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UNION PACIFIC RAILROAD COMPANY

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FILED

OCT 21 2002

**SURFACE
TRANSPORTATION BOARD**

October 18, 2002

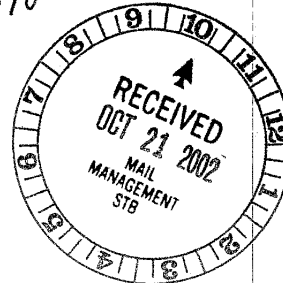
Via UPS Overnight

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

206 454



DID# 0102050002



RE: Finance Docket No. 34114 - Yolo Shortline Railroad Company -
Lease and Operation Exemption - Port of Sacramento

ENTERED
Office of Proceedings

OCT 21 2002

Part of
Public Record

Dear Mr. Williams:

Enclosed for filing in the above proceeding are the following materials:

1. An original and ten (10) copies of UP's Petition to Revoke Exemption.
2. A diskette containing the above document in WordPerfect 9.0.
3. A check in the amount of \$150 for the filing fee required by 49 C.F.R. §1002.2(f)(61).
4. Twenty (20) unbound copies of the map appearing as Exhibit 1 to the Declaration of Warren C. Wilson. These extra copies are being provided for the convenience of the Board and its staff.

Please acknowledge receipt of the above matters on the additional copy of the letter provided for this purpose and return it to me in the enclosed, self-addressed envelope.

FEE RECEIVED

OCT 21 2002

**SURFACE
TRANSPORTATION BOARD**

Very truly yours,

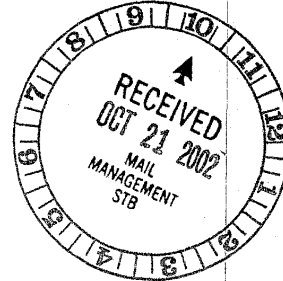
Robert T. Opal
General Commerce Counsel

cc: Persons shown on Certificate of Service

Encs.

ORIGINAL

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



FINANCE DOCKET NO. 34114

**YOLO SHORTLINE RAILROAD COMPANY
- LEASE AND OPERATION EXEMPTION -
PORT OF SACRAMENTO**

PETITION TO REVOKE EXEMPTION

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Office of Proceedings
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FILED
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**SURFACE
TRANSPORTATION BOARD**

UNION PACIFIC RAILROAD COMPANY

Robert T. Opal
General Commerce Counsel
1416 Dodge Street, Room 830
Omaha, Nebraska 68179
(402) 271-3072

Dated: October 18, 2002

Filed: October 21, 2002

FEE RECEIVED

OCT 21 2002

**SURFACE
TRANSPORTATION BOARD**

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A. Curt Graham, Manager-Marketing Services, Farmers' Rice Cooperative	
B. Warren C. Wilson, Senior Manager-Rail Line Planning, Union Pacific Railroad Company	

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34114

**YOLO SHORTLINE RAILROAD COMPANY
– LEASE AND OPERATION EXEMPTION –
PORT OF SACRAMENTO**

PETITION TO REVOKE EXEMPTION



This Petition is filed on behalf of Union Pacific Railroad Company ("UP"), pursuant to 49 U.S.C. § 10502(d). It seeks a declaration that the exemption which was the subject of a Board notice served November 20, 2001, in Finance Docket No. 34114, Yolo Shortline Railroad Company - Lease and Operation Exemption is void *ab initio* or, in the alternative, revocation of the exemption. The exemption was obtained through a notice of exemption filed on October 17, 2001, by Yolo Shortline Railroad under the Board's class exemption under 49 U.S.C. § 10902 for Class III Rail Carriers, 49 C.F.R. Part 1150, Subpart E. The exemption covered YSLR lease and operation of trackage (mostly exempt industrial trackage) owned by the Sacramento-Yolo Port District ("Port") in West Sacramento, California.¹

¹ YSLR did not serve its notice of exemption on UP and UP did not learn of it until the Board served its notice of the exemption on November 20, 2001. It then took UP until
(continued...)

Under the Board's class exemption rule and its November 20, 2001 notice in this proceeding, YSLR's notice of exemption is void *ab initio* if it contains false or misleading information. As shown below and in the accompanying statements, YSLR's notice is materially misleading in key respects. Most significantly, the notice fails to make any disclosure that the transaction involved the forced discontinuance of UP's service over the subject trackage. Instead, the notice is carefully crafted to create the false impression that the transaction is a voluntary substitution of carriers. Further, we will show that YSLR's transaction is not the type of transaction contemplated by the STB as falling within the scope of the class exemption and that, if the exemption is not declared void *ab initio*, it should be revoked to permit more intensive regulatory scrutiny of the transaction.

Farmers Rice Cooperative ("FRC"), the principal shipper served by the trackage subject to YSLR's exemption, supports UP in this proceeding and in the related Finance Docket No. 34252 proceeding. A statement by Curt Graham, FRC's Manager-Market Services, is included with this Petition (Tab A).

¹(...continued)

March, 2002, to find out exactly what YSLR and the Port had agreed to, since neither would furnish UP a copy of their agreement in spite of repeated requests. We finally obtained a copy from the Port in March under the California Public Records Act. Following that, we elected to attempt to resolve this matter through negotiations with the Port rather than by initiating legal proceedings. That effort continued until late August, 2002, when the Port rejected a UP offer to take over maintenance of the Port trackage. Throughout this period, UP has made clear that it was reserving its right to take legal action, specifically including a Petition to Revoke the YSLR exemption (Wilson Dec. p. 14 and Exhibit 7).

I.

BACKGROUND

The accompanying declaration of Warren C. Wilson (Tab B) describes in detail the factual background of this dispute (Wilson Dec., pp. 2-11). A summary of the essential facts is as follows:

Since the 1950's, UP and its predecessor have provided service over a complex of trackage in the Port of Sacramento sometimes referred to as the "Sacramento-Yolo Port Belt Railroad." In spite of the name, the trackage within the Port (i.e., the trackage west of point "E" on the map attached as Exhibit 1 to the Wilson statement) has historically been exempt industrial trackage. The Port never obtained any ICC authority to construct the track, and UP's predecessors (Sacramento Northern Railway and Southern Pacific Company) never obtained any ICC authority to operate over it.² The use of the Port tracks was covered by two principal agreements; a May 24, 1950, agreement between the Port and SN (the "1950 Agreement"), and a February 12, 1951, agreement between the Port and SP (the "1951 Agreement"). A third agreement, dated January 1, 1966, between the Port, SN and SP, allowed the two railroads to operate over the Port tracks to reach a new industrial track serving the West Sacramento Port Center (the "Port Center track"). The Port Center track was jointly owned by the two railroads, not the Port.

² In a 1962 proceeding, Finance Docket No. 22014, Sacramento Northern Ry. - Abandonment, and embraced cases (June 11, 1962) SN and SP obtained ICC authority for certain operations over Port trackage outside of the Port boundaries. This did not effect the regulatory status of the trackage within the Port (i.e., the trackage west of "E" on the Wilson Exhibit 1 map).

Both SN and SP subsequently became part of UP (in 1983 and 1996 respectively). In 1996, as part of the UP/SP merger, BNSF obtained the right to serve the West Sacramento area, either directly, through UP switching, or through a third party agent (with UP's consent). To date, BNSF has been using UP switching to access West Sacramento and the Port area.

On October 17, 2001, YSLR filed its notice of exemption in this proceeding, in which it proposed to become the "exclusive" operator on the Port tracks. As previously noted, UP was not served with a copy of this notice, and only became aware of it when the Board served its November 20, 2001 notice (which was after the exemption had become effective and the transaction had been consummated). On November 16, 2002, YSLR sent a notice to UP purporting to terminate the 1950 and 1951 Agreements "effective immediately." However, since the 1951 Agreement required one (1) year advance notice of termination, a termination could not be effective prior to November 16, 2001. UP has thus continued to use the trackage under the 1951 and 1966 Agreements.³

To date, YSLR has conducted limited operations on the Port track, mostly in connection with its storage of tank cars on this trackage. However, it intends to take over switching service on the Port track in November of this year. This will primarily affect Farmers Rice Cooperative, which has a large rice mill served by a spur track

³ YSLR did not attempt to terminate the 1966 Agreement, which provides UP with access to its Port Center track. This was probably because the 1966 Agreement has a 50-year term which does not expire until 2016, and it cannot be unilaterally terminated before that date (Wilson Dec., p. 8).

which diverges from the Port track.⁴ YSLR has published a charge of \$200.00 per car for this service (which consists of moving cars roughly a mile between FRC and UP's West Sacramento Yard). This charge will be borne by the shippers (primarily FRC), and thus represents a \$200.00 per car rate increase.⁵

II.

ARGUMENT

A. The YSLR Notice is Materially Misleading

As discussed in the Wilson Declaration, the YSLR notice of exemption is grossly misleading in two key respects:

First, and most significantly, the notice does not disclose the true nature of the transaction. Nowhere does YSLR's notice disclose that YSLR was seeking the exemption in order to force UP to discontinue service on any of the subject trackage. While the notice (which was not served on UP) states that YSLR would have "exclusive" rights on the Port trackage, nothing in the notice discloses or even suggests that YSLR intended to achieve this result by forcing UP to discontinue any service.⁶ To the

⁴ FRC has another rice mill served by a spur which branches from the UP Port Center track. However, FRC cannot use this spur to move product generated by the mill that YSLR intends to serve (Graham Dec., p. 2).

⁵ UP cannot absorb the YSLR charge because UP will get no savings from the service YSLR will provide. UP's local trains will continue to operate past FRC on their way to and from the Port Center track and could easily handle the FRC traffic for which YSLR will be charging \$200.00 per car (Wilson Dec. p. 10).

⁶ The statement that YSLR's rights were to be "exclusive" does not disclose that there was anything unusual about the transaction. §§10901 and 10902 transactions for line sales or leases very commonly result in acquisition of "exclusive" rights. But they do not commonly involve a forced discontinuance of the incumbent's rail service. This feature (continued...)

contrary, YSLR's notice is carefully written to create the impression that the substitution of carriers was consensual. It even goes so far as to suggest (without explicitly saying so) that YSLR and UP were then in the process of negotiating divisions for YSLR's service (Notice, p. 4), which was not the case (Wilson Dec., p. 9). There is no question that YSLR intended from the outset to force UP to discontinue service - YSLR sent its termination letter just over two weeks after closing its transaction with the Port.

Second - YSLR has misled the Board as to its rights to access the Port trackage. There is no physical connection between YSLR's rail lines and the Port trackage. Rather, the Port tracks connect to a UP line (point "E" on the Wilson Exhibit 1 map) over which YSLR has trackage rights. YSLR implies in its notice that it has the right to access the Port tracks under a 1991 interchange agreement (Notice, p. 4). But that agreement has nothing to do with access to the Port tracks - it is a standard interchange agreement that gives YSLR the right to use certain UP tracks at West Sacramento for interchange (Wilson Dec., p. 10).

The key agreement, which is not even mentioned by YSLR, is a 1992 trackage rights agreement, which gives YSLR free trackage rights to bridge between its Woodland and Holland Branches and to reach UP's West Sacramento Yard for interchange. As shown in Mr. Wilson's statement, this agreement has an express restriction prohibiting YSLR from serving "industry tracks" along the trackage rights agreement (Wilson Dec., p. 11). As previously discussed, the Port tracks diverging

⁶(...continued)
of the YSLR transaction was obviously material and should have been disclosed in the notice.

from the UP trackage rights segment (point "E" on the Wilson Exhibit 1 map) have always been considered industry track.⁷ UP has now instituted an arbitration to address YSLR's breach of the 1992 Agreement, and a copy of the arbitration is attached as Exhibit 6 to the Wilson Declaration. YSLR's claim that "no other contracts are required for Yolo Shortline to implement service to the Port of Sacramento" (Notice, p. 5), coupled with its failure to disclose the existence of the 1992 agreement or its restrictions, was clearly intended to mislead the Board.

B. The YSLR Exemption Should Be Revoked To Permit Greater Regulatory Scrutiny Of The YSLR Transaction

The Board has recently addressed the intended scope of its §10901 class exemption in Finance Docket No. 33980, Riverview Trenton R. Co. - Acquisition and Operation Exemption (not printed) served February 15, 2002 ("Riverview"). According to the decision, the Board's class exemption procedures under §10901 are designed for "routine" transactions for acquisition and operation of rail lines. They are intended to serve shippers and community interests by facilitating continued rail service, on lines that the selling carrier can no longer operate profitably by new, smaller and more efficient carriers. The procedures are designed to meet the need for expeditious handling of the large number of requests that are rarely opposed. See also Finance Docket No. 33995, SF&L Ry. Co. - Acquisition and Operation Exemption - TP&W Ry. Co. (not printed) served October 17, 2002, p. 11 ("SF&L").

⁷ YSLR may have intended the exemption in FD 34114 as a way to "trump" this restriction by converting the "industry" track into common carrier track. If this was YSLR's intent, the failure of the notice to disclose this is another factor that makes its notice misleading.

Where cases differ substantially from the kind of transaction described above, the class exemption is subject to revocation to permit greater regulatory scrutiny through either a petition for exemption, or a formal application. That is, in fact what happened in Riverview. The Board found that the Riverview transaction was not the kind of transaction that the class exemption was intended to cover, and revoked the use of the class exemption case to permit regulatory scrutiny before the transaction was authorized. While the Board's discussion in Riverview was directed at the Board's §10901 class exemption, it is also applicable to the similar §10902 class exemption that YSLR has utilized.

The YSLR transaction is similarly not the kind of transaction that the §10902 class exemption was meant to cover. It is not, by any means, a "routine" acquisition and operation transaction. The essence of the transaction is YSLR's forced discontinuance of UP's service over the subject trackage. The service that YSLR intends to provide will not be more "efficient." YSLR is simply inserting itself as an expensive and unwanted middleman between UP and Port area customers replacing direct UP service with a two-railroad move.⁸ It will adversely affect shippers by increasing their shipping costs for no good reason. It is adding cost, not value, to services that do not bear those costs today. The fact that FRC - the principal shipper

⁸ The "service" to be provided by YSLR in place of UP's direct service consists of a movement by YSLR of approximately 1 mile between UP's West Sacramento Yard and the Port (Wilson Dec., p. 10). This is strikingly similar to the situation in SF&L, where a direct interchange was replaced by an operation "necessitating a costly and inefficient 1-mile movement by TP&W between the lines of KJRY and SF&L," which made it more expensive to send shipments over the line. The Board cited this arrangement as one of the factors justifying revocation of SF&L's acquisition and operation exemption, SF&L, pp. 12-13.

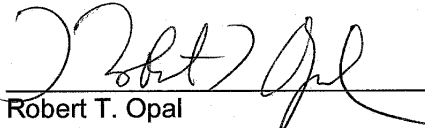
YSLR intends to serve - is supporting UP in this proceeding should be a red flag to the Board that this transaction requires greater scrutiny than it can receive under class exemption procedures.

CONCLUSION

For the reasons stated above, UP respectfully requests the Board to declare YSLR's notice of exemption misleading and therefore void *ab initio* or, in the alternative, revoke YSLR's use of the §10902 class exemption to permit more thorough review of the YSLR transaction. The Board should require YSLR to immediately unwind the underlying transaction. See SF&L, p. 19, ordering paragraph no. 3.

Respectfully submitted,

UNION PACIFIC RAILROAD COMPANY

By: 

Robert T. Opal
General Commerce Counsel
1416 Dodge Street, Room 830
Omaha, Nebraska 68179
(402) 271-3072

CERTIFICATE OF SERVICE

I certify that I have this date served a copy of UP's Petition to Revoke Exemption
and UP's Certificate of Compliance with 49 C.F.R. §§1152.32(e) and 1150.35(b) in
Finance Docket No. 34114 upon the following:

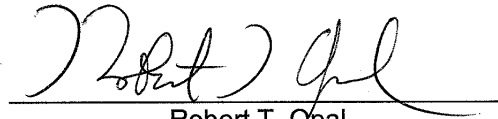
David McGaw
General Manager
Yolo Shortline Railroad Company
341 Industrial Way
Woodland, CA 95776-6012

John G. Sulpizio
Port Director
Port of Sacramento
3251 Beacon Blvd., Suite 210
West Sacramento, CA 95798-0070

Curt Graham
Farmers Rice Cooperative
2525 Natomos Park Drive
Sacramento, CA 95833-2927

Service was made by UPS Overnight with postage prepaid.

Dated at Omaha, Nebraska, this 18th day of October, 2002.


Robert T. Opal



**DECLARATION
OF
CURT GRAHAM**

My name is Curt Graham. I am Manager Marketing Services for Farmers' Rice Cooperative in Sacramento, California. Among other things, I am responsible for transportation of the products sold by FRC.

FRC is a rice marketing cooperative which processes and markets approximately 1/4 of all the rice grown in California. Approximately 70 percent of the rice processed by FRC is marketed domestically with the remainder exported. The key to FRC's ability to compete in domestic and world markets is being as efficient as possible, and constantly striving to improve on that position. Our viability in these highly competitive markets is linked to vital transportation services that include rail, port and truck access. Our ability to be an effective competitor, as well as a solid employer adding value to the community, would be severely limited without economical transportation services.

FRC's facilities are located on a 26-acre industrial site adjacent to the Port of Sacramento. These include two state-of-the-art rice mills, referred to as Mill No. 1 and Mill No. 2. Each of these mills is served by separate rail spurs. The spur serving Mill No. 1 branches off of the track owned by the Port of Sacramento, while the track serving Mill No. 2 branches off of the track owned by Union Pacific.

Both of the FRC mills are currently served by Union Pacific, which provides 5-days per week service. UP handles both its own traffic and traffic for BNSF, which obtained access to FRC in the UP-SP merger. We consider UP's service to be responsive to our shipping requirements, and we have no desire to see UP replaced as a serving carrier at either mill.

FRC is deeply concerned about changes to rail service to our mills arising from an agreement in the late 2001 between the Port and Yolo Short Line. We understand that this agreement gave YSL control over the Port tracks. This had an immediate adverse effect on FRC, as YSL took away track that Union Pacific had been using to switch our cars and filled those tracks with stored tank cars. It is our understanding that these stored tank cars have nothing to do with any traffic of Port area shippers.

This situation is going to quickly become much worse. We understand that YSL is attempting to terminate UP's right to use the Port track to serve Mill No. 1 in November. This means that YSL will be switching the spur track serving Mill No. 1 while UP will continue to switch the spur serving Mill No. 2. YSL has published a charge of \$200 per car for this service. This is the same service we have been receiving from Union Pacific at no additional charge. We cannot shift our rail shipments to Mill No. 2 to avoid YSL's charge as the two mills handle different grades of products from different bins. As a result, all of our Mill No. 1 traffic will be subject to the new YSL charge. The YSL service from a cost standpoint is not justifiable, and adding this carrier into the mix is not going to improve efficiency at all. YSL is simply going to be a hindrance to our ability to be competitive.

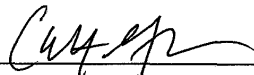
I should point out that the YSL transaction was a complete surprise to FRC. Even though FRC is one of the largest companies in the Port area, neither the Port nor YSL advised us prior to their transaction that they were going to prevent UP from switching Mill No. 1. They did not even advise us that they were considering such a change. It was only after they completed their transaction that we learned what they had done, and realized what the effects were likely to be. We have had several discussions with YSL since the transaction, and we don't feel that YSL has responded to our business needs in a positive manner.

Accordingly, FRC strongly supports UP's efforts in Finance Docket Nos. and to maintain its ability to serve FRC's facilities. The termination of UP service would seriously impact FRC.

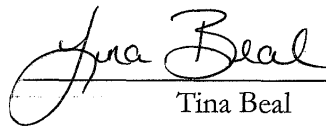
DECLARATION

Curt Graham, states under penalty that the foregoing statement is true and correct.

Executed October 15, 2002


Curt Graham

Witnessed By


Tina Beal

**DECLARATION
OF
WARREN C. WILSON**

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EXHIBITS

1. Map - UP, Port and YSLR Trackage in West Sacramento Area
2. Railroad Lease and Operating Agreement, Port-YSLR
3. YSLR letter to UP; November 16, 2001 (termination of agreements)
4. UP-YSLR Interchange Agreement; February 4, 1991
5. UP-YSLR Trackage Rights Agreement; September 27, 1992
6. UP Request for Arbitration; October 10, 2002
7. UP letter to YSLR; May 29, 2002 (breach of 1992 trackage rights agreement)

My name is Warren C. Wilson. I am Senior Manager-Rail Line Planning for Union Pacific Railroad Company at 1416 Dodge Street, Omaha, Nebraska, a position which I have held since 1991. My duties include responsibility for all aspects of Union Pacific's relations with the short lines and regional railroads with which we connect (over 160 in UP's service territory), including interchange matters. Prior to assuming my present position, I held various Marketing & Sales and Operating positions with the UP and Missouri Pacific Railroads and, prior to that with the Pennsylvania Railroad, since 1967.

This statement consists of three parts. In Part I, I will describe the development of the Port trackage facilities, the agreements covering these facilities, and UP's present service. I will also briefly describe the history of Yolo Shortline Railroad ("YSLR"). In Part II, I will address the current dispute, and demonstrate how YSLR's notice of exemption was materially misleading. Finally, in Part III, I will address the Port's stated rationale for entering in the arrangement with YSLR, and also explain why we have waited until now to seek revocation of the YSLR exemption.

I.

BACKGROUND

A. History of Port Area Rail Facilities, Agreements, Trackage and Operation

I have attached as Exhibit 1 to this statement a map showing UP, Port and YSLR trackage in the West Sacramento area. I have identified key locations on this map to which I will be referring by letters ("A" to "H"). It will be useful for the reader to refer to this map to follow my discussion throughout this statement.

1. 1950-1966

Based on surviving records of UP predecessors, it appears that the Port began constructing track in the early 1950's. The first segment extended west from a connection at "E" to what was then the mainline of the Sacramento Northern Railway¹ west to a location near "H". In May, 1950, the Port and SN entered into an agreement under which SN would provide service on the Port track west of "E".² Shortly afterwards (February, 1951), the Port made a separate agreement with Southern Pacific Company to also serve the Port track (the "1951 Agreement"). The 1951 Agreement called for the Port to construct additional trackage between the SP Sacramento-Oakland mainline and the Port ("B" to "E"), most of which ran parallel to the SN mainline on the east. The latter segment allowed SP to reach the Port area from its main line.

The next major agreement was dated March 22, 1962 (the "1962 Agreement") and was between the Port, SN and SP. This agreement was intended to accommodate construction by the Port of a new deep water channel, which would sever SN's mainline several miles south of "F". The agreement provided for exchange of trackage rights between SN and SP, generally designed to move SN's operations from the severed line

¹ The Sacramento Northern Railway was originally an electric interurban railway providing service between San Francisco and Sacramento and over several lines radiating from Sacramento. It became controlled by Western Pacific Railroad in the 1920's, and discontinued passenger service in 1940. It then continued in existence as a part of WP's freight network.

² I have not attached copies of the agreements discussed in this subsection as we are not seeking to have the Board resolve the parties' rights under any of these agreements. We would, however, be willing to file any of these agreements with the Board should the Board so request.

to the SP Sacramento-Oakland mainline. As part of these exchanges, SN obtained trackage rights over the Port-owned track between "B" and "E".

The final major agreement is dated September 1, 1966 (the "1966 Agreement") between the Port, SP and SN. This agreement gives the two railroads the right to use the Port trackage between "E" and "G" as a bridge to access the SP-SN West Sacramento Port Center track, diverging from the Port track at "G" and running north.

As far as we can determine, no ICC authority was ever sought or obtained for the construction or operation of the Port trackage between "E" and "H", or the Port Center trackage between "G" and "I". This indicates that the Port and the railroads regarded this trackage as exempt industrial trackage (otherwise ICC authority would have been required). The ICC did authorize the operations over the Port trackage between "B" and "E" covered by the 1962 Agreement in Finance Docket No. 22014 and embraced cases, Sacramento Northern Ry. - Abandonment (June 11, 1962).

2. Post 1966

Both SP and SN (WP) physically served the Port and Port Center tracks after 1966. UP began servicing the Port and Port Center in 1983 as a result of the UP-MP-WP merger, which became effective that year. In 1996, UP also assumed control of SP in the UP/SP merger. Since the UP/SP merger, UP has been the only railroad physically serving this trackage and has been providing service 5 days per week (M-F). As a result of the UP/SP merger, BNSF also obtained rights to serve this area, either by providing service itself, by UP switching or through an agent (with UP's consent). To date, BNSF has utilized UP switching, and has not physically served the West

Sacramento area.³ During this same period, the Port has removed much of the trackage that used to parallel the SN (UP) between "C" and "E". Beginning in late 2001, YSLR has conducted limited operations on the Port track (but not the Port Center tracks), mostly for the purpose of moving tank cars to and from storage on the Port tracks between "E" and "G".

B. Yolo Shortline Railroad

YSLR was initially organized to acquire the UP (former SN) "Holland Branch," running from "F" on the map south about 9.75 miles to Clarksburg, California. UP had proposed to abandon this line in 1990 in Docket No. AB-33 (Sub-No. 64), Union Pacific R. Co. - Abandonment between Bascule Bridge and Clarksburg, California.⁴ YSLR filed an Offer of Financial Assistance in the latter proceeding, and UP and YSLR reached agreement as to the purchase terms in October, 1990. In light of current events, it is interesting to note that YSLR proposed, in its Offer of Financial Assistance, to "have access to the tracks in West Sacramento owned by the Port of Sacramento (Sacramento-Yolo Belt Railroad)" (YSLR OFA dated August 8, 1990, p. 6, n. 4). But UP declined and refused to grant these access rights, and YSLR did not obtain these rights in the final agreement. It simply obtained the Holland Branch itself south of "F" and the right to interchange Holland Branch traffic with UP at UP's West Sacramento Yard ("D").

³ In order to physically serve the Port area, BNSF would need to obtain its own agreement to use the Port trackage, since UP does not have the right to admit other railroads to this trackage.

⁴ The ICC approved the abandonment by decision served September 10, 1990.

YSLR's next acquisition from UP was the former SN Woodland Branch, which runs north approximately 15 miles from "A". As part of this transaction, YSLR was given trackage rights over UP between "A" and "F" in order for YSLR to "bridge" between the Holland and Woodland Branches, and to interchange traffic from both branches with UP at West Sacramento Yard ("D"). This transaction was approved by the ICC in Finance Docket No. 32107, Yolo Shortline R. Co. - Purchase and Trackage Rights - Union Pacific R. Co. (August 11, 1992).⁵

II.

THE YSLR-PORT TRANSACTION

I am familiar with the YSLR-Port transaction and YSLR Notice of Exemption covering that transaction filed October 17, 2001. The notice was obviously written to create the impression that the underlying transaction was nothing more than a typical, consensual short line acquisition and operation transaction. Based on the notice, one would think that the transaction involved nothing more than a consensual change of operators from UP to YSLR, that YSLR and UP were in the process of negotiating the terms for YSLR's handling of UP traffic, and that not much was going to change from the perspective of the shippers but the color of the locomotives serving their facilities. One would not even suspect from the notice that there was any question as to YSLR's right to access the Port tracks from the UP trackage over which it operates. The notice implies (although it never actually says) that YSLR already had the right to access the

⁵ YSLR also obtained an exemption served March 27, 2001, to acquire operating rights over certain trackage at McClellan Park, in Sacramento County, California, in Finance Docket No. 34018. The McClellan Park operation is physically separate from the Port trackage and is not relevant to the current dispute.

Port trackage from a 1991 interchange agreement. And, there was no hint in the notice that the transaction would have any negative impact on shippers. There is nothing to suggest that the transaction is anything other than routine.

The fact is that the transaction was anything but "routine". That is clear both from the underlying YSLR-Port agreement, and from the actions taken by YSLR since the exemption became effective.

First - This transaction involves a forced discontinuance of UP service over the Port trackage, not a consensual change of operators. It is clear that this was YSLR's intent from the outset.⁶ The agreement between YSLR and the Port (which UP did not receive until March, 2002) expressly provides that YSLR is to "replace such service that heretofore has been provided by UP."⁷ And YSLR wasted no time to begin the process for ejecting UP. On November 16, 2001 - just days after consummating the transaction - YSLR sent UP a letter purporting to cancel the 1950 and 1951 Agreements "effective immediately."⁸ A copy of the letter is attached as Exhibit 3. The effect of these

⁶ YSLR has long wanted to be the exclusive railroad serving West Sacramento, including the Port area. See Finance Docket No. 32760, Brief and Request for Conditions of Yolo Shortline Railroad (YSLR-4), May 31, 1996, p. 5 "Single Switch Carrier in West Sacramento." The STB rejected this and other conditions requested by YSLR in UP/SP Merger, Decision No. 44, 1 S.T.B. 233, 467.

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terminations, once they become fully effective, would be to prevent UP from using the Port tracks for any purposes other than to access the UP-owned Port Center track under the 1966 Agreement.

YSLR obviously would, if it could, also force UP to discontinue this use of the Port tracks as well (which would force UP to discontinue service to industries on the Port Center track), since it is clear from the YSLR-Port agreement that the intent of these parties is to completely remove UP from the Port trackage. However, the 1966 Agreement has a 50-year term and cannot be terminated by any party until 2016. YSLR's response to this has been to make it as difficult as possible for UP to continue serving industries on the Port Center tracks. The way it has done this is to prevent UP from using the Port yard tracks between "E" and "G" which have historically been used to stage cars moving to the Port and Port Center trackage. One of the first things YSLR did after closing its transaction was to fill these tracks with stored tank cars, which prevented UP from making any use of them.⁹ We expect that, once YSLR begins serving industries on the Port trackage, it will do so in a way which maximizes the interference to UP's Port Center operations.

There is nothing in the YSLR notice that reveals YSLR's intent to effectuate a forced discontinuance of any UP service. The notice does say that YSLR's rights are to be "exclusive", but that does not disclose the forced discontinuance aspects of this

⁹ Most of these cars were supposed to move to/from Clarksburg (at the far end of the Holland Branch) under the shippers' billing and the UP-YSLR divisions agreement applicable to the move. Instead of moving them to/from Clarksburg (@ 9.75 miles), YSLR only moved them to/from the Port tracks (less than a mile), and then billed UP for the moves, claiming the cars had been moved to/from Clarksburg. UP has no agreement to pay any divisions to YSLR for cars moved to/from the Port tracks.

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Rather than revealing the "forced discontinuance" aspects of the transaction, YSLR's notice actually attempts to create the false impression that the substitution of carriers was consensual. This is particularly evident from the statements made on the bottom of p. 4 and the top of p. 5 of the notice, which are designed to suggest that YSLR and UP were in the process of negotiating divisions. There were no such negotiations then or later. All that had happened at the time of the notice was that John Speight, YSLR's marketing manager had taken me and other UP official aside at a short line conference in late 2001, announced that YSLR intended to "take over" switching at the Port and said that YSLR would need divisions at the same level as those applicable at McClellan Park, California. This announcement took both of us by surprise, and I told Mr. Speight that we needed to determine what was actually going on. We did not agree to negotiate or otherwise "process" a divisions agreement, and no negotiations ever occurred.

Second - This transaction will have serious adverse impacts on shippers, none of which are disclosed on the notice. That is the reason that Farmers Rice Cooperative ("FRC"), the major shipper affected by the transaction, is supporting UP in this proceeding (see accompanying Declaration of Curt Graham). The result of the YSLR transaction is that YSLR will become an unwanted middleman between UP and the rail customers accessed by the Port tracks. And YSLR will be an expensive middleman.

YSLR will haul the traffic roughly a mile between UP's West Sacramento Yard ("D") and the rail customers in the Port. YSLR has already announced that it will impose a charge of \$200 per car for this service. From the shippers' standpoint, this represents additional cost with no benefit - the shipper will be paying \$200 per car for services which they are now receiving from UP for no extra charge (See Graham Declaration, p. 2). From UP's standpoint, YSLR's service does not produce any savings that would allow UP to absorb the YSLR charges. UP's local will continue to operate through the area to serve industries on the Port Center track, and could easily serve FRC and other customers on the Port track as a small part of its existing duties. For both the shippers and UP, YSLR's operation will simply add costs to an operation which does not bear those costs today. The adverse effects of this transaction will become worse if YSLR is able to force UP to discontinue service to the Port Center trackage, which is clearly its ultimate objective.

Third - The notice completely misrepresents YSLR's ability to access the Port trackage from UP tracks. The 1991 interchange agreement mentioned in YSLR's notice (copy attached as Exhibit 4) was made over a decade ago in connection with the sale of the Holland Branch, and was made applicable to the Woodland Branch when YSLR acquired it in 1992. It is a standard interchange agreement that simply gives YSLR the right to use certain UP tracks at West Sacramento for interchange. It has nothing to do with access to the Port trackage.

The key agreement - which is not even mentioned by YSLR - is a 1992 trackage rights agreement between YSLR and UP that was made as part of the sale of the Woodland Branch. A copy of relevant portion of the agreement is attached as

Exhibit 5. This agreement grants free trackage rights to YSLR to allow it to "bridge" between its Holland and Woodland Branches and to access UP's West Sacramento Yard for interchange.¹⁰ It does not grant any rights to YSLR to access the Port tracks. In fact, it specifically provides that YSLR:

"shall not have the right to . . . serve any industry, team or house track now existing or hereafter located along the Joint Trackage."

As previously discussed, the Port trackage west of "E" has consistently been treated as "industry" track by the Port and by the railroads ever since it was constructed. We have instituted an arbitration against YSLR for its breach of the 1992 agreement (copy of Notice of Arbitration attached as Exhibit 6).

III.

OTHER MATTERS

In this section, I will address two additional issues. The first is the Port's stated reasons for entering into the transaction with YSLR. The second is why we are requesting revocation of the YSLR exemption now rather than in late 2001, when it was filed.

A. The Port's Rationale For The Transaction

In our discussions with Port officials, they have stated that their reasons for entering into the transaction with YSLR were difficulties they had supposedly

¹⁰ Here is the way YSLR described the 1992 agreement in its Petition for Exemption to acquire the Woodland Branch (FD 32107, June 12, 1992, p. 21):

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experienced in getting UP to pay the Port under the various agreements between the Port and UP's predecessors, and dissatisfaction with UP "service." Since it is possible they may make such claims in response to this filing, I want to address them here.

- First of all, as to payment issues, the real problem was that the Port was not sending UP any bills to pay. While Port officials claimed in our discussions that they had unsuccessfully attempted to obtain payments from UP, they could not, in response to a direct request from me, provide any names of people at UP with whom they had supposedly been working. Moreover, under the 1950 Agreement with SP (as amended in 1974), the Port was supposed to be furnishing UP a maintenance plan in advance of each calendar year for UP's approval, which would then be the basis for the compensation payable to the Port under that agreement for the year. The Port had failed to submit such plans since the UP/SP merger. Thus, while the Port was complaining about not getting paid, the fact is that it had not made any effort to get paid, and had completely ignored the procedures required by the underlying agreements. I would also point out that, in our discussions with the Port, UP offered to assume the obligation to maintain the Port track, which would have fully addressed any billing and payment issues. The Port turned this down.

- Second, it turned out that the Port's complaints about "service" were not about rail service to shippers (as noted above, UP provides 5-day per week service) but had to do with neighborhood complaints about switching on Port trackage immediately west of point "E". It, of course, may seem to the Port that YSLR has "solved" this problem by filling the track with stored tank cars, making switching impossible (UP has been doing the necessary switching at its West Sacramento Yard). What the Port does

not realize is that, if YSLR takes over service to the Port and/or the Port Center, YSLR will itself have to use this track for switching.

B. The Timing Of This Filing

Finally, I want to explain why UP waited until October, 2002, to file its petition to revoke the YSLR. As previously mentioned, UP first learned that the Port and YSLR were working on some kind of arrangement for YSLR to operate over the Port track when YSLR's John Speight mentioned it to me at a short line meeting in late 2001. However, even though this transaction would obviously affect UP, YSLR did not serve a copy of its notice of exemption on UP (filings like this were not available on the Board's website at the time).

We did not become aware of the notice of exemption until November 20, 2001, when the Board served its notice of the transaction. At about the same time, we received a copy of YSLR's November 16, 2001, letter (Exhibit 3) purporting to cancel the 1950 and 1951 agreements. By this time, of course, the transaction had already closed and the time to file petitions for stay had expired. However, there was no immediate risk of expulsion, as the 1950 Agreement required one (1) year notice to terminate (which would not expire until November 16, 2002).

We immediately began attempts to determine exactly what Port and YSLR had agreed to do with respect to our operations. However, both YSLR and the Port refused repeated UP requests for copies of their agreement. UP finally obtained a copy from the Port in March, 2002, after making a formal demand under the California Public Records Act.

At this point, I elected to try to negotiate a resolution of this matter with the Port, and I believed that taking legal action would interfere with that effort. My attempts to negotiate a solution (which included two meetings with Port officials in West Sacramento) continued until August 21, when the Port rejected UP's offer to assume responsibility for maintaining the Port track at UP expense. Throughout this period, we have made clear that UP was not waiving its rights to take legal action, including specifically the filing of a petition to revoke YSLR's exemption. See, for example, my letter of May 29, 2002, to David McGaw of YSLR, p. 2, #2 (copy attached as Exhibit 7).

VERIFICATION

Warren C. Wilson, under penalty of perjury, declares and verifies that he has read the foregoing statement, knows the facts stated therein, and that said facts are true as stated.

Dated: October 18, 2002.


Warren C. Wilson

**DECLARATION
OF
WARREN C. WILSON**

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EXHIBITS

1. Map - UP, Port and YSLR Trackage in West Sacramento Area
2. Railroad Lease and Operating Agreement, Port-YSLR
3. YSLR letter to UP; November 16, 2001 (termination of agreements)
4. UP-YSLR Interchange Agreement; February 4, 1991
5. UP-YSLR Trackage Rights Agreement; September 27, 1992
6. UP Request for Arbitration; October 10, 2002
7. UP letter to YSLR; May 29, 2002 (breach of 1992 trackage rights agreement)

My name is Warren C. Wilson. I am Senior Manager-Rail Line Planning for Union Pacific Railroad Company at 1416 Dodge Street, Omaha, Nebraska, a position which I have held since 1991. My duties include responsibility for all aspects of Union Pacific's relations with the short lines and regional railroads with which we connect (over 160 in UP's service territory), including interchange matters. Prior to assuming my present position, I held various Marketing & Sales and Operating positions with the UP and Missouri Pacific Railroads and, prior to that with the Pennsylvania Railroad, since 1967.

This statement consists of three parts. In Part I, I will describe the development of the Port trackage facilities, the agreements covering these facilities, and UP's present service. I will also briefly describe the history of Yolo Shortline Railroad ("YSLR"). In Part II, I will address the current dispute, and demonstrate how YSLR's notice of exemption was materially misleading. Finally, in Part III, I will address the Port's stated rationale for entering in the arrangement with YSLR, and also explain why we have waited until now to seek revocation of the YSLR exemption.

I.

BACKGROUND

A. History of Port Area Rail Facilities, Agreements, Trackage and Operation

I have attached as Exhibit 1 to this statement a map showing UP, Port and YSLR trackage in the West Sacramento area. I have identified key locations on this map to which I will be referring by letters ("A" to "H"). It will be useful for the reader to refer to this map to follow my discussion throughout this statement.

1. 1950-1966

Based on surviving records of UP predecessors, it appears that the Port began constructing track in the early 1950's. The first segment extended west from a connection at "E" to what was then the mainline of the Sacramento Northern Railway¹ west to a location near "H". In May, 1950, the Port and SN entered into an agreement under which SN would provide service on the Port track west of "E".² Shortly afterwards (February, 1951), the Port made a separate agreement with Southern Pacific Company to also serve the Port track (the "1951 Agreement"). The 1951 Agreement called for the Port to construct additional trackage between the SP Sacramento-Oakland mainline and the Port ("B" to "E"), most of which ran parallel to the SN mainline on the east. The latter segment allowed SP to reach the Port area from its main line.

The next major agreement was dated March 22, 1962 (the "1962 Agreement") and was between the Port, SN and SP. This agreement was intended to accommodate construction by the Port of a new deep water channel, which would sever SN's mainline several miles south of "F". The agreement provided for exchange of trackage rights between SN and SP, generally designed to move SN's operations from the severed line

¹ The Sacramento Northern Railway was originally an electric interurban railway providing service between San Francisco and Sacramento and over several lines radiating from Sacramento. It became controlled by Western Pacific Railroad in the 1920's, and discontinued passenger service in 1940. It then continued in existence as a part of WP's freight network.

² I have not attached copies of the agreements discussed in this subsection as we are not seeking to have the Board resolve the parties' rights under any of these agreements. We would, however, be willing to file any of these agreements with the Board should the Board so request.

to the SP Sacramento-Oakland mainline. As part of these exchanges, SN obtained trackage rights over the Port-owned track between "B" and "E".

The final major agreement is dated September 1, 1966 (the "1966 Agreement") between the Port, SP and SN. This agreement gives the two railroads the right to use the Port trackage between "E" and "G" as a bridge to access the SP-SN West Sacramento Port Center track, diverging from the Port track at "G" and running north.

As far as we can determine, no ICC authority was ever sought or obtained for the construction or operation of the Port trackage between "E" and "H", or the Port Center trackage between "G" and "I". This indicates that the Port and the railroads regarded this trackage as exempt industrial trackage (otherwise ICC authority would have been required). The ICC did authorize the operations over the Port trackage between "B" and "E" covered by the 1962 Agreement in Finance Docket No. 22014 and embraced cases, Sacramento Northern Ry. - Abandonment (June 11, 1962).

2. Post 1966

Both SP and SN (WP) physically served the Port and Port Center tracks after 1966. UP began servicing the Port and Port Center in 1983 as a result of the UP-MP-WP merger, which became effective that year. In 1996, UP also assumed control of SP in the UP/SP merger. Since the UP/SP merger, UP has been the only railroad physically serving this trackage and has been providing service 5 days per week (M-F). As a result of the UP/SP merger, BNSF also obtained rights to serve this area, either by providing service itself, by UP switching or through an agent (with UP's consent). To date, BNSF has utilized UP switching, and has not physically served the West

Sacramento area.³ During this same period, the Port has removed much of the trackage that used to parallel the SN (UP) between "C" and "E". Beginning in late 2001, YSLR has conducted limited operations on the Port track (but not the Port Center tracks), mostly for the purpose of moving tank cars to and from storage on the Port tracks between "E" and "G".

B. Yolo Shortline Railroad

YSLR was initially organized to acquire the UP (former SN) "Holland Branch," running from "F" on the map south about 9.75 miles to Clarksburg, California. UP had proposed to abandon this line in 1990 in Docket No. AB-33 (Sub-No. 64), Union Pacific R. Co. - Abandonment between Bascule Bridge and Clarksburg, California.⁴ YSLR filed an Offer of Financial Assistance in the latter proceeding, and UP and YSLR reached agreement as to the purchase terms in October, 1990. In light of current events, it is interesting to note that YSLR proposed, in its Offer of Financial Assistance, to "have access to the tracks in West Sacramento owned by the Port of Sacramento (Sacramento-Yolo Belt Railroad)" (YSLR OFA dated August 8, 1990, p. 6, n. 4). But UP declined and refused to grant these access rights, and YSLR did not obtain these rights in the final agreement. It simply obtained the Holland Branch itself south of "F" and the right to interchange Holland Branch traffic with UP at UP's West Sacramento Yard ("D").

³ In order to physically serve the Port area, BNSF would need to obtain its own agreement to use the Port trackage, since UP does not have the right to admit other railroads to this trackage.

⁴ The ICC approved the abandonment by decision served September 10, 1990.

YSLR's next acquisition from UP was the former SN Woodland Branch, which runs north approximately 15 miles from "A". As part of this transaction, YSLR was given trackage rights over UP between "A" and "F" in order for YSLR to "bridge" between the Holland and Woodland Branches, and to interchange traffic from both branches with UP at West Sacramento Yard ("D"). This transaction was approved by the ICC in Finance Docket No. 32107, Yolo Shortline R. Co. - Purchase and Trackage Rights - Union Pacific R. Co. (August 11, 1992).⁵

II.

THE YSLR-PORT TRANSACTION

I am familiar with the YSLR-Port transaction and YSLR Notice of Exemption covering that transaction filed October 17, 2001. The notice was obviously written to create the impression that the underlying transaction was nothing more than a typical, consensual short line acquisition and operation transaction. Based on the notice, one would think that the transaction involved nothing more than a consensual change of operators from UP to YSLR, that YSLR and UP were in the process of negotiating the terms for YSLR's handling of UP traffic, and that not much was going to change from the perspective of the shippers but the color of the locomotives serving their facilities. One would not even suspect from the notice that there was any question as to YSLR's right to access the Port tracks from the UP trackage over which it operates. The notice implies (although it never actually says) that YSLR already had the right to access the

⁵ YSLR also obtained an exemption served March 27, 2001, to acquire operating rights over certain trackage at McClellan Park, in Sacramento County, California, in Finance Docket No. 34018. The McClellan Park operation is physically separate from the Port trackage and is not relevant to the current dispute.

Port trackage from a 1991 interchange agreement. And, there was no hint in the notice that the transaction would have any negative impact on shippers. There is nothing to suggest that the transaction is anything other than routine.

The fact is that the transaction was anything but "routine". That is clear both from the underlying YSLR-Port agreement, and from the actions taken by YSLR since the exemption became effective.

First - This transaction involves a forced discontinuance of UP service over the Port trackage, not a consensual change of operators. It is clear that this was YSLR's intent from the outset.⁶ The agreement between YSLR and the Port (which UP did not receive until March, 2002) expressly provides that YSLR is to "replace such service that heretofore has been provided by UP."⁷ And YSLR wasted no time to begin the process for ejecting UP. On November 16, 2001 - just days after consummating the transaction - YSLR sent UP a letter purporting to cancel the 1950 and 1951 Agreements "effective immediately."⁸ A copy of the letter is attached as Exhibit 3. The effect of these

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We did not become aware of the notice of exemption until November 20, 2001, when the Board served its notice of the transaction. At about the same time, we received a copy of YSLR's November 16, 2001, letter (Exhibit 3) purporting to cancel the 1950 and 1951 agreements. By this time, of course, the transaction had already closed and the time to file petitions for stay had expired. However, there was no immediate risk of expulsion, as the 1950 Agreement required one (1) year notice to terminate (which would not expire until November 16, 2002).

We immediately began attempts to determine exactly what Port and YSLR had agreed to do with respect to our operations. However, both YSLR and the Port refused repeated UP requests for copies of their agreement. UP finally obtained a copy from the Port in March, 2002, after making a formal demand under the California Public Records Act.

At this point, I elected to try to negotiate a resolution of this matter with the Port, and I believed that taking legal action would interfere with that effort. My attempts to negotiate a solution (which included two meetings with Port officials in West Sacramento) continued until August 21, when the Port rejected UP's offer to assume responsibility for maintaining the Port track at UP expense. Throughout this period, we have made clear that UP was not waiving its rights to take legal action, including specifically the filing of a petition to revoke YSLR's exemption. See, for example, my letter of May 29, 2002, to David McGaw of YSLR, p. 2, #2 (copy attached as Exhibit 7).

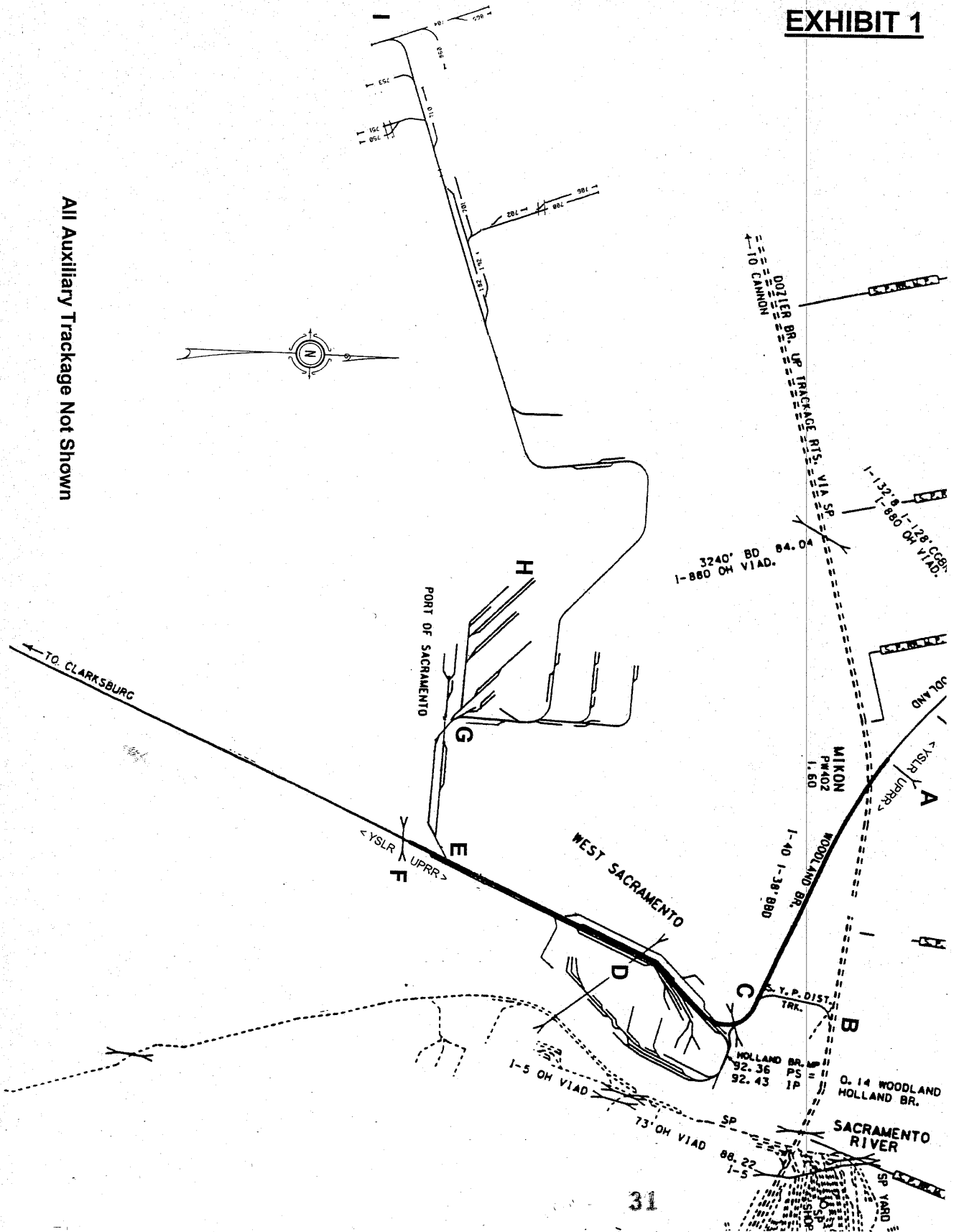
VERIFICATION

Warren C. Wilson, under penalty of perjury, declares and verifies that he has read the foregoing statement, knows the facts stated therein, and that said facts are true as stated.

Dated: October 18, 2002.


Warren C. Wilson

EXHIBIT 1



All Auxiliary Trackage Not Shown

ORIGINAL

EXHIBIT 2

Contract No. 010705

RAILROAD LEASE AND OPERATING AGREEMENT

**Sacramento-Yolo Port District—Yolo Shortline Railroad Company
West Sacramento, Yolo County, CA**

This Railroad Lease and Operating Agreement ("Lease Agreement") is made and entered into as the 10 day of October 2001 ("Agreement Date"), by and between the **SACRAMENTO-YOLO PORT DISTRICT**, a political subdivision of the State of California ("Lessor") and **YOLO SHORTLINE RAILROAD COMPANY**, a California Corporation ("Lessee").

RECITALS:

- A. The Lessor owns trackage in West Sacramento, CA that serves both the Lessor and its tenants, and connects with Union Pacific Railroad Company's ("UP") trackage, and
- B. Lessor, pursuant to separate agreements, has granted to predecessors of UP (UP and its predecessors shall also be hereinafter collectively referred to as "UP") trackage rights on Lessor's track for purposes of providing rail service to the Lessor and access to UP's trackage and customers of UP, and
- C. Lessor desires to have Lessee provide for common carrier rail service to itself and Lessor's tenants utilizing the Lessor's existing trackage in West Sacramento, which service will provide the local delivery and receipt of railcars between the Lessor and its tenants and an interchange with UP and Burlington Northern Santa Fe Railroad ("BNSF"), and which service will replace such service that heretofore had been provided by UP, and
- D. Lessor desires to have Lessee make all the necessary repairs and maintenance to Lessor's existing trackage and road crossings, as set out below and as designated in Exhibit A, in accordance with applicable Federal and State regulations, and
- E. Lessee is a common carrier railroad and desires to expand its operations into West Sacramento, and
- F. Lessee is willing to provide all maintenance and repairs to Lessor's trackage, as set out below and as designated in Exhibit A, and
- G. Lessee will make such necessary agreements with UP and BNSF and other users of the Lessor's trackage so that railroad traffic may be interchanged, delivered, received, and otherwise handled in accordance with standard railroad practices.

AGREEMENT:

Now, therefore, it is mutually agreed by and between the parties hereto as follows:

1. LESSOR GRANTS RIGHT.

- 1.1. In consideration of the Lease Fees to be paid by the Lessee and in further consideration of the covenants and agreements herein contained to be by the Lessee kept, observed and performed, the Lessor hereby grants to the Lessee a lease and license to possess, occupy, maintain, repair and operate all of the Lessor's Railroad Facilities (as hereinafter defined) in West Sacramento, except trackage and facilities that are specifically excepted, as shown on Exhibit A, attached

hereto and made a part hereof. This lease of Lessor's trackage, as set forth in Exhibit A, shall be exclusive except for loading and unloading operations that are conducted by Lessor or its tenants, and except for such operations by third party railroads as are conducted under the Agreements listed in Section 8.1 and 8.7 below. This lease of trackage shall include the land and property within 15 feet of the centerline of each track, except where roadways or buildings reduce such distance to less than 15 feet. Also lease of trackage shall include all railroad signs, switch mechanisms, signals and other appurtenances associated with the trackage subject to this Lease Agreement. Buildings and other fixtures which are not appurtenances associated with the trackage shall not be included under this Lease Agreement, notwithstanding their location within 15 feet of the centerline of such trackage. All such trackage and appurtenances described on Exhibit A and subject to this Lease Agreement are hereinafter defined as the "Railroad Facilities."

2. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.

- 2.1. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Lessor to use and maintain its property, including the right and power of the Lessor to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, signal, communication, fiber optics, pipelines or other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by the Lessor without liability to the Lessee for compensation or damages, provided that Lessor shall, to the extent possible, notify the Lessee as soon as practicable of any planned or actual interference with the Railroad Facilities or Lessee's operation thereof, and Lessor shall take all practicable measures to minimize such interference.
- 2.2. The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of the Lessor's property, and others), and the right of the Lessor to renew and extend the same; and, is made without covenant of title or for quiet enjoyment, provided that Lessor shall not amend or extend those agreements referenced in Section 8.1 and 8.7 below.
- 2.3. Lessee hereby acknowledges that (1) it has satisfied itself with respect to the condition of the Railroad Facilities and the present and future suitability of the Railroad Facilities for Lessee's intended use; (2) that Lessee has made such investigations as it deems necessary with respect to the Railroad Facilities, is satisfied with reference thereto, and assumes a responsibility therefore as to Lessee's occupancy and use thereof; and (3) neither the Lessor, nor any of Lessor's agents, has made any oral or written representations or warranties with respect to said Railroad Facilities other than as set forth in this Lease Agreement.

3. MAINTENANCE, AND OPERATION OF RAILROAD FACILITIES.

- 3.1. Following the Agreement Date, using its best commercial efforts and its due diligence, the Lessee, at its expense, shall make all necessary repairs and ongoing maintenance to the Railroad Facilities, identified on Exhibit A (Port District trackage outside of Port District fence) attached hereto, in accordance with the requirements of Section 3.2 below, except that Lessee shall not be responsible for the repairs and maintenance of the railroad crossings at Jefferson Avenue until such time as the Lessee receives funds for the maintenance and repairs of such railroad crossings as set out in Section 8.5.
- 3.2. The Lessee, at its expense, shall keep the Railroad Facilities in use in good repair and in a good and safe condition in conformity with the requirements of General Orders of the California Public Utilities Commission and the regulations of the Federal Railroad Administration ("FRA"),

as applicable, and all other applicable laws, codes or regulations. Such trackage will be maintained to FRA class I or better. For purposes of this section, such repairs include, but are not limited to, tie replacements, joint bar replacements, replacements of bolts, spikes, broken tie plates and fittings, and repair or replacement of cracked or broken rails, frogs and/or switch parts, tree trimming and weed abatement, but does not include upgrades of rail, switches and other track material.

- 3.3. All track materials installed as part of the Railroad Facilities shall become the property of the Lessor. All materials removed from the Railroad Facilities, as part of maintenance or repairs, shall become the property of Lessee.

4. RELOCATION OR REMOVAL OF RAILROAD FACILITIES.

- 4.1. The Lease herein granted is subject to the needs and requirements of the Lessor in the operation of the Port of Sacramento and in the improvement and use of that property. The Lessor, at its sole expense, may add to or remove any portion of the Railroad Facilities, change or relocate them to such new location(s) as the Lessor may designate, whenever, in the furtherance of Lessor's needs and requirements, the Lessor shall find such action necessary. In such cases, Lessee shall provide Lessor with a fixed price quote for performing such work, and Lessor shall have the option of accepting Lessee's quote and have Lessee perform the work, perform the work itself, or have another rail contractor perform such work. In the event that any railroad trackage is removed from the Railroad Facilities, Lessee may designate and stockpile for future use all or a portion of such removed materials as is reasonably necessary for repairs and maintenance of the Railroad Facilities. All such work performed and installation of railroad trackage shall be in conformance to all requirements of the General Orders of the California Public Utilities Commission and regulations of the Federal Railroad Administration (FRA), as applicable, and all other applicable laws, codes or regulations.
- 4.2. All the terms, conditions and stipulations herein expressed with reference to the Railroad Facilities shall apply to any new, modified, changed or relocated trackage that is or will be owned by Lessor that it is located within the area of Lessee's Railroad Facilities as shown on Exhibit A.

5. MINIMIZE INTERFERENCE WITH LESSOR'S TENANTS.

- 5.1. The Railroad Facilities shall be operated in such a manner as to minimize interference with the use by tenants of the roadways, property and facilities of the Lessor, and nothing shall be done or suffered to be done by the Lessee at any time that would in any manner impair the safety thereof.

6. LEASE FEES.

- 6.1. The Lease Fees shall be dependent upon the railroad traffic. Lessee shall pay Lessor the following fees based on railcars received from the connecting carrier and delivered to Lessor or the tenants of Lessor or received from Lessor or tenants of Lessor and delivered to the connecting carrier: 1) when UP or its successors pays trackage rights fees to Lessee under the relevant agreements listed in Section 8.1, Lessee shall pay such fees to Lessor as are set out in Section 6.1.4.1; and 2) when Lessee receives revenue from the connecting carrier under negotiated standard divisions, which amount is referred to as the "Railcar Divisions" (Lessee shall provide Lessor with a summary of its negotiated Railcar Divisions and shall update such summary on any adjustments to such amounts) Lessee shall pay such fees to Lessor as are set out below in Section 6.1.1.

- 6.1.1. With respect to railcar traffic originated or terminated by the Lessor or its tenants:
- 6.1.1.1. On the first 350 railcars each calendar year—No fee
 - 6.1.1.2. On the 351st through 1000th railcar each calendar year—ten percent (10%) of the Railcar Divisions received by Lessee from the connecting carrier railroad.
 - 6.1.1.3. On the 1001st and greater railcars each calendar year—fifteen percent (15%) of the Railcar Divisions received by Lessee from the connecting carrier railroad
 - 6.1.1.4. For all railcars received, for which Lessee is paid a special negotiated division (such as excess dimension or weight railcars) higher than standard, Lessor shall receive twenty percent (20%) of the Railcar Divisions received by Lessee.
- 6.1.2. All other incidental switching or operating fees (if any) shall accrue solely to Lessee (the parties acknowledge that the amounts anticipated to be received by Lessee pursuant to this Section 6.1.2 are minimal and if such assumption is incorrect and Lessee begins to receive significant funds from the services described in this Section 6.1.2 (defined as five percent (5.00%) or more of revenues generated from the Railroad Facilities), the parties shall meet and agree upon an reasonable allocation share for Lessor.
- 6.1.3. For all non-operating revenue (car storage fees or track sublease or license fees) received by Lessee related to Railroad Facilities, Lessee shall pay to Lessor fifty percent (50%) of such revenue, except as provided in Section 8.1 below.
- 6.1.4. With respect to railcars transferred over the Railroad Facilities under any of the agreements listed in Section 8.1 below that provide for trackage rights for third parties:
- 6.1.4.1. If and when UP, or its successors, pays trackage rights fees to Lessee under any of the agreements listed in Section 8.1, then (1) if such fees are five dollars (\$5.00) or less per car, then Lessee shall pay to Lessor zero percent (0%) of such fee, (2) if such fees are greater than five dollars (\$5.00) and less than or equal to ten dollars per car, then Lessee shall pay to Lessor five percent (5%) of such fee, or (3) if such fees are greater than ten dollars (\$10.00) per car, then Lessee shall pay to Lessor ten percent (10%) of such fee.
 - 6.1.4.2. If and when UP, or its successors, pays Lessee Railcar Divisions to Lessee for traffic originating or terminating in the West Sacramento area, other than traffic originating with or delivered to the Lessor or its tenants, and other than payments made pursuant to the agreements listed in Section 8.1, then Lessee shall pay to Lessor:
 - 6.1.4.2.1. On the first 350 railcars each calendar year—No fee
 - 6.1.4.2.2. On the 351st through 1000th railcar each calendar year—five percent (5%) of the Railcar Divisions received by Lessee from the connecting carrier railroad.
 - 6.1.4.2.3. On the 1001st and greater railcars each calendar year—seven and one half percent (7.5%) of the Railcar Divisions received by Lessee from the connecting carrier railroad

6.1.4.2.4. For all railcars received, for which Lessee is paid a special negotiated division (such as excess dimension or weight railcars) higher than standard, Lessor shall receive ten percent (10%) of the Railcar Divisions received by Lessee.

6.2. On or before the last day of each month, Lessee shall determine the amounts payable arising from the preceding month, and shall pay such amount to the Lessor. Lessee shall prepare a statement detailing the number of railcars utilizing the Lessor's trackage subject to the lease, along with the Railcar Divisions received by the Lessee from connecting carriers for such usage. The statement shall also indicate the amount of fees Lessee has received which are described in Section 7.1. Any adjustments shall be made as soon as practicable on subsequent statements. Lessee shall, upon reasonable request from Lessor, make available for inspection and copying all documents and receipts upon which the Lease fees are based.

7. TEMPORARY USE OF LAYDOWN SPACE.

7.1. Lessee may make arrangements from time to time with a temporary shipper by rail for use of otherwise unused laydown space (open space next to railroad track). Lessee shall notify Lessor of each such use. If Lessor reasonably objects to any specific use of laydown space by Lessee or its shipper, Lessee shall discontinue that use of such laydown space as soon as practicable. Lessee shall pay to Lessor twenty percent (20%) of all revenue (if any) received by Lessee by such shippers for such use of such laydown space.

8. ASSIGNMENTS OF AGREEMENTS, TRACK PURCHASE OPTION.

8.1. Lessor hereby assigns all rights and obligations under the following contracts and agreements [attached as Exhibits B through F] to Lessee, including the right to terminate such agreements:

8.1.1. Agreement dated May 24, 1950 between the Lessor and the Sacramento Northern Railway (and its successors in interest) and all amendments thereof relating to certain trackage rights on Lessor's tracks.

8.1.2. Agreement dated February 12, 1951 between the Lessor and Southern Pacific Railroad (and its successors in interest) and all amendments thereof relating to certain trackage rights on Lessor's tracks, and in particular that Amendment dated September 9, 1974 relating to payments for maintenance of those tracks outside of the fenced area of the Lessor.

8.1.3. Agreement dated September 1, 1966 between the Lessor, Sacramento Northern Railway, and Southern Pacific Railroad (and their successors in interest) and all amendments thereof relating to certain trackage rights on Lessor's tracks.

8.1.4. Agreement dated February 2, 1972 between the Lessor and Southern Pacific Railroad (and its successors in interest) and all amendments thereof relating to installation and signal maintenance on the Washington Transfer track.

8.1.5. Agreement dated June 1, 1977 between the Lessor and Sacramento Northern Railway (and its successors in interest) and all amendments thereof relating to certain railroad switch maintenance.

8.2. During the term of this Lease Agreement, Lessee shall indemnify, defend and hold Lessor harmless from any and all liability which is due to or arises from: (1) the agreements listed in Section 8.1 above; or (2) Lessee's failure to comply with or perform any of the terms and

conditions set forth in the agreements set forth in Section 8.1 above; except to the extent that the liability is caused by the negligence or willful misconduct of the Lessor; or (3) any actions taken by the Lessee pursuant to Section 8.3.

- 8.3. Lessor hereby assigns to Lessee the right to any and all claims held or owned by Lessor that arose prior to the Agreement Date or before the date this Lease Agreement terminates, for damages by third parties to the Railroad Facilities. Such rights and claims include the right to any payments owed under the Agreements referenced in Section 8.1 above, except that any fees due to Lessor and paid to Lessee pursuant to the agreements listed in Section 8.1, which were incurred prior to the date of this agreement, shall be paid to Lessor and Lessee according to the following: 1) Lessee shall retain the first Five Thousand dollars (\$5,000) received and fifty percent (50%) of any fees received above \$5,000; and 2) Lessee shall pay Lessor fifty percent (50%) of any fees received over \$5,000.
- 8.4. If any of the agreements referenced in Section 8.1 will continue in existence on and after the date this Lease Agreement terminates, then effective on the date of termination of this Lease Agreement, Lessee assigns all rights and obligations under such agreements back to Lessor.
- 8.5. For the term of this Lease Agreement, Lessor assigns to Lessee the right to all funds that it would otherwise receive for railroad crossing maintenance pursuant to Public Utilities Code Sections 1231 and 1232, or their successors.
- 8.6. The Lessor and Lessee agree that at their mutual option, Lessor shall sell to Lessee and Lessee shall purchase all Lessor's track between the point of connection with UP trackage in the vicinity of the Bascule Bridge in West Sacramento, CA and the point of connection with UP's main line at Washington (the Washington transfer track) and an easement on Lessor's real property for so long as such track shall be used for railroad purposes, for the liquidation value of such track; provided however that Lessor may choose not to sell Lessee the aforementioned trackage and easement at its sole discretion; and provided however, that such mutual option shall be subject to the Agreement dated March 22, 1962 [attached as Exhibit G] between the Lessor, Sacramento Northern Railway, and Southern Pacific Railroad (and their successors in interest) option to acquire such trackage from Lessor.

9. TERM AND TERMINATION.

- 9.1. This Lease Agreement shall be effective when fully executed, shall continue in full force and effect for a period of ten (10) years and year to year thereafter, unless otherwise terminated as provided herein.
- 9.2. Upon giving thirty (30) days written notice, either party may terminate this Lease Agreement in the event that Lessee cannot make commercially reasonable interchange and trackage rights agreements with UP or any other railroad for the interchange, delivery and receipt of cars for Lessor and its tenants, and reasonable Railcar Divisions.
- 9.3. If the Lessee does not use the right herein granted or the Railroad Facilities for one (1) year, or if the Lessee continues in default in the performance of any covenant or agreement herein contained for a period of thirty (30) days after written notice from the Lessor to the Lessee specifying such default, the Lessor may, at its option, forthwith terminate this Lease Agreement by written notice, provided however, that if such default cannot reasonably be cured within thirty (30) days, Lessor shall not terminate this Lease Agreement if Lessee begins to cure the default within the thirty day notice period and proceeds diligently to complete such cure.

9.4. Notwithstanding any other provision of this Lease Agreement to the contrary, this Lease Agreement may be terminated, without cause, by written notice given by either party to the other on any date stated in such notice, not less, however, than six (6) months subsequent to the date which such notice shall be given, provided that, if Lessor terminates this Lease Agreement pursuant to this subsection, or any other section of this Lease Agreement except Section 9.2 or 9.3 above, within ten (10) years of the effective date of this Lease Agreement, Lessor shall reimburse Lessee for its unamortized (using a 10-year period of straight line amortization) replacement, maintenance, and repair costs for the Railroad Facilities, including labor, material and overhead costs, incurred by Lessee under Section 3.1 hereof, which reimbursement obligation shall not, in any event exceed Two Hundred Thousand dollars (\$200,000.00). Lessee shall provide all documentation supporting any claims for such reimbursement of costs under this Section.

9.5. All obligations incurred by the Parties prior to the termination of this Lease Agreement shall be preserved until satisfied.

10. INSURANCE.

10.1. The Lessee shall, at its own cost and expense, provide and procure General Public Liability and, as applicable, Workman's Compensation or Federal Employer's Liability Act (FELA) insurance. This insurance shall be kept in force during the life of this Lease Agreement.

10.2. The General Public Liability insurance providing bodily injury, including death, personal injury and property damage coverage shall have a combined single limit of at least \$5,000,000 each occurrence or claim and at all times an unimpaired aggregate limit of at least \$5,000,000. This insurance shall contain broad form contractual liability covering the indemnity provisions contained in this Lease Agreement, coverage for construction or demolition work on or near railroad tracks, and name the Lessor as an additional insured. Such insurance coverage shall be subject to Lessor's prior written approval and Lessee shall provide Lessor with a certificate of such insurance prior to the execution of this Lease Agreement.

10.3. Workers' Compensation or FELA insurance shall cover the statutory liability as determined by the compensation laws of the State of California or FELA, as applicable, with a limit of at least \$1,000,000.

11. NOTICES.

11.1. All correspondence, notices and other papers shall be delivered either in person or by certified or registered mail, postage prepaid, to the parties hereto at the following addresses:

General Manager
Yolo Shortline Railroad Company
341 Industrial Way
Woodland, CA 95776-6012

Director
Sacramento-Yolo Port District
3251 Beacon Boulevard, Suite 210
West Sacramento, CA 95798-0070

12. CLAIMS AND LIENS FOR LABOR AND MATERIAL.

- 12.1. The Lessee shall fully pay, when due and before any lien shall attach to the Railroad Facilities, if the same may lawfully be asserted, for all materials joined or affixed to, and labor performed upon, the property of the Lessor in connection with the maintenance, repair, and operation of the Railroad Facilities, and shall not permit or suffer any mechanic's or materialman's or other lien of any kind or nature to be created or enforced against the property for any work done or materials furnished thereon at the instance or request or on behalf of the Lessee. The Lessee agrees to indemnify, hold harmless, and defend, the Lessor and Lessor's property against and from any and all liens, claims, demands, liabilities, causes of action, costs, and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials or other things furnished. The provisions of this Section 12 shall survive the termination or expiration of the term of this Lease Agreement.

13. PROPERTY TAXES.

- 13.1. The Lessee shall be responsible and liable for any property or other taxes assessed on the Railroad Facilities by any governmental authority. Lessee shall indemnify, defend and hold Lessor harmless for any property taxes on the Railroad Facilities that are assessed to and/or paid by Lessor.

14. INDEMNITY.

- 14.1. As used in this Section, "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs, and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from: (1) injury to or death of persons whomsoever (including the Lessor's officers, agents and employees, the Lessee's officers, agents and employees, as well as any other person); and (2) damage to or loss or destruction of any property whatsoever (including Lessee's property, adjacent property and crops, the roadbed, tracks, equipment or other property of the Lessor, or property in its care or custody).
- 14.2. The Lessee shall indemnify, defend and hold harmless the Lessor from any Loss which is due to or arises from: (1) the operation, maintenance, repair, or use of the Railroad Facilities and appurtenances thereto, or any part thereof; or (2) Lessee's failure to comply with or perform any of the terms and conditions set forth in this Lease Agreement; except to the extent that the Loss is caused by the negligence or willful misconduct of the Lessor or a breach of an express material warranty of Lessor. The provisions of this Section 14 shall survive the termination or expiration of the term of this Lease Agreement.

15. REMOVAL OF LESSEE EQUIPMENT, PERSONNEL AND PROPERTY UPON TERMINATION OF LEASE.

- 15.1. Prior to or upon the termination of this Lease Agreement howsoever, the Lessee shall, at Lessee's sole expense, remove its equipment, personnel, and other property from Lessor's premises and shall restore, to the satisfaction of the Lessor, such portions of such premises to as good a condition as they were in at the beginning of this Lease Agreement, excepting normal wear and tear. If the Lessee fails to do the foregoing, the Lessor may do such work at the cost and expense of the Lessee.

16. HAZARDOUS SUBSTANCES AND WASTES.

- 16.1. For the purpose of this Section, "Hazardous Materials" shall mean any substance: (A) that now or in the future is regulated or governed by, requires investigation or remediation under, or is defined as a hazardous waste, hazardous substance, pollutant or contaminant under any governmental statute, code, ordinance, regulation, rule or order, and any amendment thereto, including for example only and without limitation, the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601 et seq., and the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., or (B) that is toxic, explosive, corrosive, flammable, radioactive, carcinogenic, dangerous or otherwise hazardous, including for example only and without limitation, gasoline, diesel, petroleum hydrocarbons, polychlorinated biphenyls (PCBs), asbestos, radon and urea formaldehyde foam insulation, and "Hazardous Materials Laws" shall mean all present and future governmental statutes, codes, ordinances, regulations, rules, orders, permits, licenses, approvals, authorizations and other requirements of any kind applicable to Hazardous Materials.
- 16.2. Lessee shall comply with all federal, state and local environmental laws and regulations in its occupancy, operation and maintenance of the Railroad Facilities. Without first obtaining the Lessor's written permission (which may be withheld in Lessor's sole discretion), Lessee shall not treat, or dispose of Hazardous Materials on the Railroad Facilities. Lessee shall not release any Hazardous Materials on or at the Railroad Facilities, including through any drainage or sewer systems. Lessee assumes all responsibility for the investigation and cleanup of any such release and shall indemnify, defend and hold harmless the Lessor and its property, its officers, agents and employees, for all costs, including environmental consultant and attorney fees and claims resulting from or associated with any such release. Commencing upon the effective date of this Lease Agreement and for the term of Lessee's possession of the Railroad Facilities, Lessee shall assume all responsibility for and shall indemnify, defend and hold harmless Lessor against all costs and claims associated with a release or leak of Hazardous Materials related to the Lessee's possession or use of the Railroad Facilities, unless such event was caused by the negligence or willful misconduct of Lessor. This provision shall continue in full force and effect regardless of whether this Lease is terminated pursuant to any other provision, or the Railroad Facilities are abandoned and vacated by the Lessee.
- 16.3. In addition, Lessee shall not install any above ground or underground storage tanks without first obtaining the Lessor's written permission. If such permission is granted (which may be withheld in Lessor's sole discretion), the Lessee shall obtain any necessary permits, notify the proper authorities, and provide the Lessor with copies of such permits and notifications. Furthermore, Lessee shall assume all responsibility for and shall indemnify, defend and hold harmless Lessor against all costs and claims associated with a release or leak of any tank contents, unless such event was caused by the negligence or willful misconduct of Lessor.
- 16.4. If Lessee knows, or has reasonable cause to believe, that a Hazardous Material has come to be located under or about Railroad Facilities, other than as specifically provided herein or as previously consented to by Lessor, Lessee shall immediately give Lessor written notice thereof, together with a copy of any statement, report, notice, registration, application, permit, business plan, license, claim, action, or proceeding given to or received from, any governmental authority or private party concerning the presence, spill, release, discharge of, or exposure to, such hazardous substance.
- 16.5. Lessee shall not be liable or responsible for any Hazardous Materials present on the Railroad Facilities prior to the Agreement Date.

17. WAIVER OF BREACH.

- 17.1. Except as set forth in this Lease Agreement, the waiver by a party of the breach of any condition, covenant, or agreement herein contained to be kept, observed and performed by the other party shall in no way impair the right of the first party to avail itself of any subsequent breach thereof.

18. CONSENT.

- 18.1. Except as set forth in Sections 8.7, 16.3 and 22.1 for which Lessor may withhold its consent at its sole discretion, wherever the consent, approval, judgment or determination of a party is required or permitted under this Lease, that party shall exercise good faith and reasonable business judgment in granting or withholding such consent or approval or in making such judgment or determination and shall not unreasonably withhold or delay its consent, approval, judgment or determination.

19. ARBITRATION.

- 19.1. If at any time a question or controversy shall arise between the parties hereto in connection with the Agreement and upon which the parties cannot agree, such question or controversy shall be submitted to and settled by a single arbitrator within twenty (20) days after written notice by one party of its desire for arbitration to the other party. The arbitrator so selected shall be a person with at least one-year exposure to the concepts of railroad operations and maintenance. If the parties are unable to agree on a single arbitrator, the party demanding such arbitration (the "Demanding Party") shall notify the other party (the "Noticed Party") in writing of such demand, stating the question or questions to be submitted for decision and nominating one similarly qualified arbitrator. Within twenty (20) days after receipt of said notice, the Noticed Party shall appoint an arbitrator and notify the Demanding Party in writing of such appointment. Should the Noticed Party fail within twenty (20) days after receipt of such notice to name its similarly qualified arbitrator, the arbitrator for the Demanding Party shall select one for the Noticed Party so failing. The arbitrators so chosen shall select one similarly qualified additional arbitrator to compete the board. If they fail to agree upon an additional arbitrator, the same shall, upon application of any party, be appointed by the Chief Judge (or acting Chief Judge) of the United States District Court for the Eastern District of California.
- 19.2. Upon selection of the arbitrator(s), said arbitrator(s) shall with reasonable diligence determine the questions as disclosed in said notice of demand for 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 they deem reasonable or as either party may submit with witnesses required to be sworn, and may hear arguments of counsel or others. If any arbitrator declines or fails to act, the party (or parties in the case of a single arbitrator) by whom he was chosen or said judge shall appoint another to act in his place. 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 in writing which shall be final, binding, and conclusive on all parties to the arbitration when delivered to them. 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.

19.3. Each party shall pay the 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 the parties.

19.4. The books, records, documents (however recorded or stored) of the parties, as far as they relate to any matter submitted for arbitration, shall be open to the examination of the arbitrator(s).

20. ENTIRE AGREEMENT.

20.1. This document, and the exhibits attached hereto, constitute the entire agreement between the parties, all oral agreements being merged herein, and supersedes all prior representations, agreements, arrangements, understandings, or undertakings, whether oral or written, between or among the parties relating to the subject matter of this Lease Agreement that are not fully expressed herein.

21. MODIFICATION TO AGREEMENT.

21.1. The provisions of this Lease Agreement may be modified at any time by agreement of the parties hereto, provided such modification is in writing and signed by all parties to this Lease Agreement. Any agreement made after the date of this Lease Agreement and related to the subject matter contained herein shall be ineffective to modify this Lease Agreement in any respect unless in writing and signed.

22. LEASE NOT TO BE ASSIGNED.

22.1. Except as specifically provided in Section 22.2 below and elsewhere in this Lease Agreement, the Lessee shall not assign this Lease Agreement, in whole or in part, or any rights herein granted, without the written consent of the Lessor, which may be withheld in Lessor's sole discretion, and it is agreed that any transfer or assignment or attempted transfer or assignment of this Lease Agreement, whether voluntary, by operation of law or otherwise, without such consent in writing, shall be absolutely void and, at the option of the Lessor, shall terminate this Lease Agreement.

22.2. Lessee may enter into agreements with other railroads or railcar owners for trackage rights over any portion of the Railroad Facilities or for railcar storage. Subject to the terms and conditions of this Lease Agreement, Lessee may enter into agreements with any party for railcar storage or repairs. Pursuant to Section 7, Lessee may make agreements with shippers for use of temporary laydown space. However, Lessee shall not enter into any agreements pursuant to this Section 22.2 without first obtaining the written consent of the Lessor, which consent shall not be unreasonably withheld.

23. SUCCESSORS AND ASSIGNS.

23.1. Subject to the provisions of Section 22, this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

Contract No. 010705

24. CHOICE OF LAW.

- 24.1. This Lease Agreement shall be governed, construed, and enforced in accordance with the laws of the State of California.

25. ACTS OF GOD, ETC.

- 25.1. Neither party shall be deemed to be in default of this Lease Agreement if any failure to meet any condition or to perform any obligation or provision hereof is caused by, a result of, or due to strikes, insurrections, acts of God, or any other causes beyond the party's control.

Contract No. 010705

IN WITNESS WHEREOF, the parties hereto have caused this Lease Agreement to be executed as of the date first herein written.

LESSEE:

YOLO SHORTLINE RAILROAD COMPANY,
a California corporation

By: David Magaw
David Magaw
President

Date: 10-10-01

LESSOR:

SACRAMENTO-YOLO PORT DISTRICT, a
political subdivision of the State of California

By: Tor Chinn
Name: Tor Chinn

Its: Secretary-Treasurer

Date: 10/10/01

WITNESS:

Mike McGowan
Mike McGowan, Chairman

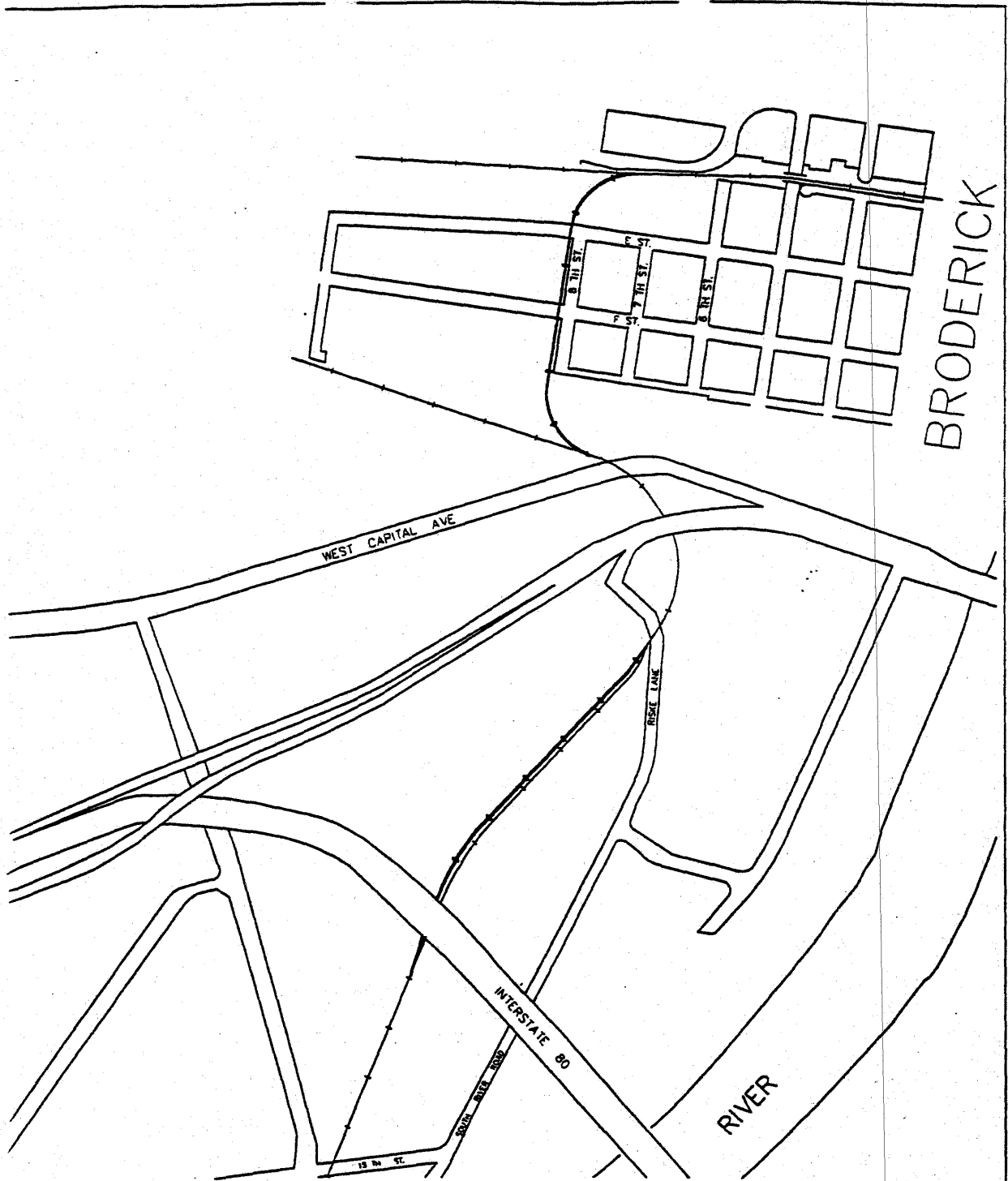
Date: 10/10/01

Contract No. 010705

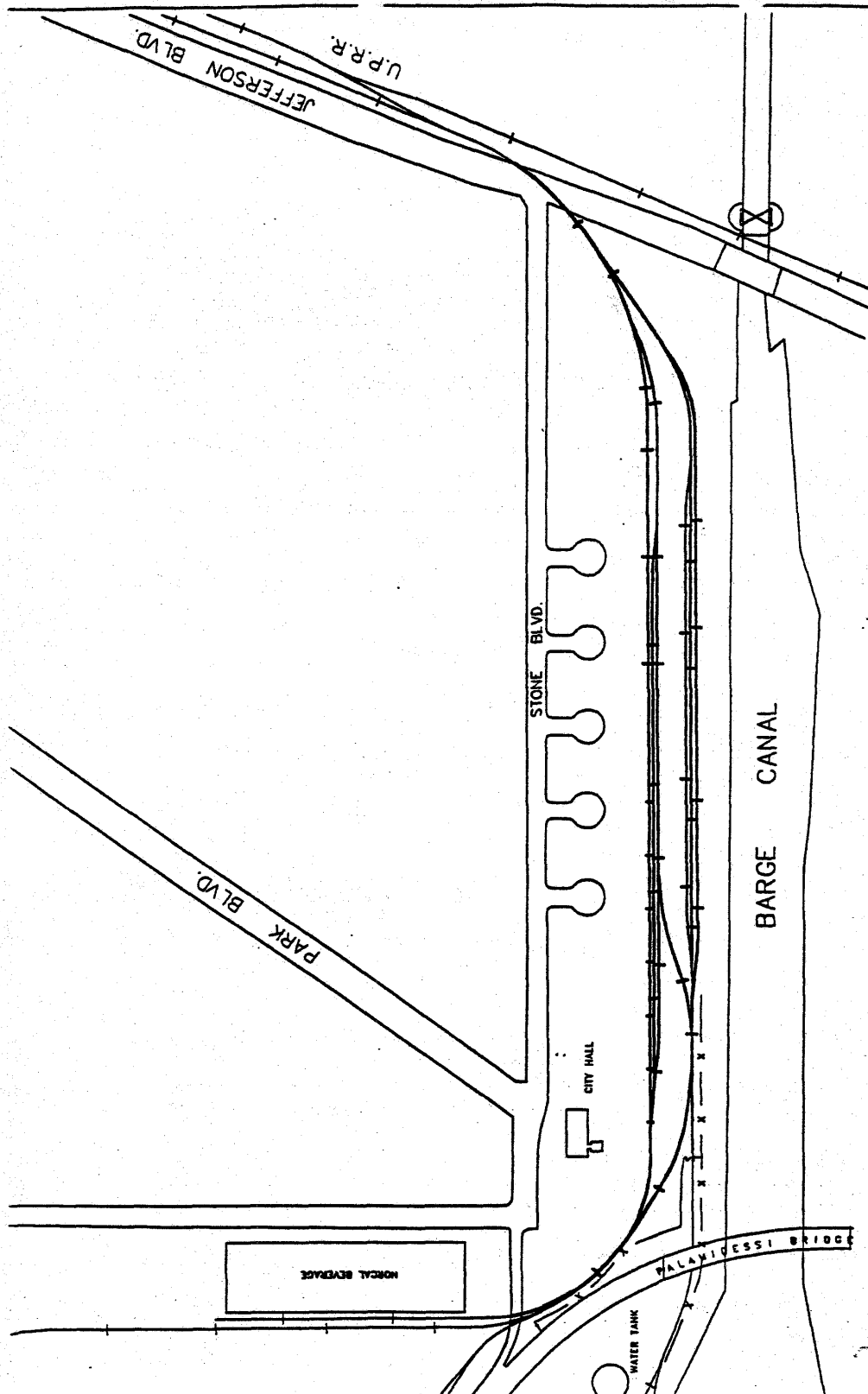
Exhibit A
Map of Lease Facilities

Railroad Facilities:

This Exhibit A is a map, which shows those portions that are leased—the Railroad Facilities—and those portions that the Lessor will retain for its own uses.



PORT OF SACRAMENTO SACRAMENTO - YOLO PORT DISTRICT	
EXHIBIT "A"	
CHIEF ENGINEER	



PORT OF SACRAMENTO		EXHIBIT X	
SACRAMENTO - GOLD PORT DISTRICT		DATE	
SHEET NO. 1		SCALE	
DATE		FILE NO.	

EXHIBIT 3



YOLO SHORTLINE RAILROAD COMPANY
Your Service Leader

341 Industrial Way
Woodland, CA 95776-6012
TEL: (530) 666-9646
FAX: (530) 666-2919

John J. Speight
Director of Marketing

November 16, 2001

Mr. Bob Stephen
Regional Director Joint Facilities
Union Pacific Railroad
280 South 400 West
Salt Lake City, Utah 84101

Subject: Termination Notice of Agreements

Dear Mr. Stephen:

Please consider this letter as Notification, effective November 16, 2001, of our intent to cancel the following agreements effective immediately in place between our two companies.

1. Agreement dated May 24, 1950, between the Sacramento-Yolo Port District and the Sacramento Northern.
2. Agreement dated February 12, 1951, between the Sacramento-Yolo Port District and the Southern Pacific Company.

If you have any questions please feel free to contact me at your earliest convenience.

Yours very truly,


David Magaw
President and General Manager

THIS AGREEMENT, made and entered into this 4th day of February, 1991, by and between UNION PACIFIC RAILROAD COMPANY, a Utah corporation, hereinafter called "UP", and YOLO SHORTLINE RAILROAD COMPANY, a California corporation, hereinafter called "YS"; UP and YS being hereinafter sometimes severally called "Party" and collectively called "Parties."

WITNESSETH:

RECITALS:

The Parties desire to establish an arrangement for effecting the delivery and receipt of interchange traffic between UP and YS at West Sacramento, California.

The Parties desire to enter into an agreement specifying the terms and conditions covering said interchange arrangement and the manner in which such interchange shall be handled.

NOW, THEREFORE, in consideration of the premises and of the covenants and agreements hereinafter expressed to be fully kept and performed, the Parties covenant and agree as follows:

Section 1. The tracks of UP at West Sacramento, California to be used for interchange of traffic between the Parties (the "Interchange Tracks") shall be designated, from time to time, by an appropriate operating officer of UP, or his designated representative.

Section 2. UP grants to YS the right, during the term hereof, to use UP tracks in or incident to the delivery of cars to be interchanged between the Parties. YS shall not use the Interchange Tracks for other than the receipt and delivery of interchange traffic between the Parties.

Section 3. Interchange of cars between the Parties shall be in accordance with the Field and Office Manuals of the AAR Interchange Rules and Code of Car Service Rules adopted by the Association of American Railroads (AAR), except that each Party in the movement of cars to be interchanged to the other Party shall, for the purposes of liability hereunder, be deemed to have sole care, custody and control of all cars to be interchanged to said other Party until the delivering Party has placed cars to be interchanged on the Interchange Tracks, and the engine or engines of the delivering Party have been uncoupled from such cars.

While operating on the Interchange Tracks, all engines, cars, trains and employees of UP and YS shall operate under Yard Limit Rules and move at yard speed, not exceeding 5 MPH.

Section 4. Should any train, locomotive or car being handled by YS be derailed or damaged while on any portion of the Interchange Tracks, the same shall be picked up and/or removed by UP, unless otherwise agreed and the expense so incurred, including repairs to trackage, plus standard additives shall be borne by YS.

Section 5. UP shall be bound to use only reasonable and customary care, skill and diligence in maintenance, repair and renewal of any of its trackage used hereunder, and YS shall not, by reason of any defect in said trackage or by reason of UP's failure or neglect to repair any such defect, have or make claim or demand against the UP for any loss, damage, injury whatsoever, resulting from such defect, failure or neglect.

Section 6. In the event of any loss, damage, injury or death upon or near the Interchange Tracks, or in the event of any damage to the Interchange Tracks or their appurtenances, caused by the negligence or wrongful act of any employee or employees engaged solely in the service of one of the parties hereto, or caused by the negligent movement of any locomotive, train, or car of such party or by defective rolling stock of such party, all such loss, damage, injury and death and liability with respect thereto shall be borne, assumed and paid by such party, and such party shall indemnify and save harmless the other party hereto from and against any and all cost, damage, expense and liability resulting directly or indirectly therefrom.

In the event of any loss, damage, injury or death on or near the Interchange Tracks, or in the event of any damage to the Interchange Tracks or their appurtenances, caused by the joint or concurring negligence or wrongful acts of employees of both parties hereto, or by defective rolling stock or equipment of both of the parties hereto, or by any combination of the above factors involving both parties, then (1) each party hereto shall bear all loss, damage and injury to its own property (excepting the Interchange Tracks and appurtenances) and to property in its custody, and all losses, charges, costs and expenses for personal injuries to or deaths of its passengers and employees, and (2) as to other persons and their property and as to the Interchange Tracks and appurtenances, the cost of such loss, damage, injury and/or death shall be equally apportioned between the parties hereto.

In the event of loss, damage, injury or death from any other cause, or in the event the cause of such loss, damage, injury or death cannot be determined, (1) each party hereto shall bear all loss, damage and injury to its own property (except the Interchange Tracks and their appurtenances) and property in its custody, and all losses, charges, costs and expenses for personal injuries to or deaths of its passengers and employees, and (2) as to other persons and their property and as to the Interchange

Tracks and their appurtenances, the cost for such loss, damage, injury and/or death shall be equally apportioned between the parties hereto; provided, however, that if the equipment and/or employees of only one party hereto is involved, said party shall bear the entire cost of such loss, damage, injury and/or death.

Any locomotive, train or other equipment used or operated by either party hereto on the Interchange Tracks shall for the purposes of this agreement be deemed to be the locomotive, train or other equipment of such party whether owned by it or not.

Anything hereinbefore in this Section to the contrary notwithstanding, no party shall have any claim against the other party for Loss and Damage caused by or resulting from interruption of or delay of such party's business.

Each of the parties hereto covenants and agrees that it will forever indemnify and save harmless the other party, its successors and assigns, from and against any and all liability or claims for damages, costs and expenses herein assumed by each of them; PROVIDED, HOWEVER, that the party liable, in whole or in part, as to any claim or suit filed against the other party shall be given prompt notice thereof and the opportunity to join in or take over, as may be appropriate, the defense and settlement of such claim or suit. No settlement which would result in one party's payment of in excess of Fifty Thousand Dollars (\$50,000) shall be made by either of the parties without the authority of the other party.

All releases taken pursuant to the settlement of claims or suits involving joint liabilities shall include all parties hereto involved, and copies shall be furnished to each of them.

Nothing in this agreement shall act to prohibit any party from bringing suit against persons or companies not parties hereto if acts of said persons or companies were the sole or partial cause of damages to that party.

Section 7. This agreement shall take effect as of the date herein first written, and shall continue in full force and effect until terminated by either Party on not less than thirty (30) days prior written notice to other Party.

Section 8. This agreement shall constitute the complete agreement concerning the delivery of interchange traffic between the Parties and shall be binding upon and inure to the benefit of the Parties and their respected successors and assigns. Any change or amendment hereto must be mutually agreed to in writing by the Parties.

A.015

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in duplicate as of the date first above written.

WITNESS:

UNION PACIFIC RAILROAD COMPANY

[Signature]

By *H. F. Lomenell*
Title: Dir. Joint Facilities

WITNESS:

YOLO SHORTLINE RAILROAD COMPANY

D. K. Wager
VICE PRESIDENT

By *David N. Magant*
Title: President

P.158

AGREEMENT made this 27th day of September, 1992, between the UNION PACIFIC RAILROAD COMPANY, a Utah corporation, hereinafter called "UP" and YOLO SHORTLINE RAILROAD COMPANY, a California corporation, hereinafter called "YS."

WITNESSETH:

164792

WHEREAS, UP, sometimes referred to as "Owner," owns a line of railway which extends from M.P. 1.75 on the Woodland Branch to M.P. 90.5 on the Holland Branch, a distance of approximately 3.5 miles, as shown in bold line on Exhibit "A" dated June 18, 1992, attached hereto and made a part hereof, which line, including all operating sidings used for the purpose of meeting and passing trains and UP owned portions of existing connections, shall be referred to herein as the "Joint Trackage," and

WHEREAS, YS, sometimes referred to as "User," desires to use the Joint Trackage for handling its cars and traffic, and for effecting the delivery and receipt of interchange between UP and YS at West Sacramento, which interchange arrangement is covered by Agreement dated February 4, 1991, and

WHEREAS, UP is willing to allow such use on the terms and conditions hereinafter set forth.

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

1. The General Conditions as set forth in Exhibit "B" attached hereto are hereby made a part of this Agreement. If any conflict between the General Conditions and this Agreement shall arise, the provisions of this Agreement shall prevail.
2. Subject to the terms and conditions contained herein, owner grants to User the nonexclusive right to use the Joint Trackage for the limited operation of its trains, locomotives, cabooses, Maintenance of Way work equipment and cars with its own employees and equipment in its account over the Joint Trackage in common with Owner and such other railroad company or companies as Owner 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, it being understood and agreed that User shall not have the right to:
 - (a) Set out, pick up or store cars, or switch industries upon Joint Trackage, or any part thereof, except as necessary for handling locomotives, cabooses or cars that are bad ordered en route.
 - (b) Serve any industry, team or house track now existing or hereafter located along the Joint Trackage.
 - (c) 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 trains, locomotives, cabooses, Maintenance of Way work equipment or cars over or upon the Joint Trackage, or any portion thereof, the trains, locomotives, cabooses or cars of any such third party which in the normal course of business would not be considered the trains, locomotives, cabooses or cars of User; provided, however, that the foregoing shall not prevent User, pursuant to a run-through agreement with any railroad, from using the locomotives and cabooses of another railroad as its own under this Agreement.

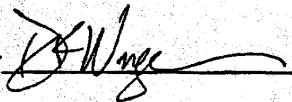
3. Owner, at its expense, shall maintain the Joint Trackage in a manner permitting operation at no less than the Time Table speeds in effect on the effective date of this Agreement, and permit User to operate at such speeds unless by mutual agreement a different standard is provided.
4. Each party shall assume responsibility for all statutorily imposed labor protection requirements for its respective employees associated with the operation of this Agreement.
5. In the event that for operating convenience, necessity or emergency, UP permits or directs YS to use adjacent UP track and track connections between or beyond the terminal of the Joint Trackage as an alternative route, then and in such event, such trackage, track connections and appurtenances shall be deemed to be part of the Joint Trackage and shall be governed by all the provisions of this Agreement during such period of use by YS.
6. YS shall obtain, furnish and keep in effect during the term of this Agreement, public liability and property damage insurance which names UP as an insured and provides for bodily injury, death and property damage coverage of a combined single limit of Five Million Dollars (\$5,000,000.00) per occurrence and Five Million Dollars (\$5,000,000.00) aggregate. The policy shall provide or be endorsed to provide that the term "person" includes employees and passengers of UP, as well as other persons, and the term "property" includes, as well as other property, property owned by and property in the care, custody or control of UP. The coverage amounts above may be adjusted by UP from time to time to reflect inflation or other reasonable changes in the risks or value of revenues experienced on the joint trackage.
7. Any liability for loss, damage, injury or death which arises from the operation under this Agreement shall be assumed, settled and paid as provided by Exhibit "B," General Conditions.

8. Subject to the provisions of Sections 7.2, 7.3 and 7.4 of Exhibit "B," this Agreement shall become effective upon the date User first commences operations over the Joint Trackage pursuant to this Agreement, subsequent to having secured all necessary consent, approval or authority from the appropriate governmental agency, or agencies upon terms and conditions satisfactory to User, and shall remain in effect for an initial term of fifteen (15) years and thereafter until terminated as hereinafter provided, except User shall have the right at any time to terminate upon not less than one (1) year's written notice to Owner. Upon the giving of one (1) year's written notice, Owner shall have the right to cancel this Agreement effective upon the date of expiration of aforesaid initial term or at any time thereafter by giving of not less than one (1) year's written notice to User.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate and have caused their corporate seals to be affixed the day and year first above written.

WITNESS:

YOLO SHORTLINE RAILROAD COMPANY

By 

By David N. Magaw

WITNESS:

UNION PACIFIC RAILROAD COMPANY

By 

By W.F. Lammert
Dir. Joint Facilities

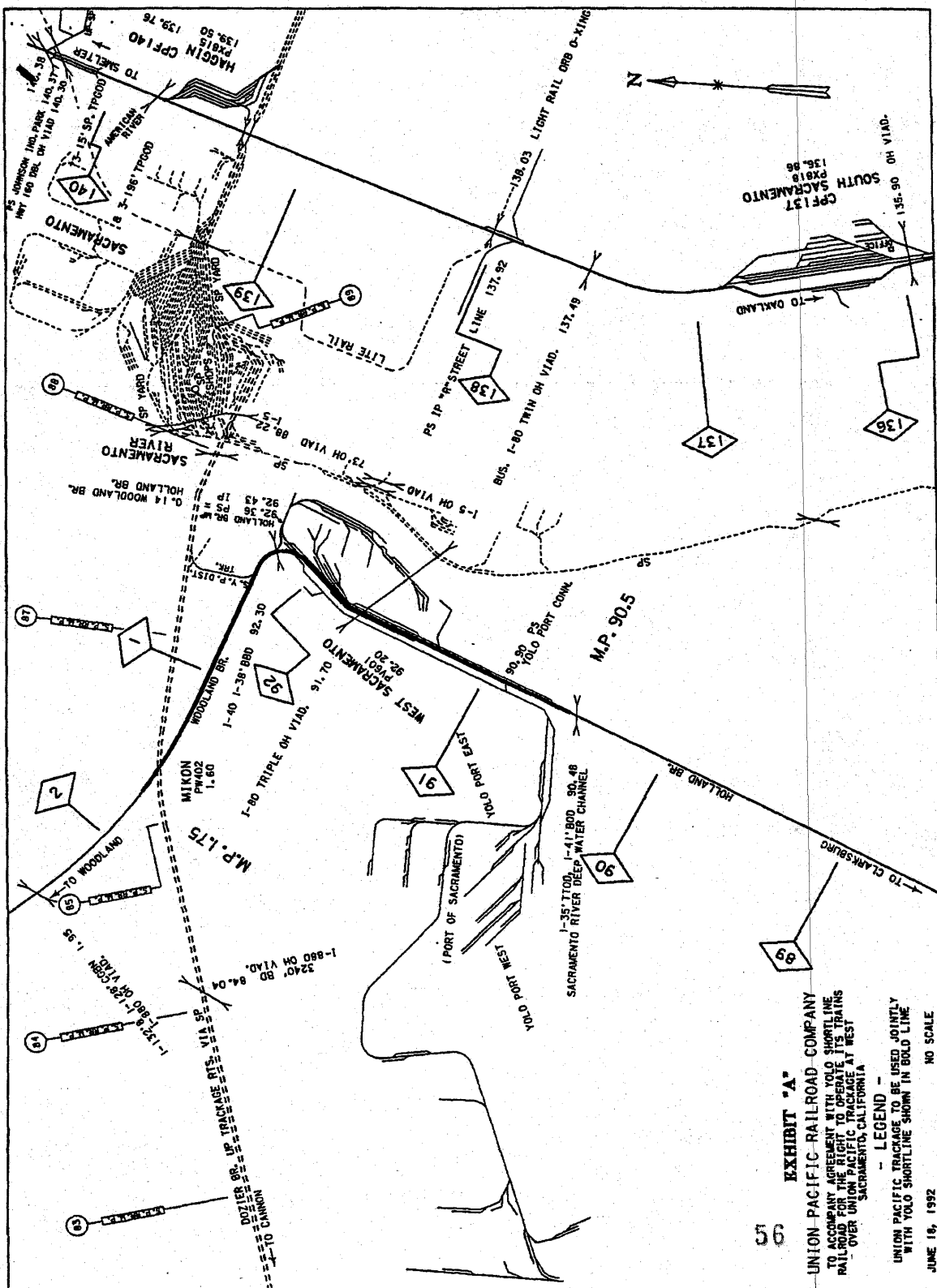


EXHIBIT "B"
GENERAL CONDITIONS

NOT REPRODUCED

UNION PACIFIC RAILROAD COMPANY

MARKETING & SALES

1416 DODGE STREET
OMAHA, NEBRASKA 68179

October 10, 2002

Mr. David Magaw
General Manager
Yolo Shortline Railroad Company
341 Industrial Way
Woodland, California 95776-6012

**RE: Request For Arbitration of Dispute
Under 1992 Trackage Rights Agreement**

Dear Mr. Magaw:

Pursuant to Section 6 of Exhibit B of the Trackage Rights Agreement dated September 27, 1992 (hereinafter referred to as the "1992 Agreement"), by and between the Yolo Shortline Railroad Company ("YSL") and Union Pacific Railroad Company ("UPRR"), UPRR hereby gives notice to YSL that there is a dispute between the parties related to the rights of YSL under said 1992 Agreement and that UPRR hereby requests that the following questions be submitted to arbitration for resolution under said section:

- 1) Whether YSL is acting in excess of its rights under the 1992 Agreement by operating on and over the UPRR trackage covered by the 1992 Agreement to gain access to and serve trackage owned by the Sacramento-Yolo Port District.
- 2) Whether such operation by YSL constitutes a material breach of the 1992 Agreement that entitles UPRR to cancel the 1992 Agreement in its entirety and terminate all of YSL's rights thereunder.
- 3) Whether such operation by YSL constitutes a material breach of the 1992 Agreement that entitles UPRR to monetary damages from YSL, and if so, the proper measure thereof.

Section 6.1 of Exhibit B of the 1992 Agreement permits the selection of a single arbitrator by the parties to resolve the questions submitted. However, UPRR proposes that the parties utilize the alternate procedure set forth in Section 6.1 for the appointment of separate arbitrators by each party, followed by selection of a neutral third arbitrator in accordance with the procedures in said section. UPRR hereby appoints Michael D. Ongerth of Inverness, California, as its arbitrator pursuant to Section 6.1. Mr. Ongerth's statement of qualifications is attached hereto.

If YSL wishes to utilize the single arbitrator procedure, please supply a list of the arbitrators that YSL believes would be qualified and available for appointment and UPRR will promptly reply. If YSL is agreeable to the alternate procedure proposed by UPRR, please advise the name and qualification of YSL's selected arbitrator as soon as convenient.

UPRR will be represented in this arbitration by:

Jeff S. Asay, Esq.
Assistant General Solicitor
Union Pacific Railroad Company
10031 Foothills Blvd. Suite 200
Roseville, California 95747

(916) 789-6217
(916) 789-6227 (fax)

and by:

Robert T. Opal, Esq.
General Commerce Counsel
Union Pacific Railroad Company
1416 Dodge St., Room 830
Omaha, Nebraska 68179

(402) 271-3072
(402) 271-5610 (fax)

All further correspondence concerning this arbitration should be directed to Messrs. Asay and Opal.

Very truly yours,



Warren C. Wilson
Senior Manager Rail Line Planning

CC: Jeff Asay
Bob Opal

UNION PACIFIC RAILROAD COMPANY

MARKETING & SALES

1416 DODGE STREET
OMAHA, NEBRASKA 68179

May 29, 2002

David Magaw
General Manager
Yolo Shortline Railroad Company
341 Industrial Way
Woodland, CA 957766-6012

Dear Mr. McGraw:

This is in response to your letter of April 22, 2002:

1. Track Condition - We do not agree with your claim that the 1992 trackage rights agreement (which gives free use of certain UP trackage at West Sacramento) requires that UP maintain the subject trackage (the "Joint Trackage") at FRA Class 1 standards. As I pointed out in my previous letter, the 1992 Agreement does not impose such a requirement or even mention FRA Class 1 track standards much less impose such a requirement. Ray Allamong, who negotiated the 1992 Agreement for UP, recalls that YSLR proposed an FRA Class 1 maintenance standard during the negotiation, but that UP would not agree to it. The language of the agreement supports his recollection of the negotiations, not yours. Further, you mention that there was hazardous materials traffic moving from the Woodland Branch when the agreement was made. But FRA Class 1 track standards were not required to handle the small amounts of hazardous material traffic that were moving (about one car a day) or were anticipated at that time, see 49 CFR 213.4(e)(3). Finally, had this been as important an issue in 1992 as you now claim it was, it is inconceivable that the matter would not have been addressed in the agreement. I note that YSLR and the Port had no difficulty writing a provision specifically requiring FRA Class 1 maintenance into their October 10, 2001 agreement (Section 3.2).

Nevertheless, we have reviewed this issue in view of our own operational requirements and we have decided to bring the 1992 Agreement Joint Trackage into compliance with FRA Class 1 track standards. We expect this to be completed during August, 2002. This action should not be taken as any admission by UP that the 1992 agreement requires such a level of track maintenance, and we reserve the right to reduce track classification for any or all of the Joint Trackage to "excepted track" at any time, consistent with the requirement of the agreement that the track speeds in effect in 1992 be permitted.

2. YSLR Breach of 1992 Trackage Rights Agreement – I am again notifying you that YSLR's use of the trackage rights granted to YSLR under the 1992 Agreement to access the Port trackage is a breach of the agreement. There is nothing in the agreement that supports your notion that YSLR can use the Joint Trackage to access any tracks located along the Joint Trackage that YSLR may come to "own or possess". In fact, the agreement specifically prohibits YSLR from serving "any industry, team or house track now existing or hereafter located along the Joint Trackage" without regard to ownership. The Port trackage west of Jefferson Boulevard has always been considered industry trackage.

We have refrained from taking any immediate legal action with respect to YSLR's breach of the 1992 Agreement because of pending negotiations with the Port. However, to prevent any possible misunderstandings, I am specifically advising you that UP has not waived any rights it has under the 1992 Agreement or otherwise to prevent YSLR from misusing its trackage rights. UP also has not waived any rights it has under the 1992 agreement or otherwise to seek damages from YSLR for this misuse. To the extent that YSLR may make commercial arrangements premised on its ability to access the Port trackage from the Joint Trackage, YSLR does so at its own risk. Further, UP also regards the Notice of Exemption which YSLR filed with the Surface Transportation Board in STB Finance Docket No. 34114 as false and misleading, in that it misrepresented the purpose of the transaction, misrepresented the nature of YSLR's rights to access the Port trackage from UP trackage, and misrepresented the status of negotiations between UP and YSLR. UP is not waiving any rights it has to seek revocation of the exemption in Finance Docket No. 34114.

3. UP Rights on Port of Sacramento Track – I am also notifying you once again that YSLR is breaching the February 12, 1951 agreement by preventing UP from using all but one of the Port tracks west of Jefferson Boulevard. Your statement that UP's rights over this trackage are only for "bridging" traffic is incorrect. Under the 1951 agreement (which is still in effect), UP has full use of all of the trackage immediately west of Jefferson Boulevard for all railroad purposes. There is nothing in the 1951 agreement that limits this to "bridge" traffic. In fact, such a reading would make no sense. The only railroads that ever used this track prior to your recent transaction with the Port were UP predecessors. If their rights were only "bridge" rights, why were the staging tracks west of Jefferson Boulevard ever constructed? There would have been no railroad that could have used them.

4. Mikon Crossing – Since we have not proposed any specific alternative to the Mikon Crossing, your comments as to the "utility" of a hypothetical alternative under Section 2.8 of the 1992 agreement's general conditions are meaningless. With respect to your comments about being required to install event recorders and two-way end of train devices, devices such as these are covered by Section 2.6 of the general conditions and have nothing to do with the "utility" of any alternate arrangements under Section 2.8. Further, FRA rules generally do not require event recorders or EOT's on trains operated

less than 30 mph, see 49 CFR 229.135(a) and 232.23(e)(5). Given the short distances that YSLR would travel on the UP main under any likely alternative, I doubt that YSLR trains would exceed this speed. See also 232.23(a)(3) and (e)(6), exempting certain "local trains" from two-way EOT requirements.

Yours very truly,

A handwritten signature in black ink, appearing to read "Warren C. Wilson", written in a cursive style.

Warren C. Wilson
Senior Manager Rail Line Planning

UNION PACIFIC RAILROAD COMPANY

MARKETING & SALES

1416 DODGE STREET
OMAHA, NEBRASKA 68179

May 29, 2002

David Magaw
General Manager
Yolo Shortline Railroad Company
341 Industrial Way
Woodland, CA 957766-6012

Dear Mr. McGraw:

This is in response to your letter of April 22, 2002:

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Nevertheless, we have reviewed this issue in view of our own operational requirements and we have decided to bring the 1992 Agreement Joint Trackage into compliance with FRA Class 1 track standards. We expect this to be completed during August, 2002. This action should not be taken as any admission by UP that the 1992 agreement requires such a level of track maintenance, and we reserve the right to reduce track classification for any or all of the Joint Trackage to "excepted track" at any time, consistent with the requirement of the agreement that the track speeds in effect in 1992 be permitted.

2. YSLR Breach of 1992 Trackage Rights Agreement – I am again notifying you that YSLR's use of the trackage rights granted to YSLR under the 1992 Agreement to access the Port trackage is a breach of the agreement. There is nothing in the agreement that supports your notion that YSLR can use the Joint Trackage to access any tracks located along the Joint Trackage that YSLR may come to "own or possess". In fact, the agreement specifically prohibits YSLR from serving "any industry, team or house track now existing or hereafter located along the Joint Trackage" without regard to ownership. The Port trackage west of Jefferson Boulevard has always been considered industry trackage.

We have refrained from taking any immediate legal action with respect to YSLR's breach of the 1992 Agreement because of pending negotiations with the Port. However, to prevent any possible misunderstandings, I am specifically advising you that UP has not waived any rights it has under the 1992 Agreement or otherwise to prevent YSLR from misusing its trackage rights. UP also has not waived any rights it has under the 1992 agreement or otherwise to seek damages from YSLR for this misuse. To the extent that YSLR may make commercial arrangements premised on its ability to access the Port trackage from the Joint Trackage, YSLR does so at its own risk. Further, UP also regards the Notice of Exemption which YSLR filed with the Surface Transportation Board in STB Finance Docket No. 34114 as false and misleading, in that it misrepresented the purpose of the transaction, misrepresented the nature of YSLR's rights to access the Port trackage from UP trackage, and misrepresented the status of negotiations between UP and YSLR. UP is not waiving any rights it has to seek revocation of the exemption in Finance Docket No. 34114.

3. UP Rights on Port of Sacramento Track – I am also notifying you once again that YSLR is breaching the February 12, 1951 agreement by preventing UP from using all but one of the Port tracks west of Jefferson Boulevard. Your statement that UP's rights over this trackage are only for "bridging" traffic is incorrect. Under the 1951 agreement (which is still in effect), UP has full use of all of the trackage immediately west of Jefferson Boulevard for all railroad purposes. There is nothing in the 1951 agreement that limits this to "bridge" traffic. In fact, such a reading would make no sense. The only railroads that ever used this track prior to your recent transaction with the Port were UP predecessors. If their rights were only "bridge" rights, why were the staging tracks west of Jefferson Boulevard ever constructed? There would have been no railroad that could have used them.

4. Mikon Crossing – Since we have not proposed any specific alternative to the Mikon Crossing, your comments as to the "utility" of a hypothetical alternative under Section 2.8 of the 1992 agreement's general conditions are meaningless. With respect to your comments about being required to install event recorders and two-way end of train devices, devices such as these are covered by Section 2.6 of the general conditions and have nothing to do with the "utility" of any alternate arrangements under Section 2.8. Further, FRA rules generally do not require event recorders or EOT's on trains operated

less than 30 mph, see 49 CFR 229.135(a) and 232.23(e)(5). Given the short distances that YSLR would travel on the UP main under any likely alternative, I doubt that YSLR trains would exceed this speed. See also 232.23(a)(3) and (e)(6), exempting certain "local trains" from two-way EOT requirements.

Yours very truly,

A handwritten signature in black ink, appearing to read "Warren C. Wilson", written in a cursive style.

Warren C. Wilson
Senior Manager Rail Line Planning