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February 15, 2024

VIA E-FILING

Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
Office of Proceedings
395 E Street, SW
Washington, DC 20423

32760 (Sub-No. 49)

Re: STB Docket No. FD ~~32760~~, Union Pacific Corporation—Control & Merger—Southern Pacific Rail Corporation

Dear Ms. Brown:

Enclosed for e-filing in the above-referenced proceeding is BNSF Railway Company's Petition for Clarification. Pursuant to 49 C.F.R. § 1002.2(f)(88), a filing fee of \$350 was paid using pay.gov.

Please contact me with any questions.

Respectfully submitted,

/s/ Peter W. Denton

Peter W. Denton
Attorney for BNSF Railway Company

FILED
February 15, 2024
SURFACE TRANSPORTATION BOARD

FEE RECEIVED
February 15, 2024
SURFACE TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

32760 (Sub-No. 49)
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

**BNSF RAILWAY COMPANY'S
PETITION FOR CLARIFICATION**

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Dated: February 15, 2024

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ENCLOSURES

Exhibit A: Pre-UP/SP Merger Map of Cline Mine Industrial Lead

Exhibit B: Restated and Amended Settlement Agreement (“RASA”)

Exhibit C: MP Notice of Exemption (Nov. 14, 1985) and MP/SP Trackage Rights Agreement (Nov. 25, 1985), *Missouri Pacific Railroad—Trackage Rights—Southern Pacific Railroad*, FD 30749

Exhibit D: Correspondence between Mike Martucci, BNSF Manager Contracts & Joint Facilities, and Chris Sanford, UP Manager Commercial & Interline Strategy

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TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
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**BNSF RAILWAY COMPANY’S
PETITION FOR CLARIFICATION**

1. Introduction and Summary

Union Pacific Railroad Company (“UP”) has refused to allow Colorado Materials, a rail-served customer located on a UP line in Uvalde County, TX to receive service from BNSF Railway Company (“BNSF”). Colorado Materials would have benefitted from the competition between UP and Southern Pacific Rail Corporation (“SP”) that existed on the line before the UP/SP merger in 1996 and that would have continued thereafter but for the merger. BNSF now asks that the Surface Transportation Board (“STB” or “Board”) ensure that Colorado Materials can receive the rail service from BNSF that the customer has requested, in order to fulfill BNSF’s competition-preserving role ordered by the Board when it approved the UP/SP merger.

The Colorado Materials facility was constructed in approximately 2013 adjacent to UP’s Cline Mine Industrial Lead (the “Lead”), as shown in the map attached as Exhibit A.

Prior to the UP/SP merger, UP and SP each had the ability to serve customers on the Lead – UP via trackage rights over the Lead¹ and SP via its ownership of the Lead. A shipper located on the Lead before the merger would thus have benefitted from direct competition and indirect competition (such as siting, transload, and build-in/build-out competition) between UP and SP. According to Board’s UP/SP merger conditions and the principles of the UP/SP merger-related settlement agreement between UP and BNSF (as amended and restated, the “RASA”), Colorado Materials should benefit from BNSF access and service, replacing the competition that was lost by the UP/SP merger.

Therefore, pursuant to 49 U.S.C. § 11327, BNSF hereby requests that the Board issue an order, detailed in more specificity below, clarifying that shipper facilities on rail lines where UP and SP could each serve customers prior to the UP/SP merger are entitled to BNSF service to prevent the loss of competition that would have otherwise occurred when the line came under the ownership of just one of the two owning carriers. Such an order will allow BNSF to replace the competition that customers on the Lead once enjoyed but then lost as a result of the UP/SP merger, permitting Colorado Materials and other similarly-situated rail-served customers to benefit from the competitive forces of two-carrier service.

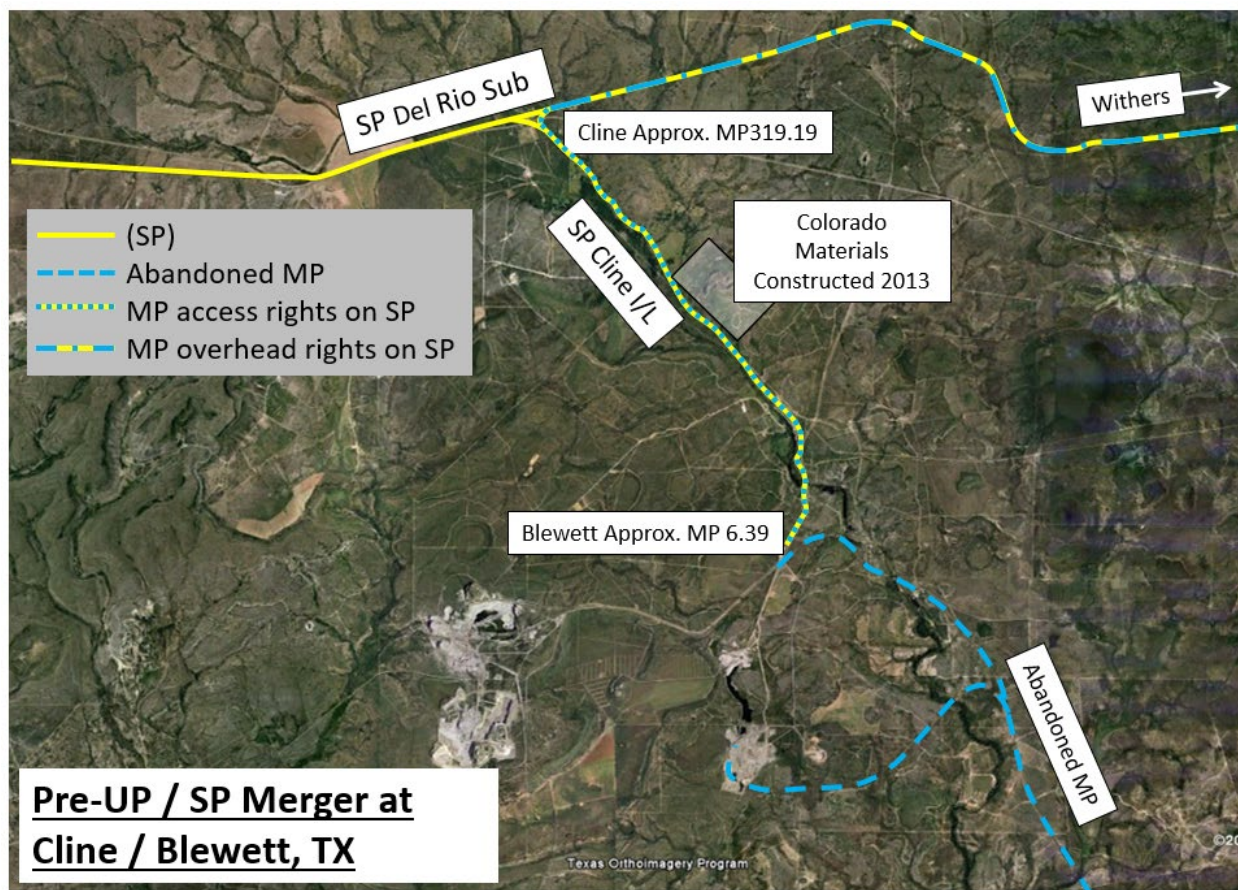
The facts set forth in this Petition have been verified by Mike Martucci, BNSF Manager, Contracts and Joint Facilities.

¹ As described further below, UP’s affiliate Missouri Pacific Railroad Company (“MP”) had trackage rights over the Lead. This Petition refers interchangeably to MP/UP as the Board treated UP’s affiliates and SP’s affiliates the same as UP and SP for competitive purposes in the UP/SP merger context.

2. Background

2.1. Prior to the UP/SP merger, both UP and SP could serve customers located on the Cline Mine Industrial Lead.

Prior to the 1996 UP/SP merger, the Cline Mine Industrial Lead was owned by SP. The Lead ran north-south from its northern point at Cline, TX (at a connection with an east-west SP line) to and including its southern point in Blewett, TX.



Pre-UP/SP Merger Map of Cline Mine Industrial Lead

In 1985, SP and MP entered into an agreement that allowed MP to operate over SP's line from San Antonio (Withers), TX to Cline, TX, including the Lead. This allowed MP to abandon its Crystal City Subdivision, which also accessed Blewett, TX, and which had suffered from extensive flood damage that destroyed a bridge on

that MP line. *See* Ex. C, MP Notice of Exemption (Nov. 14, 1985), *Mo. Pac. R.R.—Trackage Rts.—S. Pac. R.R.*, FD 30749.

Section 2 of the 1985 SP-MP agreement allowed MP to serve customers located on the Lead, but not customers located on the San Antonio-to-Cline portion of the SP line:

[SP] hereby grants [MP] for the term of this agreement . . . the right to operate its trains, engines and cars with its own employees on and over the Joint Facility solely for bridge purposes. ***Except with respect to industrial lead trackage included in the Joint Facility***, as provided in Section 1 B, hereof, User shall not . . . have the right to serve any industry or industries situated on the Joint Facility.

Ex. C, MP/SP Trackage Rts. Agreement, Sec. 2 (Nov. 25, 1985), *Mo. Pac. R.R.—Trackage Rts.—S. Pac. R.R.*, FD 30749 (emphasis added). Allowing MP to serve customers located on the Lead makes sense, given that the purpose of the agreement was to give MP alternative means to access customers at Blewett. The Notice of Exemption filed with the ICC in 1985 to obtain the necessary authority for the trackage rights stated:

(a) Both MP and SP own and operate railroad trackage serving the vicinity of Blewett, Texas, and have agreed in writing to enter into an agreement for MP to operate on SP's right of way over SP trackage between Withers, Texas (SP Mile Post 219.33 near San Antonio) and Cline, Texas (SP Mile Post 319.19 near vicinity of Blewett). Operation over an industrial lead track of SP in the Blewett/Cline, Texas area is included in the trackage rights agreement in order to permit MP's service in the Blewett area to Mile Post 6.39. The trackage rights results in a shorter, more direct route of operation for MP, and MP will no longer be required to operate over its Crystal City Subdivision, which is in poor condition, to serve the Blewett area.

Ex. C, MP Notice of Exemption 1-2 (Nov. 14, 1985).

2.2. UP has refused to allow BNSF to access Colorado Materials, relying on meritless arguments.

In February 2023, Colorado Materials requested BNSF direct service to its facility. In turn, BNSF requested access from UP to serve the facility by invoking the RASA’s “election” protocol. *See* Ex. D, Letter from Mike Martucci, BNSF Manager Contracts & Joint Facilities to Chris Sanford, UP Manager Commercial & Interline Strategy (Feb. 21, 2023). BNSF based its right to access the Colorado Materials facility on the fact that UP and SP had dual access to shippers on the Lead at the time of the UP/SP merger.

In a March 23, 2023 response letter, UP denied BNSF’s request to access Colorado Materials, stating – contrary to the express language of the 1985 SP-MP agreement – that pre-merger UP had only overhead rights on the Lead (not allowing UP to serve shippers), and that the RASA did not grant BNSF any rights on the Lead. *See* Ex. D, Letter from Sanford (UP) to Martucci (BNSF) (Mar. 23, 2023).

In a May 18, 2023 reply letter, BNSF explained, in detail, that UP’s rights to operate on the Lead **did** include “the right to serve any industry or industries situated on the Joint Facility.” *See* Ex. D, Letter from Martucci (BNSF) to Sanford (UP) (May 18, 2023) (citing Ex. C, MP/SP Trackage Rts. Agreement at Sec. 2 (Nov. 25, 1985)).

On July 21, 2023, UP denied BNSF’s access to serve Colorado Materials a second time in a short six-line letter. Choosing to ignore the language cited by BNSF granting UP rights to serve industries on the Lead, UP simply reiterated its position that UP only had overhead trackage rights on the Lead and that the RASA did not grant BNSF any rights on the Lead. *See* Ex. D, Letter from Sanford (UP) to Martucci (BNSF) (July 21, 2023).

UP's repeated denial of BNSF's request to access this rail-served facility is another attempt in a thinly-veiled strategic plan by UP to erode the essential competition-preserving bargain that it struck to obtain Board authority for the UP/SP merger in 1996. Over the last quarter-century, BNSF has repeatedly and successfully sought to enforce the rights of BNSF and its customers under the UP/SP merger conditions – all in the face of UP's continued efforts to limit competition by restricting BNSF access.²

2.3. The RASA ensures that BNSF can access New Shipper Facilities at “2-to-1” Points.

In August 1996, the Board approved the common control and merger of the rail carriers UP and SP, subject to various conditions designed to preserve direct and indirect competition that would be lost as a result of the consolidation of the two carriers. *Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp (Decision No. 44)*, 1 S.T.B. 233, 233, 367-75, 418-21 (1996). The essential bargain struck by UP/SP in order to obtain Board approval for their merger consisted of granting BNSF rights to access shipper facilities – both existing and new – that would have otherwise suffered from a reduction of competitive options as a result of the 1996 merger.

² See, e.g., *Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp. (Decision No. 75)*, FD 32760 (STB served Oct. 27, 1997) (Board permitted BNSF to serve the R.R. Donnelley & Sons Company's transload facility pursuant to the transload condition imposed in the UP/SP approval decision (*Decision No. 44*) over UP's objection); *Decision No. 81*, FD 32760 (STB served Oct. 5, 1998) (Board permitted BNSF to serve South Texas Liquid Terminal, Inc., a transload facility located within the San Antonio, Tex. switching limits pursuant to the UP/SP-BNSF settlement agreement, over UP's objection); *Decision No. 86*, FD 32760 (STB served July 12, 1999) (Board permitted BNSF to serve Four Star Sugar Co. facility in El Paso, Tex. pursuant to the new facilities condition imposed in *Decision No. 44*); *Decision No. 95*, FD 32760 (STB served Mar. 4, 2002) (Board provided guidance concerning “build-in/build-out” options for shippers to obtain access to an additional rail carrier and instructed BNSF and UP to negotiate implementation of the build-in/build-out UP/SP merger condition); *Decision No. 109*, FD 32760 (STB served Jan. 31, 2018) (Board ordered UP to permit BNSF to provide rail service to Mission Rail Park at Elmendorf, Texas, again over UP's objection).

The Board imposed as a condition of the merger the terms of a settlement agreement between UP and BNSF. *Id.* at 242-43, 246-47, 419. Under the settlement agreement, “BNSF [is] to serve all shippers who would otherwise go from two directly serving carriers, [UP and SP], to one, [UP]. **In essence, the [UP/BNSF settlement] agreement [permits] BNSF to replace, to a large extent, the competitive service that [was] lost when SP [was] absorbed into UP.**” *Id.* at 368 (emphasis added).

As contemplated by *Decision No. 44*, BNSF and UP restated and amended the original settlement agreement in accordance with that decision and subsequent Board decisions interpreting the agreement. The Board approved the terms of the March 1, 2002 Restated and Amended UP/BNSF Settlement Agreement (“RASA”), attached hereto as Exhibit B, in the context of the Board’s oversight review of the UP/SP merger. *See Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp. (General Oversight) (Decision No. 21)*, 5 S.T.B. 1173, 1174, 1178 (2001).

Among other things, the RASA ensures that BNSF can access “New Shipper Facilities” (defined as “newly constructed rail-served Shipper Facilities”) located after the UP/SP merger: (1) at “2-to-1” Points (geographic locations where at least one “2-to-1” Shipper Facility was located); and (2) along UP’s lines over which BNSF was granted trackage rights (the “Trackage Rights Lines”). The RASA also includes an omnibus provision, Section 8(i), confirming “the preservation of competition by two rail carriers” for New Shipper Facilities at “2-to-1” Points and “all other shippers who had direct competition or competition by means of siting, transload or build-in/build-out from only UP and SP pre-merger.”

3. Argument

3.1. The order requested here will allow Colorado Materials to benefit from BNSF fulfilling its competition-preserving role under the UP/SP merger conditions.

Colorado Materials should benefit from BNSF access pursuant to the UP/SP merger conditions. During the UP/SP merger proceeding, the UP/SP applicants claimed that their “basic purpose in entering into the [RASA] was to preserve competitive rail service for all 2-to-1 customers of UP and SP.” *Decision No. 44*, 1 S.T.B. at 252. The applicants “indicate[d] that, to preserve competitive options for such shippers, they identified all 2-to-1 points (i.e., *all points at which service is provided by UP and by SP, but by no other railroad*) and then negotiated trackage rights and line sales with BNSF that would provide service to as many of these shippers as possible.” *Id.* (emphasis added).

In the RASA, “2-to-1” Points are defined as “all geographic locations at which at least one “2-to-1” Shipper Facility is located. Such points include, without limitation, the points listed . . . [in] Exhibit A to this Agreement.” *See* Ex. B, RASA at 2. Exhibit A of the RASA provides a list of “2-to-1” Points, many of which are specific stations or locations, such as Little Rock, AR. *See* Ex. B, RASA at 50.

The parties recognized, however, that UP and SP could each serve shippers before the merger on certain dual-served rail lines, such as “Points on Sierra Blanca-El Paso line” and “Points on paired track from Weso NV to Alazon NV.” *See* Ex. B, RASA at 49 & 50. All points on those lines were designated as “2-to-1” so that shippers could receive BNSF service, including New Shipper Facilities locating on the dual-served lines. BNSF’s July 2, 2001 Fifth Annual and Cumulative Progress Report (relevant excerpts below) described BNSF’s service on the lines (p. 32):

Corridor Overview. The El Paso Corridor consists of BNSF’s trackage and haulage rights between El Paso and Sierra Blanca, TX. All stations on UP’s former SP line between El Paso and Sierra Blanca are “2-to-1”

points, and BNSF has access to all shipper facilities on industry tracks at these points.

Customer Access. BNSF has identified and confirmed its access to 13 “2-to-1” shipper facilities, one existing transload facility, and two new shipper facilities on the El Paso Corridor, including the Four Star Sugar transload at El Paso, TX.

The Report further states at page 10 that “[f]orty ‘2-to-1’ shipper facilities are located in the state of Nevada at points on the UP and former SP paired track between Weso and Alazon, NV.”

For reasons unknown to BNSF, notwithstanding their clear “2-to-1” status, the Cline Mine Industrial Lead and Blewett, TX were not specifically addressed in the RASA or the UP/SP merger conditions.³ The Lead is analogous to the dual-served rail lines listed in Exhibit A of the RASA, where all points on those lines are deemed to be “2-to-1” Points and all shippers at those points are deemed to be “2-to-1” Shippers entitled to BNSF access.

As the excerpt on the El Paso Corridor establishes, BNSF is entitled to serve transloads and New Shipper Facilities on dual-served lines. Any shipper situated on the Lead had the ability to receive service from both UP and SP before the UP/SP merger, and new shippers locating on the Lead would have had the ability to receive two-carrier service but for the merger. *See* Ex. C, MP/SP Trackage Rts. Agreement at Sec. 2 (Nov. 25, 1985). Therefore, the Colorado Materials facility, as a New Shipper Facility at a “2-to-1” Point, should be entitled to competitive access by BNSF in the same manner as points on the analogous dual-served lines listed in Exhibit A of the RASA.

³ It is immaterial to the right of Colorado Materials to two-carrier competitive service whether there was an existing railroad station or shipper facility on the Lead at the time of the merger. It is indisputable that SP and MP could have competed to serve any shipper locating on the Lead whether or not there was a station on the line in 1996. The merger eliminated that competition (both direct and indirect). The simple fact is that the merger precluded Colorado Materials from receiving two-carrier service. The Board should ensure that it can receive that service now.

At the core of the UP/SP merger conditions is the requirement that UP enable BNSF to fulfill BNSF's right and responsibility to compete as SP's replacement. Through the omnibus clause of the RASA, Section 8(i), UP and BNSF confirmed their intent for "the preservation of competition by two rail carriers" for New Shipper Facilities at "2-to-1" Points and "all other shippers who had who had direct competition or competition by means of siting, transload or build-in/build-out from only UP and SP pre-merger."

For the reasons stated above, the Board should issue an order clarifying: (1) that all locations on lines that were dual-served by UP and SP prior to the UP/SP merger, including the Cline Mine Industrial Lead, are "2-to-1" Points; and (2) that the Colorado Materials facility is entitled to BNSF service because it is a New Shipper Facility located at a "2-to-1" Point.⁴

The requested order would ensure that Colorado Materials and other similarly-situated shippers would not suffer a loss of competition and would continue to have at least two carrier options after the UP/SP merger. If UP is permitted to continue denying Colorado Materials its right to BNSF service, the competition-preserving effects of the Board's carefully-crafted UP/SP merger conditions will be at risk.

3.2. The Board has continuing jurisdiction to resolve issues related to the UP/SP merger conditions.

The Board has jurisdiction and authority to provide BNSF with the limited relief requested here. In *UP/SP (General Oversight) Decision No. 21*, 5 S.T.B. at 1177-78, the Board stated that, while it was concluding its formal oversight process for the UP/SP merger, it retained under 49 U.S.C. § 11327 "continuing authority to

⁴ The RASA broadly defines the term "New Shipper Facilities" to mean "newly constructed rail-served Shipper Facilities." See Ex. B, RASA at 3. Under the RASA, BNSF received access to any New Shipper Facility located at "2-to-1" Points or on Trackage Rights Lines. See RASA § 4(b). Because the Colorado Materials facility clearly falls within the definition of a "New Shipper Facility" under the RASA, BNSF would have access to the facility under the RASA.

enter supplemental orders and to modify decisions entered in merger and control proceedings under 49 U.S.C. 11323” and that “the conclusion of the formal oversight process does not preclude any party from invoking [the Board’s] jurisdiction to address any merger-related concerns arising out of [the Board’s] conditions.”⁵

Section 15 of the RASA contains a dispute resolution provision that, by implication, allows the Board or an arbitrator to hear disputes arising out of its terms.⁶ The provision implies that the Board may, by decision, determine that an unresolved dispute or controversy should not be submitted for binding arbitration but rather should be resolved by the Board.

UP and BNSF have previously resolved RASA-related disputes through private negotiations, arbitration, and formal Board proceedings. When the parties disagree as to the proper forum for a dispute, the Board has decided whether to hear the dispute. The Board has established several general principles when determining the proper forum for these disputes. First, “a Board proceeding may be proper for a dispute with potentially broad implications concerning conditions imposed in the UP/SP merger.” *Union Pac. Corp.—Control & Merger—S. Pac. Rail*

⁵ See also *Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp. (Decision No. 109)*, FD 32760 (STB served Jan. 31, 2018) (granting a BNSF petition for enforcement of UP/SP merger conditions); *Canadian Pac. Ry.—Control—Kan. City S. (Decision No. 35)*, FD 36500, slip op. at 77 (STB served Mar. 15, 2023) (“The Board has authority to enter supplemental orders enforcing merger conditions and to modify prior decisions entered in the merger proceeding both during and after the merger oversight period.”) (citing 49 U.S.C. § 11327; *Canadian Nat’l Ry.—Control—Ill. Cent.*, FD 33556 (Sub-No. 4), Oversight Decision No. 4, slip op. at 3 (STB served Dec. 27, 2001); *Decision No. 35*, FD 36500, slip op. at 55 (“[T]he Board is authorized to issue supplemental orders under 49 U.S.C. § 11327, both during the oversight period and afterwards, which may include taking remedial action following the transfer of control if warranted.”). “A prior decision may be clarified whenever there appears to be a need for a more complete explanation of the action taken therein.” See *Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp. (Decision No. 61)*, FD 32760, slip op. at 7 (Nov. 19, 1996).

⁶ Section 15 of the RASA provides that, “[e]xcept as otherwise provided by any decision of the STB or by separate agreement, unresolved disputes and controversies concerning any of the terms and provisions of this Agreement or the application of charges hereunder shall be submitted for binding arbitration under [the] Commercial Arbitration Rules of the American Arbitration Association which shall be the exclusive remedy of the parties.” Ex. B, RASA at Section 15 (emphasis added).

Corp. (Decision No. 108), FD 32760, slip op. at 3 (STB served May 5, 2017). Second, “[i]t is the Board’s responsibility to determine whether the conditions it has imposed in merger proceedings are being properly implemented in a manner consistent with the public policy underlying those conditions.” *Id.* Third, “arbitration is preferable for the resolution of disputed factual matters where the parties have agreed in advance to pursue this approach.” *Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp. (Decision No. 86)*, 4 S.T.B. 303, 309 (1999). In accordance with these principles, the Board has previously resolved several UP/SP merger disputes itself rather than allowing the disputes to be privately arbitrated.⁷

This Petition concerns the type of dispute that the Board has previously resolved in a public administrative proceeding. Here, “no material facts appear to be in dispute,” the dispute has “potentially broad implications concerning conditions imposed in the UP/SP merger,” and the dispute clearly “raises important issues related to the preservation of pre-merger rail competition.” *Decision No. 108*, FD 32760, slip op. at 3.

As described above, the dispute centers on clarifying the right of shippers situated on lines dually served by UP and SP pre-merger to continue to enjoy the direct and indirect competition existing at the time of the merger, which could have broad implications for other similarly-situated facilities. BNSF’s request is limited and is similar to other orders the Board has had to issue to ensure UP complies with the UP/SP merger conditions. *See, e.g., Decision No. 89* (Board clarified that a

⁷ *See Decision No. 108*, FD 32760, slip op. at 3 (the Board exercised its discretion to hear a dispute about BNSF’s ability to serve a shipper under the RASA because it “raise[d] important issues related to the preservation of pre-merger rail competition,” and because “no material facts appear[ed] to be in dispute”); *Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp. (Decision No. 96)*, 6 S.T.B. 210, 213 (2002) (the Board determined that it should resolve a dispute about the mechanism for adjusting the fees applicable to the trackage rights that BNSF acquired in connection with the UP/SP merger, because of the “broad implications” to the UP/SP merger conditions); *Decision No. 86*, 4 S.T.B. at 306, n.9 (the Board used the “broad implications” reasoning to resolve a dispute related to the scope of the “new facilities” UP/SP merger condition.).

shipper's facility was covered by the RASA's omnibus clause and that BNSF was entitled to provide competitive service to the facility under the clause). Such an order will allow Colorado Materials to have competitive two-carrier service, as requested by the shipper, as envisioned by the RASA, and as contemplated by the Board. Without Board intervention, UP will continue to disregard the UP/SP merger conditions and will deprive Colorado Materials of the direct and indirect competition that it would have enjoyed but for the UP/SP merger.

The Board itself should determine how the agreement that allowed BNSF to fulfill the Board's competitive objectives in the UP/SP merger should apply under those circumstances. Doing so not only would preserve the Board's authority over its merger conditions, but also would allow shippers and other parties to participate and provide the Board with their views. Moreover, BNSF has established here that the Board must act in this particular matter in order to preserve pre-merger rail competition on the Cline Mine Industrial Lead. Accordingly, if there is a question regarding the dispute's forum, the Board should retain this matter rather than allowing it to be decided by an arbitrator.

4. Conclusion

For the reasons stated above, BNSF requests that the Board issue an order clarifying: (1) that all locations on lines that were dual-served by UP and SP prior to the UP/SP merger, including the Cline Mine Industrial Lead, are "2-to-1" Points; and (2) that the Colorado Materials facility is entitled to BNSF service because it is a New Shipper Facility located at a "2-to-1" Point.

Respectfully submitted,

/s/ Peter W. Denton

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Attorneys for BNSF Railway Company

Dated: February 15, 2024

VERIFICATION

I, Mike Martucci, BNSF Manager, Contracts and Joint Facilities, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Petition for Clarification.

/s/ Mike Martucci

Mike Martucci

Executed on February 15, 2024.

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of February, 2024, I have caused the foregoing BNSF Railway Company's Petition for Clarification to be served electronically or by first-class mail, postage pre-paid, on all parties of record in this proceeding.

/s/ Onika K. Williams

Onika K. Williams

Attorney for BNSF Railway Company

EXHIBIT A

Pre-UP/SP Merger Map of Cline Mine Industrial Lead

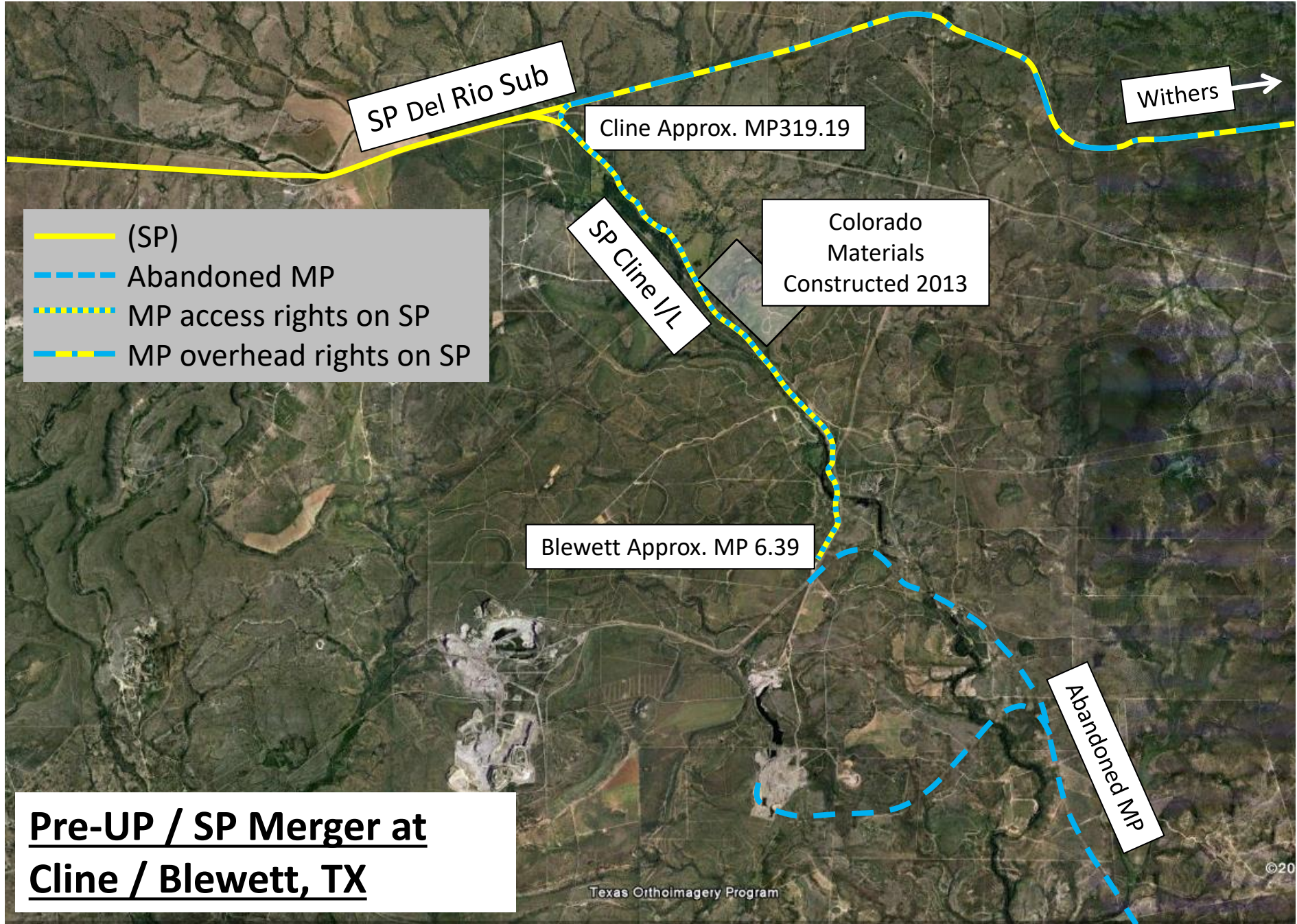


EXHIBIT B

Restated and Amended Settlement Agreement (“RASA”)

03/01/02

RESTATED AND AMENDED AGREEMENT

This Restated and Amended Agreement ("Agreement") is entered into this ____ day of March, 2002, between UNION PACIFIC RAILROAD COMPANY ("UP"), a Delaware corporation, and THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY ("BNSF"), a Delaware corporation.

WITNESSETH:

WHEREAS, UP and BNSF entered into an agreement dated September 25, 1995, as amended by supplemental agreements dated November 18, 1995, and June 27, 1996 (collectively, the "1995 Agreement"), in connection with UP's acquisition of Southern Pacific Rail Corporation and its affiliates ("SP") in 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;

WHEREAS, the Surface Transportation Board ("STB") approved the common control and merger of UP and SP in Decision No. 44 in Finance Docket No. 32760 (served August 12, 1996) and in so doing imposed certain conditions on UP and SP, including, as modified by the STB, the April 18, 1996 settlement agreement among UP, BNSF and the Chemical Manufacturers Association (the "CMA Agreement");

WHEREAS, as a part of its oversight of the UP/SP merger in Finance Docket Nos. 32760, 32760 (Sub-No. 21), and 32760 (Sub-No. 26), the STB has modified and clarified certain of the conditions it imposed in Decision No. 44;

WHEREAS, UP and BNSF entered into a Term Sheet Agreement dated February 12, 1998 (the "Term Sheet Agreement"), pursuant to which UP and BNSF agreed to the joint ownership of the line of railroad between Dawes, TX and Avondale, LA, which joint ownership was effected by separate agreement dated September 1, 2000 (the "TX-LA Line Sale Agreement");

WHEREAS, UP and BNSF have reached agreement with respect to the implementation of the conditions imposed by the STB on the UP/SP merger, as modified and clarified, and certain other matters relating to their rights and obligations under the 1995 Agreement, the CMA Agreement, the Term Sheet Agreement and the TX-LA Line Sale Agreement; and

WHEREAS, UP and BNSF now wish to amend and restate the 1995 Agreement to incorporate the conditions imposed by the STB on the UP/SP merger (including the CMA Agreement, as modified by the STB) and the agreements they have reached relating to those conditions and other related matters.

NOW, THEREFORE, the parties agree to amend and restate the 1995 Agreement as follows:

DEFINITIONS

For purposes of this Agreement, the following definitions and terms shall apply:

Shipper Facilities shall mean all existing or new shipper or receiver facilities, including transload facilities as well as rail car storage and car service and repair facilities not owned, leased or operated by UP.

"2-to-1" Points shall mean all geographic locations at which at least one "2-to-1" Shipper Facility is located. Such points include, without limitation, the points listed in Section 8(i) of and on Exhibit A to this Agreement. The boundaries for such "2-to-1" Points shall be deemed to

include all areas within the switching limits of the locations as described in Section 9(g) of this Agreement.

“2-to-1” Shipper Facilities shall mean all Shipper Facilities that were open to both UP and SP, whether via direct service or via reciprocal switching, joint facility or other arrangements, and no other railroad when the 1995 Agreement was executed, regardless of how long ago the shipper or receiver at that facility may have shipped or received, or whether the shipper or receiver at that facility ever shipped or received, any traffic via either UP or SP. The “2-to-1 Point Identification Protocol” between the parties attached hereto as Exhibit E shall govern the process for identifying “2-to-1” Shipper Facilities open to BNSF as a result of the conditions imposed on the UP/SP merger.

New Shipper Facilities shall mean: (i) existing Shipper Facilities constructing trackage for accessing rail service for the first time; and (ii) newly constructed rail-served Shipper Facilities. New Shipper Facilities shall also mean previously-served Shipper Facilities that begin to ship by rail again where (i) there has been a change of owner or lessee, and (ii) the use of the facility is actually different in nature and purpose from the facility's prior use (e.g., there has been a change in the type of products shipped from or received at the facility). New Shipper Facilities shall not include expansion of or additions to an existing rail-served Shipper Facility, but do include (1) Shipper Facilities which, on September 25, 1995, were being developed or for which land had been acquired for that purpose in contemplation of receiving rail service by both UP and SP, and (2) Transload Facilities located after September 11, 1996, including those owned or operated by BNSF.

Trackage Rights Lines shall mean the lines over which BNSF has been granted trackage rights pursuant to this Agreement, but shall not include any other lines over which UP/SP grants

BNSF trackage rights ("Overhead Trackage Rights") solely (i) to facilitate the parties' operation over Trackage Rights Lines, (ii) to permit BNSF's operation between a mutually-agreed upon BNSF junction point and points listed or described in Section 8(i) of this Agreement, or (iii) to permit BNSF's operation between a mutually-agreed upon BNSF junction point and a build-in/build-out line pursuant to Sections 4(a), 6(c) and 8(l) of this Agreement. The mutually-agreed upon junction point will be selected with the objective of minimizing the operating inconvenience to UP, consistent with ensuring that BNSF can provide competitive service. BNSF acknowledges that it shall not have the right to serve any existing or New Shipper Facility on a line over which BNSF has been granted Overhead Trackage Rights unless such right is specified in this Agreement or in any agreement implementing the Overhead Trackage Rights or unless BNSF has the right to serve a build-in/build-out line on such Overhead Trackage Rights line pursuant to the CMA Agreement or the conditions imposed on the UP/SP merger. All Overhead Trackage Rights Lines, as of the date of the execution hereof, are listed in Exhibit F to this Agreement, which exhibit may be amended and replaced from time to time by a new exhibit signed and dated by the parties. New Shipper Facilities shall be deemed to be "on" a Trackage Rights Line if the facility is either (1) adjacent to a Trackage Rights Line or (2) adjacent to a spur, an industrial track, or a yard that is itself served by such Trackage Rights Line. New Shipper Facilities are not "on" a Trackage Rights Line if they can be accessed only via a 49 U.S.C. 10901 "line of railroad" which is not a Trackage Rights Line.

Transload Facilities shall mean Shipper Facilities other than automotive or intermodal facilities or team tracks where freight is transferred from one railcar to another or from one mode to another (short term incidental storage may also occur) as defined by the STB in its decisions

in Finance Docket No. 32760. An “Existing Transload Facility” is a Transload Facility which was in existence on September 25, 1995.

1. **Western Trackage Rights**

(a) UP/SP shall grant to BNSF trackage rights on the following lines:

- SP’s line between Denver, CO and Salt Lake City, UT;
- UP’s line between Salt Lake City and Ogden, UT;
- SP’s line between Ogden and Little Mountain, UT;
- UP’s line between Salt Lake City and Alazon, NV;
- UP’s and SP’s lines between Alazon and Weso, NV;
- SP’s line between Weso, and Oakland, CA via SP’s line between Sacramento, CA and Oakland referred to as the “Cal-P” (subject to traffic restrictions as set forth in Section 1(g));
- Overhead Trackage Rights on SP's line between Binney Junction, CA and Roseville, CA in the vicinity of SP MP 106.6;
- SP’s line between Elvas (Elvas Interlocking) and Stockton, CA (subject to traffic restrictions as set forth in Section 1(g) and also excluding any trains moving over the line between Bieber and Keddie, CA purchased by BNSF pursuant to Section 2(a) of this Agreement);
- UP’s line between Weso and Stockton, CA; and
- SP’s line between Oakland and San Jose, CA.

(b) The trackage rights granted under this section shall be bridge rights for the movement of overhead traffic only, except for the local access specified herein. BNSF shall receive access on such lines only to (i) “2-to-1” Shipper Facilities and Existing Transload

Facilities at points listed on Exhibit A to this Agreement, (ii) any New Shipper Facilities located subsequent to UP's acquisition of control of SP at points listed on Exhibit A to this Agreement, and (iii) any New Shipper Facilities located subsequent to UP's acquisition of control of SP on the Trackage Rights Lines. BNSF shall also have the right to establish and exclusively serve intermodal and auto facilities at points listed on Exhibit A to this Agreement and at points identified or described in Section 8(i) of this Agreement. BNSF shall also receive the right to interchange with: the BHP Nevada Railroad Company at Shafter, NV; the Utah Railway Company at Utah Railway Junction, UT; Grand Junction, CO; and Provo, UT; the Utah Central Railway Company at Ogden; the Salt Lake, Garfield and Western at Salt Lake City; and the Salt Lake City Southern Railroad Company at Salt Lake City. BNSF shall also receive the right to utilize in common with UP/SP, for normal and customary charges, SP's soda ash Transload Facilities in Ogden and Salt Lake City. BNSF shall also have the right to access any shipper-owned soda ash Transload Facilities in Ogden and Salt Lake City and to establish its own soda ash Transload Facilities along the Trackage Rights Lines. BNSF shall have the same access as UP to all "2-to-1" Shipper Facilities and "2-to-1" Points between Salt Lake City, UT, and SP MP 755.1 north of Woods Cross, UT.

(c) Access to Shipper Facilities at points listed on Exhibit A to this Agreement open to BNSF shall be direct or through reciprocal switch, or, with UP/SP's prior agreement, through a third party contractor. Access to New Shipper Facilities open to BNSF on the Trackage Rights Lines shall be (i) direct; (ii) with UP/SP's prior agreement, through haulage for the shortest period of time necessary to allow BNSF to establish its own direct operating access after initiating service to a New Shipper Facility, but not to exceed the later to occur of 90 days or the date upon which UP completes the construction of and accepts for service any connections,

sidings or other support facilities to be paid for by BNSF that UP is then obligated to construct pursuant to this Agreement or the trackage rights agreements executed pursuant to Section 9(f) of this Agreement; (iii) with UP/SP's prior agreement, reciprocal switching where, at the time BNSF service is to commence, UP/SP already provides reciprocal switching on the portion of the Trackage Rights Line upon which the turnout to the facility is to be located; or (iv) with UP/SP's prior agreement, the use of a third party contractor; PROVIDED, HOWEVER, that it shall be UP/SP's sole decision whether BNSF's service will be provided by either haulage or reciprocal switching; and PROVIDED, FURTHER, that in no case shall UP/SP be required to initiate any new local service or increase its level of service to accommodate the level of service proposed by BNSF. New Shipper Facilities open to BNSF under this Agreement shall be open to both UP/SP and BNSF, subject to the terms of Section 9(c)(v) of this Agreement. The geographic limits within which (x) New Shipper Facilities shall be open to BNSF service at points listed on Exhibit A to this Agreement and (y) BNSF shall have the right to establish and exclusively serve intermodal and auto facilities at points listed in Section 8(i) of and on Exhibit A to this Agreement shall generally correspond to the territory within which, prior to the merger of UP and SP, a new shipper or receiver could have constructed a facility that would have been open to service by both UP and SP either directly or through reciprocal switch. Where switching districts have been established, such districts (as described in Section 9(g)) shall be presumed to establish these geographic limitations.

(d) At least forty-five (45) days before initiating service to (i) a Shipper Facility open to BNSF at a point listed or described on Exhibit A to or in Section 8(i) of this Agreement, or (ii) any New Shipper Facility on a Trackage Rights Line, BNSF shall notify UP of its election, subject to Section 1(c) above, of the manner by which it proposes such service be provided and

the specifics of its operating plan over UP/SP trackage. Within thirty (30) days of its receipt of BNSF's proposed operating plan, UP shall notify BNSF of its approval or disapproval of BNSF's plan. UP's approval of such plan shall not be unreasonably withheld. In the event UP disapproves of BNSF's proposed plan, UP shall provide an explanation in writing to BNSF of its reasons for disapproval, and UP shall propose an alternative operating plan that would be acceptable to UP and also be no more onerous than the operating plan that UP would establish for service provided by UP. If UP approves BNSF's plan but establishes conditions on that approval, those conditions shall be set forth in writing and shall be no more onerous than UP would establish for service provided by UP. BNSF shall have the right, upon one hundred eighty (180) days' prior written notice to UP/SP, to change its election; PROVIDED, HOWEVER, that BNSF shall not change any such election more often than once every five (5) years. BNSF shall reimburse UP/SP for any costs incurred by UP/SP in connection with any changed election.

(e) For Reno area intermodal traffic, BNSF may use SP's intermodal ramp at Sparks, NV with UP/SP providing intermodal terminal services to BNSF for normal and customary charges. If expansion of SP's Sparks intermodal facility is required to accommodate the combined needs of UP/SP and BNSF, then the parties shall share in the cost of such expansion on a pro rata basis allocated on the basis of the relative number of lifts for each party in the 12-month period preceding the date construction begins. If for any reason UP/SP vacates its Sparks intermodal facility, BNSF (i) may vacate the facility and independently establish one of its own, or (ii) shall be permitted by UP/SP to continue to occupy the Sparks facility upon entry into an agreement with UP/SP containing normal and customary terms and conditions (including, without limitation, rental) for the use of similar facilities. If UP elects to offer the Sparks intermodal ramp property for sale to a third party and/or receives an offer UP is willing to accept,

UP will offer to sell the property to BNSF on the same terms and conditions as are applicable to the third party. BNSF shall have thirty (30) days in which to advise UP whether or not it will buy the property on those terms. In the event BNSF declines to buy the property on those terms or fails to advise UP of its intentions within thirty (30) days, BNSF's right of first refusal will be extinguished, and UP may sell the property to the third party. BNSF will then be required to vacate the property within six (6) months, and UP's obligation to furnish BNSF with intermodal terminal services and access to a UP intermodal facility in the Sparks/Reno area will be extinguished.

(f) Except as otherwise herein provided, the trackage rights and access rights granted pursuant to this section shall be for rail traffic of all kinds, carload and intermodal, for all commodities.

(g) BNSF may operate only the following trains on SP's "Cal-P" line between Sacramento and Oakland: (i) intermodal and automotive trains composed of over ninety percent (90%) multi-level automobile equipment and/or flat cars carrying trailers and containers in single or double stack configuration and (ii) one overhead through manifest train of carload business per day in each direction. These BNSF manifest trains may be either I-5 Corridor or Central Corridor trains. On the Donner Pass line between Sacramento and Weso, BNSF may operate only intermodal and automotive trains as described in clause (i) and one overhead through manifest train of carload business per day in each direction. The manifest trains must be equipped with adequate motive power to achieve the same horsepower per trailing ton as comparable UP/SP manifest trains. BNSF may use helpers on these trains only if comparable UP/SP manifest trains use helpers; BNSF must provide the helper service. The restrictions set forth in this section do not apply to local trains serving Shipper Facilities to which BNSF has

access on the identified lines, and such trains shall not be considered in determining whether BNSF is in compliance with such restrictions. If UP grants its prior concurrence, BNSF's overhead through manifest trains shall be allowed to set out and pick up traffic to or from intermediate points on the identified lines.

(h) At BNSF's request, UP/SP shall provide train and engine crews and required support personnel and services in accordance with UP/SP's operating practices necessary to handle BNSF trains moving between Salt Lake City and Oakland. UP/SP shall be reimbursed for providing such employees on a cost plus reasonable additives basis and for any incremental cost associated with providing employees such as lodging or crew transportation expense. BNSF must also give UP/SP reasonable advance notice of its need for employees in order to allow UP/SP time to have adequate trained crews available. All UP/SP employees engaged in or connected with the operation of BNSF's trains shall, solely for purposes of standard joint facility liability, be deemed to be "sole employees" of BNSF. If UP/SP adds to its labor force to comply with a request or requests from BNSF to provide employees, then BNSF shall be responsible for any labor protection, guarantees or reserve board payments for such incremental employees resulting from any change in BNSF operations or traffic levels.

(i) UP/SP agree that their affiliate Central California Traction Company shall be managed and operated so as to provide BNSF non-discriminatory access to industries on its line on the same and no less favorable basis as provided UP and SP.

(j) If BNSF desires to operate domestic high cube double stacks over Donner Pass, then BNSF shall be responsible to pay for the cost of achieving required clearances. UP/SP shall pay BNSF one-half of the original cost of any such work funded by BNSF (including per annum interest thereon calculated in accordance with section 9(c)(v) of this Agreement) if UP/SP

subsequently decides to begin moving domestic high cube double stacks over this route. If UP/SP initiates and funds the clearance program, then BNSF shall pay one half of the original cost (including per annum interest thereon calculated in accordance with section 9(c)(v) of this Agreement) at such time as BNSF begins to use the line for domestic high cube double stacks.

(k) BNSF agrees to waive its right under Section 9 of the Agreement dated April 13, 1995, and agreements implementing that agreement to renegotiate certain compensation terms of such agreement in the event of a merger, consolidation or common control of SP by UP. BNSF also agrees to waive any restrictions on assignment in the 1990 BN-SP agreement covering trackage rights between Kansas City and Chicago.

2. **I-5 Corridor**

(a) UP/SP shall sell to BNSF UP's line between Bieber and Keddie, CA. UP/SP shall retain the right to use the portion of this line between MP 0 and MP 2 for the purpose of turning equipment. UP/SP shall pay BNSF a normal and customary trackage rights charge for this right.

(b) BNSF shall grant UP/SP overhead trackage rights on BN's line between Chemult and Bend, OR for rail traffic of all kinds, carload and intermodal, for all commodities.

(c) The parties will, under the procedures established in Section 9(f) of this Agreement, establish a proportional rate agreement incorporating the terms of the "Term Sheet for UP/SP-BNSF Proportional Rate Agreement Covering I-5 Corridor" attached hereto as Exhibit B.

3. **Southern California Access**

(a) UP/SP shall grant access to BNSF to serve all "2-to-1" Shipper Facilities in Southern California at the points listed on Exhibit A to this Agreement.

(b) UP/SP shall grant to BNSF trackage rights on the following lines:

- UP's line between Riverside and Ontario, CA; and

- UP's line between Basta, CA and Fullerton and La Habra, CA.

(c) The trackage rights granted under this section shall be bridge rights for the movement of overhead traffic only, except for the local access specified herein. BNSF shall receive access on such lines only to (i) "2-to-1" Shipper Facilities and Existing Transload Facilities at points listed on Exhibit A to this Agreement, (ii) any New Shipper Facility located subsequent to UP's acquisition of control of SP at points listed on Exhibit A to this Agreement, and (iii) any New Shipper Facility located subsequent to UP's acquisition of control of SP on the Trackage Rights Lines. BNSF shall also have the right to establish and exclusively serve intermodal and auto facilities at points listed on Exhibit A to this Agreement and at points identified or described in Section 8(i) of this Agreement.

(d) Access to Shipper Facilities at points listed on Exhibit A to this Agreement open to BNSF shall be direct or through reciprocal switch, or, with UP/SP's prior agreement, through a third party contractor. Access to New Shipper Facilities open to BNSF on the Trackage Rights Lines shall be (i) direct; (ii) with UP/SP's prior agreement, through haulage for the shortest period of time necessary to allow BNSF to establish its own direct operating access after initiating service to a New Shipper Facility, but not to exceed the later to occur of 90 days or the date upon which UP completes the construction of and accepts for service any connections, sidings or other support facilities to be paid for by BNSF that UP is then obligated to construct pursuant to this Agreement or the trackage rights agreements executed pursuant to Section 9(f) of this Agreement; (iii) with UP/SP's prior agreement, reciprocal switching where, at the time BNSF service is to commence, UP/SP already provides reciprocal switching on the portion of the Trackage Rights Line upon which the turnout to the facility is to be located; or (iv) with UP/SP's prior agreement the use of a third party contractor; PROVIDED, HOWEVER, that it shall be

UP/SP's sole decision whether BNSF's service will be provided by either haulage or reciprocal switching; and PROVIDED, FURTHER, that in no case shall UP/SP be required to initiate any new local service or increase its level of service to accommodate the level of service proposed by BNSF. New Shipper Facilities open to BNSF under this Agreement shall be open to both UP/SP and BNSF, subject to the terms of Section 9(c)(v) of this Agreement. The geographic limits within which (x) New Shipper Facilities shall be open to BNSF service at points listed on Exhibit A to this Agreement and (y) BNSF shall have the right to establish and exclusively serve intermodal and auto facilities at points listed in Section 8(i) of and on Exhibit A to this Agreement shall generally correspond to the territory within which, prior to the merger of UP and SP, a new shipper or receiver could have constructed a facility that would have been open to service by both UP and SP either directly or through reciprocal switch. Where switching districts have been established, such districts (as described in Section 9(g)) shall be presumed to establish these geographic limitations.

(e) BNSF shall grant UP/SP overhead trackage rights on Santa Fe's line between Barstow (including both legs of the wye) and Mojave, CA.

(f) Except as otherwise provided herein, the trackage rights and access rights granted pursuant to this section shall be for rail traffic of all kinds, carload and intermodal, for all commodities.

(g) UP/SP shall work with BNSF to facilitate access by BNSF to the Ports of Los Angeles and Long Beach, CA. Other than as legally precluded, UP/SP shall (a) extend the term of the present agreement dated November 21, 1981, to continue until completion of Alameda Corridor, (b) amend that agreement to apply to all carload and intermodal traffic, and (c) grant BNSF the right to invoke such agreement to provide loop service utilizing UP's and Santa Fe's

lines to the Ports at BNSF's option to allow for additional operating capacity. UP/SP's commitment is subject to available capacity. Any incremental capacity related projects necessary to accommodate BNSF traffic shall be the sole responsibility of BNSF.

(h) At least forty-five (45) days before initiating service to (i) a Shipper Facility open to BNSF at a point listed or described on Exhibit A to or in Section 8(i) of this Agreement, or (ii) any New Shipper Facility on a Trackage Rights Line, BNSF shall notify UP of its election, subject to Section 3(d) above, of the manner by which it proposes such service be provided and the specifics of its operating plan over UP/SP trackage. Within thirty (30) days of its receipt of BNSF's proposed operating plan, UP shall notify BNSF of its approval or disapproval of BNSF's plan. UP's approval of such plan shall not be unreasonably withheld. In the event UP disapproves of BNSF's proposed plan, UP shall provide an explanation in writing to BNSF of its reasons for disapproval, and UP shall propose an alternative operating plan that would be acceptable to UP and also be no more onerous than the operating plan that UP would establish for service provided by UP. If UP approves BNSF's plan but establishes conditions on that approval, those conditions shall be set forth in writing and shall be no more onerous than UP would establish for service provided by UP. BNSF shall have the right, upon one hundred eighty (180) days' prior written notice to UP/SP, to change its election; PROVIDED, HOWEVER, that BNSF shall not change any such election more often than once every five (5) years. BNSF shall reimburse UP/SP for any costs incurred by UP/SP in connection with any changed election.

4. **South Texas Trackage Rights and Purchase**

(a) UP/SP shall grant to BNSF trackage rights on the following lines:

- UP's line between Ajax and San Antonio, TX;

- UP's line between Houston (Algoa) and Brownsville, TX (with parity and equal access to the Mexican border crossing at Brownsville);
- UP's line between Odem and Corpus Christi, TX;
- UP's line between Ajax and Sealy, TX;
- SP's line between San Antonio and Eagle Pass, TX (with parity and equal access to the Mexican border crossing at Eagle Pass);
- UP's line between Craig Junction and SP Junction, TX (Tower 112) via Track No. 2 through Fratt, TX;
- SP's line between SP Junction (Tower 112) and Elmendorf, TX;
- SP's line in San Antonio between SP Tower 105 and SP Junction (Tower 112);
- Overhead Trackage Rights on SP's Port Lavaca Branch, between Placedo and Port Lavaca, TX, for the purpose of reaching a point of build-in/build-out to/from Union Carbide Corporation's ("UCC") facility at North Seadrift, TX. UP/SP shall permit BN/Santa Fe or UCC to construct and connect to the Port Lavaca Branch, at their expense, a build-in/build-out line. BN/Santa Fe or UCC shall have the right to purchase for net liquidation value all or any part of the Port Lavaca Branch that UP/SP may abandon;
- UP's line between Kerr (connection to Georgetown RR) and Taylor, TX;
- Overhead Trackage Rights on UP's line between Round Rock and McNeil, TX for the purpose of interchanging with the Capital Metro Transit Authority, its successors or agent;

- UP's line between Temple and Waco, TX;
- UP's line between Temple and Taylor, TX;
- UP's line between Taylor and Smithville, TX; and
- SP's line between El Paso and Sierra Blanca, TX.

(b) The trackage rights granted under this section shall be bridge rights for the movement of overhead traffic only, except for the local access specified herein. BNSF shall receive access on such lines only to (i) "2-to-1" Shipper Facilities and Existing Transload Facilities at points listed on Exhibit A to this Agreement and City Public Service Board of San Antonio, Texas Elmendorf facilities listed on Exhibit A to this Agreement, (ii) any New Shipper Facility located subsequent to UP's acquisition of control of SP at points listed on Exhibit A to this Agreement, and (iii) any New Shipper Facility located subsequent to UP's acquisition of control of SP on the Trackage Rights Lines. BNSF shall also have the right to establish and exclusively serve intermodal and auto facilities at points listed on Exhibit A to this Agreement and at points identified or described in Section 8(i) of this Agreement. BNSF shall also have the right to interchange with: the Texas Mexican Railway Company at Corpus Christi and Robstown, TX; the Georgetown Railroad at Kerr; Transportacion Ferroviaria Mexicana ("TFM") at Brownsville (Matamoros, Mexico); Ferrocarril Mexicano ("FXE") at Eagle Pass; and the operator of SP's former line between Giddings and Llano at McNeil, TX. BNSF's access and interchange rights at Corpus Christi and Brownsville shall be at least as favorable as SP had on September 25, 1995. BNSF shall have direct access to the Port of Brownsville, the Brownsville and Rio Grande International Railroad, and the TFM. UP will designate a yard in Brownsville for sale to BNSF at such time as BNSF establishes its own trackage rights operations into Brownsville and at such time as the connection between UP and SP as a part of the Brownsville

relocation project is completed. In the event UP/SP determines to cease operations in the SP East Yard at San Antonio, TX, UP/SP will give first consideration to BNSF for taking over operation of the East Yard pursuant to a mutually-agreeable arrangement.

(c) Access to Shipper Facilities at points listed on Exhibit A to this Agreement open to BNSF shall be direct or through reciprocal switch, or, with UP/SP's prior agreement, through a third party contractor. Access to New Shipper Facilities open to BNSF on the Trackage Rights Lines shall be (i) direct; (ii) with UP/SP's prior agreement, through haulage for the shortest period of time necessary to allow BNSF to establish its own direct operating access after initiating service to a New Shipper Facility, but not to exceed the later to occur of 90 days or the date upon which UP completes the construction of and accepts for service any connections, sidings or other support facilities to be paid for by BNSF that UP is then obligated to construct pursuant to this Agreement or the trackage rights agreements executed pursuant to Section 9(f) of this Agreement; (iii) with UP/SP's prior agreement, reciprocal switching where, at the time BNSF service is to commence, UP/SP already provides reciprocal switching on the portion of the Trackage Rights Line upon which the turnout to the facility is to be located; or (iv) with UP/SP's prior agreement, the use of a third party contractor; PROVIDED, HOWEVER, that it shall be UP/SP's sole decision whether BNSF's service will be provided by either haulage or reciprocal switching; and PROVIDED, FURTHER, that in no case shall UP/SP be required to initiate any new local service or increase its level of service to accommodate the level of service proposed by BNSF. New Shipper Facilities open to BNSF under this Agreement shall be open to both UP/SP and BNSF, subject to Section 9(c)(v) of this Agreement. The geographic limits within which (x) New Shipper Facilities shall be open to BNSF service at points listed on Exhibit A to this Agreement and (y) BNSF shall have the right to establish and exclusively serve intermodal and

auto facilities at points listed in Section 8(i) of and on Exhibit A to this Agreement shall generally correspond to the territory within which, prior to the merger of UP and SP, a new shipper or receiver could have constructed a facility that would have been open to service by both UP and SP either directly or through reciprocal switch. Where switching districts have been established, such districts (as described in Section 9(g)) shall be presumed to establish these geographic limitations.

(d) At least forty-five (45) days before initiating service to (i) a Shipper Facility open to BNSF at a point listed or described on Exhibit A to or in Section 8(i) of this Agreement, or (ii) any New Shipper Facility on a Trackage Rights Line, BNSF shall notify UP of its election, subject to Section 4(c) above, of the manner by which it proposes such service be provided and the specifics of its operating plan over UP/SP trackage. Within thirty (30) days of its receipt of BNSF's proposed operating plan, UP shall notify BNSF of its approval or disapproval of BNSF's plan. UP's approval of such plan shall not be unreasonably withheld. In the event UP disapproves of BNSF's proposed plan, UP shall provide an explanation in writing to BNSF of its reasons for disapproval, and UP shall propose an alternative operating plan that would be acceptable to UP and also be no more onerous than the operating plan that UP would establish for service provided by UP. If UP approves BNSF's plan but establishes conditions on that approval, those conditions shall be set forth in writing and shall be no more onerous than UP would establish for service provided by UP. BNSF shall have the right, upon one hundred eighty (180) days' prior written notice to UP/SP, to change its election; PROVIDED, HOWEVER, that BNSF shall not change any such election more often than once every five (5) years. BNSF shall reimburse UP/SP for any costs incurred by UP/SP in connection with any changed election.

(e) Except as otherwise provided herein, the trackage rights and access rights granted pursuant to this section shall be for rail traffic of all kinds, carload and intermodal, for all commodities.

(f) In lieu of BNSF's conducting actual trackage rights operations between Houston, Corpus Christi, Harlingen and Brownsville, TX (including TFM interchange), UP/SP agrees, upon request by BNSF, to handle BNSF's business on a haulage basis for the fee called for by Section 8(m) of this Agreement. UP/SP shall accept, handle, switch and deliver traffic moving under haulage without any discrimination in promptness, quality of service, or efficiency in favor of comparable traffic moving in UP/SP's account.

(g) UP/SP shall sell to BNSF UP's line between Dallas and Waxahachie, TX with UP retaining trackage rights to exclusively serve local industries on the Dallas-Waxahachie line.

(h) Upon the effectiveness of the trackage rights to Eagle Pass under this section, BNSF's right to obtain haulage services from UP/SP to and from Eagle Pass pursuant to the agreement between BNSF and SP dated April 13, 1995 and subsequent haulage agreement between those parties shall no longer apply, provided BNSF shall continue to have the right to use trackage at or near Eagle Pass as specified in that agreement for use in connection with trackage rights under this Agreement.

5. **Eastern Texas - Louisiana Trackage Rights and Purchase**

(a) UP/SP shall grant to BNSF trackage rights on the following lines:

- SP's line between Houston and Iowa Junction in Louisiana, which trackage rights have been amended by the Term Sheet Agreement and the TX-LA Line Sale Agreement implementing UP's and BNSF's joint ownership of SP's line between Dawes, TX and Avondale, LA;

- SP's line between Beaumont and Port Arthur, TX;
- SP's line between Dayton and Baytown and East Baytown, TX;
- SP's Channelview Spur which connects to the SP's line between Houston and Iowa Junction near Sheldon, TX for the purpose, inter alia, of reaching a point of build-in/build-out to/from the facilities of Lyondell Petrochemical Company and Arco Chemical Company at Channelview, TX. UP/SP shall permit BN/Santa Fe or one or both shippers to construct and connect to SP's Channelview Spur, at their expense, a build-in/build-out line. BN/Santa Fe or the shippers shall have the right to purchase for net liquidation value all or any part of the Channelview Spur that UP/SP may abandon;
- SP's line between Mallard Junction and Harbor, LA;
- SP's line near Avondale (SP MP 14.94 and West Bridge Junction (SP MP 9.97);
- UP's Main Line No. 1 from UP MP 14.29 to MP 14.11 including crossover to SP's main line and UP's MP 10.38 to MP 10.2; and
- UP's line between West Bridge Junction (UP MP 10.2) and UP's Westwego, LA intermodal facility (approximately UP MP 9.2).

(b) The trackage rights granted under this section shall be bridge rights for the movement of overhead traffic only, except for the local access specified herein. BNSF shall receive access on such lines only to (i) "2-to-1" Shipper Facilities and Existing Transload Facilities at points listed on Exhibit A to this Agreement, (ii) any New Shipper Facility located subsequent to UP's acquisition of control of SP at points listed on Exhibit A to this Agreement,

and (iii) any New Shipper Facility located subsequent to UP's acquisition of control of SP on the Trackage Rights Lines. BNSF shall also have the right to establish and exclusively serve intermodal and auto facilities at points listed on Exhibit A to this Agreement and at points identified or described in Section 8(i) of this Agreement. BNSF shall also have the right to handle traffic of shippers open to all of UP, SP and KCS at Lake Charles, Rose Bluff and West Lake, LA, and traffic of shippers open to SP and KCS at West Lake Charles. BNSF shall also have the right to interchange with: the Acadiana Railway Company at Crowley, LA; and the Louisiana & Delta Railroad, Inc. at Lafayette, Raceland and Schreiver, LA. BNSF shall also have the right to interchange with and have access over the New Orleans Public Belt Railroad at West Bridge Junction, LA.

(c) Access to Shipper Facilities at points listed on Exhibit A to this Agreement open to BNSF shall be direct or through reciprocal switch, or, with UP/SP's prior agreement, through a third party contractor. Access to New Shipper Facilities open to BNSF on the Trackage Rights Lines shall be (i) direct; (ii) with UP/SP's prior agreement, through haulage for the shortest period of time necessary to allow BNSF to establish its own direct operating access after initiating service to a New Shipper Facility, but not to exceed the later to occur of 90 days or the date upon which UP completes the construction of and accepts for service any connections, sidings or other support facilities to be paid for by BNSF that UP is then obligated to construct pursuant to this Agreement or the trackage rights agreements executed pursuant to Section 9(f) of this Agreement; (iii) with UP/SP's prior agreement reciprocal switching where, at the time BNSF service is to commence, UP/SP already provides reciprocal switching on the portion of the Trackage Rights Line upon which the turnout to the facility is to be located; or (iv) with UP/SP's prior agreement, the use of a third party contractor; PROVIDED, HOWEVER, that it shall be

UP/SP's sole decision whether BNSF's service will be provided by either haulage or reciprocal switching; and PROVIDED, FURTHER, that in no case shall UP/SP be required to initiate any new local service or increase its level of service to accommodate the level of service proposed by BNSF. New Shipper Facilities open to BNSF under this Agreement shall be open to both UP/SP and BNSF, subject to the terms of Section 9(c)(v) of this Agreement. The geographic limits within which (x) New Shipper Facilities shall be open to BNSF service at points listed on Exhibit A to this Agreement and (y) BNSF shall have the right to establish and exclusively serve intermodal and auto facilities at points listed in Section 8(i) of and on Exhibit A to this Agreement shall generally correspond to the territory within which, prior to the merger of UP and SP, a new shipper or receiver could have constructed a facility that would have been open to service by both UP and SP either directly or through reciprocal switch. Where switching districts have been established, such districts (as described in Section 9(g)) shall be presumed to establish these geographic limitations.

(d) At least forty-five (45) days before initiating service to (i) a Shipper Facility open to BNSF at a point listed or described on Exhibit A to or in Section 8(i) of this Agreement, or (ii) any New Shipper Facility on a Trackage Rights Line, BNSF shall notify UP of its election, subject to Section 5(c) above, of the manner by which it proposes such service be provided and the specifics of its operating plan over UP/SP trackage. Within thirty (30) days of its receipt of BNSF's proposed operating plan, UP shall notify BNSF of its approval or disapproval of BNSF's plan. UP's approval of such plan shall not be unreasonably withheld. In the event UP disapproves of BNSF's proposed plan, UP shall provide an explanation in writing to BNSF of its reasons for disapproval, and UP shall propose an alternative operating plan that would be acceptable to UP and also be no more onerous than the operating plan that UP would establish

for service provided by UP. If UP approves BNSF's plan but establishes conditions on that approval, those conditions shall be set forth in writing and shall be no more onerous than UP would establish for service provided by UP. BNSF shall have the right, upon one hundred eighty (180) days' prior written notice to UP/SP, to change its election; PROVIDED, HOWEVER, that BNSF shall not change any such election more often than once every five (5) years. BNSF shall reimburse UP/SP for any costs incurred by UP/SP in connection with any changed election.

(e) UP/SP shall grant BNSF the right to use SP's Bridge 5A at Houston, Texas.

(f) Except as otherwise provided herein, trackage rights and access rights granted pursuant to this section shall be for rail traffic of all kinds, carload and intermodal, for all commodities.

(g) UP/SP shall sell to BNSF UP's Main Line No. 1 between MP 14.11 and 10.38, UP's Westwego intermodal terminal, SP's old Avondale Yard (together with the fueling and mechanical facilities located thereon) as shown on Exhibit C; and SP's Lafayette Yard.

6. **Houston, TX-Valley Junction, IL Trackage Rights**

(a) UP/SP shall grant to BNSF trackage rights on the following lines:

- SP's line between Houston, TX and Fair Oaks, AR via Cleveland and Pine Bluff, AR;
- UP's line between Fair Oaks and Bridge Junction, AR;
- SP's line between Brinkley and Briark, AR;
- UP's line between Pine Bluff and North Little Rock, AR
- UP's line between Houston and Valley Junction, IL via Palestine, TX;
- SP's line between Fair Oaks and Illmo, MO via Jonesboro, AR and Dexter Junction, MO; and

- UP's line between Fair Oaks and Bald Knob, AR.

(b) In lieu of conducting actual operations between Pine Bluff and North Little Rock, AR, UP/SP agrees, upon request of BNSF, to handle BNSF's business on a haulage basis for the fee called for by Section 8(m) of this Agreement.

(c) BNSF shall have the right to transport unit coal trains (i) over the Trackage Rights Lines to and from a point of build-in/build-out to and from Entergy Services, Inc.'s plant at White Bluff, AR if and when such a build-in/build-out line is constructed by an entity other than UP/SP to connect such plant with an SP line, and (ii) to and from Entergy Services, Inc.'s plant at White Bluff (1) by entering and exiting the Trackage Rights Lines at Jonesboro and Hoxie, AR, respectively, and/or (2) by utilization of BNSF's line via Memphis, TN.

(d) The trackage rights granted under this section shall be bridge rights for the movement of overhead traffic only, except for the local access specified herein. BNSF shall receive access on such lines only to (i) "2-to-1" Shipper Facilities and Existing Transload Facilities at points listed on Exhibit A to this Agreement, (ii) any New Shipper Facility located subsequent to UP's acquisition of control of SP at points listed on Exhibit A to this Agreement, and (iii) any New Shipper Facility located subsequent to UP's acquisition of control of SP on the Trackage Rights Lines. BNSF shall also have the right to establish and exclusively serve intermodal and auto facilities at points listed on Exhibit A to this Agreement and at points identified or described in Section 8(i) of this Agreement. In addition to the other restrictions and limitations set forth herein, as to UP's and SP's lines between Memphis and Valley Junction, IL: (1) BNSF shall not have the right to enter or exit at intermediate points north of Bald Knob and Fair Oaks, AR; and (2) BNSF traffic is limited to traffic that moves through, originates in, or terminates in Texas or Louisiana. These two restrictions do not apply to traffic moving to or

from Shipper Facilities in the Houston-Memphis-St. Louis Corridor to which BNSF has access pursuant to this Section 6(d) or Section 8(i) below. The two restrictions also do not apply to the traffic that BNSF is permitted to handle pursuant to the remaining provisions of this Section 6(d), which remains subject to all other conditions and restrictions. BNSF shall also have the right to handle traffic of shippers open to all of UP, SP and KCS at Texarkana, TX/AR, and Shreveport, LA, to and from the Memphis BEA (BEA 73), but not including proportional, combination or Rule 11 rates via Memphis or other points in the Memphis BEA. In the Houston-Memphis-St. Louis corridor, BNSF shall have the right to move some or all of its traffic via trackage rights over either the UP line or the SP line, at its discretion, for operating convenience. BNSF shall also have the right to interchange: with the Little Rock and Western Railway at Little Rock, AR; the Little Rock Port Authority at Little Rock, AR; KCS at Shreveport, LA and Texarkana, TX/AR, for movements of traffic originated by KCS at or delivered by KCS to shippers or receivers at Lake Charles, West Lake, or West Lake Charles, LA; with KCS (y) at Shreveport, LA for movements of loaded and empty coal trains moving to and from Texas Utilities Electric Company's Martin Lake generating station, and (z) at Texarkana, TX/AR for movements of empty coal trains returning from Texas Utilities Electric Company's Martin Lake generating station; and with the Texas Northeastern Railroad at Texarkana, TX for the sole purpose of moving BNSF traffic to and from Shipper Facilities at Defense, TX.

(e) Access to Shipper Facilities at points listed on Exhibit A to this Agreement open to BNSF shall be direct or through reciprocal switch, or, with UP/SP's prior agreement, through a third party contractor. Access to New Shipper Facilities open to BNSF on the Trackage Rights Lines shall be (i) direct; (ii) with UP/SP's prior agreement, through haulage for the shortest period of time necessary to allow BNSF to establish its own direct operating access after

initiating service to a New Shipper Facility, but not to exceed the later to occur of 90 days or the date upon which UP completes the construction of and accepts for service any connections, sidings or other support facilities to be paid for by BNSF that UP is then obligated to construct pursuant to this Agreement or the trackage rights agreements executed pursuant to Section 9(f) of this Agreement; (iii) with UP/SP's prior agreement, reciprocal switching where, at the time BNSF service is to commence, UP/SP already provides reciprocal switching on the portion of the Trackage Rights Line upon which the turnout to the facility is to be located; or (iv) with UP/SP's prior agreement, the use of a third party contractor; PROVIDED, HOWEVER, that it shall be UP/SP's sole decision whether BNSF's service will be provided by either haulage or reciprocal switching; and PROVIDED, FURTHER, that in no case shall UP/SP be required to initiate any new local service or increase its level of service to accommodate the level of service proposed by BNSF. New Shipper Facilities open to BNSF under this Agreement shall be open to both UP/SP and BNSF, subject to the terms of Section 9(c)(v) of this Agreement. The geographic limits within which (x) New Shipper Facilities shall be open to BNSF service at points listed on Exhibit A to this Agreement and (y) BNSF shall have the right to establish and exclusively serve intermodal and auto facilities at points listed in Section 8(i) of and on Exhibit A to this Agreement shall generally correspond to the territory within which, prior to the merger of UP and SP, a new shipper or receiver could have constructed a facility that would have been open to service by both UP and SP either directly or through reciprocal switch. Where switching districts have been established, such districts (as described in Section 9(g)) shall be presumed to establish these geographic limitations.

(f) At least forty-five (45) days before initiating service to (i) a Shipper Facility open to BNSF at a point listed or described on Exhibit A to or in Section 8(i) of this Agreement, or (ii)

any New Shipper Facility on a Trackage Rights Line, BNSF shall notify UP of its election, subject to Section 6(e) above, of the manner by which it proposes such service be provided and the specifics of its operating plan over UP/SP trackage. Within thirty (30) days of its receipt of BNSF's proposed operating plan, UP shall notify BNSF of its approval or disapproval of BNSF's plan. UP's approval of such plan shall not be unreasonably withheld. In the event UP disapproves of BNSF's proposed plan, UP shall provide an explanation in writing to BNSF of its reasons for disapproval, and UP shall propose an alternative operating plan that would be acceptable to UP and also be no more onerous than the operating plan that UP would establish for service provided by UP. If UP approves BNSF's plan but establishes conditions on that approval, those conditions shall be set forth in writing and shall be no more onerous than UP would establish for service provided by UP. BNSF shall have the right, upon one hundred eighty (180) days' prior written notice to UP/SP, to change its election; PROVIDED, HOWEVER, that BNSF shall not change any such election more often than once every five (5) years. BNSF shall reimburse UP/SP for any costs incurred by UP/SP in connection with any changed election.

(g) Except as otherwise provided herein, the trackage rights and access rights granted pursuant to this section shall be for rail traffic of all kinds, carload and intermodal, for all commodities.

(h) BNSF shall grant to UP/SP overhead trackage rights on BN's line between West Memphis and Presley Junction, AK. UP/SP shall be responsible for upgrading this line as necessary for its use. If BNSF uses this line for overhead purposes to connect its line to the trackage rights lines, BNSF shall share in one-half of the upgrading cost.

7. St. Louis Area Coordinations

(a) UP/SP agree to cooperate with BNSF to facilitate efficient access by BNSF to other carriers at and through St. Louis via The Alton & Southern Railway Company ("A&S"). If

BNSF requests, UP/SP agree to construct or cause to be constructed for the use of both BNSF and UP/SP a faster connection between the BN and UP lines at Grand Avenue in St. Louis, MO and a third track from Grand Avenue to near Gratiot Street Tower at the sole cost and expense of BNSF. Upon completion of such construction, UP/SP shall grant to BNSF overhead trackage rights on UP's line between Grand Avenue and Gratiot Street.

(b) UP wishes to secure dispatching authority for the MacArthur Bridge across the Mississippi River at St. Louis. Dispatching is currently controlled by the Terminal Railroad Association of St. Louis ("TRRA"). BNSF agrees that it will cause its interest on the TRRA Board or any shares it owns in the TRRA to be voted in favor of transferring dispatching control of the MacArthur Bridge to UP if such matter is presented to the TRRA Board or its shareholders for action. Such dispatching shall be performed in a manner to ensure that all users are treated equally.

(c) If BNSF desires to use the A&S Gateway Yard, upon transfer of MacArthur Bridge dispatching to UP, UP/SP shall assure that charges assessed by the A&S to BNSF for use of Gateway Yard are equivalent to those assessed other non-owners of A&S.

(d) UP/SP and BNSF agree to provide each other reciprocal detour rights between Bridge Junction-West Memphis and St. Louis in the event of flooding, subject to the availability of sufficient capacity to accommodate the detour.

(e) UP/SP shall provide BNSF Overhead Trackage Rights over UP/SP's Jefferson City Subdivision between MP 34.8 near Pacific, MO and MP 43.8 near Labadie, MO for the purpose of accessing Ameren UE's facility at Labadie. BNSF shall have the right to serve all "2-to-1" Shipper Facilities, New Shipper Facilities and Existing Transload Facilities at Labadie.

8. **Additional Rights**

(a) UP/SP shall grant BNSF overhead trackage rights on SP's line between Richmond and Oakland, CA for rail traffic of all kinds, carload and intermodal, for all commodities to enable BNSF to connect via SP's line with the Oakland Terminal Railroad ("OTR") and to access the Oakland Joint Intermodal Terminal ("JIT"), or similar public intermodal facility, at such time as the JIT is built. BNSF shall pay 50% of the cost (up to \$2,000,000 maximum) for upgrading to mainline standards and reverse signaling of SP's No. 1 track between Emeryville (MP 8) and Stege, CA (MP 13.1). Compensation for these trackage rights shall be at the rate of 3.48 mills per ton mile for business moving in the "I-5 Corridor," 3.1 mills per ton mile on all other carload and intermodal business, and 3.0 mills per ton mile for bulk business (as defined in Section 9(a) of this Agreement) escalated in accordance with the provisions of Section 12 of this Agreement. UP/SP shall assess no additional charges against BNSF for access to the JIT and the OTR.

(b) BNSF shall waive any payment by UP/SP of the Seattle Terminal 5 access charge.

(c) BNSF shall grant to UP overhead trackage rights on BN's line between Saunders, WI and access to the MERC dock in Superior, WI.

(d) BNSF shall grant UP the right to use the Pokegama connection at Saunders, WI (i.e., the southwest quadrant connection at Saunders including the track between BN MP 10.43 and MP 11.14).

(e) BNSF shall waive SP's requirement to pay any portion of the Tehachapi tunnels clearance improvements pursuant to the 1993 Agreement between Santa Fe and SP.

(f) BNSF shall allow UP to exercise its rights to use the Hyundai lead at Portland Terminal 6 without any contribution to the cost of constructing such lead.

(g) BNSF shall allow UP/SP to enter or exit SP's Chicago-Kansas City-Hutchinson trackage rights at Buda, Earlville, and west of Edelstein, IL. UP/SP shall be responsible for the cost of any connections required.

(h) BNSF will amend the agreement dated April 13, 1995, between BNSF and SP to allow UP/SP to enter and exit Santa Fe's line solely for the purposes of permitting UP/SP or its agent to pick up and set out interchange business, including reciprocal switch business at Newton, KS, and switching UP industries at that point.

(i) It is the intent of the parties that this Agreement result in the preservation of competition by two rail carriers for (a) all "2-to-1" Shipper Facilities at points listed on Exhibit A to this Agreement and (b) all other shippers who had direct competition or competition by means of siting, transload or build-in/build-out from only UP and SP pre-merger.

The parties recognize that some "2-to-1" Shipper Facilities, Existing Transload Facilities, and New Shipper Facilities at "2-to-1" Points will not be able to avail themselves of BNSF service by virtue of the trackage rights and line sales contemplated by this Agreement. For example, "2-to-1" Shipper Facilities, Existing Transload Facilities, and New Shipper Facilities located at points between Niles Junction and the end of the joint track near Midway (including Livermore, CA, Pleasanton, CA, Radum, CA, and Trevarno, CA), Lyoth, CA, Lathrop, CA, Turlock, CA, South Gate, CA, Tyler, TX, Defense, TX, College Station, TX, Great Southwest, TX, Victoria, TX, Sugar Land, TX, points on the former Galveston, Houston & Henderson Railroad served only by UP and SP, Opelousas, LA and Herington, KS are not accessible under the trackage rights and line sales covered by this Agreement. Accordingly, UP/SP and BNSF agree to enter into arrangements under which, through trackage rights, haulage, ratemaking authority or other mutually acceptable means, BNSF will be able to provide competitive service

to “2-to-1” Shipper Facilities, Existing Transload Facilities, and New Shipper Facilities at the foregoing points and at other “2-to-1” Points not along a Trackage Rights Line.

(j) BNSF shall have the right to interchange with any short-line railroad which, prior to the Effective Date of this Agreement, could interchange with both UP and SP and no other railroad.

(k) BNSF shall also have the right to interchange with any short-line railroad that constructs a new line to and establishes an interchange on a Trackage Rights Line subsequent to UP's acquisition of control of SP; PROVIDED, HOWEVER, that the short-line railroad must be a Class II or Class III railroad neither owned nor operated by BNSF or any BNSF affiliate. In addition, the new rail line must be either (i) an extension of an existing Class II or Class III carrier that does not connect with UP or (ii) a new Class II or Class III carrier. BNSF shall not be entitled to interchange traffic with a Class II or Class III carrier at such a new interchange on a Trackage Rights Line if the traffic originates or terminates at a Shipper Facility that is now served solely by UP unless the Shipper Facility qualifies as a New Shipper Facility or unless the new line qualifies as a build-in or build-out under this Agreement.

(l) In addition to the right to serve build-in/build-out lines specified in Sections 4(a), 5(a) and 6(c) of this Agreement, BNSF shall have the right to serve a new build-in/build-out line constructed to reach a facility that was, prior to September 11, 1996, solely served by either UP or SP and would be open to two railroad service upon construction of the build-in/build-out line (i) to a point on lines owned by SP on September 11, 1996, in the case of facilities solely served by UP, or (ii) to a point on lines owned by UP on September 11, 1996, in the case of facilities solely served by SP. UP shall grant BNSF Overhead Trackage Rights necessary for BNSF to reach the build-in/build-out line. The routing of such trackage rights shall seek to minimize the

operating inconvenience to UP, consistent with ensuring that BNSF can provide competitive service.

(m) Where this Agreement authorizes BNSF to utilize haulage to provide service, the fee for such haulage shall be \$.50 per car mile plus a handling charge to cover handling at the haulage junction with BNSF and to or from a connecting railroad or third party contract switcher. The handling charge shall be \$50 per loaded or empty car for intermodal and carload and \$25 per loaded or empty car for unit trains with unit train defined as 67 cars or more of one commodity in one car type moving to a single destination and consignee. UP/SP shall bill BNSF the \$50 per car handling charge for all cars and, upon receipt of appropriate documentation from BNSF demonstrating that business assessed the \$50 per car handling fee was a unit train, adjust prior billings by \$25 per car for each car BNSF demonstrates to have been eligible for the \$25 per car handling charge for unit trains. Where UP/SP is providing reciprocal switching services to BNSF at "2-to-1" Shipper Facilities as provided for in Section 9(i) of this Agreement, the per car handling charge shall not be assessed at the point where such reciprocal switch charge is assessed. The haulage fee and handling charge set forth above as of September 25, 1995, shall be adjusted upwards or downwards in accordance with Section 12 of this Agreement.

(n) In the event, for any reason, any of the trackage rights granted under this Agreement cannot be implemented because of the lack of sufficient legal authority to carry out such grant, then UP/SP shall be obligated to provide an alternative route or routes, or means of access of commercially equivalent utility at the same level of cost to BNSF as would have been provided by the originally contemplated rights.

(o) In the event UP determines to terminate or not renew a lease to an Existing Transload Facility to which BNSF gained access as a result of this Agreement or the conditions

imposed on the UP/SP merger and BNSF has previously entered into a contract to provide transportation services to the Existing Transload Facility, UP shall extend the lease for the remaining period of such transportation contract or for a period not to exceed 24 months, whichever period is shorter.

9. **Trackage Rights - General Provisions**

(a) The compensation for operations under this Agreement shall be set at the levels shown in the following table as subsequently indexed under the 1995 Agreement:

Table I Trackage Rights Compensation (mills per ton-mile)		
	Keddie-Stockton/Richmond	All Other Lines
Intermodal and Carload	3.48	3.1
Bulk (67 cars or more of one commodity in one car type)	3.0	3.0

These rates shall apply to all equipment moving in a train consist including locomotives. The rates shall be escalated in accordance with the procedures described in Section 12 of this Agreement. The owning line shall be responsible for maintenance of its line in the ordinary course including rail relay and tie replacement. The compensation for such maintenance shall be included in the mills per ton mile rates received by such owning line under this Agreement.

(b) BNSF and UP/SP will conduct a joint inspection to determine necessary connections and sidings or siding extensions associated with connections, necessary to implement the trackage rights granted under this Agreement. The cost of such facilities shall be borne by the party receiving the trackage rights which such facilities are required to implement. Either party shall have the right to cause the other party to construct such facilities. If the owning carrier decides to utilize such facilities constructed by it for the other party, it shall have

the right to do so upon payment to the other party of one-half (½) the original cost of constructing such facilities.

(c) Capital expenditures on the Trackage Rights Lines and on lines over which BNSF is granted Overhead Trackage Rights will be handled as follows:

- (i) UP/SP shall bear the cost of all capacity improvements that are necessary to achieve the benefits of its merger as outlined in the application filed with the ICC for authority for UP to control SP. The operating plan filed by UP/SP in support of the application shall be given presumptive weight in determining what capacity improvements are necessary to achieve these benefits.
- (ii) Any capacity improvements other than those covered by subparagraph (i) above shall be shared by the parties based upon their respective usage of the line in question, except as otherwise provided in subparagraph (iii) below. That respective usage shall be determined by the 12 month period prior to the making of the improvement on a gross ton mile basis.
- (iii) For 18 months following UP's acquisition of control of SP, BNSF shall not be required to share in the cost of any capital improvements under the provision of subparagraph (ii) above.
- (iv) BNSF and UP/SP agree that a capital reserve fund of \$25 million, funded out of the purchase price listed in Section 10 of this Agreement, shall be established. This capital reserve fund shall, with BNSF's prior consent which will not unreasonably be withheld, be drawn down to pay for capital projects on the Trackage Rights Lines that are required to

accommodate the operations of both UP/SP and BNSF on those lines, but in any event shall not be used for expenditures covered by subparagraph (i) above. Any disputes over whether a project is required to accommodate the operation of both parties shall be referred to binding arbitration under Section 15 of this Agreement.

- (v) If both UP/SP and BNSF intend to serve New Shipper Facilities located subsequent to UP's acquisition of control of SP as authorized by Sections 1(b), 3(c), 4(b), 5(b), 6(d), and 8(i) of this Agreement, they shall share equally in any capital investment in such connections and sidings and siding extensions or other support facilities required by both UP and BNSF to provide rail service to such New Shipper Facility. If only one railroad initially provides such service, the other railroad may elect to provide service at a later date, but only after paying to the railroad initially providing such service 50% of any capital investment (including per annum interest thereon) made by the railroad initially providing rail service to the New Shipper Facility. Per annum interest shall be at a rate equal to the average paid on 90-day Treasury Bills of the United States Government as of the date of completion until the date of use by the other railroad commences. Per annum interest shall be adjusted annually on the first day of the twelfth (12th) month following the date of completion and every year thereafter on such date, based on the percentage increase or decrease, in the average yield of 30-year U.S. Treasury Notes for the prior year compared to their average yield in first year of completion of the

access to such industry or industries. Each annual adjustment shall be subject, however, to a “cap” (up or down) of two percentage points more or less than the prior year’s interest rate.

(d) Subject to the terms of the Dispatching Protocols attached hereto as Exhibit D and incorporated herein, the management and operation of the lines over which the parties have granted trackage rights to each other pursuant to this Agreement (“Joint Trackage”) shall be under the exclusive direction and control of the owning carrier, and the owning carrier shall have the otherwise unrestricted power to change the management and operations on and over Joint Trackage as in its judgment may be necessary, expedient or proper for the operations thereof intended. Trains of the parties utilizing Joint Trackage shall be given equal dispatch without any discrimination in promptness, quality of service, or efficiency in favor of comparable traffic of the owning carrier. Trains operating in the Houston terminal shall be routed over the most efficient routes as necessary to avoid delays and congestion, even routes over trackage over which the operating carrier has no operating rights.

The owning carrier shall keep and maintain the Joint Trackage at no less than the track standard designated in the current timetable for the applicable lines subject to the separate trackage rights agreement. The parties agree to establish a joint service committee to regularly review operations over the Joint Trackage lines.

In the event the owning carrier determines to sell or remove from service a Joint Trackage line and/or any associated facilities, the owning carrier shall provide the other carrier with reasonable written notice of such determination. Any such sale to a third party shall be expressly made subject to the terms and conditions of this Agreement, and the owning carrier

shall remain responsible as to the obligations imposed on it herein in the event the third party purchaser does not fulfill those obligations.

(e) Each party shall be responsible for any and all costs relating to providing employee protection benefits, if any, to its employees prescribed by law, governmental authority or employee protective agreements where such costs and expenses are attributable to or arise by reason of that party's operation of trains over Joint Trackage. To the extent that it does not violate existing agreements, for a period of three years following acquisition of control of SP by UP, BNSF and UP/SP shall give preference to each other's employees when hiring employees needed to carry out trackage rights operations or operate lines being purchased. The parties shall provide each other with lists of available employees by craft or class to whom such preference shall be granted. Nothing in this Section 9(e) is intended to create an obligation to hire any specific employee.

(f) The trackage rights grants described in this Agreement and the purchase and sale of line segments shall be included in separate trackage rights and line sale agreement documents respectively of the kind and containing such provisions as are normally and customarily utilized by the parties, including exhibits depicting specific rail line segments, and other provisions dealing with maintenance, improvements, and liability, subject to more specific provisions described for each grant and sale contained in this Agreement and the general provisions described in this section. BNSF and UP/SP shall elect which of their constituent railroads shall be a party to each such trackage rights agreement and line sale and shall have the right to assign the agreement among their constituent railroads. The parties shall use their best efforts to complete such agreements by June 1, 1996. If agreement is not reached by June 1, 1996 either party may request that any outstanding matters be resolved by binding arbitration with the

arbitration proceeding to be completed within sixty (60) days of its institution. In the event such agreements are not completed by the date the grants of such trackage rights are to be effective, it is intended that operations under such grants shall be commenced and governed by this Agreement.

(g) All locations referenced herein shall be deemed to include all areas within the switching limits of the location designated by tariff, clarified to the extent necessary by publicly-available information, in effect as of September 25, 1995, and access to such locations shall include the right to locate and serve new auto and intermodal facilities at such locations.

(h) The tenant carrier on the Joint Trackage shall have the right to construct, or have constructed for it, for its sole use exclusively owned or leased facilities, including, without limitation, automobile and intermodal facilities, storage in transit facilities, team tracks and yards along the Joint Trackage pursuant to the following terms and conditions:

- (i) The party wishing to construct such exclusively owned facilities for its sole use shall submit its plans to the other party for its review and approval, which approval shall not be unreasonably withheld or delayed;
- (ii) In the case of the construction of team tracks and ancillary facilities, including loading facilities and necessary track connections, the parties shall work cooperatively with each other to enable such construction;
- (iii) Such exclusively owned or leased and used facilities shall not (i) impair the other party's use of the Joint Trackage, (ii) prevent or unduly hinder the other party's access to existing or future customers or facilities served from the Joint Trackage, or (iii) impair access to other exclusively owned facilities then in existence; and

(iv) If jointly owned or leased and used property is to be used for the construction of such exclusively owned or leased and used facilities, the party so constructing such exclusively owned or leased and used facilities shall reimburse the other party for its ownership of the jointly owned property so utilized at 50% of its then current fair market value. If the tenant carrier uses property of the owning carrier for the construction of exclusively owned or leased and used facilities, the tenant carrier shall reimburse the owning carrier for its ownership of the property at 100% of its then current fair market value.

(i) Where UP/SP provides reciprocal switching services to BNSF under this Agreement, UP/SP will do so at a rate of no more than \$130 per car as of September 25, 1995, adjusted pursuant to Section 12 of this Agreement, and all such reciprocal switching services shall be provided on an impartial basis. In the event BNSF's access to a Shipper Facility pursuant to this Agreement is effected by means of a third party contractor, (i) any associated third party switch fee shall be paid by UP/SP, (ii) BNSF shall pay to UP/SP the applicable reciprocal switch fee established between the parties to this Agreement, and (iii) BNSF shall neither be entitled to become an assignee of UP/SP nor become eligible to enter into a separate agreement with the shipper so served.

(j) It is the intent of the parties that BNSF shall, where sufficient volume exists, be able to utilize its own terminal facilities for traffic handled by BNSF under the terms of this Agreement. These locations include Salt Lake City, Ogden, Brownsville and San Antonio, and other locations where such volume develops. Facilities or portions thereof presently utilized by UP or SP at such locations shall be acquired from UP/SP by lease or purchase at normal and

customary charges. Upon request of BNSF and subject to availability and capacity, UP/SP shall provide BNSF with terminal support services including fueling, running repairs and switching. UP/SP shall also provide intermodal terminal services at Salt Lake City, Reno, and San Antonio. UP/SP shall be reimbursed for such services at UP's normal and customary charges. Where terminal support services are not required, BNSF shall not be assessed additional charges for train movements through a terminal. BNSF shall also have equal access, along with UP/SP, to all SP Gulf Coast storage in transit facilities ("SIT") (i.e., those SP facilities at Dayton, East Baytown, and Beaumont, TX), on economic terms no less favorable than the terms of UP/SP's access, for storage in transit of traffic handled by BNSF under the terms of this Agreement, including, but not limited to, traffic to or from Shipper Facilities to which BNSF gained access under the terms of this Agreement. UP/SP agree to work with BNSF to locate additional SIT facilities on the Trackage Rights Lines and on lines over which BNSF is granted Overhead Trackage Rights to serve a build-in/build-out line as necessary.

(k) BNSF may, subject to UP/SP's consent, use agents for limited feeder service on the Trackage Rights Lines and on lines over which BNSF is granted Overhead Trackage Rights to serve a build-in/build-out line.

(l) BNSF shall have the right to inspect the UP and SP lines over which it obtains trackage rights under this Agreement and require UP/SP to make such improvements under this section as BNSF deems necessary to facilitate its operations at BNSF's sole expense. Any such inspection must be completed and improvements identified to UP/SP within one year of the effectiveness of the trackage rights.

(m) BNSF shall have the right to connect, for movement in all directions, with its present lines (including existing trackage rights) at points where its present lines (including

existing trackage rights) intersect with Trackage Rights Lines or lines it will purchase pursuant to this Agreement. UP/SP shall have the right to connect, for movement in all directions, with its present lines (including existing trackage rights) at points where its present lines (including existing trackage rights) intersect with lines over which it will receive trackage rights pursuant to this Agreement. BNSF shall also have the right, at the option of the City Public Service Board of San Antonio, TX, to connect for movement to and from Elmendorf, TX, where BNSF's trackage rights granted pursuant to this Agreement intersect at SP Junction (Tower 112) with the existing trackage rights SP has granted to City Public Service Board of San Antonio, TX.

(n) In the event UP/SP institute directional operations over any Trackage Rights Line or on lines over which BNSF is granted Overhead Trackage Rights, (i) UP/SP shall provide BNSF with reasonable notice of the planned institution of such operations and shall adjust, as appropriate, the trackage rights granted to BNSF pursuant to this Agreement so as to avoid impairing BNSF's ability to provide competitive service on a Trackage Rights Line, and (ii) BNSF shall operate in accordance with the flow of traffic established by such directional operation; PROVIDED, HOWEVER, that any rights granted to BNSF as a result of UP/SP's institution of directional operations shall be Overhead Trackage Rights only, and PROVIDED FURTHER that BNSF shall have the right, on any Trackage Rights Line over which directional operations have been instituted (including lines on which BNSF received Overhead Trackage Rights to serve a point listed or described in Section 8(i) of this Agreement or a build-in/build-out line), to operate against the flow of traffic if it is reasonably necessary to do so for BNSF to provide competitive service to shippers on the line which are accessible to BNSF (including service to New Shipper Facilities and build-in/build-out lines) over such line including but not

limited to circumstances where UP operates against the flow of traffic with trains of the same or similar type for the same shipper(s) or for shipper(s) in the same general area.

10. **Compensation for Sale of Line Segments**

(a) BNSF shall pay UP/SP the following amounts for the lines it is purchasing pursuant to this Agreement:

<u>Line Segment</u>	<u>Purchase Price</u>
Keddie-Bieber	\$ 30 million
Dallas-Waxahachie	20 million
Iowa Jct.-Avondale MP 16.9 (includes UP's Westwego intermodal yard; SP's old Avondale yard; and SP's Lafayette yard)	100 million

(b) The purchase shall be subject to the following terms:

- (i) the condition of the lines at closing shall be at least as good as their current conditions as reflected in the current timetable and slow orders (slow orders to be measured by total mileage at each level of speed restrictions).
- (ii) includes track and associated structures together with right-of-way and facilities needed for operations.
- (iii) indemnity for environmental liabilities attributable to UP/SP's prior operations.
- (iv) standard provisions for sales of this nature involving title, liens, encumbrances other than those specifically reserved or provided for by this Agreement.

- (v) assignment of associated operating agreements (road crossings, crossings for wire and pipelines, etc.). Non-operating agreements shall not be assigned.
- (vi) removal by UP/SP, from a conveyance, within 60 days of the closing of any sale, of any non-operating real property without any reduction in the agreed upon purchase price.
- (vii) the purchase will be subject to easements or other agreements involving telecommunications, fiber optics or pipeline rights or operations in effect at the time of sale.

BNSF shall have the right to inspect the line segments and associated property to be sold and records associated therewith for a period of ninety days from the Effective Date of this Agreement to determine the condition and title of such property. At the end of such period, BNSF shall have the right to decline to purchase any specific line segment or segments. In such event, UP/SP shall grant BNSF overhead trackage rights on any such segment with compensation to be paid, in the case of Avondale-Iowa Junction on the basis of the charges set forth in Section 9(a) of this Agreement, and in the case of Keddie-Bieber on a typical joint facility basis with maintenance and operating costs to be shared on a usage basis (gross ton miles used to allocate usage) and annual interest rental equal to the depreciated book value times the then current cost of capital as determined by the ICC times a usage basis (gross ton miles). In the case of Dallas-Waxahachie, operations would continue under the existing trackage rights agreement.

(c) Prior to closing the sale of SP's Iowa Jct.-Avondale line (the "IJA Line"), representatives of UP/SP and BNSF shall conduct a joint inspection of the IJA Line to consider

whether its condition at closing meets the standard established in Section 10(b)(i) of this Agreement. If the representatives of the parties are unable to agree that the condition of the IJA Line meets this standard, then BNSF shall place \$10.5 million of the purchase price in escrow with a mutually agreed upon escrow agent, and closing shall take place. After closing the parties shall mutually select an independent third party experienced in railroad engineering matters (the "Arbitrator") who shall arbitrate the dispute between the parties as to whether the condition of the IJA Line is in compliance with Section 10(b)(i) of this Agreement. Arbitration shall be conducted pursuant to Section 15 subject to the foregoing qualification that the Arbitrator be experienced in railroad engineering matters. If the Arbitrator finds the IJA Line is below the standard, the Arbitrator shall determine the amount (which shall not exceed \$10.5 million) required to bring it in compliance with the standard and authorize the payment of such amount out of the escrow fund to BNSF with the balance, if any, paid to UP/SP. Any amount so paid to BNSF out of the escrow fund to bring the IJA Line into compliance with the standard shall be used by BNSF exclusively to that end (or to reimburse BNSF for funds previously expended to that end) and UP/SP shall not, as a tenant on the IJA Line be billed for any work undertaken by BNSF pursuant to the provisions of this Section 10(c).

11. **Term**

This Agreement shall be effective upon execution (which occurred on September 25, 1995) (the "Effective Date") for a term of ninety-nine years, PROVIDED, HOWEVER, that the grants of rights under Section 1 through 8 shall be effective only upon UP's acquisition of control of SP, and provided further that BNSF may terminate this Agreement by notice to UP/SP given before the close of business on September 26, 1995, in which case this Agreement shall have no further force or effect. This Agreement and all agreements entered into pursuant or in relation hereto shall terminate, and all rights conferred pursuant thereto shall be canceled and

deemed void ab initio, if, in a Final Order, the application for authority for UP to control SP has been denied or has been approved on terms unacceptable to the applicants, PROVIDED, HOWEVER, that if this Agreement becomes effective and is later terminated, any liabilities arising from the exercise of rights under Sections 1 through 8 during the period of its effectiveness shall survive such termination. For purposes of this Section 11, "Final Order" shall mean an order of the STB, any successor agency, or a court with lawful jurisdiction over the matter which is no longer subject to any further direct judicial review (including a petition for writ of certiorari) and has not been stayed or enjoined.

12. **Adjustment of Charges**

All trackage rights charges under this Agreement shall be subject to adjustment upward or downward July 1 of each year by the difference in the two preceding years in UP/SP's system average URCS costs for the categories of maintenance and operating costs covered by the trackage rights fee. "URCS costs" shall mean costs developed using the Uniform Rail Costing System.

The rates for reciprocal switching services established in Section 9(i) and for haulage service established in Section 8(m) shall be adjusted upward or downward each July 1 of each year to reflect fifty percent (50%) of increases or decreases in Rail Cost Adjustment Factor, not adjusted for changes in productivity ("RCAF-U") published by the Surface Transportation Board or successor agency or other organizations. In the event the RCAF-U is no longer maintained, the parties shall select a substantially similar index and, failing to agree on such an index, the matter shall be referred to binding arbitration under Section 15 of this Agreement.

The parties will agree on appropriate adjustment factors if not covered herein for switching, haulage and other charges.

Upon every fifth anniversary of the effective date of this Agreement, either party may request on ninety (90) days notice that the parties jointly review the operation of the adjustment mechanism and renegotiate its application. If the parties do not agree on the need for or extent of adjustment to be made upon such renegotiation, either party may request binding arbitration under Section 15 of this Agreement. It is the intention of the parties that rates and charges for trackage rights and services under this Agreement reflect the same basic relationship to operating costs as upon execution of this Agreement (September 25, 1995).

13. **Assignability**

This Agreement and any rights granted hereunder may not be assigned in whole or in part without the prior consent of the other parties except as provided in this section. No party may permit or admit any third party to the use of all or any of the trackage to which it has obtained rights under this Agreement, nor under the guise of doing its own business, contract or make any arrangement to handle as its own trains, locomotives, cabooses or cars of any such third party which in the normal course of business would not be considered the trains, locomotives, cabooses or cars of that party. In the event of an authorized assignment, this Agreement and the operating rights hereunder shall be binding upon the successors and assigns of the parties. This Agreement may be assigned by either party without the consent of the other only as a result of a merger, corporate reorganization, consolidation, change of control or sale of substantially all of its assets.

14. **Government Approvals**

The parties agree to cooperate with each other and make whatever filings or applications, if any, are necessary to implement the provisions of this Agreement or of any separate agreements made pursuant to Section 9(f) and whatever filings or applications may be necessary to obtain any approval that may be required by applicable law for the provisions of such

agreements. BNSF agrees not to oppose the primary application or any related applications in Finance Docket No. 32760 (collectively the “control case”), and not to seek any conditions in the control case, not to support any requests for conditions filed by others, and not to assist others in pursuing their requests. BNSF shall remain a party in the control case, but shall not participate further in the control case other than to support this Agreement, to protect the commercial value of the rights granted to BNSF by this Agreement, and to oppose requests for conditions by other parties which adversely affect BNSF; PROVIDED, HOWEVER, that BNSF agrees to reasonably cooperate with UP/SP in providing testimony to the ICC necessary to demonstrate that this Agreement and the operations to be conducted thereunder shall provide effective competition at the locations covered by the Agreement. UP/SP agree to support this Agreement and its implementation and warrant that it has not entered into agreements with other parties granting rights to other parties granted to BNSF under this Agreement. UP/SP agree to ask the ICC to impose this Agreement as a condition to approval of the control case. During the pendency of the control case, UP and SP shall not, without BNSF’s written consent, enter into agreements with other parties which would grant rights to other parties granted to BNSF or inconsistent with those granted to BNSF under this Agreement which would substantially impair the overall economic value of rights to BNSF under this Agreement.

15. **Arbitration**

Except as otherwise provided by any decision of the STB or by separate agreement, unresolved disputes and controversies concerning any of the terms and provisions of this Agreement or the application of charges hereunder shall be submitted for binding arbitration under Commercial Arbitration Rules of the American Arbitration Association which shall be the exclusive remedy of the parties.

16. **Further Assurances**

The parties agree to execute such other and further documents and to undertake such acts as shall be reasonable and necessary to carry out the intent and purposes of this Agreement.

17. **No Third Party Beneficiaries**

This Agreement is intended for the sole benefit of the signatories to this Agreement. Nothing in this Agreement is intended or may be construed to give any person, firm, corporation or other entity, other than the signatories hereto, their permitted successors and permitted assigns, and their affiliates any legal or equitable right, remedy or claim under this Agreement.

UNION PACIFIC RAILROAD COMPANY

By: _____
Title: _____

THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY

By: _____
Title: _____

Exhibit A
LIST OF “2-TO-1” POINTS

Points Referred to in Section 1(b)

Provo UT
Salt Lake City UT
Ogden UT
Ironton UT
Gatex UT
Pioneer UT
Garfield/Smelter/Magna UT (access to Kennecott private railway)
Geneva UT
Clearfield UT
Woods Cross UT
Relico UT
Evona UT
Little Mountain UT
Weber Industrial Park UT
North Salt Lake City UT
American Fork UT
Orem UT
Points on paired track from Weso NV to Alazon NV
Reno NV (only intermodal, automotive [BNSF must establish its own
automotive facility], transloading, and new shipper facilities)
Herlong CA
Johnson Industrial Park at Sacramento CA
West Sacramento CA (Farmers Rice)
Port of Sacramento CA
Points between Oakland CA and San Jose CA (including Warm Springs CA,
Freemont CA, Elmhurst CA, Shinn CA, Kohler CA, and Melrose CA)
San Jose CA

Points Referred to in Section 3(a)

Ontario CA
La Habra CA
Fullerton CA

Points Referred to in Section 4(b)

Brownsville TX
Port of Brownsville TX
Port of Corpus Christi
Harlingen TX
Corpus Christi TX
Sinton TX
San Antonio TX
Elmendorf TX
Halstead TX (LCRA plant)
Waco TX
Points on Sierra Blanca-El Paso line

Points Referred to in Section 5(b)

Baytown TX
Amelia TX
Orange TX
Mont Belvieu TX (Amoco, Exxon, Chevron plants)
Eldon, TX (Bayer plant)
Harbor, LA

Points Referred to in Section 6(d)

Camden AR
Pine Buff AR
Fair Oaks AR
Baldwin AR
Little Rock AR
North Little Rock AR
East Little Rock AR
Forrest City, AR
Paragould AR
Dexter MO

EXHIBIT F

LIST OF OVERHEAD TRACKAGE RIGHTS

1. Western Trackage Rights

- A. UP/SP shall grant BNSF Overhead Trackage Rights on SP's Valley Subdivision between MP 141.9 near Binney Junction, CA and Roseville, CA in the vicinity of SP's Valley Subdivision MP 106.6.

2. South Texas Trackage Rights

- A. UP/SP shall grant BNSF Overhead Trackage Rights on the following lines:
 - a) SP's Port Lavaca Branch, between Placedo, TX in the vicinity of MP 14.2, and a point of build-in along said branch in the vicinity of MP 6.93 at Kamey, TX; and
 - b) UP's line between Round Rock, TX, in the vicinity of UP's Austin Subdivision Milepost 161.79, and McNeil, TX, in the vicinity of UP's Austin Subdivision Milepost 166.1.

3. Eastern Texas – Louisiana Trackage Rights

- A. UP/SP shall grant BNSF Overhead Trackage Rights on UP's Beaumont Subdivision between MP 458.69 in the vicinity of Beaumont, TX and MP 377.98 (Gulf Coast Junction) in the vicinity of Houston, TX.

4. Additional Rights

- A. UP/SP shall grant BNSF Overhead Trackage Rights on SP's Martinez Subdivision between approximately MP 2 in the vicinity of Oakland, CA and approximately MP 13 in the vicinity of Richmond, CA.

5. Rights to Omnibus Points

- A. UP/SP shall grant BNSF Overhead Trackage Rights over UP/SP's Jefferson City Subdivision between MP 34.8 near Pacific, MO and MP 43.8 near Labadie, MO.

EXHIBIT C

MP Notice of Exemption (Nov. 14, 1985)

and

MP/SP Trackage Rights Agreement (Nov. 25, 1985)

*Missouri Pacific Railroad—Trackage Rights—Southern Pacific
Railroad, FD 30749*

**UNION PACIFIC RAILROAD COMPANY
MISSOURI PACIFIC RAILROAD COMPANY**

LAW DEPARTMENT



1416 DODGE STREET OMAHA, NE 68178



WILLIAM F. HIGGINS
PAUL A. COBLEY, JR.
Assistant Vice President-Law
FREDERICK W. REARD, III
Assistant Vice President
Chairman & Legal Counsel
JOSEPH J. ADAMS
Assistant Vice President
Counsel
L. JAMES BERGMANN
Assistant General Counsel

WILLIAM G. BARR
MARK B. GOODWIN
Assistant General Counsel
ROBERT C. WALLEY
General Counsel
ROBERT B. BATCHELDER
LEONARD CHANG
LAWRENCE E. WIDMER
General Counsel
FORREST H. KRUTTER
General Counsel

JAMES V. DOLAN
Vice President-Law

JOSEPH D. ANTHOFER
MARK A. KALAFUT
R. DEAN OSTERMAN
NANCY A. ROBERTS
BRENDA J. WARREN
BARBARA W. SANDBERGEN
General Attorney

JAMES D. BEZIAK
GAYLA C. FLETCHER
COLLEEN A. LAUDON
LOUISE A. PRATT
JAMES C. STROG
Assistant General Attorney
JAY M. MADILLAN
KEVIN E. TAYLOR
STEVEN C. JACKERSON
Attorney

November 13, 1985

VIA AIRBORNE

Mr. James H. Bayne
Secretary
Interstate Commerce Commission
12th and Constitution Avenue, N.W.
Washington, D.C. 20423

Re: Finance Docket No. 30749, Missouri Pacific Railroad Company - Trackage Rights - Southern Pacific Transportation Company.

Dear Mr. Bayne:

Enclosed are the original and ten copies of a Notice of Exemption and Caption Summary pursuant to the class exemption of 49 C.F.R. 1180.2(d)(7) for trackage rights agreements. In addition, 20 unbound copies of the map are enclosed as required by 49 C.F.R. § 1180.6(a)(6). Please accept and file the Notice in Finance Docket No. 30749.

A voucher for \$450 is enclosed for the filing fee.

Sincerely,

Jeanna L. Regier
Jeanna L. Regier
Registered Practitioner

cc w/enclosure:

Mr. Stuart E. Vaughn
General Attorney
Southern Pacific Transportation Company
Southern Pacific Building
One Market Plaza
San Francisco, California 94105

FILED
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INTERSTATE
COMMERCE COMMISSION

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No. NOV-14 1985
Date 450.00
Page 1
ICC Washington, D.C.

BEFORE THE
INTERSTATE COMMERCE COMMISSION

FINANCE DOCKET NO. 30749

MISSOURI PACIFIC RAILROAD COMPANY -
TRackage RIGHTS - SOUTHERN PACIFIC
TRANSPORTATION COMPANY

NOTICE OF EXEMPTION

Robert B. Batchelder
Jeanna L. Regier
Missouri Pacific Railroad Company
1416 Dodge Street
Omaha, Nebraska 68179
(402) 271-4835

November 14, 1985

BEFORE THE
INTERSTATE COMMERCE COMMISSION

MISSOURI PACIFIC RAILROAD COMPANY -) FINANCE DOCKET
TRACKAGE RIGHTS - SOUTHERN PACIFIC) NO. 30749
TRANSPORTATION COMPANY)

NOTICE OF EXEMPTION

Pursuant to the requirements of 49 C.F.R.
§ 1180.2(d) for exempt transactions, Missouri Pacific Rail-
road Company (Missouri Pacific or MP) submits this Notice of
Exemption pursuant to the procedures of 49 C.F.R. § 1180.4(g)
to cover its acquisition of trackage rights over a segment
of track of the Southern Pacific Transportation Company
(Southern Pacific or SP) in Texas. This trackage rights is
not sought in a responsive application in a rail consolida-
tion proceeding.

49 C.F.R. § 1180.6 Supporting Information

(a)(1)(i) Description of the proposed transaction.

(a) Both MP and SP own and operate railroad
trackage serving the vicinity of Blewett, Texas, and have
agreed in writing to enter into an agreement for MP to oper-
ate on SP's right of way over SP trackage between Withers,
Texas (SP Mile Post 219.33 near San Antonio) and Cline,
Texas (SP Mile Post 319.19 near vicinity of Blewett). Oper-
ation over an industrial lead track of SP in the Blewett/

Cline, Texas area is included in the trackage rights agreement in order to permit MP's service in the Blewett area to Mile Post 6.39. The trackage rights results in a shorter, more direct route of operation for MP, and MP will no longer be required to operate over its Crystal City Subdivision, which is in poor condition, to serve the Blewett area.

Applicant's exact name and address is:

Missouri Pacific Railroad Company
210 North 13th Street
St. Louis, Missouri 63103

Questions regarding this transaction are to be addressed to Applicant's counsel named below:

Robert B. Batchelder
General Commerce Counsel
1416 Dodge Street
Omaha, Nebraska 68179
(402) 271-3896

(a)(1)(ii) The trackage rights will take effect on November 21, 1985.

(a)(1)(iii) In order to serve the Blewett vicinity, Applicant has been operating over its San Antonio to Laredo main line, exiting at Gardendale thence to Dabney via Crystal City. The line commencing at Gardendale and on to Dabney is in poor condition and has had extensive derailments. Furthermore, on October 22, 1985, MP embargoed its line between Blewett and Crystal City due to a railroad bridge washout which rendered the line inoperable. In order to upgrade the line, substantial rehabilitation is required. The trackage rights over the SP from Cline to Withers will

eliminate the need for MP to rehabilitate its line and to expend the substantial costs necessary to rehabilitate and upgrade the line, thus improving the financial viability of Applicant. The trackage rights operation will also result in operating economies by providing MP with a shorter, more direct route to San Antonio.

(a)(5) The property of the trackage rights agreement is located in the State of Texas. MP also has property in the states of New Mexico, Louisiana, Arkansas, Oklahoma, Kansas, Colorado, Missouri, Tennessee, Nebraska, Illinois and Mississippi.

(a)(6) Two maps are attached as Exhibit 1: one showing the area of the trackage rights and one showing the specific track.

(a)(7)(ii) A copy of the executed agreement between the parties will be submitted within ten days of execution as required by 49 C.F.R. 1180.6(a)(7)(ii), as amended by the Commission's decision in Ex Parte No. 282 (Sub-No. 9), Railroad Consolidation Procedures Trackage Rights Exemption, decided April 10, 1985.

Labor Protection

MP is agreeable to the labor protective conditions imposed by the Commission in trackage rights agreements as set forth in Norfolk and Western Ry. Co. - Trackage Rights -

BN. 354 I.C.C. 605 (1978), as modified by Mendocino Coast
Ry., Inc. - Lease and Operate, 360 I.C.C. 653 (1980).

MISSOURI PACIFIC RAILROAD COMPANY.

By



Robert B. Batchelder
Jeanna L. Regier
1416 Dodge Street
Omaha, NE 68179

VERIFICATION

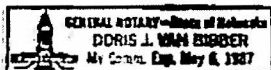
STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

R. B. Batchelder, General Commerce Counsel of
Missouri Pacific Railroad Company, being first duly sworn,
deposes and says that he has read the foregoing Notice of
Exemption, knows the contents thereof, and that the same are
true to the best of his knowledge, information and belief.



R. B. Batchelder

Subscribed and sworn to before me, a Notary Public,
this 13th day of November, 1985.



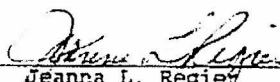


Notary Public

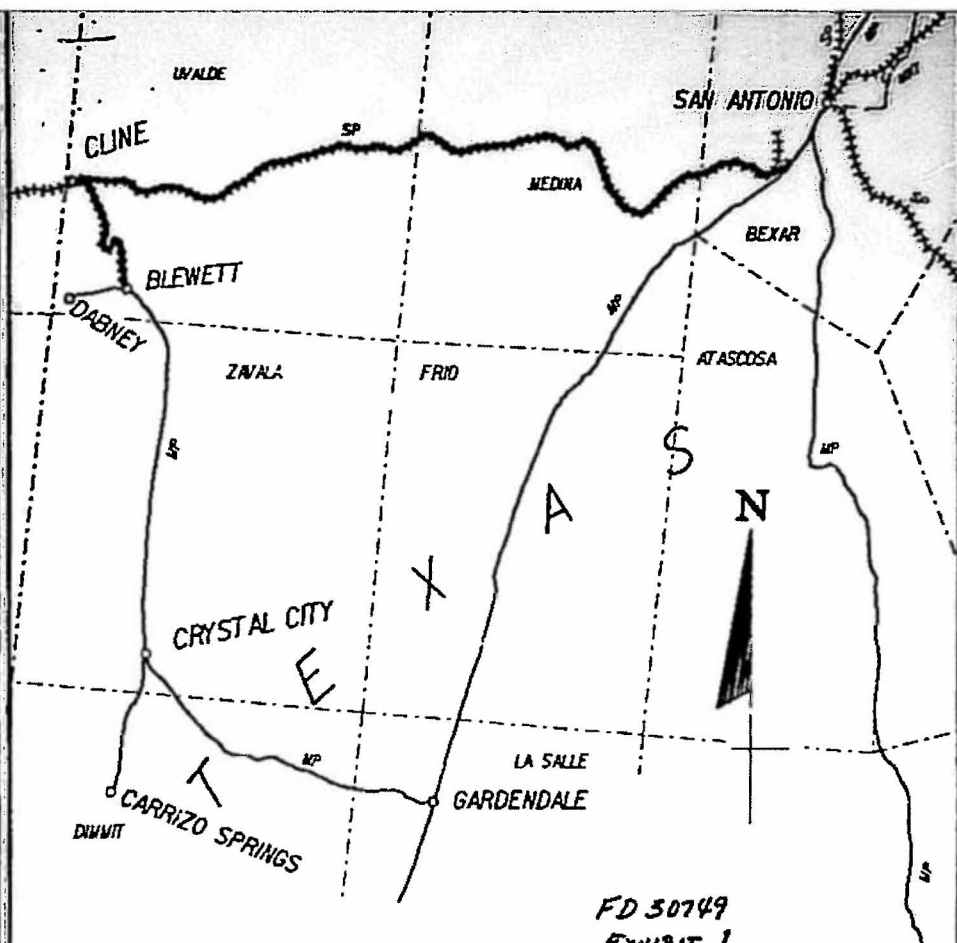
CERTIFICATE OF SERVICE

I hereby certify that I have on this date served a copy of the foregoing document, in accordance with the Commission's Rules of Practice, upon all parties of record.

Dated at Omaha, Nebraska this 13th day of
November, 1985.



Jeanna L. Regier



LEGEND:

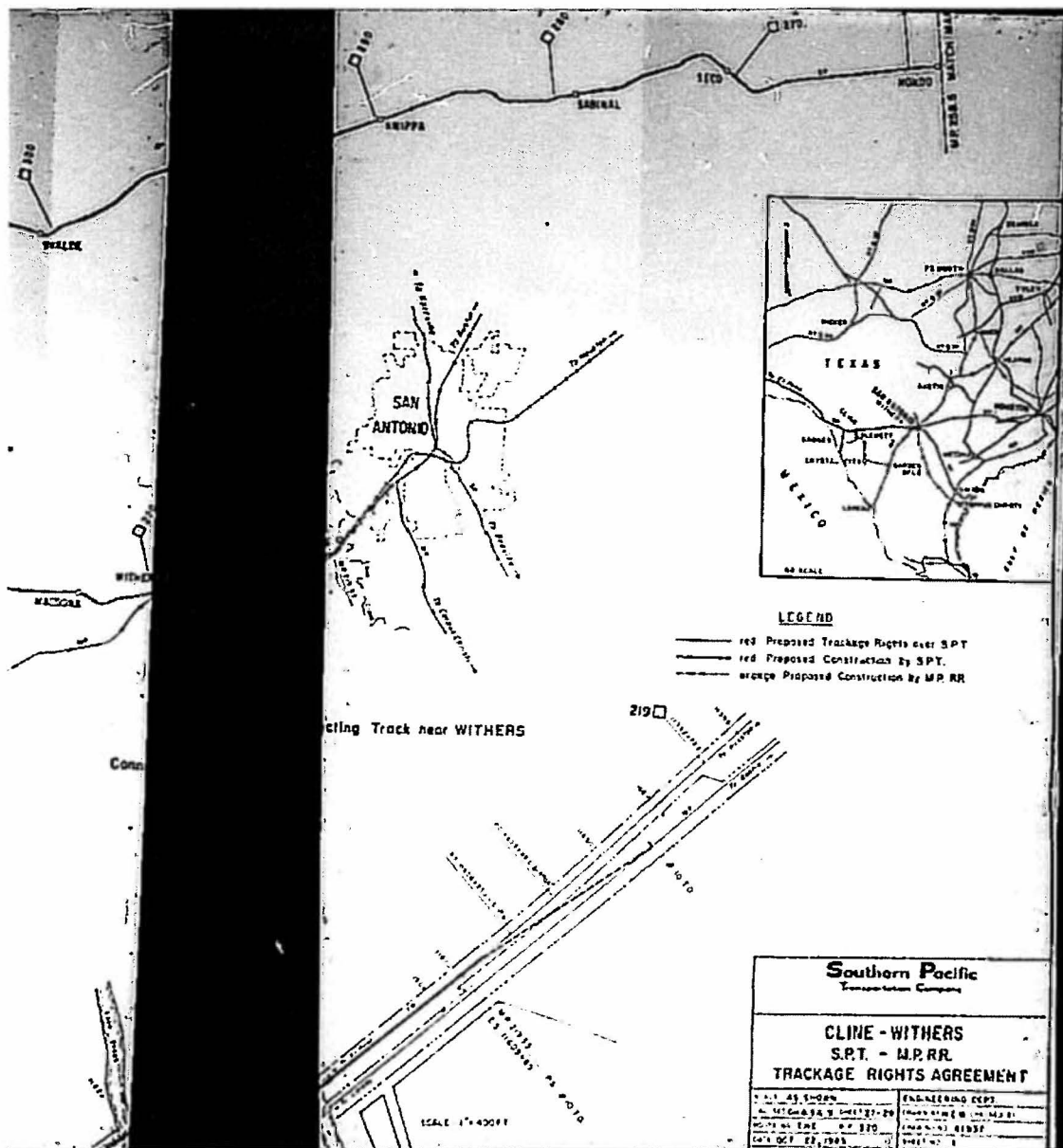
- Missouri Pacific Tracks
- Southern Pacific Trackage to be jointly used.
- Other Southern Pacific Tracks

FD 30749
EXHIBIT 1

MISSOURI PACIFIC RAILROAD COMPANY
Diagram Showing
SOUTHERN PACIFIC TRackage
JOINTLY USED BY MISSOURI
PACIFIC RAILROAD COMPANY
SAN ANTONIO TO BLEWETT, TEX.

OFFICE OF CHIEF ENGINEER ST. LOUIS, MO.
SCALE: 1" = 16 MILES (approx.) SEPT. 17, 1985

FILE NO. DR - 0038



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(CAPTION SUMMARY)

INTERSTATE COMMERCE COMMISSION

NOTICE OF EXEMPTION

FINANCE DOCKET NO. 30749

MISSOURI PACIFIC RAILROAD COMPANY -
TRACKAGE RIGHTS - SOUTHERN PACIFIC
TRANSPORTATION COMPANY

Southern Pacific Transportation Company (SP) will agree to grant overhead trackage rights to Missouri Pacific Railroad Company (MP) between Withers, Texas (SP Mile Post 219.33 near San Antonio) and Cline, Texas (SP Mile Post 319.19 near the vicinity of Blewett). Operation over an industrial load track in the Blewett/Cline, Texas area is included in the trackage rights to permit MP to serve the Blewett area to Mile Post 6.39.

The trackage rights will be effective on November 21, 1985.

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

DATED: November 14, 1985

By the Commission,

James H. Bayne
Secretary

0038m

SERVICE DATE

DEC 4 1985

INTERSTATE COMMERCE COMMISSION

Finance Docket No. 30749

MISSOURI PACIFIC RAILROAD COMPANY — TRACKAGE RIGHTS —
SOUTHERN PACIFIC TRANSPORTATION COMPANY

NOTICE OF EXEMPTION

On November 14, 1985, Missouri Pacific Railroad Company (MP) filed a notice of exemption for trackage rights over a line of track of Southern Pacific Transportation Company between Withers and Gline, TX. The transaction involves the acquisition by MP of trackage rights between milepost 219.33 and milepost 319.19. Trackage rights agreements falling within the class of transaction described in 49 C.F.R. 1180.2(d)(7) are exempt from Commission regulation.

As a condition to the use of this exemption, any employees affected by the trackage rights agreement shall be protected pursuant to Norfolk and Western Ry. Co. - Trackage Rights - BN, 354 I.C.C. 605 (1978), as modified by Mendocino Coast Ry., Inc. - Lease and Operate, 360 I.C.C. 653 (1980).

Decided: November 27, 1985.

By the Commission, Richard Lewis, Acting Director, Office of Proceedings.

James H. Bayne
Secretary



UNION PACIFIC RAILROAD COMPANY
MISSOURI PACIFIC RAILROAD COMPANY

LEGAL DEPARTMENT



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Secretary

November 22, 1985

VIA AIRBORNE

Mr. James H. Bayne, Secretary
Interstate Commerce Commission
12th and Constitution Avenue, N.W.
Washington, D.C. 20423

Re: Finance Docket No. 30749,
Missouri Pacific Railroad Company -
Trackage Rights - Southern Pacific
Transportation Company

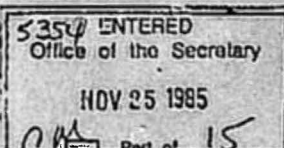
Dear Mr. Bayne:

In reference to the Notice of Exemption filed in Finance Docket No. 30749 on November 14, 1985, enclosed are the duplicate original and one copy of the agreement which was executed November 15, 1985. The agreement is submitted within ten days of execution as required by 49 C.F.R. § 1180.6(a)(7)(ii), as amended by the Commission's decision of April 10, 1985 in Ex Parte 282 (Sub-No. 9), Railroad Consolidation Procedures -- Trackage Rights Exemption.

Sincerely,

Joanna L. Regier
Joanna L. Regier
Registered Practitioner

Enclosures



THIS AGREEMENT made this 15th day of November, 1985, by and between SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation, ("SP"), MISSOURI PACIFIC RAILROAD COMPANY, a Delaware corporation ("MP"), and ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, a Missouri corporation ("SSW"), SP and SSW hereinafter collectively termed "SP/SSW,"

RECITALS:

SSW and MP each owns and operates railroad trackage between Pine Bluff and Little Rock, Arkansas, and SSW desires to obtain the right to operate over MP's trackage to forego major rehabilitation of its line;

SSW and MP each owns and operates railroad trackage serving Waco, Texas, and SSW desires to obtain the right to operate over MP's trackage between Hearne and Waco, Texas to forego major rehabilitation of SSW line, and;

SP and MP each owns and operates railroad trackage serving the vicinity of Dabney-Blewitt, Texas, and MP desires to obtain the right to operate over SP's trackage between San Antonio (Withers) and Cline, Texas, including industrial lead trackage at Cline, in order to permit the abandonment by MP of its trackage between Blewitt and Crystal City, Texas.

AGREEMENT:

NOW, THEREFORE, the parties agree as follows:

1. DEFINITIONS

A. The terms "track," "tracks," and "trackage" shall mean the track structure and all appurtenances thereto of the Joint Facility (as defined in Section 1.B. hereof), including, but not necessarily limited to, rail and fastenings, switches and frogs complete, ties, ballast, roadbed, embankments, signals, bridges, trestles, culverts, drainage facilities and any other structures or things necessary for the support of the Joint Facility and entering into the construction thereof, and, if any portion thereof is located in a thoroughfare, pavement, crossing planks and other similar materials or facilities used in lieu of pavement or other street surfacing material at vehicular crossings of tracks, crossing protection facilities, and any and all work required by lawful authority in connection with the construction, renewal, maintenance and operation of said track structures and all appurtenances thereof.

B. The term "Joint Facility" shall refer to certain MP main and auxiliary trackage, as defined in Section 1.A. of this agreement, between Pine Bluff, Arkansas and Little Rock,

ENTERED
Office of the Secretary

NOV 25 1985

Part of
Public Record

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Arkansas, as shown by heavy line on MP's Drawing No. DR0052, dated November 1, 1985, marked Exhibit "A", and between Hearne, Texas and Waco, Texas, as shown by heavy line on MP's Drawing No. DR0053, dated November 1, 1985, marked Exhibit "B"; and, further, "Joint Facility" shall refer to certain SP main and auxiliary trackage, as defined in Section 1.A. of this agreement, between Withers, Texas and Cline, Texas, as shown by heavy line on SP's Drawing No. 41937, dated October 22, 1985, marked Exhibit "C".

C. In addition to the trackage heretofore referred to in Subsection B hereinabove as comprising "Joint Facility", there shall be deemed included as a part of said "Joint Facility" (subject to such conditions, exceptions, restrictions, and limitations as are elsewhere expressed in this agreement) any other of owner's, MP's or SP's as the case may be, tracks and appurtenances thereto between the termini of "Joint Facility" if and when, from time to time, owner, MP or SP as the case may be, in cases of emergency or for the more efficient and expeditious operation of "Joint Facility"; may elect to have MP or SSW, as the case may be, operate its engines, trains and cars along and over said other trackage, but solely while said other trackage is being used for and in such operation.

D. The term "Owner" shall refer to MP with respect to the Hearne-Waco and the Pine Bluff-Little Rock segments, and to SP with respect to the Withers-Cline segment. The term "User" shall refer to SSW with respect to the Pine Bluff-Little Rock segment, to SSW with respect to the Hearne-Waco segment, and to MP with respect to the Withers-Cline segment.

E. The term "Car Mileage Proportion," as used herein, shall mean the percentage that bears the same ratio to one hundred percent (100%) as the total number of car miles operated by one party over each portion of the Joint Facility during any one month or other specified period of time shall bear to the total number of car miles operated over that same portion of the Joint Facility during said month or other specified period of time, counting each freight car, loaded or empty, and each caboose, as one car, and counting each locomotive, regardless of number of units, as two cars. For purposes of calculating the number of car miles operated, locomotives, cars and cabooses engaged in or incident to construction or maintenance work on any portion of the Joint Facility shall be excluded.

2. GRANT OF RIGHTS

Owner hereby grants User for the term of this agreement and subject to the limitations set forth herein, the right to operate its trains, engines and cars with its own employees on and over the Joint Facility solely for bridge purposes. Except with respect to the industrial lead trackage included in the Joint Facility, as provided in Section 1 B. hereof, User shall

nor have the right to construct or to operate any lead, side, spur, industrial or public freight track connected to the Joint Facility, nor shall User have the right to serve any industry or industries situated on the Joint Facility.

The rights herein granted User are subject to the right hereby reserved to Owner, its successors and assigns, to use the Joint Facility in any way which will not materially impair the use herein contemplated to be made thereof by User, including the right of Owner to use and to grant to others than User the right to use all or any portion of the Joint Facility.

3. CONNECTIONS

In order to provide suitable connections and other facilities to permit exercise of rights granted in Paragraph 2 hereof, the owner shall when requested in writing by user, at user's sole cost and expense, construct any necessary connections including acquisition of right-of-way therefore and any signaling and communications or rearrangements thereof on the property of the owner. Tracks and other facilities to be provided pursuant to this section as well as future additions and betterments thereto shall, when constructed or installed, be owned by user except that portion on owner's property which ownership shall be vested in the owner. After construction, that portion of connections on Owner's property shall be maintained by owner at user's sole cost and expense.

4. OWNER TO HAVE EXCLUSIVE CONTROL OF MANAGEMENT, MAINTENANCE AND OPERATION

Owner shall have exclusive control with respect to management, maintenance and operation of the Joint Facility and shall maintain and keep the same in repair reasonably suitable for the combined requirements of the parties and of such other railroad company or companies as may from time to time have the right of use thereof, but it is expressly understood that User shall not, by reason of any defect in the Joint Facility or in any structure or appliance appurtenant thereto, or by reason of the failure of Owner to repair any such defect, have or make against Owner any claim or demand for any loss, damage or injury whatsoever arising from such defect or failure to repair.

User shall not permit any of its employees to operate trains and engines on the Joint Facility until they are qualified on User's operating rules and regulations, also including those excerpts of Owner's rules and instructions applicable to the Joint Facility which shall be furnished from time to time by Owner to User.

5. DISQUALIFICATION OF USER EMPLOYEES FOR OPERATION ON THE JOINT FACILITY

User shall, at the request of Owner, bar from service upon the Joint Facility any User employee who shall be found by Owner to be responsible for violation of User's rules and regulations or for violation of such excerpts of Owner's rules which may be applicable. User shall bear and assume all expenses which it and Owner may incur as a result of any such barring from service. If such disciplinary action is appealed by a User employee to the National Railroad Adjustment Board or other tribunal lawfully created to adjudicate such cases, and if the decision of such board or tribunal sustains the employee's position, such employee shall not thereafter be barred from service on the Joint Facility by reason of such occurrence.

6. DEVICES ON EQUIPMENT

User, at its expense, shall install and maintain upon its engines and cars such equipment or devices as now, or in the future, may be necessary or appropriate, in the reasonable judgment of Owner, for operation of trains upon the Joint Facility.

7. ADDITIONS AND BETTERMENTS

Owner shall make and assume the cost of any changes, additions and betterments as such terms were commonly used under Retirement Replacement Betterment (RRB) accounting prior to the reporting year beginning January 1, 1983, involving total cost of \$50,000 or less to the Joint Facility which it deems necessary or desirable for the safe, efficient and economical use of the Joint Facility. Progressively during construction, and upon their completion, these changes and/or additions and betterments shall become part of the Joint Facility.

For those changes, additions and betterments as such terms were commonly used under Retirement Replacement Betterment (RRB) accounting prior to the reporting year beginning January 1, 1983, whose cost exceeds \$50,000, Owner shall advise User. Owner shall bill User, and User shall pay, its Car Mileage Proportion (for the calendar year preceeding the commencement of construction) of all related expenses of any changes, additions and betterments.

Likewise, User may request changes, additions and betterments to the Joint Facility which User shall deem necessary or desirable for the safe, efficient and economical use of the Joint Facility by the parties and Owner shall, if it concurs, construct same and they shall become part of the Joint Facility; provided, however, that if the parties cannot agree, the question of the necessity or desirability of such changes, additions or betterments for the safe, efficient and economical use of the

Joint Facility by the parties shall be subject to arbitration as set forth in Section 16.

Notwithstanding anything to the contrary herein contained, should any changes, additions and/or betterments be required by law or governmental body, User shall pay its Car Mileage Proportion as provided in the second paragraph of this Section 7.

Owner shall have the right to make changes, additions and betterments to, but not as a part of, the Joint Facility for its exclusive use, provided that such changes, additions and betterments do not materially hinder or obstruct User's use of the Joint Facility.

8. PICKING UP WRECKS

If any engine, car or other equipment shall be wrecked or derailed upon the Joint Facility, the same shall, without unnecessary delay, be picked up or rerailed by Owner, unless otherwise agreed upon by the parties. The expense incurred in rerailling equipment shall be borne by the parties in accordance with the provisions of Section 15 hereof.

9. TRAIN SUPPLIES

Owner shall not be required to furnish any fuel or other supplies for the operation of User's locomotives or trains over the Joint Facility. In the event Owner should, nevertheless, furnish such supplies to User, User shall promptly, upon receipt of billing therefor, reimburse Owner for its cost thereof, plus Owner's then-current standard additives.

10. COMPENSATION

The annual Car Miles operated by User over each segment of the Joint Facility shall be determined by Owner. At the close of each calendar year, the net balance of Car Miles operated by User over trackage of Owner shall be determined. Excess Car Miles shall be equalized between the parties by the deficit party paying the creditor party Car Mile rate. The car mile rate is attached hereto as Exhibit "D." Should rights or operations by User over any segment or segments of the Joint Facility be terminated or relinquished, charges for use of the remaining segments of the Joint Facility shall continue to be paid as provided in this paragraph. The Car mile rate shown on Exhibit "D", shall be subject to re-study at the request of either party, provided; however, no more than one re-study shall be made in any 12 month period.

Except as provided above, User shall not pay Owner any amounts for maintenance and operating expense, rental or taxes.

The car mile rate contained in Exhibit D contains two components: (1) rental and (2) maintenance and operation. The maintenance and operation component is based on 1984 costs, and shall be adjusted effective January 1 of each year, beginning January 1, 1986, by the percentage change in the Association of American Railroad's "Railroad Cost Recovery Index", Railroads of Class 1, Western District, Material Prices, Wages Rates and Supplements combined (excluding fuel), from the year 1984, which shall be taken as a base, to the calendar year immediately prior to the year in which the change is to be made effective. Thus, the percentage change from the year 1984 to year 1985 will be used to increase the maintenance and operation component of the car mile rate effective January 1, 1986.

11. RENDITION AND PAYMENT OF BILLS; INSPECTION OF RECORDS

Owner and User shall keep complete and accurate records of expenditures and data which are the bases for the charges to be made against User hereunder.

Owner shall render billing to User for all amounts due hereunder.

All bills hereunder, except those payable in advance, shall be rendered as soon as practicable after the first day of the month or year next succeeding the month or year during which the expense is incurred by Owner, and shall be paid within sixty (60) days after receipt thereof.

Errors or disputed items in any bill shall not be deemed a valid excuse for delaying payment, but shall be subject to subsequent adjustment; provided, however, that, except as herein-after in this paragraph provided, no exception to any bill shall be recognized or considered if filed after the expiration of three (3) years from the last day of the calendar month in which the bill is rendered, and no bill shall be rendered later than three (3) years after the last day of the calendar month in which the expense covered thereby is incurred or three (3) years after the last day of the calendar month in which final expenditure is made under any particular work authority, or, in the case of any claim of any third party, disputed as to amount or liability, after the amount is liquidated and/or liability is established. So much of the books, accounts and records of each party as are related to the subject matter of this agreement, except as to income taxes, shall at all reasonable times be open to inspection by the proper officers and agents of the parties.

12. DEFINITION OF "COST" OR "COSTS"

A. The term "cost" or "costs" as used in this agreement shall include, but not necessarily be limited to:

(1) All direct costs incurred for labor, materials and supplies and services furnished and/or used.

(2) Sales or use taxes on material costs.

(3) Appropriate surcharges on direct labor costs to represent vacation allowances, holidays paid for and not worked, health and welfare benefits, payroll taxes, and any other similar allowances, benefits and/or taxes in effect from time to time.

(4) Reasonable charges to represent superintendence and management of the Joint Facility..

(5) An appropriate surcharge on the purchase price of new materials to represent purchasing and store expense.

(6) Reasonable charges computed per net ton mile, but not exceeding published tariff rates, to cover transportation over lines of Owner, for materials and supplies used.

(7) Reasonable charges for use of roadway machines, special tools and appliances, and for use of locomotives, work and rolling stock equipment.

(8) Prices to be used in determining the cost or value of secondhand track materials used or released and scrap track materials released incidental to the maintenance of or the making of changes in or additions and betterments to the Joint Facility shall be agreed upon from time to time by the General Managers of Owner and User and shall remain in effect until terminated by either party upon thirty (30) days' written notice to the other.

(9) Anything herein to the contrary notwithstanding, the term "cost" or "costs" shall not include "Loss and/or Damage" as that term is defined in Section 15 hereof, except for the purpose of determining cost of repairing damage to the Joint Facility.

13. ADMISSION OF OTHER RAILROADS TO JOINT FACILITY

Nothing in this agreement shall limit the right of Owner to admit other companies to the use of the Joint Facility or any part thereof on such terms and conditions as are satisfactory to Owner.

User will not assign nor in any manner transfer this agreement or any right or privilege under and to it granted, nor permit any person or persons, company or companies to share in any such right or privilege. Nothing in this agreement shall be construed to permit any other railway company, directly or indirectly, to possess any right or privilege granted to the User.

14. OBSERVANCE OF LAWS, PUBLIC RULES AND REGULATIONS

Each party, with respect to the use of the Joint Facility or any part thereof and the operation of equipment thereon and thereover, shall comply with all applicable laws, rules, regulations and orders promulgated by any governmental entity having jurisdiction in the matter for the protection of persons or otherwise, and if any failure on the part of any party or parties hereto so to comply therewith shall result in any fine, penalty, cost or charge being imposed or assessed on or against another party, the party or parties so failing shall promptly reimburse and indemnify such other party for or on account of such fine, penalty, cost or charge and for all expenses and attorneys' fees incurred in defending any action which may be brought against such other party on account thereof, and shall, upon notice thereof being given to it by the other party, defend any such action free of cost, charge and expense to such other party.

15. LIABILITY

A. Definitions. For the purpose of this section, the following definitions shall apply:

A1. "Loss and/or Damage": Includes all claims, liability, and expense of every character incident to the loss or destruction of or damage to property and injury to or death of persons, arising upon or adjacent to the Joint Property. Loss and/or Damage apportioned under this Agreement shall be reduced by any amount applicable thereto recovered from third parties.

A2. "Joint Property": The Joint Facility and all appurtenances thereto and underlying land which, by reason of this Agreement, may be used by two or all the parties, and all motive power, cars and equipment engaged in the maintenance, renewal, removal, inspection or operation thereof for the benefit of two or all of the parties. Any locomotive or equipment shall be deemed Joint Property while engaged in or incident to the performances of service, the cost of which is included in Loss and/or Damage for which two or more of the parties are jointly liable.

A3. "Joint Employees": Any officer, agent, employee or contractor of Owner while engaged in maintaining, repairing, renewing, removing, inspecting or operating Joint Property or in making additions or betterments thereto, or in dispatching, giving orders for or directing the movement of trains or performing other service, for the common benefit of two or more of the parties hereto.

A4. "Sole Employees" and "Sole Property": Employees, motive power or equipment while engaged or about to engage in switching and handling cars of only one party or in performing other services for the exclusive benefit of one party shall, for the purpose of this Section 15, be considered the Sole Employees or the Sole Property of that party.

Anything to the contrary in this Section 15 notwithstanding, any employee, agent, contractor and motive power or equipment of Owner while engaged or about to engage in the performance of work the cost of which is to be borne entirely by User or Users hereunder shall be deemed to be the sole employee, agent, contractor and sole property of such User.

A5. For the purpose of this Section 15, equipment of foreign lines being detoured over the Joint Property by authority of Owner and all persons other than Joint Employees engaged in moving such equipment, shall be considered the Sole Property and Sole Employees of Owner.

A6. Motive power, cars, equipment, and other property handled or used by any party hereto shall, unless Joint Property, be considered the Sole Property of that party for purposes of this Section 15.

B. Allocation

The provisions of this Section 15 apply only as between the parties hereto. Except as herein otherwise provided, each party shall bear all Loss and/or Damage to its Sole Property, its Sole Employees, patrons and others on its engines, cars or trains, or on or about the Joint Property in transaction of business for or with such party. Loss and/or Damage to third parties or Joint Property or Joint Employees shall be borne by each party in an amount equal to that party's Car-Mileage Proportion, determined for the month in which the incident occurred, of such Loss and/or Damage, PROVIDED, HOWEVER, that when such expense for Loss and/or Damage totals less than Two Thousand and no/100 Dollars (\$2,000), Owner shall bear all such

expense. If, however, one, and not another, of the parties contributed (by reason of the act or omission of its Sole Employees or a defect in its Sole Property) to the Loss or Damage, the party so contributing shall bear all Loss and Damage to all persons and property. Notwithstanding the foregoing, if the engines, trains or cars of only one party are involved in the incident, that party shall bear all Loss and Damage to third parties, Joint Employees and Joint Property. Users agree to accept all vehicular crossings, now or hereafter existing, of the Joint Facility or any part thereof in whatever condition they may be during the term of this Agreement and will not assert any claim, demand or cause of action against Owner and will indemnify Owner against any claim, demand or cause of action arising out of any crossing accident on the Joint Facility or any part thereof in which the engines, cars or train of User only are involved.

C. General

C1. Each party hereto agrees that the acts and decisions of the party hereto performing any management, maintenance, repair, renewal, removal, improvement, operation or similar function of or for the Joint Property shall be deemed proper and adequate, and no claim shall be asserted against such party by reason of such function or lack thereof.

C2. Each party hereto shall pay promptly damages for which such party shall be liable under the provisions of this section, and shall indemnify the other party or parties hereto against such damages including attorneys' fees and costs.

C3. Each party hereto shall have the right to settle, or cause to be settled for it, all claims for damages for which such party shall be liable under the provisions of this Section 15, and to defend or cause to be defended all suits for the recovery of any such damage.

C4. In the event two or more of the parties hereto may be liable under the provisions of this section for any damages and the same is settled by a voluntary payment of money or other valuable consideration by one of the parties jointly liable therefor, a release from liability shall be obtained in the names of both parties so liable; however, no such settlement in excess of Twenty Thousand Dollars (\$20,000.00) shall be made by or for either party without the authority of the other party, but any settlement made by either party in consideration of said sum or less sum shall be binding upon the other party.

C5. In case a suit shall be commenced against any party for or on account of damages for which another party or parties hereto is solely or jointly liable under the provisions of this Section 15, the party so sued shall give notice in writing to the other party or parties of the pendency of said suit, and thereupon the other party or parties shall assume or join in the defense of such suit.

C6. No party shall be bound by any judgment against the other party or parties, unless such party shall have had reasonable notice requiring it to defend and reasonable opportunity to make such defense. When such notice and opportunity shall have been given, the party so notified shall be bound by the judgment as to all matters which could have been or were litigated in such suits.

16. ARBITRATION

Any dispute over the terms of this agreement shall be settled by a board of three (3) arbitrators experienced in railroad operations, one to be named by each party and the third by the two so named. If one party fails to name an arbitrator (or the two chosen do not name the third) within sixty (60) days after notice to do so, such arbitrator shall be named upon application by either party hereto to any judge of the U.S. District Court or Superior Court whose jurisdiction includes the Joint Facility. The arbitrators shall conduct a hearing, at which each party shall be given the opportunity to present its case. The decision of the arbitrators, or any two of them, shall be final and binding upon the parties. The expense of arbitration shall be apportioned by the arbitrators. The parties may agree upon a single arbitrator.

17. DEFAULT

If any User shall fail to pay any sum payable by it hereunder on the date when the same shall be due, or shall fail to perform or comply with any other covenant or condition by it to be performed or complied with under this agreement, and such default shall continue for a period of thirty (30) days after written demand for such payment, performance or compliance shall have been made upon such User by Owner, then Owner shall have the right, at its election, to terminate this agreement as to that User by giving such User written notice of such election subject to any consent of the Interstate Commerce Commission then required by law. Failure or refusal of any User to make payments

or to perform or comply with any covenants or conditions which shall be the subject of arbitration under the provisions of this agreement shall not, pending final determination of such arbitration, be deemed a cause for terminating this agreement. A waiver by Owner of the breach by any User of any covenant or condition of this agreement shall not impair the right of Owner to avail itself of any subsequent breach thereof.

18. SERVICE OF NOTICES

Notices under this agreement shall be in writing and shall be deemed to be properly served if delivered to, or if deposited in, the Post Office, postpaid, addressed to the General Manager having jurisdiction of the party to be so notified.

19. SUCCESSORS AND ASSIGNS

This agreement shall inure to the benefit of and be binding upon the parties, their respective successors and assigns, but no sale, assignment, mortgage or lease by any User of this agreement or any interest or right given by this agreement, separate and apart from the sale, assignment, mortgage or lease of its entire railroad, shall be valid without the prior written consent of Owner.

20. DISPOSSESSION BY PUBLIC AUTHORITY

In the event Owner shall be dispossessed by competent public authority of the right to operate upon and maintain the Joint Facility, Owner shall have no obligation hereunder to provide trackage for any User's use, and no User shall have and shall make any claim of any kind, legal or otherwise, against Owner for failure to provide trackage for any User's use.

21. EFFECTIVE DATE AND TERM

This agreement shall take effect as of the date hereof and shall continue in effect for a period of nine (9) years and thereafter until terminated by either party on one (1) year's written notice to the other party. It is conditioned upon the approval or exemption of the ICC and any other prerequisite legal

authority. In the event this agreement is not approved or exempted by the Interstate Commerce Commission and any other prerequisite legal authority or in the event said Commission imposes conditions unacceptable to any party, this agreement shall become null and void.

Notwithstanding the foregoing, any party hereto may, upon 90 days' written notice to the other party or parties discontinue or withdraw from use of any segment of the Joint Facility. Such discontinuance or withdrawal shall not terminate or affect the rights of the remaining parties or the other segments of the Joint Facility.

After withdrawal from use of any segment of the Joint Facility, a User may at any future time with the prior consent of Owner, recommence use of the discontinued segment and terms and conditions of this agreement shall apply to future use by such User.

IN WITNESS WHEREOF, the parties have executed this agreement in triplicate as of the day and year first above written.

SOUTHERN PACIFIC TRANSPORTATION COMPANY

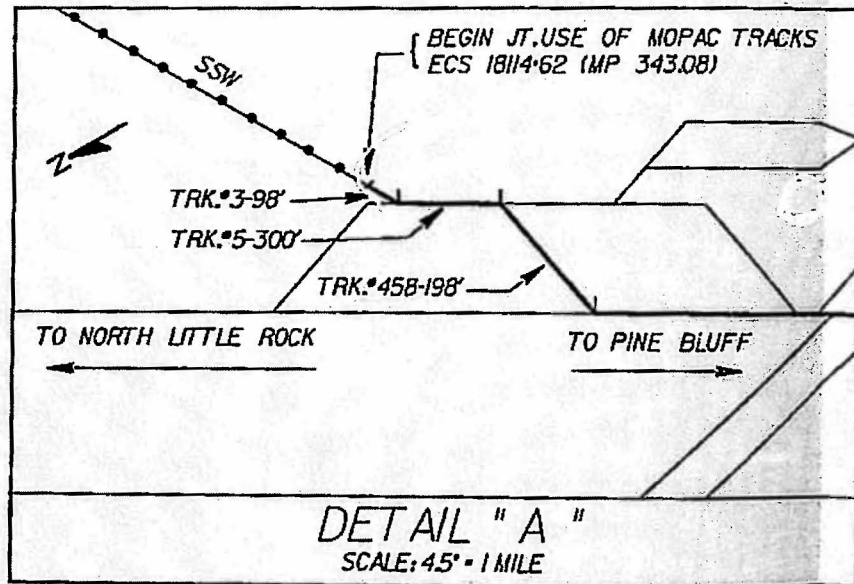
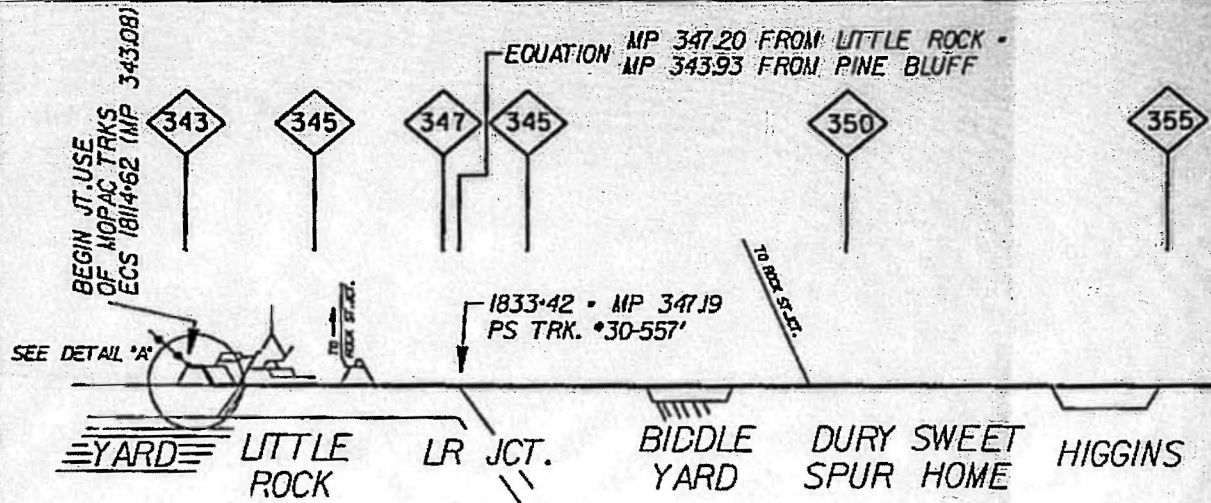
By L. J. Furlow
(Title) Assistant Vice President-Contracts

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

By L. J. Furlow
(Title) Assistant Vice President-Contracts

MISSOURI PACIFIC RAILROAD COMPANY

By R. H. Davidson
(Title)





HENSLEY

WHITE BLUFF

— MISSOURI PACIFIC TRACKS TO BE JOINTLY USED

— OTHER MISSOURI PACIFIC TRACKS

→ ST. LOUIS - SOUTHWESTERN TRACKS

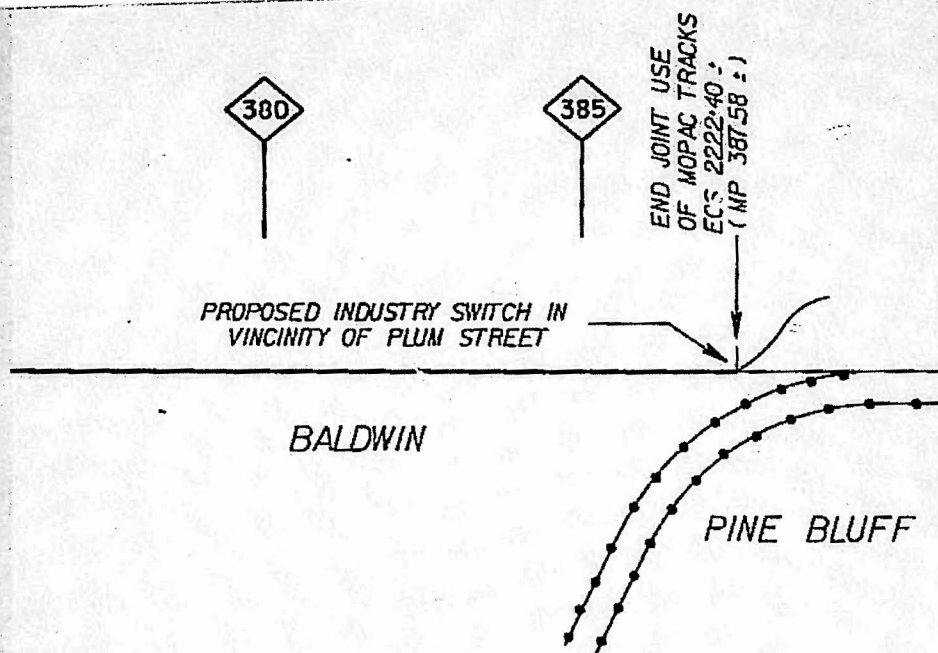


EXHIBIT "A"

MISSOURI PACIFIC RAILROAD COMPANY DIAGRAM SHOWING

Missouri Pacific Tracks Jointly used by
St. Louis - Southwestern Rwy. Co.

LITTLE ROCK to PINE BLUFF, ARK.

Office of Chief Engineer

St. Louis, Mo.

Scale 1" = 2 Miles

November 1, 1985

File No. DR0052

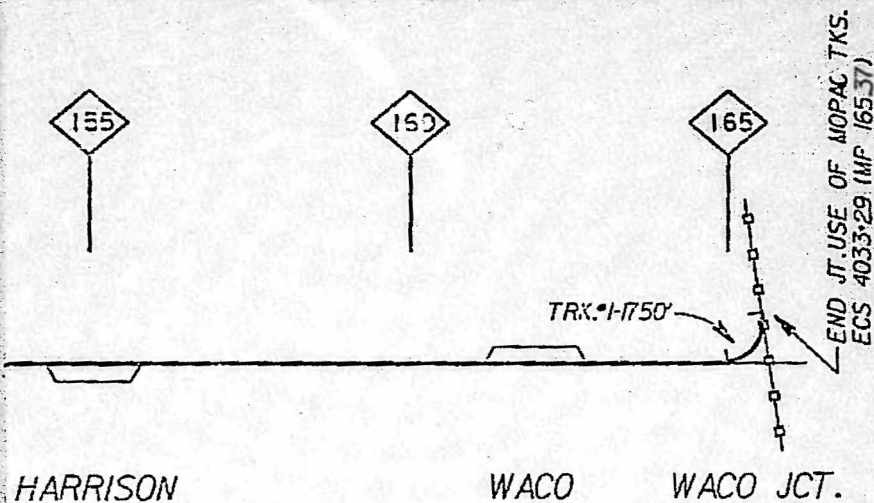


EXHIBIT "B"

MISSOURI PACIFIC RAILROAD COMPANY

DIAGRAM SHOWING

Missouri Pacific Tracks Jointly used by

Southern Pacific Rwy. Co.

HEARNE to WACO, TEXAS

Office of Chief Engineer

Scale 1" = 2 Miles

St. Louis, Mo.

November 1, 1985

MI

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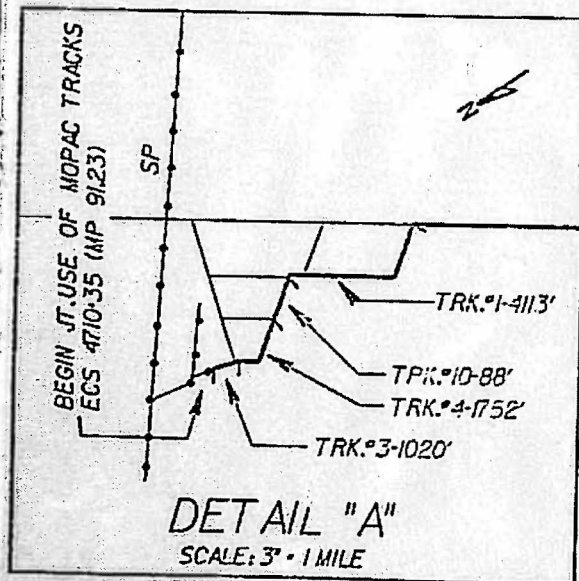
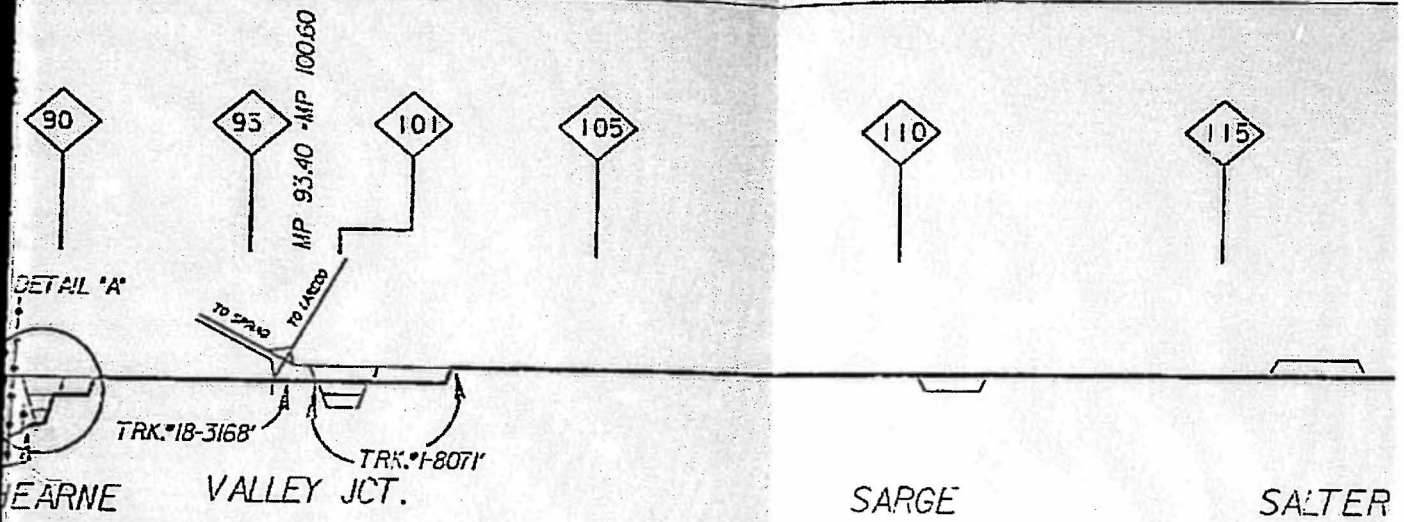
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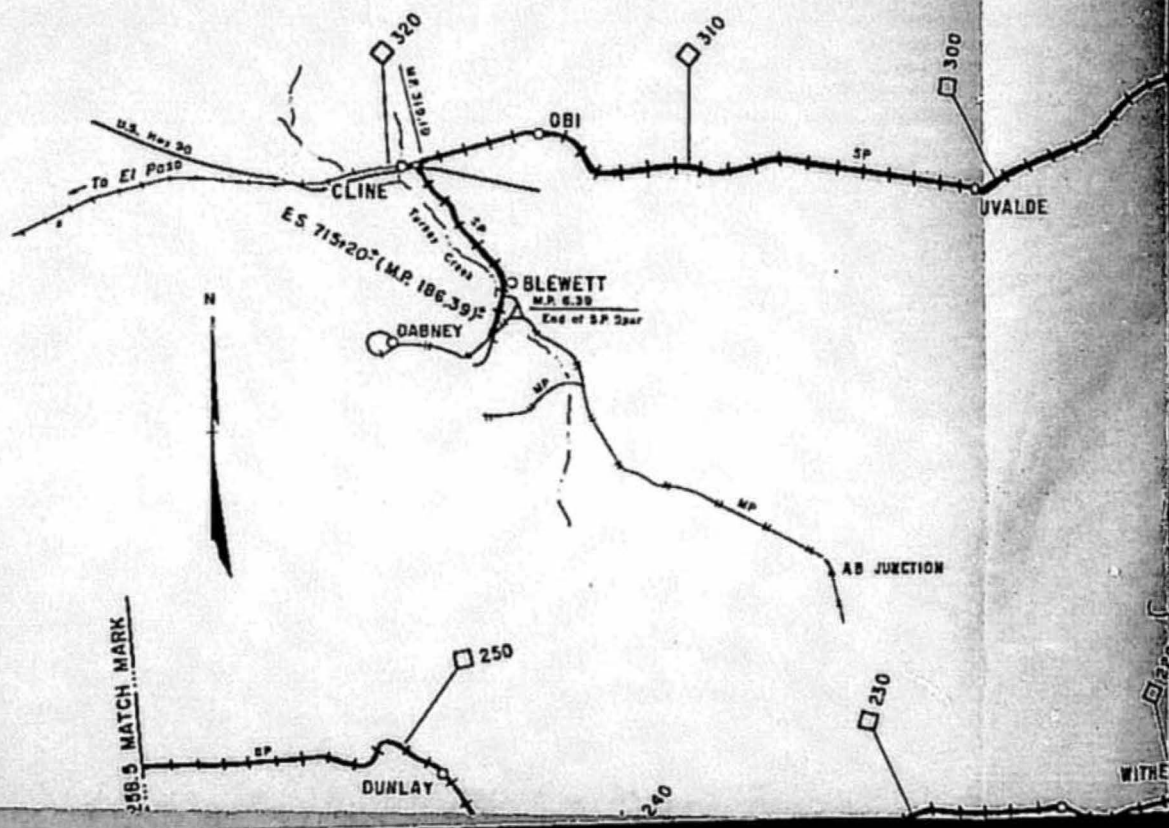
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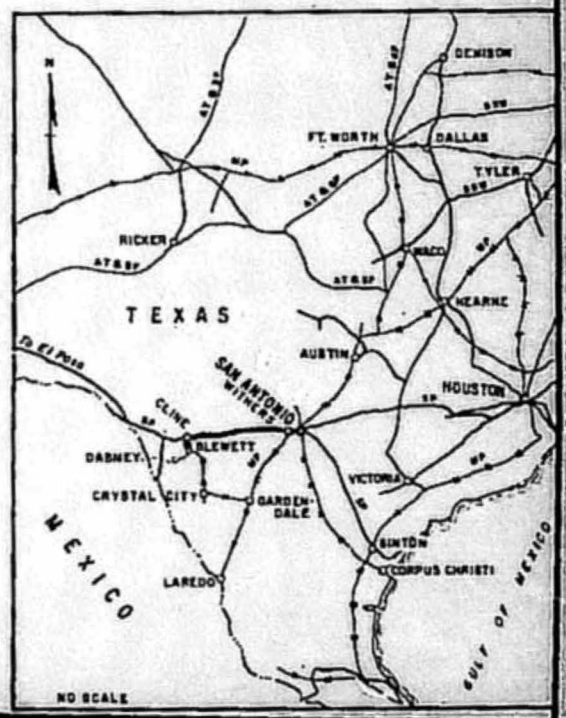
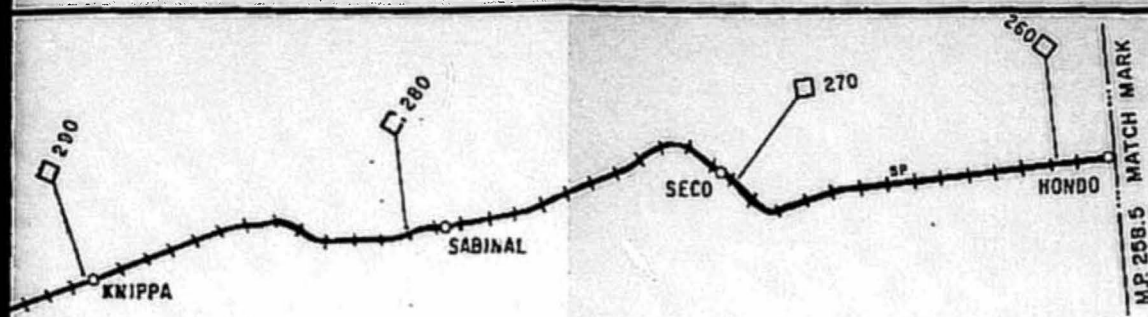


MARLIN

MISSOURI PACIFIC TRACKS TO BE JOINTLY USED
OTHER MISSOURI PACIFIC TRACKS
SOUTHERN PACIFIC TRACKS
ST. LOUIS - SOUTHWESTERN TRACKS







M.P.

SCALE: 1" = 4 MILES

Connecting Track near CLINE

MACDONA

LACOSTE

To Loredo

M.P. 319.19
E.S. 16882+881

To San Antonio

E.S. 16899+57
+0+100

E.S. 16885+14

To El Paso

U.S. Hwy 90

$\Delta = 8^{\circ}0'$
 $\Delta = 23^{\circ}20'$

$\Delta = 10^{\circ}20'$
 $\Delta = 109^{\circ}59'02"$
 $T = 734.63'$
 $L = 1084.36'$

P.S. 12+42 #10 T.O.

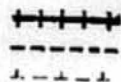
To Bixbee

SCALE: 1" = 400 FT.

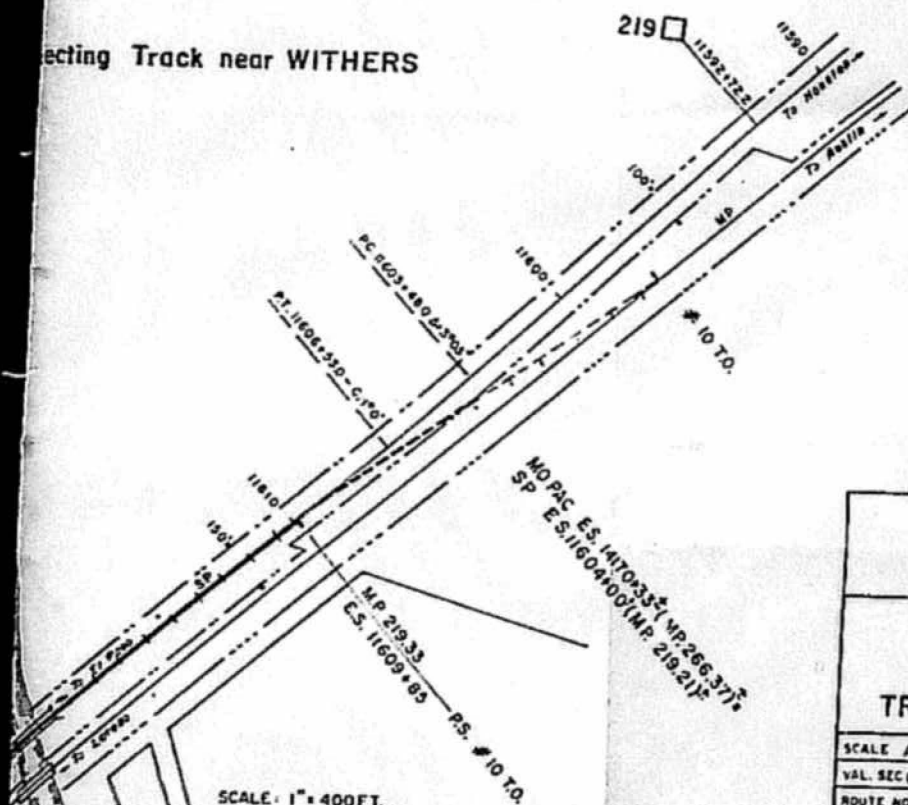
11450

ecting Track near WITHERS

LEGEND



Proposed Trackage Rights over S.P.T.
Proposed Construction by S.P.T.
Proposed Construction by M.P. RR.



SCALE: 1" = 400 FT.

EXHIBIT "C"

Southern Pacific
Transportation Company

CLINE - WITHERS S.P.T. - M.P. RR. TRACKAGE RIGHTS AGREEMENT

SCALE AS SHOWN	ENGINEERING DEPT.
VAL. SEC. 6 & SA 9 SHEET 27-29	DRAWN BY H.E.W. CHECKED BY
ROUTE NO THE M.P. 320	DRAWING NO 41937
DATE OCT. 22, 1983	SHEET NO. 1
REVISED TO	FILE DRAWER 2087

EXHIBIT "D"

Sheet 1 of 2

PROPOSED METHOD OF DEVELOPING CAR MILE MAINTENANCE CHARGE FOR SP/W EXCHANGE OF TRACKAGE RIGHTS

RAILROAD ANNUAL REPORT R-1 (GENERAL) 4101

RAILROAD OPERATING STATISTICS

LINE DESCRIPTION	SP (1952)	ADJUSTED TO "FURNISHING"	SP (1952)	ADJUSTED TO "FURNISHING"
1 TRUCK				
6 REPAIRS - RUNNING	\$12,074	\$10,841	\$11,624	\$9,876
12 TIES - RUNNING	6,027	6,027	6,027	6,027
14 RAIL - RUNNING	20,844	20,844	19,572	19,572
16 OTHER TRACK MATERIAL - RUNNING	14,255	14,255	11,370	11,370
18 BALLAST - RUNNING	8,478	8,478	8,391	8,391
20 TRACK LAYING AND SURFACING - RUNNING **	5,135	5,135	5,111	5,111
22 SIGNALS AND INTERLOCKINGS - RUNNING	25,870	25,870	41,770	41,770
165 REPAIR MACHINES *	4,547	4,547	4,272	4,272
112 PRIME REPAIRS - RUNNING	15,012	12,605	12,017	10,544
124 REPAIRS - RUNNING	24,726	24,726	15,519	15,519
	8,126	8,126	3,411	3,411
TOTAL		\$170,571	TOTAL	\$140,661
SYSTEM USE MILES				
REFERENCE TIES -		1,740,644		1,400,071
INTERCHANGE				
EXPENSE PER				
CAR MILE		\$0.0925		\$0.0910

* Pro-rated to Furnish in the same proportion that the expenses included in the maintenance portion of the flat rate are allocated between Furnish and Switching

** Not a separate item after 1952 under Depreciation Accounting

PROPOSED FLAT RATES PER CAR MILE

	SP	MS
RENTAL	\$0.0226	\$0.0210
MAINTENANCE	\$0.0695	\$0.0741
TOTAL	\$0.1121	\$0.1151

AGREED RATES

RENTAL	\$0.0210
MAINTENANCE	\$0.0910
TOTAL	\$0.1120
TOTAL AGREED FLAT RATE	

RAILROAD ANNUAL REPORT R-1 (SPW)
INVESTMENT IN RAILROAD PROPERTY USE

LINE DESCRIPTION

1. ENGINEERING
2. LAND FOR TRANSPORTATION PURPOSES
3. BUILDINGS
4. OTHER RIGHT-OF-WAY EXPENDITURES
5. BRIDGES, TRESTLES AND CULVERTS
6. TIES
7. RAILS
8. OTHER TRACK MATERIAL
9. BALLAST
10. TRACK LAYING AND SURFACING
11. SIGNALS AND INTERLOCKINGS
12. REPAIR MACHINES

INVESTMENT PER CAR MILE

* Pro-rated to Furnish in the same proportion that the expenses included in the maintenance portion between Furnish and Switching

PROPOSED METHOD OF DETERMINING CAR MILE RENTAL FACTOR
FOR S/P/MP EXCHANGE OF TRAILAGE RIGHTS

RAILROAD ANNUAL REPORT 5-2 (COMPILE 1977)

INVESTMENT IN RAILWAY PROPERTY USED IN TRANSPORTATION SERVICE

LINE DESCRIPTION	SP (1972)	ADJUSTED TO "RUNNING"	MP (1972)	ADJUSTED TO "RUNNING"
1 ENGINEERING	827,237	829,500	829,191	818,165
2 LAND FOR TRANSPORTATION PURPOSES	58,787	53,859	45,879	35,589
3 BUILDING	237,942	213,597	151,367	120,616
4 OTHER RIGHT-OF-WAY EXPENDITURES	1,884	1,895	2,175	1,742
5 BRIDGES, TRESTLES AND CULVERTS	152,556	137,274	124,922	99,317
6 TIES	67,857	61,035	56,775	45,464
7 GRADE	158,447	149,683	152,141	121,835
8 OTHER TRACK MATERIAL	122,913	111,370	151,775	121,541
9 BALLAST	55,331	52,457	57,607	46,132
10 GRADE LAYING AND SURFING	55,676	56,524	70,931	56,681
11 RAILWAY EQUIPMENT	7,874	7,979	3,022	2,471
12 STATION AND INTERLOCKING	157,283	151,746	94,655	75,772
13 SIGNAL EQUIPMENT	51,825	48,617	47,454	38,691
TOTAL		81,077,761	TOTAL	67,227,725
SYSTEM CAR MILES (SCHEDULE 755 - LINE 4-123)		1,505,644		1,455,071
INVESTMENT PER CAR MILE				
TOTAL INVESTMENT		81,077,761		67,227,725
SYSTEM CAR MILES		1,505,644		1,455,071
PROPOSED RENTAL FACTOR				
INVESTMENT PER CAR MILE 1/2 OF 811		80.0226		80.0212
				80.0212

* Pro-rated to Running in the same proportion that the expenses
included in the maintenance portion of the flat rate are allocated
between Running and Switching

EXHIBIT D

Correspondence between
Mike Martucci, BNSF Manager Contracts & Joint Facilities
and
Chris Sanford, UP Manager Commercial & Interline Strategy



Mike Martucci
MGR Contracts & Joint Facilities
BNSF Railway Company
2500 Lou Menk Drive
AOB GL
Fort Worth, TX 76131
Phone: 817-867-0804
Email: mike.martucci@bnsf.com

February 21, 2023

Mr. Chris Sanford
Manager Commercial & Interline Strategy
Union Pacific Railroad Company
1400 Douglas Street, STOP 1350
Omaha, NE 68179

Re: Access to Colorado Materials LTD at Uvalde, TX

Dear Chris:

Please accept this letter as BNSF's formal election request to access Colorado Materials LTD at 17343 Uvalde, TX 78801 and initiate service pursuant to the Restated and Amended Settlement Agreement ("RASA") between BNSF and UP dated March 1, 2002, section 4(b). This is a new shipper facility along a trackage rights line and is located at track 752 along the Cline Industrial Spur in the vicinity of MP 3.0. The Cline Industrial Spur was formerly served by both SP and MP, and the customer facility was constructed and operational in 2013. Pre-merger, the Cline Industrial Spur was dually served by MP and SP pursuant to an agreement dated November 22, 1985 which granted MP rights over SP tracks between Withers, TX and Cline, TX (inclusive of the Cline Industry Spur down to Blewett, TX).

BNSF intends to serve this facility directly with our existing train service or in unit train service planned to commence 45 days from the date of this letter (on or after April 7, 2023). Service frequency will be based on customer volumes and can be expected to fluctuate as needed depending on the customers' demand.

In accordance with Section 1(d) of the RASA, please confirm approval of BNSF's election in writing within 30 days' receipt of this letter (March 23, 2023). Upon UP's confirmation of service, BNSF's local Operations personnel will be available to discuss any concerns with UP's local Operations personnel.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Martucci".

Mike Martucci
Manager Contracts & Joint Facilities
BNSF Railway

UNION PACIFIC RAILROAD COMPANY

CHRIS SANFORD
SENIOR MANAGER –
COMMERCIAL & INTERLINE
STRATEGY

1400 DOUGLAS STREET
OMAHA, NEBRASKA 68179
402-544-3105



March 23, 2023

Mike Martucci
Manager Contracts & Joint Facilities
BNSF Railway Company
2500 Lou Menk Drive, AOB GL
Fort Worth, TX 76131

Dear Mike:

Please refer to your letter of February 21, 2023 seeking UP confirmation of BNSF access to Colorado Materials LTD at 17343 W US Highway 90, Uvalde, TX 78801. Colorado Materials is located on the Cline Mine Industrial Lead. The agreement of November 22, 1985 referenced in your letter granted MP overhead rights only and the current UP agreement with BNSF does not grant BNSF any rights on the Cline Mine Industrial Lead.

Union Pacific declines BNSF's request for customer access.

Sincerely,

Chris Sanford
Senior Manager Commercial & Interline Strategy

CC: Olivia Power
Jon Helm
Kate Sieverson
Tanya Spratt
Stephanie Weekly
Derek Hinds
Mark Simon
David Hughes
Jamal Chappell
Olin Dirks



Mike Martucci
MGR Contracts & Joint Facilities
BNSF Railway Company
2500 Lou Menk Drive
AOB GL
Fort Worth, TX 76131
Phone: 817-867-0804
Email: mike.martucci@bnsf.com

May 18, 2023

Mr. Chris Sanford
Manager Commercial & Interline Strategy
Union Pacific Railroad Company
1400 Douglas Street, STOP 1350
Omaha, NE 68179

Re: Access to Colorado Materials LTD at Uvalde, TX

Dear Chris:

This is in response to your letter of March 23, 2023, rejecting BNSF's request for confirmation of its access to Colorado Materials LTD at 17343 W US Highway 90 at Uvalde, Texas. As you noted, Colorado Materials is located on the UP Cline Mine Industrial Lead. The basis for UP's rejection of BNSF access was (i) that MP was only granted overhead rights in 1985 on the former SP line between Withers, TX and Cline, TX, and (ii) that "the current UP agreement with BNSF" (which we assume to be the RASA) does not grant BNSF any rights on the Cline Mine Industrial Lead. As set forth below, neither ground supports UP's position. BNSF is entitled to access Colorado Materials.

First, UP/MP's operating rights on the Cline Mine Industrial Lead allowed UP/MP to serve shippers on the Lead, thereby giving any shipper located on the Lead the ability to receive service from both UP/MP and SP before the UP/SP merger. The November 22, 1985 trackage rights agreement between MP and SP granted MP operating rights over SP trackage (now the UP Del Rio Sub) between Withers and Cline, including the Cline Mine Industrial Lead to Blewett, Tex. The agreement set forth an exception to the overhead restriction on MP's rights which you refer to in your letter. That exception in Section 2 of the agreement reads:

Except with respect to the industrial lead trackage included in the Joint Facility, as provided in Section 1 B. hereof, User shall not have the right to construct or operate any lead, side, spur, industrial or public freight track connected to the Joint Facility, nor shall User have the right to serve any industry or industries situated on the Joint Facility.

MP's rights under the agreement thus included "the right to serve any industry or industries" on the Cline Mine Industrial Lead. This conclusion is buttressed by MP's Notice of Exemption filed with the ICC on November 14, 1985 (attached) which stated that "[o]perating over an industrial lead track of SP in the Blewett/Cline, Texas area is included in the trackage rights agreement in order to permit MP's service in the Blewett area [to Mile Post 6.39]." The Notice also stated at page 1 that "[b]oth MP and SP own and operate railroad trackage servicing the vicinity of Blewett, Texas." MP's former use of the Lead to serve

the former Uvalde Rock Asphalt (URAC) facility and the former R.L. White facility further confirms MP's right to use the Lead as does the letter dated April 25, 2013 from Daniel Hartmann of UP to Chris Bigoness of BNSF, which stated that the URAC facility "was jointly served by both SP and MP prior to the UP/SP merger."

Second, the fact that BNSF does not currently have rights to access Colorado Materials or other shippers on the Cline Mine Industrial Lead is immaterial to BNSF's current request. BNSF sent UP its formal election request to access Colorado Materials in order to establish those rights. As you are aware, the RASA provides for BNSF access to all shippers on other line segments over which both UP and SP operated and competed pre-merger. See, e.g., references to "Points on Sierra Blanca-El Paso line" and "Points on paired track from Weso NV to Alazon NV" in RASA Exhibit A. BNSF should similarly have access on the Lead. Because shippers on the Cline Mine Industrial Lead were jointly served by UP/MP and SP before the UP/SP merger, BNSF is entitled to access to the Colorado Materials facility. Colorado Materials is entitled to benefit from the competition that would have continued to this date but the for UP/SP merger.

Sincerely,

A handwritten signature in dark ink, appearing to read "Mike Martucci", with a stylized, flowing script.

Mike Martucci
Manager Contracts & Joint Facilities
BNSF Railway

UNION PACIFIC RAILROAD COMPANY

CHRIS SANFORD
SENIOR MANAGER –
COMMERCIAL & INTERLINE
STRATEGY

1400 DOUGLAS STREET
OMAHA, NEBRASKA 68179
402-544-3105



July 21, 2023

Mike Martucci
Manager Contracts & Joint Facilities
BNSF Railway Company
2500 Lou Menk Drive, AOB GL
Fort Worth, TX 76131

Dear Mike:

Please refer to your letters of February 21 and May 18, 2023 seeking UP confirmation of BNSF access to Colorado Materials LTD at 17343 W US Highway 90, Uvalde, TX 78801. Colorado Materials is located on the Cline Mine Industrial Lead.

I reiterate that the agreement of November 22, 1985 referenced in your letter granted MP overhead rights only on the portion of line in question and the Restated and Amended Agreement of March 1, 2002 and the Sealy, TX to Waco, TX and Eagle Pass, TX Trackage Rights Agreement of June 1, 1996 do not grant BNSF any rights on the Cline Mine Industrial Lead.

Union Pacific declines BNSF's request for customer access.

Sincerely,

Chris Sanford
Senior Manager Commercial & Interline Strategy

CC: Sarah Bailiff
Jon Helm
Eric Hamilton
Tanya Spratt
Stephanie Weekly
Derek Hinds
Mark Simon
David Hughes
Jamal Chappell
Olin Dirks
Tyler White