional Park District
June 10, 1996

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1201 Constitution Avenue, N.W., Room 3219
Washington, D.C. 20423

Attn: Ms. Elaine Kaiser, Chief
Section of Environmental Analysis

Subject: Union Pacific/Southern Pacific Railroad Merger Environmental Assessment

Ralph Jaeck, City of Reno Assistant City Manager, has requested that information be furnished directly to you concerning the estimated number of trains which will utilize the current Southern Pacific rail corridor through the City of Reno.

The attached summary was prepared by Nolte and Associates, a member of the City of Reno engineering team. The estimate is self-explanatory and reflects the total number of trains which Nolte believes can reasonably be expected to occur in the post-merger condition. If you have any questions concerning the estimate, please feel free to contact Michael Christensen, Nolte and Associates, directly at (510) 934-8060 or (fax) (510) 939-5451.

Very truly yours,

Jerry L. Hail
Project Executive
Nolte and Associates

cc: Ralph Jaeck, City of Reno
Colleen Bathker, Summit Envirosolutions, Inc.
Michael Christensen, Nolte and Associates
TO: Tom Ogee, UPRR  
FROM: Mike Christensen  
SUBJECT: Projected Rail Traffic Through Reno  
DATE: May 13, 1996  
PROJ: WC0335  
#: Reno RR Mitigation

Following is an explanation of our 38 train/day estimate of future rail traffic through Reno as we discussed last Friday. This is a long-term projection that we used in the report to generate railroad-caused traffic delays in the year 2015. These numbers are in line with the March 15, 1996 and May 3, 1996 reports.

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These train count estimates could be reduced by a number of factors including:

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These train traffic estimates are based on our assessment of what we think will happen on this route over the next 2 decades and are by necessity quite rough. We recognize that they can be considerably refined with you assistance. We also realize that they will be subject to changes as the post-merger operations of the route evolve.
28 May 1996

Elaine K. Kaiser, Chief
Section of Environmental Analysis
Surface Transportation Board
1201 Constitution Avenue, NW
Room 3219
Washington, D.C. 20423-0001

Re: Proposed Merger of Union Pacific and Southern Pacific Railroads, Finance Docket No. 32760,
City of St. Louis, Missouri

Dear Ms. Kaiser:

Staff of the Historic Preservation Program, Missouri Department of Natural Resources have consulted
with McGinley Hart & Associates concerning the existing Union Pacific rail yard at Lesperance Street in
the City of St. Louis. Based on the information provided, which is to be followed up by a report of
findings and photographs of the project area, there are no cultural resources eligible for inclusion in the
National Register of Historic Places at the Lesperance Street facility. Therefore, we have no objections
to initiation of project activities.

If you have any questions, please write or call Judith Deel at 573/751-7862.

Sincerely,

HISTORIC PRESERVATION PROGRAM

Claire F. Blackwell
Director and Deputy State
Historic Preservation Officer

CFB:jd

c Paul McGinley
June 10, 1996

VIA FACSIMILE

Ms. Elaine K. Kaiser
Chief, Section of Environmental Analysis
Surface Transportation Board
Room 3219
12th and Constitution Avenue, N. W.
Washington, D.C. 20423

Re: Union Pacific/Southern Pacific
Control Proceeding (F.D. 32760)

Dear Ms. Kaiser:

Based on progress in negotiations to date, Applicants hereby request
that the Section of Environmental Analysis not prescribe mitigation measures in its
final Environmental Assessment to address any effects of the UP/SP merger in the Town
of Truckee, Placer County and in the areas of interest to the East Bay Regional Park
District. We understand that SEA is pursuing similar letters from Placer County and
the East Bay Regional Park District. We will provide SEA a copy of the Memorandum
of Understanding with the Town of Truckee as soon as it is available.

Sincerely,

J. Michael Hemmer
June 10, 1996

Ms. Elaine K. Kaiser
Chief, Section of Environmental Analysis
Surface Transportation Board
Room 3219
12th and Constitution Avenue, N. W.
Washington, D.C. 20423

Re: Union Pacific/Southern Pacific
Control Proceeding (F.D. 32760)

Dear Ms. Kaiser:

Based on progress in negotiations to date, Applicants hereby request that the Section of Environmental Analysis not prescribe mitigation measures in its final Environmental Assessment to address any effects of the UP/SP merger in the Town of Truckee, Placer County and in the areas of interest to the East Bay Regional Park District. We understand that SEA is pursuing similar letters from Placer County and the East Bay Regional Park District. We will provide SEA a copy of the Memorandum of Understanding with the Town of Truckee as soon as it is available.

Sincerely,

J. Michael Hemmer
TO: Elaine K. Kaiser
FROM: J. Michael Hemmer
ROOM: 715D

DATE: June 10, 1996

2 Pages (including cover)

If there is a transmission problem, please call the number checked below:

___ (202) 662-6280 (Telecommunications)
___ (202) 662-5729
The assumption is made that other federal agencies, e.g., FWS, FS, EPA and others have been contacted regarding potential environmental impacts. NRCS has primary responsibility for determining impacts on prime or farmland of statewide importance. The agency response was submitted 5 Feb 96 in this regard - enclosed.
Subject: LU - 310

Date: 2-5-96

File Code: 290-11-11

To: Elaine K Kaiser
Chief, Section of Environmental Analysis
Surface Transportation Board
Washington, D.C. 20423-0001

No apparent impact on prime farmland or farmland of statewide importance would occur as a result of the proposed Control and Merger of the Union and Southern Pacific railroads.

Duane Johnson
State Conservationist

Attachment(s): AD-1006
Dames & Moore is preparing an addendum to the Environmental Report for the application for merger of the Union Pacific and Southern Pacific Railroads. The attached list and maps show additional construction projects which have been identified within your state.

To prepare our addendum to the Environmental Report, we are requesting that you inform us of any concerns you have and provide information regarding:

- protected species information (State, Federal) within 5 miles of each site.
- listing of critical habitats within 5 miles of each site.
- locations of parks and refuges in proximity to the proposed projects.
- citations to any permitting/approval authority which you believe your state has over the actions identified.
- any other information you would like to provide regarding environmental matters or local concerns at these sites.

We would appreciate receiving the requested information at your earliest convenience. We would further appreciate it if the information could be supplied in writing or orally to the undersigned at the address and phone/fax numbers on this letterhead.

We very much appreciate your assistance.

Very truly yours,

DAMES & MOORE, INC.

Julie Donsky
Environmental Scientist

No federally listed endangered, threatened or candidate species present

Site may contain wetlands. Contact Corps of Engineers for necessary permits. (telephone 901-541-3471)

Environmental Coordinator
U.S. Fish and Wildlife Service

Log# 96-351

Date 3/12/96
March 21, 1996

Tom Adams
Governor’s Office Budget and Planning
P O Box 12428
Austin, Texas 78711

Dear Tom:

Carl Masterson, our Environmental Program Coordinator, has indicated that he has no concerns regarding the addendum to the Environmental Report for the application for merger of the Union Pacific and Southern Pacific Railroads (as per attached).

Thank you for keeping us informed.

Sincerely,

Rowena Ballas
Administrative Assistant

rb
attachment

TV-R-95-09-29-0002-50-00

Item No.   
Page Count 2

1 1
Tom Adams  
Governor's Office of Budget and Planning  
P.O. Box 12428  
Austin, TX 78711

Re: Tx-R-95-09-29-0182-50-00

Dames & Moore is preparing an addendum to the Environmental Report for the application for merger of the Union Pacific and Southern Pacific Railroads. The attached list and maps show additional construction projects which have been identified within your state.

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We very much appreciate your assistance.

Very truly yours,

DAMES & MOORE, INC.

Julie Donsky  
Environmental Scientist
Mr. Tom Greenland  
Union Pacific Railroad Company  
1416 Dodge Street  
Omaha, Nebraska 68179

Re: Comments from Agencies  
Union Pacific/Southern Pacific Merger  
Environmental Report

Dear Tom:

Please find enclosed one copy of letters (agency comments regarding UP/SP merger notification) received between March 15 and April 2, 1996. We will continue to send any additional letters, which we may receive to you. If you have any questions, please feel free to contact me at (847) 228-0707 ext. 364.

Sincerely,

DAMES & MOORE, INC.

Julie Donsky  
Project Manager

cc: D. Hargis, D&M  
J. Feigenbaum, D&M
DAMES & MOORE
ONE CONTINENTAL TOWERS, 1701 GOLF ROAD, SUITE 1000, ROLLING MEADOWS, ILLINOIS 60008
(847) 228-0707 FAX (847) 228-1115

U.S. FISH AND WILDLIFE SERVICE
Region 4
Richard B. Russell Federal Bdg., Rm. 1200
1875 Century Boulevard, Suite 200
Atlanta, GA 30345

Dames & Moore is preparing an addendum to the Environmental Report for the application for merger of the Union Pacific and Southern Pacific Railroads. The attached list and maps show additional construction projects which have been identified within your state.

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DAMES & MOORE, INC.

Julie Donsky
Environmental Scientist

Item No. __________
Page Count __________

No federally listed endangered, threatened or candidate species present

Site may contain wetlands. Contact Corps of Engineers for necessary permits.
(telephone 901-544-3471)

Environmental Coordinator
U.S. Fish and Wildlife Service

Log# 96-351

3/12/96 Date
The City of Tehama has several concerns on the proposed merger of Southern Pacific and
Pacific's impact on the environment and quality of life in the City of Tehama. There are
several old and historic brick buildings in the city that feel the vibrations of current trainloads
and be affected. Trains in the past few years appear to have increased in weight and speed, as the
ations of their approach can be felt in homes of longtime residents that compare present to
train effects.

A city well and a two city parks are adjacent to the railroad as it passes through the city. A
concern of subsidence at the well due to vibration damage is also a possibility.

Located on recent alluvium soils which have little or no rock base; they are fluid and are
subject to vibration and consequently are potentially damaging to older buildings, if not newer.

Noise is another factor that seems to has increased in decibels from the various trains that
pass through the city, particularly at night, and from certain trains. We realize that safety
provisions probably require the horn sounding at automobile crossings and bridge approaches.
Some engineers delight in running their horns from the bridge approach continually to
automobile crossing, or for many more times than what is required for safety. The horns also
ear to be louder and of a different quality in the recent years.

The Red Bluff Daily News reported the increase of train traffic would probably be similar
to earlier years of 24 trains per day. Up to some six more trains than present. We can compare
with an environmental report on truck traffic for the automobile bridge that said truck traffic
would only be increased minimally in Tehama. It is now a heavily trafficked truck bridge, contrary
what the early environmental study claimed. What assurance can we have that train traffic will
increase significantly and even more, compound the noise and vibration damage to Tehama?

The automobile bridge has also brought an increase of auto and truck traffic through
Tehama. The Fifth Street railroad crossing often detains traffic through the intersection creating
traffic problems. Three crossings, Aramayo Way, Proberta, and Gerber Road, often cause
traffic to wait at crossings three times, creating lines of traffic through Tehama.

Tehama also receives its emergency services of fire, police and medical from outside of
city and the resident. Little is said about upgrading tracks, trains or public relations to assure the once tranquil quality of life we have enjoyed in Tehama.

Sincerely,

Carolyn Steffan, City Clerk
Environmental Specialist
Dames and Moore Inc.
1701 Golf Road, Suite 1000
Rolling Meadows, IL 60008

Dear Ms. Donsky:

I am responding to your letter of February 26, 1996, pertaining to a request for environmental information concerning the potential merger of the Union Pacific and Southern Pacific Railroads.

The Natural Resources Conservation Service is primarily concerned with the impact of actions which relate to Prime Farmlands. Accordingly, I am forwarding your request to our Stockton field office so they may comment on that subject. I suggest you contact the following agencies for other information you seek:

1. Protected Species: U.S. Fish and Wildlife Service or California Department of Fish and Game.
2. Critical Habitats: Same as above.
3. Location of Parks and Refuges: Consult map of area, National Park Service, etc.
4. Citations re: Permits/Approval authority - State of CA.

I trust this information will be of value to you.

Sincerely,

[Signature]

Item No. 1
Page Count 1

cc:
John Beyer, Area Conservationist, NRCS, Fresno, CA
Dave Simpson, District Conservationist, NRCS, Stockton, CA
MEMORANDUM FOR Commander, Memphis District, ATTN: CELMM-PD
167 North Main Street, Room 202
Memphis, Tennessee 38103-1894

SUBJECT: Transfer Letter Pertaining to Your District

The subject letter concerning the construction of two existing rail lines for the Union Pacific and Southern Pacific Railroads, Crittenden County, Arkansas, in your District is enclosed for your response.

Please send comments to Dames and Moore, Inc.

FOR THE COMMANDER:

KENNETH W. CARTER
Chief, Planning Division

ENCL

CF:
Dames and Moore
One Continental Towers
1701 Golf Road, Suite 1000
Rollings Meadows, Illinois 60008

Item No. 
Page Count 2
| TO: Dames & Moore Rolling Meadows IL. | FROM: Julie Donsky Env. Sci. |
| CLASSIFICATION: U | PRECEDENCE: 2 |
| NO. PAGES: Including this Header: | |
| DATE-TIME: 26/03/96 |
| MONTH: 03 | YEAR: 96 |
| RELEASE'S SIGNATURE: Richard Smith |

REMARKS: Re: Your letter dated 26 Feb. '96 for "Bridge Junction" proposal, Union Pacific & So. Pacific Railroads in Crittenden Ark. We have no further comment in addition to those provide in our letter dated 14 March 1996.
Ms. Julie Donsky  
Environmental Scientist  
Dames & Moore  
One Continental Towers  
1701 Golf Road, Suite 1000  
Rolling Meadows, Illinois 60008  

Dear Ms. Donsky:

We have reviewed your letter and its attachments dealing with Dames & Moore’s addendum to its Environmental Report in the application for merger of the Union Pacific and Southern Pacific Railroads.

The areas of interest in Robstown, Texas, and Sealy, Texas, have previously been dedicated to urban and industrial land uses; therefore, these undertakings will have no adverse impact on agricultural lands.

Thank you for allowing us to comment on this proposed merger.

Sincerely,

HARRY W. ONETH  
State Conservationist  

cc: Dexter Svetlik, ASTC for Field Operations, NRCS, Corpus Christi  

Item No.  
Page Count 107
Ms. Julie Donsky  
Environmental Scientist  
Dames & Moore  
1701 Golf Road  
Suite 1000  
Rolling Meadows, Illinois 60008

Dear Ms. Donsky:

This is in response to your letter with accompanying information and maps concerning construction projects proposed in an addendum to the Environmental Report which is part of the application for merger of Union Pacific and Southern Pacific railroads. The proposed projects are construction of a new connection involving a timber crossing in the City of Robstown, Nueces County, Texas and installation of two No. 10 turnouts in the City of Sealy, Austin County, Texas. After consideration by elements of the Planning, Engineering, and Construction-Operations Divisions, our only comment is that neither of the proposed projects appears to require a Department of the Army permit.

We appreciate the opportunity to review and comment upon the proposed projects and trust that this response facilitates your preparation of the addendum to the Environmental Report.

Sincerely,

Richard Medina  
Chief, Environmental Resources Branch
March 29, 1996

Dames & Moore
One Continental Towers
1701 Golf Road, Suite 1000
Rolling Meadows, Illinois 60008

Attention: Julie Donsky, Environmental Scientist

Dear Ms. Donsky:

Thank you for your letter of March 26, 1996 in regard to the Environmental Report prior to the merging of the Southern Pacific and Union Pacific Railroads.

As far as we can tell at this time, there will be no concerns in the Shelby County area. The track running from Shreveport, Louisiana to Lufkin, Texas runs in the far northwest corner of the county and continues along the Shelby-Panola County line until it runs into Louisiana.

As was mentioned in our previous letter, the crossings here in Shelby County are so obscure due to the underbrush in some areas, they are hazardous.

Thank you for your concern in our county.

Sincerely,

[Signature]

Floyd A. Watson
County Judge
Shelby County

Item No. ____________________
Page Count ______

FAW: ph
Ms. Elaine Kaiser, Chief
Attorney at Law
Section of Environmental Analysis
Surface Transportation Board
Interstate Commerce Commission
12th & Constitution Avenue, N.W., Room 3219
Washington, DC 20423-0001

RE: PLACER COUNTY JURISDICTION MEMORANDUM OF UNDERSTANDING
FINANCE DOCKET NUMBER 32760

Dear Ms. Kaiser:

We hope that your site visit in Placer County more clearly illustrated the various environmental impacts we have proposed to mitigate as a result of the merger between the Union Pacific Railroad Company and the Southern Pacific Railroad. Placer County jurisdictions, the Placer Foothills Consolidated Fire District, and the Placer County Transportation Planning Agency have entered into negotiations with Union Pacific Railroad Company to develop and execute a Memorandum of Understanding (MOU) that will mitigate environmental issues caused by increased rail activity expected to result from the proposed merger.

We request that you not recommend any mitigation in the Post Environmental Assessment for all communities and agencies of concern in Placer County until we have completed our negotiations with Union Pacific. These include concerns raised by the City of Auburn, the City of Colfax, the City of Lincoln, the Town of Loomis, the City of Rocklin, the City of Roseville, Placer County, Placer County Public Works Department, Placer Foothills Consolidated Fire District, and the Placer County Transportation Planning Agency.

We are close to executing a MOU with Union Pacific Railroad Company that would address our concerns. We hope to have the MOU executed by July 8, 1996. We will advise you as soon as the agreement is executed and will provide you with a copy.
Sincerely,

Tim Douglas
Executive Director
Placer County Transportation Planning Agency

Pauk Ogden
City Manager
City of Auburn

Gene Albaugh
City Manager
City of Colfax

William J. Malinen
City Manager
City of Lincoln

Joan Phillipe
Town Manager
Town of Loomis

Carlos Urrutia
City Manager
City of Rocklin

Al Johnson
City Manager
City of Roseville

Donald Lunsford
County Executive Officer
Placer County

Ron Wright
Chief
Placer Foothills Consolidated Fire District

c: William E. Wimmer, Union Pacific Railroad
Elaine K. Kaiser, Chief
Section of Environmental Analysis
Surface Transportation Board
Washington, D. C. 20423-0001

Re: Union Pacific/Southern Pacific Railroad Merger, Section 106 Compliance Finance Docket No. 32760 (STB, N10)

Dear Ms. Kaiser:

The State Historic Preservation Office [SHPO] reviewed the federal undertaking referenced above under Section 106 of the National Historic Preservation Act, 36 CFR 800. The SHPO's National Register Department and the Department of Antiquities Protection review properties to determine their historical significance.

The National Register Department and Department of Antiquities Protection received your correspondence of May 2, 1996 and May 22, 1996 (Finance Docket No. 32760). Within thirty days of the May 22, 1996 correspondence which includes the inventory forms and photographs our departments will review and coordinate with Richard Starzack of Myra Frank and Associates, Inc., as necessary.

For questions about eligibility of standing structures contact Jamie Wise, National Register Department, at 512/463-6006 and for archeological concerns contact Sergio Iruegas, Department of Antiquities Protection at 512/463-6096.

Thank you for your interest in the cultural heritage of Texas, and for your compliance with this federal review process.

Sincerely,

James W. Steely, DSHPO
National Register Department

cc: Sergio Iruegas, THC Department of Antiquities Protection
Richard Starzak, Myra Frank & Associates

The State Agency for Historic Preservation
LETTER OF TRANSMITTAL

TO: Elaine K. Kaiser
Section: Environmental Analysis
Surface Transportation Board
Att: Washington, D.C. 20423-0001

DATE: June 3, 1996

WE ARE SENDING YOU:

Attached [x] Under separate cover [ ]

following items:

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REMARKS

COPY TO

SIGNED: jamie wise

TITLE: 
February 9, 1996

Ms. Elaine K. Kaiser
UP/SP Environmental Project Director
Section Of Environmental Analysis
12th. And Constitution Avenue, Room 3219
Washington, D.C. 20423-0001

RE: Multi-County - General
Section 106 Review - ICC Tracking No. #26035
Proposed Merger Of Union Pacific And Southern Pacific And
Railline Abandonment
(Finance Docket No. 32760)

Dear Ms. Kaiser:

This letter is written in response to your inquiry, regarding properties of architectural, historical, or archeological significance in the area of the proposed referenced project.

In order for the Arkansas Historic Preservation Program (AHPP) to complete its review of the proposed project, we will need the additional information checked below:

- a 7.5 topographic project location map delineating the project boundary.
- a project description detailing all aspects of the proposed project.
- the location, age, and photographs of structures (if any) to be renovated, removed, demolished, or abandoned as a result of this project.
- photographs of any structures on property directly adjacent to the project area.

Once we have received the above information, we will complete our review as expeditiously as possible. If you have any questions, please contact me at (501) 324-9785.

Sincerely,

Randy Jeffery
106 Review Coordinator
May 23, 1996

VIA FAX AND MAIL

Ms. Elaine K. Kaiser
Chief, Section of Environmental Analysis
Surface Transportation Board
1201 Constitution Ave., N.W.
Washington, D.C. 20423

Re: F.D.No. 32760 UPSP/Merger
(Environmental Impact Statement
and Conformity Determination)

Dear Ms. Kaiser:

On behalf of the City of Reno, a party participant in the above proceeding, I request that an environmental impact statement (EIS) and conformity determination be undertaken for the environmental impacts in the Reno/Sparks/Truckee Meadows Basin.

The "EIS" request is based on the Surface Transportation Board's (STB) responsibilities under the National Environmental Policies Act (NEPA) 42 USC 4321 et seq. specifically 4332(2) and applicable regulations thereunder in 40 CFR Parts 1500-1508.

The "conformity determination" request is based on STB responsibilities under the Clean Air Act (CAA), 42 USC 7401 et seq., specifically 7506(c)(1), and regulations in 40 CFR Part 51, Subpart W. 51.850-.860.

After the site visit in the Reno/Sparks/Truckee Meadows Basin I am reasonably certain that the SEA should conclude that only an EIS undertaking will fully and fairly address the significant and adverse impacts to the public health, safety and environment of
that area. A conformity determination is also consistent with the non-attainment status of the area for air quality pollutants PM$_{10}$, CO and O$_3$. Please advise me of your decision on these requests at the earliest opportunity so that the City may ensure compliance with these NEPA and CAA requirements.

Very truly yours,

Paul S. Lamboley

PHL/dph
Ms. Elaine K. Kaiser  
Chief, Section of Environmental Analysis  
Surface Transportation Board  
1201 Constitution Avenue, NW  
Room 3219  
Washington DC 20423

Clearinghouse Nevada SAI # 96300161, Due Date May 10, 1996.

Dear Ms. Kaiser:

The Nevada State Historic Preservation Office (SHPO) reviewed the Environmental Assessment (EA) for this proposed undertaking. The SHPO received a letter from the Surface Transportation Board on April 5, 1996 initiating Section 106 (National Historic Preservation Act of 1966, as amended) consultation with this office. That correspondence stated that the proposed merger could have the following results:

1. The construction of six (6) universal cross-overs between the existing parallel SP and UP trackage. These proposed construction projects are located at Alazon, Barth, Beowawe, Elburz, MP440, and the UP Connection.

2. The abandonment of the rail yard at Carlin.

3. The phaseout of the existing Reno UP intermodal facility resulting in the demolition of one existing track and concrete intermodal ramp.

4. The construction of a new rail facility in the Reno area.

5. The demolition of the Sparks SP intermodal facility.

The above elements of the proposed merger do not appear to be addressed in the subject EA.

If you have any questions concerning this correspondence, please feel free to call me at (702) 837-5138.

Sincerely,

Rebecca Lynn Palmer  
Archaeologist
Elaine Kaiser, Chief
Section of Environmental Analysis
Surface Transportation Board
1201 Constitution Avenue
WASHINGTON DC 20423-0001

Dear Ms. Kaiser:

Thank you for submitting to our office your April 12, 1996 letter and supporting documentation regarding the Environmental Assessment (EA) being prepared in compliance with the National Environmental Policy Act (NEPA) for the proposed merger of the operations of the Union Pacific Railroad Company (UP) and the Southern Pacific Transportation Company (SP). The proposed merger is intended to improve service capabilities and operating efficiencies. The merger now requires the approval of the Surface Transportation Board (STB).

You are seeking our comments on your proposed EA in accordance with 36 CFR 800, regulations implementing Section 106 of the National Historic Preservation Act. We understand however that additional documentation is being forwarded to our office that will provide comprehensive survey information regarding historic resources associated with the proposed project. This information will be evaluated in accordance with 36 CFR 800.4(c), regulations implementing Section 106 of the National Historic Preservation Act. Since the submitted EA contains only preliminary information on these resources, and is purely a National Environmental Policy Act (NEPA) document, our office declines comment on its contents pursuant to Section 106.

Thank you again for seeking our comments on your project. If you have any questions, please contact staff historian Clarence Caesar at (916) 653-8902.

Sincerely,

Cherilyn Widell
State Historic Preservation Officer
May 8, 1996

Elaine K. Kaiser, Chief
Surface Transportation Board
1201 Constitution Avenue NE
Room 3219
Washington DC 20423

Please find attached to letters from communities located on the Union Pacific in Eastern Oregon. Both letters were received by me too late to include in Oregon’s comments on the Environmental Assessment. Thank you.

Sincerely,

Claudia L. Howells
Railroad Services Coordinator
May 2, 1996

Claudia L. Howells
Department of Transportation
Transportation Development Branch
555 13th Street NE
Salem, Oregon 97310

Dear Ms. Howells:

This letter is to address the Environmental Assessment being done for the UP/SP Railroad Merger. Even a slight increase in traffic through Baker City is something that warrants comment.

We realize that there is little that can be done to change the amount of noise that results from the wheels of the train coming in contact with the track. We also realize that a great deal has already been done to reduce the amount of noise the diesel electric propulsion causes. We do not believe that the noise from whistles is being addressed.

In the technological age we live in, we believe there must be something that can be done to alert motorists and pedestrians without the use of whistles, horns or other noise generating devices that can be heard for miles in all directions. It seems to us that little is being done to reduce the amount of noise resulting from whistles. Some even contend that some engineers simply whistle all the way through the City and others are whistling for crossings that no longer exist.

At a minimum we would recommend that whistling be reduced to a minimal without jeopardizing safety. The optimum would be a new system that does away with whistling in situations other than emergencies. Most of us don't consciously hear the whistles during the daytime because there are so many of them, so where is the safety advantage. There must be a better way.
A railroad through the center of a community is no small thing. Union Pacific has realized and responded to that over the years. We hope that UP/SP will use their combined resources to further reduce the impact they have on Baker City.

Sincerely,

Karen Woolard
City Manager
City of Echo
20 S. Bonanza
P.O. Box 9
Echo, OR 97826
(503) 376-8411

May 3, 1996

Claudia Howells
Railroad Services Coordinator
ODOT
Transportation Dev. Branch
Mill Creek Office Park
555 11th St. NE
Salem, OR 97310

Subject: Environmental Assessment UP/SP Railroad Merger

The City of Echo is located in Northeastern Oregon 20 mi. west of Pendleton, 185 mi. east of Portland and about 4 miles from Hinkle. Our town is bisected down the middle by the Union Pacific main line. As a result, we are very concerned about the impact on our community of the proposed UP/SP merger from both a safety and environmental standpoint. I am responding not only on behalf of the City of Echo, but have been asked by Echo Rural Fire Protection District Fire Chief Tom Enright.

Because of our proximity to Hinkle and the fact that our community has a siding, without increased train traffic, we already experience problems due to use of the Echo siding to hold trains for a few hours to as much as several days. We have had a recurring problem with blocked crossings, although some of this problem has been eliminated due to changes in the location of crossing arm switches. We have two vehicle crossings and one pedestrian crossing in Echo. Often all three are blocked. The fire department is concerned about the blocking of crossings at Echo and Nolin (7 miles south of Echo) in the event of fires. Since the Fire Station is on the west side of town, blockage of crossings at Echo or Nolin can force the Fire Department to drive at least 5 miles to get to the other side of town or to the freeway to reach a fire. At Nolin there is only one crossing for miles.
Our police are concerned about the repeated crossing blockages. Just today, the fire chief caught a student crawling under a train on his way back to school. Because trains so often block crossings, (although it is illegal) we have residents assume that the crossing arms there is no moving train, and dart between crossing arms.

The fire department is also concerned about increased railroad generated fires and increased potential for spills of hazardous materials. While the Echo Fire District is one of the largest in the state in area, it is one of the smallest in terms of budget and manpower. It also has over 20 miles of mainline railroad running through it. As a result, it can be a big strain on their resources to handle such problems.

When trains are left on the siding in Echo they are left idling which creates not only problems with air emissions but with noise and vibration. This week alone, we have had at least two evenings where the trains set for several hours idling. Echo residents have tried to file complaints about the noise the idling trains cause and the fact that it interferes with their sleep, but have been told by the PUC that we have no jurisdiction.

I can attest to this being a problem. I live over a 1/4 of a mile away from the track on the hill above Echo and can hear and feel the vibration in my home at night. Echo lies in a narrow river valley prone to stagnant air, especially in winter months. Increased train traffic will only escalate these problems.

We have been told over the years that the siding at Echo is used so heavily, because during busy periods, there is not enough room at Hinkle to hold the trains. If this is the case now, how can they possible handle increased traffic without increasing the problems we already face.

Your memo asked for suggestions for mitigation. We are not asking to block the merger, but feel there are things that can be done to limit the impact that can be placed as conditions on the merger.

1. Require expansion of track at Hinkle, so that trains can be handled there rather than being held in Echo and Nolin.

2. Require the railroad to plant and maintain trees and shrubs along both sides of the siding about 50 feet from the tracks. If the trees are planted close enough together they should help to eliminate some of the noise problem, as well as helping with air quality.

3. Require the railroad to provide the Echo Fire District
funding for equipment to handle potential railroad generated problems.

Sincerely,

Diane Berry
City Administrator

cc: Tom Enright
Umatilla Co. Sheriff's Department
May 1, 1996

Elaine K. Kaiser, Chief  
Section of Environmental Analysis  
Room 3219  
Surface Transportation Board  
1201 Constitution Ave., NW  
Washington, DC 20423

ref: Finance Docket No. 32760

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

Dear Ms. Kaiser:

The Leadville Coalition is a party of record in the above-referenced issue. The Coalition is composed of a board of directors representing the Lake Co. Board of Commissioners; the City of Leadville; the Leadville Sanitation District; the Parkville Water District; the Lake Co. School District R-1; the Colorado Mountain Junior College District; and the Greater Leadville Area Chamber of Commerce. Associate memberships are held by St. Vincent General Hospital; Lake Co. Parks & Recreation Dept.; the U.S. Forest Service, Pike-San Isabel National Forest, Leadville Ranger District; and the Leadville Transportation Dept.

In correspondence to the Surface Transportation Board dated March 21, 1996, the Coalition indicated its opposition to the proposed merger and related abandonments on the basis of a number of concerns related to environmental conditions relating to Docket No. AB-8(Sub No. 36X), the Denver & Rio Grande Western Railroad Discontinuance Exemption, Sage-Leadville Line in Eagle and Lake Counties, Colorado, and Docket No. AB-12 (Sub No. 189X) Southern Pacific Transportation Company Abandonment Exemption, Sage-Leadville Line in Eagle and Lake Counties, Colorado. Specifically, our concerns were related to unresolved issues...
establishing responsibility for remedial action and the specific actions to be undertaken within the California Gulch Superfund Site

In review of the Environmental Assessment completed by your office, we are particularly troubled by the information contained in Vol. 3, Chapter 4, Section 4.1.7-Suggested Mitigation found on page 4-14. In this section, you are identifying mitigation measures requested by various parties participating in the Environmental Assessment. It is indicated that the U.S. Environmental Protection Agency, Region 8 has requested a remedial investigation to determine the nature and extent of contamination of rail lines to be abandoned within the Eagle Mountain and California Gulch Superfund sites. There is no indication in the record that any action will be required of the Surface Transportation Board in regard to suggested mitigation.

Further, as we review Section 4.1.8 SEA Recommended Mitigation, there appears to be no recommendation from the Section of Environmental Analysis to the Surface Transportation Board regarding the need for further remedial investigation as requested by EPA Region 8. It is indicated that “the Board will consider SEA’s recommendations and the environmental record in making its final decision.” We consider the absence of a recommendation from SEA on the request from EPA Region 8 to be a critical omission. Therefore, we are requesting that Section 4.1.8-SEA Recommended Mitigation be expanded to address the request filed with you by EPA Region 8. It is our preference that a complete remedial investigation be undertaken to define the responsibilities of the corporate entity to be created by the merger and the actions to be undertaken within the California Gulch Superfund Site and other sites under investigation by EPA along the route proposed for abandonment and/or exemption. A final record of decision should be entered by the Environmental Protection Agency as part of the remedial investigation.

Sincerely,

Joe D. Forrester, President
Leadville Coalition

/cc

pc: Leadville Coalition Directors & Associate Directors
May 1, 1996

Elaine K. Kaiser, Chief  
Section of Environmental Analysis, Room 3219  
Surface Transportation Board  
1201 Constitution Avenue NW  
Washington DC 20423

SUBJECT: ENVIRONMENTAL ASSESSMENT (EA) OF THE POTENTIAL ENVIRONMENTAL IMPACTS ASSOCIATED WITH THE PROPOSED MERGER OF THE UNION PACIFIC RAILROAD COMPANY AND THE SOUTHERN PACIFIC TRANSPORTATION COMPANY (Finance Docket No. 32760)

Dear Ms. Kaiser:

Thank you for providing the City of Salem, Oregon, with the opportunity to review and comment on the above-referenced document. We were pleased to see our February 22, 1996, comments incorporated into and addressed in the EA. We would also like to extend a special note of thanks to Public Affairs Management, and Mr. Matthew Royce in particular, for taking the time to visit with us and discuss our concerns in detail. The City of Salem considers the proposed merger, and its possible impacts to our community, a matter of great importance. We intend to continue to be an active participant in the process.

The purpose of this letter is twofold. First, it will provide the Surface Transportation Board with our comments on the EA. Second, this letter will also give the Board additional local information for its use in the final determination.

Air Quality

2.1.4 Summary by Air Quality Control Region (v 1, p 2-13); 15.1.3 Portland Oregon-Washington AOCR (193) (v 2, p 15-6). The Salem Urban Area is a nonattainment area for air quality and will be impacted by the additional emissions created by: (1) the increased train traffic; and (2) the traffic delays at the grade crossings. The area is already forced to use air emissions credits to meet the required federal and state air quality standards. We are concerned that the EA did not address the additional air quality impacts caused by idling vehicles at grade crossings. We suggest that the EA analyze this impact and that the UP/SP mitigation measures address this issue.

15.2 Air Quality Impacts at Grade Crossings (v 2, p 15-9). Unlike the assertion made in the EA with respect to Oregon grade crossings, most of the crossings in Salem exceed 5,000 vehicles per day. Additionally, many of these crossings will not be grade-separated due to their location along the perimeter of the central business district. We urge the SEA to reevaluate this section of the EA and recommend substantial mitigation measures for this impact. We have attached a map (Figure 1) that illustrates the average daily traffic at all of Salem's grade crossings.
Noise

Table 1-3: Rail Segments that Meet or Exceed Environmental Analysis Thresholds (v 1, p 1-13). The Eugene to Portland segment does not exceed the EA-established threshold for noise. It is our opinion, however, that noise will be a significant impact in Salem due to the proximity of the railroad right-of-way to sensitive receptors. The attached map (Figure 2) illustrates the location of sensitive receptors with respect to the railroad right-of-way.

Table 2-7: Number of Train Operations Needed to Generate a $L_{eq}$ of 65 dBA (v 1, p 2-15; 15.3 Noise Analysis: v 2, p 15-9). It appears from this table that the Salem portion of the Eugene to Portland segment qualifies for noise analysis. According to Table 1-13 (v 1, p 1-3), the number of trains on the railroad right-of-way in Salem, premerger and postmerger, are, 12.3 and 17.5, respectively. According to Table 2-7, this yields a postmerger receptor distance greater than 325 feet. Several sensitive receptor sites near the railroad right-of-way in Salem are within this threshold. The attached map (Figure 2) illustrates this. We suggest that (at least the Salem portion of) the Eugene-Portland segment be included in the noise analysis and that the recommended mitigation measures for noise addresses these areas.

Transportation Systems

2.3 Transportation Impacts (v 1, p 2-20); 1.2.1 Transportation/Transportation Systems (v 2, p 1-14); 1.2.6 Local/Regional Transportation Systems (v 2, p 1-26). The SEA "concludes that the only impact on local and regional transportation systems would be increased truck activity at intermodal facility locations." We are concerned that no mention of the impacts to automobile movement through grade crossings, particularly at heavily traveled ones. In our February 22, 1996, letter, we discussed how the railroad right-of-way crosses our east-west routes into the central business district. We suggest that the EA include a discussion of impacts to the local transportation systems due to increased activity on the railroad segments in this section.

15.4.2 Grade Crossings/Eugene to Portland (v 2, p 15-13). The EA did not provide enough information to document the findings in this section. Assuming they are correct, however, a queue of up to 35 vehicles and a delay of up to 2 minutes is a substantial impact to a city’s transportation system. We recommend that this impact be documented in more detail in the EA and that mitigation measures are recommended for it.

Safety

2.4 1 Grade Crossings (v 1, p 2-22). We understand that the significant threshold for addressing safety and delay is 5,000 vehicles per day. We have included an illustration (Figure 1) that shows the average daily traffic at grade crossing in Salem. Note that most of them exceed the 5,000 vehicle per day threshold.

1.2.2 Safety/Highway/Railroad Grade Crossings (v 2, p 1-15). We urge the Board to make the "preliminary" mitigation measures final, and that Salem be included as an area in which the UP/SP must conduct safety analyses and develop mitigation plans.
15.5.1 Grade Crossing Safety (v 2, p 15-14). The spread of projected grade crossing accidents, from +42 percent to -7 percent, is wide enough to warrant a more detailed explanation of it. We suggest that the EA further address the locations where significant increases in accidents are projected (e.g., locations where increases of 10 percent or more are projected), and that appropriate mitigation measures be recommended.

Energy

2.5 Energy Impacts (v 1, p 2-25), 1.2.3 Energy (v 2, p 1-22). The EA does not provide an analysis of the increased energy use by automobiles due to added idling at grade crossings. We suggest that this issue be addressed in the EA.

Recommended Mitigation Measures

6.0 Overview of Environmental Recommendations and Proposed Mitigation Measures (v 1, p 6-1). We appreciate that the recommended mitigation measures include coordination with local agencies on issues of local concern. We recommend, however, that time-certain deadlines for initial consultations and final action plans be included with these recommendations so that local agencies will be assured of timely response by UP/SP. We also strongly urge the Board to include a process in the EA appeals or mediation, if local agencies and the UP/SP cannot agree on the appropriate mitigation measures. We ask that this recommendation be expanded to all recommended mitigation measures where the UP/SP is to meet with local agencies.

15.8 SEA Recommended Mitigation/Air Quality (v 2, p 15-16). The recommended mitigation measure should include addressing the air quality impacts due to idling vehicles at grade crossings.

15.8 SEA Recommended Mitigation/Noise (v 2, p 15-16). We appreciate that the EA includes the Eugene-Portland segment in Bullet 1 of this section, even if it were not in the noise analysis sections.

15.8 SEA Recommended Mitigation/Transportation and Safety (v 2, p 15-17). The EA should also have a time-certain deadline for the UP/SP to meet with local agencies and report back to the SEA.

Suggested Mitigation Measures

We have been informed that providing suggested mitigation measures to the SEA would be appropriate. The recommended mitigation measures included in the EA have been satisfied with the provision that time-certain deadlines and an appeal or mediation process be added to the measures.

Miscellaneous Comments

2.0 Impact Areas (v 1, p 2-1). We were disappointed that the Environmental Assessment did not address the proposed merger’s impacts to sensitive land uses. As described in our letter of February 22, 1996, there are several institutional, historic, and park land uses next to the railroad...
right-of-way. The attached figure summarizes these. We recommend that the EA address impacts to sensitive land uses.

1.3 Conclusions (p. 2, p. 1-26). This section of the EA downplays the conclusions regarding air, noise, and transportation impacts of the proposed merger. We trust that UP/SP will not use the text in this section to reduce the mitigation requirements recommended in other sections of the EA.

We appreciate the opportunity to participate in this process. If you have questions, or require additional information, please do not hesitate to call me.

Sincerely,

P.M. (Peter) Fernandez, Jr., P.E.
Transportation Services Manager

Attachments:
  Figure 1. Average Daily Traffic at Grade Crossings
  Figure 2: Sensitive Receptor Sites

cc: Claudia Howells, Oregon Department of Transportation
    Frank Mauldin, Public Works Director
FIGURE 1
AVERAGE DAILY
TRAFFIC AT
GRADE CROSSINGS
SALEM, OR

MATCH LINE SEE SHEET 2
MATCH LINE SEE SHEET 2

FIGURE 2
SENSITIVE RECEPTOR SITES
SALEM, OR
May 3, 1996

VIA HAND DELIVERY

Elaine K. Kaiser
Chief
Section of Environmental Analysis
Surface Transportation Board
1201 Constitution Avenue, NW
Room 3219
Washington DC 20423

RE: Union Pacific Corp. et al. -- Control and Merger -- Southern Pacific Rail Corp. et al. (Finance Docket No. 32760)

Dear Ms. Kaiser:

Enclosed please find for your consideration an original and ten copies of "East Bay Regional Park District’s Comments and Response to the Environmental Assessment".

Please do not hesitate to contact the undersigned if you have questions or require further information regarding this submission.

Very truly yours,

GRAHAM & JAMES LLP

By

Susan B. Gerson
Attorneys for East Bay Regional Park District

Enclosures
Before the
United States Surface Transportation Board

Finance Docket No. 32760

APPLICATION OF UNION PACIFIC RAILROAD, ET AL.

THE EAST BAY REGIONAL PARK DISTRICT'S
COMMENTS AND RESPONSE TO THE ENVIRONMENTAL ASSESSMENT

Susan B. Gerson
J. Michael Cavanaugh
GRAHAM & JAMES LLP
Suite 700
2000 M Street N.W.
Washington D.C. 20036
Tel. (202) 833-0807
Fax (202) 463-0823

Attorneys for the
East Bay Regional Park District
APPLICATION OF UNION PACIFIC RAILROAD, ET AL.

THE EAST BAY REGIONAL PARK DISTRICT’S
COMMENTS AND RESPONSE TO THE ENVIRONMENTAL ASSESSMENT

The East Bay Regional Park District ("District") hereby submits its comments and response to the Environmental Assessment ("EA") made by the Surface Transportation Board’s ("Board") Section of Environmental Analysis ("SEA") regarding the proposed merger of the Union Pacific Railroad companies ("UP") and Southern Pacific Rail companies ("SP") (collectively, "UP-SP" or "Applicants") and the accompanying Settlement Agreement with Burlington Northern/Santa Fe ("BNSF"). Since the EA incorporates the Applicants’ Preliminary Draft Environmental Assessment regarding the potential environmental impacts from BNSF Settlement Agreement ("PDEA"), the District includes herein its comments and response to the PDEA.

INTRODUCTION

The District has jurisdiction over the construction, reconstruction, maintenance and operation of a system of parks and trails within Alameda and Contra Costa Counties. SP’s "Cal-P" double-track main line between Oakland and Martinez runs adjacent to the District’s parks known as the San Pablo Bay Regional Shoreline, Carquinez Strait Regional Shoreline, and Martinez Shoreline Park. The District also
maintains regional trails and connections adjacent to the SP Mococo line which connects Martinez and Stockton. Accordingly, the District is extremely concerned about the effects on its trails and parks from increases in both the number of trains and ton-mile volume which would result from the UP-SP merger and the Applicants' Settlement Agreement with BNSF. The District intervened in this proceeding and filed its Comments and Requests for Conditions ("Requests for Conditions") on March 29, 1996, in response to the Primary Application. The District requests that the merger be conditioned upon the establishment of several new at-grade or grade-separated crossings of SP rights-of-way, the grant of lateral encroachments for trails, implementation of certain train dispatching procedures to reduce crossing delays, and possible noise abatement measures. (The District incorporates by reference its Requests for Conditions.)

The Board has released its EA to the parties. In the EA, the Board's SEA addresses certain of the rail segments about which the District has concerns, provides the first statistical data regarding a yard construction project at Martinez, and recommends consultations between UP-SP and the District in order to develop a mutually agreeable mitigation plan. The District will pursue such negotiations diligently, in good faith, but the District nevertheless has significant valid concerns.

First and foremost, the District has serious reservations about its ability to obtain adequate relief unless explicit conditions are imposed upon the Applicants and BNSF regarding the environmental abatement measures the District requires. The
Applicants claim that such issues can be worked out by the parties without federal intervention (Applicants' Rebuttal, Vol. 1 at p. 313), or resolved through state Public Utilities Commission proceedings (Ongerth Rebuttal Verified Statement, p. 83). However, the District’s previous attempts to work with SP in regard to one California PUC-approved crossing at Eckley have not been successful. Although the Eckley crossing was approved in a 1995 PUC proceeding without opposition from SP, SP has not readily cooperated with the District or its contractors, and delays and increased costs have resulted. This matter is still not entirely resolved. Accordingly, the District submits that it is necessary for the Board to impose the environmental abatements which the District needs as conditions to its approval of the proposed merger. Otherwise, the District will remain unable to secure adequate relief.

Secondly, deficiencies in both the SEA’s EA and the Applicants’ PDEA severely impede the District’s ability to confront the data and conclusions set out in the EA and PDEA, because both fail to comport with the applicable legal standards regarding environmental analysis. Therefore, the District submits that the Board must comply with its statutory environmental mandate and prepare the requisite environmental

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1 Mr. Ongerth states that the District’s development of shoreline parks has "brought people across the [SP] tracks in growing numbers", giving rise to disputes and negotiations about crossings. (Ongerth Verified Rebuttal Statement, pp. 81-2). The District wishes to point out that it has always taken all possible steps to prevent and discourage any unauthorized crossings or entry onto railroad property by park users and will continue to do so. The District is proud of its record for successful coexistence of park facilities adjacent to transportation corridors, and will continue to cooperate in full with the Applicants in this effort.
analysis before it can issue a final decision either denying or approving the proposed merger.

RESPONSE AND COMMENTS

I. THE SEA MUST PREPARE AN EIS PURSUANT TO NEPA

The SEA acknowledges that the Board is required by the National Environmental Policy Act ("NEPA") to complete an environmental review process prior to making a final decision to either approve or deny the proposed merger. See EA at ES-2. To enact this national environmental policy, the Council on Environmental Quality ("CEQ") has promulgated regulations, 40 CFR Part 1500 et seq., which are binding on the Board. In addition, the former Interstate Commerce Commission ("ICC") promulgated its own regulations to carry out the mandate of NEPA. See 49 CFR Part 1105. In light of the Board’s adoption of the ICC’s environmental regulations, the SEA states that the EA complies with these regulations. See EA at ES-2. The District disagrees.

Section 102(c) of NEPA requires all federal agencies to:

[i] include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of human environment, a detailed statement by the responsible official on--

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,
(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented. (emphasis added).


The "detailed statement" described above is an environmental impact statement ("EIS"). The EIS and the comments and views of federal, state and local agencies authorized to develop and enforce environmental standards must accompany the proposed action through the Board's review process. Id. The CEQ regulations explain that "NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken." 40 C.F.R. § 1500.1(b).

In this proceeding, the Board has chosen to prepare an environmental assessment rather than an EIS. Under CEQ regulations, an environmental assessment serves to "[b]riefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact." 40 C.F.R. § 1508.9(a)(1). In contrast, an EIS is "a detailed written statement as required by section 102(2)(C) of the Act." 40 C.F.R. § 1508.11. If a particular action is not addressed by an agency's NEPA regulations, the agency must prepare an
environmental assessment and then determine whether to prepare an EIS, if necessary, or prepare a finding of no significant impact. 40 C.F.R. § 1501.4(b)-(e).^ 2

The EA states that:

Based on available information, independent environmental analysis, and the recommended mitigation, SEA concludes that the potential environmental impacts of the proposed merger and related rail line construction and abandonments should not be significant. EA at ES-4.

The District submits that, to the contrary, the environmental effects from the proposed merger on the District alone would be substantial. At the outset, both CEQ regulations and the courts require consideration of environmental impacts regardless of whether they are widespread or localized. In determining whether a proposed federal action "significantly" affects the quality of the human environment, CEQ requires consideration of both the "context" and the "intensity" of the effect. See 40 C.F.R. § 1508.27.

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^ The Board’s regulations provide that, in railroad merger proceedings, the Board will "normally" prepare an environmental assessment, even though the merger "may involve significant environmental impacts." 49 C.F.R. § 1105.6(b)(2). At the outset, this position conflicts with CEQ’s interpretation of NEPA requiring that an EIS be prepared when an action significantly affects the quality of the human environment. 40 C.F.R. § 1502.3. Additionally, the CEQ regulations permit agencies to determine under their own NEPA regulations whether the proposed action either "(1) Normally requires an environmental impact statement," or "(2) Normally does not require either an environmental impact statement or an environmental assessment (categorical exclusion)." 40 C.F.R. § 1501.4(a). The Board’s regulations do not fit precisely in either category. They seem to imply that an EA is a complete substitute for an EIS, which is contrary to the CEQ provision that an EA is a decision-making tool for ascertaining whether or not an EIS is necessary.
With respect to "context," the "action must be analyzed in several respects, including effects on society as a whole (human, natural), the affected region, the affected interests, and the locality" id. With respect to "intensity," federal agencies must consider, inter alia, "[u]nique characteristics of the geographic area such as proximity to historic or cultural resources, parklands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas." 40 C.F.R. § 1508.27(b)(3)(emphasis added). Agencies must also consider the degree of controversy likely to be caused by the impacts and the extent to which the action "may cause the loss or destruction of significant scientific, cultural, or historical resources." 40 C.F.R. § 1508.27(b)(4) and (b)(8). Under any of these criteria, the effect of the proposed merger on the quality of the human environment under the stewardship of the District would be significant.

Moreover, the courts require consideration of the impacts on all affected human environments, even if only a fraction of an overall project will have a significant environmental impact. See, e.g., Conservation Law Foundation, Inc. v. General Services Admin., 707 F.2d 626 (1st Cir. 1983) (where the GSA decided not to prepare an EIS for all parcels of land identified for sale after concluding that most, but not all, of the land would suffer no adverse environmental effects, the court found the EIS to be inadequate and ordered a supplemental, site-specific EIS prior to sale of the land); National Wildlife Federation v. U.S. Forest Service, 592 F. Supp. 931, 941 (D. Ore. 1984) (the court required the Forest Service to perform a site-specific
environmental assessment before taking any action even though it had already prepared a general EIS covering an entire forest but not discussing a particular district within the forest, and had performed an inadequate site-specific environmental assessment). Thus, an undisciplined or overly-generalized approach to environmental impact analysis is unlawful.

As will be shown below, the EA’s analysis and staff recommendations do not constitute an adequate environmental assessment with respect to the District’s region. The EA leaves one with the uneasy feeling that (a) there are significant environmental problems associated with the merger, (b) these effects are concentrated in a relatively small number of areas such as the District’s parklands, (c) the Board will not focus on environmental problems since they are not widespread, and, therefore (d) regional interests should somehow work out their concerns with the Applicants on their own, notwithstanding the enormous bargaining power advantage the Applicants have over these small interests. On the basis of the foregoing, the District submits that the Board must prepare an EIS.

II. THE EA and PDEA FAIL TO COMPLY WITH NEPA REQUIREMENTS

The Board’s SEA acknowledges that the BNSF Settlement Agreement is an integral part of the Applicants’ proposed merger. See EA at ES-1. The PDEA is the only environmental report which addresses the environmental effects of the BNSF Settlement Agreement. As the SEA notes, EA analysis of potential environmental
impacts resulting from the BNSF Settlement Agreement is based exclusively on BNSF’s comments (BNSF-1) and the PDEA. See EA, Vol. 2, p. 1-2. Unfortunately, in the PDEA Applicants did not conduct an environmental analysis in compliance with 49 C.F.R. § 1105.7. The PDEA completely fails to analyze the potential environmental impacts associated with an increase in rail traffic sufficient to trigger the environmental analysis thresholds set out in 49 C.F.R. § 1105.7. Instead, the Applicants made an independent judgment that they need not follow the regulatory framework and chose instead to only address that activity on rail lines for which BNSF’s own estimates of the number of trains BNSF expects to operate are higher than the Applicants’ own estimates. See PDEA at 3. Accordingly, there appear to be significant underestimates in the EA regarding the level of rail traffic which will likely travel over the SP’s Cal-P line, and possibly the Mococo line if the UP-SP merger and accompanying BNSF Settlement Agreement are implemented. The EA contains further underestimates regarding the effects of the Martinez Yard construction. As a result, SEA conclusions regarding the potential environmental impacts of the proposed merger and related settlement agreements on the District are improperly understated.

A. THE PDEA

The Applicants’ PDEA sets out: (1) the results of a supplemental environmental impact study on those rail line segments where BNSF projects greater levels of operations than the Applicants had projected for BNSF and (2) the findings of a
supplemental study of five proposed construction projects (one in Richmond and one in Stockton). The scope of the studies in the PDEA is inappropriate and far too narrow. As stated above, the Applicants on the one hand characterize this PDEA as a discretionary exercise which the Applicants could conduct in any manner they so chose, deciding arbitrarily which impacted rail segments they would study. On the other hand, the Applicants claim that the PDEA adequately addresses all of the outstanding environmental issues raised by BNSF-1, even though neither the PDEA nor the BNSF-1 comments are submitted in compliance with the regulatorily requirements that all rail segments which have potential environmental impacts be studied. The PDEA explicitly disclaims that it has attempted such compliance. See PDEA at 3. BNSF disclaims any compliance with obligations other than those of commenters in this proceeding. See BNSF-54, Second Verified Statement of Mr. Owen at 2.

Significant inconsistencies between PDEA figures and those in exhibits or testimony underscores the unreliability of the PDEA.

**Rail Segments Analysis**

The only effect of combined UP, SP and BNSF operations affecting the District which the PDEA addresses is an increase of 7.1 trains per day on the Cal-P line between Oakland and Martinez, with an increase of 48% in gross ton-miles per year. See PDEA, Supp. ER-A Table 1-1 at 7, at 12, and Table 3-5 at 24. From this latter figure, it is clear that the character of freight being moved, or the average train length,
must be changing dramatically. The PDEA does not address potential effects on the Mococo line (or other lines in which the District has an interest), even though the settlement agreement would grant BNSF rights, *inter alia*, to operate trains on both the Cal-P and Mococo lines and, as discussed below, BNSF apparently may divert traffic onto both of these lines.

The volume of BNSF traffic to be diverted onto the Cal-P line is not precisely quantified in BNSF-1, nor does it match the level of traffic alleged in the PDEA. BNSF-1 indicates that six regular BNSF trains, one or more dedicated unit trains, one intermodal pair, and one daily manifest train, *i.e.*, a minimum of ten additional daily BNSF trains, would also be redeployed on this line. There also may be additional dedicated unit trains as well as bulk grain and coal trains, extra trains and local freight trains added at some point. These same ten or more daily trains may also utilize the Mococo line.

In spite of this minimum traffic level of ten BNSF trains per day on the Cal-P line, and the Applicants’ projection of an average of 4.8 additional UP-SP trains per day on the Cal-P line (from 25 to 29.8) (PDEA, Supp. ER-A Table 1-1 at 7, at 12, and Table 3-5 at 24), the PDEA concludes that the total increase on the Cal-P line including BNSF traffic would only be 7.1 daily trains. Simple mathematics indicates

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4 *Id.*
that 4.8 UP-SP trains plus 10 BNSF trains equals 14.8 additional daily trains, not 7.1.

Moreover, the PDEA does not even address the Mococo line. Plainly, the PDEA is inaccurate, incomplete, or at best inexplicably inconsistent with Applicants' and BNSF's own evidence. As the District has previously noted in its Requests for Conditions, adverse environmental impacts on the District -- already significant as a result of the UP-SP merger alone -- would be vastly exacerbated if the BNSF Settlement Agreement is implemented.

**Construction Analysis**

Furthermore, the study of the five construction projects (which includes construction slated for Richmond and Stockton) does not address concerns which the District may have regarding indirect effects from such projects. This study does not attempt to consider whether other construction projects are really necessary in light of the operations UP, SP, and BNSF plan to conduct in concert.

With regard to the Oakland construction project which was studied in the PDEA, UP, SP, and BNSF plan to consolidate operations out of the SP yards in Oakland and transform the yard into a joint intermodal terminal.\(^5\) Once the Oakland yards are consolidated, Oakland will be the primary point of departure and arrival for freight on

\(^5\) See UP-SP Merger Application, Vol. 2, p. 64; Vol. 3, pp. 81 and 166; Figure 13-8, Vol. 3, p. 275.
a substantial portion of the track routes in Northern California. The Cal-P and Mococo lines will apparently carry much of this increased UP and SP rail volume which the Application contemplates. Although BNSF-1 does not address this point, BNSF rail volume must also increase on these lines, except, perhaps, for the traffic southbound to the Valley which may remain on the BNSF line.

Additional track construction is planned for Martinez. The Applicants choose not to address this construction in the PDEA, though they also failed to provide data regarding the Martinez construction in their Merger Application. As the District’s Requests for Conditions stated, the additional traffic diverted to Martinez will severely impact switching and crossing activity at the Ferry Street crossing in Martinez as well as at other at-grade crossings along the Cal-P and Mococo lines. Those crossings must be used by persons entering the District’s parks or utilizing its trails. The


7 Additional routes into the District are the UP’s Niles Canyon route connecting Livermore and Fremont as well as BNSF rail routes. These routes are adjacent to certain of the District’s lands and regional trail systems. No traffic increase on these route are shown in either the UP-SP Merger Application, BNSF-1, or BNSF PDEA. However, the District reserves its right to request conditions if these routes are affected.

8 Owen Statement in Support of BNSF-1 at pp. 11-12.

9 Table 5, Vol. 6, Part 1, p. 18.

10 Mr. Neal Owen, BNSF’s expert witness in this case, testified in the 1986 SF-SP merger proceeding before the ICC that switching movements from Ozol Yards may

(continued...
predictable result will be vastly increased noise and air quality impacts at these points.\textsuperscript{11} UP and SP acknowledge as much.\textsuperscript{12} BNSF-1 does not address the possible BNSF traffic increase following the Martinez construction, nor does the PDEA. Accordingly, the failure of both BNSF-1 and the PDEA adequately to address the BNSF settlement agreement’s potential environmental impacts on the District’s system of parks and trails has serious consequences for the PDEA’s utility to either the District or the Board as a comprehensive and accurate report of the potential environmental impacts of the proposed merger and the side agreements conditioned thereon.

\textsuperscript{10}(...continued) enter the Cal-P main line track as many as 50 times per day, activating at-grade crossing gates. ICC Finance Docket No. 30400, Owen Cross-Examination, Tr. 16,554-8. The shift of UP local train assignments from Port Chicago to Ozol Yards will clearly exacerbate this problem.

\textsuperscript{11} These switching and local freight activities will produce increased engine, coupling and draft-gear noise and air pollution impacts, regardless of the character of the freight being handled, even assuming no hazardous materials handling increases, and discounting the possibilities for derailments or crossing accidents.

\textsuperscript{12} See Table 2-4, Vol. 6, Part 2, pp. 30-31. See also, Tables 2-22 and 2-23, Vol. 6, Part 2, pp. 82 and 89; Figure 2-4, Vol. 6, Part 2, p. 93; Vol. 6, Part 3, pp. 27, 81-83; Figures 2-5, 2-7 and 3-3, Vol. 6, Part 3, pp. 44, 46 and 99. Table 1, Vol. 6, Part 1, p. 11.
B. THE EA

As explained above, the EA is only as accurate and comprehensive as the data on which it is based. In this regard, the District has serious concerns about the data and the analysis regarding the data which are contained in the EA.

Rail Segment Analysis

1. The SP Cal-P Line from Oakland to Martinez

The EA reports the same data as the PDEA regarding the number of trains which would operate over the Cal-P line pre- and post-merger, from 25.2 to 32.1 trains per day. See EA at ES-7, Table ES-3 at ES-8. The EA estimates the increase in the percentage of gross tons per year which will operate on the Cal-P at 48.2%.

The EA’s analysis of the post-merger effects on grade crossings on the Cal-P line does not give full effect to the SEA’s data, such as it is. The EA identifies 19 grade crossings on the Cal-P line, seven of which are used by over 5,000 vehicles per day. See EA, Vol. 2 at 4-36 through 4-37. The EA focuses upon the daily "train" increase of 27% instead of the 48% increase in gross tons per year. The increased length and character of these trains is more significant than the number of trains, which would itself be significant with a 27% increase. Moreover, as shown above, the likely number of additional trains per day on the Cal-P line is 14.8, not 7.1, and thus the true increase is 59% (from 25 to 39.8), not 27%. The EA also does not take into account the ten additional BNSF trains per diem on the Cal-P and Mococo lines.
The EA further underestimates the environmental impact the additional rail traffic will have at Cal-P’s crossings by calculating delay time at such crossings on the basis of present maximum and minimum train speeds. See EA, Vol. 2 at 4-37. The 48% post-merger increase in gross tonnage does not appear to have been factored into the EA’s train length or speed calculations for determining accrued daily delays at the Cal-P crossings. Accordingly, the increase in delays which the EA does find, from 65 to 82 minutes daily, is a serious underestimate. Longer, more heavily loaded, train traffic will move more slowly and cause considerably longer delays at the Cal-P crossings. The EA acknowledges that as many as 68 vehicles at one time (i.e., one lane of traffic a third of a mile long) may queue up to wait at a given crossing. See EA, Vol. 2 at 4-37.

As the District explained in its Requests for Conditions, it is of paramount importance to the District that the California PUC-approved at-grade crossing at Eckley be implemented, and that the District’s other planned crossings of the Cal-P line along the San Pablo Bay and Carquinez Strait shoreline be implemented. These include overhead crossings at Wilson Point (Pinole), Gately (Pinole), Lone Tree Point (Rodeo), City Cemetery/Nejedly Staging Area (Martinez), and at-grade crossings at White’s Resort and Port Costa.

Over 52,000 persons visited the Carquinez Strait Shoreline Park in 1994, and usage increased in 1995 as facilities were expanded. Similar numbers will soon be visiting the newly-developed San Pablo Shoreline Park. The 1987 Agreement between
the District and SP, among others required the Eckley crossing, grade-separated crossings at Wilson Point and Lone Tree Point, an overhead or at-grade crossing at Port Costa/Light, and an at-grade crossing at Port Costa/Carquinez, as well as other conditions. At a minimum, these crossings and the others described above are necessary conditions if the proposed UP-SP merger is approved. Given the substantial additional traffic for the Cal-P line apparently contemplated under the BNSF Settlement Agreement, the District requests that crossings should be grade-separated where physically feasible.

In addition, the EA acknowledges that the increased traffic activity on the Cal-P line will meet or exceed the Board’s air quality standards (but apparently not the Board’s noise quality standards). See EA at ES-7; Table ES-3 at ES-8; Table 1-3, Vol. 1 at 1-11; Table 2-2, Vol. 1 at 2-5; Vol. 2 at 4-10. The District’s Requests for Conditions analyzes the potential environmental impacts the merger and BNSF Settlement Agreement would have on the Cal-P line, and details the environmental problems which will result from the considerable post-merger increases in rail traffic congestion. These environmental impacts would necessarily involve, inter alia, a significant increase in noise affecting the District’s trails and parks adjacent to the Cal-P line. On the basis of these considerations, the District urges the Board to adopt the

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13 The District has confirmed with counsel for BNSF that footnote 3 to Table 1-3 is in error. There were only one set of comments by BNSF. These comments, BNSF-1, were filed December 29, 1995.
conditions it requests in order that the District is assured that its system of trails and parks will be adequately preserved for the public’s use and access.

2. **The SP Mococo Line from Martinez to Stockton**

The EA repeats the data from the Applicants’ Merger Application, reporting an increase from zero to four UP-SP trains per day on the Mococo line as a result of the merger. See EA at ES-7, Table ES-3 at ES-8. As indicated above, the traffic increases on the Mococo line should be reasonably anticipated in much the same manner as such increases will develop on the Cal-P. BNSF’s Verified Statement from Mr. Owen does not clearly state whether BNSF trains which are projected to run in and out of the Bay Area via SP’s Cal-P line will continue on via SP’s Mococo line. For example, though Mr. Owen states that “[t]rains to and from the Bay Area would use SP’s Cal-P route west of Sacramento,” Mr. Owen does not go on to clarify which connecting track from the Cal-P line these BNSF trains will use. (See BNSF-1 at 11.)

Whether or not there is additional BNSF traffic, UP and SP traffic alone will have adverse environmental impacts on the Mococo line. The EA’s analysis of the post-merger effects on grade crossings on the Mococo line identifies 25 grade crossings on the Mococo line, six of which are used by over 5,000 vehicles per day. See EA, Vol. 2 at 4-37. The EA further acknowledges that the increased traffic activity on the Mococo line will meet or exceed both the Board’s air and noise quality standards. See EA, Table 1-3, Vol. 1 at 1-11; Table 2-2, Vol. 1 at 2-5; Table 2-8, Vol. 1 at 2-17; Vol.
2 at 4-10; Vol. 2 at 4-22 through 4-24. Accordingly, the District renews its request for conditions which will mitigate the environmental impact to the District’s parks and trails system along the Mococo line.

**Rail Yard Analysis -- Martinez**

The EA reached beyond the Applicants’ scope of analysis in their Merger Application and their PDEA to consider effects from the construction at the Martinez (Ozol) yard. The EA shows an increase from 154.2 daily cars pre-merger to 199 daily cars post-merger being handled in the Martinez yard. See EA Table ES-4 at ES-11; Table 2-3, Vol. 1 at 2-9; Vol. 2 at 4-11. Based upon the EA’s figures, there will be an additional 48 cars switched in this yard daily. Such increase in traffic will cause an increase the level of noise and pollutant emissions.

As the District explained in its Requests for Conditions, the congestion and safety problems affecting the District’s park users at Martinez are much more serious due to the presence of the nearby Ozol Yard. Even without the added UP or BNSF trains, the District’s Requests for Conditions established that blockage of this crossing has been reported to be up to 312 minutes per day in the past. In its Requests for Conditions, the District explained that, in the past, it had often taken five to seven minutes to clear Ferry Street, that individual switching movements may obstruct this crossing for up to 14 minutes, and that movements from Ozol Yards also frequently activate the Ferry Street crossing gates. The planned relocation of UP’s local freight
switching activities to Ozol Yards will make this situation worse. The District’s Requests for Conditions also cited evidence from a prior ICC proceeding which indicated that the probability of delay at the Ferry Street had BNSF traffic been diverted onto the Cal-P line would have increased by up to 79 percent.

Martinez is the largest community on the Cal-P line corridor and is the county seat for Contra Costa County. There are no grade separations in Martinez. All emergency vehicle stations are located inland and must cross Ferry Street to respond to emergencies in the District’s Martinez Shoreline Park and marina area. Current statistics show an average of 386,000 persons annually visit Martinez Shoreline Park. The District’s Requests for Conditions provides past evidence that over 5,000 vehicles per day use the Ferry Street crossing on the average, and traffic is much higher on weekends and special event days at the park. Hence, the urgency of the need to relieve the congestion, delay and safety problems at the Ferry Street crossing becomes quite evident.

In the 1987 Agreement between the District and SP discussed in detail in the District’s Request for Conditions, the railroads had contractually acknowledged the necessity of a grade separation at Ferry Street and the implementation of dispatching procedures to reduce obstructions at this crossing if BNSF and UP traffic were allowed onto the Cal-P line. Since these changes will now occur, such conditions are obvious requirements.
III. REQUEST FOR RELIEF

Based on the foregoing, the District respectfully requests that the SEA comply with NEPA requirements and, thereby, prepare an EIS, or alternatively, impose the limited environmental mitigation measures set forth in the District's previously-filed Requests for Conditions. The various crossings, encroachments and other relief sought by the District are necessary for the successful and harmonious coexistence of the railroads and the District's parks and trails in light of proposed traffic increases.

Respectfully submitted,
GRAHAM & JAMES LLP

May 3, 1996

By
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CERTIFICATE OF SERVICE

Pursuant to Decision No. 32 in this Docket Proceeding No. 32760, I certify that I have this day served copies of the foregoing "COMMENTS AND RESPONSE TO THE ENVIRONMENTAL ASSESSMENT BY EAST BAY REGIONAL PARK DISTRICT" upon all parties of record (POR) in this proceeding, by first-class, postage pre-paid U.S. mail.

Date: May 3, 1996 Signature: ________________

Susan B. Gerson
May 3, 1996

Via Hand Delivery
Elaine K. Kaiser
Chief, Section of Environmental Analysis
Room 3219
The Surface Transportation Board
1201 Constitution Avenue, N.W.
Washington, D.C. 20423


Dear Ms. Kaiser:

Enclosed for filing in the above-captioned case are an original and ten copies of the Coalition for Competitive Rail Transportation's Request for Environmental Impact Statement identified as CCRT-10.

Respectfully Submitted,

John T. Estes
Executive Director
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

COALITION FOR COMPETITIVE RAIL TRANSPORTATION (CCRT)
REQUEST FOR ENVIRONMENTAL IMPACT STATEMENT

John T. Estes
Executive Director
Coalition for Competitive Rail Transportation
1029 North Royal Street, Suite 400
Alexandria, Va 22314
(800) 814-3531

May 3, 1996
It is essential for the Surface Transportation Board (STB) to conduct an in-depth and thorough environmental impact statement as part of its statutory evaluation of the proposed merger between the Union Pacific and Southern Pacific railroads (UPSP) or (Applicants). Such action is essential because:

1- This is the largest railroad merger in the history of the United States,

2- Thousands of cities and towns of all sizes will be affected,

3- Significant rail traffic will be rerouted resulting in new demands on both the existing transportation facilities and on emergency capabilities to cope with unforeseen accidental threats, hazardous spills and urban safety concerns,

4- There has been little or no evaluation of effective safety response capabilities on either a local or regional level,

5- Hundreds of miles of track is slated to be abandoned posing serious environmental degradation concerns,

6- Thousands of railroad employees will be laid off or reassigned posing serious training and safety related threats to both employees as well as the residents of the communities through which the affected railroads operate,

7- Currently approved municipal air and water pollution standards will be impacted as a result of an immense change in existing railroad traffic patterns which will in turn result in a cascade of additional changes in automotive and truck vehicular traffic pattern density levels, as sensitive surface transportation balances are altered,

8- Abandoned shippers must seek alternate transportation options placing new stress on the existing transportation infrastructure in numerous communities and regions of the country as well as resulting in potential land and water environmental damage to the vacated areas.

9. It is critical to a review of environmental considerations that the STB address the impact which result from the BNSF operations over the UP and SP tracks, and

10. It is respectfully submitted that it is the statutory responsibility of the STB in the public interest to address the cumulative environmental impact of the proposed merger as a whole (particularly where as here well over one half of the geographical area of the lower 48 states is involved) and not to merely target an analyses to separate geographical areas or regions.
These are the very types of concerns that the National Environmental Policy Act was designed to address and which the STB must carefully weigh. These environmental threats cannot be cavalierly examined nor can they be farmed out for other agencies to resolve. This is an STB issue which the STB must resolve on the record before it.

In a filing with the STB dated April 29, 1996 identified as CCRT-4 and CCRT-5, the Coalition for Competitive Rail Transportation (CCRT), an independent shipper driven and managed coalition, several hundred statements were submitted from shippers in many areas of the country who utilize and rely on services from various railroads. In addition a large number of press articles has been provided as part of this filing to the STB. This information reveals in detail both the voluntary expressions of shipper environmental concern about the merger as well as an analysis by media specialists trained in evaluating transportation issues.

Set forth herein is an annotated reference of those shipper environmental concerns keyed to the aforementioned CCRT filing. It is hoped the STB will agree that a review of this raw data will result in a decision, after considering the significant environmental damage that is expected from this shipper community, to aggressively pursue an environmental impact analysis.

It is earnestly hoped on behalf of shippers and communities whose only recourse is the protective shield of the STB that UPSP efforts will not succeed in bullying this merger through the evaluation process of the STB and leave in its wake not only a damaged environment, but also serious threats to the safety and welfare of innocent third parties.

Time is not of the essence in this merger application. It would be a disservice to the public interest to acquiesce in the persistent demands of the Applicants to rush this process in disregard of significant and far reaching issues affecting literally millions of people and their safety. What is of the essence is the health, safety and the preservation of environmental standards which need not be hurriedly and recklessly pushed aside and sacrificed in the interest of preserving the business objectives and plans of a very few individuals.

This statement is submitted on behalf of the members of CCRT who are engaged in shipping activities over the lines and in the geographical area covered by the proposed merger. They have a substantial interest in the outcome of this proceeding. Their comments which follow represent the day to day experience of men and women who are in the best position to assess the potential environmental harm which will result if the merger is approved as filed.
From the weekly newsletter on transportation issues, which I receive, and from the *Wichita Eagle*, I have learned that the proposed merger of the UP/SP will cause at least 11 coal trains and many more grain trains to pass by our city of Elbing...We do not have regular crossing guides with red lights and levers. It is a country-type crossing. Trains usually pass by here at 40 miles per hour. In addition, the UP has another crossing a few miles south of Elbing. The school buses use this crossing when coming from the Wichita area. Like the city of Wichita and its citizens, I am concerned about these two crossings and the possibility of accidents which might occur because of those extremely long trains. (Statement of Edwin H. Adres before the Surface Transportation Board dated February 13, 1996.) CCRT-4 p. 295

We have seen more and more shippers using trucks as an alternative, which increases traffic on an already congested highway system. It is important that Texas has a viable competitive rail system. (Texas Farm Bureau letter dated February 22, 1996.) CCRT-4 p. 654

The result of such a merger would be higher rail rates and a diversion of traffic to the already heavily congested Texas highway system. (Texas Seed Trade Association letter dated March 13, 1996.) CCRT-4 p. 662

But even more critical, what will happen to an already lacking service? It will deteriorate and the consumer and manufacturers will have to stand the liability. The railroads are already extremely independent and this move will undoubtedly force more freight to an already crowded highway transportation system. (Wortz Crackers & Cookies, letter dated March 12, 1996) CCRT-4 p. 707

The added truck transportation on a deteriorating state highway system, will increase my state taxes and erode the profit margin even further. (Sibcy Enterprises, Inc., statement of Terry Laird before the Surface Transportation Board February 27, 1996.) CCRT-4 p. 608

Another major concern I have is the resulting lack of competition in the rail business will cause increased heavy truck traffic on Texas highways.
This could lead to wear and tear on our roadway and more tax dollars to pay for repair and traffic congestion. (P&H Seed Company letter dated March 20, 1996.) CCRT-4 p. 508

• The Gypsum (Agri Producers, Inc.) elevator is within 10 miles of all my farming operation over gravel and blacktop roads. The proposed merger will result in the abandonment of the MP/UP/SP line from Hope to Bridgeport, thus eliminating rail service to Gypsum. Without rail service the Gypsum elevator will not be as competitive with their grain price bid, because all the grain will need to be trucked out. The trucking of all this grain will put an additional burden on county and state highways causing deterioration of these highways. (Statement of Dennis Cooley before the Surface Transportation Board March 11, 1996.) CCRT-4 p. 237

• Everyone in Kiowa will be directly or indirectly affected by the proposed merger and abandonment. It is necessary to have shipping availability within a short driving distance to keep up with the harvest. This merger and abandonment will reduce the availability for connection to main line ports and major grain buyers. One other concern that I have is the condition of the area highways. They are currently in poor condition and if the truck traffic would increase they would only get worse. I feel that this is a safety factor not only for ourselves driving under these conditions but for our children traveling to and from school daily. (Statement of Betty V. Crow before the Surface Transportation Board dated February 23, 1996.) CCRT-4 p. 250

• Because of the proposed Union Pacific-Southern Pacific merger, freight transportation in Arkansas will face the greatest change since the liquidation of the Rock Island Railroad in the early 1980s. The Rock Island debacle resulted in the dismantling of a railroad that paralleled Interstate 40 linking Memphis, Little Rock and Amarillo. This dumped thousands of carloads of freight into trucks, which continue to batter an already congested highway system. Anyone driving in the midst of I-40’s bumper-to-bumper 80 mph truck traffic has cause to regret the demise of the Rock Island. (February 11, 1996, The Brinkley Argus, February 22, 1996, The Times) CCRT-5 p. 187

• More trains mean more traffic gridlock for downtown Reno. There is no way around the tracks between Dickerson Road and the Wells Avenue overpass. While the trains have long been an inconvenience, city
officials are concerned that longer delays could be a life-or-death issue for people hurt or in danger. (January 1, 1996, Reno Gazette-Journal) CCRT-5 p. 451

• auto traffic will be disrupted every day because of long waits as mile-long trains make their way through the county. (February 22, 1996, The Wichita Eagle) CCRT-5 p. 91

• Paul Lamboley, Reno’s Washington, DC-based lawyer working on the merger, said about 14 trains a day now pass through the city. That number would jump to 36 under the proposed merger, including 12 Burlington Northern-Santa Fe trains, he said. (February 24, 1996, Reno Gazette-Journal) CCRT-5 p. 79

• Many Wichitans already upset about the prospect of long traffic delays as they wait for trains to pass across heavily traveled streets. Those concerns won’t ease much if the additional trains routed through the city are of the 100-car unit train variety.

Ed Trandhai, a spokesman for the Union Pacific Railroad in Omaha said his company routes about eight trains a day through Wichita. That could double after the merger, he said. (February 26, 1996, Wichita Eagle) CCRT-5 p. 70

• “Reno would be impacted most severely by addition train traffic,” Hackman said. “The tracks cut through the casino corridor.” Reno officials are expecting as many as 36 trains per day through the city if the merger goes through “so they’ve got a big, big problem,” he added. The city now sees about 14 trains per day. (March 4, 1996, Elko Daily Free Press) CCRT-5 p. 29

• Union Pacific is also concerned about Sierra’s worry that more rail traffic would mean a greater risk to the Truckee River, source of much of the area’s drinking water. Southern Pacific now has 14 trains a day passing through Reno City. Officials contend that under the merger that number would rise to 36; the railroads estimate 27. (February 29, 1996, Reno Gazette Journal) CCRT-5 p. 63

• Mr. Knight is proposing a draconian demonstration project: deliberately closing a dozen major intersections for 15 minutes to show just how
nasty the new traffic jams would get. That’s dramatic, but unnecessary. Mr. Knight doesn’t really need to rally the troops, they’re fighting mad already.  (February 24, 1996, *The Wichita Eagle*) CCRT-5 p. 83

- The UP yard in Salt Lake City is already congested. With this proposed merger, it is a good assumption that within a few years, the UP would close the SP yard, if not entirely, and turn the UP yard to total confusion. (Utah Freigh Association letter dated February 4, 1996.) CCRT-4 p. 676

- Overall increases are predicted in emissions of nitrogen oxide and sulfur dioxide, which are the most prominent pollutants in locomotive fuel...Nearly 60 changes in rail terminal activities will affect local communities. Five local railyards will have at least 100% more traffic if the merger is approved, including a new facility in the Riverside, Calif., area, Salem, ILL., Herington, Kan., and Bellmead and Amarillo, Texas. Volume increases are expected at 23 terminals on Arizona, California, Colorado, Illinois, Kansas, Louisiana, Missouri, Oregon, Texas and Washington where regional air quality does not now meet national attainment standards. Projected rail increases could lead to 25 rail-highway crossing accidents, the applications said... (December 6, 1995, *The Journal of Commerce*) CCRT-5 p. 537

- Let me give you one example of an agricultural supplier/marketer in a Central Texas community that will be impacted. It is an agricultural supply cooperative organization in Bryan, Texas that provides feed, seed fertilizer, supplies, fuel and a number of other inputs to more than 8,000 farmer and rancher producers. It’s known as Producers Cooperative Association. Their numbers indicate such a railway merger and subsequent loss of line will impact their bottomline to the tune of $200,000 in an average year. This is a substantial increase in doing business and will certainly affect the price of service to their members. (Texas Agricultural Cooperative Council letter dated March 20, 1996.) CCRT-4 p. 650

- Our rail service to small communities has declined with too much abandonment. Ghost towns have resulted. (Texas Agri-Women letter dated March 19, 1996.) CCRT-4 p. 652

- If the merger passes, many rural areas in Texas will be without rail
service and it would create financial burdens on producers of agricultural products in Texas. (Texas Poultry Federation letter dated March 11, 1996.) CCRT-4 p. 657

I’ve noticed in the past few years that a lot of service to small towns has been discontinued and in fact a lot of the tracks have been dismantled and removed. At one time we were involved in trying to purchase the short line that serves our number 2 plant because that line was being discontinued. Another group did out-bid us but it proved how businesses can be damaged by the discontinuance of service on marginal lines. I have been concerned that the railroads serving the Corpus Christi area might soon consider discontinuing or at least reducing their service here. This trend toward fewer service points has hurt some of our business associates and needs to be addressed. (Gulf Compress letter dated February 7, 1996.) CCRT-4 p. 350

Today, only one of the country elevators is on rail, and our two sub-terminals and the Enid terminal elevator are on rail, due to the abandonment of rail service in Oklahoma, which has greatly increased our cost of transportation. (W.B. Johnston Grain Company, letter dated March 14, 1996) CCRT-4 p. 417

Shell is one of the shippers that will face reduced alternatives for rail movements to and from our facilities. (Shell Chemical Company letter dated March 15, 1996.) CCRT-4 p. 595

The Texas Wheat Producers Association consists of 4,000 members. As much as 80% of wheat is moved by rail for export. Obviously this issue is an important one and goes to the heart of our members’ livelihood. The opposition of many of our members is based primarily on the very real possibility that a UP/SP merger could, for competitive reasons, force the closure of many short lines that service our producers. In many cases these lines service rural, isolated areas that a large rail company may find non-feasible. (Texas Wheat Producers Association letter dated March 20, 1996.) CCRT-4 p. 658

This is of particular concern for small shippers or those geographically located in areas which do not fit in BNSF’s strategic plans, or which would require significant capital for BNSF. It stands to reason that BNSF will choose to compete for only that business which fits its logistical

- If the railroad to these elevators were to close, our grain would have to be hauled either to Larkin, 40 miles to the south, or Oakley, 65 miles to the north. (Statement of Wayne H. Smith before the Surface Transportation Board dated March 11, 1996) CCRT-4 p. 613

- The recently filed notice of the Union Pacific and Southern Pacific merger indicates that the rail line that runs near our feed mill site may be abandoned within three (3) years. If this action occurs, then we will have much less flexibility for transportation of feed ingredients to our feed mill. This will no doubt hinder our prospects for growth. (Newsham Hybrids (USA) Inc. letter dated September 25, 1995.) CCRT-4 p. 484-5

- Our other location for grain handling would be at Cheyenne Wells which is 80 miles from here. The facility there is owned and operated by Cargill, which also has many facilities on that rail line. I am afraid that if this line is abandoned, the price of our freight by rail and the price of our grain could very easily be controlled by the Up-SP and Cargill. That is not good! If Up-SP feels that they are losing money by having this line, then let them sell it, but it should not just be abandoned. Additional competition would benefit more than just our area. If a sale could take place and the new owners would have grain cars available at harvest time, I’m all for it as the present owners haven’t always made cars available when they were needed. (Statement of Delmer Eikenberg before the Surface Transportation Board dated February 23, 1996) CCRT-4 p. 289

- If the successor to the Interstate Commerce Commission cannot stop abandonments of rail lines that affect thousands of customers and communities, how can there be a “public-interest standard: for anything it does? Is that actually “a railroad interest standard”? (Monday November 13, 1995, Journal of Commerce.) CCRT-5 p. 725

- Bob Glynn’s giants come in the shape of iron horses. The difference is, Glynn’s giants are real. The Hoisington man is convinced that the continuing mergers in the railroad industry spell disaster as in “abandonment” for his and other small towns across the mountains and
plains. And whatever one man can do about it, he's going to do. (January 17, 1996, Topeka Capital-Journal.) CCRT-5 p. 370

- Union Pacific has said it will abandon the 173 mile line from Dotsero to Canon City, and it will limit freight on its Moffat Tunnel line to local products, largely coal and grain. Mixed freight bound across country will be run on UP's southern Wyoming line. (February 4, 1996, The Daily Sentinel) CCRT-5 p. 238

- "The merger not only threatens the livelihood of railroad employees, but it threatens the livelihood of entire communities," said Coalition chairman Junior Strecker of the Scott Co-op Association in Scott City. "We will do everything in our power to fight the merger and the proposed abandonments." The rail line from Kansas City to Pueblo, Colo., is at risk because of proposed abandonments from Towner to Pueblo and Canon City to Sage in Colorado, and Bridgeport to Hope in Kansas would be affected, Strecker said. (January 17, 1996, Great Bend Tribune.) CCRT-5 p. 368.

- The abandonments could eliminate Class I Carrier service along the current line through central Kansas. Class I refers to service on a transcontinental line. A shortline is not the answer, Strecker said, because service and accessibility would be so limited. (January 19, 1996, Rocky Mountain News.) CCRT-5 p. 338

- Denver Rio Grande, which owns Southern Pacific Rail Co., wants to abandon a stretch of local track as part of a pending merger with Union Pacific. The line extends from three miles west of Eagle to Canon City, near Colorado Springs. Local government officials had hoped to buy the Tennessee Pass line for use in a rails-to-trails program or for area light-rail transit. (February 11, 1996, Vail Daily.) CCRT-5 p. 188

- Union Pacific recently filed to abandon the line contingent upon the ICC's ruling on the merger. Rail traffic to and from Kasten's business will then cease, he said. "It means death for us," Kasten said. Kasten said the big business merger is forgetting the little guy. (November 14, 1995 Intelligencer.) CCRT-5 p. 679.

- As part of their merger application filed with the Interstate Commerce Commission last week, the Union Pacific and Southern Pacific railroad...
companies said they planned to abandon nearly 300 miles of Colorado rail lines. One corridor proposed for abandonment runs 170 miles from Canon City to Minturn, crossing the Continental Divide at Tennessee Pass near Leadville. The other corridor runs 120 miles from Pueblo to the Kansas border. The railroad company that owns the line can tear up the tracks and sell the land along the corridor. (December 7, 1995, The Daily Times.) CCRT-5 p. 536

In addition, Rogers said the merger could force the closure of the Southern Pacific line from Brinkley to Memphis since Union Pacific already has an access to Memphis. (January 18, 1996, Jonesboro Sun.) CCRT-5 p. 346

The impact of the Pueblo area wasn’t indicated, but the UP want to abandon its tracks east of town as well as the SP’s historic Royal Gorge route from Canon City to Dotsero. (December 1, 1995, The Pueblo Chieftain.) CCRT-5 p. 584

At last month’s hearings, James F. Jundzilo, transportation manager for Tetra Chemicals, told the committees, “The Class 1 railroads appear to be stripping down the track capacity to eliminate just the type of track we need to do business.” (December 1995, Traffic Management.) CCRT-5 p. 453

Captive shippers, located on only one line, are seeing transportation costs increase, often forcing a shift from rail to truck transportation. (February 11, 1996 The Brinkley Argus.) CCRT-5 p. 187

The effects of reduced rail competition on rates is just one concern. The mergers also have caused shortages of rail cars during harvest, abandonment of track some shippers depend on to get products to market and concerns that ever-larger rail lines will ignore rural areas. (December 10, 1995, The Hays Daily News.) CCRT-5 p. 524

But some shippers aren’t convinced. The merger will not change the trend of the Class I railroads to bypass smaller grain elevators, says James J. Irlandi, advisor to the Kansas/Colorado Shippers Association. “The small shippers will not be served,” Irlandi says. “And if you don’t get cars and you are forced to truck, you have no five-year average
that you can use to order cars.” In addition, says Irlandi, shippers are having a hard time getting grain outside of short-line territories as these short lines are often leased from the UP railroad and their rates aren’t competitive enough to go beyond the short-line connection. (February, 1996, *Distribution.*) CCRT-5 p. 56-8

If approved, opponents said the merger would create 5,000 miles of overlapping track, leaving abandoned tracks and facilities and causing massive job losses. (November 9, 1995, *San Angelo Standard-Times.*) CCRT-5 p. 781

Respectfully submitted,

[Signature]

John T. Estes
Executive Director
Coalition for Competitive Rail Transportation

July 3, 1996
CERTIFICATE OF SERVICE

I, John T. Estes, certify that, on the 3rd day of May, 1996, I caused a copy of the foregoing document to be served by first-class mail, postage prepaid, on all parties appearing on the restricted service list established pursuant to paragraph nine of the Discovery Guidelines in Finance Docket No. 32760:

John T. Estes
Honorable Vernon A. Williams
Secretary
Surface Transportation Board
12th and Constitution Avenue, N.W.
Washington, D.C. 20423

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

Dear Secretary Williams:

Enclosed for filing in the referenced docket are the original and twenty copies of the below-listed documents:

1) Comments on Environmental Assessment and Request for Preparation of Environmental Impact Statement of Sedgwick County, Kansas and City of Wichita Kansas (SEDG-4);
2) Verified Statement of Becky L. Stewart (SEDG-5);
3) Verified Statement of William M. Watson (SEDG-6);
4) Verified Statement of Gary E. Curmode (SEDG-7);
5) Verified Statement of Lawrence D. Garcia (SEDG-8);
6) Verified Statement of Thomas W. Pollan (SEDG-9);
7) Verified Statement of LeRoy E. Rheault (SEDG-10);
8) Supplement to Verified Statement of Willard L. ("Bill") Stockwell (SEDG-11);
9) Verified Statement of F. Tim Witsman (SEDG-12);
10) Verified Statement of Jack Brown (SEDG-13); and
11) Resolution of Kechi, Kansas Resolution 356 (SEDG-14).
An extra copy of this filing is enclosed. We request that it be stamped.

By copy of this letter, service is being made upon all parties of record.

Yours,

BOARD OF COUNTY COMMISSIONERS
OF SEDGWICK COUNTY, KANSAS

CITY OF WICHITA, KANSAS

By: Steven J. Kalish
Their Attorney

cc: Honorable Jerome Nelson
BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423

FINANCE DOCKET NO. 32760

UNION PACIFIC CORP., et al.,
-- CONTROL AND MERGER --
SOUTHERN PACIFIC RAIL CORP., et al.

JOINT COMMENTS ON ENVIRONMENTAL ASSESSMENT
AND REQUEST FOR PREPARATION OF
ENVIRONMENTAL IMPACT STATEMENT OF
SEDGWICK COUNTY, KANSAS AND
CITY OF WICHITA, KANSAS

Pursuant to the procedural schedule adopted for this proceeding, Sedgwick County, Kansas ("Sedgwick County" and "County") and City of Wichita, Kansas ("Wichita" and "City") submit their comments on the Environmental Assessment ("EA") served on April 12, 1996. Through these comments and the accompanying verified statements, Sedgwick County and Wichita will demonstrate that the EA’s conclusion that "the proposed merger of the Union Pacific and Southern Pacific railroads would not significantly affect the quality of the human environment" is in serious error.

This demonstration by Wichita and Sedgwick County will be presented in three sections. First, we will demonstrate that the applicants’ proposal to reroute their traffic so as to increase rail traffic through Sedgwick County and Wichita by a minimum of 100 trains per day will have: (1) a severe negative impact on the ability of emergency services personnel to protect Sedgwick County and Wichita from loss of life, and (2) "Guide To The Environmental Assessment."
other serious personal injuries, and serious property losses; and
(2) serious negative impacts on the quality of life of the
citizens of Sedgwick County and Wichita in a number of areas
including frequent traffic delays, increased railroad-motor
vehicle accidents, reduced air quality, and increased noise. 2

Second, we will demonstrate that the Environmental
Assessment's measurements of negative impacts on Sedgwick County
and Wichita resulting from the proposed rerouting of traffic: (1)
ignore issues of vital importance; (2) fail to provide any data
specifically applicable to Sedgwick County and Wichita; and (3)
consistently understate negative environmental impacts in the
considered subject areas.

Third, Sedgwick County and Wichita will demonstrate that the
mitigation proposals offered by the Environmental Assessment are
woefully inadequate to protect the County and City from
irreparable injury resulting from the environmental degradation
which would be caused by the applicants' rerouting proposal.

In light of these demonstrations, Sedgwick County and
Wichita request that the Surface Transportation Board ("Board")
explicitly order the applicants not to increase railroad
through the City and the County above pre-merger levels.

Recognizing that the Board is not prepared, at this time, to
issue such an order, the County and the City request the Board to

The Kansas Department of Transportation ("KDOT") has noted
that "public safety, quality of life and economic well being
are at stake..." in Wichita. March 28, 1996 KDOT
(1) reverse the conclusion of the EA that "the preparation of an environmental impact statement is not necessary" and (2) prepare an Environmental Impact Statement ("EIS") addressing the applicants' proposal to increase the amount of train traffic through Sedgwick County and Wichita and all reasonable alternatives thereto, including continued use of the current routing for this traffic.¹

Two additional preliminary comments are in order. First, Wichita and Sedgwick County note that the environmental degradation addressed in these comments is a function of the precise number of trains passing through the community. Thus, in order to quantify certain matters, we will be assuming that train traffic through Wichita and Sedgwick County would be increased by ten trains per day. However, we recognize that this ten trains per day figure is not a binding maximum traffic commitment on the applicants. Indeed, it is at least arguable that the huge investments in track and other infrastructure contemplated by the applicants to pave the way for increased train traffic through Wichita and Sedgwick County would not be justified for an average of only ten trains per day. See, infra. We further note that the Kansas City Southern ("KCS") has requested rights through Wichita. Accordingly, all
quantifications based upon an increase of ten trains per day must be viewed as highly conservative.

Second, Wichita and Sedgwick County have reviewed the applicants' response to the Wichita/Sedgwick County March 29, 1996 Joint Protest And Request For Conditions. While UP/SP state that they "will continue to work with Wichita", their view that "some 16 trains per day" -- this is the first time that UP/SP have used the 16 trains per day estimate -- is a "modest" volume establishes beyond cavil that Wichita and Sedgwick County have virtually no hope of reaching an accord with the railroads. Surface Transportation Board action is required.

BACKGROUND

A. Applicants' Proposal

Volume 3 of the UP/SP "Railroad Merger Application" (UP/SP-24 Volume 3 at 273 to 274). Applicants term "Kansas City Bypass Routes" at pages 54-58. Applicants that "Kansas City has become a major bottleneck for the UP and that "Kansas City also can be a major source of delay in service", UP/SP propose to create a new route for coal train traffic via Topeka, Herington, and Wichita, Kansas to Fort Worth. Creation of that new route "to relieve large volumes of heavy traffic" would require UP/SP to invest more than $91 million.

See UP/SP-24 Volume 3 at 57.
The UP/SP quantification of the additional traffic to be routed through Wichita (and Sedgwick County) is found at page 379 of the same Volume 3. A "segment" described as Lost Springs, Kansas to Wichita, Kansas is said to have been utilized for two trains per day in 1994 and would be utilized for 12 trains per day under post-merger conditions. This is an increase of ten trains of coal and grain per day. A second "segment" described as Wichita, Kansas to Chickasha, Oklahoma is said to have been utilized for four trains per day in 1994 and would be utilized for 12 trains per day under post-merger conditions. This is an increase of eight trains of coal and grain per day.

This "segment" data obviously does not give the Board specific information as to the impact of the proposed routing on Wichita and Sedgwick County. That is, by dividing Wichita into two "segments", the applicants have not permitted the Board to determine whether the applicants are asserting that two trains per day or four trains per day currently are routed through the city. The Board can only be certain that the applicants are asserting that at least 12 trains per day -- perhaps as many as 16 trains per day would be routed through Wichita if their proposal is approved by the Board. While this 12 trains per day estimate is not a binding maximum on the applicants (in fact, the applicants use 16 as the number of trains in their April 29th Exhibit supra), the Wichita/Sedgwick County analysis has been based on the 12 trains per day figure.
B. Wichita and Sedgwick County

While Wichita is presented to the Board as a dot on the map of the "Kansas City Bypass", it is a city with a population of 312,000. Sedgwick County, which includes Wichita, has a population of 417,000.\(^2\)

Wichita and Sedgwick County are directly affected by the proposed UP/SP route. That route does not circle around Wichita. Nor does it run solely through rural or suburban areas. Rather, it runs through the heart of Wichita.\(^6\)

On March 29, 1996, Wichita and Sedgwick County submitted their objections to dramatic increases in train traffic as proposed by the applicants. Since it appears that our March 29th submission was not considered in the April 12, 1996 Environmental Assessment, we incorporate the entirety of that submission by reference herein and urge the Board to consider it along with the instant submission.

WHAT DOES IT MEAN TO HAVE 12 TRAINS IN EXCESS OF A MILE IN LENGTH RUN THROUGH THE HEART OF A MAJOR CITY EVERY DAY OF THE YEAR?

I. Emergency Services

A. Communications

Like many urban areas, Sedgwick County and the City of Wichita have created a joint Department of Emergency Communications ("Department") to receive all "911" calls for service.

Exhibits WLS-2 and WLS-3.
police/sheriff, fire, and rescue services. In 1995, the Department received 874,115 calls, almost 2,400 per day or 100 per hour.

The Department's Director, Becky L. Stewart, has submitted a verified statement in which she reports that the Department's Emergency Communications Center ("Center") receives all such calls and decides which public safety units are to be sent to the incident.

While the Center can determine the location of incidents and can match those locations with the fixed locations of fire and rescue facilities and the "beats" of police/sheriff personnel, the Center has no way of determining when one of the proposed 12 (or 14 or 16) trains will be bisecting Wichita. Thus, if emergency personnel on one side of the tracks are called upon to respond to an incident on the other side of the tracks, they will be blocked by the train and may not be able to reach victims in a timely fashion. Of course, the emergency personnel will report the fact to the Center and alternative units will be dispatched (if they are available), but delay still must result. Director Stewart concludes by stating that "... the proposed twelve long trains will cause serious delays in emergency response and also significantly complicate dispatching through my Department."

B. Police

The real-world significance of streets blocked by trains to the Wichita Police Department is described in the verified statement of its Chief, William M. Watson. Chief Watson notes
his "great concern" over the ability of his department to provide emergency services with the addition of ten trains per day on the UP tracks.

The basis for this concern is clear. In 1995, the Wichita Police received 275,683 calls for service, an average of over 750 per day. The Police Department's average response time for these calls was 10 minutes and 29 seconds.

However, cumulatively, the 12 (or 14 or 16) trains bisecting Wichita would block its major arteries for almost an hour and one-half out of every day. This blockage obviously will make it more difficult for the police to respond to calls on the opposite side of the large number of "at grade" railroad crossings in Wichita.

To be sure, there are means of moving from one side of Wichita to the other using roads above the railroad tracks. However, as fully discussed by Chief Watson, this will not permit police to avoid increased response times because in the heart of the city, all of the railroad crossings are "at grade." Chief Watson explains that delays caused by trains blocking vehicles cannot be eliminated simply by reassigning the call to another unit. He also explains unique problems associated with "critical incidents." That is, police policy prohibits responding to potentially dangerous situations leading to this total are discussed infra. Thus, if one of the units is blocked by a train, situations leading to this total are discussed infra. It is discussed in more detail, infra.
the other cannot respond. Similarly, emergency medical personnel and fire department personnel are not permitted to attend to injuries or fires at a crime scene until the police have "secured" the scene. Thus, if the police are blocked by the train, the fire and medical personnel cannot do their jobs.

C. Fire

Keep in mind the words of acting Lt. Brian Keith Lee, who stresses that "in our business, 30 seconds can mean the difference between life and death." Seconds, mind you... This much is known: Heavy smoke can kill you in less than two minutes.\[11\]

My dad was a fireman for 25 years, and I know that the most important time in a fire is the first five minutes.\[12\]

Sedgwick County Fire District #1 is represented by the

ified statement of its Chief, Gary E. Curmode. Chief Curmode

orts that in 1995, his department responded to 4,788 alarms,
cluding 2,646 requests for medical assistance, 92 hazardous
ials responses, and 145 structure fire responses.

The routes the proposed trains would take through Sedgwick

y, including the communities of Furley, Kechi, and

ille, cross over, and would block, more than twenty-five
ressings. While the Department's average response time

Council member Jack Evans (D-Ward 2) as quoted in

Would Close 3 Firehouses, Washington Post, April
for medical alarms in 1995 was 8.7 minutes, that response time cannot be maintained if the streets of Sedgwick County are blocked. And "[a]ny delay in response time will put human life at a greater risk as well as increase property losses..."

The City of Wichita’s fire department is represented by the verified statement of its Chief, Lawrence D. Garcia. Chief Garcia reports that his department responds to 27,000 alarms per year, approximately 75 per day. Of these, 54 calls per day are medically related.

Chief Garcia explains that a large percentage of these incidents require multiple fire/rescue vehicles that must use the east-west streets that would be blocked by UP/SP trains. He also explains that a response time of four minutes or less is desired to enable fire crews to provide a timely service. At present, the department’s average response time is 4.05 minutes.

Of particular importance, Chief Garcia explains that one or more of his fire/rescue units are blocked by a train each month under current conditions. If the UP/SP rerouting proposal is approved, the number of fire/rescue units blocked each month by all traffic must increase.

The real-world impact of Wichita fire equipment being blocked by trains is presented by Chief Garcia through his description of actual events. In one case, fire department personnel were blocked by a train for two minutes. By the time they arrived on the scene,
the fire had escalated to a second alarm, i.e., the damage had increased.

In a second case, while enroute to a baby who had stopped breathing, department personnel were blocked by a train. As they attempted to turn around to avoid the delay caused by the train, they were involved in an accident with another vehicle caught in the same traffic congestion. Another unit had to respond to the medical emergency.

In a third case, department personnel were blocked by a train while seeking to reach a pedestrian who had been struck by a car. Because of a train blocking the street, the unit had to make a three mile detour, which resulted in a five minute delay.

In a fourth case, a choking child had to be aided by a backup team, because the original team was blocked by a train.

In a fifth case, one fire unit was able to cross the tracks before they were blocked by a train. The second unit could not move. "Because of high, shifting wind conditions the first crew encountered an extremely dangerous situation until the second unit arrived."

In a sixth case, a "ventilation team", i.e., personnel who were responsible for the building of gas and smoke, was delayed by two trains.

In a seventh case, two units responded to a house fire just short of the tracks from their station. Both units were blocked by a train. The units could not turn around because of street congestion caused by the train. The units were delayed approximately ten
In an eighth case, while responding to the report of a shooting, fire/rescue crews were delayed by a train for approximately three to four minutes.

In a ninth case, while transporting a critical burn victim, the ambulance was delayed by a train for approximately five minutes.

Chief Garcia concludes by stating that if the UP/SP are permitted to run additional long trains through Wichita, "any increase in fire/rescue emergency service response times will result in an increase in negative response outcomes."

D. Emergency Medical Services

Thomas W. Pollan, Director, Sedgwick County Emergency Medical Services ("EMS") has submitted a verified statement. In 1995, EMS, which services both the City and the County, responded to 33,597 requests for ambulance/health care services. Of these requests, fully 28,365, almost 80 per day, were for "emergency Pre-Hospital Advanced Life Support."

Director Pollan explains that EMS performs services that are critical if the death rates of the critically ill and dying are to be reduced and give victims any chance to return to a reasonable quality of life." He notes that, according to the American Heart Association, "if a person suffers a sudden heart attack, the victim has only four minutes before brain damage occurs."

Director Pollan also explains that two units must respond to most of emergencies. The fire department "first
responders" are trained in CPR and are equipped with Automated External Defibrillators. Their average response time is four minutes. However, paramedic or Advanced Life Support care, provided by a second unit, must begin within eight minutes. Thus, if either unit is delayed by a train, the victim’s chances go down.

Cardiac arrest is only one type of situation faced by Director Pollan’s EMS personnel. Trauma patients also are time-sensitive. They must be reached quickly and they must be brought to trauma centers quickly. As Director Pollan puts it, “in one text the term ‘Golden Hour’ was defined to indicate the time a critically injured victim has from the onset of injury to intervention of a surgeon, if the victim is to be given any chance to survive.” (emphasis added)

Director Pollan’s concerns are not merely theoretical. He provided examples of victims whose health care was affected by the current level of train traffic through Wichita. For instance, transportation of one victim was blocked by a train, resulting in his arrival at the hospital by five or six minutes. Also, when we approached Riverside [Hospital] the victim went into an Arrest."

Another second victim (a female who had been pushed out of a car and run over as part of the assault) was supposed to be transported to St. Francis Regional Medical Center (one block away from the tracks UP intends to use). A train blocked the road and she had to be taken to another hospital. Her arrival
was delayed by four to five minutes as a result of the diversion.

In a third incident, EMS personnel were two blocks from a multiple victim house fire when their access to the house was blocked by a train. Other units had to be sent to the scene.

According to Director Pollan, since 1991 EMS personnel have been delayed 13 times annually by train traffic. If UP traffic goes up from two to 12 (or 14 or 16) trains per day, EMS delays must go up as well.

Leroy E. Rheault, President and Chief Executive Officer of Via Christi Health System also has submitted a verified statement. Mr. Rheault explains that the Via Christi - St. Francis [Hospital] Campus adjoins three railroad tracks in Wichita and that approximately one-half of the 440 trauma victims arriving by ground transport last year had to cross the tracks. Further explains that in the last few days, a trauma victim diverted to another hospital because of rail traffic and that it is not an unusual event. Mr. Rheault states that increased traffic "will interfere with providing prompt medical care."

E. A Quantification Of Street Blockage

Willard L. ("Bill") Stockwell, Chief Planner, Wichita-
ock County Metropolitan Area Planning Department,
$206$ Division, has provided a supplement to his report to quantify the impact that the proposed UP traffic would have on the streets of Wichita.
Based on a timing of unit trains of the type UP/SP would run through Wichita, Mr. Stockwell has determined that a unit train going 50 miles per hour, the maximum speed UP/SP would use in Sedgwick County outside of Wichita, would block a street for approximately three minutes. When a train's maximum speed is 30 miles per hour, the maximum that would be reached in Wichita assuming that all "slow orders" are removed, it would block each street crossing for up to seven minutes. Simple multiplication reveals that the additional ten trains a day proposed by UP/SP would block the streets of Wichita for up to an additional 70 minutes, i.e. one hour and ten minutes every day. The total of 12 trains a day proposed by UP/SP would block each Wichita crossing for up to 84 minutes, i.e., one hour and 24 minutes every day.

"Stated another way, in order to avoid what they term "congestion" in Kansas City, the applicants propose to block the streets of Wichita for up to an additional one hour and ten minutes per day, a period in which police, fire, and emergency medical personnel either would not be able to reach victims or could not be able to bring victims to hospitals. This is a clear substantial degradation of the quality of the human environment in Wichita, is not remotely acceptable to the residents of Wichita, and should not be acceptable to the Surface Transportation Board.

Moreover, "slow orders" have reduced the speed of UP trains through approximately 10 m.p.h.
II. Additional Quality Of Life Degradation

Assuming, *arguendo*, that Wichita and Sedgwick County need go further in describing the impact of an additional ten unit trains bisecting a major city, in the following sections we will address traffic delays, accidents, air quality, and noise.

A. Traffic Delays

Following his calculation of the amount of time during a day that the proposed additional ten UP/SP trains would block the streets of Wichita, Mr. Stockwell then calculates the impact of this blockage on Wichita’s and Sedgwick County’s street traffic. This calculation is based on 1994 daily traffic volumes for Sedgwick County and on 1995 daily traffic volumes for Wichita. As reflected in his Table 1, based upon conservative assumptions about when the additional ten trains will pass through Sedgwick County and Wichita, Mr. Stockwell determines that 9,471 cars will be blocked every day by these trains.

Since it may be difficult to grasp the significance of 9,471 cars being blocked every day, Mr. Stockwell also has presented the impact of a single unit train blocking Pawnee Street, in the heart of Wichita. Every time a UP unit train blocks that street for 30 minutes during the evening rush hour, it would block an average of 245 vehicles. That is, 61 vehicles would be back each of Pawnee’s four lanes. This backs cars up for 15 minutes per lane, four full city blocks.

Considering traffic delays in Wichita, it should be noted that Mr. Stockwell states:
Total roadway vehicular delay is also a function of traffic volumes at crossings and the availability of alternative routes, so local traffic and access patterns play a key part in determining the extent of delay impacts.

The local traffic and access patterns in Wichita virtually guarantee high levels of grade crossing delay impacts. That is, there are three major areas in which drivers have virtually no opportunity to avoid delay.

+ From the grade separation at K-96 to the next grade separation to the south, at 1st and 2nd Streets, is a distance of approximately 3.3 miles. The five grade crossings within this area have a total ADT of approximately 60,000;

+ From the grade separation at 1st and 2nd Streets to the next grade separation to the south, at I-235, is a distance of approximately 3.5 miles. The four grade crossings within this area have a total ADT of approximately 56,000;

+ From the grade separation at I-235 to the next grade separation to the south, at 79th Street, is a distance of approximately 4.75 miles. The five grade crossings within this area have a total ADT of approximately 34,000.

Tim Witsman, President and CEO of The Wichita Area of Commerce and President of the Kansas World Trade puts the traffic delay analysis into human terms in his statement. For the workers of Wichita, these delays to longer commuting times. For the industries of they translate to longer transit times. For school they mean earlier departure (or later arrival) times.
For the sick or the injured, these delays mean that, in some cases, ambulances will arrive too late. In brief, these delays would degrade the quality of life in Wichita.

B. Accidents

Mr. Stockwell reports that during the last six years there have been 15 auto/train collisions, including two fatalities, within Wichita and Sedgwick County on the UP tracks at issue here. If the number of UP/SP trains increases from two to 12 (or 14 or 16), it must be assumed that the number of accidents will rise as well, but by how much cannot be estimated without further study.

Wichita and Sedgwick County have been advised that the Kansas Department of Transportation utilizes calculated "exposure rates" to determine whether either (1) "active systems", i.e. flashing lights or gates, or (2) grade separations are appropriate for railroad crossings. As reported by Mr. Stockwell, the KDOT standards call for active systems when exposure rates exceed 3,000 and the KDOT standards for rural
highways with speed limits of 55 miles per hour call for grade separations when the exposure rate exceeds 12,000.¹

The calculated exposure rates for Wichita with the 12 trains per day proposed by UP/SP are contained in Mr. Stockwell’s Table 2. Those exposure rates range from a low of 900 at 85th Street North to a high of 304,056 at the above-mentioned Pawnee Street. Fully 20 of the grade crossings would have exposure rates equal to or greater than the level at which KDOT’s standards call for grade separation. Fully ten of those 20 grade crossings would have exposure rates ten times greater than the level at which KDOT’s standards call for grade separation.

In brief, by application of KDOT standards, moving 12 unit trains at grade through the heart of Wichita would be entirely unacceptable from the standpoint of vehicle safety and the applicants’ proposal to do precisely that should not be permitted by the Board.

C. Air Quality

Jack Brown, Environmental Health Director of the Wichita-Sedgwick County Department of Community Health, has addressed air quality in his verified statement and his analysis reveals the inadequacies of the EA’s treatment of air quality, a summary of which is presented infra.

Currently, Wichita is in attainment status under federal air quality guidelines. However, on January 9, 1996, Wichita almost

¹For reasons unknown to Sedgwick County and Wichita, KDOT does have official standards for grade separations in urban environments.
exceeded the National Ambient Air Quality Standards ("NAAQS") for carbon monoxide ("CO"). This is of particular concern to Wichita because, for over eleven years, a portion of Wichita was designated by the Environmental Protection Agency as "nonattainment with respect to the CO primary National Ambient Air Quality Standard (NAAQS) as required by section 107(d) of the Clean Air Act, as amended in 1977 (Act).”

If four trains came through Wichita during an eight hour period between 10 a.m. and 6 p.m. (a reasonable assumption given that UP/SP propose to run 12 (or 14 or 16) trains per day through Wichita), and if Wichita experienced the same conditions that existed on January 9, 1996, then the above-discussed blockage of vehicles by the four trains alone would have resulted in Wichita exceeding air quality standards for carbon monoxide. The carbon monoxide emitted from the trains themselves would have been in addition to a level exceeding air quality standards.

Exceeding air quality standards for carbon monoxide only once per year would put Wichita into a nonattainment status. As reported by Director Brown, nonattainment status could impose a huge cost on Wichita. Included in this cost is a

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See 43 FR 8964, March 3, 1978, so designating a portion of Wichita, and 54 FR 14958, April 14, 1989, redesignating Wichita nonattainment to attainment with respect to Carbon Monoxide.

Table 2-2, found at EA Volume 1 at 2-6, says that the increased trains will increase CO emissions by 54.9 tons per year for the Chickasha to Wichita segment, which passes most of the City of Wichita.
potential loss of federal funds for road projects, $6.8 million per year at current funding levels.

D. Noise

Once again, Director Brown’s analysis demonstrates the errors in the EA’s assessment of noise impacts, a subject that will be addressed infra. Fully 1,253 residences, 3 schools, and 12 churches would be in the impact zone. Five tests conducted by Director Brown’s department resulted in maximum noise levels ranging from 77.9 db(A) to 109.4 db(A) (at a residential location) resulting from train traffic through Wichita.

Again, reduced to its essentials, this data establishes that, in order to avoid "congestion" in Kansas City, UP/SP propose to dramatically increase traffic congestion in Wichita, Sedgwick County, to increase the accident exposure level in City and the County to unacceptable levels, to reduce air quality in Wichita to a level that could place the City in an attainment status, and to dramatically increase the noise by thousands of residents, school children, and churchgoers each day.

THE ENVIRONMENTAL ASSESSMENT IS INADEQUATE

The EA Ignores Issues Of Vital Importance

While the EA addresses certain environmental issues, it does not address a number of issues of vital importance to the residents of Wichita and Sedgwick County. Perhaps as a result of failure to recognize the size of Wichita and Sedgwick County,
a matter discussed infra, the EA does not even purport to address the effect that moving 12 (or 14 or 16) trains in excess of a mile long through Wichita would have on the ability of emergency services personnel to protect the citizens of Sedgwick County and Wichita. 22

Similarly, the EA does not attempt to calculate the increased number of accidents at grade crossings in Wichita and Sedgwick County based on the changes in train traffic from the proposed merger.

The City and County do not believe that an environmental assessment that fails to address these issues can possibly be deemed either complete or legally adequate. While matters addressed by the EA, albeit inaccurately, such as air quality and noise, are of undeniable importance, consideration of such matters cannot substitute for an analysis of other equally important or more important matters including the immediate and irreparable injury that would be experienced if police, fire, or emergency medical personnel are not able to attend to the injured because their community has been cut in half by trains over a mile long. Clearly, since the sole rationale presented by the applicants to inflict these harms on Wichita and Sedgwick County is a desire to avoid "congestion" along a route that has been used for an unstated number of years, the Board possibly weigh the "merits" of the applicants' proposal.
without even considering each of the grievous harms that their proposal would cause.

Even in subject matters considered by the EA, the consideration is incomplete. For example, the EA’s consideration of Air Quality Impacts, discussed in EA Volume 1 at 2-1, only considers increases in vehicle emissions "from expanded or new activities at intermodal facilities." The huge increases in air emissions from vehicles blocked by railroads in Wichita and elsewhere in Sedgwick County were not considered.

In brief, the Board is required by law to consider all environmental degradations resulting from the applicants’ rerouting plan and all reasonable alternatives thereto. The EA fails to do so.

II. The EA Contains No Data Quantifying Environmental Impacts On Wichita and Sedgwick County

As candidly recognized by the EA, the rail line segments it considered were "portions of rail line arbitrarily selected by points." The negative implications of the UP/SP arbitrary selection are particularly acute with regard to Wichita and Sedgwick County.

By dividing Wichita and Sedgwick County into the two line noted above, i.e., Lost Springs, Kansas to Wichita and to Chickasha, Oklahoma, the UP/SP and, ultimately, the UP/SP and, ultimately, the effectively mask the impact of their proposal on the relevant

See EA Volume 1 at 2-3, emphasis added.

Dividing line is in the rail yard on the north side of south of 29th Street. See EA Volume 2 at 8-25.
community, Wichita and Sedgwick County. According to the Operating Plan, the Lost Springs to Wichita segment is 64 miles long and the Wichita to Chickasha segment is 192 miles long. Thus, by utilizing these segments, the EA not only divides Wichita in two, it then buries the impact on the northern side of Wichita and Sedgwick County into a mostly rural area, 64 miles in length, and similarly buries the impact on the southern side of Wichita and Sedgwick County into a mostly rural area, 192 miles in length.

The impact of this type of analysis may be seen by reference to the Air Quality table in Volume 2 at 8-10. By way of example, the EA finds that the "Estimated Increase in Emissions (tons per year)" for carbon monoxide (CO) is 79.1 tons for the Lost Springs to Wichita segment and is 54.9 tons for the Wichita to Chickasha segment. How much of this increase may be assigned to Wichita itself, a figure vital to an understanding of whether the proposed rerouting would or could put Wichita in a "Nonattainment" status, is not stated.

When the EA does aggregate data of interest to Wichita, it does so in yet another manner that makes the rerouting proposal’s environmental impact on Wichita impossible to learn. For example, by considering Air Quality matters for Wichita and Sedgwick County as part of an entire Air Quality Control Plan, the serious potential that the proposed rerouting of
ten trains per day has on the ability of Wichita to retain its "attainment" status is entirely hidden.

This process utterly fails to give the Board the data that it needs to assess the environmental impacts of the proposed rerouting on Wichita and Sedgwick County. The Board must revise these arbitrarily selected segments so as to clearly and correctly assess those impacts.

III. The EA Consistently Understates Environmental Impacts

A clear example of the errors created by the arbitrary division of Wichita and Sedgwick County in the operating plan and in the EA is revealed by the train counts utilized in both documents.

According to the operating plan, the 1994 traffic count for the Lost Springs to Wichita segment was two trains per day, a figure the UF/SP propose to increase by ten to reach a total of 12 trains per day (but see supra, referencing "some 16 trains per day"). At the same time, the operating plan states that the traffic count for the Wichita to Chickasha segment was four trains a day, a figure that the UP/SP propose to increase by seven to reach a total of 12 trains per day (but see supra).

(continued...)
This presentation in the operating plan, carried forward into the EA, raises an obvious question, which is answered neither in the operating plan nor in the EA. That is, how do the UP and SP plan to make three trains per day disappear? The operating plan says that ten trains per day will be added to the Lost Springs to Wichita segment. At the same time, it says that only seven trains per day will be added to the Wichita to Chickasha segment. The only way that this could make sense is if three new trains per day were proposed for Wichita termination. But UP/SP are not proposing such new service. Rather, the new train traffic is entirely destined for points to the south of Wichita.

If UP/SP cannot make three trains per day disappear in Wichita, then the EA’s conclusion that 11.8 trains per day would move on the Wichita to Chickasha segment is in error. Rather, the ten additional trains per day that UP/SP propose would be added to the existing 4.4 trains per day to reach a total of 14.4 trains per day. Obviously, this would further increase the public safety and other problems resulting from the applicants’ proposed rerouting of traffic.

(...continued)

The EA eliminates the rounding errors by concluding that the current traffic on the Chickasha to Wichita line is 4.4 trains per day, which would be increased by 7.4 trains per day to reach a total of 11.8 trains per day. EA, Volume 1, Table ES-3 at ES-10.

EA Volume 1, Table ES-3 at ES-10.

Id.
As demonstrated infra, the fictional elements of the operating plan are compounded in the EA.

A. Noise

Volume 1 of the EA addresses "noise" by stating that "the increase in the number of sensitive receptors would be only incremental, as trains are already the dominant source of noise in these areas [at or near grade crossings]."^11^ This conclusion, minimizing the noise impacts of the rerouting proposal, does not square with the reality of the UP/SP proposal as it applies to Wichita and Sedgwick County. In the first place, railroads are not the dominant source of noise in any major city, and the UP trains are not the dominant source of noise today in Wichita. Consider the attachments to the verified statement of Jack Brown.

In Attachment #1, the noise level without the train was 67.7 db(A) during a late evening measurement. This level rose by 13.4 db(A) as a result of the train. In Attachment #2, the noise level without the train was 81.1 db(A) during a morning measurement. Heavy vehicle traffic was noted as adding to the background measurement. This measurement rose by 10 db(A) as a result of the train.

Similarly, in Attachment #3, an afternoon measurement, the level without the train was 66.2 db(A), in part due to traffic. This measurement was increased by 11.7 db(A) by the train.
Describing the increase in noise as "only incremental" must also be viewed as an understatement in light of Attachment #5. In that afternoon/evening measurement, taken at a residential location adjacent to the tracks, the background measurement was 64.8 db(A). This measurement rose to 109.4 db(A) during the four minutes that the train was passing. This is an increase of 44.6 db(A). This is hardly "incremental", especially when it is remembered that the UP/SP propose to inflict that noise level fully 12 (or 14 or 16) times per day.

The segment-specific noise data found in Volume 2 also is in serious error. As demonstrated in Director Brown's Table 1, while the EA has concluded that the number of sensitive receptors in the Wichita/Sedgwick County area totals to 392 residences, 3 schools, and 10 churches, the actual numbers are 1,253 residences, 3 schools, and 12 churches.

B. Air Quality

While the EA is correct in its conclusion that "adverse effects to air quality could result from increased rail segment activity in this AQCR [South Central Kansas]"¹⁴, the EA is in serious error in its assertion that:

[T]he estimated emissions increases, however, represent a conservative estimate of the potential emissions. The actual new emissions may be lower. This potential for a lower level of emissions can be attributed to operational efficiencies, reduction of
duplicate activities, and truck-to-rail traffic diversions.14

As relates to Wichita and Sedgwick County, the UP/SP proposal suggests no operational efficiencies, reduction of duplicate activities, or truck-to-rail traffic diversions. To the contrary, UP/SP propose only to increase the number of unit trains moving through the City and County by (at least) ten per day.

Thus, the EA’s measurement of air quality impacts cannot be considered “conservative.” In fact, it is hugely “liberal” in that it entirely ignores the air quality degradation caused by literally thousands of vehicles that would be blocked and would “idle” in the streets of Wichita every day as a result of the UP/SP rerouting proposal. And, as noted by the verified statement of Director Brown, this one element of the air quality degradation package could be enough to put Wichita into a non-conformity status. Accordingly, there is no sound basis for the conclusion that the proposed action, as it relates to Wichita, “is not subject to National Ambient Air Quality Standards General Conformity regulations.”15

C. Air Quality at Grade Crossings

The EA’s commentary on this issue is as follows:

Railroad crossings tend to be grade-separated when roadway and/or train traffic volumes become high, so the air quality impacts at grade crossings would generally be relatively

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14 Volume 1 at 2-13.
15 Volume 2 at 8-10.
minor. In Kansas, most grade crossings carry 5,000 or fewer vehicles. SEA concludes that no adverse air quality impacts would result from increased grade crossing delays as a result of the proposed merger.\textsuperscript{xv}

This commentary is almost entirely contrary to the facts and in error. While it may be true that railroad crossings outside of Wichita and Sedgwick County "tend to be grade-separated" when traffic volumes are high, virtually all of the railroad crossings in Wichita are not grade-separated. Similarly, while it may be true that most grade crossings in Kansas carry 5,000 or fewer vehicles, there are 12 grade crossings in Wichita that carry 5,000 or more vehicles per day. See Mr. Stockwell’s Table 2. Ten of these crossings carry 10,000 or more vehicles per day. Three of these crossings carry 15,000 or more vehicles per day. One of these crossings carries more than 25,000 vehicles per day. None of these crossings is grade-separated.

Accordingly, the EA’s conclusion that no adverse air quality impacts would result from increased grade crossing delays as a result of the proposed merger is wholly in error.

D. Grade Crossing Delays

The EA addresses grade crossings for the Chickasha to Wichita segment in Volume 2 at 8-31. According to the EA, there insufficient data to determine how many grade crossings have average daily traffic counts in excess of 5,000 vehicles per day. Noted above, the answer for Wichita is 12.
The EA also concludes that the total amount of time per day that 11.8 trains will block the streets in this segment is 30 minutes. This equates to each train blocking the streets for 2.5 minutes. The assumptions as to train length and calculations underlying this 2.5 minute per train estimate are provided in EA Volume 5, Appendix I at I-4. For several reasons, those assumptions do not apply to the traffic of concern to Wichita and Sedgwick County.

First, the unit trains at issue are not limited to the 5,000 feet assumed by the EA. Assuming that UP/SP utilize unit trains of 136 cars and three locomotives, and further assuming that each car is only 53 feet in length, the UP/SP trains would be 7,421 feet, 48% longer than assumed by the EA.

Second, the EA assumes that the total time in minutes for gate closing and opening prior to and after the passage of a train is only 0.67 minutes. This is not the experience of Wichita and Sedgwick County. Based on studies conducted on May 1, 1996, our best estimate of the average gate closing and opening time in Wichita is .88 minutes.\(^{19/}\)

Third, the EA formula for "Crossing Delay Per Train" does not include time to allow the waiting line of vehicles blocked by

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\(^{17/}\) The Journal of Commerce, April 30, 1996.

\(^{18/}\) Wichita and Sedgwick County have been advised that cars may be as long as 60 feet.

\(^{19/}\) Our understanding that the amount of time that a street is blocked before the train arrives and after the train clears crossing is a function of the train’s speed.
the train to dissipate. A figure of .3 minutes for this time is
included in the EA’s second formula, i.e., "Crossing Delay per
Vehicle." The basis for assuming only .3 minutes for this
element of the delay equation is not stated in the EA, but, based
on the EA’s assumption that ADT’s in Wichita are less than 5,000,
Wichita and Sedgwick County believe that this figure is
understated as a result of the ADT understatement and that an
estimate of .5 minutes, while probably still very conservative,
is closer to reality.

Finally, the EA assumes that the trains will be running
through Wichita at a constant speed of 30 m.p.h. Given current
slow orders, the fact that a train yard exists at the beginning
of this segment, and the general congestion in Wichita, Wichita
and Sedgwick County have assumed that UP/SP trains will average
approximately 15 m.p.h. through the City.

Based on these factors, Wichita and Sedgwick County have
assumed that a fair representation of the delay to vehicles
attributable to a passing train in Wichita may be stated in the
following formula: \[ D = \frac{L}{(V \times 88)} + .88 + .5 \]
where:
- \( D \) = Delay to vehicles;
- \( L \) = Length of the train in feet;
- \( V \) = Average train speed in m.p.h.;
- 88 = Conversion factor from m.p.h. to feet per minute;
- .88 = Average time in minutes for gate closing and opening;
- .5 = Average time in minutes for traffic dissipation.
Utilizing 7,421 feet as the length of the train and 15 m.p.h. as the average speed of the train in this formula results in a "Delay to Vehicles" of seven minutes, not the 2.5 minutes assumed by the EA.

As noted supra, Wichita and Sedgwick County have utilized this seven minute per train estimate and have determined that the ten additional trains proposed by the applicants will result in streets being blocked for an additional 70 minutes per day. The total for 12 trains per day is streets being blocked for 84 minutes per day. The total would be even greater, if, as discussed above, UP/SP are actually planning to run more than 12 trains a day through Wichita and/or other railroads are given trackage rights through Wichita.

E. Accidents

The EA "concludes that the accident exposure in Kansas would range from an increase of 383 percent to a decrease of 100 percent, depending on rail segment."\textsuperscript{44/}

The calculations leading to this conclusion are not presented in the EA. However, this conclusion is counterintuitive, at best, and is contradicted by the conclusion elsewhere in the EA that "[s]ince the proposed merger would not result in any new grade crossings, the probability of increased incidents at grade crossings would depend on the increased number of trains on rail segments."\textsuperscript{44/} If the number of trains per day
in the Lost Springs to Wichita segment is to increase from 1.9 to 11.9, EA Volume 1 at ES-9, the increase in trains, 10, represents a percentage increase of 526% and the probability of increased accidents at grade crossings would increase by that percentage, not by 383 percent.

Even assuming, *arguendo*, that the EA's 383 percent figure is correct, what does it mean in human terms? According to statistics compiled by Wichita and Sedgwick County, between May, 1990 and March, 1996, there were 15 accidents on the UP line in the City and the County, including two fatalities. If these figures are multiplied by 3.83, the EA is advising Wichita and Sedgwick County that, over the next six years, they can expect an additional 57 accidents and an additional eight fatalities as a result of the proposed rerouting by the UP/SP. This is over nine additional accidents per year and over one additional fatality per year. We note parenthetically that UP/SP estimate that their larger "could be expected to result in an additional 25 accidents per year." Thus, over 1/3 of the total increase in accidents projected by the applicants would occur in Wichita and Sedgwick County.

THE EA'S MITIGATION PROPOSALS ARE INADEQUATE

Given the severity of the above-discussed environmental that would result from the proposed rerouting of traffic through Wichita and Sedgwick County, particularly in the area of safety, there is only one mitigation order that is
appropriate. The Board should prohibit the UP/SP from increasing the current number of trains per day through Wichita and Sedgwick County.

In contrast, the EA’s mitigation proposals, Volume 2 at 8-33 through 8-35, are akin to substituting post hoc bandages for preventive surgery. We will address those proposals in the order in which they are presented by the EA.

Air Quality

The EA proposes that the UP/SP "consult" with various agencies concerning any possible mitigations to reduce any potential adverse emissions. The UP/SP are to advise the Section of Environmental Analysis ("SEA") of the results of those consultations.

Given that the proposed "consultations" would not be a condition precedent to approval of the merger and the proposed rerouting of unit trains, they are worthless to Wichita and Sedgwick County. Having already discussed the merger with the Board, we cannot conceive of the possibility that, under no duty imposed by the Board to do anything but talk, the UP/SP would do anything to eliminate the principal cause of air quality degradation, the lack of grade separations at the 20 grade crossings with high KDOT "exposure rates" (or at least the 12 crossings used by more than 5,000 vehicles per day).

Noise

The EA proposes that the UP/SP consult with appropriate agencies to reduce potential noise level impacts to sensitive
receptors. SEA is to be advised of the results of these consultations and is to be provided with a copy of any resulting noise abatement plans.

Again, this "mitigation" proposal is not a condition precedent to the merger proposal and there is no reason to believe that it would be useful to Wichita and Sedgwick County. As reflected in Director Brown's Table 1, Wichita alone has 842 residences, two schools, and nine churches, that are "sensitive receptors." What are we to discuss with UP/SP? If we ask them to avoid running trains at night, in order to allow the human beings in those 842 residences to sleep, the 12 (or 14 or 16) trains would run during daylight hours, causing untold problems for emergency service vehicles. If we ask them to avoid running trains during the day, all trains would run at night to the obvious detriment of sleep.

2. This mitigation proposal is applicable only to Kansas City.

Transportation and Safety

3.1. The EA proposes that UP/SP consult with Wichita about safety and the potential effects of additional rail traffic on local traffic." UP/SP are to advise SEA periodically of the results of these consultations and are to submit any final noise abatement plans to SEA.

Once again, the EA proposes to give Wichita absolutely no negotiating leverage. If we cannot reach agreement with UP/SP,
they remain free to jeopardize the safety of our citizens and to
degrade the quality of life in our community.

We note with interest that the EA proposes that, after up to
18 months of future consultations, the UP/SP be required to
construct, in some unknown period, a minimum of three grade-
separated crossings in Reno. Since the ADTs in Wichita exceed
the ADTs in Reno, if the Board wishes to consider mitigation
short of prohibiting UP/SP to run more than the current number of
trains per day in Wichita, it not only should require UP/SP to
construct the necessary grade-separated crossings in Wichita, it
should require that construction before permitting UP/SP to run
any additional trains through Wichita.

Wichita and Sedgwick County further note in this regard that
in the April 11, 1996 Final Environmental Impact Statement in
Volume 2, errata at 12-15. It appears that eleven streets
to be given "first consideration for selection." It further
appears that the peak traffic level for these Reno streets is
200 vehicles per day. RENO-4, Fact Finding Report, Appendix
Figure 11. Wichita has three crossings with daily traffic
levels for these Reno streets is

The Tongue River Railroad
Company - Construction and Operation - of an Additional Rail Line
from Ashland to Decker, Montana, the Board required the applicant
to comply with the Montana Department of Highway's Railroad
Crossing Protection Policy. As noted above, compliance with
this policy would require grade separation at 20 grade

ings in Wichita and Sedgwick County. Fully ten of the grade

ings in Wichita would have "exposure rates" ten times
greater than the level at which KDOT's standards call for grade separation.

2. The EA proposes that UP/SP maintain all warning devices according to Federal Railroad Administration ("FRA") standards. This is hardly "mitigation" since UP/SP already are bound to abide by FRA standards.

3. The EA proposes that UP/SP transport all hazardous materials in compliance with U.S. D.O.T. "Federal Hazardous Materials Regulations. Again, this is not mitigation. UP/SP already are bound to comply with the law.

4. In the event of hazardous materials spills, the EA proposes that UP/SP follow appropriate emergency response procedures outlined in their Emergency Response Plans. This is not mitigation.

AN EIS IS REQUIRED BY LAW

The National Environmental Policy Act of 1969 ("NEPA"), requires the Board, "to the fullest extent possible", to include a detailed statement on the environmental impact of the proposed action "in every recommendation or report on proposals for ... major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C).

There is no question that the proposed UP/SP merger is a major Federal action." The Board's regulations, 49 CFR § 23.6, provide that environmental impact statements normally will be prepared in the case of rail construction proposals (like
the UP/SP proposal to spend $100 million to permit the Kansas City Bypass rerouting through Wichita). Those regulations also provide that an EIS normally will be prepared in the event of mergers resulting in operational changes exceeding any of the thresholds established in Section 1105.7(e)(4) or (5). As recognized by the EA, those thresholds are exceeded by the UP/SP merger's proposed impacts on line segments including Wichita.

For the Board to waive the preparation of an EIS under these circumstances, it would have to find that the UP/SP merger would not significantly affect the quality of the human environment. This the Board cannot properly do.

49 CFR § 1105.5 requires the Board to be guided by the definition of "significantly" at 40 CFR § 1508.27. And, that definition leaves no doubt as to the fact that the UP/SP merger and rerouting proposal would have a significant affect on the quality of the human environment in Wichita.

Section 1508.27 provides that the definition of "significantly" requires considerations of both "context" and "intensity." Under the heading of "context", the Board must consider, inter alia, "the affected region" and "the locality." Under the heading of "intensity", the Board must consider, inter alia, "the degree to which the proposed action affects public safety."

Specifically, the environmental concerns expressed herein by Sedgwick and Sedgwick County are "inherent components" of the operation before the Board. See Union Pacific Railroad Company -- Wallace Branch, ID, 9 ICC 2nd 325 (1992).
Under any reasoned application of these definitions and considerations, approval of a railroad merger that would result in the rerouting of at least ten trains per day through the heart of Wichita (a) severely jeopardizing the ability of public safety personnel to perform their functions, (b) negatively affecting air quality to the degree that Wichita could fall into the nonattainment category, and (c) negatively affecting noise levels, traffic, and other quality of life elements is one "significantly affecting the quality of the human environment."

As explained in State Of Idaho By & Thru Idaho Pub Util. v. I.C.C., 35 F.3d 585, 595 (D.C. Cir. 1994), the court’s review of a refusal by the Board to prepare an EIS would consider four criteria:

1. Whether the agency took a "hard look" at the problem;
2. Whether the agency identified the relevant areas of environmental concern;
3. As to the problems studied and identified, whether the agency made a convincing case that the impact was insignificant; and
4. If there was impact of true significance, whether the agency convincingly established that changes in the project sufficiently reduced it to a minimum.

(footnote omitted)

A review of the EA establishes that the Board’s refusal to prepare an EIS would fail all four criteria. The failure of the Board to consider, among other issues, public safety considerations, would result in the conclusion that the Board did not take a "hard look" at the problem. That same failure would result in conclusion that the Board did not even identify "relevant aspects of environmental concern." The EA’s dramatic
understatement of problems it considered, e.g., air quality and noise, would result in the conclusion that the EA has not made a convincing case that impacts are insignificant. And, a review of the EA’s proposed post hoc "discussion" mitigation requirements would lead to the conclusion that the environmental degradations caused by the UP/SP rerouting proposal have not been reduced "to a minimum."

Missouri Mining, Inc. v. I.C.C., 33 F.3d 980 (8th Cir. 1994) also teaches that the Board must consider all appropriate alternatives. However, as noted above, the EA has not done so. Rather, it has considered only the "merger" or "no merger" alternatives. This approach ignores the fact that not only are other routings possible for the freight at issue, but one of those routings is being used by the applicants today. Moreover, even that the applicants’ rationale for the rerouting of this traffic through Wichita is nothing more than a desire to reduce congestion" in Kansas City, applicants clearly cannot maintain that the present routing through Kansas City is not either a viable or a feasible alternative to consider in an EIS.

In brief, if the Board is not prepared at this time to prohibit the UP/SP from running more than the current number of trains per day through Wichita, it must prepare the environmental statement mandated by NEPA, the Board’s regulations, and the precedent.

Indeed, there appears to be little in the EA’s proposed conditions that differ from those which the Idaho and inadequate. Id. at 595-596.
CONCLUSION

Wherefore, Sedgwick County, Kansas and the City of Wichita, Kansas respectfully request the Surface Transportation Board to prohibit the applicants from increasing the number of trains through Sedgwick County and Wichita. If the Board is not prepared to impose such a condition on the merger at this time, we request that the Board prepare an Environmental Impact Statement.

Respectfully submitted,

BOARD OF COUNTY COMMISSIONERS
OF SEDGWICK COUNTY, KANSAS

CITY OF WICHITA, KANSAS

By their attorneys:

Steven J. Kalish
McCarthy, Sweeney & Harkaway, P.C.
1750 Pennsylvania Ave., N.W.
Washington, D.C. 20006
(202) 393-5710

Stephen Plummer
Sedgwick County Counselor
525 N. Main Street, Third Floor
Wichita, KS 67203-3790
(316) 383-7111

May 3, 1996
CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 3rd day of May, 1996.

Steven J. Kalish

1750 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 393-5710

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VERIFIED STATEMENT

OF

BECKY L. STEWART

My name is Becky L. Stewart, Director, Sedgwick County Department of Emergency Communications. A resume of my education, professional background and years of experience in the emergency communications field is set forth in Exhibit BLS-1.

The purpose of my statement is to describe the impact on County emergency communications/dispatching of twelve long trains. These trains are expected on the Union Pacific's Herington-Fort Worth line through the middle of Sedgwick County and Wichita as result of the proposed UP/SP railroad merger.

The Sedgwick County Emergency Communications Center ("Center") receives "911" calls from of all of Sedgwick County, including the City of Wichita and nineteen smaller cities. The area covered is 1008 square miles. We received 874,115 calls in 1995. We dispatch the calls for all the available emergency services: Wichita Police, Sedgwick County Sheriff, Wichita Fire Department, Sedgwick County Fire Department, and Sedgwick County EMS (EMS covers the entire Sedgwick County area, including the
incorporated areas) and Sedgwick County Emergency Management.

We decide which specific public safety units are to be sent to the address given in the “911” call. The Center is separate from any of the other public safety agencies. The Center handles the calls from citizens anywhere within Sedgwick County and the City of Rose Hill, just adjacent to Sedgwick County.

Our concern is that the proposed twelve mile-long trains will block a “rolling mile’s” worth of the twenty-six arterial grade crossings (described on the map attached to Mr. Stockwell’s statement) every time such a train passes through the Sedgwick County/Wichita. This, in my opinion, will pose significant obstacles to emergency response vehicles. Fire rescue squads and EMS vehicles may not be able to reach victims in a timely fashion. As described by EMS Director Pollan, the first four minutes are often critical to life. Fire trucks have, as Chief Garcia describes, simply had to watch property burn, even with today’s lower levels of train traffic. Twelve long trains through the middle of the County and Wichita will simply make the situation worse.

Currently, dispatchers have no way of anticipating the movements of trains that presently traverse the County, much less the proposed long trains to dispatch around them. These trains will simply arrive
unannounced and the dispatchers will find out only when the emergency vehicles report they are "stuck" waiting for a train. Depending on the speed of the train, I understand it may take five to seven minutes for a long train to clear any one of the twenty-six arterial grade crossings in Sedgwick County. There will be built-in additional delay while the responding vehicle reports it is "stuck" to the dispatcher and the dispatcher arranges to send other units on the opposite side of the tracks, if such units are available.

Based on my experience, it is my opinion that the proposed twelve long trains will cause serious delays in emergency response and also significantly complicate dispatching through my Department. In addition, there will be additional potential of motor vehicle traffic tie-ups, the increased likelihood of rail-motor vehicle accidents, and train derailments.
STATE OF KANSAS
COUNTY OF SEDGWICK

I, Becky L. Stewart, being duly sworn, deposes and says that I have read the foregoing, know the contents thereof, and that the same is true and correct.

Subscribed and sworn to before me this 26th day of April, 1996

Becky L. Stewart

KAREN S. BAILEY
NOTARY PUBLIC
STATE OF KANSAS
My Appt. Exp. 07-31-94

Karen S. Bailey
Notary Public
JOYCE L. STEWART

EMPLOYMENT HISTORY Sedgwick County Department of Emergency Communications

1994 - Present

DIRECTOR, EMERGENCY COMMUNICATIONS
- Determine goals and objectives
- Evaluate efficiency and effectiveness of operations and equipment
- Initiate enhancements
- Maintain adequate staffing levels
- Administer personnel policies
- Manage 70 employees
- Conduct employee performance appraisals
- Initiate recommendations for disciplinary action or merit
- Direct maintenance of operating records
- Submit periodic reports
- Interfere with officials and citizens' groups to enlist the cooperation of the public to explain communications functions
- Develop and implement a public awareness program
- Oversee and monitor departmental budgets of $4 million

December 1992

DIRECTOR, EMERGENCY COMMUNICATIONS
- Same as listed for Director.

March 1989

COMPUTER AIDED DISPATCH COORDINATOR
- Technical guidance in the planning and overseeing of the Computer Aided Dispatch System
- Create and maintain documentation necessary for system including training documentation
1982 - December 1987

EMERGENCY COMMUNICATIONS SUPERVISOR

1978 - June 1982

EMERGENCY SERVICE DISPATCHER

EDUCATION AND TRAINING

Kansas Newman College, Wichita, Kansas
Major: Business Management
Graduated with Bachelor Science in Business May 1995

Wichita State University, Wichita, Kansas
International City Managers Association
Certificate in Public Management

Motorola National Service Training Center
Schaumburg, Illinois

ASSOCIATIONAL ORGANIZATIONS

~ Associated Public Safety Communications Officials (APCO)- Past President Kansas Chapter
~ Critical Incident Stress Debriefing Team (CISD)- past Secretary/Coordinator
~ Kansas 9-1-1 Providers Group- Founder and past President
~ Kansas Trunked Users Group- Founder and Secretary/Treasurer
~ Kansas ASTRA Users Group- Past President
~ Member National Emergency Number Association (NENA)
~ Member Executive Forum for Women
~ Member National Association for Executive Women
VERIFIED STATEMENT

OF

WILLIAM M. WATSON

My name is William M. Watson, Chief of Police, Wichita Police Department, Wichita, Kansas. My mailing address is 455 N. Main, Wichita, Kansas, 67202. A resume of my education, professional background, and work history is set forth as in Exhibit WMW-1.

The purpose of my testimony is to describe for the Board the adverse impact of the Union Pacific/Southern Pacific's proposal to add ten trains of coal and grain traffic through Wichita. The addition of these trains, which can be 110 cars or more, traveling on the north-south "Rock Island" line will split the city of Wichita. The effect of these trains on our ability to provide emergency services to our community is great concern.
During the past few weeks I have been informed of the Union Pacific/Southern Pacific's (UP/SP) proposal to spend $91 million to allow trains to travel up to 49 miles per hour while traveling between Fort Worth Texas and Herington Kansas. The addition of ten unit trains to the existing number of trains traveling through Wichita could cause the cumulative effect of delaying vehicle traffic for up to one hour per day. Wichita currently has twelve (12) "at grade" crossings on arterial streets with a combined daily traffic volume of 150,000 vehicles. Nine (9) of the twelve (12) arterial streets average over 10,000 cars per day with a high of 15,000 cars on Pawnee.

The City of Wichita has a current population of 316,330 residents. As of March 1996, the Wichita Police Department has approximately 500 officers and traffic personnel who respond to dispatched 911 calls service 24 hours a day, seven days a week. In 1995 approximately 43,383 calls for service were answered by law enforcement personnel in the city with an average response time of 10 minutes and 29 seconds.

Emergency calls are prioritized by 911 emergency
communications dispatchers in the Sedgwick County Department of Emergency Communications and are assigned to city patrol officers. Priority calls usually require multiple officers which may also include the fire department and emergency medical services. Non-priority calls are less significant in nature and do not require quick response. Priority calls are the greatest concern to the public and to officers who respond to them. Our community has placed a great deal of trust in our ability to respond to these calls and to keep our community safe. The increased train traffic through our community will reduce our ability to respond quickly to critical incidents. Upon reviewing the proposal made by Union Pacific/Southern Pacific it is apparent that the increase in north-south train traffic to twelve (12) trains a day will reduce police responsiveness in answering priority and non-priority calls for service situations where officers must cross the Union Pacific/Southern Railroad tracks. The increase in the number of trains will make it difficult to respond to calls on the opposite side of "at grade" crossings.

The City of Wichita has grade separations for all freeways and State
Highways and four arterial streets in downtown Wichita. Currently, "grade" separators (roads under the railroad tracks) for city streets are located in the downtown area at First Street, Second Street, Douglas Avenue, and Waterman Street. These separators allow east and west traffic in the downtown core area to move freely without interruptions. Other "grade" separators (road overpasses) are located at Kellogg (US-54), North I-135 and South I-235. The Kellogg "grade" separator is located on the south side of the downtown area and serves as an east-west freeway. Kellogg allows vehicle traffic access to the downtown area. The other two "grade" separators are located on interstate highways at the south end and north end of the City. These separators separate the interstate from railroad tracks and provide only limited accessibility to officers who are seeking alternative routes to avoid blocked tracks. The lack of "grade" separators on east-west roads between Kellogg and I-235 on the south, along with limited access to the Arkansas River will reduce the opportunity to select an alternative route. In addition, the lack of separators on east-west north of Third Street and South of I-135 on the north limits east-west accessibility. A series of mile long trains has the potential for
Patrol officers encounter streets that are blocked by today's shorter trains on a daily basis and must make decisions on how to handle these situations. Officers may advise the dispatcher that they are delayed by a train and ask that the call be re-assigned. Dispatchers may reassign the call to other patrol units if available or the officer will be instructed to handle the call regardless of the delay. However, they may seek an alternative route around the train. If the officer seeks an alternative route, the officer must negotiate vehicle traffic on adjacent city streets. This can be difficult because other drivers will also be looking for alternative routes. Regardless of the officer's decision the delay will adversely affect the delivery of emergency services to our community. The addition of at least ten long trains can only make this situation worse.

An example of a potential situation encountered by city patrol officers is as follows. An officer receives a priority call from the dispatcher regarding a critical incident which occurred on the west side railroad tracks on 13th street. The officer is traveling from the east
side of Wichita toward the scene on 13th street and encounters a slow moving long train headed North. If other officers are unavailable to respond to the call the delayed officer must look for an alternate route. He most likely would drive 11 blocks to the south to the Second Street underpass, precede west to the next north-south street, and drive north 11 blocks to get back on course. The officer could select a northern route which would require him to backtrack to the I-135, drive north on I-135, exit at 29th street and precede west to Broadway. The officer must then drive south 16 blocks to return to 13th street. In both cases the officer would be driving the alternate route looking for streets that have been cleared as a result of the train clearing the tracks. The impact on response time can vary depending on the location of the officer, location of the scene, train length, train speed, and time of day. The delay could be considerable if this situation occurred during rush hour traffic.

Priority calls that require additional patrol officers to be dispatched to the scene of a critical incident can further delay our response. Our policy prohibits officers from responding to potentially dangerous situations without back-up. This can result in further delays if one of the
responding officers is delayed by a train. This can be further complicated by a situation where medical personnel and fire department personnel are within blocks of crime victims, but who can not attend to the injuries until police arrive and secure the scene from further criminal activity first. In these types of situations dispatchers can reassign calls to officers who are delayed by trains if there are officers available. However, the reassigned officers may be farther from the scene which could result in a delayed response.

Non-priority calls are not as critical as priority calls but impact customer satisfaction with law enforcement services. Officers who are slow to respond to non-priority calls as a result of train delays can impact our ability to respond to priority calls. Officers who are delayed by trains may not be available for subsequent calls which adversely impacts our citizens.

Between 1990 and 1995 the Wichita Police Department recorded at least 37 vehicle-train accidents. Additional trains traveling through the area would increase the number of vehicle-train related accidents.
which in turn would require more investigatory time from law enforcement personnel. We would also expect to see an increase in the number of vehicle accidents that occur on public streets as a result of citizens searching for alternative routes around train blocked intersections. The incidents of vehicles driving around traffic gates would also increase as traffic is delayed by railroad gates. As a result, increased enforcement of related motor vehicle traffic ordinances would be required.

The potential speed of trains traveling through Wichita is also a serious concern. It would be inappropriate for trains to pass through a densely populated community at speeds approaching 49 miles per hour. Trains would have to reduce speed inside the city to avoid potential hazards.

In conclusion, it is my opinion that the addition of ten long trains traveling through our city would increase vehicle-train accidents; the hours spent investigating vehicle-train accidents; increase accidents in general around locations where streets are blocked;
and may have a significant negative effect on our response time for priority and non-priority calls for service. As a result, the service its community expects from our police department would be significantly and negatively impacted.
VERIFICATION

STATE OF KANSAS

COUNTY OF SEDGWICK

I, William M. Watson, being duly sworn, depose and say that I have read the foregoing, know the contents thereof, and the same is true and correct.

William M. Watson

Subscribed and sworn to before me this 18th day of April, 1996.

Notary Public
WILLIAM M. WATSON
CHIEF OF POLICE
WICHITA POLICE DEPARTMENT
455 N. MAIN
WICHITA, KANSAS  67202

PRESENT POSITION:  Chief of Police
Wichita Police Department
September 1995 - present

Acting Chief of Police
Wichita Police Department
June 1995 - September 1995

EMPLOYMENT HISTORY:
Wichita Police Department
Wichita, Kansas
June 1976 to present
Patrolman, Master Police Officer,
Detective, Lieutenant, Administrative
Lieutenant, Captain, Deputy Chief of
Police, Acting Chief of Police, and Chief
of Police.

Montgomery Ward and Company, Inc.
Kansas City, Missouri and Wichita, Kansas
November 1972 to June 1976
Loss Prevention Manager

Internal Revenue Service
St. Paul, Minnesota and Chicago, Illinois
June 1972 to September 1972
Inspector

U.S. Army
Fort Benning, Georgia, Fort Holibird,
Maryland and Des Moines, Iowa
July 1970 to June 1972
Second Lieutenant, First Lieutenant, Field
Office Commander

EDUCATION:
Wichita State University
Graduate School, Wichita, Kansas
30 hours master's credit, Administration of
Justice
21 hours undergraduate credit
9/80 - 5/91
U.S. Army Intelligence School
Fort Holibird, Maryland
9/70 - 3/71

U.S. Army Infantry Officer's School
Fort Benning, Georgia
7/70 - 10/70

Kansas State University
Manhattan, Kansas
Bachelor of Science, Education
9/66 - 5/70

PROFESSIONAL ORGANIZATIONS:
Koch Crime Commission
International Association of Chiefs of Police
Kansas Association of Chiefs of Police
Kansas Peace Officer's Association