

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 32760 (SUB-NO. 49)

BNSF RAILWAY COMPANY
—PETITION FOR CLARIFICATION—
SERVICE TO COLORADO MATERIALS

UNION PACIFIC'S REPLY TO BNSF'S AMENDED PETITION

CHRISTINA B. CONLIN
JAMES B. BOLES
TONYA W. CONLEY
TANYA L. SPRATT
JENNIFER L. GALER
Union Pacific Railroad Company
1400 Douglas Street
Omaha, NE 68179

MICHAEL L. ROSENTHAL
JOHN MIZERAK
BENJAMIN ROLSMA
Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001
(202) 662-6000

Attorneys for Union Pacific Railroad Company

December 22, 2025

Table of Contents

I.	Introduction	1
II.	Colorado Materials Is Not Located at a 2-to-1 Point Because None of the Shipper Facilities BNSF Identified Are 2-to-1 Shipper Facilities.	2
A.	Background.....	3
B.	Gato Quarry	7
C.	Vulcan Materials	8
D.	BNSF’s Equitable Estoppel Argument Lacks Merit	11
E.	Even if Gato Quarry or Vulcan Materials Were 2-to-1 Shipper Facilities, Colorado Materials Is Not Located at a 2-to-1 Point.	11
F.	BNSF’s Other Arguments Lack Merit.....	12
III.	Conclusion.....	13

Exhibits

Exhibit A	Restated and Amended Settlement Agreement (“RASA”)
Exhibit B	Map of Railroad Lines and Shipper Facilities in Uvalde County, Texas (drawn on map produced at UP-COMAT-002132)
Exhibit C	Exhibit C to the October 25, 1985 Transportation Service Agreement Between R.L. White Company and Missouri Pacific (UP-COMAT-002243)
Exhibit D	1986 Map of Dabney-Area Tracks (UP-COMAT-002291)
Exhibit E	October 25, 1985 Transportation Service Agreement Between R.L. White Company and Missouri Pacific and Exhibits (UP-COMAT-002245)
Exhibit F	Excerpts of Historical Correspondence Between SP and Cline-Area Shippers, and Related SP Files (UP-COMAT-002449)
Exhibit G	September 7, 2012 Report by DFDX GmbH Transportation Consultants for BNSF entitled “Rail Service to Rock Asphalt Mines in Uvalde County, Texas” (BNSF-COMAT-0000325)
Exhibit H	1946 Map of Blewett-Area Proposed and Connecting Tracks (UP-COMAT-002750 at 002770)
Exhibit I	MP Notice of Exemption (Nov. 14, 1985) and MP/SP Trackage Rights Agreement (Nov. 25, 1985), <i>Missouri Pacific Railroad—Trackage Rights—Southern Pacific Railroad</i> , FD No. 30749
Exhibit J	December 4, 2012 Email from UP’s Dave Purcell (UP-COMAT-001705)
Exhibit K	MP Tariff 8173-C, Supplement 149, Section 5, Item 2400-A (UP-COMAT-001273 at 001362)

I. Introduction¹

In rejecting BNSF's attempt to expand the definition of "2-to-1 points," the Board's June 30, 2025, decision resolved the only issue in this proceeding with broad implications concerning the conditions of the UP-SP Merger.² With that issue resolved, the Board said the parties were free to arbitrate any remaining dispute regarding access to Colorado Materials.³ If BNSF is free to arbitrate, then arbitration is its exclusive remedy. Under Section 15 of the RASA, "[e]xcept as otherwise provided by any decision" of the Board, arbitration "shall be the exclusive remedy of the parties."⁴ The Board should thus dismiss this proceeding.⁵

¹ Union Pacific uses the acronyms and abbreviations the Board used in its decision served June 30, 2025, except that "Union Pacific," "Southern Pacific," and "Missouri Pacific" are spelled out, unless their abbreviations are part of direct quotations. Single brackets ({_}) are used to designate confidential information, while double brackets ({{}}) are used to designate highly confidential information, as defined by the applicable Protective Order.

² See *BNSF Ry. Co.—Pet. for Clarification—Service to Colorado Materials (June 30 Decision)*, FD 32760 (Sub-No. 49), slip op. at 4–6 (STB served June 30, 2025); see also *id.* at 8 n.15 ("As explained above, this proceeding is appropriate for Board resolution because it raises questions regarding what constitutes a 2-to-1 point that could have broad implications concerning the conditions of the merger.").

³ See *id.*, slip op. at 4 ("[T]he Board notes that once discovery has been completed, the parties still retain the ability to submit this matter to arbitration under Section 15 of the RASA."); see also *id.* at 8 n.15 ("[T]he issues on which the Board is permitting discovery here . . . are the type of issues that would be more appropriate for arbitration if they were to arise in isolation.").

⁴ RASA § 15. For the Board's convenience, a copy of the RASA is attached as Exhibit A.

⁵ The RASA is not merely a private agreement between Union Pacific and BNSF, it is a condition on the UP-SP Merger imposed by the Board. See *Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp. (General Oversight) (Decision No. 21)*, 5 S.T.B. 1173, 1174, 1178 (2001). The Board would need to reopen and modify its decision imposing that condition to assert jurisdiction here, and it has no basis for taking such action.

Because BNSF filed the Amended Petition on the Board’s docket, however, Union Pacific submits the following additional information to clarify the record. BNSF’s attempt to show Colorado Materials is located at a 2-to-1 point misrepresents the history and locations of facilities near the Cline Mine Industrial Lead in Uvalde County, Texas. The record shows there were no 2-to-1 shipper facilities on the Cline Mine Industrial Lead, so Colorado Materials cannot be located at a 2-to-1 point on the Lead. In fact, BNSF told the Board in 2013 that “all of the two to one individual shipper facilities have been identified.”⁶

II. Colorado Materials Is Not Located at a 2-to-1 Point Because None of the Shipper Facilities BNSF Identified Are 2-to-1 Shipper Facilities.

As the Board recognized in the *June 30 Decision*, BNSF is entitled to serve Colorado Materials only if Colorado Materials is located at a 2-to-1 point.⁷ A 2-to-1 point is a “geographic location at which at least one ‘2-to-1’ Shipper Facility is

⁶ Transcript of Oral Argument at 58:5–7, *Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp.*, FD 32760 (STB Jan. 15, 2013), <https://www.stb.gov/wp-content/uploads/Transcript-2013-01-15.pdf>.

This proceeding is thus just another example of BNSF overreach. *See, e.g., Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp. (Decision No. 106)*, FD 32760 (STB served Dec. 20, 2013) (rejecting BNSF claim regarding access to G3 Enterprises); *Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp. (Decision No. 98)*, FD 32760 (STB served Oct. 22, 2002) (rejecting BNSF claim regarding trackage rights fee adjustments); *Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp. (General Oversight) (Oversight Decision No. 20)*, 5 S.T.B. 1159, 1165 (2001) (rejecting BNSF effort to expand the definition of “2-to-1 points” as an “overreach”); *Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp. (Decision No. 77)*, FD 32760 (STB served Jan. 7, 1998) (rejecting BNSF effort to access non-2-to-1 shippers in New Orleans); *Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp. (Decision No. 74)*, FD 32760 (STB served Aug. 29, 1997) (rejecting BNSF’s effort to expand the definition of “2-to-1 shipper”).

⁷ *See June 30 Decision*, slip op. at 5.

located.”⁸ And a 2-to-1 shipper facility is one that was “open to both UP and SP . . . and no other railroad when the 1995 Agreement was executed.”⁹ Stated differently, for a location to be a 2-to-1 point, three things must be true: (1) there must be a Shipper Facility open to Union Pacific; (2) the same Shipper Facility must be open to Southern Pacific; (3) that Shipper Facility must have been an existing facility open to both Union Pacific and Southern Pacific in 1995.¹⁰ No shipper facility on the Cline Mine Industrial Lead meets the criteria for a 2-to-1 shipper facility, and thus Colorado Materials cannot be located at a 2-to-1 point.

BNSF’s Amended Petition focuses on two shipper facilities on the Cline Mine Industrial Lead, but neither meets all three criteria required to qualify as a 2-to-1 shipper facility. Specifically, BNSF claims Gato Quarry and Vulcan Materials were both 2-to-1 shipper facilities. BNSF is wrong. Gato Quarry may have been open to service from Union Pacific and Southern Pacific long before the UP-SP Merger, but it was not an existing facility open to both Union Pacific and Southern Pacific at the time of the UP-SP Merger, because it had ceased to operate several years before. Vulcan Materials was never open to service from Southern Pacific.

A. Background

Mining in southwest Uvalde County, Texas, has occurred for over 100 years, at several distinct facilities. BNSF’s Amended Petition focuses on two facilities. BNSF

⁸ *Id.* (quoting RASA, Definitions (“2-to-1” Points)) (emphasis omitted).

⁹ *Id.* (quoting RASA, Definitions (“2-to-1” Shipper Facilities)) (emphasis omitted).

¹⁰ *See id.* (RASA “limits the definition of 2-to-1 points to locations with an existing shipper facility at the time of the UP-SP Merger that was open to both UP and SP (and no other railroad).”).

refers to a facility located west of Blewett, Texas, at Dabney, Texas, as “Vulcan Materials,” which is the name of its most recent owner.¹¹ A separate facility, which BNSF refers to as the “Gato Quarry,” was located south of Blewett.¹² The facilities in the area changed ownership several times. Around 1987, Vulcan Materials purchased both the facility at Dabney and the Gato Quarry.¹³

¹¹ The facility BNSF calls “Vulcan Materials” has also been referred to as White’s Uvalde Mine and White’s Mine. *See, e.g.*, Ex. C at UP-COMAT-002244 (1987 map showing “White’s Mines Trackage”); Ex. D at UP-COMAT-002291 (1986 map showing the quarry at “White’s Uvalde Mine”).

BNSF states the Vulcan Materials facility at Dabney was “formerly the Uvalde Rock Asphalt Company,” BNSF Am. Pet. at 9, but BNSF does not provide any support for this statement. As noted below in footnote 12, it is the Gato Quarry that was formerly associated with the Uvalde Rock Asphalt Company. The Vulcan Materials facility was owned by R.L. White Company, doing business as White’s Mines, as of 1985, and the R.L. White Company sold the facility to Vulcan Materials in approximately 1987. *See* Ex. E at UP-COMAT-002258 to 002269 (transportation service agreement dated October 25, 1985, between R.L. White and Missouri Pacific describing terms of an agreement, {

}); *id.* at UP-COMAT-002281 to 002282 (agreement, executed October 16, 1987, assigning agreement from R.L. White to Vulcan Materials).

¹² The facility BNSF calls the “Gato Quarry” was previously owned by the Uvalde Rock Asphalt Company, which later changed its name to Azrock Industries, Inc. *See* Ex. F at UP-COMAT-002513 (April 24, 1981 letter from Azrock {

}). The land and facility was acquired by the R.L. White Company in the mid-1980s. *See id.* at UP-COMAT-002510 (October 10, 1984 letter from Azrock to Southern Pacific announcing that {

}).

There is a third facility in the area, located southeast of Gato Quarry, which the parties have referred to as the “Martin Marietta” facility. BNSF claimed a right to access this facility in 2012, but abandoned the effort. *See* BNSF Am. Pet. at 7 n.4.

¹³ *See* Ex. G at BNSF-COMAT-0000326 (noting that {

}).

The Colorado Materials facility to which BNSF seeks access is located approximately three miles north of Blewett.¹⁴

Long before the UP-SP Merger, Union Pacific and Southern Pacific had separate lines that terminated near Blewett. Southern Pacific's line—the current Cline Mine Industrial Lead—branched south off Southern Pacific's main line at Cline, Texas, and terminated at Blewett. At Blewett, Southern Pacific's line connected with private track owned by Gato Quarry's operator.¹⁵ Missouri Pacific, a predecessor of Union Pacific, had a line called the Crystal City Subdivision that ran north from Crystal City, Texas, to Blewett and then to Dabney. At Dabney, Missouri Pacific's line connected to private track owned by Vulcan Materials.¹⁶ In 1985, after flooding damaged the Crystal City Subdivision, Southern Pacific granted Missouri Pacific trackage rights over Southern Pacific's Cline Mine Industrial Lead to Blewett, so Missouri Pacific could continue serving its customers near Blewett while abandoning its line from Crystal City to Blewett.¹⁷ The lines and facilities are shown below in Figure 1.

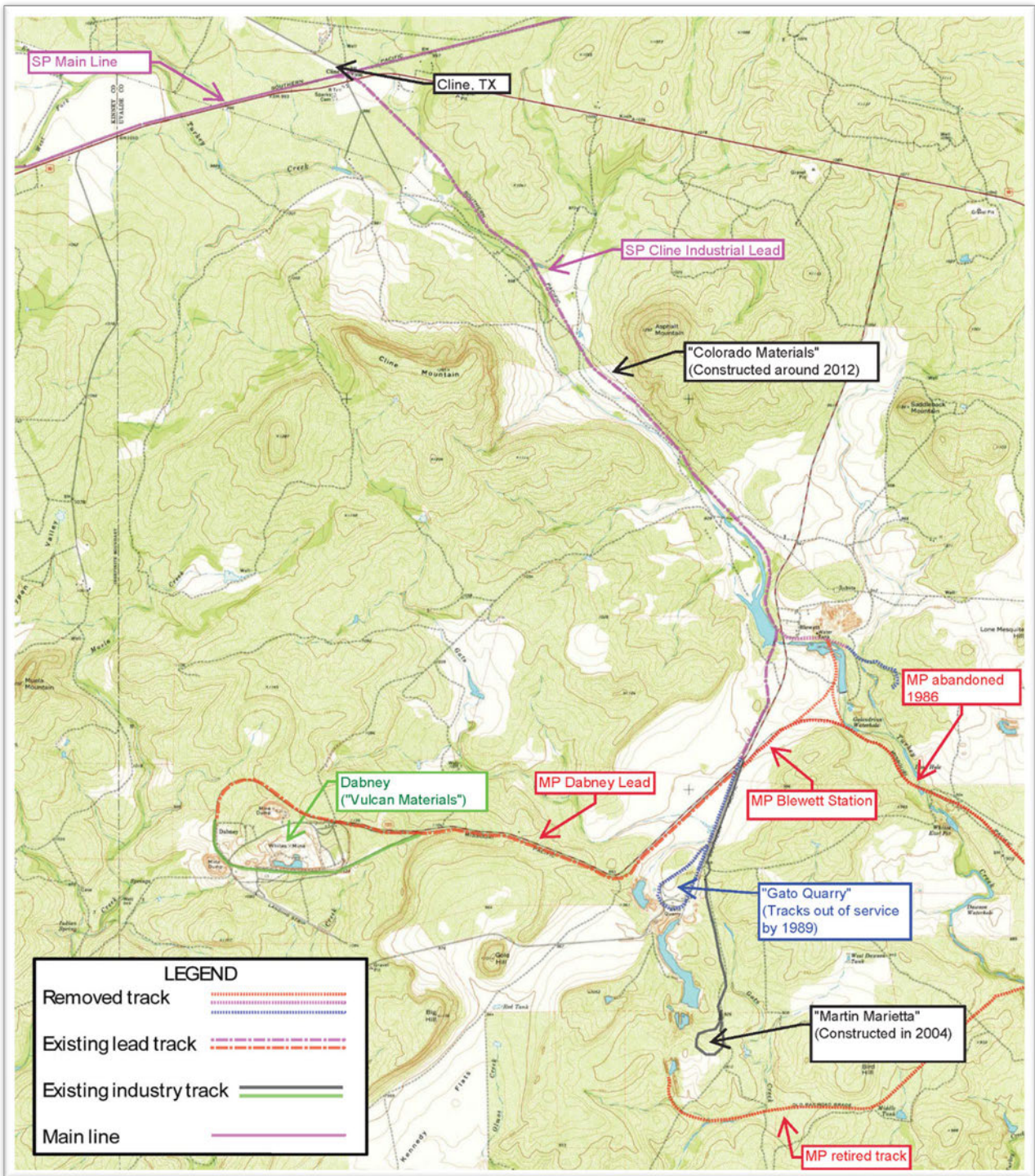
¹⁴ BNSF Am. Pet. at 14.

¹⁵ See Ex. H at UP-COMAT-002770 (1946 map showing proposed and connecting track owned by Southern Pacific and the Uvalde Rock Asphalt Co.); Ex. F at UP-COMAT-002592 (1984 map showing Southern Pacific trackage, Missouri Pacific trackage, and privately owned trackage).

¹⁶ See Ex. C at UP-COMAT-002244 (1987 map showing Missouri Pacific trackage, Southern Pacific trackage, and White's Mines trackage); Ex. F at UP-COMAT-002592 (1984 map showing Missouri Pacific trackage to Dabney).

¹⁷ See Ex. I at 15, MP/SP Trackage Rights Agreement, recitals (Nov. 25, 1985), *Mo. Pac. R.R.—Trackage Rts.—S. Pac. R.R.*, FD 30749, Notice of Exemption (Nov. 14, 1985) (explaining that the agreement was reached “to permit the abandonment by MP of its trackage between Blewett and Crystal City, Texas”).

Figure 1: Railroad Lines and Shipper Facilities in Uvalde County, Texas¹⁸



¹⁸ See Ex. B.

B. Gato Quarry

The evidence in the record shows Gato Quarry was not an existing facility served by Union Pacific and Southern Pacific at the time of the UP-SP Merger and thus does not qualify as a 2-to-1 shipper facility. The evidence shows Gato Quarry had ceased operating by 1989, approximately six years before the merger.

In October 1984, Azrock Industries, Inc., the then-owner of Gato Quarry, notified Southern Pacific that Azrock had sold its property and physical assets in Uvalde County to R.L. White Company.¹⁹ To interchange with Southern Pacific, Azrock had been using Southern Pacific track pursuant to an industry track agreement. When Azrock sold its property, Southern Pacific declined to assign the industry track agreement and instead attempted to establish a new agreement with White's Mines.²⁰ Southern Pacific provided a proposed agreement to White's Mines in 1985, and it continued trying to reach an agreement with the new owner.²¹

¹⁹ See Ex. F at UP-COMAT-002510 (Oct. 10, 1984, Letter from Clark (Azrock) to Humphries (Southern Pacific)).

²⁰ See Ex. F at UP-COMAT-002511 (Oct. 22, 1984, Letter from Southern Pacific to Clark (Azrock)); *id.* at UP-COMAT-002502 to 002504 (Unexecuted Agreement dated March 5, 1985).

²¹ See *id.* at UP-COMAT-002496 to 002497 (letters from Southern Pacific to White's Mines dated November 19, 1985 and May 15, 1986).

BNSF selectively cites a May 13, 1987, letter to suggest that this agreement was finalized, but it was not. See BNSF Am. Pet. at 11. The same page BNSF cites confirms that the agreement [REDACTED] and in a handwritten note dated July 3, 1987, states that Southern Pacific [REDACTED] Ex. F at UP-COMAT-002494. A November 30 follow-up has a handwritten note at the top that reads [REDACTED] *Id.* at UP-COMAT-002493.

However, Southern Pacific's records show Gato Quarry was no longer physically in use or receiving rail service by 1986.²² Handwritten notes from 1988 state that {{ [REDACTED]

[REDACTED] }}²³ In a June 22, 1989, letter to {{ [REDACTED] }} Southern Pacific wrote that {{ [REDACTED]

[REDACTED] }}²⁴

In its Amended Petition, BNSF asserts that Gato Quarry was served by Southern Pacific and Missouri Pacific “pre-merger.”²⁵ However, BNSF does not claim Gato Quarry was an existing shipper facility *at the time of the UP-SP Merger*, as would be required for Gato Quarry to qualify as a 2-to-1 shipper facility.²⁶ The evidence shows Gato Quarry is not a 2-to-1 shipper facility, so it does not provide a basis for treating Blewett as a 2-to-1 point.

C. Vulcan Materials

BNSF documents produced in discovery—specifically, a consultants’ report BNSF obtained in 2012 as part of an earlier attempt to gain access to new shipper

²² See Ex. F at UP-COMAT-002479 to 002491 (1988 Southern Pacific correspondence and associated 1984 map discussing the quarry track’s inactive status).

²³ *Id.* at UP-COMAT-002479 to 002480. See *supra* notes 11 and 12 (explaining that the Uvalde Rock Asphalt Company owned the Gato Quarry).

²⁴ *Id.* at UP-COMAT-002471.

²⁵ BNSF Am. Pet. at 11.

²⁶ See *June 30 Decision* at 5 (RASA “limits the definition of 2-to-1 points to locations with an existing shipper facility at the time of the UP-SP Merger”).

facilities on the Cline Mine Industrial Lead—confirm that Vulcan Materials was [REDACTED] and thus does not qualify as a 2-to-1 shipper facility.²⁷ Before the UP-SP Merger, Missouri Pacific owned the tracks between Dabney and Blewett, so Southern Pacific did not have access to Vulcan Materials. A provision in a 1985 agreement between Vulcan Materials’ then-owner, R.L. White, and Missouri Pacific further confirms that Southern Pacific did not have the right to serve the facility. The provision allowed White to use Missouri Pacific track to sell Southern Pacific rock used to maintain Southern Pacific’s track.²⁸ The provision would have been unnecessary if Southern Pacific could have served Vulcan Materials.²⁹

BNSF claims its consultants’ report supports its position, but the report expressly states that the facility known as “White’s Mines”—*i.e.*, Vulcan Materials³⁰—[REDACTED]³¹ BNSF simply fails to recognize the report’s reference to [REDACTED] was a reference to Gato

²⁷ Ex. G at BNSF-COMAT-0000326; *see also id.* (stating that [REDACTED]).

²⁸ *See* Ex. E at UP-COMAT-002262.

²⁹ *See id.* (enabling [REDACTED]); *id.* at UP-COMAT-002281 to 002282 (assigning this agreement from one owner to another when the facility changed hands). In other words, the fact that Missouri Pacific had to grant limited rights so Southern Pacific could be a *customer* of the Vulcan Materials facility emphasizes that Southern Pacific lacked rights to serve Vulcan Materials.

³⁰ *See supra* note 11 (explaining the mine BNSF calls Vulcan Materials was referred to as White’s Uvalde Mine and White’s Mine).

³¹ Ex. G at BNSF-COMAT-0000326.

Quarry, not Vulcan Materials.³² BNSF also cites internal Union Pacific communications from employees {{REDACTED}} as evidence that Vulcan was jointly served,³³ but does not include emails sent the very next day which corrected those statements. Another Union Pacific employee, {{REDACTED}}, stated that he checked {{REDACTED}} and that it {{REDACTED}} {{REDACTED}}³⁴ A few hours later, {{REDACTED}} responded to the {{REDACTED}} message to *correct* the statement on which BNSF claims it relies. {{REDACTED}}

{{REDACTED}}

{{REDACTED}}

{{REDACTED}}

{{REDACTED}}³⁵

In short, the documents upon which BNSF relies actually contradict BNSF's claim that Vulcan Materials was served by Missouri Pacific and Southern Pacific. Because Vulcan Materials is not a 2-to-1 shipper facility, it does not provide a basis for treating Blewett as a 2-to-1 point.

³² See *supra* notes 11 & 12.

³³ See BNSF Am. Pet. at 10. At the time, { [REDACTED] } recognized their limited knowledge. See Ex. J at UP-COMAT-0017073 { [REDACTED] } stated he is { [REDACTED] } and { [REDACTED] } said he was { [REDACTED] }.

³⁴ Ex. J at UP-COMAT-001706.

³⁵ *Id.* at UP-COMAT-001705.

D. BNSF's Equitable Estoppel Argument Lacks Merit

BNSF argues that Union Pacific admitted that Gato Quarry was served by Union Pacific and Southern Pacific prior to the UP-SP Merger and should be equitably estopped from arguing otherwise.³⁶ However, the so-called admission is irrelevant, because it did not address the facility's status *at the time of the UP-SP Merger*, and the evidence shows Gato Quarry was closed by 1988. Estoppel is also unwarranted because BNSF did not detrimentally rely on the statement. *See Lyng v. Payne*, 476 U.S. 926, 935 (1986) (black letter law establishes that “[a]n essential element of any estoppel is detrimental reliance on the adverse party’s misrepresentations”). BNSF continued to press the issue, ultimately filing its Petition and Amended Petition.

E. Even if Gato Quarry or Vulcan Materials Were 2-to-1 Shipper Facilities, Colorado Materials Is Not Located at a 2-to-1 Point.

Even if Gato Quarry or Vulcan Materials were a 2-to-1 shipper facility, BNSF would not have access to Colorado Materials because Colorado Materials is not located at the same point as either of those facilities.

Under the RASA, 2-to-1 points exist only at “geographic locations at which at least one ‘2-to-1’ Shipper Facility is located.”³⁷ “The boundaries for such ‘2-to-1’ Points shall be deemed to include all areas within the switching limits of the locations

³⁶ BMSF Am. Pet. at 13 & n.8 (referring to BNSF Am. Pet., Ex. 4 at UP-COMAT-001559).

³⁷ RASA at 2 (definition of “2-to-1” Points).

described in Section 9(g) of [the RASA]”—that is, within the switching limits designated by tariffs in effect as of September 25, 1995.³⁸

BNSF cites a June 25, 1990, Missouri Pacific tariff in an attempt to establish that Colorado Materials is located at the same 2-to-1 point as Gato Quarry (Blewett) or Vulcan Materials (Dabney).³⁹ However, neither Gato Quarry nor Vulcan Materials is a 2-to-1 shipper, so neither Blewett nor Dabney is a 2-to-1 point. Further, BNSF cites the wrong tariff: the version in effect at the time of the UP-SP Merger defined the relevant boundaries of stations as being “[p]oints within yard limits.”⁴⁰ BNSF does not claim, much less offer any proof, that Colorado Materials is within the yard limits of Blewett or Dabney.⁴¹

F. BNSF’s Other Arguments Lack Merit

BNSF’s Amended Petition also rehashes the argument the Board rejected as inconclusive in the *June 30 Decision*, claiming a 1985 SP-MP trackage rights agreement gave Missouri Pacific rights to serve shippers on Southern Pacific’s Cline Mine Industrial Lead.⁴² But even if BNSF were correct about the rights Southern

³⁸ *Id.* at 2–3; *see id.* at 38 (RASA § 9(g)).

³⁹ *See* BNSF Am. Pet. at 11–12.

⁴⁰ Ex. K at UP-COMAT-001273. The RASA defines the outer limits of a 2-to-1 point by the “switching limits,” as “designated by tariff.” *See* RASA at 2-3; *see also id.* at 38.

⁴¹ BNSF states that Colorado Materials is “in the vicinity of Blewett,” relying on language in the *June 30 Decision*. BNSF Am. Pet. at 8. But “in the vicinity” is not the test used in the RASA or any of tariffs cited by the parties. The Board clearly stated that whether Colorado Materials was at a 2-to-1 point was “not directly address[ed]” by BNSF or Union Pacific, because BNSF argued that “*all* points on the [Cline] Lead are 2-to-1 points.” *June 30 Decision*, slip op. at 4 (emphasis added). The Board wrote broadly to enable full discovery into all potentially relevant documents, not to change the terms of the RASA.

⁴² BNSF Am Pet. at 5–6.

Pacific gave Missouri Pacific, that would not prove *Southern Pacific* had rights to operate over *Missouri Pacific's* track from Blewett to Dabney to serve Vulcan Materials or that Gato Quarry was an existing facility at the time of the UP-SP Merger.⁴³

Finally, BNSF incorrectly claims Union Pacific has access to relevant historic records and thus should be required to “shoulder the burden of proof regarding the historic status of shipper facilities.”⁴⁴ BNSF’s assertion amounts to an inappropriate request to impose a new condition on the UP-SP Merger. In any event, BNSF’s failure of proof is not attributable to a lack of access to records. Union Pacific produced over 4,000 pages of records in discovery, dating as far back as 1947, including records from Southern Pacific and Missouri Pacific. BNSF’s issue is the records themselves, which show neither Gato Quarry nor Vulcan Materials is a 2-to-1 shipper facility, and thus Colorado Materials cannot be located at a 2-to-1 point.

III. Conclusion

If the Board does not dismiss this proceeding, then it should find that Colorado Materials is not located at a 2-to-1 point. The record shows neither the Gato Quarry

⁴³ In addition, BNSF misreads the relevant provision. The November 15, 1985, agreement provided Missouri Pacific operating rights with respect to a “Joint Facility,” which was defined to include the Cline Mine Industrial Lead itself. Ex. I at 15–16 (including “SP main and auxiliary trackage”). The agreement contained boilerplate language prohibiting operation over any “lead, side, spur, industrial or public freight track connected to the Joint Facility.” *Id.* at 17. The parties added language to obviate this prohibition—*i.e.*, the language on which BNSF relies—to prevent the agreement from being self-defeating and not actually allowing “MP . . . to obtain the right to operate over SP’s trackage,” as was the agreement’s intent. *Id.* at 15.

⁴⁴ BNSF Am. Pet. at 13 n.9.

nor Vulcan Materials was a 2-to-1 shipper facility, and even if Colorado Materials were at the same location as the Gato Quarry or Vulcan Materials, a location cannot be a 2-to-1 point unless it has a 2-to-1 shipper facility.

Respectfully submitted,

CHRISTINA B. CONLIN
JAMES B. BOLES
TONYA W. CONLEY
TANYA L. SPRATT
Union Pacific Railroad Company
1400 Douglas Street
Omaha, NE 68179

/s/ Michael L. Rosenthal
MICHAEL L. ROSENTHAL
JOHN MIZERAK
BENJAMIN ROLSMA
Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001
(202) 662-6000

Attorneys for Union Pacific Railroad Company

December 22, 2025

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of December, 2025, I caused a copy of the foregoing document to be served by email or first-class mail, postage prepaid, on all parties of record in Finance Docket No. 32760 (Sub-No. 49).

/s/ Michael L. Rosenthal

PUBLIC VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 32760 (SUB-NO. 49)

BNSF RAILWAY COMPANY
—PETITION FOR CLARIFICATION—
SERVICE TO COLORADO MATERIALS

EXHIBIT A

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.

PUBLIC VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 32760 (SUB-NO. 49)

BNSF RAILWAY COMPANY
—PETITION FOR CLARIFICATION—
SERVICE TO COLORADO MATERIALS

EXHIBIT B

Map of Railroad Lines and Shipper Facilities in Uvalde County, Texas (drawn on
map produced at UP-COMAT-002132)

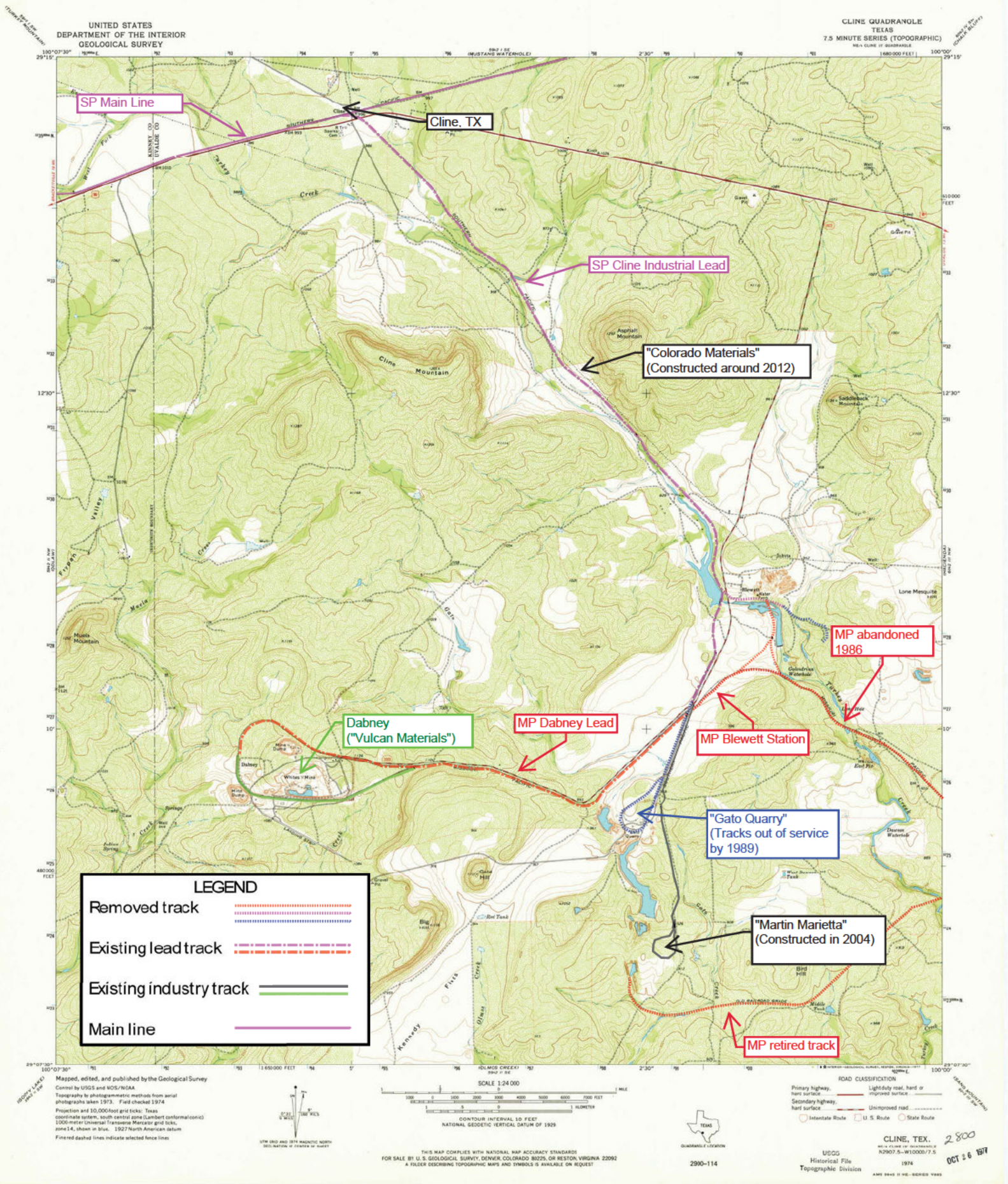


Exhibit B.

PUBLIC VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 32760 (SUB-NO. 49)

BNSF RAILWAY COMPANY
—PETITION FOR CLARIFICATION—
SERVICE TO COLORADO MATERIALS

EXHIBIT C

Exhibit C to the October 25, 1985 Transportation Service Agreement Between R.L.
White Company and Missouri Pacific (UP-COMAT-002243)

HIGHLY CONFIDENTIAL

PUBLIC VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 32760 (SUB-NO. 49)

BNSF RAILWAY COMPANY
—PETITION FOR CLARIFICATION—
SERVICE TO COLORADO MATERIALS

EXHIBIT D

1986 Map of Dabney-Area Tracks (UP-COMAT-002291)

HIGHLY CONFIDENTIAL

PUBLIC VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 32760 (SUB-NO. 49)

BNSF RAILWAY COMPANY
—PETITION FOR CLARIFICATION—
SERVICE TO COLORADO MATERIALS

EXHIBIT E

October 25, 1985 Transportation Service Agreement Between R.L. White Company
and Missouri Pacific and Exhibits (UP-COMAT-002245)

HIGHLY CONFIDENTIAL

PUBLIC VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 32760 (SUB-NO. 49)

BNSF RAILWAY COMPANY
—PETITION FOR CLARIFICATION—
SERVICE TO COLORADO MATERIALS

EXHIBIT F

Excerpts of Historical Correspondence Between SP and Cline-Area Shippers, and
Related SP Files (UP-COMAT-002449)

HIGHLY CONFIDENTIAL

PUBLIC VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 32760 (SUB-NO. 49)

BNSF RAILWAY COMPANY
—PETITION FOR CLARIFICATION—
SERVICE TO COLORADO MATERIALS

EXHIBIT G

September 7, 2012 Report by DFDX GmbH Transportation Consultants for BNSF
entitled “Rail Service to Rock Asphalt Mines in Uvalde County, Texas” (BNSF-
COMAT-0000325)

CONFIDENTIAL

PUBLIC VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 32760 (SUB-NO. 49)

BNSF RAILWAY COMPANY
—PETITION FOR CLARIFICATION—
SERVICE TO COLORADO MATERIALS

EXHIBIT H

1946 Map of Blewett-Area Proposed and Connecting Tracks (UP-COMAT-002750 at
002770)

HIGHLY CONFIDENTIAL

PUBLIC VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 32760 (SUB-NO. 49)

BNSF RAILWAY COMPANY
—PETITION FOR CLARIFICATION—
SERVICE TO COLORADO MATERIALS

EXHIBIT I

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 No. 30749

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

LAW DEPARTMENT



1416 DODGE STREET OMAHA, NE 68178



WILLIAM F. HIGGINS
PAUL A. CONLEY, JR.
Assistant Vice President-Law
FREDERICK W. HEAD, III
Assistant Vice President
Claims & Litigation Management
JOSEPH J. ADAMS
Assistant Vice President
Construction Law
L. JAMES BERGMAN
Assistant General Counsel

WILLIAM G. BARR
MARK B. DODDGE
Assistant General Counsel
ROBERT E. WALLEY
General Counsel-Carrier
ROBERT D. BATCHELDER
LEONARDE CHANG
LAWRENCE E. WIDZEK
General Counsel-Carrier
FOREST H. KRUTLER
General Counsel

JAMES V. DOLAN
Vice President-Law

JOSEPH D. JANTHOFF
MARK A. KALAFUT
R. DONALD OSTENBAUM
JANUARY A. ROBERTS
BRENDA J. WARREN
SARAHANA W. ZANDBERG
General Attorney

JAMES D. BENJAM
GAYLA L. FLETCHER
COLLEEN A. LAURENT
LOUISE A. REES
JAMES C. STROO
Assistant General Counsel
JAY M. SADDLEMAN
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,

Joanna L. Regier
Joanna 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
NOV 14 1985
INTERSTATE
COMMERCE COMMISSION

NOV 14 11 36 AM '85

5-3/8F-022
NOV 14 1985
Folio 450.00
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 Railroad 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 consolidation 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 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.

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.

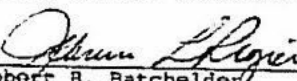
Labor Protection

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

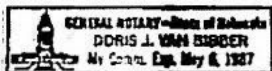
VERIFICATION

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.

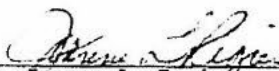



Notary Public

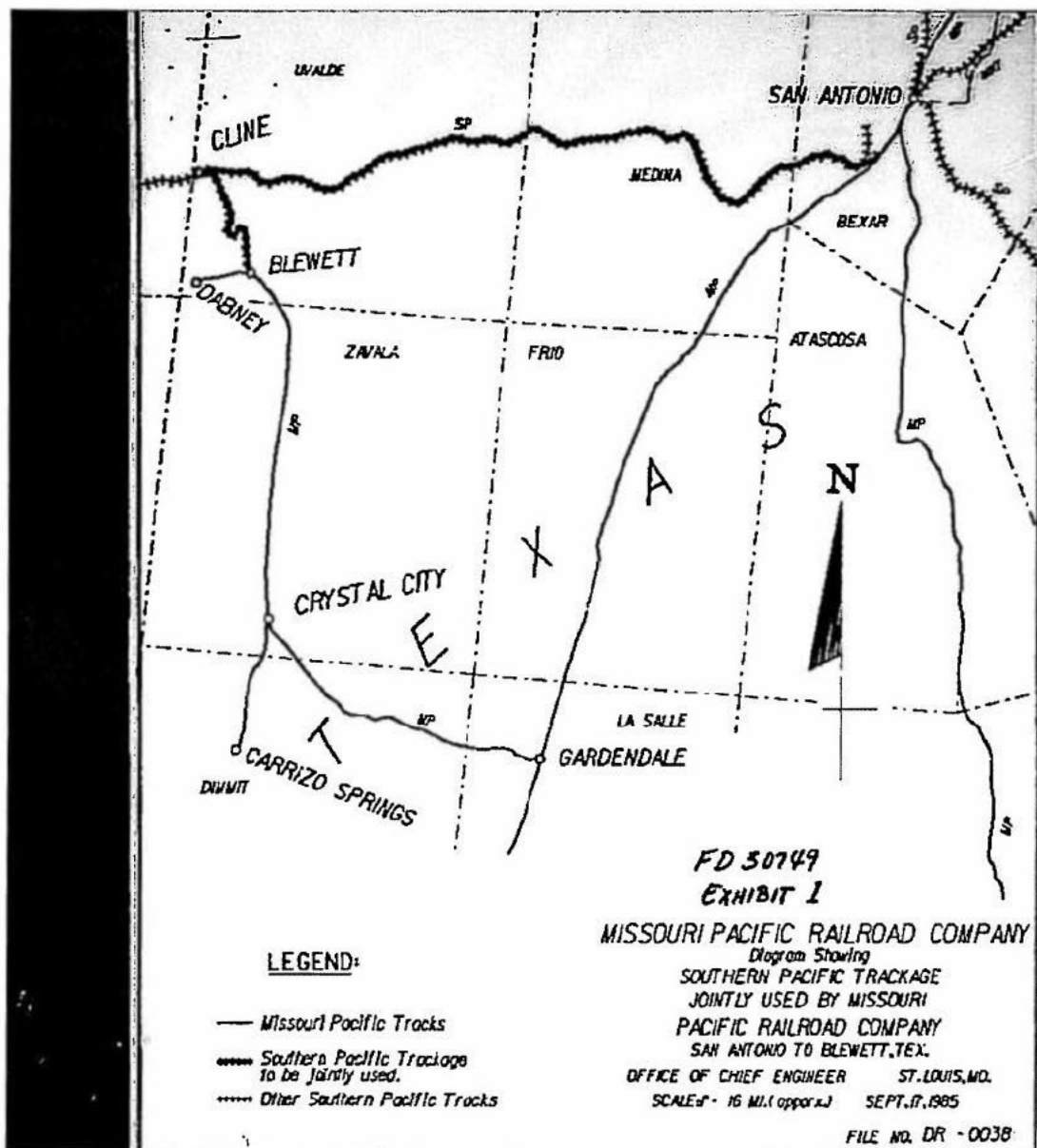
CERTIFICATE OF SERVICE

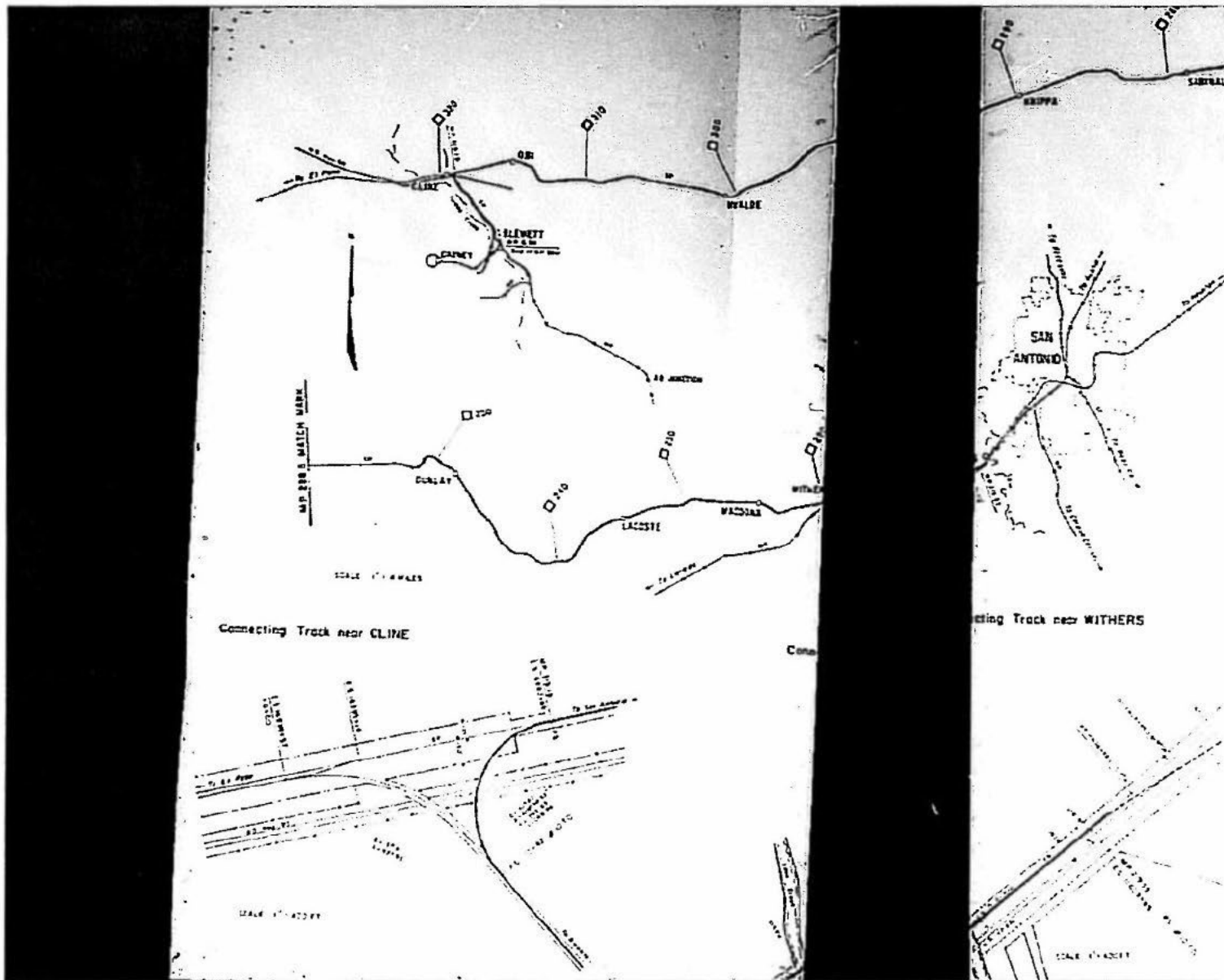
I hereby certify that I have on this date served a copy of the foregoing document, in accordance with the Commission's Rules of Practice, upon all parties of record.

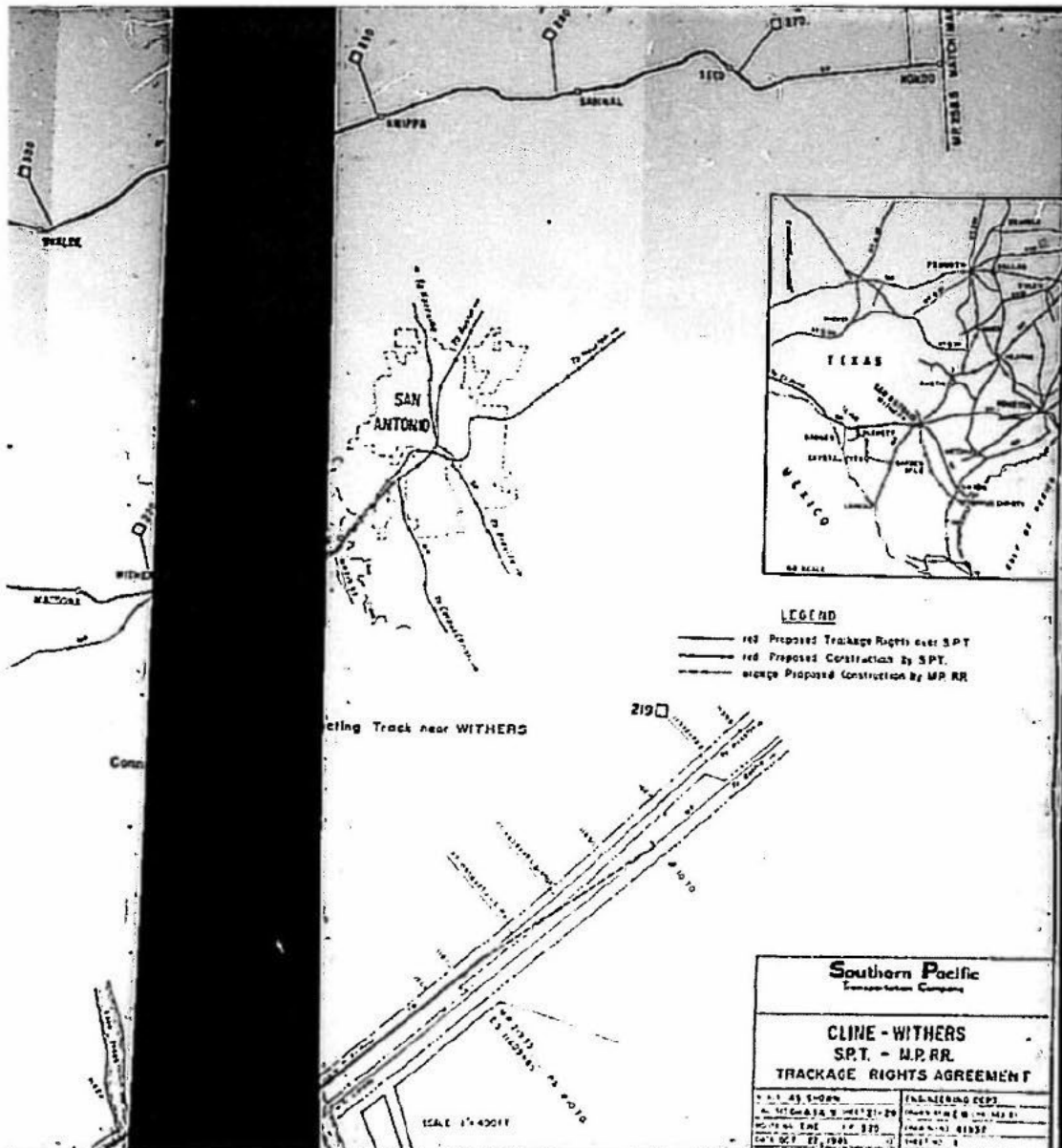
Dated at Omaha, Nebraska this 13th day of November, 1985.



Jeanna L. Regier







AGT
Raj
217
312
Ind
Incl
Dlew
Nove
Fet1
ray
will

00300

(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 Cline, 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**

L&N DEPARTMENT



1418 DODGE STREET OMAHA, NE 68179



WILLIAM R. HIGGINS
PAUL A. CONLEY JR.
Assistant Vice President-Law
FREDERICK W. HEAD, III
Assistant Vice President
Chair & Capital Management
JOSEPH J. ACHES
Assistant Vice President
Business Affairs
L. JAMES BERGMANN
Assistant General Counsel

WILLIAM D. BARK
MAURE R. GOODWIN
Assistant General Counsel
ROBERT E. WALKLEY
General Counsel-Corps
ROBERT S. BATHCHLER
LEONARD CHANG
LAWRENCE E. WICKER
General Counsel-Corps
FOREST A. KRUTTER
Attorney General

JAMES V. DOLAN
Vice President-Law

JOSEPH D. ANTHONY
MARK A. KALAFUT
R. DEWANE OSTERMAN
NANCY A. PERKINS
SHELBA A. WARRICK
BARBARA W. ZANDERSON
General Secretary

JAMES D. BENAK
GARLA L. FLETCHER
COLLEEN A. LAMONT
LOUISE A. BROWN
JAMES C. EYKOO
Assistant General Secretary
JOY M. BACHMAN
KEVIN E. MAYLER
STEVEN C. JACKSON
Attorney

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

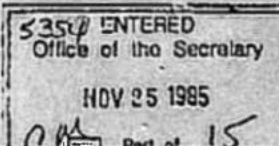
Dear Mr. Bayne:

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

Enclosure



(1-13.)

C1011(JL)

11-15-85

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-Blewett, Texas, and MP desires to obtain the right to operate over SP's trackage between San Antonio (Wichers) and Cline, Texas, including industrial lead trackage at Cline, in order to permit the abandonment by MP of its trackage between Blewett 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

Paul of
Made: [initials]

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

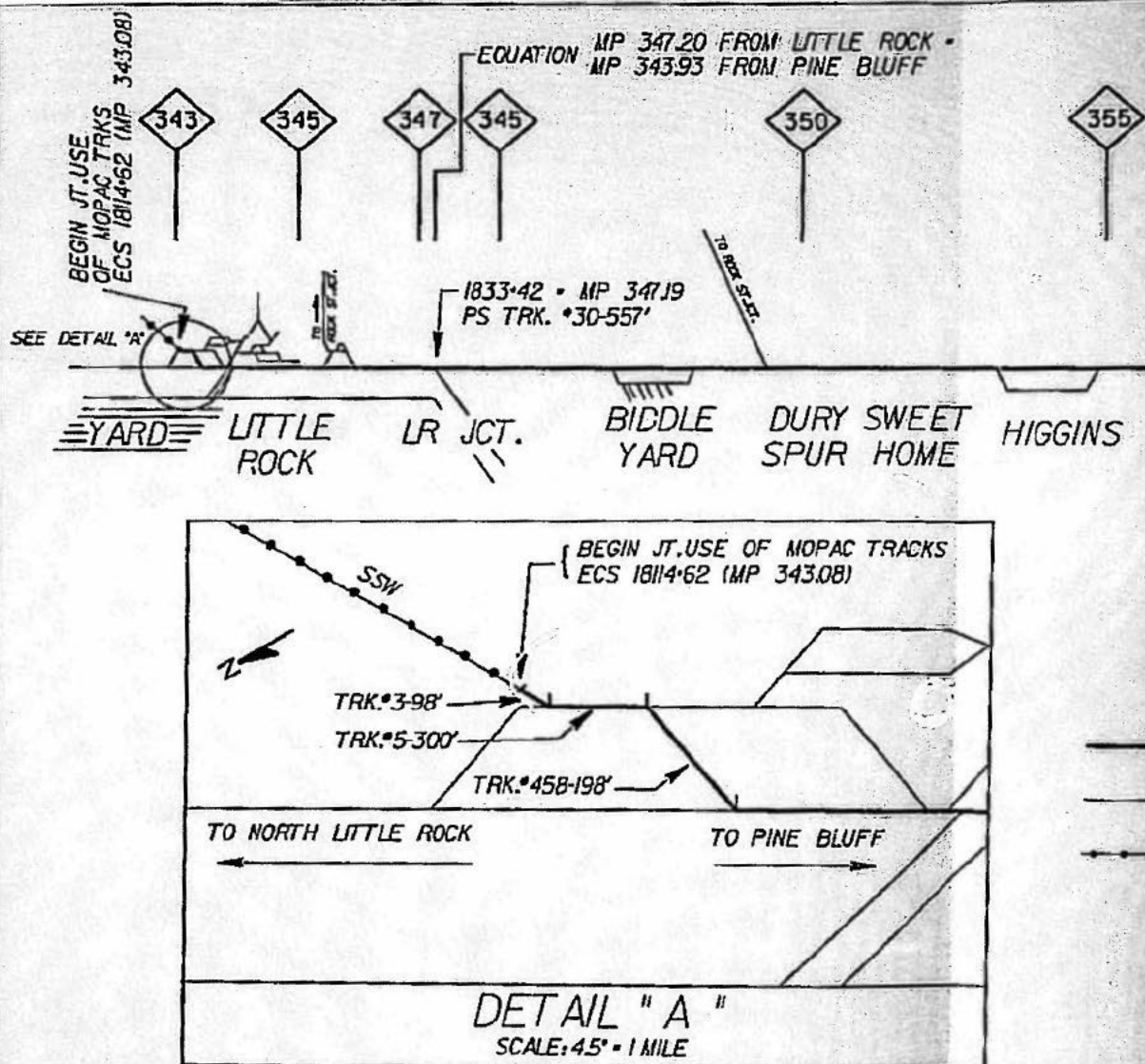
By L. J. Furlow
(Title) Assistant Vice President-Contracts

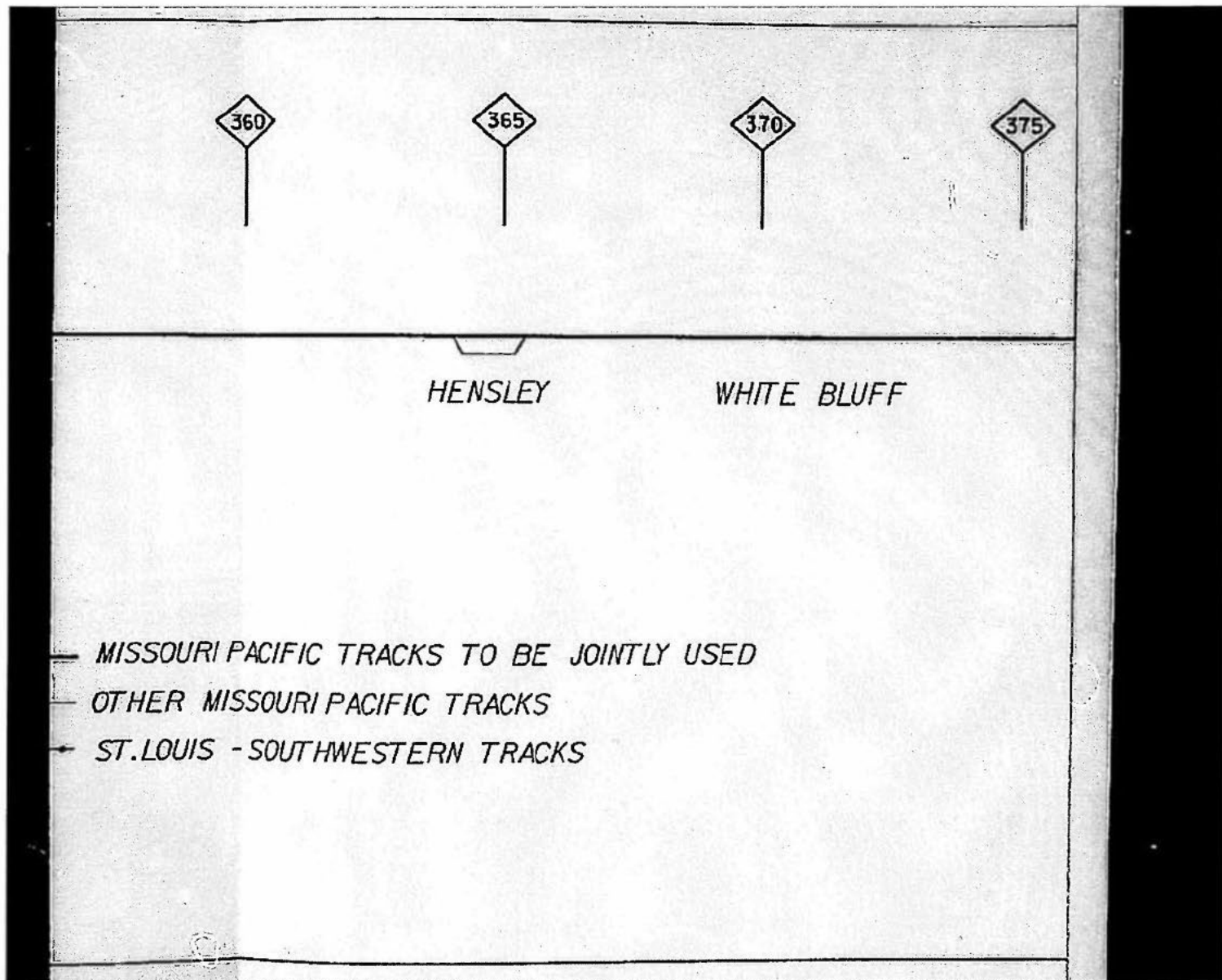
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

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

MISSOURI PACIFIC RAILROAD COMPANY

By R. H. Davidson
(Title)





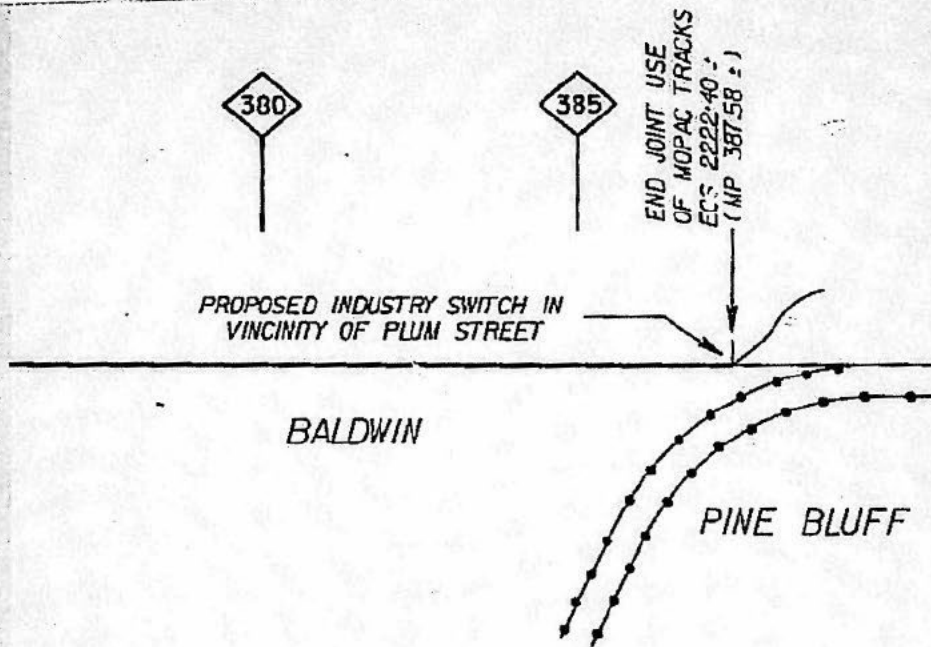


EXHIBIT "A"

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

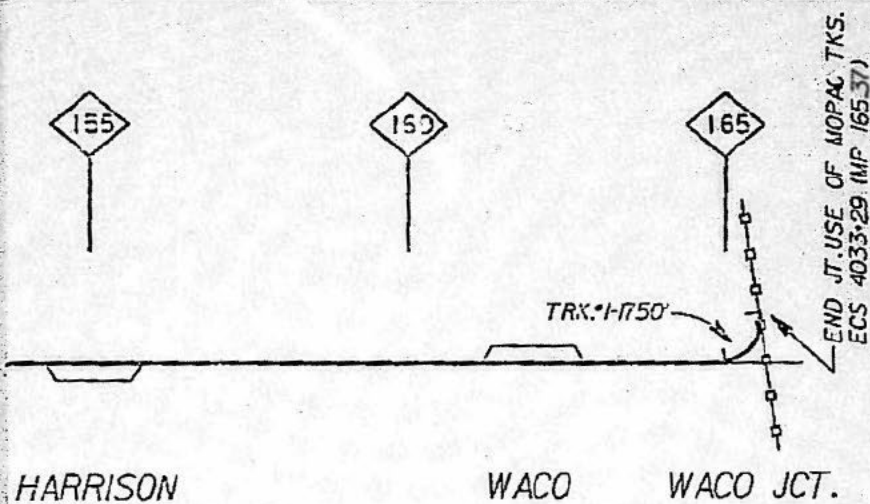
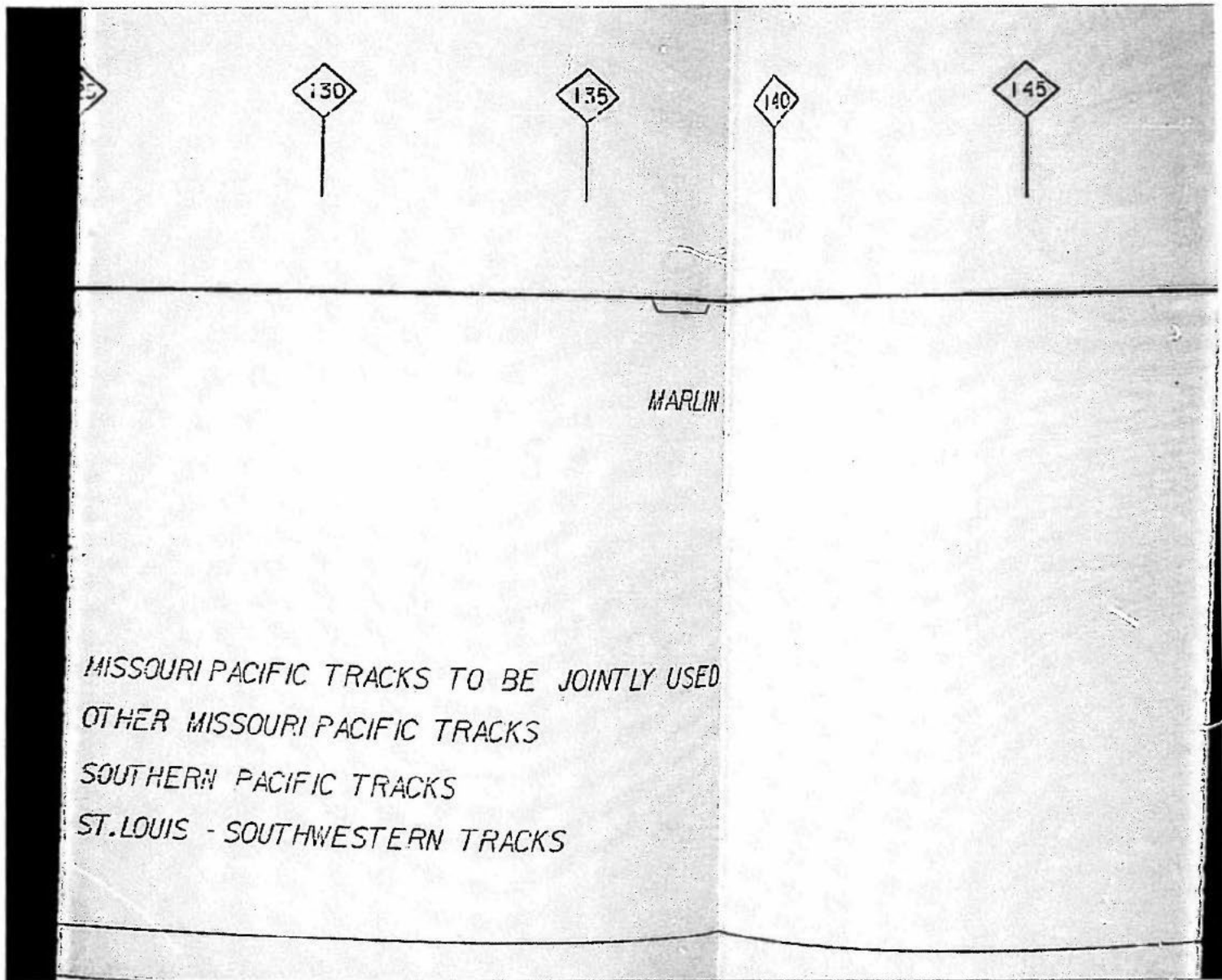


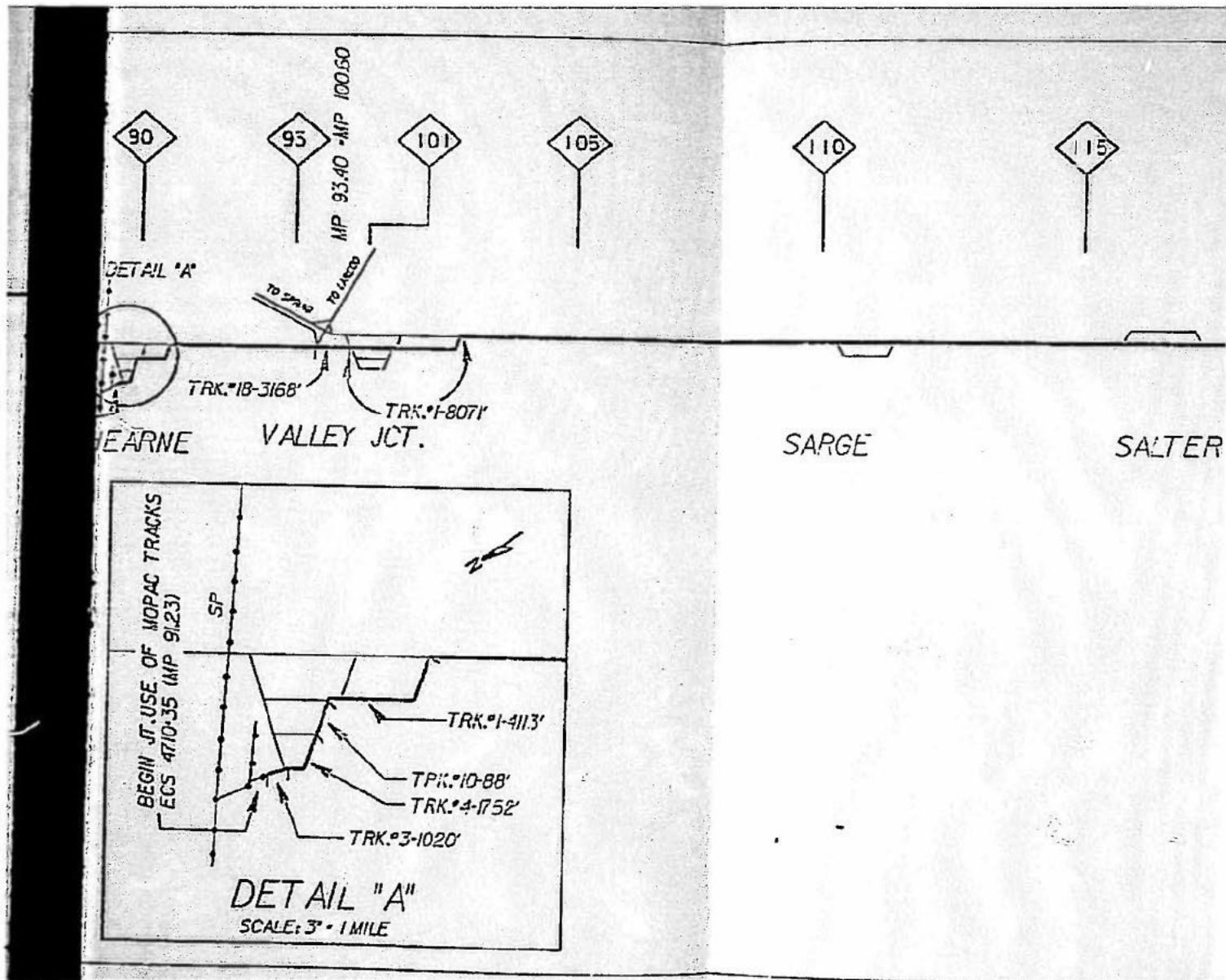
EXHIBIT "B"
MISSOURI PACIFIC RAILROAD COMPANY
DIAGRAM SHOWING
Missouri Pacific Tracks Jointly used by
Southern Pacific Rwy. Co.
HEARNE to WACO, TEXAS

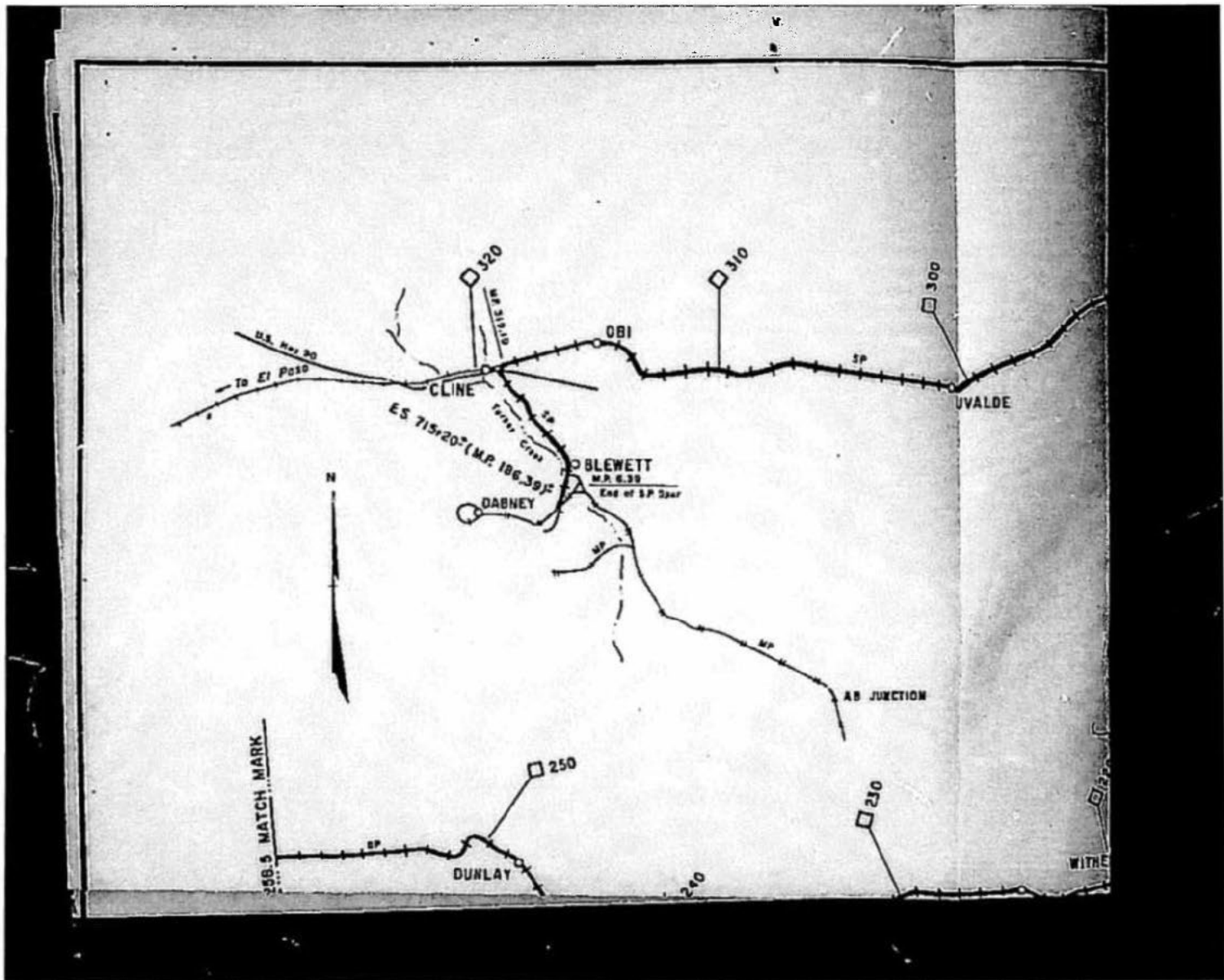
Office of Chief Engineer
Scale 1" = 2 Miles

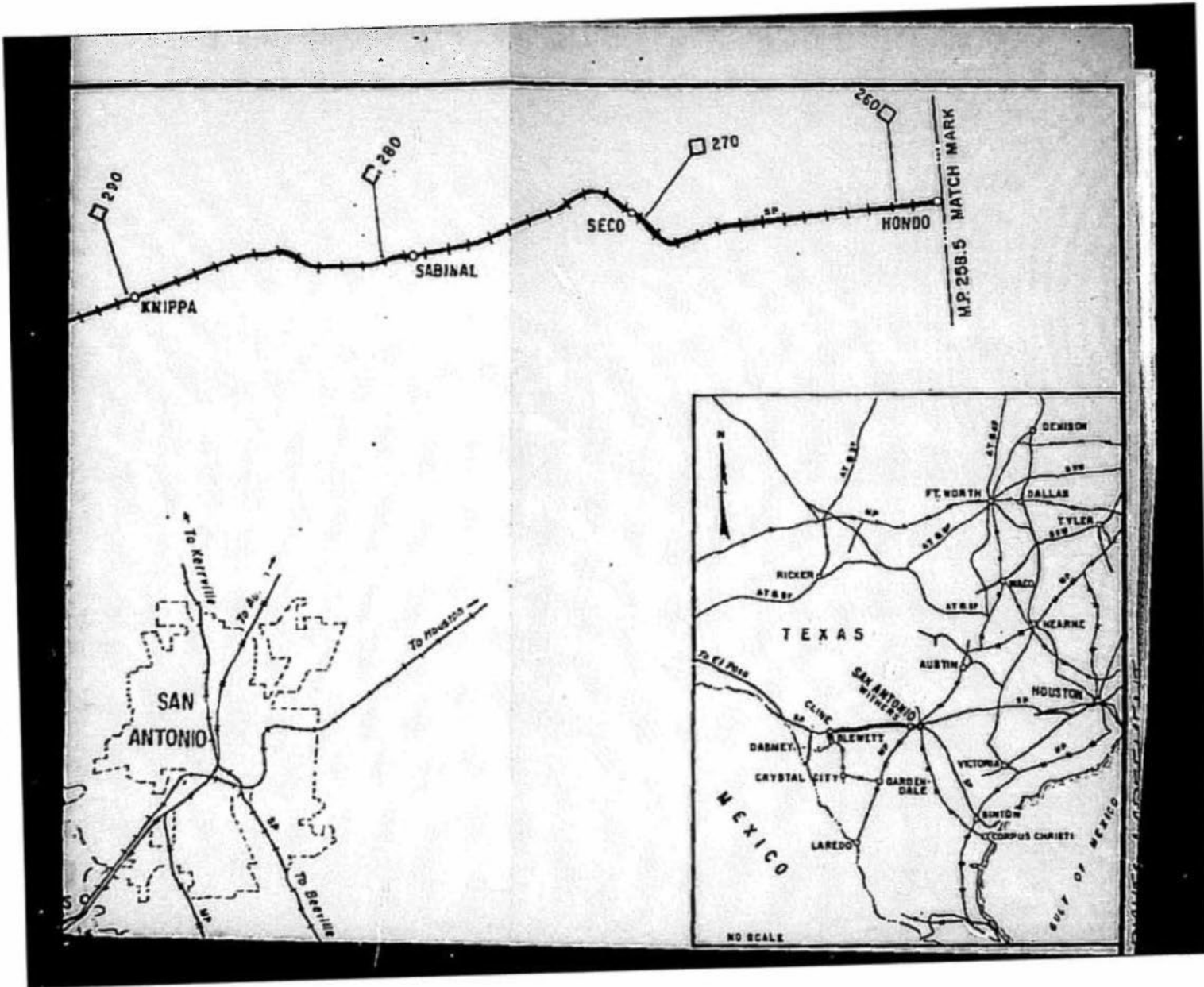
St. Louis, Mo.
November 1, 1985

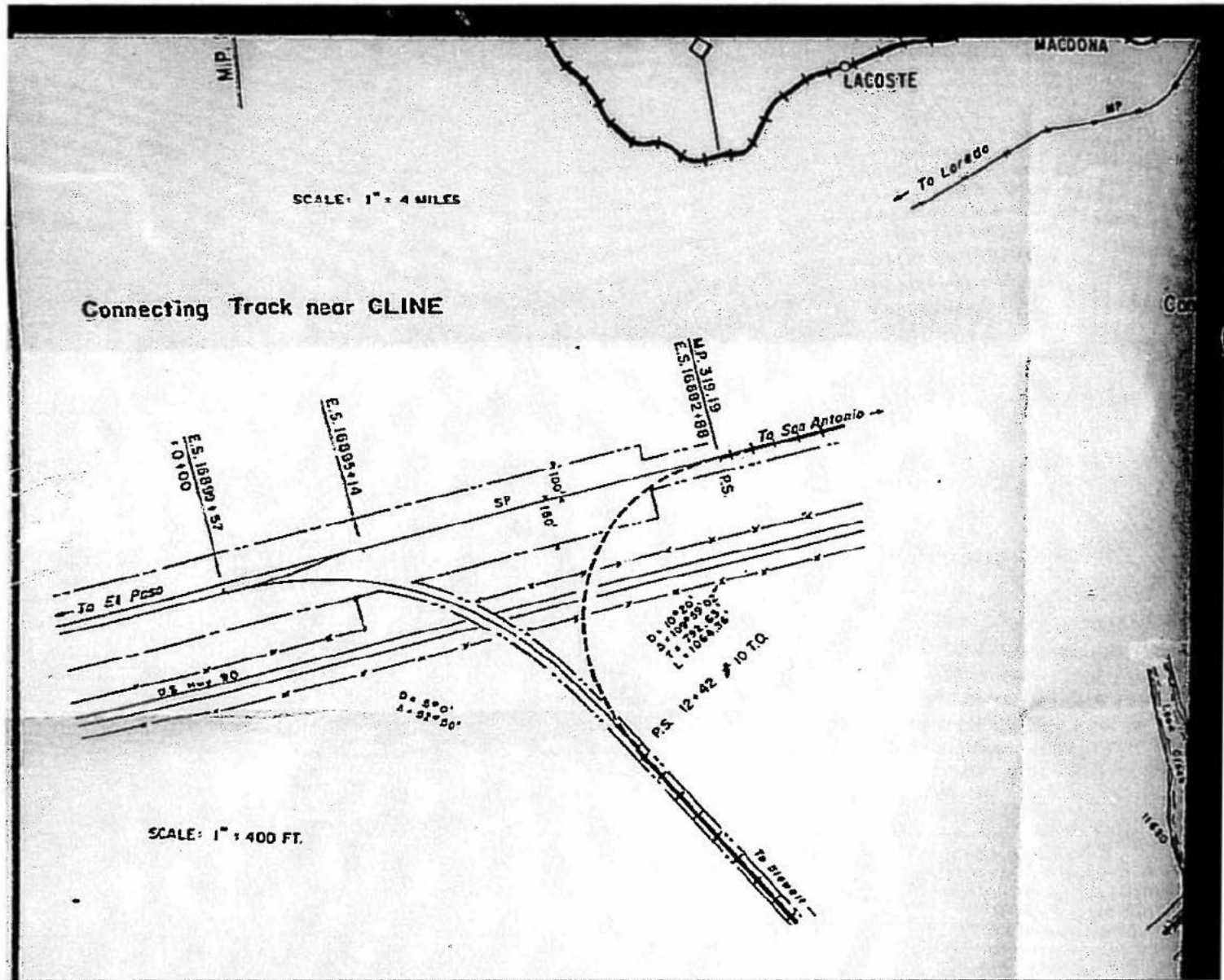
MIS
OT.
SOU
ST.











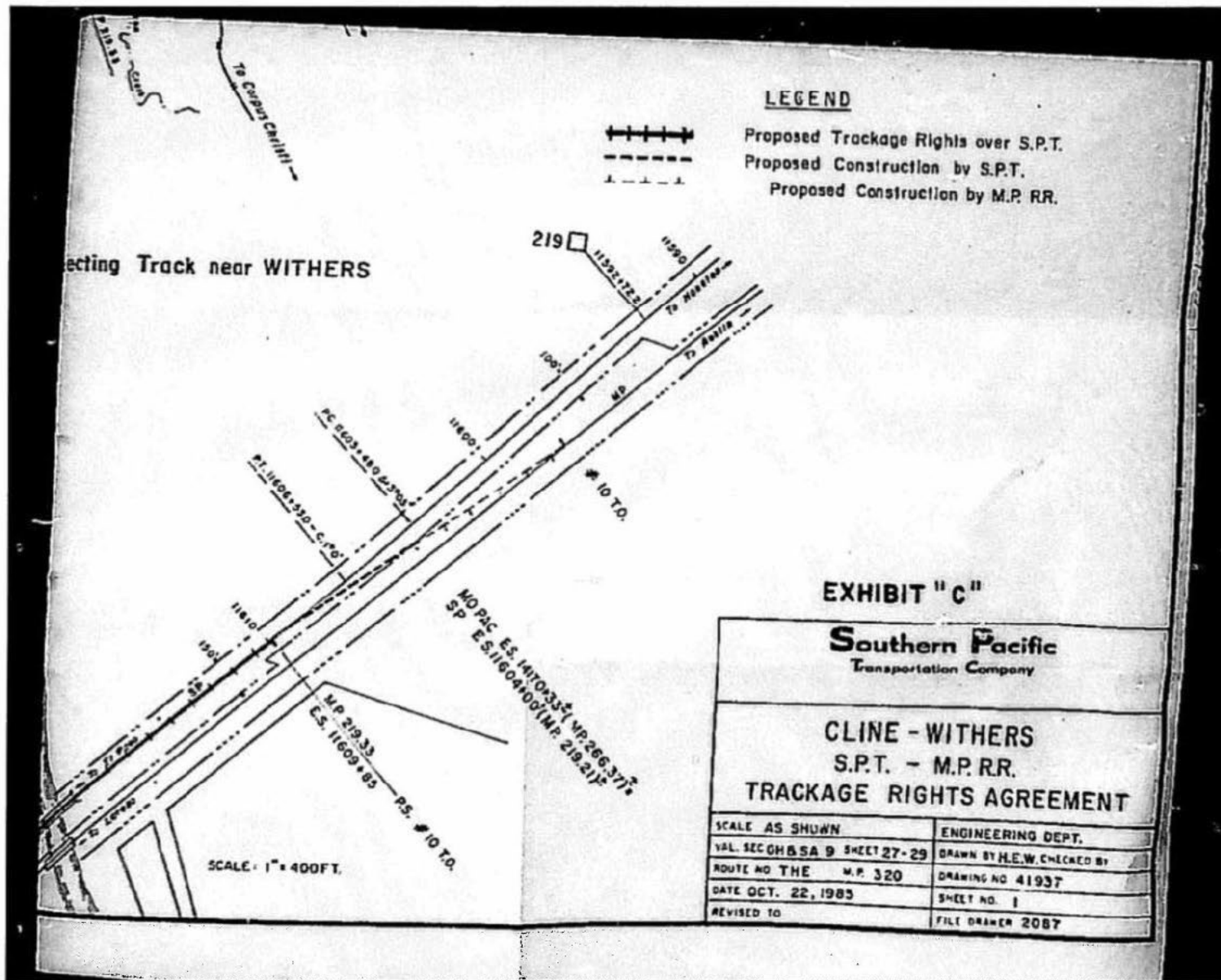


EXHIBIT "D"

Sheet 1 of 2

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

RAILROAD ANNUAL REPORT R-1 (GENERAL) 4101

RAILROAD OPERATING STATISTICS

LINE DESCRIPTION	SP (1922)	ADJUSTED TO "FURNISHING"	SP (1922)	ADJUSTED TO "SWITCHING"
1 TRACK				
6 REPAIRS - RUNNING	112,674	419,841	111,654	119,816
12 TIES - RUNNING	6,027	6,027	6,027	6,027
14 RAIL - RUNNING	29,664	29,664	19,572	19,572
16 OTHER TRACK MATERIAL - RUNNING	14,253	14,253	11,370	11,370
18 BALLAST - RUNNING	8,478	8,478	8,371	8,371
20 TRACK LAYING AND SURFACING - RUNNING	5,115	5,115	5,111	5,111
22 SIGNALS AND INTERLOCKERS - RUNNING	52,576	52,576	41,770	41,770
169 SIGNAL MACHINES	4,647	4,647	4,272	4,272
172 SIGNALS AND INTERLOCKERS - RUNNING	15,012	112,605	12,012	19,541
174 SIGNALS AND INTERLOCKERS - RUNNING	24,336	24,336	15,519	15,519
226 REPRESENTATION - RUNNING	9,124	9,124	3,411	3,411
TOTAL		479,571	TOTAL	510,661

SYSTEM CAR MILES
REFERENCE 712 - 1,145,664

INTERCHANGE
EXPENSE PER
CAR MILE

99.0925

AGREED RATE

90.0761

90.0912

* Prorated to Furnish in the same proportion that the expenses
included in the maintenance portion of the 1922 rate are allocated
between Furnish and Switching

** Not a separate item after 1922 under Depreciation accounting

PROPOSED FLAT RATES PER CAR MILE

	SP	SW
RENTAL	99.0726	99.0219
MAINTENANCE	99.0675	99.0741
TOTAL	99.1121	99.1153

AGREED FLAT RATES

RENTAL	90.0710
MAINTENANCE	90.0910
TOTAL	90.1120

TOTAL AGREED
FLAT RATE

RAILROAD ANNUAL REPORT R-1 1504

INVESTMENT IN RAILWAY 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 INTERLOCKERS
12. SIGNAL MACHINES
13. SIGNALS AND INTERLOCKERS
14. SIGNAL MACHINES

INVESTMENT PER CAR MILE

* Prorated to Furnish in the same proportion that the expenses
included in the maintenance portion of the 1922 rate are allocated
between Furnish and Switching

1 of 2

EXHIBIT "D"

Sheet 2 of 2

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

RAILROAD ANNUAL REPORT 6-1 (COMBINE 1923)

INVESTMENT IN RAILWAY PROPERTY USED IN TRANSPORTATION SERVICE

LINE	DESCRIPTION	SP (1922)	ADJUSTED TO "RUNNING"	RP (1922)	ADJUSTED TO "RUNNING"
1	ENGINEERING	827,217	724,599	824,191	118,185
2	LAND FOR TRANSPORTATION PURPOSES	59,987	53,859	43,878	35,589
3	BUILDING	277,482	213,587	151,367	170,916
4	OTHER RIGHT-OF-WAY EXPENDITURES	1,534	1,405	2,175	1,742
5	BRIDGES, TRESTLES AND CULVERTS	152,554	137,274	124,922	99,317
6	RAILS	67,857	61,035	56,773	45,444
7	WHEELS	158,447	149,683	152,141	121,875
8	STEEL TRAIL MATERIAL	122,913	111,379	151,775	121,541
9	BALLAST	55,331	52,417	57,607	48,132
10	TRAIL LAYING AND SLEEPERS	56,476	54,834	70,931	56,661
11	ROADWAY BUILDINGS	7,874	7,979	3,022	2,471
12	STATION AND INTERLOCKERS	157,283	141,746	94,672	75,772
13	STATION BUILDINGS	51,625	46,417	47,454	38,691
	TOTAL		81,077,761	TOTAL	1722,775
	SYSTEM CAR MILES (SCHEDULE 755 - LINE 4-123)		1,705,144		1,455,071
	INVESTMENT PER CAR MILE				
	TOTAL INVESTMENT		81,5457		17,5755
	SYSTEM CAR MILES				
	PROPOSED RENTAL FACTOR				PROPOSED RATE
	INVESTMENT PER CAR MILE 1/2 OF 191		10.0221		10.0213

* 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

PUBLIC VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 32760 (SUB-NO. 49)

BNSF RAILWAY COMPANY
—PETITION FOR CLARIFICATION—
SERVICE TO COLORADO MATERIALS

EXHIBIT J

December 4, 2012 Email from UP's Dave Purcell (UP-COMAT-001705)

HIGHLY CONFIDENTIAL

PUBLIC VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 32760 (SUB-NO. 49)

BNSF RAILWAY COMPANY
—PETITION FOR CLARIFICATION—
SERVICE TO COLORADO MATERIALS

EXHIBIT K

MP Tariff 8173-C, Supplement 149, Section 5, Item 2400-A (UP-COMAT-001273 at
001362)

IL CC A-503

**SUPPLEMENT
TO**

ICC MP 8170-C



MISSOURI PACIFIC RAILROAD COMPANY

SUPPLEMENT 149

TO

TARIFF MP 8170-C

(Cancels Supplements 78, 89, 127, 134, 135, 136, 137, 138, 146 and 148)

Supplement 149 and Special Supplements shown on page 2 herein contain all changes.

LOCATION OF NEW OR CHANGED ITEMS

The latest complete list of all new or changed items in effective Supplements is published in this Supplement.

ABSORPTIONS OF SWITCHING AND OTHER TERMINAL CHARGES

AND

ALLOWANCES

AT STATIONS

ON

**MISSOURI PACIFIC RAILROAD
DONIPHAN, KENSSETT & SEARCY RAILWAY**

(Except as Noted in Item 325)

THIS TARIFF APPLIES ON INTRASTATE TRAFFIC IN THE STATES OF ARKANSAS, COLORADO, ILLINOIS, KANSAS, LOUISIANA, MISSOURI, NEBRASKA, OKLAHOMA, TENNESSEE (MEMPHIS) AND TEXAS.

SWITCHING TARIFF

ISSUED OCTOBER 17, 1994

EFFECTIVE DECEMBER 2, 1994

K. H. SCHROEDER
Manager-Pricing Services
Omaha, Nebraska

Issued by
G. OSLER
Publishing Officer
1416 Dodge St.
Omaha, Nebraska 68179

(D.W.C.)

PUBLIC VERSION

SUPPLEMENT 149 TO TARIFF MP 8170-C

SECTION 5 DEFINITION OF SWITCHING LIMITS				
ITEM	STATION	BETWEEN MILE POST (Except as noted)	AND MILE POST (Except as noted)	
[41] 2400-A	ALL STATIONS (EXCEPT AS OTHERWISE PROVED)	Points within yard limits. (DQ-2929)		
ITEM	STATION	APPLICATION		
[89] 2607	SWITCHING LIMITS - EAST ST LOUIS, IL (DQ-3104)	East St Louis to Mitchell Yard, IL, inclusive Valley Jct, IL, on the north to Bixby, IL inclusive, on the south, including Sugar Loaf, IL on the east. Also includes the following stations: Dupo, IL Granite City, IL Madison, IL Maplewood, IL Mitchell, IL Nameoki, IL		
[89] 2608	SWITCHING LIMITS - ST LOUIS, MO (DQ-3104)	Main Line west from St Louis to Valley Park, MO, Lake Line to but not including MATCO, MO: Main Line south from St Louis to and including Jefferson Barracks, MO: All points on the Carondelet Line. Also includes the following stations: Alpha, MO Barretts, MO Big Bend Road, MO Billman Spur, MO Brentwood, MO Carondelet, MO Coke Station, MO Collopy Spur, MO East Kirkwood, MO Glendale, MO Grant, MO Grasso Spur, MO Ivory, MO Kirkwood, MO Lake Jct, MO Larimore, MO Maes Spur, MO Maplewood, MO Oakland, MO Tesson Road, MO Webster Groves, MO		
ITEM	STATION	POINTS FROM WHICH MILE POST LOCATION SHOWN HEREIN IS COMPUTED	FROM MILE POST DIRECTION	TO MILE POST DIRECTION
[41] 2641	AbileneTX (DQ-2929)	TexarkanaAR/TX	403.52 on east	411.7 on west.
[41] 2641.01	AldineTX (DQ-2929)	PalestineTX	137.6 on north	140.2 on south.
NOTE. Includes facilities of West Hardy Pipe Yard.				
[41] 2641.02	AlmedaTX (DQ-2929)	HoustonTX	9.4 on north	13.7 on south.
NOTE. Includes facilities of Metal Arts Co. (MACO)				