

SLOVER & LOFTUS

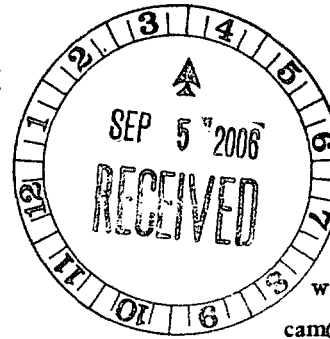
ATTORNEYS AT LAW

1224 SEVENTEENTH STREET, N. W.
WASHINGTON, D. C. 20036-3003

WILLIAM L. SLOVER
C. MICHAEL LOFTUS
JOHN H. LE SEUR
KELVIN J. DOWD
ROBERT D. ROSENBERG
CHRISTOPHER A. MILLS
FRANK J. PERGOLIZZI
ANDREW B. KOLESAR III
PETER A. PFOHL
DANIEL M. JAFFE

OF COUNSEL
DONALD G. AVERY

217484



TELEPHONE:
(202) 347-7170

FAX:
(202) 347-3619

WRITER'S E-MAIL:
cam@sloverandloftus.com

September 5, 2006

VIA HAND DELIVERY

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 711
Washington, D.C. 20423

Re: Finance Docket No. 33388 (Sub-No. 100),
Petition for Clarification Or In the Alternative For
Supplemental Order-North Jersey Shared Assets Area

Dear Secretary Williams:

Enclosed for filing in the referenced proceeding please find an original and ten copies of Petitioners Bridgewater Resources, Inc.'s and ECDC Environmental, L.L.C.'s Motion to Compel Responses to Discovery Requests Involving Relevancy Objections.

Please confirm receipt and filing of this Motion by time-stamping the extra copy of this letter and returning it to our messenger.

Sincerely,

Christopher A. Mills

CAM:jml
Enclosures

cc: Counsel for parties of record

ENTERED
Office of Proceedings

SEP 5 - 2006

Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD



CSX CORPORATION AND CSX
TRANSPORTATION, INC., NORFOLK
SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY
COMPANY – CONTROL AND
OPERATING LEASES/AGREEMENTS –
CONRAIL INC. AND CONSOLIDATED
RAIL CORPORATION

Finance Docket No. 33388
(Sub-No. 100)

(Petition for Supplemental Order)

217484

**PETITIONERS' MOTION TO COMPEL
RESPONSES TO DISCOVERY REQUESTS
INVOLVING RELEVANCY OBJECTIONS**

ENTERED
Office of Proceedings

SEP 5 - 2006

Part of
Public Record

BRIDGEWATER RESOURCES, INC. and
ECDC ENVIRONMENTAL, L.L.C.

OF COUNSEL:

Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

Dated: September 5, 2006

By: Christopher A. Mills
Stephanie M. Pisanelli
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

Their Attorneys

**CSX CORPORATION AND CSX
TRANSPORTATION, INC., NORFOLK
SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY
COMPANY – CONTROL AND
OPERATING LEASES/AGREEMENTS –
CONRAIL INC. AND CONSOLIDATED
RAIL CORPORATION**

(Petition for Supplemental Order)

- 2 -

CSX CORPORATION AND CSX TRANSPORTATION, INC., NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY – CONTROL AND OPERATING LEASES/AGREEMENTS – CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION	Finance Docket No. 33388 (Sub-No. 100) (Petition for Clarification or in the (alternative for Supplemental Order)
---	--

Pursuant to 49 C.F.R. § 1114.31(a) and the Board's decisions in this proceeding served July 31, August 16 and August 29, 2006, Bridgewater Resources, Inc. and ECDC Environmental, L.L.C. ("BRI/ECDC" or "petitioners") hereby move for an order compelling Norfolk Southern Corporation and Norfolk Southern Railway Company ("NS"), Conrail Inc. and Consolidated Rail Corporation ("Conrail"), and CSX Corporation and CSX Transportation, Inc. ("CSX") (collectively "respondents") to answer certain interrogatories and produce relevant documents as requested in BRI/ECDC's Discovery Requests served August 4, 2006.

On January 20, 2006, BRI/ECDC filed a joint petition for clarification (“Petition”) as to the limits of the North Jersey Shared Assets Area (“NJSAA”), established as part of the Conrail control transaction, in the vicinity of Port Reading Jct. NJ. In the alternative, if the Board determines that BRI’s waste transfer facility near Port

Reading Jct. is not within the NJSAA, BRI/ECDC's petition sought a supplemental order authorizing Conrail to provide switching service between the BRI facility and CSX's nearby Manville Yard.

NS subsequently sought dismissal of the Petition, and a protective order to quash discovery. In a decision served July 31, 2006 ("July 31 Decision"), the Board denied NS's motion to dismiss BRI/ECDC's Petition insofar as it sought clarification with respect to the limits of the NJSAA, and established a procedural schedule that authorized BRI/ECDC "to pursue limited discovery regarding the parties' intent involving the boundaries of the NJSAA" (*id.* at 2).¹ In a subsequent decision served August 16, 2006 ("August 16 Decision"), the Board modified the procedural schedule and set September 5, 2006 as the due date for responses to BRI/ECDC's discovery requests. In a further decision served August 29, 2006 ("August 29 Decision"), the Board granted a request by the respondents to extend the procedural schedule by three weeks, subject to an agreement between the respondents and the petitioners that the respondents would file "relevancy objections"² by the September 5, 2006 due date established in the August 16 Decision.

¹ The July 31 Decision also denied BRI/ECDC's alternative request for a supplemental order authorizing Conrail to provide switching service to the BRI facility. BRI/ECDC reserve their right to challenge the July 31 Decision insofar as it denied their alternative petition for a supplemental order.

² Relevancy objections are objections based on the grounds that a discovery request (1) goes beyond the "limited discovery" allowed by the July 31 Decision or (2) is otherwise irrelevant to any issue presented by BRI/ECDC's Petition and not reasonably calculated to lead to the discovery of relevant evidence. August 29 Decision at 1.

On August 4, 2006, BRI/ECDC served limited Discovery Requests ("Requests") on the respondents as authorized by the July 31 Decision. A copy of these Requests is appended hereto as Attachment 1. They include nine interrogatories and six document production requests, all of which were designed to elicit information related to the boundaries of the NJSAA in the vicinity of Port Reading Jct., NJ. Each of the respondents separately served relevancy objections to petitioners' Requests on August 28, 2006, pursuant to the August 29 Decision. Copies of the relevancy objections are appended hereto as Attachment 2 (NS), Attachment 3 (Conrail) and Attachment 4 (CSX).

BRI/ECDC note that their counsel has discussed NS's relevancy objections with NS counsel in an effort to narrow the parties' differences and avoid the need for a motion to compel. The discussions did not result in any agreement, thus necessitating this motion. (The other respondents took positions nearly identical to NS's in their relevancy objections.) BRI/ECDC reserve the right to file an additional motion to compel if warranted by the respondents' further responses to their Requests (and possible objections on other grounds), which are due on September 18, 2006.

II. RELEVANCY OBJECTIONS

NS's and CSX's relevancy objections involve exactly the same interrogatories and document production requests. Conrail's relevancy objections cover the same requests, as well as two others that are directed to Conrail only. In general, the objections are to: (1) the status/disposition and location of the former "Reading Connector" (a line that connected the former Conrail (now CSX) Trenton Line with the former Conrail (now NJ Transit) Raritan Valley Line and that crossed the Lehigh Line at

grade), and (2) the end point of Conrail's property interest in and the extent of Conrail's and NS's operating rights on the Raritan Valley Line in the vicinity of Bound Brook Jct. (the point where the former Reading Connector connected with the Raritan Valley Line). Conrail also objects to an interrogatory that seeks information on whether it has provided switching service to facilities in the vicinity of the NJSAA that are located on tracks/property it does not own. BRI/ECDC demonstrate below that the respondents' relevancy objections are without merit and that they should be required to answer the interrogatories and produce the requested documents that are the subject of those objections.³

III. THE BOARD SHOULD OVERRULE RESPONDENTS' RELEVANCY OBJECTIONS

Pursuant to 49 CFR § 1114.21(a) and (c), discovery must be "relevant to the subject matter involved in a proceeding" or be "reasonably calculated to lead to the discovery" of relevant evidence. *Waterloo Railway Co. – Adverse Abandonment – Lines of Bangor and Aroostook Railroad Co. and Van Buren Bridge Co. in Aroostook County, Maine*, STB Docket No. AB-279 (Sub-No. 3) (STB served November 14, 2003); *Illinois*

³ In addition, CSX's general objection No. 3 (*see Attachment 4* at 5) objected to any requests that "relate to any date that is (i) prior to the date that CSX made its first offer to acquire Conrail or (ii) after the date that the Transaction Agreement was executed by the parties thereto." With respect to (i), information related to the abandonment/disposition/location of the Reading Connector is relevant for the reasons set forth below in the text, and this information appears to pre-date CSX's first offer to acquire Conrail (and in any event Conrail did not make a similar objection). With respect to (ii), information concerning the parties' control of/operations over the former Conrail tracks in the vicinity of Port Reading Jct. is clearly relevant as to the parties' intent in establishing the limits of the NJSAA at "CP-Port Reading Jct." regardless of whether the information precedes or follows the execution of the Transaction Agreement.

Railnet, Inc. – Acquisition and Operation Exemption – BNSF Railway Company, Finance Docket No. 34549 (STB served April 15, 2005); *Wisconsin Power & Light Co. v. Union Pacific Railroad Co.*, Docket No. 42051 (STB served March 28, 2000). Relevant information is information that, either by itself or in combination with other evidence, could affect the outcome of the proceeding. *Id.* As BRI/ECDC demonstrate below, their discovery requests regarding the disposition/status/location of the Reading Connector, the division of property interests/operating rights on the Raritan Valley Line, and Conrail’s switching activities are reasonably calculated to elicit information that may affect the outcome of this proceeding.

A. Information Regarding the Former Reading Connector is Relevant in Determining What the Parties Intended In Designating “CP Port Reading Jct.” As One of the End Points of the NJSAA

Each of the respondents has interposed relevancy objections to Interrogatory Nos. 3 and 4 (*see Attachment 1* at 7-8), which relate to the status/disposition and location of the Reading Connector, on the ground that the Reading Connector was abandoned and removed by Conrail prior to the negotiation of the Conrail Transaction Agreement which allocated the then-existing lines of Conrail among NS, CSX, and the SAAs. *See, e.g.*, NS Objections at 3.⁴ Conrail also objected to Document Request No. 3, which seeks documents from Conrail related to the same subject matter.

⁴ As the respondents note, BRI/ECDC state in their Petition that the Reading Connector was abandoned and removed by Conrail in approximately 1985. The year of abandonment/removal is an educated guess, and in fact not all of the line was removed. Conrail transferred the portion of the Reading Connector located north of the Lehigh Line to BRI’s predecessor in 1995; it is now part of BRI’s Royce Spur.

The status and location of the Reading Connector are relevant to the question of what the parties to the Transaction Agreement intended in denominating "CP-Port Reading Jct." as one of the end points of the NJSAA in at least two respects.

First, NS contended in its motion to dismiss BRI's Petition that the principal indicia of the limits of the NJSAA are the tracks that Conrail is authorized to operate over, and that this is governed largely by the division of property ownership between Conrail and NS or CSX. See NS motion to dismiss filed February 9, 2006 at 8, 10, 16. NS further stated in its motion to dismiss that the division of ownership between Conrail and Pennsylvania Line LLC (NS's predecessor) on the Lehigh Line is at Milepost 35.92, and that this point is located where the Reading Connector crossed the Lehigh Line at grade prior to its partial removal. *Id.* at 10 n.3. However, this statement appears to be contradicted by the deed by which Conrail transferred its interest in the Lehigh Line west of Milepost 35.92 to NS. See Exhibit 5 to NS's motion to dismiss, at 7. The map on that page shows that Milepost 35.92 is actually located *west* of the point where the Reading Connector crossed the Lehigh Line. Information concerning the location and disposition of the Reading Connector is likely to shed light on this discrepancy, and is relevant (and within the scope of discovery permitted by the July 31 Decision) for that reason.

Second, NS claimed in its motion to dismiss that "CP-Port Reading Jct." refers to a point, not an area, and all three respondents repeat this assertion in their relevancy objections to Interrogatory No. 4. However, this claim is called into question by other statements in NS's motion to dismiss. Although the exact location of Milepost 35.92 (which is the westerly end point of Conrail's property ownership in the Lehigh

Line) is uncertain, it appears to be west of the switch connection between the Lehigh Line and the Trenton Line.⁵ Thus, at a very minimum, "CP-Port Reading Jct." (to the extent denominated by Conrail's property ownership) includes the area between the intersection of the Lehigh and Trenton Lines and Milepost 35.92. Information pertaining to the location of the Reading Connector where it crossed the Lehigh Line is clearly relevant to elucidate the question of whether the parties to the transaction agreement intended that "CP Port Reading Jct." refer to an area or a specific point.

In this regard, the respondents assert that BRI/ECDC's Interrogatory No. 4 is vague and cannot be answered meaningfully because it is impossible to determine the precise location of the Reading Connector if it were restored to service. *See* NS Objections at 4; Conrail Objections at 4. This is a red herring; the interrogatory assumed that the Reading Connector would be restored at the same location where it crossed the Lehigh Line before it was removed in that area. If that was not clear from the wording of the interrogatory, BRI/ECDC hereby clarify that such was their intent in framing it.

B. Interrogatories Regarding Conrail and NS's Property Interests and Operations On the Raritan Valley Line are Reasonably Calculated to Lead to the Discovery of Relevant Evidence

All of the respondents object to Interrogatory Nos. 7 and 8 and Document Request No. 2 regarding the former Conrail (now NJ Transit) Raritan Valley Line.⁶

⁵ Again, this is readily apparent from the map attached to the Conrail conveyance deed to NS (page 7 of Exhibit 5 to NS's motion to dismiss).

⁶ These interrogatories are reproduced in Attachment 1. Conrail also noted an objection to Interrogatory No. 8, but it was directed only to NS. Thus, BRI/ECDC does not seek to compel Conrail to answer Interrogatory No. 8.

Contrary to respondents' objections, these discovery requests are reasonably calculated to lead to the discovery of relevant evidence regarding the extent to which property ownerships govern Conrail's operating rights and thus to ascertaining the parties intent in establishing the limits of the NJSAA at "CP-Port Reading Jct."

The contested interrogatories and document request⁷ relate to the division of property rights between Conrail and NS and Conrail's operating rights on the Raritan Valley Line in the area of Bound Brook Jct., which is where the former Reading Connector connected with that line. These discovery requests are relevant to the determination of the limits of the NJSAA at Port Reading Jct. and the respondents' intent in defining the NJSAA boundaries in the Transaction Agreement.

As noted earlier with respect to Interrogatory Nos. 3 and 4, NS has emphasized that the primary indicia of Conrail's operating rights and thus the limits of the NJSAA are its property ownerships. It appears from a review of the deed (Exhibit 5 to NS's motion to dismiss) by which Conrail conveyed its property interests to NS's predecessor both at Port Reading Jct. and in the vicinity of Bound Brook Jct. (the point where the former Reading Connector connected with the Raritan Valley Line north of the BRI waste transfer facility) that Conrail conveyed its interest in the Raritan Valley line up to a point located west of Bound Brook Jct. and retained its property interests (including operating rights) east of that point. Discovery requests designed to elicit

⁷ Document Request No. 2 also seeks documents defining the boundaries of the NJSAA in the vicinity of Port Reading Jct., including relevant maps and schematics. The respondents do not object generally to this request; their objections are limited to documents involving the property interests/operating rights on the Raritan Valley Line.

information concerning the westerly end point of the conveyance and Conrail's operating rights east and west of that point (and as to the limits of the NJSAA in the vicinity) are relevant in determining the extent to which property ownership demarcations govern the limits of the NJSAA at other locations, including nearby Port Reading Jct.

This issue was raised by NS in its motion to dismiss, and BRI/ECDC are entitled to discover information relevant to it. If discovery reveals that Conrail does in fact operate over non-SAA track on the Raritan Valley Line, such information weakens NS's argument that Conrail is precluded from operating over tracks it does not own in the vicinity of Port Reading Jct. to serve the BRI facility.

C. Information On Conrail Switching Activities is Relevant to Ascertaining the Limits of the NJSAA at Port Reading Jct.

Conrail makes a relevancy objection to Interrogatory No. 9 which seeks information concerning the extent to which Conrail has provided, since the Split date, switching service to any facility in the vicinity of the NJSAA that is located on railroad property or reached via tracks that Conrail does not own. This interrogatory is also relevant because of NS's assertion that:

SAAs consist solely of *railroad* property, and the critical question is not whether a shipper's facility is itself "within" the SAA, but whether Conrail may *access* that facility solely by use of SAA tracks. Since, under the Shared Assets Agreements, Conrail may only operate over SAA tracks, it may not operate to, or provide switching services for, a facility if it can do so only by operating over non-SAA tracks of NS or CSXT.

NS motion to dismiss at 8; emphasis in original. Thus, according to NS, property *ownership* is the deciding factor in determining what track Conrail can operate over in the vicinity of Port Reading Jct.

Information as to whether Conrail has the right and ability under the Transaction Agreement to operate over any trackage that it does not own is clearly relevant in assessing the merits of NS's property-ownership argument. Indeed, the record already contains some evidence that track ownerships and operating rights in the vicinity of the NJSAA are not necessarily congruent. Conrail apparently has to operate over NS and/or CSX tracks to reach the track known as the "GSA Lead," which is clearly denominated in the Transaction Agreement as part of the NJSAA. *See* Reistrup Supp. V.S. included in BRI/ECDC's reply to NS's motion to dismiss filed March 1, 2006, at 7. BRI/ECDC are entitled to discover information on this subject to test one of the respondents' principal arguments in opposing BRI/ECDC's Petition.

Conrail also objects to Interrogatory No. 9 on grounds of burden, asserting that it would have to "search through records of hundreds of thousands of rail movements over an eight year period" to identify instances where it has provided switching services to other facilities in the vicinity of the NJSAA on property/track that it does not own. BRI/ECDC are willing to limit the scope of this interrogatory to minimize the burden on Conrail of responding to it. Specifically, Conrail should produce information concerning the regular (*i.e.*, repeated) provision of switching service to industries located on or served via track or other property that Conrail does not own in the general vicinity of Manville, Port Reading Jct., Bound Brook and Bound Brook Jct., NJ. This limits both the

need to search for isolated instances of such service and the geographic scope of the interrogatory. With this limitation, the interrogatory is not burdensome and Conrail should be compelled to answer it.

IV. CONCLUSION

For the foregoing reasons, the Board should order the respondents to answer the interrogatories and document requests directed to them that are related to the status/disposition/location of the Reading Connector and the division of property interests/operating rights on the Raritan Valley Line. Conrail should also be ordered to answer Interrogatory No. 9 regarding its switching service in the vicinity of the NJCAA, with the limitation as to scope stipulated above.

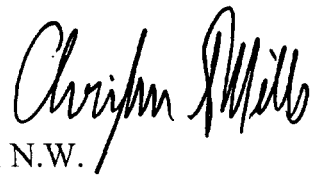
Respectfully submitted,

BRIDGEWATER RESOURCES, INC. and
ECDC ENVIRONMENTAL, L.L.C.

OF COUNSEL:

Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

By: Christopher A. Mills
Stephanie M. Pisanelli
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036



Dated: September 5, 2006

Their Attorneys

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of September, 2006 I served copies of the foregoing Motion to Compel upon counsel for the Conrail control applicants and other known parties of record, as follows:

By Hand and E-mail:

Richard A. Allen, Esq.
Nisha Saxena
Zuckert, Scoutt & Rasenberger, L.L.P.
888 Seventeenth Street, N.W., Suite 600
Washington, D.C. 20006-3939

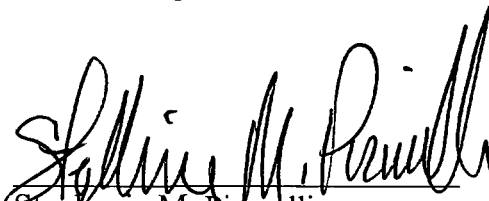
By E-mail and Overnight Delivery Service:

John V. Edwards, Esq.
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510-2191

Stephen C. Armbrust, Esq.
Counsel
CSX Transportation, Inc.
500 Water Street, J-150
Jacksonville, FL 32202

John K. Enright, Esq.
Assistant General Counsel
Consolidated Rail Corporation
1000 Howard Boulevard
Mt. Laurel, NJ 08054-2355

Eric Strohmeyer
CNJ Rail Corporation
838 Carnoustie Drive
Bridgewater, NJ 09907


Stephanie M. Pisanelli

1

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

CSX CORPORATION AND CSX	)	
TRANSPORTATION, INC., NORFOLK	)	
SOUTHERN CORPORATION AND	)	
NORFOLK SOUTHERN RAILWAY	)	Finance Docket No. 33388
COMPANY – CONTROL AND	)	(Sub-No. 100)
OPERATING LEASES/AGREEMENTS –	)	
CONRAIL INC. AND CONSOLIDATED	)	
RAIL CORPORATION	)	(Petition for Supplemental Order)

PETITIONERS' DISCOVERY REQUESTS TO APPLICANTS

Petitioners Bridgewater Resources, Inc. ("BRI") and ECDC Environmental, L.L.C. ("ECDC"), pursuant to 49 C.F.R. §§ 1114.21, 1114.26 and 1114.30 and the Board's decision in this proceeding served July 31, 2006, hereby submit the following Interrogatories and Document Production Requests to Applicants CSX Corporation and CSX Transportation, Inc. (Collectively "CSX"), Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively "NS") and Conrail Inc. and Consolidated Rail Corporation (collectively "Conrail").

BRI/ECDC originally served discovery requests in this proceeding on NS and Conrail on January 30, 2006. Those original discovery requests are hereby withdrawn and replaced by these revised discovery requests, pursuant to the Board's July 31, 2006 decision.

Responses to interrogatories and copies of responsive documents should be delivered to the offices of Slover & Loftus, 1224 Seventeenth Street, N.W., Washington,

D.C. 20036, not later than fifteen days after service hereof, or by August 19, 2006, unless otherwise agreed by the parties. BFI/ECDC are prepared to cooperate with Applicants to facilitate the expeditious production of documents with the minimum practicable burden.

BRI/ECDC understand and acknowledge that responses to these discovery requests may involve the production of confidential information or materials that should be treated pursuant to the terms of the Protective Order entered in STB Finance Docket No. 33388 on April 16, 1997. Their outside counsel and consultants have signed the "Undertaking-Highly Confidential Material" appended to the Protective Order, and their in-house employees who have a need to review materials designated as "Confidential" have signed the Undertaking-Confidential Material" appended to the Protective Order.

I.
DEFINITIONS AND INSTRUCTIONS

1. "BRI facility" means the rail-served waste transfer facility owned and operated by BRI located north of Port Reading Junction and south of Bound Brook Junction in Bridgewater Township, Somerset County, NJ.

2. "Communications" means communications by any means or medium, including but not limited to conversation, telephone conversation, meeting discussion, facsimile, e-mail or other electronic transmission, correspondence, memorandum and pleading.

3. "Conrail" means Conrail Inc. and Consolidated Rail Corporation, their present or former employees, agents, counsel, officers, directors, divisions,

departments, predecessors and their subsidiaries, or any of them, and all other persons acting (or who have acted) on their behalf.

4. "CSX" means CSX Corporation, CSX Transportation, Inc., New York Central Lines LLC ("NYC"), their present or former employees, agents, counsel, officers, directors, advisors, consultants, divisions, departments, predecessors (including but not limited to Conrail) and their subsidiaries, or any of them, and all other persons acting (or who have acted) on their behalf.

5. "Document(s)" means all writings or visual displays of any kind, whether generated by hand or mechanical means, including, without limitation, photographs, lists, memoranda, reports, notes, letters, phone logs, e-mails, contracts, drafts, workpapers, computer printouts, computer tapes, telecopies, telegrams, newsletters, notations, books, affidavits, statements (whether or not verified), speeches, summaries, opinions, studies, analyses, evaluations, statistical records, proposals, treatments, outlines, any electronic or mechanical records or representations (including physical things such as, but not limited to, computer disks), and all other materials of any tangible medium or expression, in NS's or Conrail's current or prior possession, custody or control. A draft or non-identical copy is a separate document within the meaning of this term.

6. "Final System Plan" means the Final System Plan defined in 45 U.S.C. § 702(8) and published by the United States Railway Association pursuant to 45 U.S.C. §§ 716 and 717.

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

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

9. "NJSAA" means the North Jersey Shared Assets Area as described in the Surface Transportation Board's Decision No. 89 in the Conrail control proceeding (*CSX Corp., et al. – Control – Conrail Inc., et al.*, 3 S.T.B. 196 (1998)).

10. "NS" means Norfolk Southern Corporation, Norfolk Southern Railway Company, Pennsylvania Lines LLC ("PRR"), their present or former employees, agents, counsel, officers, directors, advisors, consultants, divisions, departments, predecessors (including but not limited to Conrail) and their subsidiaries, or any of them, and all other persons acting (or who have acted) on their behalf.

11. "Person" means natural persons, corporations, institutions, partnerships, firms, joint ventures, associations, political subdivisions or other legal entities, as the case may be.

12. "Reading Connector" means the deactivated track or line of railroad, a/k/a the Reading Company New York Branch, a/k/a the Raritan Valley Connecting Track, and identified as Line Code 0326, that extended between a point of connection with the former Conrail Reading Line (now known as the Trenton Line) at or near

Manville, NJ and a point of connection with the former Conrail (now NJ Transit) Raritan Valley Line at or near Bound Brook Junction, NJ.

13. "Related," "related to," and "relating to" mean and include making a statement discussing, describing, referring to, reflecting, explaining, analyzing, or in any way pertaining to, in whole or in part, the subject matter of the Interrogatory or Request.

14. "Split Date" means June 1, 1999, the date when the division of assets of Conrail by NS and CSX took place.

15. "And," "or," and/or "each" shall be construed in the disjunctive or conjunctive as necessary in order to bring within the scope of each Interrogatory or Request all responsive information or documents which otherwise might be construed as outside the scope of the Interrogatory or Request. All use of the masculine gender shall be deemed to include the feminine.

16. Unless a different time period is specified or otherwise implicated, (*e.g.*, by reference to the Final System Plan), these discovery requests cover the period from and after January 1, 1994.

17. Unless otherwise expressly indicated, CSX, NS and Conrail are each requested to respond separately to each interrogatory and document production request.

18. If, in response to these requests, documents are produced in computer-readable format, for each computer file supplied provide:

- a. The name and description of the source database or other file from which the records in the computer file were selected;

- b. A description of how the records in the file produced were selected;
- c. The name, title and location of the individual (or contractor) responsible for developing the data responsive to the request;
- d. Each computer program (in native software and text file) and intermediate file used in deriving the files produced; and
- e. Any decoders needed to read or interpret the data in the file.

19. If an answer or the production of any responsive document is withheld under 49 C.F.R. § 1114.30(a)(1) on the basis of a claimed privilege or attorney work product, then for each such answer or document, provide the following information: its date, type (*e.g.*, letter, meeting, notes, memo, *etc.*), author (note if author is an attorney), addressee(s)/recipient(s) (note if addressee(s) or recipient(s) is an attorney), general subject matter, and basis for withholding the information. If the production of any requested document is withheld for claimed grounds other than privilege or attorney work product, state with specificity the basis for such withholding.

20. If a responsive document was, but is no longer in CSX's, NS's or Conrail's possession, custody or control, describe what disposition was made of it.

21. In the event CSX, NS or Conrail objects to producing any documents on grounds that it does not maintain the information described in the form or format requested by BRI/ECDC, please produce the documents which contain such information in whatever form or format CSX, NS or Conrail does maintain such information.

II. **INTERROGATORIES**

Interrogatory No. 1:

Please identify all property, including tracks, signals, signal and interlocking circuits, derails, right-of-way and other rail facilities, included in or covered by the controlled point ("CP") at Port Reading Junction, NJ.

Interrogatory No. 2:

Please indicate the point on the Lehigh Line (including the Royce Running Track) west of the switch connection between the Lehigh Line and the Trenton Line at Port Reading Jct. where Conrail's track, signals and other facilities maintenance obligation ends and NS's track, signals and other facilities maintenance obligation begins.

Interrogatory No. 3:

Please describe the present status and disposition of the Reading Connector, including but not limited to:

- a. The status and/or disposition of the line under the Final System Plan;
- b. Whether authority was sought and obtained from the ICC, STB or other governmental authority to abandon or discontinue service on the Reading Connector or any part thereof; and if so, the docket number, the date when the abandonment or discontinuance authority became final, and the date when the abandonment or discontinuance authority was exercised; and
- c. Whether the Reading Connector or any part thereof (including the underlying right-of-way) was sold or leased to another person(s), and if so, the date of the sale or lease, the name of the person(s) to which the property was sold or leased, and the specific property sold or leased.

Interrogatory No. 4:

If the portion of the Reading Connector that crossed the Lehigh Line at grade in the vicinity of Port Reading Jct. were reconstructed/restored to service, either by order of the STB or otherwise, please describe the extent to which the restored Reading Connector would be located within the CP at Port Reading Jct. or otherwise located within the NJSAA.

Interrogatory No. 5:

Please describe (a) Conrail's ownership and operating rights with respect to the line segment identified as the "GSA Lead" and described as extending from "NS Lehigh Line Conn." to "CSX Trenton Line" in the list of CRC Retained Assets on page 102 of Volume 8B of the Railroad Control Application in STB Finance Docket No. 33388, and (b) what this line segment is used for.

Interrogatory No. 6:

Please identify any line segments or rail facilities located within the NJSAA that are not owned by Conrail.

Interrogatory No. 7:

Please identify the point(s) on NJ Transit's Raritan Valley Line west of Bound Brook, NJ where (a) Conrail's property ownership interest(s) end and (b) west of which NS alone presently provides switching service to and from shipping and receiving facilities.

Interrogatory No. 8 (to NS only):

Please state where the point on the former Lehigh Valley Railroad (now NJ Transit's Raritan Valley) line representing the beginning of the portion of that line that Conrail transferred to Pennsylvania Lines LLC by quitclaim deed, as described in paragraph 2 on page 5 of Exhibit B to NS's February 9, 2006 Motion to Dismiss BRI/ECDC's Petition in this proceeding, is located in relation to Bound Brook Junction (the point where the former Reading Connector connected with what is now the Raritan Valley line).

Interrogatory No. 9 (to Conrail only):

Please state whether Conrail provides or has provided, since the Split Date, switching service to any shipping or receiving facility that is located on right-of-way, property or track in or near the NJSAA that Conrail does not own under the Shared Assets Area Operating Agreement for North Jersey and/or any other agreements implementing the Conrail control transaction approved by the Board in Decision No. 89 in Finance Docket No. 33388. If the answer to this question is affirmative, please identify (a) each facility to or from which switching service is or has been provided since the Split Date, including its location and the name of the shipper or receiver involved, (b) the traffic switched, and (c) the name of the yard(s) or other points to or from which Conrail delivered or received the traffic to/from NS or CSX.

III.

DOCUMENT PRODUCTION REQUESTS

Request for Production No. 1:

Please produce all documents related to the establishment of the boundaries of the NJSAA in the vicinity of Port Reading Junction/Manville, NJ, including but not limited to documents describing what is meant by/included within CP-Port Reading Jct.

Request for Production No. 2:

Please produce all documents defining the boundaries of the NJSAA in the vicinity of Port Reading Junction/Manville, NJ, including but not limited to the following (note: if a document was included in the Application in Finance Docket No. 33388 you may identify the location of the document in the Application rather than producing a separate copy thereof):

- a. color-coded maps or schematics showing railroad lines in New Jersey north of Trenton prepared and/or used by CSX, NS and/or Conrail in connection with CSX's and NS's agreement to divide the assets of Conrail and establish the NJSAA;
- b. maps, schematics or other documents identifying the specific cut points establishing the limits of the NJSAA in the vicinity of Port Reading Junction/Manville, NJ;
- c. maps, schematics or other documents identifying (1) the rail lines in the vicinity of Port Reading Jct./Manville/Bound Brook Jct., NJ but located outside the limits of the NJSAA that are subject to any form of trackage or operating rights, and (2) which carrier(s) have such rights over which specific lines;
- d. maps, schematics or other documents identifying customer rail shipping and receiving facilities located within the NJSAA in the vicinity of Bound Brook, Bound Brook Junction, Port Reading Junction and Manville, NJ; and

- e. maps, schematics or other documents identifying which rail carrier(s) would have and/or have had the ability to physically serve each customer rail shipping and receiving facility identified in response to (d) above (including without limitation the BRI facility) after the Split Date.

Request for Production No. 3 (to Conrail only):

Please produce all documents related to the sale, lease, abandonment or other disposition of the Reading Connector or any part thereof (including but not limited to treatment or disposition thereof under the Final System Plan).

Request for Production No. 4:

Please produce a copy of the current Local Movement Guidelines as described in Sections 1(aa) and 3(a)(v) of the Applicants' Shared Assets Area Operating Agreement for North Jersey.

Request for Production No. 5:

Please produce copies of the current track charts or condensed profiles for the trackage included within the CP at Port Reading Jct. and for portions of the Lehigh Line and Trenton Line located within five miles in any direction from the CP at Port Reading Jct.

Request for Production No. 6:

Please produce copies of property or valuation maps showing the current property ownerships, rights-of-way and leaseholds for the railroad-owned portions of all trackage described in Request for Production No. 5 above.

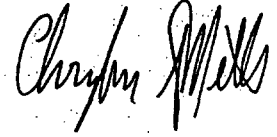
BRIDGEWATER RESOURCES, INC.
and ECDC ENVIRONMENTAL, L.L.C.

OF COUNSEL:

Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

Dated: August 4, 2006

By: Christopher A. Mills
Stephanie M. Pisanelli
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036



Their Attorneys

2

Before The
Surface Transportation Board

Finance Docket No. 33388 (Sub-No. 100)

CSX CORPORATION AND CSX TRANSPORTATION, INC.
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
— CONTROL AND OPERATING LEASES/AGREEMENTS —
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

**OBECTIONS OF NORFOLK SOUTHERN CORPORATION AND NORFOLK
SOUTHERN RAILWAY COMPANY TO PETITIONERS' REVISED DISCOVERY
REQUESTS**

Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "NS") submit the objections described below to the revised discovery requests submitted by petitioners Bridgewater Resources, Inc ("BRI") and ECDC Environmental L.L.C. ("ECDC") on August 4, 2006. Petitioners revised the discovery requests initially submitted on January 20, 2006 purportedly to conform to the decision of the Surface Transportation Board ("Board" or "STB") served July 31, 2006 ("July 31, 2006 Decision").

The objections described below are made on the grounds that the discovery request objected to goes beyond the "limited discovery" allowed by the Board in its July 31, 2006 Decision or is otherwise irrelevant to any issue presented by the BRI/ECDC petition instituting this proceeding and not reasonably calculated to lead to the discovery of relevant evidence. By agreement with counsel for BRI and ECDC, NS and the other respondents, CSX and Conrail, have agreed to submit their objections on those grounds to the revised discovery requests at this

time while continuing their efforts to gather information responsive to the revised discovery requests. By motion filed August 25, 2006, NS, CSX and Conrail request a three-week extension of the procedural schedule established by the Board's decision served August 16, 2006 to allow them to respond fully to the revised discovery requests, and petitioners have concurred in that request on condition that objections on the grounds stated here be filed at this time. As agreed to by petitioners' counsel, NS and the other respondent's reserve the right at a later time to object to any of the discovery requests on grounds other than those stated here.

GENERAL OBJECTIONS

In their Petition for Clarification filed on January 20, 2006, BRI and ECDC claim that BRI's waste transfer facility near Port Reading, New Jersey, is located in the North Jersey Shared Assets Area ("NJSAA") In its July 31, 2006 Decision, the Board denied NS' motion to dismiss the petition, with the following statements:

NS has presented strong evidence, based on the transaction agreement, to support its claim that the BRI facility is located outside the NJSAA. Nevertheless, it is appropriate for the Board to allow for *limited discovery for BRI to obtain evidence to further develop the record as to what the parties intended in their original transaction agreement* before resolving the issues that are presented here. The Board notes that Conrail's past switching service of the BRI facility is not controlling in determining whether the BRI facility is within the NJSAA.

Slip op. at 4 (emphasis supplied.) The Board further stated:

The Board will allow for *limited discovery pertaining to the parties' intent in defining the NJSAA boundaries in the original transaction agreement*. The Board is particularly interested in what the parties meant by the use of the term "CP," or control point, in defining the SAAs. Therefore, the NS and Conrail motions for protective order are denied *to the extent needed to permit the limited discovery*.

Id. at 5 (emphasis supplied.)

NS therefore objects to all interrogatories and document requests to the extent they go beyond the "limited discovery" authorized by the July 31, 2006 Decision and seek information

and documents other than that bearing on the intent of NS, CSXT and Conrail in the original transaction agreement concerning the boundary of the NJSAA as it relates to service to BRI's facility near Port Reading, NJ.

INTERROGATORIES

3. *Please describe the present status and disposition of the Reading Connector, including but not limited to:*

- a. The status and/or disposition of the line under the Final System Plan;*
- b. Whether authority was sought and obtained from the ICC, STB or other governmental authority to abandon or discontinue service on the Reading Connector or any part thereof; and if so, the docket number, the date when the abandonment or discontinuance authority became final, and the date when the abandonment or discontinuance authority was exercised; and*
- c. Whether the Reading Connector or any part thereof (including the underlying right-of-way) was sold or leased to another person(s), and if so, the date of the sale or lease, the name of the person(s) to which the property was sold or leased, and the specific property sold or leased.*

NS objects to this interrogatory on the ground that it goes beyond the limited discovery authorized by the July 31, 2006 Decision. According to the BRI/ECDC Petition, the Reading Connector was a one-mile section of track, which once connected what is now CSXT's Trenton Line to New Jersey Transit's Raritan Line and which was abandoned and removed by Conrail in approximately 1985, more than a decade before the Transaction Agreement allocated the use of the then-existing lines of Conrail among NS, CSXT and the SAAs. Inasmuch as the Reading Connector did not exist when the Transaction Agreement defined the boundaries of the NJSAA, its history and status have no bearing on the issue as to which the July 31, 2006 decision allowed limited discovery.

4. If the portion of the Reading Connector that crossed the Lehigh Line at grade in the vicinity of Port Reading Jct. were reconstructed/restored to service, either by order of the STB or otherwise, please describe the extent to which the restored Reading Connector would be located within the CP at Port Reading Jct. or otherwise located within the NJSAA.

NS objects to this interrogatory on the ground that it goes beyond the limited discovery authorized by the July 31, 2006 Decision for the reasons discussed in the response to Interrogatory No. 3. NS also objects to this interrogatory on the ground that it is ambiguous because it seems to assume, incorrectly, that the "CP at Port Reading Jct." encompasses an area rather than a single point. NS also objects that this interrogatory cannot be answered meaningfully because it is completely speculative. The possible configurations and physical characteristics of the hypothesized reconstructed line are virtually infinite, and there is no basis for assuming any of them would be feasible or a realistic possibility.

7. Please identify the point(s) on NJ Transit's Raritan Valley Line west of Bound Brook, NJ where (a) Conrail's property ownership interest(s) end and (b) west of which NS alone presently provides switching service to and from shipping and receiving facilities.

NS objects to this interrogatory on the ground that it is irrelevant to any issue presented by the BRI/ECDC Petition and is not reasonably calculated to lead to the discovery of relevant evidence. New Jersey Transit's Raritan Valley Line runs in an east-west direction north of Port Reading and BRI's facility, and BRI's facility does not and cannot receive rail service from that line.

8. *Please state where the point on the former Lehigh Valley Railroad (now NJ Transit's Raritan Valley) line representing the beginning of the portion of that line that Conrail transferred to Pennsylvania Lines LLC by quitclaim deed, as described in paragraph 2 on page 5 of Exhibit B to NS's February 9, 2006 Motion to Dismiss BRI/ECDC's Petition in this proceeding, is located in relation to Bound Brook Junction (the point where the former Reading Connector connected with what is now the Raritan Valley line).*

NS objects to this interrogatory on the ground that it is irrelevant to any issue presented by the BRI/ECDC Petition and is not reasonably calculated to lead to the discovery of relevant evidence for the reasons stated in response to Interrogatory 7.

DOCUMENT PRODUCTION REQUESTS

2. *Please produce all documents defining the boundaries of the NJSAA in the vicinity of Port Reading Junction/Manville, NJ, including but not limited to the following (note: if a document was included in the Application in Finance Docket No. 33388 you may identify the location of the document in the Application rather than producing a separate copy thereof):*

a. color-coded maps or schematics showing railroad lines in New Jersey north of Trenton prepared and/or used by CSX, NS and/or Conrail in connection with CSX's and NS's agreement to divide the assets of Conrail and establish the NJSAA;

b. maps, schematics or other documents identifying the specific cut points establishing the limits of the NJSAA in the vicinity of Port Reading Junction/Manville, NJ;

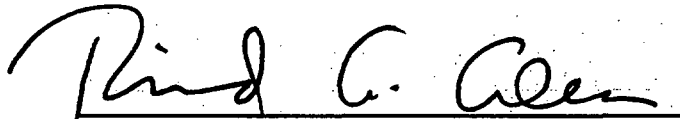
c. maps, schematics or other documents identifying (1) the rail lines in the vicinity of Port Reading Jct./Manville/Bound Brook Jct., NJ but located outside the limits of the NJSAA that are subject to any form of trackage or operating rights, and (2) which carrier(s) have such rights over which specific lines;

d. maps, schematics or other documents identifying customer rail shipping and receiving facilities located within the NJSAA in the vicinity of Bound Brook, Bound Brook Junction, Port Reading Junction and Manville, NJ; and

e. maps, schematics or other documents identifying which rail carrier(s) would have and/or have had the ability to physically serve each customer rail shipping and receiving facility identified in response to (d) above (including without limitation the BRI facility) after the Split Date.

NS objects to this document request to the extent it seeks documents related to New Jersey Transit's Raritan Valley line for the reasons stated in its response to Interrogatories 7 and 8.

Respectfully submitted,



John V. Edwards
**NORFOLK SOUTHERN
CORPORATION**
Three Commercial Place
Norfolk, Virginia 23510-2191
(757) 629-2657

Richard A. Allen
Nisha Saxena
**ZUCKERT, SCOUTT &
RASENBERGER, LLP**
888 Seventeenth Street, NW
Suite 700
Washington, D.C. 20006
(202) 298-8660

August 28, 2006

3

Before The
Surface Transportation Board

Finance Docket No. 33388 (Sub-No. 100)

CSX CORPORATION AND CSX TRANSPORTATION, INC.
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
— CONTROL AND OPERATING LEASES/AGREEMENTS —
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

**OBECTIONS OF CONSOLIDATED RAIL CORPORATION TO PETITIONERS'
REVISED DISCOVERY REQUESTS**

Consolidated Rail Corporation ("Conrail") submits the objections described below to the revised discovery requests submitted by petitioners Bridgewater Resources, Inc ("BRI") and ECDC Environmental L.L.C. ("ECDC") on August 4, 2006. Petitioners have revised their initial discovery requests in response to the decision of the Surface Transportation Board ("Board" or "STB") served July 31, 2006 ("July 31, 2006 Decision"). However, many of the revised discovery requests go beyond the "limited discovery" allowed by the Board in its July 31, 2006 Decision or are otherwise irrelevant to any issue in this proceeding or are not reasonably calculated to lead to the discovery of relevant evidence. Accordingly, Conrail submits the following objections. By agreement with counsel for BRI and ECDC, Norfolk Southern Corporation and Norfolk Southern Railway Company ("NS") and the other respondents, CSX Corporation and CSX Transportation, Inc. ("CSX") and Conrail, have agreed to submit their objections on those grounds to the revised discovery requests at this time while continuing their efforts to gather information responsive to the revised discovery requests. By

motion filed August 25, 2006, NS, CSX and Conrail requested a three-week extension of the procedural schedule established by the Board's decision served August 16, 2006 to allow them to respond fully to the revised discovery requests, and petitioners have concurred in that request on condition that objections on the grounds stated here be filed at this time. As agreed to by petitioners' counsel, Conrail and the other respondents reserve the right at a later time to object to any of the discovery requests on grounds other than those stated here.

GENERAL OBJECTIONS

In their Petition for Clarification filed on January 20, 2006, BRI and ECDC claim that BRI's waste transfer facility near Port Reading, New Jersey, is located in the North Jersey Shared Assets Area ("NJSAA") In its July 31, 2006 Decision, the Board denied NS' motion to dismiss the petition, with the following statements:

NS has presented strong evidence, based on the transaction agreement, to support its claim that the BRI facility is located outside the NJSAA. Nevertheless, it is appropriate for the Board to allow for *limited discovery for BRI to obtain evidence to further develop the record as to what the parties intended in their original transaction agreement* before resolving the issues that are presented here. The Board notes that Conrail's past switching service of the BRI facility is not controlling in determining whether the BRI facility is within the NJSAA.

Slip op. at 4 (emphasis supplied.) The Board further stated:

The Board will allow for *limited discovery pertaining to the party's intent in defining the NJSAA boundaries in the original transaction agreement*. The Board is particularly interested in what the parties meant by the use of the term "CP," or control point, in defining the SAAs. Therefore, the NS and Conrail motions for protective order are *denied to the extent needed to permit the limited discovery*.

Id. at 5 (emphasis supplied.)

Conrail therefore objects to all interrogatories and document requests to the extent they go beyond the "limited discovery" authorized by the Board's July 31, 2006 Decision and seek information and documents other than that bearing on the intent of NS, CSXT and Conrail in the

original transaction agreement concerning the boundary of the NJSAA and the use of the term "control point" as it relates to service to BRI's facility near Port Reading, NJ.

INTERROGATORIES

3. Please describe the present status and disposition of the Reading Connector, including but not limited to:

- a. The status and/or disposition of the line under the Final System Plan;
- b. Whether authority was sought and obtained from the ICC, STB or other governmental authority to abandon or discontinue service on the Reading Connector or any part thereof; and if so, the docket number, the date when the abandonment or discontinuance authority became final, and the date when the abandonment or discontinuance authority was exercised; and
- c. Whether the Reading Connector or any part thereof (including the underlying right-of-way) was sold or leased to another person(s), and if so, the date of the sale or lease, the name of the person(s) to which the property was sold or leased, and the specific property sold or leased.

Conrail objects to this interrogatory on the ground that it goes beyond the limited discovery authorized by the July 31, 2006 Decision. According to the BRI/ECDC Petition, the Reading Connector was a one-mile section of track, which once connected what is now CSXT's Trenton Line to New Jersey Transit's Raritan Line and which was removed by Conrail in approximately 1985, more than a decade before the Transaction Agreement allocated the ownership and use of the then-existing lines of Conrail among NS, CSXT and Conrail. Given that the Reading Connector no longer existed at the time of the Transaction Agreement and therefore, was not included in the trackage that defined the boundaries of the NJSAA, its history and status have no bearing on the issues for which limited discovery is being permitted pursuant to the Board's July 31, 2006 Decision.

4. If the portion of the Reading Connector that crossed the Lehigh Line at grade in the vicinity of Port Reading Jct. was reconstructed/restored to service, either by order of the STB or otherwise, please describe the extent to which the restored Reading Connector would be located within the CP at Port Reading Jct. or otherwise located within the NJSAA.

Conrail objects to this interrogatory for the same reasons that it raised in objection to Interrogatory No. 3. Conrail also objects to this interrogatory on the ground that it speculative and hypothetical. To the best of Conrail's knowledge, there are no present plans to restore the Reading Connector and it is impossible to determine the service or signal parameters for a restored Reading Connector in the abstract. Moreover, the question itself mistakenly assumes that a "control point" encompasses the geographical area where the track controlled by the "control point" is located.

7. Please identify the point(s) on NJ Transit's Raritan Valley Line west of Bound Brook, NJ where (a) Conrail's property ownership interest(s) end and (b) west of which NS alone presently provides switching service to and from shipping and receiving facilities.

Conrail objects to this interrogatory on the ground that it is irrelevant to any issue presented by the BRI/ECDC Petition and is not reasonably calculated to lead to the discovery of relevant evidence. New Jersey Transit's Raritan Valley Line runs in an east-west direction north of Port Reading and BRI's facility, and BRI's facility does not and cannot receive rail service from that line.

8. Please state where the point on the former Lehigh Valley Railroad (now NJ Transit's Raritan Valley) line representing the beginning of the portion of that line that Conrail transferred to Pennsylvania Lines LLC by quitclaim deed, as described in paragraph 2 on page 5 of Exhibit B to NS's February 9, 2006 Motion to Dismiss BRI/ECDC's Petition in this proceeding, is located in relation to Bound Brook Junction (the point where the former Reading Connector connected with what is now the Raritan Valley Line).

Conrail objects to this interrogatory on the ground that it is irrelevant to any issue presented by the BRI/ECDC Petition and is not reasonably calculated to lead to the discovery of relevant evidence for the reasons stated in response to Interrogatory 7.

9. Please state whether Conrail provides or has provided, since the Split Date, switching service to any shipping or receiving facility that is located on right-of-way, property or track in or near the NJSAA that Conrail does not own under the Shared Assets Area Operating Agreement for North Jersey and/or any other agreements implementing the Conrail control transaction approved by the Board in Decision No. 89 in Finance Docket No. 33388. If the answer to this question is affirmative, please identify (a) each facility to or from which switching service is or has been provided since the Split Date, including its location and the name of the shipper or receiver involved, (b) the traffic switched, and (c) the name of the yard(s) or other points to or from which Conrail delivered or received the traffic to/from NS or CSX.

Conrail objects to this interrogatory on the ground that it is irrelevant, not reasonably calculated to lead to the discovery of relevant evidence, and would be unduly burdensome. With specific reference to the claim in the BRI/ECDC Petition that Conrail had occasionally provided switching services to BRI, the Board pointedly noted in its July 31, 2006 decision that "Conrail's past switching service of the BRI facility is not controlling in determining whether the BRI facility is within the NJSAA." Whether, during the eight years since Split Date, Conrail has ever provided switching services to *other* facilities is clearly irrelevant to any issue presented by the BRI/EDCD Petition, and to require Conrail to search through records of hundreds of thousands

of rail movements over an eight year period to identify such instances, if there are any, would be a plainly unreasonable burden.

DOCUMENT PRODUCTION REQUESTS

2. Please produce all documents defining the boundaries of the NJSAA in the vicinity of Port Reading Junction/Manville, NJ, including but not limited to the following (note: if a document was included in the Application in Finance Docket No. 33388 you may identify the location of the document in the Application rather than producing a separate copy thereof):

a. color-coded maps or schematics showing railroad lines in New Jersey north of Trenton prepared and/or used by CSX, NS and/or Conrail in connection with CSX's and NS's agreement to divide the assets of Conrail and establish the NJSAA;

b. maps, schematics or other documents identifying the specific cut points establishing the limits of the NJSAA in the vicinity of Port Reading Junction/Manville, NJ;

c. maps, schematics or other documents identifying (1) the rail lines in the vicinity of Port Reading Jct./Manville/Bound Brook Jct., NJ but located outside the limits of the NJSAA that are subject to any form of trackage or operating rights, and (2) which carrier(s) have such rights over which specific lines;

d. maps, schematics or other documents identifying customer rail shipping and receiving facilities located within the NJSAA in the vicinity of Bound Brook, Bound Brook Junction, Port Reading Junction and Manville, NJ; and

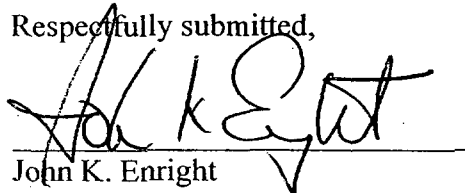
e. maps, schematics or other documents identifying which rail carrier(s) would have and/or have had the ability to physically serve each customer rail shipping and receiving facility identified in response to (d) above (including without limitation the BRI facility) after the Split Date.

Conrail objects to this document request to the extent it seeks documents related to New Jersey Transit's Raritan Valley line for the reasons stated in its response to Interrogatories 7 and 8.

3. Please produce all documents related to the sale, lease, abandonment or other disposition of the Reading Connector or any part thereof (including but not limited to treatment or disposition thereof under the Final System Plan).

Conrail objects to this document production request on the ground that it goes beyond the limited discovery authorized by the July 31, 2006 Decision. According to the BRI/ECDC Petition, the Reading Connector was a one-mile section of track, which once connected what is now CSXT's Trenton Line to New Jersey Transit's Raritan Line and which was removed by Conrail in approximately 1985, more than a decade before the Transaction Agreement allocated the ownership and use of the then-existing lines of Conrail among NS, CSXT and Conrail. Given that the Reading Connector no longer existed at the time of the Transaction Agreement and therefore, was not included in the trackage that defined the boundaries of the NJSAA, its history and status have no bearing on the issues for which limited discovery is being permitted pursuant to the Board's July 31, 2006 Decision.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John K. Enright", is written over a horizontal line.

John K. Enright
Associate General Counsel
On behalf of Respondent
Consolidated Rail Corporation

August 28, 2006

4

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388 (Sub-No. 100)

CSX CORPORATION AND CSX TRANSPORTATION, INC.
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
— CONTROL AND OPERATING LEASES/AGREEMENTS —
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

OBJECTIONS OF CSX CORPORATION AND CSX TRANSPORTATION, INC.
TO PETITIONERS' REVISED DISCOVERY REQUEST

Steven C. Armbrust, Esq.
Counsel
CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202
(904) 359-1229

Attorney for: CSX CORPORATION AND
CSX TRANSPORTATION, INC.

Dated: August 28, 2006

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388 (Sub-No. 100)

CSX CORPORATION AND CSX TRANSPORTATION, INC.
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
— CONTROL AND OPERATING LEASES/AGREEMENTS —
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

OBJECTIONS OF CSX CORPORATION AND CSX TRANSPORTATION, INC.
TO PETITIONERS' REVISED DISCOVERY REQUEST

CSX Corporation ("CSX Corp.") and CSX Transportation, Inc. ("CSXT" and, together with CSX Corp., "CSX") respond below to the revised discovery requests (the "Discovery Requests") submitted by petitioners Bridgewater Resources, Inc ("BRI") and ECDC Environmental L.L.C. ("ECDC" and, together with BRI, the "Petitioners") on August 4, 2006. Petitioners revised the discovery requests initially submitted on January 30, 2006 in response to the decision of the Surface Transportation Board (the "Board" or "STB") served on July 31, 2006 (the "July Decision").

The objections described below are made on the grounds that certain items in the Discovery Requests (the "Subject Discovery Requests") are either (i) beyond the "limited discovery" allowed by the Board in the July Decision and/or (ii) otherwise irrelevant to any issue presented in this proceeding and not reasonably calculated to lead to the discovery of relevant evidence. By agreement with counsel for Petitioners, Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "NS"), and Conrail Inc. and Consolidated Rail Corporation (collectively, "Conrail" and, together with NS and CSX, the "Respondents"), CSX

has agreed to submit its objections on the grounds referred to in clause (i) and (ii) above (collectively, the "Subject Objections") to the Subject Discovery Requests at this time while reserving its right to (i) collect additional information responsive to the Subject Discovery Requests and (ii) object to the Discovery Requests (including, without limitation, the Subject Discovery Requests) on any other ground within the time frame set forth in the motion filed jointly by the Respondents on August 25, 2006 (the "Extension Motion"). Accordingly, CSX reserves the right to object to any or all of the Discovery Requests on grounds other than the Subject Objections.

GENERAL RESPONSES

In addition to the Subject Objections and the General Objections below, the following general response is made with respect to all of the Subject Discovery Requests: CSX reserves the right to supplement the Subject Objections if additional information or documents are discovered.

GENERAL OBJECTIONS

The following general objections are made with respect to the Subject Discovery Requests. Any additional specific objections are stated at the beginning of the response to each Subject Discovery Request.

1. In the Petition for Clarification filed by the Petitioners on January 20, 2006 (the "Petition"), Petitioners argued that BRI's waste transfer facility near Port Reading, New Jersey ("Port Reading"), is located in the North Jersey Shared Assets Area ("NJSAA"). In the July Decision, although the Board acknowledged that NS presented strong evidence to the contrary, it decided to permit certain limited discovery in this proceeding solely to develop the record

regarding the parties' intent in defining the NJSAA boundaries in the original transaction agreement (the "Transaction Agreement"). Specifically, the Board stated the following:

"NS has presented strong evidence, based on the transaction agreement, to support its claim that the BRI facility is located outside the NJSAA. Nevertheless, it is appropriate for the Board to allow for limited discovery for BRI to obtain evidence to further develop the record as to what the parties intended in their original transaction agreement before resolving the issues that are presented here. The Board notes that Conrail's past switching service of the BRI facility is not controlling in determining whether the BRI facility is within the NJSAA." Slip opinion at page 4.

Accordingly, the Board issued the following order with respect to the discovery in this proceeding:

"The Board will allow for limited discovery pertaining to the parties' intent in defining the NJSAA boundaries in the original transaction agreement. The Board is particularly interested in what the parties meant by the use of the term 'CP,' or control point, in defining the SAAs. Therefore, the NS and Conrail motions for protective order are denied to the extent needed to permit the limited discovery." Slip opinion at page 5.

Therefore, CSX objects to the Discovery Request to the extent all or any portion thereof is beyond the "limited discovery" authorized by the July Decision and seeks information and documents that are not related to the Respondents' "intent in defining the NJSAA boundaries in the original transaction agreement" as it related specifically to the applicable Respondent's rail service to BRI's facility near Port Reading.

2. CSX objects to Petitioners' Definitions and Instructions (as defined in the Discovery Requests) to the extent that they seek to impose requirements that exceed those specified in the applicable discovery rules and guidelines.

3. CSX objects to any informational requests that relate to any date that is (i) prior to the date that CSX made its first offer to acquire Conrail or (ii) after the date that the Transaction Agreement was executed by the parties thereto, in each case as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding.

SUBJECT DISCOVERY REQUESTS

I. INTERROGATORIES

Interrogatory No. 3. Please describe the present status and disposition of the Reading Connector, including but not limited to:

- a. The status and/or disposition of the line under the Final System Plan.
- b. Whether authority was sought and obtained from the ICC, STB or other governmental authority to abandon or discontinue service on the Reading Connector or any part thereof; and if so, the docket number, the date when the abandonment or discontinuance authority became final, and the date when the abandonment or discontinuance authority was exercised.
- c. Whether the Reading Connector or any part thereof (including the underlying right-of-way) was sold or leased to another person(s), and if so, the date of the sale or lease, the name of the person(s) to which the property was sold or leased, and the specific property sold or leased.

Objection:

CSX objects to this interrogatory as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. In addition, CSX objects to this interrogatory on the ground that it goes beyond the limited discovery authorized by the July Decision.

According to the Petition, the Reading Connector was a one-mile section of track, which used to connect what is now CSXT's Trenton Line to New Jersey Transit's Raritan Line and which, upon information and belief, was abandoned and removed by Conrail on or about 1985. Because the Reading Connector did not exist when the Transaction Agreement defined the

boundaries of the NJSAA, its history and status are irrelevant to Respondents' "intent in defining the NJSAA boundaries in the original transaction agreement".

Interrogatory No. 4. If the portion of the Reading Connector that crossed the Lehigh Line at grade in the vicinity of Port Reading Jct. were reconstructed/restored to service, either by order of the STB or otherwise, please describe the extent to which the restored Reading Connector would be located within the CP at Port Reading Jct. or otherwise located within the NJSAA.

Objection:

CSX objects to this interrogatory on the ground that (i) it goes beyond the limited discovery authorized by the July Decision for the reasons discussed in the response to Interrogatory No. 3, (ii) it is ambiguous because it is based on the incorrect presumption that the "CP at Port Reading Jct." encompasses a geographical area rather than a single point and (iii) this interrogatory is a hypothetical question that cannot be answered without speculation by the Respondents. In addition, based on the foregoing, CSX objects to this interrogatory as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 7. Please identify the point(s) on NJ Transit's Raritan Valley Line west of Bound Brook, NJ where (a) Conrail's property ownership interest(s) end and (b) west of which NS alone presently provides switching service to and from shipping and receiving facilities.

Objection:

CSX objects to this interrogatory as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. New Jersey Transit's Raritan Valley Line runs in an east-west direction north of Port Reading and BRI's facility.

Therefore, BRI's facility does not and cannot receive rail service from that line.

II. DOCUMENT PRODUCTION REQUESTS

Document Request No. 2. Please produce all documents defining the boundaries of the NJSAA in the vicinity of Port Reading Junction/Manville, NJ, including but not limited to the following (note: if a document was included in the Application in Finance Docket No. 33388 you may identify the location of the document in the Application rather than producing a separate copy thereof):

- a. color-coded maps or schematics showing railroad lines in New Jersey north of Trenton prepared and/or used by CSX, NS and/or Conrail in connection with CSX's and NS's agreement to divide the assets of Conrail and establish the NJSAA;
- b. maps, schematics or other documents identifying the specific cut points establishing the limits of the NJSAA in the vicinity of Port Reading Junction/Manville, NJ;
- c. maps, schematics or other documents identifying (1) the rail lines in the vicinity of Port Reading Jct./Manville/Bound Brook Jct., NJ but located outside the limits of the NJSAA that are subject to any form of trackage or operating rights, and (2) which carrier(s) have such rights over which specific lines;
- d. maps, schematics or other documents identifying customer rail shipping and receiving facilities located within the NJSAA in the vicinity of Bound Brook, Bound Brook Junction, Port Reading Junction and Manville, NJ; and
- e. maps, schematics or other documents identifying which rail carrier(s) would have and/or have had the ability to physically serve each customer rail shipping and receiving facility identified in response to (d) above (including without limitation the BRI facility) after the Split Date.

Objection:

CSX objects to this document request to the extent it seeks documents related to New Jersey Transit's Raritan Valley line for the reasons stated in its response to Interrogatory 7.

Respectfully submitted,



Steven C. Armbrust, Esq.
Counsel

CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202
(904) 359-1229

Attorney for: CSX CORPORATION AND
CSX TRANSPORTATION, INC.

Dated: August 28, 2006