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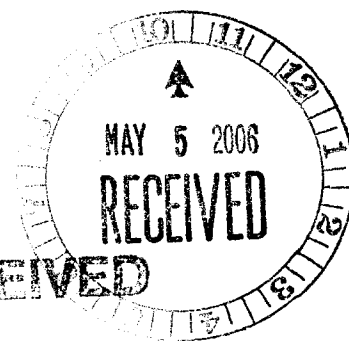
MAY 9 5 2006

SURFACE
TRANSPORTATION BOARD

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4 May 2006
by Federal Express

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MAY 9 5 2006

Hon. Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

SURFACE
TRANSPORTATION BOARD

Re: PYCO Industries, Inc. -- Feeder Line Application--
South Plains Switching, F.D. 34847

Dear Mr. Secretary:

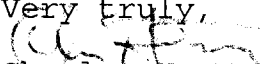
On behalf of PYCO Industries, Inc. ("PYCO"), enclosed please find an original and ten copies of a Feeder Line Application (FLA) pursuant to 49 U.S.C. § 10907 with respect to lines of South Plains Switching, Ltd. (SAW) in Lubbock, Texas. Enclosed also find a check by PYCO Industries in the amount of \$2600 for the filing fee in this proceeding.

PYCO requests that this Board accept the enclosed FLA as complete pursuant to 49 C.F.R. § 1151.2(b). However, PYCO also requests some discovery against SAW and BNSF Railway (Exhibits P and Q to the FLA) and an ability to amend. In all events, PYCO requests that this Board conditionally accept the FLA, and allow PYCO to cure any deficiencies rendering the FLA incomplete after reasonable discovery (propounded in Exhibits P and Q). Please also note that PYCO requests issuance of a standard STB protective order (Exhibit R).

As indicated in the FLA, I certify service of the entire FLA on the date of this letter. Service upon SAW, BNSF, Attebury and Compress is by Federal Express, next business day delivery. All other persons or entities served are served by First Class (Priority) U.S. Mail (as provided by 49 C.F.R. § 1151.2(a)).

Thank you for your assistance in this matter.

Very truly,


Charles H. Montange
counsel for PYCO Industries

Encls. (orig. and 10: FLA & two exhibit volumes)

cc. Gary McLaren, Esq. (w/encls) (for PYCO)
All parties indicated Part II, item 16, of FLA (w/encls)

BEFORE THE
SURFACE TRANSPORTATION BOARD



PYCO INDUSTRIES, INC. --)
FEEDER LINE DEVELOPMENT --) F.D. 34844
SOUTH PLAINS SWITCHING LTD.)

FEEDER LINE APPLICATION

PYCO Industries, Inc. ("PYCO") makes the following application pursuant to 49 U.S.C. § 10907 and 49 C.F.R. § 1151.1, et seq. Section 10907 and its implementing regulation provides a means for an affected shipper, like PYCO, to acquire rail property in the face of inadequate rail service by the incumbent rail provider.

I. PRELIMINARY STATEMENT

PYCO is a large producer of cottonseed oil and related products. PYCO owns and operates two major rail-dependent plants in the southern portion of Lubbock, Texas. South Plains Switching, Ltd. is a Class III switching railroad which owns and controls the trackage serving PYCO and certain other customers in Lubbock. SAW acquired its trackage from Burlington Northern and Santa Fe Railway [now BNSF Railway Company ("BNSF")] in 1999. South Plains Switching Ltd. -- Acq. Exemption -- BNSF, F.D. 33753 (Sub-no. 1), served July 15, 1999.

SAW is owned and managed by Larry Wisener, his wife Delilah Wisener, and/or some combination of them and other Wisener family members.

Technically, all rail customers served by SAW in reality are customers of BNSF, with SAW providing switching services on

the SAW lines in return for a division of the revenue BNSF receives from its customers. However, to avoid confusion, PYCO will employ the convention of referring to BNSF rail shippers served by SAW as "SAW customers." Pursuant to this understanding, PYCO is SAW's largest customer, with approximately 7000 carloadings in 2005.

PYCO's business year is marked by the annual cotton harvest, and in that sense PYCO has now experienced two consecutive years of inadequate rail service by SAW. PYCO does not wish to experience yet another season of threats, misconduct, and inadequate rail service by SAW. The costs to PYCO, its customers, its consignee, and the agricultural economy are too great.

1. Episode One. Commencing in early 2005, PYCO complained repeatedly to this Board's Office of Compliance and Enforcement (OCE) concerning SAW service curtailments and threats of curtailments in the winter and spring of 2005. Thanks to OCE involvement, PYCO initially believed that SAW would provide adequate rail service to PYCO.

2. Episode Two. During the summer of 2005, SAW offered itself for sale, and by September, demanded that PYCO sign a contract to pay SAW \$5.5 million for unspecified SAW assets, presumably to allow continued PYCO operations and ensure rail service. PYCO declined to sign such an agreement without due diligence. This incensed Mr. Larry Wisener, who at that time represented himself as SAW's president (and whom PYCO believes

still runs SAW). On or about November 18, 2004, Mr. Wisener informed PYCO's executives that PYCO "would have to figure out how to take care of [itself]," and that it would "cost a lot more for [PYCO] to continue doing business with [SAW]."¹

3. SAW retaliation. As promised by Mr. Wisener, SAW immediately undertook a series of retaliatory measures against PYCO, curtailing service; placing derails to prevent use of PYCO equipment for switches, and rendering switching more difficult generally; terminating leases to track traditionally used to serve PYCO's Plant No. 2; imposing discriminatory and what PYCO believes are illegal surcharges; and otherwise doing whatever he could imagine that would bludgeon PYCO into submission. PYCO was faced with a growing inventory and a possible shutdown of its operations due to inadequate rail service.

4. PYCO seeks relief. Taking heed of Mr. Wisener's advice that PYCO "would have to figure out how to take care of [itself]," PYCO filed an alternative rail service petition pursuant to 49 C.F.R. Part 1146 before this Board on December 19, 2005. See PYCO Industries -- Alternative Rail Service-- South Plains Switching, Ltd., STB Finance Dkt. No. 34802 (hereinafter referenced as F.D. 34802). In the petition, PYCO sought authorization to receive alternative rail service from

¹ V.S. of Robert Lacy, attached as Exhibit C to PYCO's Petition for Alternative Rail Service in F.D. 34802, served Dec. 19, 2005. Mr. Lacy summarizes Mr. Wisener's statements to him at paragraph 14, and his contemporaneous notes of his November 18, 2005 telephone call with Mr. Wisener (at 11 A.M.) are part of Ex. 4 to Mr. Lacy's V.S.

West Texas & Lubbock Railway (WTL).

5. The Board grants relief based on a finding of service inadequacy. This Board granted the alternative rail service petition in a decision served January 26, 2006, finding

"PYCO has shown, as to itself, 'a substantial, measurable deterioration, or other demonstrated inadequacy in rail service provided by the incumbent carrier.'" Slip op. at 5 (copy attached in Exhibit O).

Although this finding was restricted to PYCO itself, other shippers and potential shippers in Lubbock have experienced the mercurial nature of SAW management, and live in fear of retaliation in the form of switch removals, service problems, and inadequate service generally. In this light, this Board's action in authorizing alternative rail service in F.D. 34802 must be viewed as recognition that the public convenience and necessity support the granting of PYCO's feeder line application at issue here.

6. SAW fails to right itself. PYCO's alternative rail service petition was granted by order served January 26, 2006. By law, the initial period of alternative rail service is for 30 days. Before that period had transpired, SAW moved to terminate the rail service. PYCO countered with a motion to extend it. PYCO noted many instances of non-cooperation by SAW in implementation of the alternative service order, and further noted that PYCO's service by alternative provider WTL had been excellent, with WTL virtually doubling the number of carloadings

over SAW. By order served February 24, 2006, this Board denied SAW's petition to terminate, and instead authorized continued alternative rail service to PYCO for 120 additional days. This period expires at 1:59 PM on June 25, 2006.²

7. SAW continues to retaliate against PYCO. The relationship between PYCO and SAW has not improved in the interval. SAW continues to refuse to coordinate with WTL (or for that matter BNSF) to solve service problems, not only for PYCO but also for SAW's remaining customers. SAW continues to violate the service protocol ordered by this Board. SAW recently filed a lawsuit against PYCO over practices imposed by PYCO, which PYCO in turn is disputing before this Board in a complaint proceeding. Perhaps most dramatically, SAW took steps to incapacitate PYCO from operating its Plant No. 1. Focussing on this latter point, PYCO intentionally took advantage of the fact that PYCO's Plant No. 1 is heavily rail dependent and necessarily located both north and south of the set of tracks known as the "SAW yard," and further located on both sides of a "wye" track branching south out of the "SAW yard." SAW recently blockaded a crossing over this "wye" track traditionally used by PYCO to move its cottonseed stockpile into its Plant No. 1 for processing. This isolates a \$10 million cottonseed stockpile and uses PYCO's plant configuration to threaten continued PYCO

² While PYCO's rail counsel was abroad on a long-scheduled trip to view a solar eclipse, SAW filed yet another petition to terminate rail service. PYCO opposed. SAW's second petition to terminate is currently pending before this Board.

operations in Lubbock. Everything SAW has done since November 18 is consistent with retaliation, hostility, and an intent to injure PYCO. The last thing SAW's conduct exhibits is a willingness or ability to provide, or even to begin to provide, adequate rail service to PYCO. As a kind of confirmation, SAW has filed yet another petition to terminate alternative rail service (still pending), followed by a motion to modify the service protocol for the purpose of rendering rail service to PYCO infeasible (also still pending).

In short, SAW continues stubbornly to search for every opportunity to cause inadequate rail service to PYCO, to increase costs to PYCO, and otherwise to make it as difficult and costly as possible for PYCO to "figure out how to take care of [itself]" in accordance with Mr. Wisener's statement of November 18, 2005. PYCO cannot conduct its business under the continued threat of unreliable and inadequate rail service from SAW, and SAW's conduct unquestionably shows that unreliable and inadequate service is all that PYCO can henceforth expect from SAW.

8. PYCO's recourse is a feeder line application for service inadequacy pursuant to 49 U.S.C. § 10907. Given SAW's continued display of hostile intent toward PYCO, it follows that PYCO must continue to heed Mr. Wisener's advice to look for ways to "take care of [itself]." See text at note 1 supra and note 1. Shippers like PYCO who are so instructed by their incumbent rail carrier have a relatively simple set of choices: they can

close down, move out of town, pay what amounts to ransom money to the incumbent, or pursue remedies like complaints and feeder line applications before this Board. PYCO is far too large an operation to close down or to move; the losses would be enormous, and the disruption to the cotton industry substantial. Paying ransom money to SAW would violate public policy, and merely encourage incumbent railroads to shake-down shippers through abuse of this Board's preemptive authority over state law remedies otherwise available to ensure satisfaction of common carrier obligations, to prevent monopolistic practices, or to curtail misconduct. PYCO accordingly is compelled to seek further relief from this Board. PYCO has already filed a complaint for damages (F.D. 34838) on April 19, 2006. While the complaint may provide compensation for damages arising from SAW's inability or retaliatory refusal to meet its common carrier obligations, it will not ensure reliable rail service into the future. To that end, a feeder line application under 49 C.F.R. Part 1151 is both prudent and appropriate.

9. PYCO seeks discovery. A Part 1151 applicant must develop estimates of both net liquidation value (NLV) and going concern value (GCV) of the rail lines which it seeks to buy. Although PYCO is the primary and largest SAW customer, PYCO lacks access to SAW's files or to its property. Indeed, SAW has forbidden PYCO personnel permission to step onto SAW property, threatening trespass actions. This has hampered PYCO's ability to obtain the data (e.g., measurements and inspection of track)

necessary for PYCO's experts to calculate NLV and GCV. PYCO's experts have been forced to calculate what amount to "upper bounds" on NLV and GCV levels for lack of more precise information. These upper bound levels will result in overcompensation to SAW, essentially unfairly rewarding SAW for its belligerent misconduct and obtuseness. PYCO accordingly requests discovery (submitted herewith as Exhibit P) from SAW to obtain information appropriate to refine what are currently upper bound estimates of NLV and GCV. PYCO believes that BNSF may also have relevant data on shippers, but of course cannot supply that information absent appropriate protection of business confidences. In order to secure relevant data, PYCO also proposes limited discovery (Exhibit Q) against BNSF.³ PYCO reserves the right to amend this application to incorporate forthcoming information subsequent to discovery responses should discovery be permitted.

In addition, PYCO due to its status as merely a shipper may not have a complete list of shippers, nor is PYCO privy to exact levels of use by other shippers, or to other information uniquely in possession of the incumbent rail carrier. Although PYCO has attempted to be as complete as possible in this application, the fact remains that certain information germane to this proceeding is exclusively or primarily in the hands of

³ Under a standard STB protective order, we are hopeful that BNSF would be prepared to make such data available in order to facilitate this proceeding. We submit a proposed protective order as Exhibit R.

SAW (or possibly BNSF). PYCO cannot obtain that information unless granted discovery. Should this feeder line application be deemed incomplete by this Board, PYCO's proposed discovery should allow PYCO to satisfy that incompleteness, and PYCO accordingly requests that this Board at the very least conditionally to accept this application pursuant to 49 C.F.R. § 1151.2(d)(1), pending revisions after the conclusion of discovery against SAW (and BNSF).

10. Relationship to other proceedings, and need to protect PYCO during the next harvest season. As PYCO has noted, the alternative rail service order under Part 1146 currently expires on June 25, 2006, at which point PYCO will have received 150 days of alternative rail service. The statute implemented by Part 1146 allows a total of 270 days of alternative rail service. At most, PYCO may be able to obtain rail service for 120 more days, through approximately September 23, 2006.

Feeder line application procedures provide for competing applications to be filed 30 days from acceptance of the initial application, comments to be filed 60 days from initial acceptance, and replies to be filed 80 days from that date. Extensions may be granted for good cause, and no specific date is provided for decisions. 49 C.F.R. § 1151.3(e), (f) & (k). In short, feeder line proceedings may be expected to last at least six months. The most recent comparable feeder line application appears to have taken several times that period of

time.⁴

PYCO is concerned that it not fall prey to SAW during the pendency of this feeder line application. Indeed, by late September, when Part 1146 relief must cease, PYCO will be gearing up for this year's cotton harvest, and it, its consignee and other customers, and indeed the cotton industry will be most vulnerable to Mr. Wisener's retaliatory intent. PYCO accordingly is filing this application with as complete a set of information as possible, a request for discovery, a standard form of the STB protective order for entry in order to facilitate discovery responses, and a plea for as much expedition as the facts and circumstances permit.⁵

11. The feeder line application should be granted. The feeder line application statute is available to remedy service inadequacy. H.R. Conf. Report 104-422, 104th Cong., 1st Sess., at 192 (Dec. 18, 1995). This Board has already found SAW's service to PYCO to be inadequate. Decision, supra, F.D. 34802. Rather than rectifying the conditions producing service inadequacy, SAW has repeatedly and for the past months taken numerous actions to exacerbate PYCO's problems. PYCO has no

⁴ Keokuk Junction Railway Co. -- Feeder Line Acquisition -- Line of Toledo, Peoria and Western Railway, F.D. 34335 (initial application filed April 9, 2003, granted by decision served October 28, 2004, reconsideration denied by decision served Feb. 7, 2005).

⁵ PYCO as a precaution may file an additional proceeding for relief under Part 1147 should it become apparent that Part 1146 relief will be insufficient to protect PYCO during the pendency of this feeder line application.

choice but to apply to acquire SAW's Lubbock lines. SAW cannot complain about a result its own actions precipitate; in any event, SAW offered itself for sale in whole or in part in 2005, and indeed demanded that PYCO commit to buy an unspecified portion of SAW serving PYCO for \$5.5 million last fall. When PYCO declined to accede to SAW's dictation, SAW said it would retaliate, and did, by curtailing service, congesting PYCO's facilities, and otherwise moving to shut down PYCO operations. SAW now no longer has to go on a rampage to be sold; under 49 U.S.C. § 10907 it must be sold. For the reasons set forth herein, the public convenience and necessity permit or require the sale of the SAW properties as set forth herein to PYCO and as provided under 49 U.S.C. § 10907.

II. PART 1151 SHOWINGS

1. Identification of line to be purchased [49 C.F.R. § 1151.3(a)(1)].

(i) Name of incumbent carrier: South Plains Switching, Inc. ("SAW"). Address: 10917 -- E. Fm. 250 & E. Co. Road 78, Slaton, TX 79364

(ii) Exact location of the line to be purchased, including mileposts, stations, etc.: SAW's lines in Lubbock comprise 74,384 feet (about 14 miles) of former Santa Fe Railroad switch tracks, industrial leads, and yard tracks in Lubbock employed to serve various railroad customers in Lubbock, Texas. SAW acquired those tracks pursuant to 49 C.F.R. § 1150.31 in South Plains Switching -- Acquisition and Operation Exemption--

Burlington Northern and Santa Fe Railway Co., F.D. 33753 (Sub-no. 1), served July 15, 1999.

Applicant does not believe any of the tracks were assigned milepost designations or station designations. Some of these tracks, or switches to these tracks, have been salvaged and removed by SAW. SAW has forbidden PYCO entry on its premises, and obviously has information germane to value that is unavailable to PYCO, which is merely SAW's largest shipper. For these reasons, applicant is seeking discovery from incumbent railroad SAW should this Board institute a feeder line proceeding by accepting or conditionally accepting this Application. The proposed discovery is tendered herewith. Pursuant to discovery, Applicant may amend or adjust the NLV and GCV estimates, and thus the ultimate purchase price, set forth herein.

PYCO makes this feeder line application in the alternative:

First Alternative. If this Board finds that PYCO meets the relevant legal requirements (in particular, the requirement bearing on "majority of shippers"), PYCO applies to acquire all the lines of SAW. Those lines are set forth in the relevant maps in Exhibit A. We will refer to this alternative herein as the "All SAW" alternative.

Second Alternative. If this Board finds that PYCO does not meet the relevant legal requirements (in particular, the requirement bearing on "majority of shippers") to acquire all the lines of SAW, then PYCO applies to acquire those lines

set forth in the relevant map in Exhibit A. These tracks include all SAW's trackage employed to provide service to PYCO under the alternative service order issued in F.D. 34802, and coincidentally all tracks needed to provide service to Farmers' Cooperative Compress and Attebury Grain on the northeast side of the BNSF Railway mainline through Lubbock.⁶ We will refer to this alternative herein as

⁶ Per calculations furnished by counsel for SAW to counsel for WTL and PYCO, the total track to be acquired, and its name or location, are as follows for purposes of Alternative Two:

PYCO use:	Track 5, SAW yard,	2400 feet
	Track 1, SAW yard,	2100 feet
	Track 9200,	3900 feet
	Track 9298,	
	east of BNSF	
	main,	4320 feet
	Track lead to	
	PYCO plant 2	
	to 50th St.,	6280 feet
	Track 231 lead	
	to 9200/9298	960 feet
	Track 310 through	
	Farmers 1	<u>5600</u> feet
	TOTAL:	25560 feet

Similarly, the crossing right trackage is as follows:

Crossing right	
Track 9298	
to and through	
SAW yard	5000 feet

In addition, PYCO would acquire all of track no. 6 from the western end of the SAW yard to the western clearpoint of the eastern most switch of the "wye" track connecting to track no. 6 from the south, and also the western branch of said "wye" from its southern clearpoint north to and including its connection with track no. 6. The estimated linear feet of track involved is 1100. PYCO estimates approximately six acres of property are involved in the actual acquisition. PYCO is seeking an "entry" onto SAW's premises pursuant to discovery under 49 C.F.R. § 1114.30 in order to demarcate and measure the exact area.

"Alternative Two."

Under this Alternative Two, PYCO would acquire all of track 9298 on the east side of the BNSF mainline (it is used for PYCO plant no. 2), and also acquire a right to cross track 9298 on the west side of the BNSF mainline in order to reach PYCO Plant No. 1. The acquisition of the right to cross the western portion of 9298 would be pursuant to 49 U.S.C. § 10901(d) and any other applicable authority. Pending discovery, PYCO proposes to pay an annual fee of \$12655.50 for the crossing right. In the event discovery discloses that PYCO traffic on the crossing exceeds fifty per cent of the usage, PYCO plans to amend this application to acquire all of track 9298, in order to be able to rehabilitate it and ensure its proper maintenance. The basis of the \$12655.50 figure is set forth in Exhibit N. Note 2 of Exhibit N discusses impact on NLV for Alternative Two should track 9298 be added.

2. Identification of applicant [49 C.F.R. § 1151.3(a)(2)]:

(i) Applicant is PYCO Industries, Inc., P.O. Box 841, Lubbock, TX 79408-0841.

(ii) Applicants' representative is Charles H. Montange, 426 NW 162d St., Seattle, WA 98177, telephone 206-546-1936, fax: -3739.

(iii) Applicant is not affiliated with any railroad.

(iv) Names and addresses of PYCO Industries' officers and directors:

The business address for all officers and directors is PYCO

Industries, Inc., P.O. Box 841, Lubbock, TX 79408-0841.

Name:	Title:
Gail Kring	President and General Manager
Robert Lacy	Secretary and Sr. V.P. Marketing
Anthony Morton	Treasurer and V.P. Finance
Ronnie Gilbert	Ass't Sec'y/Treasurer and V.P. Oil Trading
Billy Breedlove	Ass't Sec'y/Treasurer and Mid-South Manager
Tommy Horsford	Chairman, bd. of directors
William L. (Bill) Kennedy	Vice Chairman, bd. of directors
Frank Brooks	Director
Glen Campbell	Director
Brad Crump	Director
Winston Foster	Director
Burt Heinrich	Director
Ty Askew	Director
W. Tom Robertson	Director
Jerry Multer	Director

3. Financial responsibility [49 C.F.R. § 1151.3(a)(3)]:

Pursuant to § 1151.3(a)(3), applicant must show a financial capacity to pay the higher of (i) estimated Net Liquidation Value (NLV) (see Sneed Dec., Exhibit B, for rail; Blosser Appraisal, Exhibit D1, for land⁷), or (ii) estimated Going

⁷ The Blosser Appraisal assumes full fee ownership by SAW of all tracks on which it operates. However, PYCO understands that at least some of those tracks are private industrial tracks, are held by SAW in less than fee title, or are encumbered with other claims and interests. PYCO is seeking discovery from SAW to determine non-record claims and interests,

Concern Value (GCV) (see Banks V.S., Exhibit C). Based on current information, applicant's experts calculate the unadjusted NLV, assuming full fee ownership, as follows:

	NLV Material ⁸	NLV Land	Total
All SAW:	277,000	1,817,000	2,094,000
Alternative Two (PYCO/Att/Com):	144,000	147,000 (east) 144,000 (yard)	435,000

PYCO retained RL Banks and Associates (RLBA) to calculate GCV. RLBA first determined a "preliminary GCV" ("pre-GCV" below), which RLBA then adjusted for site-specific maintenance and for rehabilitation expenses. RLBA then calculated two alternative GCV's, in order to take into account two possible levels of rehabilitation. The first level of rehabilitation would employ 90# rail, the second 112/115# rail. As indicated below, RLBA recommends 112/115# rehabilitation. The results are summarized below.⁹

and plans to supply an adjusted appraisal once discovery is complete. Moreover, the Blosser Appraisal assumes that right of way lengths and widths are as stated in right of way charts (similar to valuation section maps) furnished by Bartlett & West, an engineering firm under contract to BNSF. PYCO retained the Center for Geospatial Technology at Texas Tech University to calculate the resultant areas. See Declaration of Matthew Crawford, Exhibit D2. Should adjustment to these numbers be required due to sales subsequent to the deeds reflected in the right of way charts, the Blosser Appraisal will also have to be modified.

⁸ Number is rounded up to the higher 1000.

⁹ A parentheses indicates a negative value.

	Pre-GCV ¹⁰	GCV/90#	GCV/112#
ALL SAW (Ex. C, Table 32)	3,174,644	1,498,844	130,744
Alternative Two (PYCO/Att/Com) (Ex. C, Table 28)	1,450,864	220,064	(747,936)

The SAW physical plant is in poor physical shape. see Exhibit B. The plant has been on a deferred maintenance program for decades (id.), and requires rehabilitation. A reasonable purchaser would deduct the required rehabilitation expense from the purchase price to determine the GCV for the asset, because a reasonable purchaser would not expect a deteriorated physical plant to continue in operation absent substantial rehabilitation. RLBA recommends that 112 and 115 # rail be used because of the weight of PYCO's loadings (similar to the weights one would expect for ADM's loadings as well), and the overall industry trend toward larger cars. Indeed, the class I/high volume customer standard is now a total gross weight of car plus contents of 286,000 tons. SAW tracks were constructed when the industry standard was 263,000 tons, and most cars were less than that. The SAW lines in Lubbock are currently not suitable for handling industry standard cars absent substantial rehabilitation. Since PYCO, Attebury and Compress are long term rail users shipping primarily on class I railroads, and at least PYCO is high volume (arguably all three are high volume), a

¹⁰ Pre-GCV refers to "preliminary GCV" before adjusting for rehabilitation costs. The Pre-GCV presented here is based on cash flow reflecting site-specific maintenance of way costs. The value is discussed in detail in Exhibit C.

rehabilitation adequate to serve their needs long term is appropriate and the industry standard should be met. Rehabilitation with 90# rail would be a costly and ultimately inadequate interim measure.

Virtually the entire length of track (about 4.8 miles) in the Alternative Two (PYCO/Att/Compress) must be rehabilitated, for it is all used for substantial movement of rail cars for PYCO, Attebury and/or Compress. The same rehabilitation is required for the "All SAW" scenario. In addition, RLBA tentatively estimates that the equivalent of at least two additional miles of track must be rehabilitated to ensure safe and adequate service to ADM, the rock shippers, and to replace switches or fix crossings or other leads. In short, the above GCV estimates are based on rehabilitation of roughly half (6.8 miles) of current SAW trackage.

PYCO notes that SAW has barred PYCO from entry on SAW property. SAW has accordingly rendered PYCO unable to inspect and measure for purposes of precise rehabilitation estimates. PYCO seeks discovery (including entry per 49 C.F.R. § 1114.30), and upon completion and analysis of discovery results, PYCO may revise the rehabilitation figures, with the assistance of outside experts. This in turn would lead to revision of the GCV calculations set forth herein.

PYCO is required to pay the higher of NLV or GCV pursuant to the feeder line statute.

With respect to the SAW system as a whole, NLV (\$2,094,000)

is higher than GCV (130,744) based on the data and calculations set forth above.

With respect to Alternative Two (PYCO/Att/Compress), NLV (\$435,000) is higher than GCV (minus 747,936).¹¹

In sum, the highest value per the statute is as follows:

All SAW: \$2,094,000

Alt. Two: \$435,000

PYCO presumably, then, must show the financial capability to pay the NLV for the SAW system as a whole, as that is the highest number under the calculations set forth above. That NLV number is \$2,094,000.

PYCO Industries is a large cottonseed oil and cotton byproducts producer with plants in Lubbock and in Mississippi. PYCO attaches a letter from Co-Bank (Exhibit E) attesting that Co-Bank will provide loan funding sufficient to pay a value greater than the estimated NLV or GCV plus operating capital. PYCO is prepared to provide further financial information at the request of this Board, once an appropriate protective order to protect against disclosure of competitively sensitive and business confidential information has been entered.

Applicant must also show the financial capability to cover expenses associated with the first three years of operation. PYCO Industries expects to contract with its current alternative

¹¹ Should PYCO acquire track 9298 leading in and through the SAW yard (see Exhibit N, Note 2), NLV under current data would be \$606,000, and obviously also higher than GCV for Alternative Two.

service provider (WTL) to provide rail service. Alternatively, PYCO can contract with other rail service providers. According to statements by SAW's attorney (Mr. McFarland), SAW receives \$142.72 per carload in a division of revenue with BNSF (the unit train rate, which we understand is applicable for most Attebury shipments, is currently \$45.67/car). According to calculations by PYCO's experts, the actual cost of operation is less than the expected revenue for both the entire line, and for Alternative Two (PYCO/Att/Com), based solely on the \$142.72 per carload (\$45.67 for Attebury shipments) which the local switch provider receives pursuant to the BNSF/SAW contract (Exhibit G). Since applicant has adequate financial capability to cover acquisition, and since expenses will be covered by revenue, no additional showing of financial capability is required. Analysis sufficient to show that operating revenues will exceed expenses is set forth in the Banks Verified Statement, Exhibit D.

4. Estimate of NLV and GCV [49 C.F.R. § 1151.3(a)(4)]: Estimated NLV is set forth in Exhibits B and D1. Estimated GCV is set forth in Exhibit C. These numbers have already been summarized in item 3 above.

5. Offer [49 C.F.R. § 1151.3(a)(5)]: PYCO Industries hereby offers to buy the identified lines at the greater of either (i) estimated NLV or (ii) estimated GCV. For All SAW, PYCO currently calculates the higher value to be the NLV. As previously indicated, based on current information the upper

bound of that amount is \$2,094,000. For Alternative Two (the assets necessary to serve PYCO/Attebury/Compress), the higher value is also NLV, and the upper bound of that is \$435,000.¹²

6. Dates of operation [49 C.F.R. § 1151.3(a)(6)]: Immediately upon the effective date of the acquisition, continuing indefinitely.

7. Operating plan [49 C.F.R. § 1151.3(a)(7)]: PYCO Industries will contract with WTL to provide operational services. PYCO understands that WTL is acceptable to BNSF. In the event WTL elects to pursue other business opportunities, PYCO Industries will contract with another qualified shortline carrier and would certainly consult with BNSF to determine an appropriate and qualified operator. WTL's letter expressing a willingness and ability to provide operational services is attached as Exhibit F. WTL is providing excellent service for PYCO pursuant to the alternative service order at the current time. WTL currently operates alternative service five days per week, with additional service on weekends as needed.

Should this Board rule that PYCO's application is complete for purposes of all SAW lines in Lubbock, then PYCO through its operator would provide rail service to all existing and potential SAW customers. That service will be in accordance with the BNSF/SAW contract, unless BNSF, PYCO (and/or its operator) mutually agree to contract amendments. PYCO

¹² In the event PYCO acquires track 9298 to and through the SAW yard, NLV for Alternative Two is \$606,000. See Exhibit N, Note 2.

understands that BNSF would insist on a handling carrier agreement that would allow BNSF to price directly to customers. That is what PYCO desires, and PYCO believes all shippers prefer that approach for the services and lines in question.

Should this Board rule that PYCO's application is complete only as to PYCO, Compress and Attebury, then PYCO would provide service to the aforesaid shippers, and any potential shippers on the east side of the BNSF mainline in the southern part of Lubbock currently served by SAW. SAW would provide service for all its existing customers west of the BNSF mainline, except PYCO Industries' plant no. 1. Unless PYCO acquires track 9298 leading to and through the SAW yard, PYCO would pay SAW an annual crossing fee of \$12655.50 for traffic from PYCO's plant no. 1 crossing SAW's yard to reach the BNSF mainline. PYCO would propose to provide such service pursuant to an operating protocol providing for operating windows the same as that signed between WTL and SAW as modified by the orders of this Board in F.D. 34802. In the event PYCO is authorized only to pursue only Alternative Two, PYCO will request imposition of a protocol similar to that provided by this Board in F.D. 34802. PYCO would prefer to acquire then entire SAW system in Lubbock because SAW fails to cooperate in efforts to resolve service issues, and instead creates issues.

8. Liability insurance coverage [49 C.F.R. § 1151.3(a)(8)]: Should PYCO Industries provide its own service, it will furnish liability insurance at least equivalent to that

provided by WTL pursuant to the alternative service orders in F.D. 34802. WTL's coverage is \$5,000,000 per incident, \$10,000,000 aggregate personal injury/property damage, \$25,000 self-insured retention.

9. Preconditions [49 C.F.R. § 1151.3(a)(9)]: None.

10. Persons subsidizing operations [49 C.F.R. § 1151.3(a)(10)]. PYCO Industries will bear the full cost of acquisition. No other form of subsidization is expected.

11. Statement concerning type of feeder line application [49 C.F.R. § 1151.3(a)(11)]: Applicant will seek a finding by the Board that the public convenience and necessity permit or require acquisition. Pursuant to 49 C.F.R. § 1151.3(a)(11)(i), applicant states as follows:

(A) Evidence that incumbent rail carrier refused within a reasonable period to make the necessary efforts to provide adequate service to shippers who transport traffic over the line.

(i). Preliminary statement. PYCO submits herewith letters or communications of support from shippers Attebury (Exhibit I) and Compress (Exhibit J), Compress consignees Cargill and Allenberg Cotton (also Exhibit J), and PYCO consignee Penny Newman Grain (Exhibit K). PYCO also submits herewith a supportive Declaration by the General Manager of Hi-Plains Bag and Bagging Company (HPBB) (Exhibit L), one of the smaller shippers on the SAW line. In addition, PYCO provides letters indicating support from Goetz and International Fibre (Exhibit M).

Penny Newman Grain notes that inadequate SAW service caused

it approximately \$750,000 in additional costs in this past year. See Exhibit K. PYCO has filed a verified Complaint (in F.D. 34838, April 29, 2006) against SAW before this Board in which PYCO claims over \$4 million in damages for lost and delayed sales alone due to failure by SAW to honor its obligations under the ICC Termination Act. HPBB notes that SAW management engages in unbusinesslike conduct and threatens arbitrary retaliation against shippers raising even minor issues. See Exhibit L.

At the time this feeder line application is filed, PYCO is the only shipper on SAW lines served by an alternative rail service provider pursuant to this Board's action in F.D. 34802 (alternative rail service proceeding). PYCO is concerned that upon filing and service of this feeder line application, SAW may take retaliatory steps against Attebury, Compress, HPBB and any other shippers who evince support for the application. PYCO is informed that WTL is prepared to provide alternative rail service to all shippers on the SAW lines against whom SAW retaliates in accordance with Mr. Wisener's past threats and practices. PYCO wishes to underscore that HPBB as part of its Declaration requests that the immediately authorize alternative rail service to HPBB should SAW retaliate against HPBB for supporting PYCO's application. Exhibit L, ¶3.

(ii). Majority of shippers by volume. Based on data furnished PYCO by BNSF, SAW handled 12747 cars in calendar 2005. According to PYCO's data, 6970 of those were PYCO cars. PYCO Industries thus accounts for more than half the traffic over the

entire SAW system (Alternative One). Attebury Grain accounted for 495 cars in 2005, and Compress estimates its total loadings at 900 (most of which are for its consignees). PYCO, Attebury and Compress account for 8465/12747, or approximately 2/3 of PYCO's shippers by volume. They encompass all known shippers for the Alternative Two scenario. In short, PYCO exhibits support for this feeder line application from shippers encompassing the majority of shipments on the line.

(iii). Summary of inadequacy of service. The best evidence that the public convenience and necessity permit or require granting this Application, and the best evidence establishing SAW's inadequacy of service, is this Board's findings and conclusions in F.D. 34802 authorizing alternative rail service on grounds of service inadequacy, and thus far in declining SAW's petitions to terminate. We have already quoted (p. 3) finding of service inadequacy as to SAW's service to PYCO. We will emphasize and summarize some key points below.

SAW has a reputation for threatening to take, and actually taking, retaliatory action against its shippers and potential shippers, including reduction of service, and ripping out of track and switches. See O.E. Floyd Dec, Exhibit H, ¶13. As a result, a number of smaller shippers and prospective shippers have informed counsel for PYCO that they fear retaliation from SAW if their own service problems with SAW are discussed in public. In confirmation of the fears and risks of retaliation with respect to SAW, one of the smaller shippers -- Hi Plains

Bag and Bagging (HPBB) -- has provided a statement. That shipper notes that Mr. Wisener has already threatened (through "screaming") to "cut us off and do whatever he wanted because it was his railroad." Declaration of Calvin Kidwell, Exhibit L, ¶2. Mr. Kidwell observes that "I construed this as it was intended: a threat to retaliate and to deprive us of service if we did not do exactly what he told us to do." Id.

Of course, SAW does not limit its bullying to its smaller customers. PYCO is the largest shipper on SAW's system, and SAW has already taken about as many retaliatory shots at PYCO as it can take. Thus, in the hopes of preserving remaining shippers from additional exposure to SAW retaliation, PYCO believes it appropriate and sufficient to focus on SAW's service inadequacies to PYCO. That in tandem with the various letters and declarations of support, including representations of threats against HPBB and losses to Penny Newman, paint a clear picture of service inadequacy under SAW as incumbent carrier.

PYCO sets forth below excerpts from our Verified Petition for Alternative Rail Service, filed by PYCO on December 19, 2005, in STB F.D. 34802. [All references to exhibits in the material quoted below are to exhibits filed with the Petition. These exhibits have been filed with the Board, served on SAW, are publicly available over the internet (this Board's e-Library, under filings, for December 19, 2005), and are hereby incorporated into this proceeding. Moreover, this Application is Verified by Mr. Gail Kring.]

"In order to facilitate switching between sidings on PYCO property serving Plant No. 1, PYCO operates two track mobiles. Until this year, SAW permitted PYCO to operate its equipment on a portion of SAW trackage sufficient to allow PYCO to move cars between tracks at PYCO's Plant No. 1. This allowed PYCO to ship 26 or more carloads per day from Plant No. 1. SAW has now placed a derail on its track that now prevents PYCO from moving more than one car at a time. This and related service inadequacies by PYCO limits PYCO to 12 carloads per day at Plant No. 1, a 16 carload/day shortfall. This adds to, and further complicates, the service inadequacies and disruptions discussed below.

First episode of service inadequacy. By 2005, SAW and BNSF were embroiled in a complicated dispute over the terms of the 1999 contract by which SAW acquired the BNSF trackage in Lubbock. Apparently incensed because PYCO declined to take sides in its favor in that contract dispute, SAW by early March stopped spotting and picking up cars on reasonable request at PYCO's two rail-dependent plants in Lubbock. Indeed, shortly before March 11, 2005, Mr. Larry Wisener ... informed PYCO that SAW was terminating service to PYCO's Plant No. 2, evidently due to a dispute between SAW and BNSF over the removal of certain switches. Despite efforts by PYCO to compose the differences between BNSF and SAW, service continued to deteriorate, with Mr. Wisener again threatening to shut down service to Plant No. 2 on April 4, 2005. On April 4, a derailment occurred on the track serving Plant No. 1. Mr. Wisener (SAW) stated that SAW "didn't have time to clean up a mess right now" resulting in suspension of service to Plant No. 1.

On April 5, 2005, PYCO complained in writing to Mr. Melvin Clemens, Director of STB's Office of Compliance and Enforcement ("OCE") about service to both its Lubbock plants. This was followed by a May 3 letter from PYCO to Mr. Herzig in STB's OCE noting service problems and the threat by SAW to impose a surcharge on PYCO. By letter dated May 23 to STB, PYCO reported it had sustained \$450,000 in losses in April due to "slow switching of railcars" and that the situation had not improved. By letter dated June 8 to STB, PYCO indicated it was "experiencing worse service by the day." On June 17, 2005, Mr. Wisener sent a letter to PYCO (i) directing PYCO to make Mr. Wisener the sole source of contact for all SAW rail services to PYCO, (ii) withdrawing permission for PYCO to operate its equipment on SAW trackage, (iii) imposing surcharges, and (iv) requiring a "formal agreement" for future inbound and outbound service. On June 13, SAW threatened to "embargo any future PYCO shipments from handling." By approximately June 21, PYCO had drafted a petition for alternative rail service under 49 C.F.R. Part 1146. Although this draft was not filed, it summarizes key

events in the service disruption which PYCO experienced March through June of 2005, and also collects as exhibits the correspondence discussed above. A copy of this draft petition is attached as Appendix A, along with its exhibits.

Intervention by STB's OCE. Although counsel for PYCO does not understand himself to have all the communications, PYCO understands that Director Clemens of STB's Office of Compliance and Enforcement informed SAW in writing of SAW's obligations to provide service on reasonable request. PYCO is in possession of letters from SAW's counsel to Mr. Clemens offering excuses for SAW's failure to provide service (SAW chiefly claimed to be limited by policies of BNSF), and Mr. Clemens response of 10 June 2005 indicating that SAW needed to meet its service obligations. See Exhibit B. Due to Director Clemens' intervention, SAW improved service to PYCO at the end of June. PYCO, hoping that this marked a peaceful resolution of its service problems with SAW, did not file the emergency petition with STB for alternate rail service at that time.

Interregnum. In a request for proposals bearing date of May 10, 2005, SAW offered its Lubbock trackage for sale, including the trackage serving PYCO.

In September of 2005, Mr. Wisener informed PYCO's Senior Vice President for Marketing (Robert Lacy) that he (Wisener) wished to sell SAW and get out of the railroad business, and wished to know if PYCO was interested. After consulting internally, PYCO informed SAW that PYCO had an interest. See Exhibit C (Ver. Statement of Robert Lacy). SAW then made a specific demand to PYCO to sign an agreement by which PYCO would be bound to pay SAW \$5,500,000 (5.5 million dollars) for the trackage serving PYCO. That proposed agreement is set forth in a letter dated October 11, 2005, from SAW's Lubbock counsel to PYCO's Lubbock counsel, and is an attachment to the Lacy Verified Statement (Exhibit C). The proposed agreement as tendered by SAW does not specify what property or rights SAW proposed to transfer, nor provide for normal due diligence activities to be conducted and customary concerns to be satisfied as a condition to closing. PYCO accordingly responded on October 13 that it was "still in the early stages of looking at the purchase" of SAW's assets, and requested a paragraph making the purchase contingent upon the completion of due diligence activities and upon PYCO's obtaining financing satisfactory to PYCO. See Letter attached to Exhibit C.

SAW angrily rejected PYCO's position. SAW's president, Mr. Wisener, orally informed PYCO that SAW intended to make business miserable for PYCO. By letter dated November 3, 2005 (also in Exhibit C), SAW through its [then] president,

Larry Wisener, effectively broke off negotiations on acquisition (before they had begun), claiming agreement "cannot be reached." SAW also demanded that PYCO "cease all plant operations on SAW property immediately." [footnote 6: Letter attached as part of Exhibit B. It is unclear what Mr. Wisener meant by plant operations. PYCO surmises that he felt PYCO was loading seed cars on SAW trackage, a claim that Mr. Wisener made in a telephone call on November 17, 2005. However, PYCO was loading seed cars on its own trackage. SAW's Mr. Wisener also perhaps meant that he no longer would store cars for PYCO.]

Second episode of service inadequacy. On or about November 17, SAW placed a derail on the track making it difficult for PYCO to prepare cars for the daily switches. By letter dated November 17, 2005, SAW cancelled PYCO's lease of track #9298.

On November 18, 2005, PYCO contacted Mr. Wisener to request that he move the derail to allow switching. Mr. Wisener initially said he was busy and would look into it later. Then he said he was imposing additional charges on PYCO, and desired PYCO to "come over." PYCO's representative, weary of the confrontational nature of Mr. Wisener in meetings, indicated that if Mr. Wisener had made up his mind, there was no need to come over. Mr. Wisener indicated that PYCO "would have to figure out how to take care of [itself]." Mr. Wisener told PYCO that it would "cost a lot more for [PYCO] to continue doing business with [SAW]." See Exhibit C and attachments thereto.

On November 22, 2005, PYCO determined that if SAW would switch cars on the scale track instead of the shop track, or if it would switch on both, PYCO could load more cars. PYCO asked SAW to switch on the scale track or on both tracks. SAW refused. SAW's representative indicated that Mr. Wisener would allow only one pull per day, and only on the shop track. From that day forward, SAW has refused to switch cars on the scale track and has otherwise engaged in conduct minimizing the number of cars which PYCO can switch each day. By November 29, SAW's policies or inabilities had resulted in PYCO's being unable to load an additional 80 cars at Plant No. 1. This deteriorated situation has continued until the date of filing of this petition.

PYCO Verified Petition for Alternative Rail Service, F.D. 34802 at pp. 4-9.

The various subsequent filings in the alternative rail service proceeding further document the inadequate service

provided PYCO by SAW. Pursuant to 49 C.F.R. § 1114.5, PYCO hereby incorporates all its evidentiary filings (documents, verified statements, Declarations, and verified pleadings) in PYCO Industries -- Alternative Rail Service, F.D. 34802.¹³

On January 26, 2006, this Board issued an alternative service order on January 26, 2006, finding that PYCO Industries had demonstrated that it was not receiving adequate rail service.

The validity of the Board's determination has been demonstrated by subsequent events. PYCO has received excellent switching service from its alternative service provider ("WTL") from January 26 to date. Despite numerous problems with SAW, WTL managed quickly to work off PYCO's backlog, reduce or eliminate car storage needs except for ordinary staging, and otherwise speed up shipments. PYCO shipped more than twice as many cars in the first 17 days of service with WTL under the alternative service order than during the prior 17 days of SAW service.¹⁴ BNSF remarked that turnaround times for cars had markedly improved.¹⁵

¹³ Should this Board desire PYCO to furnish additional copies of all these documents (publicly available in this Board's e-library under filings for the relevant docket, and all previously served upon SAW), PYCO will do so.

¹⁴ PYCO Reply in F.D. 34802 at p.1 and Lacy V.S. as cited, filed Feb. 16, 2006.

¹⁵ PYCO Reply in F.D. 34802 (filed Feb. 15, 2006) at p. 1 and Kring V.S. at ¶ 10 (available at STB e-library, filings), and incorporated herein. See also PYCO Reply in F.D. 34802 (filed April 19, 2006), Exhibit C (BNSF communication to PYCO that BNSF is "very satisfied" with WTL service and "[e]quipment

SAW from time to time has contended,¹⁶ and still contends,¹⁷ that service problems in Lubbock are due to BNSF, not SAW. SAW from time to time suggests that PYCO has been used as a pawn by BNSF. But the fact that WTL has provided excellent service belies SAW's claims that the problem lies at BNSF's feet. Instead, it indicates that the problem lies with SAW.

SAW sometimes complains that PYCO has inadequate storage facilities for rail cars. PYCO's storage needs are exacerbated by inadequate switching by SAW, and are compounded by SAW's desire or modus operandi to shake-down its shippers by congesting its lines both by failing to provide adequate switches and by storing non-revenue cars on its tracks for parties who are not shippers on SAW's lines. BNSF has remarked to PYCO how service under WTL has enhanced car turnaround times, to the benefit of BNSF, PYCO, and presumably other shippers as well.¹⁸

During the period from inception of alternative service to date, SAW has continued, in what at best amounts to a passive-

velocity remains high"). That has to be good news for all BNSF customers.

¹⁶ See Letter, Mr. McFarland (for SAW) to Mr. Clemens (STB OCE), dated June 8, 2005, Exhibit B to PYCO Petition for Alternative Rail Service in STB F.D. 34802, filed December 19, 2005.

¹⁷ E.g., SAW Petition to Terminate, Delilah Wisener V.S. p. 1, in Finance Docket 34802, filed March 30, 2006; SAW Reply, Larry Wisener Declaration, in F.D. 34802 (filed April 11, 2006).

¹⁸ See note 15 supra.

aggressive fashion, to create service difficulties for PYCO.¹⁹ For example, SAW has consistently failed to participate in daily calls with BNSF and WTL to work out service difficulties. As a corollary, SAW in its pleadings in F.D. 34802 has complained of alleged problems serving some of its shippers to this Board without alerting either WTL or BNSF to the alleged problems first in the hope of achieving a solution. SAW does not want to see solutions; it wishes to contrive problems. SAW has violated the applicable service protocol, operating equipment during intervals that were designated for WTL to switch PYCO. SAW has unsuccessfully sought to impose a service protocol that would have congested its facilities, and probably BNSF's south Lubbock yard as well, and recently filed a motion with this Board to the same end in F.D. 34802 (PYCO opposed SAW's motion, which as of this writing is still pending). SAW from time to time has parked or operated equipment so as to block tracks serving PYCO. Recently SAW spotted (and continues to spot) non-revenue cars on the west branch of a "wye" track (which track serves as a lead to PYCO's Plant No. 1), for the sole purpose of blocking PYCO's access to more than \$10 million in cottonseed.

The only possible conclusion is that SAW remains dedicated to implementation of Mr. Wisener's stated goal, which is to make it "cost a lot more for [PYCO] to continue doing business with [SAW]" should SAW ever again be in a position to control

¹⁹ Examples of problems at the inception of alternative rail service is set forth in the Gregory V.S. attached to PYCO Reply in F.D. 34802, filed Feb. 16, 2006.

switching to PYCO. As Mr. Wisener said to Mr. Lacy, PYCO under SAW's watch "would have to figure out how to take care of [itself]." See note 1 supra. Under the ICC Termination Act, a logical course for a shipper told by its incumbent carrier to figure out how to take care of itself is to file a petition for alternative rail service, and to follow that action with a feeder line application. Thus, in a very real sense, PYCO is simply taking Mr. Wisener at his word and following his advice in filing this feeder line application.

PYCO is pursuing additional remedies, which also are in accordance with Mr. Wisener's advice. PYCO has filed a formal Complaint against SAW, seeking recovery of damages (at least \$4 million in lost and delayed sales alone²⁰), and various injunctive-type remedies to protect PYCO and other shippers from SAW should this feeder line application not be granted. PYCO also plans to file a petition to revoke the acquisition exemption whereby SAW originally obtained the lines in question. If successful, the result presumably would be a return of all the lines to BNSF, which would be very acceptable to PYCO.

Although SAW's smaller shippers fear retaliation by SAW if they provide public testimony,²¹ several smaller shippers (and one potential shipper which has already experienced SAW's persistent churlishness), are prepared publicly to lend this

²⁰ In addition, PYCO's consignee Penny Newman Grain calculates that it has sustained \$750,000 in losses due to SAW's service inadequacies. See Exhibit K.

²¹ See Exhibit L.

application support. We have already referenced HPBB. See Exhibit L. In addition, we submit herewith letters of support from Goetz and International Fibre. Exhibit M. Finally, we submit herewith a statement by the manager of Floyd Trucking, a potential shipper, recounting Floyd's difficulty in receiving rail service. The difficulty included switch removal, which was addressed by STB. But then SAW imposed unreasonable preconditions upon providing service, even after reinstallation of the switch, to the point that Floyd Trucking finally gave up. The episode recounted by Mr. Floyd illustrates PYCO's point that once Mr. Wisener indicates his resolve not to do common carrier business with a party, he and his railroad (SAW) are nothing except doggedly persistent in that end. See Declaration of O.E. Floyd, Exhibit H.

SAW's "patchy" and undependable pattern of service inadequacy thus extends from its largest customer all the way down to inchoate customers. It may be that SAW has provided acceptable service to some of its customers at some point in time; it may be that some of the smaller shippers have so far been spared the Wiseners' misconduct and wrath; but SAW's erratic behavior, SAW's pattern of threats and intimidation, and SAW's resultant unreliability underscore that no shipper on the line can count on reliable and adequate service from SAW at any given point in the future. The public convenience and necessity require and permit the granting of this feeder line application.

(B) Evidence that transportation over the line is

inadequate for the majority of shippers who transport traffic over the line.

The letters submitted herewith show that PYCO's Feeder Line Application has the support of all actual shippers on the east side of the BNSF mainline, including specifically PYCO itself (plus consignee Penny Newman), Attebury Grain, and Farmers Cooperative Compress (and consignees). Collectively, these shippers represent 2/3 of the shippers by volume on the SAW system, and 100% of the shippers for Alternative Two (PYCO/Att/Com). In addition, PYCO represents that its Feeder Line Application has the public support not only of PYCO, Attebury and Compress, but also HPBB (Exhibit L), Goetz & Sons, and International Fibre (Exhibit M), as well as PYCO and Compress consignees and potential shipper Floyd Trucking.

The term "shipper" for purposes of 49 U.S.C. § 10907 is not defined. It is not clear if it includes potential shippers, past (historic shippers), actual shippers, or consignees. Moreover, it is not clear if the term "majority of shippers" in the statute means numeric majority of shippers, regardless of volume of current or projected carloadings, or if the term means majority of shippers by total number of carloadings. The only logical construction of the term "majority of shippers" as used in the statute is that number of carloadings must be taken into account. Otherwise an incumbent rail provider would be able to create havoc for significant rail dependent businesses so long as it kept a numeric majority of its smaller occasional

shippers satisfied.

BNSF has provided PYCO with the following data concerning total shipments for SAW customers in Lubbock:

2003 -- 5050

2004 -- 5329

2005 -- 12,747

PYCO, Attebury and Compress had the following total shipments in Lubbock, respectively:

2003 --	3471	170	700
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2004 --	2491	357	700
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2005 --	6970	495	900
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PYCO, Attebury and Compress together represent the entire universe of shippers for Alternative Two, and a clear majority of shippers by volume for the entire SAW system.²² Using BNSF data, PYCO, Attebury and Compress collectively shipped almost 86% (4381/5050) of total shipments in 2003; 67% (3548/5329) in 2004; and 66% (8365/12747) in 2005.

PYCO understands that SAW has two shippers of rock (Hanson and Vulcan) on its extreme southern line branching off BNSF, a significant shipper (ADM) on the next line branching off BNSF further north, and a number of relatively small shippers sprinkled on the west side of the BNSF mainline.

PYCO intends to bear the whole purchase price for all SAW

²² Since the major consignees of PYCO and Compress support PYCO's feeder line application, the conclusion stated in the text holds even if consignees are considered shippers of record, so long as the references to PYCO and to Compress are understood to encompass their consignees.

lines it is permitted to acquire, and does not intend to seek subsidization of that price from any other shipper. In accordance with calculations from its experts, PYCO understands that the revenue from the share of tariff paid to the local switching operator from the BNSF tariff will cover expected operating expenses for the line. PYCO anticipates no adverse economic consequence in terms of tariff rates for any shipper on the SAW system should the feeder line application be granted. Indeed, should PYCO's application be granted, PYCO intends to require its rail operator (presumably WTL) to treat all customers in a fair and equitable fashion, and to derive its revenues solely from share of tariff provided under the BNSF/SAW contract (currently \$142.72/carload for singles and \$45.67/car in unit trains). PYCO anticipates that service would substantially improve for all shippers and potential shippers due to the markedly enhanced reliability and frequency of service PYCO has already experienced working with WTL as its alternative rail provider.

Under the circumstances, we believe that a numeric majority of shippers will support this application, and certainly that a numeric majority will not oppose it. However, even if a majority of the remaining shippers do not support the application, PYCO, Attebury and Compress encompass 2/3 of shippers by volume, and that should be treated as compliance with the "majority" requirement for purposes of acquisition of all SAW's lines in Lubbock, Texas.

(C) Sale of the line will not have a significant adverse financial effect on the rail carrier operating the line.

Should the entirety of SAW be acquired, SAW will receive the higher of NLV or GCV. A fortiori the sale will not have an adverse financial impact on the incumbent. Should this Board authorize only a sale of the Alternative Two properties, there again can be no adverse financial impact, because SAW will receive the higher of NLV or GCV, and the remaining portion of the line will remain viable. Indeed, traffic levels for the remaining portion of the line will be in the range of traffic levels at SAW's original acquisition, when SAW presumably found the line viable. For example, at 2005 levels, SAW would retain roughly 4400 carloadings per year under BNSF data. If SAW was viable prior to 2005 (when its total carloadings were in the 4000 to 5000 range), then presumptively it would remain viable with similar levels of traffic now but less railroad to operate.

Moreover, PYCO's experts performed a calculation to ascertain the GCV of the remainder of SAW should PYCO acquire the PYCO/Attebury/Compress portion. The following table (Banks V.S., Table 30) sets forth the relevant values:

Pre-GCV	GCV/90#	GCV/#112
\$1,768,780	1,278,780	878,780

In short, the GCV for the remainder would be in excess of \$1.75 million exclusive of necessary and prudent rehabilitation. Even if 112/115# rail is used for the rehabilitation, the GCV would be almost \$900,000.

This indicates that the most profitable portion of the

railroad would remain with SAW under the Alternative Two scenario, and the remainder left with SAW would certainly be viable.

(D) Sale of the line will not have an adverse effect on the overall operational performance of the rail carrier operating the line.

If PYCO is permitted to acquire the entire SAW line (alternative one), this issue is presumably not relevant.

If PYCO may pursue only Alternative Two, then PYCO notes that SAW at one point indicated that it lacked adequate plant and equipment to serve PYCO Industries. SAW's residual system will have proportionately more plant and equipment to service SAW's remaining customers than before, so SAW's operational performance should improve. PYCO's experts advise PYCO that there do not appear to be significant economies of scale to operate the whole line as opposed to Alternative Two, because service under Alternative Two can be adequately performed with one crew, but two crews are prudent for the entire line.

(E) Sale of the line will be likely to result in improved railroad transportation for shippers who transport traffic over the line.

This feeder line application is relatively unique, in that the likelihood of service improvement in the event the application is granted is demonstrated by the fact that PYCO's service markedly improved when PYCO was granted an alternative service authorization for WTL to provide rail service to PYCO. Under WTL's operation, rail service improved dramatically. BNSF

data and observations corroborate this conclusion.²³ PYCO reasonably expects all shippers to experience a similar benefit should PYCO acquire the entire SAW system (Alternative One). Under Alternative Two, service will improve for PYCO and other shippers north and east of the BNSF mainline to be served by PYCO Industries and its operator. SAW will have proportionately more facilities than before for purposes of serving its remaining customers. Therefore service in theory will likely be improved for shippers who transport traffic over the line. However, a key reason for SAW's service inadequacy appears to be the personality and business approach of SAW management, which corresponds to SAW's current ownership. That ownership has been variously represented to PYCO as Larry Wisener, his wife Delilah Wisener, both of them, or the Wisener family generally. Regardless the exact Wisener or group of Wiseners that own SAW, so long as that ownership, or any approximation thereto remains in place, PYCO and other shippers on the SAW facility are subject to arbitrary episodes of retaliation and inadequate rail service. SAW has had ample opportunity at reform. Its conduct has now confirmed any reform by SAW at this point is but a pretense. Because PYCO believes nothing will improve service on SAW lines except new ownership of SAW lines, PYCO urges that its feeder line application be granted in respect to all SAW facilities in Lubbock.

²³ See note 15 supra and sources cited (already on file with STB in F.D. 34802).

12. Statement concerning election for exemption from provisions of Title 49 [49 C.F.R. § 1151.3(a)(12)]. Applicant elects no exemptions.

13. Trackage rights [49 C.F.R. § 1151.3(a)(13)].

(i) SAW. No trackage rights are required over SAW properties if PYCO is permitted to acquire all of SAW in Lubbock.

Under Alternative Two, applicant proposes to acquire a crossing right (or, alternatively, a trackage right) in the current lead to the SAW yard to reach PYCO Plant No. 1 facilities. According to representations by SAW's counsel (Mr. McFarland), approximately 5000 feet of trackage is involved. Should discovery establish that PYCO is the majority user of this track, then PYCO would seek to acquire the lead under Alternative Two. See Exhibit N, Note 2.

Applicant wishes it understood that the crossing right includes ingress and egress to the so-called laboratory track belonging to PYCO which serves PYCO's facilities north of the SAW yard. In addition, the right obviously includes rights of access to PYCO's facilities south of the SAW yard. PYCO would acquire tracks 1 and 5 in the SAW yard (currently being used by WTL to stage PYCO cars under the alternative service order), and track 6 from its western switch to the main ((9298) all the way to the east switch of the "wye" track, and the west branch of the "wye" track, in order to provide access, and especially safe access free of disruption or threats by SAW, to PYCO's plant no.

1 facilities.

Based on PYCO Industries' experience with WTL (PYCO's alternative service provider), PYCO Industries does not expect to need any SAW trackage for storage. As noted, PYCO proposes to acquire tracks 1 and 5 in the SAW yard, which should be sufficient to stage cars for PYCO plant 1. PYCO would also acquire tracks 9200 and 9298 north of PYCO's plant 2, which traditionally have been used to stage cars for PYCO's plant 2. PYCO understands that BNSF retains certain rights to use some of that trackage under its agreement with SAW.

Due to service problems with SAW, PYCO embarked on construction of extensive trackage on its Plant No. 1 property. This trackage may be surplusage or largely so should the feeder line application be granted.

(ii) BNSF. SAW currently provides service to several of its customers (including Attebury) through trackage rights over the BNSF mainline, which SAW acquired as part of its contract with BNSF and pursuant to the acquisition exemption in South Plains Switching, Ltd -- Acquisition Exemption -- BNSF, F.D. 33753 (Sub-no. 1). PYCO would acquire those rights from SAW to the extent they are set forth in the SAW/BNSF contract as part of this feeder line application.²⁴

In the event this Board only authorizes acquisition

²⁴ In the event a separate filing is needed to acquire the trackage rights, PYCO undertakes to make such a filing should the Board so direct. Should a new agreement be required with BNSF for such rights, PYCO (or its operator) will be able to achieve such an agreement with BNSF.

pursuant to Alternative Two (PYCO, Attebury, Compress), PYCO would still require trackage rights pursuant to the SAW/BNSF contract to provide service to Attebury, and to provide a preferable means of access for service to Compress and PYCO's Plant No. 2.

14. Joint rates [49 C.F.R. § 1151.3(a)(14)]. Not applicable.

PYCO assumes it will operate (or cause its operator to operate) in SAW's place pursuant to the contract between SAW and BNSF.

15. Extent to which the owning railroad's employees who normally service the line will be used [49 C.F.R. § 1151.3(a)(15)]. Should any SAW employee be released from service by reason of lack of need for services due to the granting of this feeder line application, PYCO Industries (or its operator) upon the employee's application for employment will grant said employee priority over equally qualified applicants, to the extent permitted by law. To be hired any applicant must be adequately trained for the position, and must be willing to accept employment on the same terms and conditions as other employees of PYCO Industries or its rail operator, as appropriate.

16. Certificate of service [49 C.F.R. § 1151.3(a)(16)]. The undersigned hereby certifies that the following persons or entities required to be served under 49 C.F.R § 1151.2(a) have been served:

(a) Owning railroad (SAW): Thomas McFarland, Esq., 208 South LaSalle St., Suite 1890, Chicago, IL 60604-1112.

(b) All rail patrons (shippers in the prior 12 months):
PYCO is uncertain whether all of the entities below shipped on the SAW's system in the past twelve months, or whether this list comprehends all who did.

All addresses are Lubbock, TX 79404 unless otherwise noted.

PYCO: 2901 Ave. A

Farmers Compress: 3800 Southeast Drive

Attebury Grain: 2500 E.37th St.

ABC Supply: 404 34th St.

Acme Brick²⁵: 2301 Ave. A

ADM: 2300 E. 50th

Dynamic Foods: 1001 E. 33d

Georgia Pacific: 702 E. 44th St.

Goetz: 1204 E. 40th St.

Hanson Rock: 8505 Freeport Parkway North, Suite 300

Irving, TX 75063

Hi-Plains Bag and Bagging: 707 E. 44th St.

International Fibre Packaging: 704 E. 42d St.

Pantex: 1116 E. 42d St.

Robertson Bondwarehouse: 833 E. 40th St.

Russell Womack: 1300 E. 42nd St.

²⁵ Management for Acme Brick has informed PYCO (Mr. Kring) that Acme no longer uses rail, and is considering moving. PYCO includes them on this shipper list as a courtesy to a past shipper.

Stock L.: 801 E. 40th St.

Vulcan: Regional Sales Office, 3509 Hulen St., Suite
102, Ft. Worth, TX 76107

84 Lumber: 102 E. 50th St.

(c) Designated state agency for Texas (State Clearinghouse):

Governor's Office of Budget and Planning
P.O. Box 12428
Austin, TX 78711

Courtesy copy to:
Texas Department of Transportation, Rail Division
Dewitt C. Greer State Highway Bldg.
125 East 11th St.
Austin, TX 78701-2483

(d) Relevant county government. Hon. Tom Head, Lubbock
County Judge, 904 Broadway, Lubbock, TX 79401.

(e) National offices of rail unions with employees on the
line. PYCO does not believe there are any unionized employees
on the SAW lines.

(f) Other. (1) Michael Roper, Esq., BNSF Law Dept., 2500
Lou Menk Drive, AOB 3d Floor, Fort Worth, TX 76102;

(2) Mr. O.E. Floyd, Floyd Trucking, P.O. Box 3456, Lubbock, TX
79452

17. Environmental documentation. Acquisition under either
Alternative A or Alternative B of this feeder line application
will not result in significant changes in carrier operations for
environmental purposes. There will not be a diversion of:

- (1) more than 1000 carloads a year to motor carriage; or
- (2) an average of 50 carloads per mile per year for any part
of this line to motor carriage.

Conclusion

The public convenience and necessity permits and requires that this Board grant PYCO's feeder line application. Although PYCO believes the following amounts overstate the value of the assets in question (and requests discovery and an opportunity to amend this application better to reflect what we believe are lower values), PYCO will pay the higher of NLV or GCV for SAW as follows:

All-SAW property in Lubbock: \$2,094,000.

Alternative Two
(PYCO, Att, Compress): 435,000.²⁶

This Board has already found SAW's service inadequate; since that time, SAW has stubbornly persisted in the same mindset and activities that rendered its service inadequate in the first place. SAW's actions to date establish that the future will be like the past, and this further underscores the compelling case for granting of this feeder line application.

PYCO requests that the Board accept this Application, that the Board authorize the discovery attached in Exhibits P and Q, and that the Board enter the standard protective order attached as Exhibit R to facilitate the discovery responses.

²⁶ In the event PYCO acquires track 9298 to and through the SAW yard, NLV for Alternative Two is \$606,000.

The public convenience and necessity permits and requires that this Board grant PYCO's feeder line application. Although PYCO believes the following amounts overstate the value of the assets in question (and requests discovery and an opportunity to amend this application better to reflect what we believe are lower values), PYCO will pay the higher of NLV or GCV for SAW as follows:

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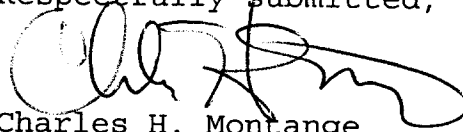
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²⁶ In the event PYCO acquires track 9298 to and through the SAW yard, NLV for Alternative Two is \$606,000.

Respectfully submitted,



Charles H. Montange
for PYCO Industries, Inc.
426 NW 162d St.
Seattle, WA 98177
(206) 546-1936
fax: -3739

Of counsel:

Gary McLaren, Esq.
Phillips & McLaren
3305 66th St., Suite 1A
Lubbock, TX 79413
(806) 788-0609
for PYCO Industries, Inc.

Exhibits

- Exhibit A -- Maps (including area, all SAW, and "Alternative Two"
- Exhibit B -- NLV rail (Sneed Dec.)
- Exhibit C -- GCV (Banks V.S.)
- Exhibit D1 -- Blosser Appraisal (land)
- Exhibit D2 -- Declaration of Matthew Crawford (land areas)
- Exhibit E -- financial responsibility (Co-Bank)
- Exhibit F -- WTL letter
- Exhibit G -- BNSF/SAW contract
- Exhibit H -- O.E. Floyd Declaration
- Exhibit I -- Attebury letter
- Exhibit J -- Compress/Compress consignee letters
- Exhibit K -- Penny Newman Grain letter
- Exhibit L -- HPBB Declaration
- Exhibit M -- Additional shipper letters
- Exhibit N -- Basis for crossing right compensation under Alternative Two
- Exhibit O -- Decision in F.D. 34802, served Jan. 26, 2006
- Exhibit P -- Proposed discovery to SAW
- Exhibit Q -- Proposed discovery to BNSF
- Exhibit R -- Proposed protective order

Verification

I, Gail Kring, depose and state that I am Manager and Chief Executive Officer for PYCO Industries, Inc., that I am authorized to make this Verification, and that I have read the foregoing Application, and know that the facts asserted therein are true and accurate as stated to the best of my knowledge, information and belief.

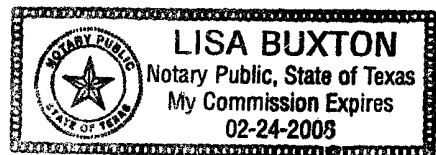
Gail Kring

Subscribed and sworn to before me on
this 2nd day of May 2006, by

GAIL KRING, personally known
to me or proved to me on the basis of
satisfactory evidence to be the person
who appeared before me.

Lisa Buxton
Notary public

My commission expires: 2-24-08



BEFORE THE
SURFACE TRANSPORTATION BOARD

PYCO INDUSTRIES, INC. --)
FEEDER LINE DEVELOPMENT --) F.D. 34844
SOUTH PLAINS SWITCHING LTD.)



FEEDER LINE APPLICATION

EXHIBIT VOLUME
TWO

*** ONE ***

Exhibit A -- Maps (including area, all SAW, and
"Alternative Two")
Exhibit B -- NLV rail (Sneed Dec.)
Exhibit C -- GCV (Banks V.S.)
Exhibit D1 -- Blosser Appraisal (land)
Exhibit D2 -- Declaration of Matthew Crawford (land areas)

*** TWO ***

Exhibit E -- financial responsibility (Co-Bank)
Exhibit F -- WTL letter
Exhibit G -- BNSF/SAW contract
Exhibit H -- O.E. Floyd Declaration
Exhibit I -- Attebury letter
Exhibit J -- Compress/Compress consignee letters
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Seattle, WA 98177
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Phillips & McLaren
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Lubbock, TX 79413
(806) 788-0609
for PYCO Industries, Inc.

for filing: 5 May 2006

E



P.O. Box 5110
Denver, Colorado 80217
5500 South Quebec Street
Greenwood Village, Colorado 80111
Phone: (303) 740-4000
Fax: (303) 740-4002

March 22, 2006

MAR 27 2006

Dear Surface Transportation Board Members:

CoBank serves as the primary lender for PYCO Industries, Inc. ("PYCO"). PYCO has asked that we supply the Surface Transportation Board with this letter which shall serve as evidence that PYCO has the financial resources to devote as much as \$5,000,000 towards rail acquisition and operation.

Should you have additional questions concerning this matter, please do not hesitate to contact the undersigned.

Sincerely,

Jim Stutzman
Vice President

c.montange

From: "Robert Lacy" <rlacy@pycoindustries.com>
To: "c.montange" <c.montange@verizon.net>
Sent: Thursday, April 27, 2006 9:13 AM
Subject: Emailing: index.htm

Will this do instead of my broken Texas English?
 Robert



[Who We Are](#) | [What We Do](#) | [Who We Serve](#) | [How We Operate](#)
[Where We Get Funds](#) | [History](#) | [About Cooperatives](#)

Who We Are

With approximately \$34 billion in assets, CoBank has been a leader in delivering financial solutions to some of America's most successful businesses since 1916. We specialize in agribusiness; energy, water and communications systems; and agricultural export financing.

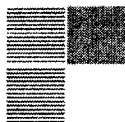
What We Do

CoBank offers a broad range of flexible loan programs, specially tailored financial services and leasing services to agribusinesses, rural communications and energy systems and Farm Credit associations. CoBank provides short-, intermediate- and long-term financing at variable and fixed interest rates. The bank offers CoLink® online financial solutions, CoTradesm electronic trade tool, letters of credit, interest rate risk management services and Business Advisory Services. We offer leasing through our wholly owned subsidiary, Farm Credit Leasing Services Corp. Through strategic alliances, we offer cash management services, private placements, equity sourcing, asset securitization services and tax-exempt bond financing. CoBank also finances agricultural exports and provides international banking services.

Who We Serve

CoBank's customers are local, regional and national agribusinesses; rural energy, water and communications systems; Farm Credit associations and other businesses serving rural America. Some of our agribusiness customers process, market, transport and export products as diverse as beans, fruits, vegetables, grains and fish. Others specialize in farm supply products, such as feed, seed, fertilizer and petroleum-based products. Farm Credit associations or Agricultural Credit Associations provide financial services to agricultural and aquatic producers and rural homeowners. CoBank also finances agricultural exports. CoBank's rural utility customers include electric, telecommunications, water and waste disposal systems. In addition, we work with commercial banks and other Farm Credit institutions to syndicate loans, and we often act as an agent for these transactions. We buy and sell loan participations with other Farm Credit banks

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and associations. We may also purchase interests in loans made by other financial institutions when they are related to agribusiness, ag trade, electric, telecommunications, water and waste disposal industries.

How We Operate

The bank is owned by approximately 2,300 stockholders -- consisting of U.S. agribusinesses; rural communications, energy and water systems; Farm Credit associations and other businesses serving rural America. CoBank is governed by a board of directors who are elected by the customer-owners of the bank. The bank operates on a cooperative basis and, historically, a substantial portion of the bank's earnings is returned to the bank's owners in the form of patronage refunds.

Where We Get Funds

CoBank is part of the Farm Credit System, a \$140-billion nationwide network of lending institutions. The funds to finance CoBank loans come primarily from the sale of Farm Credit System securities to investors in the national and international money markets. Because of the market acceptance and attractiveness of Farm Credit securities and the volume of funds raised, CoBank is able to offer competitive interest rates.

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F



Permian Basin Railways

Texas-New Mexico Railroad
West Texas & Lubbock Railway
Post Office Box 618181
Chicago, IL 60661

April 28, 2006

Mr. Gail Kring
Chief Executive Officer
PYCO Industries, Inc.
P. O. Box 841
Lubbock, TX 79408

Dear Mr. Kring:

We have read the Feeder Line Application and we support the conclusions therein. West Texas & Lubbock Ry. is willing to provide the service contemplated under either Alternative One or Alternative Two.

The realities of railroad operations are that the best possible service to all customers would be assured under Alternative One. In the event Alternative Two is selected by the Surface Transportation Board, and should BNSF continue to require that all outbound interchange be made to WTL, WTL stands ready to cooperate with SAW to provide quality rail service to all affected customers.

Sincerely,

E. E. Ellis
President

G

5/3/99

AGREEMENT FOR
SALE OF CERTAIN ASSETS, RIGHTS
AND OBLIGATIONS
OF
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY
TO
SOUTH PLAINS SWITCHING, LTD. COMPANY

AGREEMENT FOR SALE OF CERTAIN ASSETS, RIGHTS AND OBLIGATIONS
OF THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY
TO SOUTH PLAINS SWITCHING, LTD. COMPANY

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Exhibit A	List of Tracks and Map/Print
Exhibit B	Quitclaim Deed
Exhibit C	Bill of Sale
Exhibit D	Agreements to be Assigned in Part to Buyer

AGREEMENT FOR
SALE OF CERTAIN ASSETS, RIGHTS
AND OBLIGATIONS
OF
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY
TO
SOUTH PLAINS SWITCHING, LTD. COMPANY

This Agreement is entered into as of the third day of May, 1999, between THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY, a Delaware corporation (hereinafter referenced as "Seller"), and SOUTH PLAINS SWITCHING, LTD. COMPANY, a Texas limited liability company (hereinafter referenced as "Buyer").

WHEREAS, Seller desires to sell and convey to Buyer on the terms and conditions set forth in this Agreement Seller's interest in a rail line of Seller's in the vicinity of Lubbock, Texas, in Seller's Old BN Yard and former BN and ATSF tracks generally south of the Old BN Yard at Lubbock, Texas, the rail freight transportation business which Seller conducts on this rail line, and certain other rights, obligations and assets as specified in this Agreement; and

WHEREAS, Buyer desires to purchase, pursuant to the terms and conditions set forth in this Agreement, Seller's interest in a rail line of Seller's in the vicinity of Lubbock, Texas, in Seller's Old BN Yard and former BN and ATSF tracks generally south of the Old BN Yard at Lubbock, Texas, the rail freight transportation business which Seller conducts on this rail line, and certain other assets, rights and obligations as specified in this Agreement.

NOW THEREFORE, Buyer and Seller agree as follows:

1. Description of Business Sold.

(a) Seller shall convey to Buyer on the date of Closing, subject to the terms and conditions set forth in this Agreement and the terms, conditions, reservations and exceptions set

forth in the Quitclaim Deed conveying this property, all of Seller's interest in the rail line segments of Seller in the vicinity of Lubbock, Texas, shown on the map print and list attached hereto as Exhibit A, except that Seller's tracks 9200 and 9205 shall be included in the conveyance, as well as the metal depot and contiguous real estate near the Old BN Yard. The above rail line segments, together with related rail corridor property interests, less Seller's retained real property interests and access rights, are described specifically in the Quitclaim Deed set forth in Exhibit B, attached hereto, and are referenced collectively hereinafter as "Rail Line."

Seller shall furnish Buyer a complete legal description of Rail Line, and Seller shall use its best efforts to furnish such description on or prior to the date of Closing. This conveyance is expressly subject to Seller's retained interests, as specified in detail in the Quitclaim Deed, for: (1) an exclusive, permanent easement for construction, maintenance and operation of one or more pipelines or fiber optics communication lines facilities and appurtenances, in, under, across, along and through all or any portion of the Rail Line; (2) mineral rights and related permanent access easements; (3) water rights and related permanent access, construction, maintenance and water pipeline rights; and (4) Seller's continued access by rail to tracks 0340 and 9298, at no cost to Seller, and tracks 9200 and 9205, at no cost to Seller for the first five years following the date of Closing and at the rate of \$1,000 per year commencing the sixth year following the date of Closing (and thereafter until such time as Seller notifies Buyer in writing that Seller no longer desires to use said tracks), such rights to be subject to dispatching control and direction of Buyer.

(b) Seller shall convey to Buyer, on the date of Closing, the rail freight transportation business which Seller conducts on the Rail Line, subject to the terms and conditions set forth in this Agreement, in the Quitclaim Deed, or in any agreement assigned by Seller to Buyer in accordance with the terms of this Agreement.

(c) Seller shall convey to Buyer on the date of Closing, by a Bill of Sale identical in form to the Bill of Sale set forth as Exhibit C attached hereto, all of Seller's interest in all rail, ties, spikes, tie plates, rail anchors, bridges, culverts, signalling equipment, and other supporting structures, ballast, track materials and supplies, and the metal depot at or near the Old BN Yard (excluding any vehicles, maintenance equipment on wheels, radios, and computer equipment) that, on the date of the Closing, are not improvements that constitute the Rail Line, but which then are present on the real property comprising the Rail Line. This conveyance shall be subject to the terms and conditions set forth in this Agreement, including those set forth in Exhibit D, and the terms and conditions set forth in any agreement assigned by Seller to Buyer in accordance with the terms of this Agreement.

(d) Incident to the conveyance of the Rail Line, effective as of the date of the Closing, Buyer shall have the right to operate over Seller's tracks in Seller's Lower Yard at Lubbock, Texas, and over Seller's mainline between track 9298 and Seller's Lower Yard at Lubbock, Texas, all as designated by Seller's operating personnel (which rail line segments shall be referenced collectively herein as "Interchange Access Line"), at no charge to Buyer, for the sole purpose of interchanging rail traffic and equipment between Buyer and Seller at Seller's Lower Lubbock Yard. Buyer shall operate its trains over the Interchange Access Line subject to Seller's dispatching directions. Buyer agrees to keep the Interchange Access Line clear at all times, except when actually switching cars between Buyer and Seller. In dispatching the Interchange Access Line, Seller shall accord trains of Buyer equal priority with trains of Seller. Nothing herein shall preclude Seller from abandoning any portion of the Interchange Access Line if conditions otherwise warrant.

(e) Seller shall assign to Buyer on the date of Closing, subject to all terms and conditions set forth in this Agreement, or in any agreement assigned by Seller to Buyer in accordance with

the terms of this Agreement, all assignable rights and obligations of Seller to the extent that they are related to the Rail Line and are set forth in any agreement identified in Exhibit D, which is attached hereto. Buyer on the date of Closing shall accept the assignment of all such rights and obligations, as of the date of Closing, in accordance with their terms and the terms of this Agreement. Seller shall reserve all rights set forth in any agreement identified in Exhibit D to the extent those rights are related to one or more other rail lines or property of Seller. If any contract is related to the Rail Line and inadvertently is not identified in Exhibit D, it is the intent of Seller and Buyer that such contract be deemed to have been assigned by Seller to Buyer, in whole or in part as appropriate, effective the date of Closing. Seller promptly shall provide to Buyer a copy of any such contract immediately upon locating it. Buyer shall make no claim against Seller arising out of any failure to obtain a consent to assignment from any party to an agreement assigned by Seller to Buyer, in whole or in part. It is the intent of both Seller and Buyer that all assignments of rights and obligations related to the Rail Line shall be effective on the date of Closing, whether or not any consents to such assignments then have been obtained.

2. Consideration for the Sale.

(a) In consideration for Seller's sale of its interest in the Rail Line, and conveyance of the other rights, interests and obligations described in Paragraph 1 of this Agreement, Buyer agrees to all of the following:

- (1) To accept all transferred real and personal property "AS IS, WHERE IS" and "with all faults", except for the specific representations and warranties set forth in this Agreement.

(2) To pay on the date of Closing a purchase price of TEN DOLLARS (\$10.00), for Seller's assets, rights and obligations to be conveyed to Buyer as set forth herein.

(3) To maintain the Rail Line at a level adequate for the required rail service.

(4) To pay in addition to the purchase price all costs of Closing (except Seller's cost of preparation of documents to be delivered at Closing). This includes, but is not limited to, any escrow and service fees, real estate transfer taxes, recording fees and sales taxes associated with this Agreement or any of the conveyances governed by this Agreement.

(b) Buyer shall obtain the written consent of Seller, which consent shall not be unreasonably withheld or delayed, prior to entering into any agreement with any other party, or issuing any license or permit to any other party, which would allow such other party any right to cross or access any portion of the Rail Line to serve any customer located along the Rail Line.

(c) Without Seller's prior written consent, which consent shall not be unreasonably withheld, (1) Buyer shall not seek authority from the Surface Transportation Board or any other governmental agency having jurisdiction, to abandon or discontinue rail service over the Rail Line; and (2) Buyer shall not remove any track from the Rail Line except in connection with the repair or replacement of the track, unless (i) in the case of house track there has been no movement of revenue freight over the track for a period of three years, or (ii) in the case of lead track there has been no movement of revenue freight over the track for a period of five years.

3. Governmental Approval.

(a) Promptly following execution of this Agreement, Buyer, at its sole expense, shall prepare and file such documents as may be required to secure approval, or exemption from

approval, of this transaction by the Surface Transportation Board of the United States Department of Transportation ("STB"), as appropriate. Buyer shall make all reasonable efforts to obtain this approval or exemption in time for this transaction to close on or before May 31, 1999. Buyer shall permit Seller to review prior to filing all documents proposed by Buyer to be filed with the STB, or any court, to secure legal approval or exemption of this transaction.

4. Representations and Warranties.

(a) Seller hereby represents and warrants to Buyer, and Buyer's successors and assignees, the following facts, as of the date of this Agreement and as of the date of Closing:

- (1) Seller is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware;
- (2) Seller has the corporate power and authority to enter into this Agreement and carry out its obligations under this Agreement;
- (3) The execution, delivery and performance of this Agreement have been duly authorized and approved by all necessary corporate actions of Seller, and no further corporate proceedings of Seller are required to complete the transactions covered by this Agreement;
- (4) All of Seller's obligations set forth in this Agreement constitute legal, valid and binding obligations of Seller which are enforceable against Seller in accordance with their terms, except to the extent enforcement may be limited by bankruptcy, insolvency or reorganization law;

- (5) There is no provision in the Certificate of Incorporation or By-Laws of Seller which prohibits the execution of this Agreement or consummation of the transactions covered by this Agreement;
- (6) The negotiations related to this Agreement have been handled by Seller on its own behalf, without intervention of any agent or other person, so that no party has a valid claim on this basis for any finder's fee, brokerage commission, or other similar payment in connection with any of the transactions included in this Agreement;
- (7) Seller has duly filed with the appropriate agencies of the United States, the State of Texas, and appropriate local governments or political subdivisions in Texas, all tax returns and reports required to be filed; Seller either has paid in full, or is agreeable to paying in full as finally determined, all taxes, interest, penalties, assessments or deficiencies which are due for the period up to the date of Closing; and Seller has made all withholdings of tax which are required to be made under all applicable regulations of the United States, the State of Texas, and local governments in Texas;
- (8) To Seller's knowledge, there is no pending or threatened litigation or arbitration proceeding, or administrative proceeding or investigation, against or affecting the properties or assets comprising the Rail Line, or Seller's rights to conduct rail freight transportation operations over the Rail Line as Seller conducts those operations on the date of this Agreement, the result of which foreseeably would

materially adversely affect Buyer's ability to conduct rail freight transportation operations over the Rail Line on the day following the date of Closing;

- (9) Seller has received no written notice of any pending civil, criminal, or administrative actions with respect to any hazardous or toxic substance on or adjacent to the Rail Line (As used herein, "written notice" shall mean written notice delivered to either Seller's Assistant Vice President-Environmental and Hazardous Materials, or Seller's Director Environmental Remediation and Special Projects; who are the people designated by Seller to receive notice of such matters);

- (10) The physical condition of the Rail Line will be sufficient to enable Buyer to conduct rail freight transportation operations over the Rail Line on the day following the date of Closing; and

- (11) No representation or warranty by Seller in this Agreement contains any untrue statement of a material fact, nor omits any material fact that is necessary to prevent that representation or warranty from being materially misleading.

(b) Buyer hereby represents and warrants to Seller, and Seller's successors and assignees, the following facts as of the date of this Agreement and as of the date of Closing, except where specifically noted to be as of the date of Closing only:

- (1) Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas, and by the date of Closing will be qualified to do business in the State of Texas;

- (2) Buyer has all requisite authority to purchase Buyer's properties and Seller's rights and properties which are conveyed to Buyer by this Agreement; to enter into this Agreement; to conduct rail freight transportation business on the Rail Line; and to perform all of Buyer's obligations under this Agreement;
- (3) The execution of this Agreement and consummation of the transactions which are a part of this Agreement have been duly authorized and approved by all necessary company actions by Buyer, and immediately upon execution of this Agreement by Buyer's authorized representative, all of Buyer's obligations set forth in or referenced in this Agreement shall constitute legal, valid and binding obligations of Buyer, or Buyer's successors or assigns, which obligations are enforceable in accordance with their terms against Buyer or Buyer's successors or assignees;
- (4) There is no provision in the Certificate of Incorporation or By-Laws of Buyer which prohibits the execution of this Agreement or consummation of the transactions covered by this Agreement;
- (5) As of the date of Closing, Buyer shall have obtained all legal authority which is necessary to enable Buyer lawfully to conduct rail freight transportation operations over the Rail Line as a common carrier and under one or more rail freight transportation contracts, commencing at 12:01 a.m. on the day following the date of Closing;
- (6) The negotiations related to this Agreement have been handled by Buyer on its own behalf, without intervention of any agent or party, and in such manner as not to give rise to any valid claim by any party for any finder's fee, brokerage

commission, or other similar payment in connection with any of the transactions included in this Agreement;

- (7) Neither Buyer nor any of Buyer's equity owners or financing sources, nor any of their partners, is a Class I railroad or affiliated with a Class I railroad; and
- (8) No representation or warranty by Buyer in this Agreement contains any untrue statement of a material fact, nor omits any material fact that is necessary to prevent that representation or warranty from being materially misleading.

5. Inspection and Condition of Rail Line.

(a) By signing this Agreement, Buyer acknowledges that Buyer has inspected the Rail Line, including all improvements and structures on the Rail Line. Buyer further acknowledges that (i) except as set forth in Paragraphs 4(a)(8), 4(a)(9), and 4(a)(10) of this Agreement, no representation has been made by Seller to Buyer concerning the state or condition of the Rail Line, or the age of any improvements on the Rail Line; (ii) Buyer has not relied upon any statement or declaration of Seller with respect to the physical condition of the Rail Line, Seller's title to the Rail Line, Seller's freight traffic volumes to or from the Rail Line, or any other matter, either oral or in writing, as an inducement to entering into this Agreement, other than as stated in this Agreement; and (iii) the sole consideration for execution of this Agreement by Buyer is set forth in this Agreement.

(b) EXCEPT AS SET FORTH IN PARAGRAPH 4(a) OF THIS AGREEMENT, SELLER HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF THE RAIL LINE, ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY

OF THE MATERIAL OR WORKMANSHIP OF THE RAIL LINE, OR THE CONFORMITY OF THE RAIL LINE TO ITS INTENDED USES. SELLER SHALL NOT BE LIABLE TO BUYER FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING STRICT LIABILITY IN TORT) WITH RESPECT TO THE DESIGN, CONDITION, QUALITY, SAFETY, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE, OF THE RAIL LINE OR THE CONFORMITY OF THE RAIL LINE TO ITS INTENDED USES. SELLER OFFERS, AND BUYER ACCEPTS, THE RAIL LINE IN "AS IS, WHERE IS" AND "WITH ALL FAULTS" CONDITION, AND SUBJECT TO ALL LIMITATIONS ON SELLER'S RIGHTS, INTEREST, AND TITLE TO THE PROPERTY COMPRISING THE RAIL LINE.

6. Liability and Indemnity.

(a) Cooperation in Defense. Buyer and Seller agree that, following the date of Closing, they will cooperate as necessary in defense of any claim, demand, investigation or litigation arising out of Seller's or Buyer's ownership or operation of the Rail Line.

(b) Definition of Losses. In this Agreement the term, "Losses" shall include all costs, expenses, fees or liabilities of, or in any way related to the following: (i) any violation of law or regulation; (ii) any damage to property, the environment or to natural resources; (iii) any bodily injury or death of any person; or (iv) the breach of any contract. "Losses" shall include, but not be limited to, all costs of claims, activities in response to enforcement, damages, judgments, awards, orders, decrees, payments, fines, penalties, assessments, court costs, and attorney, consultant and expert witness fees.

(c) General Liability and Indemnity.

- (1) Seller's General Liability and Indemnity. Except as provided in Paragraph 6(d) of this Agreement (environmental liability), Seller shall be responsible for, and shall indemnify, defend and hold harmless Buyer fully against, all Losses, which:
- (i) except as limited by clause (iii) just below, arise out of Seller's ownership or operation of the Rail Line on or prior to the date of Closing; (ii) result from any breach by Seller of any of its representations or warranties set forth in Paragraphs 4(a) and 10 of this Agreement, or, except as covered by clause (iv) just below, any failure by Seller to perform any of its obligations under this Agreement; (iii) result from claims of third parties caused by Seller's performance or nonperformance, or Buyer's nonperformance only where Buyer had no knowledge of the existence of the duty to perform, under any material contract, lease, permit, license, easement or commitment related to the Rail Line that is not identified in this Agreement or on Exhibit D; or (iv) occur during Seller's operations on the Interchange Access Line, regardless of Seller's or Buyer's negligence or alleged negligence, solely to the extent that such Losses involve Seller's property or employees or lading on Seller's trains, or where third parties or their property (other than lading on Buyer's or Seller's trains) are involved, the negligent party shall respond in accordance with the law of the applicable jurisdiction.
- (2) Buyer's General Liability and Indemnity. Except as provided in Paragraph 6(d) of this Agreement (environmental liability), and further except for Losses resulting from one or more of Seller's representations or warranties set forth in this

Agreement containing any untrue or materially misleading statement of a material fact, or omitting any material fact that is necessary to prevent the representation or warranty from being materially misleading, Buyer shall be responsible for, and shall indemnify, defend and hold harmless Seller fully against, regardless of any negligence or alleged negligence of Seller prior to closing, all Losses which:

(i) except as limited by clause (iii) just below, arise out of Buyer's ownership or operation of the Rail Line after 12:01 a.m. on the day following the date of Closing; (ii) result from any breach by Buyer of any of its representations or warranties set forth in Paragraph 4(b) of this Agreement, or any failure by Buyer to perform any of its obligations under this Agreement; (iii) result from claims of third parties caused by Buyer's nonperformance or required performance under any material contract, lease, permit, license, easement or commitment relating to the Rail Line, where that contract, lease, permit, easement or commitment either is identified in this Agreement or on Exhibit D, or Buyer has specific knowledge of it, but then only from the time when Buyer acquired such specific knowledge; or (iv) arise out of, or are attributable to Buyer's activities or operations on the Interchange Access Line, regardless of Seller's negligence or alleged negligence, except to the extent Losses involve Seller's property or employees or lading on Seller's trains, or where third parties or their property (other than lading on Buyer's or Seller's trains) are involved, in which case the negligent party shall respond in accordance with the law of the applicable jurisdiction.

(d) Environmental Liability and Indemnity.

(1) Buyer Accepts the Rail Line "As Is, Where Is". Buyer acknowledges that Seller has provided Buyer with full access to inspect the Rail Line. Buyer further acknowledges that Seller makes only those representations and warranties to Buyer concerning the existence of any hazardous or toxic substances on or near the Rail Line, or compliance of the Rail Line with any statutes, ordinances, rules, regulations, orders or decisions with regard to hazardous or toxic substances on or near the Rail Line, which are expressly set forth in Paragraph 4(a)(9) of this Agreement.

(2) Seller's Environmental Liability and Indemnity. Notwithstanding any other liability or indemnification provision in this Agreement, Seller shall be responsible for, and shall indemnify, defend and hold harmless Buyer fully against, Losses incurred due to any claim, demand or litigation concerning violation of any applicable statute, ordinance, rule, regulation, order or decision in any way concerning any of the following: (i) any chemical, material or substance that is now, or at the time in question, is regulated or governed by any law, the release of which creates any liability under any applicable law; or (ii) any other material which, when released, would cause significant ecological damage (items described by (i) or (ii) above are referenced hereinafter as "Hazardous Materials") located on or near the Rail Line where such Losses:

(a) were caused by one or more acts of Seller that occurred on or prior to the date of Closing; and

(b) result from any written claim ("Claims") that is delivered to Seller within four years following the date of Closing; and

(c) exceed \$10,000.00 in the aggregate in any year.

(3) Buyer's Environmental Liability and Indemnity. As part of the consideration for this Agreement, and notwithstanding any other liability or indemnification provision in this Agreement, Buyer shall be responsible for, and shall indemnify, defend, and hold harmless Seller fully against, regardless of any negligence or alleged negligence of Seller occurring prior to Closing, Losses incurred due to any claim, demand or litigation concerning violation of any applicable statute, ordinance, rule, regulation, order or decision in any way concerning any Hazardous Materials located on or near the Rail Line where such Losses either:

(a) were not caused by one or more acts of Seller, or Seller's corporate predecessors, regardless of when the act or omission giving rise to the claim occurred; or

(b) regardless of cause, do not result from a Claim delivered to Seller within four years following the date of Closing; or

(c) were caused by Seller and result from a Claim delivered to Seller within four years of the date following Closing, but only up to \$10,000.00 in the aggregate in any year.

Buyer also shall be responsible for, and shall indemnify, defend and hold harmless Seller fully against, regardless of any negligence or alleged negligence of Seller, Losses incurred due to any claim, demand or

litigation concerning violation of any applicable statute, ordinance, rule, regulation, order or decision in any way concerning any Hazardous Materials on or near the Interchange Access Line, to the extent such Losses arise out of, or are attributable to, Buyer's activities or operations on the Interchange Access Line, except to the extent Losses result from Seller's affirmative negligent acts.

- (4) Arbitration of Allocation of Liability Between Buyer and Seller. Any dispute between Seller and Buyer as to allocation between them of Losses for which both Seller and Buyer are responsible under the terms of this Paragraph 6 shall be settled by binding arbitration in accordance with the rules of the American Arbitration Association.
- (5) Buyer To Comply With Hazardous Materials Laws. Buyer agrees to comply with all federal, state and local laws, regulations and rules concerning handling and disposal of Hazardous Materials.
- (6) Liability Remedies and Obligations Are Exclusive. Buyer and Seller agree that the remedies and obligations set forth in this Paragraph 6 shall be exclusive remedies and obligations of each one to the other with respect to any Losses relating to the release or existence of Hazardous Materials on or near the Rail Line.

(e) Seller to Delivery Property Records to Buyer. Seller shall deliver to Buyer, on or soon following the date of Closing, originals or copies of whatever records, prints, archival information, or other evidence Seller locates in a reasonable search of Seller's records, which

bears upon the use of, maintenance, or title to the real estate comprising the Rail Line during the time the Rail Line was operated by Seller as a common carrier line of railroad. If, at any time after Closing, Seller locates any other documents which bear upon the use of, maintenance, or title to the real estate comprising the Rail Line, Seller promptly shall provide originals or copies of those documents to Buyer.

7. Assignment; Seller's Right of First Refusal.

(a) Buyer may not assign this Agreement, or any rights or obligations under this Agreement, to another railroad, or any party or individual who at the time of the assignment is affiliated with or working for another railroad, without the prior written consent of Seller, which consent shall not be unreasonably withheld. Any assignee, including any successor in interest, of Buyer's or Seller's rights under or property acquired by this Agreement, shall assume in writing all of Buyer's or Seller's continuing and existing or thereafter arising obligations under this Agreement, and under any then effective contract assigned by Seller to Buyer, in whole or in part, in accordance with the terms of this Agreement, which obligations are related to the property or rights involved in the assignment.

(b) Any subsequent agreement by Buyer to sell all or any portion of the Rail Line (except to an affiliate of Buyer) must contain the effective right for Seller to purchase the Rail Line, or portion thereof, from Buyer, on the same, or substantially similar, basis as that set forth in the subsequent sale agreement. Buyer shall deliver to Seller a copy of the executed subsequent sale agreement within seven days following its execution. After receiving such copy, Seller and Buyer then shall negotiate in good faith for sixty days Seller's purchase of the Rail Line, or portion thereof, from Buyer. If Seller, at any time during these sixty days, offers in writing to

purchase from Seller the Rail Line, or portion thereof, on the same, or substantially similar, basis as that set forth in the subsequent sale agreement, and at a purchase price equal to the average of the highest three bids received by Buyer, then Buyer, within seven days, shall accept such offer, and within thirty days thereafter, shall convey such property to Seller. The foregoing shall not apply where Buyer wishes to sell small segments of track or property comprising the Rail Line where such sale would not hinder the overall operations of Buyer on the Rail Line.

8. Obligations are Continuing.

The representations, warranties and obligations of Buyer and Seller in this Agreement are continuing and survive the Closing. Terms of continuing obligations in this Agreement are subject to amendment only by a written contract signed by both Buyer and Seller, or their respective successors or assignees.

9. Liens and Encumbrances.

Seller represents, warrants and covenants that Seller has not caused or suffered, and will not cause or suffer prior to the date of Closing, any liens or encumbrances to be filed against the Rail Line or the Interchange Access Line which would materially adversely affect Buyer's ability to conduct rail freight transportation operations on the Rail Line or the Interchange Access Line on the day following the date of Closing. Buyer agrees to take title to the Rail Line subject to all liens and encumbrances on the Rail Line, except for the liens that would violate one or more of Seller's representations and warranties in Paragraph 4(a) or this Paragraph. The only encumbrances on the Rail Line of which Seller is aware are related to the agreements identified in Part I of Exhibit D, attached hereto, and may encumber the Rail Line on the terms and conditions set forth in those agreements.

10. Pending Public Works Projects.

Seller shall notify Buyer prior to closing of all pending public works projects on the Rail Line of which Seller is aware. Seller shall pay the railroad's share of the cost of whatever work is performed on pending public works projects before the date of Closing, and Buyer shall pay the railroad's share of the cost of whatever work is performed on these projects after the date of Closing. Any payments received by Buyer or Seller from any government body for a pending public works project shall be apportioned on the basis that Seller shall receive that share of the payments applicable to work performed on these projects prior to date of Closing, and Buyer shall receive that share of the payments applicable to work performed on these projects after the date of Closing.

11. Closing.

(a) The closing of this transaction shall occur on May 31, 1999, or an earlier date mutually agreeable to the parties (referenced herein as "Closing").

(b) At Closing, Seller shall deliver to Buyer the following documents:

- (1) A sufficient number of original counterparts of executed Quitclaim Deeds to the Rail Line, in exact form as the Quitclaim Deed attached hereto as Exhibit B, to enable Buyer to file an original Quitclaim Deed in each county in which the real property comprising the Rail Line is located;
- (2) An executed Bill of Sale in exact form as the Bill of Sale attached hereto as Exhibit C;
- (3) A copy of Seller's Articles of Incorporation and By-Laws; and

(4) An opinion of counsel for Seller to Buyer with respect to those items represented by Seller to Buyer in Paragraphs 4(a)(1), 4(a)(2), 4(a)(3), 4(a)(4), 4(a)(5) and 4(a)(8) of this Agreement.

(c) At Closing, Buyer shall deliver to Seller:

(1) A copy of Buyer's Articles of Incorporation and By-Laws;

(2) A Certificate of Insurance establishing that Buyer has effective liability insurance meeting the requirements of Paragraph 16 of this Agreement; and

(3) An opinion of counsel for Buyer to Seller with respect to those items represented by Buyer to Seller in Paragraphs 4(b)(1), 4(b)(2), 4(b)(3), 4(b)(4), 4(b)(5) and 4(b)(7) of this Agreement.

(d) At Closing, Buyer shall deliver to Seller the purchase price, as set forth in Paragraph 2 of this Agreement.

12. Proration.

(a) Prepaid rentals, utilities, and other income or fees attributable to the contracts related to the Rail Line that are being assigned under Paragraph 1 of this Agreement, shall be prorated between Seller and Buyer in such manner as to allocate to Seller all income received, and all expenses incurred, on or prior to the date of Closing, and to allocate to Buyer all income received, and expenses incurred, after the date of Closing.

(b) Seller shall be responsible for all real estate taxes applicable to the Rail Line for the calendar year 1999. Buyer shall be responsible for all real estate taxes applicable to the Rail Line commencing on and following calendar year 2000.

13. Interchange.

(a) Buyer and Seller shall interchange rail freight cars and equipment to and from each other at Seller's Lower Lubbock Yard. Seller shall have the right to change the location at which such interchange occurs, within the Lubbock, Texas area, if Seller reasonably determines that such change is necessary for operational purposes. Such interchange may include tracks designated by Buyer on Buyer's property as mutually agreed between both parties. Interchange between Buyer and any party other than Seller will not be permitted at any location along the Rail Line other than at Seller's Lower Lubbock Yard. The trackage upon which such interchange takes place shall be referenced hereinafter as "Interchange Track". Buyer will block traffic for interchange with Seller in accordance with written instructions to be furnished by Seller.

(b) Cars and their contents delivered by one party to the other on an Interchange Track shall be deemed to be in the possession of the receiving party as of the time they are placed on the Interchange Track and uncoupled from the delivering party's train or engine, except that if any such car is rejected by the receiving party under the Interchange Rules of the Association of American Railroads ("AAR") or any successor rules, the refused car shall be deemed to remain in the possession of the delivering party until that car is accepted by the receiving party.

14. Car Hire Costs.

In connection with all loaded and empty rail equipment moving in rail freight transportation service to or from the Rail Line and interchanged between Buyer and Seller on an Interchange Track, the party in possession of any car shall be responsible for all car hire costs, per diem expenses and mileage allowances payable with respect to such car, for any per diem charges for trailers or containers carried by such car, and for any equipment use charges

applicable to any RoadRailer equipment or similar carless intermodal technology. Although Buyer is a line haul carrier, the parties acknowledge that for purpose of car hire only, Buyer will be eligible for treatment as a terminal switch carrier entitled to transfer of car hire liability for up to 96 hours within the provisions of Car Hire Rule 5 - Switching Car Hire Expense Recovery, as set forth in the Code of Car Hire Rules administered by the Association of American Railroads. Seller shall make reasonable efforts to make freight cars available at Buyer's request on an Interchange Track as needed by Buyer for rail service to or from facilities on or along the Rail Line, on a non-discriminatory basis between Seller's car needs on similar rail lines and Buyer's car needs; however, Seller makes no guarantee of equipment supply to Buyer. It is the responsibility of Buyer to provide all locomotives, freight equipment for local traffic, and maintenance of way equipment.

15. Liability Insurance.

(a) For so long as Seller conducts any activities on any portion of the Interchange Access Line, Buyer shall maintain a comprehensive general form of insurance covering liability in connection with any of Buyer's activities or operations on or near the Interchange Access Line, including but not limited to Public Liability, Personal Injury and Property Damage, Federal Employers Liability Act Liability, Bill of Lading and Foreign Rolling Stock Liability, and Contractual Liability, with such limits, deductibles and exclusions as Seller may agree are satisfactory, provided however, that: (i) such limits shall not be less than \$2 million per occurrence, and \$4 million in the aggregate; and (ii) policy terms shall not exclude or limit, in connection with any of Buyer's or Seller's activities or operations on or near the Interchange Access Line, coverage where activities or operations are near railroad tracks. Seller shall be

named as an ADDITIONAL INSURED on such liability insurance policy. Such liability insurance must be purchased from an insurance company licensed to do business in Texas, and possessing a current Best's Insurance Guide Rating of B and Class X or better.

(b) Buyer shall provide to Seller evidence of Buyer's liability insurance coverage at Closing, with copies of its insurance policies and any amendments, as soon as they are available, and with evidence of continued insurance coverage on January 1 and July 1 of each year. Buyer's failure to provide such evidence shall entitle Seller to purchase such liability insurance, and withhold from the divisions payment forwarded to Buyer the cost of this insurance.

16. Seller's Authority to Establish Through Routes and Offer Through Routes.

Buyer and Seller agree that, with respect to all current and future traffic originating or terminating on or along the Rail Line and interchanged between Buyer and Seller at Lubbock, Texas, for ninety-nine years following the date of Closing, Seller shall have authority to establish through routes and offer through freight rates via through routes involving both Buyer and Seller with interchange between Buyer and Seller at Lubbock, Texas. Buyer shall not impose a surcharge upon this traffic without the prior written consent of Seller, which consent shall not be unreasonably withheld. For these ninety-nine years, Seller shall specify junctions and routes for all traffic, effective the day following the date of Closing. For this same ninety-nine years, following the date of Closing, Buyer automatically concurs in all such through rates established by Seller, whether for present or future freight traffic, so long as Buyer shall receive for transporting the traffic the division of revenues that is set forth in Paragraph 17(a) of this Agreement.

17. Division of Revenue.

(a) Buyer and Seller agree that for so long as Seller establishes through freight rates for interline freight transportation service involving both Buyer and Seller, the through revenue accruing on all existing and future carload traffic movements interchanged between Buyer and Seller at Lubbock, Texas, to or from existing and future rail destinations or origins on or along the Rail Line, shall be divided between Buyer and Seller on the following basis:

- (1) For each carload of freight that originates or terminates on the Rail Line and is interchanged between Buyer and Seller at Lubbock, Texas, billed in a block of 27 or more cars for an individual shipper or receiver, Buyer shall receive \$40.00 per car from Seller.
- (2) Except as provided in subparagraph (3), below, for each carload of freight that originates or terminates on the Rail Line and is interchanged between Buyer and Seller at Lubbock, Texas, not billed in a block of 27 or more cars for an individual shipper or receiver, Buyer shall receive \$125.00 per car from Seller.
- (3) Commencing as of January 1, 2000, should the number of carloads of freight originating and terminating on the Rail Line, interchanged between Buyer and Seller at Lubbock, Texas, and not billed in blocks of 27 or more cars for an individual shipper or receiver exceed 3,300 carloads in any calendar year, Buyer shall receive \$115.00 per car from Seller for each carload commencing with car 3,301 for the duration of that calendar year.

For purposes of computing the division of revenue set forth above, two loaded trailers or containers in intermodal service shall count as one carload.

(b) For all current and future traffic originating or terminating on or along the Rail Line, and interchanged between Buyer and Seller at Lubbock, Texas, for twenty-five years following the date of Closing, the divisions set forth in Paragraph 17(a) shall be adjusted annually, commencing as of January 1, 2001, based on 50% of the increase or decrease between the fourth quarter of 2000 compared to the fourth quarter of 1999, in the Rail Cost Adjustment Factor, unadjusted for productivity, as published by the Association of American Railroads (or, if it ceases to be used, some similar rail cost index), and thereafter as of each January 1 based on 50% of the increase or decrease in the Rail Cost Adjustment Factor in the fourth quarter of the immediately preceding year compared to the fourth quarter of the year before that. However, in no event will Buyer's divisions be reduced to a level less than the amounts specified in subparagraph (a) of this Paragraph 17.

(c) Nothing in this Agreement shall preclude Seller and Buyer from negotiating and mutually agreeing to different divisions than those specified in this Paragraph. Divisions of revenue shall be paid by Seller only where Seller is entitled to receive linehaul revenues for a shipment. Buyer shall not impose any surcharge or any additional or increased charges to shippers without Seller's written consent, which consent shall not be unreasonably withheld.

18. Buyer to Offer to Hire Seller's Qualified Employees.

Buyer shall consider for employment those of Seller's employees who want to work for Buyer on the terms and conditions of employment that are offered by Buyer, at Buyer's sole discretion. Buyer shall give priority hiring consideration to employees of Seller who work on the Rail Lines and are represented by the Brotherhood of Maintenance of Way Employees. Any such individual who Buyer in its sole discretion determines to be qualified for a job that Buyer

has available, shall be offered such job by Buyer on the terms and conditions that Buyer establishes, in Buyer's sole discretion. Buyer promptly shall notify Seller of the name of each of Seller's current employees who Buyer offers to hire, and also the name of each of these employees who Buyer actually hires. Buyer shall assume a neutral stance in any Brotherhood of Maintenance of Way Employees union organizing effort.

19. Transfer of Operations.

All rail operations on the Rail Line shall be transferred from Seller to Buyer at 12:01 a.m. on the day following the date of Closing. Upon reasonable advance notice provided by Buyer to Seller, prior to the Closing Seller will switch up to two of Buyer's locomotives from Buyer's affiliates in Slaton, Texas, and in Oklahoma, to the Rail Line, at no charge to Buyer. Following the date of Closing, Seller will perform (at no cost or charge to Buyer) up to two switch movements per year of Buyer's locomotives between the Rail Line and Slaton, Texas, for locomotive maintenance purposes.

20. Collection of Revenues.

(a) Seller shall submit freight bills or interline settlements for, and shall collect, all revenues due for movements over the Rail Line of all shipments moved over the Rail Line, on or before the date of Closing. Seller shall assess and collect all charges due for all switching services performed on the Rail Line on or before the date of Closing. Seller shall assess and collect all demurrage and miscellaneous charges relating to car supply and other services performed on the Rail Line on or before the date of Closing.

(b) Except as otherwise provided by freight transportation contracts, all shipments which move to, from or via the Rail Line that are interchanged between Buyer and Seller, after 12:01

a.m. on the day following the date of Closing, and which are made under rates and routes established by Seller as set forth in Paragraph 16 of this Agreement, shall be settled between Buyer and Seller on the basis of a modified junction settlement plan, with Seller paying division of revenue payments to Buyer on a weekly basis within five working days following the date on which Seller issues the revenue waybill for the movement. Seller shall submit freight bills for, and shall collect all revenues due for, shipments originating or terminating on the Rail Line that are interchanged between Buyer and Seller, including all prepaid shipments that originate on the Rail Line, and all collect shipments that terminate on the Rail Line, except for shipments where Seller does not receive line haul revenues. Seller has the right to grant, or refuse to grant, credit to any customer on the Rail Line concerning any shipments routed to, from or via the Rail Line that are interchanged between Buyer and Seller. Buyer shall assess and collect all charges due for all switching services performed on the Rail Line at and after 12:01 a.m. on the day following the date of Closing. Buyer shall assess and collect all demurrage and miscellaneous charges relating to car supply and other services performed on the Rail Line at and after 12:01 a.m. on the day following the date of Closing.

21. Transfer of Liabilities; Payment of Charges.

For the period before and including the day of Closing, Seller shall be responsible for: (a) all common carrier rail operations, including car supply, on the Rail Line; (b) any freight loss and damage claims attributable to rail operations over the Rail Line; and (c) all car hire and car mileage allowance payments relating to rail operations over the Rail Line. At and after 12:01 a.m. on the day following the date of Closing, Buyer shall be responsible for: (d) all common carrier rail operations, including car supply, on the Rail Line; (e) any freight loss and damage claims

attributable to rail operations over the Rail Line; and (f) all car hire and car mileage allowance payments relating to rail operations over the Rail Line.

22. Electronic Data Interchange.

Within 30 days following the date of Closing, Buyer must have the ability to send and receive electronically waybills, advanced consists, and bills of lading; as well as Train II reports and passing/placement reportings for performance purposes. Transaction reporting should be at industry standard levels or one level behind.

23. Assignment of Freight Transportation Contracts.

The parties agree that, notwithstanding any other provision of this Agreement, the only freight transportation contracts to be assigned by this agreement are: (a) freight transportation contracts that apply to traffic moving to or from facilities on or along the Rail Line; or (b) freight transportation contracts with or involving shippers or receivers that have facilities on or along the Rail Line, and which would apply to one or more shipments to or from a facility on or along the Rail Line. Seller agrees to send on the date of Closing to each shipper (or consignee), and each railroad, who is a party to any freight transportation contract involving any existing or potential freight traffic movement to or from any rail origin or destination on the Rail Line, a Notice of Assignment, advising those parties of the following: (a) the occurrence of this sale; (b) the fact that all rates and service (and in the case of other railroads, revenue divisions) terms in each contract will remain the same; and (c) the fact that Buyer will replace Seller as the party responsible for all rail service to be performed under the contracts for all movements over all or any part of the Rail Line. Buyer agrees that as between Buyer and Seller, Seller's actions in

accordance with the terms of this Paragraph will discharge in full Seller's responsibility to assign freight transportation contracts to Buyer.

24. Applicable Law.

This agreement shall be governed by and construed in accordance with the laws of the State of Texas.

25. Effect of Waiver.

Any waiver by either Buyer or Seller, or failure of either Buyer or Seller to insist upon full and complete performance by Seller or Buyer of its obligations set forth in this Agreement, shall not constitute a waiver or release of such party's right to insist upon full and complete performance of any other obligations in this Agreement, or a waiver or release of such party's right to insist upon full and complete performance of the obligations that were waived or not enforced for periods prior to, or following, the waiver or failure to insist upon full and complete performance. This Agreement shall be amended or modified only by written agreement signed by the parties hereto.

26. Notices.

All notices and other communications under this Agreement shall be in writing and deemed properly served if delivered by hand to the party addressed or, if mailed, when received by the United States Postal Service in registered or certified mail, postage prepaid, or, if sent by a national overnight service, when received by the carrier service in a prepaid mailer, return receipt requested, addressed as follows:

Seller: Mr. Jerome M. Johnson
Assistant Vice President
Shortline/Interline Development
The Burlington Northern and Santa Fe Railway Company

2650 Lou Menk Drive
Fort Worth, Texas 76161

Buyer: Mr. Larry D. Wisener
President/Manager
South Plains Switching, Ltd. Company
P.O. Box 676
Slaton, Texas 79364

Either party hereto may change its address or addressee to which notices are to be given by providing written notice of the change to the other party.

27. Confidentiality.

Except to the extent that the terms of this Agreement are required to be disclosed by the STB, by order of any court of competent jurisdiction or any governmental agency, or by parties involved in financing this purchase, each party to this Agreement shall not disclose the contents of this Agreement to any other party, without the prior written consent of the other party to this Agreement. Any party who learns of any of the terms of this Agreement shall be required by the party to this Agreement who is disclosing the information not to disclose those terms to any other party without the prior written consent of both parties to this Agreement.

28. Entire Agreement; Integration of Agreement.

This document, together with all Exhibits attached hereto, constitutes the entire agreement between Buyer and Seller relating to this transaction. Any other prior or contemporaneous agreements, understandings, representations or statements, whether oral or written, relating to this transaction are merged herein. The headings and titles to provisions in this Agreement are for convenience only, and shall not be deemed to modify or affect the rights or duties of Buyer or Seller. All rights and obligations of Buyer and Seller set forth in this Agreement, or in any Exhibit attached hereto, are integral parts of this Agreement. The consideration inducing Buyer and Seller to enter into this Agreement includes all of the commitments by Buyer to Seller, and

by Seller to Buyer, as set forth in this Agreement, including terms set forth in the Exhibits attached hereto.

IN WITNESS WHEREOF, authorized representatives of the parties have executed this agreement as of the third day of May, 1999.

THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY

By: Douglas J. Babb
Title: Senior Vice President
Merchandise Business Unit

SOUTH PLAINS SWITCHING, LTD., CO.

By: Larry Luker
Title: President/Manager

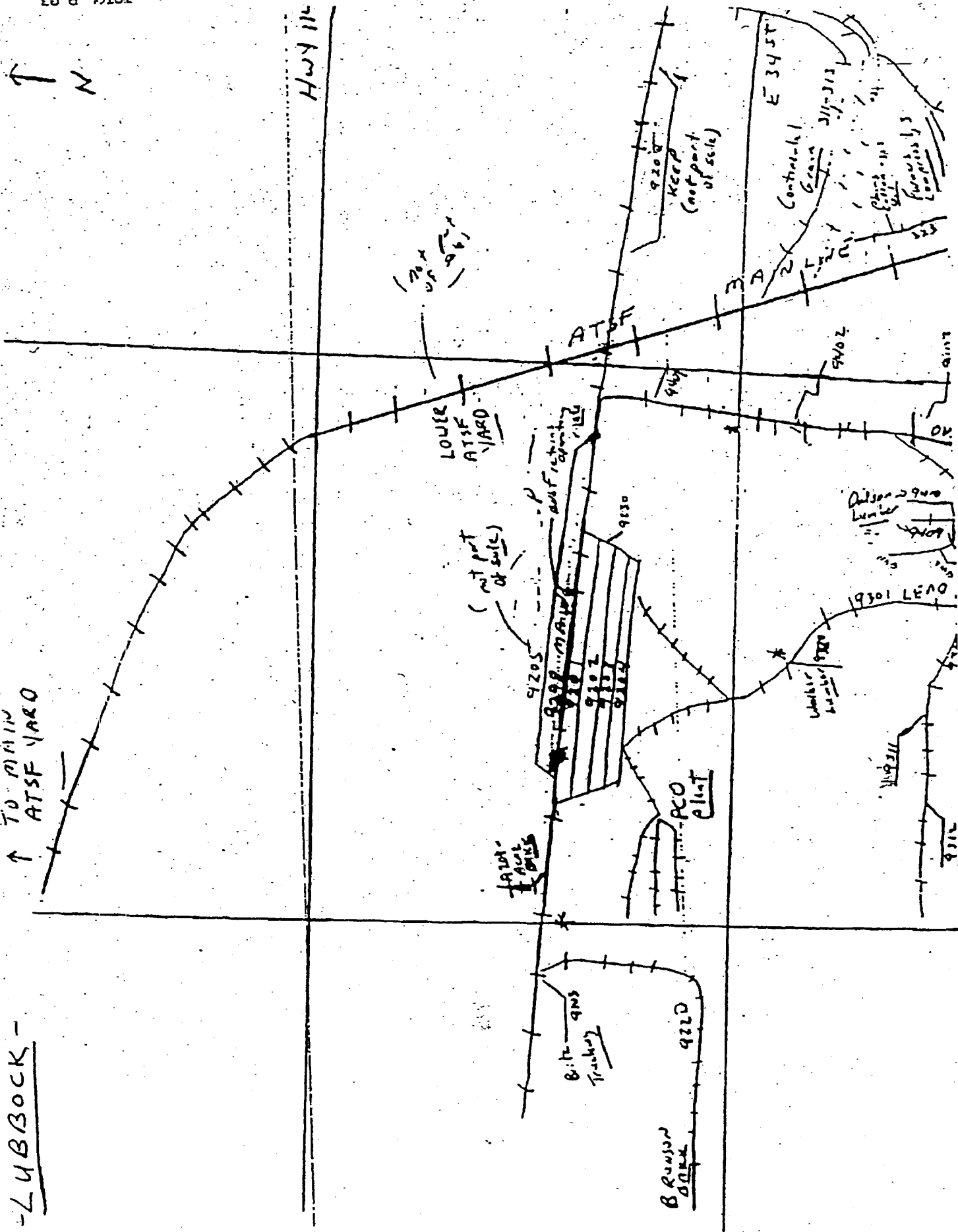
EXHIBIT A

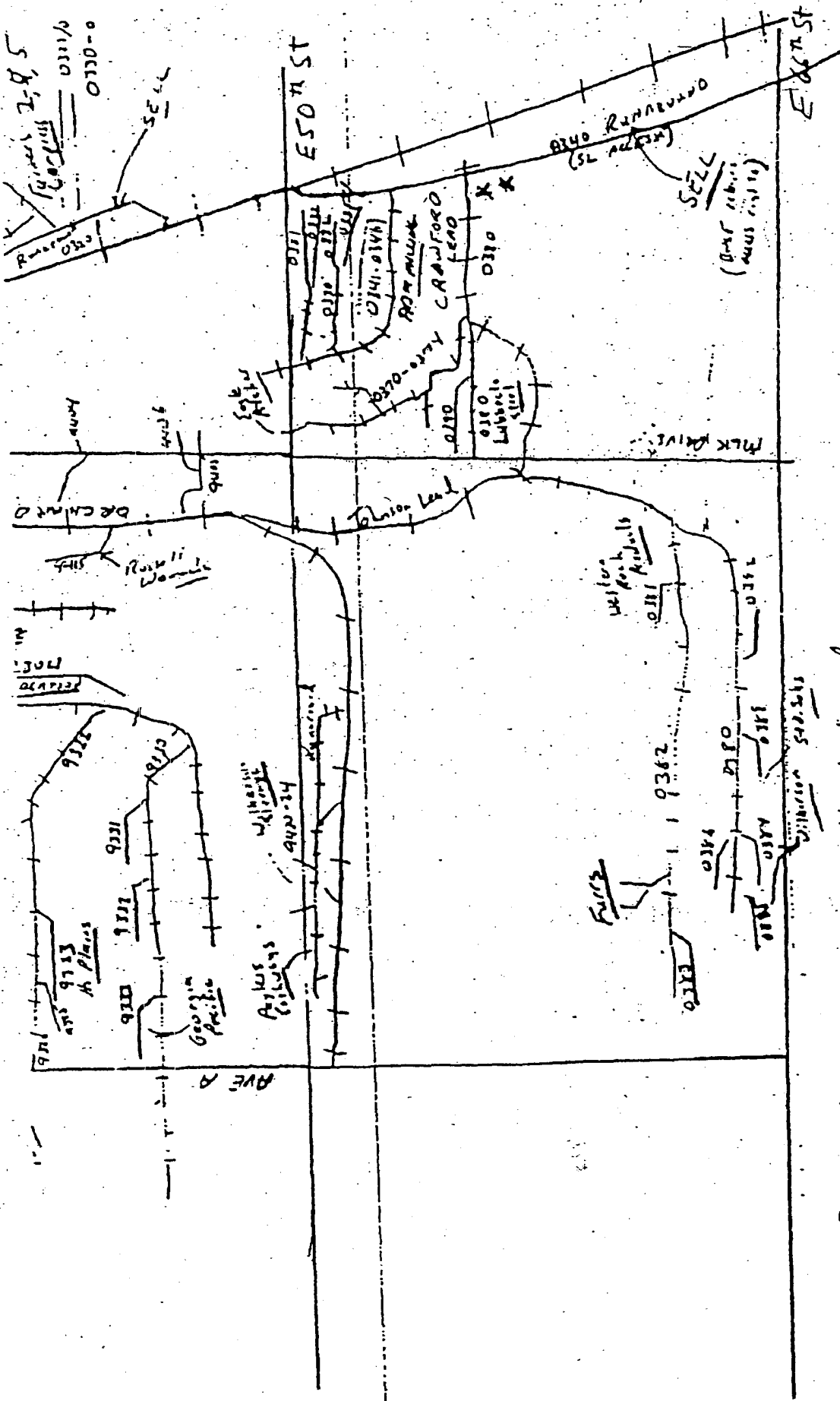
LIST OF TRACKS AND MAP/PRINT OF RAIL LINE

-LUBBOCK-

↑ TO MAIN
ATSF YARD

TOTAL P. 83





Note: Buyer will receive title to all track and right-of-way properties as diagramed in some cases, seller will convey an easement with the exception of tracks owned by shippers (industrial sales). Seller will retain: ATSF Mainline, Track 9200 and Track 9205. Seller will also retain rights to operate over Tracks 9298 and 9340.

X = Signaled Cross

EXHIBIT B

QUITCLAIM DEED

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY, a Delaware corporation, Grantor, for Ten and no/100 Dollars (\$10.00) and other good and valuable consideration, to it duly paid, the receipt whereof is hereby acknowledged, does by these presents REMISE, RELEASE and QUITCLAIM, without any covenants of warranty whatsoever and without recourse to the Grantor, its successors and assignees, unto SOUTH PLAINS SWITCHING, LTD. COMPANY, Grantee, its successors and assignees, forever, all of its all the right, title and interest, if any, in and to a certain strip or parcel of land located in the County of Lubbock, Texas, as described in detail in Attachment 1, attached hereto.

SUBJECT, however, to all existing interests, including but not limited to all reservations, rights-of-way, easements and other encumbrances, of record or otherwise.

EXCEPTING AND RESERVING unto Grantor, its successors and assigns, all of the coal, oil, gas, casing-head gas and all ores and minerals of every kind and nature, including sand and gravel underlying the surface of the premises herein conveyed, together with the full right, privilege and license at any and all times to explore, or drill for and to protect, conserve, mine, take, remove and market any and all such products in any manner which will not damage

structures on the surface of the premises herein conveyed, or unreasonably interfere with the use of such premises, together with the right of access at all times to exercise these rights.

ALSO RESERVING unto Grantor, its successors and assigns, any and all water rights, and the exclusive right to develop and take water by any means, and to all appropriations, priorities, permits and certificates which are appurtenant to, associated with, used upon, flowing over, under, or lying on, in or under the premises herein conveyed, and an exclusive, permanent easement to construct, install, operate, replace, rework, reconstruct, rehabilitate and maintain any and all water diversion, production and transportation structures, equipment, improvements and piping, and to construct, install, operate and maintain water pumps and hydroelectric generation equipment necessary, convenient or related to the production, transportation or delivery of water from, on, under or across the premises herein conveyed, together with the right of access at all times to exercise these rights.

ALSO RESERVING onto Grantor, its successors and assigns, an exclusive, permanent easement for construction, reconstruction, maintenance, use and/or operation of one or more pipelines or fiber optic communication lines, facilities and appurtenances in, under, across, along and through all or any portion of the premises herein conveyed, including the right for Grantor, its successors and assigns, or any of its licensees, to enter, disturb the surface, and occupy the premises herein to be conveyed for purposes of constructing, reconstructing, maintaining, using and/or operating one or more pipelines or fiber optics communication lines, facilities and appurtenances in, under, across, along and through all or any portion of the premises herein to be conveyed; provided however, that all activities in the exercise of these rights shall be performed in a manner which will not damage structures on the surface of the premises herein

conveyed, and that Grantor shall notify Grantee in advance of any such entry, and shall enter and occupy such premises in a manner which does not unreasonably interfere with Grantee's use of such premises.

TO HAVE AND TO HOLD the same unto Grantee, its successors and assignees, forever.

IN WITNESS WHEREOF, Grantor has caused this instrument to be signed by its authorized representative, attested by its Assistant Secretary, and its corporate seal to be affixed hereto, on the ____ day of ____, 1999.

THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY

By: _____
Title: _____

ATTEST:

By: _____
Assistant Secretary

STATE OF TEXAS)
) ss.
COUNTY OF TARRANT)

On this _____ day of _____, 1999, before me, the undersigned, a Notary Public in and for the State of Texas, duly commissioned and sworn, personally appeared Douglas J. Babb, Senior Vice President Merchandise Business Unit and an Assistant Secretary, respectively, of The Burlington Northern and Santa Fe Railway Company, the corporation that executed the foregoing instrument, and acknowledged the execution thereof to be the free and voluntary act and deed of such officer and the voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the foregoing instrument and that the seal affixed in the corporate seal of said corporation.

Witness my hand and official seal affixed the day and year first above written.

Notary Public

My commission expires: _____

Attachment 1

[property description]
to be supplied

MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF ANY OF THE PROPERTY, OR THE CONFORMITY OF ANY OF THE PROPERTY TO ITS INTENDED USES. SELLER SHALL NOT BE LIABLE TO BUYER FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING STRICT LIABILITY IN TORT) WHICH IS RELATED IN ANY WAY TO THE DESIGN, CONDITION, QUALITY, SAFETY, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE, OF ANY OF THE PROPERTY CONVEYED BY DELIVERY OF THIS BILL OF SALE; OR THE CONFORMITY OF SUCH PROPERTY TO ITS INTENDED USES. SELLER CONVEYS TO BUYER, AND BUYER, BY ACCEPTANCE OF SELLER'S DELIVERY OF THIS BILL OF SALE, HEREBY ACCEPTS, ALL PROPERTY CONVEYED BY DELIVERY OF THIS BILL OF SALE IN "AS IS, WHERE IS" CONDITION, AND SUBJECT TO ALL LIMITATIONS ON SELLER'S RIGHTS, INTEREST, AND TITLE TO SUCH PROPERTY.

IN WITNESS WHEREOF, Seller has caused this Bill of Sale to be executed by its duly authorized representative on this _____ day of _____, 1999.

THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY

By: _____
Title: _____

BILL OF SALE

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY ("Seller"), for and in consideration of promises made by SOUTH PLAINS SWITCHING, LTD., COMPANY ("Buyer"), to purchase all of Seller's interest in the rail line segments identified in the Agreement for Sale of Certain Assets, Rights and Obligations of The Burlington Northern and Santa Fe Railway Company To South Plains Switching, Ltd. Company, dated as of May 3, 1999 (which property is hereinafter referenced as "Rail Line"), hereby sells, grants and conveys to Buyer, and Buyer's successors and assignees, all of Seller's rights, interest and title, to the following property constituting the Rail Line, subject to all limitations on Seller's rights, interest and title to the following property:

All rail, ties, spikes, tie plates, rail anchors, turnouts, bridges, culverts, signalling equipment, and other supporting structures, ballast, other track materials and supplies, and the metal depot at or near the Old BN Yard (excluding: (1) any and all vehicles, maintenance equipment on wheels, radios, and computer equipment; and (2) if a notice of interim trail use is filed and accepted as to the Rail Line or if trail use is implemented during the abandonment or discontinuance process, also excluding all bridges, culverts and bridge support structures) that on the date of this Bill of Sale are present on the real property comprising the Rail Line, whether on that date they are installed or uninstalled.

SELLER HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF ANY OF THE PROPERTY CONVEYED BY DELIVERY OF THIS BILL OF SALE, ITS

EXHIBIT D

AGREEMENTS TO BE ASSIGNED IN PART
TO BUYER

[To be furnished]

H

BEFORE THE SURFACE TRANSPORTATION BOARD

PYCO INDUSTRIES, INC.
-- FEEDER LINE APPLICATION --
LINES OF SOUTH PLAINS SWITCHING, LLC

Finance Dkt. No. 34844

DECLARATION OF
O.E. FLOYD

I, O.E. Floyd, make this Declaration, pursuant to 28 U.S.C. § 1746, in support of the Feeder Line Application filed by PYCO Industries, Inc., in F.D. 34844.

1. I am general manager of Floyd Trucking Company, a family owned business, in Lubbock, Texas. My business address is 6201 Martin Luther King Blvd., Lubbock, TX 79404. Floyd Trucking Company has been in business for over forty years as a sand and gravel hauler, with up to 75 trucks at a time. My family is also part owner of Wes-Tex Manufacturing Company, which constructs "belly dumpers" and other special applications for trucks. Although Wes-Tex has some interest in rail service, I will focus my Declaration on the interests of Floyd Trucking Company.

2. Despite repeated efforts by Floyd Trucking Company, we have been unable to obtain rail service on reasonable terms from South Plains Switching, LLC ("SAW"). This problem dates from the inception of SAW's acquisition of its trackage in Lubbock pursuant to South Plains Switching LLC -- Acquisition Exemption

-- BNSF Railway, F.D. 33753 (Sub-no. 1), served July 15, 1999. As a result of SAW's failure to provide rail service on reasonable terms, Floyd Trucking Company has repeatedly lost business opportunities and sustained losses. As a result of our experience, Floyd Trucking Company believes that shippers and potential shippers will be able to obtain reasonably efficient, reliable, and non-discriminatory service only if SAW is replaced as the provider of rail services in Lubbock. To this end, regulation by this Board is needed. Floyd Trucking therefore supports either the revocation of the exemption under which SAW acquired its Lubbock trackage, or the transfer of that trackage to PYCO Industries, Inc., pursuant to the latter's Feeder Line Application.

3. Floyd Trucking purchased property located at 6201 Martin Luther King Blvd in Lubbock, Texas, in 1999. The location is depicted on the map attached. Appendix 1. The property has a railroad spur track (switch #0390), approximately 2500 feet long, which parallels on the north side a line of track owned by SAW. Another switch off that spur track branches to the north and then west for about 400 or 500 feet. Prior to my company's purchase of the property at 6201 Martin Luther King Blvd., the spur had been used to load scrap metals and to unload rock. When we acquired the property, I met with representatives of BNSF Railway and Hanson Aggregates for the purpose of making arrangements to upgrade the spur by installing sufficient track to place 100 cars on location to be unloaded. At the time I met

with BNSF, BNSF still owned the switching tracks now owned and operated by SAW. In particular, Floyd Trucking planned to extend our 2500 foot spur to the west and to install a switch into the existing line. This would create a loop facilitating movement of cars onto and off of our property. Although BNSF had been supportive of the plan, BNSF sold its interests to SAW. Our plan was unable to move forward because Mr. Larry Wisener, manager of SAW, told me that our switch was out of service. Two potential customers, DePauw Fly Ash and Capitol Aggregates, supplied me with letters dated September 19 and September 23, 2002, respectively, noting that problems in relation to the spur made them unwilling to do business with my company. Capitol Aggregates indicated that SAW said it would not service Floyd Trucking's spur; DePauw stated it was "extremely wary" and questioned reliability of service. Copies of these letters are attached in Appendix 2. This defeated one of the purposes for which we acquired our property.

4. I telephoned Ms. Nancy Beiter at the Surface Transportation Board, asking her if the track served by switch 0390 was out of service. After checking, Ms. Beiter said that it was not, and further that Mr. Wisener could not deny service. I then telephoned Mr. Wisener stating that STB informed me that the spur was in service and that SAW was required to serve it. Mr. Wisener said that he now owned the switching railroad tracks and that he would never provide service to Floyd Trucking Company's spur.

5. I continued my efforts to obtain service from SAW. Mr. Wisener claimed that the switch was defective and needed repair. Eldon Martin, of Martin Construction, engages in track construction and repair in the Lubbock area. Mr. Martin had performed work on the tracks at the Floyd Trucking facility before its purchase by us. We arranged for Martin Construction to rehabilitate the tracks. Mr. Martin inspected the switch and found no problem. Appendix 3. On September 25, 2002, I had Mr. Rickey Phillips, Motor Track Inspector for BNSF, inspect the switch. Mr. Phillips concluded that the switch and track "qualifies as class one." He "found no defect to render this track out of service." His handwritten report dated 9/25/02 is attached as Appendix 4. We ordered a car of 1" concrete rock from Vulcan Materials, but were denied service. Instead, Mr. Wisener states that he would provide service on trackage approximately two miles away. Appendix 5. By letter dated November 19, 2002, we complained to the Office of Compliance and Enforcement of the Surface Transportation Board, noting that Mr. Wisener was threatening to remove the switch. We also noted that at least three other potential shippers appeared to be experiencing similar problems with SAW but "wish to remain nameless, for fear of reprisal." Appendix 6.

6. At approximately the same time Floyd Trucking complained to OCE, SAW removed the switch. This action can only be explained as an action of retaliation and reprisal.

7. The Director of STB's OCE (Mr. Clemens) on November 25,

2003, wrote Mr. Wisener that SAW was obligated to provide service pursuant to 49 U.S.C. 11101(a), attaching a copy of the BNSF inspection report concerning the switch. Appendix 7. By letter of January 17, 2003, Mr. Clemens complained to Mr. Wisener that Mr. Wisener had not responded. Appendix 8.

8. By letter dated January 15, 2003, copied to Mr. Clemens, Mr. Wisener informed me that it would cost \$30,000 to replace the switch, requesting Floyd Trucking to pay \$25,000 of that amount. The letter also expressed a series of other concerns, conditions, and limitations on SAW's willingness to provide rail service to our spur. Appendix 9. Mr. Clemens responded with a letter dated February 20, 2003, indicating that SAW was not acting in accordance with its common carrier obligations. Appendix 10. Mr. Wisener then retained Mr. McFarland to represent him. Mr. McFarland apparently dissuaded OCE from initiating a complain proceeding. Mr. McFarland wrote me asking, as I understood him, whether our volume of business would justify restoring the switch, but ultimately, evidently under pressure from OCE (letter, OCE to McFarland, dated March 7, 2003), in a letter dated March 13, 2003, appeared to agree that SAW must restore the switch at SAW's expense, and provide rail service to Floyd, "both upon Floyd's reasonable request." Mr. McFarland indicated that a "reasonable request" is specific as to volume, commodity and time of shipment. Appendix 11 (various letters).

9. SAW continued to fail to restore the switch. On

February 25, 2004, I faxed to Mr. Clemens at STB OCE a commitment from D&J Materials to a job that required use of Floyd Trucking's rail spur. Appendix 12. I believe that Mr. Clemens suggested I request service in writing. I then informed SAW by certified mail (delivered 3/8/04 to Mr. McFarland and to SAW) that Floyd Trucking intended to ship 75,000 to 100,000 tons per year of lightweight aggregate, 60 to 80 carloads a month. Appendix 13. By letter dated March 10, 2004, Mr. Wisener stated that he was forwarding a copy of an industry track agreement that previously existed between BNSF and Lubbock Iron & Metal with respect to what is now Floyd Trucking trackage. Mr. Wisener indicated he was preparing a contract between SAW and Floyd Trucking that would contain many of those provisions. However, Mr. Wisener's letter did not contain the BNSF industry track agreement. Appendix 14. On March 19, I requested that agreement and also informed Mr. Wisener that we expected to need service by April 15, 2004. Appendix 15.

10. I then received a letter dated March 22, 2004, from Mr. Wisener, but that letter did not include the BNSF contract. Instead it contained a draft contract made out for Floyd Trucking to sign with SAW. The contract was deficient in numerous particulars. For example, Article I, paragraph 3 required us to "pay the entire cost (or an equitable share thereof) in case other industries shall be serviced by the INdustry Track or a part thereof." This requirement is virtually unintelligible. In any event, since Floyd Trucking

owned and was obligated to repair its own track, we obviously would not obligate ourselves to pay SAW if SAW used the track for other industries. Article I, paragraph 4 spoke of operating a Plant during the term hereof. No term was specified in Article I, and we were not operating a Plant; we sought to provide an unloading facility for aggregates. SAW's true intent is clarified by Article III. In that Article, SAW states that the term is two years, and thereafter can be terminated by either party on three months notice. If terminated, SAW provided that it could acquire and remove Floyd Trucking Company's track upon payment of salvage value. In other words, after two years, SAW would have the right to remove our track upon payment of salvage value. This was wholly unacceptable when dealing with a switching railroad that had indicated it did not wish to provide us any service at all. The unfairness was further compounded by the fact that SAW provided it could terminate the agreement sooner if the nonexistent "Plant" did not operate six out of twelve months. Article II, paragraph 2. This seems wholly arbitrary for possibly seasonable demand, and also given SAW's hostility to our spur generally. A copy of this proposed agreement is attached as Appendix 16.

11. Because the track agreement tendered by SAW was inconsistent with honoring SAW's common carrier obligations, Floyd Trucking declined to sign the agreement. Mr. Wisener is well-known for refusing to negotiate and for using what is commonly called coarse language in dealing with parties who do

not capitulate to his will; his attitude is that what he tenders is non-negotiable, take it or leave it.

12. On April 6, 2004, Mr. McFarland advised STB OCE that the switch was finally restored and that prior to that date SAW's "standard contract for Industry Track" was furnished to Floyd Trucking. Mr. McFarland evidently construed that unacceptable draft agreement SAW prepared for use with Floyd Trucking as SAW's "standard contract." At this point, I through in the towel, figuring that it would be impossible, as Mr. Wisener has indicated, to obtain service from SAW. On June 3, 2004, Mr. McFarland wrote STB OCE that SAW had spent \$15,000 to restore the switch, but that Floyd Trucking had not signed the industry track agreement, made a single rail shipment, nor contacted SAW. Copies of these letters are attached as Appendix 17.

13. SAW's passive aggressive business style makes it impossible for potential shippers to rely upon it to provide common carrier rail services. Our impression is that customers and potential customers of SAW are afraid to criticize SAW because of SAW's track record of retaliating against them, as it did to us. Floyd Trucking continues to wish to market its site as served by rail. Unfortunately, SAW is unwilling to provide any rail service on reasonable request. This has cost us numerous business opportunities, and results in unnecessary costs and inefficiencies in the transportation system. The public convenience and necessity are undermined by SAW's

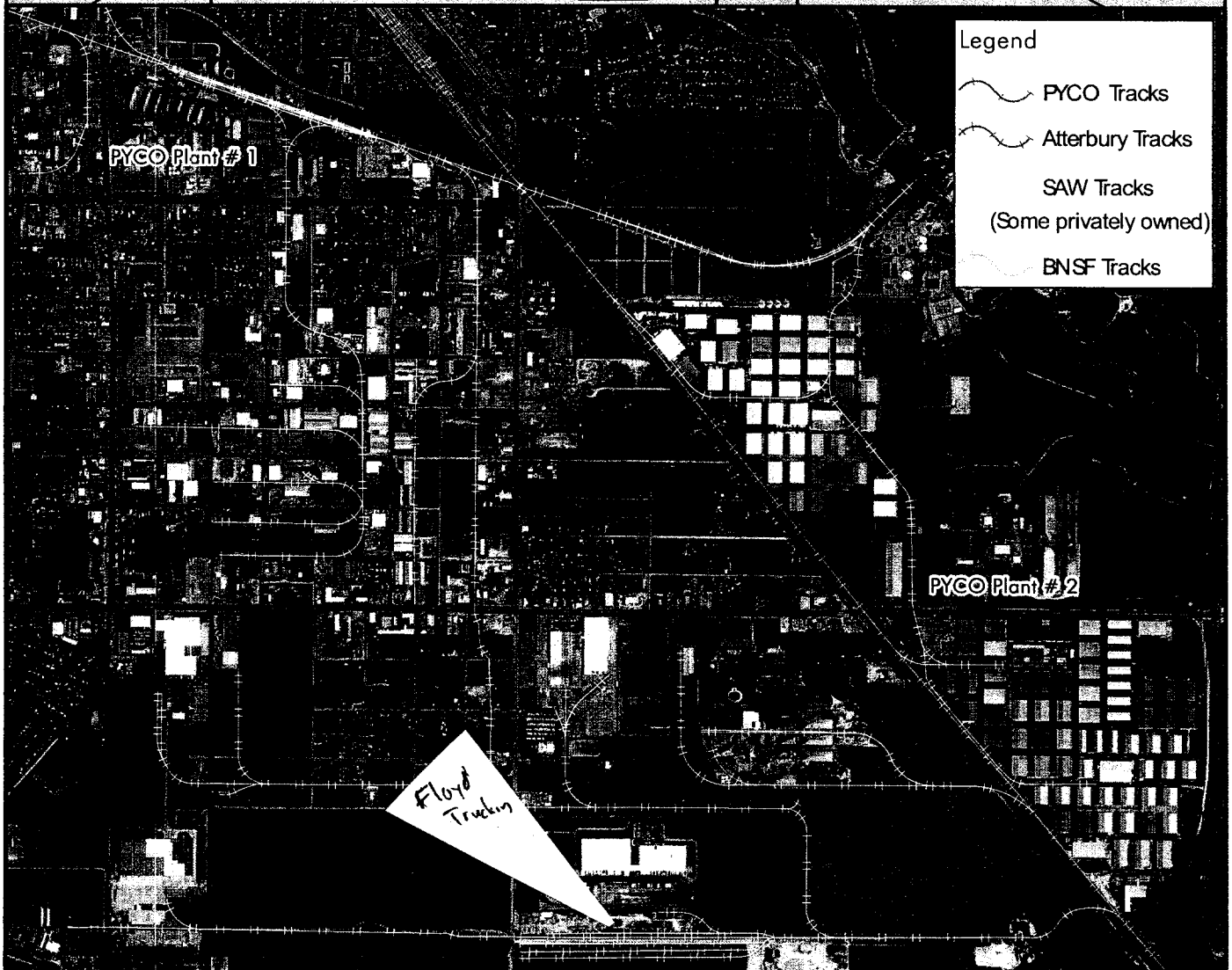
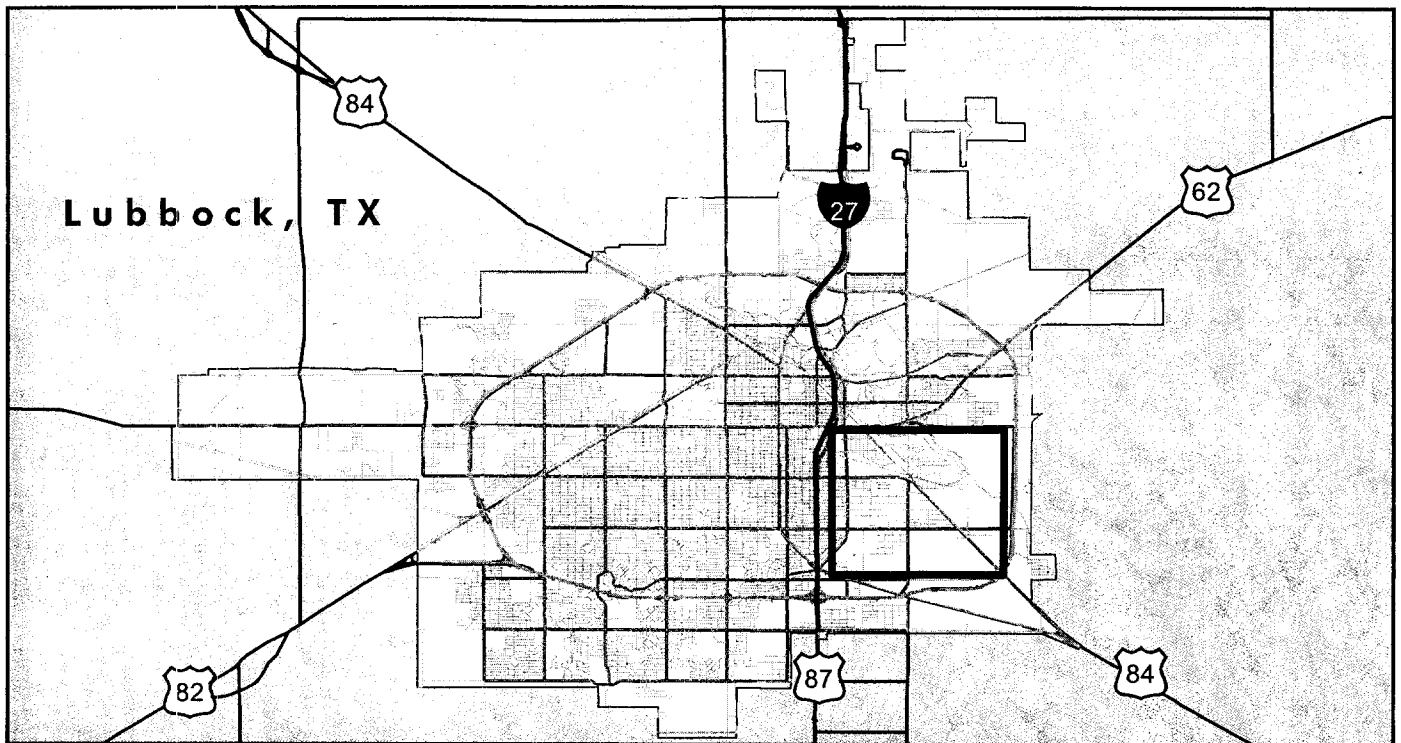
conduct. If the Surface Transportation Board does not revoke the notice of exemption under which SAW's acquisition was authorized, the Board should order a transfer of the lines to PYCO Industries, pursuant to the latter's feeder line application. In any case, the lines in question should be placed under the ownership and control of parties disposed to provide adequate common carrier service for shippers in Lubbock.

Pursuant to 28 U.S.C. § 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 3-15-06.

O. E. Hoff

Appendix 1



Appendix 2

DePAUW
FLY ASH
AMARILLO • PHOENIX

P.O. Box 3039

Amarillo, Texas 79116-3039

806/383-7511

Fax 806/381-8169

September 19, 2002

Floyd Trucking Inc
P O Box 3456
Lubbock Tx 79452

Dear Mr. Floyd,

I spoke with you during July, 2002 regarding the availability and use of the rail spur at your Lubbock, Texas yard. The facility itself would have been a very good location for DePauw. However I was extremely wary of the circumstances surrounding that Spur. I was not confident that we could rely on and maintain the type of consistency at that spur that we need. That lack of confidence forced DePauw to move to another spur in Lubbock and set up operations.

We installed scales and two large storage guppies and have moved approximately 200 tons a week through this facility since July 23rd. We estimate 12,000 to 15,000 tons through our Lubbock spur per year. I regret that DePauw felt compelled to use this alternate spur, but under the circumstances we made the only logical choice available to us.

Sincerely,



Doug Beasley

DB/lb

This was another potential customer that declined usage of our rail spur due to the refusal of rail service from South Plains Switching (Larry Wisener, Owner)

With regards,

Floyd Trucking, Inc



CAPITOL
AGGREGATES, LTD.

TRANS-PECOS MATERIALS DIV.

P.O. BOX 60408 ATS, MIDLAND, TEXAS 79711, (915) 570-8588

Monday, September 23, 2002

O.E. Floyd
Lubbock, Texas

Dear Sir:

Mr. Floyd, my name is Eddie Hickman. I represent Capitol Aggregates. Capitol is a

Aggregate supplier for Highway Construction. We are located near Pecos, Texas.

Capitol was interested in the Lubbock market. However, South Plains Switching told us

That switch # 0390 was not in service, that your track could not be serviced until you

Complied to regulation violations. Mr. Floyd when you get this matter resolved, please let us

Know, we are very interested in your location for the Lubbock Area.

Sincerely,

Eddie Hickman

Operations Manager

Appendix 3

MARTIN CONSTRUCTION

9325 West 19th

Lubbock, Texas 79407

806/784-0846

April 02, 2003

To Whom It May Concern:

RE: Floyd Trucking - Lubbock, Texas

Martin Construction has worked on the tracks at Floyd Trucking facility on Martin Luther King Blvd. in Lubbock numerous times in the past. The first time was in June, 1998 when Vulcan had the facility and was unloading rock from gondolas. The track had relay ties installed where needed and regauged, raised, lined and tamped, with walkways provided for trainmen.

Vulcan later moved to a track near the cemetery, and Martin Construction also repaired those tracks. The relocation of Vulcan to this location was due to the facility at M.L.K. Blvd. being listed for sale. Mr. O.E. Floyd purchased the property and began to clean up the facility and contacted Martin Construction to inspect and rehab the tracks.

Martin Construction began the rehab of tracks September 24, 2001 through September 30, 2001. Later, Mr. Floyd contacted Martin Construction and said Mr. Larry Wisener refused to provide service, no matter what he did to his tracks. Mr. Floyd then instructed Martin Construction to delay completion on tracks until he resolved the matter with Mr. Wisener.

Mr. Floyd contacted the proper authorities when he had no recourse left, and acted on their recommendation. At some point in time, Mr. Wisener stated the switch on his track was not operable. Afterward, Mr. Floyd contacted Martin Construction and requested us to look at the switch. I, Eldon Martin, owner, inspected the switch and found it to be well within F.R.A. regulation, as stipulated in U.S. Department of Transportation Track Safety Standards. I suggested Mr. Floyd get a neutral party to inspect the switch so there would be no question of conflict of interest, since Martin Construction was contracted to do the work for Mr. Floyd.

Mr. Floyd knew of a Union Pacific track inspector from out of town, and I told him I knew of a local track inspector that was familiar with the track because it used to be in his territory. I then contacted Ricky Phillips and he said he was on vacation and would not mind taking a look at the tracks and the switch in question at this time (September 25, 2002). Mr. Phillips inspected the switch and concurred that it was within the Track Safety Standards published by U.S. Department of Transportation. Photos were taken to show these facts and sent to the proper authorities.

After the proper authorities contacted Mr. Wisener and confronted him on the switch, he removed the switch without notifying anyone. This is the best of my recollection as to the occurrences and as to date, March 18, 2003. Mr. Floyd still has no service and no switch to get service.

Sincerely,



Eldon Martin, Martin Construction

MARTIN RAILROAD CONSTRUCTION ELDON & GWEN MARTIN

MARTIN RAILROAD CONSTRUCTION
9325 WEST 19TH
LUBBOCK TEXAS 79407

Phone 806/784-0846
Fax 806/784-0868

BUSINESS HISTORY

Eldon and Gwen Martin founded Triple T Railroad Construction in 1974 with two partners. We bought the two partners out in 1984 and formed Martin Construction. Martin Construction is owned and operated as a family business. Eldon and Gwen Martin are the primary owners with their three children Chuck, Kirk and Lori Martin as secondary owners.

QUALIFICATIONS

29 years of Railroad Construction Experience for Owner
All MOW Employees are Certified in Code of Operating Rules and Worker Protection Act.
Qualified by Federal Railroad Administration
Fully Insured and Bondable.
Qualified Supervisory Personnel.
In excess of 100 years combined total years Railroad Construction Experience for key personnel.

WORK HISTORY

Eldon Martin

1973-1984

Worked for Burlington Northern Railroad. Foreman in Amarillo yards in 1974. Foreman in charge of laying first ribbon rail in Texas for BN from Amarillo, Tx North from 1975 to 1976 and then from Texline, Tx South from 1976 to 1977. Rebuilt all of Texline yards in 1976. Foreman of tie gangs from 1977 to 1979. Rehabbed Plainview, Tx. yards and main track from Plainview, Tx. to Dimmitt, Tx. from 1980 to 1981. From 1982 to 1984, as Foreman assisted in rehab of track from Estelene, Tx to Plainview, Tx.. *Eldon has numerous years experience with derailments and building new track and because of his expertise was called out to coordinate the rebuilding of track after a derailment had occurred.*

Railroad Qualifications: EIC, Supervisor, Track Inspection, Operate following: Backhoe, Loader, Ballast Regulator, Tamper, Fork-lift, Tie Crane, Speedswing, Spike Driver, Tie Insertor, Motor Grader, Dozer, Hi-Rail, Orgo-Thermit Welds

Roadway Worker Protection Rules Certified - EIC Qualified

FRA Qualified

Current Drivers License - TX 04691313

1984-Present

Gwen Martin

Co-Primary Owner of Martin Construction. Set up and organized business & bookkeeping systems. Actively work as estimator, scope of work planner, or site supervision, operate track equipment.

Railroad Qualifications: EIC, Supervisor, Track Inspection, Operate following: Backhoe, Loader, Tamper, Fork-lift, Tie Crane, Spike Driver, Tie Insertor, Hi-Rail.

Roadway Worker Protection Rules Certified - EIC Qualified

FRA Qualified

Current Drivers License - TX 05293323

- Chuck Martin**
- 1984-1998 While attending High School and College, I worked for our family business. I assisted in building track, switches, crossings, surfacing track, installing ties, dirtwork and office work.
- 1998 Project Coordinator for Raymond Construction in Dallas, Tx. As Project Coordinator for the Dallas/Ft. Worth and Austin areas, I worked with Architects, Engineers and Subcontractors for six projects worth \$10 million dollars. I also wrote the contracts to the subcontractors, did change orders, as built and schedules.
- 1999-Present Project Supervisor/Owner for Martin Construction. I coordinate with Owners and Engineers for the jobs being done. I do job estimates and job scheduling for our company.

Martin Construction

1984-Present In 1984 we completely rehabbed 17 miles of track and 23 switches for Cargill Inc. in Plainview, Tx. We have built new track and rehabbed existing track for Cargill, ADM and other large companies over the years. We did a 5 year RR budget plan for the V.L.A. (Very Large Array - Radio Telescope) in Socorro, NM. We have installed numerous State Highway RR Crossings in the Lubbock area. While doing these crossings, we have developed a good working relationship with Texas Department of Transportation, City of Lubbock, County of Lubbock and West Texas & Lubbock Railroad. We also have either built or rehabbed numerous spur tracks off of Union Pacific, Southern Pacific and Burlington Northern Santa Fe Railroad Companies and have an excellent rapport with the officials of the serving railroads. We have successfully performed Maintenance Contracts with Seagraves Whiteface & Lubbock Railroad and with RailAmerica subsidiaries West Texas & Lubbock Railroad and Texas New Mexico Railroad. We surfaced approximately 60 miles of track and installed thousands of ties in approximately 65 miles of track for West Texas & Lubbock Railroad. We have installed over 8000 ties for Gulf Colorado San Saba RR and 27 track panels. (Please see attached for list of other clients.) We are on the approved contractors' list for Burlington Northern-Santa Fe and Union Pacific Railroads.

EDUCATION & QUALIFICATIONS

Gwen Martin

- 1981-1983 Associate of Science in Business, Clarendon College

Chuck Martin

- 1992-1995 Associate of Science, South Plains College
- 1993-1998 Bachelor of Science in Engineering Technology, Texas Tech University
- The CTEC program specializes in Construction Management, Scheduling, Economic Analysis, Surveying, Estimating and Soil Analysis.
- Student Member of AGC, Association of General Contractors
- Student Member of CSI, Construction Specifications Institute
- Railroad Qualifications:** FIC, Supervisor, Track Inspection, Operate following: Backhoe, Loader, Ballast Regulator, Tamper, Fork-lift, Tie Crane, Speedswing, Spike Driver, Tie Insertor, Motor Grader, Dozer, Hi-Rail, Orgo-Thermit Welds.
- EMT-B Expires 08/31/2005**
- Roadway Worker Protection Rules Certified - FIC Qualified**
- FRA Qualified**
- OSHA Certified**
- Commercial Drivers License Current TX CDL 12583941**

OTHER KEY EMPLOYEES WORK HISTORY***Melvin Justus - Estimator & Sales for Martin Construction***

Adjusting and Estimating - Oklahoma State University

Supervisor & Foreman - Burlington Northern Railroad

Helped build north Ft Worth yards in early 70's

Rip Track Foreman & Estimating - Rock Island Railroad, El Reno, OK

Car repair and derailments

Estimator - Cochrane-Stewart, Oklahoma City, OK (private company)

I worked for this company for several years estimating and sales. I completed jobs from a few dollars to 6.3 million for the U.S. government.

Railroad Qualifications: EIC, Supervisor, Track Inspection, Operate following: Backhoe, Loader, Ballast Regulator, Tamper, Fork-lift, Tie Crane, Speedswing, Spike Driver, Tie Insert, Hi-Rail**Roadway Worker Protection Rules Certified****FRA Qualified****Drivers License Current TX 10018963*****Leslie Taylor - Supervisor Martin Construction***

Supervise production tie gangs & surface track - Martin Construction

Built new track & installed switches - Martin Construction & Hulcher Services

Built up Switch Points, Frogs, Scale Rails, Repaired unloading pits, Worked derailments,

Rehab track, Built roadbed, Installed hwy/rr crossings - WTL, TNMR, GCSR & Industries

Section Foreman - Martin Construction on TNMR, WTL

Railroad Qualifications: EIC, Supervisor, Track Inspection, Operate following: Backhoe, Loader, Ballast Regulator, Tamper, Fork-lift, Tie Crane, Speedswing, Spike Driver, Tie Insert, Motor Grader, Dozer, Hi-Rail.

Certified Welder - Orgo-Therm welds, Switch Repair, Fabrication RR Crossing Panels

Roadway Worker Protection Rules Certified**FRA Qualified****Commercial Drivers License Current TX CDL 18862927*****Sam Garcia*** - 1968 to 2000 worked for Sante Fe Railroad. From 1968 to 1973 worked as trackman and machine operator. From 1973 to 2000 worked as foreman and track supervisor. Railroad Certifications: EIC, Loader, Backhoe, Autospiker, Insertor-Extractor, Ballast Regulator, Tamper, Speed Swing, Tie Crane, and various other on-track equipment.**Roadway Worker Protection Rules Certified****FRA Qualified****Current Drivers License TX 05091650*****Margarito Banda*** - Railroad Certifications: EIC, Loader, Backhoe, Autospiker, Insertor-Extractor, Ballast Regulator, Jackson 2300 Tamper, Hi-Rail Pick-up.**Roadway Worker Protection Rules Certified****FRA Qualified****Current Drivers License TX 06641798**

Esequil Talamntez, Jr.-Railroad Certifications: F.I.C., Engineer, Conductor, S.I.F., Loader,
Backhoe, Autospiker, Tie Insert-Extractor
Roadway Worker Protection Rules Certified
FRA Qualified
Current Drivers License - TX 14101260

Appendix 4



RICKY PHILLIPS
Motor Track Inspector
Lubbock, Texas

Burlington Northern Santa Fe

P.O. Box 2469
Lubbock, Texas 79408
806-765-3955
806-745-1395 Home
888-858-7243 Pin 114948
806-786-0893 Cellular

9/25/02

To whom it may concern

I inspected switch 0390 9/25/02

and found that this switch and track
qualifies under 213.53 class 1

under 213.63 class 1 qualifies

no defects under 213.133

qualifies under 213.143 class 1

qualifies under 213.135 class 1

qualifies under 213.109 class 1

This switch and Track qualifies as class
one and found no defect to render this

track out of service

Ricky Phillips employee # 646566
Track supervisor BNSF Ry Co.

Track Safety Standards Part 213

Subpart A to F class 1-5

~~Print Date~~ June 9 2001 All Revision Indicated
Print Date Feb 1 2002

Appendix 5

SOUTHWEST DIVISION
VULCAN CONSTRUCTION MATERIALS LP
BROWNWOOD PLANT
P.O. BOX 791550
SAN ANTONIO, TX 78279-1550

NOV 9080
No. **BR 96002**

LBS. GROSS

10-39-02 08:01 PM
260800 1b. 5R

LBS. TARE

TONS

29.70

LBS. NET

CUSTOMER COPY

P/M

☐ 1/2

☐ C

☐ CC

☐ B

☐ BB

☐ AA

☐ AA Mod

☐ Black Base

P/C - C/S:

1

2

3

4

5

6

Ballast

Flexible Base

Other

1"

ORDER NUMBER

41400*1b TA

MATERIAL CODE

199400 1b NT

CUSTOMER NUMBER

FREIGHT CODE

WEIGHED BY

LS.

BUYER

Floyd

DESTINATION

Cutback

The description and weight indicated
on this bill of lading are correct.

Subject to verification by the

WESTERN WEIGHING & INSP. BUREAU

According to Agreement.

1059

①

VULCAN MATERIALS COMPANY
BROWNWOOD PLANT
SWITCH LIST

DATE 9-12-02

[illegible]

THIS SHIPPING ORDER

must be legibly filled in, in Ink, in Indelible Pencil, or in Carbon, and retained by the Agent.

CONTROL NO.

025445

RECEIVE, subject to the classifications and tariffs in effect on the date of the issue of this Shipping Order,

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said carrier (the word carrier being understood through this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its route, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the terms and conditions of the Uniform Domestic Straight Bill of Lading set forth (1) in Uniform Freight Classification in effect on the date hereof, if this is a rail or a rail-water shipment, or (2) in the applicable motor carrier classification or tariff if this is a motor carrier shipment.

Shipper hereby certifies that he is familiar with all the terms and conditions of the said bill of lading, including those on the back thereof, set forth in the classification or tariff which governs the transportation of this shipment, and the said terms and conditions are hereby agreed to by the shipper and accepted for himself and his assigns.

OUR B/L NUMBER

7059

PLANT

BROWNWOOD STN

CARRIER

ATSF

FROM

Vulcan Materials Company

AT

BROWNWOOD

DATE

09/13/2002

CUSTOMER ORDER NO.

OUR ORDER NO.

750450

Subject to Section 7 of conditions of applicable bill of lading, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

(Signature of Consignor)

CONSIGNEE TO

TRACK #0390
LUBBOCK, TEXAS

DESTINATION

TYPE CAR

CONDOLAS

ROUTE

ATSF

DELIVERING CARRIER

If charges are to be prepaid, write or stamp here, "To be Prepaid."

Prepaid

CAR INITIALS AND NUMBER

RPGX 9970

GROSS WEIGHT

2608

TARE

614

NET WEIGHT

1994

CODE

057

SIZE & DESCRIPTION

1" CONC AGG.

RATE

96002

CHECK COL

Rec'd \$
to apply in prepayment of the charges on the property described hereon.

Agent or Cashier

Per
(The signature here acknowledges only the amount prepaid.)

Charges Advanced:

\$
"Shipper's imprint in lieu of stamp; not a part of bill of lading approved by the Interstate Commerce Commission."

"If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is 'carrier's or shipper's weight.'"

NOTE-Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.
The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding

This shipment is correctly described. Correct weight is:

Lbs.

LOADED TO FULL VISIBLE CAPACITY

\$8.00, Per Net Ton

VULCAN MATERIALS CO., Shipper, Per

Ken Marwick

Agent must detach and retain this Shipping Order and must sign the Original Bill of Lading.

Permanent post-office address of shipper,

BIRMINGHAM, ALABAMA

FORM 60-661-ACI
REV. 4-90

AGENT'S COPY

See Product Warning on Reverse Side

Appendix 6

FLOYD TRUCKING, INC.

CERTIFIED DBE & HUB CONTRACTOR

P.O. BOX 50

BROWNFIELD, TEXAS 79316

PH. 806-745-2729

November 19, 2002

Surface Transportation Board Office
Compliance and Enforcement
Suite 780 1925 K Street North West
D.C. 20423-0001

Attention: Mel Clemens

Dear Mr. Clemens:

I am O. E. Floyd, and I bought some property in Lubbock, Texas, (6201 Martin Luther King Blvd) in 1999. The property has a railroad spur (Switch # 0390), used to load scrap metal originally and later for a site to unload rock. When we bought this property I met with Hanson Aggregates' representatives, Ronnie Finley and Neal Young and Burlington Northern Santa Fe representative, Wesley E. Mailhos here on location. At that time we were prepared to install enough track to place 100 cars on location to be unloaded. I called Larry Wisener, South Plains Switching, about service. He told me the track was out of service. I was advised to call Surface Transportations board in Washington, D.C. I called December 6, 2001 and talked with Nancy Beiter, telling her about the problem. Ms. Beiter asked for the switch number (0390). She then looked the information up on the computer and told me the track was never out of service and Mr. Wisener could not deny service. I then called Mr. Wisener again advising him the track was never out of service and he told me it didn't make any difference that he owned the short line and he would never give service to this spur.

We have been trying to obtain service from South Plains Switching (Larry Wisener, owner) since 1999. Mr. Wisener has stated the switch is defective and needs to be repaired. He also stated he is considering removing the switch completely.

Mr. Rickey Phillips, Motor Tract Inspector with BNSF did an inspection on 09/25/02 (Ref. his letter) and found no defects. We are enclosing photos and statement of inspection from Mr. Phillips. Also, enclosed are documents pertaining to potential customers that declined usage of our rail spur due to the refusal of rail service from South Plains Switching. We were denied service on one railcar of 1" concrete rock from Vulcan Materials consigned to switch # 0390.

There are three (3) more potential customers, who, at this time, wish to remain nameless, for fear of reprisal. Trusting you to assist us in solving this situation as soon as possible.

Sincerely,



O. E. Floyd
Floyd Trucking, Inc.

Appendix 7



Surface Transportation Board
Washington, D.C. 20423-0001

November 25, 2002

Office of Compliance and Enforcement

1925 K Street, N.W., Suite 780
Washington, DC 20423-0001

202-565-1573
FAX 202-565-9011

Mr. Larry Wisener, President
South Plains Lamesa Railroad Ltd.
P. O. Box 676
Slaton, TX 79364-0676

Dear Mr. Wisener:

The purpose of this letter is to advise you of a complaint received by this office from Mr. O. E. Floyd, Floyd Trucking, Inc., (copy enclosed). The complaint outlines the South Plains Lamesa Railroad's (SLAL) refusal to serve Mr. Floyd's facility located in Lubbock, Texas. Further, Mr. Floyd states that they have been attempting to obtain service from the SLAL since 1999 and have been told by you that you did not intend to provide service to this facility. Apparently because of your service refusal and your contention that the track servicing Mr. Floyd's facility is out of service due to a defective switch, Mr. Floyd sought assistance from the Burlington Northern Santa Fe Railway (BNSF). Enclosed is a copy of an inspection report from a BNSF supervisory track inspector indicating that no defects were found as of the date of the report, Sept. 25, 2002.

It is my responsibility, as the Board's chief enforcement official, to advise you that, pursuant to 49 U.S.C. 11101(a), your obligation as a common carrier by railroad requires you to provide transportation or service on reasonable request. Failure to do so constitutes a failure of your obligation and an interruption of interstate commerce. With this in mind, I am requesting that you immediately commence performance of your common carrier obligation by providing the service requested by Floyd Trucking. If Mr. Floyd's requests for service are not satisfied, I will have no alternative but to recommend to the Board that it institute, on its own motion, a formal complaint proceeding to address the lawfulness of your actions and the appropriateness of damages to Floyd Trucking.

Finally, based on your February 15, 2000, verified statement to the Board in Finance Docket 33842 (copy enclosed), which stated that the mission of the SLAL "is to provide safe, timely, railroad service consistent with our customers expectations", I have every reason to assume that you understand your obligations as a rail common carrier. Inasmuch as this is the second such service complaint we have received in recent months, your prompt attention to this complaint is required. Do not hesitate to contact me if you have any questions regarding your duties and responsibilities as a common carrier, or my intentions with respect to assuring compliance with Federal statutes.



Surface Transportation Board
Washington, D.C. 20423-0001

January 17, 2003

Office of Compliance and Enforcement

1925 K Street, N.W., Suite 780
Washington, DC 20423-0001

202-565-1573
FAX 202-565-9011

Mr. Larry D Wisener, President/Manager
South Plains Lamesa Railroad, Ltd.
P. O. Box 676
Slaton, TX 79364

Dear Mr. Wisener:

It has been one month since our meeting and to date I have not heard from you regarding what actions are to be implemented to resolve the lack of service to Floyd Trucking. I have, however, heard from Mr. Floyd, who informed me that he also has not heard from you or your representative nor has he received any service from the South Plains Lamesa Railroad.

As I spelled out in my November 25th letter to you, it is my responsibility, as the Board's chief enforcement official, to advise you that, pursuant to 49 U. S. C. 11101(a), your obligation as a common carrier by railroad **requires** you to provide transportation or service on reasonable request. Failure to do so constitutes a failure of your obligation and an interruption of interstate commerce. Your duties and responsibilities have been clearly defined and there is no further need to continue delaying actions. In order to prevent a more formal action on the part of the Board I would urge you to begin implementing a service plan for this customer promptly and to provide this office with the plan.

Sincerely,

Melvin F. Clemens, Jr.
Director

cc: Mr. O. E. Floyd, Floyd Trucking, Inc.

Appendix 8



Surface Transportation Board
Washington, D.C. 20423-0001

January 17, 2003

Office of Compliance and Enforcement

1925 K Street, N.W., Suite 780

Washington, DC 20423-0001

202-565-1573
FAX 202-565-9011

Mr. Larry D Wisener, President/Manager
South Plains Lamesa Railroad, Ltd.
P. O. Box 676
Slaton, TX 79364

Dear Mr. Wisener:

It has been one month since our meeting and to date I have not heard from you regarding what actions are to be implemented to resolve the lack of service to Floyd Trucking. I have, however, heard from Mr. Floyd, who informed me that he also has not heard from you or your representative nor has he received any service from the South Plains Lamesa Railroad.

As I spelled out in my November 25th letter to you, it is my responsibility, as the Board's chief enforcement official, to advise you that, pursuant to 49 U. S. C. 11101(a), your obligation as a common carrier by railroad **requires** you to provide transportation or service on reasonable request. Failure to do so constitutes a failure of your obligation and an interruption of interstate commerce. Your duties and responsibilities have been clearly defined and there is no further need to continue delaying actions. In order to prevent a more formal action on the part of the Board I would urge you to begin implementing a service plan for this customer promptly and to provide this office with the plan.

Sincerely,

Melvin F. Clemens, Jr.

Director

cc: Mr. O. E. Floyd, Floyd Trucking, Inc.

Appendix 9

South Plains Lamesa Railroad, Ltd.
P. O. BOX 676 **SLATON, TEXAS 79364**
PHO: (806)828-4841 **FAX: (806)828-4863**

January 15, 2003

Mr. O. E. Floyd
Floyd Trucking, Inc
PO Box 50
Brownfield, TX 79319

Dear Mr. Floyd:

First, let me say South Plains Switching (SAW) desires rail business and will make every effort to serve any customer.

Please refer to your letter of November 19, 2002, to Mr. Clemens of the Surface Transportation Board about rail service to track #0390.

Your letter stated you had a meeting with Hanson Aggregates representatives and a BNSF representative, Wesley Mailhos at your location. The BNSF representative should have informed you at this meeting that BNSF had sold the track in question along with the business located on said track. Your letter further stated service was requested for one (1) car of rock to property identified as being served from switch #0390.

You were offered use of SAW team track and SAW track #9200 for the unloading of this one (1) car (both are less than 2 miles from your facility). You refused either of these services.

Track #0390 has been out of service since we started operation in July 1999. We also understand the track was out of service prior to that date. The connecting switch has been "spiked" in a straight position since July of 1999. BNSF's failure to furnish Track Inspection Reports prevents SAW from knowing the reason switch #0390 was originally spiked.

If a Track Inspection was requested from SAW as according to CFR 49 Part 213.7, conversations with the appropriate parties would have commenced.

A number of operating and service provisions must be in place before service can be provided. These items are outlined below.

A customer requesting rail service is required to have a track lease agreement with SAW. This document outlines condition of track, maintenance on the lead and industry track and the like. This is a straightforward, standard lease.

All shipments on South Plains are governed by our Demurrage and Special Services Program issued May 1, 2000. This document outlines terms of service, car free time, special service requests and the like. A copy is attached for your reference. We mailed each customer a copy of this document at the time of sale. Your facility was not active at that time and therefore was not provided a copy.

The lead track to your facility had what is known as a "frog" which is a track device allowing automatic switching of cars between two rails. As there was no traffic to your lead, and as the frog was defective and a safety issue, it was removed in November 2002.

Since the sole function of this device is to serve your siding, it needs to be replaced. The cost to replace this device is \$30,000. South Plains is willing to absorb \$5,000.00 of the cost of this unit and request you to fund the other \$25,000.00 of the cost. This would be an up front expense for both of us before any car is moved.

It will also be necessary to inspect your industry track to determine if it is safe for rail service. The industry lease agreement will outline the track safety and inspection process. This inspection must be by a South Plains authorized inspector, and an inspection by someone else is not sufficient.

Our only access between BNSF yard and your facility is via our Orchard lead track. This track winds down city streets and has many road crossings. It is not possible, nor safe to the public, to move large cuts of cars over our Orchard lead. We have negotiated with BNSF on the large rock shipments a provision such that BNSF interchanges larger cuts of cars with us on interchange track #0370. Service to your siding will require a similar agreement with the BNSF.

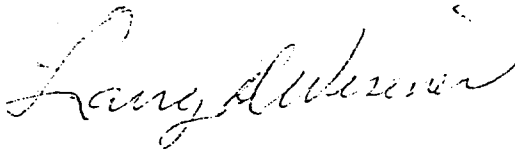
We are not aware of your ability to quickly unload cars. This impacts car hire charges from BNSF for South Plains and demurrage charges for you. SAW will need to know who will be responsible for any demurrage charges.

Through rail rates are set by BNSF. South Plains Switching, Ltd. Co. (SAW) has no rail rate making authority. It will also be necessary for you to determine what rail rates would apply for your shipments; or for those by other potential customers from BNSF.

SAW would need to know the shipper, the rates, and the quantity of material shipped as car storage space is limited.

We are willing to work with you to complete the required contracts and agreements needed to provide you with rail service. I look forward to hearing from you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Larry Wisener".

Larry Wisener
President/Manager
South Plains Switching

Cc: Mr. Melvin F. Clemens, Jr.
Director
Surface Transportation Board

Appendix 10



Surface Transportation Board
Washington, D.C. 20423-0001

February 20, 2003

Office of Compliance and Enforcement

1925 K Street, N.W., Suite 780

Washington, DC 20423-0001

Mr. Larry Wisener, President

South Plains Lamesa Railroad Ltd.

P. O. Box 676

Slaton, TX 79364-0676 (And by Facsimile-(806-828-1000),

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL

of pages **2**

To **O.E. FLOYD**

From **MELVIN CLEMENS**

Dept./Agency

Phone # **202-565-1573**

Fax # **806-745-2741**

Fax # **SURFACE TRANS BOARD**

NSN 7540-01-317-7368

5010-101

GENERAL SERVICES ADMINISTRATION

Re; Floyd Trucking complaint, Lubbock, Texas

Dear Mr. Wisener:

This follows my letter to you of November 25, 2002, and our December meeting regarding a complaint received by this office from Mr. O. E. Floyd, Floyd Trucking, Inc., a prospective shipper on the South Plains Lamesa Railroad (SLAL) in Lubbock, Texas which has been seeking rail service since 1999, and our discussions regarding my concerns for your failure to satisfy your common carrier obligation under 49 U.S.C. 11101(a), based on your refusal to provide service to Floyd Trucking. At that meeting I requested that you provide Mr. Floyd and this office with a plan for the provision of the requested rail common carrier services.

I am in receipt of your letter to Mr. Floyd, dated January 15, 2003, purporting to provide such a plan (copy enclosed). The letter outlines the conditions Mr. Floyd must meet in order to receive service, including entering into a track lease agreement with your company, establishing the time period in which cars can be unloaded even though no service is being provided, determining from Burlington Northern Santa Fe Railway (BNSF) what its rates will be for the service Mr. Floyd intends, and subsidizing SLAL's installation of the switch connection to the line on which Mr. Floyd's facility is located in the amount of \$25,000.

Let me begin by clarifying the statutory obligations. First, 49 U.S.C. 11103(a) provides that, on application of the owner of a lateral branch line of railroad or a shipper tendering interstate traffic for transportation, a rail carrier providing transportation subject to the jurisdiction of the Board must construct, maintain and operate a switch connection to connect that branch line or side track with the railroad when the connection is reasonably practicable, can be made safely, and will furnish enough business to justify its construction and maintenance. It is well settled that it is the obligation of the railroad to connect shippers with the rail system in order to provide its common carriers services, and to adopt and observe reasonable practices for the installation and maintenance of switch connections and the prompt delivery of freight. Therefore it is my opinion that it would be considered unreasonable for SLAL to attempt to impose a fee upon a shipper for the installation or reinstallation of a switch connection, and that an effort to impose such a condition would be viewed as an economic embargo and considered unlawful. Moreover, so long as rate making is the responsibility of BNSF, as you have indicated it is, neither Floyd Trucking or any other shipper would responsible to discuss those rate negotiations with SLAL. The presumption is that your revenue relationship would be with BNSF, with the exception of demurrage and charges for ancillary services.

Letter to Larry Wisener, Page 2.

Finally, considering the time period during which Mr. Floyd has been attempting to obtain service from SLAL (since 1999), and the time this matter has been before this office, I believe that you have been given a fair opportunity to address these service issues. As such, I will expect a resolution of these service issues by COB February 28, 2003. Failure to resolve these issues will result in my recommendation to the Board that it institute, on its own motion, a formal complaint proceeding to address the lawfulness of your actions involving Floyd Trucking and possibly other shippers, and the appropriateness of damages for any service failures or unlawful assessments.

Sincerely,

A handwritten signature in dark ink, appearing to read "Melvin F. Clemens, Jr.", written in a cursive style.

Melvin F. Clemens, Jr.

Director

Enclosures

cc: Mr. O. E. Floyd, Floyd Trucking, Inc.

Appendix 11

LAW OFFICE
THOMAS F. MCFARLAND, P.C.
208 SOUTH LASALLE STREET - SUITE 1890
CHICAGO, ILLINOIS 60604-1194
TELEPHONE (312) 236-0204
FAX (312) 201-9695
mcfarland@aol.com

THOMAS F. MCFARLAND

February 26, 2003

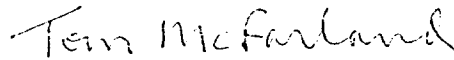
Mr. O.E. Floyd
Floyd Trucking, Inc.
P.O. Box 50
Brownfield, TX 79319

Dear Mr. Floyd:

I represent South Plains Switching, Ltd. Co. (SAW).

In order to determine the propriety of construction of a switch connection to trackage at your place of business at Lubbock, TX, please provide your estimate of the volume of rail traffic that would be transported as a result of that connection and the basis for that estimate.

Very truly yours,



Thomas F. McFarland
*Attorney for South Plains
Switching, Ltd. Co.*

TMcf:l:wp8.0\921\ltroefl

cc: Mel Clemens, STB
Larry Wisener, SAW
Bill Power
Dennis Olmstead



Surface Transportation Board
Washington, D.C. 20423-0001

March 7, 2003

Office of Compliance and Enforcement

1925 K Street, N.W., Suite 780

Washington, DC 20423-0001

Mr. Thomas F. McFarland, Esq.

208 South LaSalle Street, Suite 1890

Chicago, IL 60604-1194 (And by Facsimile (312-201-9695))

202-565-1573
FAX 202-565-9011

Re: South Plains Switching, Ltd. Co.,
Service to Floyd Trucking, Lubbock, Texas

Dear Mr. McFarland:

This confirms receipt of your letter to me of February 26th, informing me that you have been retained by Larry Wisener, of South Plains Switching Ltd. Co. (SAW), and Mr. Wisener's letter of February 25th, responding to my February 20th notice to SAW of my intention to proceed with a complaint against SAW for its failure to fulfill its common carrier obligation by refusing service to Floyd Trucking, a shipper on SAW's line in Lubbock.

I appreciate your opinion that a complaint against SAW is premature, however, I do not agree. This entire matter is predicated upon Mr. Wisener's unilateral action to remove the switch connecting Mr. Floyd's facility to SAW's line. Now, Mr. Wisener has set an unsubstantiated and, in my view, exorbitant cost (\$30,000) to replace the switch-connection that he removed. Apparently, he believes that he should be made whole by the shipper for costs entirely associated with his actions, which is not contemplated by the statute. As I outlined in my February 20th letter to Mr. Wisener, the statute places an affirmative obligation on a rail common carrier to construct, maintain, and operate switch connections when such is reasonably practical. In this case the construction was done and, except for Mr. Wisener's unilateral actions, the existing switch would likely have required only maintenance. Also indicated in my letter to Mr. Wisener of February 20th, was my expectation that, based on the ample time Mr. Wisener has had to resolve this situation, resolution would occur finally by February 28th. Instead, you and Mr. Wisener have only placed additional demands on Mr. Floyd.

This is to inform you that I intend to move forward with the complaint, and an investigation of all of Mr. Wisener's operations. As Counsel, you may want to advise Mr. Wisener of the breadth of the Board's authority with respect to determining damages, making findings of unreasonable practice, and the possible issuance of an order revoking his authority for obstruction of interstate commerce and any other unlawful acts.

Sincerely,

Melvin F. Clemens, Jr.

Director

cc: Mr. O.E. Floyd, Floyd Trucking, Inc.

LAW OFFICE
THOMAS F. MCFARLAND, PC.
208 SOUTH LASALLE STREET - SUITE 1890
CHICAGO, ILLINOIS 60604-1194
TELEPHONE (312) 236-0204
FAX (312) 201-9695
mcfarland@aol.com

THOMAS F. MCFARLAND

March 13, 2003

By fax to 202-565-9011.
w/confirmation by mail

Mr. Melvin F. Clemens, Jr.
Director
Office of Compliance and Enforcement
Surface Transportation Board
1925 K Street, N.W. - Suite 780
Washington, DC 20423-0001

Re: South Plains Switching Ltd. Co.,
Service to Floyd Trucking, Lubbock, Texas

Dear Mel:

This refers to your letter to me of March 7 and prior correspondence about the above subject.

South Plains Switching, Ltd. Co. (SAW) hereby commits to restore the switch connection to the trackage of Floyd Trucking, Inc. (Floyd) at SAW's own expense, and to provide rail service to Floyd, both upon Floyd's reasonable request. A reasonable request by Floyd would be one that is specific as to the volume, commodity and time of shipment. *See CSX Transportation, Inc. -- Aban. -- betw. Bloomingdale and Montezuma, in Parke County, IN, 2002 STB LEXIS 535 at *21 (2002), and decisions there cited.*

Please let me know if this commitment satisfies your concerns.

Very truly yours,

Tom McFarland

Thomas F. McFarland
Attorney for South Plains Switching, Ltd. Co.

TMcf:kl:wp8.0\921\lrmfc2

cc: Messrs. O.E. Floyd
Larry Wisener
Bill Power
Dennis Olmstead

Appendix 12

Floyd Trucking, Inc
P.O. Box 3456
Lubbock, Texas 79452-3456
Phone # 806-745-2729 / Fax # 806-745-2741

FAX

TO: Melvin Clemens DATE: 2/25/04

FROM: O.E. Floyd

PHONE/FAX 202-565-9011

SUBJECT: Rail Spur

NO. OF PAGES (INCLUDING COVER SHEET) 6

COMMENTS:

February 25, 2004

Melvin Clemens, Jr
Director
Office of Compliance and Enforcement
Surface Transportation Board
1925 K Street, N.W Suite 780
Washington, DC 20423-0001

Mr. Clemens,

Following are correspondence letters from Doug Beasley from D&J Materials. The letter dated February 20th, 2004 is a commitment for a job that needs our rail spur to be working in the near future. The second letter was sent to us in January of 2004. It is approximating the amounts and the possibility of obtaining the supply of material for the activity stated in the first letter. The third letter was received by us in May of 2002. This letter shows the business that we could have had if our rail spur had been accessible at that time and the loss of revenue that occurred because comparable facilities were not available. Please review these letters and contact me if you have any questions.

Thank you,

A handwritten signature in cursive script, appearing to read "O.E. Floyd".

O.E. Floyd

FLOYD TRUCKING, INC.

CERTIFIED DBE & HUB CONTRACTOR

P.O. BOX 50

BROWNFIELD, TEXAS 79316

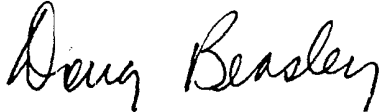
PH. 806-745-2729

February 20, 2004

Mr. Floyd,

As of Monday, February 16, 2004 the prospects of D& J Materials having a supply of Type C Fly Ash for the Lubbock market is highly probable. This agreement would be for approximately 10 years and allow us at least 30,000 tons of fly ash per year to rail into this market. The contract regarding this ash will be signed and completed by June 2004, and will begin with D&J Materials in Lubbock immediately thereafter. Please solidify and finalize any details regarding our availability to your rail spur as we currently have commitments from customers within Lubbock at this time.

Sincerely,



Doug Beasley
D&J Materials
Amarillo, Texas

D&J Materials, LLC

Amarillo, Tx

806-354-8007

Mr. Floyd,

You and I discussed the use of your rail spur by DePauw Const. in and around May, 2002. Our intent at that time was to rail flyash from Kansas into Lubbock and distribute it in that immediate market. As president of DePauw, it was my responsibility to locate a spur and help in developing a market for approximately 30,000 tons of this flyash. As we were discussing this with you, we were also approached by TXI Cement Company to locate a spur and provide off loading and delivery services for cement sold on the Crosstown Expressway in Lubbock. This made it extremely important that we find a spur with the capacity to handle this volume.

You were unable to get your spur opened and we settled for a spur on the North side of Lubbock just inside the loop. However, this spur could only accommodate 3 rail cars at a time. We realized the need for storage and moved three 300 ton guppies or pigs to this particular yard, and at considerable expense. DePauw leased six rail cars to haul the flyash, as more cars would have been useless with so little spur space available. With two turns per rail car per month, we were able to haul and market approximately 1,200 tons of flyash per month, or 14,000-15,000 tons per year. Our expectations and goals had been 30,000 tons per year. This difference in revenue caused the spur to become non-viable. In terms of gross income the difference was considerable:

30,000 tons @ \$26.00/ton = \$780,000 per year

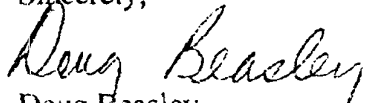
15,000 tons @ \$26.00/ton = \$390,000 per year

I resigned from DePauw in October, 2002 and they viewed the spur as non profitable and withdrew from the flyash business in Lubbock in October, 2003. Our company, D&J Materials, now has the opportunity to market this same 30,000 tons of flyash into this market. In the meantime prices have changed somewhat resulting in a realistic \$28.00/ton market or around \$840,000 of gross income. It is impossible for us to pursue this market without the availability of a spur at least equal in capacity to yours. We have done the research in this market and are positive that it is there for us. As you can readily see the difference in 15,000 tons per year and 30,000 tons per year results in lost revenue to us of approximately \$35,000 per month. Again, we would have to look at the viability of presense there at all.

D&J is also pursuing a lightweight aggregate market in Lubbock and estimating around 10,000-12,000 tons of rock per year @ approximately \$36.00/ton, or \$360,000-\$420,000 per year. This makes the capacity of a spur such as yours even more important. Realistically, the lack of availability of your spur, or one comparable, probably cost DePauw in the neighborhood of \$550,000 over those seventeen months. But I cannot speak

for DePauw. D&J has a very realistic market for flyash and rock of over \$1,000,000 per year in the Lubbock market with opportunities to grow. It is a waste to have available an asset such as your spur and not take advantage of the economic impact it can have on our company and the local economy. Please review every effort available to you to put this spur in working order and please continue your contact with us regarding that availability.

Sincerely,


Doug Beasley

Appendix 13

FLOYD TRUCKING, INC.

CERTIFIED DBE & HUB CONTRACTOR
P. O. BOX 3456
LUBBOCK, TEXAS 79452
PH. 806-745-2729 FAX 806-745-2741

Re: South Plains Switching Ltd. Co.
Service to Floyd Trucking, Lubbock, Texas

Mr. Larry Wisener,

This refers to your letter to me of March 13, 2003. Where South Plains Switching, Ltd. Co. (SAW) hereby commits to restore the switch connection to the trackage of Floyd Trucking, Inc. (Floyd) at SAW's own expense, and to provide rail service to Floyd, both upon Floyd's reasonable request. A reasonable request by Floyd would be one that is specific as to the volume, commodity and time of shipment.

Volume: 75,000 to 100,000 tons per year
Commodity: Lightweight Aggregate
Time: 60 to 80 cars per month

Storage, unloading and delivery from the railcars will be provided by Floyd Trucking for each of these products. Trucking into Lubbock is not an option because of the origins of each product. Your immediate response is requested as we have customers ready for these materials now. We ask these discussions remain confidential for obvious reasons.

Sincerely,

O. E. Floyd
O. E. Floyd
General Manager
Floyd Trucking, Inc.

cc: Mel Clemens, STB
Bonnie Murphy, FRA
Vince Haggard, FRA

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

South Plains Switching Ltd. Co.
P.O. Box 676

2. Article Number

(Transfer from service label)

7003 2260 0004 2217 88

COMPLETE THIS SECTION ON DELIVERY

A. Signature

Shahid A.

B. Received by (Printed Name)

Shahid A.

C. Date

3/8

D. Is delivery address different from item 1? ☐

If YES, enter delivery address below: ☐

3. Service Type

☐ Certified Mail ☐ Express Mail

☐ Registered ☐ Return Receipt for Merchandise

☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

THOMAS McFARLAND
208 SOUTH LA SALLE
ST 1890
CHICAGO, IL 60604

COMPLETE THIS SECTION ON DELIVERY

A. Signature

Thomas McFarland ☐ Agent ☐ Addressee

B. Received by (Printed Name)

3-8-04 ☐ Date of Delivery

D. Is delivery address different from item 1? ☐ Yes ☐ No
If YES, enter delivery address below:

3. Service Type

- ☒ Certified Mail ☐ Express Mail
- ☐ Registered ☐ Return Receipt for Merchandise
- ☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number

(Transfer from service label)

7003 2260 0004 2217 8887

PS Form 3811, August 2001

7003 2260 0004 2217 8887

102595-02-M-1540

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
South Plains Service RPR
PO Box 676
Slaton, TX 79364

COMPLETE THIS SECTION ON DELIVERY

- A. Signature *[Signature]* ☐ Agent ☐ Addressee
- B. Received by (Printed Name) *Shalio D.* ☐ Date of Delivery *3/8/04*
- C. Date of Delivery *3/8/04*
- D. Is delivery address different from item 1? ☐ Yes ☐ No
 If YES, enter delivery address below:

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.
4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) *7003 2260 0004 2217 8820*
 PS Form 3811, August 2001

7003 2260 0004 2217 8820
 102595-02-M-15-40

SAW/SLAL
 P.O. BOX 676
 SLATON, TX 79364-0671



7099 3220 0001 3189 6493

RETURN RECEIPT REQUESTED

Received
3-15-04

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Larry Wisener
South Plains Swthins
PO Box 676
Slaton, TX 79364

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.
4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) *7003 2260 0004 2218 2544*
 PS Form 3811 August 2001

7003 2260 0004 2218 2544
 102595-02-M-15-40

CERTIFIED MAIL



9264
79316

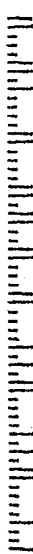
U.S. POSTAGE
 \$4.42
 SLATON, TX
 MAR 11 2004
 RMOUNT
 000-45907-01

Mr. O. E. Floyd
 Floyd Trucking, Inc.
 P. O. Box 50
 Brownfield, TX 79316

79316



79316/0050



Appendix 14

South Plains Lamesa Railroad, Ltd.
South Plains Switching, Ltd. Co.
P. O. BOX 676 **SLATON, TEXAS 79364**
PHO: (806)828-4841 **FAX: (806)828-4863**

March 10, 2004

Mr. O. E. Floyd
Floyd Trucking, Inc.
P. O. Box 50
Brownfield, TX 79319

Dear Mr. Floyd:

This refers to your letter to me, received on March 8, in which you request that South Plains Switching (SAW) restore the switch connection to the trackage of Floyd Trucking, Inc. and provide rail service to Floyd Trucking.

Your request is sufficiently specific as to volume and commodity, but not as to time of shipment. Bearing in mind that it will take a short time to install the switch connection, please advise regarding your estimate of the first date on which you propose to make or receive rail shipments.

Prior to receiving rail service, you will be expected to execute SAW's standard contract for industry track. I have attached a copy of the contract for industry track between the Santa Fe Railway and Lubbock American Iron & Metal that governed the track that you will use. Most of the provisions of that contract for industry track will be contained in the contract between SAW and your company. The contract for industry track will be provided to you shortly for your signature. At the same time, you will also be provided with a copy of SAW's tariff governing demurrage and ancillary services.

You are requested to provide advance notice to SAW each time shipments move from origin to your track. You should be aware that SAW does not have track space in the Lubbock area for storage of railcars. Consequently, you should not arrange for shipments of railcars in excess of the capacity of your trackage.

All aggregate commodities in Unit trains are received on Track No. 380 in Lubbock. You are requested to contact BNSF to arrange for spotting of your traffic on Track No. 380 in Lubbock.

SAW looks forward to transporting your traffic.

Very truly yours,

Lars Andersen

**Larry D. Wisener, President
South Plains Switching, Ltd. Co.**

Appendix 15

March 19, 2004

Larry Wisener
South Plains Switching, Ltd. Co.
P.O. Box 676
Slaton, TX 79364

Dear Mr. Wisener,

In response to your letter dated March 10, 2004, we are needing rail service beginning April 15, 2004. The contract that you mentioned between South Plains Switching Ltd. and Floyd Trucking, Inc was not attached with your letter. Please send us this contract so that we may begin receiving shipments as soon as possible. Thank you for your attention in this matter.

Thanks,

A handwritten signature in cursive script, appearing to read "O.E. Floyd", with a long horizontal flourish extending to the right.

O.E. Floyd
Floyd Trucking, Inc.

Appendix 16

South Plains Lamesa Railroad, Ltd.
South Plains Switching, Ltd. Co.
P. O. BOX 676 **SLATON, TEXAS 79364**
PHO: (806)828-4841 **FAX: (806)828-4863**

March 22, 2004

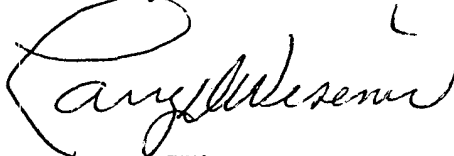
Mr. O. E. Floyd
Floyd Trucking, Inc.
P. O. Box 3456
Lubbock, Texas 79452

Dear Floyd:

In response to your letter of March 19, 2004, enclosed please find for your review the Contract of Industry Agreement with Attached Exhibits.

Your letter states that you will need rail service beginning April 15, 2004. It is important that you understand that South Plains Switching will do everything possible to service our customers however, with track work that must be performed and inspection of your industry track and contracts that must be signed, I do not feel that I can make any guarantees that all will be ready for full service at your facilities by April 15, 2004.

Sincerely,



Larry D. Wisener
President

EXHIBIT "A"
TO CONTRACT BETWEEN
SOUTH PLAINS Switching Co.
And
Floyd Trucking Inc

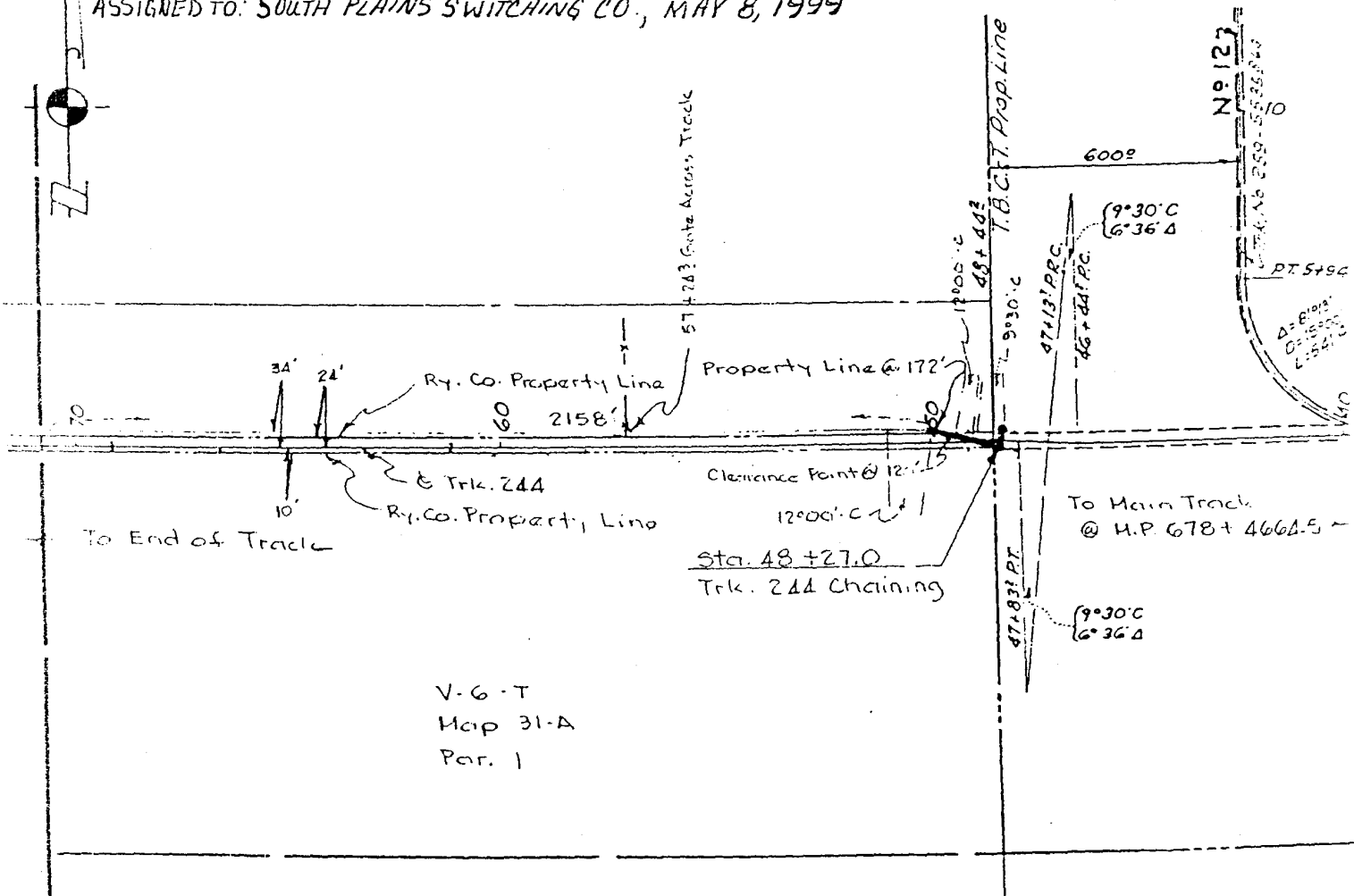
PQ

Covering an industry track
AT
LUBBOCK, LUBBOCK COUNTY, TEXAS

SCALE 1" = 400' A.G.M.-ENGINEERING-AMARILLO, TEXAS NO. X-3307

DATED: November 7, 1979

ASSIGNED TO: SOUTH PLAINS SWITCHING CO., MAY 8, 1999



DESCRIPTION:

An industry track 2,330 ft. in length as follows:
H.B. to Ry. Co. property line = 172 ft. as shown hereon in **bold**
Ry. Co. property line to end = 2,158 ft. as shown hereon.

CONTRACT FOR INDUSTRY TRACK

Agreement, Made as of this **DRAFT** day of _____ 20____

between South Plains Switching, Ltd. Co., hereinafter called the "Railway Company" party of the first part, and Floyd Trucking, Inc., hereinafter (whether one or more persons or corporation) called the "Industry," party of the second part.

RECITALS: - The Industry has requested the Railway Company to operate a track or track extension, as the case may be, about 2330 feet in length, hereinafter in its entirety referred to as "The Track", at or near the station of Lubbock, Lubbock County, Texas to serve a site for aggregate unloading and storage (hereinafter called the "Plant"), to be operated by the Industry. That portion of The Track, about 172 feet in length, which shall belong to the Railway Company, is shown in bold, and that portion of The Track, which shall belong to the Industry, is shown upon the print hereto attached, marked "Exhibit A" and made a part hereof.

AGREEMENT:

ARTICLE I.

In consideration of the covenants of the Railway Company, the Industry agrees as follow:

1. That it will and hereby does grant to the Railway Company for the term of this agreement, free of cost, a right of way, eight and one-half (8 1/2) feet on each side of the center line thereof, for all that portion, if any, of The Track located on property belonging to the Industry, with the right to operate The Track thereon, and where any part of The Track will lie on a public street or alley, or upon property belonging to third persons or corporations, that it will secure to the Railway Company by ordinance or grant, as the case may be, in form satisfactory to the Railway Company's counsel, and without cost to the Railway Company, the right to operate The Track thereon, together with the right to remove the same; in the case

of a grant, the right of way shall be eight and one-half (8 1/2) feet on each side of the center line of The Track.

2. That Industry trackage will meet Railway Company's standards and specifications and be inspected by a representative of Railway Company and accepted as being safe for service before being placed in operation.
3. That it will pay to the Railway Company, from time to time, within twenty (20) days after bills are rendered therefore, the entire cost (or an equitable share thereof) in case other industries shall be served by the Industry Track or a part thereof. By maintaining and renewing that portion of the Industry Track beyond the clearance point, the Railway Company is to be the judge of the necessity for and character of maintenance required on the Industry Track. It is understood that the expense of maintaining and renewing the Industry Track shall include any expense to which the Railway Company may be put in the way of paving, sewers, crossing protection, or other work, because of the existence of the Industry Track.
4. That it will operate the Plant during the term hereof.
5. The Industry agrees to indemnify and hold harmless the Railway Company for loss, damage or injury from any act or omission of the Industry, its employees or agents, to the person or property of the parties hereto and their employees, and to the person or property of any other person or corporation, while on or about The Track; and if any claim or liability shall arise from the joint or concurring negligence of both parties hereto, it shall be borne by them equally.
6. That it will at all times keep a space of eight and one-half (8 1/2) feet from the nearest rail of any railroad track entirely clear of structures, material and obstructions of every sort and will observe an overhead clearance of not less than twenty-five (25) feet above the top of rail; provided, however, if by statute or order of competent public authority different clearances shall be required than those provided for in this Section 6, then the Industry shall strictly comply with such statute or order. In case of a breach of these obligations, or any of them, the Industry assumes and agrees to indemnify the Railway Company against all liability for loss, damage, injury, and death arising therefrom and to reimburse the Railway Company for any sums which the Railway Company may have been required to pay in the way of damages, fines, penalties or other expense resulting from the violation by the Industry of any statute or order as aforesaid.

DRAFT

ARTICLE II.

In consideration of the covenants of the Industry, and the faithful performance thereof, the Railway Company, subject to the provisions of Section 2 and 3 of Article I hereof, agrees to operate and maintain the Industry Track during the term of this agreement, unless its obligations to maintain it may be sooner terminated as herein provided, and to transfer cars, loaded or empty, thereover to and from the Plant subject to any lawful charges that may be imposed by the Railway Company for such transfer in accordance with South Plains Switching, Ltd. Co.'s, "Demurrage and Rates Program, marked Exhibit "B" (attached).

ARTICLE III.

The parties mutually agree as follows:

1. The title to the Bold Track and to all property furnished in the maintenance thereof shall be in the Railway Company. Title to the Industry Track and to all the property furnished in the maintenance thereof shall be in the Industry. The Railway Company shall have the right to use The Track for other than the express purpose of serving the Plant.
2. If the Industry shall fail for a period of six (6) months in any period of twelve (12) months to operate the Plant, or shall fail or refuse to comply with or carry out any of the covenants or agreements herein contained, the Railway Company may, at its option, expressed in writing, terminate this agreement; but no termination shall release the Industry from any liability or obligation under this agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination.
3. Unless earlier terminated as herein provided, this agreement shall be in force for the term of **TWO YEARS** from its date and thereafter until terminated by either party giving the other three (3) months' written notice of its desire to terminate the same. Upon such or any other termination, the Railway Company shall pay to the Industry the salvage value, at the time, of the materials in such portion of the Industry Track as shall have been paid for by the Industry under the provisions of this agreement and the Railway Company shall have the right to remove the Industry Track and every part thereof. This agreement shall also terminate forthwith in the event the Railway Company shall be dispossessed of the right to operate over any privately owned track.
4. Any notice to be given by the Railway Company to the Industry hereunder shall be deemed to be properly served if the same be delivered to the Industry, or if left at the Plant with any of the agents, servants or employees of the

DRAFT

Industry, or if posted on the Plant, or if deposited in the post office, postpaid, addressed to the Industry at Floyd Trucking, Inc., P.O. Box 3456, Lubbock, Texas 79452.

5. In the event that the Industry embraces two or more persons or corporations, all the covenants and agreements of the Industry herein shall be the joint and several covenants and agreements of such persons or corporations.
6. All the covenants and provisions of this agreement shall be binding upon the successors, legal representatives and assigns of the Industry to the same extent and effect as the same are binding upon the Industry, and each and every covenant herein shall inure in favor of and run to the successors and assigns of the Railway Company and to each and every person, firm or corporation which may hereafter own or be in possession of or operate the railroad of the Railway Company to the same extent and as fully as though such person, firm or corporation were specifically named in this agreement in the place and stead of the Railway Company; provided, however, no assignment hereof by the Industry, its successors, legal representatives or assigns, or any subsequent assignee, shall be binding upon the Railway Company without the written consent of the President or a Vice-President of the Railway Company in each instance.
7. All of the provisions of Section 5, Article I, are expressly applicable during the operative period of this contract.
8. Industry shall at all times, and at its sole expense, maintain, or cause to be maintained, the Industry Track, in such safe and satisfactory condition as necessary to conform with Railway Company standards and specifications, and to conform with all applicable standards promulgated by the Federal Railroad Administration and other governmental agencies. Railway Company may at any time, at its option, refuse to operate over or transfer cars upon the Industry Track whenever Railway Company, in its judgment, determines that the track is unsafe. If and when, in Railway Company's judgment, such unsafe condition has been remedied, Railway Company shall resume such operation and transfer of cars upon the Industry Track.
9. Unless otherwise required by statute or order of competent public authority, Industry may, notwithstanding anything contained in Section 6 of Article I hereof to the contrary, at its sole cost and expense and in a manner satisfactory to Railway Company, construct, maintain and use a gate (equipped with private lock and switch lock) across The Track at the locations shown on said "Exhibit A". said gate to be opened whenever necessary to enable Railway Company to operate over The Track. Said gate shall be deemed to be a part of the Plant, and notwithstanding anything contained in this agreement to the

DRAFT

contrary, Industry shall and will at all times indemnify and save harmless Railway Company against all claims, demands, actions or causes of action arising or growing out of loss of or damage to property, including said gate, and injury to or death of persons, including employees of Railway Company and employees of Industry, resulting in any manner from the construction, maintenance, use, state of repair or presence of said gate across The Track, whether such loss, damage, injury or death be caused or contributed to by the negligence of the Railway Company, its agents or employees, or otherwise and that it will promptly pay to Railway Company the full amount of any loss or damage which Railway Company may sustain, incur or become liable for and all sums which Railway Company may pay or be compelled to pay in settlement of any claims on account thereof.

IN WITNESS WHEREOF, the parties have executed this agreement in duplicate the day and year first above written.

South Plains Switching, Ltd. Co.

by: Larry D. Wassner

Its President/Operating Manager
Title

Floyd Trucking, Inc

by: O. E. Floyd

Its
Title

With return
P.O. Box 676
Watson, Iowa 79364

Return
Receipt Requested

OF THE RETURN ADDRESS, FOLD AT DOTTED LINE
CERTIFIED MAIL™



7003 3110 0001 1831 9196

Mr. D. E. Floyd
Floyd Trucking, Inc.
P.O. Box 3456
Watson, Iowa 79452

over



9264



79452

3/26

Appendix 17

LAW OFFICE
THOMAS F. MCFARLAND, P.C.
208 SOUTH LASALLE STREET - SUITE 1890
CHICAGO, ILLINOIS 60604-1112
TELEPHONE (312) 236-0204
FAX (312) 201-9695
mcfarland@aol.com

THOMAS F. MCFARLAND

April 6, 2004

Mr. Melvin F. Clemens, Jr.
Director
Office of Compliance and Enforcement
Surface Transportation Board
1925 K Street, N.W. - Suite 780
Washington, DC 20423-0001

Re: South Plains Switching Ltd. Co.,
Service to Floyd Trucking, Lubbock, Texas

Dear Mel:

As a follow-up to my letter to you of March 10 about the above subject, this is to advise that as of April 1 the switch connection to the Floyd Trucking trackage at Lubbock, TX was restored. Prior to that date, South Plains Switching's standard contract for Industry Track was furnished to Floyd Trucking.

Very truly yours,

Tom McFarland

Thomas F. McFarland
*Attorney for South Plains
Switching, Ltd. Co.*

TMcF:kl:wp8.0\921\lrmfc6

cc: Mr. O.E. Floyd
Mr. Larry Wisener
Mr. Dennis Olmstead

LAW OFFICE
THOMAS F. MCFARLAND, P.C.
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THOMAS F. MCFARLAND

June 3, 2004

Mr. Melvin F. Clemens, Jr.
Director
Office of Compliance and Enforcement
Surface Transportation Board
1925 K Street, N.W. - Suite 780
Washington, DC 20423-0001

Re: South Plains Switching Ltd. Co.,
Service to Floyd Trucking, Lubbock, Texas

Dear Mel:

This is a further follow-up to my letters to you of April 6, 2004 and March 10, 2004 about restoration of rail service to Floyd Trucking at Lubbock, Texas.

At the specific request of Floyd Trucking, South Plains Switching reinstalled the switch connection to Floyd Trucking's trackage at Lubbock, Texas as of April 1, 2004. The cost of the reinstallation was approximately \$15,000. Prior to that date, South Plains Switching's standard contract for industry track was furnished to Floyd Trucking.

Now over two months later, Floyd Trucking has not signed the industry track contract; has not made a single rail shipment; and has not contacted South Plains Switching to advise of its intentions.

Mr. Larry Wisener, President of South Plains Switching, asked me whether Floyd Trucking, having specifically requested reinstallation of the switch connection, could be forced to ship by rail after the reinstallation, in light of the fact that South Plains Switching was forced to reinstall the switch connection at its own expense. I responded that Floyd Trucking is not required by law to ship anything by rail. I agreed with Mr. Wisener's statement that it is unfair that Floyd Trucking can force South Plains Switching to reinstall the switch, but South Plains Switching cannot force Floyd Trucking to ship by rail after the reinstallation.

THOMAS F. MCFARLAND

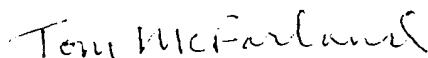
Mr. Melvin F. Clemens, Jr.

June 3, 2004

Page 2

I want you to be aware that South Plains Switching abided by the law at significant cost at the request of Floyd Trucking, but Floyd Trucking has made no use of the rail service that it requested.

Very truly yours,



Thomas F. McFarland
*Attorney for South Plains
Switching, Ltd. Co.*

TMcf:kl:wp8.0.921\lrmfc7

cc: Mr. O.E. Floyd
Mr. Larry Wisener
Mr. Dennis Olmstead

I

Attebury Grain, LLC

P.O. BOX 2707 - AMARILLO, TEXAS 79105

Capacity Over 150,000,000 Bushels

Telephone: (806) 335-1639

Fax: (806) 335-1165

Honorable Vernon Williams
Secretary
Surface Transportation Board
1925 K. Street, N. W.
Washington, D. C. 20423

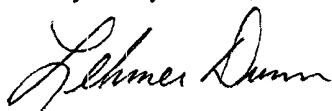
5/1/2006

Re: Feeder Line Application

Dear Mr. Williams:

Attebury Grain, L.L.C., is currently a rail shipper for whom South Plains Switching (SAW) is responsible to provide rail service. We are in support of the pending feeder line application filed by PYCO Industries, Inc.

Very Truly Yours,



Lehmer Dunn
Vice President
Attebury Grain, L.L.C.

J

FARMERS COOPERATIVE COMPRESS



P.O. Box 2877
Lubbock, Texas 79408-2877
Phone: 806/763-9431
FAX: 806/763-3251

April 26, 2006

Hon. Vernon Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

RE: Feeder Line Application

Dear Mr. Williams:

Farmers Cooperative Compress is currently a rail shipper for whom South Plains Switching (SAW) is responsible to provide rail service. We concur with PYCO Industries, Inc., that rail service of SAW has been inadequate, for them, and we join PYCO in their efforts for alternative rail service.

Very Truly,

Ron Harkey
President
Farmers Cooperative Compress



1212 13th St Suite 200
Lubbock, TX 79401
Phone (806) 762-5279
Fax (806) 765-0863

Mr. Charles Montange
426 NW 162nd St.
Seattle, WA 98177

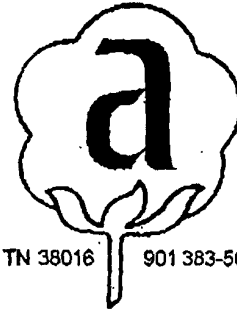
Re: Rail Service in Lubbock, Texas

Dear Mr. Montange,

This letter, on behalf of Cargill Cotton, is for use at the Surface Transportation Board in connection with any petition to revoke filed in Finance Dk. 33752 (Sub-no.1), served July 15, 1999, and PYCO Industries' proposed feeder line application to acquire all or portions of the South Plains Switching rail lines in the southern part of Lubbock. Our company supports both the petition and the feeder line application.

Very truly,
Rhonda Lambert
Logistics Coordinator
Cargill Cotton Lubbock, Texas

allenberg cotton co.



P.O. BOX 3254, CORDOVA, TN 38088-3254 • 7255 GOODLETT FARMS PARKWAY, CORDOVA, TN 38016 901 383-5000

April 17, 2006

Mr. Charles Montange
426 NW 162ND Street
Seattle, WA 98177

RE: Rail Service in Lubbock

Dear Mr. Montange:

This letter, on behalf of Allenberg Cotton Company, Div. Of Louis Dreyfus, is for Use at the Surface Transportation Board in connection with any petition to revoke Filed in Finance Dkt. 33752 (Sub-no 1), served July 15, 1999, and PYCO Industries' Proposed feeder line application to acquire all or portions of the South Plains Switching rail lines in the southern part of Lubbock. Our company supports Both the petition to revoke and the feeder line application.

Very truly,

Sheila Bracken
Transportation Manager

K

PENNY NEWMAN

MANUFACTURERS • WHOLESALERS • RETAILERS

April 25, 2006

Hon. Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: PYCO Industries, Inc. – Feeder Line Application
-- South Plains Switching, Ltd., F.D. 34844

Dear Mr. Secretary:

Penny-Newman Grain is a Fresno, California based commodity trading company that specializes in supplying whole cottonseed to California dairies. California dairies feed 1.4 million tons of cottonseed each year of which 750,000 tons are imported from outside the state, and Texas is responsible for providing 650,000 of the 750,000 tons. Penny-Newman is a consignee of the shipments, and thus shipper of record for hundreds of carloads per year from PYCO's Lubbock facility.

Unfortunately, this crop year, October 2005 through September 2006, has not begun in a way that will allow these tons to be fully shipped due to PYCO's inability to get regularly scheduled switches from South Plains Switching, the local switch into PYCO's facilities. The result is that PYCO has chosen to sell to Penny-Newman a total of 350,000 tons for this crop year rather than the normal 500,000 tons. PYCO stated that they are unable to physically load the additional 150,000 tons due to poor switching by South Plains. This has resulted in Penny-Newman having to source cottonseed elsewhere at a cost that totaled \$750,000.

It is my understanding that the Surface Transportation Board has appointed a temporary switcher to maintain PYCO's daily needs. This is a great step in the right direction, however, the out of pocket costs incurred by Penny-Newman, let alone the opportunity costs, is a small percentage of the overall damages caused by one person at South Plains Switching. Penny-Newman supports and joins in the feeder line application filed by PYCO Industries in the above docket. In the alternative, Penny-Newman supports revocation of the acquisition exemption granted in STB docket 33753 (Sub-no. 1), so that the rail lines in question may be returned to BNSF for proper operation. Dependable rail service must be restored in Lubbock. SAW is not providing that service at the current time, and Penny-Newman is aware of nothing to suggest that SAW will do so in the future.

Thank you for your attention to this matter.

Sincerely,



Todd Parker
Penny-Newman Grain

FRESNO (CORPORATE) OFFICE
2691 S. CEDAR AVENUE
FRESNO, CA 93725
PHONE (559) 448-8800
FAX (559) 448-0500

HANFORD OFFICE
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HANFORD, CA 93230
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SACRAMENTO OFFICE
1201 SOUTH RIVER ROAD
WEST SACRAMENTO, CA 95691
PHONE (916) 373-7450
FAX (916) 373-7456

STOCKTON OFFICE
1805 HARBOR ROAD
STOCKTON, CA 95203
PHONE (209) 466-3774
FAX (209) 467-7990

L

BEFORE THE SURFACE TRANSPORTATION BOARD

PYCO INDUSTRIES, INC.
-- FEEDER LINE APPLICATION --
LINES OF SOUTH PLAINS SWITCHING, LLC,

Finance Dkt. No. 34844

SOUTH PLAINS SWITCHING, LLC
-- ACQUISITION EXEMPTION --
BNSF RAILWAY COMPANY

Finance Dkt. No. 33753 (Sub-no. 1)

DECLARATION OF
CALVIN KIDWELL

I, Calvin Kidwell, make this Declaration, pursuant to 28 U.S.C. § 1746, in support of the Feeder Line Application filed by PYCO Industries, Inc., in F.D. 34844, and in support of the petition to revoke the acquisition exemption in F.D. 33753 (Sub-no.1) by which South Plains Switching LLC ("SAW") acquired certain lines of railroad in Lubbock from BNSF Railway.

1. I am the general manager of Hi-Plains Bag and Bagging Company (HPBB), whose business address is 707 East 44th St., Lubbock, TX 79404. HPBB is not a large rail user like PYCO Industries, but we do receive several inbound shipments per month of twine for cotton bales. This represents a significant cost savings over alternative forms of shipment for us. Our local

switching provider is SAW.

2. To get to the point, SAW's management is scary. Last year, a car was spotted for us in a fashion which we could not unload it. I called SAW's office, and happened to speak with Mr. Larry Wisener. I politely requested that SAW re-spot the car so we could have access. Mr. Wisener went ballistic. He started screaming. He said he could cut us off and do whatever he wanted because it was his railroad. I construed this as it was intended: a threat to retaliate and to deprive us of service if we did not do exactly what he told us to do. I tried to respond that we certainly wished to cooperate, but did not know when his crews would deliver our cars, and asked if SAW would telephone in advance. This got nowhere, and provoked more talk from Mr. Wisener about our incompetence, his power, and his willingness to wield it. He intended to and did scare the heck out of us. We told our staff to listen for his engine, and if they heard it to go to our loading area to make certain that if there was a car it was spotted correctly.

3. A SAW shipper lives in fear that SAW management on a whim will cease service. We are concerned that this Declaration itself will result in retaliation, and if so, we request immediate relief from SAW pursuant to the alternative service order PYCO Industries already has in place. SAW management is not compatible with a common carrier railroad. We support revocation of SAW's exempt

acquisition, or else the immediate sale of SAW's lines to PYCO pursuant to PYCO's feeder line application.

Pursuant to 28 U.S.C. § 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on

04/10/06

Calvin Tidwell

M



POST OFFICE BOX 740635
DALLAS, TEXAS 75374-0635

May 1, 2006

Hon. Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

Re: Feeder Line Application

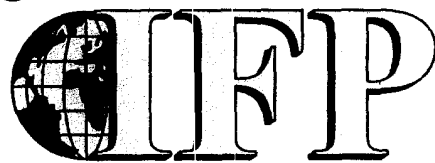
Dear Mr. Williams:

Goetz & Sons, Inc. joins in support of PYCO Industries in their feeder line application.

Very Truly Yours,

A handwritten signature in dark ink, appearing to read "J. Goetz", is written over the typed name.

Jack Goetz
President
Goetz & Sons, Inc.



A *Leggett & Platt* Company

International Fiber Packaging

406 Gerrard Drive
Florence, Alabama USA 35630
256-767-0686 FAX 256-767-1813



May 1, 2006

Hon. Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

Re: Feeder Line Application

Dear Mr. Williams:

International Fiber Packaging joins in support of PYCO Industries in their feeder line application.

Very Truly Yours,

Bart Daniel
President

N

Exhibit N

Derivation of Level of Compensation
for Crossing Right

Alternative Two Scenario Only

PYCO's proposed level of compensation for the crossing right under Alternative Two is as follows: (i) Assume 1/2 of traffic in track employed for crossing is PYCO (Plant No. 1). (ii) There are ten switches. Annual maintenance cost is \$120 per switch. See Sneed Declaration para 11. Total cost of maintenance is \$1200 per year. PYCO share is therefore \$600/year. (iii) 5000 feet of track are involved. NLV for the 5000 feet of track material (rail, ties and other track material) is \$26,973 (see Sneed Declaration Appendix III), say \$27,000. PYCO's "share" is \$13,500. (iv) 5000 feet of track (much in yard) has an average width of 50 feet, yielding roughly 6 acres of land. Assuming full fee ownership (and unadjusted for costs of sale), PYCO's outside appraiser calculates a net liquidation value for the 6 acres in question to be \$144,000. PYCO's share is \$72,000. (v) PYCO's share of Total NLV \$13,500 plus \$72,000 or \$85,500. Multiply this by 14.1% (most recent STB determination of railroad pre-tax cost of capital), yielding \$12055.50 per year. (vi) \$12055.50 plus \$600 equals \$12655.50.

NOTE: The real estate appraisal on which NLV real estate is based assumes full fee ownership, with no encumbrances, and

no adjustments for costs of sale. This may require adjustment based on discovery and additional title information. Moreover, the area in question may require adjustment based on inspection and measurement.

NOTE 1: The computation for return is based on pre-tax cost of capital.

NOTE 2: In the event discovery confirms SAW use of 9298 is small relative to PYCO use, then PYCO will amend its application to acquire all of 9298. PYCO would prefer to own 9298 in order to ensure proper rehabilitation and maintenance. The NLV for 9298 is \$27,000 (metallics) plus 144,000 (real estate, assuming full fee and no adjustments), or \$171,000. Total NLV under for Alternative Two would then be \$435,000 (see text at p. 4) plus 171,000, or \$606,000. PYCO reserves the right to adjust this figure on the basis of further information on land titles, encumbrances and measured areas, once discovery including entry is undertaken pursuant to 49 C.F.R. Part 1114. Under this approach, PYCO would grant SAW a right to cross for compensation based on NLV and SAW's pro-rata share of use.

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EB

SERVICE DATE – JANUARY 26, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34802

PYCO INDUSTRIES, INC.–ALTERNATIVE RAIL SERVICE–
SOUTH PLAINS SWITCHING, LTD. CO.

Decided: January 25, 2006

On December 20, 2005, PYCO Industries, Inc. (PYCO) filed a petition under 49 U.S.C. 11123 and 49 CFR part 1146,¹ seeking an order authorizing interim alternative rail service, for an initial period of 30 days and a total period of not more than 270 days, over the lines of South Plains Switching, Ltd. Co. (SAW) in Lubbock, TX, by West Texas & Lubbock Railway Company, Inc. (WTL) to all shippers on the line including PYCO, and by PYCO to itself. Alternatively, PYCO seeks an order authorizing WTL to provide interim service exclusively to PYCO. WTL has certified that it is willing to provide interim rail service to PYCO and all other shippers on SAW's lines.

SAW filed a reply in opposition to the petition on December 28, 2005. PYCO filed a rebuttal on January 3, 2006, and SAW filed a letter in "clarification" of a matter contained in PYCO's rebuttal on January 6, 2006. On January 9, 2006, PYCO replied to the clarification letter, asking the Board to strike it from the record. On January 10, 2006, WTL joined in the request to strike. Also, SAW and PYCO filed letters on January 19, 2006, and January 20, 2006, respectively.

We will grant the alternative request for WTL to provide service to PYCO.

PRELIMINARY MATTER

SAW submitted its clarification letter under 49 CFR 1117.1, which authorizes a party to seek relief not otherwise provided in another rule. PYCO asks us to strike the clarification from the record on grounds that it does not request any relief and constitutes an impermissible reply to the final pleading allowed under the applicable rule, a petitioner's rebuttal under 49 CFR 1146.1(b)(3). PYCO correctly notes that the purported clarification constitutes an additional reply that is not contemplated in the rule. However, the additional information in the clarification will be instructive in our analysis, and for that reason we will not strike it from the record. Rather, in the interest of fairness and a complete record, we will also accept into the record PYCO's January 9, 2006 reply to the clarification and the letters filed on January 19 and 20, 2006.

¹ These rules were adopted in Expedited Relief for Service Inadequacies, 3 S.T.B. 968 (1998) (Service Inadequacies).

BACKGROUND

In 1999, SAW received authority to acquire and operate approximately 14.1 miles of rail line from The Burlington Northern and Santa Fe Railway Company, now BNSF Railway Company (BNSF),² in Lubbock, TX, and approximately 3 miles of incidental trackage rights over BNSF's main line to a BNSF yard, where SAW interchanges with BNSF.³ Since that time, SAW has switched rail cars for shippers located on this line and transported the cars to and from BNSF's yard for interchange with that linehaul carrier. PYCO, a large processor of cottonseed oil, is heavily rail dependent and is served only by SAW.⁴

At Lubbock, PYCO has two plants from which it ships annually more than 6,000 carloads of cottonseed oil and related products. Previously, SAW permitted PYCO to operate a rail car mover⁵ on a portion of SAW's track, which allowed PYCO to move rail cars between tracks located on PYCO's property. Through this means of operation, PYCO could load 26 cars per day at its Plant No. 1. It could also load 12 cars per day from Plant No. 2. Because of a record cottonseed harvest, PYCO advised SAW that, beginning on April 1, 2005, PYCO would have an increased need for switching of rail cars.

Mr. Robert Lacy, PYCO's senior vice president of marketing, recites problems with SAW's service beginning in March 2005 that led PYCO to seek solutions from both SAW and BNSF. When these discussions did not resolve the service deficiencies, PYCO complained to the Board's Office of Compliance and Enforcement (OCE) about SAW's slow switching of rail cars. According to PYCO, after OCE's intervention, it received satisfactory service from SAW from July through October 2005, a period in which PYCO continued to need large numbers of rail cars to handle the record harvest.

PYCO states that, in September 2005, SAW inquired whether PYCO was interested in purchasing SAW's Lubbock rail lines. According to PYCO, when it expressed interest, SAW tendered a draft "Letter of Intent" that would have bound PYCO

² Effective January 20, 2005, The Burlington Northern and Santa Fe Railway Company changed its name to BNSF Railway Company.

³ South Plains Switching, Ltd. Co.-Acquisition Exemption-The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 33753 (Sub-No. 1) (STB served July 15, 1999).

⁴ PYCO asserts that it is the largest shipper served by SAW.

⁵ A rail car mover is a vehicle equipped with sets of both steel rail wheels and rubber tire road wheels, which allows the vehicle to move rail cars along rail lines as well as travel on surface roads. Its operating functions are controlled from within an operator's cab much like a locomotive.

to purchase these rail lines for \$5.5 million. Considering its negotiations to be in the early stages, PYCO states that it requested an addition to the draft letter of intent to make the purchase contingent upon PYCO's completing a due diligence examination and obtaining satisfactory financing. PYCO asserts that SAW then cut off sale negotiations.

PYCO states that, shortly thereafter, SAW's president, Mr. Larry Wisener, demanded that PYCO immediately cease operating its rail car mover on SAW's property. On November 17, 2005, SAW placed a derail device on the track to prevent PYCO's equipment from entering onto SAW's rail line. PYCO's representative, Mr. Lacy, asked Mr. Wisener to remove the device but declined Mr. Wisener's request to meet in person, due to what he asserts was his past experience with Mr. Wisener's confrontational demeanor and profane language.

PYCO also contends that SAW has engaged in other conduct that severely hampers its ability to obtain adequate transportation. PYCO reports that on November 17, 2005, SAW cancelled PYCO's lease of a track on which PYCO stored rail cars, stating only that SAW was not obligated to provide storage.⁶ According to PYCO, since that date, SAW has switched cars for PYCO at Plant No. 1 only on a shop track outside PYCO's fence, which greatly reduces the number of cars that PYCO can load. PYCO indicates that it asked SAW to instead switch cars on a scale track inside PYCO's fence or on both the shop and the scale tracks, to allow PYCO to load more cars. PYCO relates that SAW responded that it would switch cars only on the shop track and that SAW now claimed that it would be unsafe to continue to use the scale track because PYCO personnel had to cross the track and it was close to buildings—which is true in many industrial plants. PYCO emphasizes that, in any event, the shop track cannot accommodate the number of rail cars that PYCO needs to ship.

SAW did not switch any cars at all at PYCO's Plant No. 2 between November 22 and November 28, 2005, because of "a locomotive breakdown."⁷ SAW also admits that it has not recently provided as many boxcars as PYCO requests at that plant because SAW lacks sufficient cars to meet PYCO's needs. See Reply, Appendix LDW-8. According to PYCO, since November 2005, SAW has billed PYCO for surcharges, switch charges, and storage fees that SAW has not billed its other Lubbock shippers for comparable services.

PYCO asserts that it is now able to load only about 12 cars per day at Plant No. 1, instead of the 26 cars it formerly was able to load. In addition, PYCO claims that SAW's lack of delivery of sufficient boxcars continues to limit loading of a product at Plant No. 2. PYCO complains that the resulting shortfall of switched cars has caused lost sales, delayed shipments, and an inventory accumulation such that PYCO soon will be forced to curtail operations for lack of storage for its products.

⁶ Petition, Exhibit C, Verified Statement (V.S.) Lacy at 3 and Exhibit 4 (entry of Nov. 17, 2005).

⁷ Reply, V.S. Wisener at 7.

DISCUSSION AND CONCLUSIONS

1. Interim Alternative Service to Shippers Other Than PYCO.

The claim of inadequate service to shippers other than PYCO is not well supported. One potential shipper, Floyd Trucking, Inc., submitted a letter supporting PYCO's petition and indicating that SAW's response to its service requests has been inadequate. But the record here suggests that, ultimately, Floyd Trucking has other transportation alternatives and has chosen not to use rail service because of the cost.

The record shows that there are numerous other shippers served by SAW on these lines, and the "service and support comments" attached to SAW's reply rated SAW's service favorably.⁸ Although PYCO's witness, Mr. Gail Kring, states that some of the other shippers told him informally that they supported PYCO's petition, none of the other shippers has provided a statement criticizing SAW's service. Nor is there anything else in the record to establish a measurable deterioration in the service SAW has provided to them. Accordingly, we find that PYCO has not demonstrated a substantial deterioration in service to the other shippers on SAW's line. For this reason, there is no basis to grant PYCO's request to authorize WTL to serve the other customers currently served by SAW in Lubbock.

2. PYCO's Rail Car Mover.

We turn next to PYCO's request that we authorize PYCO to operate its rail car mover on SAW's line. SAW has the right to bar PYCO from operating on its line, especially in light of derailments that occurred in the last year (nine in the 12-month period ending in November 2005). PYCO does not dispute that it caused these derailments, that the derailments damaged SAW's track and equipment, or that a crane was needed to repair three of the derailments. Indeed, PYCO paid for the crane.⁹ Therefore, we deny PYCO's request for an order directing SAW to allow PYCO to operate its own switching equipment on SAW's line. However, should WTL and SAW agree that PYCO may safely move railcars to and from its facilities, they may permit such activities.

3. Interim Alternative Rail Service By WTL for PYCO.

We have established procedures under which shippers receiving poor service may obtain interim relief. Under 49 CFR 1146.1, a petition seeking such relief must: (1) show substantial, measurable service deterioration or service inadequacy;

⁸ One shipper, Goetz, gave SAW the lowest numerical rating but also commended SAW's crew, which indicates it may have meant to give a high rating.

⁹ Rebuttal, V.S. Kring at paragraph 9d.

(2) summarize discussions with the incumbent carrier and show why the incumbent is unlikely to restore adequate rail service within a reasonable time; and (3) contain a commitment from an alternative carrier to meet current transportation needs and show that this service can be performed safely without hurting service to existing customers of the alternative carrier and without unreasonably interfering with the incumbent's service.¹⁰ We discuss these criteria below.

Substantial and Measurable Deterioration in Service. The procedures at 49 CFR 1146.1 are for localized immediate service relief. Service Inadequacies, 3 S.T.B. at 972 n.11. PYCO is a rail-dependent shipper with two plants from which it ships annually more than 6,000 carloads of cottonseed oil and related products. Moreover, PYCO is served only by SAW. Here, the daily shortfall of 14 carloads for switching at Plant No. 1 (more than half of the 26 carloads that PYCO previously could load there), the continued lack of delivery of sufficient boxcars to serve Plant No. 2, and the period in November 2005 during which SAW performed no switching at all at Plant No. 2 indicate a serious deterioration in SAW's service to PYCO. PYCO has demonstrated through ample, credible evidence that, as a consequence of these service inadequacies, it will soon run out of storage capacity for its cottonseed oil and related products, and will be forced to curtail or close operations.¹¹ Consequently, we find that PYCO has shown, as to itself, "a substantial, measurable deterioration or other demonstrated inadequacy in rail service provided by the incumbent carrier."¹² 49 CFR 1146.1(a).

Discussions with the Incumbent and Reasons Why Restoration of Adequate Service Is Unlikely. The purpose of requiring pre-filing discussions is to ensure that the shipper and the carrier have done all that they can do to resolve the service issues before coming to the Board for relief. American Plant Food Corporation—Alternative Rail Service—Line of Texas Northeastern Railroad, STB Finance Docket No. 33795, slip op. at 2-3 (STB served Dec. 7, 1999) (American Plant Food) (denying alternative service request where the shipper had not contacted the incumbent carrier in the 9 months prior to filing the petition). This is not a case where the parties sought relief from us prematurely, before attempting to resolve the service issues themselves. Rather, there were many discussions between PYCO and SAW representatives in 2005 concerning the decline in SAW's service.¹³

¹⁰ The petition must be served, by hand or overnight delivery, on the incumbent and proposed alternative carriers and the Federal Railroad Administration. PYCO has certified that it served its petition on the required parties by overnight delivery.

¹¹ See Rebuttal, V.S. Kring and appended charts; PYCO's January 9, 2006 reply, Supplemental V.S. Kring.

¹² See Arkansas Midland Railroad Company, Inc.—Alternative Rail Service—Line of Delta Southern Railroad, Inc., STB Finance Docket No. 34479 (STB served Mar. 11, 2004) (authorizing alternative, interim rail service after two weeks of service problems on a rail line that generated about 6,000 carloads of traffic per year).

¹³ See Petition, Exhibit A and attached Exhibits 7, 8; Exhibit C, V.S. Lacy and Exhibit 4.

It is true that, after SAW barred PYCO from operating its rail car mover, Mr. Wisener invited a PYCO representative to discuss in person alternative ways of loading PYCO's rail cars. But PYCO's explanation as to why its personnel declined to meet with Mr. Wisener in person—because the relationship had become acrimonious—was not unreasonable. According to Mr. Lacy, in previous meetings in his office, Mr. Wisener had become progressively more profane and threatened to “throw out” people with opposing opinions, and his “bullying attitude” had worsened after SAW cut off negotiations for PYCO to purchase the line, at which point SAW cancelled the lease of the track on which PYCO had stored rail cars.¹⁴ In any event, it does not appear that another meeting would have been productive. Mr. Wisener now states that, had PYCO managers agreed to meet with him in person, he would have offered the option of ordering a second daily switch for a \$500 surcharge.¹⁵ However, SAW ultimately provided that option to PYCO in its December 2005 reply, as revised in its January 2006 clarification. Thus, another in-person meeting was not necessary.

The record here shows that, unlike the situation in American Plant Food, there were many contacts between PYCO personnel and SAW personnel in the months prior to filing the petition.¹⁶ Given the evidence showing a history of communications between the parties during the course of the events that led to the filing of this petition, we find that PYCO has made adequate attempts to work with SAW to try to resolve the service deficiencies.

The second part of this criterion requires a showing that the incumbent is unlikely to restore adequate rail service within a reasonable time. We find that the requisite showing has been met in this case. At the outset, we note that PYCO experienced a series of problems with SAW's service in March through June 2005: slow service because of SAW's failure to spot and pick up cars on reasonable request; two threats to terminate service at Plant No. 2; suspension of service to Plant No. 1; and threats of imposing surcharges on service SAW had been providing in the past without surcharges.¹⁷ Mr. Wisener has not refuted the fact that SAW's service deteriorated during that period. SAW's principal response was to offer to sell the line to PYCO. But short of that potential resolution, which evidently came to naught when SAW refused PYCO's request to make the sale contingent upon PYCO's completion of due diligence

¹⁴ See Petition, Exhibit C, V.S. Lacy.

¹⁵ Reply, V.S. Wisener at 4.

¹⁶ Petition, V.S. Lacy at paragraphs 12-15 and Exhibit 4 (notes showing conversations between Lacy and other PYCO personnel and Wisener and other SAW personnel).

¹⁷ See Petition at 5-6 and Exhibit A at Exhibit 8, Railroad Switching Log.

and the obtaining of financing, it took intervention by OCE before SAW itself restored adequate service to PYCO in the period from July through October 2005.¹⁸

In any event, the service problems began to recur in mid-November 2005. SAW did not provide any switching for 6 days at Plant No. 2 because of a breakdown experienced by one locomotive. While equipment failure might be a valid basis for a temporary service interruption, SAW states that it has six locomotives, and it has not provided any reason why one of the other five could not have been used to switch cars at Plant No 2 during that time.¹⁹ Nor has SAW given any reassurances that it will provide switching regularly for PYCO should there again be difficulty with a locomotive.

Since mid-November 2005, PYCO plainly has not received enough empty railcars to load its products that are ready for transport. PYCO uses tank cars, gondolas, hopper cars, and boxcars to ship its products. PYCO itself owns a fleet of tank cars, and its customers provide PYCO with privately owned gondolas, but SAW has not delivered a sufficient number of these privately owned cars. Concerning boxcar supply, SAW claims that it cannot provide enough boxcars because of BNSF's decision in August 2005 not to store boxcars on SAW's lines for free. Nevertheless, SAW provided sufficient boxcars to PYCO during September and October 2005, after BNSF's policy change. Therefore, BNSF's action does not explain SAW's more recently claimed inability to provide sufficient boxcars.

A major reason for this inadequate railcar supply is SAW's refusal of PYCO's repeated requests for SAW to deliver empty railcars to PYCO's scale track. SAW claims that it would be unsafe to use that track because PYCO personnel must cross it and the track is very close to some of the plant buildings. We question the sincerity of that claim in this case, however, because WTL recently inspected the scale track and concluded that it is safe.²⁰

SAW now asserts that all PYCO needs to do to receive adequate rail service at Plant No. 1 is to request a second daily switch. According to PYCO, SAW initially claimed that it lacked sufficient personnel to provide a second daily switch,²¹ and only after PYCO filed this petition did SAW express any willingness to provide a second daily switch.²² Thus, this offer, which could have been made much sooner,²³ appears to have

¹⁸ See Petition at 6-7 and Exhibit A at Exhibits 3-7; Exhibit B.

¹⁹ SAW January 6, 2006 clarification letter at 2.

²⁰ Rebuttal, V.S. Ellis at 2 ("WTL has inspected the tracks in question and believes service can be safely provided over these tracks. The idea that close clearances or crossings without warning devices within industrial areas could be used as a reason for not occupying those tracks is inconsistent with industry practice.").

²¹ Rebuttal, V.S. Kring at paragraph 9f.

²² Reply, V.S. Wisener at 1-2, 5.

been made only to avoid an order from the Board authorizing alternative service by a different carrier.

SAW suggests that PYCO simply is unwilling to pay the surcharge that would be imposed if the second daily switch were outside the crew's regular 12-hour day, and that PYCO's real complaint is that the charges it must pay are too high. Rates or charges that shippers believe are too high are not a basis to order alternative, interim rail service. See Keokuk Junction Railway Company—Alternative Rail Service—Line of Toledo, Peoria and Western Railway Corporation, STB Finance Docket No. 34397, slip op. at 6 (STB served Oct. 31, 2003) (denying alternative service order because "[r]ate disputes do not constitute service disruptions or inadequacies within the meaning of 49 U.S.C. 11123"). Here, however, PYCO has made clear that it wants the service it needs, even if it has to pay the surcharge, as that would be less costly to it than the current situation.²⁴ Thus, we do not view PYCO's request for alternative service as driven by dissatisfaction with the level of charges.

If we were persuaded that SAW's eleventh-hour offer to provide a second daily switch would fully resolve the service inadequacies for PYCO, we would not need to order the alternative service requested by PYCO. But, given SAW's broader pattern of conduct—including its unexplained abrupt cancellation of the lease of the track on which PYCO had been storing its cars and SAW's refusal to allow continued use of the scale track—we are not persuaded that SAW will do what is necessary and what it has done in the past to provide satisfactory service to PYCO, which is served only by SAW, and is heavily dependent on rail service. Therefore, based on all of the circumstances presented here, we find that PYCO has made the required showing that SAW is unlikely to restore adequate rail service to PYCO within a reasonable time and that formal intervention by the Board is appropriate.

Interference with Operations. SAW does not dispute WTL's statement that WTL can provide safe, adequate transportation service to the shippers on SAW's line without degrading service to WTL's customers on its other lines.

Because we find no need to authorize alternative service to the other shippers, we must also consider whether WTL can provide PYCO with service without unreasonably interfering with SAW's service to the other shippers on this line. To address concerns raised by having two operators on SAW's lines in Lubbock, PYCO has suggested that we authorize WTL to control dispatch over the line weekdays from 9 a.m. to 2 p.m. While we agree that two operators can safely and efficiently share this line, we will not dictate

²³ For example, when Mr. Wisener of SAW telephoned Mr. Lacy on November 17, 2005, to inform PYCO that SAW was installing the derail device, SAW could have offered to make a second daily switch, but did not do so. Instead, per Mr. Wisener's direction, SAW provided only one daily switch at Plant No. 1. Petition, Exhibit C, V.S. Lacy at Exhibit 4 (entry of Nov. 22, 2005: "Larry [Wisener] would only allow [SAW's crew] to do one pull per day.").

²⁴ Rebuttal at 3 and V.S. Kring at paragraph 9f.

specific terms at this point. Rather, we will order the two carriers promptly to enter into operating protocols that will allow for safe joint operations on this line. We recognize that it will require good faith on the part of both SAW and WTL for this arrangement to work, and we expect both parties to act in that manner. Accordingly, both SAW and WTL will be required to report to the Board that the required protocols are in place.

In sum, the criteria have been met for PYCO to obtain interim alternative rail service. Accordingly, we will grant PYCO's request for an order authorizing WTL to provide it with alternative service on SAW's line on an interim basis.

Under 49 CFR 1146.1(c), there is a rebuttable presumption that alternative service will need to continue for more than 30 days, but that presumption can be rebutted by the incumbent carrier, and a further Board order will be needed for alternative rail service to continue at the end of the 30-day period.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. PYCO's motion to strike SAW's clarification of January 6, 2006, is denied. SAW's January 6, 2006 clarification, PYCO's January 9, 2006 reply to the clarification, the letter submitted by SAW on January 19, 2006, and the letter submitted by PYCO on January 20, 2006, are accepted into the record.
2. WTL is authorized to provide alternative service to PYCO on SAW's lines, beginning at 11:59 p.m. on January 26, 2006 until 11:59 pm on February 25, 2006, under the provisions of 49 CFR 1146.1, and SAW is directed to allow such operations on its lines.
3. PYCO and SAW shall promptly enter into operating protocols that will allow for safe joint operations on this line, and they shall report to the Board that the required protocols are in place.
4. This decision is effective on its date of service.

By the Board, Chairman Buttrey and Vice Chairman Mulvey.

Vernon A. Williams
Secretary

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BEFORE THE SURFACE TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

PYCO INDUSTRIES, INC. --)
FEEDER LINE DEVELOPMENT --) F.D. 34844
SOUTH PLAINS SWITCHING LTD.)

To: SOUTH PLAINS SWITCHING LTD

REQUESTS FOR PRODUCTION OF DOCUMENTS,
INTERROGATORIES, AND
REQUEST FOR ENTRY
ON BEHALF OF
APPLICANT PYCO INDUSTRIES, INC.

I. DOCUMENT REQUESTS

Pursuant to 49 C.F.R. § 1114.30 and 49 C.F.R. § 1151.2, applicant PYCO Industries, Inc. (PYCO), makes this request to incumbent railroad South Plains Switching Ltd (SAW) for production of documents.

A. Instructions

Pursuant to 49 C.F.R. § 1114.30(b), applicant PYCO provides the following instructions concerning time, place, and manner of making the inspection of documents:

Applicant requires incumbent railroad SAW to produce all documents requested herein for inspection no later than fifteen business days (i.e., 15 days excluding federal holidays and weekends) from the date that the Surface Transportation Board accepts or conditionally accepts applicant's Feeder Line Application pursuant to 49 C.F.R. § 1151.1. If SAW asserts an objection on ground of privilege against disclosure of any

document otherwise responsive document, please identify the document by name of author, name of recipient, and date of document.

Documents shall be produced at the law offices of Gary McLaren, Philips & McLaren, L.L.P., 3305 66th St., Suite 1A, Lubbock, TX 79413.

Unless otherwise provided, the discovery requests herein relate solely to SAW operations in the southern portion of Lubbock, Texas.

B. Definitions

For purposes of these document requests, "document" shall include electronic recordings, maps, charts, schematics, notes, and all other written materials, and shall include documents in the possession of SAW, its officers, directors, employees, agents, or contractors.

"Identify" shall mean to disclose the name, address, and telephone number.

"Shipper" shall mean anyone who receives from, or deliveries to, SAW shipments for rail transportation in Lubbock, Texas.

"Potential shipper" means anyone who expresses possible interest in receiving or delivering shipments by rail over SAW lines in Lubbock, Texas.

"BNSF" means BNSF Railway Company.

C. Protective Order

Applicant anticipates that incumbent railroad SAW will

assert that certain information is competitively sensitive. Applicant is providing a proposed protective order herewith.

D. Document Requests

Please provide the following documents in accordance with the instructions and definitions above, and as provided in the regulations of the Surface Transportation Board:

1. All documents showing the nature and scope of any proposed or possible rehabilitation of all or any portion of SAW lines in Lubbock, Texas, including all rehabilitation cost estimates.

2. All documents showing any maintenance program undertaken by SAW in connection with its rail lines in Lubbock, Texas since acquisition.

3. Documents sufficient to identify all shippers on SAW lines in Lubbock, Texas in the 12 months preceding 1 May 2006.

4. (a) Documents sufficient to show the total number of carloadings (inbound and outbound) for each shipper on SAW lines in Lubbock, Texas, on a month by month basis for each of the 36 months preceding 1 May 2006.

(b) Documents sufficient to show how SAW's operational plans to serve its shippers.

5. Documents sufficient to show all revenues and expenditures of SAW for each calendar or fiscal year preceding 1 May 2006, in respect to SAW's lines in Lubbock, Texas.

6. All licenses, agreements, or contracts permitting joint use of SAW real estate assets in Lubbock, Texas by another

party.

7. All documents showing land title information, including title reports, pertaining to any of SAW's rail properties in Lubbock, Texas.

8. Documents sufficient to show all sales of SAW rail properties in Lubbock, Texas.

9. All documents pertaining to complaints to SAW by shippers or potential shippers on SAW lines in Lubbock, Texas, about problems with rail service.

10. All correspondence with the STB Office of Compliance and Enforcement.

11. Documents sufficient to show SAW expenditures for track, tie, and switch maintenance since acquisition of SAW's rail lines in Lubbock, Texas from BNSF.

12. Documents relating to any spills of toxic or hazardous materials on or adjacent to SAW's rail lines in Lubbock, Texas.

13. Documents sufficient to disclose SAW's right to operate on track owned by persons or entities other than SAW in Lubbock, Texas.

14. All contracts between BNSF and SAW relating to SAW's rail lines or service on SAW's rail lines in Lubbock, Texas, including all amendments thereto, and all final judgments in any court proceeding pertaining thereto.

15. Documents sufficient to disclose special charges or tariffs paid to SAW by any shipper or potential shipper on SAW's lines in Lubbock, Texas.

16. All safety inspection reports pertaining to SAW lines in Lubbock, Texas.

17. Documents sufficient to disclose the persons who own SAW, and any changes in ownership of SAW.

18. All documents prepared by SAW or on behalf of SAW to solicit requests for proposals to buy all or portions of SAW.

19. Documents sufficient to identify all persons or entities who received requests for proposals to buy all or portions of SAW.

20. All documents relating to responses received by SAW to requests for proposals to buy all or portions of SAW.

21. All unsolicited proposals to buy all or portions of SAW.

22. All documents relating to business plans prepared by or on behalf of SAW relating to Lubbock, Texas rail operations.

23. All federal and tax returns for SAW since acquisition by SAW of its lines in Lubbock.

24. All financial statements and loan applications prepared for or on behalf of SAW.

25. The current version of all rules and procedures (including all rail operation rules and procedures) applicable to SAW rail service in Lubbock, Texas.

26. All contracts for rail service between SAW and shippers or potential shippers.

27. All records (documents) of SAW pertaining to problems with rail service to its customers or potential customers in

Lubbock, Texas.

28. All documents relating to contamination of SAW property in Lubbock with toxic chemicals above applicable federal or state regulatory limitations.

II. INTERROGATORIES

Pursuant to 49 C.F.R. § 1114.26 and 49 C.F.R. § 1151.2, applicant PYCO Industries, Inc. (PYCO), propounds the interrogatories set forth herein to incumbent railroad South Plains Switching Ltd (SAW).

A. Instructions

Pursuant to 49 C.F.R. § 1114.26, applicant PYCO provides the following instructions concerning time for answering interrogatories.

Applicant requires incumbent railroad SAW to answer all interrogatories fully and completely no later than fifteen business days (i.e., 15 days excluding federal holidays and weekends) from the date that the Surface Transportation Board accepts or conditionally accepts applicant's Feeder Line Application pursuant to 49 C.F.R. § 1151.1.

Answers to interrogatories shall be served upon the undersigned counsel at his address of record. Should incumbent railroad SAW elect to produce documents in lieu of answering an interrogatory in accordance with § 1114.26(b), said documents shall be produced in accordance with Part I above.

Unless otherwise provided, the discovery requests herein relate solely to SAW operations in the southern portion of Lubbock, Texas.

B. Definitions

For purposes of these interrogatories, "document" shall include electronic recordings, maps, charts, schematics, notes,

and all other written materials, and shall include documents in the possession of SAW, its officers, directors, employees, agents, or contractors.

"Identify" shall mean to disclose the name, address, and telephone number of any company or individual to which the interrogatory is applicable.

"Shipper" shall mean anyone who receives from, or deliveries to, SAW shipments for rail transportation in Lubbock, Texas.

"Potential shipper" means anyone who expresses possible interest in receiving or delivering shipments by rail over SAW lines in Lubbock, Texas.

C. Protective Order

Applicant anticipates that incumbent railroad SAW will assert that certain information is competitively sensitive. Applicant is providing a proposed protective order herewith.

D. Interrogatories

Please answer the following interrogatories fully and completely in accordance with the instructions and definitions above, and as provided in the regulations of the Surface Transportation Board:

1. (a) Identify all persons with knowledge of any maintenance program implemented by SAW on its lines in Lubbock, Texas.

(b) Describe SAW's maintenance program for its lines in Lubbock, and any changes therein since SAW acquired those lines.

2. (a) Identify all persons with knowledge of any estimates for the costs of rehabilitation of any SAW lines in Lubbock, Texas.

(b) For each such person, summarize what they purport to know concerning such rehabilitation costs.

3. (a) Identify all persons with knowledge of the land title pertaining to any SAW lines in Lubbock, Texas.

(b) For each such person, summarize what they purport to know concerning such land title.

4. (a) Identify all persons with knowledge of the net liquidation value of real estate pertaining to SAW lines in Lubbock, Texas.

(b) For each such person, summarize what they purport to know concerning such liquidation value.

5. (a) Identify all persons with knowledge of the net liquidation value of rail, track, ties, and other track material pertaining to SAW lines in Lubbock, Texas.

(b) For each such person, summarize what they purport to know concerning such liquidation value.

6. (a) Identify each person who has prepared, on behalf of SAW, an estimate of the net liquidation value or going concern value of SAW lines in Lubbock, Texas.

(b) For each such person, state the value, the property involved, and the basis of the valuation.

7. (a) Identify each person who has prepared, on behalf of SAW, a rehabilitation cost estimate for SAW's lines, or any

portion thereof, in Lubbock, Texas.

(b) For each such person, state the property for which the estimate was prepared, the basis of the estimate, and the amount of the estimate.

8. (a) Identify each shipper on SAW for the last twelve months preceding 1 May 2006, (b) list the total shipments to and from that shipper by carloads in each of the past twelve months, and (c) indicate whether rail service to that shipper required or used the "we" track branching south out of the SAW yard that bisects PYCO's Plant No. 1 in Lubbock, Texas.

9. Identify SAW's accountant(s).

10. Identify the custodian of SAW's land title records.

11. Identify the custodian of SAW's records relating to shippers.

12. State all locomotives owned by SAW available for work in Lubbock, Texas; the date of acquisition of said locomotives for that purpose; and the dates during which said locomotives were out of service for repairs.

13. Identify all SAW employees who provide rail service in Lubbock, Texas on behalf of SAW, and state their normal work schedule.

14. Provide all facts and reasoning underlying SAW's demand that PYCO pay SAW \$ 5.5 million dollars as set forth in the letter from J. Gorsuch to G. McLaren dated October 11, 2005, attached as an exhibit to the Lacy Verified Statement in PYCO's Petition for Alternative Service filed in F.D. 34802, and

already served upon SAW.

15. State SAW's rail operating plan for Lubbock.

16. State SAW's cost of operation, including each component and the basis for that estimate.

17. (a) Identify each person who received or responded to a request for proposals to buy all or a portion of SAW's properties in Lubbock, Texas for rail operation.

(b) For any response to a request for proposals relating to the sale of SAW facilities in Lubbock, Texas for rail operation, state the date of the response, the amount of money or other consideration proposed, and the property to which it is applicable.

18. Identify any person who has made an offer to purchase property from SAW in Lubbock, Texas for continued rail operation and state the amount of such offer, the property to which it was applicable, and the date on which the offer was made.

19. Identify all persons with knowledge of any contamination of SAW's property in Lubbock with toxic chemicals and for each such person, summarize that person's knowledge of said contamination.

20. Identify all persons providing information responsive to the interrogatories and document requests submitted to SAW by PYCO and indicate to what interrogatories or document requests each person supplied responsive information.

III. ENTRY

Pursuant to 49 C.F.R. § 1114.30 and 49 C.F.R. § 1151.2, applicant PYCO Industries, Inc. (PYCO), makes this request to incumbent railroad South Plains Switching Ltd (SAW) for entry onto SAW's rail lines in Lubbock, Texas for inspection, measuring, surveying, photography, testing or sampling for the purpose of determining quality and condition of rail metallics and ties, and necessary and prudent rehabilitation expenses, and for determining boundaries and areas.

Because SAW historically has not operated on weekends, PYCO specifies entry on the first Saturday (other than a holiday weekend) that occurs fifteen business days (i.e., 15 days excluding federal holidays and weekends) from the date that the Surface Transportation Board accepts or conditionally accepts applicant's Feeder Line Application pursuant to 49 C.F.R. § 1151.1, and each succeeding day other than Sundays and holidays until the completion of inspection activities. PYCO shall make the inspection through one or more outside experts. Unless notified otherwise 24 hours in advance, inspection shall commence at 9 A.M. and shall conclude no later than 6 P.M. Inspection shall be on-site.

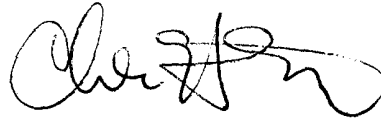
Incumbent railroad SAW shall advise PYCO in writing no later than 5 PM on the day preceding each day on which inspection will occur should SAW be conducting any work on the premises during the hours of inspection, and with particularity on which tracks and at what times SAW shall be working. Unless

SAW so advises PYCO, SAW shall not operate or work on the premises on the dates of inspection.

PYCO will make arrangements as necessary with alternative rail service provider West Texas & Lubbock Rwy concerning safe entry.

PYCO hereby commits to hold SAW harmless from any claims or costs arising from any accidents arising out of entry onto the premises pursuant to this discovery request on behalf of PYCO, other than those accidents arising from intentional misconduct by SAW, its officers, owners, agents, or employees.

Respectfully submitted,



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Of counsel:

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for PYCO Industries, Inc.

Q

BEFORE THE SURFACE TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

PYCO INDUSTRIES, INC. --)
FEEDER LINE DEVELOPMENT --) F.D. 34844
SOUTH PLAINS SWITCHING LTD.)

To: BNSF RAILWAY

INTERROGATORIES
ON BEHALF OF
APPLICANT PYCO INDUSTRIES, INC.

Pursuant to 49 C.F.R. § 1114.26 and 49 C.F.R. § 1151.2, applicant PYCO Industries, Inc. (PYCO), propounds the following interrogatories to BNSF Railway (BNSF).

A. Instructions

Pursuant to 49 C.F.R. § 1114.26, applicant PYCO provides the following instructions concerning time for answering interrogatories.

Applicant requests BNSF to answer all interrogatories fully and completely no later than fifteen business days (i.e., 15 days excluding federal holidays and weekends) from the date that the Surface Transportation Board accepts or conditionally accepts applicant's Feeder Line Application pursuant to 49 C.F.R. § 1151.1.

Answers to interrogatories shall be served upon the undersigned counsel at his address of record. Should BNSF elect to produce documents in lieu of answering an interrogatory in accordance with § 1114.26(b), said documents shall be produced

to counsel at his address of record, or made available for inspection by counsel or experts retained by PYCO as appropriate at a mutually agreeable time and place.

Unless otherwise provided, the discovery requests herein relate solely to SAW operations in the southern portion of Lubbock, Texas.

B. Definitions

For purposes of these interrogatories, "document" shall include electronic recordings, maps, charts, schematics, notes, and all other written materials, and shall include documents in the possession of SAW, its officers, directors, employees, agents, or contractors.

"Identify" shall mean to disclose the name, address, and telephone number of any company or individual to which the interrogatory is applicable.

"SAW" means South Plains Switching, Ltd.

"PYCO" means PYCO Industries, Inc. in Lubbock, TX, Applicant in this proceeding.

"West Texas & Lubbock" or "WTL" means the alternative rail service provider for PYCO in Lubbock pursuant to orders of the Surface Transportation Board (STB) in F.D. 34802.

"Shipper" shall mean anyone who receives from, or deliveries to, SAW shipments for rail transportation in Lubbock, Texas.

"Potential shipper" means anyone who expresses possible interest in receiving or delivering shipments by rail over SAW

lines in Lubbock, Texas.

C. Protective Order

Applicant anticipates that BNSF will assert that certain information is competitively sensitive or otherwise confidential. Applicant is providing a proposed protective order herewith.

D. Interrogatories

Please answer the following interrogatories fully and completely in accordance with the instructions and definitions above, and as provided in the regulations of the Surface Transportation Board:

1. Has BNSF received complaints or inquiries from shippers concerning rail service problems in Lubbock, Texas involving SAW?

2. If the answer to no. 1 is affirmative, please identify each complaining/inquiring party, summarize the complaint or inquiry, and state BNSF's response.

3. Please compare the service provided by WTL with respect to PYCO since January 26, 2006, with the service provided by SAW with respect to PYCO prior to January 26, 2006, including any problems from the perspective of BNSF with service.

4. For the past three calendar years, and for 2006 to date, please state the number of cars delivered and received by BNSF from SAW or WTL for each current or former BNSF customer switched by SAW on SAW's lines in Lubbock, Texas.

5. Please summarize any problems or issues encountered by

BNSF with SAW in connection with rail service to BNSF customers served on SAW lines in Lubbock, Texas.

6. Does BNSF have any objection to the relief sought by PYCO in the feeder line application submitted by PYCO in this proceeding?

Respectfully submitted,



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fax: -3739

Of counsel:

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for PYCO Industries, Inc.

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PROTECTIVE ORDER

STB Finance Docket No. 34844

1. For purposes of this Protective Order:

(a) "Confidential Documents" means documents and other tangible materials containing or reflecting Confidential Information.

(b) "Confidential Information" means (i) traffic data (including but not limited to waybills, abstracts, study movement sheets, and any documents or computer tapes containing data derived from waybills, abstracts, study movement sheets, or other data bases, and cost work papers); (ii) the identification of shippers and receivers in conjunction with shipper-specific or other traffic data; (iii) the confidential terms of contracts with shippers or carriers; (iv) confidential financial and cost data; (v) divisions of rates, trackage rights compensation levels, and other compensation between carriers; and, (vi) other confidential, commercial, financial, operational, proprietary, or personal information.

(c) "Designated Material" means any documents designated or stamped as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" in accordance with paragraph 2 or 3 of this Protective Order, and any Confidential Information contained in such materials.

(d) "Party" means an individual person or entity participating in the Proceedings (as defined in (f) below).

(e) "Parties" means more than one Party to the Proceedings (as defined in (f) below).

(f) "Proceedings" means (i) those proceedings before the Surface Transportation Board (the "Board") in STB Finance Docket No. 34844, (ii) any proceedings before the Board related to (i), and, (iii) any judicial review proceedings arising from (i) and/or (ii).

2. If any Party to the Proceedings determines that any part of (a) a document it submits, (b) a discovery request it propounds, (c) a discovery response it produces, (d) a transcript of a deposition or a hearing in which it participates, or (e) a pleading or other paper to be submitted, filed, or served in the Proceedings contains Confidential Information or consists of Confidential Documents, then that Party may designate and stamp such Confidential Information and Confidential Documents as "CONFIDENTIAL." Any information or documents designated or stamped as "CONFIDENTIAL" shall be handled as provided for hereinafter.

3. If any Party to the Proceedings determines that any part of (a) a document it submits, (b) a discovery request it propounds, (c) a discovery response it produces, (d) a transcript of a deposition or a hearing in which it participates, or (e) a pleading or other paper to be submitted, filed, or served in the Proceedings contains shipper-specific rate or cost data; division of rates, trackage rights compensation levels, or other compensation between carriers; or other competitively sensitive or proprietary information, then that Party may designate and stamp such Confidential Information and Confidential Documents as "HIGHLY CONFIDENTIAL." Any information or documents so designated or stamped shall be handled as provided hereinafter.

4. Information and documents designated or stamped as "CONFIDENTIAL" may not be disclosed in any way, directly or indirectly, or to any person or entity except to an employee, counsel, consultant, or agent of a Party to these Proceedings, or an employee of such counsel, consultant, or agent, who, before receiving access to such information or documents, has received and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality undertaking in the form set forth at Exhibit 1 to this Protective Order, and has delivered a copy to counsel for the other Parties.

5. Information and documents designated or stamped as "HIGHLY CONFIDENTIAL" may not be disclosed in any way, directly or indirectly, to any employee of a Party to these Proceedings, or to any other person or entity except to an outside counsel or outside consultant of a Party, who, before receiving access to such information or documents, has received and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality undertaking in the form set forth at Exhibit 2 to this Protective Order, and has delivered a copy to counsel for the other Parties.

6. The Parties must file simultaneously a public version of any Highly Confidential or Confidential submission filed with the Board, whether the submission is designated a Highly Confidential Version or Confidential Version. When filing a Highly Confidential Version, the filing Party does not need to file a Confidential Version with the Board, but must make available (simultaneously with the Party's submission to the Board of its Highly Confidential Version) a Confidential Version reviewable by other Parties' in-house counsel. The Confidential Version may be served on the other Party in electronic format only. In lieu of preparing a Confidential Version, the filing Party may (simultaneously with the Party's submission to the Board of its Highly Confidential Version) make available to outside counsel for the other Parties a list of all "highly confidential" information that must be redacted from its Highly Confidential Version prior to review by in-house personnel, and outside counsel for the other Parties must then redact that material from the Highly Confidential Version before permitting any in-house personnel to review the submission.

7. Any Party to these Proceedings may challenge the designation by another Party of information or documents as "CONFIDENTIAL" or as "HIGHLY CONFIDENTIAL" by filing a motion with the Board or with an administrative law judge or other officer to whom authority has been lawfully delegated by the Board to adjudicate such challenges. Prior to filing such a motion, the Party objecting to the designation shall confer with the Party making the designation in an effort to resolve any dispute concerning the designation.

8. Designated Material may not be used for any purposes other than the preparation and presentation of evidence and argument in these Proceedings, as defined herein. Such proscribed purposes include without limitation, business, commercial, operational, other litigation, and/or competitive purposes.

9. Any Party who receives Designated Material in discovery shall destroy such materials and any notes or documents reflecting such materials, other than (a) file copies of pleadings or other documents filed with the Board and retained by outside counsel for a Party to these Proceedings and (b) file copies of pleadings or other documents filed with the Board that contain only Confidential and public information which are retained by in-house counsel for a Party to these Proceedings, at the earlier of: (a) such time as the Party receiving the materials withdraws from these Proceedings; or (b) the completion of these Proceedings, including any petitions for reconsideration, appeals, or remands.

10. No Party may include Designated Material in any pleading, brief, discovery request or response, or

other document submitted to the Board, unless the pleading or other document is submitted under seal, in a package clearly marked on the outside as "Confidential Materials Subject to Protective Order." See 49 CFR 1104.14. All pleadings and other documents so submitted shall be kept confidential by the Board and shall not be placed in the public docket in these Proceedings, except by order of the Board or of an administrative law judge or other officer in the exercise of authority lawfully delegated by the Board.

11. No Party may include Designated Material in any pleading, brief, discovery request or response, or other document submitted to any tribunal other than the Board in these Proceedings, unless: (a) the pleading or other document is submitted under seal in accordance with a protective order that requires the pleading or other document to be kept confidential by that tribunal and not be placed in the public docket in the proceeding; or (b) the pleading or other document is submitted in a sealed package clearly marked, "Confidential Materials Subject to Request for Protective Order," and is accompanied by a motion to that tribunal requesting issuance of a protective order that would require the pleading or other document be kept confidential and not be placed in the public docket in the proceeding, and requesting that, if the motion for protective order is not issued by that tribunal, the pleading or other document be returned to the filing Party.

12. No Party may present or otherwise use any Designated Material at a Board hearing in these Proceedings, unless that Party has previously submitted, under seal, all proposed exhibits and other documents containing or reflecting such Designated Material to the Board, to an administrative law judge, or to another officer to whom relevant authority has been lawfully delegated by the Board, and has accompanied such submission with a written request that the Board, administrative law judge, or other officer: (a) restrict attendance at the hearing during any discussion of such Designated Material; and (b) restrict access to any portion of the record or briefs reflecting discussion of such Designated Material in accordance with this Protective Order.

13. If any Party intends to use any Designated Material in the course of any deposition in these Proceedings, that Party shall so advise counsel for the Party producing the Designated Material, counsel for the deponent, and all other counsel attending the deposition. Attendance at any portion of the deposition at which any Designated Material is used or discussed shall be restricted to persons who may review that material under the terms of this Protective Order. All portions of deposition transcripts or exhibits that consist of, refer to, or otherwise disclose Designated Material shall be filed under seal and be otherwise handled as provided in paragraph 10 of this Protective Order.

14. To the extent that materials reflecting Confidential Information are produced by a Party in these Proceedings, and are held and/or used by the receiving person in compliance with paragraphs 1, 2, and 3 above, such production, disclosure, holding, and use of the materials and of the data that the materials contain are deemed essential for the disposition of this and any related proceedings and will not be deemed a violation of 49 U.S.C. § 11904, or any other relevant provision of the ICC Termination Act of 1995.

15. All Parties must comply with all of the provisions of this Protective Order unless the Board or an administrative law judge or other officer exercising authority lawfully delegated by the Board determines that good cause has been shown warranting suspension of any of the provisions herein.

16. Nothing in this Protective Order restricts the right of any Party to disclose voluntarily any

Confidential Information originated by that Party, or to disclose voluntarily any Confidential Documents originated by that Party, if such Confidential Information or Confidential Documents do not contain or reflect any Confidential Information originated by any other Party

17. Nothing in this Protective Order restricts the right of any Party to argue for disclosure or non-disclosure of Confidential Information or Confidential Documents in another proceeding. Nor does anything in this Protective Order restrict the right of any Party to utilize information or documents that are in the public domain.

Exhibit 1

UNDERTAKING--CONFIDENTIAL MATERIAL

I, _____ [printed name], have read the Protective Order served on _____, 2006, governing the production and use of Confidential Information and Confidential Documents in STB Finance Docket No. 34844, understand the same, and agree to be bound by its terms. I agree not to use or to permit the use of any Confidential Information or Confidential Documents obtained pursuant to that Protective Order, or to use or to permit the use of any methodologies or techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in STB Finance Docket No. 34844, any related proceedings before the Surface Transportation Board (Board), and/or any judicial review proceedings in connection with STB Finance Docket No. 34844 and/or with any related proceedings. I further agree not to disclose any Confidential Information, Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed Undertakings in the form hereof, and that, at the conclusion of this proceeding (including any proceeding on administrative review, judicial review, or remand), I will promptly destroy any documents containing or reflecting materials designated or stamped as "CONFIDENTIAL," other than file copies, kept by counsel who have executed this undertaking, of pleadings and other documents filed with the Board.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that the Parties or other parties producing Confidential Information or Confidential Documents shall be entitled to specific performance and injunctive and/or other equitable relief as a remedy for any such breach. I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking, but shall be in addition to all remedies available at law or equity.

Signed: _____

Date: _____

Exhibit 2

UNDERTAKING--HIGHLY CONFIDENTIAL MATERIAL

I, _____ [printed name], am outside [counsel] [consultant] for _____ [Party to Proceeding], for whom I am acting in this Proceeding. I have read the Protective Order served on _____, 2006, governing the production and use of Confidential

Information and Confidential Documents in STB Finance Docket No. 34844, understand the same, and agree to be bound by its terms. I agree not to use or to permit the use of any Confidential Information or Confidential Documents obtained pursuant to that Protective Order, or to use or to permit the use of any methodologies or techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in STB Finance Docket No. 34844, any related proceedings before the Surface Transportation Board (Board), or any judicial review proceedings in connection with STB Finance Docket No. 34844 and/or with any related proceedings. I further agree not to disclose any Confidential Information, Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed Highly Confidential Undertakings in the form hereof.

I also understand and agree, as a condition precedent to my receiving, reviewing, or using copies of any information or documents designated or stamped as "HIGHLY CONFIDENTIAL," that I will take all necessary steps to assure that said information or documents be kept on a confidential basis by any outside counsel or outside consultants working with me, that under no circumstances will I permit access to said materials or information by employees of my client or its subsidiaries, affiliates, or owners. At the conclusion of this proceeding (including any proceeding on administrative review, judicial review, or remand), I agree to promptly destroy any documents containing or reflecting information or documents designated or stamped as "HIGHLY CONFIDENTIAL," other than file copies, kept by outside counsel, of pleadings and other documents filed with the Board.

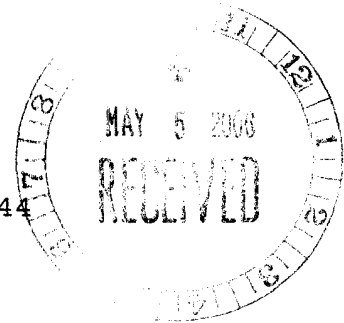
I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that the Parties or other parties producing Confidential Information or Confidential Documents shall be entitled to specific performance and injunctive and/or other equitable relief as a remedy for any such breach. I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking, but shall be in addition to all remedies available at law or equity.

Signed: _____

Dated: _____

BEFORE THE
SURFACE TRANSPORTATION BOARD

PYCO INDUSTRIES, INC. --)
FEEDER LINE DEVELOPMENT --) F.D. 34844
SOUTH PLAINS SWITCHING LTD.)



FEEDER LINE APPLICATION

EXHIBIT VOLUME
ONE

*** ONE ***

Exhibit A -- Maps (including area, all SAW, and
"Alternative Two")
Exhibit B -- NLV rail (Sneed Dec.)
Exhibit C -- GCV (Banks V.S.)
Exhibit D1 -- Blosser Appraisal (land)
Exhibit D2 -- Declaration of Matthew Crawford (land areas)

*** TWO ***

Exhibit E -- financial responsibility (Co-Bank)
Exhibit F -- WTL letter
Exhibit G -- BNSF/SAW contract
Exhibit H -- O.E. Floyd Declaration
Exhibit I -- Attebury letter
Exhibit J -- Compress/Compress consignee letters
Exhibit K -- Penny Newman Grain letter
Exhibit L -- HPBB Declaration
Exhibit M -- Additional shipper letters
Exhibit N -- Basis for crossing right compensation under
Alternative Two
Exhibit O -- Decision in F.D. 34802, served Jan. 26, 2006
Exhibit P -- Proposed discovery to SAW
Exhibit Q -- Proposed discovery to BNSF
Exhibit R -- Proposed protective order

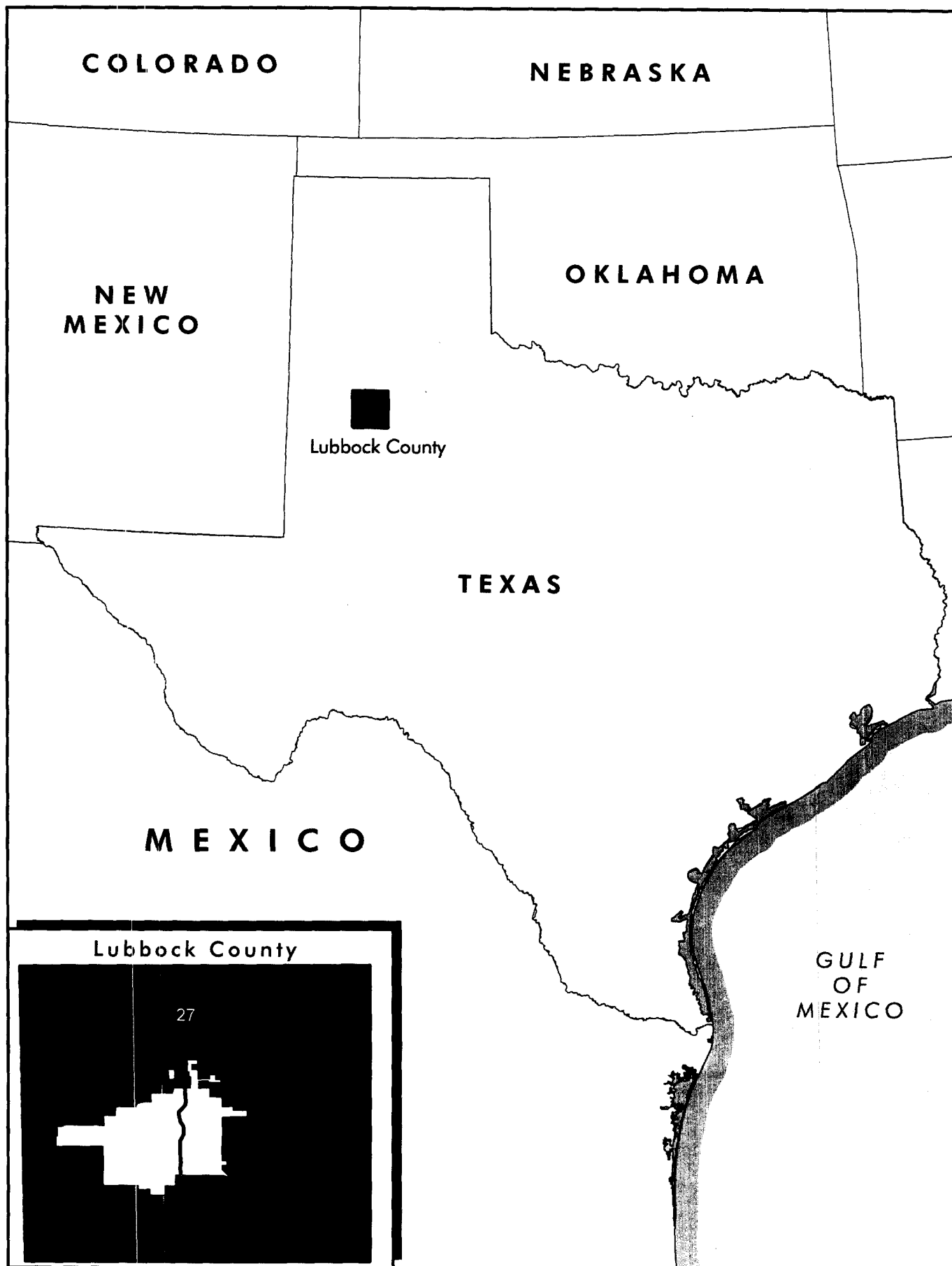
Charles H. Montange
for PYCO Industries, Inc.
426 NW 162d St.
Seattle, WA 98177
(206) 546-1936
fax: -3739

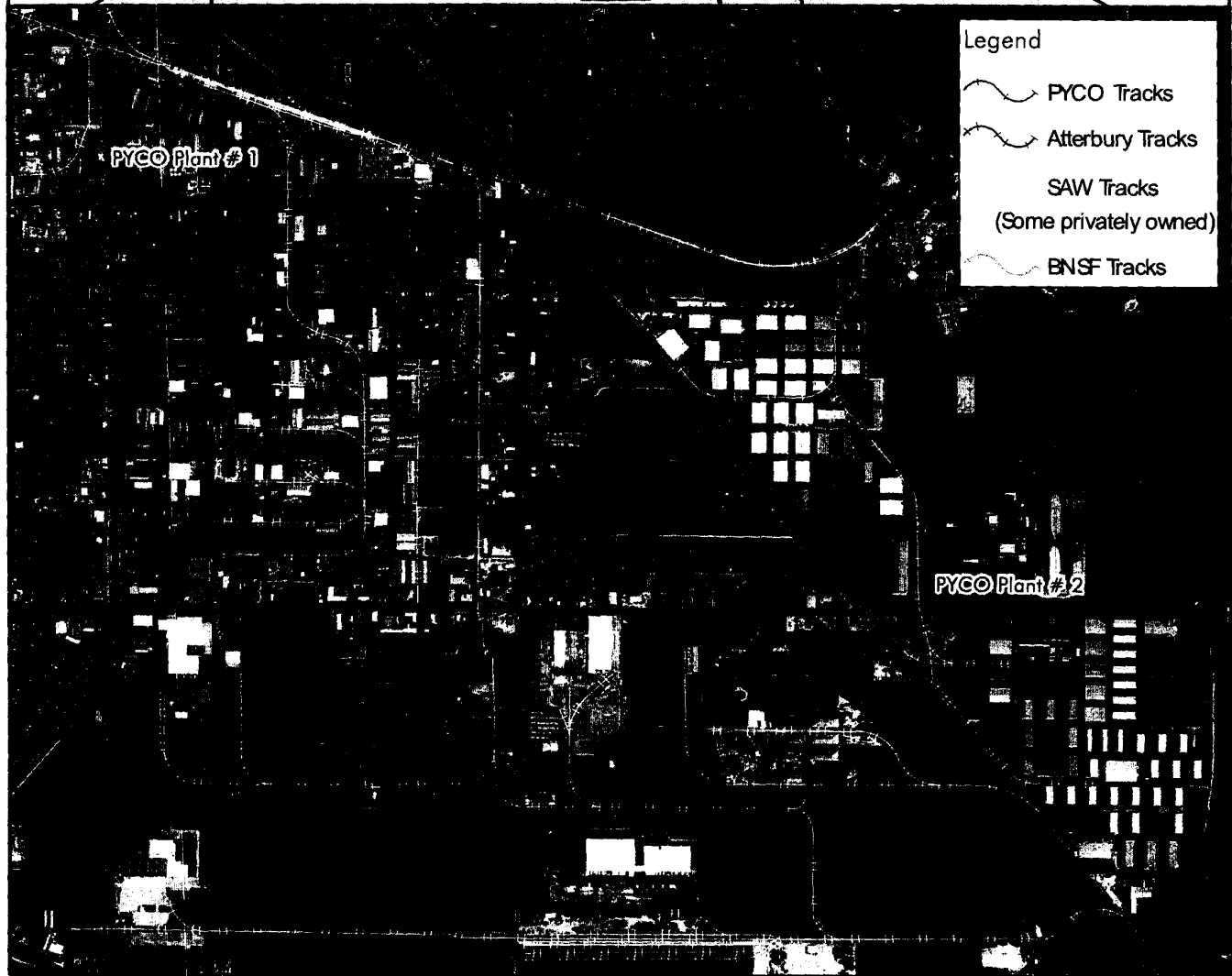
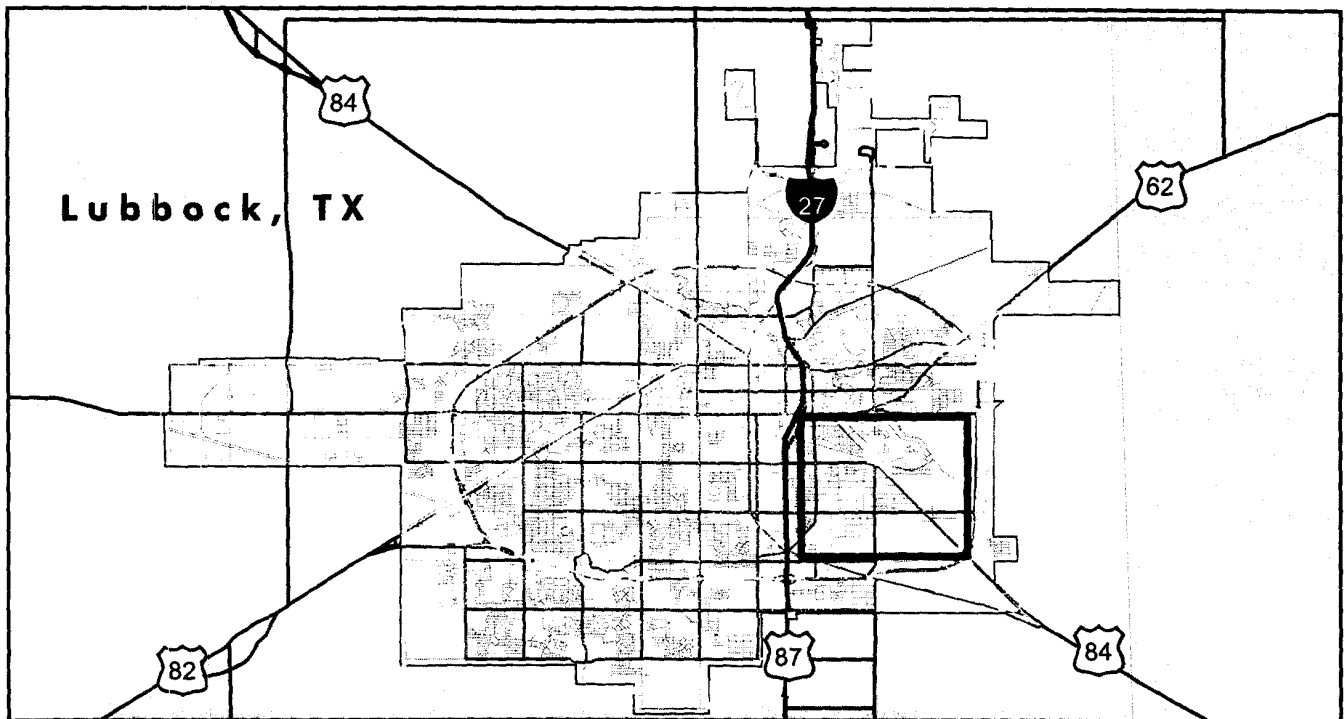
Of counsel:

Gary McLaren, Esq.
Phillips & McLaren
3305 66th St., Suite 1A
Lubbock, TX 79413
(806) 788-0609
for PYCO Industries, Inc.

for filing: 5 May 2006

A



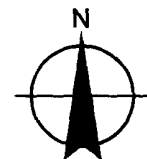


Locations of Involved Parties



Legend

-  PYCO Plants
-  Atterbury Grain
-  Farmer's COOP Compress
-  SAW Yard

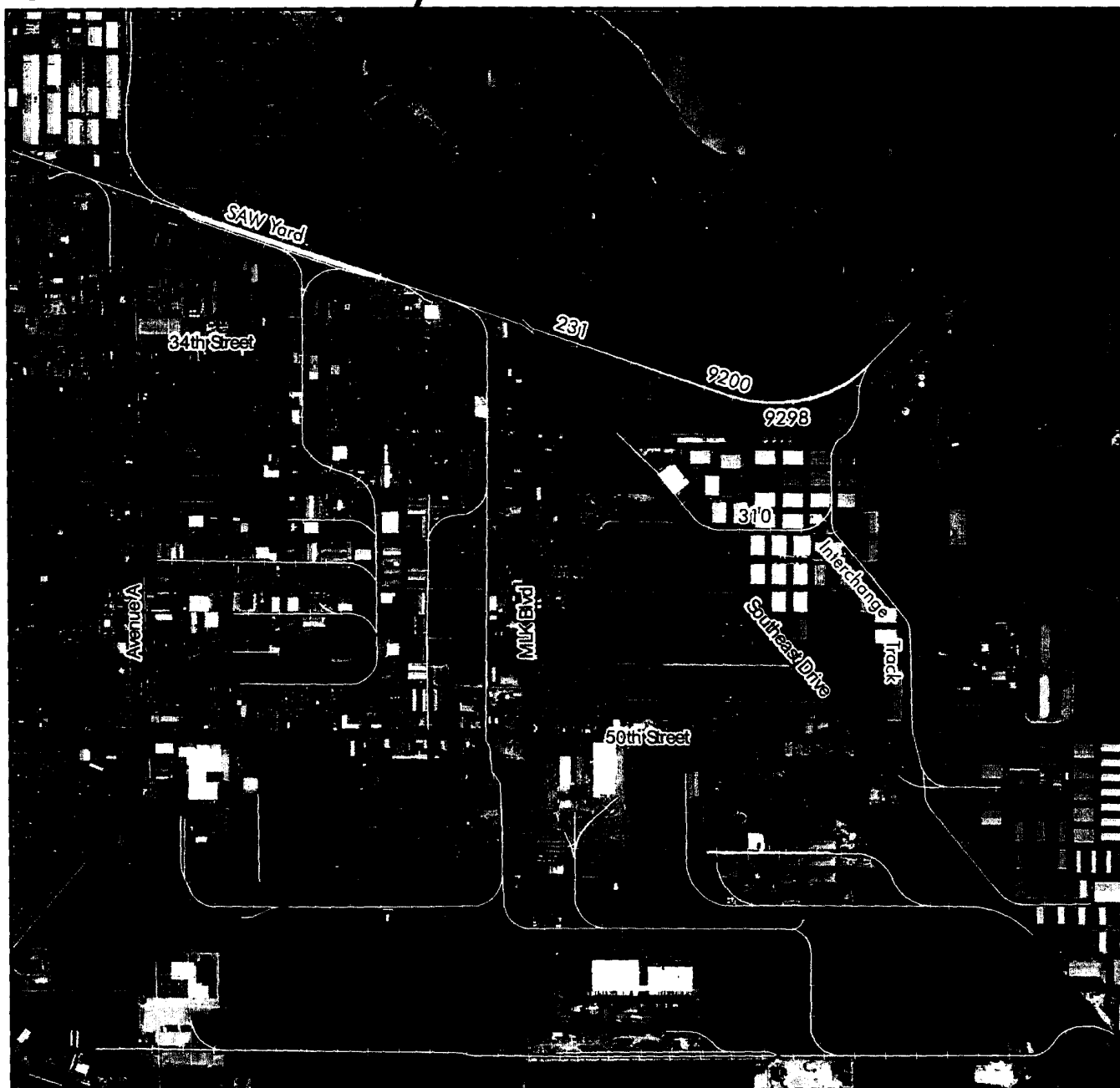


0 0.5 1 Miles

Source: Image is from the National Agriculture Image Program 2005.

Projection: Universal Transverse Mercator Zone 14 North; North American Datum 1983

SAW and Currently Known Areas of Track Removal

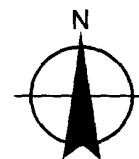


SAW Track (Some privately owned)

Existing Track

Removed Track

New Track



0 0.5 1 Miles

Source: Image is from the National Agriculture Image Program 2005.

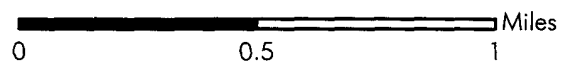
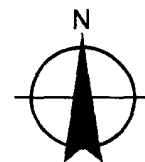
Projection: Universal Transverse Mercator Zone 14 North; North American Datum 1983

Alternative Two



Legend

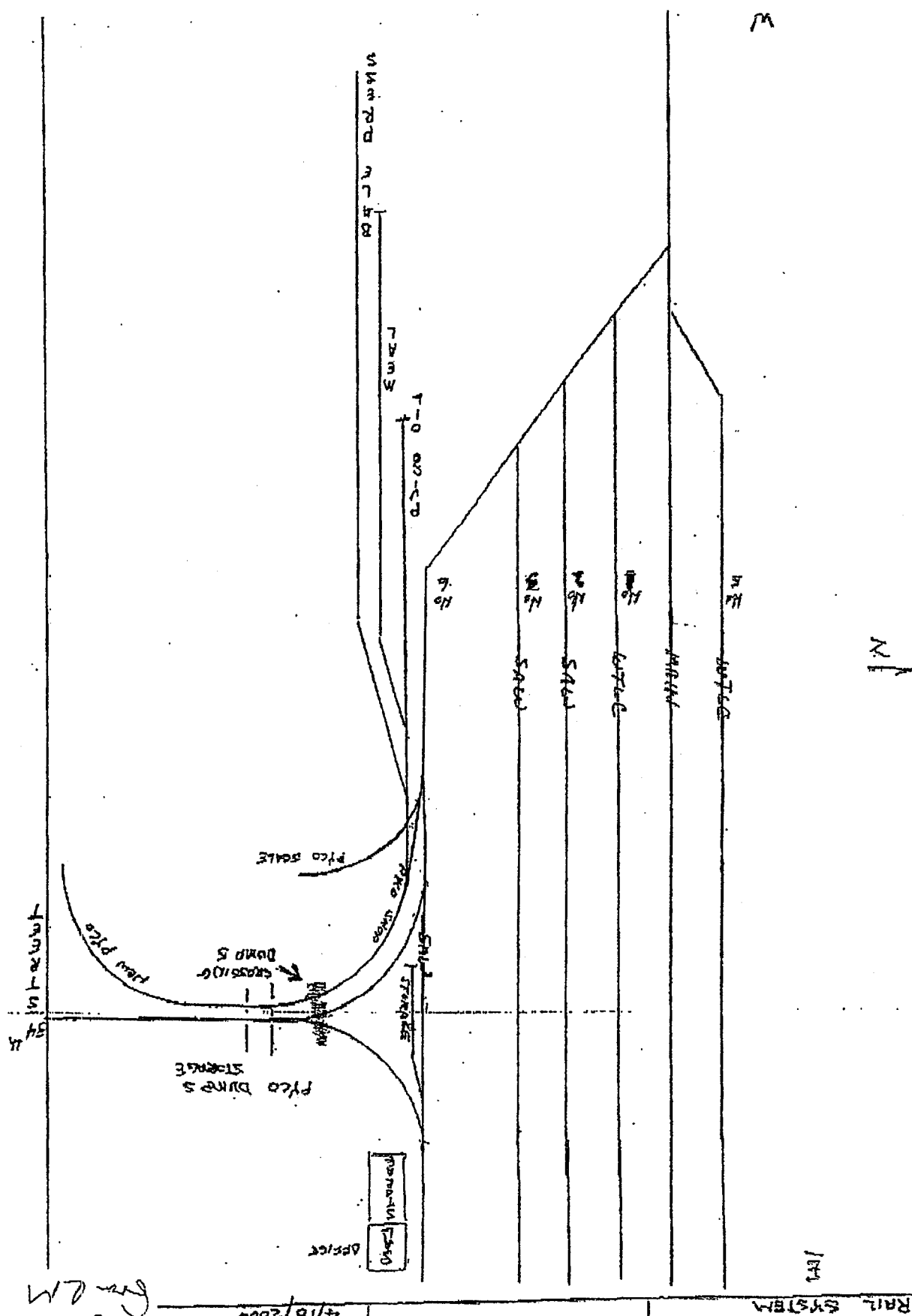
-  PYCO Tracks
-  BNSF Tracks
-  Atterbury Track
-  SAW Tracks: (Some privately owned)
-  Alternative Two Aquisition



Source: Image is from the National Agriculture Image Program 2005.

Projection: Universal Transverse Mercator Zone 14 North; North American Datum 1983

STAEDTLER®
No. 937 811E
Engineer's Computation Pad



To: Sean Carey
John Hoffman
from: DM

(FNU) 7443221

206 546 3739;

Pyro Industries

APR-18-2006(TUE) 14:45

SENT BY: CHARLES H MONTANGE;

PAGE 1 / 1

APR-19-06 2:20PM

B

BEFORE THE SURFACE TRANSPORTATION BOARD

PYCO INDUSTRIES, INC.

-- FEEDER LINE APPLICATION --

LINES OF SOUTH PLAINS SWITCHING, LLC,

Finance Dkt. No. 34844

DECLARATION OF

MONTEY SNEED

I, Montey Sneed, make this Declaration, pursuant to 28 U.S.C. § 1746, in support of the Feeder Line Application filed by PYCO Industries, Inc., in F.D. 34844.

1. I am a private railroad consultant. I have spent all my professional life in the railroad industry. In the 1970's, I was yard foreman in Lubbock, Texas, for the Fort Worth and Denver Railroad, predecessor to BNSF Railway and South Plains Switching, in respect to the same yard tracks at issue in this proceeding. I began my railroad career in 1970 as a track laborer employed by the Ft. Worth & Denver Railroad. I was promoted to Section foreman three months later and worked this position (at Channing, Stamford and Lubbock, Texas) until 1976. At that time I accepted an offer to work in sales, marketing and real estate working for the

Burlington Northern Railroad (Wichita Falls, Texas). I worked at this position until 1979. At that time I went to work for the Atchison, Topeka and Santa Fe Railway Company (ATSF) as track supervisor located in Lubbock, Texas until 1980. I then transferred to the operating department and became a locomotive engineer. I worked all over the Old Slaton Division, living in the Lubbock, Texas. In 1987 I accepted a buyout from the ATSF and looked for business opportunities to acquire an operating railroad. Because of my knowledge of the different departments within the ATSF in 1989 I purchased a branch line (Lubbock to Crosbyton, Texas) from the ATSF and operated the line for two years, but due to the lack of business I had to abandon the line and became familiar with railroad liquidation. For the last 19 years I have undertaken various railroad consulting jobs including track inspection, rehabilitations, construction, operation, and valuations. As a result of my long experience and expertise, I am familiar with all aspects of railroad salvage, including the grading and pricing of rail, track and other track material.

2. Because I reside within easy driving distance of Lubbock and am familiar with the yard track at issue in this case, I was requested by representatives of PYCO Industries, Inc., to inspect the trackage for purposes of determining the condition of the trackage generally, and the maximum upper bound for the salvage value.

3. The trackage is readily viewable from public streets and intersections. I inspected it on March 6 - 9, 2006. I quickly determined that neither BNSF nor SAW had performed any systematic maintenance program with respect to the trackage since I worked on it as yard foreman in the 1970's. The track was in a worn out condition then, and it remains so today. SAW appears to repair the track only when a derailment occurs; a typical deferred-maintenance approach. Much of the trackage is unballasted, or has not been ballasted since before I was yard foreman, and quite literally is in the dirt. SAW has constructed three new tracks (one short) presumably to receive rock, located immediately south of Floyd Trucking Company's trackage and to the west of Martin Luther King Boulevard. When completed, that will be the only rehabilitated trackage on the system. SAW has removed switches and trackage at no less than three locations: (a) between Avenues A and D south of 30th Street (old station); (b) a lead between 46th and 47th Streets west of Locust Street; and (c) a lead serving one of Mark Weaver's warehouses between 58th and 56th Streets, just east of Elm Street.

4. It is my understanding that PYCO Industries is making its feeder line application in the alternative. Alternative One is for the entire line. Alternative Two is for a subset of SAW lines sufficient to provide service to PYCO, Attebury Grain, and Farmers Co-op Compress.

5. For purposes of my calculation of net liquidation value (NLV), I have made a number of assumptions: I have assumed that SAW owns the trackage free and clear of any encumbrances. According to the STB order at Finance Docket 33753 (Sub.no.1), SAW originally acquired approximately 74,384 feet of track. As I have indicated, SAW has already salvaged out some of the track at no less than three locations. Based on an aerial survey map which I obtained from the City of Lubbock, I calculate that the removed track encompassed at least 1500 feet of what SAW originally obtained. I have therefore assumed, favorably to SAW, that SAW has 73,000 feet of track remaining. SAW is constructing new track south of the Floyd Trucking Company track. I have assumed that SAW owns this track, encompassing 5920 track feet.

6. I have calculated net liquidation value (NLV) for the track, ties, and other track material (OTM) using the methodology customarily employed in Surface Transportation Board abandonment proceedings. This methodology is straightforward: one determines the value of the material in the ground, by calculating the delivered price to a point of sale, and backing out removal costs and salvage company profit. As applied here I took the following steps: First, I inspected the track to determine the quality of the materials. Second, I called various steel mills (e.g. Chicago Heights, SMI and WA Silver) to get a price for reroll/scrap delivered to the mill. For the relay material I called the various relay material vendors (e.g. Progress Rail, Atlanta Track & Turnout, Railroad Materials Salvage). Last I called the railroads and trucking companies for a freight rate to the steel mills or relay material vendors. The spread sheet attached reflects the highest prices quoted by the mills and the relay vendors, and the cheapest freight rates quoted (here, rail). The actual cost to take out the material and the 25% profit retained by the salvager are based on my experience from salvage projects.

7. The track itself is 85 pound and 90 pound rail. To give the benefit of the doubt to SAW, I have assumed that the track is all 90 pound rail. Rail generally comes in three grades: scrap, re-roll, and re-lay. Although all the track (save the track currently being constructed by SAW) is worn-out, I have assumed (in a fashion beneficial to SAW) that it will qualify as re-reroll (which generally commands a substantially higher price). Railroad ties similarly come in three grades: scrap, landscape, and re-lay. Scrap ties generally cost \$2 or greater to remove and lawfully to dispose. Landscape ties command a higher value: generally about \$4. Re-lay ties command a substantially higher value. Based on my inspection and a statistical sampling, I concluded that the vast majority of the ties in these lines (other than the newly constructed track) are scrap, with the number of landscape or re-lay ties being negligible. I concluded that the ties would likely result in a negative valuation, and giving the benefit of the doubt to SAW, have treated the ties as a wash (i.e., positive value of the low number of landscape and re-lay ties offsets the disposal cost for the scrap ties). The SAW lines west of the BNSF mainline encompass a host of paved public crossings. I calculated the area in question to be 15,000 square feet (30 crossings, 50 feet long and 10 feet wide). The cost to restore is \$15/square foot. I deducted crossing repair cost, which lawfully the railroad must bear, to determine NLV.

8. On the above described basis, I calculate the NLV for SAW's 73,000 feet of trackage, remaining from its original acquisition, to be \$206,393.08, and the NLV for the newly constructed SAW trackage (approximately 5,920 track feet) to be \$74,511.36. The total is \$ 276,352.02. A spreadsheet setting forth the details of the calculation is annexed to this Declaration as Appendix I.

9. For the NLV estimate for Alternative Two, it is first necessary to specify what trackage is required to serve PYCO, Attebury, and Compress. SAW's attorney, Mr. McFarland, indicated to West Texas and Lubbock that the following trackage was in use to provide service to PYCO, Attebury and Compress:

Track 5, SAW yard,	2400 feet
Track 1, SAW yard,	2100 feet
Track 9200,	3900 feet
Track 9298,	4320 feet

Track lead to PYCO plant 2 to 50th St.,	6280 feet
Track 231 lead to 9200/9298	960 feet
Track 310 through Farmers 1	5600 feet
TOTAL:	25560 feet

In addition , a portion of the lead (which I will refer to as track 6), the top of the "wye", and the western branch of the "wye" is necessary for safe switching to Pyco Plant #1.

Approximatley 1100 feet of track is involved.

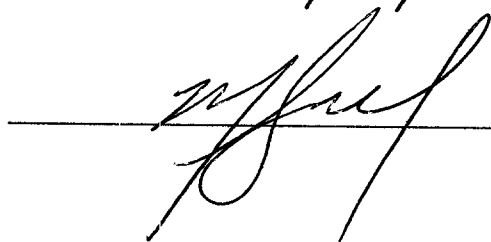
Moreover, PYCO would need to cross some SAW trackage west of the BNSF mainline in order to reach PYCO Plant No. 1. The trackage needed for this purpose, which would be shared with SAW, according to Mr. McFarland, is as follows:

Track 9298 to and through SAW yard	5000 feet
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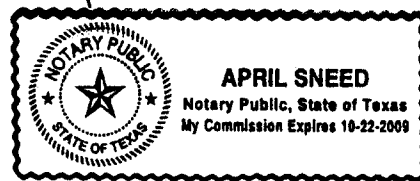
10. Consistent with the assumptions already discussed, I have calculated the NLV for the 26660 feet of trackage described in paragraph 9 to be \$143,328.87. A spreadsheet detailing the calculation is set forth in Appendix II.

11. It is my understanding that PYCO intends to propose a reimbursement amount for use of the 5000 feet of Track 9298 which Mr. McFarland for SAW indicates is necessary to and through the SAW yard. I have calculated the NLV for that 5000 feet of track, under the assumptions already discussed, to be \$26,973.54. A spreadsheet detailing the calculation is set forth in Appendix III. Crossing the SAW yard using Track 9298 will also require the use of 10 switches. Based on my experience, the maintenance cost of a switch is \$120.00/year to clean out the points, gauge rods, oil and adjust.

Pursuant to 28 U.S.C. § 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 3/23/06


Wilbarger County, Texas
April Sneed 3-23-06



□

Appendix I

Appendix I
Alternative # 1 (15.47 track miles)

	Mile Post	Mile Post	Distance	Net Ton	Price per Ton	Total
Rail Relay 90	0.00	1.12	1.12	177.41	420.00	\$74,511.36
Relay OTM 90	0.00	1.64	1.64	35.48	320.00	\$11,354.11
Reroll 90	0.00	13.83	13.83	2190.67	285.00	\$624,341.52
Scrap OTM			14.95	438.13	220.00	\$96,389.57
Ties 0	0	0	0	0.00	per tie	\$0.00
Takeup Cost	-\$40.00	per ton		2841.70	tons	-\$113,667.84
Freight by train		-\$35.00	per ton	2841.70	tons	-\$99,459.36
Crossing removal & repair		-\$15.00	per sq. ft.	15,000	square ft.	-\$225,000.00
Salvagers Profit				-25.00%		-\$92,117.34
					NLV	\$276,352.02

Appendix II

Rail Reroll	Mile Post	Mile Post	Distance	Net Ton	Price per Ton	Total
90	0.00	5.05	5.05	799.60	285.00	\$227,886.91
Scrap OTM						
90	0.00	5.05	4.84	159.92	220.00	\$35,182.54
Ties	0	0	0	0.00	per tie	\$0.00
Takeup Cost	-\$40.00	per ton		959.52	tons	-\$38,380.95
Freight by train		-\$35.00	per ton	959.52	tons	-\$33,583.33
Salvagers	Profit			-25.00%		-\$47,776.29
					NLV	\$143,328.87

Appendix III

Appendix III
Alternative #2 (5,000 Track feet East of Shared Trackage)

Rail	Mile Post	Mile Post	Distance	Net	Price per	Total
Reroll				Ton	Ton	
90	0.00	0.95	0.95	150.48	285.00	\$42,886.80
Scrap OTM						
90	0.00	0.95	0.95	30.10	220.00	\$6,621.12
Ties	0	0	0	0.00	per tie	\$0.00
Takeup Cost	-\$40.00	per ton		180.58	tons	-\$7,223.04
Freight by train		-\$35.00	per ton	180.58	tons	-\$6,320.16
Salvagers Profit				-25.00%		-\$8,991.18
					NLV	\$26,973.54

C

**Before The Surface Transportation Board
STB Finance Docket No. 34844
PYCO Industries, Inc., et al. – Feeder Line Application --
Lines of South Plains Switching, Ltd. Co.**

**Verified Statement
of
Charles H. Banks**

Before The Surface Transportation Board
STB Finance Docket No. 34844
PYCO Industries, Inc., et al. – Feeder Line Application --
Lines of South Plains Switching, Ltd. Co.

Verified Statement
of
Charles H. Banks

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PYCO Industries, Inc., et al. – Feeder Line Application --
Lines of South Plains Switching, Ltd. Co.**

**Verified Statement
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Charles H. Banks**

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Lines of South Plains Switching

Verified Statement
of
Charles H. Banks

Qualifications

I am Charles H. Banks, President of R.L. Banks & Associates, Inc. (RLBA), railroad transportation consultants, engineers, economists and planners, located at 1717 K Street, NW, Washington, DC 20036. I have prepared this Verified Statement in support of a feeder line application I understand PYCO Industries, Inc. (PYCO) is making to the Surface Transportation Board (STB). My qualifications are detailed in Attachment A. I appear in this proceeding on behalf of PYCO Industries, Inc.

Summary And Scope Of Testimony

This document presents, explains and supports computational results derived in connection with economic and financial analyses involving the going-concern value (GCV) and viability of providing rail freight service to certain railroad customers who were, or currently are, customers of South Plains Switching, Ltd. Co. (SAW).

More specifically, RLBA was asked by PYCO to review STB precedents in similar situations and to apply such precedents as it deemed appropriate, which my staff and I have endeavored to perform, including but not limited to three independent but closely related economic analyses:

- a *Limited Customer Scenario*, in which RLBA estimated the GCV of an efficient and economical short line railroad freight enterprise providing switching services only to PYCO Industries, Inc., Attebury and Compress;
- a *Remaining Customer Scenario*, in which RLBA examined the viability of and estimated the GCV of a railroad freight enterprise providing switching services to all customers once served by the South Plains Switching, Ltd. Co. (SAW) other than PYCO Industries, Inc., Attebury and Compress and
- an *All Customer Scenario*, in which RLBA estimated the GCV of an efficient and economical short line railroad freight enterprise to serve all the customers once or still served by SAW.

PYCO Industries, Inc. currently receives rail service from the West Texas and Lubbock Railway Company (WTLC) under an alternative service arrangement authorized by the Surface Transportation Board (STB) in Finance Docket No 34802, served January 26, 2006. Under this arrangement, WTLC performs all services required by PYCO to service its two plants in Lubbock, Texas. Were this arrangement to continue on a permanent basis under a feeder line application and be expanded to encompass service also to/from Compress and Attebury, I compute the "preliminary GCV" of railroad freight business generated by PYCO, Attebury and Compress, the above-described *Limited Customer Scenario*, to be no greater than \$1,616,263.

I have investigated the viability of a railroad freight enterprise, such as SAW, to operate in a coordinated but independent fashion from the arrangement hypothesized in the *Limited Customer Scenario*, providing service to all remaining customers that today are served by SAW. I conclude that that such an independently operated service, as set forth in the *Remaining Customer Scenario* can survive as a stand alone, independent, for-profit railroad, freight service enterprise. Specifically, I find the "preliminary GCV" of such an enterprise to be no greater than \$2,138,780.

Finally, I compute the "preliminary GCV" for the entirety of SAW, which I call the *All Customer Scenario*, to be no greater than \$3,755,044.

The three going-concern valuations advanced above are preliminary findings insofar as they do not reflect either rehabilitation expenditures that must be made to offset deferred maintenance which characterizes the condition of the railroad physical plant owned by SAW or site specific program and routine maintenance of way expenses, to the extent that are not already reflected in the STB's Uniform Rail Costing System (URCS).

If incremental site specific maintenance of way costs are taken into account, as they should be, GCV in the *Limited Customer Scenario* declines from \$1,616,263 to \$1,405,864. If rehabilitation costs also are taken into account, as they should be, NLV declines to \$220,064 and (\$747,936), depending upon whether 90 pound or 112/115 pound rail is installed. For reasons stated herein, my staff and I believe that use of 112/115 pound rail is by far the more sensible and economical course of action.

The addition of rehabilitation and incremental site specific maintenance of way costs have the effect of reducing the GCV in the *Remaining Customer Scenario* from \$2,138,780 to \$1,768,780 if only incremental, site specific maintenance of way costs are recognized or to \$1,278,780 and \$878,780 if rehabilitation is initiated using 90 pound and 112/115 pound rail, respectively.

Similarly, the addition of rehabilitation and incremental site specific maintenance of way costs have the effect of reducing the going concern value in the *All Customer Scenario* from \$3,750,305 to \$3,174,644 if only incremental, site specific maintenance of way costs are recognized or to \$1,498,844 and \$130,744 if rehabilitation is initiated using 90 pound and 112/115 pound rail, respectively. As in the *Limited Customer Scenario*, my staff and I believe that site-specific maintenance and rehabilitation involving the installation of 112/115 pound rail, must be taken into account in computing a proper GCV.

In summary, then the GCVs I compute are:

<i>Limited Customer Scenario</i>	(\$747,936)
<i>Remaining Customer Scenario</i>	878,780 and
<i>All Customer Scenario</i>	130,744.

The three scenarios described above are identical from a process perspective, all requiring a capitalization or discounting of estimated free cash flows.

There are essentially five, primary components in the development of the GCV and viability determination analyses set forth in this Verified Statement:

1. the traffic volume, as measured in carloads, that can be expected in the foreseeable future to be realized in connection with each scenario were ascertained. To the extent possible, I have built up carload estimates customer-by-customer to try to minimize the risk of introducing errors. Historical variations that could not be easily explained away and discounted were averaged;
2. freight operating revenues appropriate to forecasted carloads were determined. The product of the number of carloads times the revenue per carload resulted in gross railroad revenues;
3. freight operating expenses were then calculated by estimating the resources that would be consumed by a rail freight operator in order to deliver the level of service required to meet customer demand and multiplying each of those resources by appropriate unit costs. A number of steps are necessary to estimate operating expenses;
4. estimated cash flows were determined to recognize discrete cash-generating capabilities of the scenarios valued, by subtracting operating expenses from freight operating revenues and then adjusting the difference to recognize the need to invest regularly in plant and equipment, even though such amounts need not be spent each and every year and
5. going-concern values were established by discounting estimated cash flows by an appropriate discount rate.

"Preliminary Going-Concern Value" - *Limited Customer Scenario*

To repeat what was outlined above, the following GCV attempts to capture the value I believe is appropriate to associate with the provision of switching services by an efficient and economical short line railroad freight enterprise serving only PYCO Industries, Inc., Attebury and Compress.

This section of my Verified Statement comprises five parts:

1. Traffic Volume and Shipment Characteristics;
2. Freight Operating Revenues;
3. Freight Operating Expenses;

4. Estimated Cash Flows and
5. Derivation of the Going-Concern Value.

Traffic Volume and Shipment Characteristics

Based on the best information available to me, as shown in Table 1, between them, PYCO, Compress and Attebury shipped approximately 7,688 carloads during calendar year 2005. Of that volume, the vast majority, approximately 6,233 carloads were originated or terminated by PYCO or transferred between the two plants that it owns which are served by SAW. Specifically, PYCO originated an estimated 5,879 cars of cotton linters, cotton meal, cotton seed and cotton seed oil, which moved in box cars, covered hoppers, modified gondolas (seed cars) and tank cars, respectively. PYCO also terminated approximately 218 cars of cotton seed oil, which were delivered in tank cars. Finally, 136 tank cars of cottonseed oil were transferred from PYCO Plant 2 to PYCO Plant 1. Compress originated approximately 900 cars of cotton during the same period while Attebury originated approximately 495 cars of grain in approximately seven unit trains of approximately 70 cars per train. Table 1 arrays typical shipment characteristics based upon data provided by PYCO and BNSF.

Table 1

Shipment Characteristics
Limited Customer Scenario

<u>Car Type</u>	<u>Carloads</u>	<u>Frequency</u>	<u>Cars Per Day</u>
<u>PYCO</u>			
Box cars	526	Annual	2
Covered hoppers	384	Annual	1
Gondolas (seed cars)	3,648	Annual	14
Tank cars	<u>1,675</u>	Annual	<u>6</u>
Subtotal: PYCO	6,233		23
<u>Compress</u>			
Box cars	<u>900</u>	Annual	<u>3</u>
Subtotal: Plus Compress	7,133		26
<u>Attebury</u>			<u>Cars Per Movement</u>
Covered hoppers	<u>495</u>	7 trains per year	70
Grand Total: All three	7,688		

Note: Numbers may not add due to rounding.

Sources: PYCO and BNSF.

Freight Operating Revenues

Freight operating revenues were estimated by multiplying the estimated number of annual carloads generated by the three railroad customers in each scenario by the revenue paid to SAW by BNSF. In the case of PYCO and Compress, estimated freight revenues of \$1,018,022 were calculated by multiplying the number total of carloads attributed to those customers, 7,133 carloads, times the revenue per car of \$142.72. The source of the first number is the second subtotal on Table 1 while the source of the average revenue earned was confirmed with PYCO as a result of its arrangements with WTLC. It should

be noted that SAW assessed special switch charges on PYCO when it requested extra service, for example, an extra switch on a given day. Extra service has been provided by WTLC on some Saturdays due to the backlog which developed prior to the commencement of feeder line service. However, because RLBA believes that such service would not have been necessary had SAW provided adequate service historically, no special charges for such services are appropriate, nor reflected in the GCVs calculated herein.

Attebury generated estimated railroad freight revenues of approximately \$22,607 when the 495 carloads attributed to Attebury on Table 1 were multiplied by \$45.67. The source of that average revenue per carload is *Agreement For Sale Of Certain Assets, Rights And Obligations of the Burlington Northern and Santa Fe Railway Company To South Plains Switching, Ltd. Company*.

Combined, the three railroad customers generated approximately \$1,040,629 in annual revenues.

Freight Operating Expenses

There are six elements that contribute to the derivation of estimated operating expenses. They are:

1. Prospective Rail Service Plan to PYCO, Compress and Attebury;
2. Tare Weights of Freight Cars;
3. Lading Weights of Shipments Inside Freight Cars;
4. Empty to Loaded Miles Ratio;
5. Preliminary, Variable Movement Costs and
6. Index-Adjusted, Variable Movement Costs.

The foundation element is the railroad freight service plan. It is discussed first below, followed by consideration of the other five contributing elements.

Prospective Rail Service Plan to PYCO, Compress and Attebury

An indication of a potential pattern of post-decision service may be gained by examining current service provided by WTLC under the guidelines established by SAW and WTLC as memorialized on February 1, 2006 and modified by the STB. WTLC provides service to PYCO on a daily basis Monday through Friday, including holidays, or 22 days per month year-round, and weekends, as needed. Should similar guidelines be established to govern SAW and the New Railroad (NEW), RLBA believes that NEW could still efficiently conduct its business. RLBA projects that representative post-decision service could be as follows:

At 7:00 a.m., the NEW crew would report for duty. Any cars on hand destined for BNSF would be switched from the yard into an outbound train. (This would be relatively rare, as generally all outbound cars would be delivered to BNSF at the end of the day shift.) Regardless of whether or not there were outbound cars to be delivered to BNSF, when ready, the NEW crew would pull southeast out of the NEW yard onto the BNSF main line and then shove northwest into the BNSF yard. The crew then would pull outbound cars from the BNSF onto the BNSF main track and then shove them into the NEW yard.

The NEW crew would perform the switching necessary to prepare inbound cars to be delivered to PYCO 1. At the same time, cars to be delivered to PYCO 2, Compress and Attebury (all located on the east side of the BNSF main track) would be separated from other inbound cars. Coordinating with PYCO Plant 1 personnel, the NEW crew first would pull outbound cars and then place inbound cars at PYCO 1. While switching within PYCO 1 would still be performed by PYCO personnel, NEW would work closely with PYCO in terms of the timing and makeup of the delivery.

The NEW crew's next activity would depend upon: 1) whether any temporal restrictions remain in place concerning rail service to industries east of the BNSF main line and 2) then existing or anticipated BNSF traffic would hinder the NEW crew from crossing to the east side of BNSF. The NEW crew could couple onto cars destined to east side industries and depart immediately if the situation permitted or could conduct switching to line up those cars as well as cars pulled from PYCO 1, so as to facilitate subsequent delivery. There is no reason to think that a NEW crew would not be able to begin to traverse the BNSF main line around 10:00 a.m. and begin to work east of the main line until approximately 2:00 p.m., in the same manner as WTLC works in coordination with SAW and BNSF today.

Once across the BNSF main line, the NEW crew would serve PYCO 2, Compress and Attebury. Upon completion of its switching duties, the NEW crew would return to the NEW yard. At this time, PYCO Plant 1 could be switched again, if needed. Regardless, the crew's last activity would be to gather all outbound cars from all industries, deliver them to BNSF and return the locomotive(s) to the NEW yard or

other designated track. The *Limited Customer Scenario* GCV reflects the assumption that the NEW crew would return across the BNSF line at approximately 2:00 p.m. and work until approximately 7:00 p.m. daily, as needed in the same manner as WTLC works in coordination with SAW and BNSF today.

Attebury Grain ships outbound grain in multi-car blocks and/or unit trains. These blocks of cars would receive special handling by NEW and would be moved directly between BNSF and Attebury with no intermediate handling in NEW's yard. When a block of inbound empty cars is made available by BNSF at its Lubbock Yard, NEW would send a crew and two locomotives to pick up those cars and take them directly to Attebury for delivery. Attebury's own locomotive and employees would move the cars as necessary for loading. When complete, NEW's crew would deliver the outbound, loaded cars to BNSF in one block, or in smaller cuts if deemed mutually beneficial by NEW and BNSF.

The feasibility of the above-described operating pattern was verified through the course of a field inspection of PYCO facilities and, to the extent feasible, of SAW facilities by Walter H. Schuchmann, Director of Rail Operations at RLBA, on March 21 and 22, 2006. The inspection by Mr. Schuchmann was conducted under my direction and supervision. Mr. Schuchmann spent more than a decade in management positions at the Operating Departments of Norfolk Southern and Norfolk and Western Railway before joining RLBA more than a decade ago.

Finally, since PYCO has been "catching-up" due to the service problems that resulted in the alternative service arrangement, the typical rail service hypothesized in order to compute the GCV of PYCO's business by an efficient and economical short line railroad excluded the volumes and switching activities associated with the "catch-up" and, therefore, only represented volumes and activities necessary to meet projected demand going forward. As shown in Table 1, the hypothesized average daily PYCO movement was a train consisting of 23 cars. Carloads generated by Compress would average another three cars per day.

Tare Weights of Freight Cars

The second step in my operating cost derivation was the development of the tare weight component. PYCO utilizes several car-types. Each car-type possesses different characteristics in transporting to its customers the commodities processed at PYCO's plants. For example, cotton seed oil is transported in tank cars, linters are transported in box cars, meal or hulls move in covered hoppers and cotton seed moves in seed cars which were formerly wood chip gondolas that have been modified. Compress also uses

box cars. Table 2 arrays the computation of tare weights associated with typical PYCO and Compress movements.

Table 2			
Computation of Tare Weights <i>Limited Customer Scenario</i>			
PYCO and Compress			
<u>Car Type</u>	<u>Carloads Per Day</u>	<u>Tare Weight (Tons)</u> <u>Single Car</u>	<u>Total</u>
<u>PYCO</u>			
Box cars	2	32.1	64.2
Covered hoppers	1	33.2	33.2
Gondolas (seed cars)	14	37.0	518.0
Tank cars	6	31.1	186.6
<u>Compress</u>			
Box cars	<u>3</u>		<u>96.3</u>
Totals	26		893.3
Tare weight per car			34.6
Source: Table 1 and PYCO.			

The tare weights shown in Table 2, were computed from data provided by PYCO as to the 5,879 carloads originated by PYCO in 2005 by car-type and commodity. It was assumed the Compress's shipments would possess tare weights similar to PYCO's since it is also a shipper of cotton in boxcars. Multiplication of the car type tare weights involved in hauling PYCO and Compress loads, as described above, times the average number of carloads tendered daily by PYCO and Compress, yielded a weighted average tare weight per car of 34.6 tons for cars in PYCO and Compress service, as shown in Table 2.

Lading Weights of Shipments Inside Freight Cars

The third step in my operating cost derivation was the development of the lading weight of the loads within the freight cars that constituted the average day on the hypothesized freight train. Table 3 arrays the computation of lading weights of the various car types employed in hauling PYCO and Compress loads. The lading weights shown in Table 3 were computed from movement data supplied by PYCO as was described in connection with the computation of tare weights. Again, I assumed that Compress's shipments possessed characteristics similar to PYCO's. The resulting, weighted average lading weight per car servicing PYCO and Compress traffic was 87.8 tons.

Table 3

Computation of Lading Weights *Limited Customer Scenario*

PYCO and Compress

<u>Car Type</u>	<u>Carloads Per Day</u>	<u>Lading Weight (Tons)</u>	
		<u>Single Car</u>	<u>Total</u>
<u>PYCO</u>			
Box cars	2	63.3	126.6
Covered hoppers	1	91.8	91.8
Gondolas (seed cars)	14	93.9	1,314.6
Tank cars	6	93.1	558.6
<u>Compress</u>			
Box cars	<u>3</u>	63.3	<u>189.9</u>
Totals	26		2,281.5
Lading weight per car			87.8

Sources: Table1 and PYCO.

Empty to Loaded Miles Ratio

The fourth step in my operating cost derivation was the development of the empty to loaded miles ratio component. The computation of the empty to loaded miles ratio associated with PYCO and Compress movements is arrayed in Table 4. The tank and seed cars are leased by PYCO and utilized only in PYCO service and, therefore, were assigned an empty/loaded miles ratio of 2. Box cars and covered hoppers are supplied by BNSF through WTLC (SAW historically) and were assigned the same empty/loaded miles ratio as set forth in the 2004 release of URCS data associated with that car type. The 2004 data is the most recent released by the STB. The weighed average empty/loaded miles ratio computed in connection with all PYCO and Compress movements was 1.97647.

Table 4				
Computation of Empty/Loaded Miles Ratio				
<i>Limited Customer Scenario</i>				
PYCO and Compress				
			<u>Empty/Loaded Ratios</u>	
<u>Car Type</u>	<u>Data Source:</u>	<u>Carloads Per Day</u>	<u>Per Car</u>	<u>Total</u>
<u>PYCO</u>				
Box cars	URCS	2	1.88494	3.76988
Covered hoppers	URCS	1	1.96346	1.96346
Gondolas (seed cars)	PYCO	14	2.00000	28.00000
Tank cars	PYCO	6	2.00000	12.00000
<u>Compress</u>				
Box cars	URCS	<u>3</u>	1.88494	<u>5.65482</u>
Totals		26		51.38816
Empty/loaded ratio per car				1.97647
Sources: Table 1, PYCO and URCS.				

Preliminary, Variable Movement Costs

The fifth step in my operating cost derivation was the development of preliminary, variable movement costs. The variable operating cost of movements from and to PYCO, Atttebury and Compress were computed by employing the movement characteristics discussed above in the URCS movement costing program. The URCS program computed the following variable operating costs in connection with service to those three customers. They were:

- Gross ton-mile costs;
- Locomotive unit-mile costs;
- Clerical costs;
- Crew costs;
- Train-mile costs and
- Switching costs.

Table 5a arrays the results produced by URCS as to the variable operating cost of movements from and to PYCO and Compress. The costs arrayed in Table 5a exclude the variable depreciation, rent and lease costs and return on investment costs that are typically included in an URCS computations and fixed costs that SAW might incur. This is a conservative approach since it attributes the least cost to SAW of providing service to PYCO, Attebury and Compress, yielding a higher cash flow on which to calculate GCV. This methodology of computing costs in connection with serving PYCO, Compress and Attebury provides the most favorable means to SAW of compensating it for the cash flow that it would lose from PYCO obtaining the feeder line application to serve the rail customers. The multiplication of estimated service units times URCS unit costs associated with each appropriate unit cost element (cost driver) results in a total cost associated with each cost driver which, when summed, yields an estimated total variable cost of \$2,592.88 per train serving PYCO and Compress.

Table 5a

**Summary of Variable Movement Costs Per Train
Limited Customer Scenario**

PYCO and Compress

<u>Unit Cost Element (cost driver)</u>	<u>Service Units</u>	<u>Unit Cost</u>	<u>Total Cost</u>
Gross ton-mile costs	40,608	\$.0015	\$59.00
Locomotive unit-mile costs	19	2.8118	53.70
Clerical costs (originated or terminated carloads)	26	10.9386	284.40
Other costs (carloads handled)	26	3.3652	87.49
Crew costs (train-miles)	18	7.7975	136.48
Train-mile costs	18	.4621	8.09
Switching costs (switch engine minutes)	470.8174	4.1709	<u>1,963.72</u>
Total variable costs excluding loss and damage			\$2,592.88

Sources: Tables 1, 2, 3 and 4 and URCS.

Car-mile and car-day costs were excluded from the above cost computations since PYCO leases the tank cars and seed cars while the railroad-supplied equipment, box cars and covered hoppers, are supplied to WTLC (and SAW historically) free of car hire charges by BNSF for the first 96 hours, in accordance with the page 21 of an undated document entitled *Agreement For Sale Of Certain Assets, Rights And Obligations of the Burlington Northern and Santa Fe Railway Company To South Plains Switching, Ltd. Company*.

Similar to Table 5a, Table 5b arrays the results produced by URCS as to the variable operating cost of movements from Attebury. The costs arrayed in Table 5b also exclude the variable depreciation, rent and lease costs and return on investment costs that are typically included in URCS computations. The unit costs employed in Table 5b are not identical to those employed in Table 5a. Likewise, estimated service units associated with serving Attebury were multiplied by URCS unit costs associated with each appropriate unit cost element (cost driver) to again result in a total cost associated with each cost driver which, when summed, yielded an estimated total variable cost of \$2,935.78 per train serving Attebury. The estimated variable cost of a train serving

Attebury was more expensive than the estimated cost of a train serving PYCO and Compress because shipments from Attebury contain more cars than those from PYCO and Compress and, therefore, consume more resources.

Since no data on specific characteristics of Attebury's shipments was available, I employed information contained in URCS appropriate to railroad-owned covered hoppers as to loading and empty-loaded ratio data. Lading weight was computed as equal to originating shipments of field crops as contained in Freight Commodity Statistics, Annual 2004, published by the Association of American Railroads (AAR).

Table 5b

Summary of Variable Movement Costs Per Train
Limited Customer Scenario

Attebury			
<u>Unit Cost Element (cost driver)</u>	<u>Service Units</u>	<u>Unit Cost</u>	<u>Total Cost</u>
Gross ton-mile costs	101,841	\$0.0015	\$147.96
Locomotive unit-mile costs	22	2.8118	62.40
Clerical costs (originated or terminated carloads)	70	8.2430	577.01
Other costs (carloads handled)	70	3.3652	235.56
Crew costs (train-miles)	18	7.7975	137.79
Train-mile costs	18	0.4621	8.17
Switching costs (switch engine minutes)	423.627	4.1709	<u>1,766.89</u>
Total variable costs excluding loss and damage			\$2,935.78

Sources: Tables 1, 2, 3 and 4; URCS and Freight Commodity Statistics, Annual 2004.

Index-Adjusted, Variable Movement Costs

The sixth step in my operating cost derivation was the adjustment of preliminary, variable movement costs to more current cost levels than are reflected in the STB's URCS. Specifically, costs were indexed from 2004 to the first quarter of 2006, the latest available, by applying index values contained in the AAR Railroad Cost Indexes (RCR), as of March 2006 for the Western region, published by the Association of American Railroads and the

Producer Price Index Industrial Commodities, Less Fuels, published by the Bureau of Labor Statistics, U.S. Department of Labor. Index values were weighted by the external weighting factors shown in the RCR. Table 6 arrays the computation of the cost index adjustment.

Table 6					
Calculation of Adjusted Cost Index Value Limited Customer Scenario					
Cost Element	Weight	2004		First Quarter 2006	
		Value	Weighted	Value	Weighted
Wage rates and supplements	49.2%	362.2	178.2	383.7	188.8
Fuel	17.2%	355.1	61.1	524.4	90.2
Materials and Supplies	5.9%	244.2	14.4	282.1	16.6
Other	<u>27.7%</u>	151.5	<u>42.0</u>	163.2	<u>45.2</u>
Totals	100.0%		295.7		340.8
Index Value 1Q 2006 v. 2004				1.153	
Sources: AAR Railroad Cost Indexes (RCR), March 2006 for the Western Region, Association of American Railroads and Producer Price Index Industrial Commodities Less Fuels, Bureau of Labor Statistics, U.S. Department of Labor.					

Derivation Of "Preliminary Going-Concern Value" - *Limited Customer Scenario*

The "preliminary GCV" of the *Limited Customer Scenario* is based upon projected revenues as well as costs estimated by using URCS and the assumptions set forth in Table 7, which arrays the computation of the GCV of an economical and efficient short line based on the cash flow generated by servicing the traffic forecasted in connection with PYCO, Attebury and Compress. Table 7 shows a "preliminary GCV" of \$1,616,263 based on use of a pre-tax cost of capital discount rate of 14.1 percent. That rate is derived from STB Ex Parte No. 558 (Sub-No. 8), decided June 21, 2005 and is employed in Table 7 because the STB generally employs a pre-tax cost of capital in examining financial analyses of this nature. However, I would advise PYCO or any other purchaser to pay less than \$1,616,263 to acquire the bundle of assets and rights necessary to serve its two plants in Lubbock plus Compress and Attebury to adjust that figure for site-specific maintenance and rehabilitation costs, as discussed in the final section.

Table 7

“Preliminary Going-Concern Value” Computation
Limited Customer Scenario

<u>PYCO and Compress</u>		
Freight charge per car	\$ 142.72	
PYCO and Compress carloads per year	<u>7,133</u>	
Total annual revenues		\$1,018,022
<u>Attebury</u>		
Freight charge per car	\$ 45.67	
Attebury carloads per year	<u>495</u>	
Total annual revenues		<u>22,607</u>
Grand total annual revenues		\$1,040,629
<u>PYCO and Compress</u>		
Variable operating cost per train	\$2,592.88	
Trains per year		
(12 months * 22 days per month)	<u>264</u>	
Total variable operating cost		\$684,520
<u>Attebury</u>		
Variable operating cost per train	\$2,935.78	
Trains per year	<u>7</u>	
Total variable operating cost		<u>20,550</u>
Grand total variable operating cost		\$705,070
Index cost adjustment (2004 cost to first quarter 2006)	1.153	
Indexed annual operating costs		<u>812,946</u>
Cash flow		\$227,683
Pre-tax cost of capital 2004		14.1%
“Preliminary Going-Concern Value”		\$1,616,263

Source: Tables 1, 5a, 5b and 6; Ex Parte No. 558 (Sub No. 8), Railroad Cost of Capital-2004, decided June 21, 2005 and RLBA calculations.

"Preliminary Going-Concern Value" - *Remaining Customer Scenario*

To repeat what was outlined above, the following GCV attempts to capture the value I believe is appropriate to associate with the provision of services by an efficient and economical short line railroad freight enterprise to all customers once served by SAW, exclusive of PYCO Industries, Inc., Attebury and Compress. To facilitate calculation and comparison, the tables below capture only the incremental railroad freight revenues and estimated variable costs of serving customers still served by SAW. Should the STB decide that it is in the public interest that the entire property once operated by SAW should be operated by another rail carrier, the appropriate amount of compensation could be determined by adding together the GCV of the *Limited Customer Scenario* with the GCV of the *Remaining Customer Scenario*.

This section is a mirror image of that in the previous section except that this section addresses all current SAW excluding PYCO Industries Inc., Attebury and Compress customers. Therefore, it, again, is comprised of five parts:

1. Traffic Volume and Shipment Characteristics;
2. Freight Operating Revenues;
3. Freight Operating Expenses;
4. Estimated Cash Flows and
5. Derivation of the Going-Concern Value.

Traffic Volume and Shipment Characteristics

The customers currently served by SAW are organized into three categories in the following tables to facilitate cost estimation: rock shipments, Southern (formerly ADM) and all other (non-rock) customers. Table 8 is the mirror image of Table 1, again arraying typical shipment characteristics based upon data provided by BNSF and estimates made by me. It shows that an estimated 3,500 carloads of rock move approximately 33 at a time, about twice each week. Southern generated approximately 900 carloads in one year or about six per movement based on an assumption that service would be provided about three times each week. All other rail customers coincidentally generated approximately another 900 carloads a year, equating again to about six cars per movement, assuming train service was provided the same three times each week.

Table 8

Shipment Characteristics
Remaining Customer Scenario

<u>Car Type</u>	<u>Carloads</u>	<u>Frequency</u>	<u>Cars Per Movement</u>
<u>Rock Shipments</u>			
Gondolas	2,625	Annual	25
Open-top hoppers	<u>875</u>	Annual	<u>8</u>
Total Rock Shipments	3,500	Annual	33
<u>Non-rock Shipments</u>			
<u>Southern</u> (formerly ADM)			
Box cars	180	Annual	1
Covered hoppers	135	Annual	1
Tank cars	<u>585</u>	Annual	<u>4</u>
Subtotal: Southern	900		6
<u>All Other Rail Customers</u>			
Box cars	450	Annual	3
Flat cars	<u>450</u>	Annual	<u>3</u>
Subtotal: All Other Customers	900		<u>6</u>
Total Non-rock Shipments			12

Note: Assumes rock shipments occur twice each week and non-rock shipments three days per week. Numbers may not add due to rounding.

Sources: BNSF and RLBA.

Freight Operating Revenues

Freight operating revenues again were estimated by multiplying the estimated number of annual carloads generated by the remaining SAW customers by the same average charge received by the carrier, \$142.72 per car, documented previously. Because RLBA does not believe that special service would be necessary were customers provided adequate service, no such additional switching revenues are appropriate, nor reflected in the GCV calculated herein.

Freight Operating Expenses

The same process incorporating the same six elements, contributed to the derivation of estimated operating expenses. They were:

1. Prospective Rail Service Plan to the Remaining SAW customers;
2. Tare Weights of Freight Cars;
3. Lading Weights of Shipments Inside Freight Cars;
4. Empty to Loaded Miles Ratio;
5. Preliminary, Variable Movement Costs and
6. Index-Adjusted, Variable Movement Costs.

Again, the foundation element is the railroad freight service plan. It is discussed first below, followed by consideration of the other five contributing elements.

Prospective Rail Service Plan to The Remaining SAW Customers

In the event that the Board authorizes PYCO to acquire all tracks and trackage rights necessary to serve PYCO, Compress and Attebury, SAW crews would provide service to all of its existing (remaining) customers. It is anticipated that only one crew would be used on most days.

That crew would switch Southern Cotton Oil and all other carload customers located on industrial lead tracks accessed from its yard or from BNSF trackage. It would work five days per week. In addition to those customers, the crew would handle inbound rock trains consigned to Vulcan or Hanson Rock. The rock trains would be handled similarly to Attebury Grain trains: a SAW crew would pull the inbound rock trains from the BNSF yard southeast on the BNSF main track and then shove the cars onto SAW trackage and

proceed to place them for unloading without any intermediate handling in SAW's yard. Empty rock trains would be delivered directly from the customer's unloading facility to the BNSF yard.

Tare Weights of Freight Cars

The second step in my operating cost derivation with respect to this *Remaining Customer Scenario* was the development of the tare weight component. In this scenario, six different car-types would be used and, therefore, each of them was researched as to their tare weight and then weighted into a weighted average given their usage in a design day representation. Each car-type possesses different characteristics in transporting the commodities processed at the facilities of the remaining SAW customers. Table 9 arrays the computation of tare weights associated with typical movements to and from remaining SAW customers. The weighted average tare weight of cars moving loads to and from remaining SAW customers was calculated to be 32.5 tons.

Table 9

**Computation of Tare Weights
Remaining Customer Scenario**

<u>Car Type</u>	<u>Source:</u>	<u>Carloads Per Day</u>	<u>Tare Weight (Tons)</u>	
			<u>Single Car</u>	<u>Total</u>
<u>Rock Shipments</u>				
Gondolas	URCS	25	26.8	670.0
Open-top hoppers	URCS	<u>8</u>	29.7	<u>237.6</u>
Total Rock Shipments		33		907.6
Tare weight per car				27.5
<u>Non-rock Shipments</u>				
<u>Southern</u> (formerly ADM)				
Box cars	PYCO	1	32.1	32.1
Covered hoppers	PYCO	1	33.2	33.2
Tank cars	PYCO	4	31.1	124.4
<u>All Other Rail Customers</u>				
Box cars	URCS	3	33.8	101.4
Flat cars	URCS	<u>3</u>	33.0	<u>99.0</u>
Totals		12		390.1
Tare weight per car				32.5
Sources: Table 8, PYCO, URCS and RLBA.				

Except with respect to the Southern movements, the tare weights shown in Table 9, again were obtained from the 2004 release of Phase III data as computed by the STB for use in the URCS movement costing program. The 2004 cost data are the most recent released

by the STB. I assumed that the Southern movements possessed characteristics similar to those of PYCO since both companies ship similar commodities except that Southern does not ship cotton seed. Again, multiplication of the tare weights of the car types involved in hauling loads to and from remaining SAW customers, as described above, times the average number of carloads tendered daily by those customers, yielded a weighted average tare weight per car of cars in PYCO service of 32.5 tons, as shown in Table 9.

Lading Weights of Shipments Inside Freight Cars

The third step in my operating cost derivation was the development of the lading weight of the loads within the freight cars that constituted the average day on the hypothesized freight train. Table 10 arrays the computation of lading weights of the various types of cars employed in hauling loads to and from remaining SAW customers. The lading weights shown in Table 10 were computed from movement characteristics of those commodities, as reported in the Freight Commodity Statistics (FCS) for the year 2004 and freight traffic in the Western Region, in which the SAW operates. As with tare weights, PYCO's lading weights were assigned to Southern since the two enterprises ship similar commodities. The resulting, weighted average lading weight per car servicing remaining SAW customers was 74.6 tons.

Table 10

**Computation of Lading Weights
Remaining Customer Scenario**

<u>Car Type</u>	<u>Source</u>	<u>Carloads Per Day</u>	<u>Lading Weight (Tons)</u>	
			<u>Single Car</u>	<u>Total</u>
<u>Rock Shipments</u>				
Gondolas	FCS	25	100.8	2,520.0
Open-top hoppers	FCS	<u>8</u>	100.8	<u>806.4</u>
Total		33		3,326.4
Lading weight per car				100.8
<u>Non-rock Shipments</u>				
<u>Southern (formerly ADM)</u>				
Box cars	PYCO	1	63.3	63.3
Covered hoppers	PYCO	1	91.8	91.8
Tank cars	PYCO	4	93.1	372.4
<u>All Other Rail Customers</u>				
Box cars	FCS	3	61.2	183.6
Flat cars	FCS	<u>3</u>	61.2	<u>183.6</u>
Total		12		894.7
Lading weight per car				74.6
Sources: Table 8, PYCO, Freight Commodity Statistics, 2004 and RLBA.				

Empty to Loaded Miles Ratio

The fourth step in my operating cost derivation was the development of the empty to loaded miles ratio component. The computation of the empty to loaded miles ratio associated with movements to and from remaining SAW customers is arrayed in Table 11. Tank cars typically are leased by shippers or consignees and utilized only in

specific service and, therefore, were assigned an empty/loaded miles ratio of 2. Box cars, covered hoppers and flat cars are supplied by BNSF through WTLC (SAW historically) and were assigned the same empty/loaded miles ratio as set forth in the 2004 release of URCS data associated with that car type. Again, I assumed that Southern's empty to loaded miles ratio was the same as that of PYCO. The weighed average empty/loaded miles ratio computed in connection with all movements to and from remaining SAW customers was 2.03611.

Table 11

**Computation of Empty/Loaded Miles Ratio
Remaining Customer Scenario**

<u>Car Type</u>	<u>Data Source</u>	<u>Carloads Per Day</u>	<u>Empty/Loaded Ratios</u>	
			<u>Per Car</u>	<u>Total</u>
<u>Rock Shipments</u>				
Gondolas	URCS	25	2.01588	50.39700
Open-top hoppers	URCS	<u>8</u>	2.05486	<u>16.43888</u>
Total		33		66.83588
Empty/loaded ratio per car				2.02533
<u>Non-rock Shipments</u>				
<u>Southern (formerly ADM)</u>				
Box cars	URCS	1	1.88494	1.88494
Covered hoppers	URCS	1	1.96346	1.96346
Tank cars	PYCO	4	2.00000	8.00000
<u>All Other Rail Customers</u>				
Box cars	URCS	3	1.88494	5.65482
Flat cars	URCS	<u>3</u>	2.31005	<u>6.93015</u>
Totals		12		24.43337
Empty/loaded ratio per car				2.03611
Sources: Table 8, PYCO and URCS.				

Preliminary, Variable Movement Costs

The fifth step in my operating cost derivation was the development of preliminary, variable movement costs. The variable operating cost of movements from and to remaining SAW customers was computed by employing the movement characteristics discussed above in the URCS movement costing program. The URCS program computed the following variable operating costs in connection with service to the remaining SAW customers.

Table 12a arrays the results produced by URCS as to the variable operating cost of rock movements from and to the remaining SAW customers. The costs arrayed in Table 12a exclude the variable depreciation, rent, lease and return on investment costs that are typically included in URCS computations and fixed costs that SAW might incur. This is a conservative approach since it attributes the least cost to SAW of providing service to its remaining customers, yielding a higher cash flow on which to calculate GCV. This methodology of computing costs associated with the provision of rail service to SAW's remaining customers provides the means most favorable to SAW of compensating it for the cash flow that it would lose were PYCO to obtain its feeder line application and attain the right to provide service to all remaining of SAW's customers, excluding itself, Compress and Attebury.

Table 12a

**Summary of Variable Movement Costs Per Train
Remaining Customer Scenario**

Rock Movements

<u>Unit Cost Element (cost driver)</u>	<u>Service Units</u>	<u>Unit Cost</u>	<u>Total Cost</u>
Gross ton-mile costs	25,822	\$.0015	\$37.52
Locomotive unit-mile costs	24	2.8118	66.86
Clerical costs (originated or terminated carloads)	33	8.2868	273.47
Other costs (carloads handled)	33	3.3652	111.05
Crew costs (train-miles)	12	7.7975	92.70
Train-mile costs	12	.4621	5.49
	408.385		
Switching costs (switch engine minutes)	4	4.1709	<u>1,703.32</u>
Total variable costs excluding loss and damage			\$2,290.41

Note: Numbers may not add due to rounding.

Sources: Tables 8, 9, 10 and 11 and URCS.

Car-mile and car-day costs were excluded from the above cost computations since shippers typically lease tank cars while railroad-supplied equipment, box cars, flat cars and covered hoppers, are supplied to WTLC (and SAW historically) free of car hire charges by BNSF for the first 96 hours, in accordance with the page 21 of an undated document entitled *Agreement For Sale Of Certain Assets, Rights And Obligations of the Burlington Northern and Santa Fe Railway Company To South Plains Switching, Ltd. Company*.

Table 12b arrays the results produced by URCS as to the variable operating cost of non-rock movements from and to the remaining SAW customers. The costs arrayed in Table 12b were developed in a manner similar to those developed in Table 12a and described just above. This methodology provides the most favorable means of compensating SAW for the cash flow it would lose were PYCO to obtain the right to provide service to all remaining SAW customers excluding itself, Compress and Attebury.

Table 12b

**Summary of Variable Movement Costs Per Train
Remaining Customer Scenario**

All Other Rail Customers

<u>Unit Cost Element (cost driver)</u>	<u>Service Units</u>	<u>Unit Cost</u>	<u>Total Cost</u>
Gross ton-mile costs	13,514	\$0.0015	\$19.63
Locomotive unit-mile costs	16	2.8118	44.99
Clerical costs (originated or terminated carloads)	12	8.4318	101.18
Other costs (carloads handled)	12	3.3652	40.38
Crew costs (train-miles)	16	7.7975	124.76
Train-mile costs	16	0.4621	7.40
Switching costs (switch engine minutes)	149.4557	4.1709	<u>623.36</u>
Total variable costs excluding loss and damage			\$961.70

Sources: Tables 8, 9, 10 and 11 and URCS.

Index-Adjusted, Variable Movement Costs

The sixth step in my operating cost derivation was the adjustment of preliminary, variable movement costs to more current cost levels than are reflected in the STB's Uniform Rail Costing System (URCS). Again, as before, costs were indexed from 2004 to the first quarter of 2006, the latest available, by applying index values contained in the AAR Railroad Cost Indexes (RCR), as of March 2006 for the Western Region, published by the Association of American Railroads and the Producer Price Index Industrial Commodities, Less Fuels, published by the Bureau of Labor Statistics, U.S. Department of Labor. Index values were weighted by the external weighting factors shown in the RCR. The computation of the cost index adjustment arrayed in Table 6 is appropriate for use also in the case of the *Remaining Customer Scenario* and, therefore, is employed but not reproduced below in the derivation of variable cost estimates supporting this scenario.

Derivation Of "Preliminary Going-Concern Value" - *Remaining Customer Scenario*

The "preliminary GCV" of the *Remaining Customer Scenario* is based upon projected revenues as well as costs estimated by using URCS and the assumptions set forth in Table 13, which arrays the computation of the GCV of an economical and efficient short line based on the cash flow generated by servicing the traffic forecasted in connection with serving all remaining customers of SAW. Table 13 shows a "preliminary GCV" of \$2,138,780 based on the continued use of a 14.1 pre-tax cost of capital discount rate. However, I would advise PYCO or any other purchaser to pay less than \$2,138,780 to acquire the bundle of assets and rights necessary to serve all the rail customers currently served by SAW, excluding PYCO, Compress and Attebury to adjust that figure for site-specific maintenance and rehabilitation costs, as discussed in the final section.

"Preliminary Going-Concern Value" - *All Customer Scenario*

The *All Customer Scenario* is merely a combination of the *Limited Customer Scenario* and the *Remaining Customer Scenario*, illustrating what would occur were the STB to authorize PYCO to acquire all of the assets owned by PYCO and all of the rights necessary to serve all of the railroad customers currently served by SAW as well as PYCO. Because the *All Customer Scenario* is the consolidation of the other two scenarios discussed in detail above, I have chosen not to repeat in this section of my Verified Statement the detailed development of the numbers which support those two

Table 13

**“Preliminary Going-Concern Value” Computation
Remaining Customer Scenario**

<u>Rock Movements</u>		
Freight charge per car	\$ 142.72	
Annual rock carloads	<u>3,500</u>	
Total annual revenues		\$499,520
<u>All Other Rail Customers</u>		
Freight charge per car	\$ 142.72	
Annual carloads	<u>1,800</u>	
Total annual revenues		<u>256,896</u>
Grand total annual revenues		\$756,416
<u>Rock Movements</u>		
Variable operating cost per train	\$2,290.41	
Trains per year (twice per week)	<u>106</u>	
Total variable operating cost		\$242,783
<u>All Others</u>		
Variable operating cost per train	\$961.70	
Trains per year (three times per week)	<u>158</u>	
Total variable operating cost		<u>151,949</u>
Grand total variable operating cost		\$394,732
Index cost adjustment (2004 cost to first quarter 2006)	1.153	
Indexed annual operating costs		<u>455,126</u>
Cash flow		\$ 301,290
Pre-tax cost of capital 2004		14.1%
“Preliminary Going-Concern Value”		\$2,138,780

Sources: Tables 1, 5 and 6, Ex Parte No. 558 (Sub No. 8), Railroad Cost of Capital-2004 ,
decided June 21, 2005 and RLBA calculations.

Table 14

**“Preliminary Going-Concern Value” Computation
All Customer Scenario**

Total annual revenues

PYCO and Compress	\$1,018,022	
Attebury	22,607	
Rock Movements	499,520	
All Other Rail Customers	<u>256,896</u>	
Grand total annual revenues		\$1,797,045

Total variable operating costs

PYCO and Compress	\$684,520	
Attebury	20,550	
Rock Movements	242,783	
All Other Rail Customers	<u>151,949</u>	
Grand total variable operating expense	1,099,802	

Index cost adjustment (2004 cost to first quarter 2006)	1.153	
Indexed annual operating costs		<u>1,268,072</u>
Cash flow		\$528,973

Pre-tax cost of capital 2004	14.1%	
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“Preliminary Going-Concern Value”		\$3,755,044
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Source: Tables 1, 5 and 6; Ex Parte No. 558 (Sub No. 8), Railroad Cost of Capital-2004, decided June 21, 2005 and RLBA calculations.

scenarios. Instead, I believe it is necessary only to address a consolidated operating plan as if all current or historical customers of SAW were served by the same carrier and then to provide a single table, which combines the arithmetic sum of Tables 7 and 13, which contain the "preliminary GCVs" I attribute to the *Limited Customer Scenario* and *Remaining Customer Scenario*, respectively.

Prospective Rail Service Plan in the *All Customer Scenario*

In the event that the Board authorizes PYCO to acquire all current SAW tracks and trackage rights owned by SAW and serve all customers once or still served by SAW, NEW crews would provide service to all existing or new SAW customers. It is anticipated that two crews would be used on most days. The first crew, for the most part, would perform the duties previously described related to serving both PYCO plants, Compress and single cars or small blocks of cars to/from Attebury Grain.

The second crew would switch owned by SAW and all other carload customers located on industrial lead tracks accessed from NEW's yard or from BNSF trackage. This crew would work five days per week. In addition to those customers, this crew would handle inbound rock trains consigned to Vulcan or Hanson Rock. The rock trains would be handled similarly to Attebury grain trains: a NEW crew would pull the inbound rock trains from the BNSF yard southeast on the BNSF main track and then shove the cars onto NEW trackage and proceed to place them for unloading without any intermediate handling in NEW's yard. Empty rock trains would be delivered directly from the customer's unloading facility to the BNSF yard.

Regular use of two crews introduces the opportunity for increased flexibility in meeting customer service requirements. For example, Attebury grain trains would be placed and pulled by whichever crew was most readily available when needed. Work assignments described above would be shifted among the two crews to balance work loads and improve customer service.

Derivation Of "Preliminary Going-Concern Value" - *All Customer Scenario*

The "preliminary GCV" of the *All Customer Scenario* is based upon projected revenues as well as costs estimated by using URCS and the assumptions set forth in Table 14, which arrays the computation of the GCV of an economical and efficient short line based on the cash flow generated by servicing the traffic forecasted in connection with serving all remaining and historical customers of SAW. Table 14 shows a "preliminary GCV" of

\$3,755,043. However, I would advise PYCO or any purchaser to employ a figure less than \$3,755,043 as a starting point for analyzing the acquisition of the bundle of assets and rights necessary to serve all the rail customers once or currently served by SAW, adjusted for site-specific maintenance and rehabilitation costs, as discussed in the last section.

Routine, Program And Rehabilitation Maintenance Expenditures

There are three types of railroad infrastructure maintenance: 1) routine, 2) program and 3) rehabilitation. Routine maintenance covers the largely labor-intensive, day-to-day tasks performed by section forces, necessary to ensure that the track structure is available to safely host a carrier's train operations and is generally limited to inspections, switch stand and rod adjustments, lubricating, welding, respiking, replacing broken rail, spot surfacing, tamping, signal department tests, inspection and emergency repair. Program maintenance comprehends the periodic, project and/or emergency replacement of track and bridge components, either partially or entirely, such as switch timbers, ties, rail, ballast and bridges, to renew the track structure plus the relatively lesser ratio of labor necessary to install rail, tie and ballast components.

On those railroads that have deferred infrastructure maintenance, rehabilitation also may be necessary to "catch-up" on such deferrals. Rehabilitation maintenance comprehends the same elements noted above with respect to program maintenance. In the absence of such rehabilitation taking place, program and routine maintenance costs would be higher because those costs are based on the assumption that maintenance has not been deferred.

In the course of carrying out many similar assignments involving short line and regional railroad viability, valuation and due diligence projects on behalf of railroads and the financial institutions which sustain them, RLBA has developed and refined an approach toward estimating pro forma annual routine maintenance of way expenses and capital program expenditures as well as one-time rehabilitation costs necessary to offset deferred maintenance. In none of those short line/regional railroad assignments has RLBA encountered a plan for way maintenance expenditures, actual or budgeted, which could be characterized as a "normalized" level of maintenance. A normalized level of maintenance is/would encompass an organized agenda of both: 1) routine annual track maintenance expense and 2) an annual capital program, the latter including, as

necessary, rehabilitation and replacement expenditures which, if continued through the end of the life cycle of the longest lived asset, would result in a final year track structure condition at the same level of utility (speed and axle-weight limits) as in the first pro forma year.

The fact that most, if not all, Class III (small) railroads are not fully replenishing their capital base should not be construed as suggesting that the industry is doing anything wrong or shortsighted. In fact, it could easily be argued that it would be imprudent, for example, to repair each and every year one one-hundredth of a major bridge span expected to last 100 years, as long as the possibility existed that the bridge might not be needed to reach traffic sources 100 years from now. On the other hand, most short line and regional railroads can operate at a sub-normalized level of tie, surfacing, drainage, ditching and weed spray maintenance for only a few years before such deferred maintenance manifests itself in higher track maintenance, train operating expenses as well as loss and damage. Therefore, RLBA views its role as ascertaining a middle ground between unnecessary adherence to a rigid, steady state maintenance program and a lower level of expenditures that might leave a carrier (and its financing providers) vulnerable to significant, performance-affecting asset deterioration.

Because RLBA recognizes that many maintenance of way components enjoy economic lives spanning several decades, its practice is to exclude from its pro forma projections normalized levels of maintenance of way expenses associated with bridges and rail, the latter by far the most costly way maintenance components on nearly all railroads. In place of normalized levels of expenditures on these components, RLBA substitutes much smaller amounts to cover contingencies in the event unexpected expenditures are required by unforeseeable events such as a derailment.

That is exactly the approach that I have taken and is shown in Tables 15 through 22. Specifically, Tables 15 and 19 detail the rehabilitation that I believe is necessary to catch-up deferred maintenance on the railroad infrastructure that would support the *Limited* and *Remaining Customer Scenarios*, respectively. As shown in Table 15, rehabilitation in the *Limited Customer Scenario* is estimated at \$1,185,800, were the track restored using only 90 pound rail or \$2,153,800 as shown in Table 15, were the track restored using 112 or 115 pound rail to accommodate 286,000 pound cars, which is quickly becoming the national standard on Class 1 railroads, on whom both the SAW and WTLC are completely dependent for all of their (connecting) traffic. Similarly, railroad infrastructure rehabilitation in the *Remaining Customer Scenario* is estimated at \$490,000, were the

Table 15

Rehabilitation Costs
Limited Customer Scenario

Per-Mile Cost to Rehabilitate with 90# Rail

Rail & Turnout Replacement	\$150,000
Tie Replacement	60,000
Ballast Replacement	25,000
Miscellaneous Renewal	<u>10,000</u>
Total/Mile	\$245,000
Miles of Rehabilitated Track Needed	4.84

Estimated Cost of Rehabilitation = \$245,000 x 4.84 Miles \$1,185,800

Per-Mile Cost to Rehabilitate with 112# / 115# Rail (286 K Capable)

Rail & Turnout Replacement	\$350,000
Tie Replacement	60,000
Ballast Replacement	25,000
Miscellaneous Renewal	<u>10,000</u>
Total/Mile	\$445,000
Miles of Rehabilitated Track Needed	4.84

Estimated Cost of Rehabilitation = \$445,000 x 4.84 Miles \$2,153,800

Source: RLBA estimates.

Table 16

**Summary Physical Property and Maintenance Cost Estimates
Limited Customer Scenario**

Track:	
Total Track Miles	4.84
Turnouts (Number):	
Total Turnouts (Main and Side)	10
Crossings (Number):	
Total Public/Private Crossings	30
Bridges (Linear Feet):	
Total Bridge Footage	0
Total Annual Program Maintenance Cost	\$42,078
Total Annual Routine Maintenance Cost	<u>53,760</u>
Total Annual Line Maintenance Cost	\$95,838
Total Annual Cost Per Route-Mile (\$95,838 / 4.84 Miles)	\$19,801

Source: SAW Tables 3 and 4, Monty Sneed's V.S.

Table 17

Annual Program Maintenance of Way Costs
Limited Customer Scenario

Cross Ties

2,880 ties/mile /	40 years/tie=	72 ties/mile	
72 ties/mile x	\$50 cost/tie x	4.84 miles=	\$17,424

Surface and Line

\$7,000 per mile /	8 year cycle =	\$875 per mile/year	
\$875 per mile / year x		4.84 miles =	\$4,235

Rail

4.84 miles /	300 years x	\$150,000 per mile =	\$2,420
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Road Crossings

30 crossings	50 feet/crossing	1,500 L.F.	
1,500 L.F. x	\$360 L.F. /	35 year life =	\$15,429

Turnouts, Timber and Surface

90 ST per Switch >	\$100 switch tie /	35 years =	\$257
10 Turnouts x	\$257 average per turnout =		<u>\$2,570</u>

Total Annual Program Cost**\$ 42,078**

Source: RLBA estimates.

Table 18

Annual Routine Maintenance of Way Costs
Limited Customer Scenario

Inspection and Minor Repair

One person (8 hours/day x 8 days/month x 12 months/year) = 768 hours/year

Contractor Wages (\$30 - \$40/hour) average = \$35 per hour

768 hours/year x \$35 equals \$26,880 per year

Additional Maintenance Assistance

One person (8 hours/day x 4 days/month x 12 months/year) = 384 hours/year

Contractor Wages (\$30 - \$40/hour) average = \$35 per hour

384 hours/year x \$35 equals \$13,440 per year

Total Labor Cost

\$26,880 plus \$13,440 equals \$40,320 \$40,320

Material Cost

Annual material cost will approximate one-third annual labor cost = \$13,440

Total Annual Routine Maintenance Cost

\$40,320 plus \$13,440 equals **\$53,760**

Source: RLBA estimates.

Table 19

Rehabilitation Costs Remaining Customer Scenario

Per-Mile Cost to Rehabilitate with 90# Rail

Rail & Turnout Replacement	\$150,000
Tie Replacement	60,000
Ballast Replacement	25,000
Miscellaneous Renewal	<u>10,000</u>
Total/Mile	\$245,000
Miles of Rehabilitated Track Needed	2.00

Estimated Cost of Rehabilitation = \$245,000 x 2.00 Miles \$490,000

Per-Mile Cost to Rehabilitate with 112# / 115# Rail (286 K Capable)

Rail & Turnout Replacement	\$350,000
Tie Replacement	60,000
Ballast Replacement	25,000
Miscellaneous Renewal	<u>10,000</u>
Total/Mile	\$445,000
Miles of Rehabilitated Track Needed	2.00

Estimated Cost of Rehabilitation = \$445,000 x 2.00 Miles \$890,000

Source: RLBA estimates.

Table 20

Summary Physical Property and Maintenance Cost Estimates
Remaining Customer Scenario

Track:	
Total Track Miles	10.16
Turnouts (Number):	
Total Turnouts (Main and Side)	10
Crossings (Number):	
Total Public/Private Crossings	30
Bridges (Linear Feet):	
Total Bridge Footage	0
Total Annual Program Maintenance Cost	\$68,545
Total Annual Routine Maintenance Cost	<u>35,840</u>
Total Annual Line Maintenance Cost	\$104,385
Total Annual Cost Per Route-Mile (\$104,385 / 10.16 Miles)	\$10,274

Source: SAW Tables 3 and 4, Monty Sneed's V.S.

Table 21

**Annual Program Maintenance of Way Costs
Remaining Customer Scenario**

Cross Ties

2,880 ties/mile /	40 years/tie=	72 ties/mile	
72 ties/mile x	\$50 cost/tie x	10.16 miles=	\$36,576

Surface and Line

\$7,000 per mile /	8 year cycle =	\$875 per mile/year	
\$875 per mile / year x		10.16 miles =	\$8,890

Rail

10.16 miles /	300 years x	\$150,000 per mile =	\$5,080
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Road Crossings

30 crossings	50 feet/crossing	1,500 L.F.	
1,500 L.F. x	\$360 L.F. /	35 year life =	\$15,429

Turnouts, Timber and Surface

90 ST per Switch >	\$100 switch tie /	35 years =	\$257
10 Turnouts x	\$257 average per turnout =		<u>\$2,570</u>

Total Incremental Annual Program Cost**\$ 68,545**

Source: RLBA estimates.

Table 22

Annual Routine Maintenance of Way Costs *Remaining Customer Scenario*

Inspection and Minor Repair

One person (8 hours/day x 4 days/month x 12 months/year) : 384 hours/year

Contractor Wages (\$30 - \$40/hour) average = \$35 per hour

384 hours/year x \$35 equals \$13,440 per year

Additional Maintenance Assistance

One person (8 hours/day x 4 days/month x 12 months/year) : 384 hours/year

Contractor Wages (\$30 - \$40/hour) average = \$35 per hour

384 hours/year x \$35 equals \$13,440 per year

Total Labor Cost

\$13,440 plus \$13,440 equals \$26,880 \$26,880

Material Cost

Annual material cost will approximate one-third annual labor cost = \$8,960

Total Annual Routine Maintenance Cost

\$26,880 plus \$8,960 equals **\$35,840**

Source: RLBA estimates.

track restored using only 90 pound rail, or \$2,153,800 were the track restored using 112 or 115 pound rail to accommodate 286,000 pound cars. Although the total number of miles to be maintained in the *Remaining Customer Scenario* is much greater than the total number of miles to be maintained in the *Limited Customer Scenario*, I assumed that the number of miles in need of rehabilitation in the *Remaining Customer Scenario* is considerably less, two miles versus 4.84. That perhaps counterintuitive assumption is due to the fact that all 4.84 miles in the *Limited Customer Scenario* are very active and need rehabilitation whereas the volume figures I obtained suggest that the only really active portions requiring rehabilitation in the *Remaining Customer Scenario* are the approximately two miles extending between the BNSF main line and the furthest of the two locations on the SAW where rock is unloaded today, plus some spot work elsewhere and in track 9298 west of the BNSF mainline.

Tables 16 through 18 address the *Limited Customer Scenario*. Table 16 summarizes the key drivers of program and routine infrastructure maintenance costs and estimates of those costs. Table 16, shows \$95,838 in annual maintenance which should be spent if further deferred maintenance is to be avoided. That total is comprised of \$42,078 in program and \$53,760 in routine maintenance. The derivation of those subtotals are the subject of Tables 17 and 18, respectively.

Similarly, Tables 19 through 21 address the *Remaining Customer Scenario*. Table 20 summarizes the key drivers of program and routine infrastructure maintenance costs and estimates of those costs. Table 20, shows \$104,385 in annual maintenance which should be spent if further deferred maintenance is to be avoided. That total is comprised of \$68,545 in program and \$35,840 in routine maintenance, the derivation of which subtotals are the subject of Tables 21 and 22, respectively.

Tables 23 through 26 are merely the arithmetic sum of tables 15 and 19, 16 and 20, 17 and 21, and 18 and 22, with respect to rehabilitation, physical property elements, annual program and annual routine maintenance with respect to the *All Customer Scenario*.

Impact Of Site Specific Maintenance Of Way Costs On Previously Calculated Going-Concern Valuations

Tables 27 through 32 show the impact of employing site specific infrastructure maintenance and rehabilitation costs detailed above on the GCVs previously described in this Verified Statement. Specifically, Table 27 shows the calculations appropriate to infrastructure maintenance in the *Limited Customer Scenario* based solely on the use of URCS and the gross ton-miles and switch engine minutes set forth in Tables 5a, 5b, 6 and 7. Table 28 shows the impact of adjusting estimated annual cash flow, demonstrated near the bottom of Table 7, by substituting the site specific program and routine maintenance cost estimates, developed on Tables 17 and 18 for the generic URCS maintenance cost estimate derived on Table 23. Specifically, the GCV of the *Limited Customer Scenario*, which I estimated at \$1,616,263 in Table 7, declines to \$1,405,864 on Table 28 when \$1,185,800 in site specific maintenance costs are substituted for the generic costs produced by application of URCS infrastructure maintenance costs. That figure would decline to \$220,064 were the infrastructure needed to service the Limited Customer Scenario rehabilitated using 90 pound rail and to negative \$747,936 were the same trackage rehabilitated with 112 or 115 pound rail to support 286,000 pound cars. Absent the conduct of a significant rehabilitation, I would expect program and routine infrastructure maintenance costs to be higher than those reflected in Tables 16 through 18 and the GCV to be correspondingly lower than shown in Table 7.

Similarly, Table 29 shows the calculations appropriate to infrastructure maintenance in the *Remaining Customer Scenario* based solely on the use of URS and the gross ton-miles and switch engine minutes set forth in Tables 12a, 12b, 6 and 13. Table 30 shows the impact of adjusting estimated annual cash flow, demonstrated near the bottom of Table 13, by substituting the site specific program and routine maintenance cost estimates, developed on Tables 21 and 22 for the generic URCS maintenance cost estimate derived on Table 29. Specifically, the GCV of the *Remaining Customer Scenario*, which I estimated at \$2,138,780 in Table 13, declines to \$1,768,780 on Table 30 when site specific maintenance costs are substituted for the generic costs produced by application of URCS infrastructure maintenance costs. That figure would decline further to \$1,278,780 were the infrastructure needed to service the *Remaining Customer Scenario* rehabilitated using 90 pound rail and to \$878,780 were the rehabilitation made using 112 and 115 pound rail to support 286,000 pound cars.

Absent the conduct of a significant rehabilitation, I would expect program and routine infrastructure maintenance costs to be higher than those reflected in Tables 21 and 22 and the GCV to be correspondingly lower than shown in Table 13.

Table 23

Rehabilitation Costs *All Customer Scenario*

Per-Mile Cost to Rehabilitate with 90# Rail

Rail & Turnout Replacement	\$150,000
Tie Replacement	60,000
Ballast Replacement	25,000
Miscellaneous Renewal	10,000
Total/Mile	<u>\$245,000</u>
Miles of Rehabilitated Track Needed	6.84

Estimated Cost of Rehabilitation = \$245,000 x 6.84 Miles **\$1,675,800**

Per-Mile Cost to Rehabilitate with 112# / 115# Rail (286 K Capable)

Rail & Turnout Replacement	\$350,000
Tie Replacement	60,000
Ballast Replacement	25,000
Miscellaneous Renewal	10,000
Total/Mile	<u>\$445,000</u>
Miles of Rehabilitated Track Needed	6.84

Estimated Cost of Rehabilitation = \$445,000 x 6.84 Miles **\$3,043,800**

Source: RLBA estimates.

Table 24

Summary Physical Property and Maintenance Cost Estimates
All Customer Scenario

Track:	
Total Track Miles	15
Turnouts (Number):	
Total Turnouts (Main and Side)	20
Crossings (Number):	
Total Public/Private Crossings	60
Bridges (Linear Feet):	
Total Bridge Footage	0
Total Annual Program Maintenance Cost	\$110,623
Total Annual Routine Maintenance Cost	89,600
Total Annual Line Maintenance Cost	\$200,223
Total Annual Cost Per Route-Mile (\$200,223 / 15 Miles)	\$13,348

Source: SAW Tables 3 and 4, Monty Sneed's V.S.

Table 25

Annual Program Maintenance of Way Costs
All Customer Scenario

Cross Ties 2,880 ties/mile / 72 ties/mile x	40 years/tie = \$50 cost/tie x	72 ties/mile 15 miles =	\$54,000
Surface and Line \$7,000 per mile /	8 year cycle =	\$875 per mile/year 15 miles =	\$13,125
\$875 per mile / year x			
Rail 15 miles /	300 years x	\$150,000 per mile =	\$7,500
Road Crossings			
60 crossings	50 feet/crossing	3,000 L.F.	
3,000 L.F. x \$360 L.F. /		35 year life =	\$30,857
Turnouts, Timber and Surface 90 ST per Switch			
\$100 switch tie /		35 years =	\$257
20 Turnouts x \$257 average per turnout =			\$5,140
Total Incremental Annual Program Cost			\$110,623

Source: RLBA estimates.

Table 26

Annual Routine Maintenance of Way Costs
All Customer Scenario

Inspection and Minor Repair

One person (8 hours/day x 12 days/month x 12 months/year) = 1,152 hours/year

Contractor Wages (\$30 - \$40/hour) average = \$35 per hour

1,152 hours/year x \$35 equals \$40,320 per year

Additional Maintenance Assistance

One person (8 hours/day x 8 days/month x 12 months/year) = 768 hours/year

Contractor Wages (\$30 - \$40/hour) average = \$35 per hour

768 hours/year x \$35 equals 26,880 per year

Total Labor Cost \$40,320 plus \$26,880 equals \$67,200 \$67,200

Material Cost

Annual material cost will approximate one-third annual labor cost = 22,400

Total Annual Routine Maintenance of Way Costs \$67,200 plus \$22,400 equals **\$89,600**

Source: RLBA estimates.

Table 27

**Maintenance of Way Costs in URCS
Limited Customer Scenario**

	URCS		Unit	Cost
	<u>Per Gross Ton-mile (GTM)</u>		<u>Per Switch Engine Minute (SEM)</u>	
<u>Description</u>	<u>Location</u>	<u>Amount</u>	<u>Location</u>	<u>Amount</u>
Maintenance of way costs	D1L157C10	\$0.00035525	D2L159C10	\$0.362180
General overhead ratio	D8L607C1	<u>1.14396</u>	D8L607C1	<u>1.14396</u>
Total maintenance of way costs		\$ 0.00041		\$0.41432
Limited Customer Scenario Service Units		<u>GTMs</u>		<u>SEMs</u>
PYCO and Compress		40,608		470.8174
Number of movements		<u>264</u>		<u>264</u>
Subtotal: PYCO and Compress		10,720,512		124,296
Attebury		101,841		423.6270
Number of movements		<u>7</u>		<u>7</u>
Subtotal: Attebury		712,887		2,965
Total: Limited Customer Scenario		11,433,399		127,261
Total: Maintenance of Way Costs		<u>\$ 4,688</u>		<u>\$ 52,727</u>
Grand Total: Maintenance of Way Costs			\$57,415	
Index cost adjustment (2004 cost to first quarter 2006)			1.153	
Indexed maintenance of way costs			\$66,199	

Sources: URCS and Tables 5a, 5b, 6 and 7.

Table 28

Going-Concern Value Computation
Adjusted To Reflect Site Specific Maintenance of Way Costs
Limited Customer Scenario

Cash flow, reflecting URCS maintenance of way costs	\$ 227,683
Site specific maintenance of way costs:	
Program	\$ 42,078
Routine	<u>53,760</u>
Subtotal	\$95,838
Maintenance of way costs per URCS	<u>66,199</u>
Maintenance of way costs shortfall in URCS	<u>29,639</u>
Cash flow, reflecting site specific maintenance of way costs	\$ 198,044
Pre-tax cost of capital 2004	14.1%
Going-Concern Value, reflecting site specific maintenance costs	\$1,405,864
Less: Rehabilitate track with 90# rail	\$1,185,800
Going-Concern Value, reflecting rehabilitation with 90# rail	\$ 220,064
Less: Rehabilitate track with 112#/115# rail	\$2,153,800
Going-Concern Value, reflecting rehabilitation with 112#/115# rail	(\$747,936)
Source: Tables 1, 5a, 5b and 7; Ex Parte No. 558 (Sub No. 8), Railroad Cost of Capital-2004, decided June 21, 2005 and RLBA calculations.	

Table 29

**Maintenance of Way Costs in URCS
Remaining Customer Scenario**

	URCS	Unit	Cost
	<u>Per Gross Ton-mile (GTM)</u>		<u>Per Switch Engine Minute (SEM)</u>
<u>Description</u>	<u>Location</u>	<u>Amount</u>	<u>Location</u> <u>Amount</u>
Maintenance of way costs	D1L157C10	\$0.00035525	D2L159C10 \$0.362180
General overhead ratio	D8L607C1	<u>1.14396</u>	D8L607C1 <u>1.14396</u>
Total maintenance of way costs		\$ 0.00041	\$0.41432
Remaining Customer Scenario Service Units		<u>GTM</u>	<u>SEMs</u>
Rock shipments		25,822	408.3854
Number of movements		<u>106</u>	<u>106</u>
Subtotal: Rock shipments		2,737,132	43,289
Non-rock shipments		13,514	149.4557
Number of shipments		<u>158</u>	<u>158</u>
Subtotal: Attebury		2,135,212	23,614
Total Limited Customer Scenario		4,872,344	66,903
Total Maintenance of Way Costs		\$ 1,998	\$ 27,719
Grand Total: Maintenance of Way Costs			\$29,717
Index cost adjustment (2004 cost to first quarter 2006)			1.153
Indexed maintenance of way costs			\$34,264
Sources: URCS and Tables 12a, 12b and 13.			

Table 30

**Going-Concern Value Computation
Adjusted To Reflect Site Specific Maintenance of Way Costs
Remaining Customer Scenario**

Cash flow, reflecting URCS maintenance of way costs	\$ 301,290
Site specific maintenance of way costs:	
Program	\$50,546
Routine	<u>\$35,840</u>
Subtotal	\$86,386
Maintenance of way costs per URCS	<u>34,264</u>
Maintenance of way costs shortfall in URCS	<u>52,122</u>
Cash flow, reflecting site specific maintenance of way costs	\$ 249,168
Pre-tax cost of capital 2004	14.1%
Going-Concern Value, reflecting site specific maintenance costs	\$1,768,780
Less: Rehabilitate track with 90# rail	\$490,000
Going-Concern Value reflecting rehabilitation with 90# rail	\$1,278,780
Less: Rehabilitate track with 112#/115# rail	\$890,000
Going-Concern Value, reflecting rehabilitation with 112#/115# rail	\$878,780

Source: Tables 8, 12a, 12b and 13; Ex Parte No. 558 (Sub No. 8), Railroad Cost of Capital-2004, decided June 21, 2005 and RLBA calculations.

Table 31

Maintenance of Way Costs in URCS
All Customer Scenario

	URCS	Unit	Cost
	<u>Per Gross Ton-mile (GTM)</u>		<u>Per Switch Engine Minute (SEM)</u>
<u>Description</u>	<u>Location</u>	<u>Amount</u>	<u>Location</u> <u>Amount</u>
Maintenance of way costs	D1L157C10	\$0.00035525	D2L159C10 \$0.362180
General overhead ratio	D8L607C1	<u>1.14396</u>	D8L607C1 <u>1.14396</u>
Total maintenance of way costs		\$ 0.00041	\$0.41432
All Customer Scenario Service Units		<u>GTM</u>	<u>SEMs</u>
PYCO and Compress		10,720,512	124,296
Attebury		712,887	2,965
Rock shipments		2,737,132	43,289
Non-rock shipments		<u>2,135,212</u>	<u>23,614</u>
Total: All Customer Scenario		16,305,743	194,164
Total Maintenance of Way Costs		\$6,686	\$80,446
Grand Total: Maintenance of Way Costs			\$ 87,132
Index cost adjustment (2004 cost to first quarter 2006)			1.153
Indexed maintenance of way costs			\$100,463
Sources: URCS and Tables 12a, 12b and 13.			

Table 32

**Going-Concern Value Computation
Adjusted To Reflect Site Specific Maintenance of Way Costs
All Customer Scenario**

Cash flow, reflecting URCS maintenance of way costs	\$ 528,973
Site specific maintenance of way costs:	
Program	\$ 92,624
Routine	<u>\$ 89,600</u>
Subtotal	\$182,224
Maintenance of way costs per URCS	<u>100,463</u>
Maintenance of way costs shortfall in URCS	<u>81,761</u>
Cash flow, reflecting site specific maintenance of way costs	\$ 447,212
Pre-tax cost of capital 2004	14.1%
Going-Concern Value, reflecting site specific maintenance costs	\$3,174,644
Less: Rehabilitate track with 90# rail	\$1,675,800
Going-Concern Value reflecting rehabilitation with 90# rail	\$1,498,844
Less: Rehabilitate track with 112#/115# rail	\$3,043,900
Going-Concern Value, reflecting rehabilitation with 112#/115# rail	\$130,744
Source: Tables 8, 12a, 12b and 13; Ex Parte No. 558 (Sub No. 8), Railroad Cost of Capital-2004, decided June 21, 2005 and RLBA calculations.	

Privileged and Confidential
Prepared at the Instruction of Counsel

Verification

I, Charles H. Banks, verify under penalty of perjury that I am the same Charles H. Banks whose statement of Qualifications appears in Attachment A; that I am sponsoring and responsible for the going concern valuations contained herein and the assumptions upon which they are based, that I know the contents thereof and that the same are true and correct. Further, I certify that I am qualified and authorized to file this statement.

Charles H. Banks

Charles H. Banks

Subscribed and sworn to before this 3rd day of May, 2006.

Notary Public

Charles H. Banks President

Education

MBA, University of Pennsylvania, Wharton School of Business, 1977
BA Economics, Haverford College, 1974

Professional Affiliations

Transportation Research Forum

Years of Transportation Experience

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Qualifications

Since joining RLBA in 1985, Mr. Banks has focused on strategic planning, railroad line valuation and negotiation issues, and evaluation of the economics involved with financing the acquisition, expansion or rehabilitation of numerous short line and regional railroads, often assessing their potential viability as part of due diligence studies performed by the firm. He has examined the competitive economics of continued or proposed unit coal train movements to utilities and industrial customers on many rail lines. When evaluating intermodal and intramodal transport competition and other modal choices, Mr. Banks has interviewed hundreds of the largest existing and prospective rail customers on the I&M Rail Link, Wisconsin Central Ltd., Iowa Interstate Railroad, Dakota, Minnesota & Eastern Railroad and more than a dozen other enterprises as well as many large industrial customers served by Class I railroads.

Relevant Project Experience

- **Federal Railroad Administration (FRA)** Reviewed applications to FRA in connection with obtaining way and structure rehabilitation financing. Interviewed major customers of the Iowa Interstate Railroad, Ltd., the Gulf & Mississippi Railroad Corporation, and the Dakota, Minnesota & Eastern Railroad to assess those carriers' commercial prospects. Interview subjects included representatives of major industrial and agricultural rail shippers and/or receivers, including large grain elevator managers and officials of connecting carriers. Information gleaned from interviews and other materials was used to develop five year carload, freight, switching, demurrage, and other traffic volume and revenue forecasts.
- **Irving Trust, New York Life and Berkshire Partners** Interviewed 14 major rail users to assess intra- and intermodal alternatives in Wisconsin Central Ltd.'s service area. In connection with acquisition financing, conducted special studies of the highly competitive pulp and paper, TOFC and coal markets.
- **Bank of Boston, Bank of Montreal** Coordinated RLBA's extensive due diligence efforts in connection with I&M Rail Link, the largest, newly created U.S. regional railroad. Presented RLBA's findings to prospective lenders.
- **New Jersey Transit** Served as RLBA's lead staff member providing numerous services in support of this state-of-the-art, new-start, diesel light rail system DBOM procurement. Guided studies of real estate, rail asset and going-concern valuations. Participated in numerous meetings with Conrail, CSXT and NS staff to develop and refine numerous shared track/right-of-way operating/capital improvement plans. Drafted or oversaw the development of a Letter of Intent and a Construction Agreement governing the rights and responsibilities of the freight carrier/track owners, project sponsor New Jersey Transit and the DBOM consortium.

- **Massachusetts Bay Transportation Authority** Managed real estate, rail asset and going-concern valuations to assist the MBTA in determining a range of likely acquisition access costs in connection with starting commuter rail services to New Bedford and Fall River.
- **Maryland Mass Transit Administration** Oversaw the development of real estate, rail asset and going-concern valuations in connection with negotiations to acquire seven-miles of short line railroad that were used to host Baltimore's Central Light Rail Line. Interviewed existing and prospective freight customers to determine their rail service requirements, which information affected both the going-concern valuation and the rehabilitation schedule and cost, and shaped both the shared use operating agreement and the level of capital improvements necessary to minimize interference between freight and passenger services.
- **Amtrak** Determined the net present going-concern value of Boston and Maine Corporation (B&M) freight operations between Brattleboro and Windsor, Vermont, which line Amtrak sought to acquire through condemnation to restore its "Montrealer" train. The calculation, derived by a computer model which compared the financial posture of B&M before and after a contemplated taking, was the subject of four joint Verified Statements on just compensation submitted by Mr. Banks and RLBA's Chief Executive. Ultimately, the U.S. Supreme Court ruled in favor of Amtrak's position and valuation.
- **St. Louis Car Company** Examined traffic prospects, oversaw rail asset and going-concern valuations and contributed to a business plan presented in connection with the prospective purchase of SP's Owensville Branch.
- **New York City Economic Development Authority** Oversaw the development of rail asset and real estate valuations, conducted a Rail Line Acquisition Planning Seminar, and supported negotiations resulting in public sector acquisition of a rail line linking the U.S. mainland with an intermodal port facility to be rebuilt on Staten Island.

Prior to joining RLBA, Mr. Banks was Director of Strategic and Financial Planning at the United States Railway Association (USRA), the public corporation which restructured bankrupt Northeast railroads into Conrail. There, he identified Conrail's competitive advantages and rebutted valuation claims exceeding \$1.3 billion, including extensive testimony as an Expert Witness. Previously he worked in Strategic Planning and in the Costing and Economic Analysis section of Conrail's Finance department. Prior to Conrail, at the Bureau of Transportation Research at Southern Pacific, he completed numerous capital budgeting assignments, prepared abandonment studies and testified before public utilities commissions. He also worked in the Operating and Market Research Departments of railroads subsequently acquired by Norfolk Southern, CSX Transportation and Union Pacific.

Publications and Presentations

Speaker, "The Relationship of the Coal, Coal-Fired Utility and Railroad Industries," The Illinois Clean Coal Institute's 15th Contractors Conference, 1997; "How to Identify Viable Lines: The Lending Institution Consultant's Perspective," Canadian Short Line Railroad Conference, Toronto, 1993; Co-authored, "Breaching the Barriers to Moving Waste-by-rail," *Waste Age*, February 1992; Co-author, Series of articles on waste-by-rail, *The Management of World Wastes*, September 1990 - April 1991.

Media Recognition

Mr. Banks has been quoted extensively in the *Wall Street Journal*.

D

D-1

Appraisal

APPRAISAL

of

RAILROAD RIGHT OF WAY LAND

Located In

THE SOUTHEAST INDUSTRIAL SECTOR

Lubbock, Texas

for

**GARY MCLAREN
ATTORNEY AT LAW**

by

Merle Blosser, MAI, SRA

**Blosser Appraisal
1001 Main Street, Suite 206 Court Place
Lubbock, Texas 79401**



1001 Main Street • Suite 206 Court Place • Lubbock, TX 79401 • (806) 744-1188 • Fax (806) 744-1189

April 24, 2006

Gary McLaren
Attorney at Law
3305 66th Street
Lubbock, Texas 79413

Dear Mr. McLaren:

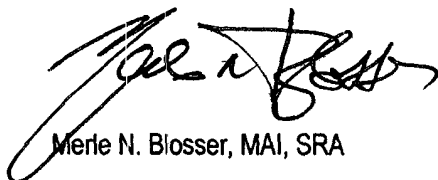
It is my pleasure to have you as a client and thank you for this opportunity to be of service. At your request a self-contained report of a complete appraisal has been prepared of railroad right of way land located in the southeast industrial sector of Lubbock, Texas. As a result of this scope of work, the final opinion of market value of the fee simple interest of the described property is presented for the effective date of April 21, 2006. The following appraisal report sets forth the value conclusions along with supporting data and reasoning which forms the basis of opinion.

This appraisal report is only for use by you the client and for possible review by appropriate regulatory authorities. It may not be communicated to or used by any other party without the appraiser's permission. The opinion of value and conclusions of this appraisal are qualified by certain definitions and assumptions that are set out in the report.

An executive summary is provided on page one for your quick review. This appraisal report is developed to comply with the Uniform Standards of Professional Practice and in compliance with the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.

This opportunity to work with you is certainly appreciated and I look forward to working with you in the future as the occasion arises.

Respectfully submitted,



Merle N. Blosser, MAI, SRA

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EXECUTIVE SUMMARY

Type of Property: Railroad Right of Way Land

General Location: Lubbock, Texas; Southeast industrial neighborhood from 26th Street and Avenue A on the northwest to Southeast Drive and Loop 289 on the southeast

Land Use Designation: East Sector refers to Rail Track right of way land east of MLK Boulevard
West Sector refers to Rail Track right of way land west of MLK Boulevard

SALES COMPARISON APPROACH

Value Indicated by the Sales Comparison Approach:

Industrial Land West Sector	
Direct Comparison	Eight Comparable Land Sales/Listings
Per Unit Value Indication	\$0.55 per square foot
Industrial Land East Sector	
Direct Comparison	Seven Comparable Land Sales/Listings
Per Unit Value Indication	\$4,000 per acre

Property One: All of "SAW" Railroad Right of way
Land Size: 2,921,901+- square feet in West Sector
52.537+- Acres in East Sector
Market Value: \$1,817,000

Property Two: All of "SAW" Railroad Right of way lying east of Southeast Drive
Land Size: 36.657+- acres
Market Value: \$147,000

Property Three: A 6.0 Acre Tract lying East of Avenue A, South of Coronado Drive
Land Size: 261,360+- square feet
Market Value: \$144,000

Effective Date of Appraisal April 21, 2006

APPRAISAL OBJECTIVES

PURPOSE AND DATE

The purpose of this appraisal is to form the basis of opinion for the "Market Value" of the fee simple interest of the described property. If it is discovered that the property is not held in fee simple ownership then revisions may be required to this valuation appraisal. Inherent in this purpose is the valuation of the described property according to its highest and best use from a physically possible, legally permissible, financially feasible, and maximally productive basis.

The effective date for the context of opinion for this valuation appraisal is April 21, 2006 while the date of this reporting document is April 24, 2006. This document is authored as a self-contained report of a complete appraisal as defined by The Standards of Professional Appraisal Practice.

PROPERTY INTEREST APPRAISED

The real property rights under appraisal include the fee simple interest of the described real estate subject to the limitations of eminent domain, escheat, police power, and taxation. Specific encumbrances, if any, that prove to be a significant influence on the valuation will be addressed in the body of this report.

INTENDED USERS AND INTENDED USE

The intended users of this appraisal report include the client, Gary McClaren, and possible reviewers from appropriate regulatory authorities. The use of this report by any other party without the appraiser's permission is specifically prohibited.

The intended use of the appraisal is to serve the valuation and informational review needs of the client pertaining to the described property.

DEFINITION OF MARKET VALUE

"Market Value" is defined by the Uniform Standards of Professional Appraisal Practice as promulgated by the Appraisal Standards Board of the Appraisal Foundation and subscribed to by the agencies that regulate federal financial institutions in the United States.

"Market Value" is defined as the most probable price, which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. buyer and seller are typically motivated
2. both parties are well informed or well advised, and acting in what they consider their best interests
3. a reasonable time is allowed for exposure in the open market
4. payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto

5. the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

SCOPE OF THE ASSIGNMENT

The scope of the assignment is to perform the appraisal process in analyzing the described property under the market conditions at the date of appraisal. The valuation involves appraising various railroad track right of way lines in the described southeast sector area of the city. The appraisal format is based on "across the fence" land valuations where the railroad right of way land value is based on the value of adjacent land tracts that are acquired for typical industrial use. This premise assumes the railroad right of way enjoys an equal functional utility with the surrounding developed industrial property land uses. Thus, no penalty is assessed for the narrow width and long length shape of the rail track right of way as it is laid out within this industrial sector of the city. Land value for the railroad right of way is based on the analysis of market sales of property that share the locational neighborhood characteristics and typical physical parameters of development tracts for industrial use.

The appraisal process in the valuation of real estate requires careful thought, with proper planning, and a systematic process to achieve quality results. This process begins with a definition of the specific problem or type of value sought. Then an orderly program ensues where the work is planned and the data required for the assignment is researched, classified, and analyzed. The conclusion results in an interpretation of the data toward the particular property under appraisal.

A physical inspection of this property occurred on April 21, 2006 by the appraiser, Merle Blosser, MAI, SRA. The data gathered for valuation analysis is a continual process for similar properties within the local market area where the most recent data is emphasized. Deed record research and personal physical inspection for each comparable sale or listing is compiled by the appraiser and verified with a knowledgeable party or agent to the transaction.

The valuation of vacant land is best processed by the Sales Comparison Approach. In the **Sales Comparison Approach**, value is estimated based primarily upon the principle of substitution, which implies that no prudent and informed person will pay more for a property than it would cost to acquire an equally desirable substitute property. Actual market sales of comparable properties are researched and analyzed. Consideration is given to the similarities and differences that the market (that is, sellers and buyers) recognizes. Value indications are reconciled from the resulting data and appropriate common denominators guide the response from this approach. The reliability of this approach is directly related to the quantity and quality of market sales data.

The **Final Value** is a reconciliation of the market data within the approach where the relative merits of each comparable are weighed. Objective judgment and reasoning are inherent in this decision-making appraisal process. The specific value opinion will focus on the most probable outcome of the influences from physical, social, governmental, and economic factors that create the marketplace.

EXPOSURE TO THE MARKET

The definition of market value refers to a condition whereby value is subject to a reasonable period of time being allowed for exposure in the open market. Market research of comparable sales data reveals that most properties have sold within a one to five year time frame. Active commercial real estate brokers have been interviewed and most expect to obtain serious offers within this same one to five year period. Thus, both actual sales records and broker opinions confirm one to five years as being a realistic exposure time on the market.

PROPERTY OWNERSHIP AND SALES HISTORY ANALYSIS

The property under appraisal has been under the same ownership for several years and no recent transactions are thought to have occurred.

PROPERTY USE

The property use for the real estate under appraisal at the date of valuation is as right of way land for rail tracks. This same use will be reflected in the appraisal where the property is detailed in the descriptive sections and analyzed according to its highest and best use.

ASSUMPTIONS AND LIMITING CONDITIONS

With respect to the subject of this appraisal and the data gathered for this report, and unless otherwise specifically referenced, the following assumptions and limiting conditions are set forth.

It is assumed the property has good marketable title, and unless specifically mentioned, the property is free and clear of any encumbrances, easements, encroachments, tax liens, restrictions, cases, or actions pending.

It is assumed the legal description, and land size is correct as furnished. It is assumed all information furnished by others is correct and reliable, but no responsibility for such is assumed.

Photographs, drawings, and maps are utilized only to assist the reader in the visual descriptions of the property. All engineering is assumed to be correct.

With respect to the integrity for the completeness of this document, reproduction of this appraisal report in whole or in part is strictly prohibited. This report is only for use by the client and appropriate regulatory authorities and may not be used by any other party without permission from the appraiser. Also, this report and specifically the data contained herein may not be communicated to any other party.

It is assumed there are no hidden or unapparent conditions of the property, subsoil, or structures that render it more or less valuable. No responsibility is assumed for such conditions or for arranging for engineering studies that may be required to discover them.

It is assumed there is full compliance with all applicable federal, state, and local laws, zoning regulations, other restrictions, and environmental regulations unless otherwise stated in this report.

It is assumed all required licenses, certificates of occupancy, or other legislative or administrative authority from any local, state, or national governmental or private entity or organization have been or can be obtained or renewed for any use on which the value estimates contained in this report are based.

Any sketch in this report may show approximate dimensions or land areas and is included to assist the reader in visualizing the property. Maps and exhibits in this report may be provided for reader reference purposes only. No guarantee as to accuracy is expressed or implied. Although a copy of a survey or plat may be provided for visualization of the property, no survey has been made for the purpose of this report.

It is assumed the improvements on the property are within the boundaries or property lines of the property described and there is no encroachment or trespass unless otherwise stated.

It is assumed no hazardous or toxic materials are present in the property such as PCB's, fuel/chemical seepage or leaking, or other chemicals or materials. It is assumed the property or nearby land has no hazardous or toxic materials on or beneath the surface that would flow to or contaminate the subject property in some fashion. It is assumed there is no petroleum product equipment on the property or near the property that is leaking fuel, chemicals, or other toxic or hazardous material.

No environmental assessment report has been furnished and the appraiser is not an engineer nor has been trained to detect environmental hazards. Any comment by the appraiser that might suggest the possibility, or the lack of, the presence of such substances should not be taken as confirmation of the presence or absence of hazardous waste and/or toxic materials. Should an environmental assessment by a professional be provided in the future, the appraiser reserves the right to revise this report according to the effect it may have on the valuation. No responsibility or liability is assumed for any hazardous/toxic materials or defects in the property or for the engineering knowledge required discovering them. The appraiser's descriptions and the resulting comments are based on the routine observations made during the appraisal process. An environmental and hazardous material assessment for any property by qualified professionals is always considered prudent.

Neither all nor any part of the contents of this report (especially any conclusions as to value, or the identity of the appraiser or appraisal firm) shall be disseminated to the public through advertising, public relations, news sales, or other media without prior written consent and approval of the appraiser.

Under the competency provision of the Standards of Professional Appraisal Practice the appraiser must properly identify the appraisal problem to be addressed and have the knowledge and experience to complete the assignment competently. The appraiser resume is submitted in the addenda of this report detailing education, professional designations, appraisal work experience, a list of various assignments, and partial client list. These elements illustrate the variety of knowledge and experience in appraising different types of real estate. This appraisal has been prepared with full confidence of having the necessary competency to complete the assignment under this standards provision.

CERTIFICATION

I certify that, to the best of my knowledge and belief....

The statements of fact contained in this report are true and correct.

The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.

I have no present or prospective interest in the property that is the subject of this report, and no personal interest with respect to the parties involved.

I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.

My engagement for completing this assignment is not contingent upon developing or reporting predetermined results.

My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal. The appraisal assignment is not based on a requested minimum valuation, a specific valuation, or for the approval of a loan.

The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute, which include the Uniform Standards of Professional Appraisal Practice.

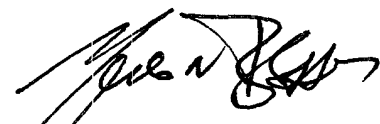
The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.

I have made a personal inspection of the property that is the subject of this report. No one provided significant real property appraisal assistance to the person signing this certification.

As of the date of this report I, Merle N. Blosser MAI, SRA, have completed the continuing education program of the Appraisal Institute.

As of the date of this report I, Merle N. Blosser, MAI, SRA, have completed the requirements set out by the State of Texas Appraiser Licensing and Certification Board and am designated as a State Certified General Real Estate Appraiser license number TX 1321336-G, which expires June 30, 2007.

Respectfully submitted,


Merle N. Blosser, MAI, SRA

04/24/06
Date

LUBBOCK ECONOMIC SUMMARY

- **2005 Population:** 209,120 City of Lubbock and 256,081 Lubbock County with 1% historical growth rate, 2010 population projection 211,442; 48.8% male, 51.2% female; median age 30.7 compared with US at 36.3 years; population density 1,786 people per square mile

Year of Census	1970	1980	1990	2000
Population Count	149,101	174,200	189,000	199,564

- **Households:** 83,650 households for 2005 up from 77,527 in 2000 census for growth rate of 1.58% per year; projection of 89,675 for 2010; average size 2.34 people per household; 2005 median household income of \$34,564 up from \$31,935 in 2000 and projection of \$37,254 in 2010; 38% < \$25,000, 28.5% \$25-50,000, 24.3% \$50-100,000, 9.1% > \$100,000
- **Ethnicity:** 50.3% White (Anglo), 30.7% White (Hispanic), 8.8% Black, 10.2% other
- **Transportation:** On I-27 route, Loop 289 freeway around city, East-West Freeway under construction; major state highways, designated as Ports to Plains corridor, efficient grid street pattern, Lubbock International Airport, good rail service, public city bus routes
- **Financial:** Strong regional and local banks, mortgage companies; Forbes Magazine and Milken Institute published national rankings of best places for business and careers for 2002 and Lubbock places 27th on their list of 200 largest metro areas
- **Agriculture:** Cotton chief crop with 64% of Texas production and 18% of national output, significant grain crops, beef/swine production, peanuts, grapes for wineries
- **Education:** 30% of population have college degree, 25.8% have some college/associates degree, 23.9% HS graduates; Good public & private K-12 schools, Texas Tech Univ with 29,000+- enrolled, Lubbock Christian Univ, Wayland Baptist Univ, South Plains College
- **Medical:** TTU Medical School, 2 full service hospitals, specialty hospitals + surgi-centers, numerous clinics, medical offices, labs, considered as major regional medical district
- **Industry:** Major agri-business firms, food distribution, light manufacturing, hi-tech firms, service sector firms, retailing, wholesale distribution, Reese Technology Center; Employment per major industry include Services 49.9%, Retail 19.5%, Transportation-Communications 7.5%, Public Admin 6.1%, Wholesale Trade 4.7%, Finance-Insurance-Real Estate 4.6%, Manufacturing 4.0%, Construction 2.9%
- **Statistics:** Elevation 3,251 feet, semi-arid moderate climate, 19 inch average rainfall, favorable sun-belt weather

TEN ECONOMIC INDICATORS FOR LUBBOCK

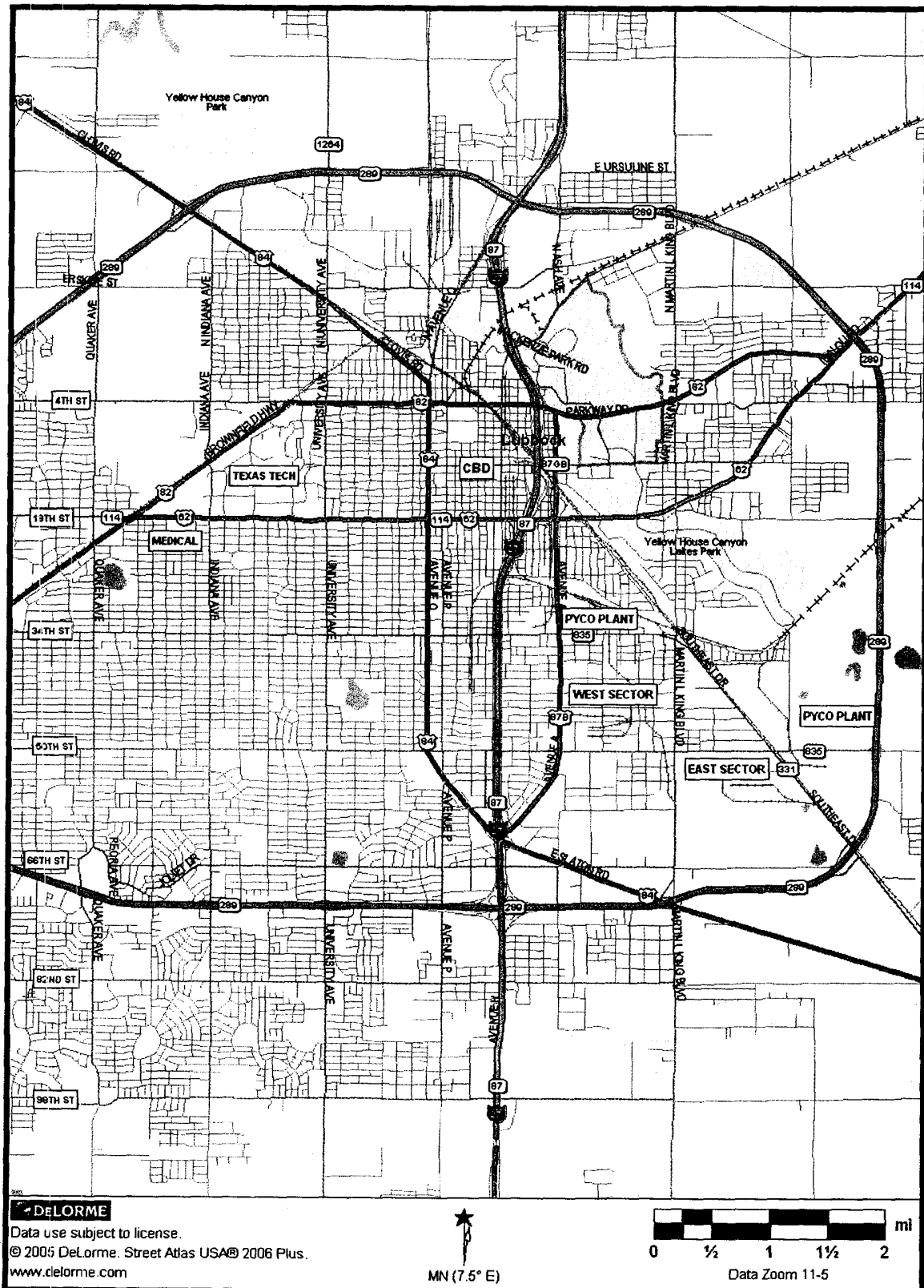
Year	Airline Boardings	New Apartment Units	Total MLS House Sales	Average House Price	Retail Sales *
1996	615,053	272	2,300	\$88,738	\$3,303,694,883
1997	597,333	668	2,370	\$89,924	\$3,244,894,593
1998	574,780	120	2,541	\$93,789	\$3,430,905,552
1999	570,452	100	2,484	\$97,817	\$3,476,842,664
2000	578,976	28	2,592	\$97,579	\$3,467,044,571
2001	536,670	541	2,631	\$101,223	\$3,429,759,359
2002	513,096	579	2,892	\$107,891	\$3,466,992,280
2003	514,250	1,058	3,017	\$117,305	\$3,435,153,436
2004	541,549	1,260	3,296	\$120,545	\$3,506,555,198
2005	553,688	180	3,243	\$120,541	\$1,666,367,032**
Average	559,585	481	2,737	\$103,535	\$3,417,982,504
Year	Civilian Employment	Unemployed	New House Permits	Commercial Construction *	South Plains Cotton Bales
1996	119,851	4.14%	571	\$54,402,062	3,076,900
1997	121,305	4.00%	542	\$92,902,300	3,415,500
1998	121,195	3.53%	664	\$59,001,303	2,587,400
1999	122,696	3.02%	747	\$88,712,065	3,008,400
2000	126,301	3.59%	819	\$65,834,125	2,302,800
2001	129,262	3.67%	941	\$79,083,699	2,492,700
2002	129,876	4.34%	1,137	\$66,400,281	3,253,000
2003	131,896	4.84%	1,288	\$80,917,570	2,270,000
2004	134,203	4.59%	1,204	\$70,157,579	4,823,500
2005	136,968	4.06%	1,129	\$87,416,656	5,630,000
Average	127,355	3.98%	904	\$74,482,764	3,286,020

(*Adjusted for inflation) (**Only first two quarters of retail sales for 2005 available from comptroller)

The 2005 economic year for Lubbock shows six of ten indicators improved over last year. This illustrates a positive review of the city's performance from a wide variety of economic base data. Seven of ten indicators hold positions that are superior to their respective ten-year averages as the economy moves forward at a healthy pace.

Airline Boardings	Up 2.2% for passengers along with US ranking of 105 th air freight
New Apartment Units	Down 85.7% with 2 new projects but good for over-built market
Multiple Listing Sales	Down 1.6% only 53 houses, still a very good historical volume
Average House Price	No change and still at the highest historical average price
Retail Sales	Up 5.1% for same 6 mo period in '04 after adjusted for CPI index
Civilian Employment	Up 2.1% for increase of 2,765 employed persons
Unemployment Rate	Decrease in rate of 0.50%, and among Texas' lowest cities
New House Permits	Down 6.2% yet still high compared with 904 10-yr average
Commercial Construction	Up 24.6% to 3 rd best in ten years for 248 projects
Cotton Bale Production	Up 16.7% for best crop on record and topping '04 high crop year

LOCATION MAP



NEIGHBORHOOD DESCRIPTION

LOCATION

The neighborhood is situated in the southeast quadrant of the city with the focal point being the intersection of 50th Street and Martin Luther King Boulevard some three miles southeast of the downtown Lubbock central business district. It is bordered by 19th Street on the north, Loop 289 on the south, I-27 on the west, and Loop 289 on the east.

HISTORY AND DEVELOPMENT

This is considered to be Lubbock's primary industrial sector with buildings and plants dating from the 1950 period to the current time frame. There are a few newer buildings, several properties have been remodeled, plus others have made additions to original plants. It has been a slow development process that is not necessarily negative, as the Lubbock industrial market is historically a "build as you go" type progression. Most properties are owner occupied with demand for space being the primary development criteria.

INDUSTRIAL CHARACTERISTICS

The predominant neighborhood use is the warehouse/distribution type facility while there are several trucking businesses, food distributors, major cotton processing/storage facilities, and some manufacturing firms. Many firms have some light manufacturing or assembly with warehouse / distribution space. The construction characteristics include a mixture of masonry block/brick or concrete tilt-up buildings plus many are the pre-engineered metal type buildings. Most are of average to good quality construction and receive adequate maintenance.

Examples of various industrial members in this southeast industrial sector include:

Frito Lay	Bayer Crop Science
Acme Brick	White Swan Foods
Rip Griffin Truck Center	S Plains International Trucks
West Texas Truck Center	Peterbilt Trucks
Crawford Austin Properties	Roberts Truck Center
Pantex Plywood	Gebo's
Galbraith Wholesale Supply	Town & Country Truck Center
Standard Sales (Beer Dist)	Hobbs Trailers
Coca Cola Bottling	W.W. Grainger
Robertson Storage	Llano Logistics
Armstrong Mechanical	United Parcel Service
Coca Cola Bottling Company	Strong Transfer and Storage
Allied Van Lines	Precision Drilling
O&A Tex-Pack Express	Yellow Freight
Merchant's Freight	Belt-Wide Industries
Georgia Pacific	Southwestern Bell Telephone
Plains Cotton Growers	Lowe's Supermarket Distribution
Wilkerson Cold Storage	Paymaster Cotton
Jim Walters Paper	Robert Heath Refrigerated Trucking
Wilkerson Warehouses	Frontier Distributors
Armstrong Mechanical	Texas Schools
Selle Insulation	South Plains Food Bank
Exxon gas distributors	Energas

United Van Lines
White Swan Foods
Lubbock Auto Auction
Anderson-Bigham Electric
Becknell Wholesale
Hub City Body Works
LISD Food Service Center

Tersco Supply
Funk Seeds
Plains Linen
General Electric
Host Ice
Brandon & Clark Electric
Wylie Sprayer

There is an assortment of various warehouses, supply houses, distribution plants, repair/service firms, and other businesses. A survey of these firms revealed that most own and occupy their own facilities. The newer improvements were designed and built by the owner occupants and the majority of lease space is for warehousing.

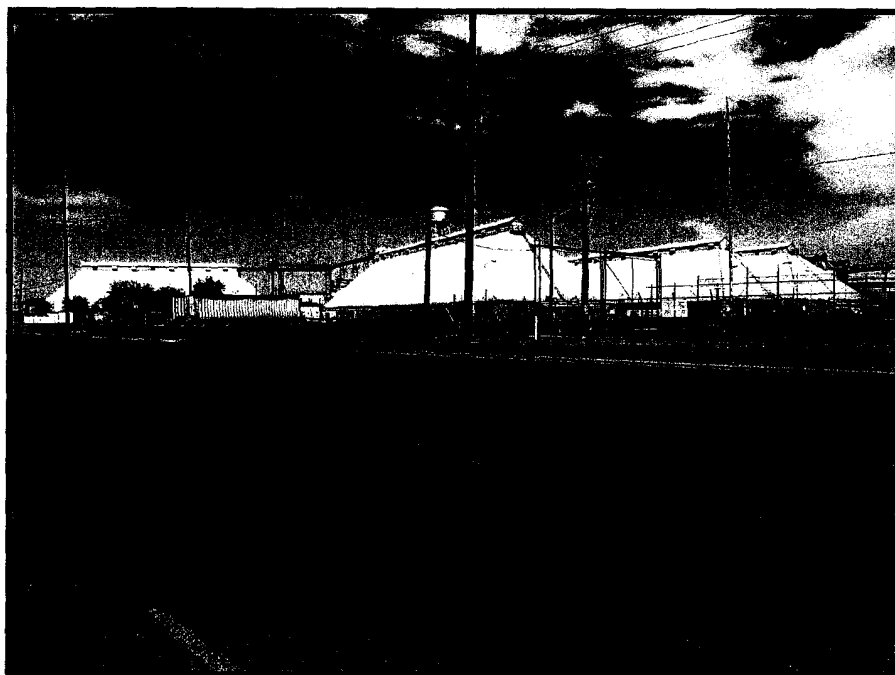
TRANSPORTATION

Major transportation routes are situated throughout this neighborhood providing truck and rail shipping and receiving. Major highway links, Interstate 27, and the rail spur system provide good freight transportation characteristics while Avenue A is a primary north-south truck route bisecting this area through Lubbock to the various storage and distribution centers.

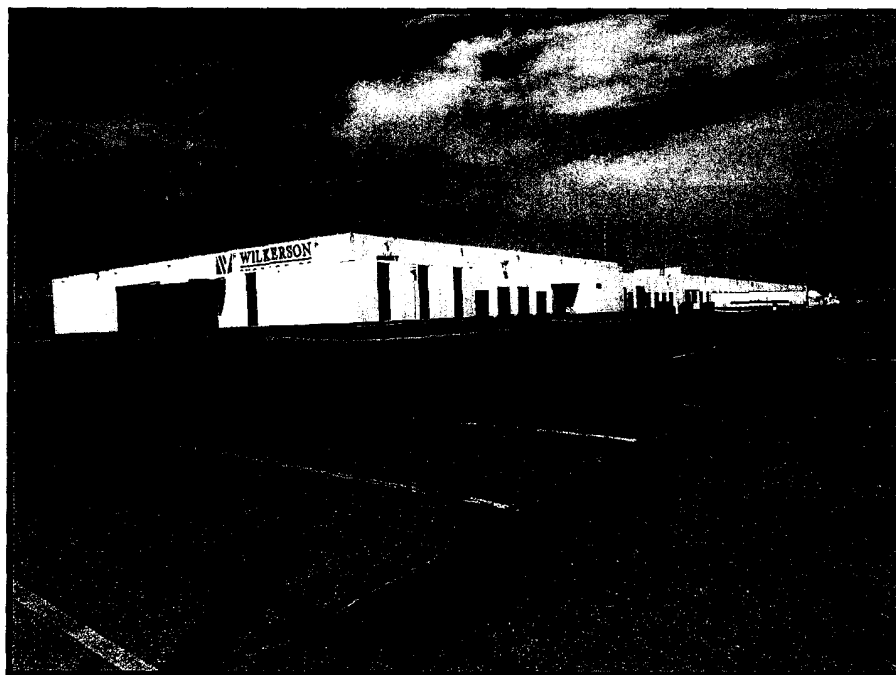
STATUS AND TRENDS

In summary, this neighborhood possesses the proper amenities for a good industrial district. These include a good labor force, ample water-gas-electrical utility sources, good street and highway system, a rail track/spur network, good quality and stable neighborhood occupants with most owning their own facilities, and ample vacant land for future growth. Although the historical growth rate for this neighborhood has been slow this is typical of most industrial areas and the slow development trend is not considered a negative point.

When all factors are considered, the regional, city, and neighborhood characteristics are positive influences toward the subject property.



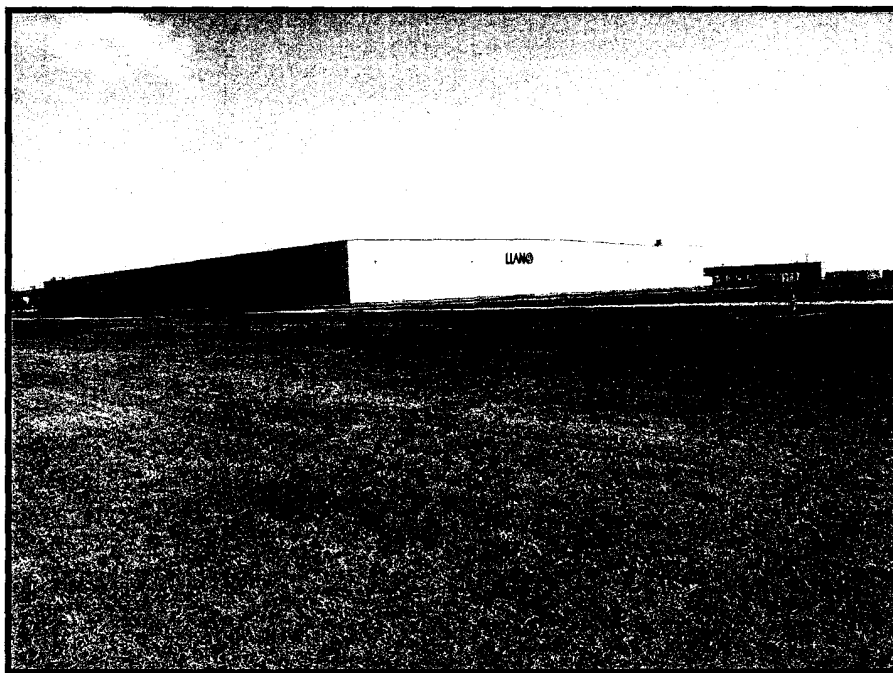
The Pyco cotton seed processing plant fronts Avenue A at 34th Street and is one of the primary neighborhood members.



Wilkerson Cold Storage warehouse is located at 66th Street and Elm Avenue and is a typical neighborhood member.



These metal shop buildings house various light manufacturing operations and serve as storage for different businesses.



The Llano Logistics facility east of MLK Boulevard at 58th Street serves as the primary distribution center for United Supermarkets.

PROPERTY DESCRIPTION

PROPERTY TYPE AND LOCATION

The property under appraisal includes the land within the right of way for a number of rail track lines that spread throughout the industrial district located in the southeast quadrant of the city. A general boundary for the railroad lands extends from 25th Street and Avenue C on the northwest corner, the 6300 block of Elm Avenue for the southwest corner, the intersection of Southeast Drive and Loop 289 E for the southeast corner, and the proximity of the 3400 block of Guava Avenue for the northeast corner of the defined area.

This district begins approximately one mile south from the downtown central business district of the City of Lubbock, Texas. The census tract map reference for this property is 25.00 and 12.00.

LEGAL DESCRIPTION

A specific legal description for all of the rail track lines is not available while the general description would best be described as various tracts out of Block "E" Sections 1 and 23; Block "S" Sections 1 and 2; and Block "B" Sections 1, 3, 4, 5, 6, 7; all to the City of Lubbock, Lubbock County, Texas.

TOPOGRAPHY

The terrain is fairly level with adequate natural drainage from the property through the street network. Flood zone status is based on the Flood Insurance Rate Maps provided by the Federal Emergency Management Agency and the properties are located on map numbers 48303-C-0305 thru 0320 D dated September 18, 2002. There are a few designated 100 year flood zone areas within the general rail track district while most of the land is classified as Zone "X" defined as areas determined to be outside the 0.2% annual chance floodplain. However, the appraiser is not a civil engineer and a professional topographical survey should be completed to satisfy the exact flood elevation status. Soil conditions are thought suitable for all construction types.

EASEMENTS AND ENCROACHMENTS

No survey has been provided that would illustrate possible easements or encroachments for the lands under appraisal, and it is assumed there are none of significance that would affect the valuation. No property record restrictions or limitations were supplied to the appraiser and it also assumed there are none of significance that would affect the valuation.

ENVIRONMENTAL ASSESSMENT

No environmental assessment has been provided for the lands under appraisal. Based on a surface inspection and casual observance of the various properties the current and historical land use is for railroad tracks. The tracks are used to carry rail cars that are loaded with various materials, equipment, and goods, along with various chemicals, minerals, and petroleum based products. The opportunity for some level of environmental contamination certainly exists. However, it should be understood that the appraiser is neither a professional engineer nor one trained as an environmental hazard expert. Thus, no legal responsibility or liability is assumed for any hazardous/toxic materials or defects in the property. At the owner's discretion, it is always considered prudent to obtain an environmental and hazardous material assessment by a qualified professional.

For this appraisal valuation the land is assumed to be free of environmental hazards and is considered to be similar and comparable to the adjacent lands that border the rail track lines in the general defined area.

SERVICES

Public utilities provided to the property within this neighborhood and include electricity, natural gas, water, and sewer. Police and fire protection plus emergency medical services are provided by public agencies.

STREET IMPROVEMENTS

The primary streets in this neighborhood have paved asphalt surfaces and include concrete curbs with gutters. Some minor streets have graded gravel surfaces and side channel drainage. Regular maintenance is provided by public services.

ZONING

The majority of lands within the defined rail track area have a manufacturing zone designation. Given that the rail tracks are designed to serve the industrial members of the neighborhood the appropriate zoning for the subject property is divided among "M-1" Light Manufacturing District and "M-2" Heavy Manufacturing District. The zone code descriptions are presented for review.

"M-1" Light Manufacturing District - Quoting from the city ordinance, "The purpose of this district is to provide for light industrial uses and those commercial uses requiring outside storage and display. The regulations are designed to provide for a mixture of heavy commercial and light industrial or manufacturing uses with proper standards to encourage attractive working areas for citizens."

General provisions provide that:

- All uses in this district shall be of a commercial, light manufacturing, or light industrial type
- outside display and/or storage shall be permitted; however screening fences are required when adjacent to commercial or residentially zone property;
- no residential use shall be permitted in this district;
- no use shall otherwise be permitted which is or would reasonably be injurious to the neighborhood residents or which would interfere with the reasonable use and enjoyment of their property by reason of the emission of dust, smoke, odor, glare, noise, vibration, trash, junk, water spray, or by reason of any condition which would amount to a public nuisance at common law.

Permitted property types under this "M-1" zoning include any use under the heavy commercial "C-4" zoning designation. Additional permitted uses include light manufacturing types, such as aluminum products fabrication; commercial bakery; building materials storage; clothing manufacturing; cold storage plant; feed store; irrigation equipment sales; lumber yard; meat processing; mini warehouses, mobile home manufacturing; moving, storage, packing of household goods; plumbing business; printing plant; sheet metal workshop; truck or rail freight terminal; truck stop; welding shop; warehouse; and various others.

There are specific requirements pertaining to yard, building height limit, off-street parking, and landscaping.

"M-2" Heavy Manufacturing District. Quoting from the city ordinance, "The purpose of this district is to provide for those uses defined as heavy industrial and/or manufacturing use which will or may produce off-site noise, odor, or dust. The regulations are designed to provide standards for proper on-site development and to protect the environmental quality of adjacent areas and the city in general.

General provisions provide that:

- no residential use shall be permitted in this district;
- outside display and/or storage shall be permitted; however screening fences are required when adjacent to commercial or residentially zone property;

- no use shall otherwise be permitted which is or would reasonably be injurious to the neighborhood residents or which would interfere with the reasonable use and enjoyment of their property by reason of the emission of dust, smoke, odor, glare, noise, vibration, trash, junk, water spray, or by reason of any condition which would amount to a public nuisance at common law.

Permitted property types under this "M-2" zoning include any use unconditionally permitted in the M-1 Light Manufacturing district along with uses under the heavy commercial zoning designation. Additional uses permitted include: aluminum manufacture, asphalt storage, liquid or solid; bag cleaning; bag and bagging; bar, club; blast furnace; boiler making, repairing; brick, tile, pottery manufacturing; carnivals, circuses; concrete batching, mixing, products manufacturing; cooperage works; corrugated metal manufacture; cotton storage; die casting manufacture; electric power plant; emery cloth and sandpaper manufacture; feed grinding and processing; flour mill; food products manufacture; forge plant; grain elevator; gravel/rock crushing; milling; model airplane center, go-cart track; oil well equipment sales, service, storage; paper waste, rag processing and storage; railroad shops, yards; sandblasting; scrap paper or rag storage; steel fabrication plant; stone cutting; tank manufacture; textile manufacture; and others;

There are specific requirements pertaining to yard, building height limit, off-street parking, and landscaping.

LAND SIZE

For valuation purposes the rail track lands are divided into three sectors that include the areas west of MLK Boulevard referred to as the West Sector, while the East Sector is subdivided into land east of MLK Boulevard and west of Southeast Drive, and land that is east of Southeast Drive. The Sales Comparison Approach discusses the market derived reasoning for dividing the land according to use, where MLK Boulevard serves as the division line for the "East Sector" and the "West Sector". The following chart illustrates the specific land areas for each defined sector.

West Sector	West Sector	East Sector	East Sector	East Sector
		W of SE Dr	E of SE Dr	Interchg Track
34,559	57,987	6,005	339,714	3,760
73,088	759	16,817	606,933	7,625
5,589	87,574	52,203	22,505	36,908
19,251	2,092	11,297	51,292	40,514
17,159	58,569	56,249	15,649	9,479
1,050	522	71,436	74,687	67,551
29,781	28,323	22,874	1,298	13,925
1,224,733	1,487	15,391	35,844	57,043
2,589	28,013	17,739	17,466	
31,317	671	164,025	46,371	
1,569	12,427	29,515	23,578	
60,126	831	165,304	68,586	
27,581	37,978	3,547	16,044	
19,762	1,538	7,099	40,012	
40,533	13,443	51,279		
15,780	774	8,794		
121,033	12,495	17,078		
18,032	753	136,281		
9,972	10,696	146,830		
1,028	1,322	155,424		
29,977	27,016	142,630		
42,006	40,252	315,459		
17,979	58,921	18,791		
1,064	20,779	6,304		
24,159	987			
43,000	34,279			
37,162	77,374			
1,028	83,601			
27,892	10,134			
974	1,118			
28,634	178,589			
922	1,245			
20,023				
2,029,352	892,549	1,638,371	1,359,979	236,805
Total SF West	2,921,901	Total SF East		3,235,155
Acres	67.078	Acres		74.269

The previous computations of rail track right of way land area have been supplied by the Center for Geospatial Technology at Texas Tech University. They are based on the assumption the identified line segments, right of way widths, and lengths are under full fee interest ownership. Should further information indicate the full fee interest land area is different from the calculations provided, revisions to this appraisal report will be necessary.

An aerial photograph that illustrates these calculations has been prepared by the Center for Geospatial Technology and is submitted as an exhibit in the addenda of this report.

These total land areas as charted for the West Sector and the East Sector are divided according to specific railroad track usage areas. The following descriptions will be applied for the land valuations.

Area One

The rail trackage to be included for Area #1 is comprised of all of the West Sector and all of the East Sector, save and except, the track sections designated as Track #231 and Track #9200. This amounts to a total land area of 2,921,901+- square feet in the West Sector and 52.537+- Acres in the East Sector.

Area Two

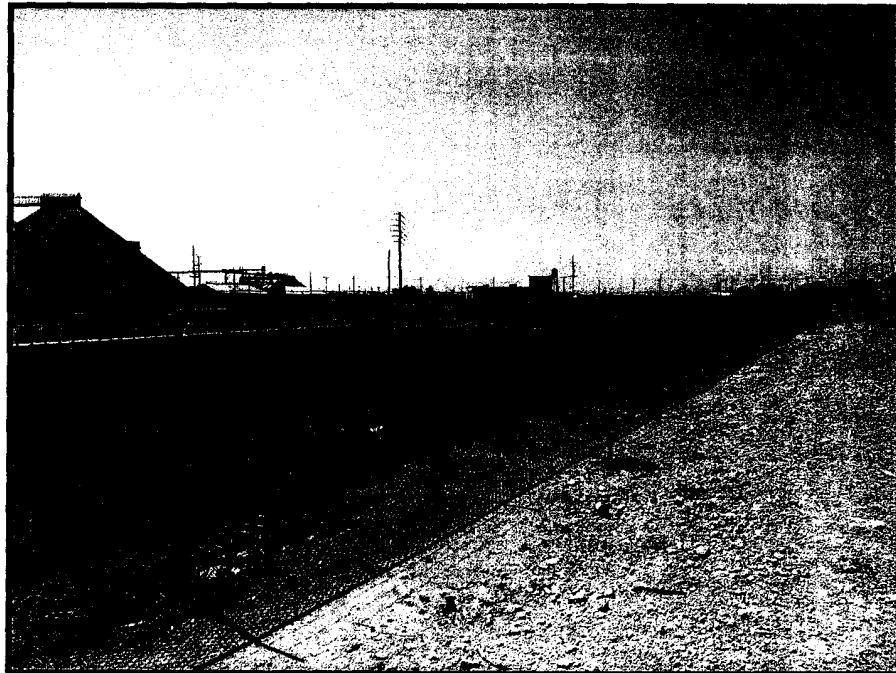
The rail trackage to be included for Area #2 is comprised of all of the East Sector land lying east of Southeast Drive. This amounts to a total land area of 36.657+- Acres.

Area Three

The land area to be included for Area #3 is comprised of a 6.00 acre tract of land to be located adjacent to the south side of Coronado Drive and lying east of Avenue A.



The subject of this appraisal is railroad right of way lands in a defined area for the southeast sector of the city. This rail track area is pictured, as we look east from Avenue A just south of 26th Street.



This tract of land is referred to as Area Three and includes six acres along the north side of Coronado Drive just east of Avenue A.



This rail track spur is in the Burlington Industrial District area as we look south from 40th Street just west of Locust Avenue.



This rail track right of way extends east-west across the Crawford Industrial District as we look east from Elm Avenue just south of 58th Street.



Some fairly new rail track has been constructed as we look east from the 6300 block of MLK Boulevard.



The portion of rail track that is referred to as the "Interchange Tract" is pictured as we look north from 50th Street with Guava Avenue on the right.



This section of the trackage is referred to as Track 9200 just north of 37th Street west of Guava Avenue.



A main rail yard area is pictured as we look west from MLK Boulevard at the 34th Street bridge.

HIGHEST AND BEST USE ANALYSIS

Highest and best use as defined in The Appraisal of Real Estate text published by the Appraisal Institute is "The reasonable and probable use that supports the highest present value, as defined, as of the date of appraisal". Alternatively, with respect to vacant land, highest and best use is "The use, from among reasonably probable and legal alternative uses, found to be physically possible, appropriately supported, financially feasible, and that results in the highest present land value."

The purpose of the appraisal is stated to form the basis of opinion for market value of the property that is based on the most probable use. The valuation section of the report will be founded on this highest and best use principle. The marketplace will direct the analysis for the land "as if vacant" while we consider its influences toward the subject of the appraisal. Investor motivations are based on the possible benefits that are expected to occur such as income potential, appreciation prospects, pride of ownership, functional attributes, locational concerns, and other factors.

The highest and best use of the land as though vacant is necessary to approach the land value. This analysis will yield the information necessary to select the appropriate market comparisons for the land valuation. The highest and best use will depend on the potential uses that are physically possible, legally permissible, financially feasible, and maximally productive.

From a physically possible aspect, the shape of the specific rail track lines is long and narrow and the functional utility character of the property is limited. However, the "scope of the appraisal" utilizes the "across the fence" concept for the land where it assumes the characteristics of the adjoining property that the rail lines serve. Thus, the physically possible characteristics of the property assume an adequate size to accommodate a variety of improvement designs and a shape conducive to easy building placement. The previous property description details the exact land sizes, locational factors, terrain, services and street improvements, access, visibility, and adjacent property types. Analysis of these factors indicate a variety of improvements for the property are physically possible and that no significant physical factors are considered to be adverse to achieving a viable highest and best use.

The legally permissible conditions for the land involve the manufacturing use zoning regulations, recorded easements, possible private restrictions, public building codes, and environmental regulations. The property description details these items individually and none of the legal aspects of the land are considered to be outside of the norm. The property does not suffer an excess influence due to legal conditions.

From a financially feasible standpoint, the land must be able to support improvements that lend a satisfactory return to the land portion of the property. This involves testing the physically and legally permissible uses for maximum gross income potential less vacancy and expenses for a net income projection to the property. This net income may be compared as a return on investment to the capital return requirement necessary to satisfy typical debt service at a market rate. The resulting cash flow or equity dividend rate may be compared with typical investor requirements to determine feasibility.

The zoning ordinance permits a variety of commercial/manufacturing/industrial property types as possible uses and the physical characteristics of this property will accommodate a variety of projects. The financial feasibility aspect of the land revolves around cash flow return on capital investment. The most recent newly developed commercial types have been owner-occupied or build-to-suit type ventures and are expected to achieve financial returns through the business operations. Examples include office warehouses, distribution plants, food service and cold storage projects, construction materials sales/storage, truck sales/service shops, agricultural product processing and distribution, storage warehouses, trucking firms, and various service related firms. These new

properties are apparently justifying new land acquisition and construction costs based on their projected business sales. The return to the land is accomplished via business success.

The maximally productive analysis of highest and best use is a process to determine the best specific use among those that are financially feasible. This would isolate the property type that produces the highest rate of return to the land. A specific use for the property could be accomplished via many different property types, however, the most logical use based on the neighborhood and location attributes would be for many categories of industrial, manufacturing, and commercial types similar to those properties that currently exist in this neighborhood.

Therefore, the highest and best use of the land "as if vacant" has proven to be some type of industrial, manufacturing, or commercial improvement within the limits of physical and legal characteristics that meets the needs of the marketplace.

SALES COMPARISON APPROACH

The direct comparison technique of the Sales Comparison Approach is the principal valuation tool in practically all land valuation appraisals. Market, from an appraisal viewpoint, includes the common activity among persons involved in property having similar or comparable characteristics. "Market Data" is a key expression used to describe the pertinent information applied in the valuation analysis. The market data for this approach focuses on sale transactions of similar or substitute vacant land properties.

The essence of the Sales Comparison Approach holds that if willing seller and buyer negotiate a fair sale of similar comparable property, then the property under appraisal may be analyzed in light of this market evidence. The principle of substitution is a direct corollary involved in the selection of comparable sales. An appraiser's role is to observe the actions of buyers, sellers, brokers, lenders, and laymen in their marketplace activity and interpret the results with regard to the property under appraisal.

A general format for application of the Sales Comparison Approach entails these basic steps.

1. Present comparable land sales with pertinent information relative to the analysis
2. Compare the land sales to property under appraisal noting significant differences and their affect on value
3. Establish common denominators, such as price per square foot, price per acre, or price per front foot and draw value indications from each sale using appropriate adjustments
4. Formulate an opinion of value based on the reconciliation of all analyses in this approach

The characteristics of the property and neighborhoods that surround the various rail track lines provide a basis for land valuation analysis. The valuation is divided into two "property/neighborhood" categories that are described as follows.

The industrial property that lies west of MLK Boulevard and East of Interstate 27 is primarily composed of small to medium sized sites for individual companies to perform operations for storage, distribution, sales, and light manufacturing. These sites are typically from 50,000+- SF to 500,000+- SF and are marketed on a "dollars per square foot" basis. Most of these sites are platted industrial park lots with a paved street network to the site frontage and have rail spur lines that are placed in an alley type layout for rear or side building distribution service. This category of land will be compared to various tracts that have sold which offer these characteristics. This analysis is presented in the following "Industrial Land West Sector Valuation" section.

The industrial property that lies east of MLK Boulevard and west of Loop 289 is primarily composed of large industrial sites for the larger company operations of storage, distribution, sales, and light to heavy manufacturing. These sites are typically from 20 acres to 100+ acres and are marketed on a dollars per acre basis. These tracts typically front a major street or highway and have rail spur access. This category of land will be compared to various large tracts that have sold which offer these characteristics. This analysis is presented in the "Industrial Land East Sector Valuation" section.

Thus, MLK Boulevard serves as the dividing line for the "East Sector" railroad right of way and the "West Sector" railroad right of way land.

INDUSTRIAL LAND WEST SECTOR VALUATION

The market data for this category of land represent the most recent sales, and those listed for sale, of properties similar to the property, known to the appraiser, that bears consideration toward interpreting the marketplace.

Land Comparison	# 1
Recorded:	Volume 6563 Page 19
Date:	01/13/2000
Parties:	M. Diekemper to Rollins Leasing Corp
Location:	702 E 50 th Street
Legal Description:	Lot 1 Rollins Leasing
Zoning:	M-1 Light Industrial
Use:	Vacant site for proposed truck leasing facility
Consideration:	\$132,000 (cash to seller) + Pro-rata \$8,325
Size:	239,580+- Square Feet
Unit Consideration:	\$0.58 per Square Foot

Land Comparison	# 2
Recorded:	Volume 6487, Page 344
Date:	10/26/99
Grantor/Grantee:	R. Randolph, Trustee to Tabco Leasing, Inc.
Location:	1114 N Avenue T
Legal Description:	N/2 Lot 7, Stanton's Industrial Addition
Zoning:	"M-2" Heavy Manufacturing
Use:	New industrial facility
Consideration:	\$15,000 (cash to seller)
Size:	29,550+- Square Feet
Unit Consideration:	\$0.51 per square foot

Land Comparison	# 3
Recorded:	Volume 6558, Page 189
Date:	1/24/00
Parties:	Lubbock Beverage Co. to W. Davis, Jr.
Location:	115 Loop 289 SE
Legal Description:	Tract "A" Davis Addition
Zoning:	"M-1" Light Manufacturing
Use:	New landscaping contractor site
Consideration:	\$115,000 (cash to seller) + \$18,800 pro-rata
Size:	151,077+- Square Feet
Unit Consideration:	\$0.89 per Square Foot as improved

Land Comparison	# 4
Recorded:	Volume 6982, Page 30
Date:	07/27/2000
Grantor/Grantee:	Wilkerson Investment Co. to CoxCom, Inc.
Location:	5802 Elm Avenue
Legal Description:	Tract out of S/2 Section 1, Block "E", Lubbock County
Zoning:	"M-1" Light Manufacturing
Use:	Vacant tract
Consideration:	\$100,000 (cash to seller) + \$21,000 Pro-Rata, Platting
Size:	217,809+- Square Feet
Unit Consideration:	\$0.56 per square foot (as if platted)

Land Comparison	# 5
Recorded:	Volume 9117, Page 260
Date:	05/05/04
Grantor/Grantee:	South Plains Switching to R. Massengale
Location:	2501 Interstate 27
Legal Description:	Tracts out of Block 6, 8, 9, 13 Merrill's Addition including portions of closed streets and alleys
Zoning:	"M-1" Light Manufacturing
Use:	Vacant tract
Consideration:	\$142,500 (cash to seller)
Size:	254,826+- Square Feet
Unit Consideration:	\$0.56 per square foot

Land Comparison	# 6
Recorded:	Volume 6484, Page 57
Date:	11/01/99
Parties:	Bobby McQueen to Postar & Postar Inc.
Location:	501 N University Avenue
Legal Description:	Lot 1, Plains Gas Addition
Zoning:	"M-1" Light Manufacturing
Use:	Vacant tract
Consideration:	\$85,000 (cash to seller)
Size:	112,419+- Square Feet
Unit Consideration:	\$0.76 per Square Foot

Land Comparison

7

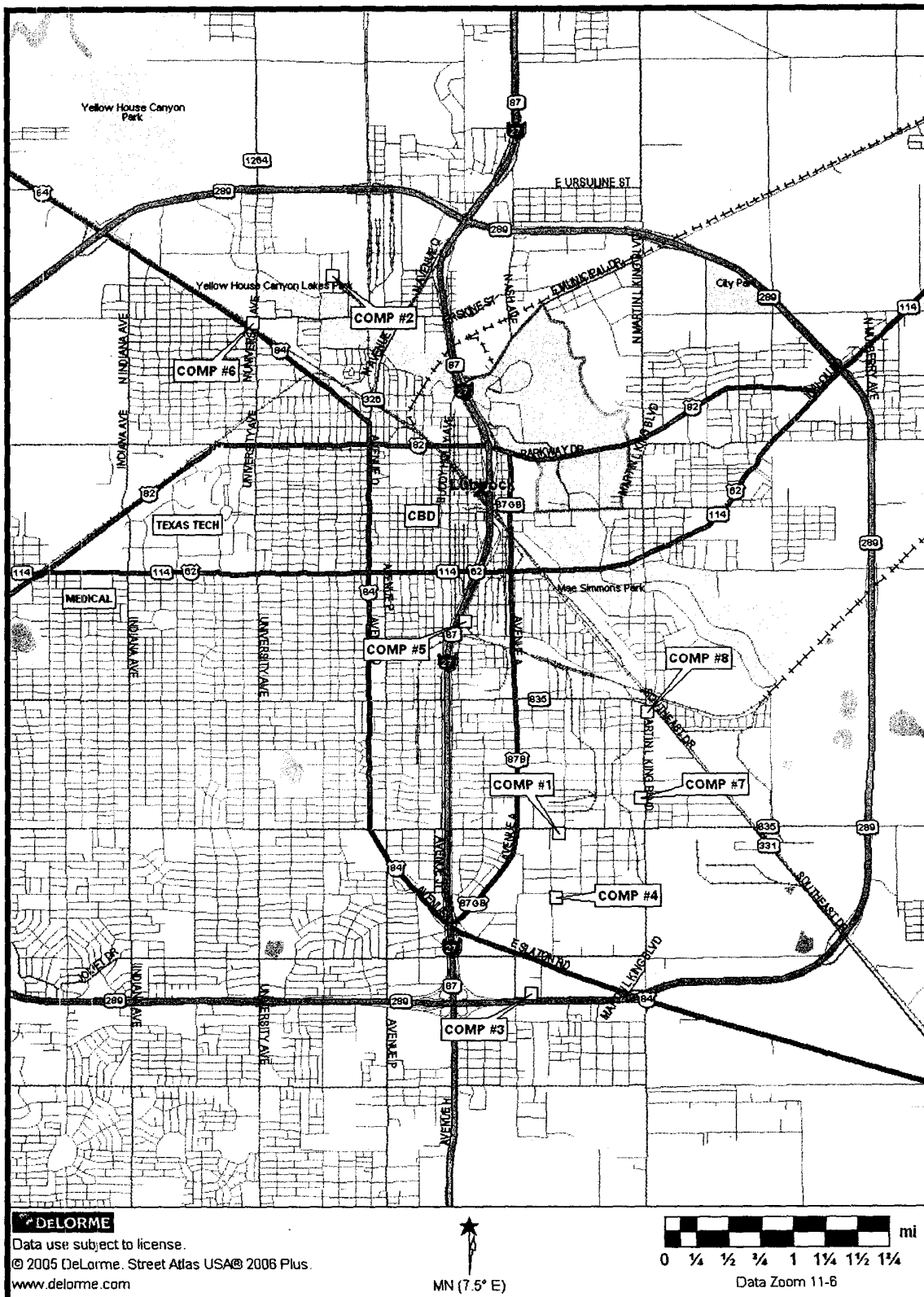
Date:	Current Listing For Sale
Real Estate Broker:	Westmark Realtors
Location:	4602 MLK Boulevard
Legal Description:	Lot 1, Block 16, Nelson Brown Addition
Zoning:	"M-1" Light Manufacturing
Use:	Vacant site
Consideration:	\$74,197 (cash to seller)
Size:	142,877+- Square Feet
Unit Consideration:	\$0.52 per square foot

Land Comparison

8

Date:	Current Listing For Sale
Real Estate Broker:	Rick Canup Coldwell Banker Realtors
Location:	3402 MLK Boulevard
Legal Description:	Lots 1-7, Tract A, Nunley Addition
Zoning:	Light Manufacturing and Heavy Commercial
Use:	Vacant site
Consideration:	\$135,000 (cash to seller)
Size:	251,132+- Square Feet
Unit Consideration:	\$0.54 per square foot

LAND SALES MAP



LAND SALES CHART (West Sector)						
#	Street	Address	Area SF	Price/SF	Date	Grantor/Grantee
1	702	50th E	239,580	\$0.58	Oct-99	Diekemper/Rollins Leasing
2	1114	N Ave T	29,550	\$0.51	Nov-99	Randolph/Tabco
3	115	Loop 289 SE	151,077	\$0.89	Jan-00	Lubb Beverage/Davis
4	5802	Elm Ave	217,809	\$0.56	Jul-00	Wilkerson/Coxcom
5	2501	Interstate 27	254,826	\$0.56	May-04	SP Switching/Massengale
6	501	Univ Ave N	112,419	\$0.76	Jan-05	McQueen/Postar
7	4602	MLK Boulevard	142,877	\$0.52	Listing	Westmark Realtors, broker
8	3402	MLK Boulevard	251,132	\$0.54	Listing	Coldwell Banker Realtors, broker

These land sale comparisons represent a survey of the neighborhood and substitute locations that compare favorably with the property under appraisal. The land prices are presented in dollars per square foot, which is the most appropriate unit of comparison for this market. The overall price range is from \$0.51 to \$0.89 per square foot.

Some of the data may require adjustment consideration attributed to time, location, physical characteristics, or terms of sale. The time factor is proven to be a stable influence over the past few years for land in this market where a cross comparison of like sales shows no significant change in value over time. The terms of sale for the transactions all included a price based on cash to the seller.

The physical sizes of the land sales are directly comparable for the market and no significant change in value may be attributed to size.

An adjustment for location may be necessary and will be based on property factors such as the immediate neighborhood characteristics, a corner versus interior block location, ingress-egress status, and visibility of the sales as they compare with the subject property.

The following land value adjustment chart illustrates the mechanics of this analysis.

LAND VALUE ANALYSIS CHART (West Sector)								
#	Street	Address	Area SF	Price/SF	Time	Size	Location	Value Guide
1	702	50th E	239,580	\$0.58	0%	0%	0%	\$0.58
2	1114	N Ave T	29,550	\$0.51	0%	0%	0%	\$0.51
3	115	Loop 289 SE	151,077	\$0.89	0%	0%	-25%	\$0.67
4	5802	Elm Ave	217,809	\$0.56	0%	0%	0%	\$0.56
5	2501	Interstate 27	254,826	\$0.56	0%	0%	0%	\$0.56
6	501	University Ave N	112,419	\$0.76	0%	0%	-25%	\$0.57
7	4602	MLK Boulevard	142,877	\$0.52	0%	0%	0%	\$0.52
8	3402	MLK Boulevard	251,132	\$0.54	0%	0%	0%	\$0.54
Average Guide								\$0.56

When these factors for time, size, and location are processed in the valuation analysis, the adjusted value guides are expressed as \$0.51 to \$0.67 with an overall average indication of \$0.56 per square foot. These land sale and listing comparisons reflect a good cross section of the industrial land market for the city and a very

consistent pattern is illustrated for this "small industrial use" category of land. The analysis includes comparables from various parts of the target neighborhood plus data from other industrial locations and they tend to agree that industrial land in this target "rail track" area will fall in a value range of \$0.50 to \$0.60 per square foot. The industrial land market is not very active relative to commercial land, apartment land, or residential land and this low volume of sales activity has been the norm throughout the history of the neighborhood. Therefore, the lack of plentiful and recent sales data for the industrial land market is not necessarily negative, it is just the norm.

With these observations in mind, the property factors suggest a value toward the middle of a practical indicated value bracket at \$0.50 to \$0.60 and a specific value conclusion of \$0.55 per square foot is the most reliable market indication.

Opinion of Market Land Value "Industrial Land West Sector"\$0.55 Per Square Foot

INDUSTRIAL LAND EAST SECTOR VALUATION

The market data for this category of land represent the most recent sales, and those listed for sale, of properties similar to the property, known to the appraiser, that bears consideration toward interpreting the marketplace.

Land Comparison # 9

Recorded: Volume 4467, Page 229
Date: 1/24/94
Parties: N, Thomas et al to Gary Products Group
Location: 2601 SE Loop 289
Legal Description: A Tract out of Section 3 Block S, Lubbock County
Use: New light industrial manufacturing site
Consideration: \$150,000
Size: 31.00 Acres Net Usable
Unit Consideration: \$4,839 per Acre

Land Comparison # 10

Recorded: Volume 6437 Page 50
Date: 19/13/99
Parties: Johan Magnusson to United Supermarkets, Inc.
Location: 5801 MLK Boulevard, Lubbock, Texas
Legal Description: Tract out of Section 2 Block S and Section 23 Block E
Lubbock County, Texas
Use: Vacant land
Consideration: \$340,000 (cash to seller)
Size: 98.596+- Acres Net Usable
Unit Consideration: \$3,448 per Acre

Land Comparison # 11

Recorded: Volume 7288, Page 58
Date: 09/26/01
Parties: W.K. Bigham & Sons to Motel Management of Lubbock, Inc.
Location: 3500 N Quaker Avenue
Legal Description: A Tract out of Section 14, Block "A", Lubbock County
Use: Vacant land for industrial tract subdivision
Consideration: \$73,250 (cash to seller)
Size: 28.225+- Acres Net Usable
Unit Consideration: \$2,595 per Acre

Land Comparison # 12

Recorded: Volume 8216, Page 30
 Date: 03/04/03
 Grantor/Grantee: Kevin Parsons to Drive-In USA, Inc.
 Location: 5101 Clovis Road (US Hwy 84)
 Legal Description: A Tract out of NW/4 Section 14, Block "A", Lubbock County
 Use: Vacant land
 Consideration: \$78,000 (cash to seller)
 Size: 24.23+- Acres Net Usable
 Unit Consideration: \$3,219 per Acre

Land Comparison # 13

Recorded: Volume 8427, Page 10
 Date: 06/13/03
 Grantor/Grantee: Enger, Williams, Jones, et al to Z-8 Properties, Ltd.
 Location: 2611 Slaton Road, Lubbock
 Legal Description: Two tracts out of Section 3, Block "S", Lubbock County
 Use: Vacant land with immediate development of 18+- acres for Chisum Travel
 Center; a portion of tract includes flood zone area
 Consideration: \$441,950 (cash to seller)
 Size: 88.4755+- Acres Net Usable
 Unit Consideration: \$4,995 per Acre

Land Comparison # 14

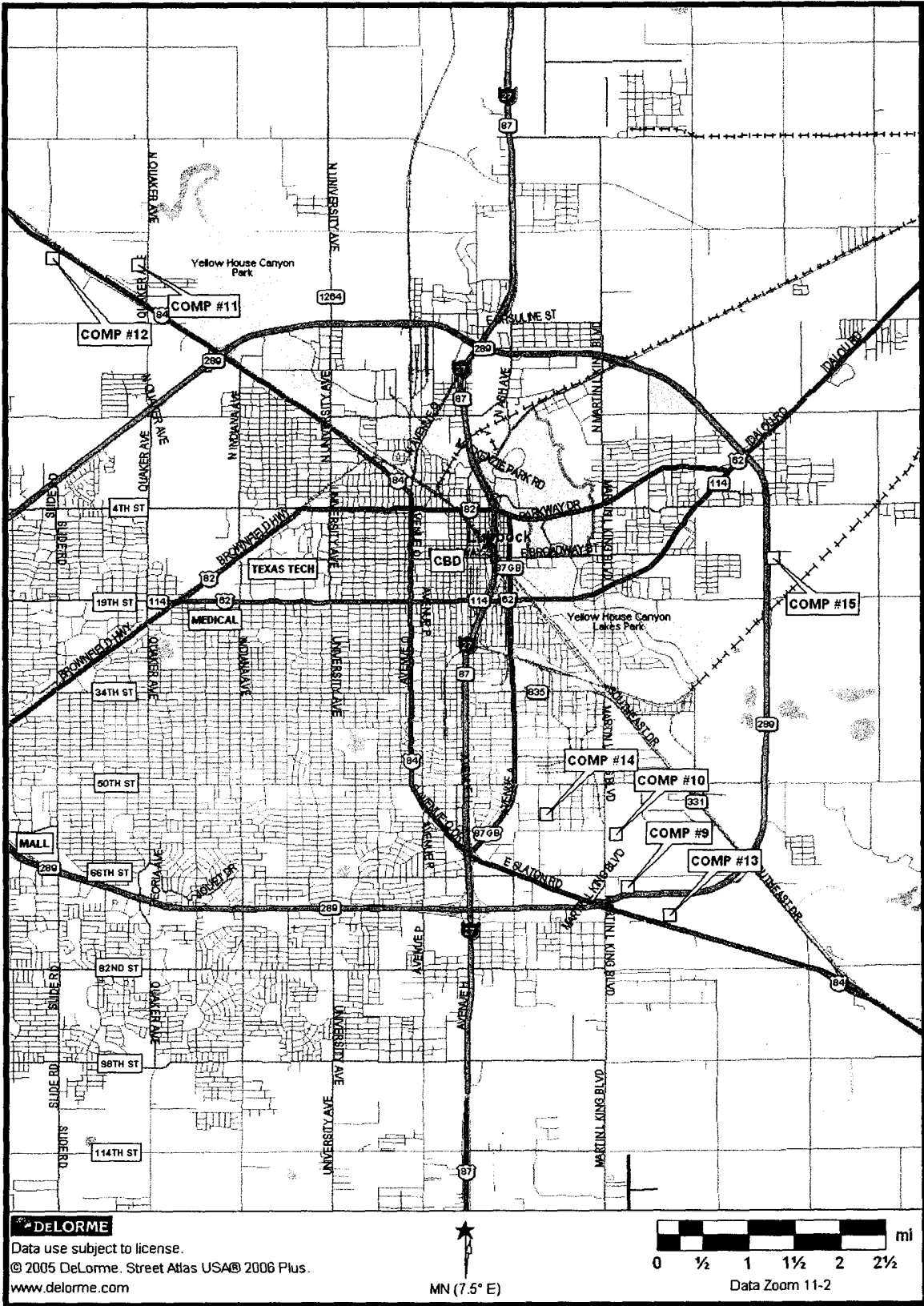
Date: Current Listing For Sale
 Real Estate Broker: Westmark Realtors
 Location: 501 E 56th Street
 Legal Description: A Tract out of Section 1, Block "E", Lubbock County
 Use: Vacant land
 Consideration: \$200,000 (cash to seller)
 Size: 42.67+- Acres
 Unit Consideration: \$4,687 per Acre

Land Comparison

15

Date:	Current Listing For Sale
Real Estate Broker:	Rick Canup Coldwell Bank Realtors
Location:	1201 Loop 289 E
Legal Description:	Two Tracts out of Section 5, Block "O", Lubbock County
Use:	Vacant land
Consideration:	\$91,228 (cash to seller)
Size:	22.807+- Acres Net Usable
Unit Consideration:	\$4,000 per Acre

LAND SALES MAP



LAND SALES CHART (East Sector)						
#	Street	Address	Area Ac	Price/Ac	Date	Grantor/Grantee
9	2601	Loop 289 SE	31.000	\$4,839	Jan-94	Thomas/Gary Products
10	5801	MLK Blvd	98.596	\$3,448	Jul-99	Magnusson/United
11	3500	N Quaker Ave	28.225	\$2,595	Sep-01	Bigham/Motel Mgt
12	5101	Clovis Rd	24.230	\$3,219	Mar-03	Parsons/Drive-In USA
13	2611	Slaton Hwy	88.476	\$4,995	Jun-03	Jones, Enger/Z-8 Prop
14	501	56th E	42.670	\$4,687	Listing	Westmark Realtors
15	1201	Loop 289 E	22.807	\$4,000	Listing	Coldwell Banker Realtors

These land sale comparisons represent a survey of the neighborhood and substitute locations that compare favorably with the property under appraisal. The land prices are presented in dollars per acre, which is the most appropriate unit of comparison for this market. The overall price range is from \$2,595 to \$4,995 per acre.

Some of the data may require adjustment consideration attributed to time, location, physical characteristics, or terms of sale. The time factor is proven to be a stable influence over the past few years for land in this market where a cross comparison of like sales shows no significant change in value over time. The terms of sale for the transactions all included a price based on cash to the seller.

The physical sizes of the land sales are directly comparable to the market of middle sized tracts, while Sale #10 and Sale #13 are larger and require positive adjustments from the typical 25-acre sized tract. A 0.05% per acre variance is recognized by cross comparison analysis of paired sales. This analysis results in adjustments of 4% and 3% respectively for these larger land sales. The location amenities vary for some tracts due to the difference in neighborhood characteristics. Comparison's #11 and #12 are slightly inferior in location to the target district while Comparable #13 is slightly superior.

The following land value adjustment chart illustrates the mechanics of this analysis.

LAND VALUE ANALYSIS CHART (East Sector)								
#	Street	Address	Area Ac	Price/Ac	Time	Size	Location	Value Guide
9	2601	Loop 289 SE	31.000	\$4,839	0%	0%	0%	\$4,839
10	5801	MLK Blvd	98.596	\$3,448	0%	4%	0%	\$3,586
11	3500	N Quaker Ave	28.225	\$2,595	0%	0%	25%	\$3,244
12	5101	Clovis Rd	24.230	\$3,219	0%	0%	15%	\$3,702
13	2611	Slaton Hwy	88.476	\$4,995	0%	3%	-10%	\$4,645
14	501	56th E	42.670	\$4,687	0%	0%	0%	\$4,687
15	1201	Loop 289 E	22.807	\$4,000	0%	0%	0%	\$4,000
Average Guide								\$4,100

When these factors for time, size, and location are processed in the valuation analysis, the adjusted value guides are expressed as \$3,244 to \$4,839 with an overall average indication of \$4,100 per acre. This is a reasonable range and the data point to a consistent indicated value bracket with an even distribution of value guides. The industrial land market is not very active relative to commercial land, apartment land, or residential land and this low volume of sales activity has been the norm throughout the history of the neighborhood. Therefore, the lack of plentiful and recent sales data for the industrial land market is not necessarily negative, it is just the norm.

With these observations in mind, the property factors suggest a value toward the middle of a practical indicated value bracket at \$3,500 to \$4,500 and a specific value conclusion of \$4,000 per acre is the most reliable market indication.

Opinion of Market Land Value "Industrial Land East Sector".....\$4,000 Per Acre

FINAL OPINION OF VALUE

The appraisal process for the valuation of this vacant land has been completed through the application of the Sales Comparison Approach. Direct analysis of comparable sales has yielded a good deal of information pertaining to the land market for property having similar characteristics to the land under appraisal.

A cross comparison analysis with the West Sector sales to the land under appraisal presents a most probable value range of \$0.50 to \$0.50 with the best specific conclusion based on \$0.55 per square foot. A cross comparison analysis with the East Sector sales to the land under appraisal presents a most probable value range of \$3,500 to \$4,500 with the best specific conclusion based on \$4,000 per acre. These per unit values may be applied to the respective land areas for the four designated areas under appraisal.

After proper consideration of data within the appraisal process, the most reasonable and supportable Market Value for the whole property under appraisal is concluded to be

Area	Size	Value Per Unit	Indicated Value
One			
West Sector	2,921,901	\$0.55	\$1,607,046
East Sector	52.537	\$4,000	\$210,148
			\$1,817,194
		Rounded	\$1,817,000
Two			
East Sector	36.657	\$4,000	\$146,628
		Rounded	\$147,000
Three			
West Sector	261,360	\$0.55	\$143,748
		Rounded	\$144,000

Effective Date of Appraisal...April 21, 2006



TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

BE IT KNOWN THAT

MERLE NORMAN BLOSSER

*HAVING PROVIDED SATISFACTORY EVIDENCE OF THE QUALIFICATIONS
REQUIRED BY THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT,
TEXAS OCCUPATIONS CODE, CHAPTER
1103, IS AUTHORIZED TO USE THE TITLE*

**STATE CERTIFIED
GENERAL REAL ESTATE APPRAISER**

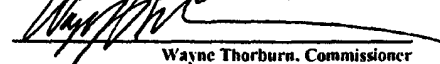
Number: TX-1321336-G

Date of Issue: May 24, 2005

Date of Expiration: June 30, 2007

In Witness Whereof


Shirley J. Ward, Chair


Wayne Thorburn, Commissioner

Shirley J. Ward, Chair
Elroy Carson
L.W. (Wayne) Mayo

Larry D. Kokel, Vice-Chair
Malcolm J. Deason
Paul E. Moore

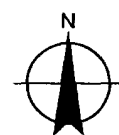
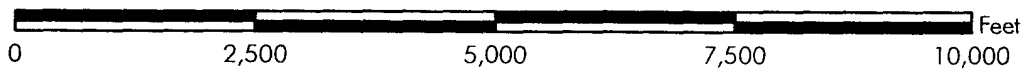
Dona S. Scurry, Secretary
William A. Faulk, Jr.
Clinton P. Sayers

ADDENDA



RIGHT OF WAY

SAW Track Map 1



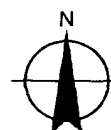
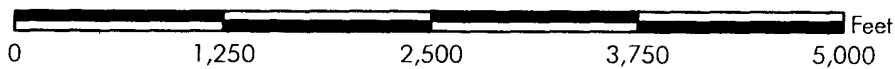
Legend

- 20 Foot Buffer
 - 46 Foot Buffer
 - 50 - 100 Foot Buffer
- Estimates in Square Feet



RIGHT OF WAY

SAW Track Map 2



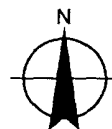
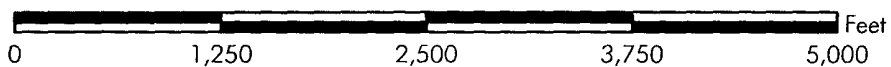
Legend

- 20 Foot Buffer
 - 46 Foot Buffer
 - 50 - 100 Foot Buffer
- Estimates in Square Feet



RIGHT OF WAY

SAW Track Map 3



Legend

-  20 Foot Buffer
 -  46 Foot Buffer
 -  50 - 100 Foot Buffer
- Estimates in Square Feet

CITY OF LUBBOCK AND REGIONAL DATA

LOCATION

Lubbock is centered at the south side of the Texas Panhandle, approximately 65 miles east of the New Mexico state line. This northwest part of Texas is known as the South Plains region. Lubbock is considered the focal point of its 23 county trade area, covering approximately 30,000 square miles.

POPULATION

The current City of Lubbock population estimate for 2005 is reported to be 209,120+ per the planning department while the Lubbock County population is measured at 256,081+. Population increased 1.68% per year for the 1970's decade, 0.85% per year for the 1980's period, and 0.58% annually for the 1990's time period. This shows an overall growth rate of around 1,700 per year for the past 30 years and a declining percentage growth rate. Lubbock population ranks 8th in the State of Texas, 185th for the U.S., and is the largest city in northwest Texas. The Lubbock population is expected to gradually increase around 0.75% per year.

Year of Census	1970	1980	1990	2000
Population Count	149,101	174,200	189,000	199,564

TRANSPORTATION

Lubbock is well served by four U.S. highways that intersect the city being US 84 from southeast to northwest, US 62-82 from southwest to northeast, and US 87 from south to north. Interstate 27 follows the US 87 route connecting Lubbock to Amarillo and provides major freeway access through the city on its' north-south route. This freeway enhances the traffic flow to and from the central business district with a time frame less than 15 minutes from any part of the city. There are also numerous state and farm to market roads that crisscross the region.

Within the city, Loop 289 is a 4 to 6 lane freeway that provides quick access to major traffic arteries as it circles Lubbock. The grid pattern street layout affords easy inner city travel with major arteries placed at one-mile intervals north to south and east to west. In addition, the new east-west freeway is under construction, which extends southwest to northeast beginning at Loop 289 W along Brownfield Highway, then traveling east along 4th Street to I-27. This will add another primary freeway with access roads and will greatly enhance the east-west traffic across the city.

US Highway 87 is part of the "Ports to Plains Trade Corridor" route that will extend trade between Mexico, the United States, and Canada. At the present, the route is defined from Laredo to Carrizo Springs, to San Angelo, to Big Spring and/or Midland, to Lubbock, to Amarillo, to Dumas and then north through Oklahoma to Denver, Colorado. This "Ports to Plains Trade Corridor" is expected to relieve the high traffic volume along Interstate 35 in central Texas and provide an alternate (quicker) route to trade opportunities north of Texas. Lubbock is one of over 50 coalition members of "Ports to Plains" that started in 1997 and has achieved state and national support in furthering trade with our NAFTA partners in this global economy.

Adequate rail service for shipping/receiving is provided to the industrial park neighborhoods via rail spurs from the major tracks through Lubbock.

The Lubbock International Airport is a modern facility with the most advanced air traffic control capability. The terminal includes nine passenger-boarding gates and serves, Southwest, Continental, and American Eagle, airlines as well as private charters. Airline boardings totaled 541,549 for 2004 and slightly below the ten-year average of 564,613. Airport sites are also being developed for private FBO facilities, air express stations, commercial sites, and an industrial park with future rail service.

FINANCIAL

There are a number of Lubbock and regional banks in operation throughout the community, which provide the full range of financial services necessary to accommodate the Lubbock and regional population. There are also several private mortgage companies with active conventional, FHA, and VA loan portfolios in the residential and commercial lending market. Lubbock has some of the state's leading banks in the agri-business sector, while most have active mortgage loan departments in addition to the normal full-service bank operations. Lubbock is considered to be a major regional financial center.

AGRICULTURE

Lubbock County is part of a highly productive area referred to as the South Plains region. High crop productivity is due to a combination of good soil, proper climate, and the irrigation assistance from water wells. The natural underground water basin covers a major portion of this area and is a primary factor in crop capacity; however, there is evidence of gradual water depletion and new sources of water and conservation methods must be discovered in the future.

Cotton is the primary crop for the South Plains region with a production volume that measures 64% of the Texas total, 18% of the nation's output, and 4% of the world cotton crop. Due to this high concentration of cotton production, there are several plant research groups and mechanization firms that make Lubbock a center for innovation within the cotton industry. The USDA research center at Texas Tech University and the Texas A&M Agricultural Research and Extension Center in Lubbock are the two leading organizations for crop research for the region. There are also major cottonseed oil mills as an important segment of agri-business.

Total cotton production on the South Plains for the 2004 crop year was the largest on record, dating from 1926, with a total 4.6 million bales. This huge crop was well above the previous ten-year average of 2.8 million bales. Cotton commodity prices generally fluctuate from \$0.35 to \$0.65 per pound, while the 2004 crop is bringing around \$0.50 per pound. The total farm income from this 2004 crop is estimated at \$1.28 Billion and economists forecast a multiplier of 3.50 to project a value of \$4.48 Billion for the region. Clearly, the cotton industry has the largest single impact on the local economy.

The northern part of this agricultural district focuses on grain sorghum where planting seed production and research is a large operation. This area produces 85% of the world's hybrid grain sorghum, involving the five largest seed companies in continuing research. Grain sorghum serves as a source of raw material for the beef and swine feeding operations. This factor has brought about a high concentration of beef-swine feed lot businesses and their allied industries such as packing plants, etc. Recently, several dairies have been developed across the south plains with expected growth of the milk industry due to good feed supply and labor pool.

Peanut production is a significant crop on the south plains due to the same good soil, water, and weather conditions. Another crop that has gained significant exposure on the regional and national scene is grape production for three local wineries. The wineries are producing some of the country's finest varieties of wine. Soil, water, and climate are reported to be ideal for the new cash crop and the forecast for growth is favorable.

The South Plains area farms are larger and more highly mechanized than most areas of the country; and considering the irrigation of more than 5.5 million acres of land; this region has a major impact on the U.S. agricultural picture.

The Texas County Extension Districts report the total cash value of basic agriculture production for the South Plains area ranks 3rd among the state's 12 regions and commands 13% of the total volume. This cash value is divided as fed beef (30.4%), cotton (29%), peanuts (6.9%), other beef (7.2%), cottonseed (4.9%), and all other agriculture production (21.5%).

EDUCATION

Lubbock is home to Texas Tech University that offers a wide range of study for undergraduate and graduate degrees from seven colleges, plus the highly accredited law and medical schools. The university serves as one of the region's primary economic engines with rapid enrollment growth from 24,558 for the fall of 2000 to 28,500+- for the fall 2004 semester. Texas Tech is a member of the "Big 12" athletic conference and has offers fairly new and state of the art facilities for the various programs. The large campus offers a wide variety of cultural facilities including a museum, planetarium, theater, international cultural center, Southwest Collection, and Ranching Heritage Center. The Texas Tech University Health Sciences Center is housed in an 800,000 square foot medical complex with the adjacent University Medical Center teaching hospital.

Lubbock Christian University offers a variety of degree programs and the student population is in a significant growth phase from 1,321 enrolled in 1999 to the current 1,937. South Plains College has campuses in Levelland and in Lubbock at Reese Technology Center and offers a two-year curriculum plus occupational and vocational training programs to about 9,500 students. Wayland Baptist University also has a Lubbock campus with around 800 college students.

The Lubbock Independent School District has 4 high schools, 10 junior high schools, and 28 elementary schools for around 29,000 students. There are also several private and/or parochial schools, plus many professional and vocational training schools.

MEDICAL

Lubbock has three hospitals, various special treatment centers, numerous medical clinics, nursing homes, and the Texas Tech Medical School. The two largest hospitals have grown in size and level of care with specialties in every area of medicine. The Covenant Medical System is a complete care medical center designed for regional patient service. The University Medical Center is the county owned teaching hospital associated with the Texas Tech University Health Sciences Center and offers a complete compliment of medical services.

Highland Hospital is a medium sized facility with various specialty services. NorthStar Surgical Center was developed in 2001 and provides specialty services for various short stay surgical procedures. An addition to this North Loop 289 medical center complex is the Lubbock Heart Hospital for 2003 with several heart specialists joining together to form a care facility for open-heart surgery and full patient care. Grace Clinic is a new diagnostic and surgical center project under construction for 2006 that will house a state of the art medical care facility.

Thus, Lubbock is definitely the major medical center for West Texas and eastern New Mexico, offering a full spectrum of nationally recognized expert medical care. This is one of the primary economic base forces for the Lubbock economy toward basic employment and the high dollar volume of medical billing and peripheral medical business production.

The Texas Department of Criminal Justice has a 550 bed Correctional Psychiatric Facility in Lubbock that has eleven 50-bed housing units and an employment base of 600 jobs.

Senior citizen care is offered by several assisted living centers and various nursing homes. There is one full life care facility (Carillon Retirement Center) that offers a complete range of retirement care from a luxury independent living apartment complex, to assisted living apartments, to a full service nursing center. The retirement care industry for

Lubbock is growing due to the high quality medical care, the comfortable climate, the quality level of facilities, and the lower cost of living.

COMPARATIVE MSA ANALYSIS

The State of Texas now has 25 Metropolitan Statistical Areas (MSA's) where five are classified as major metros and the remaining 20 are classed as smaller metros. Lubbock falls into the smaller metro category and the following chart illustrates how Lubbock compares with these 20 areas of Texas with regard to three key economic forecasts. Ray Perryman, noted economist, publishes The Perryman Texas Letter and The Perryman Report. In a recent report Mr. Perryman provides a forecast for the 2005 to 2010 time frame including population gain, Real Gross Product gain, and the gain in jobs over this five year period. These statistics provide the numbers and dollars of gains for the five years then the compound annual growth rate (CAGR) is provided for each MSA.

MSA	Pop Gain 2005-2010	Pop CAGR	Real Gross Product Gain 2005-2010 \$Billion	Real Gross Product CAGR	Number of Jobs Gain 2005-2010	Job Growth CAGR
Abilene	14,300	1.69%	\$0.83	3.99%	6,700	1.77%
Amarillo	20,100	1.62%	\$1.56	4.16%	9,900	1.69%
Beaumont-Port Arthur	33,700	1.62%	\$2.37	4.22%	14,100	1.68%
Brownsville-Harlingen	39,600	2.02%	\$1.24	4.05%	12,400	1.85%
College Station-Bryan	18,400	1.82%	\$0.98	3.99%	8,400	1.78%
Corpus Christi	30,700	1.43%	\$2.11	3.64%	11,100	1.18%
Killeen-Temple-Fort Hood	33,000	1.79%	\$1.73	3.66%	14,300	1.66%
Laredo	27,000	2.32%	\$0.96	4.17%	8,400	1.87%
Longview	17,400	1.64%	\$1.35	4.28%	8,200	1.68%
Lubbock	22,300	1.63%	\$1.57	4.05%	11,100	1.66%
McAllen-Edinburg-Pharr	84,000	2.40%	\$2.20	4.10%	20,700	1.86%
Midland	8,600	1.37%	\$1.29	4.29%	5,300	1.71%
Odessa	8,800	1.36%	\$0.78	4.13%	4,300	1.50%
San Angelo	7,600	1.37%	\$0.59	4.03%	4,300	1.63%
Sherman-Denison	10,500	1.71%	\$0.62	4.20%	4,200	1.72%
Texarkana	6,700	1.41%	\$0.45	3.76%	3,400	1.53%
Tyler	17,400	1.78%	\$1.49	4.35%	8,800	1.82%
Victoria	9,500	1.57%	\$0.69	4.08%	4,100	1.57%
Waco	19,000	1.62%	\$1.32	4.15%	9,500	1.73%
Wichita Falls	12,700	1.60%	\$0.89	3.95%	6,000	1.60%
Averages	22,065	1.69%	\$1.25	4.06%	8,760	1.67%

When compared with these 20 MSA's Lubbock ranks 7th in expected population gain and 10th in the annual percentage rate of population gain. Lubbock ranks 5th in dollar gain for Real Gross Product while ranking 12th for the annual percentage gain forecast. And Lubbock ranks 5th in the number of jobs created and 13th for the annual percentage job growth rate of change. Thus, from an overall standpoint the Lubbock MSA shows to be above average for all three categories in population numbers, dollars of growth, and number of new jobs while being very close to average for the annual percentage rate of change in all three categories.

BUSINESS AND INDUSTRY

Lubbock has a diverse group of manufacturing, wholesale, service, and retail businesses. Examples of the larger firms and their products or services are listed.

Company Name	Type of Business	Employment
Covenant Health System	General medical and surgical hospital	6,900
University Medical Center	General medical and surgical hospital	2,250
Caprock Home Health Services	Home health care	1,650
Convergys	Call center	1,500
United Supermarkets	Supermarket chain headquarters	1,345
Lubbock State School	Residential care-mental retardation	876
Texas Dept of Corrections	Psychiatric/Medical facility	870
Southwestern Bell Communications	Wireless communications	1600
West TeleServices	Call center	558
Industrial Molding	Manufacturing plastic products	505
Noble Construction Equipment	Manufacturing construction machinery	482
Covenant Home Health Care	Home health care	350
McLane High Plains	Wholesale food distribution	416
Operator Service Company	Telecommunications/long distance	409
Tyco Fire Protection	Manufacturing fire protection systems	400
NTS Communications	Telecommunications	294
Frito Lay	Manufacturing food products	277
TNM&O Coaches	Bus transportation	259
USA Relay Telecommunications	Telephone information services	200
Bell Dairy Products	Manufacturing fluid milk	240
Highland Medical Center	General medical and surgical hospital	220
US Food Service	Wholesale food distribution	214
O'Hair Shutters	Millworks	206
Goulds Pumps	Manufacturing fluid power pumps & motors	204
Dynamic Foods	Manufacturing food products	202
Rip Griffin Travel Centers	Truck travel centers	195
Mrs. Baird's Bakeries	Manufacturing food products	189
Coca-Cola	Bottled and canned soft drinks	186
Lee Lewis Construction	General contractor	175
Farmers Cooperative Compress	Baled cotton storage & handling	180
Watson Sysco Foodservice	Wholesale food distribution	177
IHS Hospital	Long term hospital skilled nursing	164
Robert Heath Trucking	Trucking	163
Scott Manufacturing	Fabricated Plate works	162
PYCO Industries	Manufacturing cottonseed oil mills	175
CHR Solutions	Communications consulting	149
Caprock Manufacturing	Manufacturing plastic products	140
Texas Agricultural Experiment Station	Agricultural research	175
X-Fab Texas	Semiconductor wafer fabrication	200
Plains Cotton Cooperative	Cotton marketing	131

Major retail firms include: Sears, J.C. Penny, Dillard's, K-Mart, Kohl's, Target, Circuit City, PetsMart, Old Navy, Office Depot, Office Max, Staple's, Best Buy, Home Depot, Lowe's Home Center, Sutherland's Home Center, Michael's, Mervyn's, Beall's, Wal-Mart and Sam's (3 stores), Dunlap's, plus United, Albertson's, and Lowe's Supermarkets.

MISCELLANEOUS

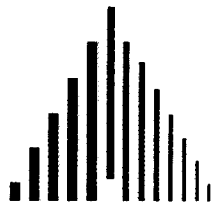
Government - mayor, council, city manager for city; commissioner's court for Lubbock County

Utilities - Water by Canadian River Authority and private wells; electric power by Excel Energy and Lubbock Power and Light; natural gas by Atmos Energy

Elevation:	3,251 feet
Climate:	Semi-arid, moderate
Average Rainfall:	19 inches per year
Average Temperature:	40 degrees winter, 80 degrees summer
Weather:	general conditions favorable in this Sunbelt region

SOCIAL AND CULTURAL

- Lubbock Memorial Civic Center for conventions, theater, concerts, meetings, exhibits
- United Spirit Arena for Texas Tech athletics and special events
- Lubbock Auditorium-Coliseum for plays, concerts, ice hockey, rodeos, and various entertainment and sporting events
- Ranching Heritage Center
- Texas Tech Museum and Moody Planetarium
- International Cultural Center
- Southwest Collection and Vietnam Center
- Charles Maedgen Theater
- Science Spectrum for science displays and hands-on learning, national touring exhibits, and special science events
- Omni-Max Theater (one of only two in Texas)
- South Plains Fair Grounds
- Buddy Holly Museum for music history and memorabilia
- Depot District for night clubs, restaurants, and music theater
- Public libraries
- Numerous parks, golf courses, and swim pools
- Three full service private country clubs
- Canyon Lakes Park
- Churches of various denominations



Appraisal Institute®

*Professionals Providing
Real Estate Solutions*

The Appraisal Institute was chartered in January 1991 as a result of a merger of The American Institute of Real Estate Appraisers and the Society of Real Estate Appraisers. This merger coupled the attributes of both long time established groups into a single professional appraisal organization. Today more than 16,000 appraisers are members of The Appraisal Institute.

The Appraisal Institute designations of MAI and SRA have attained a national reputation for professional service to the public. Courts, government agencies, lending institutions, developers, and real estate brokers have relied upon and, in many cases, sought out reports prepared by appraisers who hold the MAI and SRA designation.

The Appraisal Institute has an intensive program designed to test knowledge, experience and judgment in the field of real estate appraising, and membership in the Institute is awarded only to those who have demonstrated their ability to meet these stringent requirements. These standards demand that a member have years of practical appraisal experience; pass extensive written tests; and submit numerous appraisal reports demonstrating the ability to render competent service to clients. Moral character, ethical conduct, and professional services are always subject to review by the Appraisal Institute.

The history behind formation of The Appraisal Institute shows pioneer work in the field of continuing appraisal education having roots back to 1932. Today, the Appraisal Institute offers a series of twenty-one graduate level courses ranging from basic appraisal principles and techniques to advanced technical subjects. There are several specialty courses that are offered online via the Internet. The Appraisal Institute is the primary source for educational materials and publishes appraisal textbooks, monographs and periodicals. The MAI and SRA designations signify professional attainment in the field of real estate appraising.

The Appraisal Institute is a founding member of The Appraisal Foundation established by congress to oversee the profession. The leadership of AI in the governmental arena has been a key factor in establishing higher levels of expertise and standards for the appraisal profession.

MAI - Member, Appraisal Institute - is a designation awarded to those who have proven their ability to appraise all types of real property.

SRA - Senior Residential Appraiser - is the designation earned by those specialists who have demonstrated competence in the appraisal of single-family residences.

All members must subscribe to the Institute's rigid Code of Ethics and Standards of Professional Conduct.

RÉSUMÉ

MERLE N. BLOSSER, MAI, SRA

Owner of Blosser Appraisal, 1001 Main Street, Suite 206 Court Place, City of Lubbock, Texas

Began real estate appraisal career in 1973 in Lubbock; formed Blosser Appraisal in 1987

US Army Veteran, served in regular army active duty (1971-73) as a Pershing Missile Instructor in the 5th Army Headquarters Unit, Ft. Sill, Oklahoma

College job with General Dynamics (now Lockheed Corp) in flight test engineering department

PROFESSIONAL AFFILIATIONS

- Appraisal Institute:
 - Member Appraisal Institute (MAI) Designation, Certificate #5982 (1979)
 - Residential Member (RM) Designation, Certificate #1121 (1977)
 - Senior Residential Appraiser (SRA) converted from RM designation in 1991
 - President Appraisal Institute Texas Plains Chapter
 - Region 8 representative for Texas Plains Chapter
 - Chairman of Education and Admissions for Appraisal Institute Texas Plains Chapter
 - Ethics and Counseling Regional Panel Member
- Texas State Certified General Real Estate Appraiser Number # TX-1321336-G
- Texas Real Estate Broker's License #179763-27
- Member National, Texas, and Lubbock Association of Realtors

HONORS

- Twice appointed by the Texas State Board of Education to the textbook committee for the selection of high school economics textbooks for Texas classrooms
- Recipient of the Mayor Roy Bass Memorial Award
- Paul Harris Fellow of Rotary International
- Texas Tech University Greek Alumni of the Year

EDUCATION

Graduate of Texas Tech University, Lubbock, Texas (1971)

- BBA Degree in Industrial Management
- BBA Degree in Marketing

Professional Appraisal Courses from the Appraisal Institute:

- Real Estate Appraisal Principles
- Basic Valuation Procedures
- Residential Valuation
- Capitalization Theory and Techniques
- Case Studies in Real Estate Valuation

- Valuation Analysis and Report Writing
- Real Estate Investment Analysis
- Standards of Professional Practice
- Hotel Valuation
- Business Valuation
- Numerous seminars covering a wide variety of topics

Merle Blosser is currently certified under the Appraisal Institute's voluntary program of continuing education through December 31, 2007. Continuing education certification requires 100 hours of classroom education per five-year period

Current assistant professor in the Texas Tech University Jerry Rawls School of Business Administration teaching "Real Estate Appraisal"

Past instructor of the real estate appraisal courses for Texas Association of Realtors, South Plains College, Southwest College of Real Estate, and Western Texas College

Professional seminar participation presented by the Resolution Trust Corporation, Federal National Mortgage Association, American Society of Review Appraisers, Texas Department of Transportation, and case study of Eminent Domain and Condemnation

COMMUNITY SERVICE

- Founding President, Lubbock Ronald McDonald House 1983-87
- President, Southwest Lubbock Rotary Club
- Board of Directors, Lubbock Industrial Foundation
- Board of Elders, Youth Chairman, Westminster Presbyterian Church
- Executive Board, Young Life of Lubbock
- Board of Directors, Carillon, Inc. a non-profit retirement center
- President, Monterey High School Booster Club
- Board of Directors, Lubbock Center-Corp
- Vice President, Lubbock Public Schools Foundation for Excellence
- Chairman, Bond Steering Committee (\$24 M), Lubbock Public Schools
- Board of Directors, Lubbock Chamber of Commerce
- Chairman, Infrastructure Committee (Chamber of Commerce)
- Chairman, Lubbock Economic Development Council (Chamber of Commerce)
- Chairman, Lubbock Scholars Program (Lubbock Public Schools)
- Chairman, Central Business District Tax Increment Financing Reinvestment Zone Committee
- Board of Directors, Downtown Redevelopment Committee

BLOSSER APPRAISAL CLIENTS

The following is a representative list of clients Blosser Appraisal has served on various assignments.

McDougal Companies	Texas Tech University
TTU Health Sciences Center	Parkhill, Smith & Cooper Engineering & Architects
Reese Technology Center	US Department of Agriculture
City of Lubbock	Lubbock Christian University
Lubbock County	United Supermarkets
Lubbock Independent School District	West Texas Catepillar
Covenant Health System	Lubbock Chamber of Commerce
University Medical Center	Alan Henry Insurance
Ben Stribling Properties	Charles Skibell Development
Internal Revenue Service	Lubbock International Airport
Industrial Molding Corp.	Cox Communications
Joe D. McKay Architects	Wilkerson Properties
South Plains College	United Way of Lubbock
Wayland Baptist University	Westmark Real Estate
Texas Department of Transportation	Rip Griffin Travel Centers
Watson Sysco Foodservice	Robert's Truck Centers
Texaco USA	Rick Canup Coldwell Banker
Santa Fe Burlington Northern	Mason, Warner & Co. CPA's
Urban Renewal Agency	Wal-Mart Stores
US General Services Administration	South Plains Fair Association
Lubbock Radiology Associates	St Luke' Methodist Church
Broadway Church of Christ	GRACO Real Estate Development
Alderson Cadillac, BMW, Lexus	US Postal Service
Pepsi-Cola	Commercial Property Services
Brown McKee Engineering	Lubbock Housing Authority
North Star Surgical Center	Putt Putt Golf & Games (national client)
Westminister Presbyterian Church	Lubbock Heart Hospital
Hugo Reed and Associates	Prime Campus Housing
Lubbock Economic Development Assoc	John Q. Hammons Hotels
Weingarten Realty Investors	Buckner's Children's Home
South Plains Association of Governments	Bender Terrace Nursing Home
Buslon Company	Marjorie Kastman Investments
Westar Commercial Realty	Stellar Development

General clients include commercial real estate brokers, medical practice groups, law firms, accounting firms, church congregations, home builders, trust departments, numerous individuals and business firms.

FINANCIAL INSTITUTION CLIENTS

American Bank of Commerce	First United Bank
American State Bank	Fort Worth National
Ameriquist Mortgage	Heller First Capital
Bank of America	Horizon Bank (Denver)
Bank One	LaSalle Bank (Chicago)
Boatmen's 1st National Oklahoma	Lubbock National Bank
Boatmen's First National Amarillo	Peoples Bank
City Bank	PlainsCapital Bank
Commerce Bank	Prime West Mortgage
Federal Deposit Insurance Corp	State National Bank
First American Bank	Summit Bank (Oklahoma)
First Bank and Trust	Texas Commerce Bank
First City Bank of Maryville	Texas Tech Federal Credit Union
My Lubbock Bank	United Bank of Dallas
First National Bank of Amarillo	Wells Fargo Bank
First National Bank of McAlester	Western National Bank

Financial clients also include national asset management groups, regional banks; various mortgage bankers, and several insurance companies.

LAW FIRM CLIENTS

Baker Brown Thompson & Wagnon	Hund & Harriger
Bass Fargason Booth St Clair & Richards	Bob Jones
Boener & Dennis	Jones Flygare Brown & Wharton
Durbin & Associates	McClendon Law Firm
Wolfe & Associates	McCleskey Harriger Brazill & Graf
Mike Carper	McWhorter Cobb & Johnson
Warlick Carr	Harvey Morton
Chuck Lanehart	Mullin Hoard Brown
Charles Snuggs	Nelson & Nelson
Clifford Krier Wilkerson & Wright	Scott Sharp
Craig Terrill Hale & Grantham	Stan Weaver
Crenshaw Dupree & Milam	Dean Shuman
Dennis Reeves	Patrick Simek
Buddy Curry	Splawn Simpson & Pitts
Charles Dunn	Sims Hubert & Wilson
Larry Elms	Jack Stoffregen
Field Manning Stone Hawthorne & Aycok	Turner & Jordan
Fouts Fouts and Joplin	Gary Terrell
Claude Freeman	Popp, Gray & Hutcheson (Austin)
Charles Galey	Travis Ware
George Nelson Law Firm	Tyler Craft
George Gilkerson	Jonette Walker
Jim Gorsuch	Ward and Freels
Harley Huff	Tom Whiteside
Texas Attorney General Office	

VARIOUS APPRAISAL ASSIGNMENTS

Kingsgate Shopping Center	Reese Center
Lubbock Inn Hotel	Rip Griffin Travel Centers
Chili's Restaurant	Lubbock Plaza Holiday Inn Hotel
South Plains Mall	Lubbock International Airport Property
Woodcrest Apartments	North Star Surgical Center
Plaza West Office Building	Cowling Mini-Warehouse
Texas A&M Research Center	University Plaza Student Housing Complex
Metro Tower Office Building	The Apartments at Willow Hill
Bender Terrace Nursing Home	Whisperwood Subdivision
Boardwalk Apartments	Texas Tech Carpenter-Wells Dorm
Beck Steel	Gatti Land Pizza
South Plains Rehabilitation	City Bank Building
The Village Shopping Center	Barjo's Club
Sear's Service Center	Putt Putt Golf and Games (nationwide)
Savannah Oaks Apartments	North Pointe Subdivision
Sentry Plaza II Office Bldg	MHMR Complex
Lack's Furniture	Wayland Baptist Lubbock Campus
Wagner Supply	Lubbock Radiology
Lubbock Business Center	Rockridge Plaza Shopping Center
University Medical Center Rental Analysis	Industrial Molding Industrial Plant
Texas Commerce Amarillo Bldg	Melonie Park Baptist Church
Hunter's Way Apartments	Robert's Truck Center
Burger King Restaurants	TTU Health Sciences Center Rental Study
Park Inn International Hotel Amarillo	Petro Express Gas/Convenience Stores
Stone Lake Apartments	Commander's Mobile Home Park
Sun Star Electric	Saddlewood Apartments
Lubbock Village Retirement Center	The Rib Crib
Guy-Lane Plaza, Dumas	US Army Reserve Center
"The Strip" Package Stores	Auto Zone
Del Estrado Apartments	Brown McKee Office-Plant
Southridge Office Condos	"7-11" Stores
Arby's Restaurant	Court Place Office Tower
Keebler's Distribution Center	O & A Tex Pack Express
Park Tower Apartments	South Plains Fair Grounds
Lubbock Christian University Campus	Watson Food Warehouse
Ashton Pointe Apartments	The Compound Building
Lakeridge Plaza Shopping Center	Olsen Village Amarillo
The Gables Subdivision	First Baptist Church Snyder
Sierra Spring Water	United Way of Lubbock Building
Residential Treatment Center	La Quinta Hotel
Ashley Furniture	Southwest Savings Amarillo
Sheraton Inn Hotel	Pyramid Plaza Office Building
Messer Toyota	Dynamic Foods Plant
Covenant Healthcare Center	Hicks and Ragland Engineering Office
Llano Estates	Lubbock Diagnostic Center
Wells Fargo Center	Amarillo Urology Associates
O'Neal Steel	Reese Center Golf Course
The Dominion Apartments	Overton Park Redevelopment

BLOSSER APPRAISAL

Background experience for Blosser Appraisal includes the following property type appraisals and consulting services.

Property Types Appraised

Apartment Complex	Mini-Warehouse
Automobile Dealership	Nursing Home
Bank	Office Buildings
Car wash	Garden
Church	High-rise
Department Store	Parking Lots/Garages
Government Building	Recreational Property
Hospital	Restaurant
Hotels - Motel	Retail Commercial Building
Implement Dealership	Right-of-Way
Industrial Plant	Service Station
Land:	Shopping Center
Acreage	Single Family Residences
Commercial	Special Purpose Properties
Industrial	Steel Fabrication/Foundry
Subdivision	Theater
Landscape Nursery	Truck Terminal Distribution
Lumber Yard	Truck Stop
Medical Clinic	Warehouse
Mobile Home Park	Golf Course

Consulting Services

Feasibility Studies	Partnership Dissolution
Highest and Best Use Analysis	Estate Planning
Buy - Sell Decision Making	Rental Survey
Site Analysis	Cost Projections
Real Estate Investment Analysis	Lease analysis

D-2

Area Calculations

BEFORE THE SURFACE TRANSPORTATION BOARD

PYCO INDUSTRIES, INC.
-- FEEDER LINE APPLICATION --
LINES OF SOUTH PLAINS SWITCHING, LLC,

Finance Dkt. No. 34844

DECLARATION OF
MATTHEW CRAWFORD

I, Matthew Crawford, make this Declaration, pursuant to 28 U.S.C. § 1746, in support of the Feeder Line Application filed by PYCO Industries, Inc., in F.D. 34844.

1. PYCO Industries, Inc. (PYCO) sought the assistance of the Texas Tech University (TTU) Center for Geospatial Technology (College of Arts and Sciences) in mapping the existing rail system of the South Plains Switching, LLC, in the southern portion of Lubbock. Under the direction and supervision of Lucia Barbato, Associate Director of the Center, I calculated the square footage or acreage of the various segments of railroad corridor which belong or may belong to South Plains Switching (SAW). I based the calculations on right of way maps supplied by Bartlett and West Engineers, who are under contract with BNSF to supply maps and charts showing BNSF or former BNSF rail properties, supplemented with images derived from the National Agriculture Image Program (NAIP). The right of way maps from Bartlett and West set forth

information sufficient to disclose length and width of track segments. In some cases, line segments are present on the ground in Lubbock which were not reflected in the right of way maps supplied by Bartlett and West. In those cases, I estimated the width based on similar rights of way reflected in the right of way maps, and determined the length based on the NAIP aerial survey maps.

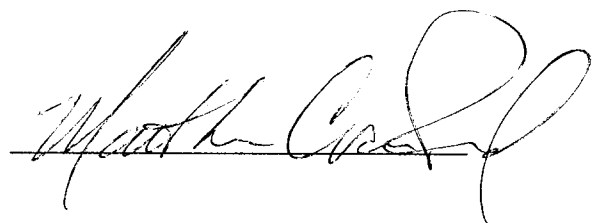
2. I supplied my calculations to counsel for PYCO Industries, and it is my understanding that the appraiser retained by PYCO to estimate the net liquidation value of real estate held by SAW employed my calculations for his estimates. I attach hereto a map showing the areas in square feet for the various line segments.

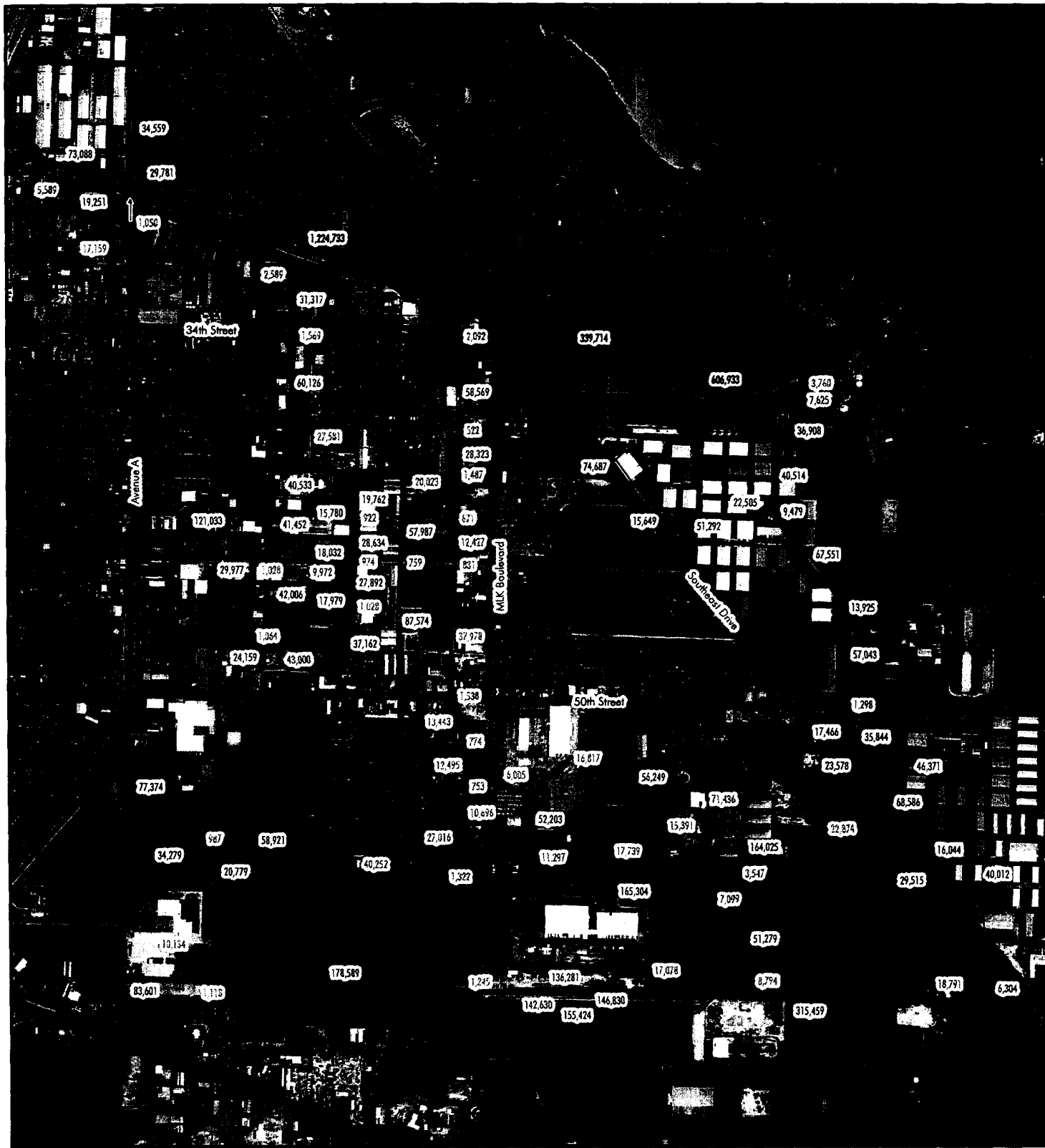
3. I included in my calculations all segments of track owned or possibly owned by SAW. The underlying fee title to some of the segments may be owned by adjoining property owners; some of the segments may be private industry track. Thus, my calculations may overstate the actual amount of property owned by SAW, and may have to be adjusted downward in the event SAW never owned, or no longer owns, some of the segments, or portions of them.

Pursuant to 28 U.S.C. § 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on

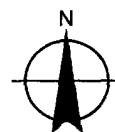
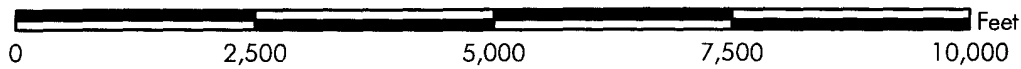
April 27, 2006





RIGHT OF WAY

SAW Track Map 1



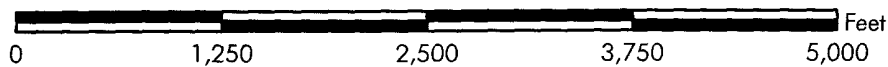
Legend

- 20 Foot Buffer
- 46 Foot Buffer
- 50 - 100 Foot Buffer
- Estimates in Square Feet



RIGHT OF WAY

SAW Track Map 2



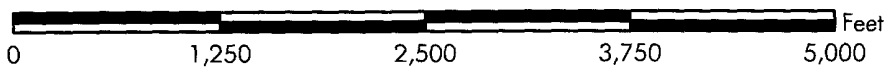
Legend

- 20 Foot Buffer
 - 46 Foot Buffer
 - 50 - 100 Foot Buffer
- Estimates in Square Feet



RIGHT OF WAY

SAW Track Map 3



Legend

- 20 Foot Buffer
 - 46 Foot Buffer
 - 50 - 100 Foot Buffer
- Estimates in Square Feet