

SURFACE TRANSPORTATION BOARD

STB Docket No. AB-870X

304100
ENTERED
Office of Proceedings
March 14, 2022
Part of
Public Record

**BUTLER COUNTY, KANSAS - ABANDONMENT EXEMPTION –
IN BUTLER COUNTY, KS**

**REPLY OF HMA PROPERTIES, LLC TO
JOINT PETITION FOR SUBSTITUTION OF TRAIL MANAGER**

Eric M. Hocky
Clark Hill PLC
2001 Market Street, Suite 2620
Philadelphia, PA 19103
215-640-8523
ehocky@clarkhill.com

Attorneys for HMA Properties, LLC

Dated: March 14, 2022

SURFACE TRANSPORTATION BOARD

STB Docket No. AB-870X

**BUTLER COUNTY, KANSAS - ABANDONMENT EXEMPTION –
IN BUTLER COUNTY, KS**

**REPLY OF HMA PROPERTIES, LLC TO
JOINT PETITION FOR SUBSTITUTION OF TRAIL MANAGER**

HMA Properties, LLC (“HMA”) is a property owner in Butler County, Kansas. Among its properties, HMA owns property adjacent to, and the reversionary interests in, property of a former line of railroad between milepost 483.62 at Augusta, and milepost 494.22 near Andover (the “Original Line”). As described in the Joint Petition filed by Butler County Economic Development (“BCED”) and the City of Augusta (“Augusta”) on February 22, 2022 (the “Joint Petition”), abandonment of the Original Line by the County was authorized by the Board, and by decision served on June 2, 2005 (the “June 2005 Decision”), a notice of interim trail use (“NITU”) was issued in favor of BCED, allowing it to negotiate an interim rail use agreement with the County, subject to the environmental condition imposed on the abandonment in an August 4, 2004 decision of the Board. See Exhibit 1 to Joint Petition. The Joint Petition also describes subsequent decisions of the Board granting petitions to allow Augusta and the City of Andover (“Andover”) to substitute for BCED as the trail manager for different segments of the Original Line.

The Joint Petition seeks to permit substitution of Augusta for BCED as trail manager for the remaining segment (the “Line Segment”) between milepost 485.2 near Augusta, (the east side of the Whitewater River) and milepost 488.35 near Andover (the north side of US 54/400). Joint Petition at 2. HMA is filing this Reply to request that the Board deny the requested substitution of trail manager based on (1) failure to comply with the Board’s regulations in connection with the Statement of Willingness, (2) misrepresentations and errors in the Joint Petition which call into

question the establishment of the original NITU and the proposed transfer of trail use responsibilities, and (3) because of changed circumstances which have severed the line from the national rail system such that Augusta as the substitute trail sponsor cannot legitimately claim or agree that it will hold the line for reactivation of rail service as required under the National Trails System Act, 16 U.S.C. § 1247(d) (“National Trails Act”), the Board’s regulations at 49 C.F.R. 1152.29, and the Statement of Willingness submitted by Augusta. Instead the Board should terminate the NITU for the Line Segment (or the Original Line as determined appropriate), and require the County to take the steps necessary to consummate the abandonment.¹

Procedural Background

STB Proceedings. Butler County (the “County”) first acquired the 10.6-mile Original Line of railroad between milepost 483.62, at Augusta, Butler County, Kansas, and milepost 494.22, near Andover, at the Butler County/Sedgewick County line, Kansas, from Burlington Northern and Santa Fe Railway Company (“BNSF”) in 2002. *Butler County, Kansas – Acquisition Exemption – The Burlington Northern and Santa Fe Railway Company*, STB Docket No. 34139 (served January 11, 2002). Shortly thereafter, BNSF filed to abandon the rail lines in Andover connected to the western end of the line, and from that time onward, the Original Line thus only connected to the national rail network at the eastern end of the line in Augusta.

The County was never able to obtain an operator or rehabilitate the line, and in June, 2004, the County filed a notice of exemption to abandon the entire 10.6-mile line of railroad. *Butler County, Kansas – Abandonment Exemption – In Butler County, Kansas*, STB Docket No. AB-870X (notice of exemption filed June 15, 2004). The exemption became effective on August 4,

¹ As noted in the June 2005 Decision, and each of the subsequent Board decisions approving substitution, consummation of abandonment will still be subject to compliance with the outstanding environmental condition.

2004. *Id* (served July 2, 2004). By decision served August 2, 2004, the Board reopened the abandonment proceeding and imposed an environmental condition. By decision and notice of interim trail use or abandonment (NITU) served on June 2, 2005, the proceeding was reopened again and Butler County Economic Development (“BCED”), a department of the County, was authorized to negotiate a trail use/rail banking agreement with the County for the entire line pursuant to § 8(d) of the National Trails Act, and 49 C.F.R. § 1152.29, in order to rail bank its own line. By letter filed on June 3, 2005, BCED notified the Board that BCED and the County had consummated a trail use/rail banking agreement for the line. A copy of the letter is attached hereto as Exhibit A.

The Joint Petition describes the three subsequent decisions by the Board served November 5, 2009, April 5, 2010, and June 6, 2010, allowing Augusta and Andover to substitute for BCED as trail manager for various segments of the Original Line. The Joint Petition now seeks to allow Augusta to substitute for BCED as trail manager for the remaining Line Segment.

State Court Litigation. In HMA Properties, LLC *et al* v. Butler County, Kansas, *et al*, Case No. 2018-CV-115 (District Court, Butler County) (the “State Court Litigation”). HMA and other plaintiffs brought suit against the County in an attempt to establish that the County has violated the Kansas Recreational Trails Act, K.S.A. 58-3211 *et seq.* (“KRTA”). The City of Andover intervened as an additional defended. Plaintiffs also contended that actions had been taken with respect to the property that severed the railroad right-of-way. The State Court ultimately found that the plaintiffs had not established that the County and Andover had violated the KRTA. See Journal Entry of Final Judgment (the “State Court Judgment”) attached hereto as Exhibit B. However, the Court went on to find that it lacked subject matter jurisdiction to determine whether the County had met its STB commitments or allowed the railroad right-of-way

to be severed from national rail network, leaving these issues to the Board. State Court Judgment at 9-11, 14.

Discussion

1. Legal Standards

The Board, of course, has the power to reject a request that does not comply with the Board's regulatory requirements. Moreover, the Board has the power to reopen and reconsider prior actions if the action would be materially affected by material error, new evidence or substantially changed circumstances. *Burlington Northern Railroad Company – Abandonment Exemption – Between Klickitat and Goldendale, WA*, STB Docket No. AB-6 (Sub-No. 335X) (served June 8, 2005), slip op. at 3. In the context of interim trail use, the Board has held that if there have been actions that preclude the restoration of rail service, or sever the right-of-way from the national rail system, it will reopen the proceeding to reexamine its authorization of interim trail use. *Central Kansas Railway, Limited Liability Company – Abandonment Exemption – In Marion and McPherson Counties, KS*, STB Docket No. AB-406 (Sub-No. 6X) (served December 8, 1999), slip op. at 6, 8, *affirmed on reconsideration* (served May 8, 2001).

2. Augusta's Statement of Willingness does not comply with the Board's regulations.

The Board's regulations at 49 C.F.R. 1152.29(f)(1) require that if a person intends to become the trail sponsor in substitution for the existing trail sponsor, among other requirements, it must submit a Statement of Willingness to Assume Financial Responsibility ("Statement of Willingness"). While the Joint Petition includes as Exhibit 2 a Statement of Willingness on behalf of Augusta, the Statement of Willingness does not comply with the Board's regulations for such statements. In particular, the regulations at 49 C.F.R. 1152.29(a)(3) require that the statement be in the required form. In this case, Augusta's Statement of Willingness fails to include a reference

to the original abandonment proceeding in the text of the statement, and further fails to include the required map depicting the right-of-way subject to the proposed NITU. As such, the Statement of Willingness is defective, and the Board should reject the requested substitution of Augusta as the trail manager.

3. There are material misrepresentations and errors in the Joint Petition which call into question the establishment of the original NITU and the proposed substitution.

In going through the history of the NITUs on the Original Line, the Joint Petition, on page 1 states “By letter dated June 3, 2005, BCED notified the Board that BCED and Butler County had consummated a trail use/rail banking agreement for the Original Line.” BCED has made the same statement in each of the previous petitions to substitute trail sponsors. See Joint Petitions filed September 28, 2009 (with Augusta), March 8, 2010 (with Andover), and April 20, 2016 (with Andover). A copy of the original letter as filed with the Board is attached hereto as Exhibit A. For BCED to become the trail manager, BCED and the County were required to enter into an “interim trail use/banking agreement” requiring BCED as the trail sponsor to assume “for the term of the agreement” full responsibility for the obligations set forth in the Statement of Willingness. See June 2005 Decision, ordering paragraphs 3 and 4. These requirements are clarified and codified in the Board’s current regulations at 49 CFR 1152.29(h).

Through discovery in the State Court litigation, HMA learned that in fact BCED and the County did not consummate / execute any written agreement that established a term for the agreement, or that required BCED to manage the right-of-way in accordance with the National Trails Act and the statement of willingness, or to hold the right-of-way for reactivation of rail service. See Deposition Transcript of William Johnson, Jr., Butler County Administrator (the “Johnson Deposition”) attached hereto as Exhibit C, Tr. 5-6 (confirming the County has not been able to locate any written agreement). Nor did the County transfer the property to BCED or

otherwise impose interim trail use restrictions in the deed for the right-of-way.² In any event, the Board should not allow the substitution requested in the Joint Petition because, based on the lack of interim trail use/banking agreement, BCED cannot properly be considered as a trail sponsor for the Line Segment, and Augusta cannot properly substitute for BCED.

Further, HMA believes that if the Board had known that no agreement was actually reached or executed, the Board would never have treated the Original Line as being railbanked, and would not have granted the previous requests for substitution of trail sponsors. Based on this discovery and the material misrepresentation as to the existence of an interim trail use / banking agreement, HMA believes the Board should find that the right-ow-way was never properly put into interim trail use, and should reopen the proceeding and vacate the NITU.

4. Because of changed circumstances, the right of way has been severed from the interstate rail network and cannot be reactivated for rail service.

If a railroad right of way is to be held for reactivation of rail service under the National Trails Act, it must stay connected to the national rail network. However, since BCED has been the trail manager, and the County the owner of the railroad right-of-way, various changes have been made to the right-of-way that sever its connection to the interstate rail network. Because of the severance, the efficacy of Augusta's Statement of Willingness to hold the Line Segment for reactivation for rail service must be questioned.

² Although not directly relevant to the Line Segment that is the subject of this proceeding, there were similar misrepresentations made in the joint petitions when Andover sought to be substituted as the trail manager for BCED in March 8, 2010, and April 20, 2016. In each of those petitions, the parties stated that "BCED and Andover have entered into an agreement to transfer the ownership of, and management responsibilities for [the designated segment]." (emphasis added). But in fact there were no agreements entered into by the parties. See Johnson Deposition, Tr. 40-41 (the transfers were merely confirmed by County council resolutions). Moreover, the underlying right-of-way was never transferred, further confirming that there no agreements as described. Johnson Deposition, Tr. 17-18, 43 (confirming no transfers of property except to Augusta).

Additionally, it is clear that if it were established that the right-of-way, or any portions thereof, has been severed from the national rail network in a way that the eventual restoration of rail service has been rendered impossible, then the Board retains authority to revoke the railbanking authority. *See Central Kansas Railway, Limited Liability Company – Abandonment Exemption – In Marion and McPherson Counties, KS*, STB Docket No. AB-406 (Sub-No. 6X) (served May 8, 2001), slip op. at 2-3, 7.

Most notably the Joint Petition does not disclose that at the eastern end of the Line Segment described in the Joint Petition as “the east side of the Whitewater River” the railroad bridge over the Whitewater River was removed in September and October 2010. *See* the certified survey report prepared by Garber Surveying Services, PA dated April 24, 2019 (the Garber Survey) that was submitted in the State Court Litigation, and is attached hereto as Exhibit E. *See also* Johnson Deposition, Tr. 34, 36 (confirming removal of the bridge, and no agreement for replacement). Pictures of the bridge as it previously existed can be found in the County’s Environmental and Historic Report filed on May 26, 2004, a copy of which is attached hereto as Exhibit D for ease of reference. Moreover, a flood control levee has been constructed by the Corps of Engineers over the segment of the right-of-way previously transferred to Augusta to the east of the river, the right-of-way from being reactivated for rail service. *See* Garber Survey; Johnson Deposition, Tr. 30-33 (confirming that the flood levee crosses the right of way, and that there are no stoplogs (gates) that would have kept the right-of-way available for reactivation of rail service during periods when there was no flooding). Both the removal of the bridge over the river and the construction of the levee across the right-of-way serve to sever the Line Segment (and western portions of the Original Line) from the Original Line’s only connection to the national rail network at the original eastern

end of Original Line. Further, these actions make it impossible for Augusta (or BCED) to continue to say that the right-of-way of the Line Segment will (or can) be held for reactivation of rail service.

There are other actions that raise severance issues with respect to the right-of-way. At the western end of the Line Segment, the railroad bridge over US Highway 54/400 has been removed, along with the pier and abutments, with no retained rights or promises to reinstall a railroad bridge. *See Garber Survey, Johnson Deposition, Tr. 34, 36.* Pictures of the bridge as it previously existed can be found in the County's Environmental and Historic Report. As US Highway 54/400 is a four-lane divided highway, the rail service on the right-of-way cannot be reactivated through a simple replacement at-grade crossing.

The Garber Survey also notes that there are several locations along the Line Segment where large boulders and barricades have been placed across the right-of-way, and other locations where the right-of-way has been blocked by a fence and bollards. Taken together these actions will further impede the ability to reactivate rail service over the right-of-way, and act to sever the Line Segment from the national rail network to the east.

As discussed above, if the Board finds that the right-of-way has been severed, it retains the ability to revoke interim trail use on those segments of the right-of-way that are no longer connected to the national rail network. While the Board at times prefers to leave severance (and land transfer) disputes to state courts, in this instance the state court refused to act on the severance claims, noting its belief that those issues were in the Board's exclusive jurisdiction. Additionally, in this case, the requested findings of severance are based on the physical removal of bridges, construction of a flood levee and other actions that block the right-of-way – factual matters that do not require state law interpretation. In this instance the Board should find that the right-of-way to

the west of the flood levee, or the west of the Whitewater River, has been severed from the Original Line's sole connection to the national rail network at its eastern end.

5. Effect of full or partial revocation of interim trail use / railbanking.

Revocation of interim trail use / railbanking, would reactivate the County's abandonment authority, and leave the County free to consummate the abandonment. In this instance, there is still an environmental condition outstanding that would prevent abandonment from being consummated, and the County's abandonment authority will not expire until 60 days after satisfaction, expiration or removal of the environmental condition. 49 USC 1152.29(e)(2). Given the clear intentions of the County not to operate the line as a railroad, the Board should require the County to satisfy the outstanding condition and consummate abandonment for any and all segments for which interim trail use is revoked.

Conclusion

Based on the foregoing, HMA requests that the Board deny the proposed substitution of trail manager, and further that the Board revoke the NITUs issued for the Line Segment and other segments of the Original Line as the Board deems appropriate.

Respectfully submitted,

/s/ Eric M. Hocky

Eric M. Hocky
Clark Hill PLC
2001 Market Street, Suite 2620
Philadelphia, PA 19103
215-640-8523
ehocky@clarkhill.com

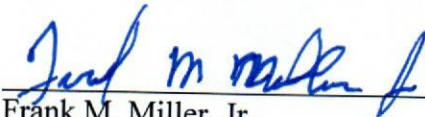
Attorneys for HMA Properties, LLC

Dated: March 14, 2022

VERIFICATION

I, Franklin M. Miller, Jr., Member of HMA Properties, LLC, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on March 14, 2022.


Frank M. Miller, Jr.

Certificate of Service

I hereby certify that a copy of the foregoing Reply has been served on the following parties of record by email or by US First-Class mail, postage prepaid:

Terrence L. Huelskamp
Huelskamp Law, P.A.
550 N 159th St E
Ste 104
Wichita, KS 67230-7521
terrence@huelskamplaw.com

Andrew Marino
Gibson Watson Marino LLC
301 N. Main, Suite 1300
Wichita, KS 67202
andrew@gwmks.com

U.S. Department of Defense
720 Thimble Shoals Boulevard, Suite 130
Newport News, VA 23606-2574

Kansas State Historical Society
6425 S W 6Th Avenue
Review & Compliance Coordinator
Topeka, KS 66615-1099

Office of Chief of Forest Service
U.S. Department of Agriculture
1400 Independence Ave., SW
Washington, DC 20250-003

Kansas State Corporation Commission
1500 SW Arrowhead Road
Topeka, KS 66604

Butler County Commissioners
205 West Central Street
El Dorado, KS 67042

Kansas Department of Transportation
700 SW Harrison Street
Topeka, KS 66603-3754

National Oceanic and Atmospheric Administration, N/Ngs12
1315 East-West Highway
Silver Spring, MD 20910-3282

Mike Wheeler
121 S Gordy
El Dorado, KS 67042

U.S. Army Corps of Engineers
2710 N.E. Shady Creek Access Road
El Dorado, KS 67042

Kansas Department of Health and Environment
1000 SW Jackson
Topeka, KS 66612-1367

Governor of Kansas
State Capitol Building
Topeka, KS 66612

/s/ Eric M. Hocky

Eric M. Hocky

Dated: March 14, 2022

EXHIBIT A

BCED Notice of Consummation of Trail Use Agreement

214125

BALL JANIK LLP

A T T O R N E Y S

1455 F STREET, NW, SUITE 225
WASHINGTON, D.C. 20005

www.balljanik.com

TELEPHONE 202-638-3307

FACSIMILE 202-783-6947

KARL MORELL



June 3, 2005

The Honorable Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Suite 715
Washington, DC 20423-0001

Re: STB Docket No. AB-870X, Butler County, Kansas – Abandonment
Exemption -- In Butler County, KS

Dear Secretary Williams:

On June 2, 2005, the Surface Transportation Board ("Board") granted Butler County Economic Development's ("BCED") request for the issuance of a NITU for the rail line located between milepost 483.62, at Augusta, and milepost 494.22, near Andover, in Butler County, KS (the "Line").

Butler County hereby notifies the Board that on this June 3rd, Butler County and BCED consummated a trail use/rail banking agreement for the Line.

If you have any questions concerning this matter, please call me.

Sincerely,

Karl Morell
Attorney for Butler County

cc: Larry Powell

ENTERED
Office of Proceedings
JUN 5
Part of
Public Record

EXHIBIT B

State Court Litigation

Journal Entry of Final Judgment

ELECTRONICALLY FILED
2021 Mar 25 PM 5:44
CLERK OF THE BUTLER COUNTY DISTRICT COURT
CASE NUMBER: 2018-CV-000115



Court: Butler County District Court
Case Number: 2018-CV-000115
Case Title: HMA Properties LLC, et al. vs. Board of County Commissioners, Butler County, KS
Type: Journal Entry of Final Judgment

SO ORDERED.

A handwritten signature in black ink, reading "Charles M. Hart".

/s/ Honorable Charles Hart, District Court Judge

IN THE THIRTEENTH JUDICIAL DISTRICT
DISTRICT COURT, BUTLER COUNTY, KANSAS

HMA PROPERTIES, LLC, *et al.*,

Plaintiffs,

-vs-

BUTLER COUNTY, KANSAS, *et al.*,

Defendants.

Case No. 2018-CV-115

JOURNAL ENTRY OF FINAL JUDGMENT

On November 4, 2020, the Court called this action by video conference, as scheduled, for a bench trial.

The Plaintiffs HMA Properties, LLC; John W. Gilliland and Colleen K. Gilliland; Bonnie B. Ayers and Wilbur S. Ayers, as Co-Trustees of the Bonnie B. Ayers Living Trust; and George and Mitzi Pankratz, as successors in interest to Jerramy and Erin Pankratz appeared through their lawyers David M. Rapp and Eric W. Barth of HINKLE LAW FIRM, LLC. Mr. Frank Miller, a Member of Plaintiff HMA Properties, LLC, also appeared personally on behalf of Plaintiff HMA Properties, LLC. Defendant Butler County, Kansas, appeared through its lawyer Terrence L. Huelskamp of HUELSKAMP LAW, P.A. Defendant City of Andover, Kansas, appeared through City Administrator Jennifer McCausland and through its lawyer Derek S. Casey of TRIPLETT WOOLF GARRETSON, LLC. There were no other appearances.

The Plaintiffs then presented their case-in-chief through the testimony of witnesses and the admission of exhibits into the record. Plaintiffs rested on November 4, 2020.

Defendants then moved for judgment as a matter of law pursuant to K.S.A. 60-250. The Court, after considering the arguments, took Defendants' motions under advisement.

Defendant City of Andover, Kansas, then presented its case-in-chief through the testimony of witnesses and the admission of exhibits into the record. Defendant City of Andover rested on November 5, 2020.

There was no rebuttal.

The Court ordered the parties to submit proposed findings of fact and conclusions of law for the Court's consideration by November 23, 2020. The Court then recessed the proceedings to December 3, 2020, for closing arguments.

On December 3, 2020, the Court called this action for closing arguments by video conference. The parties made their closing arguments and the Court recessed the matter for its deliberations and scheduled a hearing for January 20, 2021, to announce its opinion.

On January 20, 2021, the Court called this action for hearing for the announcement of the Court's findings of fact and conclusions of law pursuant to K.S.A. 60-252(a).

FINDINGS OF FACT

The Court made the following findings of fact:

(A) Subject Matter Jurisdiction.

1. The United States Surface Transportation Board or "STB" exercises jurisdiction over the railroad right-of-way, formerly operated by the BNSF Railway Company, passing through Butler County, Kansas. Stmt. of Stipulations, *filed* July 23, 2020, Stipulations ¶¶1-2; Uncontroverted Facts ¶¶15-19; Andover Exs. KK-LL; Plaintiffs' Exs. 23-25; Testimony of Frank Miller and Jennifer McCausland.

2. Defendant Butler County, Kansas, by STB decision and notice, is the Interim Trail Sponsor for 3.15 miles of the railroad right-of-way between Mileposts 488.35 and 485.20. Stmt. of Stipulations, *filed* July 23, 2020, Stipulations ¶2.

3. Defendant City of Andover, Kansas, by STB decision and notice, is the Interim Trail Sponsor for 5.87 miles of the railroad right-of-way between Mileposts 494.22 and 488.35. Stmt. of Stipulations, *filed* July 23, 2020, Stipulations ¶3.

4. As the Interim Trail Sponsors for their respective portions of the railroad right-of-way, Butler County and Andover have stated their willingness to the STB to assume full responsibility (a) for management of the right-of-way; (b) for any legal liability arising out of the transfer or use (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and (c) for the payment of any and all taxes that may be levied or assessed against the railroad right-of-way. Plaintiffs' Exs. 23-25; Stmt. of Stipulations, *filed* July 23, 2020, Uncontroverted Facts ¶18.

5. As the Interim Trail Sponsors for their respective portions of the railroad right-of-way, Butler County and Andover have each acknowledged to the STB that the right-of-way is subject to possible future reconstruction and reactivation of the right-of-way for rail service. Plaintiffs' Exs. 23-25; Stmt. of Stipulations, Uncontroverted Facts ¶19.

(B) Kansas Recreational Trails Act – Standing.

6. Plaintiff HMA Properties, LLC owns real property adjoining the railroad right-of-way between Mileposts 494.22 and 488.35, which is managed by Andover as Interim Trail Sponsor within Andover's corporate limits. Stmt. of Stipulations, Stipulated Fact ¶3.

7. Plaintiffs John W. Gilliland and Colleen K. Gilliland own real property adjoining the railroad right-of-way between Mileposts 494.22 and 488.35, managed by Andover as Interim Trail Sponsor beyond Andover's corporate limits. Stmt. of Stipulations, Stipulated Fact ¶5.

8. Plaintiffs Bonnie B. Ayers and Wilbur S. Ayers, as Co-Trustees of the Bonnie B. Ayers Living Trust, own real property adjoining the railroad right-of-way managed by Butler County as Interim Trail Sponsor. Stmt. of Stipulations, Stipulated Fact ¶4.

9. Plaintiffs George and Mitzi Pankratz, as successors in interest to Jerramy and Erin Pankratz, own real property adjoining the railroad right-of-way managed by Butler County as Interim Trail Sponsor. Stmt. of Stipulations, Stipulated Fact ¶6.

10. Frank Miller, Member of HMA Properties, testified that HMA Properties has been aggrieved by Andover's management of the railroad right-of-way because (a) the right-of-way has not reverted to HMA Properties' ownership following the termination of rail service; (b) Butler County has assessed property taxes against HMA Properties for the railroad right-of-way; and (c) trash has blown from the right-of-way onto HMA Properties' lot including trash blown by Andover employees with leaf blowers. Testimony of Plaintiff Frank Miller.

11. Railroad bridges, culverts, and stone boxes have been removed from the right-of-way. Testimony of Daniel E. Garber and Frank Miller.

12. Mr. and Mrs. Gilliland; Trustees Bonnie B. Ayers and Wilbur S. Ayers; and Mr. and Mrs. Pankratz did not appear for or testify at trial.

13. Trustees Mr. and Mrs. Ayers direct no allegations against Andover relating to Andover's operation and management of the railroad right-of-way as Interim Trail Sponsor. Andover Ex. CC, Verified Int. Response Nos. 1-5.

14. Mr. and Mrs. Pankratz direct no allegations against Andover relating to Andover's operation and management of the railroad right-of-way as Interim Trail Sponsor. Andover Ex. BB, Verified Int. Response Nos. 1-5.

(C) Compensation Paid for Recreational Trail on the Right-of-Way.

15. HMA Properties received \$95,000.00 plus interest of \$51,300.00 for the taking of the railroad right-of-way adjacent to its real property in Butler County, Kansas, for use as a recreational trail. Stmt. of Stipulated Facts, Stipulations ¶9; Andover Exs. DD.

16. Mr. and Mrs. Gilliland received \$5,800.00 plus interest of \$3,132.00 for the taking of the railroad right-of-way adjacent to their real property in Butler County, Kansas, for use as a recreational trail. Stmt. of Stipulated Facts, Stipulations ¶10; Andover Ex. EE.

(D) Property Taxes Assessed by Butler County.

17. Butler County has assigned Property Identification Number ("PID" or "CAMA") 3030704005001000 to HMA's lot adjoining the north boundary of the railroad right-of-way at 1627 North Andover Road, Andover, Kansas. Testimony of Les Mangus; Andover Ex. BB at 1-2; Plaintiffs' Ex. 6. For ease of reference, this property will be identified as "PID 1000."

18. Butler County has assigned Property Identification Number ("PID" or "CAMA") 3030704005003010 to the railroad right-of-way adjoining the south boundary of HMA's property located at 1627 North Andover Road, Andover, Kansas. Testimony of Les Mangus; Andover Ex. BB at 3-4; Plaintiffs' Ex. 7. For ease of reference, this property will be identified as "PID 3010."

19. In 2013, Butler County assessed property taxes in the amount of \$4,963.04 against HMA Properties for PID 1000. Andover Ex. PP at 1-2; Plaintiffs' Ex. 6 at 2.

20. In 2013, Butler County assessed property taxes in the amount of \$756.20 against HMA Properties for PID 3010. Andover Ex. PP at 3-4; Plaintiffs' Ex. 6 at 1.

21. The taxes assessed by Butler County against PID 1000 and PID 3010 for 2013 were paid by HMA Properties. Andover Ex. PP at 2, 4; Plaintiffs' Ex. 8 (showing payments for first half assessed in 2013); Testimony of Frank Miller.

22. There was no evidence submitted that HMA Properties appealed or protested the taxes assessed by Butler County against PID 1000 or PID 3001 for 2013.

23. In 2014, Butler County assessed property taxes in the amount of \$4,939.30 against HMA Properties for PID 1000. Andover Ex. PP at 1-2; Plaintiffs' Ex. 7 at 2.

24. In 2014, Butler County assessed property taxes in the amount of \$452.38 against HMA Properties for PID 3010. Andover Ex. PP at 3-4; Plaintiffs' Ex. 7 at 1.

25. The taxes assessed by Butler County against PID 1000 and PID 3010 for 2014 were paid by HMA Properties. Andover Ex. PP at 2, 4; Plaintiffs' Ex. 7; Testimony of Frank Miller.

26. There was no evidence submitted that HMA Properties appealed or protested the taxes assessed by Butler County, Kansas, against PID 1000 or PID 3001 for 2014.

27. In 2015, Butler County assessed taxes against PID 1000 based upon a valuation of \$125,690. Andover. Ex. JJ.

28. HMA Properties protested and appealed Butler County's assessment of property taxes against PID 1000 for 2015 to the Kansas Board of Tax Appeals. Andover Ex. JJ.

29. The Kansas Board of Tax Appeals reduced the valuation to \$120,850 because a portion of PID 1000 is burdened by the railroad right-of-way. Andover Ex. JJ.

30. In 2015, Butler County assessed taxes against PID 3010. Andover Ex. II.

31. HMA Properties protested and appealed Butler County's assessment of property taxes against PID 3010 for 2015 to the Kansas Board of Tax Appeals. Andover Ex. II.

32. The Kansas Board of Tax Appeals reduced the valuation of PID 3010 for HMA Properties to \$0 because "the easement continues to be railroad property and is included in the unit assessment of the railroad completed by the Property Valuation Division." Andover. Ex. II.

33. There was no evidence presented to show that Butler County had assessed taxes against HMA Properties for that portion of PID 1000 subject to the railroad right-of-way since the Kansas Board of Tax Appeals decision in 2016.

34. Butler County has not assessed taxes against HMA Properties for PID 3010 since the Kansas Board of Tax Appeals decision in 2016. Andover Ex. PP at 4.

(E) Trash Blowing onto HMA Properties' Lot.

35. Andover has installed and maintains trash receptacles along the railroad right-of-way. Testimony of Rick Lanzrath; Andover Ex. AA-2, 12.

36. Andover has installed trail-user education signs along the railroad right-of-way to inform trail users that littering is prohibited and that pet owners must pick up and properly dispose of pet's solid waste. Testimony of Rick Lanzrath; Andover Ex. AA-8, AA-9.

37. Andover periodically picks up and removes litter from the railroad right-of-way. Testimony of Rick Lanzrath.

38. The Andover-Augusta Rails-to-Trails Initiative is a volunteer group which has periodic clean up days to remove litter from the railroad right-of-way. Testimony of Jennifer McCausland and Rick Lanzrath.

(F) Andover City Ordinance.

39. Andover passed Ordinance No. 1575 on August 12, 2014.

40. Ordinance No. 1575 states, in relevant part, “The City of Andover, Kansas (the “City”) hereby elects to modify K.S.A. 58-3212 by making the provisions thereof inapplicable within the City limits.”

CONCLUSIONS OF LAW

The Court made the following conclusions of law:

(A) Plaintiffs’ Contentions and Remedies.

1. Plaintiffs contend that Butler County and Andover failed to develop and manage the railroad right-of-way as a recreational trail as required by the KANSAS RECREATIONAL TRAILS ACT, K.S.A. 58-3211 *et seq.* (“KRTA”) and their STB commitments. Pretrial Order at 5, ¶(a).

2. Plaintiffs further contend that Andover failed to pay taxes assessed against the railroad right-of-way in violation of Andover’s commitment to the STB. Pretrial Order at 6, ¶(b).

3. Plaintiffs further contend that Butler County and Andover have allowed the railroad right-of-way to be severed from the national rail system which disqualifies its use as a recreational trail and violates the KRTA. Pretrial Order at 6-7, ¶(c).

4. Plaintiffs seek the following as remedies to cure the alleged deficiencies stated in their contentions: (a) a permanent injunction requiring Butler County and Andover to fulfill their KRTA and STB duties as Interim Trail Sponsors or to terminate the recreational trail and consummate abandonment of the right-of-way and (b) an order of the Court (i) declaring that the railroad right-of-way has been severed from the national rail system or (ii) making findings

regarding the current state of the right-of-way, to be certified to the STB to revoke the recreational trail and consummate abandonment of the right-of-way.

(B) The District Court's Subject Matter Jurisdiction.

5. The STB has exclusive and plenary jurisdiction over all matters relating to “the construction, acquisition, operation, abandonment, or discontinuance” of railroad facilities. 49 U.S.C. §10501(b)(2); *Fox v. Surface Transp. Bd.*, 379 Fed. Appx. 767, 770 (10th Cir. 2010); *Wichita Terminal. Ass’n v. FYG Investments*, 48 Kan. App. 2d 1071, 1079, 305 P.2d 13 (2013); *Chicago & North Western Transportation v. Kaloe Brick & Tile*, 450 U.S. 311, 320, 101 S.Ct. 1124, 67 L.Ed.2d 258 (1981).

6. The conversion of railroad right-of-ways into recreational trails, as process known as “railbanking,” is “clearly a part of that regulatory process” over which the federal government has exclusive control. *Miami Cty. Bd. of Comm'rs v. Kanza Rail-Trails Conservancy*, 292 Kan. 285, 297-98, 255 P.3d 1186 (2011) (“railbanked right of ways remain part of the national rail transportation system subject to the jurisdiction of the STB”).

7. This Court, accordingly, lacks subject matter jurisdiction to determine whether Butler County or Andover have met their STB commitments or allowed the railroad right-of-way to be severed from the national rail system because those are matters relating to the railbanking of the right-of-way which is within the exclusive and plenary jurisdiction of the STB.

8. This Court, furthermore, lacks subject matter jurisdiction to grant Plaintiffs’ request for a permanent injunction requiring Butler County or Andover to fulfill their STB duties as Interim Trail Sponsors or to terminate the recreational trail and consummate abandonment of the

right-of-way because these remedies relate to the railbanking of the right-of-way which is within the exclusive and plenary jurisdiction of the STB.

9. This Court, furthermore, lacks subject matter jurisdiction to grant Plaintiffs judgment declaring the railroad right-of-way has been severed from the national rail system or the current state of the railroad right-of-way to be certified to the STB to revoke the recreational trail and consummate abandonment of the right-of-way because these remedies relate to the railbanking of the railroad right-of-way and are within the STB's exclusive and plenary jurisdiction.

10. The STB has jurisdiction to consider these contentions and remedies. *See Bitner v. Watco Companies*, 43 Kan. App. 2d 495, 226 P.3d 563 (2010), citing *Thompson v. Texas Mexican R. Co.*, 328 U.S. 134, 145, 66 S.Ct. 937, 90 L.Ed. 1132 (1946); *Louisiana & Arkansas Ry. Co. v. Bickham*, 602 F. Supp. 383, 384-85 (M.D.La. 1985); 49 U.S.C. §10903.

11. This Court does have jurisdiction to consider Plaintiffs' KRTA claims insofar as those requirements are not so onerous as to conflict with federal law governing railroad rights-of-way and recreational trails. *Miami County v. Kanza Rail-Trails*, 292 Kan. at 305; *Central Kansas Railway*, STB Docket AB-406 (SUB 6X), available at 2001 WL 489991 (S.T.B. 2001) at *6, n. 9 (local regulations governing safety, land use and zoning may be applied to recreational trails "so long as they are not applied in a discriminatory manner or in such a manner to preclude the interim trail use or the ability to reactivate rail service in the future.")

12. The Court, accordingly, dismisses without prejudice Plaintiffs' contentions that Butler County and Andover (a) violated commitments to the STB in the management and operation of the railroad right-of-way as a recreational trail; (b) failed to accept responsibility for the payment of taxes levied or assessed against the railroad right-of-way as required by the STB; (c) allowed the

right-of-way to be altered to preclude future reactivation of rail service; and (d) allowed the right-of-way to be severed from the national rail system.

13. The Court, furthermore, concludes that it lacks subject matter jurisdiction and authority (a) to order Butler County or Andover to fulfill their commitments to the STB or terminate the trail and abandon the right of way; (b) to declare that the right-of-way has been severed from the national rail system; or (c) to certify to the STB its findings to revoke the trail and abandon the railroad right-of-way.

(C) Plaintiffs' KRTA Standing.

14. The railroad right-of-way between Mileposts 485.20 and 494.22 is a “recreational trail” as defined by the KRTA. 16 U.S.C. §1247(d); K.S.A. 58-3211(b).

15. Butler County is the “responsible party” for the development, operation and maintenance of the recreational trail along the railroad right-of-way between Mileposts 488.35 and 485.20. K.S.A. 58-3211(c).

16. Andover is the “responsible party” for the development, operation and maintenance of the recreational trail along the railroad right-of-way between Mileposts 494.22 and 488.35. K.S.A. 58-3211(c).

17. Any adjacent property owner aggrieved by a responsible party’s failure to comply with the KRTA may bring an action in the district court to enforce its provisions. K.S.A. 58-3215.

18. If the Court finds that the responsible party has failed to comply with the KRTA, the Court may enter an order requiring the responsible party to comply with the KRTA. K.S.A. 58-3215. There is no other remedy available under the KRTA. *Central Kansas Conservancy v.*

Sides, 56 Kan. App. 2d 1099, 1125-26, 443 P.3d 337 (2019) (“only one remedy exists under the KRTA – an order to enforce the Act as stated under K.S.A. 2018 Supp. 58-3215”).

19. An “adjacent property owner” is one who owns property “on or adjacent to a recreational trail.” K.S.A. 58-3215. *See also* Black’s Law Dictionary at 38 (West Pub. Co., 5th ed. 1979) (“adjacent” commonly means “[l]ying near or close to; sometimes, contiguous; neighboring.”)

20. To be “aggrieved,” a plaintiff must have suffered loss or injury due to the trail sponsor’s KRTA violation. *Finstad v. Washburn Univ.*, 252 Kan. 465, 471-72, 845 P.2d 685 (1993). *See also* Black’s Law Dictionary at 60 (“aggrieved” commonly means “[h]aving suffered loss or injury; damnified; injured.”)

21. HMA Properties has standing to assert a KRTA claim against Andover because it owns property adjacent to the railroad right-of-way for which Andover is the responsible party and alleges that it has been aggrieved by Andover’s violation of K.S.A. 58-3212(a)(4) (litter control).

22. Mr. and Mrs. Gilliland own real property adjoining the railroad right-of-way for which Andover is the responsible party but have failed to submit evidence that they have been aggrieved by any alleged violation of the KRTA by Butler County or Andover to have standing to advance KRTA claims.

23. Mr. and Mrs. Ayers, as Trustees, own real property adjoining the railroad right-of-way for which Butler County is the responsible party but have failed to submit any evidence that they have been aggrieved by any violation of the KRTA by Butler County or Andover to have standing to advance KRTA claims.

24. Mr. and Mrs. Pankratz own real property adjoining the railroad right-of-way managed for which Butler County is the responsible party but have failed to submit any evidence that they have been aggrieved by any violation of the KRTA by Butler County or Andover to have standing to advance KRTA claims.

25. The Court, accordingly, concludes that the Gilliands, Ayers, and Pankratzs lack standing under the KRTA to advance claims against Butler County or Andover. Plaintiffs' claims are dismissed without prejudice.

(D) Andover's Alleged KRTA Violation.

26. The KRTA requires Andover, as the responsible party, to provide for litter control and the enforcement of laws prohibiting littering along the recreational trail, including but not limited to trail-user education and signs about laws prohibiting littering and the provision of trash receptacles and the cleanup of trash and litter. K.S.A. 58-3212(a)(4).

27. Andover has complied with K.S.A. 58-3212(a)(4) by providing for litter control and enforcement of laws prohibiting littering along the recreational trail with trail user education and signs about laws prohibiting littering.

28. Andover has complied with K.S.A. 58-3212(a)(4) by providing trash receptacles for trail users along the recreational trail.

29. Andover has complied with K.S.A. 58-3212(a)(4) by providing for the cleanup of trash and litter along the recreational trail.

30. HMA Properties failed to carry its burden to prove that Andover blew trash with leaf blowers onto its property from the recreational trail. Testimony of Frank Miller (Andover employees blew trash onto HMA Properties); Testimony of Rick Lanzrath (Andover does not use leaf blowers to blow trash onto adjoining properties).

31. The Court, accordingly, concludes that judgment should be granted to Andover and against HMA Properties on its contention that Andover has failed to comply with the KRTA in its management and operation of the recreational trail as the responsible party.

(E) Andover City Ordinance.

32. The facts and any conclusions that the Court may have as to the validity and applicability of Andover Ordinance No. 1575 are of no consequence to the Court's judgment. The Court has not ruled on the validity of the ordinance and its applicability to this case.

(F) Judgment of the Court.

33. This Court concludes that it lacks subject matter jurisdiction to consider Plaintiffs' contention that Defendants have failed to develop and manage the railroad right-of-way as required by Defendants' commitments to the STB. The Court, accordingly, dismisses Plaintiffs' contention without prejudice on this issue.

34. This Court further concludes that it lacks subject matter jurisdiction to consider HMA Properties' contention that Andover has failed to pay taxes assessed against the railroad right-of-way in violation of Andover's commitment to the STB. The Court, accordingly, dismisses these contentions without prejudice.

35. This Court further concludes that it lacks subject matter jurisdiction to consider Plaintiffs' contention that Defendants have allowed the railroad right-of-way to be severed from the national rail system. The Court, accordingly, dismisses these contentions without prejudice.

36. This Court further concludes that it lacks subject matter jurisdiction to grant Plaintiffs (a) a permanent injunction requiring Defendants to fulfill their STB commitments as Interim Trail Sponsors; (b) a permanent injunction terminating the recreational trail and consummating abandonment of the right-of-way; (c) a declaratory judgment that the railroad right-

of-way has been severed from the national rail system; or (d) an order certified to the STB to revoke the recreational trail and consummate abandonment of the right-of-way. The Court, accordingly, dismisses these contentions without prejudice.

37. The Court further concludes that HMA Properties is an adjacent property owner to the recreational trail which alleges to have been aggrieved by Andover's KRTA violations relating to litter control to have standing to advance its KRTA claims against Andover.

38. The Court further concludes that HMA Properties is not an adjacent property owner to Butler County and has failed to allege any grievance against Butler County, Kansas, for violating the KRTA to have standing to assert a KRTA claim against Butler County. The Court, accordingly, dismisses, without prejudice, HMA Properties' contentions that Butler County violated the KRTA.

39. The Court further concludes that Plaintiffs John W. Gilliland and Colleen K. Gilliland, Bonnie B. Ayers and Wilbur S. Ayers, as Co-Trustees of the Bonnie B. Ayers Living Trust, and George and Mitzi Pankratz, as successors in interest to Jerramy and Erin Pankratz, own real property adjacent to the recreational trail but have failed to present any evidence that they have been aggrieved by a violation of the KRTA by Butler County or Andover to have standing to advance KRTA claims against Butler County or Andover. The Court, accordingly, dismisses, without prejudice, Plaintiffs John W. Gilliland and Colleen K. Gilliland, Bonnie B. Ayers and Wilbur S. Ayers, as Co-Trustees of the Bonnie B. Ayers Living Trust, and George and Mitzi Pankratz, as successors in interest to Jerramy and Erin Pankratz, claims against Butler County or Andover.

40. The Court further concludes that Plaintiff HMA Properties, LLC, has failed to satisfy its burden of proof to establish that Andover violated the KRTA in providing for litter

control as required by K.S.A. 58-3212(a)(4). The Court, accordingly, grants JUDGMENT to Andover against HMA Properties.

FOR THESE REASONS the Court hereby enters final JUDGMENT pursuant to K.S.A. 60-258, in favor of Defendants and against Plaintiff HMA Properties, LLC, as to its contention that Andover violated the KRTA. The Court hereby dismisses, without prejudice, Plaintiffs' remaining claims against Defendants for lack of subject matter jurisdiction.

IT IS SO ORDERED effective as of the date and time shown on the electronic file stamp.

Submitted and Approved as to Form Only by:

HINKLE LAW FIRM, LLC

/s/Eric W. Barth

David M. Rapp, #08802 - drapp@hinklaw.com
Eric W. Barth, #21193 - ebarth@hinklaw.com
1617 North Waterfront Parkway, Suite 400
Wichita, Kansas 67206-6639
(316) 267-2000
(316) 630-8466 (Facsimile)

Attorneys for Plaintiffs
HUELSKAMP LAW, P.A.

/s/Terrence L. Huelskamp

Terrence L. Huelskamp, #12838 - terrence@huelskamplaw.com
550 North 159th Street East, Suite 104
Wichita, Kansas 67230
(316) 733-6446
(316) 733-7844 (Facsimile)

Attorney for Defendant Butler County, Kansas.

-and-

TRIPLETT WOOLF GARRETSON, LLC

/s/Derek S. Casey

Derek S. Casey, #15125 - dscasey@twgfirm.com
2959 North Rock Road, Suite 300

Wichita, Kansas 67226
Telephone: 316.630.8100
Facsimile: 316.630.8101
www.twgfirm.com

Attorneys for Defendant City of Andover, Kansas

(TWG10795.150/806685.03)

EXHIBIT C

Deposition Transcript of William Johnson, Jr.

IN THE THIRTEENTH JUDICIAL DISTRICT
DISTRICT COURT, BUTLER COUNTY, KANSAS
CIVIL DEPARTMENT

HMA PROPERTIES, LLC, a Kansas
Limited Liability Company, et
al,

Plaintiffs,

vs.

BUTLER COUNTY, KANSAS,

Defendant,

And

THE CITY OF ANDOVER, KANSAS,

Intervening Defendant.

Case No. 2018-CV-115

D E P O S I T I O N

The deposition of WILLIAM JOHNSON, JUNIOR, taken on
behalf of the Plaintiffs pursuant to the Kansas Code of
Civil Procedure before:

DARLENE K. KELLEY, CSR
KELLEY REPORTING ASSOCIATES, LTD.
Suite 108, 515 South Main Street
Wichita, KS 67202

a Certified Shorthand Reporter of Kansas, at 205 W.
Central, 4th Floor, El Dorado, Butler County, Kansas, on
Thursday, April 11, 2019, at 8:56 a.m.

KELLEY REPORTING ASSOCIATES, LTD.
Court Reporting with a Difference
(316) 267-8200 (800) 654-8684

I N D E X

Page

WILLIAM JOHNSON

Direct Examination By Mr. Rapp

4

Cross-Examination By Mr. Casey

49

E X H I B I T S

No. Description Page

F Commission minutes & Interlocal Agreement 24

R 5-17-16 Board minutes (5 pgs.) 43

Signature of Witness

56

Certificate

57

KELLEY REPORTING ASSOCIATES, LTD.

Court Reporting with a Difference
(316) 267-8200 (800) 654-8684

A P P E A R A N C E S

PLAINTIFFS:

HINKLE LAW FIRM, LLC
Mr. David M. Rapp
1617 North Waterfront Parkway
Suite 400
Wichita, Kansas 67206
316-267-2000
drapp@hinklaw.com

DEFENDANT BUTLER COUNTY:

LAW OFFICE OF TERRENCE L. HUELSKAMP, PA
Mr. Terrence L. Huelskamp
550 N. 150th St. East
Suite 104
Wichita, Kansas 67230
316-773-6446
terrence@huelskamplaw.com

DEFENDANT CITY OF ANDOVER:

TRIPLETT, WOOLF, GARRETSON, LLC
Mr. Derek S. Casey
2959 North Rock Road
Suite 300
Wichita, Kansas 67226
(316) 630-8100
dcasey@twgfirm.com

Also present was Mr. Frank Miller.

KELLEY REPORTING ASSOCIATES, LTD.
Court Reporting with a Difference
(316) 267-8200 (800) 654-8684

WILLIAM JOHNSON, JR. 4-11-19

WILLIAM JOHNSON, JR.,

having been first duly sworn on his oath to
state the truth, the whole truth, and nothing
but the truth, testifies as follows:

DIRECT EXAMINATION

BY MR. RAPP:

Q. Mr. Johnson, will you state your name for the
record.

A. William H. Johnson, Junior.

Q. What's your business address?

A. 205 West Central, El Dorado, Kansas 67042.

Q. All right. And we introduced ourselves
earlier. My name is Dave Rapp. I'm a lawyer
in Wichita with the Hinkle Law Firm. I'm
here representing the plaintiffs in this
litigation.

You've probably had your deposition
taken a time or two before, haven't you?

A. Yes, I have.

Q. Okay. You understand the rules. One of the
ones I think is important is that you let me
know if at any time you want to take a break.

A. Perfect.

Q. The other one is if I get mumbled mouth and
you don't understand me or you don't

KELLEY REPORTING ASSOCIATES, LTD.

Court Reporting with a Difference
(316) 267-8200 (800) 654-8684

5 08:57:39 1 understand the question, please let me know 08:57:42 2 so we can be sure we're communicating. 08:57:45 3 I've got a number of areas of inquiry 08:57:51 4 we want to talk about. We'll try to make 08:57:55 5 this as painless and we can, but at the same 08:58:00 6 time we want to get the whole picture. 08:58:04 7 How long have you been the County 08:58:05 8 Administrator; is that right? 08:58:05 9 A. I started in Butler County April 1st, 2002. 08:58:09 10 Q. So you've kind of been here the whole time 08:58:12 11 this matter has been evolving; is that 08:58:15 12 correct? 08:58:15 13 A. That's correct. 08:58:15 14 Q. And have you been the County Administrator 08:58:18 15 that whole time? 08:58:20 16 A. Correct. 08:58:20 17 Q. Okay, good. I'm going to jump into one of 08:58:25 18 the topics I was discussing with 08:58:30 19 Mr. Huelskamp beforehand. And that is the 08:58:33 20 existence of a written agreement between the 08:58:36 21 County and BCED with regard to Rails to 08:58:42 22 Trails. And I know you all have been looking 08:58:45 23 for it, but as I understand it, at least as 08:58:48 24 of today no written agreement has been found, 08:58:52 25 correct? KELLEY REPORTING ASSOCIATES, LTD. <i>Court Reporting with a Difference</i> (316) 267-8200 (800) 654-8684	7 09:00:15 1 side of Andover, okay? 09:00:19 2 A. Okay. 09:00:19 3 Q. That's what we're taking about when we talk 09:00:20 4 about the rail corridor. When the County 09:00:20 5 first became interested in acquiring the rail 09:00:24 6 corridor, as I understand it, it was for the 09:00:27 7 purpose of seeing if the County could find 09:00:31 8 another railroad who would continue to 09:00:35 9 operate the line; is that correct? 09:00:37 10 A. That is correct. The County was interested 09:00:39 11 in finding a short-line operator, or BCED was 09:00:45 12 interested in finding a short-line operator. 09:00:47 13 Q. As I understand it, this rail line had not 09:00:51 14 been used for a couple of years when BNSF 09:00:54 15 decided they were either going to abandon it 09:00:59 16 or transfer it to somebody? 09:01:00 17 A. I'm not sure how long it was out of service. 09:01:03 18 I know when I came around, the line or the 09:01:05 19 rail bed, ties and everything was in 09:01:08 20 existence, and the County was in negotiation 09:01:10 21 or BCED was in negotiation with BNSF prior to 09:01:18 22 me starting with the County. 09:01:21 23 Q. All right. The County's efforts or BCED's 09:01:26 24 efforts were unsuccessful as far as finding 09:01:30 25 I'll call it a replacement railroad, correct? KELLEY REPORTING ASSOCIATES, LTD. <i>Court Reporting with a Difference</i> (316) 267-8200 (800) 654-8684
6 08:58:52 1 A. Correct. 08:58:53 2 Q. And have you all searched the county 08:58:56 3 commission meeting minutes to see if any such 08:59:00 4 agreement was every reflected in those 08:59:03 5 minutes? 08:59:03 6 A. Yes. We searched the written minutes. 08:59:08 7 Q. And has anybody made an inquiry of 08:59:12 8 Mr. Morrell, the lawyer who helped the county 08:59:16 9 initially with the effort to abandon it and 08:59:20 10 then the effort to rail-bank? 08:59:22 11 A. Specifically on this issue? 08:59:24 12 Q. Yes, sir. 08:59:25 13 A. Not to my knowledge. 08:59:26 14 Q. Okay. Will the County do that so that we can 08:59:30 15 see? He says there's a agreement. It would 08:59:33 16 be nice if we could -- 08:59:35 17 A. The biggest issue is if we can locate 08:59:39 18 Mr. Morrell. 08:59:41 19 Q. Okay. Now, as I understand it, when BNSF 08:59:53 20 first approached the County with regard to 08:59:56 21 possibly acquiring the rail corridor, when 09:00:00 22 I'm talking about the corridor, I'm talking 09:00:03 23 about just, if you will, the physical 09:00:08 24 presence of what used be the BNSF Railroad 09:00:12 25 about 6.2 miles between Augusta and the west KELLEY REPORTING ASSOCIATES, LTD. <i>Court Reporting with a Difference</i> (316) 267-8200 (800) 654-8684	8 09:01:33 1 A. Correct. 09:01:33 2 Q. So at that point in time the County made the 09:01:36 3 decision we'll just abandon it; is that 09:01:41 4 correct? 09:01:41 5 A. The County made the decision to abandon the 09:01:45 6 rail and file for NITU. 09:01:51 7 Q. But didn't the County in fact go through the 09:01:54 8 abandonment process with Mr. Morrell and get 09:01:59 9 an exemption for the abandonment from the STB 09:02:07 10 before it went back and reversed its decision 09:02:09 11 to rail-bank? 09:02:09 12 A. As a process to rail-bank, they did the 09:02:14 13 process. It was a process that had to occur 09:02:17 14 before NITU could be submitted, is my 09:02:21 15 understanding. 09:02:22 16 Q. Okay. In any event NITU was issued and the 09:02:26 17 abandonment effort was abandoned so that the 09:02:31 18 rail corridor could be railbank, correct? 09:02:35 19 A. Correct. 09:02:36 20 MR. CASEY: Objection to lack of 09:02:37 21 foundation. I'm just making an objection for 09:02:40 22 the record. 09:02:40 23 A. Repeat. 09:02:40 24 MR. RAPP: Sure, would you read 09:02:40 25 it back. KELLEY REPORTING ASSOCIATES, LTD. <i>Court Reporting with a Difference</i> (316) 267-8200 (800) 654-8684

9 09:02:40 1 (The requested portion of the record 09:02:40 2 was read by the reporter, as follows: 09:02:22 3 Question: "In any event NITU was issued and 09:02:25 4 the abandonment effort was abandoned so that 09:02:31 5 the rail corridor could be railbank, 09:02:53 6 correct?") 09:02:53 7 A. I think that's a fair statement, yes. 09:02:56 8 Q. All right. And NITU was initially issued to 09:03:09 9 BCED, is that correct, as opposed to the 09:03:12 10 County, or was the County, dba BCED or do you 09:03:14 11 remember? 09:03:14 12 A. I don't remember the exact time frame without 09:03:16 13 looking at the NITU itself and telling you I 09:03:20 14 think -- whichever NITU the original one was 09:03:24 15 would identify who it was. It was either 09:03:27 16 BCED or the County. And I'd hate to say one 09:03:31 17 or the other, but the NITU that I think is 09:03:35 18 supplied will have whoever that is on there. 09:03:38 19 Q. Okay. At that point in time when the County 09:03:46 20 was essentially the responsible party, what 09:03:50 21 efforts did the County make to develop a 09:03:55 22 recreational trail? 09:03:56 23 A. The only efforts the County made was to 09:04:00 24 maintain the -- if we want to call this the 09:04:07 25 right-of-way or the trail, to remove any KELLEY REPORTING ASSOCIATES, LTD. <i>Court Reporting with a Difference</i> (316) 267-8200 (800) 654-8684	11 09:05:36 1 right? 09:05:36 2 A. They hold the NITU for that and the 09:05:40 3 right-of-way was quit claim deeded to them. 09:05:45 4 Q. Now, so at that point in time then all the 09:05:52 5 county's or the BCED's portion of the rail 09:05:55 6 corridor would have been on the west side of 09:05:58 7 the Whitewater River all the way to the west 09:06:01 8 side of Andover, essentially the Andover, 09:06:07 9 Butler County line -- or the Butler County, 09:06:11 10 Sedgwick County line? 09:06:13 11 A. Correct. 09:06:13 12 Q. And then the City of Andover got involved, 09:06:16 13 right? 09:06:16 14 A. Prior to that a trail group got involved and 09:06:20 15 then the City of Andover got involved. 09:06:24 16 Q. Which trail group was involved in the 09:06:27 17 interim, if you recall? 09:06:29 18 A. AARTI, A-A-R-T-I, I believe is the group that 09:06:36 19 petitioned the County for utilization of the 09:06:40 20 trail. 09:06:41 21 Q. Is that Andover Augusta Rails To Trails 09:06:47 22 Initiative? 09:06:48 23 A. Yes, correct. 09:06:49 24 Q. Do you recall whether or not there was 09:06:52 25 another trail group before that? KELLEY REPORTING ASSOCIATES, LTD. <i>Court Reporting with a Difference</i> (316) 267-8200 (800) 654-8684
10 09:04:09 1 brush that people requested, to put up 09:04:12 2 fencing to keep vehicular traffic off of it. 09:04:16 3 That was the only efforts that were made for 09:04:19 4 several years during that time. 09:04:22 5 Q. All right. Now, eventually the County got 09:04:30 6 the City of Andover involved and the City of 09:04:35 7 Augusta involved; is that correct? 09:04:36 8 A. Originally the County got Augusta involved 09:04:39 9 very early in the process at some point, much 09:04:43 10 earlier than Andover. 09:04:45 11 Q. So from the STB's perspective they agreed to 09:04:50 12 the substitution of the City of Augusta for 09:04:54 13 the County or BCED as the responsible party 09:04:59 14 for that portion of the rail corridor that 09:05:03 15 was within the City of Augusta; is that 09:05:06 16 right? 09:05:06 17 A. No, not exactly correct. They agreed to 09:05:09 18 transfer a segment from the Whitewater River 09:05:14 19 east through the City of Augusta to the City 09:05:17 20 of Augusta. So there is a portion of that 09:05:20 21 outside the City of Augusta. 09:05:22 22 Q. So the City of Augusta is actually 09:05:26 23 responsible for the area from the Whitewater 09:05:30 24 River east through the City of Augusta as far 09:05:34 25 as being the responsible party; is that KELLEY REPORTING ASSOCIATES, LTD. <i>Court Reporting with a Difference</i> (316) 267-8200 (800) 654-8684	12 09:06:54 1 A. Possibly Prairie Travelers. 09:06:57 2 Q. That's the one I'm thinking of. 09:07:00 3 A. There's a couple of groups and there's a 09:07:02 4 group out east, and I don't remember which 09:07:05 5 one was which. 09:07:06 6 Q. But in any event, nothing was worked out with 09:07:10 7 any of the trail groups; is that correct? 09:07:12 8 A. There was no agreement consummated with the 09:07:15 9 trail group. 09:07:15 10 Q. But then was an agreement consummated with 09:07:20 11 the City of Andover? 09:07:21 12 A. Correct, there was. 09:07:22 13 Q. And initially the City of Andover was going 09:07:25 14 to be responsible for the segment from the 09:07:28 15 Sedgwick/Butler County line to the east side 09:07:31 16 of the City of Andover; is that right? 09:07:34 17 A. That is correct. 09:07:35 18 Q. And then subsequently, like 2016, the City of 09:07:40 19 Andover agreed to assume responsibility from 09:07:42 20 the east side of the City of Andover all the 09:07:46 21 way to Highway 54 or 400? 09:07:49 22 A. Correct. 09:07:49 23 Q. The north side of 54/400; is that right? 09:07:56 24 A. Correct. 09:07:58 25 Q. Okay. Does the County maintain a specific KELLEY REPORTING ASSOCIATES, LTD. <i>Court Reporting with a Difference</i> (316) 267-8200 (800) 654-8684

13 09:08:03 1 file that includes all of the Rails to Trails 09:08:08 2 information? 09:08:09 3 A. We do as of the last month and a half. 09:08:13 4 Q. Okay. Is that available to public access? 09:08:19 5 A. Yes. 09:08:21 6 Q. All right. 09:08:27 7 A. I believe that was submitted as part of this 09:08:30 8 litigation as well. 09:08:31 9 Q. Okay, might be. There's a lot of stuff right 09:08:35 10 here that came from you folks, so that may be 09:08:38 11 most of that file. 09:08:39 12 A. Yeah. 09:08:46 13 Q. Now, was there a period of time when the 09:08:55 14 County proposed to acquire the rail corridor 09:09:00 15 for a utility corridor? 09:09:03 16 A. Yes. It was discussed that the right-of-way 09:09:07 17 could be utilized for trail and utility 09:09:10 18 location for a possible future wholesale 09:09:14 19 water district. 09:09:16 20 Q. You say it was discussed. Was that in the 09:09:18 21 county commission meeting minutes or 09:09:21 22 something like that? 09:09:21 23 A. I don't recall if it was discussed 09:09:25 24 internally, externally, through -- there was 09:09:28 25 a work group at the time that looked at a KELLEY REPORTING ASSOCIATES, LTD. <i>Court Reporting with a Difference</i> (316) 267-8200 (800) 654-8684	15 09:10:54 1 A. No. That would have been done after BCED 09:10:58 2 ceased to exist and the County turned the 09:11:01 3 property over to the Cities of Augusta and 09:11:07 4 Andover. 09:11:07 5 Q. Let's talk a little bit about BCED, then we 09:11:11 6 don't have to talk about it anymore. 09:11:16 7 I mean what kind of a creature was 09:11:20 8 BCED? 09:11:21 9 A. I can't tell you when BCED was created. I 09:11:25 10 never went back and researched that. BCED 09:11:28 11 was a volunteer group that the County funded 09:11:32 12 prior to mid, early 2000s. It had a director 09:11:37 13 that was appointed by the Board. And they 09:11:40 14 worked in conjunction with the County as the 09:11:44 15 County's economic development arm. 09:11:46 16 Sometime in the early 2000s like in 09:11:52 17 '03 or '04 the County Commission dissolved 09:11:56 18 BCED as a separate entity and created an 09:12:00 19 economic development department and brought 09:12:04 20 the director in as an employee of the County 09:12:07 21 instead of the agency. 09:12:08 22 Q. So it went from being a volunteer 09:12:11 23 organization that was sort of a 09:12:14 24 by-appointment as opposed to being employees 09:12:22 25 of the County to a new agency of the County? KELLEY REPORTING ASSOCIATES, LTD. <i>Court Reporting with a Difference</i> (316) 267-8200 (800) 654-8684
14 09:09:31 1 wholesale water district, but it possibly 09:09:36 2 could have been at a county commission 09:09:38 3 meeting. 09:09:40 4 Q. Do you know if there's any document that 09:09:43 5 reflects a conclusion as to whether or not 09:09:45 6 that was an appropriate use of a rail 09:09:47 7 corridor? 09:09:49 8 A. I don't believe it got far enough to warrant 09:09:54 9 any studies or legal -- what's the word I'm 09:10:08 10 looking for? 09:10:09 11 Q. Determination? 09:10:10 12 A. Yes, determination on that. 09:10:11 13 Q. In any event, has it been used as a utility 09:10:16 14 corridor, some or all of the rail corridor? 09:10:16 15 A. To my knowledge, the segments that we're 09:10:19 16 responsible for, which is the segment from 09:10:21 17 the south side of 400 east to the river, has 09:10:26 18 not been. I cannot speak to the segment that 09:10:30 19 the City of Andover has the NITU on or 09:10:38 20 Augusta has, that they may have done 09:10:40 21 something with that. 09:10:40 22 Q. If either of those entities did something as 09:10:44 23 far as utilizing the rail corridor for a 09:10:48 24 utility corridor, would they have had to talk 09:10:51 25 to the BCED or the County to get approval? KELLEY REPORTING ASSOCIATES, LTD. <i>Court Reporting with a Difference</i> (316) 267-8200 (800) 654-8684	16 09:12:25 1 A. New department of the County, yes. 09:12:27 2 Q. Okay. And so from that point in time when 09:12:31 3 BCED's existence was terminated, the County 09:12:38 4 has been the one that stepped in and has been 09:12:40 5 responsible for the rail bank right-of-way, 09:12:45 6 correct? 09:12:45 7 A. Correct. 09:12:45 8 Q. Now, you told us before that when the City of 09:12:50 9 Augusta got involved that the County or BCED 09:12:55 10 who held title at the time quit claimed its 09:12:59 11 interest in this segment that was located 09:13:02 12 within the city limits of the City of Augusta 09:13:05 13 to the City of Augusta, correct? 09:13:09 14 A. Correct. 09:13:09 15 Q. Now, am I correct that there is a segment 09:13:12 16 from the western city limits of the City of 09:13:15 17 Augusta to the Whitewater River which is not 09:13:18 18 located within the city limits of the City of 09:13:22 19 Augusta or do the city limits extend all the 09:13:25 20 way to the banks of the Whitewater River? 09:13:28 21 A. Whitewater River -- let me clarify this. The 09:13:35 22 segment from the city limits on the west side 09:13:38 23 of Augusta to the Whitewater River west is 09:13:42 24 what you're asking? 09:13:42 25 Q. Yes. KELLEY REPORTING ASSOCIATES, LTD. <i>Court Reporting with a Difference</i> (316) 267-8200 (800) 654-8684

17 09:13:42 1 A. I don't believe the city limits extend to the 09:13:46 2 Whitewater River. And I don't know where 09:13:47 3 exactly the city limits stop there. 09:13:50 4 Q. Okay. But I think you told me exactly what I 09:13:56 5 wanted to know. 09:13:57 6 A. I may have answered that. I believe there is 09:14:00 7 a segment in there that is outside the City 09:14:04 8 of Augusta's corporate city limits that they 09:14:07 9 have responsibility for. 09:14:08 10 Q. Do you know whether or not that segment, 09:14:12 11 however large it is, the County ever quit 09:14:16 12 claimed its interest in that segment to the 09:14:20 13 City of Augusta? 09:14:21 14 A. The County quitclaimed the total segment from 09:14:25 15 the Whitewater River east. 09:14:27 16 Q. Okay. Now, when the City of Augusta -- I'm 09:14:41 17 sorry, when the City of Andover got involved, 09:14:45 18 has the County ever quit claimed its interest 09:14:48 19 in the rail corridor to the City of Andover? 09:14:51 20 A. No. 09:14:52 21 Q. So it still has title, easement, whatever it 09:14:57 22 is, some type of title from the Butler/ 09:15:01 23 Sedgwick County line all the way to the north 09:15:06 24 side of U.S. 54/400, correct? 09:15:11 25 A. We have whatever interest BNSF quit claimed KELLEY REPORTING ASSOCIATES, LTD. <i>Court Reporting with a Difference</i> (316) 267-8200 (800) 654-8684	19 09:16:39 1 Q. And what's your employment history? 09:16:42 2 A. I worked for the City of Wichita prior to 09:16:49 3 Butler County, I want say 1993 to 2000, to 09:16:55 4 somewhere after college, a little bit during 09:16:58 5 college and after college full time. 09:17:00 6 Q. Was that in the city administrator's office? 09:17:05 7 A. No. I worked in the water and sewer 09:17:08 8 department. 09:17:08 9 Q. All right. And you've been with Butler 09:17:11 10 County ever since? 09:17:12 11 A. Correct. 09:17:28 12 Q. Now, one of the areas of inquiry we wanted to 09:17:37 13 talk about was the taxation and the 09:17:39 14 responsibility for paying taxes on the rail 09:17:42 15 corridor. And as I understand it, the County 09:17:49 16 was able to secure an exemption from property 09:17:55 17 tax for the rail corridor, correct? 09:17:58 18 A. Correct. 09:18:01 19 Q. Do you know whether or not the City of 09:18:05 20 Augusta has done the same thing? 09:18:06 21 A. No, I have not looked. 09:18:08 22 Q. And since the County has an exemption, it 09:18:14 23 doesn't have to pay any property tax, right? 09:18:17 24 A. As long as it's used for governmental use. 09:18:21 25 Q. Right. Do you know what governmental use the KELLEY REPORTING ASSOCIATES, LTD. <i>Court Reporting with a Difference</i> (316) 267-8200 (800) 654-8684
18 09:15:16 1 to us, yes. 09:15:17 2 Q. Okay. Has the County ever, to your 09:15:33 3 knowledge, looked into what would be required 09:15:36 4 for the County to assume the operation of the 09:15:40 5 railroad itself as opposed to finding some 09:15:44 6 existing railroad to operate a line? 09:15:48 7 A. I can't recall that they did or not back in 09:15:51 8 the early 2000s with BCED. 09:15:54 9 Q. Do you know whether or not a county in the 09:15:58 10 state of Kansas can operate a railroad? 09:16:02 11 A. There's nothing that says -- there's nothing 09:16:06 12 in the statute that says they can't. 09:16:08 13 Q. Is there anything that you're aware of in the 09:16:12 14 statute that says you can? 09:16:14 15 A. No. 09:16:15 16 Q. Let me step aside for a moment and just get a 09:16:19 17 little background information on you, 09:16:21 18 Mr. Johnson. 09:16:22 19 What is your educational background? 09:16:24 20 A. I have a BS in biology, another BS in 09:16:27 21 environmental science, a minor in chemistry, 09:16:31 22 and a master's degree in public 09:16:34 23 administration. 09:16:34 24 Q. What institute of higher education? 09:16:37 25 A. Wichita State and Friends University. KELLEY REPORTING ASSOCIATES, LTD. <i>Court Reporting with a Difference</i> (316) 267-8200 (800) 654-8684	20 09:18:22 1 County relied on when it applied for its 09:18:25 2 exemption with the State Board of Tax 09:18:29 3 Appeals? 09:18:30 4 A. I would have to look at the exemption 09:18:33 5 request. 09:18:34 6 Q. If I told you that the exemption was granted 09:18:35 7 based on the use as a utility corridor, would 09:18:38 8 you have any reason to disagree with me? 09:18:40 9 A. If that's what it said, that's what it said. 09:18:42 10 Q. All right. But in any event, it hasn't been 09:18:45 11 used as a utility corridor; is that correct? 09:18:54 12 A. Correct. 09:18:56 13 Q. As far as you know, is the County at the 09:19:04 14 present time using the rail corridor for any 09:19:07 15 purpose at all? 09:19:10 16 A. When you say the County, the County is not 09:19:13 17 using its 1.5, or the center segment. But 09:19:18 18 the corridor itself is being used as a trail 09:19:21 19 in Andover out in the unincorporated area 09:19:25 20 from the city limits to north of 400. And I 09:19:29 21 believe Augusta has something on it as well. 09:19:32 22 Q. But the segment from the -- let's just call 09:19:37 23 it the County segment so we're both agreeing 09:19:41 24 that's what it is. It's from the south side 09:19:43 25 of U.S. 54/400 to the east -- to the west KELLEY REPORTING ASSOCIATES, LTD. <i>Court Reporting with a Difference</i> (316) 267-8200 (800) 654-8684

21 09:19:50 1 side of the Whitewater River? 09:19:52 2 A. Correct. 09:19:52 3 Q. Okay. Has the County's segment been improved 09:20:02 4 at all? 09:20:02 5 A. The only improvement has been at the request 09:20:06 6 of property owners for brush removal or 09:20:11 7 putting up fencing and signage to keep 09:20:15 8 vehicles off of it. That's the improvement 09:20:17 9 that's been made on that segment. 09:20:20 10 Q. Now, the rail, the iron rails themselves, the 09:20:24 11 steel rails themselves and the ties, those 09:20:26 12 were pulled up not long after the County or 09:20:30 13 BCED got control of the rail corridor; is 09:20:35 14 that right? 09:20:35 15 A. I think within the first five years, I would 09:20:38 16 say yes. I don't know the exact date, but it 09:20:41 17 was quite some time ago. 09:20:43 18 Q. Now, when those, the rails and ties were 09:20:47 19 salvaged, those belonged to the County, 09:20:51 20 didn't they? 09:20:52 21 A. Correct. 09:20:52 22 Q. I mean essentially BNSF quit claimed its 09:20:58 23 interest and it didn't make any exceptions 09:21:01 24 for rails or ties or any railroad-related 09:21:05 25 entities other than maybe signals? I'm not KELLEY REPORTING ASSOCIATES, LTD. <i>Court Reporting with a Difference</i> (316) 267-8200 (800) 654-8684	23 09:22:31 1 economic development purposes which include 09:22:34 2 maintenance of that right-of-way. 09:22:41 3 Q. Is any portion of the County's segment of the 09:22:47 4 rail corridor being utilized by anybody other 09:22:51 5 than the County for any purpose? 09:22:53 6 A. I believe there is an adjacent landowner that 09:22:59 7 possibly utilizes it for a driveway. 09:23:03 8 Q. That's in the County's portion? 09:23:04 9 A. Yes. 09:23:05 10 Q. Who is that landowner or neighbor, if you 09:23:08 11 will? 09:23:08 12 A. I believe the last name is McClure. 09:23:12 13 Q. Do you know how much of the rail corridor is 09:23:19 14 used for a driveway? 09:23:20 15 A. I believe it's around a quarter of a mile. 09:23:25 16 Q. Is that an authorized use of the rail 09:23:29 17 corridor? 09:23:29 18 A. The County told Mr. McClure back whenever 09:23:34 19 this was that he could utilize that segment 09:23:38 20 until such time as the trail was developed, 09:23:40 21 and then he would have to put in his own 09:23:44 22 driveway. 09:23:44 23 Q. Is there something in writing to that effect? 09:23:47 24 A. I don't know that there is. 09:23:57 25 Q. Okay. Now, was there some consideration KELLEY REPORTING ASSOCIATES, LTD. <i>Court Reporting with a Difference</i> (316) 267-8200 (800) 654-8684
22 09:21:09 1 sure about that. 09:21:10 2 A. They did not have any claims to -- they 09:21:13 3 allowed the County to have the rails, the 09:21:16 4 ties and I think, and I'd have to look to see 09:21:21 5 if there's something out there, I think the 09:21:24 6 signals were included in it as well. I don't 09:21:27 7 think they kept the signals. 09:21:28 8 Q. When those materials were salvaged, do you 09:21:34 9 remember how that occurred? 09:21:37 10 A. The County put out a request for proposals 09:21:41 11 and bids from salvage companies that 09:21:44 12 specialized in rail salvage and selected the 09:21:48 13 highest bidder. I don't recall the company's 09:21:54 14 name. It had maybe something Foster in it. 09:21:58 15 And it was for a price in excess of \$370,000, 09:22:03 16 I believe. 09:22:03 17 Q. So the County got paid \$370,000 for the 09:22:08 18 salvage? 09:22:08 19 A. Somewhere around that amount, yes. 09:22:13 20 Q. Could it be 350? 09:22:16 21 A. No, I believe it was in the 370 range, 09:22:20 22 somewhere in there. 09:22:21 23 Q. All right. Was that money set aside for 09:22:25 24 Rails to Trails purposes? 09:22:28 25 A. That money was set aside for specifically KELLEY REPORTING ASSOCIATES, LTD. <i>Court Reporting with a Difference</i> (316) 267-8200 (800) 654-8684	24 09:24:16 1 given by the County within the last three or 09:24:19 2 four years to abandon its remaining segment 09:24:26 3 of the rail corridor? 09:24:29 4 A. Not to my knowledge. 09:24:29 5 (Deposition Exhibit F was previously 09:24:29 6 marked for identification.) 09:25:31 7 BY MR. RAPP: 09:25:31 8 Q. Mr. Johnson, I'm going to hand you a 09:25:38 9 document, actually it's a collection of 09:25:40 10 documents marked Exhibit F, and turn to what 09:25:47 11 is Bates numbered Page 57 from the production 09:25:53 12 provided by the County to us. 09:26:09 13 And I believe the document reflects a 09:26:12 14 suggestion on your part to the Mayor of the 09:26:21 15 City of Andover and Mr. Levy with the Andover 09:26:27 16 Augusta Rail Trail Initiative. I'm looking 09:26:31 17 at the second full paragraph. 09:26:34 18 A. Correct. 09:26:34 19 Q. "If neither party is interested in acquiring 09:26:37 20 the NITU, then the County would fully abandon 09:26:41 21 the right-of-way." 09:26:43 22 Do you remember sending this letter on 09:26:45 23 September 3, 2015? 09:26:47 24 A. Yes. 09:26:48 25 Q. So there was at that time some consideration KELLEY REPORTING ASSOCIATES, LTD. <i>Court Reporting with a Difference</i> (316) 267-8200 (800) 654-8684

25 09:26:50 1 at least? 09:26:51 2 A. If nobody wanted to maintain the 09:26:54 3 right-of-way, there was consideration to move 09:26:57 4 forward. 09:26:57 5 Q. And then evidently, as I understand it, AARTI 09:27:05 6 and the City of Andover came forward. The 09:27:14 7 City of Andover was approved or authorized to 09:27:16 8 take over the segment up to the north side of 09:27:20 9 U.S. 54/400? 09:27:24 10 A. As was requested in that paragraph, yes. 09:27:27 11 Q. But the County retained the County segment of 09:27:33 12 the rail corridor? 09:27:34 13 A. Yes, the County did what they stated in this 09:27:37 14 segment to maintain NITU. 09:27:45 15 Q. Now, can you tell me, I mean what efforts 09:27:48 16 have been made to kind of try to develop a 09:27:51 17 trail development plan on the part of the 09:27:55 18 County for its remaining segment? 09:27:57 19 A. The County has not itself tried to develop a 09:28:02 20 trail plan. The County has looked at 09:28:04 21 partners that wanted to, either a trail group 09:28:07 22 or the cities. That's been the County's 09:28:11 23 intent to find somebody that would possibly 09:28:14 24 want to develop those segments. And they 09:28:16 25 found the City of Augusta and the City of KELLEY REPORTING ASSOCIATES, LTD. <i>Court Reporting with a Difference</i> (316) 267-8200 (800) 654-8684	27 09:30:31 1 the County or BCED acquired the BNSF's 09:30:38 2 interest that the 10.6 mile segment of rail 09:30:42 3 was connected on the east side at some point 09:30:46 4 east of the City of Augusta, but there was a 09:30:51 5 connection so national rail traffic could 09:30:55 6 connect. But that on the west end of this 09:30:58 7 line that there was perhaps at that point in 09:31:05 8 time a connection within the City of Wichita, 09:31:10 9 all the railroads that come in and out of 09:31:14 10 Wichita. But at the time that the County 09:31:18 11 submitted to abandon the 10.6 miles, that the 09:31:24 12 County represented to the Surface 09:31:28 13 Transportation Board that the rail line was 09:31:35 14 stub ended on the west side. When I mean 09:31:38 15 stub ended, I think that really is a 09:31:41 16 technical term which means that it's 09:31:43 17 essentially a dead end, it's blocked off. 09:31:47 18 Do you know whether that's the case or 09:31:49 19 not? 09:31:49 20 A. I don't recall. I mean that's 15, 17 years 09:31:53 21 ago. If there's a document that says that, 09:31:56 22 I'm sure that's what the County said. And 09:31:59 23 that may even predate myself. 09:32:02 24 MR. CASEY: I want to make a late 09:32:02 25 objection. I thought the question was KELLEY REPORTING ASSOCIATES, LTD. <i>Court Reporting with a Difference</i> (316) 267-8200 (800) 654-8684
26 09:28:20 1 Andover for the segments they have and have 09:28:22 2 not made any efforts recently on the other 09:28:26 3 segments. 09:28:26 4 Q. Has AARTI, have they not come forward on any 09:28:33 5 interest on the County's remaining segment? 09:28:36 6 A. At this time since the transfer to the City 09:28:40 7 of Andover, we have not had any discussion 09:28:43 8 with AARTI or the City of Andover or any 09:28:45 9 other parties on the remaining segment that 09:28:48 10 the County has control of. 09:28:50 11 Q. All right. Do you know, had the County gone 09:29:00 12 forward with the idea of just abandoning its 09:29:04 13 remaining portion of the rail corridor, how 09:29:09 14 that would have affected the Andover segment 09:29:13 15 or the Augusta segment? 09:29:17 16 MR. CASEY: Objection, lack of 09:29:18 17 foundation. 09:29:19 18 A. No. 09:29:22 19 Q. I want to talk to you now a little bit about 09:30:11 20 how the rail line, and when I'm talking about 09:30:16 21 that, I'm talking about the tracks and the 09:30:18 22 ties, okay, before they were removed, how 09:30:21 23 they were connected to the National Rail 09:30:23 24 System, if you know. Okay? 09:30:27 25 And its my understanding that before KELLEY REPORTING ASSOCIATES, LTD. <i>Court Reporting with a Difference</i> (316) 267-8200 (800) 654-8684	28 09:32:04 1 whether it was stub ended at the western 09:32:07 2 boundary. I object to lack of foundation as 09:32:09 3 to what abandonment and National Rail System 09:32:14 4 means. 09:32:16 5 MR. HUELSKAMP: I think you 09:32:17 6 qualified it by saying if you know. 09:32:20 7 MR. RAPP: Right. 09:32:21 8 A. And I believe those conversations occurred 09:32:23 9 prior to my employment with the County. 09:32:26 10 BY MR. RAPP: 09:32:28 11 Q. Well, Mr. Johnson, I'm going to show you -- 09:33:05 12 what I'm handing you is our copy of the 09:33:08 13 petition with the exhibits attached. And I'm 09:33:10 14 going to direct your attention to Exhibit I 09:33:16 15 which was attached to the petition. 09:33:18 16 And the first page there is a letter 09:33:20 17 from the County's lawyer, Carl Morrell, 09:33:25 18 correct? 09:33:25 19 A. Correct. 09:33:27 20 Q. And apparently this is a letter that was 09:33:30 21 received by the Surface Transportation Board 09:33:34 22 in about June of 2004? 09:33:37 23 A. Correct. 09:33:38 24 Q. So you would have been here then? 09:33:40 25 A. I would have been, yes. KELLEY REPORTING ASSOCIATES, LTD. <i>Court Reporting with a Difference</i> (316) 267-8200 (800) 654-8684

29 09:33:43 1 Q. Turning now to Exhibit D to Mr. Morrell's 09:33:52 2 letter titled Environmental Report, and this 09:33:56 3 is what was submitted on behalf of the County 09:33:59 4 to the Surface Transportation Board, and 09:34:03 5 you'll see on Page 2 of the Environmental 09:34:06 6 Report there's a statement made by 09:34:08 7 Mr. Morrell that the line is stub ended and 09:34:14 8 therefore not capable of handling over-rail 09:34:20 9 traffic. 09:34:21 10 A. Okay. 09:34:21 11 Q. Do you have any reason to believe that this 09:34:23 12 is not an accurate document? 09:34:25 13 A. No, it's an accurate document. 09:34:26 14 Q. Or that Mr. Morrell would have misstated the 09:34:30 15 fact that the line is stub ended? 09:34:33 16 MR. HUELSKAMP: I'm going to 09:34:34 17 object. You know, it draws a legal 09:34:36 18 conclusion that Mr. Morrell made. And if 09:34:40 19 Mr. Johnson has any knowledge with respect to 09:34:43 20 that, there's probably attorney/client 09:34:47 21 privilege with respect to whether or not it 09:34:49 22 was stub ended, and their conversation would 09:34:54 23 have been privileged. You don't have to 09:34:55 24 answer that if it's privileged. 09:34:56 25 A. Okay. And I don't have any answers or any KELLEY REPORTING ASSOCIATES, LTD. <i>Court Reporting with a Difference</i> (316) 267-8200 (800) 654-8684	31 09:36:21 1 Q. And to your knowledge, does that flood 09:36:25 2 control levy occupy the entire rail corridor 09:36:29 3 as those two features intersect? 09:36:33 4 A. Okay, I don't understand. Does it cross -- 09:36:35 5 is the question does the levy cross the 09:36:38 6 railroad right-of-way? 09:36:40 7 Q. Yes. 09:36:41 8 A. I believe it does, yes. 09:36:47 9 Q. Was the County involved at all in the 09:36:51 10 dealings between the City of Augusta and the 09:36:54 11 Corps of Engineers which resulted in the 09:36:57 12 construction of that flood control levy? 09:37:00 13 A. Very limited involvement. 09:37:01 14 Q. Tell me what it was, if you recall. 09:37:07 15 A. Okay. And the involvement with the County 09:37:10 16 and the Corps on the levy had nothing to do 09:37:14 17 with the rail line. The only involvement the 09:37:17 18 County had, I think there might have been 09:37:19 19 some of the levy out in the County per se, 09:37:23 20 and we were invited to some of the meetings 09:37:26 21 with the Corps of Engineers and the City kept 09:37:31 22 us apprised of some of the project, but very, 09:37:36 23 very minimal involvement with them. And it 09:37:42 24 was early on in the stages and had to do more 09:37:45 25 with flood control mapping than it did KELLEY REPORTING ASSOCIATES, LTD. <i>Court Reporting with a Difference</i> (316) 267-8200 (800) 654-8684
30 09:34:58 1 recollection of conversations that occurred 09:34:59 2 back then. All I can refer to is the 09:35:02 3 document you have in front of you. And I 09:35:04 4 can't tell you what Mr. Morrell's theory was 09:35:09 5 at the time or not because I don't know. 09:35:12 6 That was 15 years ago. 09:35:14 7 Q. Sure. Mr. Morrell was the lawyer 09:35:16 8 representing the County? 09:35:18 9 A. Correct, I can affirm that. 09:35:20 10 Q. All right. And do you have any reason to 09:35:23 11 believe Mr. Morrell would have misrepresented 09:35:27 12 the facts to the Surface Transportation Board 09:35:30 13 to get what the County wanted? 09:35:32 14 A. No. 09:35:47 15 Q. Now, on the west side of the Augusta segment 09:35:58 16 of the rail corridor. 09:36:00 17 A. Okay. 09:36:01 18 Q. That would be all the way to Whitewater 09:36:05 19 River? 09:36:05 20 A. Correct. 09:36:05 21 Q. Between the City of Augusta, the city limits, 09:36:09 22 I say city limits, I'm assuming it is, and 09:36:13 23 the east bank of the Whitewater River there 09:36:16 24 is a flood control levy, correct? 09:36:19 25 A. Correct. KELLEY REPORTING ASSOCIATES, LTD. <i>Court Reporting with a Difference</i> (316) 267-8200 (800) 654-8684	32 09:37:49 1 anything else with FEMA. 09:37:50 2 Q. So whatever agreement was achieved between 09:37:54 3 the City of Augusta and the Corps of 09:37:58 4 Engineers, that wasn't passed by the County? 09:37:59 5 A. Yes. We were not involved in that 09:38:01 6 negotiation or conversation. 09:38:03 7 Q. Was there any discussion between the City of 09:38:08 8 Augusta and the County with regard to this -- 09:38:12 9 I'll call it interruption of the rail 09:38:15 10 corridor by the construction of a flood 09:38:18 11 control levy? 09:38:19 12 A. No. 09:38:21 13 Q. Do you know whether or not further south from 09:38:26 14 the intersection of the rail corridor and the 09:38:32 15 flood control levy there is another location 09:38:35 16 where there's a rail line that intersects 09:38:38 17 with the flood control levy? 09:38:41 18 A. Yes, there is a segment there on the live 09:38:46 19 line. 09:38:46 20 Q. And where live line exists there are large 09:38:54 21 metal gates? 09:38:56 22 A. Stoplogs. 09:38:57 23 Q. Stoplogs that can open and close depending on 09:39:01 24 whether or not there's a threat of flooding 09:39:04 25 in the city, correct? KELLEY REPORTING ASSOCIATES, LTD. <i>Court Reporting with a Difference</i> (316) 267-8200 (800) 654-8684

33 09:39:05 1 A. Correct. 09:39:05 2 Q. But there's no such stoplog at the point 09:39:09 3 where the rail corridor and the flood control 09:39:14 4 levy intersect? 09:39:15 5 A. Not to my knowledge. 09:39:37 6 Q. Now, the rail line has been severed, and I 09:39:42 7 explained what I mean by severed, at several 09:39:44 8 locations between Augusta and Andover. What 09:39:48 9 I mean by severed is that the track, the road 09:39:54 10 bed, the bridge, the culvert, whatever, has 09:39:59 11 been removed so that one could not walk from 09:40:04 12 Augusta to the north side of 54/400 along the 09:40:12 13 rail corridor if they wanted to. I mean, 09:40:23 14 from the east side of the Whitewater River 09:40:26 15 there's no bridge over the Whitewater River, 09:40:30 16 is there? 09:40:30 17 MR. HUELSKAMP: I'm going to 09:40:32 18 object to the designation as it being 09:40:35 19 severed. 09:40:37 20 MR. CASEY: I'm going to also 09:40:39 21 object to the lack of foundation. Mixing the 09:40:42 22 terms rail corridor and the right-of-way and 09:40:45 23 the presence of physical track items are all 09:40:49 24 separate things. And just because physical 09:40:52 25 track items may be gone doesn't mean that the KELLEY REPORTING ASSOCIATES, LTD. <i>Court Reporting with a Difference</i> (316) 267-8200 (800) 654-8684	35 09:42:00 1 removed, that was KDOT's doing; is that 09:42:03 2 correct? 09:42:03 3 A. KDOT was the responsible party to remove that 09:42:07 4 bridge. 09:42:08 5 Q. And there was an agreement, as I understand 09:42:10 6 it, between KDOT and the County that KDOT 09:42:16 7 would at some time in the future support the 09:42:20 8 County's effort to install a pedestrian 09:42:24 9 bridge instead of a railroad bridge across 09:42:29 10 54/400; is that correct? 09:42:30 11 A. No. I believe it also included the City of 09:42:33 12 Andover in that agreement. But I believe 09:42:35 13 you're correct in that they would work with 09:42:36 14 the County to install a pedestrian bridge 09:42:42 15 should the trail extend south. 09:42:44 16 Q. But KDOT didn't commit, did it, to actually 09:42:48 17 installing a pedestrian bridge? It would 09:42:51 18 cooperate with the County and the County's 09:42:54 19 effort to do so? 09:42:55 20 A. The County and the cities. They did not 09:42:58 21 commit to it but they committed to 09:43:00 22 negotiating with the City and the County. 09:43:02 23 Q. As far as the Whitewater River bridge, 09:43:05 24 there's no agreement as to who would replace 09:43:09 25 that bridge or what kind of structure would KELLEY REPORTING ASSOCIATES, LTD. <i>Court Reporting with a Difference</i> (316) 267-8200 (800) 654-8684
34 09:40:55 1 right-of-way and rail corridor don't still 09:40:59 2 exist. 09:40:59 3 BY MR. RAPP: 09:40:59 4 Q. I'm talking now a very common basis. 09:41:02 5 A. Can you walk the rail corridor? 09:41:05 6 Q. Yes. 09:41:06 7 A. Yes. You can walk the entire rail corridor. 09:41:06 8 You may get hit by a car, you may be waist 09:41:13 9 deep in water, but yes, you can walk the 09:41:16 10 entire corridor. 09:41:17 11 Q. You couldn't walk it without getting your 09:41:20 12 feet wet at least in the springtime? 09:41:24 13 A. You're going to walk in water. The river 09:41:27 14 crossing would be the one area that you're 09:41:29 15 going to get your feet wet. 09:41:31 16 Q. Now, the County was the entity that removed 09:41:34 17 the Whitewater River bridge, correct? 09:41:37 18 A. Correct. We contracted with a third party to 09:41:41 19 remove it, but we were the responsible party 09:41:44 20 to remove that bridge. 09:41:45 21 Q. And when that bridge was removed, it was not 09:41:48 22 only the bridge itself but the abutments; is 09:41:51 23 that correct? 09:41:51 24 A. Correct. 09:41:52 25 Q. And then when the highway railway bridge was KELLEY REPORTING ASSOCIATES, LTD. <i>Court Reporting with a Difference</i> (316) 267-8200 (800) 654-8684	36 09:43:12 1 be utilized to replace that bridge; is that 09:43:14 2 right? 09:43:14 3 A. Correct. 09:43:21 4 Q. Then there are a number of, as I understand 09:43:23 5 it, concrete blocks, culverts that crossed 09:43:28 6 several creeks over Prairie Creek, Pioneer 09:43:33 7 Creek that have been removed as well, 09:43:34 8 correct? 09:43:35 9 A. I have heard rumors of that. I have not 09:43:38 10 physically seen the removal of any of those. 09:43:41 11 Q. All right. Have you ever personally 09:43:44 12 traversed this 10.6 miles? 09:43:49 13 A. No. 09:44:39 14 Q. Now, Mr. Johnson, it's my understanding that 09:44:42 15 in the past that you have suggested that the 09:44:45 16 removal of the bridges, for instance the 09:44:49 17 Whitewater River bridge, would have no effect 09:44:51 18 on the NITU and ownership of the rail bed. 09:44:55 19 Do you remember making such a 09:44:57 20 statement? 09:44:57 21 A. I have made those statements, yes. 09:45:01 22 Q. What sort of investigation have you made to 09:45:05 23 make that determination? 09:45:06 24 A. None. 09:45:08 25 Q. Has anyone made an investigation to make that KELLEY REPORTING ASSOCIATES, LTD. <i>Court Reporting with a Difference</i> (316) 267-8200 (800) 654-8684

37 09:45:12 1 determination on behalf of the County that 09:45:14 2 you know of? 09:45:14 3 A. No. 09:45:15 4 Q. That's just simply your belief? 09:45:17 5 A. Correct. 09:45:18 6 Q. Do you have any past experience in Rails to 09:45:21 7 Trails issues outside of the one we're 09:45:24 8 talking about? 09:45:24 9 A. No. 09:45:25 10 Q. Didn't get to do that when you were with the 09:45:28 11 City of Wichita? 09:45:29 12 A. No, didn't have to do that, sir. I don't 09:45:33 13 think we did. I would be surprised if we got 09:45:37 14 into it, but I don't think that was one of 09:45:39 15 them. 09:46:24 16 Q. I think you told me this already but I want 09:46:30 17 to make sure. The County has not put forth 09:46:33 18 any effort to develop a trail other than 09:46:39 19 maintaining it; is that correct? 09:46:41 20 MR. HUELSKAMP: Objection. Asked 09:46:42 21 and answered. 09:46:46 22 BY MR. RAPP: 09:46:46 23 Q. You can still answer. 09:46:47 24 MR. HUELSKAMP: Go ahead. 09:46:48 25 A. Okay. The County's only efforts have been KELLEY REPORTING ASSOCIATES, LTD. <i>Court Reporting with a Difference</i> (316) 267-8200 (800) 654-8684	39 09:48:28 1 about the County's segment or are we talking 09:48:30 2 about the rail corridor? 09:48:31 3 MR. RAPP: The County's segment. 09:48:33 4 A. And there may be some others. I just haven't 09:48:37 5 went out and looked. I do know specifically 09:48:41 6 there is a sign there. 09:48:43 7 BY MR. RAPP: 09:49:08 8 Q. Now, am I correct that the County has 09:49:10 9 acquired some sort of liability insurance 09:49:13 10 covering the rail corridor? 09:49:17 11 A. We have property casualty insurance. I'm not 09:49:21 12 sure that we have a specific rider to the 09:49:25 13 right-of-way. I'd have to research that. 09:49:29 14 Q. But it's covered by the County's -- to the 09:49:32 15 extent the County would have any liability, 09:49:37 16 there's insurance? 09:49:38 17 A. Correct, yes. 09:49:43 18 Q. Is there a County employee other than you who 09:49:46 19 has the responsibility for the rail corridor 09:49:50 20 and the development of the recreational 09:49:54 21 trail? 09:49:55 22 A. When you say development of the recreational 09:49:59 23 trail, I will say no. 09:50:06 24 Q. What about maintenance or management of the 09:50:09 25 trail, the County's segment? KELLEY REPORTING ASSOCIATES, LTD. <i>Court Reporting with a Difference</i> (316) 267-8200 (800) 654-8684
38 09:46:52 1 into negotiating with third parties. 09:47:07 2 Q. Do you know whether or not any portion of -- 09:47:11 3 any of the County's portion of the rail 09:47:14 4 corridor has been fenced off by private 09:47:18 5 parties to prevent people from traveling 09:47:22 6 along the County's portion of the road bed? 09:47:25 7 A. I believe we have allowed, and there may be 09:47:29 8 e-mails or something, documents to landowners 09:47:33 9 that allowed them to fence off at the roadway 09:47:37 10 similar to some of the roadways we fenced off 09:47:40 11 at the County roads. 09:47:43 12 Q. Why is that? 09:47:45 13 A. To keep vehicular traffic off the rail beds, 09:47:51 14 i.e., motorcycles, ATVs, at the request of 09:47:55 15 landowners. 09:47:58 16 Q. Has the County posted any kind of signs 09:48:03 17 anywhere along its segment of the rail 09:48:07 18 corridor indicating people shouldn't, you 09:48:10 19 know, vehicular traffic shouldn't be on 09:48:15 20 there? 09:48:15 21 A. Well, I don't know exactly what the sign says 09:48:18 22 but there is some signage on that, 09:48:20 23 specifically at Santa Fe Lake Road just south 09:48:25 24 of 400. 09:48:27 25 MR. HUELSKAMP: Are we talking KELLEY REPORTING ASSOCIATES, LTD. <i>Court Reporting with a Difference</i> (316) 267-8200 (800) 654-8684	40 09:50:11 1 A. The County's segment, everything will funnel 09:50:15 2 to me and I will disseminate the work 09:50:18 3 depending on how I see fit. 09:51:29 4 Q. Is there any sort of agreement between the 09:51:32 5 County and the City of Andover with regard to 09:51:36 6 the management or operation of the 09:51:40 7 recreational trail which the City of Andover 09:51:45 8 has assumed responsibility for based on the 09:51:48 9 NITUs issued by the STB? 09:51:54 10 A. I don't recall if we had a separate agreement 09:51:57 11 or it was just simply a simple action to 09:52:01 12 allow Andover to intercede on the County's 09:52:06 13 behalf and take over that segment. So I 09:52:09 14 don't know if we had -- I can't remember if 09:52:11 15 we had a separate agreement. 09:52:14 16 Q. So there wouldn't have been, for instance, an 09:52:17 17 assignment of that phantom agreement between 09:52:20 18 the County and BCED? 09:52:24 19 MR. HUELSKAMP: Objection as to 09:52:25 20 the specific characterization as a phantom 09:52:27 21 agreement. 09:52:27 22 MR. CASEY: Lack of foundation, 09:52:33 23 but fun otherwise. 09:52:38 24 BY MR. RAPP: 09:52:38 25 Q. To your knowledge, there was no -- KELLEY REPORTING ASSOCIATES, LTD. <i>Court Reporting with a Difference</i> (316) 267-8200 (800) 654-8684

41 09:52:41 1 A. I don't think there was, but I mean if there 09:52:47 2 is, it probably was included with this. I 09:52:50 3 think it was a simple motion and to allow 09:52:55 4 legal to draft up at that time, I believe it 09:52:59 5 would have been Mr. Morrell, to work with the 09:53:02 6 City of Andover to draft the paperwork to 09:53:06 7 transfer the NITU to them, whatever 09:53:10 8 procedures required by the feds. 09:53:11 9 Q. In any event, the STB level, clearly there's 09:53:16 10 documentation showing that Andover was 09:53:18 11 substituted? 09:53:19 12 A. That's the word I was looking for, yeah, the 09:53:21 13 substitution. I don't think there's any side 09:53:23 14 agreements made between the City and the 09:53:25 15 County. I don't think they were necessary. 09:53:27 16 Q. So there might have been -- there was 09:53:29 17 obviously some cooperation, but there doesn't 09:53:33 18 seem to be any documentation from the 09:53:35 19 County's perspective; is that right? 09:53:36 20 A. No. It was specifically just conversation at 09:53:38 21 commission meetings, several commission 09:53:39 22 meetings with landowners, the City, the trail 09:53:47 23 group. 09:54:08 24 Q. One of the areas we asked you to be prepared 09:54:12 25 to talk about was the amount of property tax KELLEY REPORTING ASSOCIATES, LTD. <i>Court Reporting with a Difference</i> (316) 267-8200 (800) 654-8684	43 09:55:47 1 we know that the County quit claimed some 09:55:51 2 interest to the City of Augusta. 09:55:53 3 So it's my understanding then that the 09:55:56 4 County retains some sort of title for the 09:56:00 5 remainder of that 10.6 miles. 09:56:03 6 A. The County has no title. The County has the 09:56:06 7 interest held by BNSF. On that, I don't 09:56:12 8 believe those segments, since the transfer to 09:56:15 9 the City of Augusta, there has been anything 09:56:19 10 quit claimed out. I know there has not been 09:56:22 11 anything to the City of Andover. 09:56:26 12 Prior to the transfer to the City of 09:56:30 13 Augusta, I believe there were some buildings 09:56:32 14 located near the right-of-way or possibly 09:56:35 15 even on the right-of-way in Augusta that were 09:56:39 16 transferred to adjacent property owners that 09:56:42 17 the County received interest in. 09:56:45 18 Q. Okay. But from, let's say, the Augusta 09:56:50 19 portion west, are you telling me the County 09:56:53 20 has conveyed any interest, whatever interest 09:56:56 21 it has, any portion of that interest to any 09:56:58 22 third party? 09:56:59 23 A. Correct, yes. 09:57:42 24 (Deposition Exhibit No. R was marked 09:58:01 25 for identification.) KELLEY REPORTING ASSOCIATES, LTD. <i>Court Reporting with a Difference</i> (316) 267-8200 (800) 654-8684
42 09:54:15 1 that was being paid by BNSF before it 09:54:19 2 conveyed the line to the County. Were you 09:54:25 3 able to determine that? 09:54:26 4 A. I have not been able to get that information 09:54:29 5 yet. That's back in the '90s and we'll try 09:54:34 6 to get that pulled off some systems or 09:54:36 7 somewhere, but it might be best that that 09:54:39 8 question be -- that may be BNSF, those 09:54:43 9 records back from the '90s. 09:54:46 10 The County has since changed platforms 09:54:49 11 and I don't know how available that 09:54:51 12 information is back from then. But we can 09:54:54 13 certainly try to do some research. 09:54:58 14 Q. But you haven't tried yet, fair statement? 09:55:00 15 A. We haven't put forth a lot of effort at this 09:55:05 16 point other than it's very difficult to 09:55:08 17 ascertain. 09:55:13 18 Q. Other than the City of Augusta, has the 09:55:17 19 County conveyed away any of its interest in 09:55:22 20 the rail corridor to any third parties? 09:55:25 21 A. When you talk about corridor, are you talking 09:55:30 22 the segment between the City or between 400 09:55:35 23 and the river or the entire corridor? 09:55:38 24 Q. Well, the County came into some sort of title 09:55:43 25 from BNSF. And what I'm asking about -- and KELLEY REPORTING ASSOCIATES, LTD. <i>Court Reporting with a Difference</i> (316) 267-8200 (800) 654-8684	44 09:58:01 1 BY MR. RAPP: 09:58:01 2 Q. Mr. Johnson, I just put in front of you a 09:58:05 3 document marked Exhibit R, and it's also 09:58:08 4 Exhibit R to our petition. I want to direct 09:58:22 5 you to the third page of that five-page 09:58:24 6 exhibit, which I'm informed is an accurate 09:58:33 7 copy of the County Commission meeting minutes 09:58:37 8 of May 17, 2016. And this is a discussion 09:58:47 9 that has to do with the Rails to Trails, 09:58:50 10 correct? 09:58:59 11 A. Correct. 09:59:00 12 Q. And as I understand it, the discussion 09:59:03 13 started out with Commissioner Woydziak 09:59:07 14 saying, "My question is how much do you have 09:59:10 15 in the railroad fund." 09:59:12 16 And Mr. Alfara responded that there 09:59:15 17 was \$545,000, almost 546,000. "At this point 09:59:21 18 in time, we are still riding that 150,000 to 09:59:26 19 BG but I think there is some discussion about 09:59:30 20 closing that out. So technically we have 09:59:34 21 \$500,000." 09:59:36 22 Did I read that correctly? 09:59:37 23 A. Yes. 09:59:37 24 Q. And Commissioner Palmer spoke up and said, 09:59:41 25 "Have you submitted any of that amount to KELLEY REPORTING ASSOCIATES, LTD. <i>Court Reporting with a Difference</i> (316) 267-8200 (800) 654-8684

45 09:59:43 1 Rails to Trails?" 09:59:44 2 And your response was, "We're out of 09:59:47 3 that business." 09:59:47 4 Did I read that correctly? 09:59:49 5 A. Correct. 09:59:50 6 Q. What did you mean we're out of that business? 09:59:54 7 A. That we were not funding anything to the 10:00:00 8 south and to the west of Andover where AARTI 10:00:07 9 and City of Andover was having discussion. 10:00:11 10 Q. And so then Mr. Woydziak said, "We're not 10:00:17 11 financing anything to do with Rails to 10:00:21 12 Trails." 10:00:21 13 Mr. Palmer said, "The federal 10:00:23 14 government wants to make sure that the bridge 10:00:27 15 can be put back up there to keep it to rail 10:00:30 16 banking." 10:00:31 17 Mr. Woydziak responded, "We're not. 10:00:34 18 We made that abundant and clear. We are not 10:00:39 19 spending any money on Rails to Trails." 10:00:42 20 Did I read that correctly? 10:00:43 21 A. Correct. 10:00:44 22 Q. So when you said we're not in that business, 10:00:47 23 we're out of that business, you were just 10:00:49 24 talking about a segment? 10:00:52 25 A. The discussion during that time was the KELLEY REPORTING ASSOCIATES, LTD. <i>Court Reporting with a Difference</i> (316) 267-8200 (800) 654-8684	47 10:03:01 1 business. We have turned over 400 north to 10:03:05 2 Andover. Augusta has from the river back to 10:03:09 3 their city limits. They don't have any money 10:03:13 4 to put a bridge over the river and that is 10:03:15 5 the expensive one because that keeps growing 10:03:19 6 by the day, especially after this week." 10:03:23 7 Aren't they talking about the 10:03:25 8 Whitewater River bridge there? 10:03:27 9 A. He's talking about both bridges, the specific 10:03:34 10 commissioner. 10:03:35 11 Q. Mr. Woydziak? 10:03:36 12 A. Mr. Woydziak (pronouncing), correct. 10:03:40 13 Q. Woydziak? 10:03:41 14 A. Correct, yeah. 10:03:42 15 Q. Okay. So essentially the city -- it was 10:03:56 16 Mr. Woydziak's understanding that the County 10:03:59 17 was not going to be responsible for replacing 10:04:01 18 either the Whitewater River bridge or the 10:04:04 19 U.S. 54/400 bridge, right? 10:04:08 20 A. That is Mr. Woydziak's contention. That is 10:04:13 21 the not the Board's. 10:04:14 22 Q. All right. Did the Board have a position in 10:04:15 23 that regard that you know of? 10:04:18 24 A. The Board has never taken a vote. Until such 10:04:22 25 time as the Board takes a vote, there is no KELLEY REPORTING ASSOCIATES, LTD. <i>Court Reporting with a Difference</i> (316) 267-8200 (800) 654-8684
46 10:00:55 1 segment there going to the south and to the 10:00:58 2 west. 10:00:59 3 Q. To the south and to the west of what? 10:01:02 4 A. To Andover. 10:01:04 5 Q. To Andover. So from Andover west to the 10:01:12 6 Sedgwick/Butler County line? I'm trying to 10:01:16 7 place it in my head. 10:01:17 8 A. The segment that the City of Andover has 10:01:20 9 currently today. 10:01:22 10 Q. Okay. So what you were talking about was 10:01:28 11 just the part that Andover had responsibility 10:01:31 12 for, not the main portion that the County has 10:01:35 13 responsibility for? Did I say that correct? 10:01:40 14 A. Correct, yes. 10:02:23 15 Q. Now, going back again on the first page of 10:02:29 16 this excerpt of the minutes, Mr. Woydziak 10:02:33 17 said, "If they come to us tomorrow and say 10:02:36 18 that Butler County, to keep in the Rails to 10:02:41 19 Trails business, you will put in a bridge, 10:02:43 20 then I'm assuming that this Commission would 10:02:45 21 say abandonment because we have said we are 10:02:49 22 not putting bridges back in. We said that 10:02:53 23 consistently. We've said that consistently. 10:02:57 24 We've said, I think as a whole, as a Board, 10:02:59 25 if it comes to that, we are out of the KELLEY REPORTING ASSOCIATES, LTD. <i>Court Reporting with a Difference</i> (316) 267-8200 (800) 654-8684	48 10:04:26 1 position. 10:04:27 2 Q. No official position? 10:04:29 3 A. No official position, correct. 10:04:33 4 Q. Now, Mr. Palmer asked it be put in writing 10:04:42 5 that we are not going to replace the bridge. 10:04:45 6 And your response was, "It's on the record." 10:04:48 7 What was your understanding of what 10:04:50 8 Mr. Palmer was asking for when he said to put 10:04:53 9 that in writing? 10:05:04 10 A. My understanding on that is that the Board 10:05:10 11 has a written agreement with the City of 10:05:13 12 Augusta and KDOT until such time as the trail 10:05:17 13 develops east there will not be a bridge put 10:05:24 14 back over there, and the County is not going 10:05:27 15 to participate on it until such time, if they 10:05:30 16 do put a bridge, that a trail goes east and 10:05:33 17 south. 10:05:34 18 Q. So the County -- is it your understanding 10:05:40 19 that the County isn't committed that it would 10:05:42 20 or would not? 10:05:43 21 A. Correct. 10:07:09 22 MR. RAPP: Let's take a little 10:07:11 23 break. 10:19:30 24 (A recess was taken from 10:07 a.m. to 10:19:30 25 10:19 a.m.) KELLEY REPORTING ASSOCIATES, LTD. <i>Court Reporting with a Difference</i> (316) 267-8200 (800) 654-8684

49 10:19:30 1 BY MR. RAPP: 10:19:31 2 Q. Mr. Johnson, I don't have any other questions 10:19:34 3 for you today. Did you understand the 10:19:36 4 questions that I asked or tell me when you 10:19:38 5 didn't? 10:19:39 6 A. Yes. 10:19:39 7 MR. RAPP: Okay. 10:19:41 8 CROSS-EXAMINATION 10:19:41 9 BY MR. CASEY: 10:19:45 10 Q. Mr. Johnson, we met before. My name is Derek 10:19:50 11 Casey and I represent the City of Andover in 10:19:52 12 this litigation. I just want to follow up on 10:19:54 13 a couple things. 10:19:56 14 As I understand it, you've been 10:19:57 15 involved with municipal and county government 10:19:59 16 throughout your entire professional career? 10:20:01 17 A. Correct. 10:20:02 18 Q. Getting close to 25, 30 years total, right? 10:20:04 19 A. Correct. 10:20:05 20 Q. And you've been here as the County 10:20:07 21 Administrator of Butler County since 2002? 10:20:08 22 A. Correct. 10:20:08 23 Q. In fact, you just had an anniversary a couple 10:20:12 24 of weeks ago, April 1st? 10:20:15 25 A. Oh, yes. KELLEY REPORTING ASSOCIATES, LTD. <i>Court Reporting with a Difference</i> (316) 267-8200 (800) 654-8684	51 10:21:29 1 point in time the Burlington Northern 10:21:29 2 Santa Fe Railway quit claimed whatever 10:21:35 3 interest it had in the railroad corridor to 10:21:36 4 Butler County. Is that consistent with your 10:21:38 5 understanding of events? 10:21:40 6 A. Correct. 10:21:40 7 Q. At the time that Butler County accepted that 10:21:43 8 quit claim deed, do you have any knowledge of 10:21:46 9 any compensation it paid to any landowners as 10:21:50 10 part of that transaction? 10:21:52 11 A. That Butler County paid? 10:21:54 12 Q. That Butler County paid. 10:21:56 13 A. No. 10:21:57 14 Q. It's my understanding, and you talked about 10:21:58 15 this a little bit earlier, that at some point 10:22:00 16 in time Butler County contracted out the 10:22:03 17 removal and salvage of the rails, the ties 10:22:07 18 and maybe even some of the gravel rail bed 10:22:11 19 that was on the railroad corridor, and that 10:22:13 20 those items and materials were removed; is 10:22:16 21 that correct? 10:22:16 22 A. Correct. 10:22:18 23 Q. And Butler County received payment for those 10:22:22 24 materials from that salvage contractor? 10:22:25 25 A. Correct. KELLEY REPORTING ASSOCIATES, LTD. <i>Court Reporting with a Difference</i> (316) 267-8200 (800) 654-8684
50 10:20:17 1 Q. Not a wedding anniversary. 10:20:19 2 A. I was trying to figure out what I missed. 10:20:22 3 Q. During your time here with Butler County, 10:20:24 4 have you ever been aware of any instances 10:20:26 5 where Butler County exercised what is called 10:20:30 6 the power of eminent domain? 10:20:33 7 A. I think we did some right-of-way several, 10:20:39 8 several years ago. I don't know when. 10:20:43 9 Q. Let me ask a more general question. 10:20:45 10 Based upon your position as the County 10:20:47 11 Administrator since April 1, 2002, do you 10:20:53 12 have any knowledge whether Butler County has 10:20:56 13 the power of eminent domain? 10:20:58 14 A. Yes, we have the power of eminent domain. 10:20:59 15 Q. And as I generally understand that, that 10:21:02 16 gives certain government and other delegated 10:21:05 17 entities the ability to take private property 10:21:09 18 for public use with the payment of just 10:21:12 19 compensation. Is that somewhat consistent 10:21:14 20 with your understanding of the concept? 10:21:16 21 A. That is correct. 10:21:17 22 Q. All right. Talking about this railroad 10:21:20 23 corridor and the full extent of it across 10:21:25 24 Butler County that we've been talking about 10:21:27 25 it in this case, as I understand it at some KELLEY REPORTING ASSOCIATES, LTD. <i>Court Reporting with a Difference</i> (316) 267-8200 (800) 654-8684	52 10:22:26 1 Q. Let me back up a minute. 10:22:28 2 At the time that Butler County 10:22:30 3 accepted the quit claim deed from Burlington 10:22:33 4 Northern Santa Fe Railway, do you know 10:22:37 5 whether there was any rail service along any 10:22:41 6 portion of the rail corridor? 10:22:45 7 A. No. 10:22:45 8 Q. There was certainly no rail service along any 10:22:47 9 portion of the corridor after the ties, the 10:22:48 10 rails and the rail beds were removed; 10:22:52 11 correct? 10:22:52 12 A. Correct. 10:22:52 13 Q. At the time of the removal of the ties, the 10:22:58 14 rails and the rail beds, and I presume the 10:23:02 15 bridges in that same general time period, did 10:23:05 16 Butler County pay any compensation to any 10:23:09 17 landowners regarding the railroad corridor? 10:23:12 18 A. No. 10:23:13 19 Q. Are you aware, sir, of litigation in the 10:23:13 20 United States Court of Claims by some of the 10:23:14 21 landowners adjacent to the railroad corridor 10:23:17 22 in the last 10 or 15 years, do you have any 10:23:21 23 knowledge of that? 10:23:22 24 A. Yes. 10:23:22 25 Q. And it's my understanding that as a result of KELLEY REPORTING ASSOCIATES, LTD. <i>Court Reporting with a Difference</i> (316) 267-8200 (800) 654-8684

53 10:23:24 1 that litigation the adjacent landowners, some 10:23:27 2 of them, all of them, I don't know, received 10:23:29 3 some compensation from the United States 10:23:31 4 Government. Are you aware of that generally? 10:23:34 5 A. Yes. 10:23:34 6 Q. In conjunction with those transactions and 10:23:37 7 that litigation, did Butler County, Kansas 10:23:41 8 pay any compensation to any adjacent or other 10:23:43 9 landowners regarding the railroad corridor? 10:23:47 10 A. No. 10:23:56 11 Q. It's my understanding that Butler County 10:24:00 12 holds what we've referred to as an NITU for a 10:24:04 13 portion of the railroad corridor between its 10:24:08 14 intersection with Highway 400 and the 10:24:14 15 Whitewater River on the west side of Augusta; 10:24:18 16 is that correct? 10:24:18 17 A. Correct. 10:24:18 18 Q. What about the portion of the railroad 10:24:20 19 corridor east of Augusta? Does Butler County 10:24:25 20 have any interest or control over that? 10:24:27 21 MR. RAPP: Object to the form of 10:24:29 22 the question. 10:24:30 23 A. No. 10:24:31 24 Q. And it's my understanding that Butler County 10:24:35 25 holds that NITU between its intersection with KELLEY REPORTING ASSOCIATES, LTD. Court Reporting with a Difference (316) 267-8200 (800) 654-8684	55 10:25:57 1 filings with the Surface Transportation 10:26:00 2 Board. 10:26:00 3 Q. And all those have probably been produced in 10:26:04 4 this case? 10:26:04 5 A. All those documents have been produced. 10:26:11 6 MR. CASEY: That's all the 10:26:12 7 questions I have. Thank you, sir. 10:26:14 8 MR. HUELSKAMP: I don't have any 10:26:15 9 questions. 10:26:17 10 MR. RAPP: I don't have any 10:26:18 11 questions. 10:26:24 12 MR. HUELSKAMP: He'll read and 10:26:27 13 sign. (Deposition concluded at 10:26 a.m.) * * * 14 15 16 17 18 19 20 21 22 23 24 25 KELLEY REPORTING ASSOCIATES, LTD. Court Reporting with a Difference (316) 267-8200 (800) 654-8684
54 10:24:40 1 Highway 400 east of Andover and the 10:24:44 2 Whitewater River west of Augusta pursuant to 10:24:46 3 the quit claim deed and whatever interest it 10:24:50 4 conveyed and the NITU issued by the 10:24:55 5 United States Surface Transportation Board. 10:24:55 6 Is that consistent with your understanding? 10:24:58 7 And if it's not... 10:24:59 8 MR. RAPP: I'm going to object to 10:25:02 9 the form of the question. 10:25:03 10 A. The County only has an NITU on the segment 10:25:09 11 from U.S. 400 to the Whitewater River. 10:25:15 12 Q. It has interest, whatever that interest is, 10:25:17 13 from Highway 400 to the west boundary of 10:25:22 14 Butler County, the portion that Andover holds 10:25:24 15 the NITU on, whatever the quit claim 10:25:29 16 conveyed? 10:25:29 17 A. Yes, we do. 10:25:31 18 Q. Okay. Are you aware of any communication or 10:25:38 19 direction that Butler County has received 10:25:40 20 from the United States Surface Transportation 10:25:43 21 Board declaring one way or another whether 10:25:46 22 this railroad corridor between Augusta and 10:25:52 23 Andover is or is not part of the National 10:25:54 24 Rail System? 10:25:55 25 A. The only correspondence we have are the KELLEY REPORTING ASSOCIATES, LTD. Court Reporting with a Difference (316) 267-8200 (800) 654-8684	56 I have read or have had read to me the foregoing testimony recorded on pages 4 to 55, inclusive, and the same is true and correct to my knowledge and belief. WILLIAM JOHNSON (Date) STATE OF _____)) ss: _____ County) Subscribed and sworn to before me, the undersigned authority, this, the ____ day of _____, ____. Notary Public (Commission Expires) HMA PROPERTIES V. BUTLER CO., et al KELLEY REPORTING ASSOCIATES, LTD. Court Reporting with a Difference (316) 267-8200 (800) 654-8684

CERTIFICATE

STATE OF KANSAS)

) ss:

SEDGWICK County)

I, DARLENE K. KELLEY, a Certified Shorthand Reporter for the State of Kansas, do hereby certify that the within-named witness was by me first duly sworn to testify the truth, that the testimony given in response to the questions propounded, as herein set forth, was first taken in machine shorthand and reduced to writing with computer-aided transcription, and is a true and correct record of the testimony given by the witness. I certify that review of the testimony was requested by the witness or the parties. If any changes are made by the deponent during the time period allowed, they will be appended to the transcript.

I further certify that I am not a relative or employee or attorney or counsel of any of the parties, or a relative or employee of such attorney or counsel, or financially interested in the action.

WITNESS my hand and official seal at Wichita, Sedgwick County, Kansas, this ____ day of

_____, ____.

DARLENE K. KELLEY, CSR
Suite 108
515 South Main Street
Wichita, KS 67202

KELLEY REPORTING ASSOCIATES, LTD.
Court Reporting with a Difference
(316) 267-8200 (800) 654-8684

\$	3	A		
\$370,000 [2] - 22:15, 22:17 \$500,000 [1] - 44:21 \$545,000 [1] - 44:17	3 [1] - 24:23 30 [1] - 49:18 300 [1] - 2:15 316 [1] - 2:16 316-267-2000 [1] - 2:5 316-773-6446 [1] - 2:10 350 [1] - 22:20 370 [1] - 22:21	a.m [4] - 1:27, 48:24, 48:25, 55:14 AARTI [6] - 11:18, 25:5, 26:4, 26:8, 45:8 abandon [7] - 6:9, 7:15, 8:3, 8:5, 24:2, 24:20, 27:11 abandoned [2] - 8:17, 9:4 abandoning [1] - 26:12 abandonment [6] - 8:8, 8:9, 8:17, 9:4, 28:3, 46:21 ability [1] - 50:17 able [3] - 19:16, 42:3, 42:4 abundant [1] - 45:18 abutments [1] - 34:22 accepted [2] - 51:7, 52:3 access [1] - 13:4 accurate [3] - 29:12, 29:13, 44:6 achieved [1] - 32:2 acquire [1] - 13:14 acquired [2] - 27:1, 39:9 acquiring [3] - 6:21, 7:5, 24:19 action [2] - 40:11, 57:19 address [1] - 4:10 adjacent [5] - 23:6, 43:16, 52:21, 53:1, 53:8 administration [1] - 18:23 Administrator [4] - 5:8, 5:14, 49:21, 50:11 administrator's [1] - 19:6 affected [1] - 26:14 affirm [1] - 30:9 agency [2] - 15:21, 15:25 ago [5] - 21:17, 27:21, 30:6, 49:24, 50:8 agreed [3] - 10:11, 10:17, 12:19 agreeing [1] - 20:23 Agreement [1] - 3:11 agreement [16] - 5:20, 5:24, 6:4, 6:15,	12:8, 12:10, 32:2, 35:5, 35:12, 35:24, 40:4, 40:10, 40:15, 40:17, 40:21, 48:11 agreements [1] - 41:14 ahead [1] - 37:24 aided [1] - 57:10 al [2] - 1:5, 56:23 Alfara [1] - 44:16 allow [2] - 40:12, 41:3 allowed [4] - 22:3, 38:7, 38:9, 57:14 almost [1] - 44:17 amount [3] - 22:19, 41:25, 44:25 Andover [46] - 7:1, 10:6, 10:10, 11:8, 11:12, 11:15, 11:21, 12:11, 12:13, 12:16, 12:19, 12:20, 14:19, 15:4, 17:17, 17:19, 20:19, 24:15, 25:6, 25:7, 26:1, 26:7, 26:8, 26:14, 33:8, 35:12, 40:5, 40:7, 40:12, 41:6, 41:10, 43:11, 45:8, 45:9, 46:4, 46:5, 46:8, 46:11, 47:2, 49:11, 54:1, 54:14, 54:23 ANDOVER [2] - 1:13, 2:13 anniversary [2] - 49:23, 50:1 answer [2] - 29:24, 37:23 answered [2] - 17:6, 37:21 answers [1] - 29:25 Appeals [1] - 20:3 appended [1] - 57:15 applied [1] - 20:1 appointed [1] - 15:13 appointment [1] - 15:24 apprised [1] - 31:22 approached [1] - 6:20 appropriate [1] - 14:6 approval [1] - 14:25 approved [1] - 25:7 April [4] - 1:27, 5:9, 49:24, 50:11 area [3] - 10:23, 20:19, 34:14 areas [3] - 5:3, 19:12, 41:24	arm [1] - 15:15 ascertain [1] - 42:17 aside [3] - 18:16, 22:23, 22:25 assignment [1] - 40:17 ASSOCIATES [1] - 1:22 assume [2] - 12:19, 18:4 assumed [1] - 40:8 assuming [2] - 30:22, 46:20 attached [2] - 28:13, 28:15 attention [1] - 28:14 attorney [2] - 57:17, 57:18 attorney/client [1] - 29:20 ATVs [1] - 38:14 Augusta [46] - 6:25, 10:7, 10:8, 10:12, 10:15, 10:19, 10:20, 10:21, 10:22, 10:24, 11:21, 14:20, 15:3, 16:9, 16:12, 16:13, 16:17, 16:19, 16:23, 17:13, 17:16, 19:20, 20:21, 24:16, 25:25, 26:15, 27:4, 30:15, 30:21, 31:10, 32:3, 32:8, 33:8, 33:12, 42:18, 43:2, 43:9, 43:13, 43:15, 43:18, 47:2, 48:12, 53:15, 53:19, 54:2, 54:22 Augusta's [1] - 17:8 authority [1] - 56:13 authorized [2] - 23:16, 25:7 available [2] - 13:4, 42:11 aware [5] - 18:13, 50:4, 52:19, 53:4, 54:18
1	4			
1 [1] - 50:11 1.5 [1] - 20:17 10 [1] - 52:22 10.6 [4] - 27:2, 27:11, 36:12, 43:5 104 [1] - 2:9 108 [2] - 1:23, 57:25 10:07 [1] - 48:24 10:19 [1] - 48:25 10:26 [1] - 55:14 11 [1] - 1:27 15 [3] - 27:20, 30:6, 52:22 150,000 [1] - 44:18 150th [1] - 2:9 1617 [1] - 2:3 17 [2] - 27:20, 44:8 1993 [1] - 19:3 1st [2] - 5:9, 49:24	4 [2] - 3:4, 56:2 400 [11] - 2:4, 12:21, 14:17, 20:20, 38:24, 42:22, 47:1, 53:14, 54:1, 54:11, 54:13 43 [1] - 3:12 49 [1] - 3:5 4th [1] - 1:26			
2	5			
2 [1] - 29:5 2000 [1] - 19:3 2000s [3] - 15:12, 15:16, 18:8 2002 [3] - 5:9, 49:21, 50:11 2004 [1] - 28:22 2015 [1] - 24:23 2016 [2] - 12:18, 44:8 2018-CV-115 [1] - 1:7 2019 [1] - 1:27 205 [2] - 1:25, 4:11 24 [1] - 3:11 25 [1] - 49:18 2959 [1] - 2:14	5 [1] - 3:12 5-17-16 [1] - 3:12 515 [2] - 1:23, 57:25 54 [1] - 12:21 54/400 [7] - 12:23, 17:24, 20:25, 25:9, 33:12, 35:10, 47:19 546,000 [1] - 44:17 55 [1] - 56:2 550 [1] - 2:9 56 [1] - 3:18 57 [2] - 3:19, 24:11			
	6			
	6.2 [1] - 6:25 630-8100 [1] - 2:16 67042 [1] - 4:11 67202 [2] - 1:23, 57:26 67206 [1] - 2:4 67226 [1] - 2:15 67230 [1] - 2:10			
	8			
	8:56 [1] - 1:27			

KELLEY, YORK & ASSOCIATES, LTD.

Court Reporting with a Difference

(316) 267-8200

(800) 654-8684

BCED [19] - 5:21, 7:11, 7:21, 9:9, 9:10, 9:16, 10:13, 14:25, 15:1, 15:5, 15:8, 15:9, 15:10, 15:18, 16:9, 18:8, 21:13, 27:1, 40:18 BCED's [3] - 7:23, 11:5, 16:3 became [1] - 7:5 bed [5] - 7:19, 33:10, 36:18, 38:6, 51:18 beds [3] - 38:13, 52:10, 52:14 beforehand [1] - 5:19 behalf [4] - 1:20, 29:3, 37:1, 40:13 belief [2] - 37:4, 56:3 belonged [1] - 21:19 best [1] - 42:7 between [16] - 5:20, 6:25, 30:21, 31:10, 32:2, 32:7, 33:8, 35:6, 40:4, 40:17, 41:14, 42:22, 53:13, 53:25, 54:22 BG [1] - 44:19 bidder [1] - 22:13 bids [1] - 22:11 biggest [1] - 6:17 biology [1] - 18:20 bit [4] - 15:5, 19:4, 26:19, 51:15 blocked [1] - 27:17 blocks [1] - 36:5 BNSF [10] - 6:19, 6:24, 7:14, 7:21, 17:25, 21:22, 42:1, 42:8, 42:25, 43:7 BNSF's [1] - 27:1 Board [15] - 3:12, 15:13, 20:2, 27:13, 28:21, 29:4, 30:12, 46:24, 47:22, 47:24, 47:25, 48:10, 54:5, 54:21, 55:2 Board's [1] - 47:21 boundary [2] - 28:2, 54:13 break [2] - 4:22, 48:23 bridge [25] - 33:10, 33:15, 34:17, 34:20, 34:21, 34:22, 34:25, 35:4, 35:9, 35:14, 35:17, 35:23, 35:25, 36:1, 36:17, 45:14, 46:19, 47:4, 47:8, 47:18, 47:19, 48:5,	48:13, 48:16 bridges [4] - 36:16, 46:22, 47:9, 52:15 brought [1] - 15:19 brush [2] - 10:1, 21:6 BS [2] - 18:20 buildings [1] - 43:13 Burlington [2] - 51:1, 52:3 business [7] - 4:10, 45:3, 45:6, 45:22, 45:23, 46:19, 47:1 BUTLER [4] - 1:1, 1:10, 2:7, 56:23 Butler [27] - 1:26, 5:9, 11:9, 17:22, 19:3, 19:9, 46:18, 49:21, 50:3, 50:5, 50:12, 50:24, 51:4, 51:7, 51:11, 51:12, 51:16, 51:23, 52:2, 52:16, 53:7, 53:11, 53:19, 53:24, 54:14, 54:19 BY [10] - 4:6, 24:7, 28:10, 34:3, 37:22, 39:7, 40:24, 44:1, 49:1, 49:9 by-appointment [1] - 15:24	57:12, 57:16 changed [1] - 42:10 changes [1] - 57:13 characterization [1] - 40:20 chemistry [1] - 18:21 Cities [1] - 15:3 cities [2] - 25:22, 35:20 City [61] - 10:6, 10:12, 10:15, 10:19, 10:21, 10:22, 10:24, 11:12, 11:15, 12:11, 12:13, 12:16, 12:18, 12:20, 14:19, 16:8, 16:12, 16:13, 16:16, 16:18, 17:7, 17:13, 17:16, 17:17, 17:19, 19:2, 19:19, 24:15, 25:6, 25:7, 25:25, 26:6, 26:8, 27:4, 27:8, 30:21, 31:10, 31:21, 32:3, 32:7, 35:11, 35:22, 37:11, 40:5, 40:7, 41:6, 41:14, 41:22, 42:18, 42:22, 43:2, 43:9, 43:11, 43:12, 45:9, 46:8, 48:11, 49:11 city [15] - 16:12, 16:16, 16:18, 16:19, 16:22, 17:1, 17:3, 17:8, 19:6, 20:20, 30:21, 30:22, 32:25, 47:3, 47:15 CITY [2] - 1:13, 2:13 CIVIL [1] - 1:2 Civil [1] - 1:21 claim [5] - 11:3, 51:8, 52:3, 54:3, 54:15 claimed [8] - 16:10, 17:12, 17:18, 17:25, 21:22, 43:1, 43:10, 51:2 claims [1] - 22:2 Claims [1] - 52:20 clarify [1] - 16:21 clear [1] - 45:18 clearly [1] - 41:9 close [2] - 32:23, 49:18 closing [1] - 44:20 CO [1] - 56:23 Code [1] - 1:20 collection [1] - 24:9 college [3] - 19:4, 19:5 commission [5] - 6:3, 13:21, 14:2, 41:21	Commission [5] - 3:11, 15:17, 44:7, 46:22, 56:19 Commissioner [2] - 44:13, 44:24 commissioner [1] - 47:10 commit [2] - 35:16, 35:21 committed [2] - 35:21, 48:19 common [1] - 34:4 communicating [1] - 5:2 communication [1] - 54:18 companies [1] - 22:11 Company [1] - 1:5 company's [1] - 22:13 compensation [5] - 50:19, 51:9, 52:16, 53:3, 53:8 computer [1] - 57:10 computer-aided [1] - 57:10 concept [1] - 50:20 concluded [1] - 55:14 conclusion [2] - 14:5, 29:18 concrete [1] - 36:5 conjunction [2] - 15:14, 53:6 connect [1] - 27:6 connected [2] - 26:23, 27:3 connection [2] - 27:5, 27:8 consideration [3] - 23:25, 24:25, 25:3 consistent [3] - 50:19, 51:4, 54:6 consistently [2] - 46:23 construction [2] - 31:12, 32:10 consummated [2] - 12:8, 12:10 contention [1] - 47:20 continue [1] - 7:8 contracted [2] - 34:18, 51:16 contractor [1] - 51:24 control [11] - 21:13, 26:10, 30:24, 31:2, 31:12, 31:25, 32:11,	32:15, 32:17, 33:3, 53:20 conversation [3] - 29:22, 32:6, 41:20 conversations [2] - 28:8, 30:1 conveyed [5] - 42:2, 42:19, 43:20, 54:4, 54:16 cooperate [1] - 35:18 cooperation [1] - 41:17 copy [2] - 28:12, 44:7 corporate [1] - 17:8 Corps [4] - 31:11, 31:16, 31:21, 32:3 correct [84] - 5:12, 5:13, 5:16, 5:25, 6:1, 7:9, 7:10, 7:25, 8:1, 8:4, 8:18, 8:19, 9:6, 9:9, 10:7, 10:17, 11:11, 11:23, 12:7, 12:12, 12:17, 12:22, 12:24, 16:6, 16:7, 16:13, 16:14, 16:15, 17:24, 19:11, 19:17, 19:18, 20:11, 20:12, 21:2, 21:21, 24:18, 28:18, 28:19, 28:23, 30:9, 30:20, 30:24, 30:25, 32:25, 33:1, 34:17, 34:18, 34:23, 34:24, 35:2, 35:10, 35:13, 36:3, 36:8, 37:5, 37:19, 39:8, 39:17, 43:23, 44:10, 44:11, 45:5, 45:21, 46:13, 46:14, 47:12, 47:14, 48:3, 48:21, 49:17, 49:19, 49:22, 50:21, 51:6, 51:21, 51:22, 51:25, 52:11, 52:12, 53:16, 53:17, 56:3, 57:11 correctly [3] - 44:22, 45:4, 45:20 correspondence [1] - 54:25 corridor [59] - 6:21, 6:22, 7:4, 7:6, 8:18, 9:5, 10:14, 11:6, 13:14, 13:15, 14:7, 14:14, 14:23, 14:24, 17:19, 19:15, 19:17, 20:7, 20:11, 20:14, 20:18, 21:13, 23:4, 23:13, 23:17, 24:3, 25:12, 26:13, 30:16, 31:2, 32:10, 32:14,
C				
cannot [1] - 14:18 capable [1] - 29:8 car [1] - 34:8 career [1] - 49:16 Carl [1] - 28:17 Case [1] - 1:7 case [3] - 27:18, 50:25, 55:4 CASEY [7] - 8:20, 26:16, 27:24, 33:20, 40:22, 49:9, 55:6 Casey [3] - 2:14, 3:5, 49:11 casualty [1] - 39:11 ceased [1] - 15:2 center [1] - 20:17 Central [2] - 1:26, 4:11 certain [1] - 50:16 certainly [2] - 42:13, 52:8 Certificate [1] - 3:19 CERTIFICATE [1] - 57:1 Certified [2] - 1:25, 57:4 certify [3] - 57:5,				

KELLEY, YORK & ASSOCIATES, LTD.

Court Reporting with a Difference

(316) 267-8200

(800) 654-8684

33:3, 33:13, 33:22, 34:1, 34:5, 34:7, 34:10, 38:4, 38:18, 39:2, 39:10, 39:19, 42:20, 42:21, 42:23, 50:23, 51:3, 51:19, 52:6, 52:9, 52:17, 52:21, 53:9, 53:13, 53:19, 54:22 counsel [2] - 57:17, 57:18 COUNTY [3] - 1:1, 1:10, 2:7 County [148] - 1:26, 5:7, 5:9, 5:14, 5:21, 6:14, 6:20, 7:4, 7:7, 7:10, 7:20, 7:22, 8:2, 8:5, 8:7, 9:10, 9:16, 9:19, 9:21, 9:23, 10:5, 10:8, 10:13, 11:9, 11:10, 11:19, 12:15, 12:25, 13:14, 14:25, 15:2, 15:11, 15:14, 15:17, 15:20, 15:25, 16:1, 16:3, 16:9, 17:11, 17:14, 17:18, 17:23, 18:2, 18:4, 19:3, 19:10, 19:15, 19:22, 20:1, 20:13, 20:16, 20:23, 21:12, 21:19, 22:3, 22:10, 22:17, 23:5, 23:18, 24:1, 24:12, 24:20, 25:11, 25:13, 25:18, 25:19, 25:20, 26:10, 26:11, 27:1, 27:10, 27:12, 27:22, 28:9, 29:3, 30:8, 30:13, 31:9, 31:15, 31:18, 31:19, 32:4, 32:8, 34:16, 35:6, 35:14, 35:18, 35:20, 35:22, 37:1, 37:17, 38:11, 38:16, 39:8, 39:15, 39:18, 40:5, 40:18, 41:15, 42:2, 42:10, 42:19, 42:24, 43:1, 43:4, 43:6, 43:17, 43:19, 44:7, 46:6, 46:12, 46:18, 47:16, 48:14, 48:18, 48:19, 49:20, 49:21, 50:3, 50:5, 50:10, 50:12, 50:24, 51:4, 51:7, 51:11, 51:12, 51:16, 51:23, 52:2, 52:16, 53:7, 53:11, 53:19, 53:24, 54:10, 54:14, 54:19, 56:11, 57:3, 57:21 county [6] - 6:2, 6:8,	13:21, 14:2, 18:9, 49:15 county's [1] - 11:5 County's [20] - 7:23, 15:15, 21:3, 23:3, 23:8, 25:22, 26:5, 28:17, 35:8, 35:18, 37:25, 38:3, 38:6, 39:1, 39:3, 39:14, 39:25, 40:1, 40:12, 41:19 couple [4] - 7:14, 12:3, 49:13, 49:23 COURT [1] - 1:1 Court [1] - 52:20 covered [1] - 39:14 covering [1] - 39:10 created [2] - 15:9, 15:18 creature [1] - 15:7 Creek [2] - 36:6, 36:7 creeks [1] - 36:6 cross [2] - 31:4, 31:5 Cross [1] - 3:5 CROSS [1] - 49:8 Cross-Examination [1] - 3:5 CROSS- EXAMINATION [1] - 49:8 crossed [1] - 36:5 crossing [1] - 34:14 CSR [2] - 1:22, 57:24 culvert [1] - 33:10 culverts [1] - 36:5	1:14 DEFENDANT [2] - 2:7, 2:13 degree [1] - 18:22 delegated [1] - 50:16 DEPARTMENT [1] - 1:2 department [3] - 15:19, 16:1, 19:8 deponent [1] - 57:14 Deposition [3] - 24:5, 43:24, 55:14 deposition [2] - 1:19, 4:17 Derek [2] - 2:14, 49:10 Description [1] - 3:10 designation [1] - 33:18 determination [4] - 14:11, 14:12, 36:23, 37:1 determine [1] - 42:3 develop [5] - 9:21, 25:16, 25:19, 25:24, 37:18 developed [1] - 23:20 development [6] - 15:15, 15:19, 23:1, 25:17, 39:20, 39:22 develops [1] - 48:13 difficult [1] - 42:16 Direct [1] - 3:4 direct [2] - 28:14, 44:4 DIRECT [1] - 4:5 direction [1] - 54:19 director [2] - 15:12, 15:20 disagree [1] - 20:8 discussed [3] - 13:16, 13:20, 13:23 discussing [1] - 5:18 discussion [7] - 26:7, 32:7, 44:8, 44:12, 44:19, 45:9, 45:25 disseminate [1] - 40:2 dissolved [1] - 15:17 DISTRICT [2] - 1:1, 1:1 district [2] - 13:19, 14:1 document [8] - 14:4, 24:9, 24:13, 27:21, 29:12, 29:13, 30:3, 44:3	documentation [2] - 41:10, 41:18 documents [3] - 24:10, 38:8, 55:5 domain [3] - 50:6, 50:13, 50:14 done [3] - 14:20, 15:1, 19:20 Dorado [2] - 1:26, 4:11 draft [2] - 41:4, 41:6 drapp@hinklaw. com [1] - 2:5 draws [1] - 29:17 driveway [3] - 23:7, 23:14, 23:22 duly [2] - 4:2, 57:6 during [5] - 10:4, 19:4, 45:25, 50:3, 57:14	employment [2] - 19:1, 28:9 end [2] - 27:6, 27:17 ended [6] - 27:14, 27:15, 28:1, 29:7, 29:15, 29:22 Engineers [3] - 31:11, 31:21, 32:4 entire [5] - 31:2, 34:7, 34:10, 42:23, 49:16 entities [3] - 14:22, 21:25, 50:17 entity [2] - 15:18, 34:16 environmental [1] - 18:21 Environmental [2] - 29:2, 29:5 especially [1] - 47:6 essentially [5] - 9:20, 11:8, 21:22, 27:17, 47:15 et [2] - 1:5, 56:23 event [6] - 8:16, 9:3, 12:6, 14:13, 20:10, 41:9 events [1] - 51:5 eventually [1] - 10:5 evidently [1] - 25:5 evolving [1] - 5:11 exact [2] - 9:12, 21:16 exactly [4] - 10:17, 17:3, 17:4, 38:21 EXAMINATION [2] - 4:5, 49:8 Examination [2] - 3:4, 3:5 exceptions [1] - 21:23 excerpt [1] - 46:16 excess [1] - 22:15 exemption [6] - 8:9, 19:16, 19:22, 20:2, 20:4, 20:6 exercised [1] - 50:5 exhibit [1] - 44:6 Exhibit [7] - 24:5, 24:10, 28:14, 29:1, 43:24, 44:3, 44:4 exhibits [1] - 28:13 exist [2] - 15:2, 34:2 existence [3] - 5:20, 7:20, 16:3 existing [1] - 18:6 exists [1] - 32:20 expensive [1] - 47:5 experience [1] - 37:6 Expires [1] - 56:19
---	--	---	--	---

KELLEY, YORK & ASSOCIATES, LTD.

Court Reporting with a Difference

(316) 267-8200

(800) 654-8684

explained [1] - 33:7 extend [3] - 16:19, 17:1, 35:15 extent [2] - 39:15, 50:23 externally [1] - 13:24	Foster [1] - 22:14 foundation [5] - 8:21, 26:17, 28:2, 33:21, 40:22 four [1] - 24:2 frame [1] - 9:12 Frank [1] - 2:18 Friends [1] - 18:25 front [2] - 30:3, 44:2 full [3] - 19:5, 24:17, 50:23 fully [1] - 24:20 fun [1] - 40:23 fund [1] - 44:15 funded [1] - 15:11 funding [1] - 45:7 funnel [1] - 40:1 future [2] - 13:18, 35:7	helped [1] - 6:8 hereby [1] - 57:5 herein [1] - 57:8 higher [1] - 18:24 highest [1] - 22:13 Highway [4] - 12:21, 53:14, 54:1, 54:13 highway [1] - 34:25 HINKLE [1] - 2:2 Hinkle [1] - 4:14 history [1] - 19:1 hit [1] - 34:8 HMA [2] - 1:4, 56:23 hold [1] - 11:2 holds [3] - 53:12, 53:25, 54:14 HUELSKAMP [10] - 2:8, 28:5, 29:16, 33:17, 37:20, 37:24, 38:25, 40:19, 55:8, 55:12 Huelskamp [2] - 2:8, 5:19	insurance [3] - 39:9, 39:11, 39:16 intent [1] - 25:23 intercede [1] - 40:12 interest [19] - 16:11, 17:12, 17:18, 17:25, 21:23, 26:5, 27:2, 42:19, 43:2, 43:7, 43:17, 43:20, 43:21, 51:3, 53:20, 54:3, 54:12 interested [5] - 7:5, 7:10, 7:12, 24:19, 57:19 interim [1] - 11:17 Interlocal [1] - 3:11 internally [1] - 13:24 interruption [1] - 32:9 intersect [2] - 31:3, 33:4 intersection [3] - 32:14, 53:14, 53:25 intersects [1] - 32:16 Intervening [1] - 1:14 introduced [1] - 4:12 investigation [2] - 36:22, 36:25 invited [1] - 31:20 involved [12] - 10:6, 10:7, 10:8, 11:12, 11:14, 11:15, 11:16, 16:9, 17:17, 31:9, 32:5, 49:15 involvement [4] - 31:13, 31:15, 31:17, 31:23 iron [1] - 21:10 issue [2] - 6:11, 6:17 issued [5] - 8:16, 9:3, 9:8, 40:9, 54:4 issues [1] - 37:7 items [3] - 33:23, 33:25, 51:20 itself [5] - 9:13, 18:5, 20:18, 25:19, 34:22	June [1] - 28:22 Junior [1] - 4:9 JUNIOR [1] - 1:19
F	G	I	J	K
fact [3] - 8:7, 29:15, 49:23 facts [1] - 30:12 fair [2] - 9:7, 42:14 far [6] - 7:24, 10:24, 14:8, 14:23, 20:13, 35:23 Fe [3] - 38:23, 51:2, 52:4 features [1] - 31:3 federal [1] - 45:13 feds [1] - 41:8 feet [2] - 34:12, 34:15 FEMA [1] - 32:1 fence [1] - 38:9 fenced [2] - 38:4, 38:10 fencing [2] - 10:2, 21:7 figure [1] - 50:2 file [3] - 8:6, 13:1, 13:11 filings [1] - 55:1 financially [1] - 57:19 financing [1] - 45:11 Firm [1] - 4:14 FIRM [1] - 2:2 first [8] - 4:2, 6:20, 7:5, 21:15, 28:16, 46:15, 57:6, 57:9 fit [1] - 40:3 five [2] - 21:15, 44:5 five-page [1] - 44:5 flood [8] - 30:24, 31:1, 31:12, 31:25, 32:10, 32:15, 32:17, 33:3 flooding [1] - 32:24 Floor [1] - 1:26 folks [1] - 13:10 follow [1] - 49:12 follows [2] - 4:4, 9:2 foregoing [1] - 56:1 form [2] - 53:21, 54:9 forth [3] - 37:17, 42:15, 57:8 forward [4] - 25:4, 25:6, 26:4, 26:12	GARRETSON [1] - 2:13 gates [1] - 32:21 general [2] - 50:9, 52:15 generally [2] - 50:15, 53:4 given [3] - 24:1, 57:7, 57:11 government [3] - 45:14, 49:15, 50:16 Government [1] - 53:4 governmental [2] - 19:24, 19:25 granted [1] - 20:6 gravel [1] - 51:18 group [10] - 11:14, 11:16, 11:18, 11:25, 12:4, 12:9, 13:25, 15:11, 25:21, 41:23 groups [2] - 12:3, 12:7 growing [1] - 47:5	i.e [1] - 38:14 idea [1] - 26:12 identification [2] - 24:6, 43:25 identify [1] - 9:15 important [1] - 4:21 improved [1] - 21:3 improvement [2] - 21:5, 21:8 IN [1] - 1:1 include [1] - 23:1 included [3] - 22:6, 35:11, 41:2 includes [1] - 13:1 inclusive [1] - 56:2 indicating [1] - 38:18 information [4] - 13:2, 18:17, 42:4, 42:12 informed [1] - 44:6 Initiative [2] - 11:22, 24:16 inquiry [3] - 5:3, 6:7, 19:12 install [2] - 35:8, 35:14 installing [1] - 35:17 instance [2] - 36:16, 40:16 instances [1] - 50:4 instead [2] - 15:21, 35:9 institute [1] - 18:24	Johnson [10] - 4:7, 4:9, 18:18, 24:8, 28:11, 29:19, 36:14, 44:2, 49:2, 49:10 JOHNSON [4] - 1:19, 3:3, 4:1, 56:6 JR [1] - 4:1 JUDICIAL [1] - 1:1 jump [1] - 5:17	KANSAS [4] - 1:1, 1:10, 1:13, 57:2 Kansas [12] - 1:4, 1:20, 1:25, 1:26, 2:4, 2:10, 2:15, 4:11, 18:10, 53:7, 57:5, 57:21 KDOT [5] - 35:3, 35:6, 35:16, 48:12 KDOT's [1] - 35:1 keep [5] - 10:2, 21:7, 38:13, 45:15, 46:18 keeps [1] - 47:5 KELLEY [4] - 1:22, 1:22, 57:4, 57:24 kept [2] - 22:7, 31:21 kind [5] - 5:10, 15:7, 25:16, 35:25, 38:16 knowledge [12] - 6:13, 14:15, 18:3, 24:4, 29:19, 31:1, 33:5, 40:25, 50:12, 51:8, 52:23, 56:3 KS [2] - 1:23, 57:26
	H			L
	half [1] - 13:3 hand [2] - 24:8, 57:20 handing [1] - 28:12 handling [1] - 29:8 hate [1] - 9:16 head [1] - 46:7 heard [1] - 36:9 held [2] - 16:10, 43:7			lack [5] - 8:20, 26:16, 28:2, 33:21, 40:22 Lake [1] - 38:23 landowner [2] - 23:6, 23:10 landowners [8] - 38:8, 38:15, 41:22, 51:9, 52:17, 52:21, 53:1, 53:9 large [2] - 17:11, 32:20 last [4] - 13:3, 23:12, 24:1, 52:22 late [1] - 27:24 LAW [2] - 2:2, 2:8 Law [1] - 4:14 lawyer [4] - 4:13, 6:8, 28:17, 30:7 least [3] - 5:23, 25:1, 34:12 legal [3] - 14:9, 29:17, 41:4 letter [4] - 24:22, 28:16, 28:20, 29:2 level [1] - 41:9

KELLEY, YORK & ASSOCIATES, LTD.

Court Reporting with a Difference

(316) 267-8200

(800) 654-8684

levy ^[1] - 24:15, 30:24, 31:2, 31:5, 31:12, 31:16, 31:19, 32:11, 32:15, 32:17, 33:4 Liability ^[1] - 1:5 liability ^[2] - 39:9, 39:15 Limited ^[1] - 1:5 limited ^[1] - 31:13 limits ^[12] - 16:12, 16:16, 16:18, 16:19, 16:22, 17:1, 17:3, 17:8, 20:20, 30:21, 30:22, 47:3 line ^[22] - 7:9, 7:11, 7:12, 7:13, 7:18, 11:9, 11:10, 12:15, 17:23, 18:6, 26:20, 27:7, 27:13, 29:7, 29:15, 31:17, 32:16, 32:19, 32:20, 33:6, 42:2, 46:6 litigation ^[6] - 4:16, 13:8, 49:12, 52:19, 53:1, 53:7 live ^[2] - 32:18, 32:20 LLC ^[3] - 1:4, 2:2, 2:13 locate ^[1] - 6:17 located ^[3] - 16:11, 16:18, 43:14 location ^[2] - 13:18, 32:15 locations ^[1] - 33:8 look ^[2] - 20:4, 22:4 looked ^[5] - 13:25, 18:3, 19:21, 25:20, 39:5 looking ^[5] - 5:22, 9:13, 14:10, 24:16, 41:12 LTD ^[1] - 1:22	marked ^[4] - 24:6, 24:10, 43:24, 44:3 master's ^[1] - 18:22 materials ^[3] - 22:8, 51:20, 51:24 matter ^[1] - 5:11 Mayor ^[1] - 24:14 McClure ^[2] - 23:12, 23:18 mean ^[11] - 15:7, 21:22, 25:15, 27:14, 27:20, 33:7, 33:9, 33:13, 33:25, 41:1, 45:6 means ^[2] - 27:16, 28:4 meeting ^[4] - 6:3, 13:21, 14:3, 44:7 meetings ^[3] - 31:20, 41:21, 41:22 met ^[1] - 49:10 metal ^[1] - 32:21 mid ^[1] - 15:12 might ^[4] - 13:9, 31:18, 41:16, 42:7 mile ^[2] - 23:15, 27:2 miles ^[4] - 6:25, 27:11, 36:12, 43:5 Miller ^[1] - 2:18 minimal ^[1] - 31:23 minor ^[1] - 18:21 minute ^[1] - 52:1 minutes ^[8] - 3:11, 3:12, 6:3, 6:5, 6:6, 13:21, 44:7, 46:16 misrepresented ^[1] - 30:11 missed ^[1] - 50:2 misstated ^[1] - 29:14 mixing ^[1] - 33:21 moment ^[1] - 18:16 money ^[4] - 22:23, 22:25, 45:19, 47:3 month ^[1] - 13:3 Morrell ^[10] - 6:8, 6:18, 8:8, 28:17, 29:7, 29:14, 29:18, 30:7, 30:11, 41:5 Morrell's ^[2] - 29:1, 30:4 most ^[1] - 13:11 motion ^[1] - 41:3 motorcycles ^[1] - 38:14 mouth ^[1] - 4:24 move ^[1] - 25:3 MR ^[33] - 4:6, 8:20, 8:24, 24:7, 26:16, 27:24, 28:5, 28:7, 28:10, 29:16, 33:17,	33:20, 34:3, 37:20, 37:22, 37:24, 38:25, 39:3, 39:7, 40:19, 40:22, 40:24, 44:1, 48:22, 49:1, 49:7, 49:9, 53:21, 54:8, 55:6, 55:8, 55:10, 55:12 mumbled ^[1] - 4:24 municipal ^[1] - 49:15	N name ^[5] - 4:7, 4:13, 22:14, 23:12, 49:10 named ^[1] - 57:6 National ^[3] - 26:23, 28:3, 54:23 national ^[1] - 27:5 near ^[1] - 43:14 necessary ^[1] - 41:15 negotiating ^[2] - 35:22, 38:1 negotiation ^[3] - 7:20, 7:21, 32:6 neighbor ^[1] - 23:10 never ^[2] - 15:10, 47:24 new ^[2] - 15:25, 16:1 nice ^[1] - 6:16 NITU ^[19] - 8:6, 8:14, 8:16, 9:3, 9:8, 9:13, 9:14, 9:17, 11:2, 14:19, 24:20, 25:14, 36:18, 41:7, 53:12, 53:25, 54:4, 54:10, 54:15 NITUs ^[1] - 40:9 nobody ^[1] - 25:2 none ^[1] - 36:24 north ^[6] - 12:23, 17:23, 20:20, 25:8, 33:12, 47:1 North ^[2] - 2:3, 2:14 Northern ^[2] - 51:1, 52:4 not.. ^[1] - 54:7 Notary ^[1] - 56:16 nothing ^[5] - 4:3, 12:6, 18:11, 31:16 number ^[2] - 5:3, 36:4 numbered ^[1] - 24:11	O oath ^[1] - 4:2 object ^[6] - 28:2, 29:17, 33:18, 33:21, 53:21, 54:8 objection ^[6] - 8:20, 8:21, 26:16, 27:25, 37:20, 40:19 obviously ^[1] - 41:17 occupy ^[1] - 31:2 occur ^[1] - 8:13 occurred ^[3] - 22:9, 28:8, 30:1 OF ^[5] - 1:13, 2:8, 2:13, 56:10, 57:2 OFFICE ^[1] - 2:8 office ^[1] - 19:6 official ^[3] - 48:2, 48:3, 57:20 one ^[16] - 4:20, 4:24, 5:17, 9:14, 9:16, 12:2, 12:5, 16:4, 19:12, 33:11, 34:14, 37:7, 37:14, 41:24, 47:5, 54:21 ones ^[1] - 4:21 open ^[1] - 32:23 operate ^[3] - 7:9, 18:6, 18:10 operation ^[2] - 18:4, 40:6 operator ^[2] - 7:11, 7:12 opposed ^[3] - 9:9, 15:24, 18:5 organization ^[1] - 15:23 original ^[1] - 9:14 originally ^[1] - 10:8 otherwise ^[1] - 40:23 ourselves ^[1] - 4:12 outside ^[3] - 10:21, 17:7, 37:7 over-rail ^[1] - 29:8 own ^[1] - 23:21 owners ^[2] - 21:6, 43:16 ownership ^[1] - 36:18 P PA ^[1] - 2:8 page ^[4] - 28:16, 44:5, 46:15 Page ^[4] - 3:2, 3:10, 24:11, 29:5	pages ^[1] - 56:2 paid ^[5] - 22:17, 42:1, 51:9, 51:11, 51:12 painless ^[1] - 5:5 Palmer ^[4] - 44:24, 45:13, 48:4, 48:8 paperwork ^[1] - 41:6 paragraph ^[2] - 24:17, 25:10 Parkway ^[1] - 2:3 part ^[6] - 13:7, 24:14, 25:17, 46:11, 51:10, 54:23 participate ^[1] - 48:15 parties ^[6] - 26:9, 38:1, 38:5, 42:20, 57:13, 57:17 partners ^[1] - 25:21 party ^[8] - 9:20, 10:13, 10:25, 24:19, 34:18, 34:19, 35:3, 43:22 passed ^[1] - 32:4 past ^[2] - 36:15, 37:6 pay ^[3] - 19:23, 52:16, 53:8 paying ^[1] - 19:14 payment ^[2] - 50:18, 51:23 pedestrian ^[3] - 35:8, 35:14, 35:17 people ^[3] - 10:1, 38:5, 38:18 per ^[1] - 31:19 perfect ^[1] - 4:23 perhaps ^[1] - 27:7 period ^[3] - 13:13, 52:15, 57:14 personally ^[1] - 36:11 perspective ^[2] - 10:11, 41:19 petition ^[3] - 28:13, 28:15, 44:4 petitioned ^[1] - 11:19 pgs ^[1] - 3:12 phantom ^[2] - 40:17, 40:20 physical ^[3] - 6:23, 33:23, 33:24 physically ^[1] - 36:10 picture ^[1] - 5:6 Pioneer ^[1] - 36:6 place ^[1] - 46:7 plaintiffs ^[2] - 1:7, 4:15 PLAINTIFFS ^[1] - 2:2 Plaintiffs ^[1] - 1:20
--	---	--	---	--	--

KELLEY, YORK & ASSOCIATES, LTD.

Court Reporting with a Difference

(316) 267-8200

(800) 654-8684

plan [2] - 25:17, 25:20 platforms [1] - 42:10 point [12] - 8:2, 9:19, 10:9, 11:4, 16:2, 27:3, 27:7, 33:2, 42:16, 44:17, 51:1, 51:15 portion [18] - 9:1, 10:14, 10:20, 11:5, 23:3, 23:8, 26:13, 38:2, 38:3, 38:6, 43:19, 43:21, 46:12, 52:6, 52:9, 53:13, 53:18, 54:14 position [5] - 47:22, 48:1, 48:2, 48:3, 50:10 possible [1] - 13:18 possibly [6] - 6:21, 12:1, 14:1, 23:7, 25:23, 43:14 posted [1] - 38:16 power [3] - 50:6, 50:13, 50:14 Prairie [2] - 12:1, 36:6 predate [1] - 27:23 prepared [1] - 41:24 presence [2] - 6:24, 33:23 present [2] - 2:18, 20:14 presume [1] - 52:14 prevent [1] - 38:5 previously [1] - 24:5 price [1] - 22:15 private [2] - 38:4, 50:17 privilege [1] - 29:21 privileged [2] - 29:23, 29:24 Procedure [1] - 1:21 procedures [1] - 41:8 process [5] - 8:8, 8:12, 8:13, 10:9 produced [2] - 55:3, 55:5 production [1] - 24:11 professional [1] - 49:16 project [1] - 31:22 pronouncing [1] - 47:12 PROPERTIES [2] - 1:4, 56:23 property [8] - 15:3, 19:16, 19:23, 21:6, 39:11, 41:25, 43:16,	50:17 proposals [1] - 22:10 proposed [1] - 13:14 propounded [1] - 57:8 provided [1] - 24:12 public [3] - 13:4, 18:22, 50:18 Public [1] - 56:16 pulled [2] - 21:12, 42:6 purpose [3] - 7:7, 20:15, 23:5 purposes [2] - 22:24, 23:1 pursuant [2] - 1:20, 54:2 put [13] - 10:1, 22:10, 23:21, 37:17, 42:15, 44:2, 45:15, 46:19, 47:4, 48:4, 48:8, 48:13, 48:16 putting [2] - 21:7, 46:22	36:18, 38:3, 38:13, 38:17, 39:2, 39:10, 39:19, 42:20, 45:15, 51:18, 52:5, 52:6, 52:8, 52:10, 52:14 Rail [4] - 24:16, 26:23, 28:3, 54:24 rail-bank [3] - 6:10, 8:11, 8:12 railbank [2] - 8:18, 9:5 Railroad [1] - 6:24 railroad [18] - 7:8, 7:25, 18:5, 18:6, 18:10, 21:24, 31:6, 35:9, 44:15, 50:22, 51:3, 51:19, 52:17, 52:21, 53:9, 53:13, 53:18, 54:22 railroad-related [1] - 21:24 railroads [1] - 27:9 Rails [10] - 5:21, 11:21, 13:1, 22:24, 37:6, 44:9, 45:1, 45:11, 45:19, 46:18 rails [8] - 21:10, 21:11, 21:18, 21:24, 22:3, 51:17, 52:10, 52:14 railway [1] - 34:25 Railway [2] - 51:2, 52:4 range [1] - 22:21 RAPP [17] - 4:6, 8:24, 24:7, 28:7, 28:10, 34:3, 37:22, 39:3, 39:7, 40:24, 44:1, 48:22, 49:1, 49:7, 53:21, 54:8, 55:10 Rapp [3] - 2:3, 3:4, 4:13 read [8] - 8:24, 9:2, 44:22, 45:4, 45:20, 55:12, 56:1 really [1] - 27:15 reason [3] - 20:8, 29:11, 30:10 received [5] - 28:21, 43:17, 51:23, 53:2, 54:19 recently [1] - 26:2 recess [1] - 48:24 recollection [1] - 30:1 record [5] - 4:8, 8:22, 9:1, 48:6, 57:11 recorded [1] - 56:2 records [1] - 42:9	recreational [4] - 9:22, 39:20, 39:22, 40:7 reduced [1] - 57:9 refer [1] - 30:2 referred [1] - 53:12 reflected [1] - 6:4 reflects [2] - 14:5, 24:13 regard [5] - 5:21, 6:20, 32:8, 40:5, 47:23 regarding [2] - 52:17, 53:9 related [1] - 21:24 relative [2] - 57:16, 57:18 relied [1] - 20:1 remainder [1] - 43:5 remaining [5] - 24:2, 25:18, 26:5, 26:9, 26:13 remember [7] - 9:11, 9:12, 12:4, 22:9, 24:22, 36:19, 40:14 removal [5] - 21:6, 36:10, 36:16, 51:17, 52:13 remove [4] - 9:25, 34:19, 34:20, 35:3 removed [8] - 26:22, 33:11, 34:16, 34:21, 35:1, 36:7, 51:20, 52:10 repeat [1] - 8:23 replace [3] - 35:24, 36:1, 48:5 replacement [1] - 7:25 replacing [1] - 47:17 Report [2] - 29:2, 29:6 Reporter [2] - 1:25, 57:4 reporter [1] - 9:2 REPORTING [1] - 1:22 represent [1] - 49:11 represented [1] - 27:12 representing [2] - 4:15, 30:8 request [4] - 20:5, 21:5, 22:10, 38:14 requested [4] - 9:1, 10:1, 25:10, 57:12 required [2] - 18:3, 41:8 research [2] - 39:13, 42:13	researched [1] - 15:10 respect [2] - 29:19, 29:21 responded [2] - 44:16, 45:17 response [3] - 45:2, 48:6, 57:7 responsibility [7] - 12:19, 17:9, 19:14, 39:19, 40:8, 46:11, 46:13 responsible [10] - 9:20, 10:13, 10:23, 10:25, 12:14, 14:16, 16:5, 34:19, 35:3, 47:17 result [1] - 52:25 resulted [1] - 31:11 retained [1] - 25:11 retains [1] - 43:4 reversed [1] - 8:10 review [1] - 57:12 rider [1] - 39:12 riding [1] - 44:18 right-of-way [14] - 9:25, 11:3, 13:16, 16:5, 23:2, 24:21, 25:3, 31:6, 33:22, 34:1, 39:13, 43:14, 43:15, 50:7 river [5] - 14:17, 34:13, 42:23, 47:2, 47:4 River [22] - 10:18, 10:24, 11:7, 16:17, 16:20, 16:21, 16:23, 17:2, 17:15, 21:1, 30:19, 30:23, 33:14, 33:15, 34:17, 35:23, 36:17, 47:8, 47:18, 53:15, 54:2, 54:11 Road [2] - 2:14, 38:23 road [2] - 33:9, 38:6 roads [1] - 38:11 roadway [1] - 38:9 roadways [1] - 38:10 Rock [1] - 2:14 rules [1] - 4:20 rumors [1] - 36:9
S				
salvage [5] - 22:11, 22:12, 22:18, 51:17, 51:24 salvaged [2] - 21:19, 22:8				

KELLEY, YORK & ASSOCIATES, LTD.

Court Reporting with a Difference

(316) 267-8200

(800) 654-8684

Santa [3] - 38:23, 51:2, 52:4 science [1] - 18:21 se [1] - 31:19 seal [1] - 57:20 searched [2] - 6:2, 6:6 second [1] - 24:17 secure [1] - 19:16 Sedgwick [3] - 11:10, 17:23, 57:21 SEDGWICK [1] - 57:3 Sedgwick/Butler [2] - 12:15, 46:6 see [5] - 6:3, 6:15, 22:4, 29:5, 40:3 seeing [1] - 7:7 seem [1] - 41:18 segment [41] - 10:18, 12:14, 14:16, 14:18, 16:11, 16:15, 16:22, 17:7, 17:10, 17:12, 17:14, 20:17, 20:22, 20:23, 21:3, 21:9, 23:3, 23:19, 24:2, 25:8, 25:11, 25:14, 25:18, 26:5, 26:9, 26:14, 26:15, 27:2, 30:15, 32:18, 38:17, 39:1, 39:3, 39:25, 40:1, 40:13, 42:22, 45:24, 46:1, 46:8, 54:10 segments [5] - 14:15, 25:24, 26:1, 26:3, 43:8 selected [1] - 22:12 sending [1] - 24:22 separate [4] - 15:18, 33:24, 40:10, 40:15 September [1] - 24:23 service [3] - 7:17, 52:5, 52:8 set [3] - 22:23, 22:25, 57:8 several [6] - 10:4, 33:7, 36:6, 41:21, 50:7, 50:8 severed [4] - 33:6, 33:7, 33:9, 33:19 sewer [1] - 19:7 short [2] - 7:11, 7:12 short-line [2] - 7:11, 7:12 shorthand [1] - 57:9 Shorthand [2] - 1:25, 57:4 show [1] - 28:11	showing [1] - 41:10 side [19] - 7:1, 11:6, 11:8, 12:15, 12:20, 12:23, 14:17, 16:22, 17:24, 20:24, 21:1, 25:8, 27:3, 27:14, 30:15, 33:12, 33:14, 41:13, 53:15 sign [3] - 38:21, 39:6, 55:13 signage [2] - 21:7, 38:22 signals [3] - 21:25, 22:6, 22:7 Signature [1] - 3:18 signs [1] - 38:16 similar [1] - 38:10 simple [2] - 40:11, 41:3 simply [2] - 37:4, 40:11 sometime [1] - 15:16 somewhat [1] - 50:19 somewhere [4] - 19:4, 22:19, 22:22, 42:7 sorry [1] - 17:17 sort [6] - 15:23, 36:22, 39:9, 40:4, 42:24, 43:4 south [9] - 14:17, 20:24, 32:13, 35:15, 38:23, 45:8, 46:1, 46:3, 48:17 South [2] - 1:23, 57:25 specialized [1] - 22:12 specific [4] - 12:25, 39:12, 40:20, 47:9 specifically [5] - 6:11, 22:25, 38:23, 39:5, 41:20 spending [1] - 45:19 springtime [1] - 34:12 ss [2] - 56:10, 57:2 St [1] - 2:9 stages [1] - 31:24 started [2] - 5:9, 44:13 starting [1] - 7:22 State [3] - 18:25, 20:2, 57:5 STATE [2] - 56:10, 57:2 state [3] - 4:3, 4:7, 18:10 statement [4] - 9:7, 29:6, 36:20, 42:14	statements [1] - 36:21 States [4] - 52:20, 53:3, 54:5, 54:20 statute [2] - 18:12, 18:14 STB [3] - 8:9, 40:9, 41:9 STB's [1] - 10:11 steel [1] - 21:11 step [1] - 18:16 stepped [1] - 16:4 still [4] - 17:21, 34:1, 37:23, 44:18 stop [1] - 17:3 stoplog [1] - 33:2 stoplogs [2] - 32:22, 32:23 Street [2] - 1:23, 57:25 structure [1] - 35:25 stub [6] - 27:14, 27:15, 28:1, 29:7, 29:15, 29:22 studies [1] - 14:9 stuff [1] - 13:9 submitted [5] - 8:14, 13:7, 27:11, 29:3, 44:25 Subscribed [1] - 56:12 subsequently [1] - 12:18 substituted [1] - 41:11 substitution [2] - 10:12, 41:13 suggested [1] - 36:15 suggestion [1] - 24:14 Suite [5] - 1:23, 2:4, 2:9, 2:15, 57:25 supplied [1] - 9:18 support [1] - 35:7 Surface [7] - 27:12, 28:21, 29:4, 30:12, 54:5, 54:20, 55:1 surprised [1] - 37:13 sworn [3] - 4:2, 56:12, 57:6 System [3] - 26:24, 28:3, 54:24 systems [1] - 42:6	41:25 Tax [1] - 20:2 taxation [1] - 19:13 taxes [1] - 19:14 technical [1] - 27:16 technically [1] - 44:20 term [1] - 27:16 terminated [1] - 16:3 terms [1] - 33:22 TERRENCE [1] - 2:8 Terrence [1] - 2:8 terrence@ huelskamplaw.com [1] - 2:11 testifies [1] - 4:4 testify [1] - 57:7 testimony [4] - 56:2, 57:7, 57:11, 57:12 THE [2] - 1:1, 1:13 themselves [2] - 21:10, 21:11 theory [1] - 30:4 therefore [1] - 29:8 thinking [1] - 12:2 third [5] - 34:18, 38:1, 42:20, 43:22, 44:5 THIRTEENTH [1] - 1:1 threat [1] - 32:24 three [1] - 24:1 throughout [1] - 49:16 Thursday [1] - 1:27 ties [9] - 7:19, 21:11, 21:18, 21:24, 22:4, 26:22, 51:17, 52:9, 52:13 title [6] - 16:10, 17:21, 17:22, 42:24, 43:4, 43:6 titled [1] - 29:2 today [3] - 5:24, 46:9, 49:3 tomorrow [1] - 46:17 topics [1] - 5:18 total [2] - 17:14, 49:18 track [3] - 33:9, 33:23, 33:25 tracks [1] - 26:21 traffic [5] - 10:2, 27:5, 29:9, 38:13, 38:19 Trail [1] - 24:16 trail [23] - 9:22, 9:25, 11:14, 11:16, 11:20, 11:25, 12:7, 12:9, 13:17, 20:18, 23:20,	25:17, 25:20, 25:21, 35:15, 37:18, 39:21, 39:23, 39:25, 40:7, 41:22, 48:12, 48:16 Trails [10] - 5:22, 11:21, 13:1, 22:24, 37:7, 44:9, 45:1, 45:12, 45:19, 46:19 transaction [1] - 51:10 transactions [1] - 53:6 transcript [1] - 57:15 transcription [1] - 57:10 transfer [6] - 7:16, 10:18, 26:6, 41:7, 43:8, 43:12 transferred [1] - 43:16 Transportation [7] - 27:13, 28:21, 29:4, 30:12, 54:5, 54:20, 55:1 Travelers [1] - 12:1 traveling [1] - 38:5 traversed [1] - 36:12 tried [2] - 25:19, 42:14 TRIPLET [1] - 2:13 true [2] - 56:3, 57:10 truth [4] - 4:3, 4:4, 57:7 try [4] - 5:4, 25:16, 42:5, 42:13 trying [2] - 46:6, 50:2 turn [1] - 24:10 turned [2] - 15:2, 47:1 turning [1] - 29:1 two [2] - 4:18, 31:3 type [1] - 17:22
U				
U.S [5] - 17:24, 20:25, 25:9, 47:19, 54:11 undersigned [1] - 56:13 unincorporated [1] - 20:19 United [4] - 52:20, 53:3, 54:5, 54:20 University [1] - 18:25 unsuccessful [1] - 7:24 up [9] - 10:1, 21:7, 21:12, 25:8, 41:4,				

KELLEY, YORK & ASSOCIATES, LTD.

Court Reporting with a Difference

(316) 267-8200

(800) 654-8684

44:24, 45:15, 49:12, 52:1 utility [6] - 13:15, 13:17, 14:13, 14:24, 20:7, 20:11 utilization [1] - 11:19 utilize [1] - 23:19 utilized [3] - 13:17, 23:4, 36:1 utilizes [1] - 23:7 utilizing [1] - 14:23	whole [5] - 4:3, 5:6, 5:10, 5:15, 46:24 wholesale [2] - 13:18, 14:1 Wichita [12] - 1:23, 2:4, 2:10, 2:15, 4:14, 18:25, 19:2, 27:8, 27:10, 37:11, 57:20, 57:26 William [1] - 4:9 WILLIAM [4] - 1:19, 3:3, 4:1, 56:6 within-named [1] - 57:6 Witness [1] - 3:18 witness [3] - 57:6, 57:11, 57:13 WITNESS [1] - 57:20 WOOLF [1] - 2:13 word [2] - 14:9, 41:12 Woydziak [7] - 44:13, 45:10, 45:17, 46:16, 47:11, 47:12, 47:13 Woydziak's [2] - 47:16, 47:20 writing [4] - 23:23, 48:4, 48:9, 57:9 written [4] - 5:20, 5:24, 6:6, 48:11
V	
vehicles [1] - 21:8 vehicular [3] - 10:2, 38:13, 38:19 volunteer [2] - 15:11, 15:22 vote [2] - 47:24, 47:25 vs [1] - 1:8	
W	
waist [1] - 34:8 walk [6] - 33:11, 34:5, 34:7, 34:9, 34:11, 34:13 wants [1] - 45:14 warrant [1] - 14:8 water [5] - 13:19, 14:1, 19:7, 34:9, 34:13 Waterfront [1] - 2:3 wedding [1] - 50:1 week [1] - 47:6 weeks [1] - 49:24 West [1] - 4:11 west [17] - 6:25, 11:6, 11:7, 16:22, 16:23, 20:25, 27:6, 27:14, 30:15, 43:19, 45:8, 46:2, 46:3, 46:5, 53:15, 54:2, 54:13 western [2] - 16:16, 28:1 wet [2] - 34:12, 34:15 whichever [1] - 9:14 Whitewater [22] - 10:18, 10:23, 11:7, 16:17, 16:20, 16:21, 16:23, 17:2, 17:15, 21:1, 30:18, 30:23, 33:14, 33:15, 34:17, 35:23, 36:17, 47:8, 47:18, 53:15, 54:2, 54:11	years [9] - 7:14, 10:4, 21:15, 24:2, 27:20, 30:6, 49:18, 50:8, 52:22
	Y

KELLEY, YORK & ASSOCIATES, LTD.

Court Reporting with a Difference

(316) 267-8200 (800) 654-8684

**BUTLER COUNTY
COUNTY COMMISSION MEETING**

May 12, 2015

TO: Butler County Board of Commissioners

SUBJECT: Andover Augusta Rail Trail initiative, Inc. (AARTI) Redbud Trail Improvement Plan

INITIATED BY: Will Johnson, County Administrator

Recommendations: Consider approval of a Trail Improvement Plan by the Andover Augusta Rail Trail initiative, Inc. (AARTI) for the purpose of improvements related to the future Redbud Trail.

Background: Butler County acquired rail property between Andover and Augusta in 2001 for the purpose of securing a corridor between the two cities for possible utility placement and or possible public trail use. The salvage value of the property was determined to be beneficial and the County designated salvage revenues be utilized to create and economic development fund. The rail property was salvaged in 2004 for approximately \$350,000 and has left vacant and unused since that time. Recently a lawsuit was filed with the Department of Justice (DOJ) for revocation of property ownership back to the adjoining property owners and property owners were compensated for the right-of-way. The County has requested from the Cities of Andover and Augusta their interest in transferring ownership of the property within their city boundaries and the area between the cities. Augusta took ownership of the property within its City limits and the Notice of Interim Trail Use (NITU). The City of Andover took over responsibility of the NITU with the City limits of Andover and the County continues to hold ownership of the right-of-way. The County still holds ownership of the right-of-way and NITU for the area between the two cities.

The County met with the City of Augusta and Andover along with the AARTI group on March 20th to discuss the request from AARTI to enter into an MOU and also request again the cities take over the NITU and ownership of the right-of-way. AARTI came to the Commission meeting the following Tuesday on March 24th and presented an opportunity for the group to acquire grant funds and labor to help improve the trail between the two cities. Part of the grant request required AARTI to enter into an MOU with governmental entities to allow them to work on the right-of-way and support their efforts. AARTI requested on the 24th the Commission place the MOU on the agenda and consider approval. The City of Andover has already entered into an MOU with AARTI and they are requesting a similar agreement with the County. The MOU does not commit the County to funding, but does allow them to begin work on the trail segment located in the County and approved the MOU on March 31st. A draft plan was presented on Tuesday, May 5th and the Commission requested a timeline and funding plan prior to approval of the plan.

Analysis: AARTI has put together an overview of the work to be performed in a plan presented May 5th to the County Commission. The plan breaks down each mile section of rail bed and highlights issues and maintenance that has to be addressed to develop the trail. The trail will be improved with an 8' wide by 6" deep layer of crushed limestone laid over the existing rail bed. Signage will be posted along the trail and at intersections, and bollards and posts will be constructed to prevent vehicular traffic on the trail. A budget and timeline has been included with the plan as requested by the Commission. It identifies \$93,026 in improvements to the trail over a six month period.

**EXHIBIT
F**

Financial Considerations: No fiscal cost to the County.

Legal Considerations: None

Recommended Action: I Commissioner _____ move to approve/deny the plan from the Andover Augusta Rail Trail initiative, Inc. (AARTI) for the purpose of improvements related to the Redbud Trail and allow the group to commence with the improvements.

**BUTLER COUNTY
COUNTY COMMISSION MEETING**

August 11, 2015

TO: Butler County Board of Commissioners

SUBJECT: Andover Augusta Rail Trail initiative, Inc. (AARTI) MOU

INITIATED BY: Will Johnson, County Administrator

Recommendations: Consider tabled approval of a Memorandum of Understanding (MOU) with the Andover Augusta Rail Trail initiative, Inc. (AARTI) for the purpose of improvements from Meadowlark Road to the North side of US400 on the proposed Redbud Trail.

Background: Butler County acquired rail property between Andover and Augusta in 2001 for the purpose of securing a corridor between the two cities for possible utility placement and or possible public trail use. The salvage value of the property was determined to be beneficial and the County designated salvage revenues be utilized to create and economic development fund. The rail property was salvaged in 2004 for approximately \$350,000 and has left vacant and unused since that time. Recently a lawsuit was filed with the Department of Justice (DOJ) for revocation of property ownership back to the adjoining property owners and property owners were compensated for the right-of-way. The County has requested from the Cities of Andover and Augusta their interest in transferring ownership of the property within their city boundaries and the area between the cities. Augusta took ownership of the property within its City limits and the Notice of Interim Trail Use (NITU). The City of Andover took over responsibility of the NITU with the City limits of Andover and the County continues to hold ownership of the right-of-way. The County still holds ownership of the right-of-way and NITU for the area between the two cities.

The County met with the City of Augusta and Andover along with the AARTI group on March 20th to discuss the request from AARTI to enter into an MOU and also request again the cities take over the NITU and ownership of the right-of-way. AARTI came to the Commission meeting the following Tuesday on March 24th and presented an opportunity for the group to acquire grant funds and labor to help improve the trail between the two cities. Part of the grant request required AARTI to enter into an MOU with governmental entities to allow them to work on the right-of-way and support their efforts. AARTI requested on the 24th the Commission place the MOU on the agenda and consider approval. The City of Andover has already entered into an MOU with AARTI and they are requesting a similar agreement with the County. The MOU does not commit the County to funding, but does allow them to begin work on the trail segment located in the County and approved the MOU on March 31st. A draft plan was presented on Tuesday, May 5th and the Commission requested a timeline and funding plan prior to approval of the plan. On June 23rd the Commission on a 3-2 voter requested a draft MOU developed by July 14th for consideration by the Commission to develop the trail from Meadowlark Road to the North side of US 400.

Analysis: AARTI has put together an overview of the work to be performed in a plan presented May 5th to the County Commission. The plan breaks down each mile section of rail bed and highlights issues and maintenance that has to be addressed to develop the trail. The trail will be improved with an 8' wide by 6" deep layer of crushed limestone laid over the existing rail bed. Signage will be posted along the trail and at intersections, and bollards and posts will be constructed to prevent vehicular traffic on the trail. A budget and timeline was included with the plan. It identifies \$93,026 in improvements to the trail over a six month

period. Staff developed the MOU in accordance with K.S.A. 58-3212. In addition to the required statutory requirements the MOU requires a bond or escrow in the amount of \$2,500, placement of no parking for trail use signage at all roadway crossing, requires an access area to include adequate parking for trail users and defines insurance requirements. The plan is in a draft form to allow comments and changes from the Commission. The MOU has been submitted to legal counsel who will be present at the Commission meeting to discuss changes or modifications he feels is necessary.

Financial Considerations: No fiscal cost to the County.

Legal Considerations: The MOU has been reviewed by legal counsel. Estimated legal costs for defense against a case taken to District Court would be \$40K - \$70K and the County would have a \$10K deductible for Insurance. For a claim filed in Federal Court the cost could be \$65K – 100K and the County would also have a \$10K deductible.

Recommended Action: I Commissioner _____ move to approve/deny/modify the MOU with the Andover Augusta Rail Trail initiative, Inc. (AARTI) for the purpose of improvements related to the Redbud Trail from Meadowlark Road to the North side of US 400.

**MEMORANDUM OF UNDERSTANDING
(INTERLOCAL AGREEMENT)
BETWEEN
BUTLER COUNTY, KANSAS,
AND
ANDOVER AUGUSTA RAIL TRAIL INITIATIVE, INC.**

THIS AGREEMENT is made and entered into on this _____ day of _____, 2015, by and between Butler County, Kansas (hereinafter referred to as "County"), and Andover Augusta Rail Trail Initiative, Inc. (hereinafter referred to as "AARTI").

WHEREAS, Butler County has ownership of the railroad easement and all improvements from the city limits of Andover to the Whitewater river in Augusta, and

WHEREAS, AARTI desires to develop a walking and bike trail from Meadowlark Road to the North side of US 400, and

WHEREAS, Butler County and AARTI desire to enter into an agreement for maintenance and upkeep of the right of way in conformance with K.S.A. 58-3212.

WHEREAS, the County and AARTI find it necessary and desirable to set out the details and requirements for each party necessary to complete and maintain the right-of way.

NOW, THEREFORE, IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO, AS FOLLOWS:

Section 1: Purpose and Scope

- (a) The purpose of this Agreement is to provide for a mechanism to allow for the development of a recreational trail from Meadowlark Road to the North side of US 400.
- (b) The scope of this agreement will cover responsibilities of each party to allow for the purpose of this agreement to be achieved.

Section 2: Responsibility of County

- (a) The County will continue to act as the responsible party according to K.S.A. 58-3212.
- (b) The County will grant access to the railroad easement from Meadowlark Road to the North side of US 400 to allow AARTI to develop a recreational trail.
- (c) The County will oversee the work performed by AARTI to ensure compliance with K.S.A. 58-3212.

- (d) The County will assist AARTI as necessary with maintenance of culverts or drainage issues along the right-of-way which warrant repair as defined by the County Engineer.

Section 3: Responsibility of AARTI

- (a) Perform the duties stipulated in K.S.A. 58-3212 to include the following:
 - a. Provide for the safety, use and accessibility of the existing easement.
 - b. Provide for trail-user education and signs regarding trespassing laws and safety along the trail.
 - c. Provide for litter control and the enforcement of laws prohibiting littering along the trail, including but not limited to trail-user education and signs about laws prohibiting littering and the provision of trash receptacles and the cleanup of trash and litter.
 - d. Develop and maintain the trail in a condition that does not create a fire hazard.
 - e. Designate the trail for nonmotorized vehicle use with the exceptions only for motorized wheelchairs and maintenance, law enforcement and emergency vehicles.
 - f. Provide signage prohibiting hunting or trapping on or from the trail.
 - g. Grant easements to adjacent property owners to permit such owners to cross the trail in a reasonable manner consistent with the use of the adjacent property.
 - h. Maintain any existing fencing between the trail and adjacent property and any future fencing installed according to the K.S.A 58-3212 Section 10.
 - i. Maintain the trail and all culverts, roadway intersections and crossing on the trail essential to the reasonable and prudent operations of the trail needed for drainage.
- (b) Follow the procedures defined by K.S.A. 58-3213 for development of the trail.
- (c) Provide for Noxious Weed control by a certified applicator along the trail in accordance to the Kansas Noxious Weed laws.
- (d) Provide for signage at all roadways crossing prohibiting parking for trail use along township roads.
- (e) Provide for an access area to include adequate parking for trail users.
- (f) Provide to the County a Certificate of Insurance for liability insurance with a General Aggregate amount of \$5,000,000 and personal and occurrence limits of \$1,000,000.
- (g) Provide a bond to the County or establish and escrow account with a Kansas Financial Institution payable to the County in the amount of \$2,500.

Section 7: Duration and Effect

- (a) This Agreement shall remain in effect until such time as the easement is abandoned or a new bridge constructed crossing US 400 for pedestrian traffic.

Section 8: General Provisions Agreed To By All Parties:

- (a) This MOU is subject to the laws of the State of Kansas.
- (b) This MOU may not be assigned to any other party, nor the respective rights and duties thereof.
- (c) To act in their individual capacity and not as agents, employees, partners, in a joint venture, or as associated of one another. The employees or agent of one party shall not be deemed or construed to be the employees or agent of the other party for any purpose whatsoever.
- (d) This MOU shall constitute the entire source of authority between the parties and shall control the relationship between the parties, regardless of any other understanding between the parties.
- (e) Certify, by placement of signature to this MOU, that neither they nor any of their principals, subcontractors and suppliers used on this project are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in such an agreement by any Federal or State Department or Agency
- (f) Any party's failure at any time to require strict performance by any of the provisions of this MOU shall not waive or diminish that party's right thereafter to demand strict compliance therewith or with any provision. Waiver of any default shall not waive any other default.
- (g) In the event any of the provisions of this MOU are deemed to be invalid or unenforceable, the same shall be deemed severable from the remainder of the MOU. If such provision shall be deemed invalid due to its scope and breadth, such provision shall be deemed valid to the extent of the scope and breadth permitted by law.
- (h) This MOU may only be amended by written mutual amendment and attached hereof according to the same formalities required of the original execution of this MOU.

- (i) All parties signing this MOU hereby attest to authorization as a signatory for the respective entities involved.
- (j) To permit any party to this MOU, or duly authorized representative thereof, at any time to inspect and audit all work, materials, and other data and records with regard to work under this MOU. Further, the terms of this agreement shall be open to the public, if requested, pursuant to K.S.A. 45-215 *et seq.*

Section 9: Approval by Butler County, Kansas

- (a) This Agreement has been approved by Resolution 15-____ adopted this ____ day of _____ 2015 by the Board of County Commissioners.

Approved: _____
Mike Wheeler, Chairman
Butler County Commission

Attest: _____
Don Engels, County Clerk

Section 10: Approval by the Andover Augusta Rail Initiative, Inc. (AARTI)

- (a) This Agreement has been approved _____ adopted this ____ day of _____ 2015 by the AARTI Board.

Approved: _____
David Levy
President

Attest: _____
AARTI Secretary

Budget & Timeline for Redbud Trail in Butler County

Prepared by Andover Augusta RailTrail Initiative (AARTI)

This information is supplied as a supplement to the presentation presented to Butler County on May 5, 2015.

- > The Redbud Trail between Meadowlark Road and the White Water river is approximately 6 miles in length.
- > AARTI has a 1 for 1 matching grant from Sunflower Foundation for this trail project.
- > Since AARTI has not received the final documentation, we have been asked by the Foundation not to divulge any financial information yet.
- > All funding will be through private donations and grants. No funds are requested from Butler County.

Sunflower Foundation - Trails connect people, promote community, as well as enable and reinforce healthy lifestyles - that's why Sunflower supports trail projects, allocating more than \$250,000 in grant funds - including this one.

<u>Time line for the Redbud Trail</u>	<u>Estimated start date</u>	<u>Estimated completion date</u>	<u>Estimated Cost</u>
Trim and clear trees and growth, spray weeds as needed	Started April 27, 2015	approx - 12 weeks	Free- volunteer labor AmeriCorp
Chipper rental	April 27, 2015	approx - 6 weeks	1600
Ground Breaking Ceremony	June - TBD	1 day	50
Install 2 cattle guards & gates (Meadowlark E & Indianola W)	June 1, 2015	approx - 4 weeks	1800
Deliver, level and roll 6 miles of crushed limestone	June 22, 2015	Grant allows 365 days	85098
Install 16 bollards & post and cable @ intersections	June 22, 2015	365 days	TBD
Purchase & Install Knox locks on Andover's Response section (#377	July 1, 2015	TBD	278
Purchase & Install Knox locks on Butler Cnty's section (#3770)	July 1, 2015	TBD	TBD
AARTI padlocks	July 1, 2015	TBD	400
Install Signage - Mile Markers; Stop Signs	August 15, 2015	approx - 12 weeks	2000
Trail Ribbon Cutting	TBD	1 day	
Trail Party	TBD	1 day	
Install Rules of the Trail (qty 2) and Adopt a Trail Signs (qty 6) (More signs might be installed if we receive additional funds)	October 15, 2015	approx - 8 weeks	800
Build and install Benches along the trail - Boy Scout Eagle	September 2015	2 years	Free - Boy Scout Eagle Project
Maintain the Trail w/ Saturday workday's	On-Going	Monthly	N/A
And Adopt a Trail - Business and Individual's	On-Going	Monthly	N/A
Misc items - postage, concrete, gas for tools, Porta-pots, etc.	On-going		1000
			93026

Because we are still in the process of soliciting bids and quotes for this project, AARTI is unable to provide more detailed information.

Butler County Redbud Trail
Informational Meeting
Butler County Commission Room
May 26, 2015 at 6:30 PM

I. Introduction & Welcome

- a. Jeff Varner, Butler County Farm Bureau
- b. Will Johnson, Butler County Administrator

II. History of the Rail Road Right-of-Way between Augusta & Andover

- a. Will Johnson, Butler County Administrator

III. Proposed Plans for Redbud Trail

- a. David Levy, President Andover Augusta Rail Trail Initiative, Inc (AARTI)

IV. Mike Irvin, Farm Bureau Representative

V. Questions from Landowners and Concerned Parties

- a. Guidelines for Audience – Will Johnson & Jeff Varner
 - i. Keep the meeting civil and professional
 - ii. Try not to repeat a concern that has already been presented
 - iii. Limit comments to three (3) minutes.
 - iv. No clapping, applauding or harassing comments after questions.
 - v. Refrain from side conversations so everyone can hear the questions being asked.
 - vi. Be Polite

VI. Adjournment

Butler County Redbud Trail
Informational Meeting
Butler County Commission Room
May 26, 2015 at 6:30 PM

I. Introduction & Welcome

- a. Jeff Varner, Butler County Farm Bureau
- b. Will Johnson, Butler County Administrator

II. History of the Rail Road Right-of-Way between Augusta & Andover

- a. Will Johnson, Butler County Administrator

III. Proposed Plans for Redbud Trail

- a. David Levy, President Andover Augusta Rail Trail Initiative, Inc (AARTI)

IV. Mike Irvin, Farm Bureau Representative

V. Questions from Landowners and Concerned Parties

- a. Guidelines for Audience – Will Johnson & Jeff Varner
 - i. Keep the meeting civil and professional
 - ii. Try not to repeat a concern that has already been presented
 - iii. Limit comments to three (3) minutes.
 - iv. No clapping, applauding or harassing comments after questions.
 - v. Refrain from side conversations so everyone can hear the questions being asked.
 - vi. Be Polite

VI. Adjournment

BUTLER COUNTY REDBUD TRAIL INFORMATIONAL MEETING
BUTLER COUNTY COMMISSION ROOM
Tuesday, May 26, 2015 - 6:30 PM

If the easement is 100 – 150' and the trail group is responsible for 10', who will be responsible for maintaining the remaining 90 - 140'?

If there is a 2-year time frame to develop the trail, why does AARTI already have access to do it now?

Why was the land not reverted back to the land owners like the rest of the rail did?

Can AARTI perform to the statutes that were presented earlier?

Who will be policing the statutes to assure that they are followed?

Is AARTI financially sound? Do they have the backing to do what they have proposed?

Will the trails be up to date on safety standards?

Will the trails be accessible for the elderly, children, and handicap? Is it wheelchair accessible?

Who will police the littering?

Who is responsible for the safety of the people working on the trail?

Who is responsible for the additional expense of law enforcement to be used on this trail?

What about fencing? What fence type and plan will be used? Do landowners get a say?

Who maintains the fence?

When do the fences have to be in place?

Who is responsible for surveying?

What is the timeframe for fences to be in?

Will the trail open before the fencing is done?

Who will be responsible for building and maintaining culverts, bridges and flood control?

Who determines what types of sprays will be used for noxious weeds?

Is there a Commission approved bond from AARTI with the County?

What insurance does AARTI have in place and what dollar liability?

How will the lead contamination of the rail bed be handled?

On what date were certified letters sent to the landowners with the proposal to the trail?

Who is funding AARTI?

Why were landowners not notified by the County Commissioners?

Was there a request for a Conditional Use Permit (CUP)?

Would it be better for the cities of Augusta and Andover to acquire a shared responsibility of rail land?

Why would a land owner intentionally build on rail land knowing that it could be taken away.

Who will maintain the trail?

Asking County Counsel, who owns the trail?

What are the dimensions of the trail?

Can the rail bank ever be turned back to an overhead railroad?

Does AARTI have proof of the economic benefits that have been talked about?

What about the vehicle traffic at dirt roads where trail users will be crossing?

Will there be noise restrictions for trail users?

What about the cost of installing bridges?

How can something be voted on without knowing the cost?

Has there been some revocation of the NITU by the County?

What will be the boundaries of the "No Hunting" area?

Will the presentation being presented tonight be available to the landowners?

Why is Farm Bureau was against the trails?

If the land goes back to the landowners, what are the responsibilities of the land owners pertaining to water drainage and noxious weed control?

**BUTLER COUNTY REDBUD TRAIL INFORMATIONAL MEETING
CONSTITUENT QUESTIONS**

Tuesday, May 26, 2015 - 6:30 PM

AARTI answers are in red
Butler County answers are in blue
Farm Bureau answers are in purple

1. If the easement is 100 – 150' and the trail group is responsible for 10', who will be responsible for maintaining the remaining 90 - 140'? What about noxious weeds in that area?

The trail itself will be 8' wide but approximately 20' to either side will be maintained to keep the path clear from branches, etc. Spot spraying of weeds will be performed as required to keep down noxious weeds.

The responsible party will be responsible for upkeep of the entire right-of-way.

2. If there is a 2-year time frame to develop the trail, why does AARTI already have access to do it now? Does the 2-year time frame to build the trail start when the signs were put up last year or when the MOU was issued?

Defer answer to Butler County.

The two year time period would start once the County Commission approves the plan submitted by AARTI. AARTI was granted access by the County Commission on May 12th to begin brush clearing with Americore volunteers from Meadowlark to Tawakoni Rd.

3. Why was the land not reverted back to the land owners like the rest of the rail did?

Defer answer to Butler County.

Butler County chose to hold on to the right-of-way at the request of both the cities of Andover and Augusta for future development of a trail.

4. Can AARTI conform & adhere to the statutes that were presented earlier? Who will be policing the statutes to assure that they are followed?

The trail will be constructed and maintained similar to other trails in Kansas. Defer answer on policing to Butler County (We assume it will be Butler County).

Butler County is the responsible party and when they accept a plan by AARTI the County will be responsible to hold AARTI to the statutes.

5. Is AARTI financially sound? Do they have the backing to do what they have proposed?

Yes.

6. Will the trails be up to date on safety standards? What is our assurance that the trails and areas be maintained to adequate safety standards?

From the MOU: Butler County and AARTI agree to work together in the pursuit of

the development of the Redbud Trail to ensure that there is unified and responsive leadership of the Redbud trail project and to demonstrate a commitment to the successful development and improvement of the trail. Past experience with other projects has shown that safety and maintenance are not significant issues. Once the trail is established and interest picks up there is a good supply of volunteers and sponsors for maintenance and upkeep.

7. Will the trails be accessible for the elderly, children, and handicap? Is it wheelchair accessible?
The trail will be constructed and maintained similar to other trails in Kansas. Crushed limestone is the standard surface used on most all trails. For example the, the 240 mile Katy trail in Missouri is crushed limestone. Elderly, children and physically challenged individuals should all be able to use the trail.
8. Who will police the littering? Who will be responsible to the picking up & removal of litter?
AARTI is currently doing litter pickup in selected areas. We will continue to sponsor workdays to keep the trail clean. Past trails have shown trash dumping decreases. Many trail users will pick up trash as they are walking.
9. Who is responsible for the safety of the people working on the trail and volunteering for the trail?
Volunteers always assume some of their own risk. AARTI maintains a liability insurance policy in case of injury.
10. Who is responsible for the personal safety of those using the trail?
Users always assume some of their own risk. AARTI maintains a liability insurance policy in case of injury.
11. How many people will use the trail daily? Where will those people be coming from? How do you know this?
There is already some usage but the exact number is not known. It is expected that usage will start at a low level but that interest will pick up as the trail becomes more established.
12. Who is responsible for the additional expense of extra law enforcement to cover these extra patrol miles? How does the Sheriff's Department view this plan?
Defer answer to Butler County.

There will be no additional expense for law enforcement. We have spoken with other local Sheriff's Departments with trails and they have seen no additional cost or criminal activity associated with trails.
13. Who will be responsible for putting in the fence? What type of fence? Who determines the type of fencing? Do landowners get a say?
The "Responsible Party" is defined in KSA 58-3211 and currently is Butler

County. Fencing is covered in KSA 58-3212. New fencing is split 50-50 between the Responsible Party and the Adjacent Property Owner. AARTI is prepared to help reimburse the portion of fencing costs for Butler County.

14. Who will have to fix & maintain the fence? Who pays for the initial fencing & the subsequent supplies & repairs?
Existing fencing is maintained by the Responsible Party. AARTI is prepared to help maintain fencing.
15. When time frame would the fences have to be in place?
Fences will be installed around the same time as the improvement plan is being implemented.
16. Who has to pay for the property surveys prior to the fence building?
The Right of Way boundary is well defined and surveys should not be needed. AARTI will meet with adjacent Property Owners to determine fence locations that are mutually acceptable.
17. Will the trail be allowed to open prior to all fencing in place?
The trail will not officially open until fencing is in place. The trail is currently being used now by bikers, walkers, and riders.
18. Who is financially responsible for building and maintaining culverts, bridges and flood control?
Funding for new bridges over Hwy 400 and Whitewater River has yet to be determined. We expect this to be a combination of private donations, grants, and State funding. The current infrastructure will be maintained by AARTI at or better than their current condition. Existing issues with culverts and drainage should be the responsibility of Butler county and not AARTI.
19. Who determines what to treat with & when to apply noxious weed spray? Who is financially responsible for overspray on adjacent land &/or runoff?
AARTI will spot spray weeds as required. Overspray and runoff will be controlled.
20. Is there a Commission approved bond from AARTI with the County? If so, how much, has it been submitted to the Commissioners for confirmation?
AARTI does not yet have a bond. We need to agree on an amount with Butler County. This is typically an amount equal to one years' maintenance. Prairie Travelers has an escrow account with Sedgwick County for \$2500. We would propose something similar.
21. What insurance does AARTI have in place and for what level of dollar amount of liability? Have those policies been confirmed as in affect by the Commissioners?
Liability Insurance is in place with general aggregate of \$5,000,000 and a limit of \$1,000,000/occurrence. A copy has been provided to Butler County.

22. Since not all funds for the project are currently in place, what is the Commissioners' assurance that adequate funding will be raised not only for the initial construction, but for the permanent maintenance of the trail & surrounding area?
Funding for all the rail bed crushed limestone has been secured. AARTI will continue to raise funds through private donations and grants. Given the initial level of interest and past experience with other projects we expect a steady stream of funding to continue. We also anticipate sufficient volunteer labor for ongoing maintenance.
23. How will the lead contamination of the rail bed be dealt with & disposed? Who will pay for all of this expense? How much will that cost?
The limestone will be laid over the existing railbed and the lead will not be disturbed.
24. On what date were certified letters sent to the landowners regarding the proposal to this trail prior to AARTI beginning on the land? What were the dates it was publicized and in what paper?
KSA 58-3213 states that notice may be sent via first class mail. Notice was sent on or about April 22, 2015. The notice has not been published in a newspaper.
25. Where is AARTI receiving their funding?
AARTI Funding has been received through a combination of private donations and grants. Financial statements are available upon request as required by law.
26. Why were we the landowners not notified by the County Commissioners?
With the consent of Butler County, AARTI took the lead and sent out notices to landowners.
27. Was there a request for a Conditional Use Permit (CUP)?
No, a Conditional Use is not required.
28. Would it be better for the cities of Augusta and Andover to acquire a shared responsibility of the trail?
There are pros and cons to this approach. AARTI is willing to assist with development of the trail for Butler County, Andover and Augusta.
29. Why would a land owner intentionally build on rail land knowing it is an easement and that it could be taken away?
This is not for AARTI to answer.
30. Who will maintain the trail?
AARTI is currently doing litter pickup in selected areas. We will continue to sponsor workdays to keep the trail clean. Past experience with other trails is that groups will step up to help maintain sections of the trail as well.

31. Who is responsible for fixing a culvert and other water issues that has been an ongoing issue for many years along the rail bank?
Fixing major drainage issues is not part of AARTI's plan. Defer answer to Butler County.
- Butler County would be responsible for drainage issues along the trail that we determine are creating a problem or need addressed.
32. (Addressing County Counsel) Does Butler County actually own the rail property and fee?
Defer answer to Butler County.
- Butler County owns the right of way through a quit claim deed granted to the County from BNSF.
33. What is the legal width of the trail?
Defer the legal definition to Butler County. It is generally accepted that the trail right of way is 100' wide. The actual trail itself will be 8' wide.
- The right-of-way is generally 100' wide in the unincorporated area.
34. Does AARTI or Butler County have the environmental study that is required by the NITU?
AARTI has not performed an environmental assessment. The limestone will be laid over the existing railbed and the lead will not be disturbed.
35. Can the rail bank ever be turned back to an overhead railroad?
We don't have the means to assess that.
- As long as the right-of-way exists the potential for an active railroad exists, which was the intention of rail banking.
36. Does AARTI have proof of the economic benefits that have been talked about?
No. Our assertions are based on past experience.
37. What about the vehicle traffic at dirt roads where trail users will be crossing?
Trail users will use the same caution crossing roads as they do in the city.
38. Will there be noise restrictions for trail users?
The same noise restrictions that exist in the county will apply.
39. Will there be restroom facilities on the trail?
There will be restrooms at the trailheads in Andover and Augusta.
40. Will there be enforcements to assure that trail users, use the restroom facilities and not the outdoors?
AARTI does not have the means to enforce that.

It will be enforced the same as with any other laws in the County.

41. Are the plans to end at Augusta or continue east of Augusta?
The ROW east of Augusta is not railbanked so the trail will end in Augusta.
42. Why was the land on the west side of Augusta not reverted back to the land owners as was done on the east side of Augusta?
Defer answer to Butler County.

Butler County chose to hold on the right-of-way at the request of both the cities of Andover and Augusta for future development of a trail.
43. What does the County really benefit from this trail?
The primary benefit is to quality of life for the trail users, but there are multiple other benefits as present to the BCC.
44. What kind of experience is this going to be for the taxpayers in Butler County?
See question number 43.
45. How much will it cost to install the bridge back over Kellogg?
Costs and funding for a new bridge over Hwy 400 has yet to be determined. We expect this to be a combination of private donations, grants, and State funding.
46. What are the unknowns, of this project, that the Commission faces and how do you get people to begin to know those things?
AARTI has experience with other trail development projects and there are relatively few unknowns.
47. How can something be voted on without knowing the cost?
AARTI has raised the needed funds for the project. There is no request for funding from Butler County.
48. Has there been a revocation of the NITU by the County?
Defer answer to Butler County.

No
49. What will the boundaries be for the "No Hunting" area?
There is no hunting within the ROW.
50. Will there be concrete figures before the trail moves forward?
AARTI believes the budget is well enough defined for the project to move forward.

51. Where is the trail going to be within the 100'?

The trail will follow the existing railbed, which is approximately at the center of the 100' ROW.

52. Will the presentation being presented tonight be available to the landowners?

Defer answer to Butler County.

Yes

53. Why is the Farm Bureau against the trails?

Butler County Farm Bureau Association and Kansas Farm Bureau are not usually involved in trail development. The County Board became aware of the issue when a Butler County Farm Bureau Association Member reached out for help to better understand what was happening with regard to the proposed trail. BCFB is in support of landowners being informed about their property ownership rights. That has been, and continues to be, BCFB and KFB's stance and involvement with this proposed project.

54. If the land goes back to the landowners, what are the responsibilities of the land owners pertaining to water drainage and noxious weed control?

Defer answer to Butler County.

If the land reverted back the responsibility for any maintenance issues would be the landowners.

55. What prompted the Farm Bureau to get involved?

Butler Co. Farm Bureau (BCFB) was approached by several landowners inquiring about the development of a trail project in Butler County. The landowners had seen something on the Butler County Commissioners (BCC) agenda in the local newspaper, but had very little information about the trail project. Therefore, BCFB became involved to insure that members/landowners were aware of the all of the activities surrounding the trail project and its development.

56. How many proposed trails has the Farm Bureau been involved with that have been successfully developed?

Butler County Farm Bureau and Kansas Farm Bureau (KFB) are not usually involved in trail development.

57. How many proposed trails has the Farm Bureau been involved with that have not been successfully developed?

As stated above, Butler County Farm Bureau and Kansas Farm Bureau (KFB) are not usually involved in trail development.

58. Did the BCC know the Farm Bureau would be represented by legal counsel at this meeting ahead of time?

We are without sufficient information to answer what the BCC knew ahead of the meeting. However, Mr. Will Johnson and Mr. David Alfaro had lunch with members of the BCFB and Mike Irvin, KFB, on May 20, 2015 to discuss the trail development. The parties discussed and agreed that landowners needed to be involved in the discussions before any decisions were made by the BCC, regarding the trail project. In addition, the parties agreed that it would be in everyone's interest to host a separate meeting so that landowners could attend and learn more about the proposed trail development.

59. Did the BCC know the Farm Bureau attorney would be presenting at this meeting ahead of time?

Yes, the BCC knew that KFB would be providing a presentation ahead of time. In fact, Will Johnson, BC County Administrator, specifically called Mike Irvin KFB staff attorney ahead of time and requested that he be present for the public meeting on May 26, 2015. Mr. Johnson was fully aware that Mike Irvin would be providing a PowerPoint presentation at the public meeting.

60. Will we be able to get an electronic copy of all PowerPoint presentations?

Yes, they are available online at www.bucoks.com

61. What will happen at section line roads where trails may be entered? Will there be parking areas or will cars be parking along the side of the road?

Parking will need to be addressed in the plan so that cars are not parked on the sides of roads impeding traffic. Trailheads will be developed in Andover and Augusta with adequate parking. Future parking areas may need to be developed in the unincorporated areas, which provide off street parking.

62. What access will private property owners have to the trail off of their own property?

Private property owners will have access to the trail off their own property for trail use purposes.

63. Right now there may be interest with the Trail group about funding & maintaining, but what happens in 15 or 20 years when the fad is over & funding has dried up? Who will have the duty to maintain & insure at that time?

If the County still owns the right-of-way at that time a decision will have to be made to maintain it themselves, find another volunteer group to maintain it or allow the right-of-way to revert back to adjacent property owners.

64. Whose duty was it to give the Landowners their notice, Butler County of AARTI?

See questions 24 & 26.

ADM - Will Johnson

From: Prairie Travelers <prairietravelers@yahoo.com>
Sent: Friday, February 27, 2015 8:45 PM
To: ADM - Will Johnson; COM - Mike Wheeler; CDV - David Alfaro; PWK - Darryl Lutz
Subject: Fundraiser for the RedBud Trail
Attachments: sponsorship 2015 (1).pdf; AARTI flier (1).pdf; Opportunity of a Lifetime (2).docx

Dear Mr Johnson, Mr Wheeler, Mr Alfaro & Mr Lutz,

This winter has brought the possibility of having all of our dreams a reality of completing as much as possible the **Redbud trail** between Andover and Augusta. We have the potential for AmeriCorps NCCC volunteers for 13 weeks and a \$55,000 matching 1:1 grant from Sunflower Foundation. So instead of dragging it out over a few years we may have it completed (except for the pedestrian bridge over Kellogg) by summer's end. Attached are the on line forms for sharing if you would be so inclined as we are still scrambling trying to fund raise.

As part of the Sunflower Foundation Grant we also need some **letters of support** for the trail. We would be honored if a few of you could e-mail a letter of support to AARTI at aartitrail@gmail.com. Our grant is due March 11, so we are asking for the letters by the end of this week to make sure we have all in order.

Best regards & we so appreciate your support,

Ruth Holliday, Sec
Prairie Travelers
Board member both PT & AARTI
316-685-4545 (work)
316-641-4030 (cell)

03/17/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND, OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

INS. C:

CERT NUMBER: 1001214407

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOT WITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS									
---	--	--	--	--	--	--	--	--	--

- Coverage is not provided for special events unless those events are first scheduled and approved by the insurer and appropriate premium is paid. Special events are any ride for which a participation fee is charged (certain exceptions may apply). Club insurance must be in place before special event coverage can be purchased.
- Notable Exclusions: Racing. Time trials involving racing between individuals (a covered time trial is an individual timing activity). Commercially-operated tours. Commercial bicycle repair shops. Bicycle rental programs. Construction or engineering of bicycle trails or paths. Organizing or supervising a program that involves the regular transportation of minors to and from school. Activities involving E-bikes, mopeds, or any other vehicle with manual power source.
- Coverage applies to bicycle-related activities conducted and supervised by the insured organization. Coverage does not apply to bicycle education courses (as defined in the policy) or bicycle refurbishment unless otherwise indicated herein. Coverage applies to ANDOVER AUGUSTA RAIL TRAIL INITIATIVE, INC. from March 17, 2015 through January 31, 2016.

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Drew Smith

BUCO000054

Rail to Trail



September 3, 2015

Andover City Hall
Attn: Mayor Ben Lawrence
1609 E. Central, PO Box 295
Andover, KS 67002

Andover Augusta Rail Trail Initiative
Attn: David Levy
PO Box 692
Andover, KS 67002

Dear Mayor Lawrence & Mr. Levy,

As you are most likely aware the County Commission on August 25th, 2015 voted 3-2 to direct staff to transfer the north portion of the rail road right-of-way from US 400 to Meadowlark to either the City of Andover or AARTI. The following is a copy of the approved motion:

Commissioner Woydziak made a supplicant motion to direct staff to contact the Surface Transportation Board (STB) to transfer the Notice of Interim Trail Use (NITU) to the City of Andover or the Andover Augusta Rail Trail Initiative (AARTI) north of HWY 400 and to retain the NITU south of HWY 400 until the bridge over HWY 400 and the bridge over the Whitewater River are constructed. Commissioner Masterson seconded the motion. Motion carried 3-2. Commissioner Palmer and Commissioner Myers were opposed.

The intent of the County Commission is to first give the City of Andover the opportunity to acquire the NITU and if the City is not interested to transfer the property to AARTI group. If neither party is interested in acquiring the NITU, then the County would fully abandon the right-of-way. Should either party decide to acquire the NITU, the County would maintain the NITU south of US 400 to the Whitewater river.

The County Commission has asked for both parties to notify the County of their intentions either to acquire the NITU or not acquire the NITU by September 30th, 2015. Should you have any questions, please feel free to contact me.

Sincerely,



William H. Johnson
Butler County Administrator

cc: County Commission
Mark Detter, Andover City Administrator

William H. Johnson, Jr., County Administrator

Butler County Courthouse, 205 W. Central, El Dorado, Kansas 67042 • 316-322-4300

BUCO000057



Rail Road

January 13, 2011

Bill Keefer, City Manager
City of Augusta
113 E. 6th, Avenue
Augusta, KS 67010

RE: Rail Road Property

Dear Mr. Keefer,

Butler County is in receipt of the City of Augusta's request to assume ownership of the rail property currently located in Augusta and owned by Butler County. The Commission discussed the City of Augusta's request at their meeting on December 21, 2010 prior to receiving the official letter from the City. The Commission is fully supportive of transforming the property to the City of Augusta by Quit Claim Deed once a survey is completed by the City. Upon completion of the survey and drafting of a legal description, the Commission will take official action to transfer the property to the City of Augusta.

In your letter, you requested to meet with both the City of Andover and Butler County to discuss the future of the rail property located between Augusta and Andover. The Commission is fully supportive of transferring those rights to both cities and is ready to discuss how we can make this possible. I will send out a meeting request immediately to both you and the Sasha Stiles, City Administrator of Andover requesting some dates in the future to meet with both Mayors and County Commissioners representing each district. Should you have any questions or concerns please don't hesitate to contact my office at anytime to discuss.

Sincerely,

A handwritten signature in black ink, appearing to read "William H. Johnson, Jr.", written over a horizontal line.

William H. Johnson, Jr.
Butler County Administrator

CC: County Commission
David Alfaro, Director of Economic Development

William H. Johnson, Jr., County Administrator

R.R.

The City of
ANDOVER
in Butler County

909 N. Andover Road, P.O. Box 295
Andover, Kansas 67002

Phone (316) 733-1303
Fax (316) 733-4634

April 10, 2008

Butler Co. Commissioners
205 W Central Ave.
El Dorado, KS 67042

Dear Property Owners,

The City of Andover is considering a potential rails to trails project that would create a hike/bike path along the abandoned Burlington Northern Santa Fe rail corridor in Andover. City Council is interested in hearing input from residents adjacent to the rail corridor. The Governing Body will be conducting an informational meeting regarding the rail corridor at their next Workshop Meeting. This meeting will be held Monday April 28th, 7:00 pm at City Hall located at 909 N. Andover Road. Please feel free to attend this meeting and express your views regarding this potential project. Thank you for your attention to this matter.

Sincerely,



Jeffrey K. Bridges, Jr.
City Clerk/Administrator

Rail Road

PROJECT NO. 54-8 KA-2212-01
RAILROAD BRIDGE REMOVAL
BUTLER COUNTY, KANSAS

Agreement No. 124-13

AGREEMENT

THIS AGREEMENT is made and entered into effective the date signed by the Secretary or designee, by and between Butler County, Kansas (the "County") and Michael S. King, Secretary of Transportation, Kansas Department of Transportation (KDOT) (the "Secretary"), collectively referred to as the "Parties."

RECITALS:

- A. The County owns a certain railroad easement which extends from the city limits of Andover, Kansas to the Whitewater River in Augusta, Kansas.
- B. The Secretary has authorized KDOT Project No. 54-8 KA-2212-01, a surface overlay maintenance project on US-54/US-400 from the Butler County line to Augusta, Kansas (the "Project").
- C. The County owns a certain railroad bridge with limited clearance that spans US-54/US-400 within the Project limits, more specifically identified in Exhibit A, which is attached to this Agreement and incorporated by this reference.
- D. The Secretary desires to remove the County's railroad bridge in order to have proper clearance for the US-54/US-400 roadway upon Project completion.
- E. The County and the Secretary desire to enter into this Agreement regarding the removal of the County's railroad bridge and to initiate a cooperative process for development of a future multi-party project, which will include construction of a pedestrian bridge at or in the vicinity of the location of the railroad bridge to be removed as part of the contemplated rail-to-trail project, as further described in this Agreement.
- F. The Secretary and the County are empowered by the laws of Kansas to enter into agreements for the construction and maintenance of the State Highway System.

NOW, THEREFORE, in consideration of these premises and the mutual covenants set forth herein, the Parties agree to the following terms and provisions.

ARTICLE I

DEFINITIONS: The following terms as used in this Agreement have the designated meanings:

1. "Agreement" means this written document, including all attachments and exhibits, evidencing the legally binding terms and conditions of the agreement between the Parties.

2. **"County"** means the County of Butler, Kansas, with its principal place of business located at 121 S Gordy Street, Suite 200, El Dorado, KS 67042.
3. **"Effective Date"** means the date this Agreement is signed by the Secretary or Secretary's designee.
4. **"KDOT"** means the Kansas Department of Transportation, an agency of the state of Kansas, with its principal place of business located at 700 SW Harrison Street, Topeka, KS 66603-3745.
5. **"Parties"** means the Secretary of Transportation and KDOT, individually and collectively and Butler County, Kansas.
6. **"Secretary"** means Michael S. King, in his official capacity as Secretary of Transportation of the state of Kansas, and his successors.

ARTICLE II

COUNTY RESPONSIBILITIES:

1. **Railroad Bridge Removal.** The County warrants and represents that it is the owner of the railroad bridge located within the Project limits, as shown in Exhibit A. By execution of this Agreement, the County authorizes the Secretary to remove and dispose of the railroad bridge and abutments as part of KDOT Project No. 54-8 KA-2212-01.
2. **Temporary Easement.** The County will grant the Secretary temporary access to the railroad easement, as identified in the Project design plans, so that the Secretary may initiate, maintain, and operate at a temporary construction site for removal of the railroad bridge. The County agrees to execute any related agreements, permits, or approvals the County requires to permit the Secretary's temporary access to that railroad easement and bridge location.
3. **County Participation.** The County will assist in the planning process for the contemplated rail-to-trail project, will cooperate with use of the railroad easement for such project, and will participate in the construction and development costs for such project, to the extent permitted by County fund appropriations in support of such project.
4. **County Authorization.** The County will adopt all necessary ordinances and/or resolutions and take such legal or administrative steps as may be required to give full effect to the terms of this Agreement.

ARTICLE III

SPECIAL CONDITIONS:

1. **Rail-to-Trail Project.** The County and other partners, contemplate developing a rail-to-trail project, to be located along the County's railroad easement. In conjunction with the

contemplated rail-to-trail project, the County may request financial assistance from the Secretary to construct a pedestrian bridge located at or in the vicinity of the former railroad bridge location over US-54/US-400 at such time as local funding exists for design and construction of the trail system from Tawakoni Road to Santa Fe Lake Road. The request will be made in accordance with any KDOT policies and application procedures for state or federally funded programs, as applicable.

2. **Funding Limitations.** The County agrees and acknowledges that funding requests to the Secretary are not guaranteed to be approved; however, if submitted within ten (10) years from the Effective Date, the Secretary will make good faith efforts to provide for partial funding of the proposed pedestrian bridge as funding becomes available for priority projects. Notwithstanding the foregoing, in no event will the Secretary's share of funding for the proposed pedestrian bridge exceed eighty percent (80%) of the actual costs of construction and construction engineering costs for the proposed project.

ARTICLE IV

SECRETARY RESPONSIBILITIES:

1. **Railroad Bridge Removal.** The Secretary will remove and dispose of the County's railroad bridge and abutments at the Secretary's expense and in accordance with Project specifications and design plans, following the Secretary's receipt of any further County authorizations, permits, or approvals required to grant the Secretary temporary access to the railroad easement and bridge location.

2. **Financial Obligation.** Subject to the provisions stated in Article III, the Secretary shall make good faith efforts to program eligible state or federal funding to assist in the actual costs to construct the proposed pedestrian bridge element of the contemplated rail-to-trail project.

ARTICLE V

GENERAL PROVISIONS:

1. **Civil Rights Act.** The "Special Attachment No. 1," pertaining to the implementation of the Civil Rights Act of 1964, is attached and made a part of this Agreement.

2. **Contractual Provisions.** The provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12) which is attached hereto, are hereby incorporated into this Agreement and made a part thereof.

3. **Headings.** All headings in this Agreement have been included for convenience of reference only and are not be deemed to control or affect the meaning or construction or the provisions herein.

4. **Binding Agreement.** This Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon Secretary and the County and their successors in office.

5. **No Third Party Beneficiaries.** No third party beneficiaries are intended to be created by this Agreement and nothing in this Agreement authorizes third parties to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

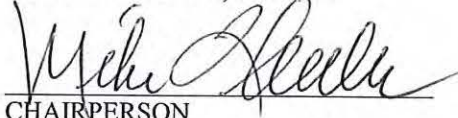
IN WITNESS WHEREOF the Parties have caused this Agreement to be signed by their duly authorized officers as of the Effective Date.

ATTEST:


COUNTY CLERK
(SEAL)



BUTLER COUNTY, KANSAS

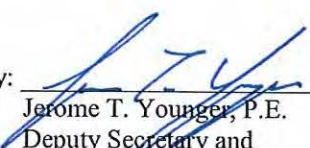

CHAIRPERSON

MEMBER

MEMBER

Kansas Department of Transportation
Michael S. King, Secretary of Transportation

By:


Jerome T. Younger, P.E.
Deputy Secretary and
State Transportation Engineer

9/2/14
(Date)



Redbud Trail Plan in Butler County

Overview: Project is approximately 6 miles of trail from Meadowlark Rd on the west to Whitewater River on the East. It is more or less divided evenly by Kellogg Rd. The trail will be improved with an 8' wide by 6" deep layer of crushed limestone laid over the existing railbed. Bollards and posts will be placed at all road intersections to discourage motor vehicle access. As used here, a typical "bollard" installation will include a single removable bollard in the center and 3-5 posts on either side that will be connected by a cable. Post spacing is about 4 feet. Additional features will include mile markers and major road crossings will have "stop" and "no motor vehicle" signs.



Exhibit "R"

EXCERPT OF MINUTES OF A MEETING
OF THE BOARD OF COUNTY COMMISSIONERS OF
BUTLER COUNTY, KANSAS
HELD ON MAY 17, 2016

The Board of County Commissioners of Butler County, Kansas met in regular session at the County Courthouse in El Dorado, Kansas at 9:00 a.m.; the following members being present and participating: Woydziak, Myers, Masterson, Palmer, and Wheeler. Chairman Masterson called the meeting to order.

(Other Proceedings)

(01:13:32)

ITEM #4 – RECEIVE THE CITY OF AUGUSTA AND CITY OF ANDOVER TO DISCUSS PARTICIPATION IN RECRUITMENT OF A BUSINESS PROSPECT

Will Johnson, County Administrator, introduced the Mayor of the City of Andover, Ben Lawrence, to the Board for the discussion to participate in the recruitment of a business to Butler County. Andover has been working with the current Wichita company, Epic Sports, for possible relocation to a parcel on the north side of SW HWY 54 just west of the Augusta Airport. Relocating to Butler County brings employment numbers near 300 as well as gas and sewer utilities to surrounding areas of said location, including the Augusta Airport. The City of Andover plans to island annex the parcel into their city limits along with any zoning requirements. They would also be able to offer and Industrial Revenue Bonds (IRB) for tax abatements. Mr. Lawrence noted an interest from other agencies for the support of growth in the area. A Community Development Block Grant (CDBG) from the State of Kansas is also being applied towards the endeavor. Butler County offers assets that are attractive to Epic Sports. With that, Andover is requesting participation from the County through the use of Economic Development funds. Butler County Community Development and Planning and Zoning Director David Alfaro was present and noted that the County's Railroad Fund had an approximate balance of \$500,000 to use towards economic development ventures. (There is no obligation to use these funds for any type of Rails-to-Trails project.) Participation to recruit Epic Sports could be a 3-way interlocal agreement between the City of Andover, the City of Augusta, and Butler County. Andover City Administrator Mark Deter was also present in support of the project. Augusta City Manager Josh Shaw approached the Board stating the benefits that utilities would bring to the airport. Businesses such as restaurants, flight training companies, and industrial businesses, have shown interest to locate near the airport. But with the lack of utility amenities, it hasn't been possible. The Augusta Airport is the 5th largest of its kind in the State. A list of 50+ is waiting for hanger space. Sewer utilities would be supported from a main location at Harry St. and 159th St. Kansas Gas Service would route services east from Andover. The County's Western Tag Office located at the airport will also benefit from these utilities. Following discussion, the consensus of the Board was to support the recruitment of Epic Sports to Butler County. Commissioner Palmer requested that Butler County's financial portion to the project be used towards utility improvement. Augusta City Mayor Matt Childers approached the Board noting that the governing body of Augusta is 100% supportive and willing to partner with the City of Andover noting that the area between the two towns has been a potential industrial sight for many years.

No action was taken.

(Other Proceedings)



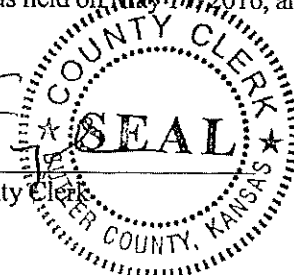
(02:21:03)

ADJOURNMENT

Commissioner Woydziak motioned to adjourn the meeting of the Board at 12:01 p.m. Commissioner Wheeler seconded the motion. Motion carried 5-0.

I hereby certify that the foregoing Excerpt of Minutes is a true and correct excerpt of the proceedings of the Board of County Commissioners of Butler County, Kansas held on ~~May 17~~, 2016, and that the official minutes of such proceedings are on file in my office.


Don Engels, County Clerk



**VERBATIM DISCUSSION DURING A MEETING
OF THE BOARD OF COUNTY COMMISSIONERS OF
BUTLER COUNTY, KANSAS
HELD ON MAY 17, 2016**

The following discussion took place during Item #4 of the Butler County Commission meeting on May 17, 2016.

Verbatim from the Commission meeting on 5/17/16

(01:55:23)

Commissioner Woydziak:

My question is how much do we have in the Rail Road Fund?

David Alfaro:

Currently we have right at \$545,000, almost \$546,000. At this point in time, we are still riding that 150,000 to BG but I think there is some discussion about closing that out. So technically, we have \$500,000

Commissioner Palmer:

Have you committed that amount to anything regarding Rails to Trails?

Administrator Johnson:

We're out of that business.

Palmer:

Excuse me?

Johnson:

We're out of it.

Woydziak:

We're not financing anything to do with Rails to Trails.

Palmer:

The Federal Government wants to make sure that the bridge can be put back up there to keep it to rail banking.

Woydziak:

We're not. We made that abundant and clear. We are not spending any money on Rails to Trails.

Commissioner Masterson:

That is a separate and unrelated issue.

Woydziak:

If they come to us tomorrow and say that Butler County, to keep in the Rails to Trails business, you will put in a bridge. Then I am assuming that this Commission would say abandonment because we have said we are not putting bridges back in. We've said that consistently. We've said, I think as a whole, as a Board, if it comes to that, we are out of the business. We have turned over 400 north to Andover. Augusta has from the river back to their city limits. They don't have any money to put a bridge over the river and that is the expensive one because that keeps growing by the day, especially after this week.

Palmer:

The only thing I am saying is I have tried to clarify this for months.

Johnson:

We have no other monies committed other than the BG project that is probably 10 years old for employee relocation incentives that we're trying to close out.

Alfaro:
We've used maybe, and this is on the high end, maybe \$10,000.

Johnson:
We've committed \$150,000.

Palmer:
So will you put that in writing that we are not going to replace that bridge?

Johnson:
It's on record.

Palmer:
I haven't seen it.

Masterson:
I don't know where you're getting that.

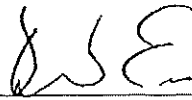
Palmer:
It's important if you understand the Federal Law in rail banking.

Conversation:
That is something we need to come back to. That's a whole other ball game.

Masterson:
That is a separate issue, no dollars in the Economic Development funds are submitted to a trail project.

(01:58:02)
End of the written verbatim narrative recorded per Commissioner Palmer. The complete meeting is recorded (audio) and kept in the County Clerk's office.

I hereby certify that the foregoing record of the meeting discussion is a true and correct record of the proceeding of the Board of County Commissioners of Butler County, Kansas held on May 17, 2016, and that the official minutes of such proceedings are on file in my office.


Don Engels, County Clerk



Attachment "A" Information request

1. Please provide a copy of the sale/transfer document between the County and the City of Andover, or state that the document does not exist
2. Please a copy of the Trail Use/Rail Banking Agreement between the County and BCED, or state that the document does not exist
3. Please copies of the project plans and date received, submitted to the County Commission for approval, or state that the document does not exist.
 - a. BCED
 - b. Andover
4. Please provide a certified transcript of the County Commission Meeting of May 17, 2016, when the Commissioners made clear their intent not to spend money to maintain the corridor

EXHIBIT D

Butler County Environmental and Historic Report

211113

BALL JANIK LLP

A T T O R N E Y S

1455 F STREET, NW, SUITE 225
WASHINGTON, D.C. 20005

www.balljanik.com

TELEPHONE 202-638-3307
FACSIMILE 202-783-6947

KARL MORELL

kmorell@bjllp.com

May 26, 2004

BY HAND DELIVERY

Victoria Rutson
Chief
Section of Environmental Analysis
Surface Transportation Board
1925 K Street, N.W. - Room 504
Washington, DC 20423

ENTERED
Office of Proceedings

MAY 26 2004

Part of
Public Record

Re: STB Docket No. AB-870^X, Butler County, KS -- Abandonment
Exemption -- In Butler County, Kansas

Dear Ms. Rutson:

Attached please find 10 copies of the Environmental Report and Historic Report in the above-captioned matter. Butler County expects to file its Notice of Exemption on or shortly after June 15, 2004.

Sincerely,



Karl Morell

Enclosures



ENTERED
Office of Proceedings

MAY 26 2004

EXHIBIT D

Part of
Public Record

ENVIRONMENTAL REPORT

(49 C.F.R. 1105.7)

Docket No. AB-870X

BUTLER COUNTY, KS
--ABANDONMENT EXEMPTION--
IN BUTLER COUNTY, KANSAS



(1) Proposed Action and Alternatives. Describe the proposed action, including commodities transported, the planned disposition (if any) of any rail line and other structures that may be involved, and any possible changes in current operations or maintenance practices. Also describe any reasonable alternatives to the proposed action. Include a readable, detailed map and drawings clearly delineating the project.

Butler County, Kansas (the "County") proposes to abandon its 10.6-mile rail line located between milepost 483.62, at Augusta, and milepost 494.22, near Andover in Butler County, Kansas (the "Line"). Upon receipt of abandonment authority, the County intends to remove the rail, track material, and crossies. There are currently no plans to remove the two bridge structures on the Line.

The County acquired the Line by donation from The Burlington Northern And Santa Fe Railway Company.¹ The Line was out of service when the County acquired it in 2001. The County had intended to rehabilitate the Line and locate an operator in order to preserve rail service in the area. The County, however, has not been able to locate a suitable operator and has thus decided to abandon the Line. To the best of the County's knowledge, no traffic has

¹ See STB Docket No. 34139, *Butler County, Kansas – Acquisition Exemption – The Burlington Northern And Santa Fe Railway Company* (not printed), served January 11, 2002.

moved over the Line in years. Since December 2001, no local traffic has moved over the Line. The Line is stub-ended and, therefore, not capable of handling overhead traffic.

The Line has had no traffic in recent years. In addition, no maintenance has been performed on this dormant Line for some time. Therefore, the proposed abandonment will have no impact on rail freight operations and maintenance practices on the Line.

The only alternative to abandonment would be not to abandon the Line thereby forcing the County to pass the opportunity costs of retaining the Line on to its citizens. This would not be a prudent use of the County's resources.

A map of the proposed abandonment is attached hereto as Exhibit 1.

(2) Transportation System. Describe the effects of the proposed action on regional or local transportation systems and patterns. Estimate the amount of traffic (passenger or freight) that will be diverted to other transportation systems or modes as a result of the proposed action.

No passenger traffic will be diverted to other modes as a result of the proposed abandonment. No local traffic has been handled on the Line for several years and the Line is not capable of handling overhead traffic. Since the Line no longer handles rail traffic, the proposed abandonment will have no adverse effects on regional or local transportation systems and patterns.

(3) Land Use. (i) Based on consultation with local and/or regional planning agencies and/or a review of the official planning documents prepared by such agencies, state whether the proposed action is consistent with existing land use plans. Describe any inconsistencies. (ii) Based on consultation with the U.S. Soil Conservation Service, state the effect of the proposed action on any prime agricultural land. (iii) If the action affects land or water uses within a designated coastal zone, include the coastal zone information required by 1105.9. (iv) If the proposed action is an abandonment, state whether or not the right-of-way is suitable for alternative public use under 49 U.S.C. § 10905 and explain why.

(i) The proposed abandonment is consistent with existing land use plans. The Butler County Commissioners were contacted concerning the proposed abandonment. See Exhibit 2. The Commissioners have reviewed the County Comprehensive Plan and concluded that the proposed abandonment will have no negative impact on land use planning. See Exhibit 3. A copy of this Report has been mailed to the appropriate local and state agencies for their information and further comment.

(ii) The proposed abandonment will not have any detrimental effect on any prime agricultural land. The County notified the State Conservationist of the proposed abandonment and requested assistance in identifying any potential effects on prime agricultural land. See Exhibit 4. According to the Assistant State Conservationist, the proposed abandonment will have no adverse environmental effects on matters for which the Natural Resources Conservation Service is responsible. See Exhibit 5. A copy of this Report is being supplied to the USDA Natural Resources Conservation Service for its information and further comment.

(iii) The Line does not pass through a designated coastal zone.

(iv) The right-of-way involved does not appear to be suitable for alternative public use other than a recreational trail since it is located in rural, sparsely populated areas. The County intends to trail-bank the Line.

(4) Energy. (i) *Describe the effect of the proposed action on transportation of energy resources.* (ii) *Describe the effect of the proposed action on recyclable commodities.* (iii) *State whether the proposed action will result in an increase or decrease in overall energy efficiency and explain why.* (iv) *If the proposed action will cause diversions from rail to motor carriage of more than: (A) 1,000 rail carloads a year; or (B) an average of 50 rail carloads*

per mile per year for any part of the affected line, quantify the resulting net change in energy consumption and show the data and methodology used to arrive at the figure given.

(i) The proposed abandonment will have no effect on the transportation of energy resources.

(ii) The proposed abandonment will have no effect on the transportation of recyclable commodities.

(iii) The proposed abandonment will have no effect on overall energy efficiency as no local traffic has been handled on the Line in several years and the Line is not capable of handling overhead traffic.

(iv) The proposed abandonment will not cause diversions of rail traffic to motor carriage, since no local traffic has been handled on the Line in years and the Line is not capable of handling overhead traffic.

(5) Air. (i) If the proposed action will result in either: (A) An increase in rail traffic of at least 100 percent (measured in gross ton miles annually) or an increase of at least eight trains a day on any segment of rail line affected by the proposal, or (B) an increase in rail yard activity of at least 100 percent (measured by carload activity), or (C) an average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on any affected road segment, quantify the anticipated effect on air emissions. For a proposal under 49 U.S.C. § 10901 (or § 10505) to construct a new line or reinstitute service over a previously abandoned line, only the eight train a day provision in sub-section (5)(i)(A) will apply. (ii) If the proposed action affects a class I or nonattainment area under the Clean Air Act, and will result in either: (A) an increase in rail traffic of at least 50 percent (measured in gross ton miles annually) or an increase of at least three trains a day on any segment of rail line; (B) an increase in rail yard activity of at least 20 percent (measured by carload activity); or (C) an average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on a given road segment, then state whether any expected increased emissions are within the parameters established by the State Implementation Plan. However, for a rail construction under 49 U.S.C. § 10901 (or 49 U.S.C. § 10505), or a case involving the reinstitution of service over a previously abandoned line, only the three train a day threshold in this item shall apply. (iii) If transportation of ozone depleting materials (such as nitrogen oxide and freon) is contemplated, identify: the materials and quantity; the frequency of service; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and spills; contingency plans to deal with accidental spills; and the likelihood of an accidental release of ozone depleting materials in the event of a collision or derailment.

(i) The proposed abandonment will not result in meeting or exceeding the specified thresholds.

(ii) The proposed abandonment will not result in meeting or exceeding the specified thresholds.

(iii) The proposed abandonment will not affect the transportation of ozone depleting materials.

(6) Noise. If any of the thresholds identified in item (5)(i) of this section are surpassed, state whether the proposed action will cause: (i) an incremental increase in noise levels of three decibels Ldn or more; or (ii) an increase to a noise level of 65 decibels Ldn or greater. If so, identify sensitive receptors (e.g., schools, libraries, hospitals, residences, retirement

communities, and nursing homes) in the project area, and quantify the noise increase for these receptors if the thresholds are surpassed.

Not applicable

(7) Safety. (i) Describe any effects of the proposed action on public health and safety (including vehicle delay time at railroad grade crossings). (ii) If hazardous materials are expected to be transported, identify: the materials and quantity; the frequency of service; whether chemicals are being transported that, if mixed, could react to form more hazardous compounds; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and hazardous spills; the contingency plans to deal with accidental spills; and the likelihood of an accidental release of hazardous materials. (iii) If there are any known hazardous waste sites or sites where there have been known hazardous materials spills on the right-of-way, identify the location of those sites and the types of hazardous materials involved.

(i) The proposed abandonment will have no detrimental effects on public health and safety. The removal of grade crossings and the associated signs and structures will enhance public safety by eliminating distractions to vehicular traffic crossing the Line.

(ii) The proposed abandonment will not affect the transportation of hazardous materials.

(iii) There are no known hazardous material waste sites or sites where known hazardous material spills have occurred on or along the rail corridor of the Line.

(8) Biological Resources. (i) Based on consultation with the U.S. Fish and Wildlife Service, state whether the proposed action is likely to adversely affect endangered or threatened species or areas designated as a critical habitat, and if so, describe the effects. (ii) State whether wildlife sanctuaries or refuges, National or State parks or forests will be affected, and describe any effects.

(i) The proposed abandonment will not have an adverse affect on endangered or threatened species or areas designated as a critical habitat. The County notified the U.S. Fish and Wildlife Service of the proposed abandonment and requested assistance in determining whether endangered or threatened species or areas designated as a critical habitat are likely to be adversely affected. See Exhibit 6. According to the U.S. Fish and Wildlife Service, the proposed abandonment will have no adverse impacts to fish and wildlife resources, including threatened and endangered species. See Exhibit 7. A copy of this Report is being supplied to the U.S. Fish and Wildlife Service for its information and further comment.

(ii) The County does not believe that any wildlife sanctuaries or refuges, National or State parks or forests would be adversely affected by the proposed abandonment. The County notified the National Parks Service of the proposed abandonment and requested assistance in identifying any potential effects on wildlife sanctuaries or refuges, National or State parks or forests. See Exhibit 8. To date, no response to this request has been received. A copy of this Report is being supplied to the National Park Service for its information and comment.

(9) Water. (i) *Based on consultation with State water quality officials, state whether the proposed action is consistent with applicable Federal, State or local water quality standards. Describe any inconsistencies.* (ii) *Based on consultation with the U.S. Army Corps of Engineers, state whether permits under section 404 of the Clean Water Act (33 U.S.C. § 1344) are required for the proposed action and whether any designated wetlands or 100-year flood plains will be affected. Describe the effects.* (iii) *State whether permits under section 402 of the Clean Water Act (33 U.S.C. § 1342) are required for the proposed action.*

(i) The County is confident that the proposed abandonment will be consistent with applicable water quality standards. The County contacted the Kansas Department of Health and Environment and the U.S. Environmental Protection Agency concerning this matter

requesting assistance in determining whether the proposed abandonment is consistent with applicable Federal, State, or local water quality standards. See Exhibit 9. To date, no response to these requests has been received. A copy of this Report is being supplied to the U.S. Environmental Protection Agency and the Kansas Department of Health and Environment for their information and comment.

(ii) The County is confident that no designated wetlands or 100-year flood plains will be adversely affected by the proposed abandonment. The County contacted the Corps of Engineers concerning these matters. See Exhibit 10. According to the Corps of Engineers, no Department of Army permit authorization will be required for the proposed abandonment. See Exhibit 11. A copy of this Report is being supplied to the U.S. Army Corps of Engineers for its information and further comment.

(iii) The County believes the proposed abandonment will not require the issuance of any permits under Section 402 of the Clean Water Act. The County contacted the U.S. Environmental Protection Agency concerning this matter and requested assistance in identifying any potential effects on applicable water quality standards and determining whether the proposed abandonment is consistent with applicable Federal, State, or local water quality standards. See Exhibit 9. To date, no response to this request has been received. A copy of this Report is being supplied to the U.S. Environmental Protection Agency for its information and comment.

(10) Proposed Mitigation. Describe any actions that are proposed to mitigate adverse environmental impacts, indicating why the proposed mitigation is appropriate.

The County does not expect any adverse environmental impact from the proposed abandonment and, therefore, sees no need for any mitigating actions. The County will, of course, adhere to any remedial actions suggested by the recipients of this Report and required by the Board.

Topographic map of the Andover, Kansas area, showing a route from Andover to Augusta. The map includes contour lines, roads, and various landmarks. A thick black line indicates the route, starting at Andover (Milepost 494.22) and ending at Augusta (Milepost 483.6). The map is labeled "EXHIBIT 1" in the top right corner.

EXHIBIT 1

AUGUSTA **MILEPOST 483.6**

ANDOVER

MILEPOST 494.22: Andover-

NORTH

EXHIBIT 2

BALL JANIK LLP

A T T O R N E Y S

1455 F STREET, NW, SUITE 225
WASHINGTON, D.C. 20005
www.balljanik.com
TELEPHONE 202-638-3307
FACSIMILE 202-783-6947

KARL MORELL
OF COUNSEL

kmorell@bjllp.com

March 11, 2004

Butler County Commissioners
205 West Central Street
El Dorado, KS 67042

**RE: Docket No. AB-870, Butler County, KS --Abandonment
Exemption—In Butler County, Kansas**

Dear Sir/Madam:

Butler County, Kansas ("County") is planning to file a Notice of Exemption with the Surface Transportation Board ("STB"), on or about April 30, 2004, for the County to abandon the 10.6-mile rail line located between milepost 483.62, at Augusta, and milepost 494.22, near Andover, in Butler County, Kansas. A map of the proposed abandonment is attached.

Pursuant to the STB's environmental regulations at 49 C.F.R., Part 1105, we are advising you of this proposed action so that you may assist us in identifying any potential effects on existing land use plans. We must determine whether the proposed abandonment is inconsistent with existing land use plans.

We would appreciate your review of the proposed abandonment and any comments you may wish to offer. We would also appreciate you providing us with a written response so that we can forward it to the STB.

BALL JANIK LLP

March 11, 2004

Page 2

Thank you in advance for your prompt assistance. If you have any questions concerning this matter, please contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Karl Morell".

Karl Morell

Attorney for:

Butler County, Kansas



March 19, 2004

Karl Morell
Ball Janik LLP Attorneys
1455 F. Street, NW, Suite 225
Washington, D.C. 20005

RE: Response on Docket No. AB-870, Butler County, KS – Abandonment
Exemption – In Butler County, Kansas

Dear Mr. Morell,

The County is in receipt of the letter sent on March 11, 2004 concerning the abandonment of the 10.6-mile rail line. We have reviewed the County Comprehensive Plan and the effect this may have on any land use planning in the area. The County Commission has concluded that this will have no negative impact on land use planning by abandoning the existing rail. We appreciate your notice and if you should require any further information please feel free to contact us.

Sincerely,



William H. Johnson, Jr.
Butler County Administrator

xc: County Commission
File

William H. Johnson, Jr., County Administrator

BALL JANIK LLP

A T T O R N E Y S

1455 F STREET, NW, SUITE 225
WASHINGTON, D.C. 20005

www.balljanik.com

TELEPHONE 202-638-3307
FACSIMILE 202-783-6947

KARL MORELL
OF COUNSEL

kmorell@bjllp.com

March 11, 2004

State Conservationist
USDA Natural Resources Conservation Service
760 South Broadway
Salina, KS 67401-4642

**RE: Docket No. AB-870, Butler County, KS --Abandonment
Exemption—In Butler County, Kansas**

Dear Sir/Madam:

Butler County, Kansas ("County") is planning to file a Notice of Exemption with the Surface Transportation Board ("STB"), on or about April 30, 2004, for the County to abandon the 10.6-mile rail line located between milepost 483.62, at Augusta, and milepost 494.22, near Andover, in Butler County, Kansas. A map of the proposed abandonment is attached.

Pursuant to the STB's environmental regulations at 49 C.F.R., Part 1105, we are advising you of this proposed action so that you may assist us in identifying any potential effects on prime agricultural land.

We would appreciate your review of the proposed abandonment and any comments you may wish to offer. We would also appreciate you providing us with a written response so that we can forward it to the STB.

BALL JANIK LLP

March 11, 2004
Page 2

Thank you in advance for your prompt assistance. If you have any questions concerning this matter, please contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Karl Morell".

Karl Morell
Attorney for:
Butler County, KS



**United States Department of Agriculture
Natural Resources Conservation Service**

2917 West Highway 50
Emporia, KS 66801-5140

Phone: 620-343-7276
FAX: 620-343-7871
www.ks.nrcs.usda.gov

March 30, 2004

Karl Morell, Attorney
Ball Janik LLP
1455 F Street, NW, Suite 225
Washington, D.C. 20005

Dear Mr. Morell:

Thank you for the opportunity to review the proposed abandonment of 10.6 miles of rail line located between milepost 483.62, at Augusta, and milepost 494.22, near Andover. This project is in Butler County, Kansas.

Since the proposed project is on land already under Right-Of-Way, this project has no impact on prime farm land and therefore, an AD-1006 Form is not required.

I see no other adverse environmental effects for which the Natural Resources Conservation Service (NRCS) is responsible for evaluating.

We wish you well with your project and if our local (NRCS) office in El Dorado can be of any assistance, don't hesitate to call.

If I can be of further assistance, please let me know.

Sincerely,

A handwritten signature in cursive script that reads "William M. Gilliam".
WILLIAM M. GILLIAM
Assistant State Conservationist

cc:

Justin P. Kneisel, District Conservationist, NRCS, El Dorado, Kansas
Rodney D. Egbarts, Soil Conservationist, NRCS, Salina, Kansas

BALL JANIK LLP

A T T O R N E Y S

1455 F STREET, NW, SUITE 225
WASHINGTON, D.C. 20005
www.balljanik.com
TELEPHONE 202-638-3307
FACSIMILE 202-783-6947

KARL MORELL
OF COUNSEL

kmorell@bjllp.com

March 11, 2004

U.S. Fish and Wildlife Service
315 Houston Street, Suite E
Manhattan, KS 66502-6172

**RE: Docket No. AB-870, Butler County, KS --Abandonment
Exemption--In Butler County, Kansas**

Dear Sir/Madam:

Butler County, Kansas ("County") is planning to file a Notice of Exemption with the Surface Transportation Board ("STB"), on or about April 30, 2004, for the County to abandon the 10.6-mile rail line located between milepost 483.62, at Augusta, and milepost 494.22, near Andover, in Butler County, Kansas. A map of the proposed abandonment is attached.

Pursuant to the STB's environmental regulations at 49 C.F.R., Part 1105, we are advising you of this proposed action so that you may assist us in determining whether it is likely to adversely affect endangered or threatened species or areas designated as a critical habitat.

We would appreciate your review of the proposed abandonment and any comments you may wish to offer. We would also appreciate you providing us with a written response so that we can forward it to the STB.

BALL JANIK LLP

March 11, 2004
Page 2

Thank you in advance for your prompt assistance. If you have any questions concerning this matter, please contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Karl Morell".

Karl Morell
Attorney for:
Butler County, KS



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Kansas Field Office
315 Houston Street, Suite E
Manhattan, Kansas 66502-6172

March 19, 2004

Karl Morell, Attorney
Ball Janik LLP
1455 F Street, NW, Suite 225
Washington, DC 20005

RE: Docket No. AB-870, Butler County, Kansas

Dear Mr Morell:

This is in response to your letter of March 11, 2004, describing a proposed abandonment of 10.6 miles of existing railway line between Augusta and Andover, in Butler County, Kansas. We have reviewed this proposal and conclude that there should be no adverse impacts to fish and wildlife resources, including threatened and endangered species. Therefore, the U.S. Fish and Wildlife Service has no objection to the proposal as planned.

The Service encourages that the right-of-way be maintained in a natural condition for the benefit of native wildlife, plants, and the public. You may wish to contact the National Park Service, Omaha, Nebraska, 402-221-3350, for more information on the "Rails to Trails" Program. You may also wish to contact the Kansas Department of Wildlife and Parks in Pratt, Kansas (316-672-5911) to determine their interest in acquiring a nature trail.

Thank you for this opportunity to comment on your proposal.

Sincerely,

for: [Signature]
William H. Gill
Field Supervisor

cc: KDWP, Pratt, KS (Environmental Services)

WHG/dwm

BALL JANIK LLP

A T T O R N E Y S

1455 F STREET, NW, SUITE 225
WASHINGTON, D.C. 20005

www.balljanik.com

TELEPHONE 202-638-3307
FACSIMILE 202-783-6947

KARL MORELL
OF COUNSEL

kmorell@bjllp.com

March 11, 2004

National Park Service
Recreational Resources Assistance Division
1849 C Street, NW
Washington, D.C. 20240-0001

**RE: Docket No. AB-870, Butler County, KS --Abandonment
Exemption—In Butler County, Kansas**

Dear Sir/Madam:

Butler County, Kansas ("County") is planning to file a Notice of Exemption with the Surface Transportation Board ("STB"), on or about April 30, 2004, for the County to abandon the 10.6-mile rail line located between milepost 483.62, at Augusta, and milepost 494.22, near Andover, in Butler County, Kansas. A map of the proposed abandonment is attached.

Pursuant to the STB's environmental regulations at 49 C.F.R., Part 1105, we are advising you of this proposed action so that you may assist us in identifying any potential effects on wildlife sanctuaries or refuges, National or State parks or forests.

We would appreciate your review of the proposed abandonment and any comments you may wish to offer. We would also appreciate you providing us with a written response so that we can forward it to the STB.

BALL JANIK LLP

March 11, 2004
Page 2

Thank you in advance for your prompt assistance. If you have any questions concerning this matter, please contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Karl Morell".

Karl Morell
Attorney for:
Butler County, Kansas

BALL JANIK LLP

A T T O R N E Y S

1455 F STREET, NW, SUITE 225
WASHINGTON, D.C. 20005
www.balljanik.com
TELEPHONE 202-638-3307
FACSIMILE 202-783-6947

EXHIBIT 9

KARL MORELL
OF COUNSEL

kmorell@bjllp.com

March 11, 2004

Department of Health and Environment
Division of Environment
Landon State Office Building
901 S.W. Jackson Street
Topeka, KS 66612

**RE: Docket No. AB-870, Butler County, KS --Abandonment
Exemption—In Butler County, Kansas**

Dear Sir/Madam:

Butler County, Kansas ("County") is planning to file a Notice of Exemption with the Surface Transportation Board ("STB"), on or about April 30, 2004, for the County to abandon the 10.6-mile rail line located between milepost 483.62, at Augusta, and milepost 494.22, near Andover, in Butler County, Kansas. A map of the proposed abandonment is attached.

Pursuant to the STB's environmental regulations at 49 C.F.R., Part 1105, we are advising you of this proposed action so that you may assist us in identifying any potential effects on applicable water quality standards. We also seek your assistance in determining whether the proposed abandonment is consistent with applicable Federal, State or local water quality standards. The County does not believe any permits under Section 402 of the Clean Water Act will be required.

We would appreciate your review of the proposed abandonment and any comments you may wish to offer. We would also appreciate you providing us with a written response so that we can forward it to the STB.

BALL JANIK LLP

March 11, 2004

Page 2

Thank you in advance for your prompt assistance. If you have any questions concerning this matter, please contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Karl Morell".

Karl Morell

Attorney for:

Butler County, Kansas

BALL JANIK LLP

A T T O R N E Y S

1455 F STREET, NW, SUITE 225

WASHINGTON, D.C. 20005

www.balljanik.com

TELEPHONE 202-638-3307

FACSIMILE 202-783-6947

KARL MORELL
OF COUNSEL

kmorell@bjllp.com

March 11, 2004

U.S. Environmental Protection Agency
901 N 5th Street
Kansas City, KS 66101-2907

**RE: Docket No. AB-870, Butler County, KS --Abandonment
Exemption—In Butler County, Kansas**

Dear Sir/Madam:

Butler County, Kansas ("County") is planning to file a Notice of Exemption with the Surface Transportation Board ("STB"), on or about April 30, 2004, for the County to abandon the 10.6-mile rail line located between milepost 483.62, at Augusta, and milepost 494.22, near Andover, in Butler County, Kansas. A map of the proposed abandonment is attached.

Pursuant to the STB's environmental regulations at 49 C.F.R., Part 1105, we are advising you of this proposed action so that you may assist us in identifying any potential effects on applicable water quality standards. We also seek your assistance in determining whether the proposed abandonment is consistent with applicable Federal, State or local water quality standards. The County does not believe any permits under Section 402 of the Clean Water Act will be required.

We would appreciate your review of the proposed abandonment and any comments you may wish to offer. We would also appreciate you providing us with a written response so that we can forward it to the STB.

BALL JANIK LLP

March 11, 2004

Page 2

Thank you in advance for your prompt assistance. If you have any questions concerning this matter, please contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Karl Morell".

Karl Morell

Attorney for:

Butler County, Kansas

BALL JANIK LLP

A T T O R N E Y S

1455 F STREET, NW, SUITE 225
WASHINGTON, D.C. 20005

www.balljanik.com

TELEPHONE 202-638-3307
FACSIMILE 202-783-6947

KARL MORELL
OF COUNSEL

kmorell@bjllp.com

March 11, 2004

U.S. Army Engineer District, Kansas City
2710 N.E. Shady Creek Access Road
El Dorado, Kansas 67042

**RE: Docket No. AB-870, Butler County, KS --Abandonment
Exemption--In Butler County, Kansas**

Dear Sir/Madam:

Butler County, Kansas ("County") is planning to file a Notice of Exemption with the Surface Transportation Board ("STB"), on or about April 30, 2004, for the County to abandon the 10.6-mile rail line located between milepost 483.62, at Augusta, and milepost 494.22, near Andover, in Butler County, Kansas. A map of the proposed abandonment is attached.

Pursuant to the STB's environmental regulations at 49 C.F.R., Part 1105, we are advising you of this proposed action so that you may assist us in identifying any potential effects on designated wetlands or 100-year flood plains. The County does not believe any permits under Section 404 of the Clean Water Act will be required.

We would appreciate your review of the proposed abandonment and any comments you may wish to offer. We would also appreciate you providing us with a written response so that we can forward it to the STB.

BALL JANIK LLP

March 11, 2004
Page 2

Thank you in advance for your prompt assistance. If you have any questions concerning this matter, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Karl Morell". The signature is fluid and cursive, with the first and last names being clearly legible.

Karl Morell
Attorney for:
Butler County, Kansas



EXHIBIT 11

DEPARTMENT OF THE ARMY
KANSAS CITY DISTRICT, CORPS OF ENGINEERS
STATE REGULATORY PROGRAM OFFICE - KANSAS
2710 N.E. SHADY CREEK ACCESS ROAD
EL DORADO, KANSAS 67042

REPLY TO
ATTENTION OF:

March 19, 2004

Kansas State Regulatory Office
(200400944)
(Butler, KS, NPR)

Mr. Karl Morell
Ball Janik LLP
1455 F Street NW, Suite 225
Washington, District of Columbia 20005

Dear Mr. Morell:

This is in response to your letter received on March 15, 2004, requesting a Department of the Army (DA) permit determination concerning the abandonment of a 10.6-mile rail line located between milepost 483.62, at Augusta, and milepost 494.22, near Andover, in Butler County, Kansas. The rails and ties will be taken up and disposed of at an upland site, but any structures, such as bridges or culverts, within any creeks or rivers will be left in place.

The Corps of Engineers has jurisdiction over all waters of the United States. Discharges of dredged or fill material in waters of the United States, including wetlands, require prior authorization from the Corps under Section 404 of the Clean Water Act (33 USC 1344). The implementing regulation for this Act is found at 33 CFR 320-330.

The enclosed Jurisdictional Determination (JD) form describes the extent of waters of the United States on the project site. Also, the enclosed Notification of Administrative Appeal Options and Process and Request for Appeal form (FORM) describes your options in Section E of the FORM.

We have reviewed the information furnished and based upon the fact that no work is proposed within any jurisdictional waters (any bridges/culverts will remain in place), have determined that the proposed activity will not involve the discharge of dredged or fill material in waters of the United States. Therefore, Department of the Army permit authorization is not required. Other Federal, state and/or local permits may be required, however, and you should verify this yourself.

Mr. Thomas A. McCabe, Regulatory Specialist, reviewed the information furnished and made this determination. If you have any questions concerning this matter, please feel free to contact Mr. McCabe at 316-322-8247 (FAX 316-322-8259).

Enclosures

Copies Furnished:

Environmental Protection Agency, Water Resources Protection Branch wo/enclosure
Kansas Department of Wildlife and Parks wo/enclosure
Kansas Department of Agriculture wo/enclosure

JURISDICTIONAL DETERMINATION
U.S. Army Corps of Engineers, Kansas City District

APPLICANT: Butler County, Ks NUMBER: 200400798

LOCATION/WATERWAY: 10.6-Mile Railway Abandonment from Augusta to Andover, KS, Butler County, KS

PROJECT REVIEW COMPLETED: ☒ Office ☐ Field

JURISDICTIONAL DETERMINATION (JD) (For sites regulated under 33 CFR 320-330):

- ☒ Preliminary JD – Based on available information, there appear to be no waters of the U.S. on the project site. A preliminary JD is not appealable.
- ☐ Approved JD – There are waters of the United States on the project site, as identified in the basis of jurisdiction determination indicated below. An approved JD is an appealable action (33 CFR 331). (Note: JDs prepared by the U.S. Environmental Protection Agency are not appealable to the Corps of Engineers.)

BASIS FOR JURISDICTIONAL DETERMINATION:

Waters defined under 33CFR 328.3(a) as "waters of the United States:"

- ☐ (1) The presence of waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.
- ☐ (2) The presence of interstate waters including interstate wetlands¹.
- ☐ (3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could effect interstate commerce including any such waters:
- ☐ (i) which are or could be used by interstate or foreign travelers for recreational or other purposes.
 - ☐ (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
 - ☐ (iii) which are or could be used for industrial purposes by industries in interstate commerce.
- ☐ (4) Impoundments of waters defined as a Water of the U.S.
- ☐ (5) The presence of a tributary to a water identified in (1) – (4) above.
- ☐ (6) The presence of territorial seas.
- ☐ (7) The presence of wetlands adjacent² to interstate or other waters of the U.S., except for those wetlands adjacent to other wetlands.

Waters defined under 33CFR 329 as "navigable waters of the United States:"

- ☐ The presence of waters that are subject to the ebb and flow of the tide and/or are presently used or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

Rationale for Basis (Applies to any boxes checked above): The proposed project includes removing the rails and ties and disposing of at an upland location, but any structures (bridges, culverts etc.) within any jurisdictional waters would remain in place. The project site is thus defined as the railway alignment, excluding and structures in any jurisdictional waters.

Lateral Extent of Jurisdiction (33 CFR 328 and 329):

- ☐ Ordinary High Water Mark indicated by:
- ☐ clear, natural line impressed on the bank
 - ☐ the presence of litter and debris
 - ☐ changes in the character of soil
 - ☐ destruction of terrestrial vegetation
 - ☐ shelving
 - ☐ other (hydrologic study, etc.): _____
- ☐ High Tide Line indicated by:
- ☐ oil or scum line along shore objects
 - ☐ fine shell or debris deposits (foreshore)
 - ☐ physical markings/characteristics
 - ☐ tide gages
 - ☐ other: _____
- ☐ Mean High Water Mark indicated by:
- ☐ survey to available datum; ☐ physical markings; ☐ vegetation lines/changes in vegetation types
- ☐ In ocean or coastal area, site is in a zone three geographic (nautical) miles seaward of the baseline³
- ☐ Wetland, as shown on the attached wetland delineation map, and/or in a jurisdictional report prepared by _____, and dated _____.
- ☐ Additional supporting information attached and/or multiple JD forms completed for sites with multiple water categories.

Preparer: Regulatory Specialist, Thomas A. McCabe Date: 19 March 2004

Thomas A. McCabe

¹ Wetlands are identified and delineated using the methods and criteria established in the 1987 Corps of Engineers Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

² The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.

³ Baseline is the line on the shore reached by the ordinary low tides from which the distance of three miles is measured.

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Butler County, KS- 10.6 Mile Railway Abandonment from Augusta to Andover, Kansas		File Number: 200400944	Date: 19 Mar 2004
Attached is:			See Section below
	A. INITIAL PROFFERED PERMIT (Standard Permit or Letter of Permission)	A	
	B. PROFFERED PERMIT (Standard Permit or Letter of Permission)	B	
	C. PERMIT DENIAL	C	
	D. APPROVED JURISDICTIONAL DETERMINATION	D	
XX	E. PRELIMINARY JURISDICTIONAL DETERMINATION	E	

SECTION I - The following identifies your rights and options regarding a modification, reconsideration, or administrative appeal of the above decision. Additional information may be found at <http://www.usace.army.mil/inet/functions/cw/cecwo/reg> or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or request modification of the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the District Engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **REQUEST MODIFICATION:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the District Engineer. Your objections must be received by the District Engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the District Engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the District Engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the District Engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the Division Engineer (address on page 2). This form must be received by the Division Engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the Division Engineer (address on page 2). This form must be received by the Division Engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept the approved JD, appeal the approved JD, or submit new information and request reconsideration of the approved JD.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the Division Engineer (address on page 2). This form must be received by the Division Engineer within 60 days of the date of this notice.
- **RECONSIDERATION BASED ON NEW INFORMATION:** You may submit new information to the District Engineer for reconsideration of an approved JD. You must submit the information within 60 days of the date of this notice.

E. PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II –Fill out this section and return this form to the appropriate office only if submitting a request for modification or reconsideration to the District Engineer, or if submitting a request for Administrative Appeal to the Division Engineer. All such submittals must be made within 60 days of the date of this notice.

Submit the following requests to the District Engineer

- A. Modification of an INITIAL PROFFERED PERMIT (Item A).
- D. Reconsideration of an APPROVED JURISDICTIONAL DETERMINATION based on NEW INFORMATION (Item D RECONSIDERATION).

Submit the following requests to the Division Engineer

- B. Administrative Appeal of a PROFFERED PERMIT (Item B).
- C. Administrative Appeal of a PERMIT DENIAL (Item C).
- D. Administrative Appeal of an APPROVED JURISDICTIONAL DETERMINATION (Item D APPEAL) (for reasons other than reconsideration of an approved JD based on new information).

(Note: Preliminary Jurisdictional Determinations (Item E) are not appealable. If you have concerns regarding a preliminary Jurisdictional Determination, you can request an approved Jurisdictional Determination).

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

SUBMITTAL OF NEW OR ADDITIONAL INFORMATION: The District Engineer may accept and consider new information if you request a modification to an initial proffered permit (Part A), or a reconsideration of an approved JD (Part D). An administrative appeal to the Division Engineer is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the administrative record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:

DISTRICT ENGINEER

Attn: Joseph S. Hughes

Chief Regulatory Branch

U.S. Army Engineer District, Kansas City

601 East 12th Street, Room 706

Kansas City, MO 64106-2896

Telephone: 816-983-3990

(Use this address for submittals to the District Engineer)

If you wish to submit an appeal or have questions regarding the appeal process you may contact:

DIVISION ENGINEER

Attn: Mores V. Bergman

Appeal Review Officer

U.S. Army Engineer Division, Northwestern Division

12565 West Center Road

Omaha, NE 68144-3869

Telephone: 402-697-2533

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Signature of appellant or agent.

Date:

Telephone number:

EXHIBIT E

HISTORIC REPORT

(49 C.F.R. 1105.8)

Docket No. AB-870X

BUTLER COUNTY, KS

--ABANDONMENT EXEMPTION--
IN BUTLER COUNTY, KANSAS

ENTERED
Office of Proceedings

MAY 26 2004

Part of
Public Record



The Historic Report should contain the information required by 1105.7(e)(1) of the Environmental Report. The following is excerpted from the Environmental Report prepared for the proposed abandonment:

(1) Proposed Action and Alternatives. Describe the proposed action, including commodities transported, the planned disposition (if any) of any rail line and other structures that may be involved, and any possible changes in current operations or maintenance practices. Also describe any reasonable alternatives to the proposed action. Include a readable, detailed map and drawings clearly delineating the project.

Butler County, Kansas (the "County") proposes to abandon its 10.6-mile rail line located between milepost 483.62, at Augusta, and milepost 494.22, near Andover in Butler County, Kansas (the "Line"). Upon receipt of abandonment authority, the County intends to remove the rail, track material, and crossties. There are currently no plans to remove the two bridge structures on the Line.

The County acquired the Line by donation from The Burlington Northern And Santa Fe Railway Company.¹ The Line was out of service when the County acquired it in 2001. The County had intended to rehabilitate the Line and locate an operator in order to preserve rail service in the area. The County, however, has not been able to locate a suitable operator and

¹ See STB Docket No. 34139, *Butler County, Kansas - Acquisition Exemption - The Burlington Northern And Santa Fe Railway Company* (not printed), served January 11, 2002.

has thus decided to abandon the Line. To the best of the County's knowledge, no traffic has moved over the Line in years. Since December 2001, no local traffic has moved over the Line. The Line is stub-ended and, therefore, not capable of handling overhead traffic.

The Line has had no traffic in recent years. In addition, no maintenance has been performed on this dormant Line for some time. Therefore, the proposed abandonment will have no impact on rail freight operations and maintenance practices on the Line.

The only alternative to abandonment would be not to abandon the Line thereby forcing the County to pass the opportunity costs of retaining the Line on to its citizens. This would not be a prudent use of the County's resources.

A map of the proposed abandonment is attached hereto as Exhibit 1.

HISTORIC REPORT

1. *A U.S.G.S. topographic map (or alternate map drawn to scale and sufficiently detailed to show buildings and other structures in the vicinity of the proposed action) showing the location of the proposed action, and the locations and approximate dimensions of railroad structures that are 50 years old or older and are part of the proposed action;*

A map and the identification of all structures on the Line that are 50 years old or older have been supplied to the Kansas State Historical Society ("KSHS"). See Exhibit 2.

2. *A written description of the right of way (including approximate widths, to the extent known), and the topography and urban and/or rural characteristics of the surrounding area;*

The right-of-way is predominately 100 feet in width. The 10.6-mile rail Line is located between Augusta and Andover, in Butler County, Kansas, beginning at milepost 483.62, at Augusta, and running generally in a westerly direction to the end of the line at milepost 494.22, near Andover. The Line crosses through predominately flat, rural areas.

3. *Good quality photographs (actual photographic prints, not photocopies) of railroad structures on the property that are 50 years old or older and of the immediate surrounding area;*

The only structures on the Line associated with the proposed abandonment that may be 50 years old or older are two bridges. The two bridges are of quite common design and construction and of no historical significance. Pictures of the bridges are contained in Exhibit 2.

4. *The date(s) of construction of the structure(s), and the date(s) and extent of any major alterations, to the extent such information is known;*

There are two bridges located on the Line which may be fifty years old or older. See Exhibit 2. The County is not in possession of any engineering documents regarding the maintenance or repair of these bridges.

5. *A brief narrative history of carrier operations in the area, and an explanation of what, if any, changes are contemplated as a result of the proposed action;*

The Line was originally constructed by the St. Louis, Wichita & Western Railway Company ("SLW&W") and formed a part of the Oswego to Wichita line. Construction began in 1879 and was completed by May 1880. Upon completion of the line, the SLW&W was merged into the St. Louis & San Francisco Railroad ("Frisco"). In 1980, the Frisco merged with the Burlington Northern ("BN") and in 1995 the BN merged with The Atchison, Topeka and Santa Fe Railway Company to form the BNSF. After World War II, a Mobil refinery in Augusta was a major customer on the Line. In the mid-1980's, the Line was utilized to serve the refinery and an aircraft plant. By the mid-1990's, all operations on the Line had ceased.

The Line is in poor condition and has not seen any traffic in recent years. In order to restart freight operations, significant rehabilitation would be required. Because no traffic has

moved on the Line in about ten years, no changes to current transportation patterns are anticipated upon the abandonment of the Line.

6. *A brief summary of documents in the carrier's possession, such as engineering drawings, that might be useful in documenting a structure that is found to be historic;*

There are no available individual drawings for the two bridges on the Line. Each of the bridges is quite common in design and construction and is of no historical significance. They are typical of many bridges found throughout North America.

7. *An opinion (based on readily available information in the railroad's possession) as to whether the site and/or structures meet the criteria for listing on the National Register of Historic Places (36 C.F.R. 60.4), and whether there is a likelihood of archeological resources or any other previously unknown historic properties in the project area, and the basis for these opinions (including any consultations with the State Historic Preservation Office, local historical societies or universities);*

The two bridges are quite common in design and construction. None has any historical significance as to the history of railroad construction or operation. The KSHS has reviewed the proposed abandonment and determined that "it should not affect any property listed on the National Register of Historic Places or otherwise in our files as having historical significance."

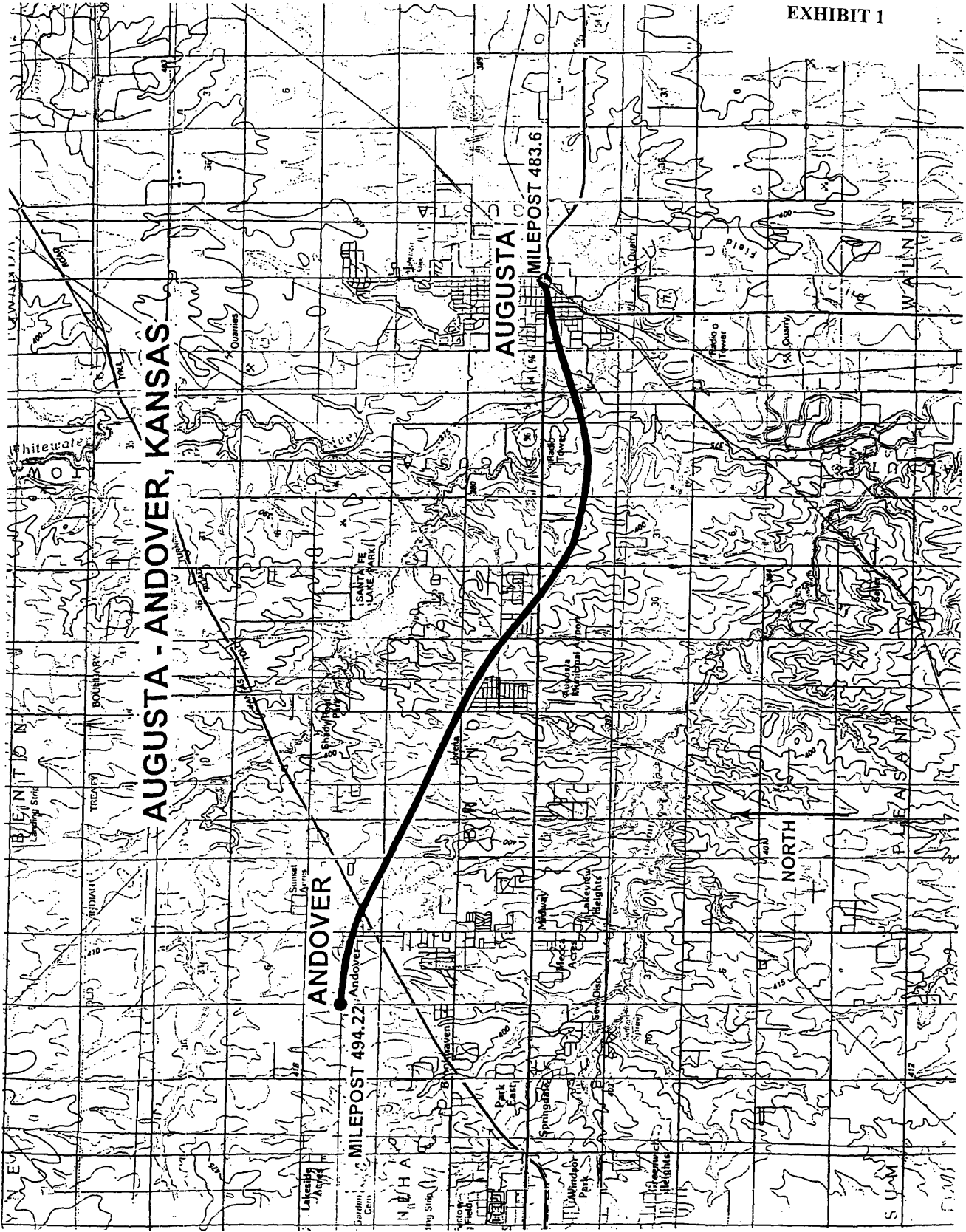
See Exhibit 3. There are also no known archeological resources in the project area.

8. *A description (based on readily available information in the railroad's possession) of any known prior subsurface ground disturbance or fill, environmental conditions (naturally occurring or manmade) that might affect the archeological recovery of resources (such as swampy conditions or the presence of toxic waste), and the surrounding terrain.*

There are no existing records as to the nature of any known subsurface ground disturbance or fill, or environmental condition that might affect the archeological recovery of any potential resources.

9. *Within 30 days of receipt of the historic report, the State Historic Preservation Officer may request the following additional information regarding specific non railroad owned properties or groups of properties immediately adjacent to the railroad right-of-way: photographs of specified properties that can be readily seen from the railroad right-of-way (or other public rights-of-way adjacent to the property) and a written description of any previously discovered archeological sites, identifying the location and type of the site (i.e. prehistoric or native American).*

The County does not foresee the likelihood that any additional information will need to be supplied in association with the proposed line abandonment other than that information previously submitted. But, if any additional information is requested, the County will promptly supply the necessary information.



BALL JANIK LLP

A T T O R N E Y S

1455 F STREET, NW, SUITE 225

WASHINGTON, D.C. 20005

www.balljanik.com

TELEPHONE 202-638-3307

FACSIMILE 202-783-6947

KARL MORELL
OF COUNSEL

kmorell@bjllp.com

March 18, 2004

Kansas State Historical Society
6425 S.W. 6th Avenue
Topeka, KS 66615-1099

**RE: Docket No. AB-870, Butler County, KS --Abandonment
Exemption—In Butler County, Kansas**

Dear Sir/Madam:

Butler County, Kansas ("County") is planning to file a Notice of Exemption with the Surface Transportation Board ("STB"), on or about April 30, 2004, for the County to abandon the 10.6-mile rail line located between milepost 483.62, at Augusta, and milepost 494.22, near Andover, in Butler County, Kansas. One of the requirements for this filing with the STB is that the owner of the rail line contact the State Historic Preservation Office regarding the proposed abandonment.

Enclosed is a map depicting the area where the rail line is located. The proposed abandonment will involve the removal of the rail, track material, and crossties; however, there are currently no plans to remove any existing structures along the track.

The 10.6-mile rail line the County seeks to abandon begins at milepost 483.62, at Augusta, and extends generally in a westerly direction to the end of the line at milepost 494.22, near Andover. The line crosses through predominately flat, rural areas.

There are 2 bridges on the rail line that appear to be 50 years old or older. Pictures of the bridges and their milepost locations are attached. These structures are quite common in design and construction and, in the County's view, have no historical significance.

BALL JANIK LLP

March 18, 2004
Page 2

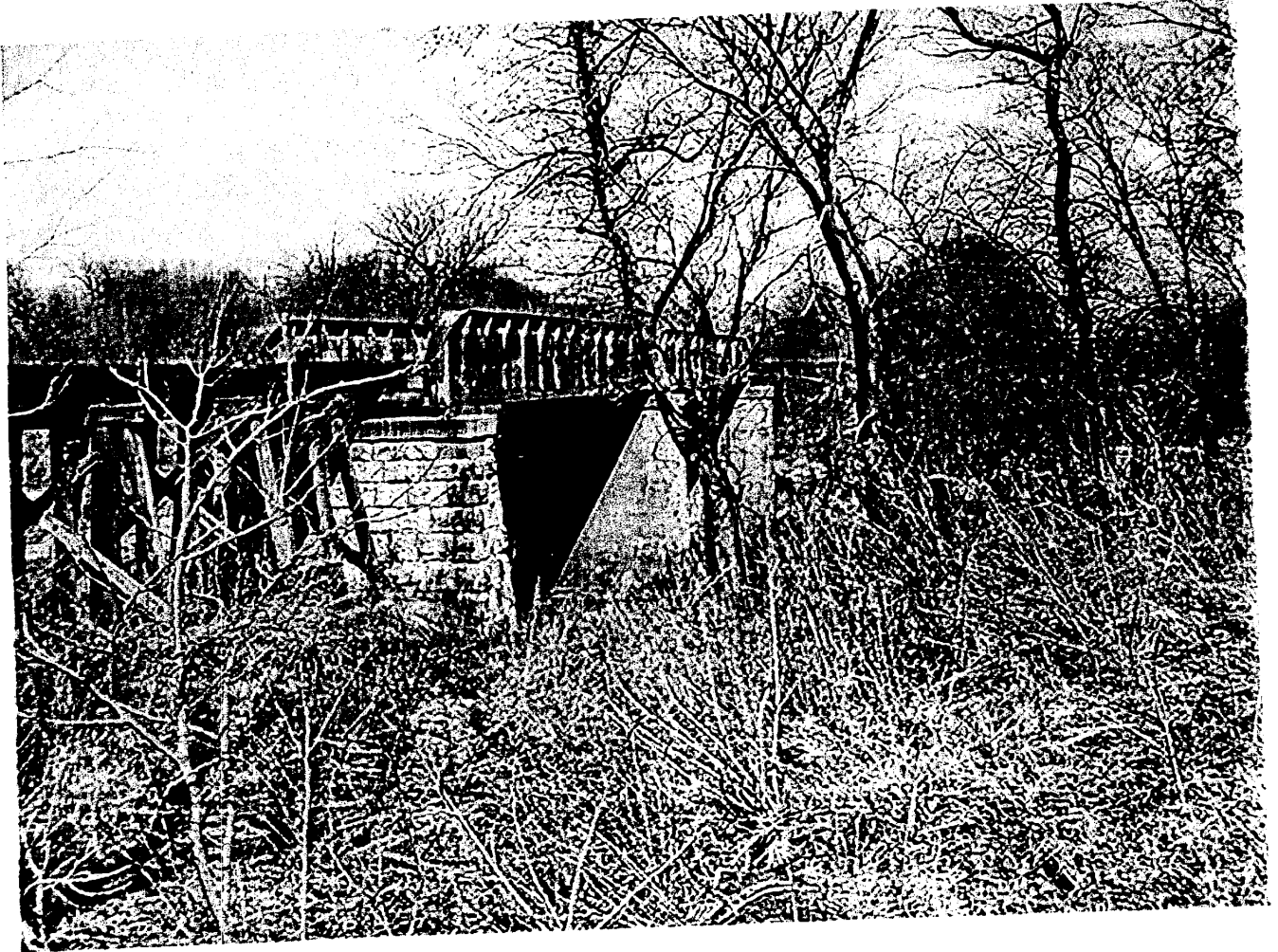
We will send you a copy of the Historic Report as soon as it is completed. If I can of further assistance regarding this matter, please call me at (202) 638-3307.

Sincerely,

A handwritten signature in cursive script, appearing to read "Karl Morell".

Karl Morell
Attorney for
Butler County, Kansas

[illegible][illegible][illegible][illegible][illegible]



MP 485.2



MP 485.2



MP 488.3

KANSAS

KSR&C No. 04-03-156

Kansas State Historical Society
Dick Pankratz, Director, Cultural Resources Division

KATHLEEN SEBELIUS, GOVERNOR

March 23, 2004

Karl Morell
Attorney
Ball Janik LLP
1455 F Street NW Suite 225
Washington DC 20005

RE: Abandon 10.6 Miles of Track From Augusta to Andover – Docket No. AB-870
Butler County

Dear Mr. Morell:

We have reviewed the project identified above and have determined that it should not affect any property listed on the National Register of Historic Places or otherwise identified in our files as having historical significance. This office has no objection to implementation of the project.

Sincerely yours,

Terry Marmet
Acting State Historic Preservation Officer



Richard Pankratz, Director
Cultural Resources Division

clg

EXHIBIT E

**Survey Report of
Garber Surveying Services, P.A.**

Main Office
2908 North Plum Street
Hutchinson, KS 67502
Office: (620) 665-7032
Fax: (620) 663-7401



Garber Surveying Service, P.A.

Branch Offices
511 North Poplar Street
Newton, KS 67114
Office: (316) 283-5053
Fax: (316) 283-5073

115 East Marlin, Suite 102
McPherson, KS. 67460
Office: (620) 241-4441
Fax: (620) 241-4458

TESTIMONY RELATING TO CASE NO. 18-CV-115
BUTLER COUNTY DISTRICT COURT
HMA PROPERTIES, LLC, ET AL.
V.
BUTLER COUNTY, KANSAS ET AL.

Being retained by David Rapp of Hinkle Law Firm, I have researched available records for the St. Louis-San Francisco Railroad and the Burlington Northern Santa Fe Railroad for the right-of-way between Wichita, Sedgwick County, Kansas and Augusta, Butler County, Kansas.

Based on aerial photos taken by Google Earth, I planned the site visit to view and photograph the current condition of the railroad right-of-way from the Santa Fe Railway on N. Santa Fe Avenue in Wichita to the City of Augusta.

Factual Information based on Field Observation:

1. The railroad bridge over US Highway 54, (near the N/4 corner of Section 25, T27S, R3E) along with pier and abutments, was removed between March, 2014 and July, 2015.
2. The railroad bridge over Whitewater River (near the center of Section 28, T27S, R4E) was removed during September and October, 2010.
3. Between the Sedgwick-Butler County line and the west city limits of the City of Augusta, there were at least 15 "stone boxes" that would most likely need to be replaced to current standards in order for the right-of-way to be used for railroad purposes again.
4. The former railroad bed has been converted to a concrete walking trail through the City of Andover.
5. The former railroad bed has been converted to a concrete walking trail through the City of Wichita from Hydraulic Avenue east to North Woodlawn Boulevard.
6. In a letter from James H. Gallegos, Vice President and Corporate General Counsel of BNSF Railway, to the Secretary of the Surface Transportation Board, dated June 22, 2006, he stated that BNSF and the City of Wichita entered into a Railbanking Agreement on March 24, 2005 on the Wichita, Kansas Trackage between railroad milepost 494.22 and railroad milepost 504.05 and that BNSF was consummating the abandonment of the Wichita, Kansas Trackage between railroad milepost 504.05 and railroad milepost 505.20.
7. Between Washington Avenue and Hydraulic Avenue in the City of Wichita, it appears the former railroad right-of-way has reverted to adjacent property owners, another indication of abandonment.

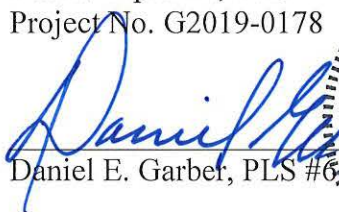
Daniel E. Garber – Professional Land Surveyor
Members: Kansas Society of Land Surveyors
National Society of Professional Surveyors

8. At least one commercial building has been constructed over the former railroad bed at 707 North Wabash Avenue in Wichita.
9. A flood control levee has been constructed over the former railroad bed near SW Thunder Road at Augusta, approximately 1,100 feet south of the Northeast corner of Section 28, T27S, R4E.
10. The railroad tracks of the St. Louis – Santa Fe Railway have been removed from the City of Augusta to the City of Fredonia, a distance of 70 miles.
11. Large boulders and barricades are placed on the former railroad bed on the east side of SW River Valley Road to apparently prevent access.
12. It appears the former railroad bed is being used as a residential driveway going west from SW River Valley Road for approximately 1,000 feet. Address appears to be 10595 SW River Valley Road.
13. Large boulders have been placed on the former railroad bed on the east side of SW Diamond Road preventing access.
14. A wooden fence has been constructed across the former railroad right-of-way on the east side of SW Santa Fe Lake Road with a sign posted “Property of Butler County”.
15. Bollards have been placed on the former railroad bed on both sides of SW Tawakoni Road with a “No Outlet” sign on the east side indicating the trail ends near Highway 54.

General Observation:

The former railroad bed is generally developed as a hiking trail from the Sedgwick-Butler County line east to the north side of Highway 54 where it is stub-ended. From Highway 54 going southeast and east to the City of Augusta, the former railroad bed appears to be mostly unimproved as a hiking trail. Based on these observations, it is my opinion that the former railroad has been disconnected from the national rail system.

Dated: April 24, 2019
Project No. G2019-0178


Daniel E. Garber, PLS #683

