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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Proceedings
July 24, 2019
Part of
Public Record

DOCKET NO. FD 36319

**TEXAS PACIFICO TRANSPORTATION, LTD.
-- TRACKAGE RIGHTS EXEMPTION --
UNION PACIFIC RAILROAD COMPANY**

VERIFIED NOTICE OF EXEMPTION

TEXAS PACIFICO TRANSPORTATION, LTD.

Jeffrey S. Lisson
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San Angelo, TX 76903
325-655-4889
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FEE RECEIVED
July 24, 2019
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FILED
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Dated: _____, 2019

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**TEXAS PACIFICO TRANSPORTATION, LTD.
-- TRACKAGE RIGHTS EXEMPTION --
UNION PACIFIC RAILROAD COMPANY**

VERIFIED NOTICE OF EXEMPTION

Texas Pacifico Transportation, LTD. ("TXPF") submits this Verified Notice of Exemption, pursuant to 49 C.F.R. § 1180.2(d)(7), for exemption of overhead trackage rights over a line of railroad of Union Pacific Railroad Company ("UP") between the connection between TXPF and UP at Alpine, Texas in the vicinity of UP's Milepost 608.46 and the connection between TXPF and UP at Paisano Junction, Texas, in the vicinity of UP's Milepost 619.64, for a total distance of approximately 11.18 miles.

Under 49 C.F.R. § 1180.2(d)(7), the acquisition or renewal of trackage rights by a rail carrier over lines owned or operated by any other rail carrier or carriers is exempt if the rights are (i) based on written agreements, and (ii) not filed or sought in responsive applications in rail consolidation proceedings. The trackage rights covered by this Notice are based on the written agreement attached hereto as Exhibit 2,¹ and are not filed or sought in responsive applications in a rail consolidation proceeding. As such, the § 1180.2(d)(7) exemption is applicable.

¹ A redacted copy of the agreement for the public record is attached as Exhibit 2. UP has filed a Motion for Protective Order along with an unredacted copy of the agreement to protect confidential commercial terms in the agreement.

In accordance with the requirements of 49 C.F.R. § 1180.4(g), TXPF submits the following information:

§ 1180.6(a)(1) Description of the Proposed Transaction

The transaction covered by this Notice is the renewal of overhead trackage rights by TXPF over approximately 11.18 miles of UP's trackage extending between Alpine, Texas (Milepost 608.46) and Paisano Junction, Texas (Milepost 619.64). TXPF leases operates a line of railroad owned by the State of Texas extending from San Angelo Junction to Alpine and from Paisano Junction to the US-Mexico border at Presidio, Texas. These trackage rights provide connectivity between the two parts of TXPF's current operation.

Southern Pacific Transportation Company granted these trackage rights to the South Orient Railroad Company, Ltd. ("SORC") in ICC Finance Docket No. 32032. The rights were assigned to TXPF when TXPF acquired SORC's operations as acknowledged by the Board in *Texas Pacifico Transportation, Ltd.—Acquisition and Operation Exemption—South Orient Railroad Company, Ltd.* FD 33851 (STB served March 3, 2000). The underlying trackage rights agreement was terminated by UP following expiration of its initial term. TXPF and UP successfully negotiated a new trackage rights agreement which is the subject of this Notice.²

§ 1180.6(a)(1)(i) Summary of the Proposed Transaction

See answer to § 1180.6(a)(1), above.

§ 1180.6(a)(1)(i) Name, Business Address and Telephone Number of Applicant, and the Name of Counsel to whom Questions can be Addressed

The name and business address of the applicant is:

² The mileposts covered by the new agreement do not match the mileposts in the prior agreement because the mileposts on UP's line were changed following the UP-SP merger.

Texas Pacifico Transportation, LTD.
106 S Chadbourne St.
San Angelo, Texas 76903

Questions regarding this transaction are to be addressed to the representative named below:

Jeffrey S. Lisson
Attorney for Texas Pacifico Transportation, Ltd.
Carter, Boyd, Lisson & Hohensee, P.C.
515 W. Harris, Ste. 100
San Angelo, TX 76903
325-655-4889

jllisson@carterboyd.com

§ 1180.6(a)(1)(ii) Consummation Date

The agreement will be consummated on the effective date of this Notice of Exemption.

§ 1180.6(a)(1)(iii) Purpose of the Transaction

The trackage rights covered by this Notice will provide continued connectivity between the two parts of TXPF's current operation and the track leased by TXPF from the State of Texas.

§ 1180.6(a)(5) States in which Property of Applicant Is Situated

TXPF's property is situated in the state Texas.

§ 1180.6(a)(6) Map (Exhibit 1)

A map is provided as Exhibit 1.

§ 1180.6(a)(7)(ii) Agreement (Exhibit 2)

A redacted public copy of the executed trackage rights agreement is attached as Exhibit 2.

An unredacted copy of the agreement is being filed separately along with a motion for protective order.

§ 1180.4(g)(1)(i) Labor Protection

The applicable labor protection conditions are those imposed in Norfolk and Western Ry. Co. -- Trackage Rights -- BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc. -- Lease and Operate, 360 I.C.C. 653 (1980).

§ 1180.4(g)(2)(i) Caption Summary (Exhibit 3)

A caption summary of this transaction suitable for publication in the Federal Register is attached as Exhibit 3.

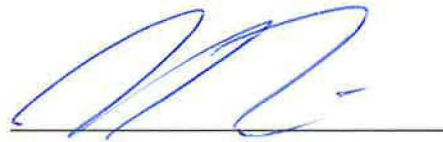
§ 1180.4(g)(3) Environmental Documentation

Environmental documentation is not required for this transaction. See 49 C.F.R. § 1105.6(c)(4) (no environmental documentation required for common use of rail terminals and trackage rights), and is exempt from historic preservation reporting requirements, as the transaction will not substantially change the level of maintenance of railroad property. See 49 C.F.R. § 1105.8(b)(3).

Respectfully submitted,

Texas Pacifico Transportation, LTD.

By:



Jeffrey S. Lisson
Attorney for Texas Pacifico Transportation, Ltd.
Carter, Boyd, Lisson & Hohensee, P.C.
515 W. Harris, Ste. 100
San Angelo, TX 76903
325-655-4889

jlisson@carterboyd.com

VERIFICATION

I, Federico Diaz Page, executive vice president of Texas Pacifico Transportation, LTD., under penalty of perjury, declare and verify that I am authorized to make this verification and I have read the foregoing Notice of Exemption, know the facts stated therein, and believe that said facts are true as stated to the best of my knowledge, information and belief.

Dated: July 24, 2019



Federico Diaz Page, executive vice president

SUBSCRIBED AND SWORN TO
before me this 24 day
of July, 2019.


Notary Public

My Commission expires: 06-07-2022



**OVERHEAD TRACKAGE RIGHTS AGREEMENT
BETWEEN ALPINE JUNCTION, TEXAS AND PAISANO, TEXAS**

THIS OVERHEAD TRACKAGE RIGHTS AGREEMENT (the "Agreement") dated March 5, 2019 ("Effective Date"), is made between UNION PACIFIC RAILROAD COMPANY (hereinafter referred to as "Owner" or "UP") and TEXAS PACIFICO TRANSPORTATION LTD, (hereinafter referred to as "User" or "TXPF").

RECITALS:

WHEREAS, UP owns a line of railroad consisting of track structure extending from Alpine Junction, Texas in the vicinity of UP's Milepost 608.46 to Paisano, Texas, in the vicinity of UP's Milepost 619.64, on UP's Valentine Subdivision as shown by bold dashed lines on the attached print dated March 5, 2019 (and identified as Exhibit A) and further described in Section 1.5 of Exhibit B, which shall be referred to herein as the "Joint Trackage"; and

WHEREAS, UP's predecessor, Southern Pacific Transportation Company, granted certain rights to South Orient Railroad Company, LTD ("SORC") to use the Joint Trackage under a Trackage Rights Agreement dated February 26, 1992 ("1992 Agreement") to connect two non-contiguous lines of railroad (from San Angelo Junction, Texas to UP connection at Alpine, Texas and from the UP connection at Paisano Junction, Texas to the international bridge at Presidio, Texas) then owned by SORC (the "SORC Rail Lines"). The State of Texas owns the real property underlying the SORC Rail Lines and the track structure of the SORC Rail Lines; and

WHEREAS, TXPF leases and operates the SORC Rail Lines from the State of Texas under a Lease and Operating Agreement dated January 31, 2001. SORC's rights under the 1992 Agreement were assigned to TXPF, with UP's consent, effective March 2, 2001; and

WHEREAS, the 1992 Agreement was terminated by UP following expiration of the initial term of that agreement. Prior to expiration of the 1992 Agreement, TXPF had not utilized its trackage rights over the Joint Trackage for international traffic in over 10 years; and

WHEREAS, TXPF desires to enter into this Agreement to allow for TXPF's continued use of the Joint Trackage; and

WHEREAS, UP invested a significant amount of capital in the Joint Trackage infrastructure with the expectation that UP would be able to fully utilize all capacity on the Joint Trackage due to TXPF's non-use of the Joint Trackage for an extended period of time. UP is now willing to allow TXPF to utilize part of its capacity, as outlined below, without seeking reimbursement from TXPF; and

WHEREAS, UP incurred significant cost to install Positive Train Control ("PTC") on the Joint Trackage. The cost to install PTC was increased due to the connections from the Joint Trackage to the SORC Rail Lines. UP is now willing to allow TXPF to operate over the Joint Trackage, as outlined below, without seeking reimbursement for UP's PTC expenditure from TXPF; and

WHEREAS, UP desires to work with TXPF to grow traffic on the SORC Rail Lines to offer competitive interline rail service to customers located beyond the SORC rail lines. UP is

willing to grant trackage rights to TXPF, as outlined in this Agreement, taking into account UP's investments on the Joint Trackage.

NOW, THEREFORE, it is mutually agreed by and between the parties:

SECTION 1. GENERAL CONDITIONS; CONFLICTS BETWEEN PROVISIONS

The General Conditions set forth in Exhibit B attached hereto are hereby made a part of this Agreement. Each capitalized term used and not otherwise defined in this Agreement shall have the meaning ascribed to it in the General Conditions. If any conflict between the General Conditions and this Agreement shall arise, the provisions of this Agreement shall prevail.

All amendments, supplements, modifications to and waivers of the terms of this Agreement shall be in writing and signed by the parties hereto.

SECTION 2. TXPF RIGHTS AND OBLIGATIONS

2.1 Subject to the terms and conditions contained herein, UP grants to TXPF the nonexclusive right to use the Joint Trackage for the limited operation of Equipment in TXPF's account over the Joint Trackage in common with UP and such other railroad company or companies as UP has heretofore admitted or may hereafter at any time in the future admit to the joint use of all or part of the Joint Trackage (provided that such future admittance shall not materially hinder or obstruct the fair and reasonable exercise of the rights granted in this Agreement), such other railroad company or companies to hereinafter be considered UP for the purposes of this Agreement, it being understood and agreed that TXPF shall not have the right to:

- (i) Perform any local freight service into the limits of the Joint Trackage, serve or switch any customer or industry, serve or switch any industry, team, or house track, intermodal, or auto facility now existing or hereafter located along the Joint Trackage; or
- (ii) Participate in transload operations upon the Joint Trackage; or
- (iii) Set out, pick up or store Equipment upon the Joint Trackage, or any part thereof, except as otherwise provided in Sections 2.12, 2.13 and 2.14 of Exhibit B; or
- (iv) Permit or admit any third party to the use of all or any portion of the Joint Trackage, nor, under the guise of doing its own business, contract or make any agreement to handle as its own Equipment over or upon the Joint Trackage, or any portion thereof, the Equipment of any such third party which in the normal course of business would not be considered the Equipment of TXPF; provided, however, that the foregoing shall not prevent TXPF, pursuant to a run-through agreement with any railroad, from using the locomotives and cabooses of another railroad as its own under this Agreement; or
- (v) Connect with itself at any location along the Joint Trackage, except for the TXPF connections at MP 608.46 and MP 619.64; or

- (vi) Connect with any other railroad at any location along the Joint Trackage; or
- (vii) Build-in to or build out from any point on or along the Joint Trackage; or
- (viii) Exit or enter the Joint Trackage at any location along the Joint Trackage, except for the TXPF connections at MP 608.46 and MP 619.64; or
- (ix) Interchange with any other railroad or perform haulage services for any other railroad on or along the Joint Trackage.

2.4 TXPF must enter, exit, and operate over the Joint Trackage in a continuous movement, without stopping on the Joint Trackage, and without unreasonable interference or impairment to fluidity or operations on the Joint Trackage. TXPF will be solely responsible for any costs required to allow TXPF to operate in this manner, including, but not limited to, any infrastructure, capacity, or PTC on the SORC Rail Lines, connections to the Joint Trackage, and any PTC or PTC support for TXPF equipment, crews, and train information.

2.5 Any traffic interchanged between UP and TXPF at Alpine, Texas, shall be interchanged in a manner that shall be mutually agreed. If any new infrastructure and investments are mutually agreed to be required for the interchange at Alpine, UP will contribute an amount equal to the amount TXPF contributes.

SECTION 3. TXPF OPERATIONS

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12/21/00

SECTION 4. COMPENSATION

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SECTION 5. TERM AND TERMINATION

5.1 This Agreement shall be effective for an initial term of thirty (30) years from the Effective Date ("Initial Term"). Following the Initial Term, this Agreement will automatically renew two times, on the thirtieth and fortieth anniversary of the Effective Date, for an additional term of ten (10) years each ("Additional Term"). Either party may terminate this Agreement by providing notice of its intent to terminate not less than six (6) months prior to the end of the Initial Term or any Additional Term. Liabilities created under this Agreement shall survive any such termination.

5.2 UP may terminate this Agreement, at any time during the remaining term of this Agreement, upon not less than ninety (90) days' written notice to TXPF if:

5.3 Upon termination of the Agreement, however such termination may occur, TXPF shall be released from any and all manner of obligations and shall be deemed to have forever relinquished, abandoned, surrendered and renounced any and all right possessed by User to operate over the Joint Trackage and TXPF shall forever release and discharge UP of and from any and all manner of obligations, claims, demands, causes of action, or suits which TXPF might have, or which might subsequently accrue to TXPF growing out of or in any manner connected with, directly or indirectly, the contractual obligations of UP under the Agreement, in all events provided, however, the aforesaid relinquishment, abandonment, surrender, renunciation, release and discharge by TXPF shall not in any case affect any of the rights and obligations of either UP or TXPF which may have accrued, or liabilities accrued or otherwise, which may have arisen prior to such termination. TXPF shall promptly make application for all necessary governmental authority to discontinue operating under the terms of the Agreement. If TXPF fails to do so, UP may proceed, at its option, to seek such authority on behalf of TXPF, and TXPF shall support and not oppose such actions of UP and TXPF shall bear all costs therefor, including, without limitation, attorneys' fees, filing fees and related costs. Upon any

termination, UP shall remove from Owner's right of way any connecting track, and any exclusive facility of TXPF, at TXPF's expense with salvage to be delivered to and retained by TXPF. Upon any partial termination of the Agreement, however the same may occur, the terms and conditions hereof shall continue and remain in full force and effect for the balance of the Joint Trackage.

SECTION 6. ASSIGNMENT

This Agreement and any rights granted hereunder may not be assigned in whole or in part by TXPF without the prior written consent of the UP, which consent may be withheld for any reason in UP's sole and absolute discretion. UP may assign in whole or in part without the prior written consent of the User. In the event of an authorized assignment, the Agreement and the operating rights hereunder shall be binding upon the successors and assigns of the parties.

SECTION 7. NOTICES

All notices, demands, requests, submissions and other communications which are required or permitted to be given pursuant to this Agreement shall be given by either party to the other in writing and shall be deemed properly served if delivered by hand, or mailed by overnight courier or by registered or certified mail, return receipt requested, with postage prepaid, to such other party at the address listed below:

If intended for UP:

Executive Vice President-Operations
Mail Stop 1180
1400 Douglas Street
Omaha, Nebraska 68179

With a copy to:

General Manager Joint Facilities
Mail Stop 1180
1400 Douglas Street
Omaha, Nebraska 68179

If intended for TXPF:

*Executive Vice President
106 S Chadbourne St.
San Angelo Tx.
76903*

With a copy to:

*Vice President of Operations
106 S Chadbourne St.
San Angelo Tx
76903*

Notice of address change may be given any time pursuant to the provisions of this Section.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

UNION PACIFIC RAILROAD COMPANY

TEXAS PACIFIC TRANSPORTATION LTD

By: *David DeSoye Nunez*

Its: General Manager Joint Facilities

By: *Federico Diaz*

Its: *Executive Vice President*

Relevant terms of this Agreement assented to by:

FERROCARRIL MEXICANO, S. A. de C. V.

By: *Lorenzo Reyes Retana M.*

Its: *Projects and Planning General Director*

Isaac Franklin Linkins
COMMERCIAL GENERAL DIRECTOR

Exhibit A

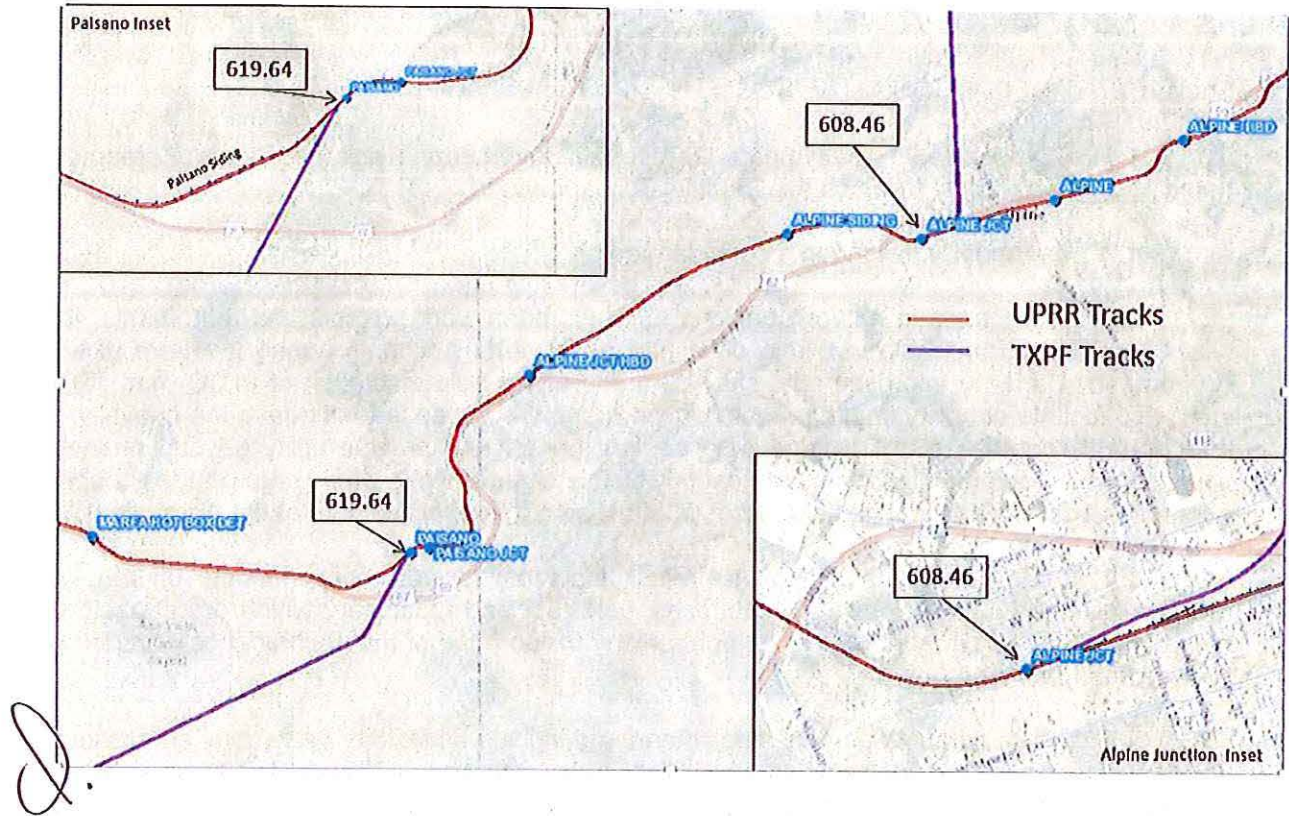


EXHIBIT "B"
GENERAL CONDITIONS

Section 1. DEFINITIONS

1.1 "Agreement" shall mean that certain Overhead Trackage Rights Agreement dated March 5, 2019, to which this Exhibit "B" is appended.

1.2 "Annual" shall mean a calendar year.

1.3 "Changes in and/or Additions to" shall mean work projects and retirements, the cost of which is chargeable in whole or in part to Property Accounts during the term of this Agreement. Capacity improvements shall be made at the sole discretion of the Owner. This shall also include capacity improvements whose primary purpose is to increase the capacity or through-put over the Joint Trackage or a portion thereof and provide utility beyond ordinary and/or programmed maintenance, the cost of which is chargeable in whole or in part to Property Accounts under STB accounting standards in effect as of the effective date of the Agreement.

1.4 "Equipment" shall mean trains, locomotives, rail cars (loaded or empty), intermodal units (loaded or empty), cabooses, vehicles, and machinery which are capable of being operated on railroad tracks or on right-of-way for purpose of the maintenance or repair of such railroad tracks.

1.5 "Hazardous Materials" shall mean and include all toxic or hazardous substances, pollutants, waste or contaminants to which liability or standards of conduct may be imposed under any Environmental and Safety Requirements including, without limitation, (a) petroleum or petroleum based products or any derivatives or hazardous constituents thereof or any additives thereto, (b) fuels (including motor fuels, diesel, methane and other natural gas), (c) waste oils, lubricating oils and cleaning solvents, (d) ammonia, glycol and freon, (e) any "Hazardous Substances," "Hazardous Materials," "Regulated Substances" or "Toxic Substances," or similarly defined terms, as set forth in any Legal Requirements, and/or (f) any other substances at levels greater than those allowed by applicable Legal Requirements.

1.6 "Joint Trackage" shall mean the track structure of Owner as described in the Agreement including necessary right-of-way and all appurtenances, signals, communications, and facilities of Owner and all Changes in and/or Additions to said track structure now or in the future located as are required or desirable for the operation of the Equipment of the parties hereto.

1.7 "Owner" shall have the meaning given to it in the Agreement.

1.8 "STB" shall mean the Surface Transportation Board of the United States Department of Transportation or any successor agency.

 1.8 "User" shall have the meaning given to it in the Agreement.

1.10 "TIH/PIH" shall mean Rail Security-Sensitive Material shipments that are categorized as a toxic inhalation hazard or poison inhalation hazard.

Section 2. MAINTENANCE, ADDITIONS, OPERATION, AND CONTROL

2.1 Owner shall have sole charge of the maintenance and repair of the Joint Trackage with its own supervisors, labor, materials and equipment. Owner, from time to time, may make such Changes in and/or Additions to the Joint Trackage as shall be required by any law, rule, regulation or ordinance promulgated by any government body having jurisdiction, or as Owner, in its sole discretion, shall deem necessary, subject to Section 2.2. Such Changes in and/or Additions to the Joint Trackage shall become a part of the Joint Trackage or in the case of retirements shall be excluded from the Joint Trackage.

2.2 Unless otherwise mutually agreed to by the parties in writing, Owner shall keep and maintain the Joint Trackage on a consistent basis at no less than the track standard designated in the timetable in effect on the date of the Agreement, including special instructions for the Joint Trackage as of the date of the Agreement.

2.3 Owner shall employ all persons necessary to construct, operate, maintain, repair and renew the Joint Trackage. Owner shall be bound to use reasonable and customary care, skill and diligence in the construction, operation, maintenance, repair and renewal of the Joint Trackage and in managing of the same, provided User will shall have or make any claim against Owner for loss, damage or expense caused by or resulting from Owner's failure or negligence in the construction, operation, maintenance, repair or renewal of the Joint Trackage. Owner shall make its best effort to ensure that User is given the same advance notice of maintenance plans and schedules as is provided to Owner's personnel.

2.4 The management, operation (including dispatching) and maintenance of the Joint Trackage shall, at all times, be under the exclusive direction and control of Owner, the movement of Equipment over and along the Joint Trackage shall at all times be subject to the exclusive direction and control of Owner's authorized representatives and in accordance with such reasonable operating rules as Owner shall from time to time institute. User shall, at User's sole cost and expense, obtain, install and maintain necessary communication equipment to allow User's Equipment to communicate with Owner's dispatching and signaling facilities the same as Owner's trains so utilize. Owner shall consult with User prior to the adoption of new communication or signaling systems to be employed on the Joint Trackage, which have not theretofore been generally adopted in the railroad industry.

2.5 If the use of the Joint Trackage shall at any time be interrupted or traffic thereon or thereover be delayed for any cause, neither party shall have or make any claim against the other for loss, damage or expense caused by or resulting solely from such interruption or delay.

2.6 Owner may from time to time provide any track or tracks on the Joint Trackage other than those delineated in Exhibit A to the Agreement for use by User provided there shall at all times be afforded User a continuous route of equal utility for the operations of its Equipment between the termini of the Joint Trackage. When such tracks which are not part of the Joint Trackage are used as provided herein, the Agreement shall govern for purposes of direction and control and liability as if all movement had been made over the Joint Trackage.

2.7 Each party shall be responsible for furnishing, at its sole cost and expense, all labor, fuel, train supplies and other supplies necessary for the operation of its own Equipment over the Joint Trackage. In the event a party does furnish such labor, fuel or train and other supplies to another party, the party receiving the same shall promptly, upon receipt of billing therefor, reimburse the party furnishing the same for its reasonable costs thereof, including customary additives.

2.8 User shall be responsible for the reporting and payment of any mileage, per diem, use or rental charges accruing on Equipment in User's account on the Joint Trackage. Except as may be specifically provided for in this Agreement, nothing herein contained is intended to change practices with respect to interchange of traffic between the parties or with other carriers on or along the Joint Trackage.

2.9 Except as otherwise may be provided in the Agreement, User shall operate its Equipment over the Joint Trackage with its own employees, but before said employees are assigned or permitted to operate Equipment over the Joint Trackage as herein provided, and from time to time thereafter as and when reasonably requested by Owner, they shall be required to pass the applicable rules examinations required by Owner of its own employees. Owner shall delegate to specified User's officers the conduct of such examinations in the event User chooses to conduct such examinations. If an Owner officer conducts such examinations of employees of User, User shall pay Owner a reasonable fee for each employee so examined, such fee to be mutually agreed upon by the parties from time to time in a separate agreement. Notwithstanding any such examination, User shall be responsible for ensuring that its employees are qualified and have taken all such rules examinations. Upon request of User, Owner shall qualify one or more of User's supervisory officers as pilots and such supervisory officer or officers so qualified shall qualify employees of User engaged in or connected with User's operations on or along the Joint Trackage. At User's request, Owner shall furnish a pilot or pilots, at the expense of User, to assist in operating trains of User over the Joint Trackage.

2.10 If any employee of User shall neglect, refuse or fail to abide by Owner's rules, instructions and restrictions governing the operation on or along the Joint Trackage, such employee shall, upon written request of Owner, be prohibited by User from working on the Joint Trackage. If either party shall deem it necessary to hold a formal investigation to establish such neglect, refusal or failure on the part of any employee of User, then upon such notice presented in writing, Owner and User shall promptly hold a joint investigation in which the parties concerned shall participate and bear the expense for their respective officers, counsel, witnesses and employees. Notice of such investigations to User's employees shall be given by User's officers, and such investigation shall be conducted in accordance with the terms and conditions of schedule agreements between User and its employees. If, in the judgment of Owner, the result of such investigation warrants, such employee shall, upon written request by Owner, be withdrawn by User from service on the Joint Trackage, and User shall release and indemnify Owner from and against any and all claims and expenses arising from such withdrawal.

If the disciplinary action is appealed by an employee of User to the National Railroad Adjustment Board or other tribunal lawfully created to adjudicate such cases, and if the decision of such board or tribunal sustains the employee's position, such employee shall not thereafter be barred from service on the Joint Trackage by reason of such disciplinary action.

2.11 If any Equipment of User is bad ordered enroute on the Joint Trackage and (i) it is necessary that it be set out, and (ii) only light repairs to the Equipment are required, such bad ordered Equipment shall be promptly repaired, and, thereafter, be promptly removed from the Joint Trackage by User. Owner may, upon request of User and at User's sole cost and expense, furnish the required labor and material and perform light repairs to make such bad ordered Equipment safe for movement. The employees and Equipment of Owner while in any manner so engaged or while enroute to or returning to Owner's terminal from such an assignment shall be considered Sole Employees (as hereinafter defined) of User and Sole Property (as hereinafter defined) of User. However, should Owner's employees after repairing such bad ordered Equipment for User move directly to perform service for Owner's benefit rather than return to Owner's terminal, then User's exclusive time and liability will end when Owner's employees depart for work to be performed for Owner's benefit. In the case of such repairs by Owner to freight cars in User's account, billing therefor shall be in accordance with the Field and Office Manuals of the Interchange Rules, adopted by the Association of American Railroads ("AAR"), hereinafter called "Interchange Rules", in effect on the date of performance of the repairs. Owner shall then prepare and submit billing directly to and collect from the car owner for car owner responsibility items as determined under said Interchange Rules, and Owner shall prepare and submit billing directly to and collect from User for handling line responsibility items as determined under said Interchange Rules. Owner also shall submit billing to and collect from User any charges for repair to freight cars that are User's car owner responsibility items as determined under said Interchange Rules, should said car owner refuse or otherwise fail to make payment therefor. Repairs to locomotives shall be billed as provided for in Section 3 of these General Conditions.

2.12 If Equipment of User shall become derailed, wrecked, or otherwise disabled while upon the Joint Trackage, it shall be re-railled or cleared by Owner, except that employees of User may re-rail User's derailed Equipment on the Joint Trackage whenever use of motorized on or off track equipment is not required; however, in any such case, employees of User shall consult with and be governed by the directions of Owner. Owner reserves the right to re-rail Equipment of User when, in the judgment of Owner, Owner deems it advisable to do so to minimize delays and interruptions to train movement. The reasonable costs and expenses of rerailing or clearing derailed, wrecked or disabled Equipment shall be borne by the parties in accordance with Section 5 of these General Conditions. Services provided under this section shall be billed in accordance with Section 3 of these General Conditions.

2.13 In the event Equipment of User shall be forced to stop on the Joint Trackage, and such stoppage is due to insufficient hours of service remaining among User's employees, or due to mechanical failure of User's Equipment (other than bad ordered Equipment subject to light repairs pursuant to Section 2.12), or to any other cause not resulting from an accident or derailment (including the failure of User to promptly repair and clear bad ordered Equipment pursuant to Section 2.12), and such Equipment is unable to proceed, or if a train of User fails to maintain the speed required by Owner on the Joint Trackage, or if, in emergencies, disabled Equipment is set out of User's trains the Joint Trackage, Owner shall have the option to furnish motive power or such other assistance (including but not limited to the right to re-crew User's train) as may be necessary to haul, help or push such Equipment, or to properly move the disabled Equipment off the Joint Trackage. The reasonable costs and expenses of rendering such assistance shall be borne by User. Services provided under this section shall be billed in accordance with Section 3 of these General Conditions.

2.14 User shall pay to Owner reasonable expenses incurred by Owner in the issuance of timetables made necessary solely by changes in the running time of the trains of User over the Joint Trackage. If changes in running time of trains of Owner or third parties, as well as those of User, require the issuance of timetables, then User shall pay to Owner that proportion of the expenses incurred that one bears to the total number of parties changing the running time of their trains. If changes in running time of trains of Owner or third parties, but not those of User, require the issuance of timetables, then User shall not be required to pay a proportion of the expenses incurred in connection therewith.

2.15 User, at Owner's request, shall be responsible for reporting to Owner the statistical data called for in the Agreement, which may include, but is not limited to, the number and type of Equipment operated on the Joint Trackage.

Section 3. BILLING

3.1 Billing shall be accomplished on the basis of data contained in a billing form mutually agreed to between the parties. Such billing forms shall contain sufficient detail to permit computation of payments to be made hereunder. Billing shall be prepared according to the rules, additives, and equipment rental rates as published by the Owner. User shall pay to Owner at the Office of the Treasurer of Owner, or at such other location as Owner may from time to time designate in writing, all the compensation and charges of every name and nature which in and by the Agreement User is required to pay in lawful money of the United States within thirty (30) days after the rendition of bills therefor. Bills shall contain a statement of the amount due on account of the expenses incurred, properties and facilities provided and services rendered during the billing period.

3.2 Errors or disputed items in any bill shall not be deemed a valid excuse for delaying payment, but shall be paid subject to subsequent adjustment; provided, no exception to any bill shall be honored, recognized or considered if filed after the expiration of three (3) years from the last day of the calendar month during which the bill is rendered and no bill shall be rendered later than three (3) years (i) after the last day of the calendar month in which the expense covered thereby is incurred, or (ii) in the case of claims disputed as to amount or liability, after the amount is settled and/or the liability is established. This provision shall not limit the retroactive adjustment of billing made pursuant to exception taken to original accounting by or under authority of the STB or retroactive adjustment of wage rates and settlement of wage claims.

3.3 So much of the books, accounts and records of each party hereto as are related to the subject matter of this Agreement shall at all reasonable times be open to inspection by the authorized representatives and agents of the parties hereto. All books, accounts, and records shall be maintained to furnish readily full information for each item in accordance with any applicable laws or regulations.

3.4 Should any payment become payable by Owner to User under the Agreement, the provisions of Sections 3.1 and 3.2 of these General Conditions shall apply with User as the billing party and Owner as the paying party.



Section 4. COMPLIANCE WITH LAWS

4.1 With respect to operation of Equipment on the Joint Trackage, each party shall comply with all applicable federal, state and local laws, rules, regulations, orders, decisions and ordinances ("Standards") including Positive Train Control ("PTC"), and if any failure on the part of any party to so comply shall result in a fine, penalty, cost or charge being imposed or assessed on or against another party, such other party shall give prompt notice to the failing party and the failing party shall promptly reimburse and indemnify the other party for such fine, penalty, cost or charge and all expenses and reasonable attorneys' fees incurred in connection therewith, and shall upon request of the other party defend such action free of cost, charge and expense to the other party.

4.2 User agrees to comply fully with all applicable Standards concerning Hazardous Materials. User covenants that it shall not treat or dispose of Hazardous Materials on the Joint Trackage. User further agrees to furnish Owner (if requested) with proof, satisfactory to Owner, that User is in such compliance. User also agrees to notify Owner prior to tenant operating TIH/PIH over the Joint Trackage.

In the event any accident, bad ordered Equipment, derailment, vandalism or wreck (for purposes of this Section 4.2 and 4.3 hereinafter called collectively "Derailment") involving Equipment of or a train operated by User carrying Hazardous Materials shall occur on any segment of the Joint Trackage, any report required by federal, state or local authorities shall be the responsibility of User. User shall also advise the owner/shipper of the Hazardous Materials involved in the Derailment, and Owner, immediately.

In the event of a Derailment, Owner shall assume responsibility for cleaning up any release of Hazardous Materials from User's Equipment in accordance with all federal, state, or local regulatory requirements. User may have representatives at the scene of the Derailment to observe and provide information and recommendations concerning the characteristics of Hazardous Materials release and the cleanup effort. Such costs shall be borne in accordance with Section 5 of these General Conditions.

If a Hazardous Materials release caused by a derailment involving Equipment of User, or on a train operated by User, results in contamination of real property or water on the Joint Trackage or on real property or water adjacent to the Joint Trackage (whether such real property or water is owned by Owner or a third party), Owner shall assume responsibility for emergency cleanup conducted to prevent further damage. User shall be responsible for performing cleanup efforts thereafter. Any costs associated with cleaning up real property or water on or adjacent to the Joint Trackage contaminated by Hazardous Materials shall be borne in accordance with Section 5 of these General Conditions.

If Hazardous Materials must be transferred to undamaged Equipment or trucks as a result of a release caused by a derailment involving Equipment of User, or on a train operated by User, User shall perform the transfer; PROVIDED, HOWEVER, that if the Hazardous Materials are in damaged Equipment that is blocking the Joint Trackage, Owner, at its option, may transfer the Hazardous Materials with any costs associated with such transfer borne in accordance with Section 5 of these General Conditions. Transfers of Hazardous Materials by User shall only be conducted after being authorized by Owner.

4.3 The total cost of clearing a Derailment, cleaning up any Hazardous Materials released during such Derailment, and/or repairing the Joint Trackage or any other property

damaged thereby shall be borne by the party or parties liable therefor in accordance with Section 5 of these General Conditions.

4.4 In the event of release of Hazardous Materials caused by faulty Equipment or third parties, cleanup will be conducted as stated in Sections 4.2 and 4.3 of these General Conditions.

Section 5. LIABILITY

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Section 6. ARBITRATION

6.1 If at any time a question or controversy shall arise between the parties hereto in connection with the Agreement upon which the parties cannot agree, such question or controversy shall be submitted to and settled by arbitration. Unless other procedures are agreed to by the parties, arbitration between the parties pursuant to this Section 6 shall be governed by the rules and procedures set forth in this Section 6.

6.2 If the parties to the dispute are able to agree upon a single competent and disinterested arbitrator within twenty (20) days after written notice by one party of its desire for arbitration to the other party, then the question or controversy shall be submitted to and settled by that single arbitrator. Otherwise, any party (the notifying party) may notify the other party (the noticed party) in writing of its request for arbitration and nominating one arbitrator. Within twenty (20) days after receipt of said notice, the noticed party shall appoint an arbitrator and notify the notifying party in writing of such appointment. Should the noticed party fail within twenty (20) days after receipt of such notice to name its arbitrator, said arbitrator may be appointed by the Chief Judge (or acting Chief Judge) of the United States District Court for the District of Columbia upon application by either party after ten (10) days' written notice to the other party. The two arbitrators so chosen shall select one additional arbitrator to complete the board. If the arbitrators so chosen fail to agree upon an additional arbitrator, the same shall, upon application of a party, be appointed by said judge in the manner heretofore stated.

6.3 Upon selection of the arbitrator(s), said arbitrator(s) shall, with reasonable diligence, determine the questions as disclosed in said notice of arbitration, shall give both parties reasonable notice of the time and place (of which the arbitrator(s) shall be the judge) of hearing evidence and argument, may take such evidence as the arbitrator(s) shall deem reasonable or as either party may submit with witnesses required to be sworn, and hear arguments of counsel or others. If an arbitrator declines or fails to act, the party (or parties in the case of a single arbitrator) by whom the arbitrator was chosen or said judge shall appoint another to act in the arbitrator's place.

6.4 After considering all evidence, testimony and arguments, said single arbitrator or the majority of said board of arbitrators shall promptly state such decision or award and the reasoning for such decision or award in writing which shall be final, binding, and conclusive on all parties to the arbitration when delivered to them. The award rendered by the arbitrator(s) may be entered as a judgment in any court having jurisdiction thereof and enforced as between the parties without further evidentiary proceeding, the same as entered by the court at the conclusion of a judicial proceeding in which no appeal was taken. Until the arbitrator(s) shall issue the first decision or award upon any question submitted for arbitration, performance under the Agreement shall continue in the manner and form existing prior to the rise of such question.

After delivery of said first decision or award, each party shall forthwith comply with said first decision or award immediately after receiving it.

6.5 Each party to the arbitration shall pay all compensation, costs, and expenses of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, exhibits, and counsel. The compensation, cost, and expenses of the single arbitrator or the additional arbitrator in the board of arbitrators shall be paid in equal shares by all parties to the arbitration.

6.6 The parties may obtain discovery and offer evidence in accordance with the Federal Rules of Civil Procedure Rules 26 - 37, and Federal Rules of Evidence, as each may be amended from time to time.

6.7 Interest computed annually, at a rate equal to the Prime Rate plus two (2) percentage points, shall be applied to any and all arbitrator's awards requiring the payment of money and shall be calculated from thirty (30) days following the date of the applicable arbitration decision. The term "Prime Rate" shall mean the minimum commercial lending rate charged by banks to their most credit-worthy customers for short-term loans, as published daily in the Wall Street Journal.

Section 7. GOVERNMENTAL APPROVAL and ABANDONMENT

7.1 Owner and User shall, at their respective cost and expense, initiate by appropriate application or petition and thereafter diligently prosecute proceedings for the procurement of all necessary consent, approval or authority from any governmental agency for the sanction of the Agreement and the operations to be carried on or conducted by User thereunder. User and Owner agree to cooperate fully to procure all such necessary consent, approval or authority.

7.2 In the event Owner shall be involuntarily dispossessed, including by threat of condemnation by competent public authority, of the right to operate upon and maintain any portion of its Joint Trackage and Owner fails or declines to replace said Joint Trackage, Owner shall have no obligation hereunder to provide tracks in replacement of such Joint Trackage for User's use, and User shall have and shall make no claim of any kind, legal or otherwise, against Owner for failure to provide such Joint Trackage for User's use.

7.3 To the extent that Owner may lawfully do so, Owner reserves to itself the exclusive right, exercisable at any time during the life of the Agreement without concurrence of User, to elect to abandon all or any part of the Joint Trackage by giving six (6) months' prior written notice to User of its intention so to do ("Notice of Abandonment").

7.4 Owner and User each shall be responsible for and shall bear labor claims, and employee protection payable to, its own respective employees (and employees of its respective affiliated companies) including any amounts that either Owner or User may be required to pay to its own respective employees pursuant to labor protective conditions imposed by the STB.

Section 8. DEFAULT

 7.1 Notwithstanding the provisions of Section 3 of these General Conditions, either party hereto claiming default of any of the provisions of the Agreement (including these General

Conditions) shall furnish notice and written demand to the other party for performance or compliance with the covenant or condition of the Agreement claimed to be in default, which notice shall specify wherein and in what respect such default is claimed to exist and shall specify the particular Section or Sections of the Agreement under which such claim of default is made.

7.2 If the default shall continue for an additional period of thirty (30) days after receipt of such written notice and demand, and such default has not been remedied within said thirty (30) day period, or reasonable steps have not been nor continue to be taken to remedy a failure or default which cannot reasonably be remedied within said thirty (30) day period, and such default relates to the provisions and terms of the Agreement, either party shall resort to binding arbitration provided that the arbitrator shall not have the authority to amend, modify or terminate the Agreement.

7.3 Failure of a party to claim a default shall not constitute a waiver of such default. Either party hereto entitled to claim default may waive any such default, but no action by such party in waiving such default shall extend to or be taken to effect any subsequent defaults or impair the rights of either party hereto resulting therefrom.

Section 9. OTHER CONSIDERATIONS

9.1 The Agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right in any third person to recover by way of damages or otherwise against any of the parties hereto.

9.2 This Agreement contains the entire understanding of the Parties hereto and supersedes any and all oral understandings between the Parties.

9.3 No term or provision of the Agreement may be changed, waived, discharged, or terminated except by an agreement in writing and signed by the authorized representatives of the Parties to the Agreement.

9.4 All words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms and phrases in the railroad industry.

9.5 All section headings are inserted for convenience only and shall not affect any construction or interpretation of the Agreement.

9.6 This Agreement is the result of mutual negotiations of the Parties hereto, neither of whom shall be considered the drafter for purposes of contract construction.

9.7 No Party may disclose the provisions of this Agreement to a third Party, excluding a parent, affiliate or subsidiary company without the written consent of the other Party, except as otherwise required by law, regulation or ruling.

9.8 If any covenant or provision of the Agreement not material to the right of User to use the Joint Trackage shall be adjudged void, such adjudication shall not affect the validity,

obligation or performance of any other covenant or provision which is in itself valid. No controversy concerning any covenant or provision shall delay the performance of any other covenant or provision. Should any covenant or provision of the Agreement be adjudged void, the parties shall make such other arrangements as will effect the purposes and intent of the Agreement.

9.9 In the event there shall be any conflict between the provisions of these General Conditions and the Agreement, the provisions of the Agreement shall prevail.

9.10 This Agreement may be executed in any number of counterparts, all of which, when taken together, shall constitute one and the same agreement, and any of the Parties to this Agreement may execute this Agreement by signing any of the counterparts.

9.11 Should any court, government authority or arbitration panel determine that any provision of this Agreement is invalid, unenforceable or illegal, such determination shall not affect, impair or invalidate the remainder of this Agreement and shall be confined in its operation to the provision directly involved, and the remainder of this Agreement shall remain in full force and effect.

9.12 Reference to any agency or other organization shall include any successor agency or organization, and reference to any index or methodology (e.g., RCAF-U, URCS, etc.), if such index or methodology ceases to exist or is no longer available, shall include any substantially similar index or methodology selected by the parties or, if the parties fail to agree on such, one determined by binding arbitration under Section 6 of these General Conditions.

END OF EXHIBIT "B"

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SURFACE TRANSPORTATION BOARD

**NOTICE OF EXEMPTION
DOCKET NO. FD 36319**

**TEXAS PACIFICO TRANSPORTATION, LTD.
-- TRACKAGE RIGHTS EXEMPTION --
UNION PACIFIC RAILROAD COMPANY**

Union Pacific Railroad Company has agreed to renew overhead trackage rights to Texas Pacific Transportation, LTD. between Alpine, Texas (Milepost 608.46) and Paisano Junction, Texas (Milepost 619.64), a distance of approximately 11.18 miles. The trackage rights will be consummated on or after August 25, 2019 (30 days after the verified notice of exemption was filed).

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

Dated: _____, 2019

By the Board,

Rachael D. Campbell
Director, Office of Proceedings