

BALL JANIK LLP

A T T O R N E Y S

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

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

KARL MORELL



August 23, 2002

BY HAND DELIVERY

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

ENTERED
Office of Proceedings

AUG 26 2002

Part of
Public Record

Re: STB Docket No. AB-839 (Sub-No. 1X), Kiowa, Hardtner and Pacific
Railroad Company--Abandonment Exemption--In Barber County,
Kansas

Dear Ms. Rutson:

Attached please find 10 copies of the Environmental Report and Historic Report in the above-captioned matter. Kiowa, Hardtner and Pacific Railroad Company expects to file its Notice of Exemption in this matter on or shortly after September 13, 2002.

Sincerely,

Karl Morell

Enclosures

ENTERED
Office of Proceedings

AUG 26 2002

Part of
Public Record

ENVIRONMENTAL REPORT

(49 C.F.R. 1105.7)

Docket No. AB-839 (Sub-No. 1X)

KIOWA, HARDTNER AND PACIFIC RAILROAD COMPANY

--ABANDONMENT EXEMPTION--

IN BARBER COUNTY, KANSAS

EXHIBIT D



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

Kiowa, Hardtner and Pacific Railroad Company ("KHP"), proposes to abandon its 9.93-mile rail line located between milepost 571.85, at Kiowa, and milepost 581.78, at Hardtner, in Barber County, Kansas (the "Line"). Upon receipt of abandonment authority, KHP intends to remove the rail, track material, and crossties. There are currently no plans to remove any of the bridge structures along the Line.

The proposed abandonment will not change rail freight operations or maintenance practices on the Line. No local traffic has been handled on the Line for several years. There currently are no active rail shippers located on the Line. The Line is stub-ended and, therefore, not capable of handling overhead traffic.

The only alternative to abandonment would be not to abandon the Line thereby forcing KHP to absorb the opportunity costs of retaining this inactive Line. This would not be a prudent use of carrier resources. The Line is in poor condition and in need of substantial repair.

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

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

No passenger or freight traffic will be diverted to other modes as a result of the proposed abandonment. No local traffic has been handled on the Line for several years and the Line has no overhead traffic. Since the Line no longer handles rail traffic, the proposed abandonment will have no adverse effects on regional or local transportation systems and patterns.

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

(i) KHP does not consider the proposed abandonment to be inconsistent with existing land use plans. KHP contacted the Barber Board of County Commissioners. See Exhibit 2. To date, no response to this inquiry has been received. A copy of this Report has been mailed to the appropriate local and state agencies for their information and comment.

(ii) KHP notified the State Conservationist of the proposed abandonment and requested assistance in identifying any potential effects on prime agricultural land. See Exhibit 3. The Natural Resources Conservation Service determined that the proposed abandonment should have no negative impacts to important farmland. See Exhibit 4. A copy of this Report is being supplied to the Natural Resources Conservation Service for its information and further comment.

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

(iv) The Line traverses a predominately rural area that has adequate road and highway networks. The Line essentially parallels State Highway 2 and U.S. Highway 281. Therefore, there is little or no likelihood that the rail corridor is needed for a transit or highway corridor.

(4) Energy. (i) Describe the effect of the proposed action on transportation of energy resources. (ii) Describe the effect of the proposed action on recyclable commodities. (iii) State whether the proposed action will result in an increase or decrease in overall energy efficiency and explain why. (iv) If the proposed action will cause diversions from rail to motor carriage of more than: (A) 1,000 rail carloads a year; or (B) an average of 50 rail carloads per mile per year for any part of the affected line, quantify the resulting net change in energy consumption and show the data and methodology used to arrive at the figure given.

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

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

(iii) The proposed abandonment will have no effect on overall energy efficiency as no local traffic has been handled on the Line for several years and no overhead traffic can be handled on the Line.

(iv) The proposed abandonment will not cause any diversions of rail traffic to motor carriage, since no local traffic has been handled on the Line for several years and no overhead traffic can be handled on the Line.

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

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

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

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

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

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

Not applicable

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

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

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

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

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

(i) KHP is confident that the proposed abandonment will not have an adverse affect on endangered or threatened species or areas designated as a critical habitat. KHP notified the U.S. Fish and Wildlife Service of the proposed abandonment and requested assistance in determining

whether endangered or threatened species or areas designated as a critical habitat are likely to be adversely affected. See Exhibit 5. To date, no response has been received from the U.S. Fish and Wildlife Service. A copy of this Report is being supplied to the U.S. Fish and Wildlife Service for its information and comment.

(ii) KHP does not believe that any wildlife sanctuaries or refuges, National or State parks or forests would be adversely affected by the proposed abandonment. KHP notified the National Parks Service of the proposed abandonment and requested assistance in identifying any potential effects on wildlife sanctuaries or refuges, National or State parks or forests. See Exhibit 6. To date, no response to this request has been received. A copy of this Report is being supplied to the National Park Service for its information and comment.

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

(i) KHP is confident that the proposed abandonment will be consistent with applicable water quality standards. KHP contacted the Kansas Department of Health and Environment and the U.S. Environmental Protection Agency concerning this matter requesting assistance in determining whether the proposed abandonment is consistent with applicable Federal, State, or local water quality standards. See Exhibit 7. To date, no response to these requests has been received. A copy of this Report is being supplied to the U.S. Environmental Protection Agency and the Kansas Department of Health and Environment for their information and comment.

(ii) KHP is confident that no designated wetlands or 100-year flood plains will be adversely affected by the proposed abandonment. KHP contacted the Corps of Engineers concerning these matters. See Exhibit 8. The Corps has determined that a Department of the Army permit is not required for the proposed project. See Exhibit 9. A copy of this Report is being supplied to the U.S. Army Corps of Engineers for its information and comment.

(iii) KHP contacted the U.S. Environmental Protection Agency concerning this matter and requested assistance in identifying any potential effects on applicable water quality standards and determining whether the proposed abandonment is consistent with applicable Federal, State, or local water quality standards. See Exhibit 7. To date, no response to this request has been received. A copy of this Report is being supplied to the U.S. Environmental Protection Agency for its information and comment.

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

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

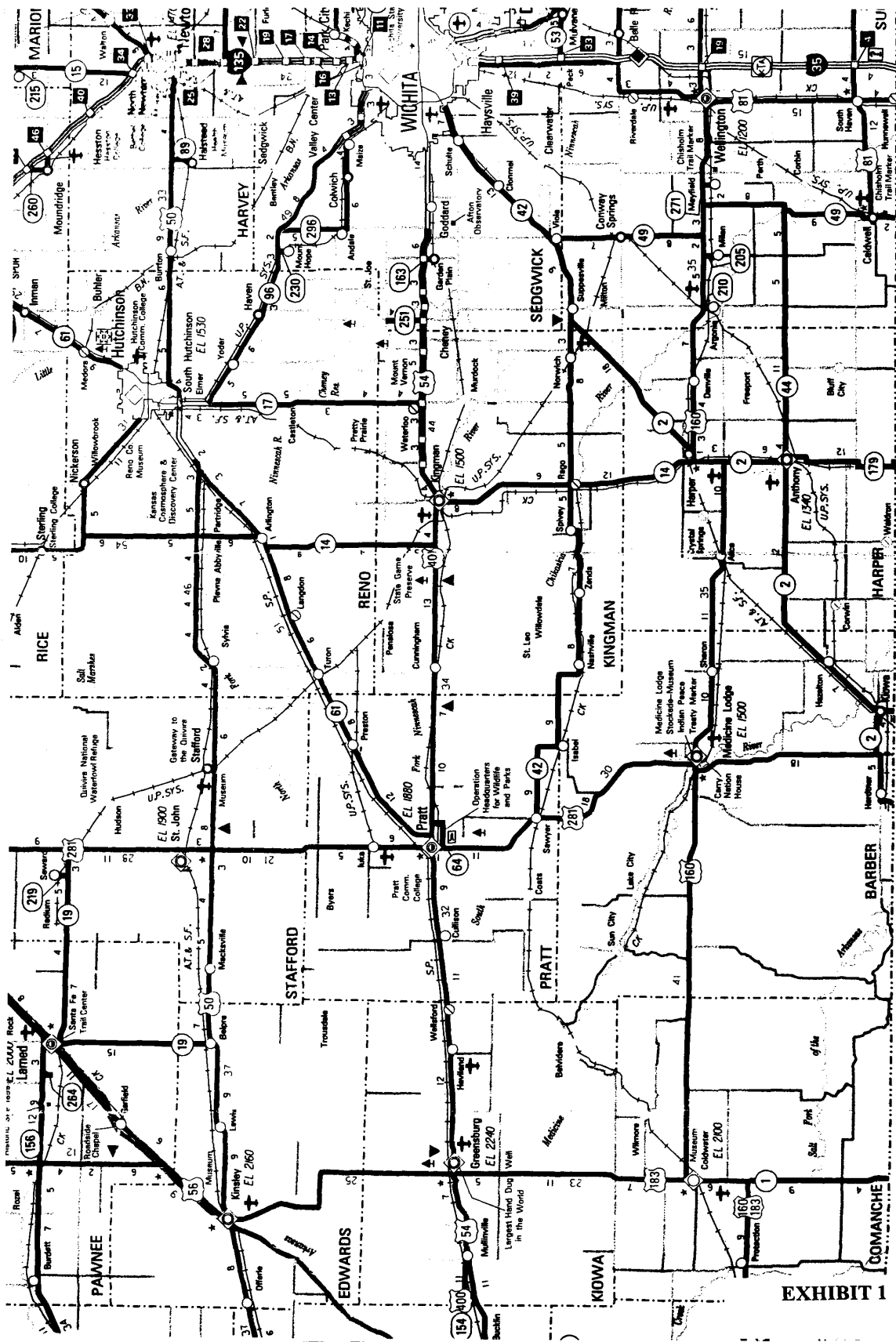


EXHIBIT 1

KIOWA, HARDTNER AND PACIFIC RAILROAD COMPANY
P.O. Box 26421
SALT LAKE CITY, UT 84126
(801) 977-6343 • (801) 977-9387 FAX

July 30, 2002

Board of County Commissioners
Barber County
205 West Central, 4th Floor
El Dorado, KS 67042

**RE: Docket No. AB-839 (Sub-No. 1X), Kiowa, Hardtner and Pacific
Railroad Company -- Abandonment Exemption—In Barber County,
Kansas**

Dear Sir/Madam:

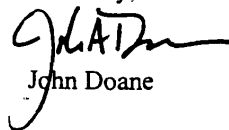
The Kiowa, Hardtner and Pacific Railroad Company, ("KHP") is planning to file a Notice of Exemption with the Surface Transportation Board ("STB"), on or about September 13, 2002, for KHP to abandon approximately 9.93 miles of rail line located between milepost 571.85, at Kiowa, and milepost 581.78, at Hardtner, in Barber County, Kansas. A map of the proposed abandonment is attached.

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

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

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

Sincerely,



John Doane

KIOWA, HARDTNER AND PACIFIC RAILROAD COMPANY
P.O. Box 26421
SALT LAKE CITY, UT 84126
(801) 977-6343 • (801) 977-9387 FAX

July 30, 2002

State Conservationist
USDA Soil Conservation Service
760 South Broadway
Salina, KS 67401

**RE: Docket No. AB-839 (Sub-No. 1X), Kiowa, Hardtner and Pacific
Railroad Company -- Abandonment Exemption--In Barber County,
Kansas**

Dear Sir/Madam:

The Kiowa, Hardtner and Pacific Railroad Company, ("KHP") is planning to file a Notice of Exemption with the Surface Transportation Board ("STB"), on or about September 13, 2002, for KHP to abandon approximately 9.93 miles of rail line located between milepost 571.85, at Kiowa, and milepost 581.78, at Hardtner, in Barber County, Kansas. A map of the proposed abandonment is attached.

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

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

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

Sincerely,

John Doane



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

9 West 28th
Hutchinson, KS 67502-3453

Phone: 620-663-3501
FAX: 620-663-3866
www.ks.nrcs.usda.gov

August 8, 2002

John Doanne
Kiowa, Hardtner and Pacific Railroad Co.
P.O. Box 26421
Salt Lake City, UT 84126

Dear Mr. Doanne:

Thank you for the opportunity to review the plans "Docket No. AB-839 (Sub-No. IX)", to abandon 0.93 miles of rail line located between milepost 571.85, at Kiowa, and milepost 581.78, at Hardtner, in Barber County, Kansas.

Because the project is on land already owned by the railroad, and no new property is being added, there are no negative impacts to important farmland as defined by the Farmland Protection Policy Act. I see no adverse environmental effects for which the Natural Resources Conservation Service is responsible for evaluating.

Sincerely,

A handwritten signature in black ink, appearing to read "Jess F. Crockford", is written over a horizontal line.

JESS F. CROCKFORD
Assistant State Conservationist

cc:

Harold L. Klaege, State Conservationist, NRCS, Salina, Kansas
Rodney D. Egbarts, Soil Conservationist, NRCS, Salina, Kansas
Harold E. Kline, District Conservationist, NRCS, Medicine Lodge, Kansas

KIOWA, HARDTNER AND PACIFIC RAILROAD COMPANY
P.O. Box 26421
SALT LAKE CITY, UT 84126
(801) 977-6343 • (801) 977-9387 FAX

July 30, 2002

U.S. Fish and Wildlife Service
P.O. Box 25486
Denver Federal Center
Denver, CO 80225

**RE: Docket No. AB 839 - (Sub-No. 1X), Kiowa, Hardtner and Pacific
Railroad Company -- Abandonment Exemption--In Barber County,
Kansas**

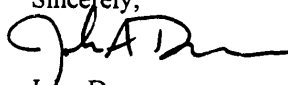
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Pursuant to the STB's environmental regulations at 49 C.F.R., Part 1105, we are advising you of this proposed action so that you may assist us in determining whether it is likely to adversely affect endangered or threatened species or areas designated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

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

Sincerely,

John Doane

KIOWA, HARDTNER AND PACIFIC RAILROAD COMPANY
P.O. Box 26421
SALT LAKE CITY, UT 84126
(801) 977-6343 • (801) 977-9387 FAX

July 30, 2002

National Park Service
Recreational Resources Assistance Division
P.O. Box 37127
Washington, D.C. 20013-7127

**RE: Docket No. AB-839 (Sub-No. 1X), Kiowa, Hardtner and Pacific
Railroad Company -- Abandonment Exemption--In Barber County,
Kansas**

Dear Sir/Madam:

The Kiowa, Hardtner and Pacific Railroad Company, ("KHP") is planning to file a Notice of Exemption with the Surface Transportation Board ("STB"), on or about September 13, 2002, for KHP to abandon approximately 9.93 miles of rail line located between milepost 571.85, at Kiowa, and milepost 581.78, at Hardtner, in Barber County, Kansas. A map of the proposed abandonment is attached.

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

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

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

Sincerely,


John Doane

KIOWA, HARDTNER AND PACIFIC RAILROAD COMPANY
P.O. Box 26421
SALT LAKE CITY, UT 84126
(801) 977-6343 • (801) 977-9387 FAX

Exhibit 7

July 30, 2002

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

**RE: Docket No. AB-839 (Sub-No. 1X), Kiowa, Hardtner and Pacific
Railroad Company-- Abandonment Exemption--In Barber County,
Kansas**

Dear Sir/Madam:

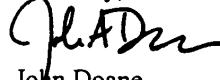
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Pursuant to the STB's environmental regulations at 49 C.F.R., Part 1105, we are advising you of this proposed action so that you may assist us in identifying any potential effects on applicable water quality standards. We also seek your assistance in determining whether the proposed abandonment is consistent with applicable Federal, State or local water quality standards. KHP 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,


John Doane

KIOWA, HARDTNER AND PACIFIC RAILROAD COMPANY
P.O. Box 26421
SALT LAKE CITY, UT 84126
(801) 977-6343 • (801) 977-9387 FAX

July 30, 2002

U.S. Environmental Protection Agency
Region 7
901 N. 5th Street
Kansas City, KS 66101

**RE: Docket No. AB 839-(Sub-No. 1X), Kiowa, Hardtner and Pacific
Railroad Company-- Abandonment Exemption--In Barber County,
Kansas**

Dear Sir/Madam:

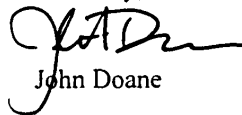
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Pursuant to the STB's environmental regulations at 49 C.F.R., Part 1105, we are advising you of this proposed action so that you may assist us in identifying any potential effects on applicable water quality standards. We also seek your assistance in determining whether the proposed abandonment is consistent with applicable Federal, State or local water quality standards. KHP 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,


John Doane

KIOWA, HARDTNER AND PACIFIC RAILROAD COMPANY

P.O. Box 26421

SALT LAKE CITY, UT 84126

(801) 977-6343 • (801) 977-9387 FAX

Exhibit 8

July 30, 2002

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

**RE: Docket No. AB 839 - (Sub-No. 1X), Kiowa, Hardtner and Pacific
Railroad Company -- Abandonment Exemption--In Barber County,
Kansas**

Dear Sir/Madam:

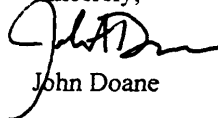
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Pursuant to the STB's environmental regulations at 49 C.F.R., Part 1105, we are advising you of this proposed action so that you may assist us in identifying any potential effects on designated wetlands or 100-year flood plains. KHP does not believe 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.

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

Sincerely,



John Doane



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

Exhibit 9

REPLY TO
ATTENTION OF:

August 20, 2002

Kansas State Regulatory Office
(200202006)
(Barber, KS, NPR)

Mr. John Doane
Kiowa, Hardtner and Pacific Railroad
Post Office Box 26421
Salt Lake City, Utah 84126

Dear Mr. Doane:

This is in response to your letter received on August 9, 2002, requesting a Department of the Army (DA) permit determination concerning the abandonment of approximately 9.93 miles of rail line including crossings over tributaries of Driftwood Creek and Mule Creek. The project is located in Sections 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17, Township 35 south, Range 12 west, and Sections 7, 8, 9, 10, 11, 14, 15, 16, 17, and 18 Township 35 south, Range 11 west, Barber County, Kansas.

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

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

We have reviewed the information furnished and have determined that the proposed activity will not involve the discharge of dredged or fill material in waters of the United States. Therefore, Department of the Army permit authorization is not required. Other Federal, state and/or local permits may be required, however, and you should verify this yourself.

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

AUG-23-2002 FRI 08:43 AM

FAX NO.

P. 03

-2-

Enclosures

Copies Furnished:

Environmental Protection Agency,
Water Resources Protection Branch wo/enclosure

Kansas Department of Wildlife
and Parks wo/enclosure

Kansas Department of Agriculture wo/enclosure

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

APPLICANT: Kiowa, Hardtner And Pacific Railroad NUMBER: 200202006

LOCATION/WATERWAY: Barber County, KS/ Tributaries to Driftwood Creek and Mule Creek

PROJECT REVIEW COMPLETE: ☒ Office ☐ Field

JURISDICTIONAL DETERMINATION (JD):

- ☒ Preliminary JD – Based on available information, there appear to be no waters of the U.S. on the project site. A preliminary JD is not appealable.
☐ Approved JD – There are no waters of the United States on the project site. An approved JD is an appealable action.

BASIS FOR JURISDICTIONAL DETERMINATION:

- ☒ There are no jurisdictional waters of the U.S. present on the project site.
☐ The presence of waters which are currently used, or were used in the past, or may be susceptible for use to transport interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide (i.e., navigable waters of the U.S).
☐ The presence of interstate waters (including interstate wetlands¹).
☐ The presence of a tributary to an interstate water or other water of the U.S.
☐ Impoundments of interstate or other waters of the U.S. or their tributaries.
☐ The presence of territorial seas.
☐ The presence of wetlands adjacent² to interstate or other waters of the U.S., except for those wetlands adjacent to other wetlands.
☐ The presence of an isolated water (i.e., intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds).
 ☐ The site is used by interstate or foreign travelers for recreational purposes.
 ☐ The site has fish or shellfish that are taken and sold in interstate or foreign commerce.
 ☐ The site is used for industrial purposes by industries in interstate commerce.
 ☐ Other: _____

Rationale for Basis (applies to any boxes checked above): Driftwood Creek and Mule Creek are tributaries of the Arkansas River.

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

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

Preparer: Regulatory Specialist, Sarah M. Reznicek Date: 20 August 2002

¹ Wetlands are identified and delineated using the methods and criteria established in the 1987 Corps of Engineers Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology). Processes for determining wetlands on agricultural lands may vary from methods described in the 87 Manual.

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

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

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR MODIFICATION		
Applicant: Kiowa, Hardtner and Pacific Railroad		File Number: 200202006
Date: 20 Aug 2002		
Attached is:		See Section below
☐	A. INITIAL PROFFERED PERMIT (Standard Permit or Letter of Permission)	A
☐	B. PROFFERED PERMIT (Standard Permit or Letter of Permission)	B
☐	C. PERMIT DENIAL	C
☐	D. APPROVED JURISDICTIONAL DETERMINATION	D
☒	E. PRELIMINARY JURISDICTIONAL DETERMINATION	E

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

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

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

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

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

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

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

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

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

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

Submit the following requests to the District Engineer:

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

Submit the following requests to the Division Engineer:

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

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

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

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

POINT OF CONTACT FOR QUESTIONS OR INFORMATION

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

DISTRICT ENGINEER

Attn: Joseph Hughes

Chief Regulatory Branch

U.S. Army Engineer District, Kansas City

601 East 12th Street, Room 706

Kansas City, MO 64106-2896

Telephone: 816-983-3990

(Use this address for submittals to the District Engineer)

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

DIVISION ENGINEER

Attn: Mores V. Bergman

Appeal Review Officer

U.S. Army Engineer Division, Northwestern Division

12565 West Center Road

Omaha, NE 68144-3869

Telephone: 402-697-2533

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

Signature of appellant or agent.	Date:	Telephone number:
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