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BEFORE THE
SURFACE TRANSPORTATION BOARD

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NOR 42185

WESKAN GRAIN LLC V. KANSAS & OKLAHOMA RAILROAD, LLC

**KANSAS & OKLAHOMA RAILROAD, LLC'S MOTION TO
REJECT THE COMPLAINT OR, IN THE ALTERNATIVE,
FOR EXPEDITED DETERMINATION OF JURISDICTION AND
BIFURCATION OF THE PROCEEDING**

EXPEDITED CONSIDERATION REQUESTED

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OKLAHOMA RAILROAD, LLC**

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I. INTRODUCTION AND RELIEF REQUESTED

Defendant Kansas & Oklahoma Railroad, LLC (“K&O”) respectfully requests that the Surface Transportation Board (the “Board”) reject the subject Complaint outright as an abuse of process. In the alternative, or pending a preliminary Board inquiry into the *bona fides* of the motives of Complainant Weskan Grain LLC (“Weskan”), K&O requests that the Board bifurcate this proceeding to separately determine the threshold jurisdictional issue of market dominance before proceeding, if necessary, to the rate reasonableness phase. Further, consistent with Board precedent, K&O requests that the Board hold the rate reasonableness phase—including all related Stand-Alone Cost (“SAC”) discovery and motions—in abeyance pending the resolution of the market dominance inquiry pursuant to the procedural schedule offered below.¹

¹ The present motion is supported by the testimony of William Brennan, Ph.D, former Director of the Office of Economics and Chief Economist of the Surface Transportation Board (“V.S. Brennan”) (attached as Ex. A) and Zachary G. Boehme,

The subject Complaint fundamentally inverts the traditional Board-administered rate case paradigm. The Board’s SAC test, part of the larger Constrained Market Pricing (“CMP”) framework, was designed to protect truly captive, localized shippers from the monopolistic pricing power of Class I rail carriers. *See Coal Rate Guidelines*, 1 I.C.C.2d 520, 524-25 (1985) (“CMP is an appropriate regulatory framework that will meet our dual objectives of providing railroads the real prospect of attaining revenue adequacy while protecting captive coal shippers from ‘monopolistic’ pricing practices”), *aff’d sub nom. Consol. Rail Corp. v. United States*, 812 F.2d 1444 (3d Cir. 1987).

That is far from the factual reality here. Weskan is a subsidiary of the Soloviev Group, a highly capitalized global conglomerate with varying investment interests.² Together with its affiliates and wholly-owned subsidiaries, the Soloviev Group is executing a broader strategy of vertical integration across the agricultural supply chain—a strategy that specifically includes the aggressive pursuit of railroad assets with mixed results.³ Weskan seeks a SAC rate prescription for a single,

Senior Vice President, Rail – Sales of Watco Companies, L.L.C (“V.S. Boehme”) (attached as Ex. B).

² Those investment interests include Crossroads Agriculture, consisting of farms and ranches across 400,000 acres of land in Kansas, Colorado, and New Mexico; Colorado Pacific Railroad, LLC (“CXR”), and Colorado Pacific Rio Grande Railroad, LLC (“CXRG”); premier real estate in Manhattan and Texas; wind and solar energy; a vineyard; and various hospitality ventures. *See* Ex. C, selected pages from <https://solovievgroup.com/>.

³ *See KCVN, LLC & Colo. Pac. R.R.—Feeder Line Appl.—Line of V & S Ry. Located in Crowley, Pueblo, Otero, & Kiowa Cntys., Colo.*, FD 36005 (STB served July 31, 2017) (approving CXR and KCVN, LLC’s (“KCVN”) application to force the sale of V & S’s Towner Line); *KCVN, LLC & Colo. Pac. R.R.—Feeder Line Appl.—Line of Union Pac. R.R. Located in Pueblo, Fremont, Chaffee, Lake, & Eagle Cntys.*,

unprecedented, short-haul grain transportation route from Scott City, Kan., to Stockton Siding (Sheridan Lake), Colo. As discussed more below, the Soloviev Group's leadership has publicly admitted that its goal in the agricultural sector is to eliminate the likes of third-party logistics services companies such as K&O, all while using highly questionable tactics to gain a competitive advantage over other agricultural market competitors in the region.

By attempting to gerrymander the transportation market around the footprint of its Stockton Siding facility, Weskan purposely conflates its preferred corporate supply chain with market captivity. Weskan's insistence that regional grain must be funneled exclusively through its Stockton Siding facility to serve the Soloviev Group's broader commodity logistics ambitions is driven by mere business preference, not economic necessity. K&O is not a monopolistic gatekeeper capable of foreclosing access to any grain destination markets. It is rather simply declining to subsidize Weskan's highly specific, vertically integrated business model, and it is defending itself against a complainant that has deployed repeated and ongoing litigation against K&O as leverage intended ultimately to compel K&O to relinquish K&O's Scott City-Towner line (if not the entirety of its railroad network) to Weskan's CXR affiliate. *See* Ex. D, Map 5 (showing K&O's rail network).

Colo., FD 36386 (STB served Mar. 13, 2020) (rejecting the joint CXR and KCVN application to force the sale of Union Pacific Railroad Company's ("UP") Tennessee Pass line); *Colo. Pac. Rio Grande R.R.—Acquis. & Operation Exemption Containing Interchange Commitment—San Luis & Rio Grande R.R.*, FD 36656 (STB served Jan. 5, 2023) (notice of exemption for CXRG to acquire approximately 150 miles of track in southern Colorado).

As former Board Chief Economist William Brennan notes in his attached testimony, this dynamic bears the hallmarks of classic economic rent-seeking. *See* V.S. Brennan at 11-13. Weskan seeks to use the asymmetrical burdens of SAC discovery to exert leverage over a complementary transportation asset by seeking to route traffic through a single-served intermediate facility when robust alternative transportation options exist (and evidently are being used) for handling the subject commodities. *Id.* at 13-14; *see also* V.S. Boehme at 4. The Board should not permit a well-capitalized shipper to engineer a transportation bottleneck and then weaponize the Board's regulatory processes—meant for truly captive shippers—to force a short line into a submissive partnership.

Bifurcation would protect against Weskan impunity to engage in regulatory abuse where its desire for an immediate plunge into a sprawling and costly SAC discovery assault is a calculated harassment and leverage tactic. The objective is to deploy the asymmetric financial burden of SAC litigation against a traditional grain-gathering Class III short line (rarely, if ever, the legitimate target of predatory accusations) to force an artificial subsidy of Weskan's local market position with depressed rates or to aggressively leverage a forced sale of its franchise to the Soloviev Group—a tactic rendered even more egregious by the fact that Weskan's shuttle facility has barely three years of operational history.

As demonstrated in Dr. Brennan's written testimony, the economic and transportation realities of the challenged grain transportation service raise substantial doubt as to whether K&O possesses market dominance. The Board

should never allow its resource-intensive SAC procedures to be utilized as leverage for predatory corporate acquisitions or anticompetitive market manipulation, but certainly not before the agency’s statutory jurisdiction is established. Accordingly, the Board should not permit Weskan to force K&O into the asymmetrical, resource-driven burden of SAC discovery based on a manufactured bottleneck. Instead, K&O is entitled to the bifurcated proceeding proposed below to demonstrate how alternative line-haul gateways and motor carriage actively discipline the regional market, thereby precluding a finding of market dominance and potentially putting an end to an utterly unnecessary and abusive litigation exercise.

II. PROCEDURAL HISTORY, ADMINISTRATIVE CONTEXT, AND EXPEDITED CONSIDERATION REQUEST

On December 17, 2025, Weskan Grain LLC (“Weskan”) filed a Pre-Filing Notice of Complaint challenging a specific, and separate, set of rate quotes issued by Defendant Kansas & Oklahoma Railroad, LLC (“K&O”) in early December 2025. Following the appointment of Board mediators, the parties engaged in a mediation period ultimately terminated by the mediators on March 6, 2026.

Subsequently, Weskan submitted a *new* request for revised rates and service terms. In response, K&O issued a separate set of common carrier rate quotes on March 19, 2026, featuring distinct operational terms and service parameters—specifically, non-dedicated manifest service in 50-car blocks—that had not been subject to the previous mediation. On March 25, 2026, Weskan advised K&O that it would begin moving traffic under these newly quoted March 2026 rates while reserving its right to challenge them.

On April 17, 2026, rather than filing a new Notice of Intent to trigger the mandatory 70-day pre-filing and mediation track required for these new rates, Weskan instead filed what it styled as a Petition for Waiver alongside a formal Rate Reasonableness Complaint, attempting to retroactively fit its new rate challenge into the December 2025 docket line.⁴ Simultaneously—and without any live regulatory schedule authorizing active litigation—Weskan served its massive First Requests for Admissions, Interrogatories, and Requests for Production of Documents directly upon K&O. *See* Ex. E.

K&O timely filed its Reply in Opposition to Weskan’s Amended Petition for Waiver on May 4, 2026. In addition to demonstrating Weskan’s failure to establish good cause for a retroactive waiver, K&O raised a formal Request for Procedural Clarification, actively contesting Weskan’s recycling of the original docket number and requesting guidance from the Board on whether this attempt to bypass mediation over entirely new rates must be dismissed or reassigned to a separate, new docket.

As of the date of this filing, the Board has not yet ruled upon Weskan’s April 17, 2026, Petition for Waiver or K&O’s request for procedural clarification. As matters currently stand, K&O files this Motion to account for the substantial, automatic operational mandates embedded within the Board’s default rules of

⁴ Later that same day, Weskan filed an Amended Petition for Waiver, again with its formal Rate Reasonableness Complaint, to supersede its combined filing from earlier that day.

procedure if the Board were to cross the threshold and allow the Complaint to proceed without the benefit of agency-sponsored mediation.

Under the standard regulatory framework, an order from the Board granting Weskan's waiver and accepting the Complaint would instantly activate "Day 0" of a rigid statutory Stand-Alone Cost ("SAC") procedural clock under 49 U.S.C. § 10704(c)-(d) and 49 C.F.R. § 1111.9. In the absence of a standalone motion to bifurcate, this automatic trigger would drop an immediate avalanche of severe litigation deadlines onto K&O simultaneously:

- **Day 20:** K&O would be required to file its formal Answer to the Complaint under 49 C.F.R. § 1111.5(a).
- **Day 30:** Pursuant to 49 C.F.R. §§ 1114.26 and 1114.27, K&O would face an instant, mandatory obligation to serve full written answers, responses, and legal objections to the sprawling, enterprise-wide discovery demands already sitting on its desk.

While deep-bore discovery requests into system-wide operational and financial data are standard traits of an active SAC case, allowing these immense burdens to hit a Class III short line immediately creates a profound case-management task (as Weskan knows). Without a dedicated bifurcation order from the Board, the standard rules would require K&O to instantly expend massive private resources defending a full SAC rate case and modeling a hypothetical Stand-Alone Railroad ("SARR") design. This enormous defensive burden would unfold unchecked before the Board has established its statutory jurisdiction by determining whether K&O possesses qualitative market dominance over the unique 78-mile intermediate short line railroad movement at issue, and all while K&O

(along with UP) is actively defending itself in Kansas Federal Court against allegations that K&O's proposed terms to govern its lease of lines owned by UP violate federal and state antitrust laws.⁵

Because of these pending procedural contingencies and in the event the Board were to grant Weskan's unprecedented waiver request and decline to order mediation over this new rate dispute, K&O respectfully requests expedited consideration of this Motion before the SAC procedural schedule would begin. To be clear, prompt action on this Motion is pressing if, and only if, the agency were to deviate from its standard regulations by granting Weskan's unprecedented Petition for Waiver to bypass the advanced notice of intent process and mandatory Board-sponsored mediation. If the Board were to deny Weskan's request and order mediation in accordance with its standard procedures, the immediate threat of an automatic Stand-Alone Cost schedule is abated, and the need for expedited consideration of this bifurcation request is likely rendered moot.

However, should the Board grant the waiver, the immediate activation of the statutory procedural clock would force K&O into the very discovery avalanche this Motion seeks to prevent. Expedited action is therefore necessary under that specific contingency to ensure the Board evaluates whether to reject the Complaint entirely and the threshold jurisdictional question before K&O is severely prejudiced by an abrupt advance into the rate reasonableness phase.

⁵ *Weskan Grain LLC v. Kansas & Oklahoma R.R., LLC*, No. 2:26-cv-02053 (D. Kan. filed Jan. 27, 2026).

III. THE LEGAL STANDARD FOR BIFURCATION

The Board's authority to adjudicate rate reasonableness is strictly conditional. The Board may only consider the reasonableness of a challenged rate if the defendant rail carrier possesses market dominance over the transportation at issue. 49 U.S.C. § 10707(b)-(c). While the Board's default procedural schedule would provide for the concurrent consideration of market dominance and rate reasonableness evidence, the agency may depart from such a schedule and bifurcate a SAC proceeding where a defendant presents evidence raising "considerable doubts" about the existence of market dominance. *Sierra Pac. Power Co. v. Union Pac. R.R.*, NOR 42012, slip op. at 4 (STB served Jan. 26, 1998).

In *Total Petrochemicals USA, Inc. v. CSX Transportation, Inc.*, NOR 42121, slip op. at 6-7 (STB served Apr. 5, 2011), the Board reaffirmed this standard, finding that there was "considerable uncertainty about market dominance," bifurcating consideration of the issues, and explicitly postponing the presentation and consideration of rate reasonableness evidence until the complainant had proven that the defendant carrier had market dominance over the issue traffic. The Board explained that bifurcation would "spare the time and expense of filing rate reasonableness evidence where the carrier [is] not found market dominant." *Id.* at 4; see also *M&G Polymers USA, LLC v. CSX Transp., Inc.*, NOR 42123, slip op. at 1 (STB served May 6, 2011).

The facts of this case fully satisfy the *Total Petrochemicals* bifurcation standard. The economic evidence K&O offers here demonstrates that its quoted

rates are constrained by pervasive intramodal and intermodal competition, rendering a simultaneous dual-track procedural schedule fundamentally prejudicial, particularly here, where the plaintiff's *modus operandi* is to use the burden of discovery (and litigation generally) as leverage to an ulterior objective.

To secure bifurcation, K&O need not *definitively* disprove market dominance now. Instead, K&O must only demonstrate that Weskan's naked assertions of captivity are subject to "considerable doubt" in light of real-world competitive factors. As demonstrated below, the complex transportation realities of the western Kansas agricultural market easily clear this threshold, necessitating a dedicated discovery and evidentiary phase to resolve the Board's jurisdiction before assessing the challenged rates under the exhaustive SAC methodology. In evaluating this motion, the Board should consider the substantial and unnecessary cost (in both time and money) that Weskan, K&O and the Board itself would incur under strict adherence to the default schedule, especially since the facts of this case (the length of the challenged movement, the shipper involved, and a short line railroad defendant) make the case before this agency all the more conspicuous.

IV. ARGUMENT

A. Weskan's Alleged Captivity Is a Self-Serving Contrivance.

Weskan dedicates a mere four sentences in its Complaint to the threshold jurisdictional issue. Rather than providing substantive economic evidence of captivity, Weskan relies entirely on bare assertions, flatly declaring, "[t]here is no economically feasible transportation alternative to K&O rail service."

Compl. ¶ 18. However, to secure bifurcation, K&O need only demonstrate that such bare assertions are subject to “considerable doubt.” Weskan attempts to sidestep such doubt by relying upon a fundamental fallacy regarding the volume capacity of its facilities at Scott City and Stockton. Specifically, Weskan claims that “[t]ransporting the volumes of grain Scott City East was constructed to process and ship by truck would be prohibitively costly compared to maximum reasonable rail rates.” Compl. ¶ 20. In other words, Weskan attempts to define the relevant market entirely by the engineered capacity of its own facility, rather than the economic mobility of the commodity itself, and it alleges that the trucking option (an option that otherwise would go begging if not addressed, even if superficially, in the Complaint) forecloses the alternative use of trucks to ship grain to Stockton.

Weskan’s argument deliberately ignores the fundamental origin mechanics of the grain market. The actual grain origin is the farm, not Weskan’s elevator. Consequently, Weskan’s market dominance claim fails regardless of the grain’s actual origin. Where Weskan sources grain from independent, third-party farmers, those farmers possess the ultimate economic leverage, utilizing highly elastic motor carriage to seek the best price among competitive options. *See* V.S. Brennan at 6-7. Conversely, where Weskan processes grain originated by the Soloviev Group’s own upstream affiliates (such as Crossroads Agriculture), Dr. Brennan confirms such routing is a closed-loop corporate transfer. Weskan cannot claim K&O possesses market dominance over Weskan’s own vertically integrated supply chain because the Board’s market dominance protections are designed to

remedy a lack of competitive transportation options, not to subsidize the specific logistical configuration of a vertically integrated conglomerate.

B. The Railroad's R/VC Ratio Reflects the Realities of Low-Density Short Line Economics, Not Market Dominance.

Weskan relies on raw revenue-to-variable cost ("R/VC") ratios exceeding the 180% statutory floor to imply *per se* captivity. But Weskan's rhetorical ploy is legally and economically hollow. As detailed in Dr. Brennan's testimony, applying a raw R/VC metric to a short-haul, low-density movement of 78 miles on a speed-restricted line provides a deeply distorted picture of market power. V.S. Brennan at 2-3. On a short-haul movement, fixed terminal and switching costs are spread over a remarkably small number of line-haul miles, mathematically inflating the R/VC ratio regardless of the carrier's actual pricing power. *Id.*

The issue movement's R/VC ratio is an inescapable mathematical product of short-haul fixed-cost allocation and profound operational risk, not empirical evidence of a short line railroad monopoly. As Mr. Boehme details, K&O's network has historically functioned as a west-to-east gathering system. *See* V.S. Boehme at 5. Handling unprecedented, uncommitted westward blocks of traffic over the western end requires significant physical plant improvements to handle heavy-tonnage degradation. *Id.* at 6. Furthermore, because Weskan provides no volume assurances and the timing of empty railcar releases is entirely unpredictable, K&O must plan for highly inefficient operational cycles. *Id.* at 7. Delivering a single block to Stockton Siding forces K&O to absorb the cost of two entirely uncompensated light-engine deadhead moves—one to return power to Scott

City after dropping off the loads, and a second to retrieve the empties at an unknown later date. *Id.* 7-8.

Absent volume commitments to offset these massive capital and operational variables, K&O must price this risk into its rates by structuring its quote around non-dedicated manifest service. *Id.* at 8. Crossing the statutory 180% threshold on a 78-mile route under these specific operational constraints merely reflects the higher cost of handling uncommitted, highly speculative traffic and assuring K&O can earn a return on the traffic; it cannot be weaponized by Weskan as *per se* evidence of captivity. Moreover, and for good reason, 49 U.S.C. § 10707(d)(2) clearly mandates that an R/VC ratio at or above 180% does not establish a presumption that the rail carrier possesses market dominance nor that the rate at issue is unreasonable. *See E.I. DuPont de Nemours & Co. v. Norfolk S. Ry.*, NOR 42125, slip op. at 51 & n.10 (STB served Mar. 14, 2014).

C. Data-Driven Agricultural Economics Raise “Considerable Doubt” About Market Dominance.

When analyzed through the lens of empirical agricultural economics, K&O’s rates are demonstrably constrained by a highly elastic, dynamic, and competitive market.

i. Weskan purposely ignores the market realities of grain transportation.

Weskan’s assertion of market dominance rests fundamentally on a flawed premise regarding access to motor carrier competition (or the alleged lack of the same). Weskan baldly alleges that transporting the volumes of grain its Scott

City East facility was clearly constructed to process by truck would be “prohibitively costly” and poses “no effective competitive constraint.” Compl. ¶ 20. However, this assertion ignores established agricultural economics, the complainant’s own operations and promotional literature, and the true origins of the traffic at issue.

First, the proliferation of high-capacity shuttle loading facilities has expanded motor carrier draw radii. Available data indicates that industry analysis uses up to 250-mile distances as standards for assessing the cost-effectiveness of trucks in grain logistics, confirming that producers routinely utilize long-haul trucking to reach high-capacity shuttle locations and processors. *See* V.S. Brennan at 6-7; see also Informa Economics, *Heavier Semis: A Good Idea?* (Jan. 2015).

Because bulk commodities such as soybeans, corn, and winter wheat utilize the same commercial hopper-bottom trucking fleets and operate under identical logistical economics, this 250-mile capability reflects the true, interchangeable capacity of the regional grain transportation network. The ubiquity of these high-capacity commercial configurations across the region is well-documented in federal agricultural tracking. *See* Dybing, et al., *Central Plains Grain Farm Truck Fleet & Marketing Patterns*, USDA Agricultural Marketing Service (April 2023) (attached as Ex. WB-3 to V.S. Brennan).

The economic driver behind this expanded radius is the shuttle facility basis premium. Empirical agricultural economic studies confirm that shuttle facilities offer statistically significant cash bids that financially incentivize farmers to bypass local elevators and haul grain over much longer highway distances. *See*

V.S. Brennan at 10–11; *see also* Bekkerman & Taylor, *Influence of Shuttle Loaders* (Aug. 2017) (“Cash price bids at shuttle-loading elevators are higher than at conventional elevators”) (attached as Ex. WB-5 to V.S. Brennan). To capture these premiums, farmers rely heavily on their own modernized, high-capacity transportation assets. Empirical data focused specifically on Central Plains operations confirms that regional farmers, including those in Kansas, actively maintain and operate massive commercial-grade truck fleets.

Five-axle trucks are the most commonly owned and operated farm truck, comprising 56 percent of the regional farm fleet and utilized 95% of the time by producers hauling their own grain, with average loaded capacities exceeding 80,000 pounds. *See* V.S. Brennan at 6; *see also* Dybing, et al., *Central Plains Grain Farm Truck Fleet & Marketing Patterns*, USDA Agricultural Marketing Service (April 2023) (attached as Ex. WB-3 to V.S. Brennan). This extensive farm-level ownership of heavy commercial configurations ensures that local producers possess the immediate asset mobility to react to regional market premiums and substitute local elevator drops for longer, more lucrative regional hauls.

Second, the structural elasticity of this draw radius is magnified by Stockton Siding’s unique dual-carrier access, a distinct competitive advantage overlooked by generalized, dated economic models, and a factor conveniently downplayed by Weskan. Unlike standard shuttle facilities that often are served by a single Class I carrier, the Stockton Siding facility enjoys outbound line-haul access via CXR to both BNSF Railway Company (“BNSF”) and UP. This dual-

carrier access creates a line-haul bidding war of sorts for Weskan’s outbound traffic—particularly for lucrative corridors serving Pacific Coast export terminals and western domestic feedlots. By playing these two rail giants against one another, Weskan could extract compounding transportation cost savings that conventional, single-served elevators likely cannot match.

This dual-carrier procurement expansion is a mathematically documented reality in regional grain markets. The USDA itself has presented empirical evidence to this Board demonstrating that access to a second Class I carrier fundamentally alters local grain elevator pricing dynamics by suppressing outbound rail rates, which elevators subsequently convert into higher local cash bids. *See, e.g.,* Comments of the U.S. Dep’t of Agric., EP 711 (Sub-No. 1), at 5-6 (filed Oct. 26, 2016) (detailing the economic multiplier of rail-to-rail competition on local agricultural basis). As Dr. Brennan explains, facilities utilize these competition-generated savings to outbid competitors, structurally elongating their geographic draw radii along major highway corridors. *See* V.S. Brennan at 8. Ultimately, this “competition premium” gives Weskan a profound commercial reach beyond a traditional draw radius, as farmers accept longer truck hauls to capture the financial windfall of a rate structure optimized by Class I competition.

This empirical reality—that shuttle facilities dually served by multiple line-haul carriers (BNSF and UP in this case) generate basis premiums that expand the competitive truck draw—exposes the fatal flaws in Weskan’s Complaint. If Weskan is attempting to attract independent, third-party grain to Stockton it must

actively compete against specifically documented Class I basis premiums, proving the regional market is fiercely competitive and wholly unconstrained by K&O. If, conversely, Weskan is simply directing its affiliated Crossroads Agriculture grain to ignore these premiums and feed its own sole-sourced elevator at Stockton Siding, that routing is a closed-loop corporate transfer. A vertically integrated conglomerate's internal decision to forgo regional basis premiums in favor of its own downstream logistics is a private business calculation, not evidence of an absence of effective transportation competition. *See* V.S. Brennan at 9.

Third, the viability of trucking these grain volumes is expressly corroborated by Weskan's public marketing and operations. It strains credulity for Weskan to argue that trucking the necessary volumes to Stockton is practically unviable, while simultaneously marketing a state-of-the-art destination facility engineered specifically to receive massive volumes of long-haul truck traffic.

Weskan boasts that its 2,200-acre Stockton facility provides "limitless staging room for trucks," featuring a staggering "70,000 Bushels Per Hour Receiving Capacity" supported by a bucket elevator system capable of emptying a standard 1,000-bushel truck hopper in "about one minute." *See* Ex. F, Weskan Grain Facility at Stockton, from <https://weskangrain.com/facility/>. Weskan also operates a network of eleven regional facilities, many of which are off-rail and rely entirely on motor carriers to bridge the gap to rail-loading terminals. *See* Ex. D, Maps 1 to 4 (showing Weskan grain-gathering facilities and 50- and 100-mile radii around Weskan's Scott City and Stockton facilities as points of reference for

considering the availability of truck competition). Truck-based gathering of massive volumes is the very foundation of its business model. *See* Ex. G, The Competitive Advantage, from <https://weskangrain.com/advantage/> (“Prior to the construction of the Weskan facility, local farmers who needed operations / equipment capable of handling unit trains were required to send their trucks to Cheyenne Wells, Sharon Springs, or Coolidge. However, none of these facilities are served by both BNSF and Union Pacific, which left farmers without choice and leverage. The Weskan Grain facility is the only trainloader within reasonable trucking distance of its tributary territory.”); *see also* Ex. D, Maps 1 to 4.

Fourth, Weskan’s geographic premise is fatally incomplete, deliberately obscuring the true origins of the grain. Weskan attempts to establish market dominance by drawing an artificial line strictly between K&O’s Scott City elevators and Stockton Siding. However, grain originates on farms, not in elevators. Weskan, which operates in tandem with its sister company, Crossroads Agriculture—a massive regional farming enterprise on its own—has notably failed to identify the specific farm origins from which it intends to source grain. The regional geography provides a direct, straight-line east-west highway corridor (via State Highway 96) connecting the Scott City agricultural area directly to the Colorado border and the Stockton facility. *See* Ex. D, Map 6. Without identifying the actual farm origins—some of which may be significantly closer to Stockton than Scott City, and which may be in many cases very close to alternative shuttle-ready elevators—Weskan’s claim that utilizing this direct highway network to bypass the

K&O is economically unviable is dubious, especially given its destination facility's express design to rapidly process massive truck deliveries from its broader network.

Fifth, Weskan's definition of the relevant transportation market ignores the profound impact of "load-out competition" (V.S. Brennan at 5-8) at the actual point of origin. As Dr. Brennan explains, the qualitative market dominance inquiry must begin before grain is ever committed to Weskan's Scott City facility, because grain in western Kansas originates on farms and is initially gathered by truck. At this crucial farm-gate level, farmers possess substantial transportation optionality and are not a captive supply base.

The western Kansas agricultural landscape is a densely packed, highly competitive market. Empirical research demonstrates that the average Kansas grain elevator operates in an environment with 26 other elevators within a mere 60-mile radius. *Id.* at 7. This competitive density includes grain elevators located on BNSF and UP main lines that run parallel to the K&O network to the south and north, respectively. Because of this dense proximity, these facilities must compete aggressively to attract farm deliveries. Elevators located on proximate Class I lines routinely pass their shuttle-train cost savings back to producers, actively competing for farm-originated grain in the form of higher local cash prices. *Id.* at 6-7.

Drawn by these higher bids, farmers may deploy their own high-capacity truck fleets—which are a central, documented feature of Kansas grain logistics—to bypass Stockton Siding entirely. Farmers readily utilize these trucks to move their grain to competing intermediate elevators, Class I-served shuttle

facilities, feedlots, or mills within an economically practical distance. *Id.* at 7. Because producers can and do freely substitute K&O’s rail service with truck movements to these alternative, nearby loading options, K&O’s rates are fundamentally disciplined by off-line competition long before a single kernel is ever dumped at Weskan’s Scott City elevator. Weskan’s preferred internal logistics configuration cannot be substituted for an actual absence of effective competition.

ii. Weskan admits that trucks are a thoroughly viable alternative to the handling-intensive K&O short-haul route.

Weskan’s corporate parent has admitted that mass-scale trucking is a viable substitute for the at-issue rail movements. In discussing its strategic grain market aspirations, regional grain logistics, and its recently initiated antitrust lawsuit against UP and K&O, among other issues, the Soloviev Group stated to industry press that Weskan is prepared to utilize or divert the equivalent volume of 25,000 trucks to handle the regional grain flow. *See* Ex. H, Rip Watson, *Lawsuit claims UP, short line blocked grain moves via alternate route*, *Trains* (Feb. 2, 2026).

This staggering admission shatters the core premise of Weskan’s Complaint. Weskan cannot credibly claim to this Board that motor carriage is “prohibitively costly” and offers “no effective competitive constraint” (Compl. ¶ 20) while simultaneously acknowledging to the trade press that a 25,000-truck logistical alternative is actively available to move—and currently does move—western Kansas grain to Stockton Siding. This admission alone is basis for “considerable doubt” about K&O’s market dominance to warrant bifurcation.

iii. The 78-mile route falls squarely within the zone of optimal, efficient, and exempt motor carrier economics.

In establishing the streamlined market dominance test, *see Market Dominance Streamlined Approach*, EP 756 (STB served Aug. 3, 2020), the Board codified a 500-highway-mile threshold, below which a complainant cannot utilize the streamlined procedures due to the presumed viability of over-the-road trucking. The K&O movement sits at the epicenter of optimal motor carrier economics. For farm-sourced grain to move via K&O's intermediate rail service to far western destinations via Stockton Siding shuttle loading (and CXR-UP/BNSF service beyond), it must endure significantly more handling compared to the all-truck route. Under the K&O service scenario, grain arriving from local farms must be dumped, elevated, loaded into railcars at Weskan's Scott City elevator, transported roughly 78 miles to Stockton Siding, where it is unloaded again. Direct farm-to-destination trucking eliminates this massive double-handling friction, establishing a definitive price ceiling. *See V.S. Brennan at 9.*

The economic viability of these farm-direct highway movements is further cemented by federal regulatory exemptions. Under the Moving Ahead for Progress in the 21st Century Act (MAP-21), farmer-owned trucks transporting agricultural commodities within a 150-air-mile radius of the farm are categorically exempt from federal Commercial Driver's License and Hours of Service requirements. *See 49 U.S.C. § 32934; see also Ex. I, Federal Motor Carrier Safety Administration, Farm, Ranch, and Agricultural Transportation Exemption Reference Guide Covered Farm Vehicle Exemptions*, available at

https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/regulations/hours-service/elds/396526/agricultural-reference-guide_0.pdf. The 78-mile route from the Scott City area to Stockton Siding falls easily within this exempt zone.

Consequently, farmers can deploy their own exempt fleets to bypass K&O and deliver directly to Weskan without incurring the premium overhead, regulatory logging, or labor costs associated with commercial motor carriers.

Weskan's acknowledged reliance on a 25,000-truck logistical alternative proves that this price ceiling actively governs the market. Where a shipper possesses the operational capability and economic incentive to substitute 25,000 over-the-road truck movements for a complex, intermediate short-haul rail movement, the intermediate rail carrier categorically lacks monopolistic market dominance. The Board cannot justify subjecting K&O to the massive, asymmetric burdens of SAC discovery when Weskan has admitted to possessing and using an active, high-volume motor-carrier alternative. *See Watson, supra*.

iv. K&O's status as an expendable intermediary precludes market foreclosure.

If Weskan were to attempt to shield itself from Phase I (Market Dominance) discovery by characterizing alternative BNSF and UP shuttle facilities as impermissible "geographic competition," such an argument would fundamentally misapprehend the Board's own policy rationale. The Board's simplifying decision to no longer consider geographic competition is rooted in a desire to prevent market foreclosure—specifically, the concern that monopolistic rail rates might force a captive shipper to abandon its chosen destination market and sell its goods

elsewhere. *See Mkt. Dominance Determinations—Prod. & Geographic Competition*, 3 S.T.B. 937, 949 (1998), *remanded sub nom., Ass’n of Am. R.Rs. v. STB*, 237 F.3d 676 (D.C. Cir. 2001), *aff’d*, 5 S.T.B. 492 (2001).

That policy concern is entirely absent here because Weskan’s market definition is artificial and gerrymandered. K&O is not a destination carrier; it is merely a 78-mile intermediary link in a massive national and global agricultural supply chain. The ultimate destination markets for this grain—Pacific Coast export terminals, Gulf Coast ports, and domestic feedlots, as examples—are dictated by macroeconomic forces over which K&O has no control.

If western Kansas farmers utilize their motor carrier alternatives to bypass Weskan’s Stockton Siding facility in favor of proximate BNSF or UP shuttle elevators, the evidence is likely to show that these farmers are not foreclosed from a single destination market due to K&O pricing. To the contrary, utilizing those alternative Class I-served elevators can allow western Kansas grain to reach the exact same final consumers without K&O. Because K&O is an expendable intermediary rather than a destination gatekeeper, access to alternative shuttle elevators located along, and line-haul routes offered via, BNSF and UP constitute pure intermodal and intramodal routing substitution, not market foreclosure.

Weskan’s reliance on its own asserted “captivity” potentially to oppose discovery and as a prop for market dominance allegations fatally conflates the physical location of its Scott City loading facility with the economic realities of the agricultural market. While Weskan’s Scott City elevators may be physically served

only by K&O, the commodity at issue—grain—and the farmers who supply it are highly mobile. Physical captivity of a single intermediate handling facility does not equate to market dominance when the underlying grain supply can easily utilize motor carriage and other railroads to bypass that facility entirely and reach the same consumer markets. This fundamental distinction between facility footprint and commodity mobility creates, at a minimum, the considerable doubt required to justify bifurcation. Accordingly, discovery into—and the subsequent presentation of evidence regarding—these alternative Class I gateways during Phase I (Market Dominance) is both economically relevant and legally required.

v. The lack of traffic history confirms transportation optionality.

In keeping with the facts underlying the carrier's successful motion to bifurcate in *Total Petrochemicals*, there is an absolute absence of historical captive traffic volumes moving between Weskan's Scott City East loading facility and the relatively new receiving/re-loading Stockton Siding elevator. *See Total Petrochemicals*, NOR 42121, slip op. at 2 n.3 (STB served Apr. 5, 2011).

The lack of historical data is absolute. As noted above, Weskan only advised K&O that it would begin moving traffic under the newly challenged service parameters on March 25, 2026. Since then, Weskan has shipped one 50-car block of grain westward via K&O. Because this specific service has barely commenced and yielded only a single movement, there is virtually no meaningful historical traffic or revenue data upon which to base a reliable, backward-looking SAC model.

Furthermore, the fact that the CXR line itself was historically rationalized and only recently reactivated serves as macroeconomic proof that the regional agricultural market already possessed robust, alternative transportation routing prior to this arrangement. *See KCVN, LLC & Colo. Pac. R.R.—Feeder Line Appl.—Line of V & S Ry. Located in Crowley, Pueblo, Otero, & Kiowa Cntys., Colo.*, FD 36005, slip op. at 3-5 (describing V & S’s abandonment and discontinuance efforts beginning in 2011).

D. The Board Must Honor Its Statutory Mandate and Evaluate Hub and Route Competition and, in so Doing, Assure It Is Acting in Adherence with the Rail Transportation Policy.

The core of K&O’s initial market dominance defense is that robust transportation alternatives constrain K&O’s pricing power over the move. Weskan’s Complaint attempts to artificially isolate a single, 78-mile rail segment from Scott City to Stockton Siding as a captive bottleneck. This framework ignores the economic reality that the grain at issue is highly mobile, initiates via motor carrier, and has ready access to alternative high-speed shuttle facilities connected to the BNSF and UP networks.

K&O anticipates that Weskan may attempt to thwart certain discovery and stifle the presentation of corresponding evidence concerning nearby, highly truck-accessible Class I alternatives by arguing such a line of analysis entails an impermissible assessment of “geographic competition” under the Board’s *DMIR/DuPont* line of decisions. However, as Dr. Brennan’s testimony establishes, the farm-level optionality in western Kansas is a form of intermodal “load-out

competition,” not geographic competition. Because the commodity, the origin source, and the ultimate consumer markets remain exactly the same, substituting K&O’s rail service with a direct truck haul to a BNSF or UP elevator is pure intermodal and intramodal substitution.

Even if the Board were to apply the “geographic competition” label, the categorical exclusion of these real-world routing alternatives would artificially narrow the Board’s explicit statutory mandate. Under 49 U.S.C. § 10707(a), the Board must determine whether there is an “absence of effective competition” over the traffic. The statute contains no language authorizing the agency to ignore alternative rail networks or the localized truck-to-rail logistics that dominate western Kansas agricultural movements. Like it did with the “Limit Price Test” in *Total Petrochemicals* and *M&G Polymers*, the Board should seek to “gauge objectively” whether there are “practically feasible” alternative transportation options that could replace the entire transportation move and constrain K&O’s pricing. See *Total Petrochemicals & Refining USA, Inc. v. CSX Transp., Inc.*, NOR 42121, slip op. at 4, 17 (STB served May 31, 2013); *M&G Polymers USA, LLC v. CSX Transp. Inc.*, slip op. at 13-14 (STB served Sept. 27, 2012).

If the Board is inclined to categorize as geographic competition the evidence offered here demonstrating that K&O does not have market dominance—a categorization with which K&O fiercely disagrees—good cause exists to waive the Board’s self-induced prohibition of such evidence. Cf., *Mohawk, Adirondack & N. R.R.—Aban. Exemption—in Lewis & Jefferson Cntys, N.Y.*, AB 768X et al., slip op.

at 2, 4-5, 9 (STB served Jan. 14, 2025). In justifying its decision to eliminate consideration of product and geographic competition, the Board “found it unlikely that a shipper with obvious product or geographic competition alternatives would pursue a costly and time consuming rate complaint before the Board.” *Mkt.*

Dominance Determinations—Prod. & Geographic Competition, 5 S.T.B. at 494.

For the reasons already discussed herein—the realities of the grain market as it relates to truck transportation, the short length of the challenged move, the lack of historical traffic, the fact that K&O is an expendable intermediary; and finally, evidence that the Soloviev Group would prefer to also vertically integrate K&O’s line into its own corporate family—the Board should find that good cause exists to allow the use of such evidence to demonstrate that K&O does not possess market dominance under this unique set of circumstances. K&O has demonstrated that, under the right conditions and with dreams of further vertical integration, a shipper with obvious competitive transportation alternatives will indeed pursue a rate reasonableness case.

Additionally, granting K&O’s request to bifurcate this proceeding directly advances the core objectives of the Rail Transportation Policy (“RTP”) set forth at 49 U.S.C. § 10101. First and foremost, bifurcation promotes the expeditious handling of administrative proceedings and minimizes the need for unnecessary federal regulatory control. *See* 49 U.S.C. §§ 10101(2), (15). By resolving the threshold jurisdictional question of market dominance first, the Board can potentially spare the agency and the parties from the staggering expense and time

consumption of SAC discovery. For a Class III short line, being forced to expend considerable sums to litigate a rate that is already constrained by market forces directly undermines the statutory goal of allowing rail carriers to earn adequate revenues on their operational investments. *See id.* § 10101(3).

Furthermore, a dedicated Phase I market dominance inquiry honors the RTP's mandate to allow, to the maximum extent possible, competition and demand for services to establish reasonable rates. *See id.* § 10101(1). As detailed herein, the regional agricultural market is actively disciplined by highly elastic motor carriage and proximate Class I shuttle facilities. Permitting K&O to demonstrate this real-world competition before diving into a hypothetical SAC model ensures that the Board regulates only where effective competition is truly absent. *See id.* § 10101(5).

Bifurcation also explicitly supports the honest and efficient management of railroads. *See id.* § 10101(9). Weskan's refusal to commit to volumes and its insistence upon *ad hoc* service could force highly inefficient network operations—such as uncompensated light-engine deadhead moves—which K&O must responsibly price into its quotes. Also, the Board should not allow its resource-intensive SAC procedures to be utilized to facilitate predatory commercial practices or to extort subsidized rates for inherently inefficient service demands. *See id.* § 10101(12). Ultimately, shielding a Class III short line from this type of regulatory rent-seeking by bifurcating the proceeding would ensure development and continuation of a sound rail transportation system. *See id.* § 10101(4).

Moreover, as recent legal and economic scholarship observes, federal courts historically sustained the Board’s restrictive take on competition by relying strictly on the doctrine of administrative deference. *See* Ex. J, Kristian Stout, *The State of Competition in the US Rail Sector*, International Center for Law & Economics, at Section III (Nov. 4, 2025) (explaining that the Board’s exclusion of broader competition relies on deference to excuse an atextual narrowing of the statute); *see also* *Ass’n of Am. R.Rs. v. STB*, 237 F.3d at 680 (deferring in part to the Board’s interpretation of “market dominance” based on *Chevron U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984)).

However, that doctrine of administrative shielding, originally established in *Chevron*, has now been decisively overruled. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024). In the post-*Loper Bright* era, the Board’s jurisdictional inquiry must adhere strictly to the plain text of the statute. Because Section 10707 demands a real-world assessment of effective competition, K&O is entitled to the bifurcated Market Dominance discovery period proposed below in Section V, below. Only by establishing a dedicated discovery and evidentiary track can K&O demonstrate how alternative line-haul options and multi-carrier access effectively discipline the regional market and preclude an administrative finding of market dominance.⁶

⁶ While CSXT filed its motions to bifurcate in the *Total Petrochemicals* and *M&G* dockets after the completion of discovery, K&O files this motion before discovery has begun because bifurcation would be substantially more efficient and productive in this case. Short lines (and grain elevators) traditionally operate on lean margins, making bifurcation critical to preventing undue economic burden.

E. Bifurcation is Necessary to Protect Non-Party Competitors from Prejudicial Fishing Expeditions

Full Stand-Alone Cost (“SAC”) rate cases are among the most expensive and resource-intensive processes before the agency. *See* STB Rate Reform Task Force, Report to the Surface Transp. Bd. 5-6 (2019) (describing SAC cases as “too expensive for most shippers to bring”). However, this proceeding presents the inverse and more corrosive danger: a complainant for whom the immense litigation cost is not a barrier, but a strategic objective. In this case, the disparity between the limited economic value of the short-haul rate dispute and the staggering cost of SAC discovery creates a perverse incentive structure. For Weskan, the litigation expense is an investment in corporate coercion rather than a “cost of entry.” By forcing a Class III carrier to respond to 116 sprawling discovery requests and 14 interrogatories prematurely served on April 17 demanding years of enterprise-level financial projections, Weskan misuses the Board’s procedural machinery to extract an unearned commercial advantage.

Worse, this discovery is not narrowly tailored to the challenged movement; instead, it constitutes a transparent fishing expedition designed to force the disclosure of sensitive commercial data from both the defendant and, by extension, other market participants in western Kansas. Subjecting a Class III carrier to this staggering burden—and exposing the competitive secrets of the regional grain market—before the Board has even established its statutory jurisdiction allows the Complainant to utilize the mere process of Board-

administered litigation to extract commercial concessions that it could never secure through legitimate market competition.

But this extreme burden falls not only on K&O; it threatens the broader agricultural market in western Kansas. A SAC presentation inevitably requires invasive discovery into the traffic patterns, pricing, and operational realities of non-party shippers—including other agricultural commodity shippers who are direct Weskan competitors.

Weskan's strategic use of Board proceedings to access competitors' sensitive commercial data is not a theoretical concern. During the ALJ-administered discovery phase of the recent leasehold proceeding in FD 36849, Weskan's counsel and consultants (the same ones present here and likely advising the Soloviev Group on related commercial matters) sought access to the private grain transportation contracts, service metrics, and pricing data of various K&O customers. This aggressive discovery tactic prompted non-party Weskan competitors, Bartlett Grain Company, LLC, and The Scoular Company, to formally object (unsuccessfully) to the presiding administrative law judge.

These competitors explicitly warned the Board that standard protective orders are inherently insufficient to protect their proprietary data from Weskan's outside strategists. As Scoular's legal counsel cautioned:

[The contracts] contain Scoular-specific rate information, rail traffic flows, and other sensitive business information that Scoular would not share with third parties, let alone to a competitor of Scoular's. Disclosure of this information, even if limited to Weskan's outside counsel and consultants, would be detrimental to Scoular and its ongoing grain business.

Message from K. Kuhl to Hon. Judge Soulikias, FD 36849 attached as Ex. K.

Bartlett's corporate counsel echoed this exact threat of inevitable disclosure, noting the "high likelihood of prejudice . . . where the outside counsel and consultants receiving such sensitive information are aligned in interest with Weskan and their knowledge . . . will most certainly impact their representation of Weskan in the future." Message from S. Schwend to Hon. Judge Soulikias, FD 36849 attached as Ex. L. By bifurcating this proceeding, the Board can efficiently resolve the threshold issue of market dominance without prematurely exposing the proprietary data of Bartlett, Scoular, and others to a direct competitor.

F. Weskan's Stated Objective of Eliminating the "Middleman" Confirms that the Considerable Burden of SAC Discovery Is a Means to an Ulterior End.

The burden of proceeding to the SAC phase at the outset is magnified by the unique, vertically integrated nature of the Complainant and its lack of operational history. The Soloviev Group owns and operates a broader network of short line railroads that handle agricultural commodities. It has systematically sought to vertically integrate the regional agricultural supply chain by acquiring the farmland (Crossroads Agriculture), constructing the elevators (Weskan Grain), and purchasing the connecting carrier (Colorado Pacific Railroad).

This objective is a matter of public record. Stefan Soloviev, in whose hands control of Solviev Group is vested, has explicitly stated that his overarching business strategy in the agricultural sector is to "cut out the middleman." *See* Ex.

M, Betsy Barnett, *Stefan Soloviev Says First Unit Train Sent on CoPac Railroad from Weskan Grain His Biggest Achievement*, Kiowa County Independent (May 10, 2023). In western Kansas, K&O is that middleman in between parts of the Soloviev Group's emerging agricultural empire. Having failed to acquire K&O's Scott City – Towner leasehold through commercial pressure, Weskan is weaponizing Board procedures to squeeze the “middleman” out by forcing K&O into costly and punitive SAC discovery by its initiation of an antitrust case against K&O and UP in Kansas federal court, and by way of challenging the legal bona fides of K&O's petition for supplemental authorization to continue to lease UP-owned lines comprising the western end of the K&O network (where Weskan assails an interchange commitment arrangement that is categorically inapplicable to any of Weskan's active loading facilities on K&O's system).

If and when Soloviev Group can conceive of another arguable grievance against K&O, it is certain that it will reinforce the message that K&O will find itself in constant legal defense mode unless or until K&O relinquishes its franchise or, at a minimum, accepts Soloviev-dictated transportations rates. Mr. Boehme's testimony confirms this reality on the ground. He notes that Weskan's adversarial stance falls entirely outside commercial industry norms; rather than engaging in the standard dialogue regarding forecasted tonnages and service needs typical of short line customers, Weskan insists on filtering communications through counsel to maintain an aggressive, adversarial posture. *See* V.S. Boehme at 10.

This predatory acquisition strategy is not merely historical speculation; it is active and ongoing. As recently as this year, Soloviev Group leadership publicly admitted to the trade press their explicit desire to outright purchase the UP lines currently leased and operated by K&O, openly expressing frustration over being thwarted in their attempts to secure the corridor. *See* Watson, *supra*. When these public admissions of thwarted acquisition attempts are viewed alongside Stefan Soloviev's stated goal to "cut out the middleman," the true motive behind this rate proceeding becomes undeniable. Weskan is not a captive shipper seeking regulatory relief. It is a frustrated corporate acquirer attempting to use the costly and asymmetrical burden of SAC discovery to manipulate regulatory oversight and leverage a forced acquisition of the K&O franchise outside of standard arms-length negotiations.

The speculative nature of this tactic is laid bare by Weskan's operational timeline. By its parent company's own admission in the above-referenced Kiowa County news article, the very first unit train of shuttle grain shipped out of Weskan's Stockton siding on May 3, 2023. A SAC presentation fundamentally relies on historical traffic and revenue data. Because the facility only commenced unit train operations in mid-2023, and since Weskan has tendered a single 50-car block of grain westward via K&O, there is virtually no meaningful historical data upon which to base a reliable SAC model.

If Weskan desires significantly lower per-carload rates, K&O is willing to offer them, but not based upon entirely speculative traffic flows that, as it is, are

heavily dependent upon numerous externalities, such as droughts, crop shifts, geopolitical impacts on agricultural markets, and even regional market preference shifts (e.g., preferences for shipments to Gulf Coast export vs. Pacific Coast export), to name a few. That is, if Weskan were *genuinely* willing to make binding volume commitments consistent with its stated Scott City throughput projections in place of unsubstantiated volume claims, and if it were willing to assume the risks associated with the aforementioned market dynamics (rather than to insist that K&O assume such risks itself), then K&O can and would offer lower rates—potentially much lower rates—than are offered in its challenged rate quote.

On that note, it appears that Weskan's Complaint is merely about wanting to have its cake (lower rates) and eat it, too (by shifting all volume variation risks on a fledgling service entirely onto K&O). Mr. Boehme explicitly confirms on the record that if Weskan were to enter into a guaranteed volume framework—appropriately addressing the market risk and allowing K&O to optimize crew rotations and eliminate light-engine movements—K&O is prepared to offer Weskan potentially significantly lower per-carload rates. *See* V.S. Boehme at 11. Weskan's refusal to engage in this standard commercial dialogue, choosing instead to launch an immediate SAC discovery assault, confirms that its objective is not competitive pricing, but rather to use regulatory litigation to force a capitulation.

G. The Board Should Reject the Complaint—or, at a Minimum, Bifurcate the Proceeding—to Protect the Integrity of Its Processes.

Weskan's Rate Reasonableness Complaint is not a *bona fide* quest for regulatory relief. It is, rather, a tactical abuse of the Board's processes designed to achieve an ulterior objective. By seeking an immediate leap into full SAC litigation over an unprecedented short-haul route with practically zero traffic history, Weskan seeks to exploit the complexity of regulatory litigation to subvert the Board's processes and manufacture leverage for a forced corporate acquisition where K&O has already advised Weskan's parent that K&O is not for sale.

Weskan's public admissions reveal a calculated, subjective indifference to the merits of its rate claim. By acknowledging the viability of a 25,000-truck alternative and expressing frustration over its thwarted attempts to acquire the K&O line, Weskan concedes in the public forum the presence of pervasive intermodal competition—the very fact that legally defeats a market dominance claim. Furthermore, even assuming *arguendo* that Weskan could somehow survive the market dominance inquiry, the objective economics of litigating a full SAC case over this specific traffic expose the Complaint as a pretext. Because there is virtually no historical traffic to generate meaningful past damages, and the movement is a mere 78-mile haul with uncommitted, highly speculative future volumes, the legitimate financial reward of “winning” a SAC rate prescription (if possible at all) would be completely dwarfed by the cost of the litigation itself.

Because a legitimate rate prescription offers no rational return on investment, Weskan's strategy relies on hijacking the Board's resource-intensive

SAC framework for its own commercial ends. Weskan is indifferent to the actual regulatory outcome on the merits, because its strategic objective is achieved simply by forcing the activation of the Board's most burdensome adjudicatory mechanisms. Weskan intends to weaponize the agency's processes to manufacture artificial leverage for a forced conveyance of K&O's assets that Weskan knows are not available for purchase. This calculated bad faith transforms the Complaint from a *bona fide* rate dispute into an egregious abuse of the administrative process.

The Board possesses both the authority and the obligation to intervene in such circumstances. As the Board has stated, "to the extent that a party wishes to challenge the bona fides of a transaction, we retain the right to review the transaction to protect the integrity of our processes." *The Land Conservancy of Seattle and King County—Acquisition and Operation Exemption—The Burlington Northern and Santa Fe Railway Company*, 2 S.T.B. 673, 676 (1997). The Board has consistently rejected or has otherwise halted proceedings where regulatory mechanisms were deployed as tactical leverage to secure independent, non-rail commercial advantages. Selected examples include the following:

- The Board revoked a class exemption where the applicant filed its notice not to provide rail common carrier service, but as a shield to stave off local condemnation and leverage real estate purchase negotiations. *Milwaukee Industrial Trade Center, LLC, d/b/a Milwaukee Terminal Railway—Acquisition and Operation Exemption—Line Owned by Milwaukee Industrial Trade Center, LLC*, FD 35133, slip op. at 5–6 (STB served June 16, 2010).
- The Board ordered divestiture and a return to the *status quo ante* upon finding that the agency's regulatory authority was subverted to execute a salvage and scrapping strategy rather than legitimate rail operations. *SF&L Railway, Inc.—Acquisition and Operation Exemption—Toledo Peoria and*

Western Railway Corporation Between La Harpe and Peoria, IL, FD 33995 *et al.*, slip op. at 2 (STB served Feb. 6, 2003).

- The Board explicitly reaffirmed that its intervention is fully warranted when necessary “to protect the integrity of Board processes” against parties seeking to “improperly circumvent” the true intent of governing rail statutes. *BNSF Railway Company—Discontinuance of Trackage Rights Exemption—In Peoria and Tazewell Counties, Ill.*, Docket No. AB 6 (Sub-No. 470X) *et al.*, slip op. at 5 (STB served Apr. 26, 2011).

The underlying legal principle governing such precedent applies equally here, if not more so.

The Board’s resource-intensive SAC adjudicatory framework was built to protect truly captive shippers from monopolistic gatekeepers, not to act as a proxy enforcer for a global conglomerate seeking to vertically integrate complementary short line assets through the tactical abuse of regulatory proceedings. Because Weskan is weaponizing the Board’s processes for ulterior commercial motives where the Soloviev Group has been rebuffed in an element of the company’s vertical integration ambitions, the appropriate remedy is for the Board to reject the Complaint.

Alternatively, the Board should hold the proceeding in abeyance to conduct a preliminary inquiry to ascertain to its satisfaction whether Weskan’s objectives constitute a legitimate exercise of the CMP framework or are instead an actionable abuse of process. Allowing Weskan to trigger a sweeping, enterprise-level SAC discovery assault under these circumstances turns the agency’s regulations into an instrument of commercial leverage for an ulterior objective.

If the Board were nevertheless to decline to reject the Complaint or to conduct a preliminary *bona fides* inquiry despite the evidence offered here, it must, at the very least, exercise its case-management authority to bifurcate the proceeding and resolve the threshold qualitative market dominance inquiry first.

V. CASE MANAGEMENT AND BOARD TECHNICAL ASSISTANCE

If the Board were to decline to reject Weskan's complaint but to grant K&O's request for bifurcation, K&O proposes the following bifurcated procedural schedule to facilitate efficient case management and protect against the asymmetrical burdens of unnecessary SAC litigation.

K&O recognizes that the Board is subject to statutory deadlines governing the adjudication of SAC rate reasonableness proceedings under 49 U.S.C. § 10704(c). However, because market dominance is a fundamental jurisdictional prerequisite to any rate reasonableness inquiry, K&O respectfully requests that the Board toll all statutory deadlines pertaining to the rate reasonableness phase of this proceeding during the pendency of the threshold Phase I (Market Dominance) inquiry, given the unusual facts of this proceeding, and the serious questions surrounding whether K&O truly possesses market dominance. *See* 49 U.S.C. § 10704(d)(2)(B) (providing Board authority to extend statutory SAC deadlines after a request from any party). Tolling the SAC deadlines serves the public interest and the Board's docket efficiency by preventing the premature expenditure of millions of dollars in discovery on a rate the Board may not have jurisdiction to regulate.

Phase I (Market Dominance)

- **Day 0:** Effective date of the Board's order granting this Motion to Bifurcate or the end date of the prefilings period, whichever is later.
- **Day 75:** Close of Phase I Discovery. (*Strictly limited to qualitative market dominance issues; accommodates time for resolution of any necessary motions to compel*).
- **Day 105:** Weskan's Opening Evidence on Market Dominance.
- **Day 135:** K&O's Reply Evidence on Market Dominance.
- **Day 150:** Weskan's Rebuttal Evidence on Market Dominance (Close of Phase I Record).

The Phase I Adjudication Buffer

Following the close of the Phase I record, all case deadlines shall remain held in abeyance to allow the Board time to issue a final decision on market dominance. The statutory clock governing a SAC proceeding under 49 U.S.C. § 10704(c) shall remain tolled until the service date of the Board's Phase I decision.

Phase II (Rate Reasonableness – If Necessary)

Consistent with the Board's order in *M&G Polymers*, a procedural schedule governing SAC discovery and merits briefing shall only be triggered if, and only if, the Board were affirmatively to find that K&O possesses market dominance over the move. If such a jurisdictional finding is made, the procedural schedule for the SAC portion of the proceeding can resume. If the Board determines that it is

appropriate to provide a procedural schedule for Phase II at this juncture, K&O proposes the following disciplined schedule:

- **Day 0:** Effective date of a Board decision finding market dominance.
- **Day 90:** Close of Phase II (SAC) Discovery.
- **Day 135:** Weskan's Opening Evidence on Rate Reasonableness.
- **Day 180:** K&O's Reply Evidence on Rate Reasonableness.
- **Day 210:** Weskan's Rebuttal Evidence on Rate Reasonableness (Close of Phase II Record).

VI. CONCLUSION

For the foregoing reasons, K&O respectfully requests that the Board reject the Complaint outright as an abuse of process or hold the proceeding in abeyance pending a preliminary inquiry into Weskan's *bona fides*. Absent such action, K&O requests the Board consider this Motion on an expedited basis, grant K&O's request to bifurcate the proceeding, detail Board staff to assist the ALJ with Phase I discovery, and stay all discovery and scheduling obligations related to rate reasonableness pending a final Board determination on market dominance.

Respectfully submitted,

By: /s/ *R. A. Wimbish*

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**ATTORNEYS FOR KANSAS &
OKLAHOMA RAILROAD, LLC**

Dated: June 17, 2026

BEFORE THE
SURFACE TRANSPORTATION BOARD

NOR 42185

WESKAN GRAIN LLC V. KANSAS & OKLAHOMA RAILROAD, LLC

**KANSAS & OKLAHOMA RAILROAD, LLC'S MOTION TO
REJECT THE COMPLAINT OR, IN THE ALTERNATIVE,
FOR EXPEDITED DETERMINATION OF JURISDICTION AND
BIFURCATION OF THE PROCEEDING**

EXHIBIT A

**VERIFIED STATEMENT OF
WILLIAM BRENNAN, Ph.D**

BEFORE THE SURFACE TRANSPORTATION BOARD

DOCKET NO. NOR 42185

WESKAN GRAIN LLC v. KANSAS & OKLAHOMA RAILROAD, LLC

VERIFIED STATEMENT OF WILLIAM BRENNAN, Ph.D.

Identity and Interest

I am William Brennan, Ph.D. I previously served as Director of the Office of Economics and Chief Economist of the Surface Transportation Board (STB or Board). In that capacity, I participated in and supervised economic analysis involving rail rate reasonableness, including the stand-alone cost (SAC) test, market dominance, revenue adequacy, and railroad costing. I have worked on matters in which market dominance was found to exist and matters in which it was not, and I am familiar with both the economic concepts underlying market dominance and SAC analysis and the practical burdens such proceedings impose on parties, the Board, and its staff.

I also worked for several years at the U.S. Department of Agriculture, where I was the Department's resident expert on Class I railroads and the transportation of agricultural commodities. As a result, I am familiar with the economic issues and regulatory challenges that can arise in agricultural transportation markets.

I submit this verified statement in support of Kansas & Oklahoma Railroad, LLC's (K&O) request that the Board bifurcate this proceeding to determine first whether K&O possesses market dominance over the traffic at issue. Before requiring the parties and the Board to devote substantial resources to a full SAC case, the Board should resolve the serious qualitative market dominance questions presented here.

Market Dominance Is the Threshold Issue

Market dominance is the threshold inquiry in a rate reasonableness case. Before the Board may determine whether a challenged rate is unreasonable, it must first determine whether the carrier has market dominance over the transportation to which the rate applies. That inquiry has both quantitative and qualitative components.

The quantitative component asks whether revenue-to-variable cost ratio (R/VC) of the challenged rate is equal to or greater than 180 percent. A rate below that threshold precludes a finding of market dominance. But a rate above that threshold does not establish market dominance; it merely permits the Board to consider whether effective competition is absent. The qualitative component asks whether the challenged

transportation is constrained by effective competition from other rail carriers or modes of transportation.

That qualitative inquiry is the central issue here. In its petition, Weskan Grain LLC (Weskan) relies heavily on two facts. First, the R/VC of the challenged movement is greater than 180 percent. Second, K&O is the only railroad physically serving Scott City. But these facts do not imply that K&O has market dominance over the transportation at issue. The Board must still determine whether practical transportation alternatives discipline the challenged movement. That threshold question should be resolved before the parties and the Board are required to devote substantial resources to full SAC litigation.

The R/VC Evidence Does Not Resolve Market Dominance

Because Weskan assumes away the significant qualitative market dominance issues presented by this case, it leans on the fact that the challenged rates exceed the quantitative market dominance threshold. It is true that the rates at issue exceed jurisdictional threshold, but that is not surprising given that the challenged movement is exceptionally short: a mere 78 miles.

The Board's most recent Commodity Revenue Stratification Report also puts Weskan's R/VC allegations and the challenged rate in practical context. Those reports show that a substantial share of grain movements meet or exceed the 180 percent jurisdictional threshold.¹ Indeed, as my workpaper demonstrates, the current STCC-5 Stratification Report shows that more than 40 percent of grain movements exceed that threshold and that the average revenue per car for such movements is more than \$4,300—far higher than the \$850 rate K&O is offering for movements in railroad-supplied cars.²

To be sure, there is a reason why the average grain shipments subject to rates equal to or exceeding the R/VC jurisdictional threshold move at a rate more than five times higher than the rate K&O is quoting: the average movement will be significantly longer than the 78-mile movement at issue here. But that is precisely the point. Weskan should not be permitted to rely on the short length of this movement to minimize the significance of the relatively modest absolute rate K&O is offering, while simultaneously ignoring the way that same short length affects the R/VC ratio it invokes in the quantitative market dominance calculation.

¹ Surface Transportation Board, 2024 Commodity Stratification Report (5-digit), <https://www.stb.gov/reports-data/economic-data/commodity-revenue-stratification-reports/>.

² See Exhibit WB-1, Brennan 2024 5-Digit Commodity Stratification Report Workpaper.

The short distance that keeps the per-car rate relatively low is also the short distance that magnifies fixed and quasi-fixed costs in the R/VC calculation. In rail costing, certain terminal, switching, handling, and movement-initiation costs are fixed or quasi-fixed. Those costs do not increase proportionately with distance. When they are applied to a very short line-haul, particularly on a line with low densities and speed and weight restrictions, the resulting R/VC ratio may be elevated for reasons that do not involve monopoly power.

That is especially true where traffic is sporadic or uncertain, as it is here. Weskan's Complaint characterizes the movement as "shuttle service," but K&O's tariff indicates that the movement is non-dedicated manifest service.³ If a movement does not involve regular, high-density traffic flows, the carrier cannot rely on the same economies of density that may exist in more predictable line-haul service with committed equipment cycling and handling efficiencies. Providing ad hoc or low-frequency service on a short-line network requires careful attention to pricing that accounts for operational uncertainty, equipment use, crew deployment, switching, and other service-specific costs. In such circumstances, crossing the R/VC 180 percent threshold may reflect the essential cost structure of short-haul rail service rather than the absence of effective transportation competition.

Relying on the fact that a rate exceeds the jurisdictional threshold does not resolve the market dominance inquiry. A grain transportation rate at or above the jurisdictional threshold is not per se unreasonable and not per se evidence of market dominance. Under 49 U.S.C. § 10707(d)(2), it merely permits a qualitative market dominance analysis.

Weskan's Complaint Frames the Qualitative Market Inquiry Too Narrowly

Weskan's Complaint does not meaningfully engage the central qualitative market dominance question presented by this case. It baldly asserts that there is "no economically feasible transportation alternative" to K&O rail service for the movement from Scott City to the Stockton Facility, and that trucking the grain volumes Stockton Siding was constructed to process would be prohibitively costly.⁴ But those assertions begin the analysis too late. They assume that the relevant grain is already committed to loading at Scott City and, in turn, to the challenged transportation via K&O.

That assumption is especially important here because, as I understand it, there has been only one rail shipment from Scott City — Weskan's Scott City East facility — to

³ Weskan Grain LLC, Amended Petition for Waiver and Complaint, NOR 42185, Ex. A ¶ 22; Ex. B (filed Apr. 17, 2026).

⁴ Weskan Grain LLC, Amended Petition for Waiver and Complaint, NOR 42185, Ex. A ¶ 18-20 (filed Apr. 17, 2026).

Weskan's Stockton Siding: a 50-car block of grain loads that moved under the challenged rate in late April. In a conventional rate case, historical traffic patterns may reveal whether a shipper has long depended on the defendant railroad. Here, in contrast, the challenged movement involves a new and largely untested internal logistics pattern within Weskan's own grain-handling network.

The near absence of traffic history over the challenged route further supports addressing market dominance first. Weskan is not asking the Board to regulate a long-established captive movement. Rather, it is asking the Board to evaluate a potential transportation arrangement in which Weskan would reposition grain between two affiliated facilities as one segment of a broader movement from western Kansas farms to West Coast destinations.

That demonstrates why the Board must carefully assess whether K&O controls the only practical transportation path, or whether alternative truck-based transportation options discipline the movement before grain is committed to K&O's route. Grain in western Kansas does not originate on rail. It originates on farms and is gathered by truck before it is committed to any particular elevator, rail origin, or delivery channel. In that context, the relevant question is not simply whether K&O is the only railroad physically serving Scott City. Nor is it whether Weskan would prefer to use K&O rail service to move all of the grain it hopes to process through that facility. The question is whether truck-based transportation alternatives constrain the challenged rate before the grain is committed to K&O's route.

Weskan's Complaint does address intermodal competition, but only after assuming that the relevant grain has already been assembled at Scott City East and committed to the challenged K&O movement. It asserts that transporting the volumes of grain Scott City East was constructed to process by truck would be prohibitively costly compared to maximum reasonable rail rates, and that trucking that same volume over the distance of the challenged rail movement would not effectively constrain K&O's rates. But that framing does not resolve the qualitative market dominance question presented here. A facility's engineered capacity, or Weskan's preferred operating plan, should not be confused with the absence of effective competition. In a grain market, transportation alternatives may include direct truck movement, truck movement to competing elevators, truck movement to Class I-served origins, truck movement to feedlots or mills, or truck movement to other grain-channel outlets within an economically practical distance.

For these reasons, Weskan's market dominance claim turns on treating its preferred facility configuration as the relevant competitive constraint. But the market may discipline

K&O's rate before grain ever leaves the farm. That earlier point of transportation choice is the focus of the load-out competition analysis discussed below.

The Challenged Movement Presents Serious Qualitative Market Dominance Questions

The qualitative market dominance question is important because the challenged movement is unusually short. At just 78 miles from rail origin to rail destination, truck transportation is not merely theoretical. Trucking is how grain is shipped to rail loading sites in the first instance, and the same truck network can provide a practical substitute for, or bridge around, the challenged rail movement. At this distance, subject to ordinary loading, unloading, and hours-of-service constraints, truck transportation is likely to be operationally practical in a way that would not be true for a long-haul movement.

For purposes of this statement, I refer to this as “load-out competition”: truck-based transportation optionality at the point where grain is gathered and committed to a delivery channel. Load-out competition is not geographic competition as the Board used that term when product and geographic competition were removed from the market dominance test in *Ex Parte No. 627*.⁵ Geographic competition asks whether a shipper can avoid the defendant railroad by obtaining the same product from a different source or shipping the same product to a different destination. That is not the issue here.

The relevant product is, and remains, grain. The source is still the same local farm-originated supply. The destination Weskan seeks to serve is still Stockton. And the ultimate markets for the grain Weskan wants to handle are in the far-western U.S. via line haul service provided by BNSF Railway Company (BNSF) or Union Pacific Railroad Company (UP). The question is whether that same farm-originated grain must first be trucked to Scott City and then moved by K&O to Stockton, or whether it can be trucked directly to Stockton or to other truck-accessible transportation outlets. That is a transportation-path question, not a different-source or different-destination question.

The distinction is especially important because Weskan owns the facilities at both Scott City and Stockton. Weskan's theory treats grain as captive once it arrives at its Scott City loading facilities, but Weskan itself controls whether grain is assembled there or is instead attracted directly to Stockton through its bid structure. If the same farmers can truck the same grain to the same Stockton facility, then the alleged captivity arises from Weskan's internal logistics configuration, not necessarily from K&O's control of an unavoidable transportation bottleneck.

⁵ See *Mkt. Dominance Determinations—Prod. & Geographic Competition*, 3 S.T.B. 937 (1998), *remanded sub nom.*, *Ass'n of Am. R.Rs. v. STB*, 237 F.3d 676 (D.C. Cir. 2001), *aff'd*, 5 S.T.B. 492 (2001).

Weskan’s own public description of Stockton confirms the economic relevance of load-out competition. Weskan describes the facility’s “fastest unloading system from Western Kansas to Eastern Colorado” as the “greatest advantage” available to area farmers.⁶ It further explains that, during harvest, long waits for truck unloading are costly because they reduce the efficient utilization of grain trucks traveling from field to elevator, and because longer distances and longer waits require larger truck fleets at a time when truck drivers are in increasingly short supply. Weskan also emphasizes that Stockton Siding is located near the crossroads of Highways 385 and 96, with paved-road access in all four compass directions, and describes that highway access as an additional competitive advantage. Those statements are economically important. They show that direct truck delivery by local farmers is not incidental to Stockton’s business model; it is a central feature of the facility’s competitive offering.

Load-out competition is therefore best understood as a form of intermodal transportation competition. The economic question is whether, before grain is committed to Scott City, trucks can fulfill the same basic transportation function K&O is being asked to perform, or at least discipline K&O’s rate for performing that function. In this setting, there is substantial reason to conclude that they can.

Agricultural transportation economics supports that conclusion. Shuttle-train loading facilities can lower outbound transportation costs, support higher elevator bids to producers, and induce farmers to truck grain longer distances when the higher bid offsets the added trucking cost. That dynamic is relevant here because farm-to-elevator transportation is often borne as part of the farmer’s own cost of marketing grain, rather than merely as a third-party motor-carrier charge.

In Central Plains grain markets, the initial movement of grain is commonly farm-generated truck movement from the field to a market outlet, storage location, elevator, processor, or feedlot. A UGPTI/USDA AMS survey confirms that this truck movement is a central feature of Kansas grain logistics: Kansas wheat is overwhelmingly delivered directly from field to market, farmers own and operate substantial grain-truck capacity, and larger farms make significant use of 5-axle semis.⁷ Similarly, a 2015 Informa/Soy Transportation

⁶ See Ex. WB-2, Weskan Grain Advantage.

⁷ See Ex. WB-3, Alan Dybing, Kimberly Vachal & Baishali Rahman, Central Plains Grain Farm Truck Fleet & Marketing Patterns, DP-321, Upper Great Plains Transportation Institute, at 8, tbl. 6 (Apr. 2023) (reporting that Kansas wheat shipments directly from field to market represented 89% to 98% of total shipments depending on farm size); id. at 18, tbls. 34–36 (reporting Kansas farm-owned truck configurations and that 5-axle semis are the truck of choice on larger farms); id. at 19–20, tbls. 37, 39 (reporting annual truck-mile shares by farm size and that 5-axle semis were used 94.8% of the time to haul producers’ own grain).

Coalition study reports an average truck component of 101 miles in the soybean transportation chain—longer than the 78-mile rail movement at issue here.⁸

Taken together, this evidence supports treating truck transportation as economically relevant to the qualitative market dominance inquiry. Before grain is committed to Scott City and the challenged K&O movement, farmers and grain buyers may have practical truck-based options that influence where the grain is delivered and what rate K&O can practically charge. Therefore, the qualitative market dominance inquiry should begin before, not after, grain has been assembled at Scott City.

The competitive significance of those truck options is reinforced by evidence concerning Kansas elevator markets. Bekkerman and Taylor found that Kansas grain elevators operate in a particularly competitive environment: the average Kansas elevator has 26 other elevators within a 60-mile radius, and Kansas elevators are larger on average than Montana elevators.⁹ Consequently, Kansas elevators must compete more aggressively for grain deliveries, including by passing through a greater share of shuttle-technology cost savings to farmers in the form of higher prices.

That dynamic is relevant here because elevators on BNSF and UP lines running parallel to K&O may discipline the challenged movement by providing truck-accessible shuttle-train alternatives for farm-originated grain. Grain in the K&O service territory moves through a transportation environment that includes local truck movement, competing elevators, feedlots, mills, and Class I-served rail outlets. There are elevators located not only on K&O and on neighboring Colorado Pacific Railroad, but also on BNSF and UP main lines that parallel K&O to the north and south.¹⁰

Those facts confirm the practical relevance of load-out competition. At load-out, the farmer has optionality and can move grain by truck to another intermediate elevator, to a Class I-served facility, to a feedlot or mill, or to another truck-accessible grain-channel outlet within an economically practical distance. As a result, the only logical conclusion is that K&O's rates are constrained by transportation competition. That conclusion is stronger

⁸ Informa Economics, "Heavier Semis: A Good Idea?", prepared for the United States Soybean Export Council and Soy Transportation Coalition, at xviii (Jan. 2015), <https://www.soytransportation.org/newsroom/SemiWeightLimitStudyFullReport2015.pdf> (last visited June 17, 2026) (Executive Summary attached as Exhibit WB-4).

⁹ Anton Bekkerman, Mykel Taylor, *Influence of Shuttle Loaders on Grain Markets in Kansas and Montana*, Agricultural Marketing Policy Center Fact Sheet #10 at 5 (Aug. 2017) (attached as Exhibit WB-5).

¹⁰ See Motion to Bifurcate, Exhibit D, Maps.

still where local roads allow faster or more flexible truck movement than the weight- and speed-limited tracks used for the challenged rail movement, as I understand they do.

A recent statement by Stefan Soloviev reveals that substantial truck movements already play a significant role in the Soloviev Group's regional grain transportation strategy. According to a February 2, 2026, report in TrainsPRO, Mr. Soloviev indicated that, if Colorado Pacific were to assume operations over the K&O line between Scott City and Towner, Colorado, Scott City-Stockton Siding railroad service "**would eliminate 25,000 moves currently made by truck** to get grain from Scott City to where Colorado Pacific can handle it."¹¹ That statement confirms that truck transportation from farms relatively proximate to Scott City to the Stockton Siding shuttle elevator is not merely theoretical. At a minimum, it underscores why existing truck movements, truck costs, truck capacity, and truck-accessible rail outlets are highly relevant to the threshold market dominance inquiry.

Those same facts also matter to the rate prescription Weskan seeks. If Stockton's truck-unloading speed, highway access, unit-train capability, and Class I connections give Weskan a transportation advantage, Weskan can seek to attract grain directly to Stockton by reflecting some of that advantage in its bids to farmers. In ordinary grain markets, transportation advantages are often competed back, at least in part, to farmers through stronger bids for their product. A prescribed K&O rate would achieve a different result: it would lower the cost of Weskan's preferred internal logistics configuration without requiring Weskan to compete for that grain through its own bid structure.

Rather than bearing the full cost of attracting grain directly to Stockton, Weskan seeks to assemble grain at Scott City and require K&O to provide a short-haul movement to Stockton at a prescribed rate. That distinction is economically important. If truck-delivered grain can be attracted directly to Stockton through Weskan's own bids, then the challenged K&O movement is not an indispensable transportation link; it is instead Weskan's preferred internal logistics configuration. In that circumstance, a prescribed rate would shift part of the cost of assembling grain for Stockton away from Weskan and onto K&O. That possibility is directly relevant to the market dominance inquiry because it underscores the need to determine whether Weskan is seeking regulatory relief from the ordinary costs of competing for grain in a truck-accessible market.

The short-haul rail service Weskan seeks is not the typical case where a railroad is the indispensable link between an independent seller at origin and an independent buyer at a distant destination. Rather, Weskan seeks to move grain between two facilities within

¹¹ See Motion to Bifurcate, Exhibit H, Rip Watson, Lawsuit claims UP, short line blocked grain moves via alternate route, TrainsPRO (Feb. 2, 2026) (emphasis added).

its own vertically integrated agricultural network. If the same grain, from the same farms, can viably move directly to Stockton by truck, that transportation option would constrain what K&O can charge to move the grain from Scott City to Stockton, particularly once one accounts for the additional handling associated with truck-to-elevator-to-railcar transfers at Scott City. Economically, the challenged movement resembles an intra-plant or intra-network transfer: Weskan has chosen to assemble grain at one affiliated facility and reposition it to another. The fact that Weskan prefers to use K&O for such repositioning does not establish that K&O possesses a transportation monopoly.

And yet, despite these serious market dominance concerns, Weskan's Complaint treats its Scott City elevators and, in turn, K&O as essential and irreplaceable logistical nodes in the western Kansas grain transportation network. But physical access to a preferred facility is not the same as economic captivity where the commodity is truck-originated from a farm, the rail movement is unusually short, Weskan controls both facilities, and truck-accessible alternatives exist.

Market Dominance Is a Necessary Economic Prerequisite to SAC

Market dominance is not merely a preliminary pleading issue. It is the economic condition that justifies regulatory intervention into the reasonableness of an otherwise lawful rail rate. If effective competition constrains the challenged rate, then no rate reasonableness inquiry is warranted because the market itself supplies the discipline for which regulatory review (and prescription, where needed) is a surrogate. SAC and Constrained Market Pricing (CMP) were designed to test whether a captive shipper is being charged more than would be required by an efficient stand-alone railroad (SARR) serving the relevant traffic group.¹²

This case stands in stark contrast to *McCarty Farms*, the Board's principal modern SAC case involving grain.¹³ *McCarty Farms* involved long-haul movements of Montana wheat and barley to Pacific Northwest export markets. The market dominance allegations in that case focused on Burlington Northern's extensive control over Montana rail infrastructure and grain elevator access, including its alleged control of most Montana track mileage, most Montana grain elevators, and nearly all wheat and barley shipments moving to Pacific Northwest export markets. In that setting, the market dominance question turned on whether the railroad controlled the practical rail path from a broad grain-producing region to distant export markets.

¹² *Coal Rate Guidelines, Nationwide*, 1 I.C.C.2d 520 (1985).

¹³ For background, see generally *McCarty Farms, Inc. v. Burlington N., Inc.*, 3 I.C.C. 2d 822 (1987), 2 S.T.B. 460 (1997), *modified*, 3 S.T.B. 102 (1998) ("*McCarty Farms*").

The challenged movement here is materially different. Weskan seeks a very short movement between affiliated facilities, involving grain that originates by truck and may be capable of moving directly to Stockton or to other truck-accessible grain outlets before it is ever committed to Scott City. The question is therefore not whether a railroad controls the long-haul movement from a captive grain region to an export market, but whether K&O controls an unavoidable transportation bottleneck for this particular 78-mile repositioning movement. That distinction reinforces why market dominance should be resolved before the parties and the Board are required to undertake the full SAC exercise.

That sequencing matters because SAC is justified only if the shipper is captive in the relevant transportation sense. Where, as here, effective truck-based transportation alternatives may constrain K&O's ability to exercise market power, the economically logical course is to resolve that threshold question first. SAC requires the parties to design and test a hypothetical SARR. The analysis may involve route selection, traffic group development, operating-plan assumptions, engineering requirements and estimates, track, bridge, signal, yard, and terminal costs, locomotive and crew requirements, maintenance assumptions, revenue forecasts, depreciation, cost of capital, and related economic and operational evidence. These assumptions must then be knitted together into a coherent model capable of withstanding scrutiny and cross-examination.

These inquiries are not incidental. They require substantial discovery, expert modeling, engineering judgment, economic review, and—once filed—Board staff attention, demanding nearly countless hours of attorney and expert time and extraordinary litigant and agency expenditure. SAC cases are notoriously demanding proceedings for the agency and disputants alike. That work is appropriate where the statutory and economic prerequisites are clearly satisfied. But where a serious threshold question exists as to market dominance, requiring the parties to proceed immediately into full SAC discovery risks imposing significant costs and business disruption that may prove entirely unnecessary.¹⁴ Indeed, if market dominance is absent, none of that work on SAC issues bears on whether the case should proceed.

Bifurcation Is the Appropriate Response in this Situation

Bifurcation would allow the parties and the Board to focus first, as it should, on the fundamental threshold issue question upon which the balance of the prospective case hinges. A focused market dominance phase would permit targeted discovery into trucking costs, grain handling expenses (and who bears them), truck capacity, actual or threatened

¹⁴ It is my understanding that Weskan has already served discovery on K&O, which included 116 requests for information.

diversion, nearby rail-served alternatives, grain buyer options, market options for farmers, relevant facility constraints, and commercial evidence of transportation choices.

In its most recent SAC case, *Consumers Energy v. CSX Transportation*, the Board confirmed that the qualitative market dominance analysis is an inquiry into practical feasibility.¹⁵ The complainant bears the burden of showing the absence of effective competition from other carriers or modes, and the central question is whether feasible alternatives exist for the challenged transportation. Here, that threshold inquiry should be resolved first because K&O's proposed alternatives do not depend on speculative construction of new facilities or uncertain environmental permitting. They involve existing truck-based grain gathering, existing highway access, existing truck-capable facilities, and existing truck-accessible grain outlets.

Qualitative market dominance is thus distinct from the engineering and operating-plan questions that dominate SAC litigation. Deferring SAC discovery would not deprive Weskan of an opportunity to prove its case, nor would it prejudice any remedy if the Board later were to find both market dominance and an unreasonable rate. Bifurcation would simply sequence the case so that the statutory and economic threshold is tested before the parties incur the costs of designing and litigating a hypothetical railroad under these highly unusual circumstances.

Bifurcation Would Reduce the Risk of Rent-Seeking and Litigation Leverage

This dispute is not an isolated, one-shot rate case. It arises as part of a broader commercial and legal dispute. Weskan is part of the larger Soloviev Group, which, as I understand it, is pursuing a broader strategy of vertical integration involving grain origination (farms), grain handling (elevators), and transportation assets (railroads and possibly also trucks) in western Kansas and eastern Colorado. Vertical integration is not inherently suspect; it may reduce transaction costs, improve coordination, and create efficiencies. But where, as here, a vertically integrated firm simultaneously pursues regulatory relief, antitrust litigation, and efforts to obtain greater control over transportation assets, there is a real risk that the regulatory process may be abused for commercial advantage beyond the nominal scope of a genuine rate dispute.

That risk can be understood as a rent-seeking concern. By rent seeking, I mean the use of legal, regulatory, or political processes to obtain economic advantages that a party

¹⁵*Consumers Energy Co. v. CSX Transp., Inc.*, NOR 42142, slip op. App. E at 286–98 (STB served Jan. 11, 2018; updated Mar. 14, 2018) (evaluating whether proposed water and water/rail alternatives were feasible in determining qualitative market dominance).

has not obtained through ordinary market competition or voluntary exchange.¹⁶ Here, that concern is not abstract. Weskan may be seeking through regulation a rate, transportation arrangement, or cost shift that it has not secured in the marketplace.

In fact, I strongly suspect that Weskan is attempting to shift part of the cost of acquiring and assembling grain for Stockton away from itself and onto K&O, even though those costs would ordinarily be borne by Weskan through its own bid structure in competition for truck-originated grain. Weskan operates in a densely populated agricultural market, competing for grain origination against established entities such as Scoular, Bartlett, ADM, and Cargill, which possess various geographic or operational advantages. Forcing K&O to capitulate to below-market rates under the threat of litigation effectively forces the railroad to subsidize the Stockton Siding facility, while simultaneously establishing an unlevel playing field for Weskan against its regional competitors.

That concern is more pronounced where the regulatory process itself, if not properly and fairly administered, could impose substantial asymmetric costs on one side before the threshold predicate for regulation has even been established. In such settings, parties may utilize litigation tactics that, while costly on the surface, are intended as leverage and signaling to shape future bargaining behavior. Rail carriers, for example, may resist settlement in difficult cases because they fear that an early settlement could encourage follow-up complaints. But the same logic can operate the other way, too: repeated litigation or regulatory pressure may be used to alter a smaller carrier's bargaining calculus, increase the cost of resistance, or condition the carrier merely to capitulate.

In my opinion, this concern is consistent with, rather than contrary to, the Board's reasoning in *Ex Parte No. 627*. In that decision, while the Board recognized that product and geographic competition certainly can constrain rail rates, it nevertheless declined to consider those acknowledged rate constraints in market dominance analyses because doing so could impose substantial burdens and delay.¹⁷ The Board also observed that, where competitive alternatives are obviously effective, it would be unlikely that a shipper would pursue a regulatory rate challenge.¹⁸

¹⁶ See Gordon Tullock, "The Welfare Costs of Tariffs, Monopolies, and Theft," 5 *W. Econ. J.* 224 (1967) (identifying the social costs of efforts to obtain transfers through monopoly, tariffs, and theft) (attached as Exhibit WB-6); Anne O. Krueger, "The Political Economy of the Rent-Seeking Society," 64 *Am. Econ. Rev.* 291 (1974) (developing the concept of rent seeking in regulatory and trade-policy settings) (attached as Exhibit WB-7).

¹⁷ *Mkt. Dominance Determinations—Prod. & Geographic Competition*, 3 S.T.B. at 948-49.

¹⁸ *Mkt. Dominance Determinations—Prod. & Geographic Competition*, 3 S.T.B. at 948.

That observation is important here. The challenged traffic is new, its scope is limited, and the potential damages (if any) would be modest compared to the cost of full SAC litigation. That mismatch reinforces why the Board should be attentive to the possibility that the regulatory process itself may be used to obtain economic advantages that have not been secured through ordinary market exchange – the burden of regulatory litigation as leverage, in other words. The Board’s concern in Ex Parte No. 627 was that market dominance litigation should not become so burdensome that it distorts the economics of the dispute. That concern should apply symmetrically. In this case, immediate SAC litigation could impose substantial burdens on a Class III railroad before the Board has determined whether the complainant is captive in the relevant transportation sense, and where common sense suggests otherwise.

This concern, incidentally, does not require the Board to find bad faith. My point is narrower and economic. Where the objective circumstances of a case create a meaningful risk that regulatory litigation (regardless of long-term outcome) could be deployed by one side of a complaint proceeding as leverage against the other, sound case management favors resolving the threshold jurisdictional question before allowing the most burdensome phase of the proceeding to begin.

Several features of this case seem to bear on that risk. I understand that only one shipment has moved via K&O under the challenged rate – the first such shipment from K&O to Stockton Siding ever. The challenged transportation is not part of a long-established captive traffic flow. It is instead to be a new and largely untested movement between facilities within Weskan’s broader grain-handling network.

That distinction matters. Where a shipper has long depended on a railroad to reach its market, a rate complaint may naturally be understood as an effort to obtain relief from a persistent transportation constraint. But where the traffic is new, the route is short, the grain originates by truck, the shipper controls both the Scott City and Stockton facilities and has been rebuffed in its attempt to acquire a targeted portion of the defendant carrier’s network, and truck-accessible alternatives appear to exist before the grain is committed to the challenged route, the market dominance question takes on a different character. The Board should be especially careful before allowing the burdens of SAC litigation to attach to an intra-network repositioning rather than an unavoidable transportation bottleneck.

The burden of immediate SAC litigation is especially significant here. As noted above, SAC discovery imposes significant costs before the Board has even determined whether the complainant is captive in the relevant transportation sense. The burden to the defendant, by itself, would be a major leverage point for a large conglomerate like the Soloviev Group harboring larger vertical integration aspirations. In those circumstances,

the process itself can become economically significant apart from the merits of the challenged rate.

Bifurcation is therefore the appropriate case-management response. It would not deny Weskan an opportunity to prove market dominance, nor would it prejudice any remedy if the Board later finds both market dominance and an unreasonable rate. It would simply prevent the most burdensome phase of the case from proceeding before the Board has determined whether the statutory and economic predicate for rate regulation exists. If market dominance exists, the case can proceed to SAC. If it does not, the parties and the Board will have avoided litigation costs that could otherwise become economically significant apart from the merits of the challenged rate.

Conclusion

For these reasons, I believe bifurcation is economically sensible and administratively efficient in this proceeding. The challenged movements present serious threshold questions concerning qualitative market dominance. They involve short-haul grain transportation, truck-originated traffic, potential truck competition, nearby Class I-served alternatives, competing elevators and grain-channel outlets, and a commercial setting in which transportation options likely discipline K&O's rates.

The logic of bifurcation is consistent with the economic principles underlying *Coal Rate Guidelines*. CMP and SAC were designed to protect genuinely captive traffic where market dominance exists,¹⁹ not to displace ordinary market bargaining where effective transportation alternatives may exist. Where serious questions exist about whether actual truck-based or truck-accessible rail alternatives already discipline the challenged movement, the Board should resolve market dominance first.

A focused market dominance phase would allow the Board to determine first whether the statutory and economic predicate for rate regulation is present. It would not deny Weskan an opportunity to prove its claim, nor would it prejudice any remedy if the Board later finds both market dominance and an unreasonable rate. It would simply align the litigation sequence with the economic structure of the statute: first determine whether the complainant is captive in the relevant transportation sense; only then, if necessary, determine whether the challenged rate is unreasonable under SAC.

¹⁹ See *Coal Rate Guidelines*, 1 I.C.C.2d at 521-22.

In my opinion, that sequencing would promote sound economic analysis, practical case management, and efficient use of both party and Board resources. I therefore endorse K&O's request that the Board bifurcate this proceeding, resolve qualitative market dominance first, and defer SAC discovery and rate-reasonableness proceedings unless and until market dominance is established.

BEFORE THE
SURFACE TRANSPORTATION BOARD

NOR 42185

WESKAN GRAIN LLC v. KANSAS & OKLAHOMA RAILROAD, LLC

**KANSAS & OKLAHOMA RAILROAD, LLC'S MOTION FOR
EXPEDITED DETERMINATION OF JURISDICTION AND
BIFURCATION OF PROCEEDING**

VERIFIED STATEMENT OF WILLIAM BRENNAN Ph.D.

EXHIBIT WB-1

WORKPAPER

5 DIGIT STCC EXPANDED STRATIFICATION REPORT FOR 2024

Cells Labeled "Redacted" Indicate Data Suppressed By the STB in the Report to Preserve Confidentiality

Cars are in actual quantity; tons, revenue, and variable cost are all in thousands

STCC5	Commodity Name	Car Type	Car Type Name	R/VC<100				100<=R/VC<180				180<=R/VC			
				Cars	Tons	Revenue	Variable Cost	Cars	Tons	Revenue	Variable Cost	Cars	Tons	Revenue	Variable Cost
01132	Corn	C	Covered Hopper	66,567	7,078	174,494	259,946	419,801	45,115	1,886,004	1,265,598	310,445	33,061	1,368,822	621,327
01136	Sorghum Grains	C	Covered Hopper	Redacted	Redacted	Redacted	Redacted	14,616	1,575	78,726	52,148	19,724	2,070	84,987	40,803
01137	Wheat	C	Covered Hopper	15,915	1,690	68,513	78,298	148,253	15,640	704,912	494,505	153,940	15,846	633,264	282,867

Source: <https://www.stb.gov/reports-data/economic-data/commodity-revenue-stratification-reports/>

Commodity		Total	of which % is equal to or greater than 180%, or:	
01132	Corn	796,813	310,445	39.0%
	Cars	85,253	33,061	38.8%
	Tons	3,429,321	1,368,822	39.9%
	Revenue \$	2,146,871	621,327	28.9%
	Variable Cost \$			

Average R/VC for those movements with an R/VC equal to or greater than 180: 220.3%
 Rev per Car for those cars with an R/VC equal to or greater than 180: \$ 4,409.23

Commodity		Total	of which % is equal to or greater than 180%, or:	
01136	Sorghum Grains	34,340	19,724	57.4%
	Cars	3,645	2,070	56.8%
	Tons	163,713	84,987	51.9%
	Revenue \$	92,951	40,803	43.9%
	Variable Cost \$			

Average R/VC for those movements with an R/VC equal to or greater than 180: 208.3%
 Rev per Car for those cars with an R/VC equal to or greater than 180: \$ 4,308.82

Note: Sorghum Grains R/VC<100 was redacted in the STB's report to preserve confidentiality given the limited number of such movements.
 I have treated them as effectively amounting to zero for the purposes of this comparison

Commodity		Total	of which % is equal to or greater than 180%, or:	
01137	Wheat	318,108	153,940	48.4%
	Cars	33,176	15,846	47.8%
	Tons	1,406,689	633,264	45.0%
	Revenue \$	1,206,067	282,867	23.5%
	Variable Cost \$			

Average R/VC for those movements with an R/VC equal to or greater than 180: 223.9%
 Rev per Car for those cars with an R/VC equal to or greater than 180: \$ 4,113.71

Challenged Grain Commodities		Total	of which % is equal to or greater than 180%, or:	
	Cars	1,149,261	484,109	42.1%
	Tons	122,075	50,978	41.8%
	Revenue \$	4,999,723	2,087,073	41.7%
	Variable Cost \$	3,445,888	944,997	27.4%

Average R/VC for those movements with an R/VC equal to or greater than 180: 220.9%
 Rev per Car for those cars with an R/VC equal to or greater than 180: \$ 4,311.16

BEFORE THE
SURFACE TRANSPORTATION BOARD

NOR 42185

WESKAN GRAIN LLC v. KANSAS & OKLAHOMA RAILROAD, LLC

**KANSAS & OKLAHOMA RAILROAD, LLC'S MOTION FOR
EXPEDITED DETERMINATION OF JURISDICTION AND
BIFURCATION OF PROCEEDING**

VERIFIED STATEMENT OF WILLIAM BRENNAN Ph.D.

EXHIBIT WB-2

WESKAN GRAIN ADVANTAGE

The Competitive Advantage

Weskan Grain is the only grain company that has a dedicated rail line, The Colorado Pacific Railroad. With the acquisition of 160 grainers, Weskan is able to load and transport grain at costs lower than those offered by trucking companies.

Prior to the construction of the Weskan facility, local farmers who needed operations / equipment capable of handling unit trains were required to send their trucks to Cheyenne Wells, Sharon Springs, or Coolidge. However, none of these facilities are served by both BNSF and Union Pacific, which left farmers without choice and leverage.

The Weskan Grain facility is the only trainloader within reasonable trucking distance of its tributary territory which offers access to both of the Class 1 railroads at Weskan and Avondale. Apart from the new facility, all of western Kansas and Eastern Colorado is captive to either one or the other of those railroads, and rail shippers from the Kansas state line east to Great Bend have no access to heavy axle weight grain cars.

The greatest advantage gained by area farmers using the Weskan Grain facility is utilizing the fastest unloading system from Western Kansas to Eastern Colorado. During harvest times, long waits for truck unloading are deadly for efficient utilization of grain trucks traveling from field to elevator. Long distances and long waits for unloading require a larger truck fleet in order to speed harvest to safe storage, and truck drivers are in increasingly short supply in the 2020s. Concrete storage alongside heavy axle weight tracks at facilities which can offer unit train service and connections to dueling class one railroads offer the gold standard for farmers.

Stockton Siding is close to the crossroads of Highways 385 and 96, offering paved roads in all four compass directions, and therefore an additional competitive advantage over facilities with highway access in only two directions. The facility offers a variety of grain contracts tailored to any particular farmer's level of risk tolerance, and solicits the business of local farmers.

BEFORE THE
SURFACE TRANSPORTATION BOARD

NOR 42185

WESKAN GRAIN LLC v. KANSAS & OKLAHOMA RAILROAD, LLC

**KANSAS & OKLAHOMA RAILROAD, LLC'S MOTION FOR
EXPEDITED DETERMINATION OF JURISDICTION AND
BIFURCATION OF PROCEEDING**

VERIFIED STATEMENT OF WILLIAM BRENNAN Ph.D.

EXHIBIT WB-3

**CENTRAL PLAINS GRAIN FARM TRUCK
FLEET & MARKETING PATTERNS**

Central Plains Grain Farm Truck Fleet & Marketing Patterns



Prepared by:

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Central Plains Grain Farm Truck Fleet & Marketing Patterns

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April 2023

Disclaimer

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ABSTRACT

A survey of farm operators in the Central Plains Region, including Illinois, Indiana, Iowa, Kansas, and Nebraska, was conducted to gather information about transportation of crops, the inventory and characteristics of farmer-owned truck fleets, and on-farm storage capacity. The objective of the study is to provide information about the farm truck inventory and marketing patterns in the Central Plains. There is no other source for this information, and it should be unique and complementary to other farm-to-market information and national commodity flow publications. Farmers may use the results for their own investment and productivity assessments. Local and regional planners and policy makers can use the information to calibrate travel demand and freight flow models for investment and asset management choices and to estimate pavement impacts. Survey results indicate that the 5-axle semi is the most common truck configuration within the study area and that single-axle and tandem-axle truck ownership will decline in the future in favor of 5-axle and 7-axle configurations. On-farm storage is concentrated on larger farms in terms of average capacity, but the storage per bushel harvested is inversely related to farm size. The average distance to the first-choice delivery point was 14.92 miles.

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INTRODUCTION

Agriculture, including traditional grain markets and value-added activities such as food processing, biofuels production, and specialty grains, plays a large role in the economy of Central Plains states. In this report references to the Central Plains region includes the states of Illinois, Indiana, Iowa, Kansas and Nebraska. The 2017 Agricultural Census shows that farms in these states had crop sales of \$44.7 billion (U.S. Department of Agriculture, 2022). The survey developed as part of this study queried producers in all five states regarding truck use and marketing patterns for corn and soybeans during the 2019 crop year. The survey to Kansas producers added questions regarding wheat shipments during the 2019 crop year.

Background and Objective

Farm-generated truck movement is defined as the initial movement of grain from field to market delivery point in the distribution chain. This market delivery point may be an elevator, feedlot, or processor, and the move may include an interim movement to an on-farm storage facility. The grain distribution chain is complex with delivery timing and points influenced by factors such as market pricing signals, storage alternatives, global markets, and farm manager market expectations. It is especially important to understand the transportation patterns and trends for these farm truck shipments in making investment and policy decisions related to rural and agriculture-centric economies. National commodity transport data sources, such as the Commodity Flow Survey and Freight Analysis Framework, do not account for this farm-generated grain traffic (U.S. Department of Transportation, Bureau of Transportation Statistics, 2022).

The objective of this study is to partially fill the information gap for the farm truck inventory and grain marketing patterns in the Central Plains. Collecting truck and trip information directly from farm operators is vital for understanding patterns and trends in farm-generated grain traffic. This traffic is not otherwise inventoried in national data sources, so it is the responsibility of individual states or other entities to collect and/or estimate farm-generated grain traffic. As state and local decision makers consider infrastructure investments, policy changes, and traffic operations it is especially important to better understand the farm-generated grain traffic patterns and trends for this key local and widely dispersed freight generator. The information collected in this study should be unique and complementary to other farm-to-market studies (Baumel, 1996; Tolliver et al., 2005) and national commodity flow publications. Results will prove useful to a wide array of groups. Farmers may use the results for their own investment and productivity assessments. Local and regional planners can utilize the information in calibrating travel demand and freight flow models for investment and asset management choices. In addition, policy makers will be able to consider this information when making infrastructure and industry related decisions.

Background on State Production Trends

Within the Central Plains region, 219 million tons of corn and 50 million tons of soybeans were produced in 2019. Kansas produced 9.8 million tons of wheat in 2019. Since 2000, this represents a 39% increase in corn production and a 19% increase in soybean production on a tonnage basis. Wheat production in Kansas has increased by 6% from 2000 to 2019. The shipment of each of these commodities begins with a common factor – the initial farm-to-market or farm to storage shipment, which occurs via truck transportation. Since 2000, there have been some changes in truck technology as well as configurations used by producers. Moreover, the marketing network has changed from a wide network of small country elevators to more shipments consolidated at subterminal elevators or processors located within each state. The result of this, even in the absence of production increases, is increases in the ton-miles of these commodities shipped from the field to the initial destination.

As described above, there have been significant increases in corn, soybean, and wheat production within the Central Plains region since 2000. This is due to multiple factors ranging from improvements in seed varieties to farming technology and input quality and types. Over the past two decades, each of the states showed a positive trend in terms of total production of corn and soybeans, although individual year outliers are present due to weather-related impacts.

Production of corn and soybeans in Illinois from 1999 to 2019 is shown in Figure 1. Corn production in Illinois increased from 1.4 billion bushels in 1999 to 2.2 billion in 2019. Soybean production in Illinois increased from 443 million bushels in 1999 to 683 million bushels in 2019. The combined production of corn and soybeans grew by roughly 56% over the past two decades.

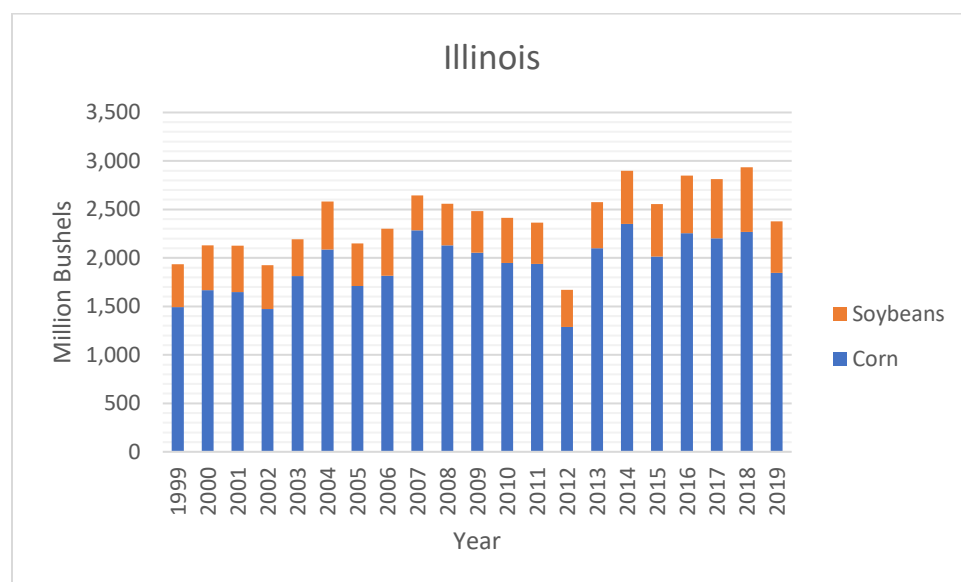


Figure 1. Illinois Grain Production Trend

Production of corn and soybeans in Indiana from 1999 to 2019 is shown in Figure 2. Corn production in Indiana increased from 748 million bushels in 1999 to 815 million bushels in 2019. Soybean production in Indiana increased from 216 million bushels in 1999 to 273 million bushels in 2019. The combined production of corn and soybeans in Indiana grew by 13% over the same timeframe.

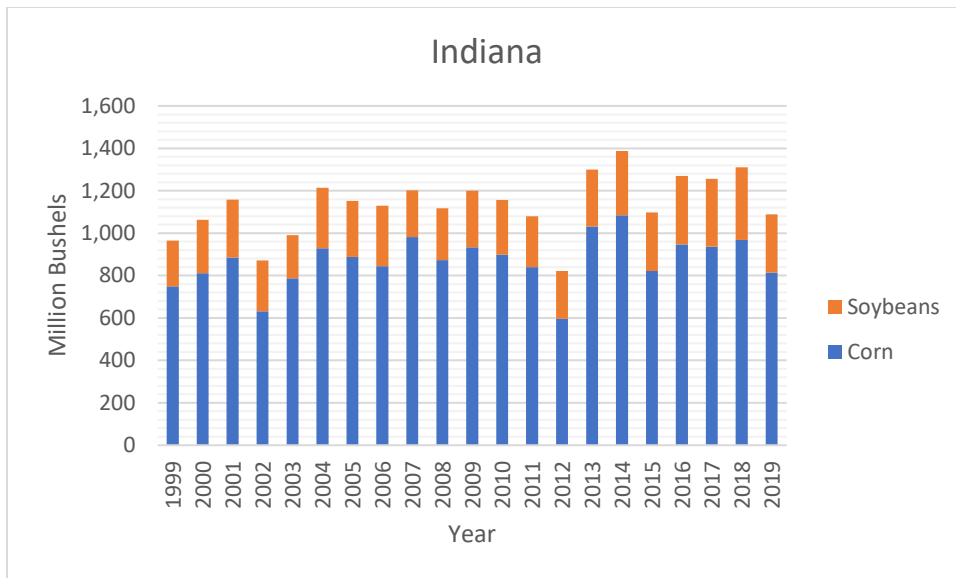


Figure 2. Indiana Grain Production Trend

Production of corn and soybeans in Iowa from 1999-2019 is shown in Figure 3. Corn production in Iowa increased from 1.8 billion bushels in 1999 to 2.6 billion bushels in 2019. Soybean production in Iowa increased from 478 million bushels in 1999 to 502 million bushels in 2019. The combined production of corn and soybeans in Iowa grew by 36% from 1999-2019.

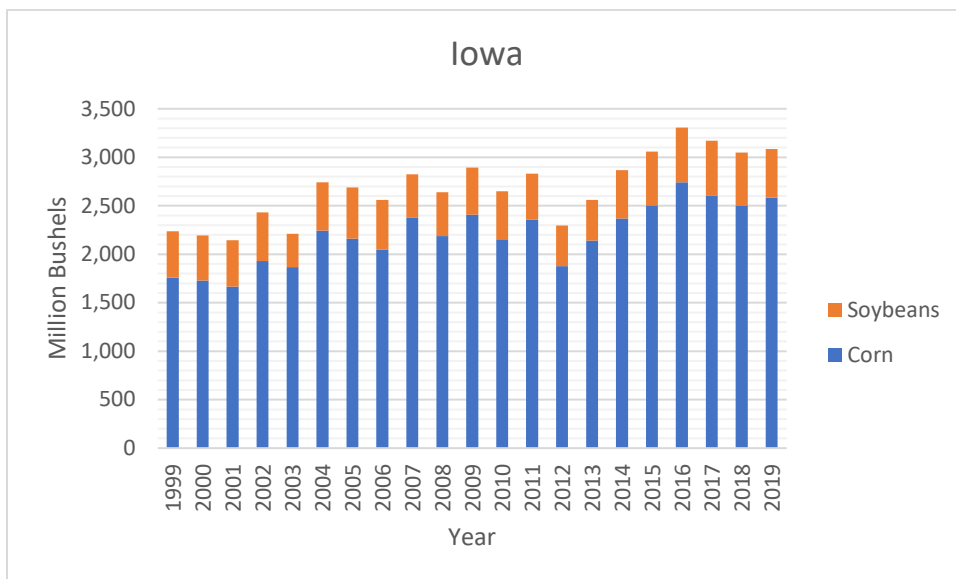


Figure 3. Iowa Grain Production Trend

Production of corn and soybeans in Kansas from 1999 to 2019 is shown in Figure 4. Corn production in Kansas increased from 420 million bushels in 1999 to 801 million bushels in 2019. Soybean production in Kansas increased from 81 million bushels in 1999 to 186 million bushels in 2019. Wheat production decreased from 432 million bushels in 1999 to 348 million bushels in 2019. The combined production of corn, soybeans, and wheat in Kansas grew by 43% from 1999 to 2019.

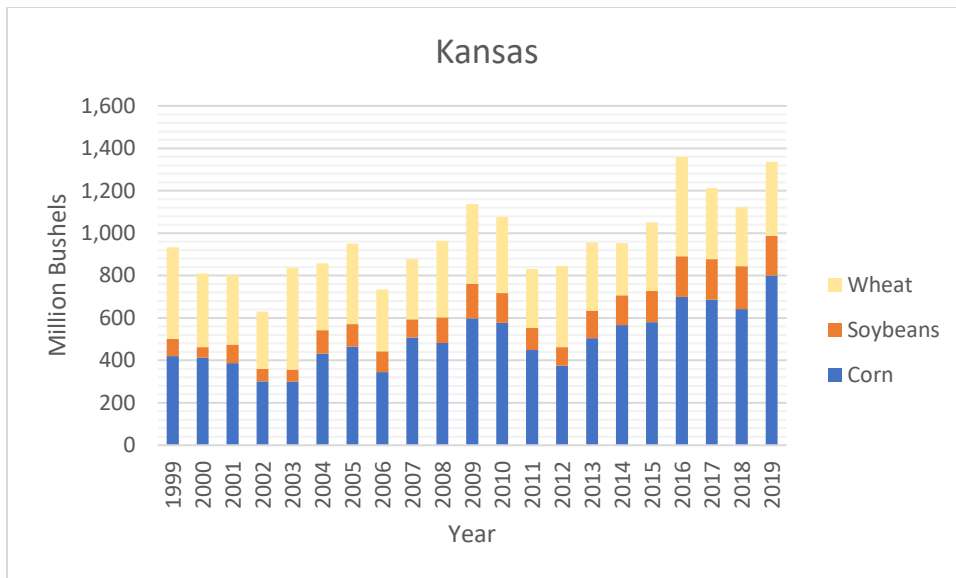


Figure 4. Kansas Grain Production Trend

Production of corn and soybeans in Nebraska from 1999 to 2019 is shown in Figure 5. Corn production in Nebraska increased from 1.2 billion bushels in 1999 to 1.7 billion bushels in 2019. Soybean production in Nebraska increased from 181 million bushels in 1999 to 283 million bushels in 2019. The combined production of corn and soybeans in Nebraska grew by 56% from 1999 to 2019.

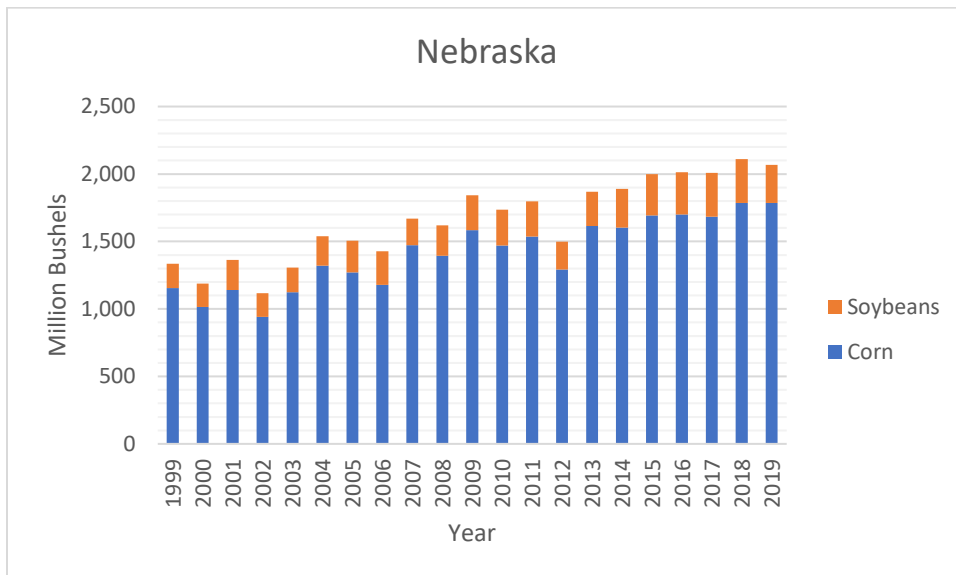


Figure 5. Nebraska Grain Production Trend

As the above figures show, total production of the combined commodities has increased in all states over the last 20 years. The ultimate result of this is additional ton-miles of farm-based grain shipments generated at the farm or point of production.

METHOD AND DATA

The survey method was used to collect the data needed for the study. The survey instrument was designed by the National Agricultural Statistics Service (NASS) with input from the Upper Great Plains Transportation Institute (UGPTI). The survey consisted of six major topic areas: (1) crop production and marketing, (2) farm grain truck fleet and inventory, (3-5) farm-generated transportation of winter wheat, corn, and soybeans, and (6) select farm operation characteristics. Information regarding corn and soybean production and marketing were collected for Illinois, Indiana, Iowa, Kansas, and Nebraska, while winter wheat data were collected for Kansas only.

Mail and Phone Surveys

The survey process was a two-phase system. An initial mail survey was distributed to a sample of farmers in the NASS contact database. A follow-up mailing was distributed to non-respondents. Following the second survey mailing, Computer-assisted telephone interviewing (CATI) was used to contact non-respondents. Limited field enumeration was used in select cases where mail and CATI were unsuccessful. In addition, NASS developed and conducted training for the telephone survey. A stratified non-probability quota sample was used to select the farmers from the population for the survey. The number of surveys collected, overall and from within each of the state strata, was deemed sufficiently large to approximate random selection so generalizations could be made about the larger population within the budget and time constraints. In addition, NASS personnel's expertise with agricultural survey issues and data quality control contributes to a strong likelihood that the sample is representative of the larger population. Although random influences cannot be ruled out within this sample technique, confidence intervals are shown since the large regional sample is assumed to have normal probability distributions. NASS estimated sample sizes to achieve a coefficient of variation of 5% for each of the states. The target sample sizes are shown in Table 1.

Table 1. Sample Size by State	
State	Count
Illinois	850
Indiana	1,000
Iowa	750
Kansas	1,250
Nebraska	800
Total	4,550

The survey and mail sample were designed to collect data for a representative sample of corn and soybean producers in Illinois, Indiana, Iowa, and Nebraska, and corn, soybean, and wheat producers in Kansas. The farms surveyed may produce one or more of these commodities. The sample for the survey was derived from the larger population of farms that reportedly grew at least one of the major wheat, corn, and soybean crops based on the County Agricultural Production Survey (CAPS). This group is defined as the eligible farm population that comprised the potential survey candidates. CAPS is a federally required submission used for federal farm program management at all jurisdictions. A random sample of 4,550 farms was drawn from the eligible population.

SURVEY RESULTS

The survey was conducted during the summer of 2020. Data were provided for analysis beginning in February 2021. A total of 4,550 surveys were mailed during summer 2020 with an initial response of 756 surveys returned. Follow up methods including personal and computer assisted telephone and mobile telephone surveys resulted in an additional 1,224 responses for a total of 1,980 responses or a 43.5% response rate. Illinois had the largest response rate of 55.3% with 470 total responses. Kansas had the lowest response rate of 31.1% with 389 responses. The remaining states had response rates ranging from 43.5% to 48.3%.

Respondent Profile

Survey respondents were asked to indicate whether they produce any of the commodities that are the focus of this study (Table 2). Only respondents in Kansas were asked whether they produce wheat, and 99% of respondents indicated that they do produce wheat. Respondents indicating that they produced corn varied across the states, with the highest percentages in Iowa, Nebraska, and Illinois and the lowest in Kansas. Respondents indicating soybean production were highest in Iowa, Illinois, and Indiana with the lowest in Kansas.

Table 2. Respondents Reporting Crop Production, by State and Commodity			
State	Wheat	Corn	Soybeans
Iowa	n/a	95%	91%
Illinois	n/a	95%	88%
Indiana	n/a	85%	90%
Kansas	99%	64%	60%
Nebraska	n/a	91%	79%
Overall	99%	85%	82%

n=1,980

The respondent farm size averaged 1,047 harvested acres of corn, soybeans, and wheat in 2019. Respondents were grouped by farm size; defined as (1) less than 300 harvested acres, (2) 301-750 harvested acres, (3) 751-1,500 harvested acres, and (4) 1,501 or greater harvested acres. Of the respondents who reported total harvested acres, 12% are in farm group 1 with an average of 148 harvested acres, 24% are in farm group 2 with an average of 514 harvested acres, 25% are in farm group 3 with an average of 1,057 harvested acres, and 39% are in farm group 4 with an average of 2,606 harvested acres (Table 3).

Table 3. Farm Group Characteristics			
Farm Group	Count	Percent	Average Harvested Acres
300 acres or fewer	210	12%	148
301 to 750 acres	438	24%	514
751 to 1,500 acres	458	25%	1,057
1,501 acres or more	719	39%	2,606

Marketing Patterns

Farm markets vary substantially across respondents because transportation for these major grains can simply be a short haul to on-farm storage or a longer haul to an elevator, feedlot, or processor facility. The transportation resources consumed do show some patterns for individual commodities. In addition, responses to on-farm storage questions provide some insight into the timing of grain deliveries. Overall regional marketing patterns are useful. In addition, insight is provided in the market patterns among state and farm group strata.

On-Farm Storage

On-farm storage for corn, soybeans, or wheat was confirmed by respondent farms (Table 4). Among the states, Kansas had the lowest reported average on-farm storage capacity weighted by harvested acres and Indiana the largest. The storage ratio measured in bushels of on-farm storage per harvested acre ranged from 36 bushels in Kansas to 104 bushels in Indiana.

Table 4. Corn, Soybean, and Wheat Storage Capacity, by State		
State	Storage Ratio, Bushels per Harvested Acre*	Average On-Farm Storage, Bushels*
Iowa	101	92,415
Illinois	89	97,786
Indiana	104	110,838
Kansas	36	41,130
Nebraska	78	87,918

*Weighted by Harvested Acres

The storage capacity density, measured in terms of bushels produced per harvested acre (including corn and soybeans in Iowa, Illinois, Indiana, and Nebraska, and corn, soybeans, and wheat in Kansas), was inversely related to farm size with the exception of farm group 2 (Table 5). The storage capacity volume, however, is greater for the larger farms. Average on-farm storage was 196,272 bushels for farms of 1,501 acres or greater. The smallest farms averaged 50,297 bushels of storage capacity.

Table 5. Corn, Soybean, and Wheat Storage Capacity, by Farm Group				
State	n	Share in Farm Groups	Average Storage Ratio, Bushels per Harvested Acre*	Average On-Farm Storage, Bushels*
300 acres or fewer	210	12%	339	50,297
301 to 750 acres	438	24%	86	44,021
751 to 1,500 acres	458	25%	81	86,200
1,501 acres or more	712	39%	75	196,272

*Weighted by Harvested Acres

On-farm storage is concentrated in the larger farms in terms of average capacity. In terms of flexibility, however, the smaller farms appear to be more able to adapt when increased on-farm storage is needed (Table 5). For the smallest farms, the ratio of storage capacity bushels per harvested acre was 339. The largest farms have an average of 75 bushels of on-farm storage for each harvested acre.

The role of on-farm storage is important in understanding farm-generated crop traffic. On-farm storage provides an easily accessible option to delay grain delivery beyond the harvest season. Farmers were asked about the share of their crop production delivered directly to a market from the field at harvest time. Table 6 outlines the variations in field to market percentages by commodity and farm group size. Wheat producers were only surveyed in Kansas, and all reported marketing percentages by farm group size are specific to that state. Wheat shipments in Kansas directly from field to market represent 89% to 98% of the total, depending on farm size, with the largest percentages in farm groups 2 and 3. As outlined in Table 4, Kansas has the lowest average on-farm storage capacity, which may help to explain the high field to market percentages. For corn and soybean movements from field to market, all five states are represented.

Table 6. Crop Delivery from Field to Market, by Farm Group						
Commodity	Farm Group	n	Average	Standard Error	95% Confidence Limit	
Wheat	300 acres or fewer	16	91%	5%	81%	100%
	301 to 750 acres	50	98%	1%	97%	99%
	751 to 1,500 acres	59	97%	1%	95%	99%
	1,501 acres or more	99	89%	2%	85%	94%
Corn	300 acres or fewer	78	79%	4%	71%	88%
	301 to 750 acres	397	84%	2%	81%	88%
	751 to 1,500 acres	413	77%	2%	73%	80%
	1,501 acres or more	643	68%	2%	65%	71%
Soybeans	300 acres or fewer	72	78%	5%	68%	87%
	301 to 750 acres	397	66%	2%	63%	70%
	751 to 1,500 acres	420	56%	2%	53%	60%
	1,501 acres or more	696	53%	1%	50%	55%

Corn shipments from field to market range from 68% in the largest farm group to 79% – 84% in the smaller farm group. The percentage of soybean shipments direct from field to market is lower across all farm strata as compared with wheat and corn shipments, and are inversely related to farm size strata.

Regional Markets

Farmers were asked to describe their corn, soybean, and wheat marketing patterns in 2019. For wheat harvested, farmers reported that as of May 1, 2019, about 4% of bushels produced remained in on-farm storage with the largest share (91%) transported to elevators (Table 7). A small share (2%) was hauled to processors. For soybeans, of the 2019 crop sold at the time of the survey, 72% was moved to elevators and 11% to processors (Table 9). Farmers were less likely to use on-farm storage for soybeans than for corn and more likely to use storage for soybeans than for wheat. Of the corn grown during 2019, 61% was sold to an elevator, while 15% of the 2019 corn crop was held in on-farm storage. Feed use accounted for about 8% for corn, with the largest share being used for feed on their own farms (Table 8).

Table 7. Regional Markets for Wheat Produced in 2019				
Market	Average	Standard Error	95% Confidence Limit	
Elevator	91%	1%	89%	92%
Processor	2%	1%	0%	4%
Feed Lot	1%	0%	0%	1%
Feed Own	1%	0%	0%	1%
Storage	4%	1%	2%	6%
Other	2%	1%	1%	4%

Table 8. Regional Markets for Corn Produced in 2019				
Market	Average	Standard Error	95% Confidence Limit	
Elevator	61%	1%	59%	63%
Processor	15%	1%	13%	16%
Feed Lot	4%	0%	3%	5%
Feed Own	4%	0%	3%	4%
Storage	15%	1%	14%	17%
Other	1%	0%	1%	2%

Table 9. Regional Markets for Soybeans Produced in 2019				
Market	Average	Standard Error	95% Confidence Limit	
Elevator	72%	1%	70%	73%
Processor	11%	1%	10%	13%
Feed Lot	0%	0%	0%	1%
Feed Own	0%	0%	0%	1%
Storage	13%	1%	11%	14%
Other	3%	0%	2%	4%

Markets, State Strata

Kansas farmers reported the same share of wheat delivered to elevators compared to the regional market average (Table 10). The share of the 2019 wheat held on-farm at the time of the survey and the feed use was also the same as the regional market average.

Table 10. Regional Markets for Wheat Produced in 2019, Kansas				
Market	Average	Standard Error	95% Confidence Limit	
Elevator	91%	1%	89%	92%
Processor	2%	1%	0%	4%
Feed Lot	1%	0%	0%	1%
Feed Own	1%	0%	0%	1%
Storage	4%	1%	2%	6%
Other	2%	1%	1%	4%

Statistics for regional markets for corn produced in 2019 in Iowa, Illinois, Indiana, Kansas, and Nebraska are presented in Tables 11 to 15. All five states sold a smaller share of their 2019 crops to elevators compared with the regional average. Among the five states, Kansas marketed the largest share of corn to elevators compared with the other four states. Kansas also had the smallest share of corn held on-farm

compared with Iowa, Illinois, Indiana, and Nebraska. This is consistent with Kansas having the lowest average on-farm storage capacity of the five states studied (Table 4). The figures are smaller than the regional average for Kansas and larger than the regional average for the other four states. Kansas had the largest share, 16% (Table 14), for feed on their own farms, whereas Iowa had the lowest share of feed of 4% (Table 11). The feed share for corn in Kansas is double the regional average.

Table 11. Regional Markets for Corn Produced in 2019, Iowa				
Market	Average	Standard Error	95% Confidence Limit	
Elevator	53%	2%	48%	57%
Processor	26%	2%	21%	30%
Feed Lot	1%	1%	-1%	2%
Feed Own	3%	1%	2%	5%
Storage	15%	2%	12%	19%
Other	1%	0%	0%	2%

Table 12. Regional Markets for Corn Produced in 2019, Illinois				
Market	Average	Standard Error	95% Confidence Limit	
Elevator	69%	2%	66%	72%
Processor	8%	1%	5%	10%
Feed Lot	1%	0%	0%	1%
Feed Own	2%	0%	1%	3%
Storage	19%	1%	16%	22%
Other	2%	1%	1%	3%

Table 13. Regional Markets for Corn Produced in 2019, Indiana				
Market	Average	Standard Error	95% Confidence Limit	
Elevator	58%	2%	54%	62%
Processor	17%	2%	13%	20%
Feed Lot	5%	1%	3%	7%
Feed Own	3%	1%	2%	4%
Storage	16%	2%	13%	19%
Other	2%	1%	0%	3%

Table 14. Regional Markets for Corn Produced in 2019, Kansas				
Market	Average	Standard Error	95% Confidence Limit	
Elevator	70%	2%	66%	74%
Processor	5%	1%	3%	8%
Feed Lot	9%	2%	6%	12%
Feed Own	7%	1%	4%	10%
Storage	8%	1%	5%	10%
Other	1%	1%	0%	3%

Table 15. Regional Markets for Corn Produced in 2019, Nebraska				
Market	Average	Standard Error	95% Confidence Limit	
Elevator	55%	2%	51%	59%
Processor	18%	2%	14%	22%
Feed Lot	5%	1%	3%	7%
Feed Own	5%	1%	2%	7%
Storage	17%	2%	13%	20%
Other	1%	1%	0%	2%

Statistics for regional markets for soybeans produced in 2019 in Iowa, Illinois, Indiana, Kansas, and Nebraska are presented in Tables 16 to 20. Iowa and Indiana sold a smaller share of their 2019 crops to elevators compared with the regional average. Among the five states, Kansas marketed the largest share of soybeans to elevators compared with the other four states (Table 19). Kansas also had the smallest share of soybeans held on-farm compared with Iowa, Illinois, Indiana, and Nebraska, and the share is equal to that of corn. The shares of soybeans held on-farm are smaller than the regional average for Kansas and bigger than the regional average for the other four states. Iowa, Kansas, and Nebraska had 0% feed on their own farms (Table 16, 19, 20), whereas Illinois and Indiana had less than 1% share of feed (Table 17, 18). All the feed shares for soybeans are lower than the regional average.

Table 16. Regional Markets for Soybeans Produced in 2019, Iowa				
Market	Average	Standard Error	95% Confidence Limit	
Elevator	67%	2%	63%	70%
Processor	15%	2%	11%	19%
Feed Lot	0%	0%	-1%	1%
Feed Own	0%	0%	0%	1%
Storage	14%	2%	10%	17%
Other	4%	1%	2%	6%

Table 17. Regional Markets for Soybeans Produced in 2019, Illinois				
Market	Average	Standard Error	95% Confidence Limit	
Elevator	74%	1%	72%	77%
Processor	4%	1%	3%	6%
Feed Lot	0%	0%	0%	0%
Feed Own	1%	0%	0%	1%
Storage	16%	1%	13%	19%
Other	5%	1%	3%	7%

Table 18. Regional Markets for Soybeans Produced in 2019, Indiana				
Market	Average	Standard Error	95% Confidence Limit	
Elevator	66%	1%	63%	68%
Processor	16%	2%	13%	20%
Feed Lot	1%	0%	0%	2%
Feed Own	0%	0%	0%	1%
Storage	13%	2%	10%	16%
Other	3%	1%	2%	5%

Table 19. Regional Markets for Soybeans Produced in 2019, Kansas				
Market	Average	Standard Error	95% Confidence Limit	
Elevator	82%	2%	79%	86%
Processor	7%	2%	4%	11%
Feed Lot	0%	0%	0%	0%
Feed Own	0%	0%	0%	1%
Storage	8%	2%	5%	11%
Other	2%	1%	0%	3%

Table 20. Regional Markets for Soybeans Produced in 2019, Nebraska				
Market	Average	Standard Error	95% Confidence Limit	
Elevator	76%	2%	73%	79%
Processor	12%	2%	8%	17%
Feed Lot	0%	0%	0%	1%
Feed Own	0%	0%	0%	1%
Storage	10%	2%	6%	13%
Other	1%	1%	0%	2%

Markets, Farm Group Strata

Farm group 1, including farms with fewer than 300 acres, held 0% share of wheat in storage, which is lower than the regional average. These farm storage practices may be related to specialty or small-scale milling operations that tend to have limited on-site inventory or to individual farmer decisions to hold inventory multiple years. Wheat that grades with higher milling quality characteristics has historically garnered a premium during years where weather or other factors lead to below average crop quality. The corn market is also somewhat different from the region as these farms utilize a 6% share of corn for feed which is 1.5 times the regional average. These smaller farms also report storing more of their corn and less of their soybean crop relative to the regional averages.

Table 21. Regional Markets for Wheat Produced in 2019, Farm Group I				
Market	Average	Standard Error	95% Confidence Limit	
Elevator	98%	2%	94%	102%
Processor	0%	0%	0%	0%
Feed Lot	0%	0%	0%	0%
Feed Own	2%	2%	0%	5%
Storage	0%	0%	0%	0%
Other	4%	4%	0%	11%

Table 22. Regional Markets for Corn Produced in 2019, Farm Group I				
Market	Average	Standard Error	95% Confidence Limit	
Elevator	79%	3%	73%	85%
Processor	10%	2%	5%	14%
Feed Lot	4%	1%	1%	7%
Feed Own	6%	2%	2%	9%
Storage	16%	3%	10%	21%
Other	4%	1%	1%	7%

Table 23. Regional Markets for Soybeans Produced in 2019, Farm Group 1				
Market	Average	Standard Error	95% Confidence Limit	
Elevator	94%	2%	90%	97%
Processor	5%	2%	1%	9%
Feed Lot	1%	1%	0%	3%
Feed Own	0%	0%	0%	0%
Storage	12%	3%	7%	17%
Other	2%	1%	0%	5%

Farm group 2, which includes farms sized 301 to 750 harvested acres, was like the regional averages in its wheat marketing. This group did report selling a larger share of each commodity to elevators compared with the regional average. With 99% of wheat, 75% of corn, and 89% of soybeans marketed at the elevator, the shares are 8 percentage points higher for wheat and 14 and 17 percentage points higher than the regional average for corn and soybeans, respectively (Table 24, Table 25, and Table 26).

Table 24. Regional Markets for Wheat Produced in 2019, Farm Group 2				
Market	Average	Standard Error	95% Confidence Limit	
Elevator	99%	1%	96%	101%
Processor	0%	0%	0%	0%
Feed Lot	0%	0%	0%	0%
Feed Own	0%	0%	0%	0%
Storage	3%	2%	0%	8%
Other	4%	3%	0%	10%

Table 25. Regional Markets for Corn Produced in 2019, Farm Group 2				
Market	Average	Standard Error	95% Confidence Limit	
Elevator	75%	2%	71%	78%
Processor	11%	1%	8%	14%
Feed Lot	4%	1%	2%	5%
Feed Own	6%	1%	4%	8%
Storage	17%	1%	14%	20%
Other	1%	0%	0%	2%

Table 26. Regional Markets for Soybeans Produced in 2019, Farm Group 2				
Market	Average	Standard Error	95% Confidence Limit	
Elevator	89%	1%	86%	92%
Processor	8%	1%	6%	11%
Feed Lot	1%	0%	0%	1%
Feed Own	1%	0%	0%	1%
Storage	13%	1%	10%	16%
Other	3%	1%	1%	5%

Farms between 751 and 1,500 acres comprise the operations in farm group 3. Like group 2, this group also reported selling a larger share of each commodity to elevators compared with the regional average. With 97% of wheat, 73% of corn, and 85% of soybeans marketed at the elevator, the shares are 6 percentage points higher for wheat and 12 and 13 percentage points higher than the regional average for corn and soybeans, respectively (Table 27, Table 28, Table 29). Elevators are the primary market for each commodity. Corn has the greatest market diversification (Table 28).

Table 27. Regional Markets for Wheat Produced in 2019, Farm Group 3				
Market	Average	Standard Error	95% Confidence Limit	
			Lower	Upper
Elevator	97%	1%	95%	99%
Processor	0%	0%	0%	0%
Feed Lot	2%	2%	0%	6%
Feed Own	1%	1%	0%	2%
Storage	3%	2%	0%	7%
Other	0%	0%	0%	1%

Table 28. Regional Markets for Corn Produced in 2019, Farm Group 3				
Market	Average	Standard Error	95% Confidence Limit	
			Lower	Upper
Elevator	73%	2%	69%	76%
Processor	19%	2%	16%	23%
Feed Lot	3%	1%	2%	5%
Feed Own	4%	1%	2%	5%
Storage	16%	1%	14%	19%
Other	2%	1%	1%	3%

Table 29. Regional Markets for Soybeans Produced in 2019, Farm Group 3				
Market	Average	Standard Error	95% Confidence Limit	
			Lower	Upper
Elevator	85%	1%	83%	88%
Processor	13%	2%	10%	16%
Feed Lot	1%	0%	0%	1%
Feed Own	1%	0%	0%	1%
Storage	15%	1%	12%	17%
Other	2%	1%	1%	4%

Farm group 4 includes the largest operations among the respondent farms, at least 1,501 acres. These operations are like the regional market distributions. Farm group 4 sells slightly more than the regional average share of its wheat, corn, and soybeans to elevators. Group 4's own feed use is slightly lower than the regional average for corn and similar for wheat and soybeans. Wheat shows a greater market distribution variability, considering the standard errors. Figures for each commodity market sales share exceed the regional 95% confidence intervals (Table 30, 31, 32).

Table 30. Regional Markets for Wheat Produced in 2019, Farm Group 4				
Market	Average	Standard Error	95% Confidence Limit	
			Lower	Upper
Elevator	92%	2%	88%	96%
Processor	6%	2%	1%	10%
Feed Lot	0%	0%	0%	0%
Feed Own	1%	0%	0%	1%
Storage	6%	2%	2%	9%
Other	2%	1%	0%	5%

Table 31. Regional Markets for Corn Produced in 2019, Farm Group 4				
Market	Average	Standard Error	95% Confidence Limit	
			Lower	Upper
Elevator	67%	1%	64%	70%
Processor	21%	1%	18%	23%
Feed Lot	6%	1%	5%	7%
Feed Own	3%	0%	2%	4%
Storage	20%	1%	18%	22%
Other	1%	0%	1%	2%

Table 32. Regional Markets for Soybeans Produced in 2019, Farm Group 4				
Market	Average	Standard Error	95% Confidence Limit	
			Lower	Upper
Elevator	79%	1%	76%	82%
Processor	19%	1%	16%	21%
Feed Lot	0%	0%	0%	1%
Feed Own	0%	0%	0%	1%
Storage	17%	1%	15%	19%
Other	5%	1%	4%	7%

Grain Transportation Vehicle Inventory

Between 1963 and 2002, the U. S. Department of Transportation sampled private and commercial truck registrations in each state to compile a national public database. The database offered estimated truck characteristics in a five-year cycle. It was released as the Vehicle Inventory and Use Survey (VIUS) and had widespread use by government, academia, and businesses in assessing policy and investment decisions. The database offered a source to profile a state's vehicle fleet using information such as vehicle registration numbers, model year (or fleet age), truck axle configuration, truck body type, and business activity (such as agriculture or manufacturing). The survey was discontinued in 2002 because of budget restrictions so the information provided here offers insight, missing since 2002, into the region's grain truck fleet. VIUS data collection resumed in 2021 and the survey data are expected to be released in 2023.

The farm-owned grain truck fleet is comprised of five main truck types: single-axle, tandem-axle, tridem-axle, 5-axle semi, and the 7-axle semi or Rocky Mountain Double (RMD). Many more types and combinations are used, but not in sufficient quantity for analysis.

The single-axle truck, used to deliver grain from farm to elevator, was for decades the industry standard. It provided sufficient utility for small farms in the Central Plains. The single-axle truck (Figure 6) is agile and serves as a multiple use vehicle. However, the single-axle truck is not efficient for moving grain long distances. A survey conducted by the Upper Great Plains Transportation Institute in 1984 estimated that the farm truck fleet was 80% single-axle trucks (Griffin, Wilson, & Casavant, 1984). The same survey found that the average trip to market was 12 miles. A study by the Upper Great Plains Transportation Institute in 2000 estimated that 52% of the farm fleet was single-axle trucks and 25% were tandems (Tolliver, Berwick, & Vachal, 2005). Only 9% of the fleet was 5-axle or other type of semi-truck. The problem with the single-axle truck is that it is small and the regulatory weight limit provides for a relatively small payload compared with other truck types. This severely limits any size economies for grain truck transport. The federal bridge formula¹ limits this truck because of its relatively short wheelbase. Other factors that reduce the desirability of the single-axle farm truck is that it is expensive to buy if purchased new relative to its payload. It is also expensive to operate as the fuel economy per mile is equal to or less than some larger truck types.

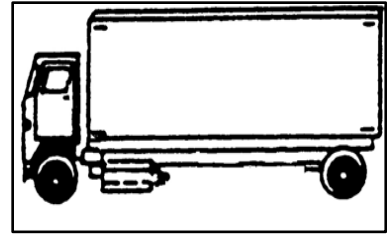


Figure 6. Single-Axle Truck

The tandem-axle truck (Figure 7) increases payload weight by adding an axle. The federal regulation for the interstate system and on most state highways limits the tandem-axle truck to 34,000 pounds on the tandem-axle. The gasoline powered tandem-axle truck served as a transition from the single-axle farm truck to the semi widely in use today. The GVW (gross vehicle weight) of the tandem-axle truck is 46,000 pounds, depending on the spread of the axles and the width of the front tires.

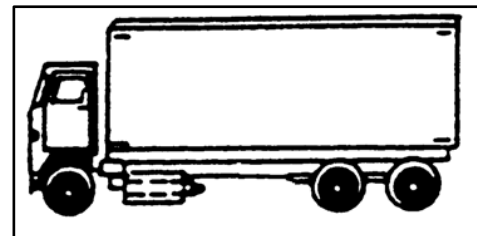


Figure 7. Tandem-Axle Truck

A third truck type represented in the survey is the tridem-axle single unit truck (Figure 8). This truck provides the agility of a single unit truck but adds an axle for increased payload. A tridem-axle with the front and rear axle centers set at a length of 8 feet can weigh 42,000 pounds compared with a tandem-axle at 34,000 pounds. This higher weight allows for larger payloads, making this truck both agile and efficient. The federal bridge formula restricts the tridem to a GVW of 56,000 pounds on the interstate.

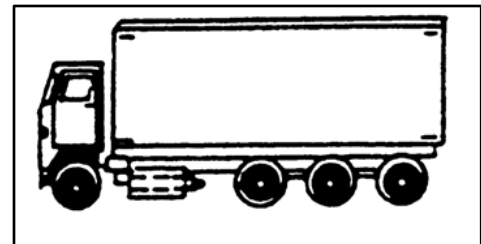


Figure 8. Tridem-Axle Truck

Differences exist among tandems and even tridem trucks. Some have gasoline powered engines that lack power. Producers have found that a pre-owned over-the-road diesel powered semi-truck could be converted economically into a box and hoist truck for farm use. These converted trucks are adequately powered, agile, and efficient for use as a farm truck. The cost of converting a pre-owned semi-tractor into a box and hoist truck is comparable to buying a new single-axle or tandem gas-powered truck.

¹ $W=500 [(LN/N-1+12N+36)$

W=The maximum weight in pounds that can be carried on a group of two or more axles to the nearest 500 pounds

L=The spacing in feet between the outer axles of any two or more consecutive axles

N=The number of axles being considered

The 5-axle semi is the most commonly used truck in the United States (Figure 9). The truck consists of two groups of tandem-axles and a steering axle. The grain trailer of a 5-axle semi can be made of either steel or aluminum or some combination. The trailer is usually a double hopper, which allows for gravity flow unloading out the bottom, or is equipped with a hydraulic cylinder that lifts the trailer for gravity flow out the back. The truck is allowed to operate at a GVW of 80,000 pounds on the interstate system and most state highways if the distance between the extreme axles is at least 51 feet. Even though the empty weight of a 5-axle semi is greater than that of any previously mentioned straight truck, the payload is considerably more. The payload of a 5-axle semi is usually more than 52,000 pounds, and can be higher depending on the type of tractor and trailer. Many tractor and trailer types result in the 5-axle semi configuration; however, the payloads may vary. A semi with the condo sleeper or a steel trailer adds weight to the unit and reduces payload. A tractor called a day-cab or no sleeper semi-tractor pulling an aluminum trailer is the lowest weight 5-axle semi, providing for the biggest payload. These units may weigh as little as 22,000 pounds, allowing for up to a 58,000-pound payload.

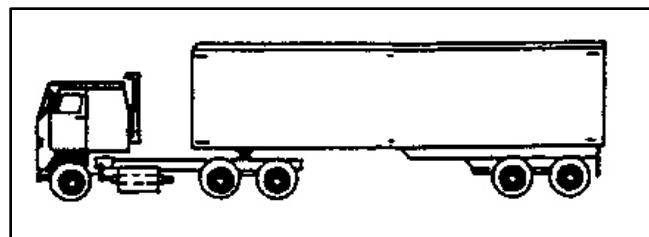


Figure 9. 5-Axle Semi Truck

The 7-axle semi or Rocky Mountain Double (Figure 10) is typically allowed to operate at a GVW of 105,500 pounds if it is at least 78 feet from the front axle to the extreme back axle. This truck is not allowed on the Interstate System at more than 80,000 pounds. The payload of the RMD depends on the unit. A day-cab tractor with aluminum trailers may allow for a 75,000-pound payload.

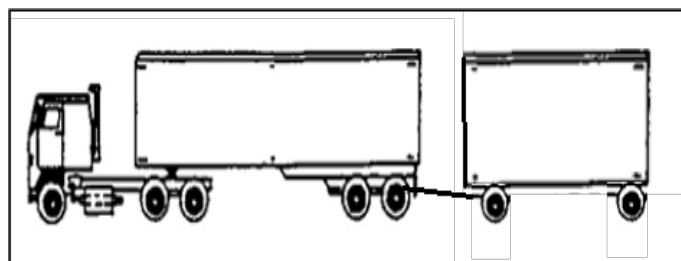


Figure 10. 7-Axle Semi or RMD (Rocky Mountain Double).

Farm Truck Ownership

The most commonly owned truck in the five-state Central Plains region is the 5-axle semi. Responses show that the 5-axle semi comprises about 56% of all trucks reported, followed by the tandem-axle truck with 18.8% and the single-axle with 12% (Table 33). The tridem-axle and 7-axle semi-trucks were the least owned among producers, representing 3.8% and 3.6%, respectively.

Table 33. Regional Total Trucks Reported		
Truck Type	Number	Percentage
Single-Axle	5,340	12.0%
Tandem-Axle	8,382	18.8%
Tridem-Axle	1,705	3.8%
5-Axle Semi	24,952	56.0%
7-Axle Semi	1,608	3.6%
Other Truck Types	2,604	5.8%

Looking at the truck types by state there is some variation (Table 34). The 5-axle semi has the highest share of the truck fleet in Iowa, Illinois, Indiana, Kansas, and Nebraska with 63.5%, 49.6%, 66.3%, 45.2%, and 54.9% share, respectively. In all five states, the tandem-axle truck is the second most popular, representing 14.5% to 23.0% share of the fleet. According to respondents, the single-axle truck makes up 21.5% of the fleet in Kansas, which is third, and the tandem-axle is second at 23.0%. The 5-axle semi is

first at 45.2%. The single-axle is third-most reported with 8.1% in Iowa, 13.8% in Illinois, 10.3% in Indiana, 21.5% in Kansas, and 8.7% in Nebraska.

Table 34. Truck Type Owned, by State					
Truck Type	Iowa	Illinois	Indiana	Kansas	Nebraska
Single-Axle	8.1%	13.8%	10.3%	21.5%	8.7%
Tandem-Axle	14.5%	22.3%	14.7%	23.0%	19.5%
Tridem-Axle	3.6%	3.2%	2.4%	4.4%	5.8%
5-Axle Semi	63.5%	49.6%	66.3%	45.2%	54.9%
7-Axle Semi	5.4%	2.4%	4.1%	3.3%	3.0%
Other Truck Types	4.9%	8.7%	2.3%	2.7%	8.2%

Examining fleet truck count data does not tell the whole story because traffic is ultimately a key factor. Truck miles or truck use by state is a better measure of farm truck activity (Table 35). The 5-axle semi is the most heavily used truck in all states surveyed, based on truck miles reported. The 5-axle semi accounts for 71.6% of the miles in Iowa, followed by Indiana, Nebraska, Illinois, and Kansas with 66.6%, 51.6%, 49.6%, and 48.3%, respectively.

Table 35. Truck Annual Mileage Share in State, by Truck Type					
Truck Type	Iowa	Illinois	Indiana	Kansas	Nebraska
Single-Axle	5.0%	9.0%	12.6%	20.6%	7.1%
Tandem-Axle	10.3%	19.6%	8.0%	14.1%	13.8%
Tridem-Axle	2.0%	3.4%	1.9%	6.9%	5.0%
5-Axle Semi	71.6%	49.6%	66.6%	48.3%	51.6%
7-Axle Semi	10.4%	15.9%	5.5%	8.8%	5.7%
Other Truck Types	0.7%	2.4%	5.3%	1.3%	16.7%

The 5-axle semi is the truck of choice on larger farms (Table 36). The 5-axle semi makes up more than 70% of fleets among farms with 1,501 acres or more and 59.9% of farms with 751 acres or more. The tandem-axle truck is second most owned among the larger farms while the single-axle truck is most owned among farms with 300 acres or fewer.

Table 36. Truck Fleet Owned, by Farm Size				
Truck Type	Farm Group			
	1	2	3	4
	300 Acres or Fewer	301 to 750 Acres	751 to 1,500 Acres	1,501 Acres or Greater
Single-Axle	25.2%	17.4%	11.8%	4.7%
Tandem-Axle	27.2%	21.2%	20.4%	13.5%
Tridem-Axle	1.0%	8.0%	1.7%	2.8%
5-Axle Semi	38.6%	38.6%	59.9%	70.9%
7-Axle Semi	1.9%	3.3%	2.4%	5.4%
Other Truck Types	6.2%	11.5%	3.8%	2.7%

Producers reported that the 5-axle semi is used most by all farm groups except for group 1, that is farms with 300 acres or fewer (Table 37). Although single-axle trucks are most often owned by farmers with 300 acres or fewer, the 5-axle semi is most heavily used for hauling grain to market. The tandem-axle is second in use among farm groups with 751 to 1,500 acres and with 1,501 acres or more. These larger

farms reported using the tandem truck more frequently, in annual truck miles, than the tridem-axle truck. All farm sizes report that the 7-axle semi or the RMD is used more than the tridem except for the groups of farms with 301 to 750 acres.

Table 37. Annual Truck Miles, by Truck Type and Farm Group				
	Farm Group			
	1	2	3	4
Truck Type	300 Acres or Fewer	301 to 750 Acres	751 to 1,500 Acres	1,501 Acres or Greater
Single-Axle	32.1%	18.0%	6.4%	1.7%
Tandem-Axle	25.1%	15.7%	12.5%	12.4%
Tridem-Axle	0.0%	8.2%	1.5%	2.0%
5-Axle Semi	31.7%	45.0%	69.5%	60.4%
7-Axle Semi	8.5%	4.9%	5.9%	20.2%
Other Truck Types	2.6%	8.0%	4.2%	3.4%

Farm Truck Use

The 7-axle truck is reported to have the most annual miles per unit at 9,164 miles (Table 38). This level of mileage, which is 2.4 times greater than the 5-axle average annual mileage, may explain this fleet investment decision as typified by heavier use in longer hauls of a producer's grain or in likely custom hauling activity. The 7-axle is also reportedly used more for custom hauling than any of the other truck types. Tandem-axle trucks reportedly have the least average annual miles at 2,264 miles. The order of truck types and use follows the order of efficiency among truck types. The truck type with the largest payload is most appropriate for hauling loads the longest distances. Therefore, larger farms with large-payload trucks may have more flexibility to efficiently haul past the first option of delivery to maximize revenue.

Table 38. Regional Annual Truck Miles, by Truck Type and Farm Group					
Truck Type	n	Average Annual Miles	Standard Error	95% Confidence Interval	
				Lower	Upper
Single-Axle	177	2,272	343	1,596	2,948
Tandem-Axle	288	2,264	225	1,822	2,707
Tridem-Axle	64	2,622	279	2,067	3,178
5-Axle Semi	897	3,891	188	3,521	4,260
7-Axle Semi	79	9,164	5,287	0	19,672
Other Truck Types	29	3,203	840	1,528	4,877

Producers reported the use of their trucks based on hauling their own grain, custom hauling for others, and other uses. Other uses included hauling crop inputs, feed for livestock, and other needs around the farm. The 5-axle semi was reported to be used 94.8% of the time for hauling the producers' own grain. The tridem, tandem, and single-axle also were used for hauling owners' grain at 90.9%, 94.1%, and 79.9%, respectively (Table 39).

Table 39. Regional Truck Average Annual Use for Hauling Own Grain by Truck Type					
Truck Type	n	Haul Own Grain Share in Annual Use	Standard Error	95% Confidence Interval	
				Lower	Upper
Single-Axle	177	79.9%	2.9%	74.2%	85.6%
Tandem-Axle	288	94.1%	1.2%	91.8%	96.5%
Tridem-Axle	64	90.9%	2.9%	85.0%	96.7%
5-Axle Semi	897	94.8%	0.5%	93.8%	95.9%
7-Axle Semi	79	94.7%	1.9%	90.8%	98.5%
Other Truck Types	29	92.4%	4.7%	82.8%	100.0%

Producers reported the use of their trucks for custom hauling for others and, except for the 7-axle semi, this was a small percentage (Table 40). The 7-axle was reportedly used 4.5% of the time in custom hauling. Producers reported using their 5-axle semis for custom hauling 2.7% of the time.

Table 40. Regional Truck Average Annual Custom Use by Truck Type					
Truck Type	n	Custom Haul Share in Annual Use	Standard Error	95% Confidence Interval	
				Lower	Upper
Single-Axle	177	2.3%	1.0%	0.3%	4.4%
Tandem-Axle	288	1.6%	0.6%	0.5%	2.8%
Tridem-Axle	64	3.7%	2.1%	0.0%	7.9%
5-Axle Semi	897	2.7%	0.4%	1.9%	3.5%
7-Axle Semi	79	4.5%	1.8%	0.8%	8.2%
Other Truck Types	29	0.7%	0.7%	0.0%	2.1%

Respondents reported using their single-axle trucks 17.8% of the time for uses other than hauling their own grain or custom hauling. This truck is agile and handy for hauling small loads around the farm. The tandem and tridem were reported to be used for other uses 4.3% and 5.5% of the time, respectively. The 5-axle and 7-axle reported 2.5% and 0.8% for other uses. Other uses include hauling agricultural inputs such as seed and fertilizer and for other uses around the farm (Table 41).

Table 41. Regional Truck Average Annual Other Use by Truck Type					
Truck Type	n	Other Haul Share in Annual Use	Standard Error	95% Confidence Interval	
				Lower	Upper
Single-Axle	177	17.8%	2.8%	12.3%	23.3%
Tandem-Axle	288	4.3%	1.0%	2.2%	6.3%
Tridem-Axle	64	5.5%	2.2%	1.1%	9.8%
5-Axle Semi	897	2.5%	0.4%	1.8%	3.2%
7-Axle Semi	79	0.8%	0.6%	0.0%	2.1%
Other Truck Types	29	6.9%	4.7%	0.0%	16.5%

Farm Truck Fleet: Current and Future Investments

The type and number of trucks owned in 2020, as reported by respondents, is listed in Table 42. For respondents reporting ownership of common truck types, an average 1.42 single-axle and 1.47 tandem-axle trucks were included in their fleet. The average farm ownership was highest among the 5-axle semi, at an average 1.78 per farm. A relatively small number of producers, 29, reported owning other truck types, where 79 producers owned 7-axle RMDs. With the average number per farm at 1.80, this indicates that many of these producers own more than one.

Table 42. Regional Number of Trucks Owned in 2020					
Truck Type	n	Number of Trucks Owned	Standard Error	95% Confidence Interval	
				Lower	Upper
Single-Axle	177	1.42	0.06	1.30	1.54
Tandem-Axle	288	1.47	0.05	1.36	1.57
Tridem-Axle	64	1.36	0.10	1.16	1.57
5-Axle Semi	897	1.78	0.07	1.64	1.92
7-Axle Semi	79	1.52	0.09	1.34	1.70
Other Truck Types	29	1.80	0.16	1.48	2.12

Farm operators estimate they will own same number of single-axle farm trucks in 2024 as they own in 2020 (Table 43). The trend is also slightly different for the tandem-axle truck. Respondents indicate that they plan to increase the number of 5-axle semi-trucks by 6%. The average number of tridem trucks will increase in 2024.

Table 43. Regional Number of Trucks to be Owned in 2024					
Truck Type	n	Average Number of Trucks to Be Owned in 2024	Standard Error	95% Confidence Interval	
				Lower	Upper
Single-Axle	177	1.42	0.08	1.27	1.57
Tandem-Axle	288	1.46	0.06	1.33	1.58
Tridem-Axle	64	1.45	0.12	1.21	1.68
5-Axle Semi	897	1.89	0.08	1.73	2.05
7-Axle Semi	79	1.40	0.12	1.15	1.65
Other Truck Types	29	1.73	0.18	1.37	2.10

The number of trucks leased in the regional farm fleet is small (Table 44). Farmers lease equipment for a couple of reasons. The first is that leasing is an alternative to bank financing. Second, lease payments are tax deductible. The recent tax advantage of the Section 179 depreciation schedule allows producers to deduct the purchase price of equipment in a single year, with some limits. This provision gives ownership an advantage over leasing (Internal Revenue Service, 2015). Producers have clearly chosen ownership over leasing.

Table 44. Regional Number of Trucks Leased in 2020					
Truck Type	n	Number of Trucks Leased	Standard Error	95% Confidence Interval	
				Lower	Upper
Single-Axle	177	0.00	0.00	0.00	0.00
Tandem-Axle	288	0.00	0.00	0.00	0.00
Tridem-Axle	64	0.00	0.00	0.00	0.00
5-Axle Semi	897	0.02	0.00	0.01	0.02
7-Axle Semi	79	0.00	0.00	0.00	0.00
Other Truck Types	29	0.70	0.66	0.00	2.03

The number of trucks leased in 2020 is a very small percentage of the truck fleet and that is projected to continue into 2024 based on respondents' truck fleet investment plans. The economic conditions and tax laws provide no advantage at the present time for leasing over owning. Leasing becomes more attractive when it is difficult to finance equipment and tax laws provide a tax savings for leasing.

Table 45. Regional Number of Trucks to be Leased in 2024					
Truck Type	n	Average Number of Trucks to Be Leased in 2024	Standard Error	95% Confidence Interval	
				Lower	Upper
Single-Axle	177	0.00	0.00	0.00	0.00
Tandem-Axle	288	0.00	0.00	0.00	0.00
Tridem-Axle	64	0.00	0.00	0.00	0.00
5-Axle Semi	897	0.00	0.00	0.00	0.00
7-Axle Semi	79	0.00	0.00	0.00	0.00
Other Truck Types	29	0.30	0.63	0.00	1.56

Farm-to-Market Trips

Maturation in agriculture has been typified by farm consolidation and elevator industry rationalization as firms seek to adopt new technologies and gain efficiencies while competing with a rather homogeneous product in a global grain market. It is reasonable to expect an increase in the average distance for farm-generated grain movements because farm size and distance between elevator industries have increased over recent decades. In addition, production pattern changes and policy incentives have created opportunities for local processing investments in industries such as ethanol and biofuels. On average, major crops were hauled 14.92 miles to the first-choice delivery point and 21.53 miles to the second-choice in the Central Plains region for marketing the 2019 crop (Table 46). About one in seven miles was on unpaved roads for the first-choice delivery point. Only about one mile of the average trip is on interstates. The largest share of the trip occurs on state roads, with one in two miles on state roads. Respondents reported that 41% of their average delivery miles to each of the first- and second-choice delivery points is on local roads.

Table 46. Regional Market Road Type Miles for 2019 Grain Delivery				
Road Type	Average Miles	Standard Error	95% Confidence Interval	
			Lower	Upper
First-Choice Delivery Point				
Interstate	0.77	0.11	0.55	0.99
State 4-Lane Paved	1.10	0.11	0.87	1.32
State 2-Lane Paved	6.77	0.25	6.28	7.26
Local Paved	4.10	0.15	3.81	4.39
Local Unpaved	2.18	0.10	1.98	2.38
Total	14.92			
Second-Choice Delivery Point				
Interstate	2.17	0.34	1.50	2.85
State 4-Lane Paved	1.66	0.23	1.21	2.12
State 2-Lane Paved	10.88	0.54	9.83	11.94
Local Paved	4.93	0.28	4.38	5.47
Local Unpaved	1.89	0.15	1.58	2.19
Total	21.53			

Road Use in Farm Grain Delivery

Figure 11 provides a summary of the road distances traveled to the first-choice delivery point for wheat, corn, and soybean crops in the Central Plains region for marketing of the 2019 crop. These distances are weighted by the bushels produced for each respective crop. The second-choice delivery points are two to six miles farther than the first-choice delivery point. Respondents reported an average length of haul for wheat of 12.9 miles, of which 4.7 miles, or 36%, were on unpaved roads.

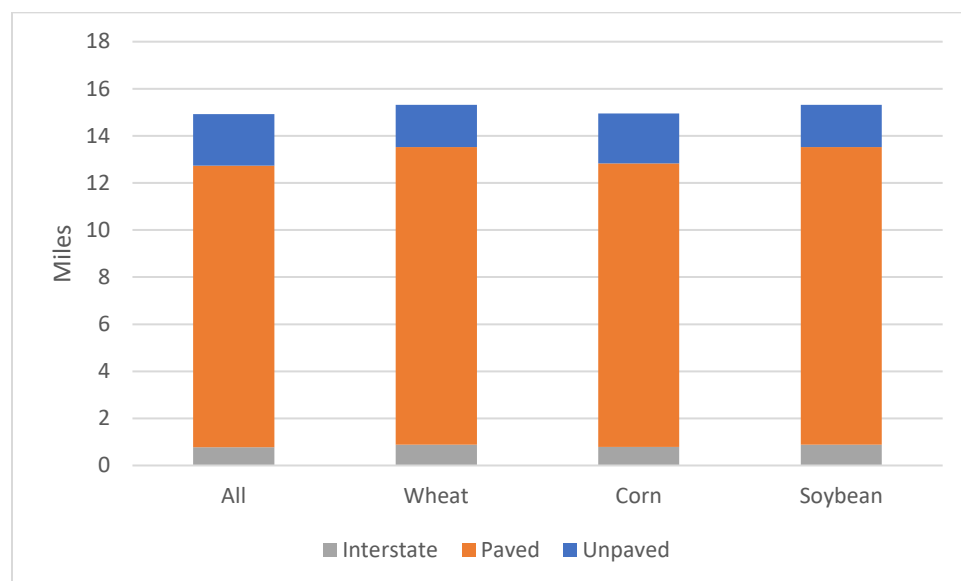


Figure 11. Regional Road Use for the First-Choice Delivery Point

Soybeans have the longest average trip to the first point delivery choice at 15.3 miles. About 12% of the distance is on unpaved roads (Table 49). The share of unpaved roads in the average corn trip of 14.9 miles is 14% and in the average wheat trip of 12.9 miles is 36.2% (Table 48, Table 47). Differences in the surface type distribution within road networks in Central Plains states in conjunction with production

volumes by state may explain these differences. Considering the road groups, interstates are lightly used in the delivery of grain to its first-choice delivery point, accounting for less than one mile in a crop delivery trip. State 2-lane and 4-lane paved roads account for 34.4%, 53.8%, and 54.9% of the average trip distance for wheat, corn, and soybeans, respectively. The remaining 63.9%, 41.9%, and 39.4% of mileage occurs on the local road systems. The distance to the second-choice delivery point is farther for each commodity. The second-choice deliveries tend to include a smaller share of travel on unpaved roads, with a similar allocation between state and local roads.

Table 47. Regional Market Road Type Miles for 2019 Wheat Delivery				
Road Type	Average Miles	Standard Error	95% Confidence Interval	
			Lower	Upper
First-Choice Delivery Point				
Interstate	0.13	0.11	0.00	0.34
State 4-Lane Paved	0.78	0.28	0.24	1.33
State 2-Lane Paved	3.72	0.48	2.78	4.66
Local Paved	3.58	0.42	2.75	4.41
Local Unpaved	4.66	0.35	3.97	5.35
Total	12.87			
Second-Choice Delivery Point				
Interstate	0.85	0.85	0	2.54
State 4-Lane Paved	0	0.02	0	0.02
State 2-Lane Paved	7.03	1.36	4.32	9.75
Local Paved	3.46	0.63	2.20	4.71
Local Unpaved	3.76	0.49	2.78	4.74
Total	15.10			

Table 48. Regional Market Road Type Miles for 2019 Corn Delivery				
Road Type	Average Miles	Standard Error	95% Confidence Interval	
			Lower	Upper
First-Choice Delivery Point				
Interstate	0.79	0.13	0.54	1.04
State 4-Lane Paved	1.11	0.13	0.85	1.38
State 2-Lane Paved	6.85	0.29	6.29	7.41
Local Paved	4.08	0.17	3.75	4.40
Local Unpaved	2.12	0.11	1.90	2.34
Total	14.95			
Second-Choice Delivery Point				
Interstate	1.97	0.69	1.31	2.63
State 4-Lane Paved	1.73	0.34	1.22	2.24
State 2-Lane Paved	10.20	0.26	9.09	11.30
Local Paved	4.96	0.56	4.35	5.57
Local Unpaved	1.93	0.31	1.57	2.29
Total	20.79			

Table 49. Regional Market Road Type Miles for 2019 Soybean Delivery				
Road Type	Average Miles	Standard Error	95% Confidence Interval	
			Lower	Upper
First-Choice Delivery Point				
Interstate	0.89	0.14	0.62	1.16
State 4-Lane Paved	1.17	0.15	0.89	1.46
State 2-Lane Paved	7.23	0.31	6.62	7.84
Local Paved	4.23	0.17	3.90	4.56
Local Unpaved	1.80	0.10	1.61	2.00
Total	15.32			
Second-Choice Delivery Point				
Interstate	2.03	0.40	1.25	2.82
State 4-Lane Paved	1.36	0.26	0.84	1.88
State 2-Lane Paved	10.87	0.75	9.40	12.34
Local Paved	5.27	0.34	4.59	5.94
Local Unpaved	1.37	0.13	1.10	1.63
Total	20.90			

Road Use in Farm Delivery, by State

Kansas was the only state where respondents were asked about wheat deliveries. Respondents reported an average first-choice delivery distance of 12.87 miles (Table 50). A very small proportion of this distance occurred on interstate highways or state 4-lane paved roads. The majority occurred on local road systems and state 2-lane paved road systems.

Table 50. Wheat Market Road Type Miles for 2019 Grain Delivery, Kansas				
Road Type	Average Miles	Standard Error	95% Confidence Interval	
			Lower	Upper
First-Choice Delivery Point				
Interstate	0.13	0.11	0.00	0.34
State 4-Lane Paved	0.78	0.28	0.24	1.33
State 2-Lane Paved	3.72	0.48	2.78	4.66
Local Paved	3.58	0.42	2.75	4.41
Local Unpaved	4.66	0.35	3.97	5.35
Total	12.87			

Indiana had the longest average corn trip to the first-choice delivery point at 16.7 miles, though not substantially larger than the other surveyed states. The trip distance was similar among Iowa, Illinois, Nebraska, and Kansas at 14.91, 14.22, 14.60, and 13.66 miles, respectively. Nebraska and Kansas had the largest proportion of unpaved road miles for corn shipments with 28% and 33% of miles on local gravel roads. Illinois and Indiana reported the smallest share on gravel roads with 4% and 3% of miles on local gravel roads. Regarding local road use, Iowa, Kansas, and Nebraska reported similar local road use percentages ranging from 47.4% to 49.7% of first-choice delivery miles on local roads. Indiana had the lowest reported local road use at 29.9% but reported the highest state road use at 64%. Use of interstate highways for first-choice deliveries were the highest in Illinois, Indiana, and Iowa with 10.1%, 6.2%, and

5.4% of miles via the Interstate System. Additional details about the road type in corn delivery is provided in Figure 12, Table 51, Table 52, Table 53, Table 54, and Table 55.

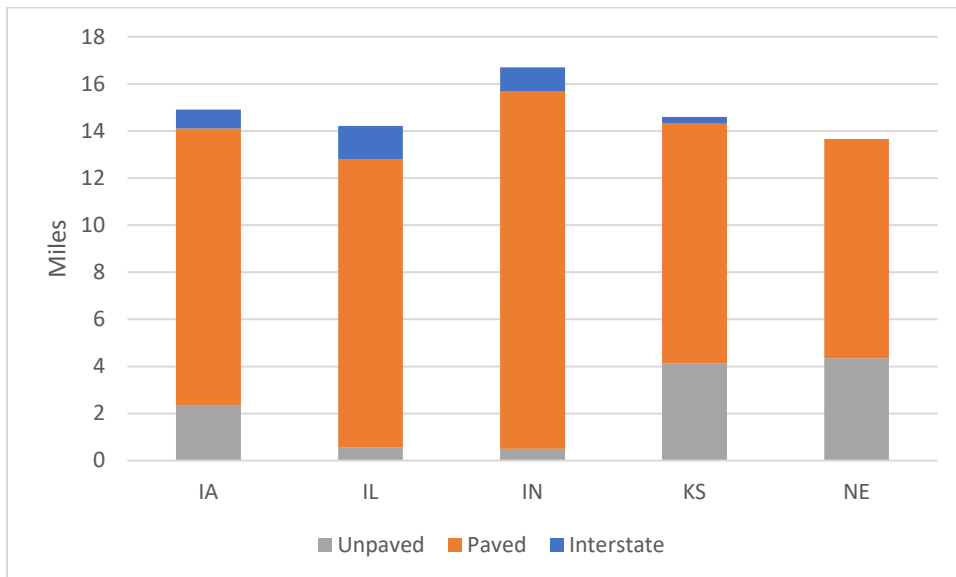


Figure 12. Road Type for Corn Delivery, by State

Table 51. Corn Market Road Type Miles for 2019 Grain Delivery, Iowa				
Road Type	Average Miles	Standard Error	95% Confidence Interval	
			Lower	Upper
First-Choice Delivery Point				
Interstate	0.80	0.28	0.25	1.35
State 4-Lane Paved	1.54	0.38	0.78	2.29
State 2-Lane Paved	5.29	0.57	4.18	6.41
Local Paved	4.92	0.49	3.95	5.89
Local Unpaved	2.36	0.20	1.96	2.76
Total	14.91			

Table 52. Corn Market Road Type Miles for 2019 Grain Delivery, Illinois				
Road Type	Average Miles	Standard Error	95% Confidence Interval	
			Lower	Upper
First-Choice Delivery Point				
Interstate	1.43	0.38	0.68	2.18
State 4-Lane Paved	0.55	0.19	0.19	0.92
State 2-Lane Paved	6.61	0.59	5.45	7.77
Local Paved	5.06	0.32	4.43	5.70
Local Unpaved	0.57	0.09	0.39	0.75
Total	14.22			

Table 53. Corn Market Road Type Miles for 2019 Grain Delivery, Indiana				
Road Type	Average Miles	Standard Error	95% Confidence Interval	
			Lower	Upper
First-Choice Delivery Point				
Interstate	1.03	0.29	0.46	1.59
State 4-Lane Paved	1.98	0.36	1.27	2.70
State 2-Lane Paved	8.70	0.65	7.42	9.99
Local Paved	4.49	0.32	3.86	5.12
Local Unpaved	0.50	0.12	0.28	0.73
Total	16.70			

Table 54. Corn Market Road Type Miles for 2019 Grain Delivery, Kansas				
Road Type	Average Miles	Standard Error	95% Confidence Interval	
			Lower	Upper
First-Choice Delivery Point				
Interstate	0.29	0.15	0.00	0.57
State 4-Lane Paved	0.52	0.23	0.06	0.98
State 2-Lane Paved	6.53	0.71	5.12	7.94
Local Paved	3.13	0.38	2.38	3.87
Local Unpaved	4.13	0.44	3.26	5.00
Total	14.60			

Table 55. Corn Market Road Type Miles for 2019 Grain Delivery, Nebraska				
Road Type	Average Miles	Standard Error	95% Confidence Interval	
			Lower	Upper
First-Choice Delivery Point				
Interstate	0.00	0.01	0.00	0.00
State 4-Lane Paved	0.67	0.20	0.27	1.06
State 2-Lane Paved	6.52	0.65	5.24	7.80
Local Paved	2.12	0.30	1.53	2.71
Local Unpaved	4.35	0.31	3.75	4.95
Total	13.66			

As with corn shipments, Indiana reported the longest first-choice trip for soybean shipments at 17.75 miles. Iowa reported the second longest first-choice trip distance of 15.64 miles. Illinois, Kansas, and Nebraska reported similar trip distances of 13.99, 13.14, and 14.83 miles, respectively. Nebraska and Kansas reported the highest proportion of gravel miles for the first-choice delivery of 26.0% and 28.2%, respectively. Illinois and Indiana reported the lowest gravel proportion at 3.5% and 2.9%, respectively. Road classification use reported for soybean shipments mirrors that of corn shipments. Local roads comprised a larger proportion of the average miles in Iowa, Kansas, and Nebraska (47.1%, 51.1%, and 44.4%) and a smaller proportion in Illinois and Indiana (38.8% and 27.8%). State highway mileages represented 44% of the total miles in Iowa, 50.1% in Illinois, 67.8% in Indiana, 47.0% in Kansas, and 55.1% in Nebraska. Illinois and Iowa had the largest proportion of average miles on interstate highways

with 11.1% and 8.9%, respectively. Additional details about the road type in soybean delivery is provided in Figure 13, Table 56, Table 57, Table 58, Table 59, and Table 60.

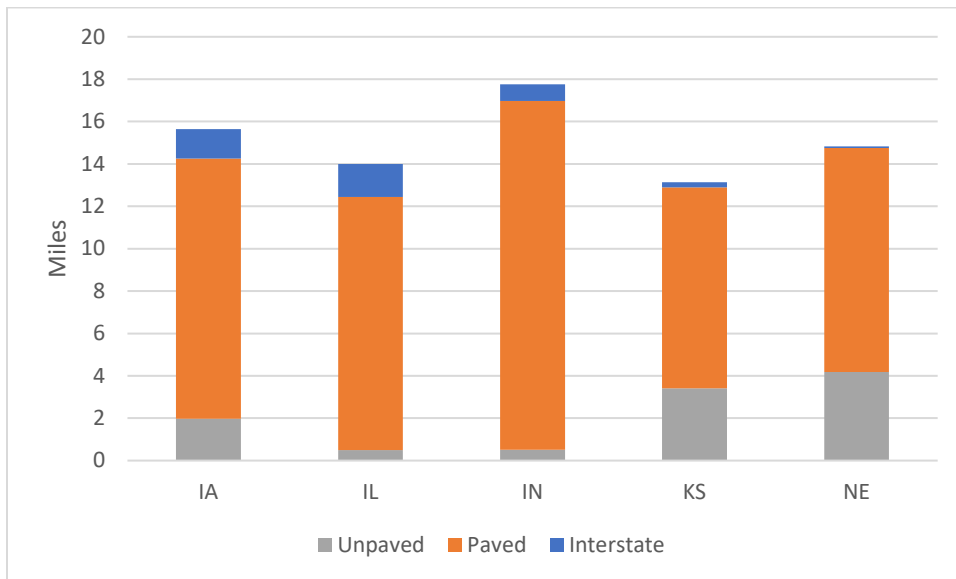


Figure 13. Road Type for Soybean Delivery, by State

Table 56. Soybean Market Road Type Miles for 2019 Grain Delivery, Iowa				
Road Type	Average Miles	Standard Error	95% Confidence Interval	
			Lower	Upper
First-Choice Delivery Point				
Interstate	1.39	0.36	0.68	2.11
State 4-Lane Paved	1.45	0.37	0.72	2.18
State 2-Lane Paved	5.43	0.64	4.18	6.68
Local Paved	5.39	0.52	4.36	6.42
Local Unpaved	1.98	0.19	1.60	2.37
Total	15.64			

Table 57. Soybean Market Road Type Miles for 2019 Grain Delivery, Illinois				
Road Type	Average Miles	Standard Error	95% Confidence Interval	
			Lower	Upper
First-Choice Delivery Point				
Interstate	1.55	0.41	0.75	2.36
State 4-Lane Paved	0.39	0.16	0.09	0.70
State 2-Lane Paved	6.62	0.63	5.38	7.87
Local Paved	4.94	0.33	4.29	5.60
Local Unpaved	0.49	0.09	0.31	0.66
Total	13.99			

Table 58. Soybean Market Road Type Miles for 2019 Grain Delivery, Indiana				
Road Type	Average Miles	Standard Error	95% Confidence Interval	
			Lower	Upper
First-Choice Delivery Point				
Interstate	0.78	0.25	0.30	1.27
State 4-Lane Paved	2.17	0.37	1.44	2.89
State 2-Lane Paved	9.87	0.66	8.57	11.17
Local Paved	4.42	0.29	3.85	4.99
Local Unpaved	0.51	0.11	0.29	0.73
Total	17.75			

Table 59. Soybean Market Road Type Miles for 2019 Grain Delivery, Kansas				
Road Type	Average Miles	Standard Error	95% Confidence Interval	
			Lower	Upper
First-Choice Delivery Point				
Interstate	0.25	0.15	0.00	0.54
State 4-Lane Paved	0.74	0.31	0.12	1.36
State 2-Lane Paved	5.43	0.65	4.15	6.71
Local Paved	3.31	0.37	2.59	4.04
Local Unpaved	3.41	0.37	2.67	4.14
Total	13.14			

Table 60. Soybean Market Road Type Miles for 2019 Grain Delivery, Nebraska				
Road Type	Average Miles	Standard Error	95% Confidence Interval	
			Lower	Upper
First-Choice Delivery Point				
Interstate	0.08	0.06	0.00	0.20
State 4-Lane Paved	0.74	0.32	0.10	1.37
State 2-Lane Paved	7.43	0.81	5.82	9.03
Local Paved	2.40	0.34	1.73	3.06
Local Unpaved	4.18	0.31	3.56	4.80
Total	14.83			

Truck Type Characteristics, Trips from Field to On-Farm Storage or Market

Farmers were asked to describe their farm truck fleet use specific to wheat, corn, and soybean movements. The high use of the 5-axle semi in farm-to-market trips in the region is first discussed in the farm truck fleet section of this report. Other commonly reported truck types were the single-axle and tandem trucks. Number of trucks in the fleet, as discussed earlier, does not provide a good metric for understanding the actual use of these trucks in grain marketing. For example, in Iowa, single-axle trucks represent 8% of the farm truck fleet but account for only 5% of the annual miles traveled for the fleet. Therefore, understanding the annual miles traveled as well as the typical truck type trip for farmers in the region is useful for planning and operational analysis. The specification here for the grain fleet is to define the individual truck types used for the three major crops during the 2019 harvest season. Key descriptors were defined as bushels per load, loaded weight, empty weight, and one-way distance to delivery point.

Regional Truck Type Characteristics

The average trip distance and loaded weight by truck type in the Central Plains region is shown in Table 61. The 5-axle semi, which represents 50% or more of the share of annual mileage in the Central Plains region, has the longest average trip distance of 22.23 miles. The 7-axle semi has the next longest at 19.57 miles. The truck configuration with the shortest average trip distance is the single-axle configuration with an average trip distance of eight miles. The average loaded weight increases across all truck configurations. The fleet average for a single-axle truck is 26,029 pounds. The reported average loaded weight for tandem- and tridem-axle trucks is similar at 47,445 and 58,109 pounds, respectively. Additionally, the reported weight of 5-axle and 7-axle configurations is similar as well with 80,668 and 82,851 pounds, respectively. Depending on the jurisdiction where these configurations are operated, gross vehicle weight restrictions may be more limiting than the bridge formula, which would result in lower reported weights in these configurations.

Truck Type	Average Distance	Standard Error	Average Loaded Weight	Standard Error
Single-Axle	8.00	0.82	26,029	1,578.51
Tandem-Axle	11.85	0.64	47,445	1,641.49
Tridem-Axle	13.36	1.68	58,109	3,884.26
5-Axle Semi	22.23	5.77	80,668	468.27
7-Axle Semi	19.57	1.61	82,851	1,366.73

Variations in average loaded weight by truck type and commodity are shown in Figure 14 and Table 62. Single-unit trucks, with the exception of the single-axle configuration, have higher average loaded weights for corn than soybean or wheat shipments. Combination truck configurations were similar across commodity types.

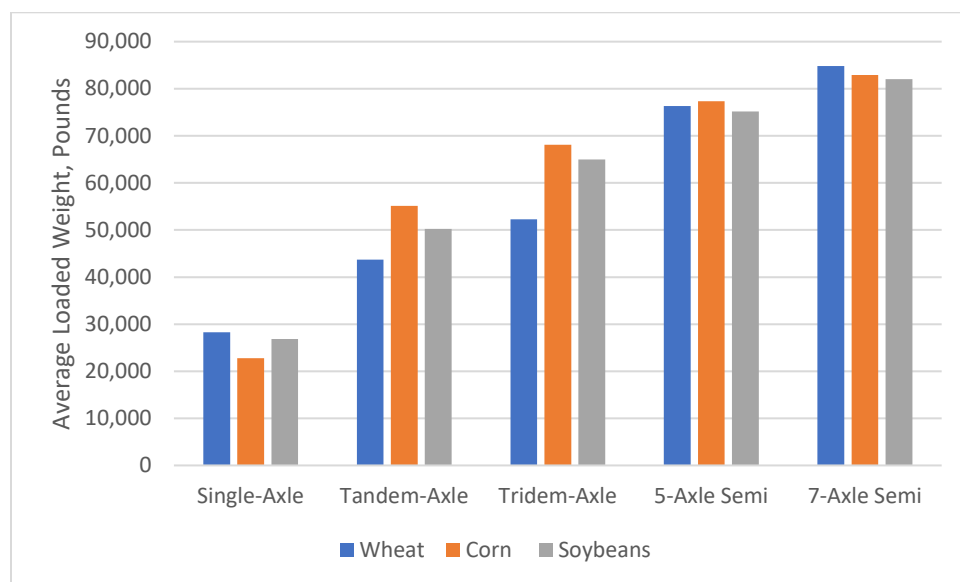


Figure 14. Average Loaded Weight by Truck Type and Commodity

Table 62. Average Loaded Weight, by Commodity									
	Wheat			Corn			Soybeans		
Truck Type	N	Mean	Standard Error	N	Mean	Standard Error	N	Mean	Standard Error
Single-Axle	23	28,284	4,525	78	22,799	2,291	79	26,867	2,750
Tandem-Axle	37	43,712	4,559	209	55,128	1,969	200	50,200	1,944
Tridem-Axle	9	52,279	6,213	35	68,076	2,414	31	64,953	2,425
5-Axle Semi	117	76,300	1,779	790	77,364	568	728	75,162	694
7-Axle Semi	5	84,800	1,538	58	82,913	883	56	82,047	831

Producers were asked to report the average tare or empty weight of their trucks by configuration. The average single-axle empty weight ranged from 8,236 to 10,269 pounds. Tandem-axle trucks had smaller variation in empty weights from 17,528 to 18,789. Tridem-axle trucks had greater variation in empty weights, which is likely due to the differences in trucks under this configuration category. Some tridem-axle trucks are converted tandem-axle vehicles with a drop axle added while others may be converted semi tractors. The 5-axle and 7-axle truck empty weights would also vary depending on the trailer type and construction material.

Table 63. Average Empty Weight, by Commodity									
	Wheat			Corn			Soybeans		
Truck Type	N	Mean	Standard Error	N	Mean	Standard Error	N	Mean	Standard Error
Single-Axle	23	10,269	1,544	79	8,236	865	79	9,622	992
Tandem-Axle	37	17,528	1,403	200	18,789	678	200	17,662	681
Tridem-Axle	10	18,063	1,446	49	15,151	1,630	45	19,907	1,148
5-Axle Semi	128	25,515	845	851	24,623	249	802	24,449	240
7-Axle Semi	5	28,258	606	56	27,110	365	55	26,912	367

In addition to loaded and empty truck weights, producers were asked about the payload capacity in bushels for the three commodities included in this study (Table 64). Bushel payloads are consistent across commodities except for corn payload in the single-axle configuration and wheat in the 7-axle semi configuration. The 7-axle configuration may be due to GVW restrictions on the Kansas highway system (Kansas Highway Patrol, 2018).

Table 64. Truck Type Average Bushels per Load, by Commodity									
	Wheat			Corn			Soybeans		
Truck Type	N	Mean	Standard Error	N	Mean	Standard Error	N	Mean	Standard Error
Single-Axle	23	388	26	78	437	27	79	329	33
Tandem-Axle	37	651	26	209	617	43	200	633	16
Tridem-Axle	10	659	31	49	628	55	45	632	34
5-Axle Semi	128	931	7	851	922	76	803	1,034	19
7-Axle Semi	5	980	22	58	1,202	189	58	1,287	200

With regard to trip distance, the 5-axle semi had the longest reported average trip distance for all commodities with the exception of 7-axle semi shipments of soybeans (Figure 15). For single-axle trucks, the longest reported average trip distance was 8.41 miles for wheat and 5.51 miles for corn shipments. Average wheat distances for the tandem-axle configuration was the shortest at 8.56 miles and soybeans the longest at 10.63 miles. For the 5-axle semi, wheat shipments had the shortest average trip distance of 14.73 miles, and corn had the longest with 23.83 miles. One notable exception in the 7-axle configuration average trip distance was wheat shipments, which had a lower reported average trip distance than corn or soybean trips. As described above, since only Kansas reported wheat shipments in the survey, existing truck size and weight restrictions may limit the potential gains from utilizing this truck configuration (Table 65).

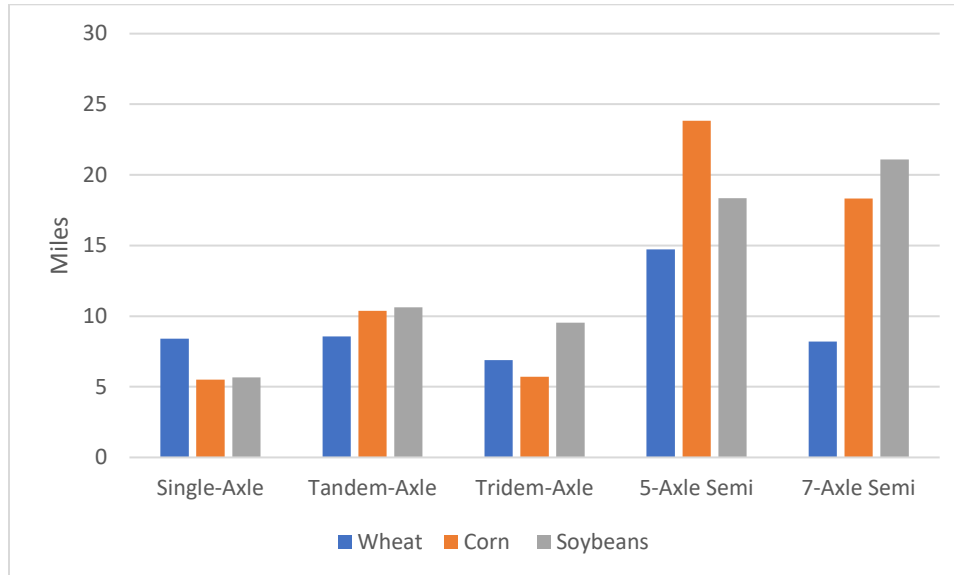


Figure 15. Average Trip Distance, by Truck Type and Commodity

Table 65. Truck Type Average Trip Distance, by Commodity									
	Wheat			Corn			Soybeans		
Truck Type	N	Mean	Standard Error	N	Mean	Standard Error	N	Mean	Standard Error
Single-Axle	23	8.41	1.52	78	5.51	0.91	79	5.67	0.81
Tandem-Axle	37	8.56	1.50	209	10.38	0.80	200	10.63	0.83
Tridem-Axle	10	6.88	0.87	49	5.71	1.14	45	9.53	1.18
5-Axle Semi	128	14.73	1.10	850	23.83	6.28	800	18.36	0.54
7-Axle Semi	5	8.20	0.62	58	18.32	1.66	58	21.10	1.61

Truck Type Characteristics, by Farm and State Strata

It is important to consider the farm group and state strata for the truck trip descriptors to identify differences that should be considered as a way to calibrate application of the survey findings in case studies or other sub-region analyses. To simplify analysis and presentation of differences, only the 5-axle semi-truck farm trip load weights and trip distances were analyzed with regard to the size and geographic strata. In addition, due to limited observations for corn and soybean shipments, Montana farm truck trips are omitted in this analysis to minimize potential sample size bias in the means tests.

Within the farm group strata, the average loaded weight of wheat shipments using a 5-axle semi-truck configuration ranged from 80,843 to 82,424, and there was a positive relationship between farm size and average loaded weight (Table 66). For 5-axle semi-trucks, the average trip distance for wheat shipments ranged from seven miles in farm group 1 to 16.71 miles in farm group 4 (Table 67). Farm groups 2 and 3 reported similar trip distances for wheat shipments at 13.41 and 11.73 miles, respectively.

Table 66. Wheat Trip 5-Axle Loaded Weight, by Farm Group					
Farm Group	N	Mean	Standard Error	95% Confidence Limit	
				Lower	Upper
300 acres or fewer	5	80,043	994	78,224	83,776
301 to 750 acres	21	80,940	967	78,923	82,958
751 to 1,500 acres	29	81,374	1,354	78,601	84,148
1,501 acres or more	62	82,424	717	80,990	83,858

Table 67. Wheat Trip 5-Axle Average Distance, by Farm Group					
Farm Group	N	Mean	Standard Error	95% Confidence Limit	
				Lower	Upper
300 acres or fewer	7	7.00	2.19	1.63	12.37
301 to 750 acres	23	13.41	1.61	10.06	16.75
751 to 1,500 acres	32	11.73	1.68	8.29	15.18
1,501 acres or more	66	16.71	2.30	12.11	21.32

In Kansas, the average 5-axle loaded weight was 81,837 pounds (Table 68) and the average 5-axle trip distance was 14.34 miles. The remaining states were not surveyed with respect to wheat transportation.

Table 68. Wheat Trip 5-Axle Loaded Weight, by State					
State	N	Mean	Standard Error	95% Confidence Limit	
				Lower	Upper
Iowa	0				
Illinois	0				
Indiana	0				
Kansas	117	81,837	536	80,776	82,897
Nebraska	0				

Table 69. Wheat Trip 5-Axle Distance, by State					
State	N	Mean	Standard Error	95% Confidence Limit	
				Lower	Upper
Iowa	0				
Illinois	0				
Indiana	0				
Kansas	128	14.34	1.32	11.73	16.94
Nebraska	0				

Within the farm group strata, the average loaded weight of corn shipments using a 5-axle semi-truck configuration ranged from 79,820 to 80,869 pounds (Table 70). The average trip distance in this configuration ranged from 14.19 miles for farm group 2 to 29.79 miles for farm group 4. Except for farm group 2, there is a positive relationship between average corn trip distance and farm size (Table 71).

Table 70. Corn Trip 5-Axle Loaded Weight, by Farm Group					
Farm Group	N	Mean	Standard Error	95% Confidence Limit	
				Lower	Upper
300 acres or fewer	909	80,059	1,820	76,274	83,845
301 to 750 acres	360	79,820	558	78,716	80,925
751 to 1,500 acres	369	79,845	421	79,013	80,676
1,501 acres or more	549	80,869	266	80,345	81,393

Table 71. Corn Trip 5-Axle Average Distance, by Farm Group					
Farm Group	N	Mean	Standard Error	95% Confidence Limit	
				Lower	Upper
300 acres or fewer	909	15.55	3.61	8.99	23.83
301 to 750 acres	360	14.19	0.95	12.32	16.06
751 to 1,500 acres	369	16.07	0.90	14.31	17.84
1,501 acres or more	549	29.79	12.80	4.63	54.94

Within the state strata, the average loaded weight of corn shipments using a 5-axle semi-truck configuration ranged from 78,308 pounds in Illinois to 82,649 pounds in Nebraska (Table 72). The average trip distance in this configuration ranged from 14.37 miles in Kansas to 40.79 miles in Indiana (Table 73).

Table 72. Corn Trip 5-Axle Loaded Weight, by State					
State	N	Mean	Standard Error	95% Confidence Limit	
				Lower	Upper
Iowa	137	80,948	298	80,359	81,538
Illinois	173	78,308	324	77,667	78,949
Indiana	211	80,223	461	79,314	81,132
Kansas	123	80,204	619	78,978	81,431
Nebraska	146	82,649	560	81,541	83,758

Table 73. Corn Trip 5-Axle Distance, by State					
State	N	Mean	Standard Error	95% Confidence Limit	
				Lower	Upper
Iowa	147	16.59	1.11	14.39	18.79
Illinois	190	17.13	1.13	14.90	19.35
Indiana	231	40.79	23.60	0.00	87.29
Kansas	131	14.37	1.33	11.74	17.01
Nebraska	151	14.76	0.88	13.03	16.50

Within the farm group strata, the average loaded weight of soybean shipments using a 5-axle semi-truck configuration ranged from 79,040 to 82,380 pounds (Table 74). The average trip distance in this configuration ranged from 12.54 miles for farm group 1 to 18.29 miles for farm group 4, showing a positive relationship between average soybean trip distance and farm size (Table 75).

Table 74. Soybean Trip 5-Axle Loaded Weight, by Farm Group					
Farm Group	N	Mean	Standard Error	95% Confidence Limit	
				Lower	Upper
300 acres or fewer	909	79,822	992	77,738	81,906
301 to 750 acres	360	79,040	592	77,867	80,213
751 to 1,500 acres	369	82,380	3,289	75,896	88,865
1,501 acres or more	549	80,432	270	79,901	80,963

Table 75. Soybean Trip 5-Axle Average Distance, by Farm Group					
Farm Group	N	Mean	Standard Error	95% Confidence Limit	
				Lower	Upper
300 acres or fewer	909	12.54	2.64	7.11	17.96
301 to 750 acres	360	14.65	0.93	12.82	16.48
751 to 1,500 acres	369	18.02	1.02	16.02	20.02
1,501 acres or more	549	18.29	0.83	16.66	19.91

Within the state strata, the average loaded weight of soybean shipments using a 5-axle semi-truck configuration ranged from 78,240 pounds in Illinois to 83,299 pounds in Indiana (Table 76). The average trip distance in this configuration ranged from 15.86 miles in Kansas to 19.14 miles in Indiana (Table 77).

Table 76. Soybean Trip 5-Axle Loaded Weight, by State					
State	N	Mean	Standard Error	95% Confidence Limit	
				Lower	Upper
Iowa	127	80,477	313	79,858	81,096
Illinois	163	78,240	321	77,605	78,874
Indiana	224	83,299	3,152	77,087	89,511
Kansas	98	79,129	698	77,744	80,514
Nebraska	116	80,895	733	79,444	82,346

Table 77. Soybean Trip 5-Axle Distance, by State					
State	N	Mean	Standard Error	95% Confidence Limit	
				Lower	Upper
Iowa	135	17.63	1.28	15.09	20.17
Illinois	184	15.86	1.08	13.74	17.98
Indiana	246	19.14	0.88	17.42	20.86
Kansas	109	15.65	1.83	12.01	19.28
Nebraska	126	17.07	1.40	14.29	19.84

SUMMARY

The objective of this study was to provide information about farm truck inventory and grain marketing patterns in the Central Plains. There is no other source for this information, and this study should be unique and complementary to other farm-to-market information and national commodity flow publications. Farmers may use this information for investment and productivity assessments. Local and regional planners and policy makers can use the information in calibrating travel demand and freight flow models for investment and asset management choices.

The survey of farm operators in this Central Plains region was conducted to gather information about transportation of crops, the inventory of the farmer-owned truck fleet, and on-farm storage capacity. Survey design and implementation was a collaboration of the Upper Great Plains Transportation Institute at North Dakota State University and the National Agricultural Statistics Service of the U.S. Department of Agriculture.

Average on-farm storage capacity for the three commodities ranged from 41,130 bushels to 110,838 bushels among the states surveyed. The storage capacity density, measured by farm as bushels produced per harvested acre (including corn, soybeans, and wheat), was inversely related to the farm size. Storage capacity volume, however, is substantially greater for the larger farms. Average on-farm storage was 196,272 bushels of corn, soybean, and wheat capacity for farms of 1,501 acres or more. The smallest farms averaged only 50,297 bushels of capacity for the three commodities.

The on-farm storage is concentrated on the larger farms in terms of average capacity. In terms of flexibility, however, the smaller farms appear to be more able to adapt when increased on-farm storage is needed. For the smallest farms, the ratio of storage capacity bushels per harvested acre was 339, where the largest farms have an average of 75 bushels of on-farm storage for each harvested acre. The difference in the storage density may be related to expectations for yield among commodities.

On-farm storage provides an easily accessible option for delaying grain delivery beyond the harvest season. Farmers were also asked to identify the share of the crop delivered directly to market from the field at harvest time. Responses, weighted by bushels produced, showed 91% of wheat 95% CI [89%, 92%] and 61% of corn 95% CI [59%, 63%] was delivered directly to market. The average share of soybeans delivered directly to market from the field was 72%, 95% CI [70%, 73%].

The most owned and operated truck in the five-state area reported by survey respondents is the 5-axle semi. The 5-axle semi accounted for 56% of all trucks reported followed by the tandem-axle truck with more than 19% and then the single-axle with 12%. The tridem and 7-axle semi were least owned among producers, representing 3.8% and 3.6%, respectively.

In the current survey, producers reported that the 5-axle semi is used most by all farm groups. Even though more single-axle trucks are owned by farmers with 300 acres or less, the 5-axle semi is used more for hauling to market. The tandem gets second most use by all farm groups.

The 5-axle semi was reported to be used 95% of the time by producers hauling their own grain, followed by the tridem, tandem, and single-axle with 91%, 94%, and 80%, respectively.

Farmers estimate that single-axle and tandem-axle truck ownership will decline in the future while 5-axle and 7-axle semi ownership will increase. Ownership of tridem-axle trucks is expected to remain constant.

It is reasonable to expect an increase in the average distance for farm-generated grain movements because farm size and distance between elevators has increased over time. In addition, production pattern changes and policy incentives have created opportunities for local processing investments in industries such as ethanol and biofuels. On average, the major crops were hauled 14.92 miles to the first-choice delivery point and 21.53 miles to the second choice in the Central Plains region in marketing the 2019 crop. About 14% of miles were on unpaved roads for the first-choice point. Less than one mile of the average trip is attributed to interstates. The largest share of the trip is on state roads, with one in two miles on state roads. Respondents reported that 42% of their average delivery miles to each of the first- and second-choice points is on local roads.

In comparing the trip distances to the Tolliver study, note that even though there has been rationalization in the elevator industry, the number of large shuttle elevators has more than doubled since 2005. This provides more options to farmers and perhaps shorter distance to the first or second delivery choice for some than was available in 2005 when hauling to shuttle facilities.

The average wheat trip to the first-choice delivery point was 12.87 miles. Gravel road miles accounted for 36% of the total mileage for wheat deliveries to the first-choice destination. The average wheat trip to the second-choice delivery point was 15.10 miles with a smaller proportion occurring on gravel roads (24%).

Indiana had the longest average corn trip to the first-choice delivery point at 16.7 miles, though not substantially larger than the other surveyed states. The trip distance was similar among Iowa, Illinois, Nebraska, and Kansas at 14.91, 14.22, 14.60, and 13.66 miles, respectively. Nebraska and Kansas had the largest proportion of unpaved road miles for corn shipments with 28% and 33% of miles on local gravel roads. Illinois and Indiana reported the smallest share on gravel roads with 4% and 3% of miles on local gravel roads. Regarding local road use, Iowa, Kansas, and Nebraska reported similar local road use percentages ranging from 47.4% to 49.7% of first-choice delivery miles on local roads. Indiana had the lowest reported local road use at 29.9% but reported the highest state road use at 64%. Use of interstate highways for first-choice deliveries was highest in Illinois, Indiana, and Iowa with 10.1%, 6.2%, and 5.4% of miles via the Interstate System.

As with corn shipments, Indiana reported the longest first-choice trip for soybean shipments at 17.75 miles. Iowa reported the second longest first-choice trip distance of 15.64 miles. Illinois, Kansas, and Nebraska reported similar trip distances of 13.99, 13.14, and 14.83 miles, respectively. Nebraska and Kansas reported the highest proportion of gravel miles for first-choice delivery of 26.0% and 28.2%, respectively. Illinois and Indiana reported the lowest gravel proportion at 3.5% and 2.9%, respectively. Road classification use reported for soybean shipments mirrors that of corn shipments. Local roads comprised a larger proportion of the average miles in Iowa, Kansas, and Nebraska (47.1%, 51.1%, and 44.4%) and a smaller proportion in Illinois and Indiana (38.8% and 27.8%). State highway mileages represented 44% of the total miles in Iowa, 50.1% in Illinois, 67.8% in Indiana, 47.0% in Kansas, and 55.1% in Nebraska. Illinois and Iowa had the largest proportion of average miles on interstate highways with 11.1% and 8.9%, respectively.

The average loaded weight shows the expected trend across commodities; larger trucks are associated with heavier loaded weights. The average loaded weight for a single-axle truck ranges from 22,799 pounds for corn to 28,284 pounds for wheat. The fleet average for single-axle trucks is 26,029 pounds. The 5-axle semi, which is attributed with more than half of the annual farm truck miles, ranges in loaded weight from 75,162 pounds for soybeans to 77,364 pounds for corn. Overall, the average loaded weight for a 5-axle semi is 80,668 pounds. The average loaded weight for the tandem truck is 47,445 pounds.

REFERENCES

- Baumel, P. C., Gervais, J.-P., Hommes, H., & O'Riley, C. (1996). "The Iowa Grain Flow Survey: Where and How Iowa Grain Producers and Country Elevators Ship Corn and Soybeans." Iowa State University.
- Griffin, G., Wilson, W., & Casavant, K. (1984). "Characteristics and Costs of Operation of North Dakota's Farm Trucks." Upper Great Plains Transportation Institute, North Dakota State University.
- Kansas Highway Patrol. (2018, May). "Weight Enforcement in Kansas." Retrieved from https://kansashighwaypatrol.org/wp-content/uploads/2022/05/weight_enforcement_201805241325568790.pdf
- Tolliver, D. D., Berwick, M., & Vachal, K. (2005). "Farm-to-Market Patterns and Truck Use in the Northern Plains." North Dakota State University, Upper Great Plains Transportation Institute.
- U.S. Department of Agriculture. (2022, August 12). "USDA Quick Stats." Retrieved from <https://quickstats.nass.usda.gov/>
- U.S. Department of Transportation, Bureau of Transportation Statistics. (2022). "Commodity Flow Survey." Retrieved from <https://www.bts.gov/cfs>

BEFORE THE
SURFACE TRANSPORTATION BOARD

NOR 42185

WESKAN GRAIN LLC v. KANSAS & OKLAHOMA RAILROAD, LLC

**KANSAS & OKLAHOMA RAILROAD, LLC'S MOTION FOR
EXPEDITED DETERMINATION OF JURISDICTION AND
BIFURCATION OF PROCEEDING**

VERIFIED STATEMENT OF WILLIAM BRENNAN Ph.D.

EXHIBIT WB-4

HEAVIER SEMIS: A GOOD IDEA?

I. Executive Summary

Federal and state regulations govern the weight and physical dimensions of trucks, buses, and trailers on U.S. highways. In 1975, the U.S. Congress increased truck weight limits as a means to promote greater efficiency in transportation given the energy crisis that was occurring at that time. The weight limit for trucks with single axles increased to 20,000 pounds, to 34,000 pounds for tandem axles, and the overall weight limit was raised to 80,000-pound gross vehicle weight (GVW). These limits remain in effect today.

From 1975 to 2013, technological breakthroughs have occurred at such a pace that society underestimates the significance of such developments. Such developments begs the question, does it really make sense that the regulations meant for 1975 technology are being applied to 2013 technology? The improvements in safety training, equipment and communications have fundamentally changed how businesses operate.

By not increasing truck weights in parallel with technological advances does create bottleneck in the flow of agricultural goods, which reduces America's competitiveness in the world market. The regulations are impacting trade with Canada and Mexico; each of which has higher weight limits than the U.S. Industries that are directly tied to soybean and grain consumption, such as meat and beverage operations, are impacted through higher feedstock costs and higher transportation costs that result in higher landed costs and ultimately, lost sales. For example, the U.S. meat industry is dependent on exports for growth, which means domestic soybean meal and grain consumption is tied to the success of the meat export program. Lowering landed prices in global markets is a key component to higher meat exports and eventually domestic soybean meal and grain consumption, which results in increased employment and revenues.

Nonetheless, changes to truck weight limits are a highly-charged, often emotional issue. Few automobile drivers look forward to the prospect of sharing the road with vehicles weighing upwards of nearly 50 tons, particularly since highway truck accidents involving passenger cars are often devastating, and are commonly fatal. Furthermore, when wrecks do occur between a semi-tractor trailer and an automobile, the video footage makes great fodder for media of all types (the evening news and posting on the internet), which amplifies the public's concern about all highway safety in general.

This report is an update to the report prepared in 2009, analyzing, from an economic standpoint, the pros and cons of allowing higher weight limits. It considers not only efficiency and cost savings from proposed higher limits, but also provides a thorough review of highway safety considerations and infrastructure integrity issues that could be associated with allowing heavier trucks.

The key takeaway is that efficiency gains from higher truck weight limits could be substantial, although the benefits will vary by industry depending on the characteristics of the cargo shipped. Informa also found little substantive evidence that heavier trucks

would pose a safety hazard, since the addition of another axle would provide the necessary braking capacity to handle the added weight. Furthermore, the reduction in vehicle miles traveled (VMT) will reduce the number of accidents by a corresponding amount. Industry stakeholders are deeply divided on raising the federal truck weight limit. The issue being debated is safety concerns. Regarding infrastructure integrity, the results are mixed. The additional axle would mitigate pavement damage that might be associated with heavier trucks, but the stress on bridges would depend on how the bridge was constructed. Most bridges would likely be able to handle the additional weight, but a third of the older bridges could be in need of replacement or reinforcement to safely handle these trucks. On a square foot basis, 85% of the bridges would be able to accommodate heavier vehicles.

A. Perspective from Various Industry Organizations

Interviews and a review of public statements from various government and industry organizations reveal a diverse set of opinions on the issue of Truck Size and Weights. Not surprisingly, industry organizations' positions differ depending on the potential gains and the additional exposure to risk that their respective constituencies or members would face. Several organizations that have reservations of increasing truck size and weights on the Interstate system or have not taken a position have expressed that the reason is due to the complexity of the issue, rather than an objection to larger trucks in principle. Gaining support from these organizations would likely be predicated on having the proper regulations, standards, and strategic plans in place to successfully implement and manage heavier trucks. Having adequate data is a significant constraint in objective analysis of reforming truck size and weight policy. There are several efforts taking place, both in the private sector and with the government to better capture and analyze data that is relevant to the issue. Many sources indicate that an update to the comprehensive study that the U.S. Department of Transportation (DOT) published more than a decade ago that is scheduled to be completed in 2014 will be significant to the policy discussion. Department of Transportation officials involved with the study have indicated that collecting the appropriate data for a comprehensive analysis poses a challenge for the study, which they are attempting to address as best as possible.

B. Future Estimates of Freight Movements by Semis

According to the DOT, the volume of freight demand by all modes (air, truck, rail and water) is expected to increase from 18.5 billion tons in 2010 to more than 27.5 billion in 2040, an increase of 9.2 billion tons or 50%. Truck volumes are expected to register the largest increase, rising from 12.5 billion tons in 2010 to 18.5 billion in 2040, an increase of 6 billion tons or 48%. Moreover, only 34% or 3.2 billion tons of the growth will come from modes other than truck.

By increasing weight limits from 80,000 pounds on five-axle truck semi-tractor trailers to 97,000 lbs. on six-axle truck semi-tractor trailers would reduce the number of truck trips and total truck miles, and result in substantial savings in fuel costs. It is assumed the average ton-mile distance is 75 miles for all trucks, 150 for semi-tractor trailers and that

80% of semi-tractor trailer cube out versus weigh out. By 2022, due to the large size of the truck market, even a small percentage decrease in the number of trips will save approximately 39.3 million trips annually, reduce miles driven by 5.9 billion annually, and save 1.1 billion gallons of diesel annually.

C. Motorist Safety

Research indicates that if truck weight limits are increased, adding an extra axle with the accompanying brakes increases excess brake capacity and improves stopping performance. Also adding an axle increases the number of tires on a truck from 18 to 22 reducing the load weight per tire that improves tire surface and braking friction.

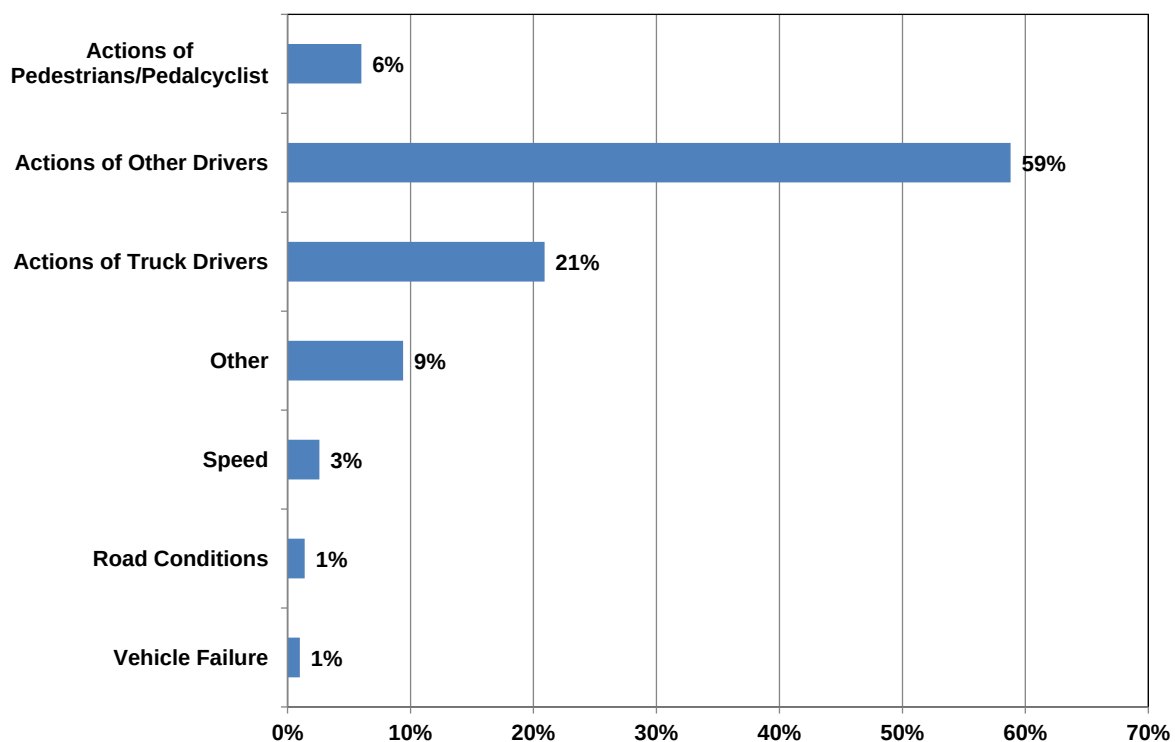
Accordingly, there is very little difference between five-axle 80,000 pound semi-tractor trailers and six-axle 97,000 pound semi-tractor trailers in terms of key characteristics of crash dynamics, such as static roll stability, load transfer ratio and rearward amplification.

Still, proposals to increase truck size and weight maximums likely face opposition because automobile drivers think they are much more dangerous. In reality, fatalities and injuries in accidents involving trucks have been declining steadily for several decades despite greater traffic congestion and much higher highway speeds for all vehicles.

There is no compelling evidence to suggest that the higher truck weights would themselves lead to an increase in fatality or injury rates, so long as the additional axle is also included to provide added braking power.

The Federal Motor Carrier Safety Administration (FMCSA) and the National Highway Traffic Safety Administration (NHTSA) reported in 2001 that vehicle failures were only responsible for one percent of fatal crashes as shown in Figure 1. Since 2001, the problem of “distracted driving” has increased dramatically as the use and adoption of smart phones has grown in popularity. Associations opposed to higher truck weights freely admit distracted driving is a serious issue. To tackle the problem of distracted motorists, states have passed laws, such as making it illegal to text and drive, or special requirements for teenage drivers. Over the same time period, NHTSA has issued new braking guidelines and Federal Motor Carrier Safety Administration (FMCSA) issued new hours of service (HOS) regulations aimed at increasing highway safety. The bottom line is that a 97,000 pound gross vehicle weight (GVW) truck will not enter interstate service without meeting the same safety standards as an 80,000 pound GVW truck. Lastly, the primary cause of accidents is not vehicle failures but human error.

Figure 1: Critical Events in Large Truck Fatal Crashes



Source: Federal Motor Carrier Safety Administration (FMCSA) and the National Highway Traffic Safety Administration (NHTSA)

Research also suggests that increasing maximum truck weights could make U.S. highways safer and reduce the number of highway truck crashes by reducing the number of VMT required to move any given amount of freight. It follows that fewer trips and reduced truck mileage will also translate to fewer accidents involving trucks. In 2011, for every 100 million vehicle miles traveled by combination trucks, traffic accidents resulted in 1.7 fatalities.¹ A combination truck is defined as a truck tractor pulling any number of trailers (including a “bobtail” truck tractor not pulling any trailers) or a straight truck pulling at least one trailer. Applying these same accident rates to the estimated 4.1 billion mile reduction calculated by Informa for 2012 suggests a net reduction of 68 fatalities in 2012 and 98 fatalities by 2022.

FMCSA reported in 2011 that combination trucks were involved in accidents that killed 2,724 people as shown in Table 1. The estimate for VMT was 164 billion miles in 2011. Total fatalities divided by VMT equals 1.66 fatalities per 100 million VMT. Assuming 80% of combination trucks are semi-tractor trailer moves, total fatalities would total 2,179. A 97,000 pound GVW truck will require 20% less trips than an 80,000 pound GVW on loads that are constrained by weight. According industry interviews, approximately 20% of freight is constrained by weight, which results in a 4% decline in

¹ Source: *Large Truck and Bus Crash Facts 2011*, January 2009, Analysis Division Federal Motor Carrier Safety Division.

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all semi-tractor trailer vehicle miles, which in turn results in a 4% decline in fatalities or 87 saved lives.

The 87 saved lives assumes if a truck does not leave the parking lot, it will not be involved in an accident. It is argued that a heavier vehicle is inherently more dangerous. So, how much more would fatalities per 100 million VMT have to be for a 97,000 pound truck to have the same number of fatalities as an 80,000 pound truck? Based on the data, a 97,000 pound truck's fatalities per 100 million VMT rate would have to be 25% greater than an 80,000 pound truck to prevent lives from being saved. A 97,000 pound truck with an extra axle having comparable handling characteristics as an 80,000 pound truck combined with similar safety parameters that indicate a very small percentage of wrecks are the result of equipment failure results in the likelihood of a 25% increase in accidents as highly unlikely.

Table 1: Safety Comparison (80,000 GVW versus 97,000 GVW in 2011)

	All Combination Trucks	Semi-Tractor Trailers	80,000 Pounds or Less	97,000 Pounds
Cubes Out Versus Weights Out	100%	80%	64%	16%
Total Fatalities	2,724	2,179	1,743	436
Million Vehicle Miles Traveled	163,692	130,954	104,763	26,191
Fatalities per 100 Million VMT	1.66	1.66	1.66	1.66
Million Vehicle Miles Saved	3%	0%	0%	20%
Adjusted Vehicle Miles Traveled	158,454	125,715	104,763	20,953
Fatalities per 100 Million VMT	1.66	1.66	1.66	1.66
Adjusted Fatalities	2,637	2,092	1,743	349
Fatalities Lowered	87	87	-	87
Break Even Rate	1.72	1.73	1.66	2.08
Break Even Percent Increase	3%	4%	0%	25%

Source: Large Truck and Bus Crash Facts 2011, Analysis Division Federal Motor Carrier Safety Administration, Department of Transportation, and Informa

For a truck driver, the increase in efficiency is viewed as either unemployment or driving a truck with a greater chance of harm. The options are not very attractive. Truck drivers are paid to move freight and if they move more freight, they want more money.

D. Infrastructure Integrity

Increasing the allowable weights of trucks has implications for wear-and-tear on bridges and roadways, but the relationship is complicated and the magnitude is uncertain. Pavement and bridge impacts are major concerns associated with changing truck weight limits because of the magnitude of Federal and State investments in pavement on the Nation's highways and in repairing or replacing bridges. Wear-and-tear on paved surfaces (including on bridges) depends on both the volume of traffic and the number of axles over which the weight of the traffic is distributed. The structural integrity of bridges depends not only on the weight of the vehicles that pass over it, but also the number of axles that carry the weight and the distance between those axles, a relationship used to establish the "bridge formula" that guides current weight restrictions.

The additional axle would mitigate pavement damage that might be associated with heavier trucks, but the stress on bridges would depend on how it was constructed. Most bridges would likely be able to handle the additional weight, but a third of the older bridges could be in need of replacement or reinforcement to safely handle these trucks. On a square foot basis, 85% of the bridges would be able to accommodate heavier vehicles. The principal cost for bridges associated with heavier trucks lies in ensuring that the bridge can safely accommodate the trucks. This involves replacing or strengthening bridges. In addition, bridge replacement or repair disrupts traffic and increases motorist time requirements as traffic patterns change. As a general rule, most bridges constructed after 1965 can support heavier trucks than are allowed under current rules.

Research shows that the use of six-axle 90,000 pound semi-tractor trailers would not increase stress on bridges at maximum weight compared with five-axle tractor semi-tractor trailers. However, the heavier six-axle 97,000/98,000 pound semi-tractor trailers would exceed current bridge formula limits and might cause stresses exceeding bridge design. The removal of the current bridge formula cap of 80,000 lbs. on gross vehicle weight would allow minimal or no increase in gross weight of a five-axle tractor semi-tractor trailer, but could allow vehicles with additional axles to operate substantially above 80,000 lbs. However the bridge formula has not been updated since it was developed in the mid-1970s.

The six-axle 90,000 and 97,000 pound semi-tractor trailers were found to cause the same or less road damage than the five-axle semi-tractor trailer. Unit pavement costs and pavement costs per unit of payload-mile are also the same or lower for six-axle semi-tractor trailers than for five-axle semi-tractor trailers.

E. Enhanced Efficiency of Transporting Soybeans and Products

The U.S. soybean farm to market value chain and logistics flow provides a framework to analyze the journey of a soybean from its initial production region to end consumer. The marketing chain provides the starting point to determine the amount of fuel and volume of emissions transporting soybeans and soybean products from origin to destination that can be reduced by higher truck weights. Not all savings will be accomplished in one year, but the greater efficiencies will partially offset the increase cost of diesel. In addition, as soybean yields increase, fuel and carbon dioxide (CO₂) emissions will increase without an offsetting increase in transportation efficiencies. The primary greenhouse gas is carbon dioxide.

Assuming soybean meal and soybean oil are a continuation of the soybean, the average distance traveled to an end user or export position is 955 miles. Truck accounts for 101 miles, rail 588 and barge 266. Transporting soybeans requires an average move of 667 miles, soybean meal requires 590 miles and soybean oil requires

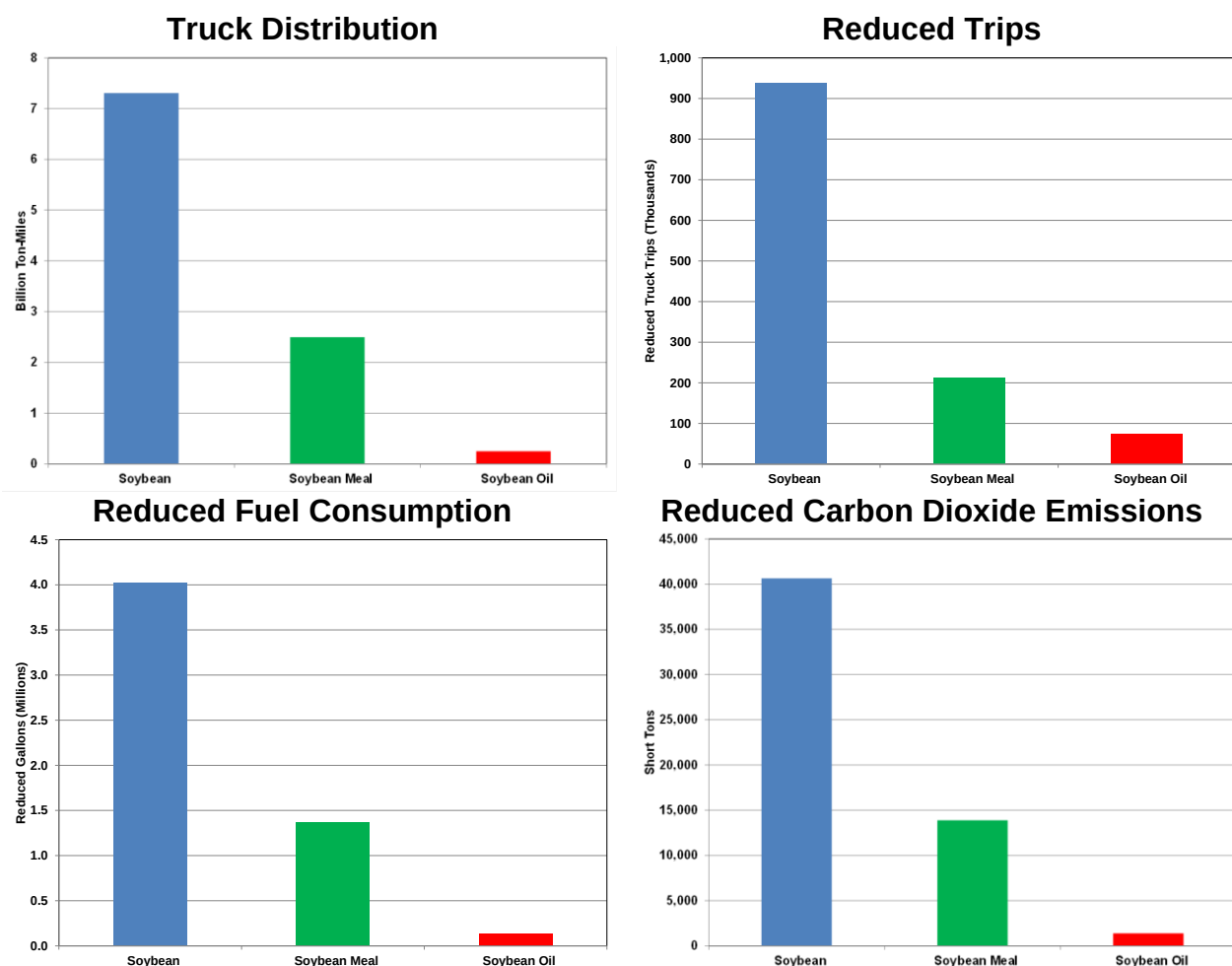
Heavier Semis: A Good Idea?

463 miles. Soybeans account for approximately 70% of the ton-miles while the soybean products account for remaining 30%.

U.S. distribution of soybean and soybean products with heavier trucks could reduce truck traffic by 1.2 million trips. Transporting soybeans requires over 75% of the ton-miles. The first moves for soybeans have the largest impact on farmers.

U.S. distribution of soybean and soybean products with heavier trucks could reduce fuel and carbon dioxide emissions by 6 million and 56 thousand tons, respectively. Higher truck weights would save the soybean industry \$11 million to \$28 million, depending on the price of fuel alone.

Figure 2: U.S. Combined Soybean and Soybean Products Distribution by Truck, and Reduced Trips, Fuel Consumption and Carbon Dioxide Emissions using Higher Truck Weights to 97,000 Pounds



Source: USDA, USACOE, USITC, Informa

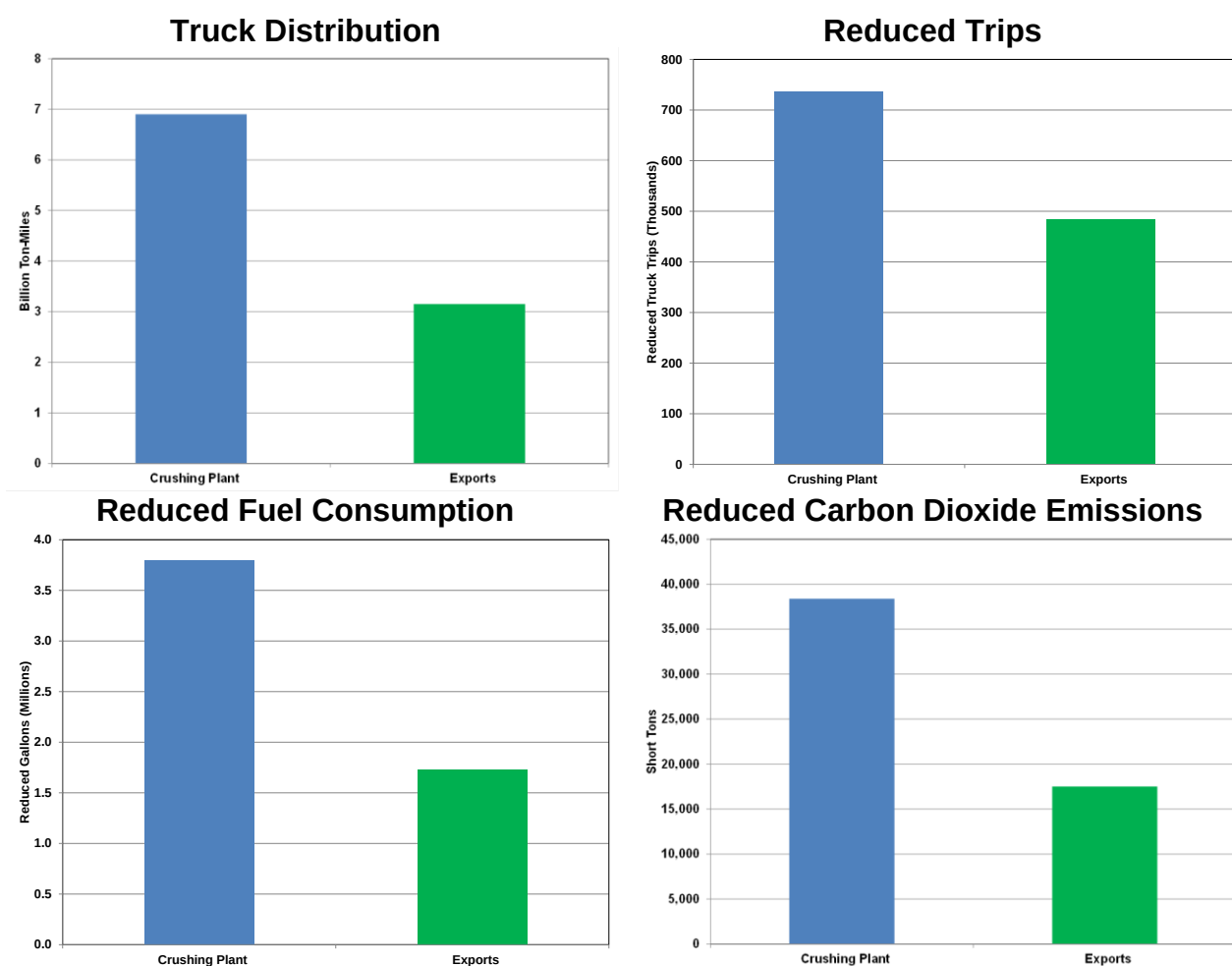
When accounting for the soybean moves to export or a crushing plant, the average distance is 1,227 miles and 699 miles; respectively. The average move from farm

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through a crushing plant to market position requires 135 miles by truck, 444 miles by rail, and 120 miles by barge. The average move from farm to export position requires 66 miles by truck, 739 miles by rail, and 422 miles by barge.

U.S. distribution of soybean and soybean products with heavier trucks could reduce truck traffic by 1.2 million trips. Crushing plants save \$11 million while exports moves save \$19 million. Crushing plant operations produce valued added products and jobs that benefit the U.S. significantly more than the export market.

Figure 3: U.S. Combined Soybean and Products to Export or Crushing Plant Distribution by Truck, and Reduced Trips, Fuel Consumption and Carbon Dioxide Emissions using Higher Truck Weights to 97,000 Pounds



Source: USDA, USACOE, USITC, Informa

BEFORE THE
SURFACE TRANSPORTATION BOARD

NOR 42185

WESKAN GRAIN LLC v. KANSAS & OKLAHOMA RAILROAD, LLC

**KANSAS & OKLAHOMA RAILROAD, LLC'S MOTION FOR
EXPEDITED DETERMINATION OF JURISDICTION AND
BIFURCATION OF PROCEEDING**

VERIFIED STATEMENT OF WILLIAM BRENNAN Ph.D.

EXHIBIT WB-5

**INFLUENCE OF SHUTTLE LOADERS ON
GRAIN MARKETS IN KANSAS AND
MONTANA**

Influence of Shuttle Loaders on Grain Markets in Kansas and Montana

ACCC Fact Sheet Series – Paper #10

August 29, 2017

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In competitive grain commodity markets, agribusinesses have strong incentives to use a variety of strategies for reducing variable costs of handling grain. Shuttle train-loading elevators—high capacity, high-speed grain loading facilities—are a recent example of agribusinesses adopting technologies that improve efficiency and attempt to capture market share. These facilities provide improved rail rates, guaranteed railcar availability, and attract grain from further distances. For example, between 2010 and 2015, rail tariffs across numerous U.S. origins and destinations for wheat delivered by shuttle trains were, on average, 23.3% lower than delivery using non-shuttle trains (USDA Agricultural Marketing Service, 2016). Furthermore, the ability to load shuttle-unit trains within a designated amount of time enables elevators to preferentially reserve rail cars and, in many cases, more consistently meet the volume and timing needs of foreign buyers than elevators without shuttle-loading technologies.

While the economic advantages for agribusinesses and cooperatives to invest in shuttle-loading facilities can be directly observed, the downstream implications for farmers have not been clearly identified. That is, "Are cost savings passed by grain elevators passed along to farmers in the form of stronger basis bids?" and "Are there other benefits to farmers from these sizable investments?"

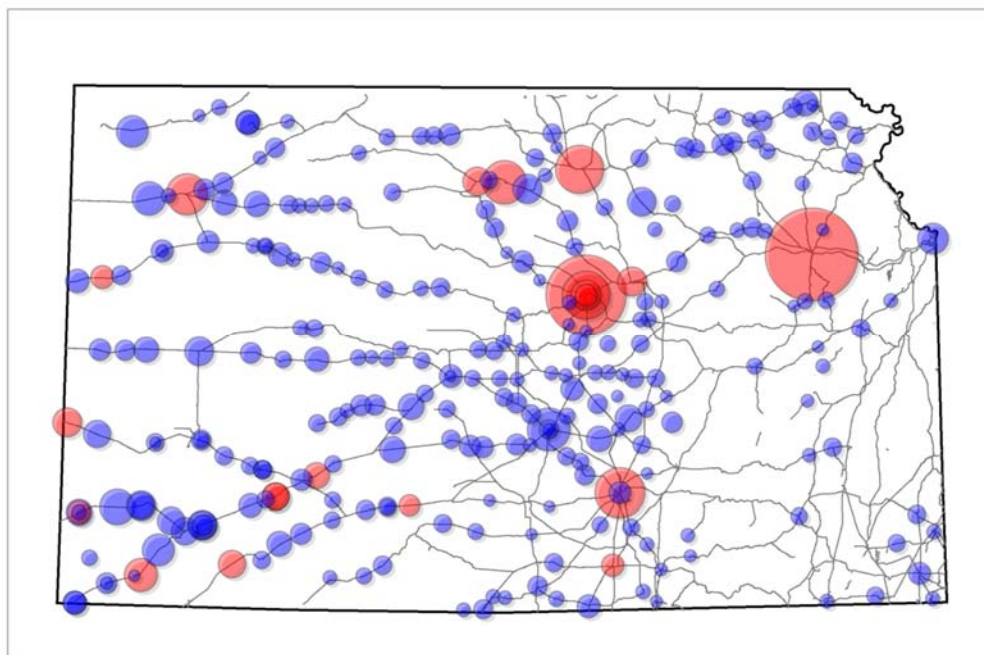
The purpose of this fact sheet is to provide information about the impact of shuttle-loading facilities on wheat basis, a measure that links the economic interaction between grain processing facilities and wheat producers. The insights presented below are based on nearby wheat basis and grain elevator information collected for the period 2005–2013 in two large wheat-producing states: Kansas and Montana. Both states have had substantial recent growth in the number of shuttle-loading elevators and have continued interest from agribusinesses to build additional high-capacity grain-handling facilities. To examine the differences between Kansas

and Montana, a panel dataset of daily cash and futures prices for 297 locations in Kansas and Montana over the 2005 to 2013 period. The key finding of the research is that shuttle-loading facilities have benefited farmers and those agribusinesses that decide to invest in the technology.

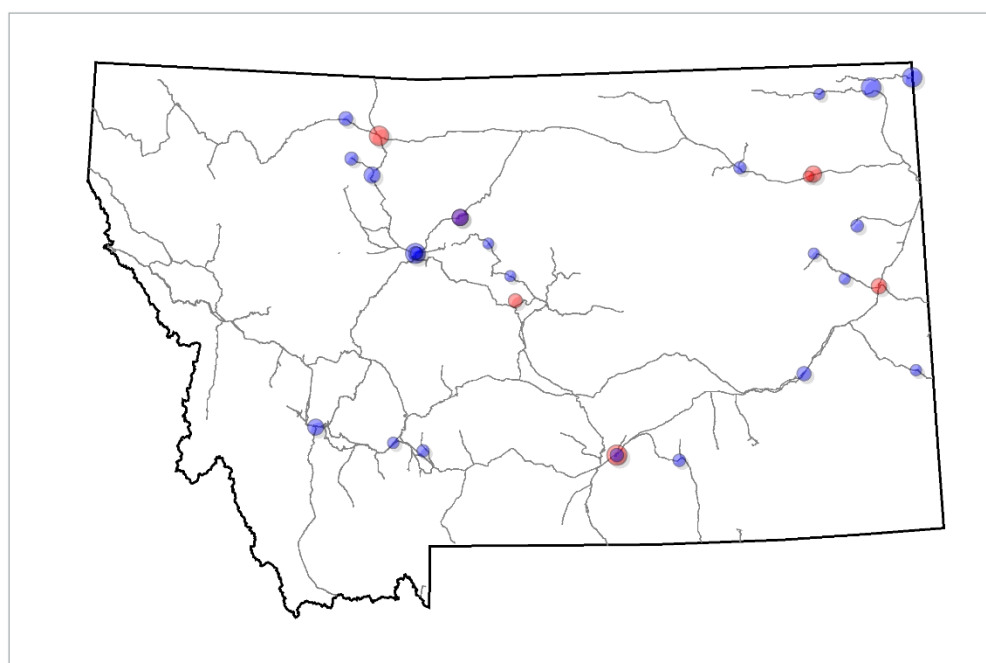
Comparing the Impact of Shuttle-Loaders in Kansas and Montana

Cash price bids at shuttle-loading elevators are higher than at conventional elevators. This is the primary finding from a statistical model of wheat basis, which accounts for other factors that could influence elevators' decisions to raise or lower cash bids, such as seasonal pricing, elevator location or state, past prices, and volatility of futures prices. Relative to conventional grain elevators in Kansas, newer, more technologically advanced shuttle-loading facilities offer, on average, a \$0.08 per bushel premium to farmers. Shuttle-loading facilities in Montana also pass through cost savings in the form of higher prices, but the premium is, on average, only \$0.04 per bushel.

The difference between the premiums in Kansas and Montana is likely a result of the significant historical difference of the wheat marketing landscapes in the two states. Perhaps the most salient difference that can help explain the pass-through disparity is the number of grain elevators to which farmers can cost-effectively deliver their wheat. That is, the degree of geographic competition between elevators for wheat delivery.



(a) Grain handling facilities and rail lines in Kansas



(b) Grain handling facilities and rail lines in Montana

Figure 1. Elevator Locations and Rail Lines in Kansas and Montana

Notes: Circles represent the location of a grain handling facility. Red circles represent facilities with shuttle train-loading capabilities and blue circles represent conventional elevators. The size of each circle represents the total storage capacity at the location relative to other elevators across the two states. Black lines characterize rail lines.

Figure 1 provides a visual representation of the different grain elevator density in Kansas and Montana, and helps illustrate the different geographic competition structures in the two states. The figure shows the location of grain elevators that procure wheat in each state. Shuttle-loader elevators are represented by red circles and conventional elevators are blue. The size of each circle corresponds to an elevator's licensed grain storage capacity, with larger circles representing greater capacity relative to other elevators. The lines on the map represent rail lines in each state.

In Montana, there is a greater distance between any particular farmer and the set of potential elevators to which the farmer can choose to deliver. This may increase opportunities for Montana elevators to exert some market power in determining prices to farmers within close proximity. Why? Many Montana farmers would face excessive costs to deliver to an alternative grain handling facility. An elevator in Montana has on average only 3 other competing facilities within a 60-mile radius.

Kansas, however, has a greater density of elevators with more storage capacity. An elevator in Kansas has 26 other elevators within a 60-mile radius. Furthermore, the average Kansas elevator storage capacity is two times as large as the average of elevators in Montana. As a result, Kansas elevators must compete more aggressively for grain deliveries by increasing a higher proportion of their shuttle technology cost savings that they pass through to farmers in the form of higher prices.

Implications of the Research

This research provides an important foundation for understanding how technological innovation within the wheat marketing channel impacts farmers and how these impacts are influenced by the marketing landscape. Because neither Kansas's nor Montana's wheat marketing landscape is likely to change drastically in the short or medium terms, factors such as elevator density, distance between farmers and delivery facilities, and production patterns will remain relatively stable. As such, these research findings can be used to more accurately assess investment and management decisions of shuttle-loading facilities.

One important example of how this work's findings can be used to assess management decisions is an improved understanding about the interrelationship between investment and geographic market power. Despite an increasing number of shuttle-loading facilities in both Kansas and Montana, those facilities are largely privately owned, while conventional elevators are mostly operated by a farmer-owned cooperative. In fact, only approximately 10% of shuttle-loading facilities are operated by cooperatives. Given the cost and throughput advantages of shuttle-loading technologies, many cooperatives could be considering replacing conventional elevators with newer shuttle-loading facilities. This research provides valuable insights toward making a more informed-decision about at least two aspects: whether to make the investment and the location of a new facility.

First, the findings of an \$0.08 per bushel average pass-through in Kansas can be useful for helping evaluate the trade-offs of making an investment in upgrading grain handling technologies. For example, if the projected cost savings from investing in a shuttle-loading facility results in long-term cost savings of less than \$0.08 per bushel, then the investment would

likely be suboptimal because the entirety of those cost savings would be passed through in the form of higher basis bids.

Second, the Kansas-to-Montana pass-through comparison can aid in selecting a more competitive site for a new or upgraded facility. Geographic competition between elevators and the proximity of farmers to a delivery location can significantly affect the proportion of cost-savings that a shuttle-loading facility may need to pass through. As such, these factors could be critical in improving the return on technological investment.

For elevators that are cooperatively owned, both the cost-savings pass-through and the ability to increase profitability through geographic differentiation are important to maintaining competitiveness in the grain marketing landscape. This research provides a framework for assessing differences in marketing behaviors in existing agricultural markets and increases understanding of future pricing strategies as competitive marketing structures continue to evolve.

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VERIFIED STATEMENT OF WILLIAM BRENNAN Ph.D.

EXHIBIT WB-6

**THE WELFARE COSTS OF TARIFFS,
MONOPOLIES, AND THEFT**

THE WELFARE COSTS OF TARIFFS, MONOPOLIES, AND THEFT

GORDON TULLOCK

RICE UNIVERSITY

In recent years a considerable number of studies have been published that purport to measure the welfare costs of monopolies and tariffs.¹ The results have uniformly shown very small costs for practices that economists normally deplore. This led Mundell to comment in 1962 that "Unless there is a thorough theoretical re-examination of the validity of the tools upon which these studies are founded . . . someone will inevitably draw the conclusion that economics has ceased to be important."² Judging from conversations with graduate students, a number of younger economists are in fact drawing the conclusion that tariffs and monopolies are not of much importance. This view is now beginning to appear in the literature. On the basis of these measurements Professor Harvey Leibenstein has argued "Microeconomic theory focuses on allocative efficiency to the exclusion of other types of efficiencies that, in fact, are much more significant in many instances."³

It is my purpose to take the other route suggested by Mundell and demonstrate that the "tools on which these studies are founded" produce an underestimation of the welfare costs of tariffs and monopolies. The classical economists were not concerning themselves with trifles when they argued against tariffs, and the Department of Justice is not dealing with a miniscule problem in its attacks on monopoly.

STATICS

The present method for measuring these costs was pioneered by Professor Harberger.⁴ Let us, therefore, begin with a very simple use of his diagram to analyze a tariff. Figure 1 shows a commodity that can be produced

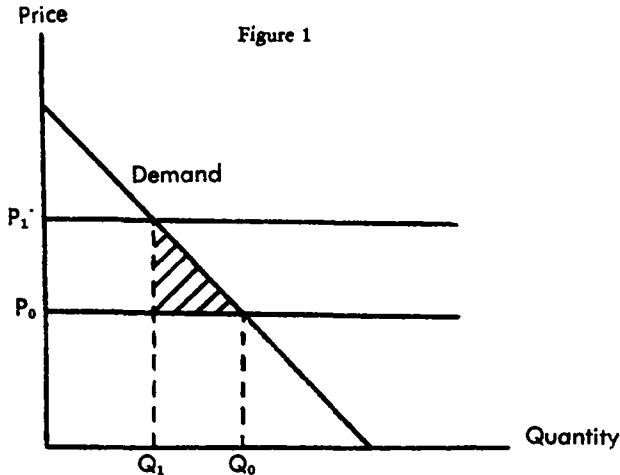
¹These studies are conveniently listed with a useful table of the welfare losses computed in each in Harvey Leibenstein, "Allocative Efficiency vs. 'X-Efficiency,'" *Am. Econ. Rev.*, June 1966, 56, 392-415.

²R. A. Mundell, Review of L. H. Janssen, *Free Trade, Protection and Customs Union*, *Am. Econ. Rev.*, June 1962, 52, 622.

³*Op. cit.*, p. 392. In this article Leibenstein consistently uses the phrase "allocative efficiency" to refer solely to the absence of tariffs and monopolies.

⁴A. C. Harberger, "Using the Resources at Hand More Effectively," *Am. Econ. Rev.*, May 1959, 49, 134-46. It should be noted that Harberger suggested the method for the measurement of the welfare costs of monopoly, but its extension to cover tariffs was the work of other scholars. The more careful scholars who have measured the welfare costs of tariffs have not all used this very simple application of Harberger's method, but a method such as illustrated in Figure 2. I have chosen to begin with this method of measurement partly because it simplifies the exposition and partly because this procedure is the "conventional wisdom" on the matter. (Cf. Leibenstein, *op. cit.*)

domestically at the constant cost of P_1 and imported at P_0 . With the given demand and no tariff Q_0 units will be purchased at a price of P_0 . If a prohibitive tariff is imposed Q_1 units will be bought at a price of P_1 . The increase in price, it is argued, is merely a transfer from some members of the community to others, and the only welfare loss is consequently the shaded triangle. The studies purporting to measure the welfare costs of tariffs have simply computed the value of this triangle. From the geometry it is fairly obvious that the amount would normally be small.



There are a considerable number of costs that are ignored by this procedure. As a starter, collection of a tariff involves expenditure on customs inspectors, etc., who do the actual collection and coast guards who prevent smuggling. Further, customs brokers are normally hired by the shipper to expedite the movement of their goods through customs.⁵ Normally we pay little attention to collections costs because they are small, but in this case they may well be larger than the welfare triangle which is also small. Thus by simply adding in collection costs we significantly increase the "social cost" of the tariff.

For a more significant criticism of this method of measuring the welfare cost let us apply the procedure to a standard excise tax instead of a tariff. Assume that Figure 1 shows a constant supply cost and a declining demand for some commodity in some country. Q_0 units are bought at a price, P_0 . Now suppose that a tax is imposed, raising the price to P_1 , and reducing sales to Q_1 . The welfare cost of this tax is measured by the shaded triangle. But suppose further, that the revenues raised by this tax are completely wasted, building tunnels, for example, which go nowhere. Now the social

⁵Strictly speaking, the customs brokerage should be added on to the tax thus producing a larger welfare triangle.

cost of the total package of tax and wasteful expenditure is the welfare triangle plus the total tax revenue, or the trapezoid bounded by the lines showing cost, the cost-plus-tax, and the demand function. The people buying the product pay more than the cost, but no one benefits from the expenditure.⁶ The funds are not transferred because no one benefits from the existence of the tax. The whole economy is poorer not just by the triangle, but by the whole amount of wasted resources.

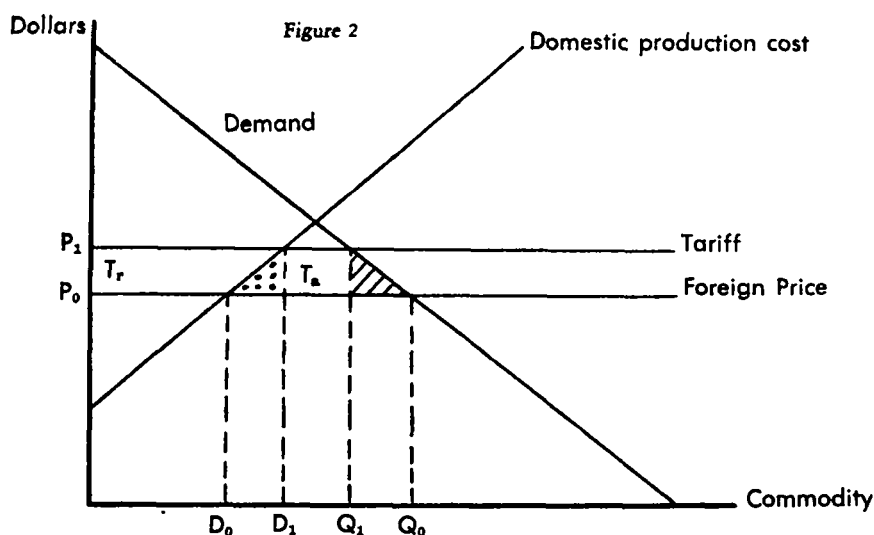
The tariff involves a similar waste of resources and consequently its social cost cannot be measured simply by the welfare triangle. Figure 1 can also be used to show the foreign and domestic costs of some type of good and the national demand for it. Since domestic cost is higher than the (delivered) cost of the foreign good, none would be produced domestically in the absence of a tariff. Q_0 units would be imported and consumed at a price shown by P_0 . The country now puts on a prohibitive tariff and the higher cost domestic production takes over the complete market. Q_1 units are sold at P_1 . The welfare triangle has been used to measure the welfare cost of this operation.⁷ The argument for this procedure is, essentially, that the higher prices paid by the consumers represent a transfer payment, not a real loss to the economy. But who receives this transfer? The owners of the resources now engaged in inefficiently producing the commodity receive no more than they would have received had the tariff never been introduced and they had been employed in other industries.⁸ These resources, however, are being inefficiently utilized, and the rectangle between P_1 and P_0 and bounded by the vertical axis and Q_1 measures the social cost of this waste. Thus the total welfare cost of the tariff is the triangle plus the much larger rectangle to its left.

The situation is identical to that which would arise if the government required an established domestic industry to abandon an efficient method of production and adopt an inefficient. This could be graphed on the same diagram, and it would be generally agreed that the welfare loss would not be just the welfare triangle, but would also include the inefficient use of resources required by the governmental regulation shown in the rectangle to the left of the triangle. Since a tariff shifting production from the production of export goods to import-replacement goods where the country has a comparative disadvantage is, in fact, a governmental requirement that the goods be obtained in an inefficient manner, the cases are identical. The cost of a protective tariff is the triangle plus the difference between domestic cost of production and the price at which the goods could be purchased abroad.

⁶The government action might slightly increase the rents on the resources used to build the tunnel, and thus the owners of specialized resources might benefit slightly, but clearly this is a very trivial effect.

⁷Tibor Scitovsky, *Economic Theory and Western European Integration*, Stanford 1958.

⁸There might be sizable but temporary rents to the firstcomers when the industry was first established.



Let us, however, consider the situation in which there is some domestic production before the imposition of a tariff. Figure 2 shows a commodity part of the consumption of which is imported and part produced domestically. The supply elasticity of the commodity from foreign sources is assumed infinite, but domestic production is carried on in conditions of increasing costs. Without the tariff, the price is P_0 , domestic producers turn out D_0 units and $Q_0 - D_0$ units are imported to make up the total consumption of Q_0 . Suppose now, that Mr. Gladstone is prime minister and imposes a tariff on imports and an excise tax of the same amount on domestic production. With the new price, P_1 , consumers will want only Q_1 units, and the shaded triangle measures the excess burden. Domestic production will remain D_0 , but imports will shrink from $Q_0 - D_0$ to $Q_1 - D_0$. The government will receive a tax revenue equivalent to the entire rectangle bounded by the two price lines, the vertical axis and Q_1 .

Let us now change our example by assuming that the domestic excise tax is repealed, so that we have only a protective tariff. Domestic consumption and price would remain the same, but domestic production would expand to D_1 and imports would shrink accordingly. There would be an inefficient use of resources in producing things which would be better imported represented by the dotted triangle. Governmental revenues would shrink to the rectangle marked T_a and the owners of the resources in the domestic industry would receive an amount of resources equal to the area of the trapezoid T_r .⁹ Clearly the social cost of the tariff is not just the shaded triangle, but also the dotted triangle which shows a net waste of resources in inefficient production.

⁹See J. Wemelsfelder, "The Short Term Effect of the Lowering of Import Duties in Germany," *Econ. Jour.*, March 1960, 70, 94-104.

DYNAMICS: THE COST OF TRANSFERS

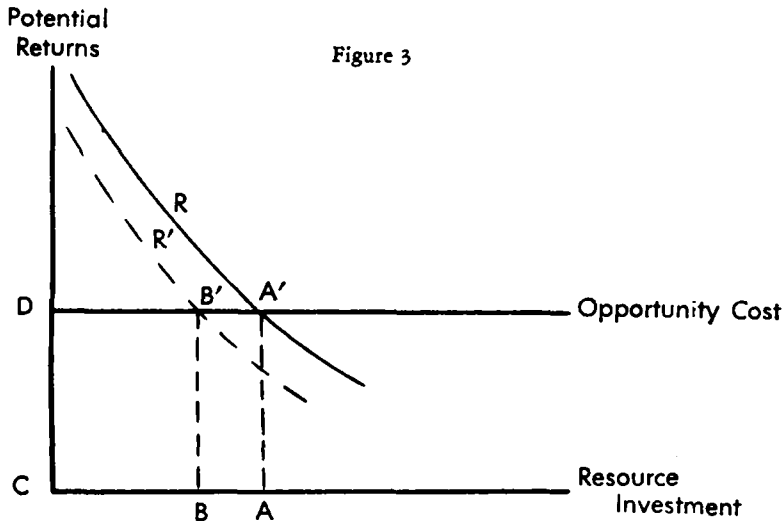
The trapezoid T_r , however, would appear to be a pure transfer, and hence not to be included in the computation of the cost of the tariff. Strictly speaking this is so, but looking at the matter dynamically, there is another social cost involved, and its magnitude is a function of the size of this transfer trapezoid. Generally governments do not impose protective tariffs on their own. They have to be lobbied or pressured into doing so by the expenditure of resources in political activity. One would anticipate that the domestic producers would invest resources in lobbying for the tariff until the marginal return on the last dollar so spent was equal to its likely return producing the transfer. There might also be other interests trying to prevent the transfer and putting resources into influencing the government in the other direction. These expenditures, which may simply offset each other to some extent, are purely wasteful from the standpoint of society as a whole; they are spent not in increasing wealth, but in attempts to transfer or resist transfer of wealth. I can suggest no way of measuring these expenditures, but the potential returns are large, and it would be quite surprising if the investment was not also sizable.

Monopolies involve costs of a somewhat similar nature, and it follows that I will not be able to produce a method to measure their social costs. I will, however, be able to demonstrate that the welfare triangle method greatly underestimates these costs. The argument is customarily explained with the aid of a figure like Figure 1. The monopolist charges the monopoly price P_1 instead of the cost P_0 for the commodity, and consumption is reduced from Q_0 to Q_1 . The welfare triangle is a clear loss to the community but the rectangle to its left is merely a transfer from the consumers to the owners of the monopoly. We may object to the monopolist getting rich at the expense of the rest of us, but this is not a reduction in the national product.

In order to demonstrate that this line of reasoning ignores important costs, I should like to take a detour through the economics of theft.¹⁰ Theft, of course, is a pure transfer, and therefore might be assumed to have no welfare effects at all. Like a lump sum tax, it produces no welfare triangle at all, and hence would show a zero social cost if measured by the Harberger method. This would, of course, be incorrect. In spite of the fact that it involves only transfers, the existence of theft has very substantial welfare costs. Our laws against theft do not deal with a trivial and/or unimportant problem any more than our laws against monopoly.

¹⁰The economics of illegal activities is an underdeveloped area, but Harold Demsetz discusses the subject briefly in "The Exchange and Enforcement of Property Rights," *Jour. of Law and Econ.*, October 1964, 7, 11-26. J. Randolph Norsworthy's Doctoral Dissertation, *A Theory of Tax Evasion and Collection*, Virginia, 1966, is a more comprehensive examination of one type of illegal activity. Two unpublished items have been circulated among a few scholars. Gary Becker's "A Theory of Government Punishments and Rewards," and my own *Law and Morals*, the unfinished manuscript of a book which I began four years ago and which has languished in draft form for almost all of those four years.

Figure 3 shows the situation confronting the potential thief. On the horizontal axis is shown the quantity of effort and capital (burglars' tools, etc.) he might invest in a career of crime. On the vertical axis are shown potential returns. The "opportunity cost" line shows the returns he could get for the same investment of work and material in other occupations. It is assumed to be constant. Let us begin by assuming that taking another's property is not illegal. Under these circumstances the returns on various amounts of investment in the activity are shown by line R . The potential thieves would invest the quantity of resources shown at A in theft, the cost to him would be the rectangle $AA'DC$, and his net return on the investment would be the triangular area above $A'D$.



The situation of a person who wished to guard his own assets, who might, of course, be the thief hoping to hold onto his loot, may also be shown on Figure 3. On the horizontal axis are shown the resources invested in loss minimizing activities.¹¹ The cost of each unit of resources put to this use is shown by the horizontal opportunity line, and the savings are on the vertical axis. The line R now shows the returns in the form of savings for each unit of "theft prevention." The total amount of resources invested would again be A .

The two situations are interrelated by more than the fact that they can be shown on the same diagram. The height of the R curve for the thief would depend upon the amount of resources invested by other members of the community in locks and other protections. Similarly, the individual in considering how many locks to buy would find that his R curve

¹¹The word "activities" may be misleading. One way of minimizing loss by theft is to have little or nothing to steal. In a world in which theft was legal we could expect this fact to lead to a reduction in productive activities and a great expansion in leisure.

depended upon the resources being invested in attempts at theft by the rest of the population. When a potential thief invests money, say, in an improved lock pick, the R curve for people trying to protect their property moves downward. Similarly, hiring an armed guard to watch your valuables moves the R curve for potential thieves down. Putting a new lock on my door reduces the chance that I will be robbed, but whether the gain will be worth the cost will depend upon the effort the thieves are willing to put into getting in. Over time the interaction between the investment in locks, the payoff on lock picks and the investment in nitroglycerine and safes would come to equilibrium.

This equilibrium, however, would be extremely costly to the society in spite of the fact that the activity of theft only involves transfers. The cost to society would be the investments of capital and labor in the activity of theft and in protection against theft. If we consider Figure 3 as representing the entire society instead of individuals, then the social costs would be the area covered by the rectangle $AA'DC$. Transfers themselves cost society nothing, but for the people engaging in them they are just like any other activity, and this means that large resources may be invested in attempting to make or prevent transfers. These largely offsetting commitments of resources are totally wasted from the standpoint of society as a whole.

This lesson has been learned by almost all societies that have adopted a collective method of reducing this sort of income transfer. This collective procedure, laws against theft and police and courts to enforce them, can also be shown on Figure 3. On the horizontal axis we now have resources invested by police and courts, with their opportunity cost shown as a horizontal line. The "protection" given by each unit of resources invested in these activities is shown by the R line. The society would purchase A amount of protective services, and the total cost would be the usual rectangle. The effect of this would be to reduce the expected returns on theft and the savings to be made by private investment in locks, etc. The new returns are shown by R' on Figure 3, and there is a corresponding reduction in the resources invested in each of these fields to B' . Whether the establishment of a police force is wise or not, depends upon an essentially technological question. If police activities are, for a range, more efficient than private provision of protection, then the R line will have the shape shown, and the police and court rectangle will have an area smaller than the sum of the two "savings" rectangles, for theft and locks.¹² This is, of course, what we normally find in the real world.

Note, however, that we do not carry investment in police protection to the extent that it totally replaces private protective expenditures. Clearly

¹²It may be suggested that society should not be interested in the saving of the resources of thieves, and hence that the value of the protection afforded by the police should be measured by the lock rectangle only. This, however, would be correct only to the extent that the resources would not be reallocated to socially acceptable production.

it is more efficient to have some protective expenditures by the owners of property. Automobiles are equipped with locks and keys, presumably because the expansion of the police force which could be paid for from the cost of leaving them off would be less effective in preventing theft than they are.¹³ The total social cost of theft is the sum of the efforts invested in the activity of theft, private protection against theft, and the public investment in police protection. The theft itself is a pure transfer, and has no welfare cost, but the existence of theft as a potential activity results in very substantial diversion of resources to fields where they essentially offset each other, and produce no positive product. The problem with income transfers is not that they directly inflict welfare losses, but that they lead people to employ resources in attempting to obtain or prevent such transfers. A successful bank robbery will inspire potential thieves to greater efforts, lead to the installation of improved protective equipment in other banks, and perhaps result in the hiring of additional policemen. These are its social costs, and they can be very sizable.

But this has been a detour through the criminal law, our major subject is monopoly. To return to Figure 1, the rectangle to the left of the welfare triangle is the income transfer that a successful monopolist can extort from the customers. Surely we should expect that with a prize of this size dangling before our eyes, potential monopolists would be willing to invest large resources in the activity of monopolizing. In fact the investment that could be profitably made in forming a monopoly would be larger than this rectangle, since it represents merely the income transfer. The capital value, properly discounted for risk, would be worth much more. Entrepreneurs should be willing to invest resources in attempts to form a monopoly until the marginal cost equals the properly discounted return.¹⁴ The potential customers would also be interested in preventing the transfer and should be willing to make large investments to that end. Once the monopoly is formed, continual efforts to either break the monopoly or muscle into it would be predictable. Here again considerable resources might be invested. The holders of the monopoly, on the other hand, would be willing to put quite sizable sums into the defense of their power to receive these transfers.

As a successful theft will stimulate other thieves to greater industry and require greater investment in protective measures, so each successful establishment of a monopoly or creation of a tariff will stimulate greater diversion of resources to attempts to organize further transfers of income. In Gladstone's England few resources were put into attempts to get favorable

¹³James Buchanan and Gordon Tullock, "Public and Private Interaction Under Reciprocal Externality," in *The Public Economy of Urban Communities*, Julius Margolis, Ed., Washington, D.C. 1964, pp. 52-73.

¹⁴The margin here is a rather unusual one. Additional units of resources invested in attempting to get a monopoly do not increase the value of the potential monopoly, but the likelihood of getting it. Thus they change the discount rate, rather than the payoff.

tariff treatment. In present day United States large and well financed lobbies exist for this purpose. The welfare cost in the first case was very low, in the second it must be quite sizable. An efficient police force reduces the resources put into the activity of theft, and free trade or an active antitrust policy will reduce the resources invested in lobbying or attempting to organize monopolies.

The problem of identifying and measuring these resources is a difficult one, partly because the activity of monopolizing is illegal. The budget of the antitrust division and the large legal staffs maintained by companies in danger of prosecution would be clear examples of the social cost of monopoly, but presumably they are only a small part of the total. That very scarce resource, skilled management, may be invested to a considerable extent in attempting to build, break, or muscle into a monopoly. Lengthy negotiations may be in real terms very expensive, but we have no measure of their cost. Similarly, a physical plant may be designed not for maximum efficiency in direct production, but for its threat potential. Again, no measure is possible. As a further problem, probably much of the cost of monopoly is spread through companies that do not have a monopoly, but have gambled resources on the hopes of one. The cost of a football pool is not measured by the cost of the winner's ticket, but by the cost of all tickets.¹⁸ Similarly the total costs of monopoly should be measured in terms of the efforts to get a monopoly by the unsuccessful as well as the successful. Surely most American businessmen know that the odds are against their establishing a paying monopoly, and they therefore discount the potential gain when investing resources in attempting to get one. The successful monopolist finds that his gamble has paid off, and the unsuccessful "bettor" in this particular lottery will lose, but the resources put into the "pool" would be hard to find by economic techniques. But regardless of the measurement problem, it is clear that the resources put into monopolization and defense against monopolization would be a function of the size of the prospective transfer. Since this would be normally large, we can expect that this particular socially wasteful type of "investment" would also be large. The welfare triangle method of measurement ignores this important cost, and hence greatly understates the welfare loss of monopoly.

¹⁸This helpful analogy was suggested to me by Dr. William Niskanen.

BEFORE THE
SURFACE TRANSPORTATION BOARD

NOR 42185

WESKAN GRAIN LLC v. KANSAS & OKLAHOMA RAILROAD, LLC

**KANSAS & OKLAHOMA RAILROAD, LLC'S MOTION FOR
EXPEDITED DETERMINATION OF JURISDICTION AND
BIFURCATION OF PROCEEDING**

VERIFIED STATEMENT OF WILLIAM BRENNAN Ph.D.

EXHIBIT WB-7

**THE POLITICAL ECONOMY OF THE RENT-
SEEKING SOCIETY**

The Political Economy of the Rent-Seeking Society

By ANNE O. KRUEGER*

In many market-oriented economies, government restrictions upon economic activity are pervasive facts of life. These restrictions give rise to rents of a variety of forms, and people often compete for the rents. Sometimes, such competition is perfectly legal. In other instances, rent seeking takes other forms, such as bribery, corruption, smuggling, and black markets.

It is the purpose of this paper to show some of the ways in which rent seeking is competitive, and to develop a simple model of competitive rent seeking for the important case when rents originate from quantitative restrictions upon international trade. In such a case 1) competitive rent seeking leads to the operation of the economy inside its transformation curve; 2) the welfare loss associated with quantitative restrictions is unequivocally greater than the loss from the tariff equivalent of those quantitative restrictions; and 3) competitive rent seeking results in a divergence between the private and social costs of certain activities. Although the analysis is general, the model has particular applicability for developing countries, where government interventions are frequently all-embracing.

A preliminary section of the paper is concerned with the competitive nature of rent seeking and the quantitative importance of rents for two countries, India and Turkey. In the second section, a formal model of rent seeking under quantitative

restrictions on trade is developed and the propositions indicated above are established. A final section outlines some other forms of rent seeking and suggests some implications of the analysis.

I. Competitive Rent Seeking

A. *Means of Competition*

When quantitative restrictions are imposed upon and effectively constrain imports, an import license is a valuable commodity. It is well known that under some circumstances, one can estimate the tariff equivalents of a set of quantitative restrictions and analyze the effects of those restrictions in the same manner as one would the tariff equivalents. In other circumstances, the resource-allocational effects of import licensing will vary, depending upon who receives the license.¹

It has always been recognized that there are *some* costs associated with licensing: paperwork, the time spent by entrepreneurs in obtaining their licenses, the cost of the administrative apparatus necessary to issue licenses, and so on. Here, the argument is carried one step further: in many circumstances resources are devoted to competing for those licenses.

The consequences of that rent seeking are examined below. First, however, it will be argued that rent-seeking activities are often competitive and resources are devoted to competing for rents. It is difficult, if not impossible, to find empirically observable measures of the degree to which rent seeking is competitive. Instead, some

* Professor of economics, University of Minnesota. I am indebted to James M. Henderson for invaluable advice and discussion on successive drafts. Jagdish Bhagwati and John C. Hause made helpful comments on earlier drafts of this paper.

¹ This phenomenon is explored in detail in Bhagwati and Krueger.

mechanisms under which rent seeking is almost certain to be competitive are examined. Then other cases are considered in which it is less obvious, but perhaps equally plausible, that competition results.

Consider first the results of an import-licensing mechanism when licenses for imports of intermediate goods are allocated in proportion to firms' capacities. That system is frequently used, and has been analyzed for the Indian case by Jagdish Bhagwati and Padma Desai. When licenses are allocated in proportion to firms' capacities, investment in additional physical plant confers upon the investor a higher expected receipt of import licenses. Even with initial excess capacity (due to quantitative restrictions upon imports of intermediate goods), a rational entrepreneur may still expand his plant if the expected gains from the additional import licenses he will receive, divided by the cost of the investment, equal the returns on investment in other activities.² This behavior could be perfectly rational even if, for all entrepreneurs, the total number of import licenses will remain fixed. In fact, if imports are held constant as domestic income grows, one would expect the domestic value of a constant quantity of imports to increase over time, and hence installed capacity would increase while output remained constant. By investing in additional capacity, entrepreneurs devote resources to compete for import licenses.

A second sort of licensing mechanism frequently found in developing countries is used for imports of consumer goods. There, licenses are allocated *pro rata* in proportion to the applications for those licenses from importers-wholesalers. Entry

is generally free into importing-wholesaling, and firms usually have U-shaped cost curves. The result is a larger-than-optimal number of firms, operating on the downward sloping portion of their cost curves, yet earning a "normal" rate of return. Each importer-wholesaler receives fewer imports than he would buy at existing prices in the absence of licensing, but realizes a sufficient return on those licenses he does receive to make it profitable to stay in business. In this case, competition for rents occurs through entry into the industry with smaller-than-optimally sized firms, and resources are used in that the same volume of imports could be efficiently distributed with fewer inputs if firms were of optimal size.

A third sort of licensing mechanism is less systematic in that government officials decide on license allocations. Competition occurs to some extent through both mechanisms already mentioned as businessmen base their decisions on expected values. But, in addition, competition can also occur through allocating resources to influencing the probability, or expected size, of license allocations. Some means of influencing the expected allocation—trips to the capital city, locating the firm in the capital, and so on—are straightforward. Others, including bribery, hiring relatives of officials or employing the officials themselves upon retirement, are less so. In the former case, competition occurs through choice of location, expenditure of resources upon travel, and so on. In the latter case, government officials themselves receive part of the rents.

Bribery has often been treated as a transfer payment. However, there is competition for government jobs and it is reasonable to believe that expected total remuneration is the relevant decision variable for persons deciding upon careers. Generally, entry into government service requires above-average educational at-

² Note that: 1) one would expect to find greater excess capacity in those industries where rents are higher; and 2) within an industry, more efficient firms will have greater excess capacity than less efficient firms, since the return on a given amount of investment will be higher with greater efficiency.

tainments. The human capital literature provides evidence that choices as to how much to invest in human capital are strongly influenced by rates of return upon the investment. For a given level of educational attainment, one would expect the rate of return to be approximately equated among various lines of endeavor. Thus, if there appear to be high official-plus-unofficial incomes accruing to government officials and higher education is a prerequisite for seeking a government job, more individuals will invest in higher education. It is not necessary that government officials earn the same total income as other college graduates. All that is necessary is that there is an excess supply of persons seeking government employment, or that highly educated persons make sustained efforts to enter government services. Competition takes place through attaining the appropriate credentials for entry into government service and through accepting unemployment while making efforts to obtain appointments. Efforts to influence those in charge of making appointments, of course, just carry the argument one step further back.

To argue that competition for entry into government service is, in part, a competition for rents does not imply that all government servants accept bribes nor that they would leave government service in their absence. Successful competitors for government jobs might experience large windfall gains even at their official salaries. However, if the possibility of those gains induces others to expend time, energy, and resources in seeking entry into government services, the activity is competitive for present purposes.

In all these license-allocation cases, there are means, legal and illegal, for competing for rents. If individuals choose their activities on the basis of expected returns, rates of return on alternative activities will be equated and, in that sense, markets

will be competitive.³ In most cases, people do not perceive themselves to be rent seekers and, generally speaking, individuals and firms do not specialize in rent seeking. Rather, rent seeking is one part of an economic activity, such as distribution or production, and part of the firm's resources are devoted to the activity (including, of course, the hiring of expeditors). The fact that rent seeking and other economic activities are not generally conducted by separate economic entities provides the motivation for the form of the model developed below.

B. *Are Rents Quantitatively Important?*

Granted that rent seeking may be highly competitive, the question remains whether rents are important. Data from two countries, India and Turkey, suggest that they are. Gunnar Myrdal believes India may "... on the balance, be judged to have somewhat less corruption than any other country in South Asia" (p. 943). Nonetheless, it is generally believed that "corruption" has been increasing, and that much of the blame lies with the proliferation of economic controls following independence.⁴

Table 1 presents crude estimates, based on fairly conservative assumptions of the value of rents of all sorts in 1964. One important source of rents—investment licensing—is not included for lack of any valid basis on which to estimate its value. Many smaller controls are also excluded. Nonetheless, it is apparent from Table 1 that

³ It may be objected that illegal means of competition may be sufficiently distasteful that perfect competition will not result. Three comments are called for. First, it requires only that enough people at the margin do not incur disutility from engaging in these activities. Second, most lines of economic activity in many countries cannot be entered without some rent-seeking activity. Third, risks of detection (especially when bribery is expected) and the value judgments associated with illegal activities differ from society to society. See Ronald Wraith and Edgar Simpkins.

⁴ Santhanam Committee, pp. 7–8.

TABLE 1—ESTIMATES OF VALUE OF RENTS: INDIA, 1964

Source of Rent	Amount of Rent (Rs. million)
Public investment	365
Imports	10,271
Controlled commodities	3,000
Credit rationing	407
Railways	602
Total	14,645

Sources:

1) Public investment: The Santhanam Committee, pp. 11–12, placed the loss in public investment at *at least* 5 percent of investment. That figure was multiplied by the average annual public investment in the *Third Five Year Plan*.

2) Imports: The Santhanam Committee, p. 18, stated that import licenses were worth 100 to 500 percent of their face value. Seventy-five percent of the value of 1964 imports was used here as a conservative estimate.

3) Controlled commodities: These commodities include steel, cement, coal, passenger cars, scooters, food, and other price—and/or distribution-controlled commodities, as well as foreign exchange used for illegal imports and other unrecorded transactions. The figure is the lower bound estimate given by John Monteiro, p. 60. Monteiro puts the upper bound estimate at Rs. 30,000 billion, although he rejects the figure on the (dubious) ground that notes in circulation are less than that sum.

4) Credit rationing: The bank rate in 1964 was 6 percent; Rs. 20.3 billion of loans were outstanding. It is assumed that *at least* an 8 percent interest rate would have been required to clear the market, and that 3 percent of bank loans outstanding would be equivalent to the present value of new loans at 5 percent. Data source: Reserve Bank of India, Tables 534 and 554.

5) Railways: Monteiro, p. 45, cites commissions of 20 percent on railway purchases, and extra-official fees of Rs. 0.15 per wagon and Rs. 1.4 per 100 maunds loaded. These figures were multiplied by the 1964 traffic volume; 203 million tons of revenue-paying traffic originated in that year. Third plan expenditure on railroads was Rs. 13,260 million. There were 350,000 railroad goods wagons in 1964–65. If a wagon was loaded once a week, there were 17,500,000 wagons of freight. At Rs. 0.15 per load, this would be Rs. 2.6 million; 100 maunds equal 8,228 pounds so at 1.4 Rs. per 100 maunds, Rs. 69 million changed hands; if one-fifth of railroad expenditures were made in 1964–65, Rs. 2652 million was spent in 1964; at 20 percent, this would be Rs. 530 million, for a total of Rs. 602 million.

import licenses provided the largest source of rents. The total value of rents of Rs. 14.6 billion contrasts with Indian national

income of Rs. 201 billion in 1964. At 7.3 percent of national income, rents must be judged large relative to India's problems in attempting to raise her savings rate.

For Turkey, excellent detailed estimates of the value of import licenses in 1968 are available.⁵ Data on the c.i.f. prices of individual imports, their landed cost (c.i.f. price plus all duties, taxes, and landing charges), and wholesale prices were collected for a sizeable sample of commodities representing about 10 percent of total imports in 1968. The c.i.f. value of imports in the sample was TL 547 million and the landed cost of the imports was TL 1,443 million. The value at the wholesale level of these same imports was TL 3,568 million. Of course, wholesalers incur some handling, storage, and transport costs. The question, therefore, is the amount that can be attributed to normal wholesaling costs. If one assumes that a 50 percent markup would be adequate, then the value of import licenses was TL 1,404 million, or almost three times the c.i.f. value of imports. Imports in 1968 were recorded (c.i.f.) as 6 percent of national income. On the basis of Aker's data, this would imply that rents from import licenses in Turkey in 1968 were about 15 percent of *GNP*.

Both the Indian and the Turkish estimates are necessarily somewhat rough. But they clearly indicate that the value of import licenses to the recipients was sizeable. Since means were available of competing for the licenses, it would be surprising if competition did not occur for prizes that large. We turn, therefore, to an examination of the consequences of competitive rent seeking.

⁵ I am indebted to Ahmet Aker of Robert College who kindly made his data available to me. Details and a description of the data can be found in my forthcoming book.

II. The Effects of Competitive Rent Seeking

The major proposition of this paper is that competitive rent seeking for import licenses entails a welfare cost in addition to the welfare cost that would be incurred if the same level of imports were achieved through tariffs. The effects of tariffs upon production, trade, and welfare are well known, and attention is focussed here upon the additional cost of competitive rent seeking. A simple model is used to develop the argument. Initially, free trade is assumed. Then, a tariff or equivalent import restriction is introduced. Finally, an equal import restriction with competitive rent seeking is examined.

A. The Basic Model

Two commodities are consumed by the country under investigation: food and consumption goods. Food is produced domestically and exported. Consumption goods are imported. Distribution is a productive activity whereby food is purchased from the agricultural sector, exported, and the proceeds are used to import consumption goods which are sold in the domestic market. Labor is assumed to be the only domestic factor of production.⁶ It is assumed that the country under consideration is small and cannot affect its international terms of trade. Physical units are selected so that the fixed international prices of both goods are unity.

The agricultural production function is

$$(1) \quad A = A(L_A) \quad A' > 0, A'' < 0$$

where A is the output of food and L_A is the quantity of labor employed in agriculture. The sign of the second derivative reflects a diminishing marginal physical

⁶ Labor could be regarded as a composite domestic factor of production. Extensions to two or more factors would complicate the analysis, but would not alter its basic results.

product of labor in agriculture, due, presumably, to fixity in the supply of land.

The level of distribution output, D , is defined to equal the level of consumption-goods imports, M :

$$(2) \quad D = M$$

One unit of distributive services entails exchanging one unit of imports for food with the agricultural sector at the domestic terms of trade, and exporting the food in exchange for imports at the international terms of trade. Constant returns to scale are assumed for the distribution activity; one unit of distribution requires k units of labor. Total labor employed in distribution, L_D , is

$$(3) \quad L_D = kD$$

A distribution charge of p_D per unit is added to the international price of imports:

$$(4) \quad p_M = 1 + p_D$$

where p_M is the domestic price of imports. The domestic price of food is assumed to equal its unit international price.⁷

Society's demand for imports depends upon the domestic price of imports and total income generated in agriculture:⁸

$$(5) \quad M = M(p_M, A)$$

where $\partial M / \partial p_M < 0$ and $\partial M / \partial A > 0$. Demand decreases with increases in the price of imports, and increases with increases in agricultural output (income). Equation (5) is derived from micro utility maximization with the assumption that farmers, distributors, and rent seekers all have the same consumption behavior. Domestic

⁷ These assumptions establish a domestic numeraire. The real analysis would be unaffected by proportional changes in the domestic prices.

⁸ Food and imports are consumed. But, by choice of food as the numeraire (see equation (6)) and the assumed constancy of international prices, agricultural output serves as a measure of income.

food consumption, F , is simply the quantity not exported:

$$(6) \quad F = A - M$$

Since the fixed international terms of trade equal unity, food exports equal consumption goods imports.

Finally, it is assumed that the economy under consideration has a fixed labor supply, $\bar{L}$:

$$(7) \quad \bar{L} = L_A + L_D + L_R$$

where L_R is the quantity of labor engaged in rent seeking.

B. Free Trade

Under free trade, there is free entry into both agriculture and distribution and competition equates the wage in the two activities:

$$(8) \quad A' = p_D/k$$

Equations (1) to (8) constitute the free-trade system. These eight equations contain the eight variables A , M , D , F , L_A , L_D , p_M , and p_D . Since there is no rent seeking under free trade, $L_R \equiv 0$.

It is easily established that free trade is optimal in the sense that the domestic price ratio under free trade equals the marginal rate of transformation between food consumption and imports. The consumption possibility locus is obtained by substituting into (6) from (1) and (7)

$$F = A(\bar{L} - kM) - M$$

The locus has a marginal rate of transformation greater than one:

$$(9) \quad \frac{-dF}{dM} = kA' + 1 > 1$$

which reflects the positive distribution cost of substituting imports for food consumption. The locus is concave:

$$\frac{d^2F}{dM^2} = k^2A'' < 0$$

since $A'' < 0$, which follows from diminishing returns in food production. Substituting from (8) into (9),

$$\frac{-dF}{dM} = 1 + p_D$$

which establishes the aforementioned equality.

A free-trade solution is depicted in Figure 1. Domestic food consumption and import consumption are measured along OF and OM , respectively. The consumption possibility locus is $\hat{F}\hat{M}$. At the point $\hat{F}$ no imports are consumed and hence there is no distribution. If distribution were costless, society could choose its consumption point from the line $\hat{F}A$. However, to consume one unit of import requires exchanging one unit of food and withdrawing k workers from agriculture to provide the requisite distributive services. With diminishing marginal product of labor in agriculture, the cost of additional imports in terms of foregone food production rises. Thus, the price of distribution, and hence the domestic price of imports, increases in moving northwest from $\hat{F}$. The consump-

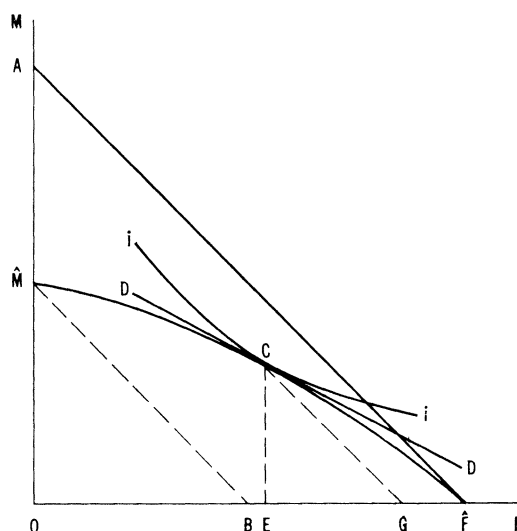


FIGURE 1. FREE TRADE

tion point $\hat{M}$ has OB food exchanged for $O\hat{M}$ of imports. The distance $\hat{F}B$ is the agricultural output foregone to distribute $O\hat{M}$ imports.

If society's preferences are given by the indifference curve ii , point C is optimal. The price of distribution is reflected in the difference between the slope of $\hat{F}A$ and the slope of DD at C . At the point C , OG food would be produced, with $EG (=EC)$ exported, and the rest domestically consumed.

C. A Tariff or an Import Restriction Without Rent Seeking

Consider now a case in which there is a restriction upon the quantity of imports

$$(10) \quad M = \bar{M}$$

where $\bar{M}$ is less than the import quantity that would be realized under free trade. Since entry into distribution is now limited, the competitive wage equality (8) will no longer hold. The relevant system contains (1) to (7) and (10). The variables are the same as in the free-trade case and again $L_R = 0$. The system may be solved sequentially: given (10), D follows from (2), L_D from (3), L_A from (7), A from (1), F from (6), p_M from (5), and p_D from (4). Since equations (1), (6), and (7) remain intact, the solution for this case is also on the consumption possibility locus.

It is useful to establish the directions of change for the variables following a switch from free trade to import restriction. The reduced import level will reduce the labor employed in distribution and increase the labor force in agriculture. Diminishing returns will reduce the agricultural wage. The domestic price of imports, the distributive margin, and the wage of distributors will increase. Distributors will earn a rent in the sense that their wage will exceed the wage of those engaged in agriculture.

In the absence of rent seeking, a tariff

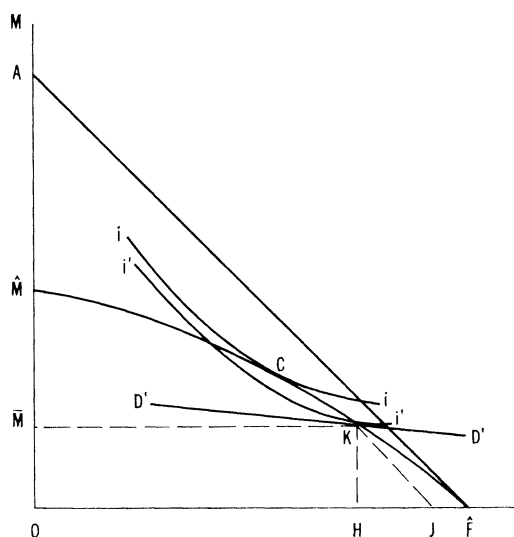


FIGURE 2. IMPORT RESTRICTION WITHOUT RENT SEEKING

and a quantitative restriction are equivalent⁹ aside from the resultant income distribution. Under a quantitative restriction the distributive wage is higher than the agricultural. If instead there were an equivalent tariff with redistribution of the proceeds, the marginal product of labor in agriculture would be unchanged, but agricultural workers would benefit by the amount of tariff proceeds redistributed to them whereas traders' income would be lower. Since the allocation of labor under a tariff and quantitative restriction without rent seeking is the same and domestic prices are the same, the only difference between the two situations lies in income distribution.

The solution under a quantitative restriction is illustrated in Figure 2, where $\hat{F}\hat{M}$ is again the consumption possibility locus and C the free-trade solution. With a quantitative restriction on imports in the amount $O\bar{M}$, the domestic prices of

⁹ The change in the price of the import from the free-trade solution is the tariff equivalent of the quantitative restriction described here.

imports, and hence of distribution, rise from free trade to import restriction. Food output (OJ) and domestic consumption of food increase, and exports decline to HJ ($=OM$). The indifference curve $i'i'$ lies below ii (and the point C), and the welfare loss may be described by the consumption and production cost measure given by Harry Johnson.

The wage rate in distribution unequivocally rises for a movement from free trade to a quantitative restriction. The total income of distributors will increase, decrease, or remain unchanged depending upon whether the proportionate increase in p_D is greater than, less than, or equal to the absolute value of the proportionate decrease of imports. For the moment, let p_D , p_M , and $\bar{M}$ represent free-trade solution values, and let p_D^* , p_M^* , and $\bar{M}$ represent import-restriction solution values. The total arc elasticity of demand for imports for the interval under consideration, η , is

$$(11) \quad \eta = \frac{-(\bar{M} - M)}{\bar{M} + M} \cdot \frac{p_M^* + p_M}{p_M^* - p_M}$$

Total expenditures on imports will increase, decrease, or remain unchanged as η is less than one, greater than one, or equal to one. The total income of distributors will increase if

$$p_D^* \bar{M} > p_D M$$

Multiplying both sides of this inequality by $(p_M^* + p_M)/(p_M^* - p_M)$, substituting from (11), and using (4),

$$(12) \quad 1 + 2/(p_D^* + p_D) > \eta$$

Hence, distributors' total income can increase even if the demand for imports is price elastic.¹⁰ The smaller is the free-trade

¹⁰ Proof of (12) uses the step that $p_D^* \bar{M} > p_D M$ implies $(p_D^* - p_D)/(p_D^* + p_D) > -(\bar{M} - M)/(\bar{M} + M)$. Note that in the continuous case, (12) reduces to $1 + 1/p_D > \eta$.

distributive markup, the more likely it is that the distributors' total income will increase with a curtailment of imports. The reason is that an increase in the domestic price of imports results in a proportionately greater increase in the price of distribution.

D. An Import Restriction with Competitive Rent Seeking

In the import-restriction model just presented, the wage in distribution p_D/k exceeds the wage in agriculture A' . Under this circumstance, it would be surprising if people did not endeavor to enter distribution in response to its higher return. Resources can be devoted to rent seeking in all the ways indicated in Section IA. This rent-seeking activity can be specified in a number of different ways. A simple and intuitively plausible specification is that people will seek distributive rents until the average wage in distribution and rent seeking equals the agricultural wage:¹¹

$$(13) \quad A' = \frac{p_D \bar{M}}{L_D + L_R}$$

One can regard all distributors and rent seekers as being partially engaged in each activity or one can think of rent seekers as entering in the expectation of receiving import licenses. In the latter case, the final solution classifies the successful seekers in L_D and the unsuccessful ones in L_R . Equation (13) implies risk neutrality in this circumstance.

The model for import restriction with rent seeking contains the same equations,

¹¹ As an alternative, the distributive production function (3) can be altered to treat all persons competing for import licenses as distributors so that L_D also encompasses L_R and $A' = p_D \bar{M}/L_D$. Another alternative is to introduce a rent-seeking activity distinct from distribution with a wage determined from total rents $(p_D - A'k)\bar{M}/L_R$, and require that this wage equal the wages in distribution and agriculture. These specifications give results equivalent to those that follow from (13).

(1) to (7) and (10), and the same variables as the model for import restrictions without rent seeking. In addition, the new model contains (13) and the introduction of L_R as a variable. The essential factor of rent seeking is that L_R becomes positive.

Let us start with a solution for an import restriction without rent seeking and ask what happens to the values of the variables when rent seeking is introduced. By assumption $M = \bar{M}$ is unchanged, so that L_D is unchanged. Therefore, $dL_A = -dL_R$, because the labor that enters rent seeking can only come from agriculture. Substituting into the total differential of (1) and using (6),

$$(14) \quad dF = dA = -A'dL_R < 0$$

Agricultural production and food consumption are reduced by the introduction of rent seeking. Since the import level remains unchanged, rent seeking entails a welfare loss beyond that for an import restriction without rent seeking. The concavity of the agricultural production function results in a food loss that is less than proportional to decrements in L_A . Differentiating (5) totally,

$$(15) \quad 0 = M_1 dp_M + M_2 dA$$

where M_1 and M_2 are the partial derivatives of (5) with respect to p_M and A , respectively. Solving (15) for dp_M , and substituting from (4) and (14),

$$(16) \quad dp_D = dp_M = \frac{M_2}{M_1} A' dL_R < 0$$

since $M_1 < 0$ and $M_2 > 0$. The domestic cost of imports will be lower under rent-seeking competition. This follows from the decrease in the consumption of food relative to imports.

The results of (14) and (16) are not dependent upon the particular form of the equilibrium of the labor market. They hold for any specification of competitive

rent seeking. Equation (13) serves to determine particular values for L_R and other variables of the system. The mere existence of competitive rent seeking is enough to determine the directions of change of the variables.

The above results are sufficient to indicate that, for any given level of import restrictions, competition among rent seekers is clearly inferior to the tariff equivalent of the restrictions, in that there could be more food consumed with no fewer imports under the latter case than the former. To the extent that rent seeking is competitive, the welfare cost of import restrictions is equal to the welfare cost of the tariff equivalent *plus the additional cost of rent-seeking activities*. Measurement of that excess cost is considered below.

The tariff-equivalent and rent-seeking equilibria are contrasted in Figure 3. Equilibrium under rent seeking will be at some point such as L , with the same consumption of imports, but smaller production and consumption of food than occurs under a tariff. The points K and C are the tariff-equivalent and free-trade equilibria, respectively. The line $D'D'$ cor-

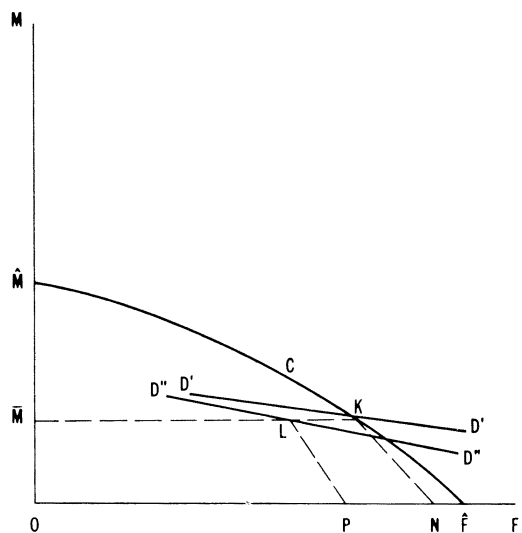


FIGURE 3. RENT-SEEKING IMPORT RESTRICTION

responds to the domestic price of imports in Figure 2, and the steeper line $D''D''$ corresponds to the lower domestic price of imports under competitive rent seeking.

So far, it has been shown that for any given level of import restriction, a tariff is Pareto-superior to competitive rent seeking, and the properties of rent-seeking equilibrium have been contrasted with those of the tariff-equivalent case in the absence of competition for the rents. A natural question is whether anything can be said about the properties of rent-seeking equilibrium in contrast to those of a free-trade equilibrium, which is, after all, the optimal solution. It has been seen that the number of persons engaged in distribution declines from free trade to import restriction without rent seeking, and increases as one goes from that situation to competition for import licenses. Likewise, agricultural output increases between free trade and the tariff-equivalent case, and declines between that and rent seeking. The question is whether any unambiguous signs can be placed on the direction of these changes between free trade and rent seeking and, in particular, is it possible that society might produce and consume less of both goods under rent seeking than under free trade?

The answer is that if inequality (12) is satisfied, the absolute number of persons ($L_D + L_R$) in distribution will increase going from a free-trade to a rent-seeking equilibrium. If import demand is more elastic, the number of persons in distribution will decline. Contrasted with a free-trade equilibrium, there would be less agricultural output and fewer imports when inequality (12) holds. If, with import restriction, the income from distribution $p_D^* \bar{M}$ is greater than distributors' income at free trade, more persons will be employed in distribution-cum-rent seeking with import restriction than are employed under free trade.

E. *Measuring the Welfare Loss from Rent Seeking*

A tariff has both production and consumption costs, and it has already been shown that rent seeking entails costs in addition to those of a tariff. Many forms of competition for rents, however, are by their nature difficult to observe and quantify and one might therefore question the empirical content of the result so far obtained.

Fortunately, there is a way to estimate the production cost of rent seeking. That cost, in fact, is equal to the value of the rents. This can be shown as follows. The rent per import license, r , is:

$$(17) \quad r = p_D - kA'$$

This follows because the labor required to distribute one unit of imports is k , which could be used in agriculture with a return A' . Note that at free trade r equals zero. A distributor could efficiently distribute an import and earn his opportunity cost in agriculture with zero rent. The total value of rents, R , with competitive rent seeking is thus the rent per unit of imports times the amount imported.

$$(18) \quad R = r\bar{M} = (p_D - kA')\bar{M}$$

Using (3) and (13),

$$(19) \quad R = \left(p_D - \frac{k p_D \bar{M}}{L_D + L_R} \right) \bar{M} \\ = p_D \left(1 - \frac{L_D}{L_D + L_R} \right) \bar{M} \\ = \frac{p_D \bar{M} L_R}{L_D + L_R}$$

Thus the total value of rents reflects the agricultural wage (A') times the number of rent seekers.

The value of rents reflects the value (at current prices) of the domestic factors of production which could be extracted from the economy with no change in the final

goods and services available for society's utilization. Thus, if the value of rents is known, it indicates the volume of resources that could be transferred out of distribution and into other activities, with no loss of distributive services from an initial position of rent-seeking activity. The estimates of rents in India and Turkey, therefore, may be interpreted as the deadweight loss from quantitative restrictions in addition to the welfare cost of their associated tariff equivalents if one believes that there is competition for the rents.

The value of the rents overstates the increase in food output and consumption that could be attained with a tariff to the extent that the marginal product of labor in agriculture is diminishing, since the equilibrium wage will rise between the tariff and the competitive rent-seeking situation. In the case of a constant marginal product of labor in alternative uses, the value of rents will exactly measure foregone output.

F. *The Implications of Rent Seeking for Trade Theory*

Recognition of the fact of rent seeking alters a variety of conclusions normally obtained in the trade literature and examination of such cases is well beyond the scope of this paper. A few immediately derivable results are worth brief mention, however.

First, an import prohibition might be preferable to a nonprohibitive quota if there is competition for licenses under the quota. This follows immediately from the fact that a prohibition would release resources from rent seeking and the excess cost of domestic production might be less than the value of the rents. Second, one could not, in general, rank the tariff-equivalents of two (or more) quotas, since the value of rents is a function of both the amount of rent per unit (the tariff equivalent)

and the volume of imports of each item.¹² Third, it has generally been accepted that the more inelastic domestic demand the less is likely to be the welfare cost of a given tariff. For the quota-cum-rents case, the opposite is true: the more price inelastic is demand, the greater will be the value of rents and the greater, therefore, the deadweight loss associated with rent seeking. Fourth, it is usually believed that competition among importers will result in a better allocation of resources than will a monopoly. If rent seeking is a possibility, however, creating a monopoly position for one importer will generally result in a higher real income if not in a preferable income distribution for society. Finally, devaluation under quantitative restrictions may have important allocation effects because it diminishes the value of import licenses, and hence the amount of rent-seeking activity, in addition to its effects upon exports.

III. Conclusions and Implications

In this paper, focus has been on the effects of competition for import licenses under a quantitative restriction of imports. Empirical evidence suggests that the value of rents associated with import licenses can be relatively large, and it has been shown that the welfare cost of quantitative restrictions equals that of their tariff equivalents plus the value of the rents.

While import licenses constitute a large and visible rent resulting from government intervention, the phenomenon of rent seeking is far more general. Fair trade laws result in firms of less-than-optimal size. Minimum wage legislation generates equilibrium levels of unemployment above the optimum with associated deadweight losses, as shown by John Harris and

¹² I am indebted to Bhagwati for pointing out this implication.

Michael Todaro, and Todaro. Ceilings on interest rates and consequent credit rationing lead to competition for loans and deposits and/or high-cost banking operations. Regulating taxi fares affects the average waiting time for a taxi and the percent of time taxis are idle, but probably not their owners' incomes, unless taxis are also licensed. Capital gains tax treatment results in overbuilding of apartments and uneconomic oil exploration. And so on.

Each of these and other interventions lead people to compete for the rents although the competitors often do not perceive themselves as such. In each case there is a deadweight loss associated with that competition over and above the traditional triangle. In general, prevention of that loss can be achieved only by restricting entry into the activity for which a rent has been created.

That, in turn, has political implications. First, even if they *can* limit competition for the rents, governments which consider they must impose restrictions are caught on the horns of a dilemma: if they do restrict entry, they are clearly "showing favoritism" to one group in society and are choosing an unequal distribution of income. If, instead, competition for the rents is allowed (or cannot be prevented), income distribution may be less unequal and certainly there will be less appearance of favoring special groups, although the economic costs associated with quantitative restrictions will be higher.

Second, the existence of rent seeking surely affects people's perception of the economic system. If income distribution is viewed as the outcome of a lottery where wealthy individuals are successful (or lucky) rent seekers, whereas the poor are those precluded from or unsuccessful in rent seeking, the market mechanism is bound to be suspect. In the United States, rightly or wrongly, societal consensus has

been that high incomes reflect—at least to some degree—high social product. As such, the high American per capita income is seen as a result of a relatively free market mechanism and an unequal distribution is tolerated as a by-product. If, instead, it is believed that few businesses would survive without exerting "influence," even if only to bribe government officials to do what they ought in any event to do, it is difficult to associate pecuniary rewards with social product. The perception of the price system as a mechanism rewarding the rich and well-connected may also be important in influencing political decisions about economic policy. If the market mechanism is suspect, the inevitable temptation is to resort to greater and greater intervention, thereby increasing the amount of economic activity devoted to rent seeking. As such, a political "vicious circle" may develop. People perceive that the market mechanism does not function in a way compatible with socially approved goals because of competitive rent seeking. A political consensus therefore emerges to intervene further in the market, rent seeking increases, and further intervention results. While it is beyond the competence of an economist to evaluate the political impact of rent seeking, the suspicion of the market mechanism so frequently voiced in some developing countries may result from it.

Finally, all market economies have some rent-generating restrictions. One can conceive of a continuum between a system of no restrictions and a perfectly restricted system. With no restrictions, entrepreneurs would seek to achieve windfall gains by adopting new technology, anticipating market shifts correctly, and so on. With perfect restrictions, regulations would be so all-pervasive that rent seeking would be the only route to gain. In such a system, entrepreneurs would devote all their time and resources to capturing windfall rents.

While neither of these extreme types could ever exist, one can perhaps ask whether there might be some point along the continuum beyond which the market fails to perform its allocative function to any satisfactory degree. It will remain for further work to formalize these conjectures and to test their significance. It is hoped, however, that enough has been said to stimulate interest and research on the subject.

REFERENCES

- J. Bhagwati, "On the Equivalence of Tariffs and Quotas," in his *Trade, Tariffs and Growth*, London 1969.
- and P. Desai, *Planning for Industrialization: A Study of India's Trade and Industrial Policies Since 1950*, Cambridge 1970.
- and A. Krueger, *Foreign Trade Regimes and Economic Development: Experience and Analysis*, New York forthcoming.
- J. R. Harris and M. P. Todaro, "Migration, Unemployment, and Development: A Two-Sector Analysis," *Amer. Econ. Rev.*, Mar. 1970, 60, 126–42.
- H. G. Johnson, "The Cost of Protection and the Scientific Tariff," *J. Polit. Econ.*, Aug. 1960, 68, 327–45.
- A. Krueger, *Foreign Trade Regimes and Economic Development: Turkey*, New York 1974.
- J. B. Monteiro, *Corruption*, Bombay 1966.
- G. Myrdal, *Asian Drama*, Vol. III, New York 1968.
- M. P. Todaro, "A Model of Labor Migration and Urban Employment in Less Developed Countries," *Amer. Econ. Rev.*, Mar. 1969, 59, 138–48.
- R. Wraith and E. Simpkins, *Corruption in Developing Countries*, London 1963.
- Government of India, Planning Commission, *Third Five Year Plan*, New Delhi, Aug. 1961.
- Reserve Bank of India, *Report on Currency and Finance*, 1967–68.
- Santhanam Committee, *Report on the Committee on Prevention of Corruption*, Government of India, Ministry of Home Affairs, New Delhi 1964.

VERIFICATION

I, William Brennan, verify under penalty of perjury that the foregoing is true and correct.
Further, I certify that I am qualified and authorized to file this statement.

/s/ William Brennan

William Brennan

Executed on June 17, 2026

BEFORE THE
SURFACE TRANSPORTATION BOARD

NOR 42185

WESKAN GRAIN LLC V. KANSAS & OKLAHOMA RAILROAD, LLC

**KANSAS & OKLAHOMA RAILROAD, LLC'S MOTION TO
REJECT THE COMPLAINT OR, IN THE ALTERNATIVE,
FOR EXPEDITED DETERMINATION OF JURISDICTION AND
BIFURCATION OF THE PROCEEDING**

EXHIBIT B

**VERIFIED STATEMENT OF
ZACHARY G. BOEHME**

BEFORE THE SURFACE TRANSPORTATION BOARD

DOCKET NO. NOR 42185

WESKAN GRAIN LLC v. KANSAS & OKLAHOMA RAILROAD, LLC

VERIFIED STATEMENT OF ZACHARY G. BOEHME

I, Zachary G. Boehme, being duly sworn, hereby state as follows:

INTRODUCTION AND PROFESSIONAL BACKGROUND

My name is Zachary G. Boehme. I am the Senior Vice President, Rail - Sales of Watco Companies L.L.C. (“Watco”). My business address is 315 W. 3rd Street, Pittsburg, Kansas 66762.

In my role as Senior Vice President, I hold commercial oversight for all railroads controlled by Watco Holdings, Inc. in North America. This includes developing and advancing partnerships between Class I railroads on the one hand, and the short line and regional railroads within the Watco corporate family, on the other, including the Kansas & Oklahoma Railroad, LLC (“K&O”). In addition to managing carrier-to-carrier interline relationships, I spend a considerable amount of my professional time engaging directly with various short line customers, including those on K&O, to discuss individual service parameters, establish transportation terms, and negotiate rates.

I was promoted to my current role in 2023 after joining Watco as Vice President of Rail Sales in 2022. My railroad career began in 2013 as a conductor, and over the subsequent years, I held roles of increasing operational and commercial responsibility. Prior to railroading, I worked in the agribusiness sector. I hold a bachelor’s degree in business administration and management from the University of Illinois-Springfield.

I have personal knowledge of the commercial facts, market dynamics, and operational parameters set forth in this Verified Statement. This knowledge is derived from my direct involvement in developing the rate structures responsive to recent inquiries from Weskan Grain LLC (“Weskan”), my review of K&O’s business and traffic records, and my professional experience in agricultural rail logistics. This statement is submitted in support of K&O’s Motion for Expedited Determination of Jurisdiction and Bifurcation of Proceeding. Beyond supporting K&O’s position on market dominance, my broader purpose is to provide the Board with the operational and commercial realities driving this dispute.

First, I will explain that the Revenue-to-Variable Cost (R/VC) ratios in this case are not the product of monopolistic pricing, but rather a mathematical reflection of the profound operational risk K&O must assume to accommodate Weskan’s unprecedented, uncommitted, and highly speculative traffic demands. As matters now appear, it is my sense that K&O is being pressured by an aggressive, litigious and heavily capitalized corporate conglomerate motivated by vertical integration aspirations to bear all the operational risk and capital burden to support a novel service, while that same conglomerate appears intentionally to be withholding any dependable volume assurances.

Second, and equally important, I intend to make clear on the record that K&O remains a willing commercial partner. We stand ready to engage in good-faith discussions to establish the lower rates Weskan desires, provided Weskan is willing to come to the table and reciprocate with the commitments necessary to make such service operationally and economically workable for both parties.

EVALUATING THE TRUE COMMERCIAL VALUE OF WESKAN'S DEMANDS

K&O is receptive to the development of new, westward traffic flows on our system. Public marketing materials and industry statements that have been shared with me indicate that Weskan's Stockton Siding facility enjoys a highly functional, truck-based supply chain capable of receiving 70,000 bushels per hour, fed by origin farms within K&O's broader geographic territory. K&O views this as a sizeable commercial opportunity. We actively desire to participate in this marketplace, capture a portion of that truck-to-rail grain volume, and expand our financial circumstances as a grain-transporting railroad.

However, because this westward traffic flow is historically unprecedented for K&O, we must plan for highly uncertain operational variables, particularly in the absence of any firm traffic and volume commitments. Weskan's outreach about potential westward service to Stockton Siding is a recent development. The Stockton Siding elevator did not become fully operational until approximately May 2023, and K&O received no expression of interest from Weskan regarding feeder services to this facility until 2024, which is when I recall that discussions about rates and service parameters first began.

Furthermore, our rate and service offerings for speculative westward traffic flows depends heavily upon the reality of K&O's far-west-end infrastructure. Weskan only recently upgraded its Scott City East facility to be able to handle the 50-car blocks of traffic at issue in this complaint proceeding. In fact, in February of 2026, K&O formally inspected Weskan's Scott City East facility at Weskan's request to verify that the track conditions and siding capacity were in sufficient operating condition to receive these larger blocks. See Exhibit ZBG-1. Consequently, Weskan's recent demands for service remain largely untethered to clear projections or historic volumes, as only one 50-car unit grain train has been shipped since the

Scott City East facility became operationally capable of handling such blocks, occurring in late April of this year.

It remains entirely unclear whether Weskan's proposed volumes represent *cumulative growth* or the *redistribution* of historical traffic flows. I presume, optimistically, that K&O is facing the opportunity for cumulative (entirely new) traffic growth based upon a recent public statement¹ suggesting that K&O could participate in diverting potentially as much as 25,000 yearly – and “*current*” – truck movements from western Kansas farms to Weskan's Stockton Siding facility to our railroad instead. I am not sure how much of these asserted 25,000 *ongoing* truck movements to Stockton Siding are open to potential alternative K&O handling, but I am assuming that an appreciable portion of those existing traffic flows are, or could be, available for a K&O intermediate westward routing from Weskan collection-and-loading sources on our system to Weskan's large shuttle elevator near Sheridan Lake. From a commercial sales and logistics perspective, K&O views this substantial, highly functional over-the-road trucking network as our primary, active competitor for these grain flows.

If this grain is incremental volume over and above K&O's existing eastbound traffic flows, it represents an appealing short-haul growth opportunity. But it also would be an opportunity that would strain existing capacity, most likely requiring K&O to undertake the significant capital and personnel investments detailed later in this statement if, based on Weskan's public statements, K&O were presented with thousands of carloads of new (and unprecedented) westward traffic flows. Conversely, if Weskan intends to divert grain that has historically loaded at K&O facilities and moved to eastern K&O interchanges for subsequent

¹ See Rip Watson, *Lawsuit claims UP, short line blocked grain moves via alternate route*, Trains (Feb. 2, 2026), available at <https://www.trains.com/pro/freight/lawsuit-claims-up-short-line-blocked-grain-moves-via-alternate-route/>, attached as Exhibit ZGB-1.

movement to eastern or southern destinations beyond the K&O network, K&O faces a structural disruption to which we would need to adapt. In that scenario, K&O would have to consider scaling back its predictable, long-haul eastward operations and redeploy those same assets (where possible) for westward grain movements, while undertaking much of the same track improvement discussed above. Such uncertainty is further complicated by the vagaries of western Kansas agriculture – a comparatively arid region prone to droughts and crop shifting when measured against farmland to the east – and macroeconomic geopolitical forces that ultimately dictate which directional routing offers the best price for farmers.

RATIONAL CAPITAL ALLOCATION AND VARIABLE COST DRIVERS

As indicated above, the geographic and operational profile of the K&O network is rooted in a traditional west-to-east traffic flow, funneling agricultural commodities eastward toward major line-haul interchanges, with traffic densities increasing toward the eastern end of the system. Like any rational commercial enterprise, K&O prioritizes its capital, maintenance resources, and physical plant investments based on actual traffic volumes, historical flow patterns, and areas of highest density. It is standard railroad industry practice to allocate heavy infrastructure investment to segments that actively sustain the wear-and-tear of repetitive, heavy-tonnage train movements.

Based upon my review of online sources, I understand that the connecting line west of Towner was treated as surplus property by a previous Class I owner, and that it for years existed as a dormant corridor offering no viable westward traffic opportunities. In the absence of shipper interest in potential westward grain traffic movements (until recently) and longstanding shipper demand for transportation of grain loadings to interchanges on the eastern ends of the

K&O system, K&O appropriately calibrated its maintenance and capital expenditures on its far western segment to match its historical function as a lower-density gathering line.

During the entire 25 years of K&O's existence, traffic densities on K&O's lines diminish the closer you get to the far western end of the railroad at Towner, Colorado. To be clear, K&O has never intentionally undercapitalized any segment of its railroad to discourage or foreclose westward traffic. Any argument to the contrary would ignore basic railroad economics. K&O simply has invested resources where our customers and historical traffic realities demanded them, with higher capital improvements typically targeted to the higher-density sections of our system, and I am confident that K&O will continue to do so, adapting as new traffic opportunities emerge and are evaluated as any other short line might do.

To safely and reliably handle the type of westward grain train service Weskan says it wants from K&O-served loading points at or near Scott City, Kansas, K&O cannot simply utilize idle track capacity like flipping a figurative switch. Because of the historical realities described above, we must undertake significant, new capital improvements to our physical plant on the western end – potentially including tie replacements, heavier rail deployment, and ballast upgrades – to safely support and withstand the accelerated track degradation caused by heavy-tonnage blocks if such tonnages were to materialize.

Furthermore, handling the grain volumes that Weskan claims it will ship may require the procurement and dedicated deployment of motive power (locomotives) and crews, particularly if the new westward traffic flows that Weskan anticipates represent new, incremental traffic growth for K&O. In the context of variable operating costs, if Weskan were to utilize new K&O service sporadically or without commitment, then the high-cost assets necessary to support this new traffic would sit idle or would be forced into inefficient re-positioning or re-deployment. The

possible infrequency of uncommitted moves would also mean that these massive capital and deployment expenses would translate into an equally massive variable per-carload cost driver.

PURSUING AND ACHIEVING RUN-THROUGH SERVICE EFFICIENCIES

Adding to these variable costs is the infrastructure reality at the western terminus.

K&O's western end is at Towner, where our railroad connects to the Weskan-affiliated Colorado Pacific Railroad ("CXR"). But there are no suitable physical interchange facilities for the exchange of traffic between K&O and CXR at Towner. It is merely an intermediate point along what had been a longer Union Pacific operating subdivision in years past.

To overcome this infrastructure deficit, K&O and CXR resolved that an efficient local operational solution would be a K&O run-through operation using a segment of the CXR system directly to Weskan's Stockton Siding facility some five miles west of Towner. Under this framework, a K&O westbound train would bypass a physical interchange at Towner and operate directly over CXR track to Stockton Siding, the first significant, active siding location west of Towner. Once the grain is delivered at Stockton Siding, we understand it would be unloaded and lifted at the Stockton elevator later to be loaded into outbound unit shuttle trains for westward transportation handled by CXR to interchanges with either BNSF or UP.

However, executing this service scenario without volume assurances forces K&O into inefficient operational cycles. Because we lack assurances of committed traffic flows, K&O must plan for worst-case, highly inefficient operational cycles. To execute a single shipment cycle, K&O suffers two completely unrecouped light-engine deadhead moves. First, a K&O crew must come on duty at our Scott City base of operations, pick up the westbound loads from Weskan's Scott City facilities, deliver them directly to Stockton Siding roughly 78 miles to the

west, cut off the motive power, and return “light” (locomotives only, with no cars) back to Scott City. Second, at an unpredictable later date when Weskan releases the empty cars back to K&O, we would need to originate a Scott City crew, run light westward to Stockton Siding to retrieve the empties, and transport them back to the Scott City base for subsequent handling. These repetitive light engine movements generate significant variable labor, fuel, and track-wear costs without producing corresponding revenue. Furthermore, without a predictable volume baseline, coordinating these unscheduled movements into the Stockton Siding network creates scheduling friction, risking crew expirations under federal Hours of Service laws.

THE NON-DEDICATED MANIFEST RATE STRUCTURE RATIONALE

It is precisely because of these heavy variable costs and operational inefficiencies that K&O structured its rate quotes around “non-dedicated manifest service, 50-car blocks.” By embedding Weskan’s traffic within a manifest framework, K&O designed an operational solution that might mitigate to some extent the high fixed costs of the movement. This framework permits the same train crew, where feasible and where traffic demand permits, to perform intermediate local switching, pickups, and set-offs for other retail customers located between Scott City and Towner. Blending Weskan’s blocks with existing local traffic patterns where possible would allow K&O to distribute the major variables of crew positioning and motive power across multiple revenue streams, rather than forcing a speculative, standalone movement to bear those costs alone.

As a matter of commercial history, Weskan has focused its requests strictly on short-haul, intermediate movements from Scott City to its own Stockton Siding facility. I am unaware of any discussions or outreach from either Weskan or its affiliate, CXR, approaching K&O to

explore broader, long-haul unit train opportunities where K&O would originate or create a westward 100+ unit shuttle train on its own system, and would, in turn, interchange with CXR for forward transportation as part of a line haul route to West Coast domestic markets or Pacific export terminals via NA Junction bypassing Stockton Siding entirely. The business presented by Weskan appears to be a brand-new, isolated operational flow intended to substitute K&O rail service for trucks for a portion of the grain routing from western Kansas farms to Stockton.

RISK ALLOCATION AND BINDING VOLUME COMMITMENTS

It appears from Weskan's open-ended (and unprecedented) rate and service demands that Weskan expects K&O to bear all economic, natural, capital, and geopolitical risks associated with hosting the traffic that Weskan says can and will materialize if only K&O would first reduce its rates. If so, then Weskan evidently expects the railroad to invest the upfront capital required to accommodate a brand-new traffic flow, all while remaining noncommittal about how much or how little Weskan might actually utilize this new westward service. If a drought were to occur, if global market shifts were to make eastward routes more profitable for farmers, or if Weskan or the farmers involved were to jettison K&O service in favor of other options, then, under any of these scenarios entirely beyond K&O's control, K&O would be left holding stranded capital assets and personnel.

K&O cannot safely operate or maintain a common carrier franchise by absorbing 100% of the volume variation risk for a speculative operation with no historical precedent and no traffic or volume assurances. To justify the deployment of assets and the capital improvements required to handle this growth, K&O must have some assurance that it will earn a reasonable return on investment through rates that account for absorbing all risk. Because I know that CXR

wants to assume possession of the western end of our system, we suspect that Weskan views K&O merely as an expendable intermediary and is leveraging this risk and potential economic hardship as a mechanism to pressure K&O into relinquishing some or all of its system to CXR. In fact, in my opinion, if Weskan were to refuse to assume its fair share of the risk associated with this new traffic opportunity, this would confirm my suspicions about Weskan's (and CXR's) true ulterior motives.

Nevertheless, we will take Weskan at its word at this point that it wants to pursue a genuinely fair and equitable arrangement that would – (1) support K&O's capital and operational commitments; (2) assure a modicum of volume and revenue certainty that could assure reasonable returns on K&O investment at lower rates; (3) yield greater operational efficiencies; and (4) allow K&O to offer comparatively lower rates. K&O stands ready and eager to develop new westward traffic flows with Weskan and establish a functional commercial partnership, but that will require a reasonable give and take on both sides. And to this point, I've yet to see Weskan engage in anything more than unilateral demands for service and rates that satisfy Weskan's concealed commercial expectations.

It occurs to me as part of this discussion that Weskan's troubling adversarial stance is outside of commercial industry norms as I have experienced them. It is standard practice on the K&O system—and a mutually beneficial two-way street—for active customers to have regular, recurring discussions with me and my team concerning forecasted tonnages, changes in facility operations, and upcoming service needs so our short line railroads can make appropriate adjustments to service and (in some cases) transportation terms. To my disappointment, this normal commercial dialogue is not happening with Weskan, who insists on filtering communications through counsel and engaging almost exclusively in an adversarial posture.

If Weskan is being honest about the substantial volumes of grain that would move via K&O to Stockton Siding, and if it is confident about the volumes it would generate (where practically no such volumes currently exist or have existed in the past), we would encourage Weskan to enter into binding, commercial volume obligations as a clear measure of commitment and good faith. By sharing the market risk and establishing a predictable traffic baseline, K&O can structurally optimize its crew rotations, justify its capital improvements, eliminate light engine movements, and pass operational cost savings directly to Weskan in the form of lower per-carload rates. To be clear, under a guaranteed volume framework, K&O is prepared to offer Weskan lower per-carload rates—potentially significantly lower than the common carrier rates K&O has offered that are untethered to any historic or assured volumes or service parameters.

BEFORE THE
SURFACE TRANSPORTATION BOARD

NOR 42185

WESKAN GRAIN LLC V. KANSAS & OKLAHOMA RAILROAD, LLC

**KANSAS & OKLAHOMA RAILROAD, LLC'S MOTION FOR
EXPEDITED DETERMINATION OF JURISDICTION AND
BIFURCATION OF PROCEEDING**

VERIFIED STATEMENT OF ZACHARY G. BOEHME

EXHIBIT ZGB-1

**K&O COURTESY INSPECTION REPORT –
WESKAN STOCKTON EAST TRACK FACILITIES**



Operations Office:
1825 W. Harry
Wichita, KS 67213
Phone: 316-263-3113
Fax: 316-263-5563

02/11/2026

Steven Morgan
K&O Railroad
603 Main Street
Great Bend KS 67530

To: Michael Espinoza
Freight and Rail Program Manager
Kansas Department of Transportation
Michael.Espinoza@ks.gov
785-296-3228

Michael, this letter is to inform you of the inspection of Project #1 (#RA-0524-01) and Project #2 (#RA-8524-24) in Scott County for Weskan Grain, between MP. 111.79 -112.29 on the KO mainline Scott city subdivision.

During the inspection on 02/11/26 I found that all components and completion of the two projects appear to meet AREMA and FRA standards. I (Steven Morgan) am qualified to perform FRA 213 inspections.

Components are as follows:

1. 2 mainline switches
2. 2 switch derails
3. 1 pit
4. 4 stub tracks/dead end tracks
5. Switches inside facility

All work has been completed in conformance with the design plans, FRA track standards and applicable AREMA standards.

If you have any questions feel free to reach out to me

Respectfully,

Steven Morgan
316-215-4089

BEFORE THE
SURFACE TRANSPORTATION BOARD

NOR 42185

WESKAN GRAIN LLC V. KANSAS & OKLAHOMA RAILROAD, LLC

**KANSAS & OKLAHOMA RAILROAD, LLC'S MOTION FOR
EXPEDITED DETERMINATION OF JURISDICTION AND
BIFURCATION OF PROCEEDING**

VERIFIED STATEMENT OF ZACHARY G. BOEHME

EXHIBIT ZGB-2

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Lawsuit claims UP, short line blocked grain moves via alternate route

By [Rip Watson](#) | January 30, 2026 | Last updated on February 2, 2026



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The Colorado Pacific Railroad and Weskan Grain, both part of the Soloviev Group, have sued Union Pacific and the Kansas & Oklahoma Railroad over a fee they say blocks grain from moving on the Colorado Pacific Soloviev Group

KANSAS CITY, Kan. — Colorado Pacific Railroad and Weskan Grain, two subsidiaries of the Soloviev Group, this week filed a federal court suit that alleges Union Pacific Railroad and regional railroad Kansas & Oklahoma have conspired to prevent westbound grain moves over Colorado Pacific.

The plaintiffs claimed that UP and Watco Cos.' K&O are using a \$500 per car interchange fee to effectively prevent farmers located on the K&O from shipping export grain west over Colorado Pacific to an interchange with UP and BNSF Railway at NA Junction in Colorado. The junction is near Boone, Colo., and about 25 miles east of Pueblo.

Both UP and K&O, one of Watco's 30 regional and shortline railroads, denied the allegations.

Colorado Pacific bought 122 miles of track in 2018 from NA Junction to an interchange with the K&O at Towner, Colo., about 60 miles west of Scott City, Kansas. The railroad rebuilt the property it calls the Towner line, where no traffic had moved for more than two decades, seeking to move grain from elevators on K&O in the Scott City area, including two Weskan facilities.

The complaint filed in U.S. District Court in Kansas alleges that UP and K&O in 2019 altered a 1997 lease agreement to impose the interchange fee that made westbound moves from elevators on K&O too costly for farmers in the Scott City area. Grain from the Scott City area can move more than 140 eastbound miles over the K&O to interchange with UP at Great Bend, Kan., before it moves west.

"I'm a farmer wanting to get a market for my grain," said Weskan and Colorado Pacific Chairman Stefan Soloviev in an interview. "We got into the rail business to provide competition so farmers could get competitive prices. They [UP and K&O] have given us no choice. We've been fighting this for three years. The lawsuit is the last thing we wanted to do."

Jake Wahlenmaier, grain elevator manager at Weskan's elevator in Sheridan Lake, Colo., says the potential for the Towner line is enormous, if the grain traffic could move that way.

"We'd turn that line into the busiest stretch of rail west of the Mississippi," he said. "We'd be smoking the rail ties."

Colorado Pacific also has filed at the Surface Transportation Board to contest the interchange fee and support its contention that the other two railroads illegally created a so-called "paper barrier" to block westbound grain moves from the K&O to Colorado Pacific.

"Union Pacific denies the allegations of the lawsuit and will present the facts to the court and Surface Transportation Board who handles these issues," a UP representative said.

"We do not comment on litigation matters, but as a matter of course we will defend our commitment to the values that define us through the proper legal channels," said spokeswoman for Watco, based in Pittsburg, Kan.

Soloviev said Colorado Pacific anticipates moving 5,000 carloads of grain this year. Weskan is at capacity at five rail and five truck facilities, and 20 unit trains have been booked for future moves, he added.

"We have to have that western outlet for our grain," Steven Compton, a Scott City farmer, told *Trains*. "Transportation is vital. Feed and other costs have gone up, but grain prices are steady. Markets are being compressed. This is about more than money. It's about the survivability of the farm economy."

Weskan is part of Soloviev's grain businesses that provide services such as seed, storage and transportation to farmers. More than a dozen farmers in the Scott City area joined in the suit.

Soloviev Group says it is the 14th largest landowner in the U.S. Its holdings are estimated at 350,000 acres. The New York-based entrepreneur also has businesses including real estate, wind farms, and a resort hotel on Long Island.

Soloviev also controls the Colorado Pacific Rio Grande, a 150-mile railroad in southern Colorado. Several years ago Soloviev sought to reopen the former Denver & Rio Grande's route over Tennessee Pass to move westbound grain, an effort that included an unsuccessful bid to force UP to sell the line to Colorado Pacific [see "[Regulators toss out effort to force UP to sell ...](#)," *Trains.com*, March 18, 2020]. That effort ended in 2023 [see "[News report says Colorado Pacific ...](#)," May 9, 2023].

The suit alleges violations of the Sherman Act that govern anti-competitive practices, said Michael Hershman, CEO of Soloviev Group.

"The allegations are fairly standard for a Sherman Act case," Hershman said. "What's different here is that this is David vs. Goliath. It's very difficult to go against a multi-billion dollar company [UP]."

Soloviev said Colorado Pacific was prevented from bidding on the property that UP owns and K&O operates under the lease that is being challenged in the federal court case. In the interview, Soloviev advanced another reason to seek the change, saying the ability to move traffic directly via Colorado Pacific would eliminate 25,000 moves currently made by truck to get grain from Scott City to where Colorado Pacific can handle it.

— Updated at 6:05 p.m. to clarify item on taking trucks off the road; updated Feb. 2 at 9:55 a.m. to correct title of Jake Wahlenmaier. To report news or errors, contact trainsnewswire@firecrown.com.

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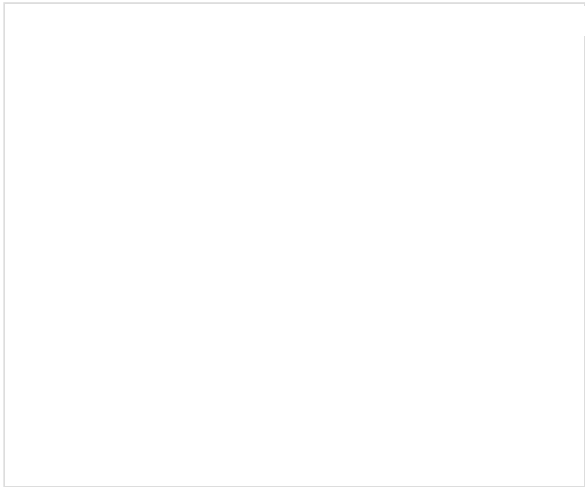
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VERIFICATION

I hereby verify under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on this 17th day of June, 2026.

/s/ *Zachary G. Boehme*

Zachary G. Boehme
Senior Vice President, Rail – Sales
Watco Companies L.L.C.

BEFORE THE
SURFACE TRANSPORTATION BOARD

NOR 42185

WESKAN GRAIN LLC V. KANSAS & OKLAHOMA RAILROAD, LLC

**KANSAS & OKLAHOMA RAILROAD, LLC'S MOTION TO
REJECT THE COMPLAINT OR, IN THE ALTERNATIVE,
FOR EXPEDITED DETERMINATION OF JURISDICTION AND
BIFURCATION OF THE PROCEEDING**

EXHIBIT C

SOLOVIEV GROUP DIVISIONS

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For more than two decades, Crossroads AG has been at the forefront of sustainable and efficient farming practices. We are on the ground and in the fields, operating from locally-based headquarters in Kansas, Colorado, and New Mexico across 400,000 acres of land. Through our partnerships with area farmers, we harvest more than 1 million bushels of both wheat and milo annually for domestic sales and international export.

Working on the western edge of the region's arable dryland, we utilize the latest in industry technology and data insights for maximum yield. From seed to harvest, we are pioneers in the implementation of dryland farming techniques, including the use of a land rotation system and drought-resistant crop varieties.

Our methods have proved so successful that wheat and milo harvests in eastern Colorado now exceed the region's grain elevator capacity, and the surplus must be piled on the ground at facilities operated by third parties. As part of the company's integrated and efficient operations in the region, these facilities are served by the Soloviev Group's Colorado Pacific Railroad.

The Soloviev Group also produces crops such as corn, alfalfa hay, and specialty food on irrigated land, partially using organic farming practices.

For more information visit:

crossroadsagriculture.com

crossroadsatlantic.com

Western Expansion

A RANCH FOR RANGE REARED PRIME BEEF

Dedicated to the production of high-quality beef, our ranching division is located on 300,000 acres in eastern New Mexico. We operate the Quintin City Ranch (QCR) under the region's established SS brand. Stringent standards are upheld through rigorous breeding stock selection, health and nutrition regimens, and genomics. The use of

animal pharmaceuticals is kept to a minimum. The 5,000-head herd of primarily Angus and horned Hereford cattle includes 160 bulls and produces over 1.5 million pounds of live beef annually.





Grain Storage & Merchandising

FACILITIES THAT INCREASE ACCESS & EFFICIENCY

Crossroads Agriculture's twin distribution hubs enable efficient and fast grain distribution. Our Astor, Kansas, facility, providing Class I interchange points, is served by Kansas & Oklahoma Railroad. Our Kit Carson, Colorado, facility is served by Union Pacific. Future projects include a large-scale grain storage and merchandising elevator to aggregate grain from area farmers and provide a highly competitive alternative to similar facilities to the east.

Weskan Grain Facility

Meeting Increased Output with Superior Storage & Transport

With production levels now exceeding the capacity of existing grain elevators in the territory, the Soloviev Group is constructing a grain elevator near Sheridan Lake, Colorado, to meet the increased need. The planning and design of the facility prioritized the selection of a strategic location and the ability to offer reduced load times, competitive pricing, and exceptional customer service to area farmers.

Weskan Grain will have a storage capacity of 4.5 million bushels and be capable of loading grain trains up to 120 railroad cars in length. The facility will be capable of receiving 65 trucks per hour during the peak harvest season, and over 50 trucks per hour during the offseason, with room to expand. Large unit trains will be loaded in under 10 hours.

The facility is located alongside the Group's railroad, with connections on the west end to two major railroads. This allows for efficient movement of grain to export terminals in the west coast and Texas as well as domestic demand.

For more information visit:
weskangrain.com



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A Strategic Network That Connects & Competes

A system of railroads and freight trains provides partners unparalleled access and efficiency.



Colorado Pacific Railroad

A REVIVED LINE OFFERS LEVERAGE & CHOICE

The Soloviev Group owns the Colorado Pacific Railroad, which runs from Towner, Colorado, to NA Junction, about 27 miles east of Pueblo. Running parallel to the current Colorado State Highway 96, it was originally built in the 1880s as part of a trunk line connecting Pueblo to Kansas City. After many years of neglect, it was nearly disassembled, but because the line was constructed with Federal land grant funds, the railroad could not legally be abandoned if a financially-qualified company could operate it.

Recognizing this opportunity, in 2018, the Soloviev Group acquired and rehabbed the railroad, reopening it to service under the Federal Railroad Administration reporting mark “CXR.”

Today, Colorado Pacific Railroad enables communities in eastern Colorado and western Kansas to transport goods for shipment overseas via Union Pacific or BNSF Railroads. Enhancements include a new shuttle train delivery siding constructed at the west end of the line, as well as upgrades to accommodate heavier and faster freight traffic.

Generally bisecting the farmland holdings of the Soloviev Group in Colorado, the railroad is ideally positioned for the company’s operations in the region, while also offering competitive tariff quotes, making it the clear rail line of choice for local farmers.

For more information visit:
coloradopacificrailroad.com

Colorado Pacific Rio Grande Railroad

IMPROVED SERVICE FOR SAN LUIS VALLEY PARTNERS

The Colorado Pacific Rio Grande Railroad is a 150-mile rail line that facilitates the seamless and efficient delivery of crops and products to market for farmers and other shippers in the San Luis Valley.

Running west from a connection with the Union Pacific Railroad at Walsenburg, Colorado, the railroad serves Huerfano, Costilla, Alamosa, Conejos, and Rio Grande Counties, with 12 stations along its route. At Alamosa, the railroad splits, with one branch extending south to Antonito—just north of the New Mexico border—and the other continuing northwest to South Fork. The railroad's La Veta Pass, at 9,242 feet above sea level, is the highest rail freight line in North America.

Previously known as the San Luis & Rio Grande Railroad, the Soloviev Group purchased the rail line out of bankruptcy in February of 2023. Significant upgrades to the line are planned, including improved speed performance, weight clearance, storage, and logistics capabilities.



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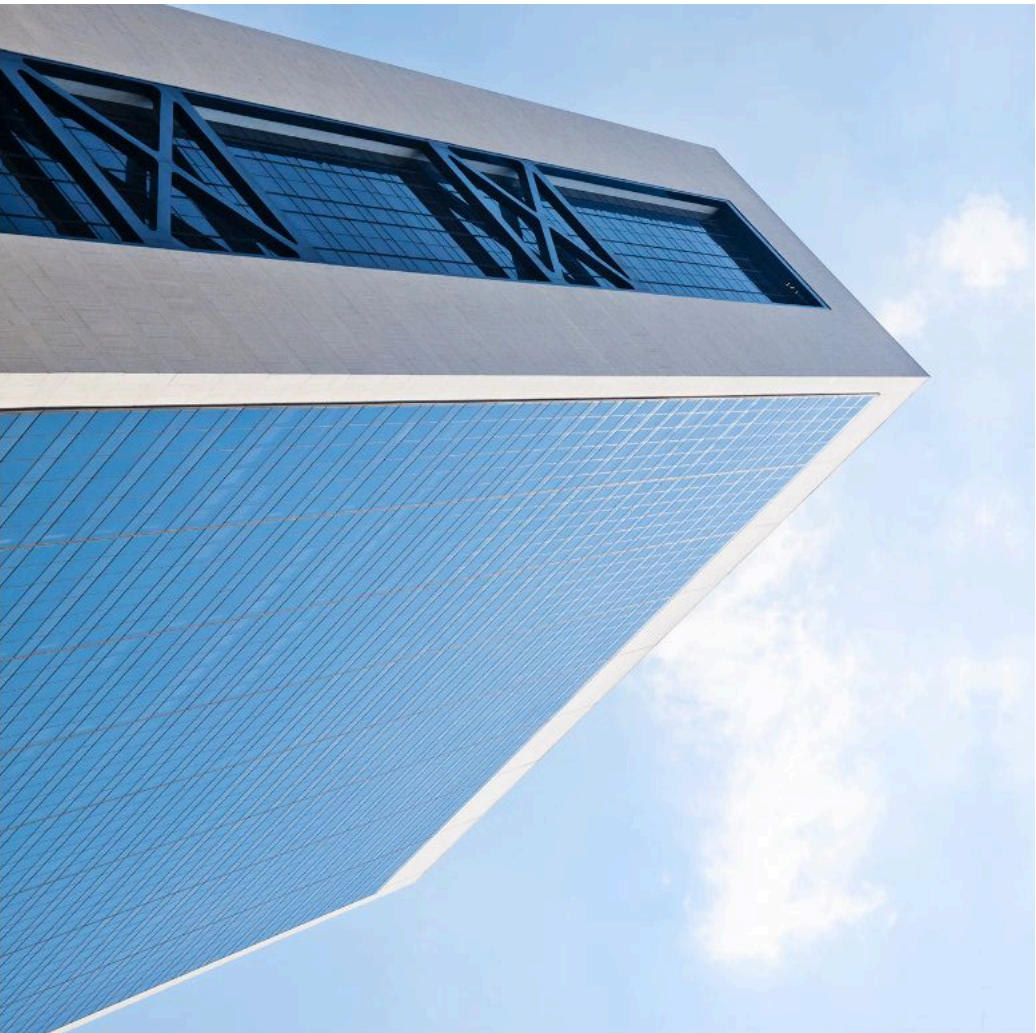
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A Growing Business with Excellence as its Foundation

An extensive portfolio of commercial and luxury residential properties is managed from idea to execution.



Soloviev Building Company

A LEADER & PIONEER IN COMMERCIAL & RESIDENTIAL PROPERTY

Our projects include groundbreaking, iconic, office towers, reimagined townhouses, and modern luxury residences. We collaborate with award-winning architects, source and utilize exceptional materials, and bring an unparalleled understanding of markets to our properties. We exclusively oversee every aspect of our projects, from concept and design to development and management, ensuring the excellence of the Soloviev name.

Austin Development

A MAJOR INVESTOR POSITIONED FOR GROWTH

We are laying the groundwork to capitalize on a significant economic expansion, and accompanying housing boom, in Austin, Texas. A considerable investment in the city from tech companies Google, Facebook, and Tesla promise a dramatic increase in demand for residential housing. As principal owners and developers of property along the city's rapidly growing light rail line (fueled by a \$7 billion bond package) we are ideally positioned to leverage this surge in a market with extremely limited inventory.



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Partnering For A More Sustainable Future

Cultivating energy independence with wind & solar technology.



Wind Farms

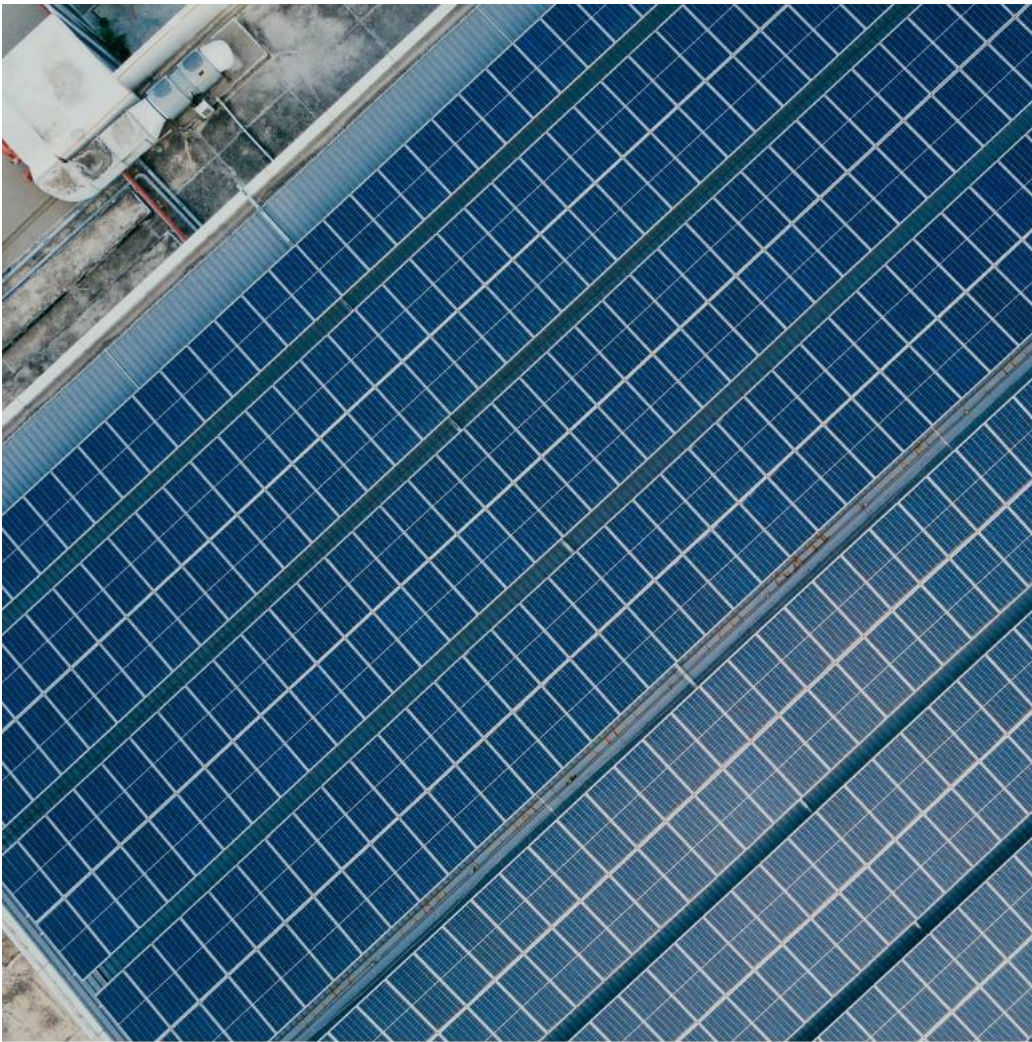
COLLABORATING FOR CLEAN FUEL

Our commitment to sustainability extends to an aggressive investment in renewable resources. One of the fastest-growing sources of electricity supply, wind power is the largest source of new, renewable power generation in the United States since 2000. Wind turbines currently operating on our New Mexico farmland are a sign of what's to come, as we prepare to lease an additional 100,000 acres to established companies in the sector.

Solar Energy

DRIVING UTILITY-SCALE SOLAR FORWARD

We are partnering with companies and municipalities to provide utility-scale solar leases on more than 400,000 acres across Colorado, Kansas, and New Mexico. Our land holdings are uniquely positioned to support mandated renewable energy initiatives in states such as Colorado and New Mexico, taking effect as soon as 2025.



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Boutique Properties Providing Meaningful Experiences

Our business is farm-to-table, connecting people to the planet and each other.



**Chequit
Inn**

A BELOVED LANDMARK RESTORED & RENEWED

Built in 1872, The Chequit Inn is a historic seaside hotel and restaurant located on the banks of Suffolk County’s Shelter Island. Since its acquisition by The Soloviev Group in April of 2020, the iconic inn has undergone a meticulous renovation preserving its celebrated charm, and introducing state-of-the-art and sustainable upgrades to provide guests the ultimate in relaxed luxury. Facilities include the Tavern at the Chequit, Japanese restaurant and sake bar Weakfish, a cafe, and the Inn’s expansive porch, a prime spot for al fresco dining. [LEARN MORE](#)

**Jack’s
Marina**

SHELTER ISLAND’S WELCOMING WATERSIDE PORT

Located a short walk from The Chequit Inn, Jack’s Marina provides effortless access to the property, with 47 moorings and 26 docks and boat slips. Guests of The Chequit Inn enjoy amenities at the Marina, including boat tours and premium docking. Points of retail include a marina and toy store, with an ice cream shop set to open in 2023.





**Peconic Bay
Vineyards**

SUSTAINABLY CULTIVATING AWARD-WINNING WINES & ELEVATED CULINARY EXPERIENCES

Peconic Bay Vineyards is home to 230 acres of vines, producing numerous gold medal award-winning wines including Chardonnay, Riesling, and Viognier. Dedicated to sustainable and responsible cultivation, the winery welcomes visitors year-round for tours, tastings, events, immersive epicurean experiences, and the finest in farm-to-table dining and hospitality.

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BEFORE THE
SURFACE TRANSPORTATION BOARD

NOR 42185

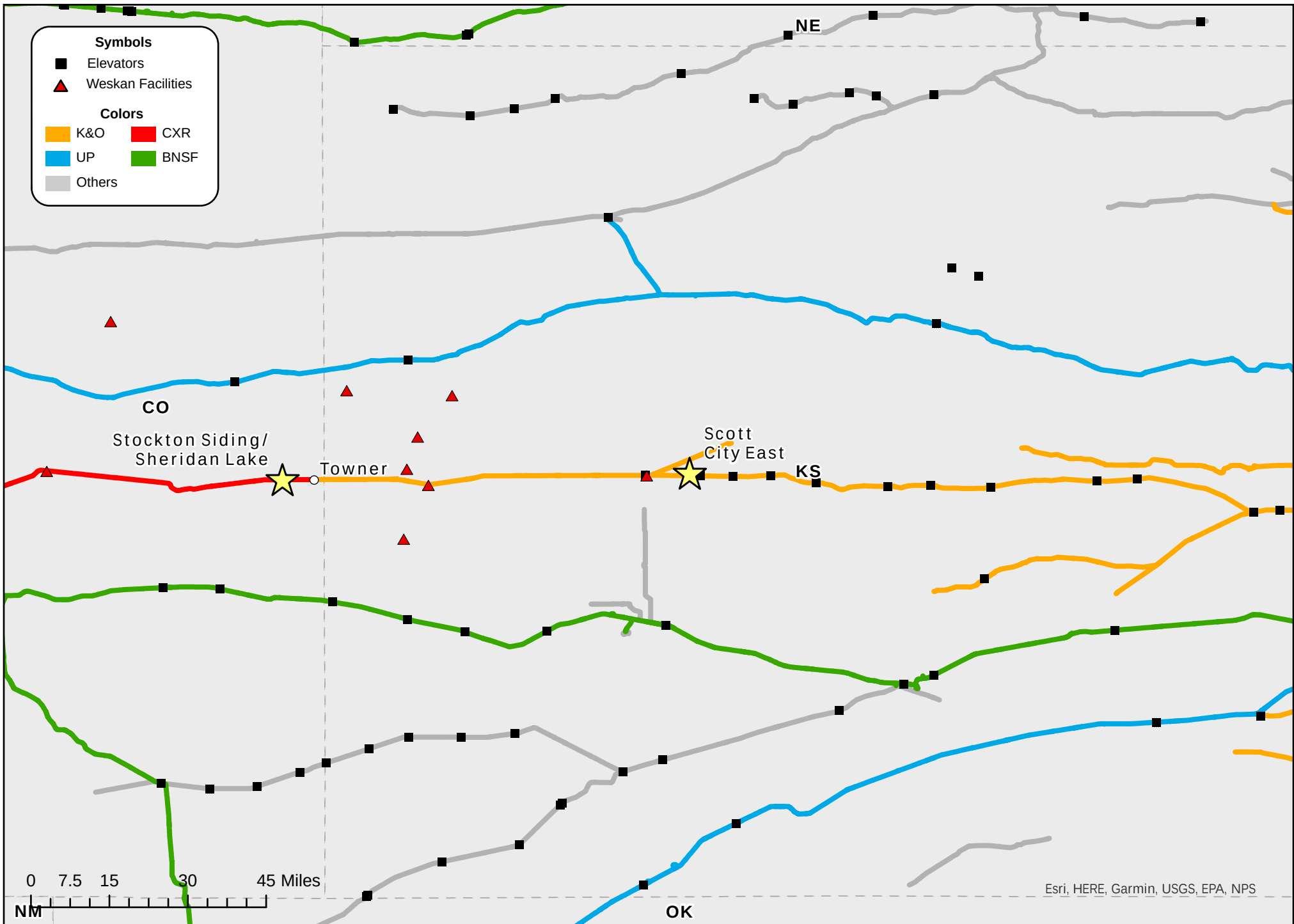
WESKAN GRAIN LLC V. KANSAS & OKLAHOMA RAILROAD, LLC

**KANSAS & OKLAHOMA RAILROAD, LLC'S MOTION TO
REJECT THE COMPLAINT OR, IN THE ALTERNATIVE,
FOR EXPEDITED DETERMINATION OF JURISDICTION AND
BIFURCATION OF THE PROCEEDING**

EXHIBIT D

**MAPS OF K&O AND WESKAN
SERVICE REGIONS**

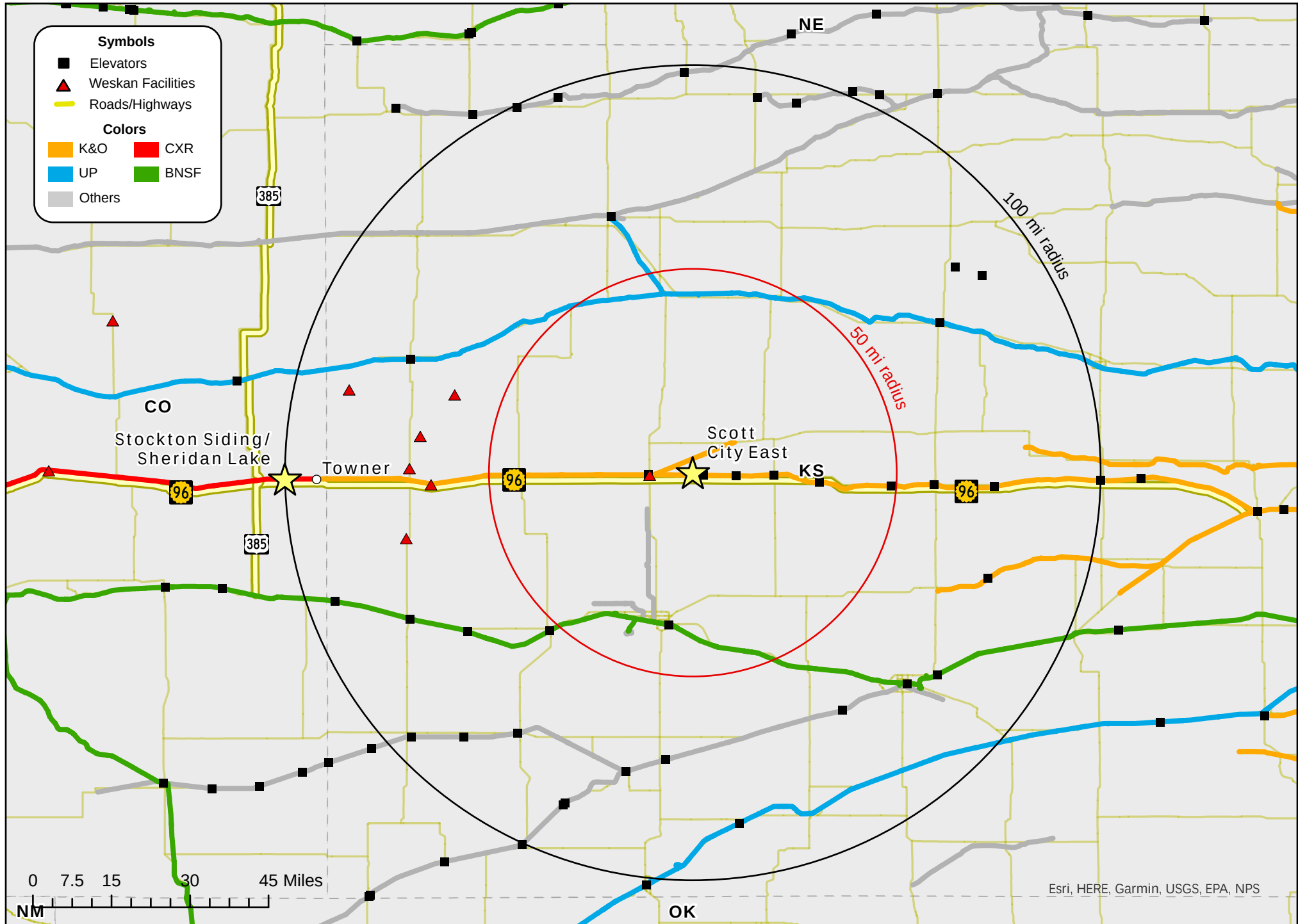
Map 1 – Western Kansas Overview



Esri, HERE, Garmin, USGS, EPA, NPS

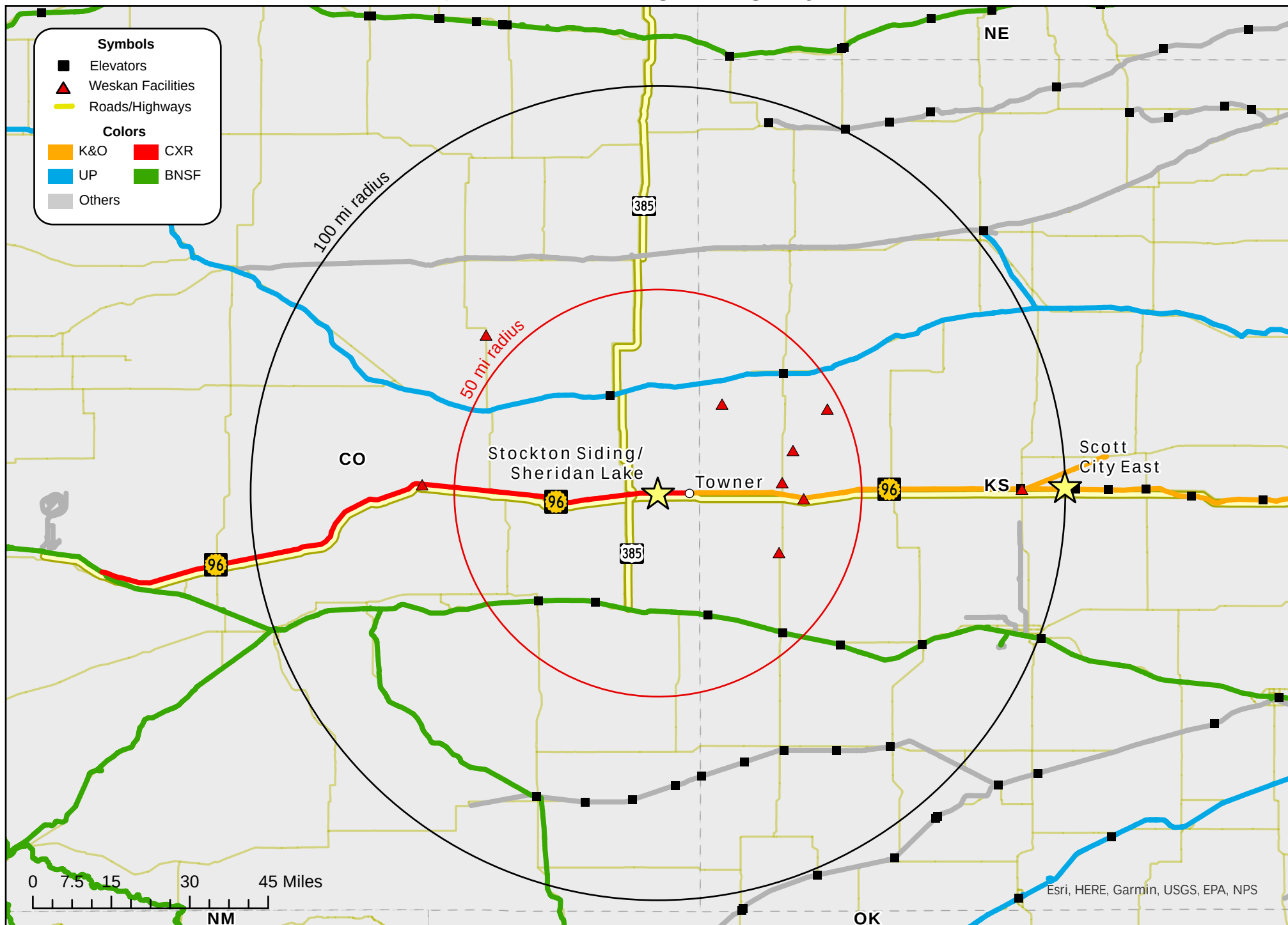
Sources: U.S. Bureau of Transportation Statistics, National Transportation Atlas Database.

Map 2 – Scott City East with Highways and Radii



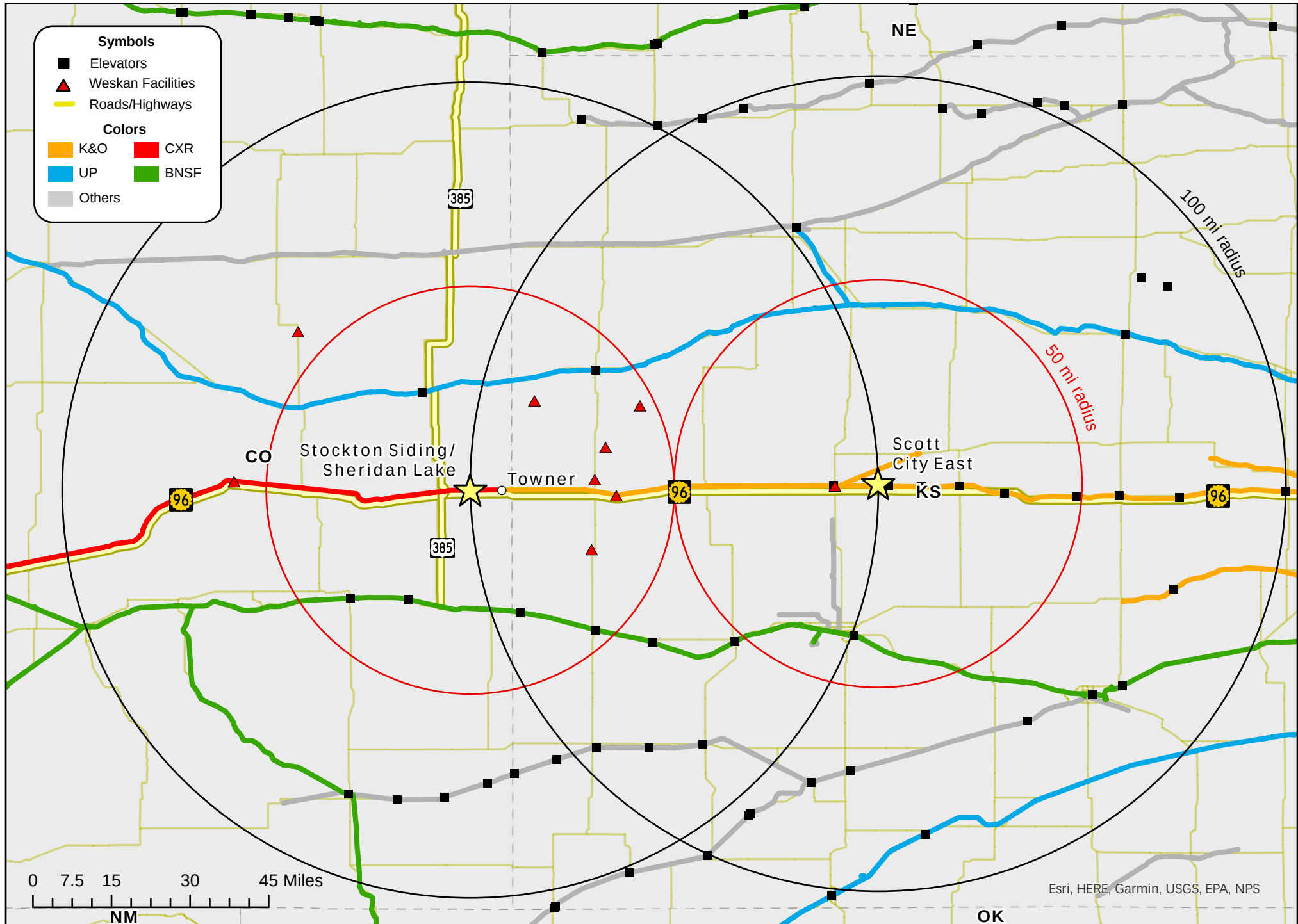
Sources: U.S. Bureau of Transportation Statistics, National Transportation Atlas Database.

Map 3 – Stockton Siding with Highways and Radii



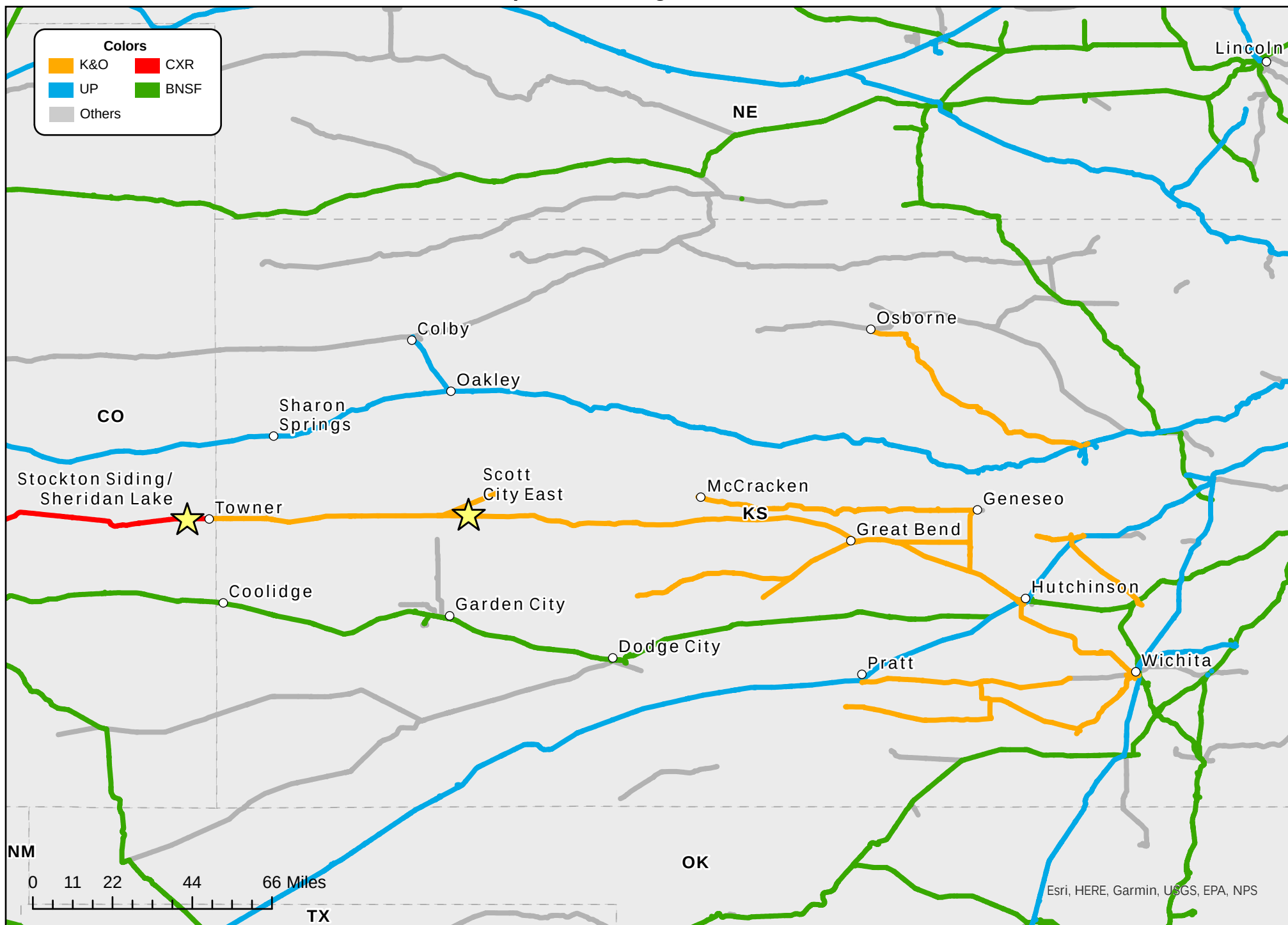
Sources: U.S. Bureau of Transportation Statistics, National Transportation Atlas Database.

Map 4 – Scott City East and Stockton Siding with Highways and Radii



Sources: U.S. Bureau of Transportation Statistics, National Transportation Atlas Database.

Map 5 – K&O Regional Overview



Sources: U.S. Bureau of Transportation Statistics, National Transportation Atlas Database.

BEFORE THE
SURFACE TRANSPORTATION BOARD

NOR 42185

WESKAN GRAIN LLC V. KANSAS & OKLAHOMA RAILROAD, LLC

**KANSAS & OKLAHOMA RAILROAD, LLC'S MOTION TO
REJECT THE COMPLAINT OR, IN THE ALTERNATIVE,
FOR EXPEDITED DETERMINATION OF JURISDICTION AND
BIFURCATION OF THE PROCEEDING**

EXHIBIT E

**WESKAN RATE COMPLAINT DISCOVERY
REQUESTS DIRECTED TO K&O**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Weskan Grain LLC	)	
	)	
	)	
Complainant,	)	
	)	
v.	)	Docket No. NOR 42185
	)	
Kansas & Oklahoma Railroad, LLC	)	
	)	
Defendant	)	
	)	

**COMPLAINANT’S FIRST REQUESTS FOR ADMISSIONS,
INTERROGATORIES, AND REQUESTS
FOR PRODUCTION OF DOCUMENTS TO DEFENDANT**

Complainant Weskan Grain LLC (“Weskan”), pursuant to 49 C.F.R. Part 1114.30, hereby submits its First Requests for Admissions, Interrogatories, and Requests for Production of Documents to Defendant Kansas & Oklahoma Railroad, LLC (K&O).

Responses to Weskan’s Requests for Admissions and answers to Interrogatories, and copies of documents responsive to Weskan’s Requests for Production should be delivered to the Law Office of Thomas W. Wilcox, LLC, 1629 K. Street NW, Suite 300, Washington, D.C. 20006, within thirty (30) days from the date hereof, unless otherwise agreed by the parties. Weskan is prepared to cooperate with Defendant to facilitate the expeditious production of documents with the minimum practical burden.

I. DEFINITIONS

The following defined terms are used herein:

1. “BNSF” means BNSF Railway Company.
2. “Challenged Rate” means the rate for common carrier rail transportation service that is the subject of Weskan’s Complaint in this proceeding including any such rate that may be established after the date hereof.
3. “Class I Railroad” means any railroad carrier whose annual operating revenues meet or exceed the Class I revenue threshold established and adjusted annually by the Surface Transportation Board pursuant to 49 C.F.R. § 1201, General Instructions 1-1.
4. “CXR” means Colorado Pacific Railroad.
5. “Defendant” means K&O as defined in this section.
6. “Destination” means Weskan’s Stockton grain elevator facility located near Sheridan Lake, Colorado on CXR Lines.
7. “Document(s)” means all writings or visual displays of any kind, whether generated by hand or electronic means including without limitation, photographs, lists, memoranda, reports, notes, letters, electronic mail, phone logs, contracts, drafts, workpapers, computer print-outs, electronic data, telecopies, newsletters, notations, books, affidavits, statements (whether or not verified), speeches, summaries, opinions, studies, analyses, evaluations, statistical records, proposals, treatments, outlines, any electronic or mechanical records or representations (including physical things such as, but not limited to, computer disks or drives), and all other materials of any tangible medium or expression,

in K&O's current or prior possession, custody or control. A draft or non-identical copy is a separate document within the meaning of this term.

8. "Geocoded" means process or object data associated to an entity which is linked to a specific location or an array of locations on the Earth's surface through a standard geographic coordinate system.

9. "Geographic Coordinates" means latitude and longitude coordinates (in decimal values, with no decimal value truncation) associated to a named and standard geographic coordinate system, such as "North American Datum of 1927."

10. "Identify," when referring to a document, means to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s) and/or recipient(s).

11. "Identify," when referring to information, means to list or produce documents containing the specified information.

12. "K&O Lines" means rail lines over which K&O conducts train operations, including both lines owned by K&O and lines owned by other railroads or entities over which K&O has trackage or operating rights, together with all branch lines and spur tracks that connect with these lines. Where information is requested for trains or traffic moving on K&O Lines, the request includes information for trains/traffic moving between initial origin and final destination, regardless of whether the initial origin or final destination are located on the specified lines.

13. "K&O" means Kansas & Oklahoma Railroad, LLC, its present or former employees, agents, counsel, officers, directors, advisors, consultants, divisions,

departments, predecessor, parent and/or holding companies, subsidiaries, or any of them, and all other persons acting (or who have acted) on its behalf, including but not limited to Watco.

14. “Origin(s)” means two (2) grain loading facilities owned by Weskan located on K&O Lines in the vicinity of Scott City, Kansas: The Scott City East facility and the Scott City Kirk facility.

15. “Movement” means the shipment of a railcar(s) from an origin or interchange location to a destination or interchange location under a common waybill or similar identifier, whether in single-car, multiple-car, or unit train service.

16. “Person” means natural persons, corporations, institutions, partnerships, firms, joint ventures, associations, political subdivisions or other legal entities, as the case may be.

17. “Possession, custody, or control” refers to and includes documents actually within the possession, custody or control of K&O or any other person acting for or in concert with K&O; and refers to and includes documents prepared by, obtained, or placed in the possession, custody, or control of any such person within the scope of his or her duties or relationship to K&O; and further refers to and includes documents having been placed in the temporary possession, custody, or control of any third party by any of the foregoing or K&O. Documents are deemed to be in the possession, custody, or control of K&O if K&O has the right to secure the document, or a copy thereof, from another person or entity, whether public or private, having such actual physical possession, custody, or control thereof.

18. “Price” or “prices” mean the price per ton or other unit of measure, and whether it is f.o.b. or f.a.s. a railroad car, vessel, destination, port or other conveyance.

19. “Related,” “related to,” and “relating to” mean and include making a statement discussing, describing, referring to, reflecting, explaining, analyzing, or in any way pertaining to, in whole or in part, the subject matter of the Interrogatory or Request.

20. “Short Line Railroad” means any non-Class I railroad.

21. “STB” means the U.S. Surface Transportation Board.

22. “Watco” means Watco Holdings, Inc., its present or former employees, agents, counsel, officers, directors, advisors, consultants, divisions, departments, predecessor, parent and/or holding companies, subsidiaries, or any of them, and all other persons acting (or who have acted) on its behalf, including but not limited to: Watco Transportation Services, LLC, Watco Companies, L.L.C., Watco Finance Corp., Watco Terminal and Port Services, Watco Mechanical Services, and/or Watco Logistics.

23. “Weskan route(s)” means the railroad line segments over which K&O moves or reasonably could move loaded or empty grain cars between Origin and Destination.

24. “Weskan train(s)” or “Weskan service” means the trains containing loaded or empty grain cars moving between Origin and Destination over the Weskan route(s).

25. “UP” means Union Pacific Railroad Company.

26. “And,” “or,” and/or “each” shall be construed in the disjunctive or conjunctive as necessary in order to bring within the scope of each Interrogatory or Request

all responsive information or documents which otherwise might be construed as outside the scope of the Interrogatory or Request. All use of the masculine gender shall be deemed to include the feminine.

II. INSTRUCTIONS

K&O is requested to conform to the following instructions in responding to these Requests and Interrogatories. Each paragraph shall operate and be construed independently. Unless otherwise indicated, no paragraph limits the scope of any other paragraph.

1. Where these discovery requests seek data in a computer-readable format, machine-readable format, or in its native format, this data is defined as an electronic file which contains structured, relational data, and is managed within a commercially available and relational database system (for example Microsoft, Oracle, IBM) and is readable via commercially available and standard Microsoft Windows software API (Application Programming Interfaces) methods to include Open Database Connectivity (ODBC) implementations, thereby making the data accessible independent of the host system.

If the source table is stored within a non-relational system, such as a 'flat file', or a custom system (not commercially available), provide the data in standard sequential or delimited text files. The text files will be PC compatible text formats.

a. For each computer file supplied provide:

- i. The name and description of the source database or other file from which the records in the computer file were selected (stating whether the file is an original extract from a line of business transactional or data warehouse computer system, or if the provided file is an extract, or report, created specifically for this request) including a graphic or textural representation of the database relational model for each system to include all named tables of data within the system's relational model, and for every table provide a list of fields, primary keys, foreign keys, list relational links to other tables and fields, and filters, if any, associated to the relational links. Include all related tables, and all fields within each included table. List the fields which define a unique record (row) for each table, or state if the table does not require unique row differentiators or primary keys. For code tables, provide the code, and associated data elements in a discreet list (no duplicates);
 - ii. A description of how the records in the file produced were selected including production of the query, script, or code used to select the provided records;
 - iii. The original table names (no aliases), original field names, to match the provided systems' data structures within each computer program (in native software and text file) and intermediate file used in deriving the files produced if the files produced are flat files. If the files produced are commercially available relational database files, provide the method used and code (if code was created) used to export the data to this relational format including the operating system and version under which the final text files or relational tables were produced; and
 - iv. A relational diagram defining relationships amongst tables, with all fields, listing primary keys, foreign keys, with each table or file provided as listed in the relational diagram. Also provide all table indexes, and index files, which define the index to be clustered or non-clustered.
- b. For each field in each computer database file provide a complete, standard data structure including:
 - i. The name of the field including its source table name, and if different from the LOB (line of business) or off-line analytical

system field name, provide all field name incarnations so that there is a linkage between the provided fieldname and the original source fieldname and source table, and source application/system. Also provide the “Synonymous Name”, that being a single word or multiple words that differ from the fieldname, but represents the same data element using alternative or more descriptive terminology. Also provide the “Context”, that being a designation or description of the application environment in which the data item (or field) is applied or from which it is originally derived (its origin);

- ii. The starting and ending positions of the field if the file is a nondelimited flat file, or if the file is delimited, verify that the delimiter is inserted at the end of each field and the delimiter is not contained, as data, within any data cell (provide row terminators and line feed codes), otherwise, if the provided data set is a relational database "table", export the table structure into a separate ANSI SQL 92 code or text file;
- iii. A detailed definition of the field and whether this field is the record's (or row's) unique identifier, or it is one of many fields which create a unique row (list them);
- iv. A detailed description of the data in the field including an explanation of what they are used for and also identify all related index fields, if any;
- v. The type of data in the field, i.e., whether numeric, character, alphanumeric, number of digits, number of significant digits, whether signed or unsigned (i.e., negatives allowed) and whether this field is Unicode, or contains any constraints, or requirements to be Non-Null, or non-blank;
- vi. If the values in a field are codes, terms or abbreviations, provide a list of all codes, terms or abbreviations used with detailed definitions of each and provide the approved domain (range of values if indeterminate) or list of values permitted if determinate. Also provide minimum and maximum values including whether the values are Null, hidden, or specific ASCII or ISO codes. Include the character encoding or software vendor's code page, for each table if any;

- vii. An indication of whether the data in the field are packed or compressed;
- viii. If the data in the field are packed or compressed, the type of packing or compression:
 - (1) Zoned with low-order sign;
 - (2) Binary with LSB first;
 - (3) Binary with MSB first;
 - (4) Packed with high-order sign;
 - (5) Packed with low-order sign;
 - (6) Packed with no sign; and
 - (7) Other (specify and provide detailed instructions for unpacking).
- ix. If the data files and tables originate on a non-Microsoft Windows operating system, state the original operating system and convert to Microsoft Windows format; and
- x. All data and files shall be provided in industry-standard, non-proprietary formats (e.g., CSX, XLSX, PDF, TXT, XML) that are platform-independent and readable using standard commercially available software.

2. If an answer to an Interrogatory or the production of any responsive document is withheld under 49 C.F.R. § 1114.30(a)(1) on the basis of a claimed privilege or attorney work product, then for each such answer or document, provide the following information: its date, type (e.g., letter, meeting notes, memo, etc.), author (note if author is an attorney), addressee(s)/recipient(s) (note if addressee(s) or recipient(s) is an attorney), general subject matter, and basis for withholding the information. Weskan is willing to negotiate the scope of any privilege log requested in this instruction.

3. If the answer to any Interrogatory or the production of any responsive document is withheld on claimed grounds other than privilege or attorney work product,

provide the information described in Instruction No. 2 and state with specificity the basis for such withholding.

4. Defendant is requested to supplement its production in the manner provided in 49 C.F.R. Part 1114.29.

5. All documents should be produced or made available for inspection in the form in which they are retained by K&O in the usual course of business (*e.g.*, if the documents are in a file, the file containing the documents should be produced), unless otherwise agreed by Weskan and K&O.

6. Please organize or number the documents produced in such a manner that Weskan may readily determine which documents are being produced in response to each specific Request for Production. If no document is produced in response to any specific Request, please so indicate in the response.

7. Weskan reserves the right to file supplemental or follow-up Interrogatories or Requests for Production, and pursue other discovery, as necessary or appropriate.

III. REQUESTS FOR ADMISSIONS

Request for Admission No. 1

Admit that K&O faces no effective competition for the transportation of grain from Origin to Destination.

Request for Admission No. 2

Admit that the Challenged Rate is more than 180% of the variable cost of the service over the Weskan route.

IV. INTERROGATORIES

Interrogatory No. 1

If K&O's response to Request for Admission No. 1 was anything other than an unqualified admission, please describe in detail the effective competition that Defendant claims exists for the transportation to which the Challenged Rate applies, and why such competition is effective.

Interrogatory No. 2

Provide a description of the requested movement of Weskan's trains by K&O from Origin to Destination and from Destination to Origin including, but not limited to, a description of all transportation-related activities (including placing and/or interchanging trains with other railroads, holding loaded or empty trains in transit, providing notifications to Weskan or other railroads, inspecting trains, changing crews and other related activities) at Origin, at Destination, and at intermediate stations or other points between Origin and Destination.

Interrogatory No. 3

To the extent that the information is not included in your response to Interrogatory No. 3, please describe:

- a. The location and length (route miles) of each crew district (identified by “from and to” stations) to be traveled by the Weskan trains when operated by K&O;
- b. The location(s) where the locomotives on the Weskan trains will be fueled by K&O and the fueling procedures used (*e.g.*, DTL);
- c. Any run-through locomotive power arrangements between K&O and UP and/or BNSF in effect from 2021 through the present, which will apply to the Weskan trains operated by K&O;
- d. The operations required to deliver loaded trains to, place loaded trains for unloading at, and remove empty trains subsequent to unloading from, the railcar unloading facilities at Destination, including, but not limited to, operations involving the removal, placement, and/or repositioning of locomotives or railcars;
- e. Identify any other carriers’ tracks, personnel, or facilities required to perform any activities for Weskan’s trains moving between Origin and Destinations; and
- f. Identify any third-party contractors that will perform any services on behalf of K&O for Weskan’s trains moving between Origin and Destination.

Interrogatory No. 4

Please identify the location and name of each bulk transfer facility and yard located on K&O Lines in Kansas and Colorado.

Interrogatory No. 5

For each calendar year from 2021 through 2025, please provide:

- a. The total amount of corporate debt incurred or assumed by K&O, including principal and all accrued interest, that was outstanding as of the first day of such year;
- b. The total principal amount of new corporate debt incurred or assumed by K&O, during such year; and

- c. The total amount of corporate debt for which K&O was responsible for repayment, including principal and all accrued interest, which remained outstanding as of the last day of such year.

As used in this Interrogatory, “corporate debt” refers to all types of commercial (as distinguished from personal or residential) indebtedness, including, but not limited to, bonds, notes, debentures, equipment trust certificates, conditional sales agreements, and capitalized leases, whether secured or unsecured and regardless of the source of the borrowing.

Interrogatory No. 6

Please identify any computer programs or models that are currently being used or have been used by K&O and/or Watco in the past three years to (a) download locomotive, train and/or car event or similar data from locomotives, trains, and/or cars along any line segment on K&O Lines in Kansas and Colorado including, but not limited to, the Event Recorder Automated Download system or any successor thereto and/or (b) process locomotive event data for purposes of determining locomotive throttle position and/or fuel consumption.

Interrogatory No. 7

Please identify any computer programs or models that are currently being used or have been used by K&O and/or Watco in the past three years to record, store, and manage data related to the movement of individual shipments that traverse its lines, the revenues received by the carrier(s) providing rail service, and the identification of the freight payor(s) and consignee(s) (i.e., waybill data).

Interrogatory No. 8

Please identify K&O and/or Watco affiliates that provide services related to K&O rail operations in Kansas and Colorado, including off-site support related to administration of operations, billing, database management, infrastructure delivery and maintenance, dispatching, equipment management, or other core functions. Describe the services provided by these affiliates. Also, provide a description of payments made to affiliates, equity contributions made to affiliates, distributions from affiliates, and other financial or accounting transactions between K&O and/or Watco and affiliates.

Interrogatory No. 9

Identify each Class I Railroad and/or Short Line Railroad and describe the arrangements between K&O and each Class I Railroad and/or Short Line Railroad identified in response to this Interrogatory regarding all movements handled in whole or in part by K&O:

- a. whether K&O sets all rates, fees and surcharges, including the portion of the movement handled by each identified Class I Railroad and/or Short Line Railroad, and if not, identify who sets the rates, fees and surcharges;
- b. whether the K&O revenues reported in the traffic and revenue data provided in response to Request for Production No. 10 include or exclude the monies paid to each identified Class I Railroad and/or Short Line Railroad as compensation for its portion of each movement;
- c. whether a physical interchange of traffic takes place between K&O and each identified Class I Railroad and/or Short Line Railroad, and if so, identify the interchange location(s);
- d. whether each identified Class I Railroad and/or Short Line Railroad provides its own locomotive power for its portion of each movement

or if run-through power is used, and who the locomotive owner(s) are; and

- e. Whether each identified Class I Railroad and/or Short Line Railroad provides its own train crew personnel for its portion of each movement or if K&O or foreign train crew personnel are used.

Interrogatory No. 10

Please describe how hazardous materials are handled by K&O in each of the bulk transfer facilities and yards identified in response to Interrogatory No. 4, and specifically describe the procedures used by K&O to classify railcars containing hazardous materials and if such classification occurs in a separately designated portion of the yards or bulk transfer facilities.

Interrogatory No. 11

Describe the use of one-man crews, if any, on trains operated by K&O or its affiliates. Also, describe efforts made by K&O to reduce or limit train crews to one person.

Interrogatory No. 12

Describe the use of helper services for trains operated by K&O or its affiliates.

Interrogatory No. 13

Please describe your methodology and inputs for calculating K&O and or Watco's COE and COC for the time periods specified in response to the previous Interrogatory. Please describe any adjustments that were made to the COE and COC values in performing the calculations. Please identify all documents that support your response.

Interrogatory No. 14

Please identify and describe any corporate or enterprise-level projections that K&O and/or Watco has made from January 1, 2021, to the present of K&O's future annual revenues, costs, earnings, profits, operating ratios, return on investment, return on invested capital and/or return on equity for any time period(s) subsequent to December 31, 2021. Please identify all documents that support your response and/or that memorialize your projections.

V. DOCUMENT PRODUCTION REQUESTS

Request for Production No. 1

Please produce all documents related to the establishment of the Challenged Rate, including, but not limited to, all documents used and/or relied upon in determining any formula or other methodology used for calculating or otherwise developing the rates.

Request for Production No. 2

Please produce any studies, analyses, and other documents in K&O's possession from January 1, 2021, to the present regarding the transportation of grain to Destination from Origin: (a) by a rail carrier(s) other than K&O; and (b) by any mode of transportation other than rail. If no such documents exist, please confirm the same in the response to this Request.

Request for Production No. 3

Please provide the density and operating statistics information described below for K&O's rail system for each year or partial year 2021 to the present in a computer-

readable database or electronic spreadsheet, including all record layouts, all field descriptions, data definitions and data dictionaries/decoders required to utilize the data. To the extent available, please provide the following data for each segment and for all traffic by commodity:

- a. Identification of the unique railroad divisions, subdivisions, and individual line segments for each unique density segment;
- b. Station name and Standard Point Location Code (“SPLC”) at the beginning of a unique density segment and at the end of a unique density segment;
- c. Beginning and ending milepost for each unique density segment;
- d. Rail and track mileage for each unique density segment;
- e. Total density (both directions, including empty and loaded trains) by segment expressed in
 - i. net ton-miles;
 - ii. gross ton-miles plus appropriate factors that can be used to convert gross ton-miles to net ton-miles (including and excluding locomotives); and
 - iii. car-miles.
- f. Density information
 - i. for segments that K&O utilizes via trackage rights (or other joint facility or joint use agreements) on another railroad;
 - ii. for segments where another railroad(s) operates by trackage rights (or other joint facility or joint use agreements) over K&O segments; and
 - iii. an identification of such densities in (i) and (ii) that are included in the total densities provided in response to subpart e. above.
- g. Operating statistics
 - i. Train miles

- ii. Train hours
- iii. Locomotive unit miles
- iv. Loaded car-miles
- v. Empty car-miles
- vi. Number of trains

Request for Production No. 4

Please produce density charts and/or maps for the K&O system for the period 2021 to the present, corresponding to the data provided in response to Request for Production No. 3 above.

Request for Production No. 5

Please produce the following for all joint ownership, joint facility or joint use agreements including, but not limited to, trackage rights agreements, joint or common ownership agreements and lease agreements, between K&O and another rail carrier or other entity applicable to any of the railroad lines and/or facilities in Kansas and Colorado, and that were in effect during all or any portion of the period from January 1, 2021 to the present:

- a. Copies of all agreements (including amendments and supplements);
- b. Copies of all bills and/or payments from 2021 to the present (including all supporting documents and data), for each month, quarter, and/or annual period from 2021 to the present; and
- c. Density data and operating statistics (including but not limited to train miles, train hours, locomotive unit miles, loaded car-miles, empty car-miles, net ton-miles, gross ton-miles (both including and excluding locomotives), and number of trains) separately for K&O and all other carriers using the facility for each year or partial year for the period from 2021 to the present.

Request for Production No. 6

Please produce all transportation contracts including amendments and supplements thereto (or letters of understanding with appendices or attachments), and all tariffs, common carrier pricing authorities or other documents containing common carrier rate and service terms (collectively “pricing authorities”), entered into, agreed to or established or provided by K&O which govern or governed shipments handled by K&O as originating, terminating, overhead or single-line carrier on the Weskan route for each year or partial year 2021 to the present. For each pricing authority, please provide the traffic volumes and revenues associated with the movement of traffic under each pricing authority by traffic group (e.g., coal, agriculture, intermodal, etc.) for each year or partial year 2021 through the present.

Request for Production No. 7

Produce copies of all documents, including agreements and/or understandings and all amendments and supplements thereto between K&O and/or Watco and each Class I Railroad and/or Short Line Railroad identified in response to Interrogatory No. 10, that refer or relate to the pricing and handling of all commodities, including but not limited to:

- a. Agreements or understandings pertaining to K&O’s payments to any identified Class I Railroad and/or Short Line Railroad of a revenue factor, division, flat rate, or other type of compensation for the Class I Railroad and/or Short Line Railroad’s portion of a movement;
- b. Locomotive run-through power or power sharing agreements or arrangements;

- c. Train crew run-through or train crew sharing agreements or arrangements;
- d. Any other agreements or arrangements pertaining to rates, surcharges, revenue sharing, or operations, including handling agreements;
- e. Any operating timetables (including special instructions and/or operating rule books), station lists, station books, track charts, and “condensed profiles” for any of the identified Class I Railroad and/or Short Line Railroads; and
- f. Copies of all bills or invoices from 2021 to the present (including all supporting documents and data) rendered between K&O and any identified Class I Railroad and/or Short Line Railroad pursuant to each of the agreements and/or understandings produced in response to this Request for Production No. 7.

Request for Production No. 8

Please identify all agreements pertaining to K&O operations in Kansas and Colorado to which K&O and/or Watco is a party with other rail carriers, and supplements thereto, under which K&O and/or Watco purchases the services of and/or compensates such other carrier(s) for the use of locomotives, crews, dispatching services, trackage, or other facilities. Provide a copy of each agreement, including all supplements.

Request for Production No. 9

For each train operating over the K&O, please produce documents sufficient to show:

- a. K&O’s train identifier or designation and/or symbol of each identified train and the beginning and end points served by each of the identified trains;
- b. Whether the crews are assigned or in pool service;

- c. The home and away-from-home terminals for each crew district;
- d. The scheduled on-duty and off-duty locations for each crew assigned to the identified trains;
- e. The number of crew members assigned per shift to each of the identified trains;
- f. The number and type of locomotives assigned to each of the trains;
- g. The number and type of loaded and empty cars assigned to each of the trains;
- h. The trailing length for each of the identified trains;
- i. The trailing weight for each of the identified trains;
- j. The scheduled frequency of service for each identified train; and
- k. The scheduled time of departure and arrival at stations served by each of the identified trains.

Request for Production No. 10

Please produce the databases, data warehouses, and computer programs (with all documentation related to these databases and computer programs and associated selection criteria), in a computer-readable format, that include the information listed below for each movement handled by K&O as originating, terminating, overhead or single-line carrier for each year or partial year 2021 to the present. To the extent this data is contained in separate tables, please provide the appropriate fields to correctly link the separate tables. Please also include appropriate fields required to correctly link this data to the car event and/or train event data discussed in Request for Production No. 11 and Request for Production No. 12, including any “foreign key(s)” K&O uses in the normal course of business to link the data sets.

- a. The name of the consignee, shipper, sold to party, payer party, customer, and if a third party has contracted for the service (e.g., steamship line), their name for each shipment record;
- b. Commodity (seven-digit Standard Transportation Commodity Code “STCC”);
- c. Toxic Inhalation Hazard/Poisonous Inhalation Hazard (“TIH/PIH”) Commodity Identifier;
- d. Physical origin Standard Carrier Alpha Code (“SCAC”), Freight Station Accounting Code (“FSAC”), Standard Point Location Code (“SPLC”), station name, and state/province;
- e. Physical destination SCAC, FSAC, SPLC, station name, and state/province;
- f. For shipments that originated on K&O’s system(s), the date and time the shipment was originated;
- g. For shipments K&O received in interchange, the on-junction location station, state, SPLC, FSAC, and milepost;
- h. For shipments K&O received in interchange, the road received from;
- i. For shipments K&O received in interchange, the date and time the shipment was interchanged;
- j. For shipments given in interchange, off-junction location station, state, SPLC, FSAC, and milepost;
- k. For shipments given in interchange, the railroad given to;
- l. For shipments given in interchange, the date and time the shipment was interchanged;
- m. For shipments terminated on K&O’s system, the date and time the shipment was terminated;
- n. Number of rail cars;
- o. Number of intermodal containers or trailers;
- p. Tons (Net);
- q. Rail car tare weight;
- r. Intermodal container or trailer tare weight;
- s. Total freight revenues from origin to destination, or K&O’s share of the total freight revenues in the event that K&O was not the sole carrier for a particular movement, including any adjustments thereto, along with a description of the adjustment (*i.e.*, add to or subtract from gross revenue);

- t. Total revenues from surcharges (including, but not limited to, fuel surcharges), and whether such revenue from surcharges is included in the total freight revenues and K&O's division thereof provided in response to Subpart s. above;
- u. The contract, agreement, tariff, or other pricing authority that the shipment is billed under, including the amendment and item numbers;
- v. Unique Waybill number and date;
- w. Trailer on Flat Car/Container on Flat Car ("TOFC/COFC") plan code;
- x. Car/trailer/container initial for each car/trailer/container used to move the shipment (for intermodal movements, provide both the railcar and container/trailer initial);
- y. Car/trailer/container number for each car/trailer/container used to move the shipment (for intermodal movements, provide both the railcar and container/trailer number);
- z. The unique train identification initial and number of all trains used to move the shipment;
- aa. The station, state, and SPLC where the traffic was interchanged between trains;
- bb. Total loaded movement miles;
- cc. Total loaded miles on K&O's system;
- dd. The predominant route of movement for each shipment on K&O's system that is associated with the loaded movement miles;
- ee. AAR car-type code;
- ff. Provider of car and container/trailer (K&O-owned, K&O-leased, shipper or foreign road);
- gg. Total empty movement miles;
- hh. Total empty miles on K&O's system;
- ii. Miles used to derive applicable fuel surcharges;
- jj. Applicable fuel surcharge rate;
- kk. Applicable fuel surcharge basis fuel price (e.g., No. 2 Diesel Retail Sales by All Sellers, On-Highway Diesel, Highway Diesel Field);
- ll. Intermodal service plan code and the intermodal line of business code for each intermodal shipment;
- mm. Length, width, and height for each car/container/trailer used to move the shipment; and

- nn. Number of articulated wells included (where applicable) in an individual railcar used to move an intermodal (or other) shipment.

Request for Production No. 11

Please produce documents, in a computer-readable format to the extent available, which contain complete information (including all events) tracking and describing car, trailer/container, and locomotive movements (including yard and hub operations) from origin to destination for each car, trailer/container, and locomotive moving on the K&O system for each year or partial year 2021 to the present. Please include appropriate fields required to correctly link this data to the waybill data discussed in Request for Production No. 10 and the train event data discussed in Request for Production No. 12, including any “foreign key(s)” K&O uses in the normal course of business to link the data sets. The car event information provided should include, but not be limited to, the following information:

- a. Equipment Initial;
- b. Equipment Number;
- c. Equipment Owner (System, Foreign, Private);
- d. Tare weight;
- e. Lading weight;
- f. Number of intermodal units on flat cars;
- g. Event Sequence Number;
- h. Year;
- i. Month;
- j. Day;

- k. Unique Train Identification Symbol and/or Number;
- l. Train Date;
- m. Unique Waybill Number;
- n. Waybill Date;
- o. Load/Empty Indicator;
- p. Unique Shipment Identification Number;
- q. Actual event date/time stamp for nodal events (if movement link data are provided, provide timestamps for both car departure from line segment begin node and car arrival at line segment end node);
- r. Time zone indicator (of the Event date/time stamp);
- s. Event type indicator specifying if the event was an arrival, a departure, an intermediate switching/handling event, or an instantaneous time as in the case of a non-dwell event (e.g., passing a scanner);
- t. Unique System/Network Location Identifier (if movement link data are provided, provide for both line segment begin and end nodes). Include the following:
 - i. Station name;
 - ii. City or metropolitan name;
 - iii. State / Province name;
 - iv. SPLC;
 - v. Engineering milepost; and,
 - vi. Transportation milepost.
- u. Trackage Rights Indicator;
- v. Switching Type indicator (specifying if the event is classifying a car onto a train, classifying the car off a train, or intermediate switching);
- w. Line segment name (for movement link data);
- x. Direction of travel (for movement link data please also indicate whether the car movement was from line segment begin node-to-end node or end node-to-begin node);
- y. Interchange Indicator specifying if the car was received or delivered in interchange;

- z. Identification of interchange railroad;
- aa. Industry Handling Indicator specifying if the car was pulled from origin or placed at destination;
- bb. Time elapsed at event location;
- cc. Time elapsed between event locations;
- dd. Miles between event locations; and

Request for Production No. 12

Please provide documents that record complete train movement data (including all events and intermediate stations) in a computer-readable format to the extent available, from origin to destination, for all K&O train movements (including yard and hub operations) for each year or partial year 2021 to the present. Please include the appropriate fields required to correctly link this data to the car event data discussed in Request for Production No. 11, including any “foreign key(s)” K&O uses in the normal course of business to link the data sets. The train movement information provided should include, but not be limited to, the following information:

- a. Unique Train Identification Symbol and/or Number;
- b. Train Date;
- c. Train Type (intermodal, unit, merchandise, foreign, etc.);
- d. Event Sequence Number;
- e. Year;
- f. Month;
- g. Day;
- h. Event date/time stamp;

- i. Time zone indicator (of the Event date/time stamp);
- j. Event type indicator specifying if the event was an arrival, a departure, an intermediate handling event, or an instantaneous time as in the case of a non-dwell event (e.g., passing a scanner);
- k. Unique System/Network Location Identifier (if for movement data, provide for both line segment begin and end nodes). Include the following:
 - i. Station name;
 - ii. City or metropolitan name;
 - iii. State / Province name;
 - iv. SPLC;
 - v. Engineering milepost; and,
 - vi. Transportation milepost.
- l. Trackage Rights Indicator;
- m. Number of loaded cars arriving at station;
- n. Number of loaded cars departing from station;
- o. Number of loaded intermodal units arriving at station;
- p. Number of loaded intermodal units departing from station;
- q. Number of empty cars arriving at station;
- r. Number of empty cars departing from station;
- s. Number of empty intermodal units arriving at station;
- t. Number of empty intermodal units departing from station;
- u. Trailing net tons arriving at station;
- v. Trailing net tons departing from station;
- w. Trailing gross tons arriving at station;
- x. Trailing gross tons departing from station;
- y. Length of train arriving at station;

- z. Length of train departing from station;
- aa. Number of active locomotives arriving at station;
- bb. Number of active locomotives departing from station;
- cc. Horsepower of active locomotives arriving at station;
- dd. Horsepower of active locomotives departing from station;
- ee. A flag indicating if the location was turn station;
- ff. Unit Train Loading/Unloading Indicator (for unit trains, indicate if the cars were loaded or unloaded at station);
- gg. Switching Indicator (indicate if the train was picking up or dropping off cars);
- hh. Number of cars switched onto train;
- ii. Number of cars switched out of train;
- jj. Number of cars repositioned on train;
- kk. Train Crew Change Indicator;
- ll. Train Fueling Indicator;
- mm. Meet/Pass Indicator;
- nn. Line segment name;
- oo. Direction of travel (for movement link data, please also indicate whether the car movement was from line segment begin node-to-end node or end node-to-begin node);
- pp. Interchange Indicator specifying if the train was received or delivered in interchange;
- qq. Identification of Interchange Railroad;
- rr. Industry Handling Indicator specifying if the train pulled cars from origin or placed cars at destination;
- ss. Time elapsed at event location;
- tt. Time elapsed between event locations;

uu. Miles between event locations; and

Request for Production No. 13

Please provide all documents including computer programs, definitions, decoders, and instructions, necessary to utilize, evaluate and link the data produced in response to Request for Production No. 10, Request for Production No. 11, and Request for Production No. 12. Please include with this production a description of the relationship between the databases (*e.g.*, whether there is a 1:1 ratio between databases, or whether one can expect to link 100% of the records in one file to another file). Please also indicate which data fields are common (and may be used to link) to the provided databases.

Request for Production No. 14

Please produce documents sufficient to show the relationship(s) among, and scope of, all databases used to record, monitor, track, and invoice trains and/or cars on K&O's system, including, but not limited to, graphical representations of such systems.

Request for Production No. 15

For each database identified in response to Request for Production No. 14, please produce documents sufficient to show the fields in each database and the type of data in each field (*i.e.*, a detailed field description and decoder for each unique entry in each field).

Request for Production No. 16

For each database identified in response to Request for Production No. 14, please produce documents sufficient to show the standard reports (including a description

of the report) that are produced from data contained in the databases, including reports that rely on multiple databases. “Standard reports” include regularly scheduled recurring reports and commonly requested ad-hoc reports.

Request for Production No. 17

Please provide the following K&O Geographic/Geospatial Information System (“GIS”) data for the states of Kansas and Colorado. The GIS data should be viewable, readable, and writable with no access limitations. The GIS data should be able to be read using current off-the-shelf (COTS) software, using either ESRI ArcGIS Pro (ArcGIS) or Precisely MapInfo Pro (MapInfo):

- a. Map Projections defined per layer;
- b. GIS files associated with and/or created by the GIS software system, to include:
 1. In their original vector, or other, file format, to include file types such as:

For ESRI application software:

- a) .shp (shape files, feature geometry)
- b) .shx (shape file indexes)
- c) .dbf (attribute format)
- d) .prj (projection format)
- e) .sbn, .sbx (spatial indexes of features)
- f) .fbn, .fbx (spatial index of features)
- g) .ixs (geocoding indexes)
- h) .mxs (geocoding indexes)
- i) .atx (attribute index)
- j) .shp.xml (metadata in xml)
- k) .cpg (code page)

2. For MapInfo application software:

- a) .dat (attribute data)
- b) .tab (MapInfo table, stores types of data)
- c) .id (stores links to graphic and database information)

- d) .map (stores graphic and geographic information)
 - e) .ind (index files)
- 3. For other GIS systems: provide native files.
 - c. Map data geocoded to a standard available coordinate system;
 - d. Map data associated with latitude and longitude coordinates without limits placed on decimal accuracy; and
 - e. Map Layers (either separate object layers, or in layers with each object having attributes defining the item's entity type and attributes)
- 1. Track detail
 - a) Rail stations and/or nodes (an entity with all attributes)
 - b) Rail segments and/or links between nodes (an entity with all attributes)
 - c) Siding (an entity with all attributes)
 - d) Grade (an entity, or attributes associated to track)
 - e) Curves (an entity, or attributes associated to track)
 - f) Mileposts (an entity, with a unique identifier, milepost name, milepost code, latitude and longitude coordinates with no limits on geocoded coordinate decimal values) that match the mileposts in the transactional "Event" data provided in response to Request for Production Nos. 14, 15, and 16
 - g) Elevation in feet above sea level per rail node/milepost
 - h) Timetables
 - i) Signals
- 2. Mileage between track nodes;
- 3. Land parcels; and,
- 4. Terminals (including, but not limited to, K&O rail yards, Automotive Distribution Facilities, Bulk Transfer Facilities, and intermodal facilities).

Request for Production No. 18

Please identify the miles, by ownership, which make up the K&O lines in Kansas and Colorado.

Request for Production No. 19

For each bulk transfer or yard facility located on K&O Lines in Kansas and Colorado (as identified in response to Interrogatory No. 5), please provide the following:

- a. Documents containing descriptions of the existing facilities;
- b. Documents showing the track layout, the length of each track and the ownership of each track;
- c. Copies of all agreements (including amendments and supplements) between K&O and any other entity pertaining to services provided by such entity and charges incurred by K&O for such services from 2021 to the present;
- d. Copies of all invoices, bills, etc. (including all supporting documents and data) received by K&O for services provided from 2021 to the present;
- e. Document sufficient to show the services that K&O or any other entity provides at each facility;
- f. Documents sufficient to show the components (e.g., land, track, specific buildings, loading or unloading facilities, etc.) that are owned and/or operated by K&O or by any other entity. In the event that an entity other than K&O owns and/or operates any identified facility, please produce documents sufficient to show any applicable charges incurred by K&O for such services; and
- g. Documents sufficient to show the security procedures and measures employed and the entity responsible for providing and paying for security.

Request for Production No. 20

Please produce documents sufficient to show the location, size (including square footage, number and lengths of tracks, capacity, etc.), components (such as

equipment and machinery), and original cost of each facility located on the K&O Lines in Kansas and Colorado that falls within each of the following categories of facilities:

- a. Roadway maintenance facilities;
- b. Locomotive maintenance facilities;
- c. Locomotive servicing facilities (including fueling facilities);
- d. Administrative facilities;
- e. Rail yards;
- f. Dispatch centers;
- g. Freight car repair and maintenance facilities;
- h. Scales;
- i. Wastewater treatment plants;
- j. Landslide/rockslide detection/protection devices or facilities;
- k. Snowshed facilities; and
- l. Train, yard and engineman facilities.

Request for Production No. 21

For each yard and bulk transfer facility (collectively yard) identified in Interrogatory No. 5, please produce documents sufficient to show:

- a. The type of yard, (i.e., flat switch yard);
- b. The number of shifts operated at each yard, and the average number of cars handled over each yard per day;
- c. The yard layout, yard signaling, yard switching, and the yard connection to mainline track;
- d. The average number of hazardous material cars handled at each yard on a daily basis;
- e. The scheduled switch crew assignments on a daily basis (including the name or designation of each assignment) and the respective duties of each assignment (e.g., switching job, bowl job, hump job, industrial job, etc.);

- f. For each of the switch assignments identified in response to subpart e above, the typical number of switch crew members and the number and type of locomotives assigned to each switch service; and the typical number of hours worked by switch crews in performing their assigned tasks;
- g. For each individual industrial switch job identified in response to part (e), above:
 - i. The name or designation of each individual industrial switch job;
 - ii. The number of crew members assigned to each identified industrial switch job;
 - iii. Number and type of locomotives assigned to each identified industrial switch job;
 - iv. The industries served by each identified industrial switch job; and
 - v. The frequency of service of each identified industrial switch job.
- h. For each train, that originates or terminates in each of the yards:
 - i. K&O's train identification or designation of each train;
 - ii. The number of crew members assigned to each identified train;
 - iii. The number of loaded and empty cars assigned to each train;
 - iv. The trailing length of each identified train;
 - v. The trailing weight of each identified train;
 - vi. The number and type of locomotives assigned to each train;
 - vii. The route of service for each identified train, and if the train is a turn crew or straight-away crew;
 - viii. The industries served by each identified train; and
 - ix. The frequency of service of each train.

Request for Production No. 22

For each K&O rail yard and bulk transfer facility referred to in Interrogatory No. 5, please produce documents sufficient to identify switch crew assignments, yard crew assignments, train assignments, and the number of cars handled in each yard per day.

Including but not limited to copies of all crew agreements currently in effect, which contain provisions dealing with K&O switching operations in Kansas and Colorado.

Request for Production No. 23

Please provide any studies or databases showing dwell times in yards for shipper-provided and foreign cars.

Request for Production No. 24

For all locations on the K&O Lines in Kansas and Colorado where K&O interchanges railcars and/or trains with another railroad, please provide documents that:

- a. Identify the location of the interchange (by milepost and/or yard name);
- b. Describe the interchange procedures at each location;
- c. Identify the tracks (and length of each track) used for interchange purposes; and
- d. Identify the ownership of each track used for interchange purposes.

Request for Production No. 25

Please produce current operating timetables (including special instructions and/or operating rule books), station lists, station books, and track charts (including a legend for the track chart markings) covering K&O's rail system. Please provide the requested documents in their native format to the extent available (including all necessary documentation). If current versions of any of the requested documents are not available, please produce the most recent versions that are available.

Request for Production No. 26

To the extent such information is not produced in response to Request for Production No. 25 please produce track charts and “condensed profiles” (including schematics which provide the number, length, and ownership status (*i.e.*, whether railroad-owned or privately-owned) of the tracks at the origins and destinations), which are applicable to all K&O Lines in Kansas and Colorado.

Request for Production No. 27

Please produce detailed track diagrams of K&O all tracks on the K&O Lines in Kansas and Colorado including, but not limited to, the track layout, the length of each track, the ownership of each track and descriptions of the existing facilities.

Request for Production No. 28

Please produce documents (in computer-readable format to the extent available) that depict individual tracks, connections to the main line, turnouts, communications, signals, and elevations for all yards on the K&O system which are located on the K&O lines in Kansas and Colorado.

Request for Production No. 29

Please produce documents, in a computer-readable format to the extent available, that show the following for K&O Lines in Kansas and Colorado:

- a. The gradient or grade profile for each line segment;
- b. The elevation and elevation changes (in feet above sea level) for each line segment; and
- c. The locations of all curves on each line segment and all information maintained by K&O pertaining to such curves including, but not

limited to, the beginning milepost, ending milepost, and degree of curvature.

Request for Production No. 30

To the extent described in response to Interrogatory No. 13, please produce documents which provide the following information for all K&O helper services operated on K&O Lines in Kansas and Colorado, separately for each helper service location, for each year or partial year 2021 to the present:

- a. “From” and “To” stations and mileposts where trains are actually helped;
- b. Number and type of locomotives (model and horsepower) involved per help;
- c. Round-trip mileage each locomotive travels per help;
- d. Number of total trains helped per crew assignment;
- e. Minimum train size/weight requiring helper service; and
- f. Crew size per crew assignment.

Request for Production No. 31

Please provide a copy of any K&O and/or Watco operating rules related to the special handling of hazardous materials (provide the requested information by class of hazardous material), including, but not limited to, rules related to:

- a. Placement of cars containing hazardous materials in a train;
- b. The number and location of buffer cars required, if any, when handling hazardous materials in trains; and
- c. Special routing instructions for trains containing hazardous materials.

Request for Production No. 32

Please produce documents sufficient to show the transaction costs incurred by K&O and/or Watco, by service unit, for electronic data interchange services with Railinc (or other applicable service providers) during each of the years 2021 to the present for traffic on K&O Lines in Kansas and Colorado.

Request for Production No. 33

Please produce all forecasts and all documents related to forecasts or projections prepared by or for K&O and/or Watco from 2021 through the present, or in K&O's and/or Watco's possession and relate to that time period, of future traffic volumes and/or revenues for all freight traffic by traffic group (including any breakdown of any such forecasts or projections whether by commodity classification, geographic regions, line segment, or any other category) including, but not limited to, traffic projections prepared in connection with engineering studies, authorizations for expenditures or other road property investments, marketing studies, operating expense budgets, capital budgets, human resource planning, or mergers with or acquisition of other carriers.

Request for Production No. 34

To the extent such documents are not produced in response to Request for Production No. 19, please produce copies of all computer programs and databases used by K&O and/or Watco from 2021 through the present to forecast or project volumes and/or revenues for all traffic moving over any portion of the K&O Lines in Kansas and Colorado.

Request for Production No. 35

Please produce the train list(s) and train profile(s) showing the scheduled horsepower per ton (“HPT”) for all K&O trains operating on the Weskan route. If the train list(s) or train profile(s) are not available, please provide other documents sufficient to show the scheduled HPT for the trains identified above.

Request for Production No. 36

Please produce any studies or analyses conducted by K&O and/or Watco, or an outside entity working for K&O and/or Watco, from January 1, 2021 to the present, which model and evaluate rail operations over all or any part of the K&O Lines in Kansas and Colorado using the Rail Traffic Controller (“RTC”) computer model. In addition to the results of such studies or analyses, please produce documents sufficient to show the following information for each study or analysis:

- a. The version of the RTC model utilized in each study or analysis;
- b. All electronic files input into the RTC model, including track input files, train input files, Form A and Form B files (or similar files showing track, operating, or other outages or failures that affected train operations); and
- c. All electronic files generated as output from the RTC model for each study or analysis.

Request for Production No. 37

Please produce documents, in a computer-readable format to the extent available, sufficient to show the dispatch priority given by K&O to each train type (*e.g.*, intermodal, general freight, grain shuttle, local, *etc.*) and, to the extent applicable, special dispatch priority given to any train within a grouping based on train type.

Request for Production No. 38

Please produce documents sufficient to show unplanned track-related and operating-related incidents or outages that affected K&O train operations on the K&O Lines in Kansas and Colorado in 2021-2025, including the cause of the incidents or outages, the duration of the incidents or outages, the location of the incidents or outages, and the train IDs of any trains impacted by the incidents or outages.

Request for Production No. 39

Produce for each K&O territory or division located in Kansas or Colorado organization charts which show each K&O and/or Watco management and/or supervisory position, the number of personnel in each position, and the relationship or reporting authority and relative rank of each position. Please include organizational charts which include, but are not limited to, positions related to train operations, yard operations, maintenance of way, maintenance of equipment, engineering, and general and administrative functions. Also, include the relationship and reporting authority from each K&O territory or division to K&O and/or Watco senior management.

Request for Production No. 40

Please produce for each year or partial year 2021 to the present documents (in a computer-readable format) which show for each K&O and/or Watco individual locomotive trainmaster, assistant trainmaster, engineer, conductor, dispatcher and

equipment inspector, the number of shifts worked per year, their length of employment, and their annual compensation.

Request for Production No. 41

Please produce documents sufficient to show the applicable wage rates for K&O and/or Watco's maintenance of way employees by job classification for each year from 2021 to the present.

Request for Production No. 42

Please produce documents sufficient to show the applicable wage rates for K&O and or Watco's Transportation Train and Engine employees by job classification for each year from 2021 to the present.

Request for Production No. 43

Please produce documents or data, in a computer-readable format to the extent available, which provide the following information for each K&O crew district in Kansas and Colorado:

- a. Each crew district identified by "from" and "to" stations;
- b. The route miles in each such crew district; and
- c. The number of locomotive units per train by train type (i.e., coal, general freight, automotive, intermodal, etc.) and the extent to which the locomotive units are in a distributed power train configuration.

Request for Production No. 44

Provide documents sufficient to show the amounts paid by K&O and/or Watco for training employees and the number of employees trained, including but not

limited to training employees hired for the following positions, in each of the year 2021 to the present:

- a. Experienced locomotive engineers;
- b. Experienced locomotive conductors;
- c. Locomotive conductors training to become engineers;
- d. Novice conductors;
- e. Train dispatchers;
- f. Crew callers;
- g. Information technology programmers;
- h. Supervisors of maintenance operations;
- i. Maintenance of way employees; and
- j. Equipment inspectors.

The training information requested includes, but is not limited to, wages paid during classroom training, wages paid during field or on the job training, fringe benefits paid during classroom training, fringe benefits paid during field or on the job training, costs for classroom training, costs for on the job training or field training, expenses for room and board during classroom training and during field training, the number of weeks of classroom training required for each type of employee, and the number of weeks of on the job or field training required for each type of employee.

Request for Production No. 45

Produce for each year or partial year 2021 to the present documents (in a computer-readable format) which show for K&O employees by position the amount spent for travel,

including but not limited to transportation, meals, entertainment, lodging, and the corresponding number of travelers.

Request for Production No. 46

Produce for each year or partial year 2021 to the present, documents (in a computer-readable format) which show K&O contracts with lodging companies for use of K&O personnel when traveling.

Request for Production No. 47

Produce for each year or partial year 2021 to the present documents (in a computer-readable format) which show the actual attrition rate for K&O employees by position, including age group and years of service.

Request for Production No. 48

Please produce documents sufficient to show all donated rights of way and/or land grants (including easements) obtained by K&O and/or K&O's predecessors in connection with the construction of any rail lines or facilities located on the Weskan route.

Request for Production No. 49

Please produce all documents related to any sale, appraisal, abandonment or acquisition of land (improved and unimproved) that K&O completed for K&O lines in Kansas and Colorado since 2021 including, but not limited to, documents showing the location of the parcel, size of the parcel, the valuation of the parcel by K&O, the sale or acquisition price, K&O land transaction cost, a description of any improvements to the parcel, the date of sale, and any characteristics of the parcel such as land use, utilities, access and topography.

Request for Production No. 50

Please produce all data, analyses, and other documents in K&O's possession relating to any sales of K&O railroad lines in the past 10 years.

Request for Production No. 51

Please produce all documents relating to any contribution by any governmental or quasi-governmental entity to construction, upgrading, maintenance and/or operating expenses on the K&O Lines in Kansas and Colorado.

Request for Production No. 52

Please produce all documents relating to any contribution by any governmental or quasi-governmental entity to the construction or maintenance of at-grade or grade-separated crossings of the K&O Lines in Kansas and Colorado.

Request for Production No. 53

Please produce documents sufficient to show the following for each construction and rehabilitation project completed by K&O and/or Watco, or an outside contractor acting on K&O's behalf, since January 1, 2021:

- a. The date the project was started;
- b. The date the project was completed;
- c. Whether the project was new construction or rehabilitation;
- d. Whether or not the project was performed "under traffic", i.e., traffic continued to move through the construction area;
- e. A complete copy of the Authorization For Expenditure ("AFE") and description of all columns and data contained with the AFEs;

- f. A complete copy of the Roadway Completion Report or any successor document;
- g. All invoices underlying each AFE and/or Roadway Completion Report;
- h. Engineering and/or construction plans;
- i. Progress reports;
- j. Photographs, if available, and
- k. Construction contracts.

Request for Production No. 54

Please produce documents, including, but not limited to, AFEs, construction plans, engineering estimates, bid tabs, contractor invoices, and construction specifications, for any projects that a carrier other than K&O and/or Watco has undertaken on the K&O Lines in Kansas and Colorado for which K&O paid for some or all of the project cost since 2021.

Request for Production No. 55

Please produce documents sufficient to show the maximum permissible gross weight on rail (“GWR”) per railcar for all K&O Lines in Kansas and Colorado, and for all segments having a GWR less than 286,000 lbs. per railcar, please produce documents sufficient to show the items and factors that limit the GWR for the identified segments.

Request for Production No. 56

Please provide documents sufficient to show K&O’s existing maintenance-of-way plan and staffing in Kansas and Colorado including maintenance-of-way districts

and/or crews employed by K&O to maintain the (a) track, (b) signals and communications facilities, and (c) bridges and (d) all other facilities on the K&O Lines in Kansas and Colorado, the number of K&O employees by job classification presently assigned to each maintenance-of-way district or crew on both a permanent and a seasonal basis, and any changes in the maintenance districts, crews, and number and classification of employees that have occurred since January 1, 2021.

Request for Production No. 57

Please produce documents sufficient to show the maintenance-of-way equipment owned or leased by K&O, and how such equipment is assigned to the respective maintenance-of-way districts identified in response to Request for Production No. 56. In addition, please provide documents sufficient to show the unit costs for such equipment, if purchased, or the annual lease cost if leased, and the annual cost of ownership including information on maintenance and fueling costs during each year or partial year 2021 to the present.

Request for Production No. 58

For maintenance of way and/or construction for the K&O Lines in Kansas and Colorado performed by contractors for the period from 2021 to the present, please produce copies of all bills for services, documents which contain a description of the line location of the contract repairs and/or construction, and the details of the work performed, including labor and materials. If K&O does not maintain copies of these documents, produce whatever documents K&O does maintain or have available to it describing the

costs incurred by K&O and the details of the work performed, in a computer-readable form if available (including all necessary decoders or other explanatory documentation).

Request for Production No. 59

Please produce copies of the most current land valuation maps for the Weskan route, and all documents (including but not limited to deeds or other instruments of grant or conveyance) related to the parcels identified on those maps.

Request for Production No. 60

Please produce documents sufficient to show the following with respect to grading construction activities undertaken or proposed at any time by K&O or its predecessors, or currently ongoing, on the K&O Lines in Kansas and Colorado:

a. Number of cubic yards of excavation of:

- i. Common earth;
- ii. Loose rock;
- iii. Solid rock; and
- iv. Unclassified material.

b. Number of cubic yards of embankment of:

- i. Common earth;
- ii. Loose rock;
- iii. Solid rock; and
- iv. Unclassified material.

c. Number of cubic yards of borrow of:

- i. Common earth;
- ii. Loose rock;
- iii. Solid rock; and
- iv. Unclassified material.

- d. Grading construction data for each construction specification measured by K&O including without limitation, roadbed width, side slope ratio, track center distance, presence of access roads, impact of grading activities on right-of-way width, use of geotextiles, use of water, soil stabilization, and width and depth of side ditches;
- e. Number of route miles, separated between single track main, double track main, triple track main, etc., corresponding to the cubic yard information described in paragraphs (i) through (iv) of Subparts (a), (b) and (c) of this Request;
- f. Number of track-miles corresponding to the cubic yards in paragraphs (i) through (iv) of Subparts (a), (b) and (c) of this Request;
- g. All of the different types of equipment (and the associated tasks) used to:
 - i. Excavate common earth;
 - ii. Excavate loose rock;
 - iii. Excavate solid rock;
 - iv. Excavate unclassified material; and
 - v. Obtain borrow material.
- h. Linear feet of pipe installed for lateral drainage;
- i. Number of cubic yards of rip-rap placed for the protection of the roadway;
- j. Location, type and quantity of retaining walls;
- k. Construction method including, but not limited to, the number of cubic yards of masonry or other similar material used for retaining walls;
- l. Number of acres cleared;
- m. Number of acres grubbed; and
- n. Number of acres seeded.

Request for Production No. 61

Please produce documents sufficient to show the costs that K&O and/or Watco incurred during each year 2021 to the present for the following:

- a. Cost per cubic yard of excavation for:
 - i. Common earth;
 - ii. Loose rock;
 - iii. Solid rock; and
 - iv. Unclassified material.
- b. Number of cubic yards of embankment of:
 - i. Common earth;
 - ii. Loose rock;
 - iii. Solid rock; and
 - iv. Unclassified material.
- c. Cost per cubic yard of borrow for:
 - i. Common earth;
 - ii. Loose rock;
 - iii. Solid rock; and
 - iv. Unclassified material.
- d. Cost per cubic yard of rip-rap (installed), separated between material and labor;
- e. Cost for each material used for retaining walls, separated between material and labor;
- f. Gross cost per acre for clearing timber and any credits reflecting the sale of timber;
- g. Cost per acre for grubbing;
- h. Cost per acre for seeding;
- i. Cost per acre for weed spray (including necessary chemicals);
- j. Cost per hour or per mile for brush cutting;
- k. Cost per square yard for geotextile fabric; and
- l. Cost per linear foot for yard drainage facilities.

Request for Production No. 62

Please produce documents sufficient to show culvert/drainage pipe locations (*i.e.*, railroad milepost), size (diameter), length, height of cover, number of tracks crossed, type, and cost of material and installation for each, for the K&O Lines in Kansas and Colorado.

Request for Production No. 63

Please produce documents sufficient to show the following for construction projects that K&O and/or Watco has undertaken since January 1, 2021:

- a. Standard construction project specifications including but not limited to: track structures and designs; bridges; culverts; yard and roadway buildings; fueling facilities; maintenance facilities and wastewater treatment facilities;
- b. Whether or not the project was performed “under traffic”, *i.e.*, traffic continued to move through the construction area;
- c. Standard estimating procedures for track construction projects; and
- d. Standard estimating procedures for non-track construction projects.

Request for Production No. 64

Please produce all of K&O and/or Watco’s price list books governing prices for construction and maintenance materials (including but not limited to weights of rail from 90 to 141 pounds per yard, turnouts, ties, fasteners, lubricators, plant and field welds, fencing, roadway signs, track geometry cars, hot bearing and dragging equipment detectors, and related tools), or other documents utilized by K&O and/or Watco’s engineering personnel for estimating costs of maintenance and construction projects for each year or partial year 2021 to the present. To the extent that the charges for

transportation and delivery of materials are not included in the prices shown, please produce documents sufficient to show such charges for all materials.

Request for Production No. 65

Please produce documents sufficient to show the following information with respect to rail purchased by K&O and/or Watco and used on K&O Lines in Kansas and Colorado for each year or partial year 2021 to the present:

- a. The average cost per linear foot and/or ton by weight of rail for both new and relay rail;
- b. The source of the rail;
- c. The average cost per ton-mile to transport the rail on K&O;
- d. The average cost per ton to handle the rail, categorized by the length of and weight of rail including the cost for a specialized rail train if applicable, on K&O;
- e. The average cost per ton-mile, by carrier, to transport the rail on a foreign carrier by carrier;
- f. The average cost per ton to handle the rail, categorized by length and weight of rail including the cost for a specialized rail train if applicable, on a foreign carrier by carrier; and
- g. Any haulage agreements between K&O and a foreign carrier that applied or could apply to the transportation of rail over either carriers rail lines in Kansas and Colorado.

Request for Production No. 66

Please produce documents sufficient to show the following information with respect to ballast or sub-ballast used on K&O Lines in Kansas and Colorado for each year or partial year 2021 to the present:

- a. The average cost per cubic yard for ballast, by type;

- b. The average cost per cubic yard for the transportation and handling of ballast;
- c. The average length of haul represented by the value(s) in (b) above;
- d. The average cost per cubic yard for sub-ballast, by type;
- e. The average cost per cubic yard for transportation and handling of sub-ballast;
- f. The average length of haul represented by the value(s) in Subpart (e) above;
- g. The names and locations of all quarries supplying such ballast or sub-ballast; and
- h. The unit prices from all quarries listed in response to Subpart (g).

Request for Production No. 67

Please produce bridge lists or other documents detailing location (milepost, division and subdivision), number of spans, type(s) of spans, length of each span, load rating, a description of what is being crossed (*e.g.*, name of body of water, highway or road (including name or number), navigable waterway *etc.*), whether or not it is a movable bridge, whether or not it is in service, type, length, number of tracks, clearance, height, curvature and skew (if any) for all bridges located on the K&O Lines in Kansas and Colorado.

Request for Production No. 68

For each of the types of bridges identified in the documents produced in response to Request for Production No. 67, please produce documents sufficient to show the standard design for the bridge type and the unit costs (*e.g.*, cost per foot or other

appropriate measure), for single track open deck and ballast deck construction and double track open deck and ballast deck construction, from 2021 to the present.

Request for Production No. 69

Please produce documents sufficient to show the following information related to the construction or replacement, in part or in whole, of each bridge on the K&O Lines in Kansas and Colorado from 2021 to the present:

- a. The location of the bridge, by line segment and milepost;
- b. An itemized listing of the bridge components being constructed or replaced (including quantities);
- c. The estimated cost, by component, for each of the components (identified in response to Subpart (b) above) being constructed or replaced;
- d. The actual cost, by component, for each of the components (identified in response to Subpart (b) above) being constructed or replaced;
- e. The design for each bridge;
- f. The total cost of the bridge;
- g. The total length of the bridge;
- h. Whether the project was new construction or rehabilitation;
- i. Whether or not the project was performed “under traffic”, i.e. traffic continued to move through the construction area;
- j. All costs incurred as a function of performing the project under traffic, e.g., flagging costs, temporary signal costs, realignments, delays and all other costs that would not be incurred if the bridge was new construction;
- k. The construction documents and contracts for the construction and/or rehabilitation; and

1. Any cost sharing between K&O and/or Watco and another entity.

Request for Production No. 70

Please provide a copy of K&O and/or Watco's technical specifications for the construction and/or maintenance of industrial trackage.

Request for Production No. 71

Please produce documents sufficient to show all revenues, fees, rents or other compensation received by K&O in 2021 through 2025 from any source that was related to a third party's use or exercise of subsurface rights below any K&O right-of-way on the K&O Lines in Kansas and Colorado.

Request for Production No. 72

Please produce documents sufficient to show:

- a. The locations and quantities of fiber optic cabling installed on K&O rights-of-way on K&O Lines in Kansas and Colorado;
- b. The bandwidth capacity of the fiber optic cabling identified in Subpart (a);
- c. The entity that owns and operates the fiber optic cabling identified in Subpart (a);
- d. The costs to K&O, if any, for installing the fiber optic cable identified in Subpart (a);
- e. Whether K&O is permitted to use the fiber optic cable identified in Subpart (a);
- f. The amount, if any, that K&O pays the carriers for use of the fiber optic cable identified in Subpart (e); and
- g. The revenues or other payments that K&O receives from the carriers for the use of the railroad's right-of-way for fiber optic cable.

Request for Production No. 73

If K&O utilizes the fiber optic cable(s) identified in response to Request for Production No. 72, please provide documents sufficient to show:

- a. The total number of K&O route miles on K&O Lines in Kansas and Colorado that are covered by fiber optic communications;
- b. The cost, manufacturer and model number of each item and the quantities used for the construction and operation of the fiber optic communications system on the K&O system(s) during each of the years 2021 to the present; and
- c. The annual spot maintenance costs incurred by K&O for the fiber optic communications system and by device type, on K&O Lines in Kansas and Colorado.

Request for Production No. 74

For each year or partial year 2021 to the present, please produce documents which contain the following information with regard to K&O highway and railroad at-grade crossings:

- a. The various sizes, compositions and costs per linear foot (installed) of a one-lane private road crossing over a single line of track;
- b. The various sizes, compositions and costs per linear foot (installed) of a two-lane public highway crossing over a single line of track;
- c. The various sizes, compositions and costs per linear foot (installed) of a four-lane public highway crossing over a single line of track;
- d. The installed cost of signs for a private road crossing (if necessary);
- e. The installed cost of signs for a public highway crossing;
- f. The installed cost of each of the different types of protective devices identified in the response to Subpart (g) below;

- g. A list identifying each component required for an automatic type interlocking (assuming a diamond crossing);
- h. The cost of each of the components identified in response to Subpart (g) above and the cost of installation for each year or partial year 2008 to the present;
- I. The costs for a 16-foot and 24-foot cattle guard and the cost of installation for each year or partial year 2021 to the present; and
- j. Any additional costs incurred.

Request for Production No. 75

Please produce documents in a computer-readable format, to the extent available, containing the following information for each K&O at-grade and grade-separated road crossing on the K&O Lines in Kansas and Colorado:

- a. Geographic location, *i.e.*, city, county and state;
- b. Rail location, *i.e.*, railroad, line name and milepost;
- c. Whether public or private;
- d. Name of road crossed;
- e. Width;
- f. Length;
- g. Type of construction;
- h. Number of tracks;
- i. Type of protective devices;
- j. Date of initial installation at the location;
- k. Total cost of the initial installation and the amount borne by K&O, if any; and

- l. Identification of the party responsible for ongoing maintenance of any such structures.

Request for Production No. 76

For each grade-separated, highway crossing identified in Request for Production No. 75, please provide documents sufficient to show, separately for each crossing:

- a. The total construction cost of the highway crossing;
- b. The percentage of the total cost incurred by K&O; and
- c. Any monies received by K&O from any other party to compensate K&O for the use of the crossing, including, but not limited to, maintenance and easement payments.

Request for Production No. 77

Please produce documents sufficient to show the location, linear feet, and type of fencing (*e.g.*, snow fence) for all fencing currently in place on the K&O Lines in Kansas and Colorado.

Request for Production No. 78

For each track construction project that K&O and/or Watco has undertaken on the K&O Lines in Kansas and Colorado since 2021 to the present, provide documents showing the following:

- a. How the disposal of excess excavation quantities was handled; and
- b. All costs associated with the disposal of such excess excavation quantities.

Request for Production No. 79

Please produce documents (in computer-readable format to the extent available) that identify and list the location and type of communications and signals systems/facilities used for train operations by milepost, division, and subdivision on the K&O Lines in Kansas and Colorado.

Request for Production No. 80

Please produce documents listing the items, the cost of each item and the quantity of each item installed on K&O's system related to the construction and (during each year or partial year 2021 to the present) operation of the centralized traffic control signal system(s) or any other traffic control system in use on the K&O system (including hot bearing and dragging/failed equipment detectors). Please indicate whether the costs include additional services such as installation, design planning, electrical drops for utilities, and/or transportation. If the costs for additional services are not included, please provide each cost separately for each additional service.

Request for Production No. 81

Please produce documents containing the following information for each K&O communications site (defined as a location with a microwave tower, a land mobile radio ("LMR") tower, a tower used for both purposes, or a location where communications equipment (microwave or LMR) is located that does not include a tower) located on or near the K&O Lines in Kansas and Colorado:

- a. The number of microwave towers, LMR towers, combined towers, or other communications equipment location (shown separately for each category);

- b. The latitude and longitude coordinates of each tower or other communications equipment location;
- c. The height of each tower in (i) feet above the ground and (ii) feet above sea level;
- d. The number of microwave antennae on each tower and the status of each antenna (*i.e.*, whether it is operational);
- e. The number of LMR antennae on each tower and the status of each antenna (*i.e.*, whether it is operational);
- f. The latitude and longitude coordinates of other communications sites that can link via microwave or radio from this site or a topological map of the communication system; and
- g. The acres of land owned or leased by K&O for these sites and the cost of purchase or lease.

Request for Production No. 82

Please produce documents sufficient to show:

- a. K&O's specifications for the construction of communications sites (as defined in Request for Production No. 79 above);
- b. The total number of K&O route miles on K&O Lines in Kansas and Colorado that are covered by microwave communications;
- c. The total number of K&O route miles on K&O Lines in Kansas and Colorado that are not covered by microwave communications;
- d. The cost, manufacturer and model number of each item and the quantities used for the construction and operation of the microwave radio and/or land mobile radio communications system(s) on the K&O system during each of the years 2021 to the present; and
- e. The annual spot maintenance costs incurred by K&O for the microwave and/or land mobile radio tower communications system per tower and by device type, on the K&O Lines in Kansas and Colorado.

Request for Production No. 83

Please produce documents sufficient to describe the specifications, functions, operation and costs, during each year or partial year 2021 to the present, of any communications system equipment other than microwave towers used to transmit data from devices such as mobile two-way radios, portable (hand-held) two-way radios, FEDs, AEI scanners and EOTDs across all or any part of the K&O and/or Watco system(s).

Request for Production No. 84

Please provide documents identifying each electrical connection in Kansas and Colorado that is used to provide power to devices, including, but not limited to, the CTC system and other signal devices, hot box detectors, failed equipment detectors, powered road crossings, warning devices and power switches, and provide the following for each such connection:

- a. The location of the connection by line segment and milepost;
- b. The source of the electricity;
- c. The amount K&O paid for each connection and the date; and
- d. K&O's costs for each billing period from 2021 to the present.

Request for Production No. 85

For any company other than K&O that provides the development, implementation and/or maintenance of computer systems, software and associated documentations for the day-to-day operations of K&O, please produce documents sufficient to show the services outsourced, the fees paid for the outsourced services, and

the analyses which developed the estimated and/or actual savings realized by K&O and each of its subsidiaries from such outsourcing.

Request for Production No. 86

Please produce documents which contain the following information for K&O and/or Watco for each year or partial year 2021 to present:

- a. The location(s) where car inspectors inspect trains moving on the K&O Lines in Kansas and Colorado, and the location(s) where inspections occur on the K&O Lines between Origin and Destination;
- b. A description of the procedures followed by the car inspectors in preparing for and inspecting the trains;
- c. The total number of car inspections per tour of duty (by day of the week) and the total number of trains inspected per tour of duty (by day of the week), separated between grain trains and other than grain trains, for each location identified in response to (a) above;
- d. The number of car inspectors inspecting each train at each location identified in response to (a) above, and the time spent by each inspector during each inspection;
- e. The daily or hourly rates of pay, including all additives for the inspectors identified in response to (d) above;
- f. The number of trains each car inspector identified in response to (a) above inspects during his tour of duty;
- g. The other duties performed by the car inspectors identified in response to (d) above while on duty and not inspecting trains;
- h. The percentage of time the car inspectors identified in response to (d) above spend inspecting trains versus other assignments during their tour of duty;
- i. The materials and supplies used by the car inspectors at each of the locations identified in response to (a) above;

- j. The purchase price of each item identified in response to (i) above; and
- k. The total number of trains and cars inspected at each location identified in response to (a) above.

Request for Production No. 87

Please produce documents for each year or partial year 2021 to the present which contain the following, in a computer readable format, for each freight car purchased or leased by K&O and/or Watco (including freight cars currently on order and privately-owned freight cars leased by K&O/Watco that maintain the private owner's car initial and number) that K&O has in providing transportation service on the K&O Lines in Kansas and Colorado:

- a. Initial and number;
- b. Manufacturer;
- c. Lessor, if leased;
- d. AAR car type;
- e. Tare weight;
- f. Purchase or order date, if purchased;
- g. Lease or order date, if leased;
- h. Total purchase price, if purchased;
- i. If leased, the type of lease (e.g., capital, operating, etc.) and term;
- j. If leased, the amount and frequency of lease payments;
- k. If purchased, the AFE applicable to each purchased freight car; and

1. If leased, the lease agreement including all supplements, amendments, exhibits and applicable schedules.

Request for Production No. 88

For each year or partial year 2021 to the present, please produce documents which contain the following information (in a computer-readable format, if available) with respect to each shipper-owned and shipper-leased railcar and each intermodal and automotive railcar provided by a third party moving over any part of the K&O Lines in Kansas and Colorado:

- a. Identification number of the car;
- b. The type of the car;
- c. The length and tare weight of the car (for intermodal and automotive cars only);
- d. The cost to K&O for use of the car;
- e. The terms of any mileage allowance agreement covering the car;
- f. Whether the car is subject to a zero-based mileage agreement;
- g. Whether the car hire paid on the car is subject to refund of the payments under certain contractual conditions; and
- h. The year of manufacture of the car.

Request for Production No. 89

Please produce all railcar maintenance agreements with outside contractors including all supplements, attachments, exhibits and schedules, in effect during all or any portion of each year or partial year 2021 to the present, for all the cars on the K&O Lines in Kansas and Colorado, and documents providing

- a. the amount paid for each car or by car or by car type total and broken down by each service performed under the agreement, and
- b. the number of car-miles corresponding to the amounts referenced in (a).

Request for Production No. 90

Please produce copies of all contracts/agreements with third parties (including, but not limited to, shippers or receivers) in effect during all or any portion of the period from January 1, 2021 to the present related to the performance of car inspection functions with respect to (a) K&O grain trains and (b) other trains traversing all or a portion of the K&O Lines in Kansas and Colorado.

Request for Production No. 91

Please produce copies of the following documents:

- a. Documents sufficient to show the locomotive tonnage ratings (*e.g.*, horsepower per trailing ton) by line segment for the K&O Lines in Kansas and Colorado; and
- b. Tractive effort tables or other documents sufficient to show the tractive effort produced by the locomotives used to transport trains through all or any portion of the K&O Lines in Kansas and Colorado.

Request for Production No. 92

Please produce all records from January 1, 2021, through the present related to K&O's use of UP and/or BNSF locomotives in the provision of service between Origin and Destination.

Request for Production No. 93

To the extent such information is not produced in response to Request for Production No. 92, please produce documents for each year or partial year 2021 to the present which list by initial and unit number:

- a. locomotives used in in any grain service between Origins and any destination or used by K&O in providing transportation service including switching services, on K&O Lines and yards and bulk transfer facilities in Kansas and Colorado; and
- b. if such locomotives were drawn from a pool(s), all the locomotives in the pool(s) from which the locomotives used in grain service are drawn.

Request for Production No. 94

Please produce documents, in a computer-readable format to the extent available, which provide the following information for each of the locomotives contained in each of the listings produced in response to Request for Production No. 93, to the extent that the information is in K&O and/or Watco's possession or is available to K&O and/or Watco upon request:

- a. The locomotive initial and number;
- b. The manufacturer, if purchased;
- c. The lessor, if leased or rented, or provider, if used in run-through service;
- d. Model or type (*e.g.*, SD-40-2);
- e. Horsepower;
- f. Capacity of its fuel tanks (gallons);
- g. Weight;

- h. Date of purchase or lease;
- i. Date first placed into service;
- j. The original cost plus the cost of any additions and betterments;
- k. Financing vehicle (*e.g.*, equipment trust);
- l. Debt rate as a percent;
- m. Financing terms (in years);
- n. Annual depreciation;
- o. Annual depreciation as a percent;
- p. Current salvage value as a percent;
- q. Accrued depreciation;
- r. If leased, the type of lease (*i.e.*, capital, operating, “power by the hour”, *etc.*);
- s. If a capital lease, the capitalized value of the lease by locomotive or group of locomotives (if a group of locomotives, the number of locomotives (by initial and number) and aggregate dollars);
- t. If an operating lease, the quarterly, semi-annual, *etc.*, lease payment by locomotive or group of locomotives covering the term of the lease (if a group of locomotives, the number of locomotives (by initial and number) and aggregate dollars);
- u. If leased or rented under a short-term or “power by the hour” agreement, the minimum annual fixed payment and the use payment (*e.g.*, per kilowatt/hour, per diesel unit mile, *etc.*) per locomotive, the average annual payment per locomotive, and the annual locomotive unit-miles for each such locomotive, stated separately for grain service and other service; and
- v. The diesel unit-miles traveled each year or partial year from 2021 to the present in all types of service.

Request for Production No. 95

Please produce all lease or rental agreements, including all supplements and copies of all billings, applicable to each leased or rented locomotive identified in response to Request for Production No. 93 and Request for Production No. 94.

Request for Production No. 96

Please produce all locomotive maintenance and repair records and/or reports and related documents for each year or partial year 2021 to the present, which provide K&O locomotive maintenance, repair and overhaul expenses by locomotive or locomotive type or series (or by other basis in which records are kept) and the total locomotive unit-miles corresponding to these maintenance, repair and overhaul expenses for the locomotives identified in response to Request for Production No. 93.

Request for Production No. 97

Please produce all locomotive maintenance agreements including all supplements, attachments, exhibits and schedules, with outside contractors and provide, for each year or partial year 2021 to the present for all locomotives in K&O's fleet under such maintenance agreements,

- a. the amount paid for each locomotive or by locomotive type in total and broken down by each service performed under the agreement, and
- b. the number of locomotive unit miles corresponding to the amounts listed above.

Request for Production No. 98

Please produce documents sufficient to show the following information for K&O and/or Watco for the most recent 12 calendar months:

- a. The location(s) where locomotives traversing the K&O Lines in Kansas and Colorado are fueled;
- b. The actual amount of fuel used by the locomotives identified in response to Request for Production No. 93, by individual locomotive;
- c. The total number of diesel unit miles generated by the locomotives for which fuel consumption data was provided in response to (b) above during the same time period used in response to (b) above;
- d. The method by which K&O and/or Watco accounts for or records fuel usage for locomotives;
- e. Computer-readable versions (both compiled and non-compiled), including all supporting databases and necessary documentation, of any and all computer programs in K&O and/or Watco's possession used to estimate the fuel usage of locomotives; and
- f. The same information for all road and switch locomotives on the K&O system in the same format as that given in the responses to (b), (c), and (e) above.

Request for Production No. 99

For the locomotive fueling locations identified in response to Request for Production No. 98, please produce documents sufficient to show the following information with respect to locomotive fueling at each location:

- a. The source(s) of the fuel including the name and location of the vendor(s) who provide the fuel to K&O and/or Watco and the refinery(ies) or other location from which the fuel is obtained;
- b. The method and cost of transporting and dispensing the fuel from the refinery(ies) or other locations from which the fuel is obtained to the location where the fueling of locomotives is performed;
- c. The method by which fuel is dispensed into locomotives, *i.e.* from fixed fueling facilities or by direct-to-locomotive (tanker truck) service;

- d. A description of all facilities and equipment (including, but not limited to, fuel storage tanks) at each location where K&O and/or Watco has fixed fueling facilities; and
- e. The cost per gallon paid (including any applicable taxes) on a weekly basis in 2024, and in 2025 to the extent available.

Request for Production No. 100

Please produce copies of all contracts/agreements with third parties related to the performance of locomotive fueling functions for all locomotives that are used on the K&O Lines in Kansas and Colorado.

Request for Production No. 101

Produce all studies, analyses and related documents, in a computer-readable format to the extent available, pertaining to the fuel consumption or the measurement of the fuel consumption by K&O's trains (or the locomotives used on K&O's trains) moving over any portion of the K&O Lines in Kansas or Colorado during the period from January 1, 2021 to the present.

Request for Production No. 102

Please produce documents, in a computer readable format to the extent available, which show locomotive utilization and locomotive performance (*e.g.*, locomotive unit-miles, locomotive hours running, locomotive hours switching, locomotive hours out-of-service for repairs and locomotive hours stored useable) for each locomotive that K&O and/or Watco owned or leased for each year or partial year 2021 to the present and that K&O and/or Watco used in providing transportation service on the K&O Lines in Kansas and Colorado.

Request for Production No. 103

Please produce a copy of K&O and/or Watco's rules and instructions pertaining to train handling, including, but not limited to, measures for conserving fuel.

Request for Production No. 104

Please identify all written agreements covering movements on which K&O and/or Watco locomotives are used on trains traversing non-K&O owned lines and/or non-K&O owned locomotives are used on the trains traversing lines of K&O for movements over the K&O Lines in Kansas and Colorado. Please provide a copy of all agreements (including supplements and amendments) covering these movements.

Request for Production No. 105

For the sections of the agreements identified in Request for Production No. 104 that covers compensation between the parties, please provide the amount of compensation or equalization by component, e.g., fuel, maintenance, servicing, etc., and the service units covered by the compensation, e.g., horsepower hours, for each of the years 2021 to present and the basis for computing the compensation by component including, but not limited to, studies used in determining the basis of compensation. Please provide a copy of correspondence, bills, etc., relating to each agreement.

Request for Production No. 106

For all agreements covering locomotives owned by one carrier and used on another carrier's lines and not covered by Request for Production No. 104 agreements, provide the amount and basis including, but not limited to, identification

of studies used in determining the basis, of compensation, for the using carrier's compensation to the owning carrier for:

- a. Use of the locomotive;
- b. Fuel consumed while on using carrier's line;
- c. Maintenance of the locomotive(s);
- d. Servicing of the locomotive(s); and
- e. Other.

Request for Production No. 107

Please provide a copy of correspondence, bills, etc., relating to each agreement identified in response Request for Production No. 106 above.

Request for Production No. 108

Please provide all fuel usage documents, reports, analyses, and estimates (as well as estimation methodologies), including fuel quantities and the associated service units, for any or all of the locomotives used to power K&O trains, for the years 2021 to the present.

Request for Production No. 109

Please produce copies of any locomotive sharing agreements between K&O and any applicable Class I Railroad and/or Short Line Railroad.

Request for Production No. 110

Please produce documents for each year or partial year 2021 to the present, which provide K&O's loss and damage costs and annual tonnage separately for each commodity that K&O carries on its system.

Request for Production No. 111

Please produce documents including, but not limited to, tax returns filed with the states and all supporting schedules and attachments, showing the ad valorem taxes that K&O and/or Watco paid to the State of Kansas and Colorado for each year or partial year 2021 to the present, together with documents showing the total route-miles and total track-miles K&O owned or owns in the State for each year 2021 to the present. Please also provide the current ad valorem tax rates that the State of Kansas, Colorado, and local governments use to assess K&O property, as well as how these rates are applied.

Request for Production No. 112

Please produce all inflation and/or rail cost adjustment estimates or calculations in K&O's possession or that K&O and/or Watco prepared or caused to be prepared or purchased for each year or partial year 2021 to the present, including, but not limited to, any estimates relating to:

- a. The cost of acquiring equity;
- b. The cost of acquiring debt;
- c. General expenses, including, but not limited to, assets, equipment, materials and supplies, fuel, and labor expense;
- d. Railroad productivity, including, but not limited to, commodity-specific productivity, asset productivity, and expense productivity;
- e. The Rail Cost Adjustment Factor Adjusted (RCAF-A);
- f. The Rail Cost Adjustment Factor Unadjusted (RCAF-U);
- g. Gross Domestic Product/Implicit Price Deflator;
- h. Producer Price Index - All Commodities;

- i. The U.S. Department of Energy's U.S. average price of Retail On-Highway Diesel Fuel; and
- j. Land values along or adjacent to K&O's right of way for K&O Lines in Kansas and Colorado.

Request for Production No. 113

Please provide documents related to the amount of Bonus Depreciation claimed by K&O separately for 2021, 2022, 2023, 2024, and 2025 on K&O and/or Watco's Federal Tax Returns in Schedule 4562. The amount should be separated by asset class and include the historical cost recorded for the assets related to the claimed bonus depreciation, including all schedules and worksheets showing the calculation and development of bonus depreciation allowed under the Economic Stimulus Act of 2008, the American Reinvestment and Recovery Act, the American Taxpayer Relief Act, the Tax Increase Prevention Act, Protecting Americans From Tax Hikes Act, Tax Cuts and Jobs Act, and One Big Beautiful Bill Act.

Request for Production No. 114

Please provide documents related to the amount of Railroad Track Maintenance Credit claimed under IRC § 45G K&O separately for 2021, 2022, 2023, 2024, and 2025 on K&O and/or Watco's Federal Tax Returns, including Form 8900 and all associated schedules. The information should be separated by category of qualified railroad track maintenance expenditures and include the historical cost records to support each expenditure claimed for the credit. Please also provide all schedules and worksheets showing the calculation and development of the § 45G credit, including supporting

documentation for qualified track miles, expenditure allocations, and any credit carryforwards or other adjustments, including any tax credits assigned to third-party companies

Request for Production No. 115

Please provide copies of K&O and/or Watco's 2021, 2022, 2023, 2024, and 2025 State income tax returns for Kansas and Colorado, including all State tax credit worksheets.

Request for Production No. 116

Provide the K&O mileage chart and/or table-based mileage matrix and/or routing table that identifies the K&O rail mileage between any two points on the K&O rail system based upon a predominant or expected route of movement.

Respectfully submitted,

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Attorney for Weskan Grain LLC

Dated: April 17, 2026

BEFORE THE
SURFACE TRANSPORTATION BOARD

NOR 42185

WESKAN GRAIN LLC V. KANSAS & OKLAHOMA RAILROAD, LLC

**KANSAS & OKLAHOMA RAILROAD, LLC'S MOTION TO
REJECT THE COMPLAINT OR, IN THE ALTERNATIVE,
FOR EXPEDITED DETERMINATION OF JURISDICTION AND
BIFURCATION OF THE PROCEEDING**

EXHIBIT F

**WESKAN GRAIN FACILITY AT
STOCKTON - WEBPAGE**

Weskan Grain Facility at Stockton

Five million bushels of concrete storage have been built and were first placed in service in October 2022. These bins are served by a bucket elevator system having a capacity of 50,000 bushels an hour, divided among two bucket systems, so can unload and elevate the grain from a typical 1000 bushel truck hopper in about one minute. There is also a 600,000 bushel ground bunker with a Lemar driveover stacker having a capacity of 15,000 bushels/hour for temporary overflow storage, and ground has been prepped for storage of another one million bushels of ground storage. The stacker can empty a truck's grain hopper in about three minutes. There are also three 20,000 bushel capacity steel bins dedicated to the receipt of problematic loads, for instance wet grain that requires extra drying. Farmers with troublesome load quality issues are welcome at Weskan Grain.

As part of the upcoming Phase II construction, a fully automated Apollo above-ground scale system having a 120,000 pound capacity, with a modern truck ticket interface system is being installed. Drivers will be able to reach their paperwork without leaving the truck, either through their window or standing on their driver-side truck step. A six foot long grain probe will shoot samples by underground line to a scalehouse lab to be analyzed for protein, moisture, test weight, and any other relevant test factors. Modern lab equipment will generate results within just a few seconds, which will be printed as a part of the scale ticket. Tickets will be assigned a farm field ID number, and split IDs are allowed.

The facility is located on a 2,200-acre tract so there is limitless staging room for trucks. The wait time for unloads is expected to be minimal due to the high unloading speed. Our state-of-the-art facility provides the fastest truck unloads in Western Kansas and Eastern Colorado. No expense has been spared in the design, construction, and efficiency of the facility. Tours are available upon request.

The facility is fully licensed by the Colorado Department of Agriculture, holding a Commodity Warehouse License and a Commodity Handlers License. It is bonded in complete satisfaction of state requirements, and fully insured in case of destruction by tornado or other peril. Regular business hours are 8:00am to 5:00pm weekdays, except at harvest times and any time a producer requests delivery. Attention is given to careful management in every detail, with a focus on rapid but prudent speed of loading and unloading.

BEFORE THE
SURFACE TRANSPORTATION BOARD

NOR 42185

WESKAN GRAIN LLC V. KANSAS & OKLAHOMA RAILROAD, LLC

**KANSAS & OKLAHOMA RAILROAD, LLC'S MOTION TO
REJECT THE COMPLAINT OR, IN THE ALTERNATIVE,
FOR EXPEDITED DETERMINATION OF JURISDICTION AND
BIFURCATION OF THE PROCEEDING**

EXHIBIT G

**THE COMPETITIVE ADVANTAGE –
WESKAN ONLINE PROMOTIONAL
MATERIALS**

The Competitive Advantage

Weskan Grain is the only grain company that has a dedicated rail line, The Colorado Pacific Railroad. With the acquisition of 160 grainers, Weskan is able to load and transport grain at costs lower than those offered by trucking companies.

Prior to the construction of the Weskan facility, local farmers who needed operations / equipment capable of handling unit trains were required to send their trucks to Cheyenne Wells, Sharon Springs, or Coolidge. However, none of these facilities are served by both BNSF and Union Pacific, which left farmers without choice and leverage.

The Weskan Grain facility is the only trainloader within reasonable trucking distance of its tributary territory which offers access to both of the Class 1 railroads at Weskan and Avondale. Apart from the new facility, all of western Kansas and Eastern Colorado is captive to either one or the other of those railroads, and rail shippers from the Kansas state line east to Great Bend have no access to heavy axle weight grain cars.

The greatest advantage gained by area farmers using the Weskan Grain facility is utilizing the fastest unloading system from Western Kansas to Eastern Colorado. During harvest times, long waits for truck unloading are deadly for efficient utilization of grain trucks traveling from field to elevator. Long distances and long waits for unloading require a larger truck fleet in order to speed harvest to safe storage, and truck drivers are in increasingly short supply in the 2020s. Concrete storage alongside heavy axle weight tracks at facilities which can offer unit train service and connections to dueling class one railroads offer the gold standard for farmers.

Stockton Siding is close to the crossroads of Highways 385 and 96, offering paved roads in all four compass directions, and therefore an additional competitive advantage over facilities with highway access in only two directions. The facility offers a variety of grain contracts tailored to any particular farmer's level of risk tolerance, and solicits the business of local farmers.

BEFORE THE
SURFACE TRANSPORTATION BOARD

NOR 42185

WESKAN GRAIN LLC V. KANSAS & OKLAHOMA RAILROAD, LLC

**KANSAS & OKLAHOMA RAILROAD, LLC'S MOTION TO
REJECT THE COMPLAINT OR, IN THE ALTERNATIVE,
FOR EXPEDITED DETERMINATION OF JURISDICTION AND
BIFURCATION OF THE PROCEEDING**

EXHIBIT H

**TRAINS PRO ONLINE ARTICLE
FEBRUARY 2, 2026**

Lawsuit claims UP, short line blocked grain moves via alternate route

Lawsuit claims UP, short line blocked grain moves via alternate route

By Rip Watson | January 30, 2026 | Last updated on February 2, 2026



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Grain company, Colorado Pacific say interchange fee prevents westward traffic

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KANSAS CITY, Kan. — Colorado Pacific Railroad and Weskan Grain, two subsidiaries of the Soloviev Group, this week filed a federal court suit that alleges Union Pacific Railroad and regional railroad Kansas & Oklahoma have conspired to prevent westbound grain moves over Colorado Pacific.

The plaintiffs claimed that UP and Watco Cos.' K&O are using a \$500 per car interchange fee to effectively prevent farmers located on the K&O from shipping export grain west over Colorado Pacific to an interchange with UP and BNSF Railway at NA Junction in Colorado. The junction is near Boone, Colo., and about 25 miles east of Pueblo.

Both UP and K&O, one of Watco's 30 regional and shortline railroads, denied the allegations.

Colorado Pacific bought 122 miles of track in 2018 from NA Junction to an interchange with the K&O at Towner, Colo., about 60 miles west of Scott City, Kansas. The railroad rebuilt the property it calls the Towner line, where no traffic had moved for more than two decades, seeking to move grain from elevators on K&O in the Scott City area, including two Weskan facilities.

The complaint filed in U.S. District Court in Kansas alleges that UP and K&O in 2019 altered a 1997 lease agreement to impose the interchange fee that made westbound moves from elevators on K&O too costly for farmers in the Scott City area. Grain from the Scott City area can move more than 140 eastbound miles over the K&O to interchange with UP at Great Bend, Kan., before it moves west.

"I'm a farmer wanting to get a market for my grain," said Weskan and Colorado Pacific Chairman Stefan Soloviev in an interview. "We got into the rail business to provide competition so farmers could get competitive prices. They [UP and K&O] have given us no choice. We've been fighting this for three years. The lawsuit is the last thing we wanted to do."

Jake Wahlenmaier, grain elevator manager at Weskan's elevator in Sheridan Lake, Colo., says the potential for the Towner line is enormous, if the grain traffic could move that way.

"We'd turn that line into the busiest stretch of rail west of the Mississippi," he said. "We'd be smoking the rail ties."

Colorado Pacific also has filed at the Surface Transportation Board to contest the interchange fee and support its contention that the other two railroads illegally created a so-called "paper barrier" to block westbound grain moves from the K&O to Colorado Pacific.

"Union Pacific denies the allegations of the lawsuit and will present the facts to the court and Surface Transportation Board who handles these issues," a UP representative said.

"We do not comment on litigation matters, but as a matter of course we will defend our commitment to the values that define us through the proper legal channels," said spokeswoman for Watco, based in Pittsburg, Kan.

Soloviev said Colorado Pacific anticipates moving 5,000 carloads of grain this year. Weskan is at capacity at five rail and five truck facilities, and 20 unit trains have been booked for future moves, he added.

"We have to have that western outlet for our grain," Steven Compton, a Scott City farmer, told *Trains*. "Transportation is vital. Feed and other costs have gone up, but grain prices are steady. Markets are being compressed. This is about more than money. It's about the survivability of the farm economy."

Weskan is part of Soloviev's grain businesses that provide services such as seed, storage and transportation to farmers. More than a dozen farmers in the Scott City area joined in the suit.

Soloviev Group says it is the 14th largest landowner in the U.S. Its holdings are estimated at 350,000 acres. The New York-based entrepreneur also has businesses including real estate, wind farms, and a resort hotel on Long Island.

Soloviev also controls the Colorado Pacific Rio Grande, a 150-mile railroad in southern Colorado. Several years ago Soloviev sought to reopen the former Denver & Rio Grande's route over Tennessee Pass to move westbound grain, an effort that included an unsuccessful bid to force UP to sell the line to Colorado Pacific [see "[Regulators toss out effort to force UP to sell ...](#)," *Trains.com*, March 18, 2020]. That effort ended in 2023 [see "[News report says Colorado Pacific ...](#)," May 9, 2023].

The suit alleges violations of the Sherman Act that govern anti-competitive practices, said Michael Hershman, CEO of Soloviev Group.

"The allegations are fairly standard for a Sherman Act case," Hershman said. "What's different here is that this is David vs. Goliath. It's very difficult to go against a multi-billion dollar company [UP]."

Soloviev said Colorado Pacific was prevented from bidding on the property that UP owns and K&O operates under the lease that is being challenged in the federal court case. In the interview, Soloviev advanced another reason to seek the change, saying the ability to move traffic directly via Colorado Pacific would eliminate 25,000 moves currently made by truck to get grain from Scott City to where Colorado Pacific can handle it.

— Updated at 6:05 p.m. to clarify item on taking trucks off the road; updated Feb. 2 at 9:55 a.m. to correct title of Jake Wahlenmaier. To report news or errors, contact trainsnewswire@firecrown.com.

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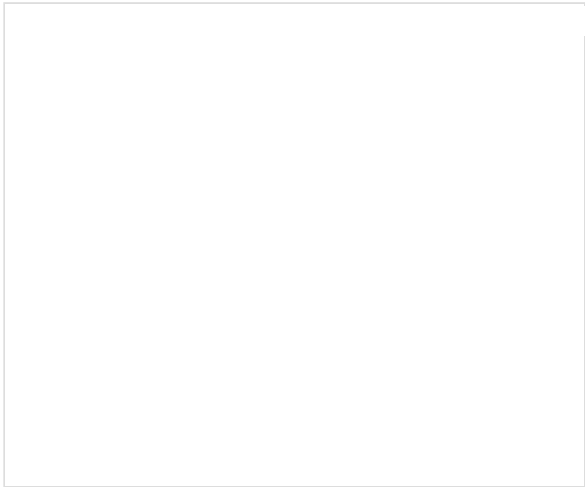
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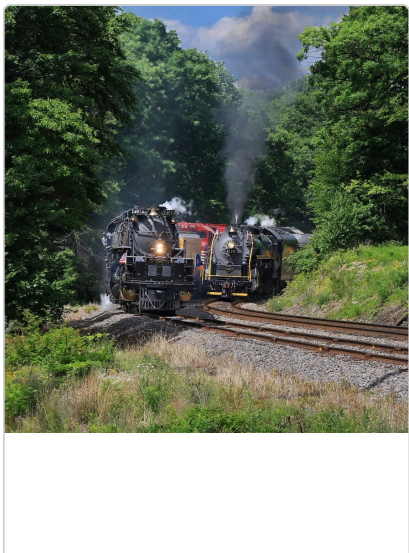


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BEFORE THE
SURFACE TRANSPORTATION BOARD

NOR 42185

WESKAN GRAIN LLC V. KANSAS & OKLAHOMA RAILROAD, LLC

**KANSAS & OKLAHOMA RAILROAD, LLC'S MOTION TO
REJECT THE COMPLAINT OR, IN THE ALTERNATIVE,
FOR EXPEDITED DETERMINATION OF JURISDICTION AND
BIFURCATION OF THE PROCEEDING**

EXHIBIT I

**FMCSA, COVERED FARM VEHICLE
EXEMPTIONS**

Farm, Ranch, and Agricultural Transportation Exemption Reference Guide

Step 1 – Occasional Personal Use?

§ 390.3(f)(3) provides an exception for the occasional transportation of personal property by individuals not for compensation and not in the furtherance of a commercial enterprise. This includes individuals who occasionally use CMVs to transport horses to races, tournaments, shows or similar events, even if prize money or scholarships are offered. For more information on the transportation of horses to shows, rodeos, etc., please click [Horse Q&A](#)

If this exception applies:



The transportation is not subject to the Federal Motor Carrier Safety Regulations. However, please beware that States may have more stringent regulations of their own.

If this exemption does not apply:



Proceed to Step 2.

Step 2 – Covered Farm Vehicle?

A Covered Farm Vehicle (CFV)

1. Is a straight truck or articulated vehicle,
2. Is operated by an owner or operator of a farm or ranch, or by a family member or employee of the owner or operator,
3. Transports agricultural commodities, livestock, machinery or supplies to or from a farm or ranch,
4. Has a license plate or some other means specified by the State that identifies it as a farm vehicle,
5. Is not used in for-hire motor carrier operations (but for-hire operations do not include use of a vehicle owned and operated by a tenant farmer to transport the landlord's portion of the crops under a crop-share agreement),
6. Is not transporting hazardous materials that require placarding, and either of the following:
 - a. Has a GVW or GVWR (whichever is greater) of 26,001 or less*, in which case the CFV exemptions in § 390.39 apply anywhere in the United States.
 - b. Has a GVW or GVWR (whichever is greater) of more than 26,001 pounds* and travels within the State where it is registered or, if traveling out of the State where it is registered, stays within 150 air-miles of the owner or operator's farm or ranch.

*Please note that these limits are different than the definitions for commercial motor vehicles found in § 383.5 or in § 390.5.

If this exception applies:



The transportation is not subject to Parts 382, 383, 395, 396, and Subpart E of Part 391 of the Federal Motor Carrier Safety Regulations. However, please beware that States may have more stringent regulations of their own.

If this exemption does not apply:



Proceed to Step 3.

Step 3 - Miscellaneous Agricultural Exceptions and Exemptions

Farm Waiver (CDL)

A farm waiver for operators of a farm vehicle, is available in some States when that vehicle—

1. Controlled and operated by a farmer, including operation by employees or family members,
2. Used to transport either agricultural products, farm machinery, farm supplies, or both to or from a farm,
3. Not used in the operations of a for-hire motor carrier, except for an exempt motor carrier as defined in §390.5 of this subchapter, and,
4. Used within 241 kilometers (150 miles*) of the farmer's farm.

*Note that this is not air-miles.

If this exception applies: A State may waive the requirements of Part 383, however, this waiver is limited to the driver's home State, unless there is a reciprocity agreement with adjoining States. **Contact your State driver's licensing office for additional information.**

Restricted CDL for Certain Drivers in Farm-Related Service Industries

A State may, at its discretion, waive the required knowledge and skills tests of subpart H of this part and issue restricted CDLs to employees of these designated farm-related service industries:

- Agri-chemical businesses
- Custom harvesters
- Farm retail outlets and suppliers
- Livestock feeders

If this exception applies: Refer to § 383.3(f) for additional information and contact your State driver's license office to determine if this type waiver is offered.

Farm Custom Operations

Certain exceptions from Part 391 are available to a driver who drives a commercial motor vehicle controlled and operated by a person engaged in custom-harvesting operations, if the commercial motor vehicle is used to—

1. Transport farm machinery, supplies, or both, to or from a farm for custom-harvesting operations on a farm; or
2. Transport custom-harvested crops to storage or market.

If this exception applies: Part 391 does not apply, except for § 391.15(e) and (f). (These sections discuss the disqualifications for texting while driving a CMV and using a hand-held device.)

Apiarian Industries (Bees)

This exception applies to drivers who operate commercial motor vehicles controlled and operated by beekeepers engaged in the seasonal transportation of bees.

If this exception applies: Part 391 does not apply, except for § 391.15(e) and (f). (These sections discuss the disqualifications for texting while driving a CMV and using a hand-held device.)

Step 3 - Miscellaneous Agricultural Exceptions and Exemptions (continued)

Certain Farm Vehicle Drivers (does not apply to combination vehicles)

A farm vehicle driver means a person who drives only a commercial motor vehicle that is—

1. Controlled and operated by a farmer as a private motor carrier of property;
2. Being used to transport either agricultural products, or farm machinery, farm supplies, or both, to or from a farm;
3. Not being used in the operation of a for-hire motor carrier;
4. Not carrying hazardous materials of a type or quantity that requires the CMV to be placarded; and
5. Being used within 150 air-miles of the farmer's farm.

If this exception applies: Part 391 does not apply, except for § 391.15(e) and (f). (These sections discuss the disqualifications for texting while driving a CMV and using a hand-held device.)

Farm Vehicle Drivers of Articulated Commercial Motor Vehicles (combination vehicles)

A farm vehicle driver means a person who drives only a commercial motor vehicle that is—

1. Controlled and operated by a farmer as a private motor carrier of property;
2. Being used to transport either agricultural products, or farm machinery, farm supplies, or both, to or from a farm;
3. Not being used in the operation of a for-hire motor carrier;
4. Not carrying hazardous materials of a type or quantity that requires the CMV to be placarded; and
5. Being used within 150 air-miles of the farmer's farm.

If this exception applies: The following rules do not apply to a farm vehicle driver who is 18 years of age or older and who drives an articulated commercial motor vehicle—

- Section 391.11(b)(1), (b)(6) and (b)(8) (relating to general qualifications of drivers);
- Subpart C (relating to disclosure of, investigation into, and inquiries about the background, character, and driving record of drivers);
- Subpart D (relating to road tests); and
- Subpart F (relating to maintenance of files and records).

Agricultural Operations

This exception applies to drivers transporting—

1. Agricultural commodities from the source of the agricultural commodities to a location within a 150 air-mile radius from the source;
2. Farm supplies for agricultural purposes from a wholesale or retail distribution point of the farm supplies to a farm or other location where the farm supplies are intended to be used within a 150 air-mile radius from the distribution point; or
3. Farm supplies for agricultural purposes from a wholesale distribution point of the farm supplies to a retail distribution point of the farm supplies within a 150 air-mile radius from the wholesale distribution point.

If this exception applies: Part 395 is not applicable during planting and harvesting periods, as determined by each State.

Transportation of Commercial Bees

If this exception applies: The provisions requiring a 30-minute rest break, do not apply to a driver engaged in the interstate transportation of bees by commercial motor vehicle as long as the bees are on the vehicle.

Transportation of Livestock

If this exception applies: The provisions requiring a 30-minute rest break, do not apply to a driver engaged in the interstate transportation of livestock by commercial motor vehicle while livestock are on the vehicle.

Step 4 – General Rules and Exemptions

FMCSR

Once you have determined if any miscellaneous agricultural exceptions and exemptions apply, you would then review the Federal Motor Carrier Safety Regulations for any general exemptions that may pertain to the driver and/or motor carrier's operation. For example, if the driver or motor carrier was determined to be subject to Part 395, you would determine if any of the following exceptions apply:

- Short-haul operations,
- State of Alaska or Hawaii exceptions,
- ELD Exception, etc.

BEFORE THE
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**KANSAS & OKLAHOMA RAILROAD, LLC'S MOTION TO
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BIFURCATION OF THE PROCEEDING**

EXHIBIT J

**INTERNATIONAL CENTER FOR
LAW & ECONOMICS -
*THE STATE OF COMPETITION***

The State of Competition in the US Rail Sector

Kristian Stout

ICLE Issue Brief 2025-11-04

I. Introduction

Building on earlier International Center for Law & Economics (ICLE) research¹ into railroads and common-carrier obligations—highlighting how the U.S. rail industry’s competitive structure has evolved beyond common assumptions, with intermodal rivals, contractual arrangements, and capital-market discipline now central to constraining service and pricing—this issue brief offers an update on the state of rail-industry competition in 2025. In particular, it examines how the federal courts’ statutory interpretation in the wake of the 2024 *Loper Bright* decision are likely to intersect with the economic realities of modern rail markets, and how that intersection might reshape the analysis of regulatory authority.

Three focal points structure the discussion. First, the law’s treatment of market dominance requires a return to the statutory and economic foundations of the Staggers Act—an approach that recognizes product and geographic substitution, consistent with Congress’ original intent, rather than freezing competition analysis in a 1980s procedural mold.² Second, and in the same vein, the concept of revenue adequacy under §10704 must be understood as a floor designed to attract capital and network investment, not a ceiling that caps profitability. Third, the broad preemption provisions of the Interstate Commerce Commission Termination Act of 1995 (ICCTA) continue to function as pro-competitive infrastructure by preventing state and local overlays that would otherwise balkanize operations, raise costs, and shrink the effective competitive frontier.

Taken together, these themes show how the economically oriented frameworks of the Staggers Act and ICCTA remain relevant but must be applied with renewed textual discipline and contemporary evidence of competition. Statutory fidelity—sharpened by post-*Loper Bright* jurisprudence—and economic recognition of intermodal and geographic rivalry both point toward the same conclusion: regulatory interventions should be tightly bounded by text and justified only where competitive forces fail. In a networked industry such as rail, uniformity and competition are not opposing values; indeed, uniformity is what makes competition possible.

II. Statutory Text as First Principle: *Grand Trunk* in the Post-*Loper Bright* Era

The U.S. Supreme Court’s 2024 decision in *Loper Bright Enterprises v. Raimondo* marked a watershed moment in the history of U.S. administrative law.³ In overruling *Chevron U.S.A. v. Natural Resources Defense Council*,⁴ the Court abandoned the doctrine of complete judicial deference to “reasonable” agency interpretations of ambiguous statutes. While it remains premature to make definitive

¹ Kristian Stout, *Common Carrier Reforms to Promote a Healthy Market in the Rail Industry*, INT’L CTR. FOR LAW & ECON. (2025), <https://laweconcenter.org/resources/common-carrier-reforms-to-promote-a-healthy-market-in-the-rail-industry>.

² See H. Rep. 96-1430 (1980), at 96-97, <https://www.congress.gov/bill/96th-congress/senate-bill/1946>.

³ *Loper Bright Enterprises v. Raimondo*, No. 22-451, 603 U.S. 369 (2024), available at https://www.supremecourt.gov/opinions/23pdf/22-451_7m58.pdf.

⁴ *Chevron U.S.A., Inc. v. NRDC*, 467 U.S. 837 (1984).

predictions about the post-*Loper* regulatory landscape, what is clear is that federal agencies will have to work harder to justify their own interpretations of relevant statutes.

In *Chevron*'s place, the Court has reaffirmed the Administrative Procedure Act's command that "the reviewing court shall decide all relevant questions of law," which ostensibly leaves a gap that will be filled by the pre-*Chevron* *Skidmore* deference.⁵ The practical effect is that agencies may no longer rely on interpretive leeway to advance broad policy objectives untethered from statutory text. For regulated industries such as rail, which has historically operated under a densely detailed statutory framework, this shift places renewed emphasis on statutory fidelity and the limits of delegated authority.

The 7th U.S. Circuit Court of Appeals' decision earlier this year in *Grand Trunk v. STB* demonstrates how courts are approaching rail regulation in the wake of *Loper Bright*, even without explicit reliance on that case.⁶ At issue was the Surface Transportation Board's (STB) reciprocal-switching rule, which would have compelled carriers to interchange traffic without a threshold finding that the incumbent's service was inadequate.⁷ For decades, both the Interstate Commerce Commission (ICC) and its successor, the STB, had construed 49 U.S.C. § 11102(c) to require such a predicate—phrased in earlier decisions as a showing of "actual necessity" or a "compelling reason," and operationalized as a finding of inadequate service.⁸

The STB's rule dispensed with this longstanding requirement, substituting a broader "public interest" inquiry.⁹ The 7th Circuit vacated the rule, holding that the statutory text and history compelled the conclusion that inadequate service remained an indispensable prerequisite.¹⁰ By treating that condition as optional, the STB was found to have exceeded its statutory authority. What's notable is that the 7th Circuit reached this conclusion without invoking *Loper Bright*.

The court's reasoning, however, exemplifies the post-*Loper* mode of review: a refusal to defer to an agency's policy preferences where they are untethered from statutory language. *Loper Bright* made clear that ambiguity in a statute does not authorize agencies to create new regulatory regimes,¹¹ and *Grand Trunk* shows the application of this principle in practice—although under the guise of traditional statutory interpretation. Together, the two decisions underscore that the relevant inquiry

⁵ Daniel Deacon, *Loper Bright, Skidmore, and the Gravitational Pull of Past Agency Interpretations*, NOTICE & COMMENT (Jun. 30, 2024), <https://www.yalejreg.com/nc/loper-bright-skidmore-and-the-gravitational-pull-of-past-agency-interpretations>.

⁶ *Grand Trunk Corp. v. Surface Transp. Bd.*, No. 24-1811 (7th Cir. 2025), available at <https://www.govinfo.gov/content/pkg/USCOURTS-ca7-24-01811/pdf/USCOURTS-ca7-24-01811-0.pdf>.

⁷ *Id.* at 2.

⁸ *Id.* at 12.

⁹ *Id.*

¹⁰ *Id.* at 30.

¹¹ *Loper Bright*, *supra* note 3.

is no longer whether an agency's policy is "reasonable," but whether Congress has authorized it expressly.

This shift is particularly significant for the economics of rail competition. It raises a heightened risk of invalidation for regulatory structures designed to reengineer market dynamics by administrative fiat, rather than by reference to statutory commands. In the rail market, a disciplined return to statutory text would also align with sound economic reasoning: statutes such as the Staggers Act¹² and the ICCTA¹³ embody deliberate tradeoffs between competition and stability, and between rate flexibility and minimum service guarantees. Treating those compromises as pliable invitations to agency policymaking not only distorts the legal framework but unsettles the economic equilibrium that Congress sought to maintain.

III. Improving Competition Analysis: Statutory Tradeoffs and Economic Realities

The statutory compromises struck in the Staggers Act of 1980 and the ICCTA reflect a deliberate balance between deregulation and the choice to retain limited safeguards. On the one hand, Congress sought to restore competitive market dynamics by freeing carriers from pervasive rate and service controls that had pushed the industry toward insolvency. On the other hand, Congress preserved some tools—such as the common-carrier obligation and maximum-rate jurisdiction—to guard against the possibility of abuse where genuine market power persisted. These statutory tradeoffs are central to the economics of rail competition; they aim to promote efficiency and investment while preventing the reemergence of monopoly rents in captive-shipper markets.

Yet the STB's competition analysis has not kept pace with these foundational compromises. Rate cases currently treat markets as static and narrowly defined, in contravention of Congress' original intent. This is in tension with the reality that shippers today operate within far broader competitive environments.¹⁴ Intermodal competition from trucking, pipelines, and even barges frequently constrains rail pricing, as does sourcing flexibility; shippers can alter production or distribution points to take advantage of regional rate differentials. By failing to incorporate these product and geographic alternatives into its analysis, the STB risks mischaracterizing the extent of rail-market power and, in turn, applying remedies that suppress efficient pricing or distort network investments.

This failure of modern competition analysis has emerged in rate cases where the STB refused to take account of many contemporary dynamics. In U.S. freight-rail regulation, a railroad's "market dominance" must be established before the STB will review a rate's reasonableness. Since 1998,

¹² S. 1946, 96th Cong. (1979–80) (Staggers Rail Act of 1980), <https://www.congress.gov/bill/96th-congress/senate-bill/1946>.

¹³ *Id.*

¹⁴ See Stout, *supra* note 1.

however, the STB has refused to consider evidence of product or geographic competition when determining market dominance in rate cases.¹⁵

In other words, the STB examines only direct transportation alternatives (such as other rail carriers or modes) and ignores whether shippers could switch to other products or sourcing locations to avoid the challenged rail rate. This policy, affirmed in the early 2000s by the U.S. Circuit Court of Appeals for the D.C. Circuit,¹⁶ was intended to simplify and expedite rate-dispute proceedings. But this narrow approach to market definition has become increasingly problematic in light of evolving competitive conditions. The STB's exclusion of broader competition evidence is increasingly problematic—particularly given evolving market conditions in the freight-rail industry.

A. Market Dominance in Rail Regulation: Statutory Framework and STB Policy

Under federal law, the STB cannot review the reasonableness of a challenged rail rate unless the shipper first shows the carrier has “market dominance,” which is defined by statute as “an absence of effective competition from other rail carriers or modes of transportation to which a rate applies.”¹⁷ Congress introduced this market-dominance test as part of railroad deregulation in the late 1970s and early 1980s in order to ensure that regulation applies only where a railroad has monopoly power.¹⁸

Early on, the ICC limited market-dominance inquiries to direct transportation competition—i.e., other railroads on the route (intramodal competition) or alternative modes like trucks, barges, or pipelines (intermodal competition).¹⁹ The commission explicitly declined to consider “indirect” competition, such as product substitutes or geographic alternatives, and the D.C. Circuit upheld that limited approach as a reasonable and efficient reading of the statute.²⁰

Soon after, however, the regulatory stance shifted. In the early 1980s the ICC reconsidered its rules and decided to include evidence of product and geographic competition in market-dominance determinations. For example, a railroad could fend off a market-dominance finding by showing that a captive shipper *could* avoid using its service by purchasing a substitute product (product competition) or by obtaining the commodity from or shipping it to a different location reachable by

¹⁵ *STB Stands by Its Decision to Exclude Product and Geographic Competition Considerations from Rate Complaints*, PROG. RAILROADING (Apr. 3, 2001), https://www.progressiverailroading.com/rail_industry_trends/news/STB-stands-by-its-decision-to-exclude-product-and-geographic-competition-considerations-from-rate-complaints-3366.

¹⁶ *Ass'n Amer. R.R. v. Surface Transp. Bd.*, 237 F.3d 676 (D.C. Cir. 2001).

¹⁷ 49 USC 10707(a).

¹⁸ See Public Law 94-210, 94th Cong., 90 Stat. 31 (Feb. 5, 1976) (Railroad Revitalization and Regulatory Reform Act of 1976), available at <https://www.congress.gov/94/statute/STATUTE-90/STATUTE-90-Pg31.pdf>; Staggers Rail Act, *supra* note 12.

¹⁹ *Ass'n Amer. R.R. v. Surface Transp. Bd.*, No. 01-1213 (D.C. Cir. Oct. 8, 2002), <https://law.justia.com/cases/federal/appellate-courts/cadc/01-1213/01-1213a-2011-03-24.html>.

²⁰ *Atchison, Topeka & Santa Fe Ry. v. ICC*, 580 F.2d 623 (D.C. Cir. 1978).

another carrier (geographic competition).²¹ In upholding this approach, the 5th U.S. Circuit Court of Appeals opined that a fuller consideration of competition aligned with the Staggers Act's goal for market-based rate setting where that was possible.²²

The STB was created in 1996 to replace the ICC, and that change brought another policy reversal. By 1998, the STB concluded that accounting for product and geographic competition was impractical and counterproductive. In its December 1998 order Ex Parte No. 627, the STB announced it would “no longer consider evidence of product and geographic competition” in market dominance determinations.²³ The new rule, finalized in 1999, categorically excluded these indirect competition factors from the market-dominance phase. In practical terms, this meant that after 1999, a railroad could not defeat a market-dominance claim by arguing that the shipper had outside alternatives, such as different inputs or sourcing regions.

This policy was promptly challenged by the rail industry. In *Association of American Railroads v. STB*, however, the court upheld the STB's discretion.²⁴ The D.C. Circuit found that the statutory definition of market dominance “does not require the STB to consider indirect (product and geographic) competition.”²⁵

B. Why Excluding Broader Competition Is a Mistake in Today's Environment

The STB's refusal to consider product and geographic competition rests on an economically impoverished view of how rail markets work. By drawing an artificial boundary around “indirect competition,”²⁶ the board effectively assumes away the competitive constraints that matter most to shippers in the real economy. The result is a regulatory framework that too easily finds “market dominance” where none exists, inviting unnecessary interventions that distort both pricing and investment.

The core problem is that ignoring product and geographic factors produces a caricature of market power. Antitrust law and modern competition economics insist that market definition must account for reasonable substitutes—whether those substitutes take the form of alternative products or alternative sources of supply.²⁷ If a buyer can avoid an alleged monopolist's rate increase by switching fuels or sourcing from a different region, the monopolist's leverage is limited.

²¹ *Western Coal Traffic League v. United States*, 719 F.2d 772 (5th Cir. 1983) (*en banc*).

²² *Ass'n Amer. R.R. v. Surface Transp. Bd.*, 306 F.3d 1108 (D.C. Cir. 2002).

²³ Prog. Railroading, *supra* note 15.

²⁴ AAR, *supra* note 22.

²⁵ *Id.*

²⁶ AAR, *supra* note 22.

²⁷ See, e.g., *United States v. E. I. du Pont de Nemours & Co.*, 351 U.S. 377 (1956).

Yet the STB has chosen to exclude these very considerations. It treats the relevant market as confined to a single origin–destination pair and asks only whether another carrier or mode is available for that specific modality and geography. This narrow approach is at odds with the analytical frameworks applied by the U.S. Justice Department (DOJ) and Federal Trade Commission (FTC),²⁸ and it systematically increases the likelihood of false positives: findings of dominance in settings where real-world competition disciplines rates.

For example, in the 2023 Merger Guidelines, the federal antitrust agencies examine potential market concentration as follows:

Absent price discrimination, a relevant market is described by a product or group of products and a geographic area. In determining whether a hypothetical monopolist would be in a position to exercise market power, **it is necessary to evaluate the likely demand responses of consumers to a price increase. A price increase could be made unprofitable by consumers either switching to other products or switching to the same product produced by firms at other locations.** The nature and magnitude of these two types of demand responses respectively determine the scope of the product market and the geographic market.²⁹

In other words, to determine the presence of market power in an antitrust case, it is necessary to look at the reasonable substitutes that would discipline that power. A rate-case evaluation has a nearly identical disposition: the question is whether a rail provider is exercising market power with rate increases. But to exclude relevant product and geographic markets is essentially to assume the outcome: a rail carrier is a monopolist because the STB decides its market is, by definition, a monopoly.

Concrete examples abound of how these product and geographic vectors undermine the STB’s position. In energy markets, railroads haul coal to power plants, but the rise of cheap natural gas and renewable alternatives has reshaped utility-fuel choices.³⁰ Abundant natural gas has transformed the generation mix, making coal a far less secure demand source. In practice, this means that even a railroad with sole access to a coal plant cannot raise rates with impunity; if rail delivery becomes too expensive, the utility can and will switch to gas-fired generation. The threat of substitution is a powerful competitive check. Yet under the STB’s framework, such a railroad is still deemed “market dominant,” and its rates subject to review and possible caps, as if no competition existed at all. Refusal to recognize product substitution is tantamount to automatically siding with shippers.

²⁸ See 2023 Merger Guidelines, U.S. DEP’T OF JUSTICE & FED. TRADE COMM’N (2023), § 4, <https://www.justice.gov/atr/2023-merger-guidelines> (broadly describing the mission of the FTC and DOJ to police antitrust harms in markets, including through the tools of market definition to determine where actual competition takes place).

²⁹ *Id.* (emphasis added).

³⁰ See, e.g., *Electricity Demand in the Eastern United States Surged from Heat Wave*, U.S. ENERGY INFO. ADMIN., (Aug. 5, 2020), <https://www.eia.gov/todayinenergy/detail.php?id=65604>.

Geographic flexibility exerts similar pressures. Shippers frequently have multiple sourcing or destination options.³¹ A utility facing high rail rates from Mine A may shift to Mine B, served by a different carrier or accessible by barge. Grain and chemical shippers may reposition shipments through different terminals or transloading points to arbitrage rate disparities. The economic reality is that the railroad's residual demand curve is more elastic than it appears if one were to look solely at a single corridor. But because the STB bars geographic evidence, its decisions miss this elasticity and treat the carrier as more powerful than it is. In so doing, it risks intervening in markets that are already self-corrected through shipper substitution.

This critique goes further: by generating false positives, the STB creates significant dynamic inefficiencies. If a carrier is wrongly found to have market dominance, its rates may be capped below what competitive conditions would warrant. That misalignment can deprive railroads of revenues needed to recover high fixed costs and to invest in infrastructure. Over time, this undermines the revenue adequacy that Congress deliberately sought to restore through deregulation. Worse still, regulatory error can distort resource allocation—e.g., prolonging coal shipments that would otherwise exit the market in favor of gas, simply because regulators suppress the rail rate below its market-clearing level. Such distortions are deeply inefficient; they keep uneconomic flows alive while discouraging efficient capital deployment.

The economic disconnect has only grown more pronounced with time. The freight market of 2025 bears little resemblance to that of 1998.³² Trucking competition has intensified, global supply chains have become more flexible, and advances in data and analytics make it easier than ever to quantify substitution possibilities. Rail-dependent industries—from agriculture to manufacturing—have become nimbler in shifting routes and suppliers. In this environment, the STB's categorical refusal to acknowledge indirect competition looks increasingly anachronistic. What may once have been justified as a way to simplify cases now functions as a “myopic” view of competition that blinds regulators to the dynamics of a global, intermodal marketplace.

The inconsistency is striking when compared with the STB's own treatment of other sectors. In pipeline cases, for instance, the STB has allowed evidence of product and geographic substitution to determine market power.³³ This discrepancy underscores that the exclusion is more the product of

³¹ See, e.g., *A Study of Competition in the U.S. Freight Railroad Industry and Analysis of Proposals That Might Enhance Competition: Executive Summary*, CHRISTENSEN ASSOCS. (Revised Final Report, Nov. 2009), available at <https://www.stb.gov/wp-content/uploads/files/docs/competitionStudy/Executive%20Summary.pdf> (concluding that access to transportation alternatives creates competitive pressure that lowers rail rates); Kevin McCoy et al., *The Importance of Highways to U.S. Agriculture*, U.S. DEP'T OF AGRIC. AGRIC. MKTG. SERV'N (Dec. 2020), available at https://www.ams.usda.gov/sites/default/files/media/Main_Highway_Report.pdf (noting that shippers will switch to highway transport as a lower-cost substitute when rail transport rates increase).

³² See Stout, *supra* note 1.

³³ See STB Docket No. 41685, *CF Industries, Inc., v. Koch Pipeline Co., LP*, (May 3, 2000).

legacy procedural habits than of principled economic reasoning. For a regulator charged with relying on competition “to the maximum extent possible,” that is a fundamental flaw.³⁴

C. Vulnerability of the STB’s Policy in the Post-*Loper Bright* Era

Ultimately, the courts originally upheld the STB’s exclusion of product and geographic competition primarily by invoking *Chevron* deference. In *Association of American Railroads v. STB*, the D.C. Circuit rejected the AAR’s challenge to the 1998 rule, not because it found the statute compelled the board’s reading, but because—under *Chevron*—the agency retained discretion to interpret the ambiguous statutory term “transportation” in its definition of market dominance.³⁵ As the D.C. Circuit explained in a follow-up case, the court explained:

Under *Chevron* the Board maintained discretion to interpret the market dominance definition so as to exclude indirect competition. Therefore, we deferred to its latest interpretation and accepted the Board’s reasoning.³⁶

In other words, the judicial imprimatur rested not on the strength of the statutory text, but on a doctrine of agency deference.

That doctrinal foundation has now collapsed. In *Loper Bright*, the Court held that the Administrative Procedure Act requires lower courts to exercise independent judgment in deciding all questions of law, and that no special deference is owed to agency interpretations of ambiguous statutes.³⁷ This means that if the STB’s rule is challenged anew, the reviewing court cannot defer to the STB’s administrative judgment about efficiency. It must instead ask whether the statutory text and structure authorize the categorical exclusion of relevant competition evidence.

On its face, the statute does not. Section 10707 defines market dominance as the absence of effective competition from other rail carriers or modes of transportation,³⁸ and Congress’ broader policy directives stress reliance on “competition and the demand for services” wherever possible.³⁹ Those provisions would be difficult to square with the board’s prohibition on parties presenting economically relevant evidence of competition. Thus, even setting aside the practical market realities that make product and geographic competition economically salient, the STB’s position would be, at best, on tenuous legal footing in the post-*Loper* landscape. Federal courts must now scrutinize the statutory text directly, without deference to the STB’s view that excluding such evidence reduces complexity.

³⁴ 49 USC 10101(1).

³⁵ AAR, *supra* note 16.

³⁶ AAR, *supra* note 22.

³⁷ *Loper Bright*, *supra* note 3.

³⁸ 49 U.S.C. § 10707(a).

³⁹ 49 U.S.C. § 10101.

Once *Chevron* is stripped away, what remains is a rule that sacrifices substantive accuracy for administrative convenience—an approach courts are unlikely to uphold when the statutory policy tilts so heavily toward incorporating competitive forces. Put simply, the STB’s blanket prohibition may have survived under the deferential regime of *Chevron*, but it faces a far tougher slog under *Loper Bright*’s command of independent judicial review. Indeed, the board has conceded that product and geographic competition can effectively constrain rail rates.⁴⁰

To remedy this legal infirmity, the STB should revisit its 1998 rule and restore consideration of product and geographic competition in market-dominance determinations, aligning its procedures with both the statutory text and contemporary competitive realities.

IV. Revenue Adequacy as a Floor, not a Ceiling

In the rail context, the statutory concept of “revenue adequacy” was introduced by §10704 of the Staggers Rail Act as part of Congress’ broader attempt to restore the financial health of an industry that had been brought to the brink of collapse by decades of pervasive rate and service regulation.⁴¹ The statutory text instructs the STB to:

maintain ... standards and procedures for establishing revenue levels for rail carriers ... that are adequate, under honest, economical, and efficient management, for the infrastructure and investment needed to meet the present and future demand for rail services and to cover total operating expenses, including depreciation and obsolescence, plus a reasonable and economic profit or return (or both) on capital employed in the business.⁴²

The central purpose was clear: Congress wanted private railroads to have the ability to attract capital and to maintain, modernize, and expand their networks.

Yet in recent decades, some have attempted to repurpose revenue adequacy as a tool to constrain railroads’ earnings, treating it as an implicit rate cap.⁴³ This view is in tension with both the statutory text and the economics of network investment. As Bernard Sharfman has argued, the text of §10704 links adequacy to the industry’s health and ability to attract capital; nothing in the statute authorizes the STB to use adequacy as the basis to lower maximum rate levels.⁴⁴ Revenue adequacy was meant

⁴⁰ See *Market Dominance Determinations—Product and Geographic Competition*, 3 S.T.B. 937, 945 n.49 (1998), available at <https://www.stb.gov/wp-content/uploads/BV-3-Jan98-Dec98-937.pdf> (acknowledging that “in certain circumstances product and geographic competition effectively limit railroad pricing”).

⁴¹ 49 U.S.C. §10704.

⁴² *Id.* at § 10704(a)(2).

⁴³ See, e.g., Russell Pittman, *Two Roads Diverged: Two Alternate Strategies for Protecting Captive Freight Shippers in the “Americas” Model of Freight Rail Restructuring*, U.S. DEP’T OF JUSTICE ANTITRUST DIV. (Expert Analysis Group Discussion Paper EAG 24-2, Oct. 2024), <https://www.justice.gov/atr/media/1372596/dl?inline> (framing “revenue adequacy” as a constraint (ceiling) in certain ratemaking contexts to prevent monopoly pricing by claiming it is used to establish “constrained market pricing” in rate cases with captive shippers).

⁴⁴ Bernard S. Sharfman, *The Significance of ‘Adequate Revenues’ Under the Staggers Rail Act of 1980*, TRANSPORTATION L.J. (forthcoming), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5236244.

to signal whether the system as a whole was capable of earning a competitive return on invested capital, not to set a ceiling for ratemaking in individual disputes. To invert adequacy from a floor into a cap is to treat a measure of industry health as if it were evidence of monopoly rents.

The economic problems with this inversion are significant. If regulators treat adequacy as a ceiling, they effectively punish railroads for achieving the very financial stability that Congress intended for them to attain. It also undermines market incentives to invest in long-lived, capital-intensive assets. Railroads face enormous, fixed costs in maintaining track, equipment, and safety systems, and their ability to fund these investments depends on sustained profitability.

Moreover, using adequacy levels as a *de facto* rate cap discourages carriers from pursuing efficiency gains or productivity improvements, since any financial gains will be clawed back through regulatory rate reviews. The result is a chilling effect on innovation and network expansion. As Sharfman emphasizes, this risks locking the industry into a “just enough to survive” equilibrium, when the statutory design was to ensure a robust, capital-attracting rail system.⁴⁵

Instead, revenue adequacy should be treated as a health diagnostic, not as a lever for rate suppression.⁴⁶ In economic terms, adequacy is about dynamic efficiency: ensuring that the industry has sufficient resources to maintain and improve its infrastructure over time. Misusing it as a ceiling prioritizes short-term distributional gains for certain shippers at the expense of long-term system investment, a tradeoff that is both economically inefficient and contrary to congressional intent. Moreover, such a ceiling approach creates perverse incentives: railroads may avoid pursuing new efficiencies or cost savings, fearing that any margin will trigger more aggressive regulatory intervention.

In short, the proper reading of §10704 is that revenue adequacy functions as a threshold assurance—a guarantee that the system can attract the capital it needs. It is not a metric for determining whether railroads are “too profitable” or whether rates should be capped below levels permitted by competition and statutory maximum-rate standards. Using adequacy in this way violates both the statutory scheme and the basic principles of regulatory economics. As Sharfman concludes, adequacy should be viewed as a floor that protects the industry’s viability, not as a ceiling that undermines the very incentives Congress sought to preserve.⁴⁷

Further, read through a post-*Loper Bright* lens, §10704’s architecture reinforces the reading that it was intended as a floor. The provision instructs the STB to assure adequacy so that private railroads can attract capital; it does not supply a freestanding mandate to cap earnings once that condition is met. Under *de novo* review, courts will ask whether Congress authorized the use the board proposes.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

Treating adequacy as a ceiling is not a textual implementation of § 10704; it is a policy preference that reassigns the statute's investment assurance into an earnings constraint. That is precisely the kind of atextual gloss that *Loper* makes difficult to defend. The safer—and more faithful—reading of the statutory text is that adequacy sets the investment floor, while any limits on rates must be justified case-by-case under the separate maximum-rate provisions and on a record that demonstrates actual market power.⁴⁸

V. Preemption and the Networked Industries

Rail is the paradigmatic network industry. It relies on sunk, interconnected assets and generates value from seamless interstate operations. Congress codified that reality in the ICCTA, which vests the STB with exclusive jurisdiction over “transportation by rail carriers” and expressly preempts state and local regulation “with respect to regulation of rail transportation.”⁴⁹

For nearly three decades, courts have read §10501(b) to bar state and local measures that seek to manage or govern rail operations, while tolerating truly general, neutral laws (e.g., building codes, fire and electrical safety) that do not unreasonably burden rail service. Appellate decisions have repeatedly enshrined this division. This congressional choice to make federal regulation “completely exclusive” underscores that preemption was an essential component of the ICCTA's deregulatory design.⁵⁰ State or local schemes that function as rail-specific permitting, siting, or veto devices are preempted; truly general exercises of police power that do not intrude on operations typically survive.⁵¹

The doctrinal payoff of this express preemption is a single national baseline—not because uniformity is a value in itself, but because uniformity is part of what makes competition possible for a networked industry. It keeps assets fungible, schedules reliable, and intermodal/geographic substitutions viable.

⁴⁸ There are other instances in the statute that support this view. See 49 U.S.C. § 10101(3) (stating U.S. policy is “to promote a safe and efficient rail transportation system by allowing rail carriers to earn adequate revenues, as determined by the Board”); 49 U.S.C. § 10707(a)(2) (requiring the board to “make an adequate and continuing effort to assist those carriers in attaining revenue levels prescribed under this paragraph”); 49 U.S.C. § 10704(a)(3) (directing the board to “annually determine which carriers are earning adequate revenues”); 49 U.S.C. § 10701(d)(2) (instructing the board to consider “the policy of this part that rail carriers shall earn adequate revenues” when evaluating rate reasonableness).

⁴⁹ 49 U.S.C. § 10501(b).

⁵⁰ See H.R. Rep. No. 104-311, at 95-96 (1995) (explaining that the ICCTA eliminated a limited state police-power exception “as unnecessary, in view of the Federal policy of occupying the entire field,” and that “[a]lthough States retain the police powers reserved by the Constitution, the Federal scheme of economic regulation and deregulation is intended to address and encompass all such regulation and to be completely exclusive”).

⁵¹ *Green Mountain R.R. Corp. v. Vermont*, 404 F.3d 638, 643-46 (2d Cir. 2005) (ICCTA § 10501(b) broadly preempts state land-use permitting that functions as a rail-specific veto; notes that *generally applicable* health/safety codes may apply if they don't unreasonably burden operations); *N.Y. Susquehanna & W. Ry. Corp. v. Jackson*, 500 F.3d 238, 252-54 (3d Cir. 2007) (ICCTA preempts state efforts that regulate operations, while allowing neutral laws of general applicability that do not unreasonably interfere); *Friberg v. Kan. City S. Ry. Co.*, 267 F.3d 439, 443-45 (5th Cir. 2001) (Texas anti-blocking statute preempted because it directly regulates train operations/scheduling).

Congress itself confirmed this structure by carving out narrow, express exceptions—e.g., the Clean Railroads Act of 2008,⁵² which subjects certain solid-waste rail-transfer facilities to specified state and local oversight and gives the STB a tailored “land-use-exemption permit” role.⁵³ Thus, when Congress wants state overlay local rules within the rail domain, it does so explicitly. Absent such instruction, the ICCTA’s default is federal exclusivity over rail transportation.

Two additional clarifications matter. First, preemption analysis under §10501(b) is statutory; it is not a free-floating balancing test. The question is whether the challenged measure regulates rail transportation or amounts to a rail-targeted impediment to operations, facilities, or services. Second, overlapping statutes (e.g., the Federal Railroad Safety Act (FRSA))⁵⁴ have their own preemption/savings architectures; they do not diminish ICCTA’s independent field of exclusivity over economic regulation of rail transportation.

States often invoke the FRSA to justify regulatory overlays where the Federal Railroad Administration has not acted, but that argument misreads the statutory framework. The FRSA and ICCTA address distinct spheres—safety versus economic regulation—and the presence of an FRSA savings clause does not dilute the ICCTA’s field preemption over rail transportation. As the STB has explained, “when both the Board and FRA have jurisdiction, the later-enacted ICCTA preemption may impose restraints on state action even where the FRSA preemption does not.”⁵⁵ The DOJ has taken the same position, emphasizing that:

[T]he FRSA cannot be read to create a loophole in the ICCTA that would permit a patchwork of state and local regulation over rail transportation simply because the regulations also happen to touch on “safety-related” matters.⁵⁶

While *Loper Bright* casts a long shadow here as well, in the case of ICCTA §10501(b), the statutory command is so clear, and the legislative intent so unmistakably deregulatory, that both the STB and the courts should interpret preemption broadly and consistently. Congress paired express preemption with exclusive federal jurisdiction precisely to prevent state and local interference with rail operations.

In that context, *Loper Bright* reinforces, rather than undermines, the STB’s authority to articulate a uniform preemption policy grounded in the statute’s text. Both the board and reviewing courts should therefore err on the side of preemption: neutral, generally applicable laws may apply only insofar as they do not manage or govern rail transportation or impose unreasonable burdens on operations, while policy-driven efforts to steer routing, scheduling, equipment, or facility use are

⁵² 49 U.S. Code § 10908.

⁵³ 49 U.S. Code § 10909

⁵⁴ 49 U.S.C. §20109.

⁵⁵ STB Amicus Br. at 6, 9, *Iowa, Chi. & E. R.R. v. Wash. Cnty.*, 384 F.3d 557 (8th Cir. 2004) (No. 03-3136), 2004 WL 6395939.

⁵⁶ Brief for the United States as Amicus Curiae, *Ohio v. CSX Transp.*, 144 S. Ct. 545 (2024) (No. 22-459), 2023 WL 8112708, at *13.

preempted at the threshold. The same textual discipline illustrated by *Grand Trunk* and the earlier market-dominance discussion applies no less to ICCTA preemption.

For a networked industry like rail, preemption is itself an infrastructure for competition. As discussed above, intermodal rivals and product/geographic substitutions provide discipline for modern rail markets. Patchwork regulation erodes those constraints in three predictable ways.

- Latency and uncertainty—state-by-state permits, facility-specific approvals, or rail-targeted fees—would lengthen cycle times and inject variance that shippers cannot hedge, dulling the price discipline of alternative routes or modes.
- Loss of fungibility—locomotive or equipment restrictions, conflicting emissions or crew mandates—reduces the interchangeability of assets across state borders, shrinking the practical option set for shippers.
- Cost layering—compliance costs accumulated across jurisdictions—raises delivered prices and compresses the competitive frontier that the STB should recognize in market-power analyses.

By contrast, the ICCTA’s uniform baseline lowers search and compliance costs and preserves the reliability and asset mobility on which effective competition depends.

A. Renewed State Overlays, Familiar Fault Lines

Various familiar pressure points have resurfaced since our 2024 report because of recent state initiatives. Several jurisdictions have adopted environmental controls tailored to rail operations, most notably “waste-by-rail” regimes that single out putrescible or construction-and-demolition material moved by rail.⁵⁷ These laws typically require enclosure, impose throughput or dwell-time caps, mandate buffer zones, or condition movement on rail-specific permits; they function, in practice, as commodity-specific operational vetoes, rather than neutral health measures.

Some states have also imposed rail-only fees framed as safety or hazardous-materials assessments. Typically, these are keyed to train movements, railcars, or hazardous contents, and dedicated to rail-specific funds coupled with inspection or planning mandates. Such fees operate less like neutral taxation and more like targeted regulation of operations and throughput.

For example, in 2023, Minnesota revived and increased a railroad/pipeline safety assessment that funds hazmat readiness—\$4 million annually, with 70% charged to railroads according to route-

⁵⁷ See, e.g., N.Y. Environmental Conservation Law § 27-0712, <https://law.justia.com/codes/new-york/env/article-27/title-7/27-0712> (requires railcars hauling putrescible waste to be sealed with hard lids and non-putrescible waste to be covered with hard tarps); N.J.A.C. 7:26-2D.1, <https://www.law.cornell.edu/regulations/new-jersey/N-J-A-C-7-26-2D-1> (imposes operational standards on rail carriers that transfer solid waste to/from rail cars, including sealed containers at all times and time-at-facility limits (e.g., a limit for putrescible waste of less than or equal to 72 hours)); New York City DSNY siting rules for putrescible and C&D transfer stations, available at <https://www.nyc.gov/assets/dsny/downloads/about/adopted-rules/about-adopted-rule-siting-requirements-transfer-stations-0815.pdf> (requires minimum buffer distances from residential/sensitive uses (e.g., 400–700 feet) and throughput conditions, keyed in part to whether material is moved by rail or vessel).

miles—and with additional charges after “significant response” incidents. The state also created dedicated accounts for the hazmat rail-safety program.⁵⁸

The California Air Resources Board’s (CARB) 2023 In-Use Locomotive Rule would have required railroad operators to fund emissions-indexed spending accounts; comply with a 30-minute idling cap and detailed reporting; and meet age-based operational limits, with zero-emission milestones for switchers and line-haul locomotives.⁵⁹ In that case, litigation followed. After CARB represented it would not enforce the rule—pending Environmental Protection Agency (EPA) action—it withdrew its authorization request in January 2025 and noticed a repeal. This left the rule as a salient—but ultimately withdrawn—example of a state rail-specific equipment/emissions mandate.⁶⁰

B. Preemption as Pro-Competitive Infrastructure

ICCTA preemption is not a peripheral doctrine; it is integral to the statutory and economic synthesis developed here. As *Loper Bright* underscores, the statutory text controls and §10501(b) provides a uniquely clear textual command: exclusive federal jurisdiction, paired with express preemption of state and local regulation of rail transportation.

Reaffirming that command serves two core functions. First, it keeps regulatory authority within the statute’s bounds, ensuring that neither state overlays nor agency improvisations displace the structure Congress enacted. This was reflected in the jurisprudential theme running through *Grand Trunk* and beyond. Second, it preserves the conditions under which competition operates in a network industry. By blocking state interventions that would otherwise degrade reliability, raise delivered costs, and constrict product and geographic alternatives, ICCTA preemption protects the very competitive frontier the STB must recognize in its analyses.

In network industries, uniformity is not antithetical to competition; it is essential. Rail demonstrates this most vividly: only with a stable and uniform federal baseline can intermodal and geographic substitution discipline carrier pricing and investment choices. The ICCTA is the legal mechanism that delivers this uniformity, and in doing so, it ties the jurisprudential discipline of post-*Loper Bright* review to the economic realities of modern rail competition.

V. Conclusion

Read in context of the post-*Loper Bright* frame, the controlling question across rail regulation is no longer whether an agency’s policy is “reasonable” but whether Congress authorized it. *Grand Trunk* supplies the template. Begin with the statute, its structure, and settled predicates; do not

⁵⁸ Minn. Stat. § 299A.55 (2023), available at <https://www.revisor.mn.gov/statutes/2023/cite/299A.55/pdf>.

⁵⁹ *Final Regulation Order: In-Use Locomotive Regulation*, CAL. AIR RES. BD. (2022), Title 13, Cal. Code Regs. §§ 2478–2478.17, available at <https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2022/locomotive22/fro.pdf>.

⁶⁰ *Public Hearing to Consider the Proposed Repeal of the In-Use Locomotive Regulation: Staff Report, Initial Statement of Reasons*, CAL. AIR RES. BD. (Apr. 29, 2025), available at <https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2025/locorepeal/isorlocorepealada.pdf>.

creatively interpret around them. That same textual discipline requires that market-dominance and rate decisions must rest on the record's evidence of competition, rather than on assumptions that markets are captive or static.

The economic corollary is straightforward. Where product and geographic substitution exist, competition analysis must admit it. Moreover, revenue adequacy under §10704 must be treated as the floor that Congress designed to sustain investment, not as an *ad hoc* ceiling on earnings. Where rates are to be restrained, the work belongs under §10707 on a case-specific record of market power. This alignment—text first, evidence next—preserves incentives to maintain and expand a capital-intensive network, while targeting intervention to those narrow settings where true dominance persists.

Finally, ICCTA preemption is not peripheral; it is infrastructure for competition in a network industry. A uniform federal baseline lowers latency and compliance costs, preserves asset fungibility and reliability, and keeps intermodal and geographic rivalry viable. Reaffirming robust §10501(b) preemption, modernizing competition analysis, and maintaining the floor reading of revenue adequacy would together yield a coherent legal-economic program. Statutory fidelity is not at odds with rail competition; it is the precondition for it.

BEFORE THE
SURFACE TRANSPORTATION BOARD

NOR 42185

WESKAN GRAIN LLC V. KANSAS & OKLAHOMA RAILROAD, LLC

**KANSAS & OKLAHOMA RAILROAD, LLC'S MOTION TO
REJECT THE COMPLAINT OR, IN THE ALTERNATIVE,
FOR EXPEDITED DETERMINATION OF JURISDICTION AND
BIFURCATION OF THE PROCEEDING**

EXHIBIT K

**SCOULAR COMPANY EMAIL TO ALJ
SOULIKIAS, FD36849 DISCOVERY PHASE**

Robert A. Wimbish

From: Kylie Kuhl <KKuhl@scoular.com>
Sent: Friday, September 26, 2025 12:52 PM
To: Alj.soulikias.inbox@stb.gov
Cc: Robert A. Wimbish
Subject: STB-Mandated Traffic and Rate Disclosure - Kansas & Oklahoma Railroad and Weskan Grain

Judge Soulikias,

I am writing on behalf of my client, The Scoular Company ("Scoular"). Scoular is a customer of the Kansas & Oklahoma Railroad ("K&O") and has been made aware of the dispute between K&O and Weskan Grain, LLC ("Weskan") and of Weskan's request for K&O's disclosure of certain non-signatory contracts ("NOC"), two of which are with Scoular. Scoular considers the NOCs and their terms confidential and proprietary information and objects to their disclosure to Weskan, a competitor of Scoular's. The NOCs contain Scoular-specific rate information, rail traffic flows, and other sensitive business information that Scoular would not share with third parties, let alone to a competitor of Scoular's. Disclosure of this information, even if limited to Weskan's outside counsel and consultants, would be detrimental to Scoular and its ongoing grain business. Thank you for your consideration.

Respectfully,
Kylie Kuhl

Kylie A. Kuhl

Associate General Counsel
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Omaha, NE 68154



BEFORE THE
SURFACE TRANSPORTATION BOARD

NOR 42185

WESKAN GRAIN LLC V. KANSAS & OKLAHOMA RAILROAD, LLC

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REJECT THE COMPLAINT OR, IN THE ALTERNATIVE,
FOR EXPEDITED DETERMINATION OF JURISDICTION AND
BIFURCATION OF THE PROCEEDING**

EXHIBIT L

**BARTLETT GRAIN EMAIL TO ALJ
SOULIKIAS, FD36849 DISCOVERY PHASE**

Robert A. Wimbish

From: Scott Schwend <s.schwend@bartlettco.com>
Sent: Thursday, September 25, 2025 10:06 PM
To: alj.soulikias.inbox@stb.gov
Subject: Concerns re Disclosure of Competitively Sensitive Information (FD 36849)

Importance: High

Dear Judge Soulikias,

My name is Scott Schwend, and I am the corporate counsel for Bartlett Grain Company, LLC (“Bartlett”). I am reaching out to voice our concerns with and objections to certain discovery requests in connection with the paper barrier dispute involving the Kansas & Oklahoma Railroad (“K&O”) and Weskan Grain, LLC (“Weskan”) before the Surface Transportation Board (“STB”). We have been advised that, as part of this case, you are conducting an *in-camera* review to determine whether to compel the production of certain K&O records that Weskan’s counsel has demanded access to. Our understanding is that the requested records include Bartlett’s private grain transportation contracts, service, traffic volumes and pricing data in K&O’s possession. Weskan is a direct competitor to Bartlett in the grain market, specifically as it relates to our elevators located in Towner, Colorado and Scott City and Healy, Kansas. In addition, the terms of the requested transportation contracts are commercially sensitive. Not only are the service and rate terms of our transportation arrangements with the K&O specific to Bartlett, but the requested records will also reveal information about Bartlett’s grain traffic flows, business costs and specific transportation requirements.

We are aware that the STB issued a protective order limiting access to this information to Weskan’s outside lawyers and consultants only and prohibiting disclosure to in-house Weskan personnel. However, we remained concerned that even this more limited access is problematic where the outside counsel and consultants receiving such sensitive information are aligned in interest with Weskan and their knowledge of the highly sensitive information will most certainly impact their representation of Weskan in the future. Accordingly, given the high likelihood of prejudice to Bartlett if competitively sensitive information is shared with Weskan or its outside representatives, we respectfully request that such information remain confidential and protected.

Thank you,

Scott Schwend

BEFORE THE
SURFACE TRANSPORTATION BOARD

NOR 42185

WESKAN GRAIN LLC V. KANSAS & OKLAHOMA RAILROAD, LLC

**KANSAS & OKLAHOMA RAILROAD, LLC'S MOTION TO
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BIFURCATION OF THE PROCEEDING**

EXHIBIT M

**KIOWA COUNTY INDEPENDENT ARTICLE
MAY 10, 2023**

[News](#) · Stefan Soloviev Says First Unit Train Sent on CoPac Railroad from Weskan Grain His Biggest Achievement



History was made in Kiowa County on May 3, 2023, when the first unit train was filled with local milo at Weskan Grain and then sent to market along the Colorado Pacific Railroad.

John Sherman

NEWS

Stefan Soloviev Says First Unit Train Sent on CoPac Railroad from Weskan Grain His Biggest Achievement



BY BETSY BARNETT

May 10, 2023

On Wednesday, May 3rd, history was made in Kiowa County and a new economic era may have just opened up for the County as well as far beyond its borders. According to Stefan Soloviev, CEO of Soloviev Group, a multi-billion dollar privately owned conglomerate, “It was my biggest achievement—the goal of my life.”

That statement about a business transaction in Kiowa County, Colorado seems a bit overstated when one considers the type of industries associated with the 8 Regions located across the United States within Soloviev Group’s extensive holdings. The industries are lucrative and quite varied including real estate, art collections, casinos, hospitality, mining, landscaping, vineyards, renewable energy, transportation and railroads, and agricultural businesses.

On that historically significant day last week in Kiowa County crews from Soloviev’s Colorado Pacific Railroad loaded a unit train with 110 full grain cars in 36 hours at the newly built Weskan Grain Elevator, located at Stockton Siding just east of Plainview School on Highway 96 in eastern Kiowa County, and delivered the unit train to the Union Pacific interchange at NA Junction (near Pueblo) to be taken on to a market in the Houston, TX area. The train cars were filled with milo grown by not only Crossroads Ag, owned by the Soloviev Group, but by other local producers, as well.



Ty Lin Williams

To understand the enormous significance of what exactly happened on Wednesday, May 3, 2023, we have to go back to another time in Kiowa County. The railroad line that runs the entire length of the county was first constructed in the late 1880s by the Missouri Pacific Railroad and was the catalyst for the town-building that followed. Each of the towns in the county including Arlington, Haswell, Eads, Chivington, Brandon, Sheridan Lake, and Towner were established next to the railroad. That railroad was the lifeline of the county and a significant connector to the outside world—until one day it wasn't.

It seems powerful men can determine the economic demise of an entire area when they just stopped the train in 1996. One normal day the communities along the line saw 21 trains running through the county, as was usual, and, literally, the next day the tracks had gone silent—and stayed silent for a very long, devastating period of time.

The 122-mile stretch of track known as the Towner line was acquired by the Union Pacific in 1996 as part of its merger with Southern Pacific Railroad. However, the Union Pacific already had one line running across Eastern Colorado, they did not need two. The state of Colorado stepped in and bought the Towner line railroad. The purpose? To keep it intact. The state then, unfortunately, turned around and sold the railroad, a line they had bought to protect from being scrapped, to V&S Railroad, who promised to keep the railroad in service. The thing was—V&S was a railroad scrap and salvage company.



Ty Lin Williams

While Kiowa County was languishing economically looking for a reasonable way to get their grain out of the county without a significant cost in transportation where it is well-known that time means money, Stefan Soloviev was working his way toward Kiowa County, a place that lacked agribusiness infrastructure but had plenty of producers who were being shut out of the markets.

Soloviev grew up in New York City and got into commodities trading, particularly in the grain markets, after leaving New York University without graduating. According to an April 2, 2023 article in Leaders Magazine, Soloviev related the story, “Back around 2000, I realized that some commodities, especially grain prices, were not keeping up with inflation. Even though inflation was historically low at the time, I knew grain was going to become more expensive. You could go back 30 or 40 years on the price of wheat, for example, and there was no real change in price other than select times during specific world events. I quickly shifted from not only wanting to trade grains, but also to own farmland – which at the time was totally out of favor – and produce grains.”

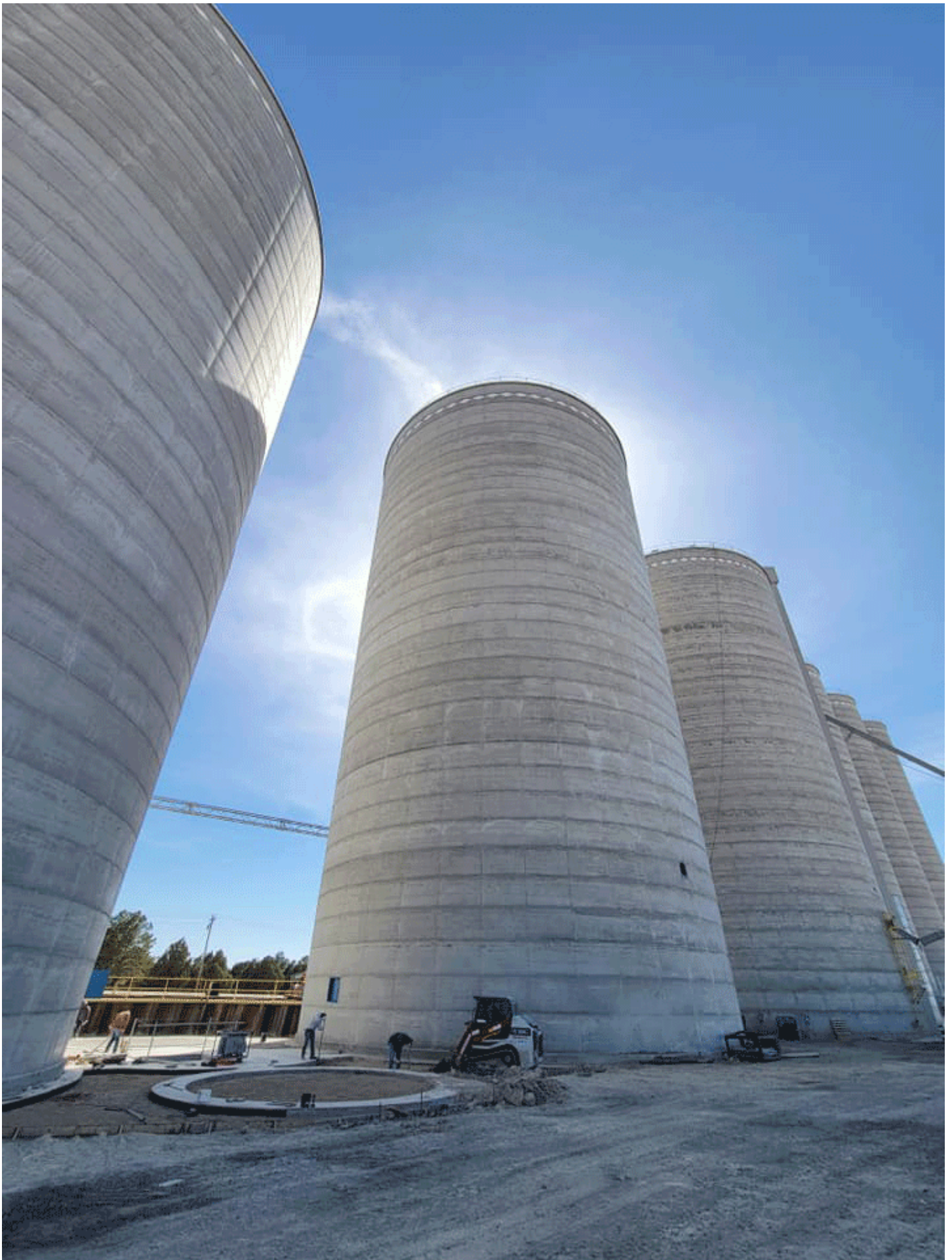
Soloviev then made a major decision uprooting his family to Wichita, Kansas to learn how to be a farmer. He met the local producers, studied the markets more, figured out milo was a crop that held significant importance as it was none-gmo so China would buy it—and buy it at a better price than other markets. Milo was easier to grow and more drought resistant. Then corn seed was also developed into a more drought-resistant crop which opened even more opportunity for an enterprising young farmer.



That's when Soloviev made his move. He formed Crossroads Agriculture and came to an area that most people avoided at all costs. "I finally settled on the Kansas/Colorado border which was a place I felt would be perfect for expansion. It was an area where no one was looking for land. You would barely see anyone from Denver or Iowa looking to take a shot there, much less any investors from the big cities. Less rainfall meant more risk, but also meant much larger fields at cheaper prices than the fields around Wichita. In my mind, it was also a prime area not only for the westward expansion of the drought-resistant corn, but for newer technologies for tomorrow. The plan was simple – leverage as much land as possible through the farm credit banking system. Then, as the grain price started to go the way I thought it would, the price of the acreage – as low as \$200 an acre back then – would follow and allow more equity for more land."

Since that decision to establish Crossroads Ag in 2007, the Soloviev Group is currently listed by The Land Report as the 26th largest landowner in the United States owning approximately 500,000 acres in its holdings in Colorado, Kansas, and New Mexico.

The formation of Crossroads Ag put Soloviev in the area soon after the train stopped running on the Towner line. Soloviev told the Independent in a February 2018 interview, "Whenever I was out there, which was pretty often, I'd drive over those tracks. That line runs straight west, and that always interested me. So, I looked into the situation. I began watching the headlines, talking to some of the locals, just trying to learn what I could."



Ty Lin Williams

By that time, V&S began to make its move to scrap the railroad. They presented their case to the Surface Transportation Board (STB) that the railroad should be abandoned, and the track pulled up and scrapped.

Fortunately, a STB ruling required V&S to wait for 2 years before tearing up the track. Meanwhile, Soloviev says his interest kept growing. "I don't get into anything unless I plan to win, and I knew, if I got into it, it was going to be a fight. If I hadn't stepped in when I did, the railroad would have been gone."

Then began an excruciating legal battle between Soloviev and V&S. In response to Soloviev's application to the STB the scrappers at V&S, in 2014, changed their tactics and brought equipment in pulling up tie spikes and anchors from four out of every five ties, starting at the Western end of the line. Soloviev then forced the sale stopping V&S Railway's destruction of the line.



Ty Lin Williams

Soloviev told the Independent, “It was the first forced sale in the country since the early 1970s.”

Finally, in 2018, the Towner line, 122 miles from Towner to NA Junction just east of Pueblo, was purchased by the Soloviev Group for \$10 million and the Colorado Pacific Railroad was born. Soloviev had saved the railroad, but it took many years and millions of dollars to do it. It was time to put his new railroad to work. First, there was much work to be done on the actual line and for that he brought in CWC Rail, Inc. owned and operated by Matt Prince, an experienced railroad contractor from Tennessee, and Harvey Crouch of Crouch Engineering. Despite fighting their way through a pandemic that Prince estimates put the project back a year, the old Towner line was finished in late 2020 costing an estimated \$3.5 million to rehab.

The final project before the rail line could open was to complete the interchange at NA Junction. The interchange consisted of the construction of two new sidings in a railyard that will afford flexibility for the Towner line. The construction of the new sidings in the interchange at NA Junction will allow the Burlington Northern Sante Fe (BNSF) Railroad or Union Pacific Railroad, and the local Colorado Pacific Railroad to set off and pick up loaded and empty freight cars finally opening rail traffic to the west for farmers in eastern Colorado and western Kansas. The NA Junction project came in on time and was finished just as 2021 rolled in with a price tag of \$3.4 million.

As his railroad was making significant progress and would soon represent a way to move the local grain to markets never before accessible for local producers toward the West, Soloviev was facing another issue—the lack of significant grain storage. With his business sense he knew he needed his own grain storage to help in lowering costs but had been unable to buy or lease the elevators along the Towner line as grain conglomerates Bartlett Grain—now Savage—and Scoular Grain owned or leased the major grain elevators along the rail line in Haswell, Eads, and Towner.



Ty Lin Williams

Soloviev said, “I’ve faced 18 years of hurdles in trying to get the best price I can for not only my products but also for local producers in Kiowa, Prowers, Cheyenne County and western Kansas. I keep trying to cut out the middleman. It was us against the world.”

The decision was made to build his own grain elevator that would not only serve his needs for Crossroads Ag but also improve the economics for the local producers. As of last week, the Soloviev Group owns and operates Weskan Farms, a massive grain elevator located strategically on Highway 96 and along the Colorado Pacific Railroad.

According to Weskan Grain CEO Will Bramblett the Stockton Railroad Siding consists of 7 concrete bin towers and 4 steel bins. “It can currently hold 3 million bushels of differing grains with the ability to expand for future needs.”

Bramblett, a Texas Tech graduate who has been in the grain industry for 20 years in a number of different states says the project cost somewhere in the neighborhood of \$20 million.

According to Randy Williams, owner of R&T Redi Mix, a local company out of Brandon and Lamar, “We poured the first three towers (of the seven) by shuttling cement back and forth from the Lamar plant to the Weskan Grain site. It took us 6 months and a lot of long days to complete the first three towers. Once they decided to build four more towers, we built a portable batch plant right on the site. That project began in September (2022), and we finished up in April.”

It is hard to estimate how much cement went into the project, but Williams says it was in the neighborhood of 13,000 to 14,000 yards of cement. They poured cement in all types of weather. The cement was carried up a belt on the large outside leg and then dumped down a spout. McPherson Concrete out of Kansas was the general contractor on the job.

“The facility is special as Weskan Grain is being dual served by two Class I railroads which should make them very competitive with other grain railroads in the region,” explains Bramblett. He further explained that these trains are heavy

axle meaning there is no limit on the length of cars that can be loaded.

Bramblett indicated that Soloviev has plans to expand Weskan Grain to a new facility at Galatea located between Eads and Haswell. “The Galatea project is located on the Colorado Pacific Railroad right-away property with Highway 96 on the south side and the railroad on the north side for easy access not only for the producers who will unload grain at a high speed but also for the train who will utilize shuttle cars to pick it up.”

In addition, according to Matt Prince, general manager and operator of Colorado Pacific Railroad, “The purpose of the satellite elevator at Galatea is for the grain producers further west to save on time and fuel in getting their grain to a market. We’re buying used hopper cars—65 to 100—to shuttle the grain from Galatea to the Weskan Grain elevator at Stockton Siding.”

Which brings us full circle on the history-making day last week. Prince played a major role in the first unit train going out of Weskan Grain to NA Junction and then on to markets in the Houston area. “We met the inbound Union Pacific unit train with the 110 cars at interchange. They got off and we got on and headed east to Weskan Grain. It takes 6 hours one-way to arrive at Weskan Grain. We had a few bugs that we identified while going through the first experience of loading the cars that had to do with the elevator’s processes. It took us 36 hours total to get the unit train back to interchange and off to market.” Even with the learning curve the train crew met the 48-hour time limit with time to spare.

As for Bramblett, “The sole purpose at Weskan Grain is to offer our services and time to area producers. We are driven to provide a more competitive price, give producers more advantages, and outstanding service.” Will Bramblett says he wants producers to call him. “I don’t want to just say we’re open for business, I want to talk to producers and explain how we can give them a competitive edge. I will answer texts and phone calls so do contact me at 830-328-2028.

Soloviev says, “Weskan Grain at Stockton Siding is the epicenter of Soloviev Group.” He shares the story that he chose the name Weskan Grain because of its significance to him personally, “The first time I heard the word Weskan was when

he watched the great Todd Okeson from the tiny town of Weskan, KS play in the 2004 NCAA Sweet 16 with Nevada. I thought at the time, what a neat name to describe a place in Western Kansas and on the border with Colorado. It struck me how impressive the people from Okeson's hometown must be."

Soloviev says he is doing something special with Weskan Grain and Colorado Pacific Railroad. "We're developing a new way to do agribusiness. I want the local producers to call me so I can come visit with them. I don't care if they have 40 acres or 40,000 acres of farmland, I'd love to talk to them."

CERTIFICATE OF SERVICE

I hereby certify that I have, this 17th day of June, 2026, served a copy of the foregoing motion via electronic mail to all parties of record in this docket.

/s/ *R. A Wimbish*

Robert A. Wimbish
**Counsel for Kansas & Oklahoma
Railroad, LLC**