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June 5, 2003

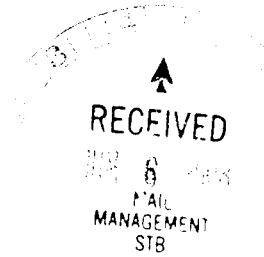
Office of Proceedings

Via Federal Express

JUN 06 2003

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

Part of
Public Record



RE: *San Jacinto Rail Limited and The Burlington Northern and Santa Fe Railway Company Construction and Operation of a Rail Line from the Bayport Loop in Harris County, Texas*

Finance Docket No. 34079

Petitioners' Motion for Stay Pending Judicial Review

Dear Secretary Williams:

Enclosed please find an original plus eleven (11) copies of the Petition By The Galveston Bay Conservation and Preservation Association and The League of United Latin American Citizens' For A Stay Pending Judicial Review in the above referenced proceeding. Please return a filed stamped copy of this document to me in the enclosed self-addressed, stamped envelope.

Respectfully submitted,

BLACKBURN CARTER, P.C.

by

James B. Blackburn, Jr.

Enclosure

CC: Enrique Dovalina, Esq.
Sharon Mattox, Esq.

BEFORE THE
SURFACE TRANSPORTATION BOARD

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STB FINANCE DOCKET NO. 34079

SAN JACINTO RAIL LIMITED CONSTRUCTION EXEMPTION AND
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY
OPERATION EXEMPTION - BUILD-OUT TO
THE BAYPORT LOOP NEAR HOUSTON, HARRIS COUNTY, TEXAS

GALVESTON BAY CONSERVATION AND PRESERVATION ASSOCIATION AND
LEAGUE OF UNITED LATIN AMERICAN CITIZENS'
MOTION FOR STAY PENDING REVIEW

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PRESERVATION ASSOCIATION
And of counsel for THE LEAGUE OF UNITED LATIN
AMERICAN CITIZENS***

DATED: June 5, 2003

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 34079

SAN JACINTO RAIL LIMITED CONSTRUCTION EXEMPTION AND
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY
OPERATION EXEMPTION - BUILD-OUT TO
THE BAYPORT LOOP NEAR HOUSTON, HARRIS COUNTY, TEXAS

**GALVESTON BAY CONSERVATION AND PRESERVATION ASSOCIATION AND
LEAGUE OF UNITED LATIN AMERICAN CITIZENS'
MOTION FOR STAY PENDING REVIEW**

COME NOW, The Galveston Bay Conservation and Preservation Association ("GBCPA") and The League of United Latin American Citizens ("LULAC"), Petitioners, and submits its Petition to Stay the Surface Transportation Board's (the "Board") Order granting the final approval of the exemption sought by San Jacinto Rail (SJR) to construct, and by The Burlington Northern and Santa Fe Railway Company ("BNSF") to operate, a rail line in Harris County, TX.

I. BACKGROUND

On August 30, 2001, SJR and BNSF filed a petition with the Board pursuant to 49 U.S.C. 10502 to construct and operate a rail line in Harris County, Texas. In that petition, SJR/BNSF proposed to construct approximately 12.8 miles of new rail line to serve the petrochemical industries in the Bayport Industrial District.

On December 6, 2002, following a scoping and public hearing, the Board's Section of Environmental Analysis ("SEA") issued a draft environmental impact statement. On May 2, 2003, a final environmental impact statement was issued. Final appeals will end on June 16, 2003.

II. ARGUMENT

This petition is being filed because Petitioners plan to file a Motion for Reconsideration before the time to appeal expires on June 16, 2001. A stay is being sought at this time in an effort to provide the Board with ample time to adequately address Petitioners' Motion for Reconsideration.

A. THERE ARE SUFFICIENT GROUNDS FOR GRANTING PETITIONERS' PETITION FOR STAY.

There are four basic criteria that the Board must consider in determining to grant a stay.

Those four criteria are:

- (1) There is a strong likelihood that Petitioners will prevail on the merits;
- (2) Petitioners will suffer irreparable harm in the absence of a stay;
- (3) Other interested parties will not be substantially harmed,; and
- (4) The public interest supports the granting of the stay.

Hilton v. Braunskill, 481 U.S. 770, 776 (1987); *Standard Havens Products, Inc. v. Gencor Indus., Inc.*, 897 F.2d 511, 512 (Fed. Cir. 1990) (stating that each factor need not be given equal weight and the likelihood of success on the merits is not a rigid concept).

1. Petitioners Will Prevail on the Merits

Petitioners can show that the Board erred on several counts in its decision to grant SJR/BNSF's exemption to build a rail line.

First, the Board has failed to properly analyze pipeline safety issues. The Board has not conducted a proper assessment of the locations of the pipelines in the build area. Indeed, the Board has stated that SJR/BNSF will hire an outside consultant (ICF Consulting) to locate all the pipelines in the area before construction commences. This is too late. The location of these pipelines has to be made known now and the true safety issues evaluated. This goes to the fundamental purpose of the NEPA process. The Board has also failed to adequately assess the risks involved in track maintenance and how it impacts above and below ground pipelines. Second, the Board has failed to properly assess build alignments 2B and 2D, i.e., the alignments that are to be constructed north of Ellington Field. The location for these alignments is in the vicinity of some old landfills. Petitioners contended that the Board has failed to properly assess the landfills in the area, including the hazardous substances issues. Third, the Board has not properly assessed the acreage of wetlands in the proposed build areas, nor the impacts associated with such construction and operation of a rail line. Fourth, there is no discussion of fine air particulates, e.g., PM 2.5. In light of the proposed construction of the adjacent Bayport container facility, Petitioners contend that a cumulative impact study of PM 2.5. is warranted. Fifth, the Board has failed to discuss the likely congestion problems on the Galveston, Houston and Henderson Railroad ("GH&H"). Additionally, the Board has failed to discuss the cumulative impacts north of Highway 225 regarding rail transportation. Lastly, the Board has failed to discuss the land use changes that will occur from the construction and operation of this rail line in the area between the cities of Clear Lake and Pasadena. Additionally, in support of Petitioners' Motion for a Stay, Petitioners hereby incorporate the previously submitted comments of GBCPA as part of our Motion for a Stay.

Therefore, in light of all of the above analytical missteps of the Board, Petitioners will on the merits.

2. Petitioners Will Suffer Irreparable Harm in the Absence of a Stay

Petitioners will suffer irreparable harm from the construction and operation of this rail line. The significant lack of a proper environmental analysis for the construction and operation of the rail line will cause irreparable harm to Petitioners. To deny a stay only to have the appellate court overturn the Board's decision and during such time have the rail line be built would compound the Board's irresponsibility in this matter. Once the rail line is built the damage will have already been done.

3. No Other Interested Parties Will Be Harmed

SJR and BNSF will not be harmed from the granting of this stay. Indeed, SJR and BNSF will be benefited by a more searching and complete environmental analysis.

4. The Public Interest Supports Granting of the Stay

The public interest will be satisfied from the granting of this stay. Indeed, the public has a strong interest in insuring that their environment and natural resources are protected, and that this Board has adequately adhered to the NEPA process in determining to build a rail line with the least environmental impacts.

III. CONCLUSION

Petitioners have demonstrated that there is sufficient basis for granting the stay of the Board's Order pending review of Petitioners' Motion for Reconsideration, and requests that the stay be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On this 5th day June, 2003, a true and correct copy of the foregoing instrument was served on all Parties of Record by the undersigned via regular U.S. Mail, and/or Certified Mail/Return Receipt Requested, and/or hand delivery, and/or facsimile transmission, and/or Federal Express Overnight Mail.


James B. Blackburn, Jr.

SERVICE LIST
STB Finance Docket 34079
San Jacinto Rail
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