

BEFORE THE
SURFACE TRANSPORTATION BOARD

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LANDOWNERS -- ADVERSE	)	
ABANDONMENT—GREAT WESTERN	)	DOCKET NO.
RAILWAY OF COLORADO, LLC, IN	)	AB-857 (SUB-NO. 2)
WELD COUNTY, COLORADO	)	

APPLICATION FOR ADVERSE ABANDONMENT

CINDY SAUER, et al., LANDOWNERS
c/o Stewart, Wald & McCulley
2100 Central Street, Suite 22
Kansas City, MO 64108

Applicants

THOMAS S. STEWART
ELIZABETH G. McCULLEY
REED W. RIPLEY
STEWART, WALD & McCULLEY
2100 Central Street, Suite 22
Kansas City, MO 64108
(816) 303-1500
stewart@swm.legal
mcculley@swm.legal
ripley@swm.legal

THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
2230 Marston Lane
Flossmoor, IL 60422-1336
(708) 704-7679
mcfarland@aol.com

Attorneys for Applicants

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Pursuant to 49 U.S.C. § 10903(d) and 49 C.F.R. § 1152.22, as partially waived and exempted in the Board’s Decision served February 11, 2022, there are twenty-seven owners of land (the “Landowners”)¹ who collectively own 34 parcels of land adjacent to and/or within the right-of-way of a 6.2-mile rail line that extends (1) between Milepost 0.0 at Johnstown, Colorado and Milepost 6.2 near Welty, Colorado (the “Rail Line”).² The Landowners hereby respectfully apply for a Board determination that the present and future public convenience and necessity (“PC&N”) permit adverse abandonment of the federal interest in the Rail Line. The Landowners also seek exemptions from the offer of financial assistance (“OFA”) provisions at 49 U.S.C. § 10904, the public use provisions at 49 U.S.C. § 10905, and waiver of the trail use regulations at 49 C.F.R. § 1152.29.

All the Landowners’ requests for waivers and exemptions were granted in the Board’s Decision served on February 11, 2022, except the Board required that the language in the Notice of Intent be amended and that current environmental and historic reports must be prepared and submitted. The Notice of Intent was filed and served on July 22, 2022, pursuant to 49 C.F.R. § 1152.20(a)(1). It was then published for 3 consecutive weeks in the Greeley Tribune pursuant to 49 C.F.R. § 1152.20(a)(4) (see Appendix 3). The Environmental and Historic Report was served

¹ The names and addresses of the 27 Landowners are listed in Appendix 1 (the “Landowners”).

² A map of the Rail Line is attached hereto as Appendix 2.

on July 27, 2022, pursuant to 49 C.F.R. § 1152.20(c) (see Appendix 4). The draft Federal Register Notice, pursuant to the Board's Decision served on February 11, 2022 and 49 C.F.R. § 1152.22(i), is attached hereto as Appendix 5.

THE RAIL LINE

The Rail Line at issue was constructed in 1902 and 1903. The Rail Line is stub-ended and runs 6.2 miles to the west from Great Western Railway of Colorado, LLC's ("GWRC") main line in Johnstown, Colorado, where it literally comes to an end in the middle of nowhere (*see* Appendix 2). The Rail Line was constructed to transport sugar beets from a sugar beet dump facility, located at the Rail Line's western endpoint, to the railroad's main line facilities in Johnstown.

The sugar beet dump facility was closed in the 1970's. The surrounding farms no longer produce sugar beets and, since the industry shut down, the nature of the adjacent land has mostly changed to residential development. The closure of the sugar beet dump reduced the demand to zero and, as a result, the Rail Line has not been used for Board-regulated rail transportation for approximately 43 years, and there is no reasonable prospect for such use in the foreseeable future. In fact, not only has there been no Board-regulated rail transportation on the Rail Line for more than 40 years, but the railroad has also not performed any maintenance on the right-of-way, such that current use of the rail bed for rail transportation is either impossible or cost prohibitive or both.

THE LANDOWNERS' INTEREST

The Landowners have a legitimate interest in this subject matter that provides ample standing to prosecute the Application because the Landowners possess fee ownership of the land that is adjacent to and within the right-of-way of the Rail Line. The Landowners own fee in the right-of-way because the railroad received an easement limited to railroad purposes in 1902 and 1903 when the Rail Line was constructed. Each original source conveyance deed specifies that

the grant is an easement that is limited exclusively to railroad purposes and that the right-of-way must revert to the Landowners when no longer used for railroad purposes.³

The Landowners' fee ownership of the land adjacent to and within the railroad's right-of-way is not even disputed. In fact, in the underlying takings litigation that has been pending before the Court of Federal Claims since GWRC filed their first Petition for Exemption in 2008, the Department of Justice has stipulated that the applicable deeds to the railroad conveyed easements limited in scope to railroad purposes. *See Sauer West v. United States*, Case No. 12-cv-00340, Joint Stipulation, ECF No. 19 (May 6, 2013).

The land within the right-of-way is burdened by an easement that permits GWRC's use of the land within the right-of-way of the Rail Line for railroad purposes. GWRC has refused to voluntarily relinquish the easement, even though the Rail Line has not been used for railroad purposes for more than 40 years. The Landowners here seek a determination that, under these circumstances, PC&N permits adverse abandonment of the Rail Line, thereby extinguishing the federal interest in the Rail Line, and paving the way for action under Colorado law to free the land from the easement's burden.

THE PROCEDURAL BACKGROUND AND HISTORY IS UNDISPUTED

After the sugar beet dump closed in the late 1970's, there was no Board-regulated rail transportation on the Rail Line for almost 30 years, until 2008, when GWRC filed their first Notice of Exemption to abandon the Rail Line.⁴ The undisputed procedural history associated with GWRC's prior Notice of Exemption, as contained within STB Docket No. AB-857 (Sub-No. 1), is as follows:

³ See Declaration of Cindy Sauer, attached hereto as Appendix 6, and the Declaration of Fred Weis, attached hereto as Appendix 7, both of which are Landowners. *See also Lithgow v. Pearson*, 135 P. 759 (Colo. App. 1913); *Barnes v. Winford*, 833 P.2d 756, 759 (Colo. App. 1991).

⁴ See STB Docket No. AB-857 (Sub-No. 1)

- 1) **GWRC filed its Notice of Exemption on April 16, 2008**—GWRC specifically stated:
 - a. “The proposed consummation date is June 5, 2008;”
 - b. “There has been no local traffic on the Line in over 20 years. The Line is stub-ended and not capable of handling overhead traffic;” and
 - c. “The Line traverses a primarily rural area that has an adequate road and highway network. Therefore, there is little or no likelihood the rail corridor is needed for a transit or highway corridor. Some of the property underlying the right-of-way may be reversionary, which would affect the transfer of the property for other than rail or railbanking purposes;”
- 2) **The Board’s Decision of May 6, 2008 granted permission for GWRC to abandon the right-of-way**—the Board acknowledged GWRC’s Notice of Exemption and granted permission to GWRC to abandon the corridor—the Board stated that GWRC’s exemption would be effective on June 5, 2008 and, unless a trail use agreement and railbanking was pursued, GWRC had to file a Notice of Consummation of abandonment with the Board to signify that it had exercised the authority granted and fully abandoned the line;
- 3) **The Board issued a Notice of Interim Trail Use (“NITU”) on July 28, 2008**—because the Town of Johnstown requested the issuance of a NITU under the Trails Act, the Board issued the NITU on July 28, 2008 and stated that GWRC and the Town of Johnstown would have an initial 180-day period for negotiations of a possible trail use agreement and that, if no trail use agreement was implemented, GWRC may proceed to fully abandon the line;
- 4) **The negotiations between GWRC and the Town of Johnstown for a possible trail use agreement broke down**—the NITU expired pursuant to its terms such that the Board’s authorization for abandonment was again triggered on December 2, 2008;
- 5) **Thereafter, GWRC requested and received six yearly extensions to consummate abandonment**—instead of formally consummating abandonment after the NITU expired, GWRC requested yearly extensions of the deadline for consummating abandonment on May 19, 2009, April 22, 2010, April 12, 2011, April 16, 2012, April 17, 2013, and April 16, 2014;⁵ and
- 6) **Instead of consummating abandonment, GWRC notified the Board on August 28, 2014 that it has decided to reactivate the Rail Line that had been authorized for abandonment since 2008**—although there was no Board-regulated rail

⁵ Each request for an extension stated that GWRC was continuing to explore alternative options to consummating the abandonment of the Rail Line, including various public uses of the corridor, but never said anything about possible shippers or the actual restoration of Board-regulated rail traffic.

transportation between 2008 and 2014, just like there had been no Board-regulated traffic from 1980 through 2008, GWRC refused to consummate abandonment, ostensibly in order to monetize the Rail Line in some fashion.

The Rail Line is stub-ended. No shippers ever utilized the Rail Line for Board-regulated rail activity from 1979 through 2008 when GWRC filed the Notice of Exemption, or from 2008 until 2014 when GWRC “reactivated” the Rail Line, and no shippers have utilized the Rail Line for Board-regulated activity after 2014 either, for a total of 43 years. Although there has been some random and sporadic use of the Rail Line for the storage of cars after 2008,⁶ the Landowners filed a Petition on October 15, 2021 to seek exemptions from certain statutory provisions and waivers of certain regulatory requirements regarding the filing of an adverse application for abandonment. The Board’s Decision served on February 11, 2022, partially granted the Landowners’ Petition.

In the meantime, on December 28, 2021, GWRC implemented the process for a second Notice of Exemption and indicated that it was going to file the Notice of Exemption on or about February 15, 2022 (*see* Docket No. AB-857 (Sub No. 3)). As part of GWRC’s abandonment exemption process, GWRC filed its Environmental Report and Historic Report on April 6, 2022, and indicated that it expected to file its Notice of Exemption on or shortly after June 1, 2022. GWRC has yet to file its second Notice of Exemption.

DECISIONAL STANDARDS

Pursuant to 49 U.S.C. § 10903(d), no line of railroad may be abandoned and no rail service discontinued unless the Board finds that the present or future public convenience and necessity

⁶ From 2008 through 2016, GWRC utilized the extreme eastern end of the Rail Line, approximately 1.5 miles of the 6.2 miles, for car storage—the least amount of cars moving in was 43 cars in 2008 and the largest amount was 630 cars in 2011. GWRC did not move in any cars from 2017 through 2021. As described in Appendices 6 and 7, GWRC used more than the eastern 1.5 miles on one occasion for long term car storage when cars were removed from revenue-generating transportation purposes and merely parked on the Rail Line.

(“PC&N”) require or permit the abandonment or discontinuance. *See* 49 C.F.R. § 10903(d). The Board may entertain adverse abandonment if the person seeking the abandonment has sufficient interest in the subject matter. *See Port of Benton County, Wash.—Adverse Discon. Of Rail Service—Tri-City Railroad Co., LLC*, 2019 WL 5658809 at *3 (Docket No. AB 1270, served October 31, 2019 (“Port of Benton”).

The Board balances the competing benefits and burdens of abandonment on all interested parties, including the rail carrier-owner of the line, the shippers on the line, the communities involved; and interstate commerce generally. *See Port of Benton, supra*, 2019 WL 5658809, at *4; *Waterloo Railroad—Adverse Abandonment—Lines of Bangor & Aroostok Railroad—in Aroostok County, ME*, 2004 WL 941227 at *3 (Docket No. AB 124 [Sub-No. 2], served May 3, 2004); *City of Peoria—Adverse Discontinuance—Pioneer Industrial Railway*, 2005 WL 1900922 at *7 (Docket No. AB 878, served August 10, 2005). The statute requires the Board to consider whether a proposed abandonment would have a serious adverse impact on rural and community development. *See* 49 U.S.C. 10903(d); *see also Port of Benton, supra*, 2019 WL 5658809 at *4.

The Board exercises its jurisdiction to preserve and promote continued rail service (*i.e.*, denies adverse abandonment) when a rail carrier is currently utilizing the line for legitimate railroad operations or is taking reasonable steps to acquire traffic. *See Seminole Gulf Railway, LP – Adverse Abandonment – in Lee County, FL*, 2004 WL 2618630 at *3 (Docket No. AB 400 (Sub-No. 4), served November 18, 2004); *Chelsea Property Owners—Abandonment—Portion of Consolidated Rail Corp’s West 30th Street Secondary Track in New York, NY*, 8 I.C.C. 2d 773, 779 (1992), *aff’d*, *Consolidated Rail Corp. vs. I.C.C.*, 29 F.3d 706 (D.C. Cir, 1994) (“*Chelsea Property Owners*”). On the other hand, the Board does not allow its jurisdiction to be used to shield a carrier from the legitimate processes of state law (*i.e.*, grants adverse abandonment) where no overriding

federal interest exists. *See CSX Corp. – Adverse Abandonment – Canadian National Railway Co.*, 2002 WL 127074 at *4 (Docket No. AB 31 (Sub-No. 38, served February 1, 2002)). Under the facts of this case, GWRC has been shielded for decades, and adverse abandonment should be granted because GWRC has not used the Rail Line for legitimate Board-regulated railroad operations for 43 years and no overriding federal interest exists.

ARGUMENT

I. The Present and Future Public Convenience and Necessity Permits the Proposed Adverse Abandonment

The present case is the latest in a distinct line of decisions in which applications for adverse abandonment have been granted based on lengthy nonuse of a rail line and compelling evidence that the line will not be needed for rail transportation in the future. *See Denver & Rio Grande Railway Historical Foundation—Adverse Abandonment—in Mineral County, CO*, 2008 WL 2154898 at *12 (2008) (“*D&RGR*”); *Modern Handcraft, Inc.—Abandonment—in Jackson County, MO*, 1981 WL 22670, 363 I.C.C. 969 (1981) (“*Modern Handcraft*”); and *Chelsea Property Owners*. The underlying facts pertaining to this Rail Line are similar to the facts presented in *D&RGW*, *Modern Handcraft* and *Chelsea Property Owners*, and the same legal principles should apply.

In *D&RGW*, the rail line proposed for adverse abandonment had not been used to transport rail freight for nearly 40 years. Track materials in the line were in substantial disrepair. The only opposition to adverse abandonment was from the rail carrier who operated the line. The Board found that potential shippers identified by that carrier were unlikely to use the subject rail line and that no other shippers were likely to materialize in the future:

(T)he City is the only town in Mineral County, with a population of only 417 people, and there are no businesses in the City (such as manufacturers) that would require freight. **Based on the geography and demographics of the City**

and surrounding area, we agree with the City that there will not likely be any businesses that require freight rail service in the foreseeable future on this line that has not handled freight rail traffic for decades.

See D&RGW, 2008 WL 2154898 at *8 (footnote omitted) (emphasis added).

In *D&RGW*, the city proposed using the abandoned right-of-way for public purposes, including expanding the City's park and playground and paving the parking area. The Board concluded that "[G]iven the essentially nonexistent need to preserve this 1-mile segment as part of the national rail system, **we find that adverse abandonment would serve the public interest by allowing possible development of public projects.**" *See D&RGW*, 2008 WL 2154898 at *13 (emphasis added) (footnote omitted).

As to the effect of abandonment on rural and community development, the Board found:

Given that there is no realistic potential for freight rail service, removing this line from the interstate rail system would not adversely impact rural and community development. In fact, abandonment would help foster community development, consistent with the public uses that the City has identified in this proceeding.

See D&RGW, 2008 WL 2154898 at *14 (emphasis added).

The Board correctly concluded that the balancing of interests favored the City. As a result, because the City had met its burden under the PC&N test, its application for adverse abandonment was granted. *Id.* The same reasoning applies under these facts.

In *Modern Handcraft*, the rail line proposed for adverse abandonment had not been operated for 12 years. During that 12-year period, the owner of the rail line made no serious effort to solicit rail freight traffic, and there was no serious effort to reinstitute rail service. Instead, the rail line was used during that period for parking lot and billboard purposes. *See Modern Handcraft*, 1981 WL 22671 at *2-3. An adjacent landowner filed an application for abandonment of the portion of the rail line adjacent to its property. Thereafter, a rail transit agency filed an application

for abandonment of the entire rail line, such that the application was unopposed except for the rail carrier owner. In those circumstances, the I.C.C. concluded as follows:

Where as here there have been no rail operations for over 12 years and no attempt to provide rail service, we can find no public benefit in preventing a State condemnation proceeding.

We find that the rail service which Freight Operation is authorized to perform is not required and that elimination of this line will not burden interstate commerce and will benefit the public.

See Modern Handcraft, 1981 WL 32670 at *3 (emphasis added).

The *Modern Handcraft* decision is very instructive when applied to these facts, as the I.C.C. concluded that a *de facto* abandonment had taken place, that rail service was not required, and that elimination of the rail line would not burden interstate commerce:

The record leaves no doubt that a *de facto* abandonment of the Freight Operation line has taken place. No rail service or recognizable rail track maintenance has taken place since September of 1968. Nor has there been any serious effort on the part of Freight Operation to solicit traffic or reinstate rail service. Indeed, the current use of the Rail Line for parking lot and billboard purposes is totally unrelated to the carrier's obligation to perform rail service. **The only objection to abandonment comes from the carrier itself, whose principal interest appears to be the price and terms for the sale of the right-of-way.**

See Modern Handcraft, 1981 WL 22670 at *2 (emphasis added).

The I.C.C. went even further in *Modern Handcraft* and discussed the standard for obtaining permission to abandon a rail line and the relationship between federal jurisdiction and state jurisdiction. The I.C.C. specifically concluded that the railroad was misusing the federal jurisdiction over the property to improperly interfere with other legitimate uses of the right-of-way:

The function of our exclusive and plenary jurisdiction over abandonments is to provide the public with a degree of protection against the unnecessary discontinuance, cessation, interruption, or obstruction of available rail service. We will not allow our jurisdiction to be used to shield a carrier

from the legitimate processes of State law where there is no overriding Federal interest in interstate commerce. Whereas here there have been no rail operations for over 12 years and no attempt to provide rail service, we can find no public benefit in preventing a State condemnation proceeding.

We find that the rail service which Freight Operation is authorized to perform is not required and that elimination of this line will not burden interstate commerce and will benefit the public. Although it is true that the grant of abandonment application is permissive and the railroad can choose not to surrender its common carrier status and obligations, a certificate of abandonment is evidence in any court proceeding that the line is not required by the public for rail operations.

See Modern Handcraft, 1981 WL 22670 at *3 (emphasis added).

There are two obvious and fundamental principles of law set forth in *Modern Handcraft*. First, there is no need for the Board to continue to exercise its exclusive and plenary jurisdiction over railroad lines and/or railroad abandonments when there is no overriding federal interest in continued rail operations. Second, the railroad should not be allowed to use continuing federal jurisdiction over a rail line as a shield against abandonment when there is no overriding federal interest in continued rail operations. The Board and the Courts have reaffirmed these basic principles on numerous occasions, and both principles clearly apply under these facts. *See Chelsea Property Owners*, 1992 WL 233599 at *1-*4; *Consolidated Rail*, 29 F.3d at 712 (“more to the point, it is clear that the aim of § 10905 is not simply the maintenance of Rail Lines but the continuation of rail *service*”) (emphasis in original); *CSX Corp.*, 2002 WL 127074 at *4 (“where no overriding federal interest exists, we will not allow our jurisdiction to be used to shield a carrier from the legitimate processes of state law” and “here, we conclude that the public is best served by granting the adverse abandonment application”).

These basic principles were also applied in *Chelsea Property Owners*, where the rail line had been out-of-service for more than 10 years. First, because the rail line was in a state of disrepair, continued rail traffic was neither operationally nor economically feasible. *See Chelsea*

Property Owners, 1992 WL 22671 at *12. Second, and most importantly, even though the railroad asserted a continuing interest in future traffic prospects, the Commission found that PC&N permitted abandonment because the jurisdiction of the Commission “**may not be used to shield a carrier from the legitimate process of state law.**” *Id.* at *1-*4 (emphasis added). Simply put, the Board’s exclusive and plenary jurisdiction should not shield GWRC under these facts because the Rail Line has not been used for rail traffic for 43 years, and PC&N permit abandonment so that the landowners can finally put their land to productive use.

II. The Facts are Undisputed that a *De Facto* Abandonment Occurred More Than 40 Years Ago and that the Present and Future PC&N Permit Adverse Abandonment

The underlying facts in this case present a stronger case for adverse abandonment than the facts contained within *D&RGW*, *Modern Handcraft*, and *Chelsea Property Owners*. As set forth in the three decisions, adverse abandonment is appropriate when there is an extended period of non-use, the track is in substantial disrepair, the compelling evidence is that the rail line will not be needed for rail transportation, the elimination of the rail line will not burden interstate commerce and will benefit the public, a *de facto* abandonment has already taken place, there is no overriding federal interest in continued rail operations, and continued operations are neither operationally or economically feasible.

The Declarations of Cindy Sauer, Appendix 6, and Fred Weis, Appendix 7, establish all the necessary and undisputed facts:

- 1) The Rail Line has not been used since 1979 for Board-regulated rail traffic;⁷
- 2) In addition to the 43 years of non-use, the Rail Line has been in a constant condition of substantial disrepair;⁸

⁷ See Appendix 6, ¶¶ 7, 9, and 10.

⁸ See Appendix 6, ¶¶ 9, 14; Appendix 7 at ¶ 8.

- 3) Because the Rail Line has not been used for rail transportation for 43 years, the railroad has made little or no effort to maintain the right-of-way either;⁹
- 4) Even though there have been no shippers to utilize the right-of-way for rail traffic for 43 years, GWRC did sporadically and randomly utilize a small portion of the Rail Line on the eastern end to store cars on a temporary basis—but, there was never any storage of cars on the western portion of the Rail Line from 1979 through 2017 and cars have only been stored on the western end of the Rail Line on one occasion during the 43 years;¹⁰
- 5) The Weld County Assessor, noting the fact that GWRC had abandoned the right-of-way at least by 2007, transferred the responsibility of paying taxes on the acreage within the right-of-way from GWRC to Cindy Sauer, and Cindy Sauer has been paying taxes on the additional acreage included within the right-of-way since 2007;¹¹ and
- 6) Fred Weis owns the right-of-way at the end point of the Rail Line where it is stub-ended on his property. As set forth in Appendix 7, there have been no shippers or train traffic on his property for 43 years because the sugar beet dumps ceased to exist, the Rail Line has been used for the long-term storage of cars on one instance over the 43 years since the sugar beet dump closed, the Rail Line has never been used for the short-term storage of cars as a revenue-generating activity, the condition of the Rail Line is dangerous, and the elimination of the Rail Line will not burden interstate commerce and will benefit the public.¹²

A close examination of GWRC's conduct through 43 years clearly demonstrates that there has been no need for rail transportation, there has been no serious effort to reinstate rail service, and there has been and is no overriding federal interest in continuing rail operations. These fundamental facts demonstrate these fundamental legal conclusions:

- 1) There simply has been no Board-regulated train activity on the Rail Line for 43 years;
- 2) There was no train activity or the storage of cars from 1979 through 2008;
- 3) GWRC filed a Notice of Exemption on April 16, 2008 and, after specifically admitting that there had been no local traffic on the Rail Line for more than 20 years and that the Rail Line was stub-ended and not capable of handling overhead traffic, requested a proposed consummation date for abandonment of June 5, 2008;

⁹ See Appendix 6, ¶¶ 9, 10, 14, 17, 18, 19, and 20; Appendix 7, ¶¶ 8, 11, and 12.

¹⁰ See Appendix 6, ¶ 15; Appendix 7, ¶ 10.

¹¹ See Appendix 6, ¶ 12.

¹² See Appendix 7, ¶¶ 7, 8, 9, 10, 11, and 12.

- 4) The Board granted GWRC's request to abandon the Rail Line in its Decision of May 6, 2008 and specifically stated that GWRC's exemption would be effective on June 5, 2008 unless a trail use agreement and railbanking was pursued;
- 5) After the Board issued a NITU on July 28, 2008, the negotiation for trail use ceased and the Board's authorization for abandonment was again triggered on December 2, 2008;
- 6) GWRC then requested and received six yearly extensions to consummate abandonment and ultimately notified the Board on August 28, 2014 that it had decided to reactivate the Rail Line instead of consummating the abandonment;
- 7) After the NITU was issued in 2008, until GWRC "reactivated" service in 2014, GWRC never used the Rail Line for rail traffic, nor sought or found any shippers;
- 8) After the Landowners started the process of adverse abandonment by filing their Petition for Waivers and Exemptions, GWRC started a renewed abandonment exemption process, first indicating that they were going to file a Notice of Exemption by February 15, 2022, and then stating that they would file a Notice of Exemption by June 1, 2022, and they ultimately filed their Environment and Historic Report in support of their Notice of Exemption on April 6, 2022; and
- 9) GWRC has still not filed a Notice of Exemption even though the Rail Line is stub-ended, there has been no train traffic for 43 years, and a *de facto* abandonment occurred over a decade ago.

This record leaves no doubt that a *de facto* abandonment has already taken place. The Board's rulings in *D&RGW*, *Modern Handcraft*, and *Chelsea Property Owners* are dispositive under these facts because there is no question that "public convenience and necessity (PC&N) require or permit the proposed abandonment" and the Rail Line is not required for rail service in interstate commerce because there is no present or future need for rail service over the line." See *D&RGW*, 2008 WL 2154898 at *4. Indeed, the facts in this case are much more egregious than the facts in both *D&RGW* and *Modern Handcraft* because:

- 1) There was no rail service or recognizable maintenance in *D&RGW* for almost 40 years and in *Modern Handcraft* for 12 years and it is at least 43 years in this case;
- 2) The PC&N test was established in *D&RGW* and there was a *de facto* abandonment in *Modern Handcraft* just like there is here;

- 3) There has been no effort to actually solicit train traffic for decades in this case just like *D&RGW* and *Modern Handcraft*, despite GWRC's filing to "reactivate" the line in 2014;
- 4) Just like *D&RGW* and *Modern Handcraft*, the Rail Line in this case has not been used by anyone for 43 years, there are no current shippers, and it is and will be close to impossible and cost prohibitive to ever reinstate rail service in the future; and
- 5) Just like in *Modern Handcraft*, GWRC's principal, and perhaps only interest, appears to be price and/or the terms of transfer.

As the Board pointed out in *Modern Handcraft*, the Board's exclusive and plenary jurisdiction over abandonments is to provide the public with a degree of protection concerning continuing rail service, and the Board should not stand by and allow its jurisdiction to be used to shield GWRC when there is no overriding federal interest in interstate commerce. In fact, just like in *Modern Handcraft*, GWRC is misusing the federal jurisdiction over the Rail Line to improperly interfere with the Landowners' legitimate uses of the right-of-way. Under these egregious facts, nobody, including all these Landowners, has been allowed to put their land to productive use simply and solely because GWRC has utilized continuing federal jurisdiction of the Rail Line as a shield.

The application of the PC&N test balances the competing benefits and burdens of abandonment on all interested parties, including GWRC, shippers, the community (both the Town of Johnstown and the Landowners), and interstate commerce generally. Under these facts, GWRC has no legitimate interest to require continued federal jurisdiction when they have not used the Rail Line for any freight services for 43 years. Simply put, there have been no shippers on the Rail Line for 43 years who either initiated or received freight services and, even if a shipper somehow magically would now appear, the cost of providing service would far outweigh the possible benefit and other alternative methods of transportation already exist. Here, in addition to

the Landowners, importantly, the Town of Johnstown “supports any conclusion that results in the abandonment of the Welty Line, either through GWRC’s Notice of Exemption or the Landowners’ Application for Adverse Abandonment.” See correspondence from Gary Lebsack, Mayor of Johnstown, filed with the Board on July 19, 2022. This is not a situation where there is or would be a serious adverse impact on rural or community development if the Rail Line was abandoned—in fact, the nature of the area has changed over 43 years from a primarily agricultural use to a primarily residential development and abandonment would serve the public interest with no increased burden on interstate commerce.

Here, just like in *Modern Handcraft*, rail service is not required and the elimination of this Rail Line will not burden interstate commerce and will benefit the public.”¹³ Under these egregious facts, the Board should not allow its jurisdiction “to be used to shield [GWRC] from the legitimate processes of State law where there is no overriding Federal interest in interstate commerce.”¹⁴ The Board should conclude that the PC&N test has been satisfied and should permit the adverse abandonment of this Rail Line.

III. Application of the OFA and Public Use Statutes and the Trail Use Regulations to the Rail Line Authorized for Adverse Abandonment Should Be Exempted and Waived

The Board should not effectively undo its withdrawal of jurisdiction over the Rail Line through adverse abandonment by reasserting jurisdiction over the line to apply the OFA or

¹³ The benefit to the public, to these Landowners, is paramount because they can get their land back and put it to productive use. This fundamental tenet of property law is arguably the most basic and most important aspect of the law of the land in the United States. As noted by the esteemed scholar, Professor James W. Ely, Jr., “[P]erhaps the most important value of the Founding Fathers of the American constitutional period was their belief in the necessity of securing property rights.” See Property Rights in American History, Vanderbilt University, James W. Ely, Jr., <https://www.hillsdale.edu/educational-outreach/free-market-forum/2008-archive/property-rights-in-american-history/> (last visited 7/13/2022).

¹⁴ See *Modern Handcraft*, 1981 WL 22670 at *3; *Chelsea Property Owners*, 1992 WL 22671 at *1-*4; *CSX Corp.*, 2002 WL 127074 at *4.

Public Use Statutes or the Trail Use Regulations. To avoid that perverse result, those provisions should be exempted and waived.

The Board's decision in *Norfolk Southern Railway Co. -- Adverse Abandonment -- St. Joseph County, IN, supra*, contains a cogent analysis of the law governing exemption of the OFA and Public Use Statutes, 49 U.S.C. § 10904 and 10905, as applied to adverse abandonment cases:

The petition for exemption from 49 U.S.C. § 10904... will be granted. In a third-party abandonment proceeding, the Board withdraws its primary jurisdiction to permit state, local, or other federal law to apply where there is no overriding federal interest in interstate commerce (citation omitted). Absent exemption, section 10904 could provide a vehicle for someone to invoke agency processes that the Board has determined are not necessary or appropriate. If the Board ultimately finds that the PC&N require or permit withdrawal of its regulatory authority in this adverse abandonment proceeding, it would be fundamentally inconsistent to provide for further Board regulation under section 10904 and thereby negate the Board's decision (citation omitted).

We merely find... that under the circumstances presented here, a grant of an adverse abandonment... would be frustrated if section 10904 could be invoked in an effort to continue active rail service...

We will grant an exemption from the public use provisions of 49 U.S.C. § 10905.... Should we decide to withdraw our primary jurisdiction over the Lines, we should not then allow our jurisdiction to be invoked to impose a public use provision.

See Norfolk Southern, 2006 WL 3401094 at *5-6.

The Board was also asked to waive the Trails Act provisions of 49 C.F.R. § 1152.29 in that case, but the Board declined to decide whether the Trails Act can be applied to an adversely abandoned rail line *over the objection of the Applicant for adverse abandonment*. *Id* at *6.¹⁵ The Landowners respectfully request that the Board waive application of the trails provisions in the present case.

¹⁵ The Trails Act provisions can be applied to a right-of-way that is adversely abandoned *if the applicant for adverse abandonment agrees to the Trails Act provisions*, but the Board has not decided whether the Trails Act provisions can be applied over the objection of the applicant for adverse abandonment.

If the Board were to find that PC&N permits withdrawal of the Board's regulatory authority in the present case, it would be every bit as fundamentally inconsistent to provide for further Board regulation under the trail use provisions as under the OFA and public use provisions. Having withdrawn its primary jurisdiction over the Rail Line, the Board should not let its jurisdiction be invoked to impose trail use provisions that are unwanted and unneeded by the Landowners.

It would be a cruel irony if the Board were to grant withdrawal of federal jurisdiction, enabling the Landowners to free their land from GWRC's railroad easement, only to have the Board then reassert federal jurisdiction to permit unwanted trail use that would be much more intrusive than the dormant railroad easement. The Board should waive application of trail use regulations as equally inconsistent with adverse abandonment as OFA and public use provisions, at least where the Applicant for adverse abandonment does not agree to the trail use provisions.

Moreover, GWRC and the trail interests have had a full opportunity to implement trail use when GWRC first obtained authority for abandonment of the stub-ended Rail Line in 2008. The negotiations between GWRC and the Town of Johnstown broke down and the STB authorized extension of the time for GWRC to consummate abandonment for six full years. GWRC, having done nothing to make the Rail Line operational, informed the STB that it would not be consummating abandonment of the Rail Line. The fact is that there has been no train traffic since 2014, GWRC has made no effort to develop rail traffic or to rehabilitate the Rail Line, and the Landowners have been deprived of any ability to make any productive use of their land.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, for the reasons stated, the Board should:

(1) find that the present and future public convenience and necessity require and permit adverse abandonment of the Welty Rail Line. Accordingly, the Landowners' Application should be granted; and

(2) find that the application of 49 U.S.C. § 10904 and 10905 and 49 C.F.R. § 1152.29 to the Rail Line authorized for abandonment should be exempted and waived.

Respectfully submitted,

CINDY SAUER, et al., LANDOWNERS
c/o Stewart, Wald & McCulley
2100 Central Street, Suite 22
Kansas City, MO 64108

Applicants

THOMAS S. STEWART
ELIZABETH G. McCULLEY
REED W. RIPLEY
STEWART, WALD & McCULLEY
2100 Central Street, Suite 22
Kansas City, MO 64108
(816) 303-1500
stewart@swm.legal
mcculley@swm.legal
ripley@swm.legal

THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
2230 Marston Lane
Flossmoor, IL 60422-1336
(708) 704-7679
mcfarland@aol.com

Attorneys for Applicants

DATE FILED: August 18, 2022

CERTIFICATE OF SERVICE

I hereby certify that on August 18, 2022, I served the foregoing document, Application For

Adverse Abandonment, by e-mail or first-class, U.S. mail on the following:

Karl Morell
440 1st Street, NW, Suite 440
Washington, DC 20001

Katelyn S. Werner
Quintairos, Prieto, Wood & Boyer, P.A.
1400 16th Street, Suite #400
Denver, CO 80202

The Honorable Jared Polis, Governor of Colorado
State Capital Building
200 E. Colfax Ave., Rm. 136
Denver, CO 80203

U.S. Department of Transportation – Federal Railroad Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

U.S. Department of the Interior
Bureau of Land Management
Colorado State Office
2850 Youngfield Street
Lakewood, CO 80215

Matt LeCerf, Town Manager
City of Johnstown
450 Parish Avenue
Johnstown, CO 80534

Colorado Department of Transportation
2829 W. Howard Pl.
Denver, CO 80204

Tom Parko
Planning Director
Weld County Planning Department
1555 N. 17th Avenue
Greeley, CO 80631

Pamela Fischhaber, Deputy Director
Colorado Public Utilities Commission
1560 Broadway, Suite 250
Denver, CO 80202

Military Surface Deployment and Distribution Command Transportation Engineering Agency
ATTN: SDTE-SA (Railroads for National Defense)
1 Soldier Way, Building 1900W
Scott AFB, IL 62225-5006

U.S. Department of the Interior
National Park Service
Recreation Resources Assistance Division
1849 C Street NW
Washington, DC 20240

U.S. Department of Agriculture
Chief of Forest Service
Sidney R. Yates, Building
201 14th Street, SW
Washington, DC 20227

National Institute of Food and Agriculture
800 9th Street SW
Washington, D.C. 20024

U.S. Railroad Retirement Board
William O. Lipinski Federal Building
844 North Rush Street
Chicago, IL 60611-1275

Mike Reynolds, Regional Director
Intermountain Region
National Park Service
12795 West Alameda Pkwy
Lakewood, CO 80228

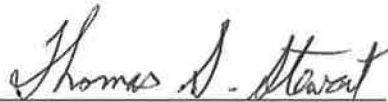
A handwritten signature in cursive script, reading "Thomas S. Stewart", written in dark ink. The signature is positioned above a horizontal line.

Thomas S. Stewart

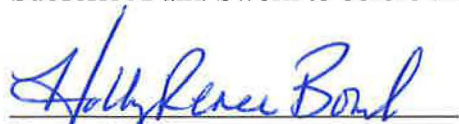
VERIFICATION

State of MISSOURI)
) ss.
County of JACKSON)

Thomas S. Stewart makes oath and says that he is an attorney for the Landowners, the applicant herein; that he has been authorized by the applicant to verify and file with the Surface Transportation Board the foregoing application in STB AB-857 (Sub-No. 2); that he has carefully examined all of the statements in the application as well as the appendices attached thereto and made a part thereof; that he has knowledge of the facts and matters relied upon in the application; and that all representations set forth therein are true and correct to the best of his knowledge, information, and belief.


Signature

Subscribed and Sworn to before me this 18th day of August, 2022.

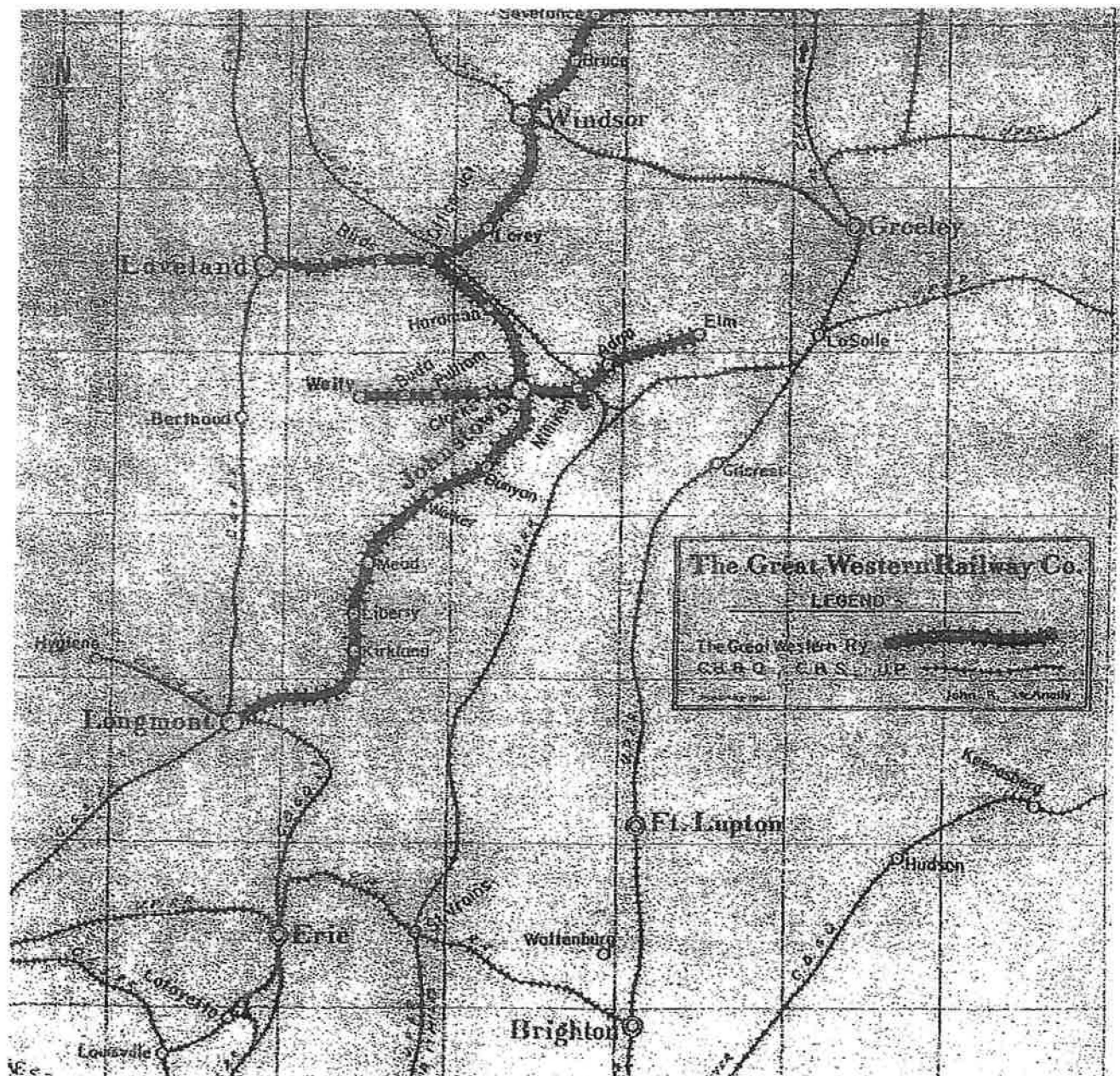

Notary Public

My Commission Expires: 6/20/26



APPENDIX 1

Property Owner	Spouse-/Additional Owner(s)	Mailing Address	Mailing City	Mailing State	Mailing ZIP
Jack Hodges	Crystal	308 Charlotte Ave.	Johnstown	CO	80534
Brianna Nelson		302 Charlotte St.	Johnstown	CO	80534
Cathy Egger	Mike Kellog	600 Aviara St.	Johnstown	CO	80534
Eleven, LLC, c/o Alex Sauer, Abe Sauer (2 parcels)		P.O. Box 611	Johnstown	CO	80534
Stephen A. Grantham	Karla A.	501 Pebble Beach Ave.	Johnstown	CO	80534
Danielle Blessing (Grauer)		616 Aviara St.	Fort Collins	CO	80534
Ann Weidman		614 Aviara St.	Johnstown	CO	80534
Jimmy L. Larkin	Annette L.	1422 S. Vivian Way	Johnstown	CO	80228
Deanne Gibboney		710 Country Acres Dr.	Johnstown	CO	80534
Calvin Lohnes	Donna Rae	614 Country Acres Dr.	Johnstown	CO	80534
Duane Lowe		618 Aviara St.	Johnstown	CO	80534
7 Parcels, LLC, c/o Lora Mayfield Warren		2125 Bluebell Ave.	Greeley	CO	80631
Connor Vaughn		8540 Benton Street	Arvada	CO	
Michael Horner		608 Aviara St.	Johnstown	CO	80534
Harry C. Peterson	Delores M.	6061 S. Aberdeen St.	Littleton	CO	80120
Aaron J. Sanchez	Jessica R. Aguilar	624 Aviara St.	Johnstown	CO	80534
Sauer Phantom 5 LLC, c/o Cindy Sauer (2 parcels)		6681 CR 50	Johnstown	CO	80534
Sauer West LLC, c/o Cindy Sauer		6681 CR 50	Johnstown	CO	80534
Troy Renner	Avery	606 Aviara St.	Johnstown	CO	80534
RMSJ, LLC, c/o Byron L. Spaur	Mark Spaur Steven Spaur	22605 RD 15	Johnstown	CO	80534
Byron L. Spaur		3801 46 CR	Berthoud	CO	80513
Kelly Bloom		P.O. Box 154	Johnstown	CO	80534
Austin W. Stewart		602 Aviara St.	Johnstown	CO	80534
Suzanne (Tocchini) Fulkrod	k/n/a Suzanne Fulkrod	2906 Falcon View Dr.	Wellington	CO	80549
Amando Valdez (2 parcels)	Anita	314 Charlotte St.	Johnstown	CO	80534
Fred Weis (4 parcels)	Diane K.	15168 CR 7	Mead	CO	80542
Zimmerman Brothers LP (2 parcels)		3041 CR 46	Berthoud	CO	80513



**NOTICE OF INTENT TO ABANDON OR TO DISCONTINUE
RAIL SERVICE**

Twenty seven Colorado Landowners give notice that on or about August 19, 2022 they intend to file with the Surface Transportation Board, Washington, DC, a Verified Application for Adverse Abandonment permitting the abandonment of a 6.2 mile line of railroad between railroad milepost 0.0, near Johnstown, Colorado which traverses through United States Postal Service ZIP Code 80534, and railroad milepost 6.2 at Welty, Colorado which traverses through United States Postal Service ZIP Code 80513 in Weld County(ies) Colorado. The proceeding has been docketed as No. AB 857 (Sub-No.2).

The Board's Office of Environmental Analysis (OEA) will generally prepare an Environmental Assessment (EA), which will normally be available 60 days after the filing of the petition for abandonment exemption. Comments on environmental and energy matters should be filed no later than 30 days after the EA becomes available to the public and will be addressed in a Board decision. Interested persons may obtain a copy of the EA or make inquiries regarding environmental matters by writing to OEA, Surface Transportation Board, Washington, DC or by calling OEA at 202/245-0245.

Appropriate requests for environmental conditions, public use conditions, or rail banking/trails use also can be filed with the Board. An original and 10 copies of any pleading that raises matters other than environmental issues (such as trails use and public use) must be filed directly with the Board's Office of Proceedings, Washington, DC and one copy must be served on applicants' representative. Questions regarding public use or trails use may be directed to the Board's Office of Public Assistance, Governmental Affairs, and Compliance at 202/245-0245. Copies of any comments or requests for conditions should be served on the applicant's representative Thomas F. McFarland, Thomas F. McFarland, P.C., 2230 Marston Lane, Flossmoor, IL 60422-1336, mcfarland@aol.com, and Thomas S. Stewart and Elizabeth G. McCulley, Stewart, Wald & McCulley, 2100 Central Street, Suite 22, Kansas City, MO 64108, stewart@swm.legal, and mculley@swm.legal.

Published: Greeley Tribune July 24, 31, August 7, 2022-1908119

Prairie Mountain Media, LLC

PUBLISHER'S AFFIDAVIT

**County of Weld
State of Colorado**

The undersigned, Agent, being first duly sworn under oath, states and affirms as follows:

1. He/she is the legal Advertising Reviewer of **Prairie Mountain Media LLC**, publisher of the **Greeley Tribune**.
2. The **Greeley Tribune** is a newspaper of general circulation that has been published continuously and without interruption for at least fifty-two weeks in Weld County and meets the legal requisites for a legal newspaper under Colo. Rev. Stat. 24-70-103.
3. The notice that is attached hereto is a true copy, published in the **Greeley Tribune** in Weld County on the following date(s):

Jul 24, 31 and Aug 7, 2022


Signature

Subscribed and sworn to me before me this

8th day of August, 2022


Notary Public

(SEAL)

**SHAYLA NAJERA
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20174031965
MY COMMISSION EXPIRES July 31, 2025**

Account: 1115546
Ad Number: 1908119
Fee: \$224.40

EXHIBIT D**ENVIRONMENTAL REPORT
(49 C.F.R. SECTION 1105.7)****DOCKET NO. AB-857 (SUB-NO. 3X)****GREAT WESTERN RAILWAY OF COLORADO, LLC
– ABANDONMENT EXEMPTION –
WELD COUNTY, COLORADO**

1. *Proposed Actions 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 the 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.

Great Western Railway of Colorado, LLC ("GWRC") proposes to abandon its Welty Branch located between milepost 0.0 at Johnstown, Colorado and milepost 6.2, at Welty, in Weld County Colorado, totaling approximately 6.2 miles (the "Line"). GWRC intends to railbank the Line and leave the rail, track materials, and cross ties in place. In addition, there are no plans of disturbing the underlying roadbed. There are no bridges to be removed and no surrounding waterways.

Previously, in April 2008, GWRC filed to abandon the Line. See STB Docket No. AB-857 (Sub-No. 1X), *Great Western Railway of Colorado, LLC – Abandonment Exemption – in Weld County, CO* (not printed), served May 6, 2008. The requested exemption became effective on June 5, 2008. After being granted six extensions of the deadline to consummate the abandonment, GWRC, on August 28, 2014, notified the Board that, due to recent industrial expansion in the area, GWRC had decided not to consummate the abandonment of the Line.

The Line has not been used for local traffic in many years. The Line is stub-ended and not capable of handling overhead traffic. Therefore, the proposed abandonment will not change rail freight operations on the Line. The Line has been used to store rail cars and GWRC plans to continue using a portion of the Line for car storage.

GWRC continues to believe that there will be industrial expansions along the Line in the near future. Certain "Landowners" are apparently seeking to file an adverse abandonment and salvage the Line. Consequently, GWRC is seeking abandonment authority so the GWRC can railbank the Line and preserve the corridor for future rail service.

A map of the proposed abandonment is attached 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 and freight) that will be diverted to other transportation systems or modes as a result of the proposed action.

No passenger or freight traffic will be diverted to other modes as a result of the proposed abandonment. No local traffic has moved over the Line in many years and the Line is not capable of handling overhead traffic. Therefore, the proposed abandonment will have no adverse effects on local or regional transportation systems or 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 the 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) GWRC is confident that the proposed abandonment will be consistent with local land use plans. GWRC contacted the local government of Weld County. *See Exhibit 2.* On January 19, 2022, Mr. Tom Hartwell of the Weld County Planning Service left a voice mail stating that Weld County has no concerns about the proposed abandonment. A copy of this Report is being supplied to the Weld County Commissioners for their information and further comment.

(ii) GWRC contacted the Natural Resource and Conservation Service ("NRCS") and requested assistance in identifying any potential effects on prime agricultural land. *See Exhibit 3.* To date, no response to this inquiry has been received. In 2008, NRCS stated that the "potential impact on prime agricultural land will be none." *See Exhibit 3.*

(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 as a recreational trail since it is located, for the most part, in a rural, sparsely populated area. No State or local entity has expressed an interest in the right-of-way.

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 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 adverse effect on overall energy efficiency since no local traffic has moved over the Line in many years and the Line is not capable of handling overhead traffic. Any traffic that previously moved over the Line has long ago been transferred either to other modes or other routings.

(iv) The proposed abandonment will not cause the diversion of any rail traffic to motor carriage since no local traffic has been handled over the Line in many 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 10502) to construct a new line or reinstitute service over a previously abandoned line, only the eight train a day provision in subsection (5)(i)(A) will apply. (ii) If the proposed action affects a class I or non-attainment 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 these thresholds.

(ii) The proposed abandonment will not result in meeting or exceeding these 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 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.

(ii) The proposed abandonment will have no effect on the transportation of hazardous materials.

(iii) GWRC is unaware of any hazardous waste sites or sites where hazardous spills have occurred on or along the right-of-way.

8. Biological Resources. (i) Based on consultations 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 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) GWRC notified the U.S. Fish and Wildlife Service ("FWS") 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 4.* According to FWS, "because there is no construction or disturbance associated with this project proposal, the Service does not need to provide review or comment for it to move forward." *See Exhibit 4.* A copy of this Report is being supplied to FWS for its information and further comment.

(ii) There are no wildlife sanctuaries or refuges, National or State parks or forests along the Line that would be adversely affected by the proposed abandonment. Nevertheless, GWRC contacted the National Park Service ("NPS") 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 5.* To date, no response to this inquiry has been received. In 2008, NPS had no comments regarding the abandonment of the Welty Branch. A copy of this Report is being supplied to NPS for its information and comment.

9. Water. (i) Based on consultation with the 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 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) GWRC is confident the proposed abandonment will not be inconsistent with applicable water quality standards. The Line does not cross any bodies of water and there will be no salvage operations or impacts on water quality in the area. Nevertheless, GWRC contacted the Colorado Department of Public Health and Environment ("CDPHE") and the U.S. Environmental Protection Agency ("EPA") concerning this matter requesting assistance in determining whether the proposed abandonment is consistent with applicable Federal, State, or local water quality standards. *See Exhibit 6.* To date, no response has been received from CDPHE. EPA stated that GWRC may need to obtain a construction stormwater permit if the abandonment will result in disturbance at least one acre and discharge into state waters." A copy of this Report is being supplied to CDPHE and EPA for their information and comment.

(ii) GWRC contacted the Corps of Engineers ("Corps") concerning these matters. *See Exhibit 7.* To date, no response to this inquiry has been received. A copy of this Report is being supplied to the Corps for its information and comment.

(iii) GWRC believes the proposed abandonment will not require the issuance of any permit under Section 402 of the Clean Water Act. GWRC contacted the EPA 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 6. EPA stated that it cannot say for sure whether a Section 402 permit will be required. Also, if the abandonment results in work in Waters of the U.S., GWRC may need a CWA 404 permit. A copy of this Report is being supplied to the EPA for its information and further comment.

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

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

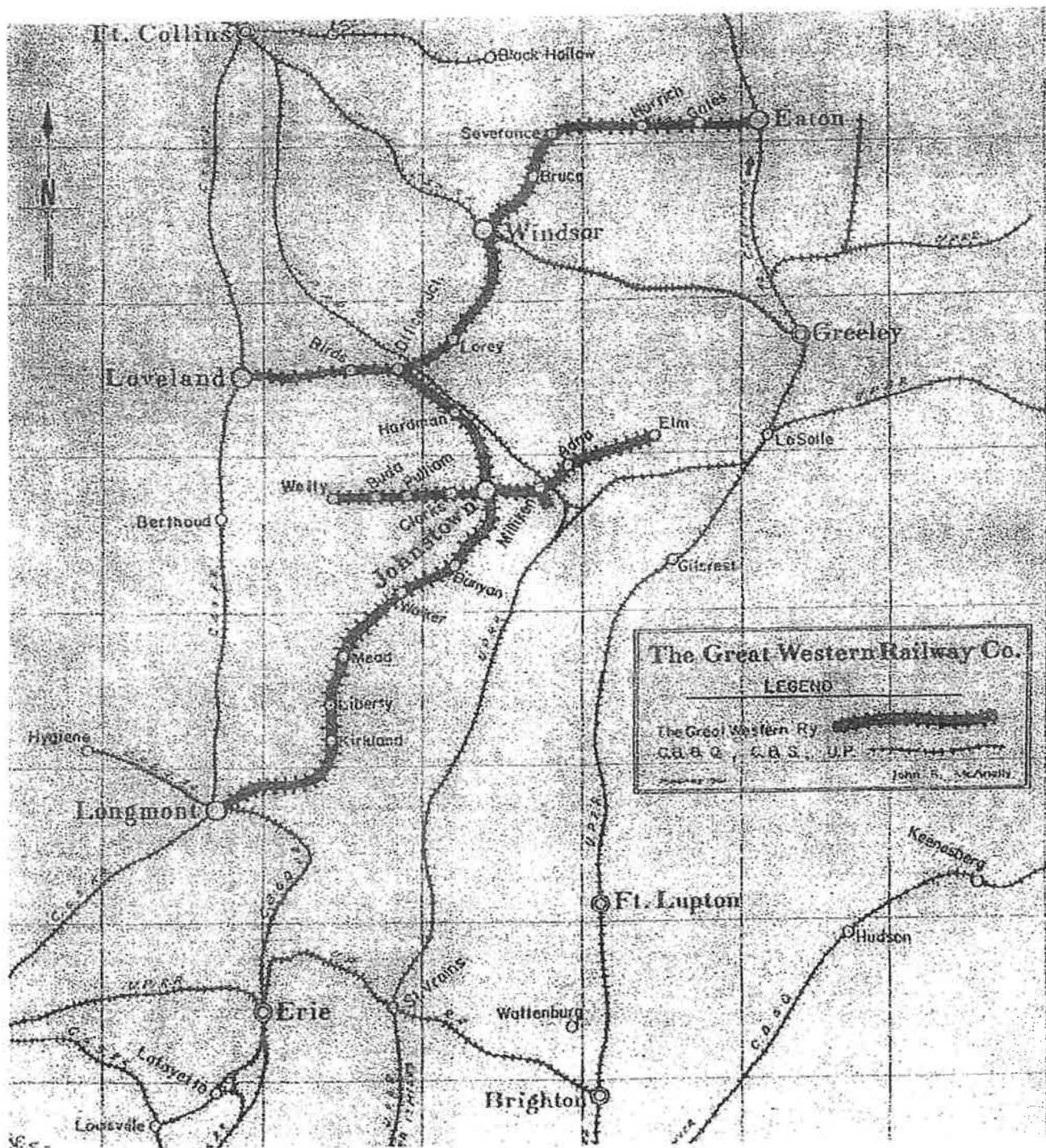


EXHIBIT 1

EXHIBIT 2

Karl Morell & Associates
440 1st Street, NW, Suite 440
Washington, DC 20001
(202) 595-9045
karlm@karlmorell.com

December 23, 2021

Weld County Commissioners
P.O. Box 758
Greeley, CO 80632

**RE: Docket No. AB-857 (Sub-No. 3), Great Western Railway of Colorado,
L.L.C.--Abandonment Exemption--In Weld County, CO**

Dear Sir/Madam:

Great Western Railway of Colorado, LLC ("GWRC") is planning to file a Notice of Exemption with the Surface Transportation Board ("STB"), on or about February 15, 2022, for GWRC to abandon its 6.2-mile line of railroad located between milepost 0.0, at Johnstown, and milepost 6.2, at Welty, in Weld County, Colorado. 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.

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

Sincerely,

Karl Morell

Attorney for:

Great Western Railway of Colorado, LLC

EXHIBIT 3

Karl Morell & Associates
440 1st Street, NW, Suite 440
Washington, DC 20001
(202) 595-9045
karlm@karlmorell.com

December 23, 2021

State Conservationist
USDA Natural Resource Conservation Service
Denver Federal Center
Building 56, Room 2400
P.O. Box 25426
Denver, CO 80225-0426

**RE: Docket No. AB-857 (Sub-No. 3), Great Western Railway of
Colorado, LLC --Abandonment Exemption--In Weld County,
CO**

Dear Sir/Madam:

Great Western Railway of Colorado, LLC ("GWRC") is planning to file a Notice of Exemption with the Surface Transportation Board ("STB"), on or about February 15, 2022, for GWRC to abandon its 6.2-mile line of railroad located between milepost 0.0, at Johnstown, and milepost 6.2, at Welty, in Weld County, Colorado. 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.

In 2007, GWRC sought your assistance in the proposed abandonment of this same rail line. A copy of your response is attached.

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

Sincerely,

Karl Morell

Attorney for:

Great Western Railway of Colorado, LLC

Karl Morell & Associates
440 1st Street, NW, Suite 440
Washington, DC 20001
(202) 595-9045
karlm@karlmorell.com

December 23, 2021

U.S. Fish and Wildlife Service
134 Union Blvd.
Lakewood, CO 80228

**RE: Docket No. AB-857 (Sub-No. 3), Great Western Railway of
Colorado, LLC --Abandonment Exemption--In Weld County, CO**

Dear Sir/Madam:

Great Western Railway of Colorado, LLC ("GWRC") is planning to file a Notice of Exemption with the Surface Transportation Board ("STB"), on or about February 15, 2022, for GWRC to abandon its 6.2-mile line of railroad located between milepost 0.0, at Johnstown, and milepost 6.2, at Welty, in Weld County, Colorado. 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.

In 2007, GWRC sought your assistance in the proposed abandonment of this same rail line. A copy of your response is attached.

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

Sincerely,

Karl Morell

Attorney for:

Great Western Railway of Colorado, LLC

Karl Morell

From: Karl Morell
Sent: Saturday, February 05, 2022 9:25 AM
To: 'Williams, Jennifer M'
Subject: RE: Docket No. AB-857 (Sub-No. 3), Great Western Railway of Colorado, L.L.C. -- Abandonment Exemption - In Weld County, CO

Thank you for the response. The infrastructure will remain in place. The railroad is planning on railbanking the line as is. The red line on map is correct.

Karl

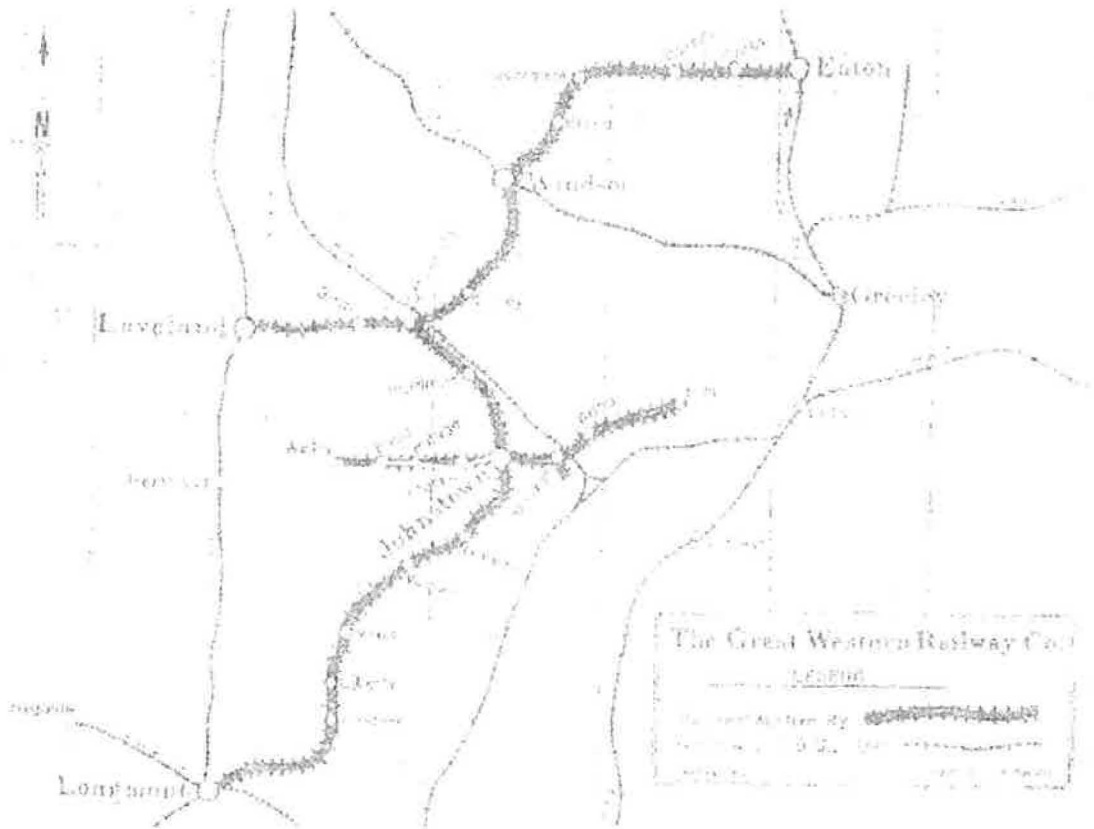
From: Williams, Jennifer M <jennifer_williams@fws.gov>
Sent: Tuesday, February 01, 2022 9:13 PM
To: Karl Morell <karlm@karlmorell.com>
Subject: Docket No. AB-857 (Sub-No. 3), Great Western Railway of Colorado, L.L.C. --Abandonment Exemption - In Weld County, CO

Hi Karl,

The project referenced in the subject line was assigned to me. Apologies for the delayed response. We are under mandatory telework and only have staff going into the office every 2-3 weeks to check for mail. In addition, we are moving toward 100% electronic project requests. Please submit all future requests to us via email at _____ to ensure a timely review and response.

I see that your meeting is rapidly approaching so I will try to get you a response quickly. We need to know what all is involved with abandoning these particular tracks. Will the infrastructure remain in place? If so, are there any hazards associated with leaving the material? If infrastructure will be removed, please describe the level of ground disturbance that will be involved and whether any construction will occur (for example, building a trail in the place of the railroad).

In the map that you provided, is it just the section I traced in red that will be abandoned?



Thank you,

Jen

Dr. Jen Williams ()
Fish and Wildlife Biologist
Colorado Ecological Services Field Office
134 Union Blvd
Lakewood CO 80228
303-236-4758

Karl Morell

From: Williams, Jennifer M <jennifer_williams@fws.gov>
Sent: Thursday, February 10, 2022 12:42 PM
To: Karl Morell
Subject: Re: [EXTERNAL] RE: Docket No. AB-857 (Sub-No. 3), Great Western Railway of Colorado, L.L.C. --Abandonment Exemption - In Weld County, CO

Hi Karl,

Thank you for contacting the U.S. Fish and Wildlife Service (Service). Because there is no construction or disturbance associated with this project proposal, the Service does not need to provide review or comment for it to move forward. Therefore, the Service will not provide additional response beyond this notification. We appreciate your efforts to ensure the conservation of threatened and endangered species.

Project Number: 2022-TA-0433

Kind regards,

Jen Williams

Dr. Jen Williams ()
Fish and Wildlife Biologist
Colorado Ecological Services Field Office
134 Union Blvd
Lakewood CO 80228
303-236-4758

From: Karl Morell <karlm@karlmorell.com>
Sent: Saturday, February 5, 2022 7:25 AM
To: Williams, Jennifer M <jennifer_williams@fws.gov>
Subject: [EXTERNAL] RE: Docket No. AB-857 (Sub-No. 3), Great Western Railway of Colorado, L.L.C. --Abandonment Exemption - In Weld County, CO

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.
--

Thank you for the response. The infrastructure will remain in place. The railroad is planning on railbanking the line as is. The red line on map is correct.

Karl

From: Williams, Jennifer M <jennifer_williams@fws.gov>
Sent: Tuesday, February 01, 2022 9:13 PM

To: Karl Morell <karlm@karlmorell.com>

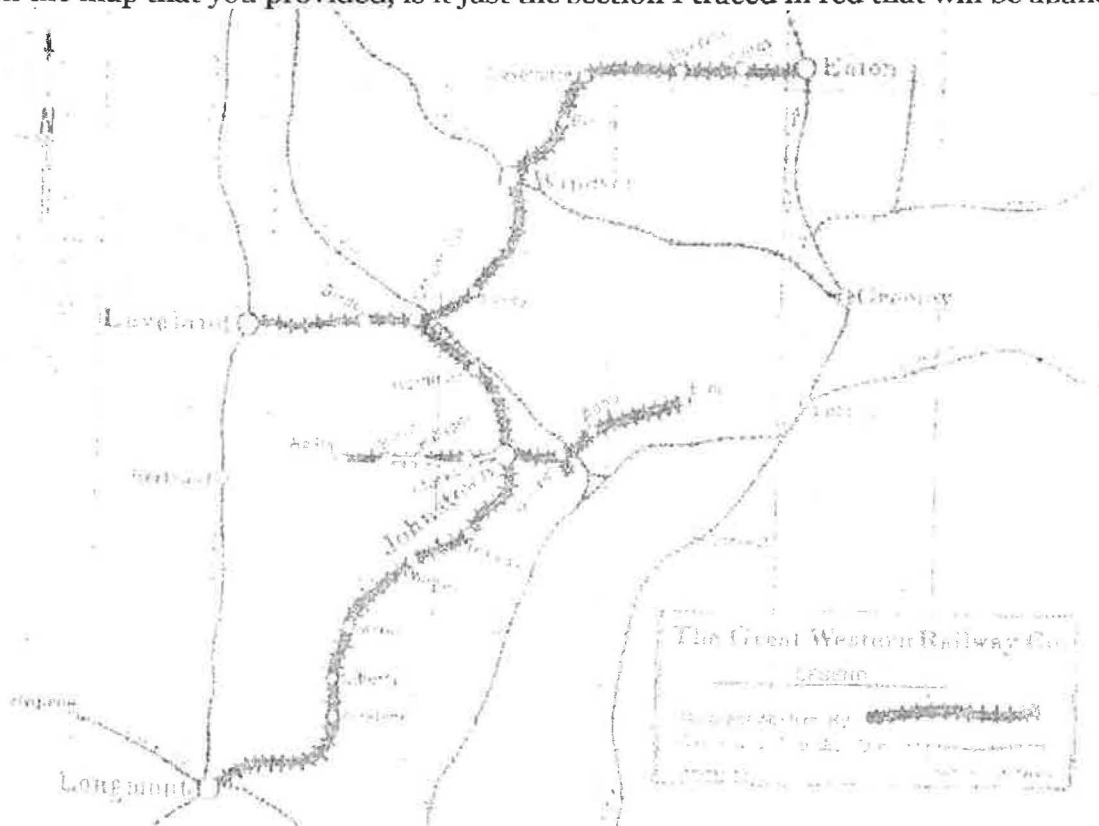
Subject: Docket No. AB-857 (Sub-No. 3), Great Western Railway of Colorado, L.L.C. --Abandonment Exemption - In Weld County, CO

Hi Karl,

The project referenced in the subject line was assigned to me. Apologies for the delayed response. We are under mandatory telework and only have staff going into the office every 2-3 weeks to check for mail. In addition, we are moving toward 100% electronic project requests. Please submit all future requests to us via email at _____ to ensure a timely review and response.

I see that your meeting is rapidly approaching so I will try to get you a response quickly. We need to know what all is involved with abandoning these particular tracks. Will the infrastructure remain in place? If so, are there any hazards associated with leaving the material? If infrastructure will be removed, please describe the level of ground disturbance that will be involved and whether any construction will occur (for example, building a trail in the place of the railroad).

In the map that you provided, is it just the section I traced in red that will be abandoned?



Thank you,

Jen

Dr. Jen Williams ()
Fish and Wildlife Biologist
Colorado Ecological Services Field Office
134 Union Blvd
Lakewood CO 80228

EXHIBIT 5

Karl Morell & Associates
440 1st Street, NW, Suite 440
Washington, DC 20001
(202) 595-9045
karlm@karlmorell.com

December 23, 2021

National Park Service
RTCA Program
1849 C Street, NW
Washington, D.C. 20240

**RE: Docket No. AB-857 (Sub-No. 3), Great Western Railway of
Colorado, LLC --Abandonment Exemption--In Weld County,
CO**

Dear Sir/Madam:

Great Western Railway of Colorado, LLC ("GWRC") is planning to file a Notice of Exemption with the Surface Transportation Board ("STB"), on or about February 15, 2022, for GWRC to abandon its 6.2-mile line of railroad located between milepost 0.0, at Johnstown, and milepost 6.2, at Welty, in Weld County, Colorado. 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.

In 2007, GWRC sought your assistance in the proposed abandonment of this same rail line. A copy of your response is attached.

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

Sincerely,

Karl Morell

Attorney for:

Great Western Railway of Colorado, LLC

Karl Morell & Associates

440 1st Street, NW, Suite 440
Washington, DC 20001
(202) 595-9045
karlm@karlmorell.com

December 23, 2021

Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, CO 80246

**RE: Docket No. AB-857 (Sub-No. 3), Great Western Railway of
Colorado, LLC --Abandonment Exemption--In Weld County,
CO**

Dear Sir/Madam:

Great Western Railway of Colorado, LLC ("GWRC") is planning to file a Notice of Exemption with the Surface Transportation Board ("STB"), on or about February 15, 2022, for GWRC to abandon its 6.2-mile line of railroad located between milepost 0.0, at Johnstown, and milepost 6.2, at Welty, in Weld County, Colorado. 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. GWRC 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.

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

Sincerely,

Karl Morell

Attorney for:

Great Western Railway of Colorado, LLC

Karl Morell & Associates
440 1st Street, NW, Suite 440
Washington, DC 20001
(202) 595-9045
karlm@karlmorell.com

December 23, 2021

U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, CO 80202-1129

**RE: Docket No. AB-857 (Sub-No. 3), Great Western Railway of
Colorado, LLC --Abandonment Exemption--In Weld County,
CO**

Dear Sir/Madam:

Great Western Railway of Colorado, LLC ("GWRC") is planning to file a Notice of Exemption with the Surface Transportation Board ("STB"), on or about February 15, 2022, for GWRC to abandon its 6.2-mile line of railroad located between milepost 0.0, at Johnstown, and milepost 6.2, at Welty, in Weld County, Colorado. 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. GWRC 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.

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

Sincerely,

Karl Morell

Attorney for:

Great Western Railway of Colorado, LLC

Karl Morell

From: Snyder, Shannon (she/her) <snyder.shannon@epa.gov>
Sent: Tuesday, February 08, 2022 6:16 PM
To: Karl Morell
Subject: Great Western Railway Docket No. AB-857 (Sub-No. 3)
Attachments: Scanned from R08-DEN-5137-M01-12-2022-175105.pdf

Dear Karl Morell,

We received your attached letter regarding the Great Western Railway Abandonment Exemption in Weld County, Colorado. In your letter, you are notifying EPA of this proposed action so that we can assist with identifying any potential impacts under 49 CFR Part 1105. The letter does not provide adequate information for us to identify the potential impacts of this proposed action, and the map provided doesn't include any waterbodies to help identify potential water quality standards impacts. However, based upon the provided information, you may need to obtain a construction stormwater permit from the Colorado Department of Public Health and Environment (CDPHE) if the abandonment will result in disturbance at least one acre and discharge into state waters. In your letter it states that you don't believe Clean Water Act (CWA) 402 permits are needed, but based upon the provided information we cannot say that for sure. Additionally, we don't know what the abandonment entails, but if it will result in work in Waters of the U.S. you may need a CWA 404 permit. For further information about the construction stormwater permit here is a link to the CDPHE Colorado Construction Stormwater Permit:

Please let me know if I can be of further assistance.

Shannon

U.S. EPA, Region 8, 8ORA-N
NEPA Branch
Office of the Regional Administrator
1595 Wynkoop Street
Denver, CO 80202-1129
p: (303) 312-6335 / f: (303) 312-7203

EXHIBIT 7

Karl Morell & Associates
440 1st Street, NW, Suite 440
Washington, DC 20001
(202) 595-9045
karlm@karlmorell.com

December 23, 2021

U.S. Army Engineer, Omaha District
1616 Capitol Street, STE 9000
Omaha, Nebraska 68102

**RE: Docket No. AB-857 (Sub-No. 3), Great Western Railway of
Colorado, LLC --Abandonment Exemption--In Weld County,
CO**

Dear Sir/Madam:

Great Western Railway of Colorado, LLC ("GWRC") is planning to file a Notice of Exemption with the Surface Transportation Board ("STB"), on or about February 15, 2022, for GWRC to abandon its 6.2-mile line of railroad located between milepost 0.0, at Johnstown, and milepost 6.2, at Welty, in Weld County, Colorado. 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. GWRC 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.

In 2007, GWRC sought your assistance in the proposed abandonment of this same rail line. A copy of your response is attached.

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

Sincerely,

Karl Morell

Attorney for:

Great Western Railway of Colorado, LLC

EXHIBIT E

HISTORIC REPORT (49 CFR SECTION 1105.8)

STB DOCKET NO. AB-857 (SUB-NO. 3X)

GREAT WESTERN RAILWAY OF COLORADO, LLC – ABANDONMENT EXEMPTION – IN WELD COUNTY, COLORADO

The Historic Report should contain the information required by Section 1105.7(e)(1) of the Environmental Report prepared for the proposed abandonment:

1. *Proposed Actions 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 the 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.

Great Western Railway of Colorado, LLC ("GWRC") proposes to abandon its Welty Branch located between milepost 0.0 at Johnstown, Colorado and milepost 6.2, at Welty, in Weld County Colorado, totaling approximately 6.2 miles (the "Line"). GWRC intends to railbank the Line and leave the rail, track materials, and cross ties in place. In addition, there are no plans of disturbing the underlying roadbed. There are no bridges to be removed and no surrounding waterways.

Previously, in April 2008, GWRC filed to abandon the Line. See STB Docket No. AB-857 (Sub-No. 1X), *Great Western Railway of Colorado, LLC – Abandonment Exemption – in Weld County, CO* (not printed), served May 6, 2008. The requested exemption became effective on June 5, 2008. After being granted six extensions of the deadline to consummate the abandonment, GWRC, on August 28, 2014, notified the Board that, due to recent industrial expansion in the area, GWRC had decided not to consummate the abandonment of the Line.

The Line has not been used for local traffic in many years. The Line is stub-ended and not capable of handling overhead traffic. Therefore, the proposed abandonment will not change rail freight operations on the Line. The Line has been used to store rail cars and GWRC plans to continue using a portion of the Line for car storage.

GWRC continues to believe that there will be industrial expansions along the Line in the near future. Certain "Landowners" are apparently seeking to file an adverse abandonment and salvage the Line. Consequently, GWRC is seeking abandonment

authority so the GWRC can railbank the Line and preserve the corridor for future rail service.

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

HISTORIC REPORT

1. A U.S.G.S. topographic map (or an 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 or older and are part of the proposed action.

A map depicting the Line proposed for abandonment were supplied to the Colorado State Historic Preservation Officer ("SHPO"). See Exhibit 2. There are no structures 50 years old or older associated with the abandonment of the Line.

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 Line branches off GWRC's mainline at the intersection of route 17 and N 2nd Street in Johnstown (population 9,887), extends in a southwesterly direction through Johnstown until it reaches route 15 and then extends westerly through a predominantly rural area to the end of the Line just west of Interstate Hwy 25. The basic rail corridor right-of-way is approximately 80 feet in width for the majority of the length of the Line.

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

There are no railroad structures on the Line that are 50 years old or older.

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

There are no railroad structures on the Line that are 50 years old or older.

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.

GWRC is the successor to the Great Western Railway Company that constructed the Line sometime between 1901 and 1906 primarily to serve the sugar beet industry in the area. Subsequently, the Line was used to transport various agricultural products. The Line, however, has not been used for many years. Because no traffic has moved over this

Line in many years, the proposed abandonment will not result in any change in rail operations.

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.

GWRC does not possess any such documents.

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 Line contains no historic structures and GWRC is unaware of any archeological resources or railroad historic properties along the Line.

On December 28, 2021, GWRC sent a letter to the SHPO eliciting their views on the proposed abandonment. *See* Exhibit 2. In response, the SHPO stated that “[w]e concur with your assessment that the proposed undertaking will have no adverse effect on historic properties, provided the Railway remains committed to railbanking this section of the track.” *See* Exhibit 3.

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 specified nonrailroad 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).

GWRC will work with the SHPO on the matters discussed above and will provide the SHPO whatever additional information is need in association with the proposed Line abandonment.

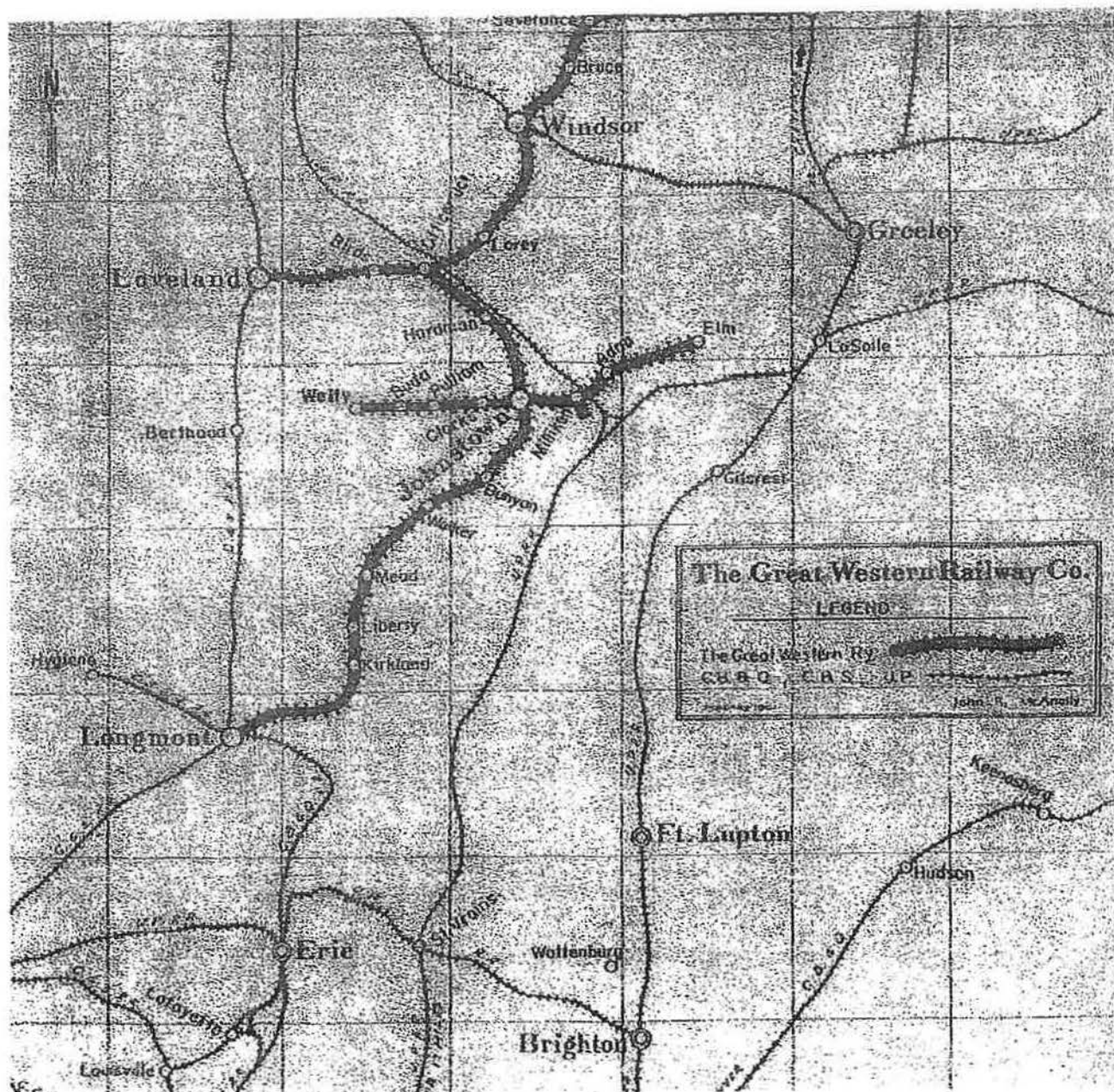


EXHIBIT 1

Karl Morell & Associates
440 1st Street, NW, Suite 440
Washington, DC 20001
(202) 595-9045
karlm@karlmorell.com

EXHIBIT 2

December 23, 2021

Colorado Archeology and Historic Preservation Office
1200 Broadway
Denver, Colorado 80203

**RE: Docket No. AB-857 (Sub-No. 3), Great Western Railway of
Colorado, LLC --Abandonment Exemption--In Weld County,
CO**

Dear Sir/Madam:

Great Western Railway of Colorado, LLC ("GWRC") is planning to file a Notice of Exemption with the Surface Transportation Board ("STB"), on or about February 15, 2022, for GWRC to abandon its 6.2-mile line of railroad located between milepost 0.0, at Johnstown, and milepost 6.2, at Welty, in Weld County, Colorado. A map of the proposed abandonment is attached. One of the requirements for this filing with the STB is that the carrier 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 cross-ties.

The rail line GWRC seeks to abandon is located in Weld County, Colorado. The line begins at milepost 0.0, at Johnstown, and extends generally in a westerly direction to the end of the line at milepost 6.2, at Welty. The line crosses through predominately flat, rural areas.

There are no structures 50 years old or older associated with the abandonment of the 6.2-mile rail line.

In 2007, GWRC sought your assistance in the proposed abandonment of this same rail line. A copy of your response is attached. GWRC also retained URS Corporation to prepare a report which was submitted to your office. Attached is the correspondence between URS and your office. Should you require an additional copy of the URS August 2008 report, please contact me.

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.

Sincerely,

Karl Morell

Attorney for

Great Western Railway of Colorado, LLC

10 January 2022

HC #80837

Karl Morell
Karl Morell & Associates
440 1st St., NW, Suite 440
Washington, DC 20001

RE: Abandonment Exemption, Great Western Railway of Colorado, MP 0.0 to MP 6.2,
Johnstown to Welty, Weld County (Docket No. AB-857 (Sub-No. 3)

Dear M. Morell:

Thank you for your recent correspondence received 4 January 2022, concerning the proposed abandonment and railbanking of a section of track in Weld County. Our office has reviewed the submitted materials. This section of the Welty Branch (5WL.841.15) supports to overall eligibility of the resource. We concur with your assessment that the proposed undertaking will have no adverse effect on historic properties, provided the Railway remains committed to railbanking this section of the track.

If you have any questions, please contact Joseph Saldibar, Architectural Services Manager, at (303) 866-3741 or (303) 842-5619.

Sincerely,

Dr. Holly Kathryn Norton

Dawn DiPrince
State Historic Preservation Officer

Digitally signed by Dr. Holly Kathryn Norton
Date: 2022.01.12 11:23:51 -07'00'

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423

STB Docket No. AB-857 (Sub-No. 2)

**LANDOWNERS -- ADVERSE ABANDONMENT --
GREAT WESTERN RAILWAY OF COLORADO, LLC, IN WELD COUNTY,
COLORADO**

FEDERAL REGISTER NOTICE

On August 18, 2022, 27 Landowners (“the Applicant”), filed with the Surface Transportation Board, Washington, D.C. 20423, an Application for Adverse Abandonment, for permission for the abandonment of a line of railroad that extends (1) between Milepost 0.0 at Johnstown, Colorado and Milepost 6.2 near Welty, Colorado (the “Rail Line”), a distance of 6.2 miles, in Weld County, Colorado, Postal Zip Codes 80534 and 80513.

To the Landowners' knowledge, the Rail Line does not contain federally granted rights-of-way. Any documentation on that subject in the Applicant's possession will be made available promptly to those requesting it. The Application can be viewed on the Board's webpage, www.stb.gov, or a copy can be secured from Applicants' counsel, whose name and address appear below. The Applicants' entire case for abandonment was filed with the Application.

The interest of railroad employees will be protected by the employee protective conditions imposed in *Oregon Short Line R. Co. - Abandonment - Goshen*, 360 I.C.C. 91 (1979).

Any interested person may file with the Surface Transportation Board written comments concerning the proposed abandonment or protests (including the protestant's entire opposition case), within 45 days after the application was filed. Persons opposing the proposed abandonment that do wish to participate actively and fully in the process should file a protest. In addition, a commenting party or protestant may provide recommended provisions for protection of the interests of employees and parties seeking information concerning the filing of protests should refer to § 1152.25.

Written comments and protests must indicate the proceeding designation STB No. AB 857 (Sub-No. 2) and should be filed with the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board (Board), Washington, DC 20423-0001, no later than October 3, 2022. Interested persons may file a written comment or protest with the Board to become a party to this abandonment proceeding. A copy of each written comment or protest shall be served upon the representative of the applicant Thomas F. McFarland, Thomas F. McFarland, P.C., 2230 Marston Lane, Flossmoor, IL 60422-1336, mcfarland@aol.com, and Thomas S. Stewart and Elizabeth G. McCulley, Stewart, Wald & McCulley, 816/303-1500, 2100 Central Street, Suite 22, Kansas City, MO 64108, stewart@swm.legal, and mcculley@swm.legal. The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, every document filed with the Board must be served on all parties to the abandonment proceeding. 49 CFR 1104.12(a).

Persons seeking further information concerning abandonment procedures may contact the Surface Transportation Board or refer to the full abandonment regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Office of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Office of Environmental Analysis. EAs in these abandonment proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

SAUER WEST LLC, et. Al.,	)	
	)	
Plaintiffs,	)	
	)	No. 1:12-cv-00340-MBH
vs.	)	
	)	Judge Ryan T. Holte
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	
	)	

I, Cynthia Sauer, declare as follows:

- 1) I am over 18 years of age and competent to make this declaration.
- 2) I live at 6681 County Road 50, Johnstown, Colorado in Weld County, Colorado.
- 3) I have lived in Weld County, Colorado for many decades, I own many properties in Weld County, Colorado, and my family has farmed all these properties for many decades too. I am personally very familiar with each parcel of land and visit the properties on a daily basis.
- 4) I am the owner of Sauer West, LLC, which is adjacent to the Rail Line. Sauer West, LLC's legal description is as follows: Northwest Quarter (NW ¼) of Section Ten (10), Township Four (4) North, Range Sixty-eight (68) West of the Sixth Principal Meridian.
- 5) My children are the owners of Sauer Phantom 5, LLC, which is also adjacent to the Rail Line, and I am the operating manager. The legal description for Sauer Phantom 5, LLC is "Lots A and B of Recorded Exemption No. Corrected 1061-09-4-RE-2955, recorded April 17, 2001 at Reception No. 2840988, being a part of the Southeast Quarter of Section 9, Township 4 North, Range 68 West of the 6th P.M., County of Weld, State of Colorado". Assessor parcel 106109000034 is Lot A, 5.09 Acres. Assessor parcel 106109000035 is Lot B, 151.06 acres.
- 6) I am also the owner of and Sauer Whitehall, which is also adjacent to the Rail Line. Sauer Whitehall's legal description is "All of the South East Quarter of Section 12, Township 4 North, Range 68 West of the 6th P.M., excepting a strip off of the North side already conveyed to the Great Western Railway Company, County of Weld, State of Colorado" Deed of Trust recorded 12/17/1993, Recording Book 1417, Film 1283.
- 7) Since 2002, Sauer West, LLC, Sauer Whitehall, LLC and Sauer Phantom 5, LLC have leased the properties to my company, Sauer Ag, LLP for all farming operations.

- 8) The Rail Line is stub ended 6 miles outside of Johnstown, Colorado. It used to serve sugar beet dumps in the area. The last use of the Rail Line for railroad purposes was in the late 1970's because that is when the sugar beet dumps ceased to exist.
- 9) My last memory of Great Western activity on this property was using the railroad bed during the filming of the Frisco Kid (No Knife), which was released as a movie in July, 1979. I have never witnessed Great Western run trains on this line at least since 1979. The railroad has also not maintained the railroad bed in any fashion to my knowledge since 1979.
- 10) Instead, my husband, Henry Sauer, maintained the former railroad bed from 9/1/1978 to 11/12/2002, including spraying for noxious and overgrown weeds. After my husband died, my children and I maintain the former railroad bed, including spraying for noxious weeds.
- 11) The original deeds to the Great Western Railway Co. provided that, if railroad operations ever ceased for a period of six months or more, then the land was supposed to revert to the landowner;
 - a) for Sauer Phantom 5, including parcel numbers 106109000035 and 106109000034, the applicable conveyance deed is the DeFrance conveyance deed Book 163 page 480, which states, "And it is expressly agreed that if the party of the second part, its successors or assigns shall cease or fail for a period of six months to operate its said railway... the premises hereby conveyed shall revert to the party of the first part this his heirs and assigns;"
 - b) for Sauer West, LLC, parcel number 106110000027, the applicable conveyance deed is the Kahler conveyance deed Book 190, Page 79, which states, "If anytime thereafter the party of the second part or its assigns shall cease or fail to maintain and operate the same thereon in any such event, the said premises shall revert to the part of the first part, his heirs and assigns;" and
 - c) for Sauer Whitehall, parcel number 106112000013, the applicable conveyance deed is the Pulliman conveyance deed, Book 190 Page 182, which states, "If anytime thereafter, the party of the second part or its assigns shall cease or fail to maintain and operate the same thereon, in any such event, the said premises shall revert to the party of the first part, his heirs and assigns."
- 12) Because Great Western abandoned the right-of-way, the Weld County Assessor, after noting the abandonment, removed the railroad bed easement from my property descriptions in 2007, adjusted the total acreage, and added the acreage of the right-of-way to my assessed value. As a result, I began paying the taxes on this additional acreage included within the right-of-way in 2007.
- 13) According to the original grants to the railroad that provided for reversion to the landowners after a short period of the railroad's nonuse, Great Western abandoned the railroad right-of-way sometime in the early 1980s. My land should be free from any

railroad easement under state law and would be free of the easement but for the fact that Great Western never formally consummated abandonment under federal law.

- 14) There has been no train traffic on this property for 43 years. The railroad bed has been in total disrepair for more than 43 years. I have never witnessed or known Great Western to ever make any repairs for 43 years, except to reconstruct a crossing at County Road 13 at the Sauer West property in 2009. The condition of the rails are not even conducive to any train operation.
- 15) Despite no train traffic for 43 years, I have witnessed Great Western temporarily storing cars on Sauer West property located in Section 12, but no cars were stored on Sauer West property from at least 2006 until at least 2016. In 2016 or 2017, Great Western stored rail cars the entire length of the line. Those rail cars were stored there for approximately two years, but Great Western did not rotate the cars, and they stood still for the duration of storage. When Great Western finally removed the cars, much damage was done to the tracks, and now the tracks are unusable. No rail car storage ever occurred before or since.
- 16) I have continually expressed my beliefs to Great Western, and anybody who would listen, that the railroad abandoned their easement and that I should have the right to my land back unencumbered by any easement. I even hired an attorney in early 2000, to no avail. I provided public comments regarding improvements at County Road 7 as follows: Comments regarding PUC Docket #09A-893R, THE MATTER OF WELD COUNTY, FOR THE AUTHORITY TO MAKE ROADWAY CROSSING IMPROVEMENTS AT THE AT-GRADE CROSSING OF WELD COUNTY ROAD 7 AND GREAT WESTERN RAILWAY AND DESIGNATE THE CROSSING AS EITHER OUT OF SERVICE OR EXEMPT. Representing landowners Sauer West, LLC and Sauer Phantom, LLC which properties lay on either side of the specific Weld County Road 7 roadway crossing, I wish to comment on Weld County's application. I strongly request that the PUC grant this application. Great Western Railway has violated the original terms of the deed for the Sauer West, LLC property, which gave them a right of way in 1901. The deed that granted them a right of way expressly stipulated that if they ceased or failed to maintain or operate the railroad in any such event, the "said premises shall revert to the party of the first part... heirs and assigns."
- 17) Great Western has failed to maintain and operate the property as a railroad for at least 43 years based on my observations and personal knowledge and their express statements to the Surface Transportation Board.
- 18) Great Western has shown no interest in, and has made no effort to, keep down weeds or make any kind of repairs to the right-of-way, except for sparse areas east of I-25. Photographs taken in 2015 depicting the total disrepair of the railroad on my properties are labeled for each property and attached as Exhibit A. Photographs taken in 2022 depicting the total disrepair of the railroad on my properties are labeled for each property and attached as Exhibit B.
- 19) Sauer Ag, LLP has been maintaining the railway line to control noxious weeds for more than 43 years, and Great Western has never sprayed for any weeds at any time. In April,

2015 Sauer Ag, LLLP sent a letter and invoice (attached as Exhibit C) to Great Western, requesting reimbursement of cost of controlling weeds on Sauer West, Sauer Phantom 5, and Sauer Whitehall.

- 20) At one point, I started sending Great Western bills for weed control along the line on my properties. A few years later, Great Western sent a third party to manage the weeds. That third party destroyed a large amount of our crops. That was the last time they managed the weeds, approximately five years ago.

Cynthia Sauer
Cynthia Sauer

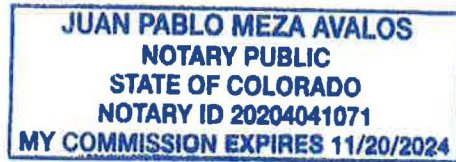
STATE OF Colorado
COUNTY OF Weld

The foregoing document was subscribed and sworn to before me this 7th day of July, 2022.

Juan Pablo Meza Avalos
Notary Public

My Commission Expires:

11/20/2024



SAUER WEST

Photographs - 2015

Sauer West: 1-7

Sauer Phantom: 8-20

Sauer Whitehall: 21-22





EXHIBIT
A1









EXHIBIT

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A-5





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EXHIBIT

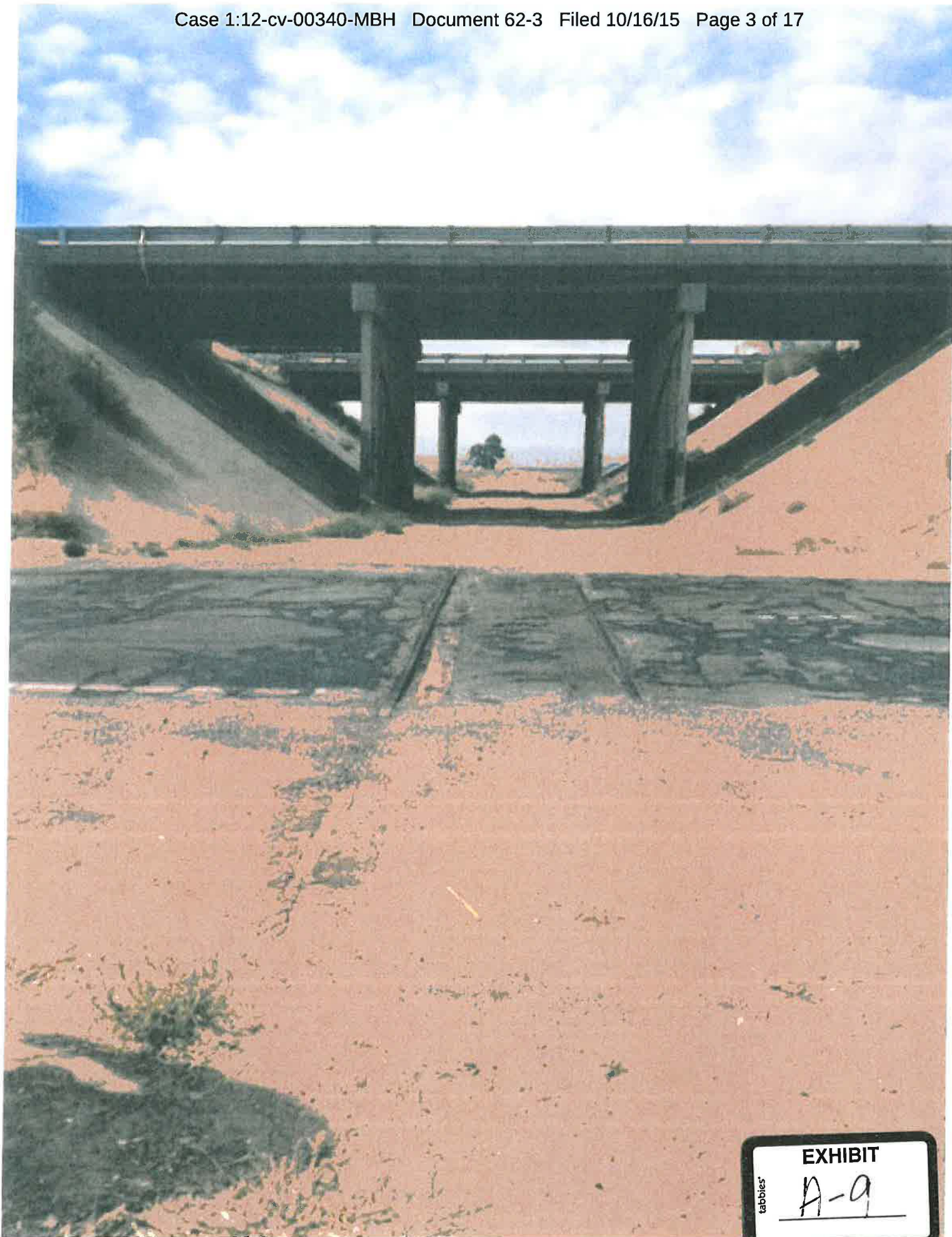
A-7



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EXHIBIT

A-8



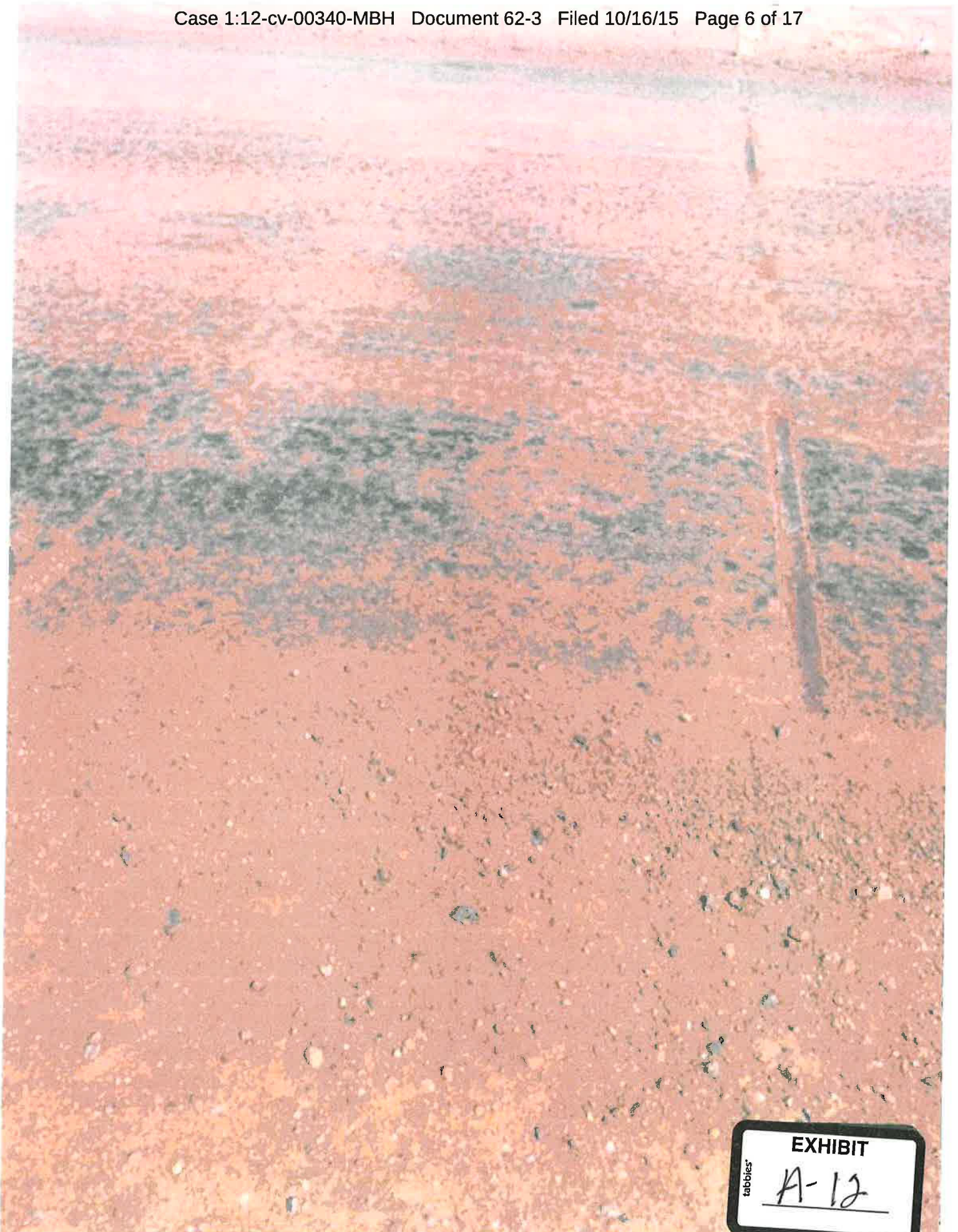


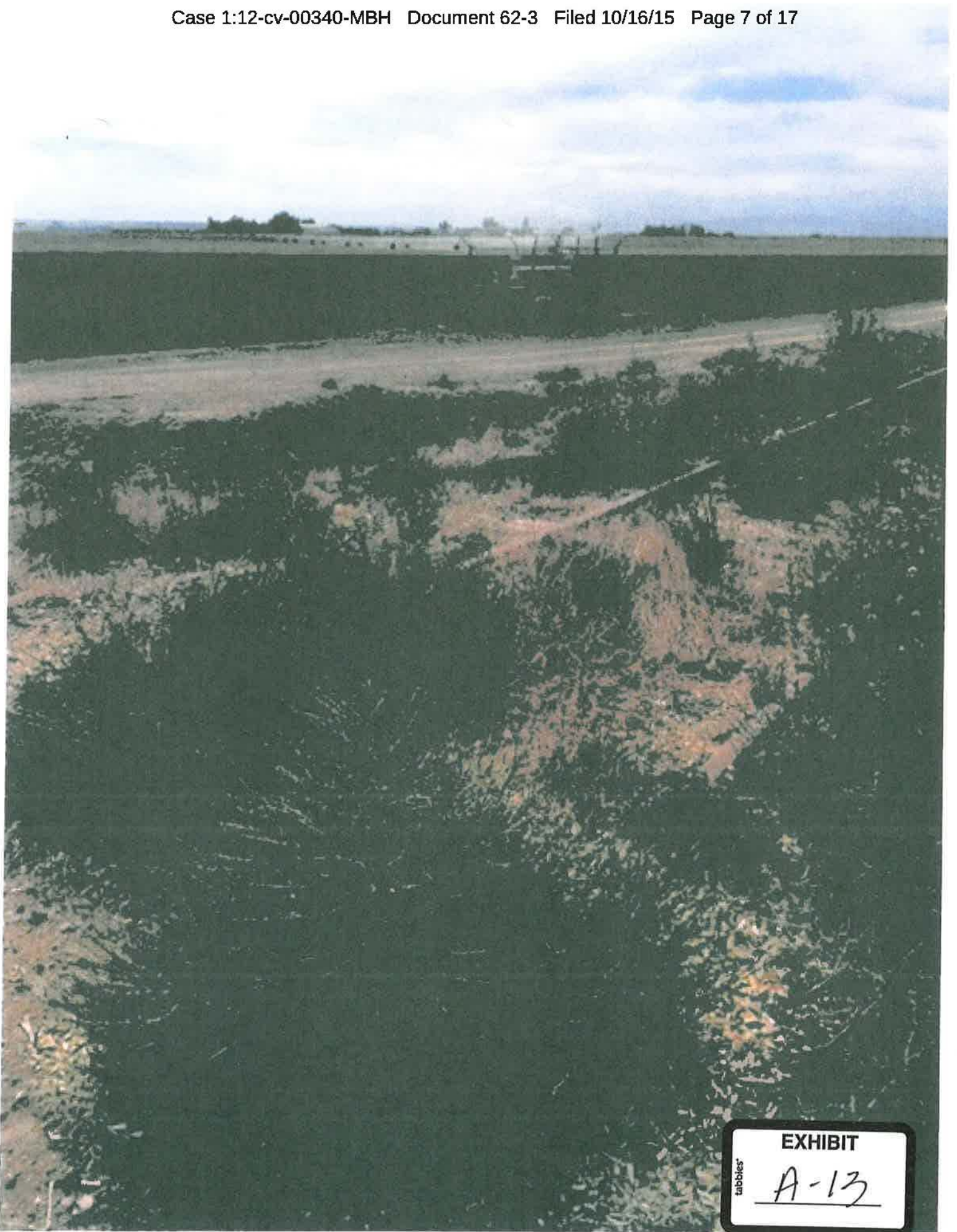
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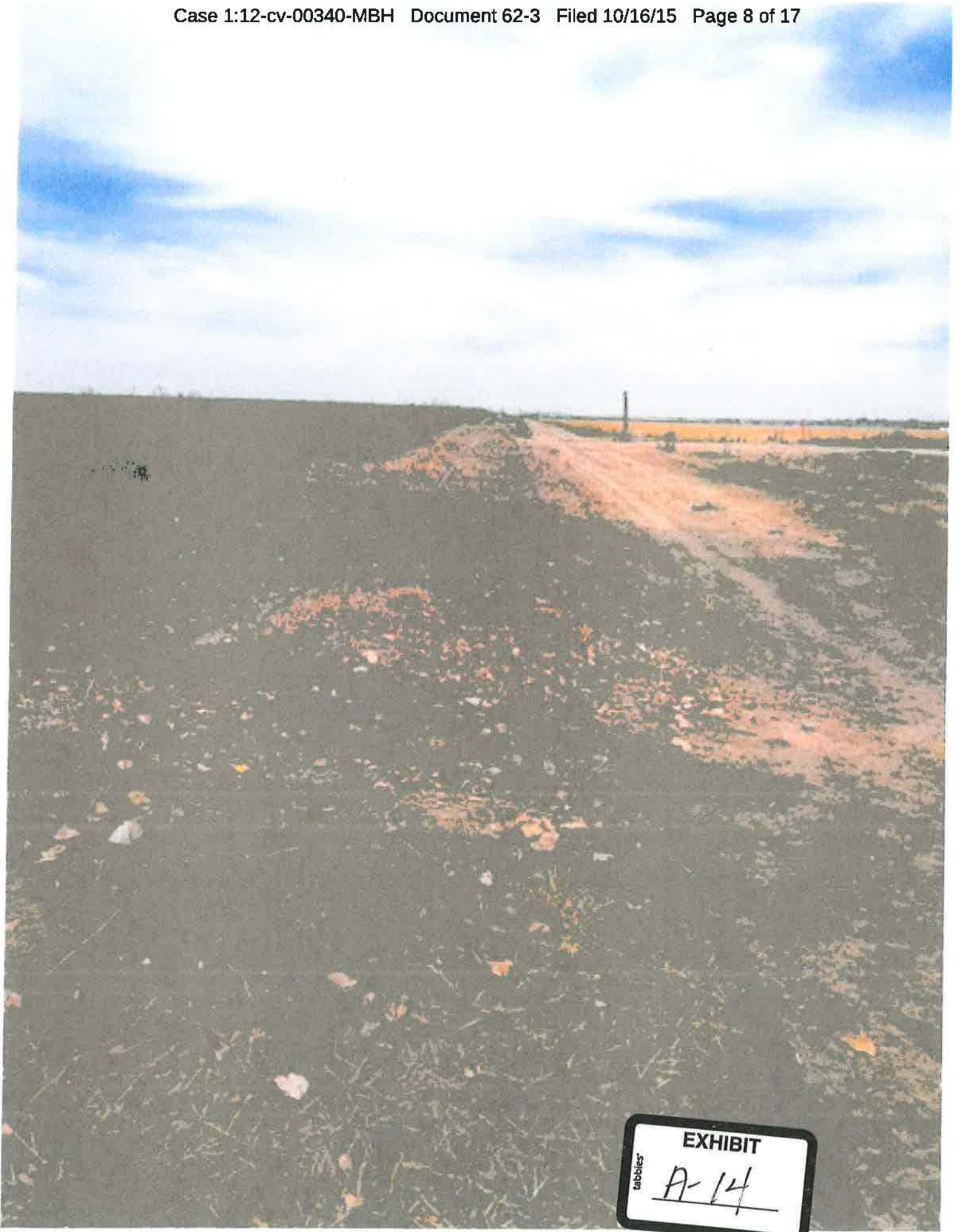
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EXHIBIT
A-14



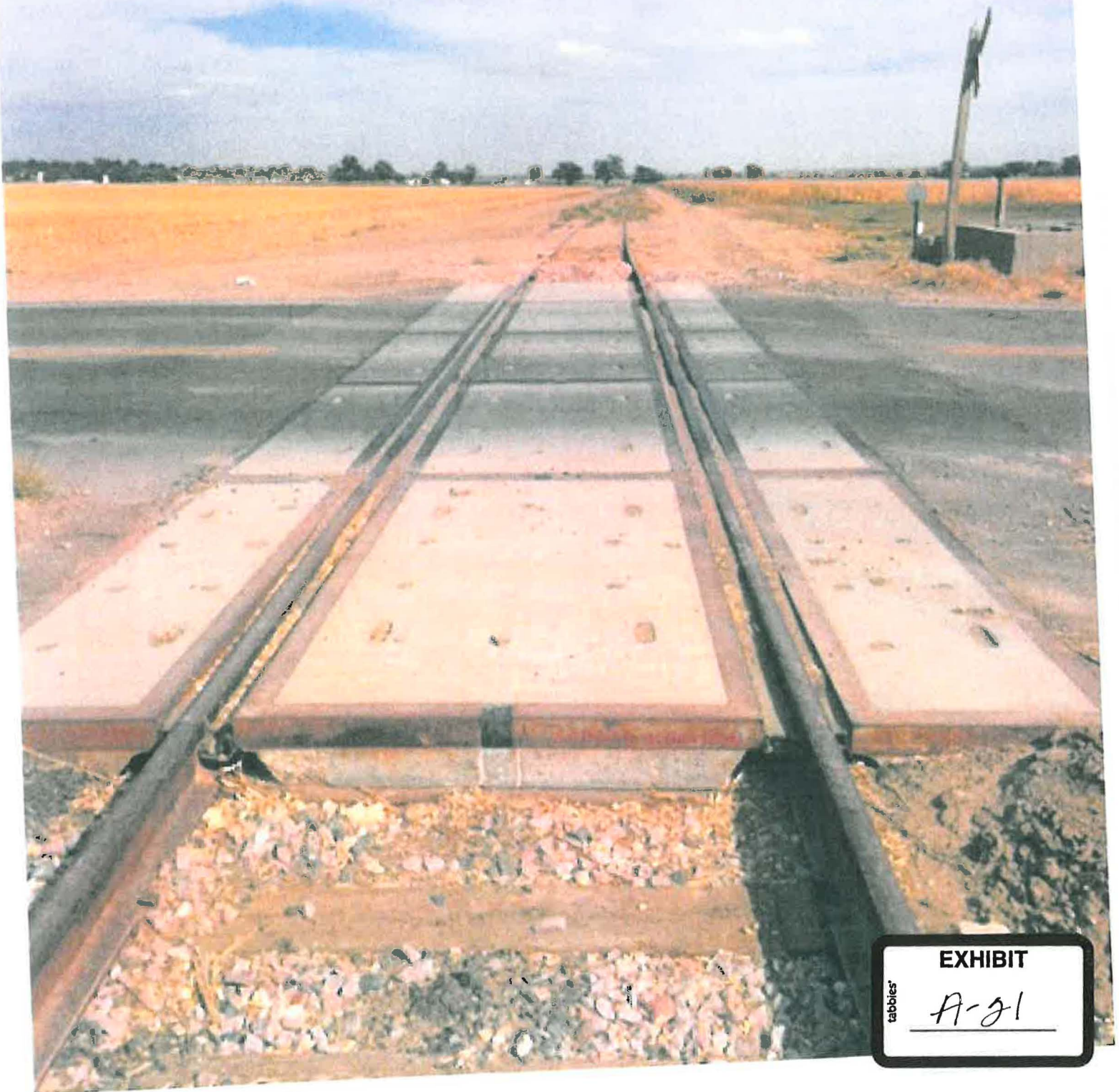








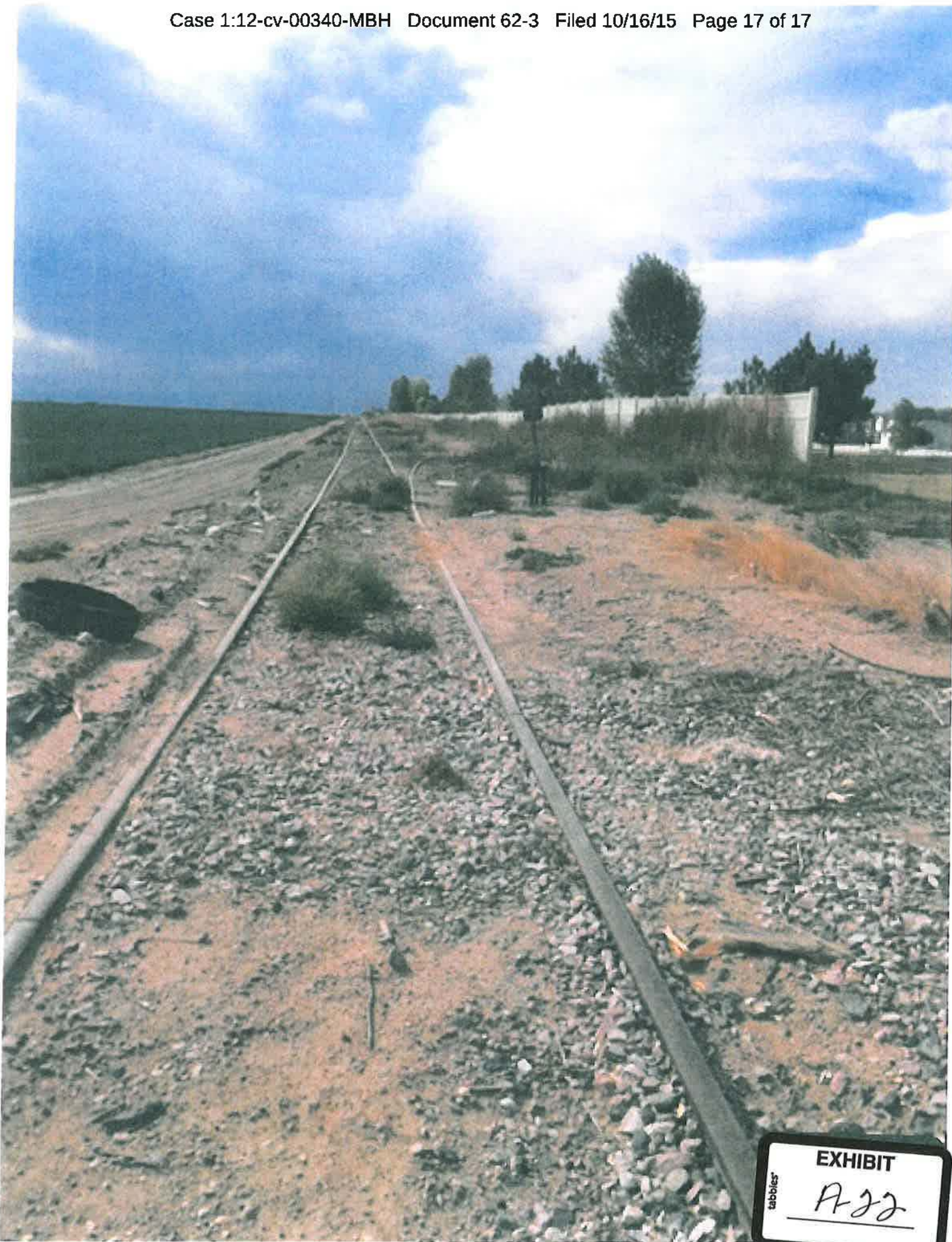




EXHIBIT

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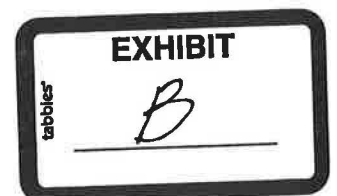
A-21



SAUER WEST
Photographs - 2022

Sauer Whitehall/Eleven LLC: 1-6
North of High School

Sauer/Weis Property Line: 7-12





EXHIBIT

tabbles

B-1



EXHIBIT

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B-2



EXHIBIT
B-3



EXHIBIT

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EXHIBIT
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EXHIBIT
B-7



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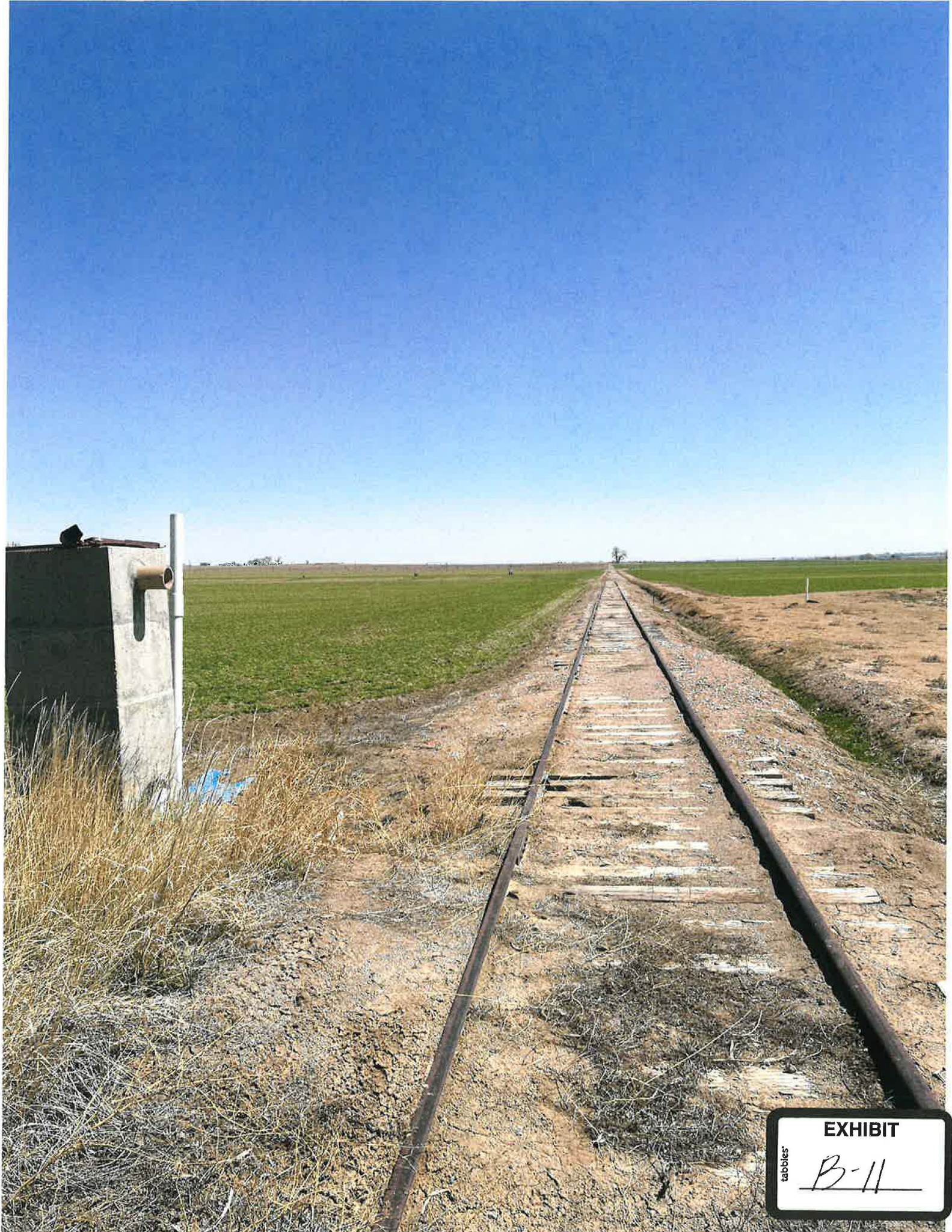


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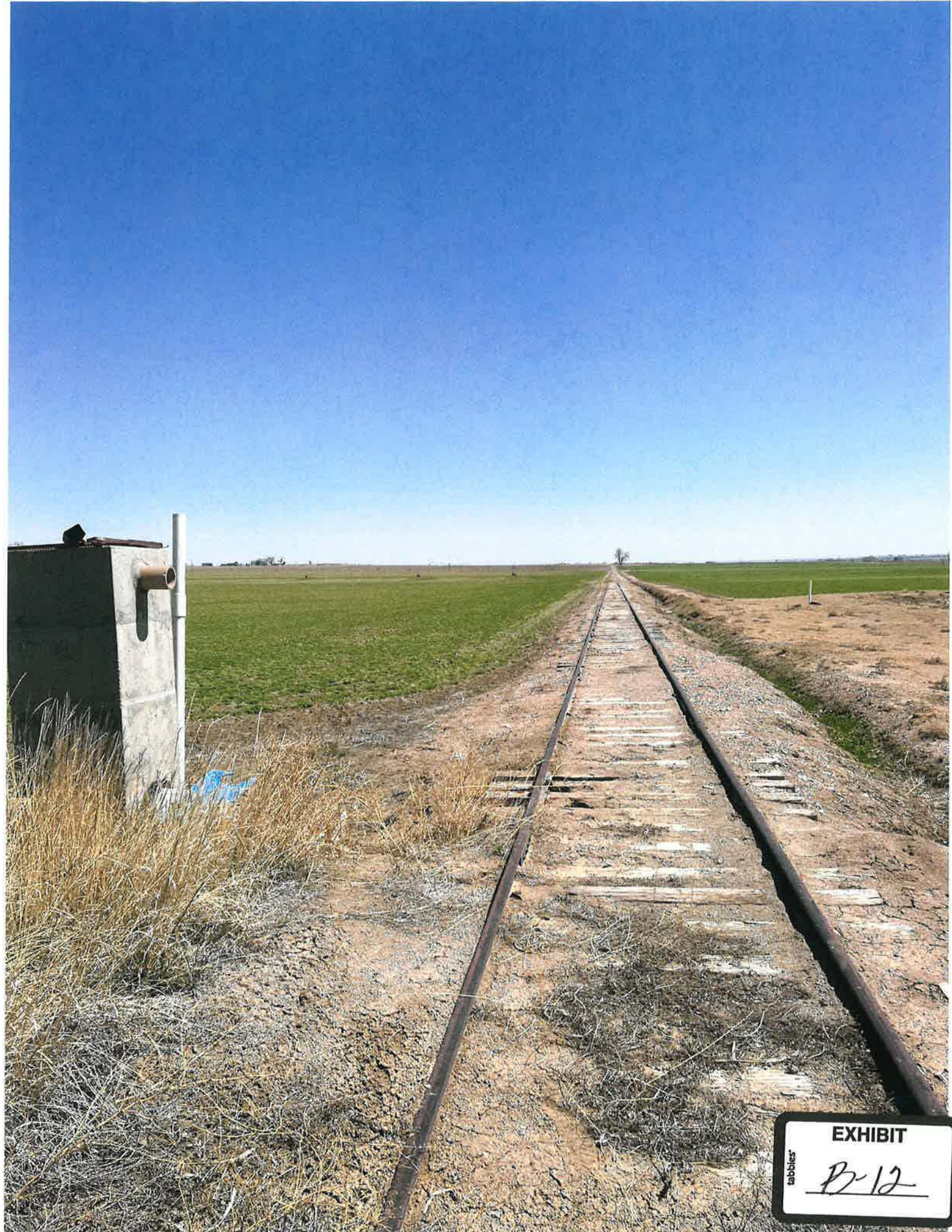
EXHIBIT
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EXHIBIT

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EXHIBIT

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P-12

Sauer Ag, LLLP
6681 County Road 50
Johnstown, CO 80534

April 24, 2015

Mr. John Lane, General Manager
Great Western Railway, LLC
950 Taylor Avenue
Loveland, CO 80539

RE: Sauer Ag, LLLP Invoice for reimbursement of Maintenance on Great Western Railway Easements

Dear Mr. Lane,

Sauer Ag, LLLP leases farm ground from Sauer Whitehall, LLC, Sauer West, LLC and Sauer Phantom 5, LLC, which are all farm properties located in Weld County that have Great Western Railway easements running through them. These properties are located on the Welty Line of GWR.

Over the past 20 years (and more), the Sauer Family and Sauer Ag, LLLP have managed the eradication, suppression and containment of noxious weeds on these properties, because Great Western Railway has failed to do so.

According to the Colorado Noxious Weed Law (CRS 35-5.5-102), Great Western Railway has a duty to manage noxious weeds on its easements.

In its application to the Surface Transportation Board in November, 2007, Great Western Railway admitted that it has not performed any maintenance on the Welty Line for over 20 years.

Attached is an invoice, charging Great Western Railway for Sauer Ag's cost of maintenance on these three properties for 2015.

Please let me know if Great Western Railway intends to begin assuming its responsibility for the noxious weed control in the future.

If I do not hear from you that you intend to assume this responsibility, Sauer Ag, LLLP will continue to send you an annual invoice for reimbursement of its costs.

Sincerely,

Cynthia Sauer, Operating Manager
Sauer Ag, LLLP
970-587-2112



Sauer Ag, LLLP

6681 County Road 50
Johnstown, CO 80534

Invoice

Date	Invoice #
4/24/2015	2015-01-01

Bill To
Great Western Railway 950 Taylor Avenue Loveland, CO 80539

Ship To

P.O. Number	Terms	Rep	Ship	Via	F.O.B.	Project
	Net 30		4/24/2015			
Quantity	Item Code	Description			Price Each	Amount
1	Chemicals	Chemicals used in noxious weed control			507.00	507.00
1	Labor	Labor controlling noxious weeds			360.00	360.00
		All past due sums shall bear a finance Charge of 1.5% per month (18%/annum)				
					Total	\$867.00

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

SAUER WEST LLC, et. Al.,	)	
	)	
Plaintiffs,	)	No. 1:12-cv-00340-RTH
	)	
vs.	)	Judge Ryan T. Holte
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	
	)	

I, Fred Weis, declare as follows:

- 1) I am over 18 years of age and competent to make this declaration.
- 2) I live at 2705 Saltbrush Drive, Loveland, CO.
- 3) I am the owner of four parcels of land adjacent to and abutting the Great Western Railroad's abandoned rail line known as the "Welty" line in Weld County, CO.
- 4) The legal descriptions of my properties are as follows:
 - a) Parcel number 106109000002, described as 25722 PT SW 1/4 of NW 1/4 of S. 9 TWN 4 Range 68 Beginning 30'N of SW Corner SW 1/4 of NW 1/4 N 100', E 719.65' S 63 Degrees 26' E, 223.6' W 91.65' To Beginning (1.88 Acres) Welty;
 - b) Parcel number 106109300014, described as PT SW 1/4 of Section 9, TWN 4, Range 68, LOT D Rec Exempt RE- 4172 (1D);
 - c) Parcel number 106109200036, described as PT NW 1/4 of Section 9, TWN 4, Range 68, LOT A REC Exempt RE-3264 (.24 R); and
 - d) Parcel number 106109200037, described as PT NW 1/4 of Section 9, TWN 4, Range 68, LOT B Rec Exempt RE-3264 (1.13 R, .94D).
- 5) I've owned this farm, which is approximately 300 acres, for more than 23 years.
- 6) The original deed to the Great Western Railway Co. provided that, if railroad operations ever ceased for a period of six months or more, then the land was supposed to revert to the landowner. The original conveyance deed for my properties, including parcel numbers 106109000002, 106109200036, 106109300041 and 106109200037, is the DeFrance conveyance deed, located at Book 163 page 480, which states, "And it is expressly agreed that if the party of the second part, its successors or assigns shall cease or fail for a period

of six months to operate its said railway... and the premises hereby conveyed shall revert to the party of the first part this his heirs and assigns.”

- 7) We were told by neighbors that there has been no train traffic since 1979. Because the line is stub-ended on my property, and the sugar beet dumps no longer exist, there is no reason for train movement on the line.
- 8) The condition of the railroad is, and has been for more than 23 years since I’ve owned the property, extremely poor. Photographs taken in 2015 depicting the extremely poor condition of the tracks are attached as Exhibit A. Photographs taken in 2022 depicting the extremely poor condition of the tracks are attached as Exhibit B.
- 9) The railroad has not run trains on this property for at least 23 years and possibly longer. I do know there have been no trains or train traffic since I have owned this property for the last 23 years.
- 10) Despite no train traffic for 23 years or longer, Great Western temporarily stored cars on the line beginning in 2016 or 2017. The rail cars were stored from Weld County Road to my property near the end of the line. Great Western did not rotate the cars, and the same cars stood in place for about one-and-a-half or two years, until Great Western removed them. No rail car storage occurred on my property at any time since I acquired the property 23 years ago, except for that one instance.
- 11) There has also been no discernible maintenance for at least 23 years. The lack of maintenance, and the condition of the right-of-way, has been an impediment to my farming operation, and the condition results in damaged equipment. I’ve tried to move equipment from the south side of my farm to the north side of my farm, but what remains of the railroad track is in the way.
- 12) The railroad tracks are dangerous to children and to cattle. We have used extensive rotational grazing of our cattle through the years, and we always worry about calves getting caught up in the rails, as they are little more than a mess of twisted metal and ties.
- 13) I have repeatedly requested that Great Western remove the tracks and they have refused. They said that the line was functional, so I asked them to give me prices to run a train to carry my hay, which they never did.
- 14) Great Western has never controlled the weeds.


Fred Weis

STATE OF Colorado)
COUNTY OF Larimer)

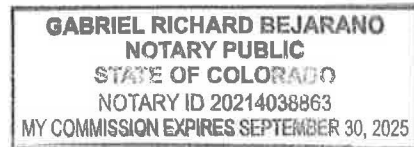
The foregoing document was subscribed and sworn to before me this 7th day of July, 2022



Notary Public

My Commission Expires:

9/30/2025

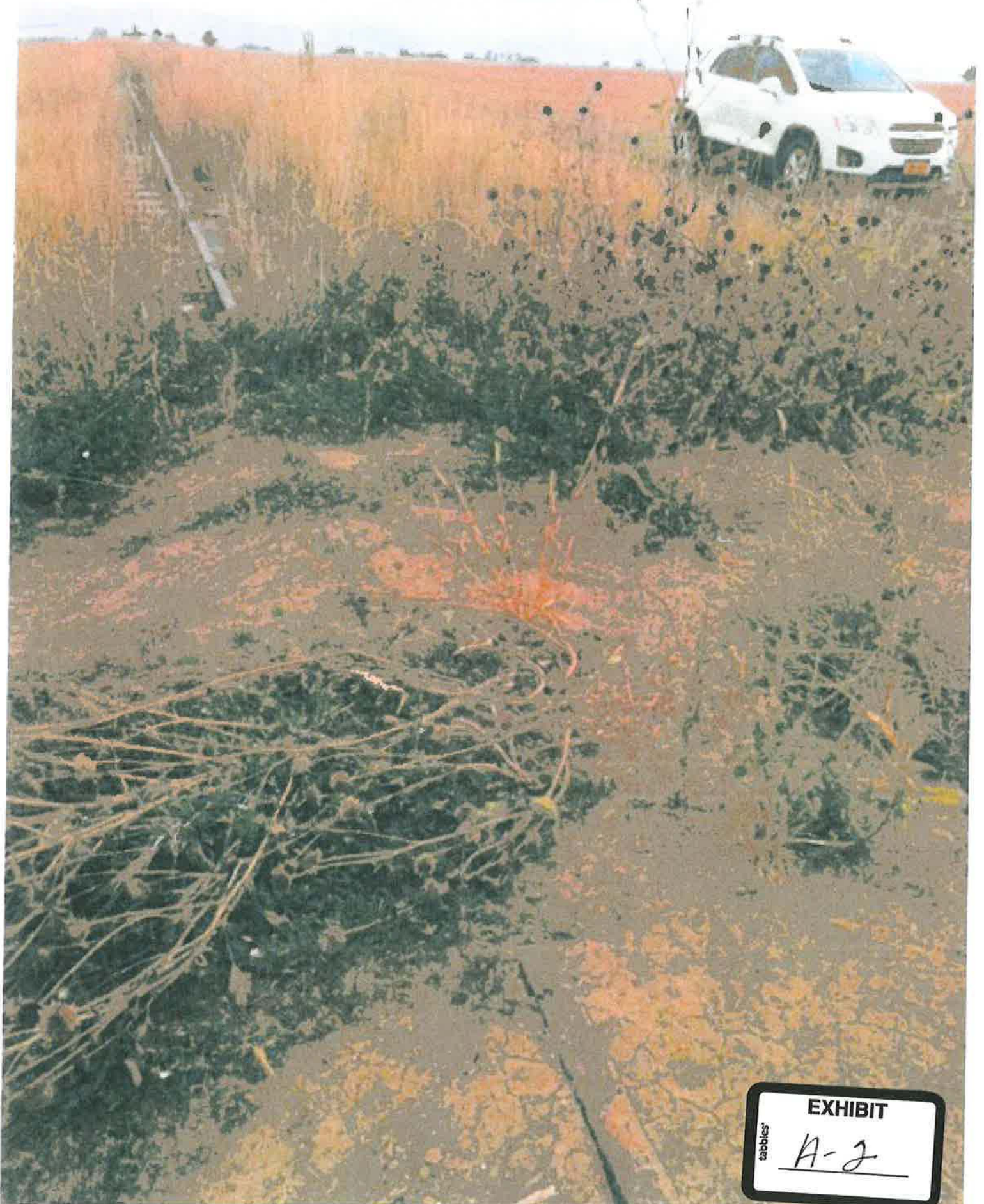


SAUER WEST
Photographs - 2015

Fred Weis Property: 1-21











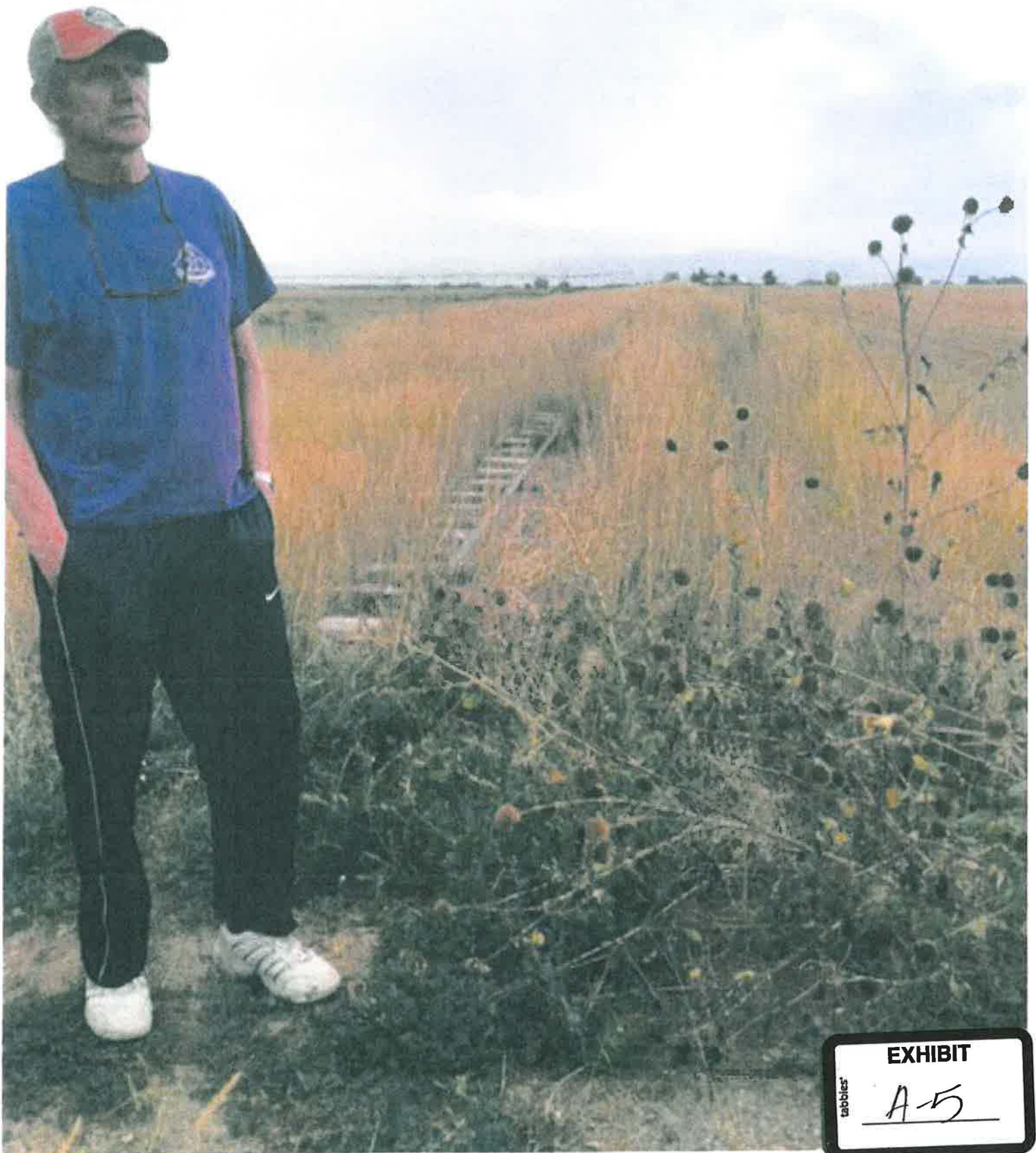
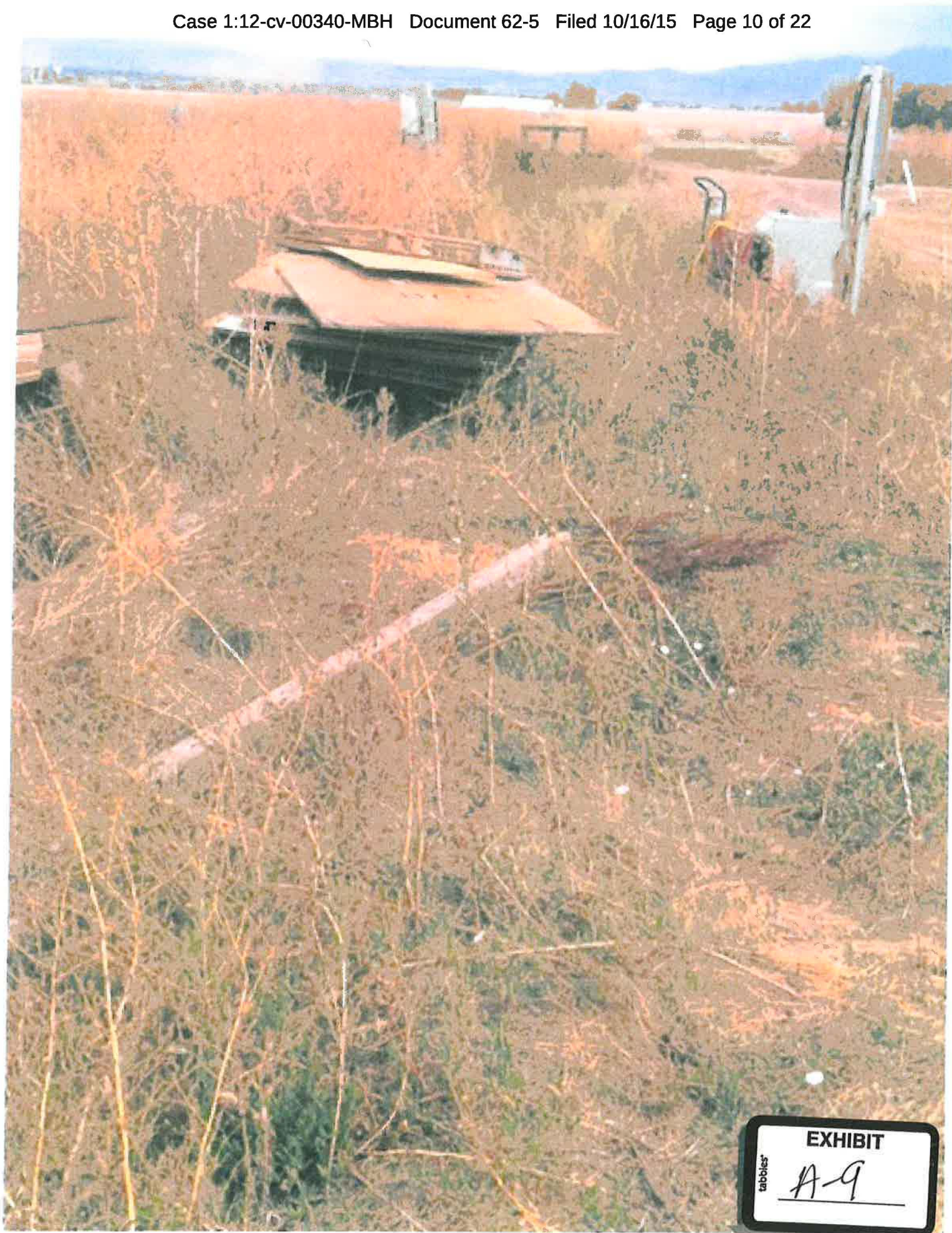




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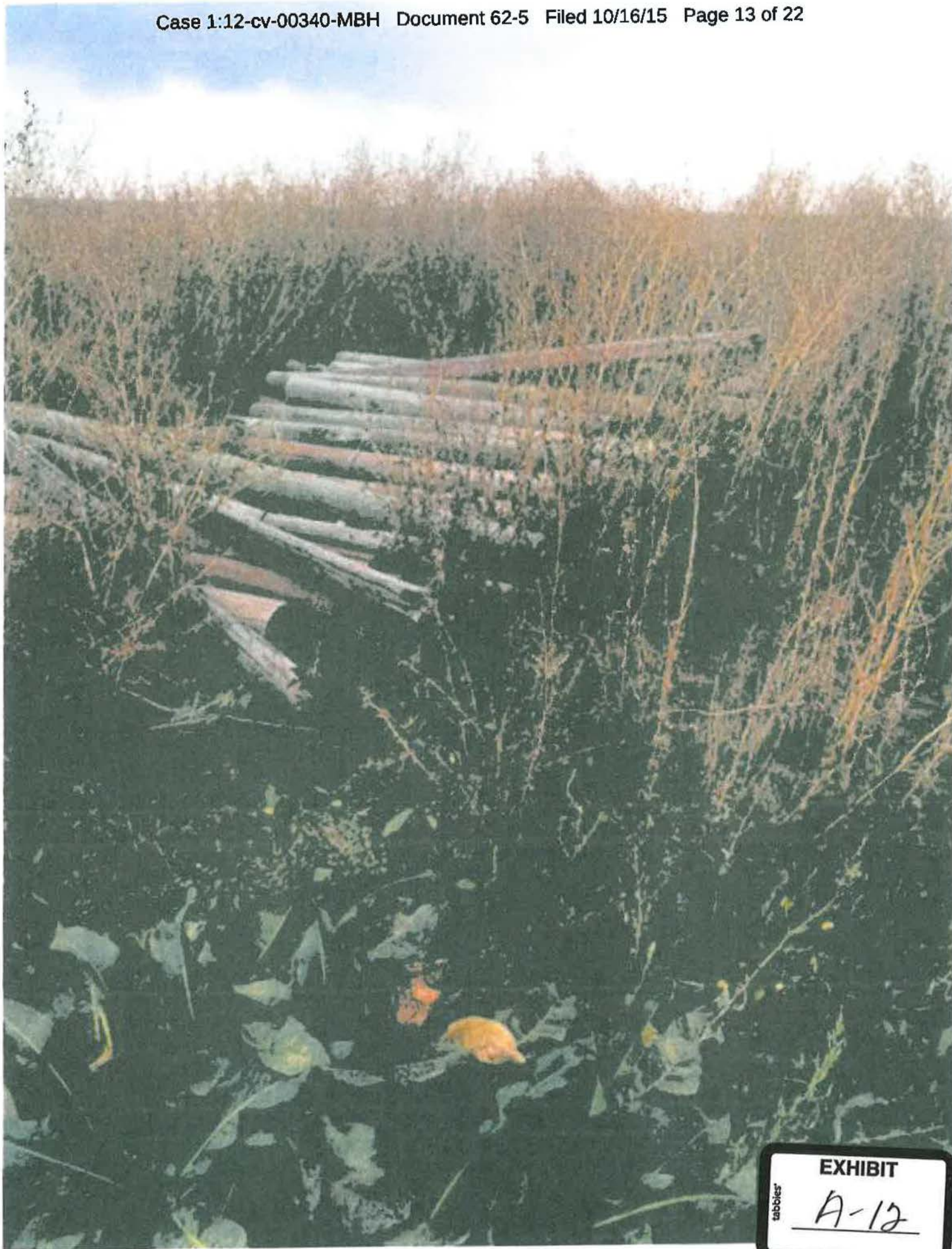


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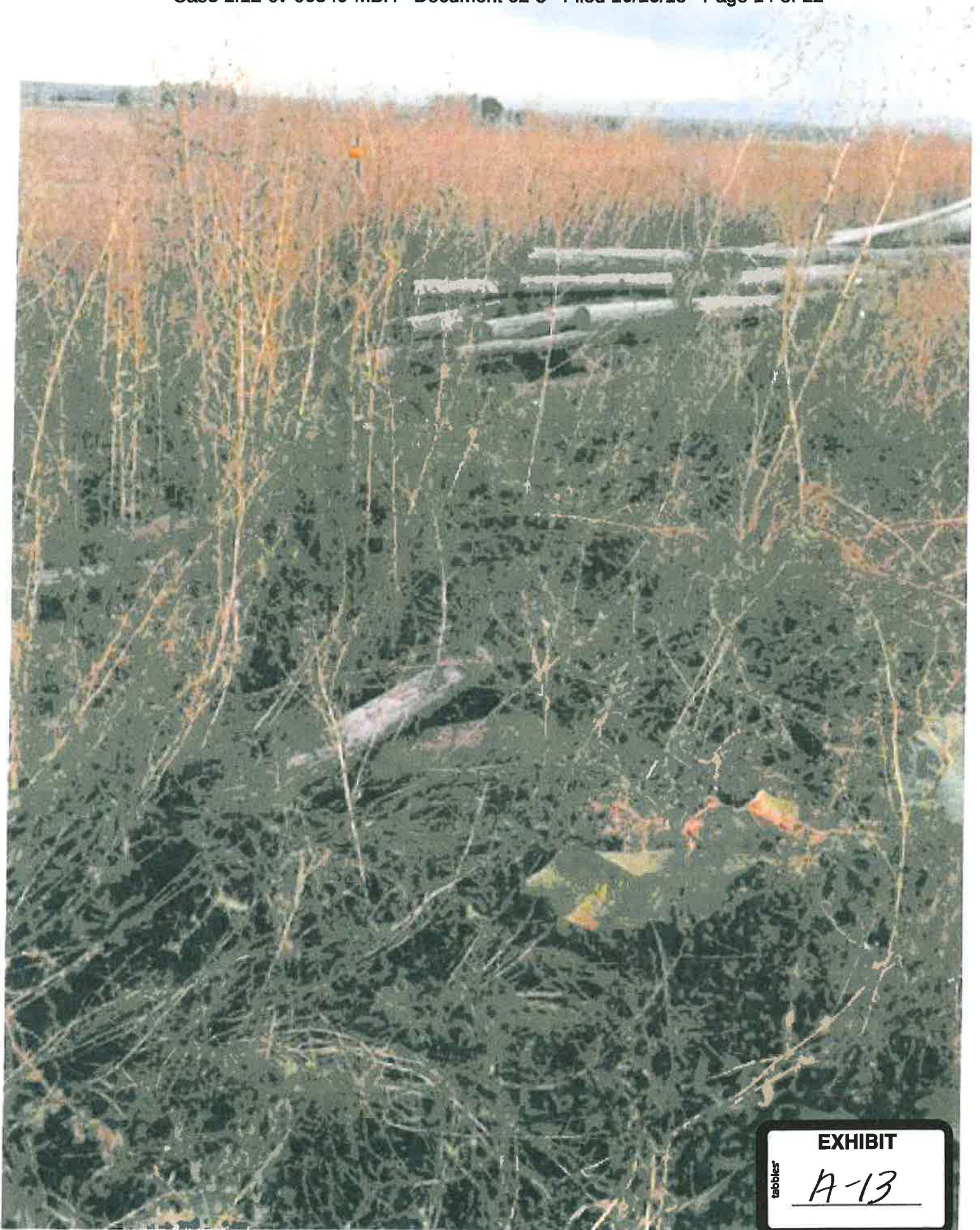


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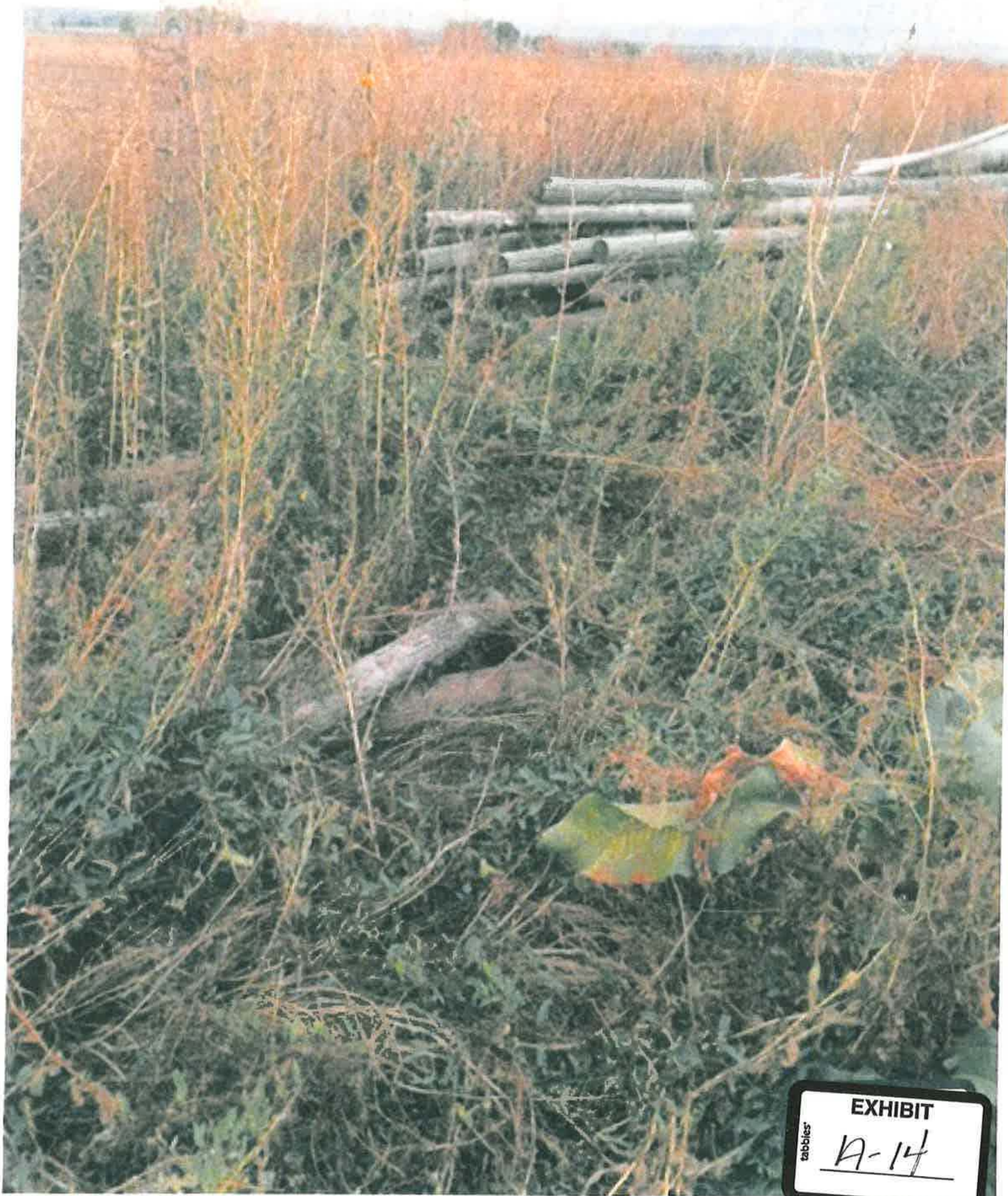


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EXHIBIT
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EXHIBIT
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EXHIBIT
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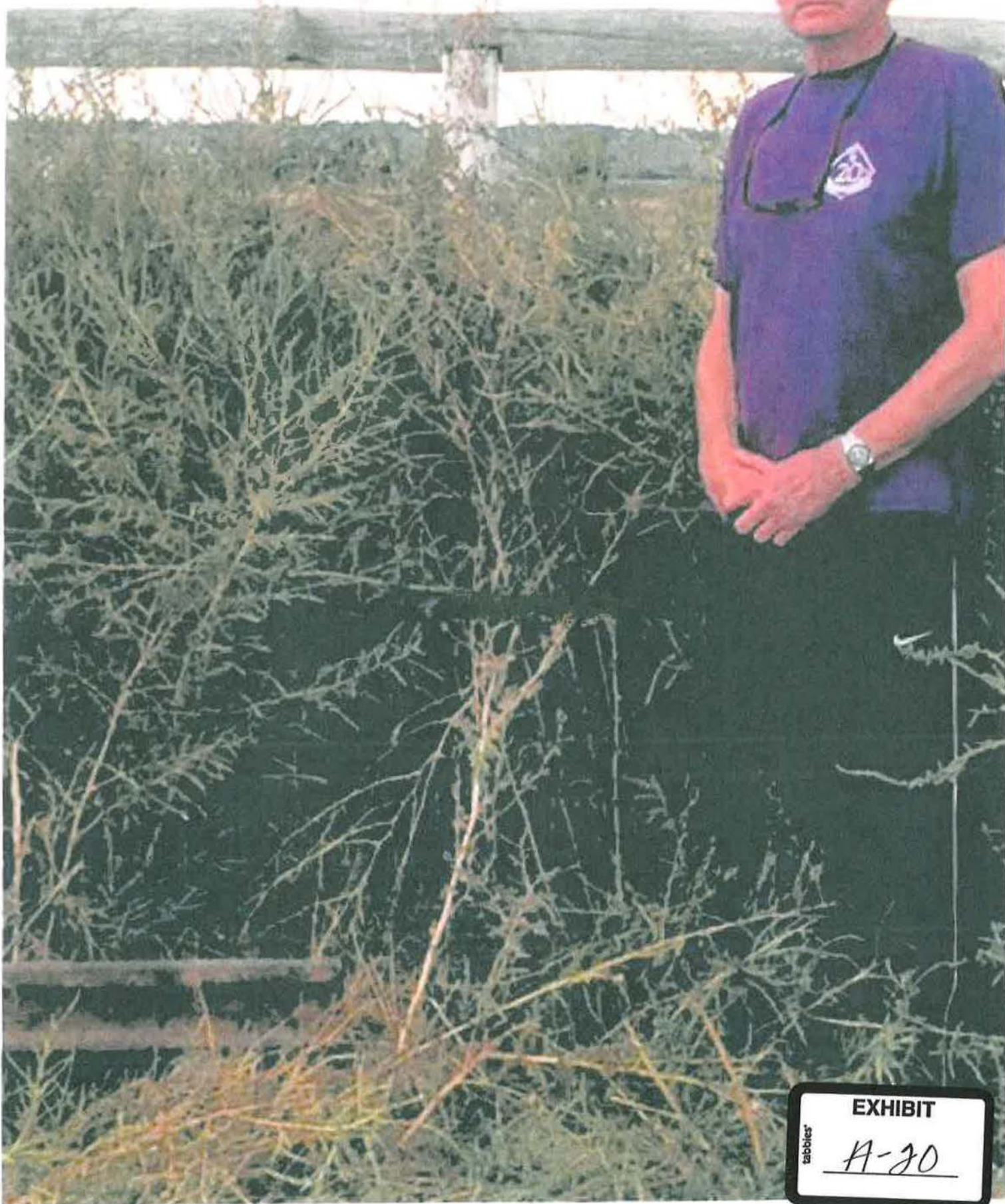


EXHIBIT
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SAUER WEST
Photographs - 2022

Fred Weis Property: 1-25





EXHIBIT
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