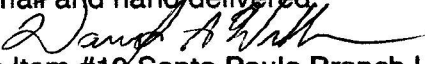


September 10, 2012

To: The Ventura County Transportation Commission
From: Dave Wilkinson, Fillmore & Western Railway
Via E-mail and hand delivered


RE: Item #10 Santa Paula Branch Line Bridge Report and Recommended Actions

Honorable Chair, Honorable Commissioners

Presented to you today is a report on the status of several bridges on the Santa Paula Branch Line. The recommendation is to forward that report to the Federal Rail Administration and continue to work with the Fillmore & Western to find funding to repair the bridges. We would respectfully ask that a third recommendation be added to immediately fund the repair of the Ellsworth Barranca Bridge

The four bridges identified in the report are in fact controlled by two very different sets of circumstances. Three of the bridges are to the east of Santa Paula or mile post 414 and are subject only to the lease agreement between the Commission and the Fillmore & Western. The fourth bridge, the Ellsworth Barranca Bridge is to the west of Santa Paula. This bridge is subject to the usage agreement amendment number one between the Commission and the Southern Pacific Railroad, now the Union Pacific which states:

1. Section 2(b) is deleted in its entirety and replaced with the following:

(b) Purchaser shall at its sole cost and expense maintain the track structures, bridges, signal systems and appurtenant railroad facilities located on the Santa Paula Branch to a level not less than that existing on October 31, 1995... (Entered into January 21, 1997)

It is the commission's responsibility to have this bridge repaired immediately. While the Union Pacific (UP) has stopped moving paper goods to the plant in Santa Paula, there are other customers on the line to the East of the bridge who, because of the close operating partnership between the Fillmore & Western (F&W) have been able to continue to enjoy the services of rail. The non-repair of the Ellsworth Bridge, in violation of the usage agreement is now creating harm. It is in the best interests of all concerned that this bridge be repaired now. To that end, as stated above, we would request an additional recommended action to direct the repair of the bridge with existing funding using the operator, F & W and JL Patterson and so have the resolution to freight movement on the line immediately. This will allow the other negotiations to move forward in partnership instead of in violation of current obligations to the commission.

Attachment: Usage Agreement.

P. 01/03

JAN 21 '97 16:23 FR UPRR-OPS ADM JT FC 4022/169/1 10 518056424000 F.02/00
JAN 21 '97 15:17 ADM UNION PACIFIC 10 518056424000

4-09-1999 12:57PM FROM VCTC 805 642 4860

JAN 22 '97 10:41 FR UPRR-OPS ADM JT FC

4022716971 TO 918056424860

P.3

P.02/03

JAN 21 '97 16:24 FR UPRR-OPS ADM JT FC

4022716971 TO 918056424860

P.03/04

JAN 21 '97 13:17

FROM UNION PACIFIC

TO 4022716971

Purchaser shall notify Seller's authorized representative at least twenty four (24) hours before performing any Maintenance and Improvement Work to avoid any train operations while such Maintenance and Improvement Work occur on the Santa Paula Branch. Notwithstanding any other provision contained herein, Purchaser agrees to and shall indemnify and hold harmless Seller, its officers, agents, and employees from and against any and all claims, demands, losses, damages, causes of action, suits, and liabilities of every kind (including reasonable attorney's fees, court costs, and other expenses related thereto) for injury to or death of a person or for loss of or damage to any property, arising out of or in connection with any work done, action taken or permitted by Purchaser, its subcontractors, agents or employees relating to (1) labor claims by employees of Seller with respect to work performed by Purchaser prior to the date hereof on the Santa Paula Branch and, (2) Maintenance and Improvement Work. It is the express intention of the parties hereto, both Purchaser and Seller, that the indemnity provided for in this paragraph indemnifies Seller for its own negligence, whether that negligence is active or passive, or a concurring cause of the injury, death or damage; provided that said indemnity shall not protect Seller from liability for death, injury or damage arising out of its sole negligence or the willful misconduct, gross negligence and/or criminal actions of Seller, its officers, agents and employees."

2. This First Amendment shall be effective January 21, 1997

3. Except as amended hereby, the terms of the Usage Agreement remain in full force and effect.

CC:AVGRENDA/PALLAND

4-00-1999 12:58PM FROM VCTC 805 642 4860

JAN 22 '97 10:41 FR UPRR-UPS HUM JI FL 4022716971 10 918036424860 P.4
JAN 21 '97 13:17 FROM UNION PACIFIC-LAW/SE 10 20022716971 P.03/03

IN WITNESS WHEREOF, the parties have executed this First Amendment as of
the date first set forth above.

PURCHASER:

Ventura County Transportation
Commission, a public agency

By Amigos Hernandez
Name Amigos Hernandez
Title Executive Director

SELLER:

Southern Pacific Transportation
Company, a Delaware corporation

By William E. Fowler
Name WILLIAM E. FOWLER
Title DIRECTOR - JOINT FACILITIES

CONTINUED ON REVERSE

3

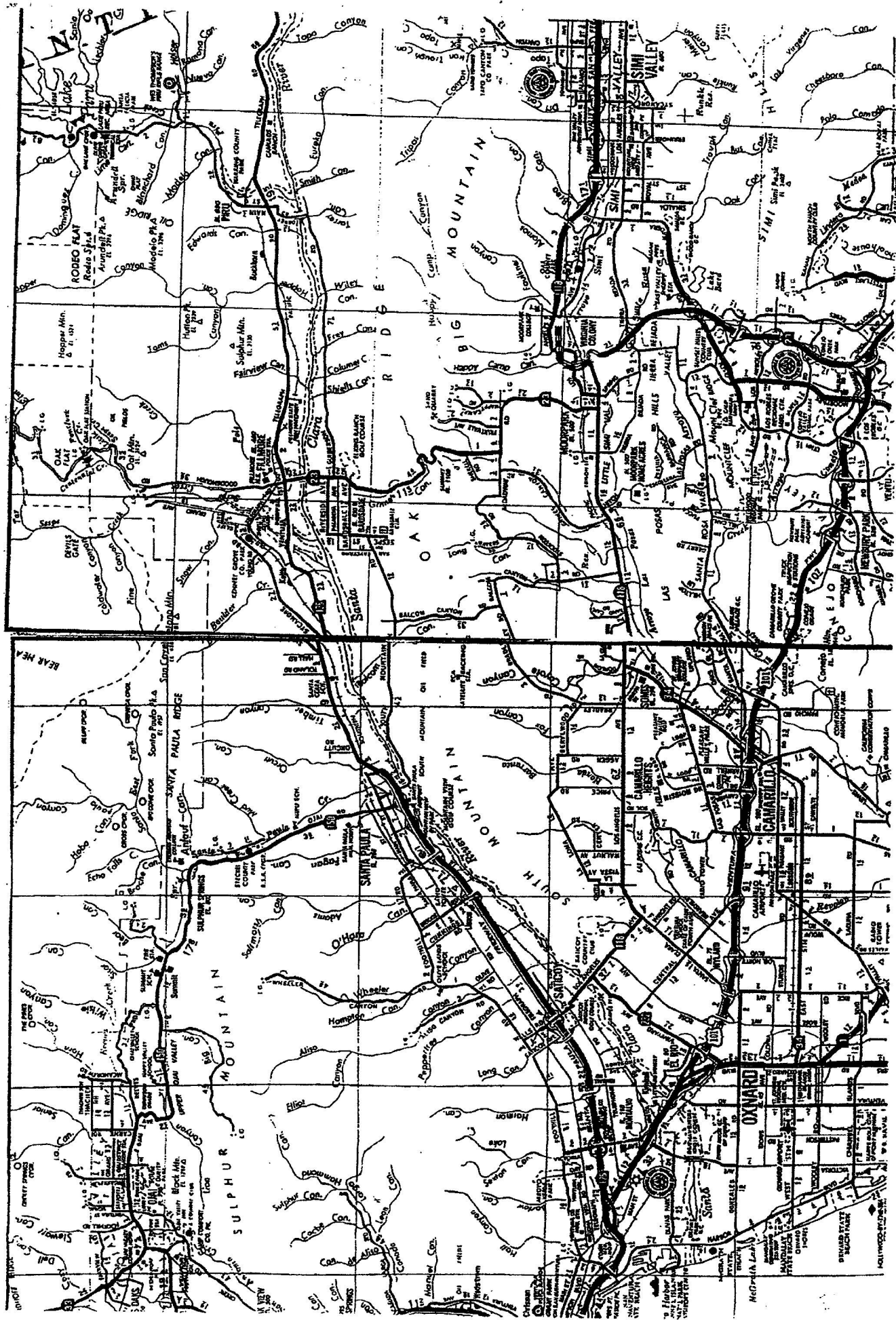
** TOTAL PAGE.004 **

** TOTAL PAGE.004 **

JAN 22 '97 10:25

805 642 4860 PAGE.004

** TOTAL PAGE.003 **



J. J. MILLER
AUG 21 2001

USAGE AGREEMENT--SANTA PAULA BRANCH

THIS AGREEMENT dated as of October 31, 1995, is entered into between Southern Pacific Transportation Company, a Delaware corporation ("Seller"), and the Ventura County Transportation Commission ("Purchaser") with reference to the following facts:

A. Seller and Purchaser have entered into a Purchase and Sale Agreement dated October 27, 1995 (the "Purchase Agreement"), pursuant to which Seller has agreed to sell to Purchaser the Santa Paula Branch, together with certain adjoining land and improvements, located in the State of California, all of which are included in the definition of "Property" in the Purchase Agreement.

B. Seller has a common carrier obligation to continue rail service between Milepost 415.0 and Milepost 403.2 ("Santa Paula Branch"). Seller has advised Purchaser that the Santa Paul Branch track is classified as "Excepted Track" under regulations of the Federal Railroad Administration and that existing traffic levels do not warrant further investments by Seller on the Santa Paula Branch.

Purchaser is therefore willing to permit Seller to continue such freight service on the terms set forth herein.

NOW, THEREFORE, the parties hereto agree as follows:

1. Scope. This Agreement applies only to the Santa Paula Branch, as defined above, after the closing provided for in the Purchase Agreement.

2. Common Carrier Service and Its Termination.

(a) Seller currently provides and will provide, as a common carrier, rail service to the shippers located on the Santa Paula Branch. Seller retains the sole and exclusive right and obligation to exclusively provide freight rail service on the Santa Paula Branch; provided, however, that Seller reserves the right to surcharge such traffic. Seller shall have the exclusive right to provide freight rail service, and neither Purchaser nor any person or entity other than Seller shall be permitted to provide "overhead" or any other freight rail service on the Santa Paula Branch. In the event Purchaser desires to operate or have operated on its behalf rail passenger service on the Santa Paula Branch, it shall provide Seller with six (6) months prior written notice during which time the parties shall negotiate a joint usage agreement to supersede this Agreement; provided, however, that the foregoing shall not apply to rail passenger service operated from the east into the Santa Paula Station (approximately milepost 414.5). The joint usage agreement shall address: maintenance, dispatch, cost allocation, liability allocation, rehabilitation, construction disruption to service and such other matters as may be required. Unless otherwise required by law, Seller shall not make any physical modifications to the track structures for the purpose of providing rail service to any shipper other than currently-served shippers, unless Seller shall have given at least 90 days' prior written notice thereof to Purchaser. Furthermore, Seller shall notify Purchaser in writing as soon as is reasonably practicable that Seller intends to provide or is providing freight rail service to any shipper other than a currently-served shipper. Unless otherwise required by law, Seller shall not materially extend or increase its freight rail service obligations without providing notice thereof to Purchaser as soon as is reasonably practicable. Seller

expressly retains and Purchaser expressly declines to assume any obligation to provide such freight rail service or to assume any common carrier obligation or any other obligation with respect thereto.

(b) Seller shall (i) at its sole cost and expense, and subject to its sole management and control, maintain the track structures, bridges, signal systems and appurtenant railroad facilities located on the Santa Paula Branch to a level reasonably determined by Seller to be consistent with the use being made thereof by Seller, (ii) have full responsibility for and control over operations and dispatching, and (iii) indemnify and hold Purchaser harmless from and against any and all cost, expense or liability caused solely by Seller's operations on the Santa Paula Branch. Notwithstanding the foregoing, Purchaser shall have control over, and shall be responsible for, any material improvements to be made to the Santa Paula Branch, including, without limitation, any track crossings, grade separations or improvements requested by any governmental or quasi-governmental agency or any third party, and the financing thereof, unless such improvements are requested by Seller or such agency (other than Purchaser) solely for or solely as a result of Seller's own use. ✓

(c) Purchaser shall have reasonable access to the Santa Paula Branch for the purpose of surveying, inspecting or testing or for any other similar limited purpose, upon giving reasonable notice to Seller; provided, however, Purchaser shall not undertake any significant activities thereon, including, without limitation, any rehabilitation, construction or relocation activities and prior to the commencement of any activities, shall provide the notice referred to in subsection (d). During any period of continued access, when reasonably required, Seller shall control and dispatch Seller's trains to minimize

conflict with Purchaser's activities. If Purchaser reasonably requests, Seller shall issue notices of interrupted service, including embargo notices (with duration thereof to be specified by Purchaser) to affected shippers. Any access or activity by Purchaser pursuant to this Section 2 shall be coordinated with Seller to minimize interference with freight service, but Purchaser shall bear the financial cost of any such interruption relating to freight operations, including the cost of flagmen or safety signals. Purchaser shall hold harmless, indemnify and defend Seller from and against any cost, expense, claim or liability (other than labor disputes or claims) resulting from any such access or activities.

(d) For purposes of this Agreement, the "Changeover Date" for the Santa Paula Branch or any portion thereof is the date on which Purchaser shall be deemed to have assumed sole responsibility for the Santa Paula Branch or portion thereof, which shall be the effective date of an order by which the Interstate Commerce Commission or its successor agency ("ICC") has granted Seller authority to abandon or transfer its common carrier obligation to another party.

3. Purchaser's Exclusive Use. As of and after the Changeover Date, Purchaser or its independent contractor shall assume sole and exclusive responsibility for the operations, maintenance and dispatching of such rail line and its appurtenant facilities, including rail freight operations.

4. Determinations. Seller may not terminate its common carrier obligations except in accordance with this Section 4. At any time, Seller may elect or Purchaser may request Seller to terminate such freight rail service or transfer it to another party. Upon making such election, Seller or Purchaser, as the case may be, shall notify the other party in writing and seek authority from the ICC to discontinue, abandon or transfer Seller's



freight rail service. In the case of a Purchaser request, Seller shall not contest such request and shall provide all necessary information for Purchaser to complete the ICC application subject to an agreement for appropriate protection of confidential business information. Seller shall continue to provide such service and to retain all of the rights and obligations described herein until the effective date of the transfer, discontinuance or abandonment.

5. Property Taxes. Notwithstanding any provision of this Agreement or the Purchase Agreement to the contrary, to the extent any real property taxes continue to be payable which are not otherwise enjoined by court order with respect to any portion of the Santa Paula Branch or thereafter by reason of Seller's continued use of such portion of the Property in accordance with this Agreement, Seller will pay, to the extent required to do so, such real property taxes prior to delinquency and shall protect, defend, indemnify and hold Purchaser harmless from and against any and all liability, loss, cost, damage or expense (including, without limitation, reasonable attorneys' fees) Purchaser may sustain or incur on account of any such real property taxes by reason of this provision.

6. Indemnification. Seller shall protect, defend, indemnify and hold Purchaser harmless from and against any and all liability, loss, cost, damage or expense (including, without limitation, reasonable attorneys' fees) Purchaser may sustain or incur by reason of any discontinuance or abandonment by Seller of freight rail service on any portion of the Santa Paula Branch by reason of a Seller's ICC filing or otherwise (except by reason of a Purchaser request to abandon or transfer common carrier service, or any other action taken or caused by Purchaser or its agents, which is in whole or in part the basis of such loss, claim or damage to the extent that such action is the basis of such loss, claim or

damage). Purchaser shall hold harmless, protect, indemnify and defend Seller from and against any and all liability, loss, cost, damage or expense (including, without limitation, reasonable attorneys' fees) Seller may sustain or incur by reason of the termination or denial of rail service to any shipper or potential shipper as a result of a Purchaser request to abandon or transfer common carrier service, and from any expense related to such claim, including, without limitation, reasonable attorneys' fees.

7. Assignment. Seller may assign or otherwise delegate any of its rights and duties hereunder to any financially and operationally responsible party without the consent of Purchaser; provided, however, that at Purchaser's request, Seller shall provide reasonable evidence that such party is financially and operationally responsible. Any other assignment or delegation shall require the prior written consent of Purchaser. No such assignment or delegation shall relieve Seller of any of its duties or obligations hereunder unless otherwise expressly agreed to in writing by Purchaser.

8. No Third Party Beneficiaries. This Agreement is for the benefit of the parties hereto and their successors and assigns only, and shall not be deemed to inure to the benefit of any third parties.

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

SOUTHERN PACIFIC TRANSPORTATION
COMPANY, a Delaware corporation

By: _____

Title: _____

[Signature]
Vice-President

VENTURA COUNTY TRANSPORTATION
COMMISSION

By: _____

Title: _____

[Signature]
Chairman