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July 17, 2003

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



RE: Docket No. AB-441 (Sub-No. 3X), *SWKR Operating Co.—Abandonment
Exemption—in Cochise County, AZ*

Dear Secretary Williams:

Enclosed are the original and 10 copies of a Petition for Exemption for abandonment in the above-entitled proceeding and check number 146280 for the filing fee of \$4,700. Also enclosed are three computer diskettes of the petition, environmental report and historic report.

Please time and date stamp the additional copy of this letter and the petition and return them with our messenger. Thank you for your assistance.

If you have any questions, call or email me.

Sincerely yours,

Louis E. Gitomer
Attorney for SWKR Operating Co.

Enclosures

FILED
JUL 17 2003
SURFACE
TRANSPORTATION BOARD

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ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. AB-441 (Sub-No. 3X)

SWKR OPERATING CO.—ABANDONMENT EXEMPTION—IN COCHISE COUNTY, AZ

PETITION FOR EXEMPTION

420

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Attorneys for: SWKR Operating Co.

Dated: July 17, 2003

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BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. AB-441 (Sub-No. 3X)



SWKR OPERATING CO.—ABANDONMENT EXEMPTION—IN COCHISE COUNTY, AZ

PETITION FOR EXEMPTION

SWKR Operating Co. (“SWKR”) petitions the Surface Transportation Board (“STB”) to exempt, under 49 U.S.C. § 10502, SWKR’s abandonment of a 19.9-mile rail line between near Curtis, milepost 7.00 (formerly milepost 1040.15), and near Charleston, the end of the line, milepost 26.9 (formerly milepost 1055.8), all in Cochise County, AZ (the “Line”). Abandonment is justified by the lack of rail traffic on the Line.

PROPOSED TRANSACTION

SWKR proposes to abandon its 19.9-mile rail line between near Curtis, milepost 7.00 (formerly milepost 1040.15), and near Charleston, the end of the line, milepost 26.9 (formerly milepost 1055.8), all in Cochise County, AZ.¹ The Line traverses US Zip Codes 85602, 85621, and 85615.

A map of the Line is attached as Exhibit A. The Environmental Report is in Exhibit B and the Historic Report is in Exhibit C. Exhibit D contains the Federal Register notice, Exhibit E contains the Certificate of publication, and Exhibit F contains the certificate of service.

¹ There is an equation of the former mileposts at current milepost 17.73 that accounts for the mileage difference between the former mileposts and current mileposts.

Based on information in SWKR's possession, the Line does not contain any federally granted right-of-way. Any documentation in SWKR's possession concerning title will be made available to those requesting it.

BACKGROUND

SWKR acquired and operated 84.9 miles of rail line between milepost N 1032.84 at Benson and the end of the line at milepost N 1107.96 at Douglas and between milepost 1085.0 at Bisbee Jct. and milepost 1090.6 at the end of the line at Bisbee, in Cochise County, AZ, from the Southern Pacific Transportation Company, predecessor to the Union Pacific Railroad Company ("UP"). *SWKR Operating Co., Inc.—Acquisition and Operation Exemption—Southern Pacific Transportation Co.*, ICC Finance Docket No. 32620 (ICC served December 23, 1994).²

SWKR has abandoned two portions of the 84.9 mile line. SWKR abandoned 17.26 miles between milepost 1085.0 at Bisbee Jct. and milepost 1090.6 at Bisbee, and between milepost N 1097.30 near Paul Spur and milepost N 1107.96 near Douglas, including a one mile line between milepost 1107 in Douglas and the international border with Mexico at Agua Prieta (the "17-mile line"). *SWKR Operating Co.—Abandonment Exemption—in Cochise County, AZ*, ICC Docket No. AB-441 (Sub-No. 1X) (ICC served October 12, 1995) (the "*Sub-No. 1 Abandonment*"). SWKR was also authorized to abandon the 41.5-mile line between milepost 1055.8 near Charleston and milepost 1097.3 near Paul Spur (the "41.5-mile line"). *SWKR Operating Co.—Abandonment Exemption—in Cochise County, AZ*, STB Docket No. AB-441 (Sub-No.2X) (STB served February 14, 1997) (the "*Sub-No. 2 Abandonment*"). The 41.5-mile line was transferred for trail use to the San Pedro Trail Company ("SP Trail").

The control of Kyle Railways, Inc. and in turn SWKR was acquired by StatesRail, Inc. *StatesRail, Inc.–Acquisition of Control Exemption–Kyle Railways, Inc.*, STB Finance Docket No. 33340 (STB served April 17, 1997). RailAmerica, Inc. acquired control of StatesRail, Inc. and SWKR in 2002. *RailAmerica, Inc.–Control Exemption–StatesRail Acquisition Corp. and StatesRail, Inc.*, STB Finance Docket No. 34129 (STB served December 28, 2001).

The Line is in a rural area of Arizona and does not generate any local rail traffic. Indeed, 18.65 miles of the Line are within the San Pedro Riparian National Conservation Area (the “SPRNCA”), an area that SWKR does not expect to ever be developed or ever need rail service. Prior to 2003, the Line carried some overhead traffic in contract service from the 17-mile line and the 41.5-mile line as an accommodation to the shippers on those abandoned lines.³

In 2001, SWKR transported under contract as an accommodation to Chemical Lime Corporation (“CLC”) nine carloads of lime, 101 carloads of coal, 235 carloads of coke, and two carloads of magnesium chloride to Paul Spur, AZ on the 17-mile line. The last shipments were made in October 2001 and no shipments for CLC were made in 2002 or to date in 2003. SWKR has contacted CLC and does not expect CLC to oppose abandonment of the Line.

SWKR transported under contract as an accommodation to Ace Hardware two carloads of lumber to Bisbee Jct. in 2001 and four carloads in 2002. The last carload was delivered in December 2002 and none have been delivered to date in 2003. SWKR has contacted Ace Hardware and does not expect Ace Hardware to oppose abandonment of the Line.

² Kyle Railways, Inc. continued in control of SWKR. *Kyle Railways, Inc.–Continuance in Control Exemption–SWKR Operating Co., Inc.*, ICC Finance Docket No. 32621 (ICC served December 23, 1994).

³ SWKR has abandoned the 17-mile line and transferred the 41.5-mile line to SP Trail, but has not yet salvaged the rail on either line.

The main source of overhead traffic on the Line has been from GrupoMexico, which transloaded shipments from trucks to boxcars at Bisbee Jct. SWKR transported under contract as an accommodation to GrupoMexico the transloaded shipments. In 2001 SWKR moved 1,240 box cars loaded with copper cathodes and 74 boxcars loaded with copper rod from Bisbee Jct. over the Line for interchange to UP at Benson, AZ. In 2002, SWKR handled 131 box cars of copper cathodes from Bisbee Jct. and two box cars of empty pallets to Bisbee Jct. for GrupoMexico. The last shipments of copper cathodes were made in April 2002 and the only shipments of pallets were made in May 2002. SWKR has handled no traffic for GrupoMexico to date in 2003. SWKR has contacted GrupoMexico and does not expect GrupoMexico to oppose abandonment of the Line.

In addition to there being no demand for service over the Line, abandonment of the Line would allow SWKR to eliminate about \$ 100,000 in annual maintenance costs and to sell or reuse \$ 650,000 worth of rail, ties and other track materials. UP retained the bridges and underlying right-of-way between milepost 8.31 and milepost 26.9 when it sold the Line to SWKR. Therefore, SWKR will not incur any cost to remove bridges, nor will it realize any revenue from the sale of the majority of the real estate under the Line. SWKR understands that UP may donate or otherwise convey the real estate and bridges to the SPRNCA.

ARGUMENT SUPPORTING THE ABANDONMENT

SWKR seeks an exemption under 49 U.S.C. § 10502 from the applicable requirements of 49 U.S.C. § 10903 in order to abandon the Line.

Under 49 U.S.C. § 10502, the STB must exempt a transaction from regulation when it finds that:

(1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and

(2) either:

(a) the transaction is of limited scope, or

(b) regulation is not necessary to protect shippers from the abuse of market power.

The legislative history of Section 10502 reveals a clear Congressional intent that the STB should liberally use its exemption authority to free certain transactions from the administrative and financial costs associated with continued regulation. In enacting the Staggers Rail Act of 1980, Pub. L. No. 96-488, 94 Stat. 1895, Congress encouraged the STB's predecessor agency to liberally use the expanded exemption authority under former Section 10505:

The policy underlying this provision is that while Congress has been able to identify broad areas of commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress. The conferees expect that, consistent with the policies of this Act, the Commission will pursue partial and complete exemption from remaining regulation.

H.R. Rep No. 1430, 96th Cong. 2d Sess. 105 (1980). See also *Exemption From Regulation--Boxcar Traffic*, 367 I.C.C. 424, 428 (1983), vacated and remanded on other grounds, *Brae Corp. v. United States*, 740 F.2d 1023 (D.C. Cir 1984). Congress reaffirmed this policy in the conference report accompanying the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, which re-enacted the rail exemption provision as Section 10502. H.R. Rep. No. 422, 104th Cong., 1st Sess. 168-69 (1995).

A. The Application of 49 U.S.C. § 10903 Is Not Necessary to Carry Out the Rail Transportation Policy

Detailed scrutiny of this transaction is not necessary to carry out the rail transportation policy. An exemption would minimize the unnecessary expense associated with the preparation and filing of a formal abandonment application, expedite regulatory decisions and reduce regulatory barriers to exit. 49 U.S.C. § 10101 (2) and (7). The abandonment by SWKR will not result in a loss of rail service. No shippers are receiving local service to and from the Line today. The shippers who used the Line for overhead service have stopped using that service and SWKR believes that they will not oppose this abandonment. Granting this exemption, therefore, fosters sound economic conditions and encourages efficient management by permitting the rationalization of an unnecessary rail line. 49 U.S.C. § 10101 (3), (5) and (9). Other aspects of the rail transportation policy are not adversely affected. For example, competition and the continuation of a sound rail transportation system are not affected since the public will not be deprived of any needed rail services.

B. This Transaction Is Of Limited Scope

The proposed transaction is of limited scope. SWKR seeks to abandon a 19.9-mile line in one county in Arizona.

C. This Transaction Will Not Result In An Abuse Of Market Power.

SWKR is abandoning the Line. There are no shippers located on the Line. The Line had been used to provide overhead service to shippers who have chosen to stop shipping over the Line in overhead service.

Since no shipper will lose service, SWKR does not anticipate any opposition to the proposed abandonment.

ENVIRONMENTAL REPORT

An Environmental Report is in Exhibit B.

HISTORIC REPORT

A Historic Report is in Exhibit C.

FEDERAL REGISTER NOTICE

A draft Federal Register notice is attached hereto as Exhibit D.

LABOR PROTECTION

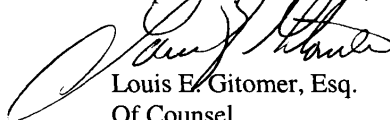
The interests of railroad employees of SWKR who may be adversely affected by the proposed abandonment will be adequately protected by the labor protective conditions in *Oregon Short Line R. Co.--Abandonment--Goshen*, 360 I.C.C. 91 (1979).

CONCLUSION

Application of the regulatory requirements and procedures of 49 U.S.C. § 10903 is not required to carry out the rail transportation policy set forth in 49 U.S.C. § 10101, as previously shown. Nor is STB regulation required to protect shippers from the abuse of market power. Moreover, this abandonment is of limited scope. Accordingly, SWKR respectfully urges the STB to grant the proposed abandonment of the 19.9-mile Line.

Gary A. Laakso, Esq.
Vice President Regulatory Counsel
RailAmerica, Inc.
5300 Broken Sound Boulevard N.W.
Second Floor
Boca Raton, FL 33487
(561) 994-6015

Respectfully Submitted,



Louis E. Gitomer, Esq.
Of Counsel
BALL JANIK LLP
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Washington, D.C. 20005
(202) 638-3307

Attorneys for: SWKR OPERATING CO.

Dated: July 17, 2003

EXHIBIT A-MAP

**SWKR Operating Company
Abandonment in Cochise County, AZ
STB Docket No. AB-441 (Sub-No. 3X)**



EXHIBIT B-ENVIRONMENTAL REPORT

ENVIRONMENTAL REPORT
(49 C.F.R. 1105.7)

Docket No. AB-441 (Sub-No. 3X)

SWKR OPERATING CO.—ABANDONMENT EXEMPTION—IN COCHISE COUNTY, AZ

Dated: June 25, 2003

(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.

The SWKR Operating Company ("SWKR") proposes to abandon a 19.9-mile rail line between near Curtis, milepost 7.00 (formerly milepost 1040.15), and near Charleston, the end of the line, milepost 26.9 (formerly milepost 1055.8), all in Cochise County, AZ (the "Line").¹ Upon receipt of abandonment authority, SWKR will terminate its common carrier obligation to operate over the Line, salvage the track and materials. SWKR acquired the Line from the Southern Pacific Transportation Company, a predecessor of the Union Pacific Railroad Company ("UP").² SWKR owns the real estate between mileposts 7.00 and 8.31 and will dispose of the real estate after abandonment. UP retained ownership of the rest of the land and will decide on how to dispose of it after abandonment by SWKR.

The only alternative to abandonment would be to continue to operate the Line. SWKR believes that there is not a sufficient volume of traffic available on the Line to justify the costs of

¹ There is an equation of the former mileposts at current milepost 17.73 that accounts for the mileage difference between the former mileposts and the current mileposts.

² *SWKR Operating Co., Inc.—Acquisition and Operation Exemption—Southern Pacific Transportation Co.*, ICC Finance Docket No. 32620 (STB served December 23, 1994).

maintaining and operating the Line. Making a capital investment in the Line would not be a prudent use of carrier resources.

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

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

There has been no passenger service over the Line in decades, so no passenger will be diverted to other modes as a result of the proposed abandonment. There has been no local rail traffic originating or terminating on the Line in 2003. Overhead traffic was moved on the Line in 2002 and 2001 in contract service from the segment south of the Line, which had been previously abandoned.³ There has been no overhead traffic in 2003 and only one carload of lumber moved over the Line in overhead service in 2002 after May 2002. Accordingly, SWKR expects the proposed abandonment not to add any trucks to the highways.

(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) SWKR considers the proposed abandonment to be consistent with existing land use plans. The land adjoining the Line is mainly rural in character. SWKR contacted Cochise County, AZ by letter dated June 25, 2003. See Exhibit 2. No response has been received as of

³ *SWKR Operating Co., Inc.—Abandonment Exemption—in Cochise County, AZ*, ICC Docket No. AB-441 (Sub-No. 1X) (ICC served October 12, 1995); and *SWKR Operating Co.—Abandonment Exemption—in Cochise County, AZ*, STB Docket No. AB-441 (Sub-No. 2x) (STB served February 14, 1997).

this date. A copy of this Environmental Report has been mailed to the appropriate local and state agencies for their information and further comment.

(ii) SWKR notified the United States Department of Agriculture ("USDA") Natural Resources Conservation Service (the agency succeeding to the responsibilities of the Soil Conservation Service) of the proposed abandonment by letter dated June 25, 2003, and requested assistance in identifying any potential effects on prime agricultural land. See Exhibit 2. No response has been received to date. A copy of this report is being supplied to the USDA for its information and further comment.

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

(iv) The real estate underlying the Line is owned by UP, except for that owned by SWKR between mileposts 7.00 and 8.31. The right-of-way may be suitable for public use as part of the San Pedro Riparian National Conservation Area, which the Line enters at milepost 8.25. There is little or no likelihood that the rail corridor is needed for a transit or highway corridor. The right-of-way could be used for a recreational trail.

(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 minimal effect on overall energy efficiency.

(iv) The proposed abandonment will not cause the diversion more than 1,000 rail carloads a year; or an average of 50 rail carloads per mile per year for any part of the Line of rail traffic to motor carriage.

(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.

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

(iii) SWKR is not aware of any 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) SWKR does not believe that the proposed action is likely to adversely affect endangered or threatened species or areas designated as a critical habitat. SWKR notified the U.S. Fish and Wildlife Service of the proposed abandonment by letter dated June 25, 2003, and requested assistance in determining whether the proposed abandonment will adversely affect

endangered or threatened species or areas designated as a critical habitat. *See* Exhibit 2. A copy of this Report has been supplied to the U.S. Fish and Wildlife Service for its information and further comment.

(ii) The Line runs in a north-south direction through the San Pedro Riparian National Conservation Area (the "SPRNCA"). SWKR intends to remove the track structure so as not to affect the SPRNCA. SWKR notified the National Parks Service of the proposed abandonment by letter dated June 25, 2003, and requested assistance in identifying any potential effects on wildlife sanctuaries or refuges, National or State parks or forests. *See* Exhibit 2. 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) SWKR is confident that the proposed abandonment will be consistent with applicable water quality standards. SWKR contacted the Arizona Environmental Protection Agency ("AZEPA") and the United States Environmental Protection Agency ("USEPA") by letters dated June 25, 2003. *See* Exhibit 2. To date, no response to this request has been received. A copy of this Report has been supplied to the AZEPA and USEPA for their information and comment.

(ii) SWKR believes that no permits under section 404 of the Clean Water Act are required for the proposed abandonment and that no designated wetlands or 100-year flood plains will be affected by the proposed abandonment. SWKR contacted the U.S. Army Corps of

Engineers by letter dated June 25, 2003 and has received no response to date. *See* Exhibit 2. A copy of this Report has been supplied to the U.S. Army Corps of Engineers for its information and comment.

(iii) SWKR believes that no permit under section 402 of the Clean Water Act would be required for the abandonment. SWKR contacted the AZEPA and the USEPA by letter dated June 25, 2003. *See* Exhibit 2. A copy of this Report has been supplied to the AZEPA and USEPA for their 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.

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

EXHIBIT 1

**SWKR Operating Company
Abandonment in Cochise County, AZ
STB Docket No. AB-441 (Sub-No. 3X)**



Legend

- SWKR Line to be Abandoned
- Other SWKR Lines
- Other Railroads
- Highways

Scale: 1 inch = 25 miles

EXHIBIT 2



June 25, 2003

Arizona State Clearinghouse
Arizona State Clearinghouse
3800 North Central Avenue, 14th Floor
Phoenix, AZ 85012

RE: Docket No. AB-441 (Sub-No. 3X), *SWKR Operating Co.—Abandonment
Exemption—in Cochise County, AZ*

Dear Sir or Madam:

On or about July 15, 2003, we expect to be filing with the Surface Transportation Board ("STB") a petition for exemption seeking authority for SWKR Operating Co. to abandon a 19.9-mile rail line between near Curtis, milepost 7.00 (formerly milepost 1040.15), and near Charleston, the end of the line, milepost 26.9 (formerly milepost 1055.8), all in Cochise County, AZ.

Attached is an Environmental Report describing the proposed action and any expected environmental effects, as well as a map of the affected area. We are providing this report so that you may review the information that will form the basis for the STB's independent environmental analysis of this proceeding. If any of the information is misleading or incorrect, if you believe that pertinent information is missing, or if you have any questions about the STB's environmental review process, please contact the Section of Environmental Analysis (SEA), Surface Transportation Board, 1925 K Street, NW, Washington, DC 20423, telephone 202-565-1538 and refer to the above Docket No. AB-441 (Sub-No. 3X).

Because the applicable statutes and regulations impose stringent deadlines for processing this action, your written comments to SEA (with a copy to our representative) would be appreciated within 3 weeks. Your comments will be considered by the STB in evaluating the environmental impacts of the contemplated action. If there are any questions concerning this proposal, please contact our representative directly. Our representative in this matter is Louis E. Gitomer who may be contacted by telephone at 202-638-3307, email at lgitomer@dc.bjllp.com, or mail at Ball Janik LLP, 1455 F Street, N.W., Suite 225, Washington, DC 20005.

Sincerely yours,

Louis E. Gitomer
Attorney for SWKR Operating Co.

Enclosure

SWKR OPERATING CO. INC. DBA
San Pedro & Southwestern Railway



a StatesRail Company

WE WILL MANAGE THE
STATESRAIL COMMUNITY BY OUR CORE VALUES:
Trust, Passionate Commitment & Integrity

June 25, 2003

Arizona Department of Environmental Quality
1110 W. Washington Street
Phoenix, AZ 85007

RE: Docket No. AB-441 (Sub-No. 3X), *SWKR Operating Co.—Abandonment
Exemption—in Cochise County, AZ*

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Sincerely yours,

Louis E. Gitomer
Attorney for SWKR Operating Co.

Enclosure

SWKR OPERATING CO. INC. DBA
San Pedro & Southwestern Railway



WE WILL MANAGE THE
STATESRAIL COMMUNITY BY OUR CORE VALUES:
Trust, Passionate Commitment & Integrity

a StatesRail Company

June 25, 2003

Head of Cochise County
Board of Supervisors
Cochise County, AZ
1415 Melody Lane, Building B
Bisbee, AZ 85603

RE: Docket No. AB-441 (Sub-No. 3X), *SWKR Operating Co.—Abandonment
Exemption—in Cochise County, AZ*

Dear Sir or Madam:

On or about July 15, 2003, we expect to be filing with the Surface Transportation Board ("STB") a petition for exemption seeking authority for SWKR Operating Co. to abandon a 19.9-mile rail line between near Curtis, milepost 7.00 (formerly milepost 1040.15), and near Charleston, the end of the line, milepost 26.9 (formerly milepost 1055.8), all in Cochise County, AZ.

Attached is an Environmental Report describing the proposed action and any expected environmental effects, as well as a map of the affected area. We are providing this report so that you may review the information that will form the basis for the STB's independent environmental analysis of this proceeding. If any of the information is misleading or incorrect, if you believe that pertinent information is missing, or if you have any questions about the STB's environmental review process, please contact the Section of Environmental Analysis (SEA), Surface Transportation Board, 1925 K Street, NW, Washington, DC 20423, telephone 202-565-1538 and refer to the above Docket No. AB-441 (Sub-No. 3X).

Because the applicable statutes and regulations impose stringent deadlines for processing this action, your written comments to SEA (with a copy to our representative) would be appreciated within 3 weeks. Your comments will be considered by the STB in evaluating the environmental impacts of the contemplated action. If there are any questions concerning this proposal, please contact our representative directly. Our representative in this matter is Louis E. Gitomer who may be contacted by telephone at 202-638-3307, email at lgitomer@dc.bjllp.com, or mail at Ball Janik LLP, 1455 F Street, N.W., Suite 225, Washington, DC 20005.

Sincerely yours,

Louis E. Gitomer
Attorney for SWKR Operating Co.

SWKR OPERATING CO. INC. DBA
San Pedro & Southwestern Railway



WE WILL MANAGE THE
STATESRAIL COMMUNITY BY OUR CORE VALUES:
Trust, Passionate Commitment & Integrity

June 25, 2003

United States Environmental Protection Agency
Region 9
75 Hawthorne Street
San Francisco, CA 94105

RE: Docket No. AB-441 (Sub-No. 3X), *SWKR Operating Co.—Abandonment
Exemption—in Cochise County, AZ*

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Enclosure

SWKR OPERATING CO. INC. DBA
San Pedro & Southwestern Railway



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STATESRAIL COMMUNITY BY OUR CORE VALUES:
Trust, Passionate Commitment & Integrity

a StatesRail Company

June 25, 2003

United States Fish and Wildlife Service
Arizona Ecological Services Field Office
2321 W. Royal Palm Road, Suite 103
Phoenix, AZ 85021

RE: Docket No. AB-441 (Sub-No. 3X), *SWKR Operating Co.—Abandonment
Exemption—in Cochise County, AZ*

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a StatesRail Company

June 25, 2003

United States Army Corps of Engineers
Los Angeles District
911 Wilshire Blvd.
Los Angeles, CA 90017

RE: Docket No. AB-441 (Sub-No. 3X), *SWKR Operating Co.—Abandonment
Exemption—in Cochise County, AZ*

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a StatesRail Company

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STATESRAIL COMMUNITY BY OUR CORE VALUES:
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June 25, 2003

National Park Service
Director
National Park Service
1849 C Street NW
Washington, DC 20240

RE: Docket No. AB-441 (Sub-No. 3X), *SWKR Operating Co.—Abandonment
Exemption—in Cochise County, AZ*

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a StatesRail Company

June 25, 2003

Natural Resource Conservation Service
West Region Office
Pearlie S. Reed, Regional Conservationist
430 G St. STE 4165
Davis, CA 95616

RE: Docket No. AB-441 (Sub-No. 3X), *SWKR Operating Co.—Abandonment
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Enclosure

SWKR OPERATING CO. INC. DBA
San Pedro & Southwestern Railway



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NGS Information Services
NOAA, N/NGS12
National Geodetic Survey
SSMC-3, #9202
1315 East-West Highway
Silver Spring, MD 20910-3282

RE: Docket No. AB-441 (Sub-No. 3X), *SWKR Operating Co.—Abandonment
Exemption—in Cochise County, AZ*

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Louis E. Gitomer
Attorney for SWKR Operating Co.

Enclosure

EXHIBIT C-HISTORIC REPORT

HISTORIC REPORT

(49 C.F.R. 1105.8)

Docket No. AB-441 (Sub-No. 3X)

SWKR OPERATING CO.—ABANDONMENT EXEMPTION—IN COCHISE COUNTY, AZ

Dated: June 25, 2003

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

(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.

The SWKR Operating Company (“SWKR”) proposes to abandon a 19.9-mile rail line between near Curtis, milepost 7.00 (formerly milepost 1040.15), and near Charleston, the end of the line, milepost 26.9 (formerly milepost 1055.8), all in Cochise County, AZ (the “Line”).¹ Upon receipt of abandonment authority, SWKR will terminate its common carrier obligation to operate over the Line, salvage the track and materials. SWKR acquired the Line from the Southern Pacific Transportation Company, a predecessor of the Union Pacific Railroad Company (“UP”).² SWKR owns the real estate between mileposts 7.00 and 8.31 and will dispose of the real estate after abandonment. UP retained ownership of the rest of the land and will decide on how to dispose of it after abandonment by SWKR.

¹ There is an equation of the former mileposts at current milepost 17.73 that accounts for the mileage difference between the former mileposts and the current mileposts.

² *SWKR Operating Co., Inc.—Acquisition and Operation Exemption—Southern Pacific Transportation Co.*, ICC Finance Docket No. 32620 (STB served December 23, 1994).

The only alternative to abandonment would be to continue to operate the Line. SWKR believes that there is not a sufficient volume of traffic available on the Line to justify the costs of maintaining and operating the Line. Making a capital investment in the Line would not be a prudent use of carrier resources.

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

HISTORIC REPORT

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

U.S. Geological Survey Maps have been supplied to the Arizona State Historic Preservation Office ("AZSHPO").

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 runs 19.9 miles in a southerly direction from near Curtis, AZ to near Charleston, AZ, the end of the line. From milepost 7.00 to milepost 9.3 the right-of-way is 200 feet wide (100 feet on either side of the center line). Between milepost 9.3 and the end of the abandonment at milepost 26.9 the right-of-way is 100 feet wide (50 feet on either side of the center line).

At milepost 7.00, the Line begins on a ridge west of the San Pedro River at an altitude of about 3,600-3,700 feet. The Line continues parallel to the San Pedro River when it enters the San Pedro Riparian National Conservation Area ("SPRNCA") at milepost 8.25 where the Line climbs to an altitude of about 3,850 feet. The Line crosses the San Pedro River at milepost 13.93 and then Tombstone Gulch at milepost 14.46. The Line ends south of Charleston, within the SPRNCA at an altitude of about 4,000 feet.

The Line crosses two public roads at mileposts 8.3 and 26.2 and four private roads at mileposts 8.7, 15.99, 20.9, and 21.45. A list of the bridges is in Exhibit 3.

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

See Exhibit 4.

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

See Exhibit 3. Because SWKR has been unable to determine the age of the structures on the Line, in order to take the most conservative approach, SWKR is treating each bridge as if it were 50 years old or older and is submitting photographs of each bridge.

SWKR contacted AZSHPO. See Exhibit 2. No response has been received. A copy of this Report has been mailed to AZSHPO.

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;

Prior to 1992, the Southern Pacific Transportation Company owned and operated the Line. In 1992, SWKR commenced operations over the Line. SWKR operated in overhead service on the Line through the end of 2002, at which time it terminated overhead operations for traffic moving under contract from the abandoned rail line to the south.

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;

Union Pacific Railroad Company ("UP"), the owner of the real estate under the Line, possesses the valuation maps of the Line. SWKR is not aware of any other documentation in its possession.

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);

SWKR believes that neither the structures on the Line nor the Line itself are unusual or noteworthy for inclusion on the National Register of Historic Places. It is also SWKR's opinion that there are no archeological resources or other railroad related historic properties in the project area.

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

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

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

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

EXHIBIT 1-MAP

**SWKR Operating Company
Abandonment in Cochise County, AZ
STB Docket No. AB-441 (Sub-No. 3X)**



EXHIBIT 2-LETTERS

SWKR OPERATING CO. INC. DBA
San Pedro & Southwestern Railway



a StatesRail Company

WE WILL MANAGE THE
STATESRAIL COMMUNITY BY OUR CORE VALUES:
Trust, Passionate Commitment & Integrity

June 25, 2003

Mr. James W. Garrison, SHPO
Arizona State Parks
1300 West Washington
Phoenix, AZ 85007

RE: Docket No. AB-441 (Sub-No. 3X), *SWKR Operating Co.—Abandonment
Exemption—in Cochise County, AZ*

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Attorney for the SWKR Operating Co.

EXHIBIT 3-BRIDGE INFORMATION

EXHIBIT 4-BRIDGE PICTURES

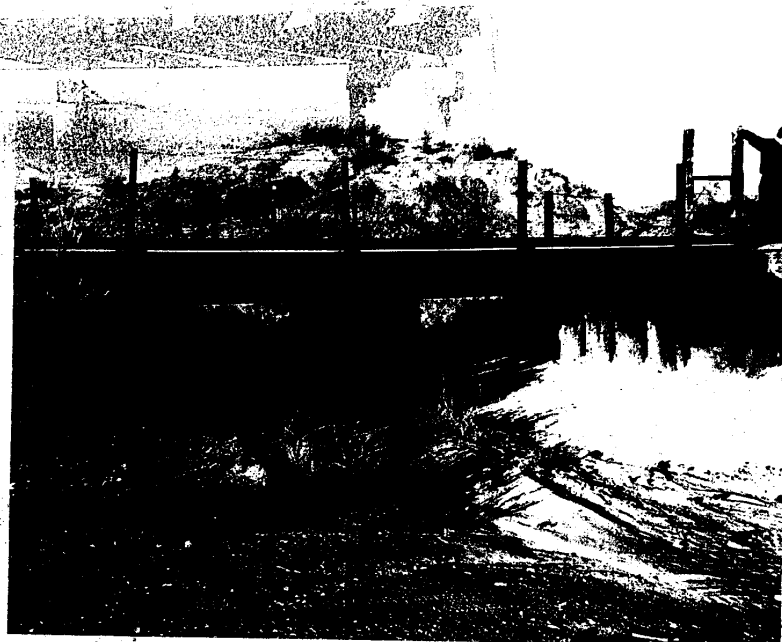
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Location MP 1033.08

Size 20 Foot



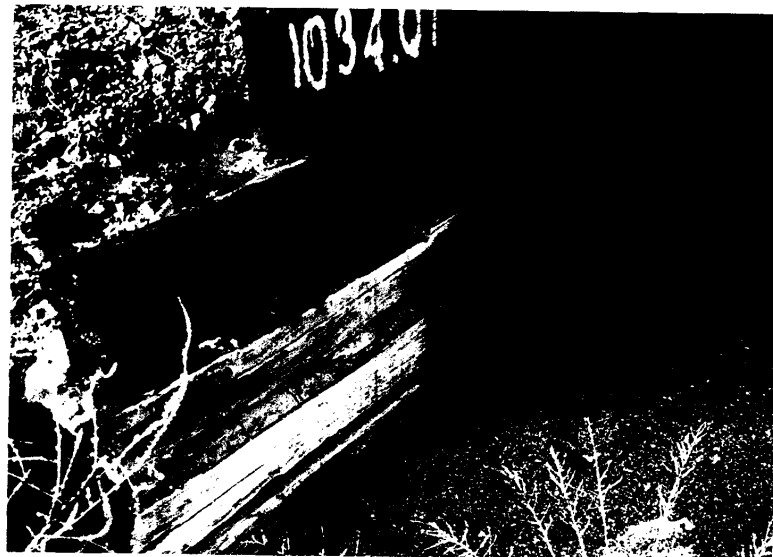
Scene Type Ballast Deck Bridge
Location MP 1033.25

Size 30 Foot



Scene Type Open Deck Bridge
Location MP 1034.07

Size 30 Foot



1.75

Scene Type Open Deck Bridge
Location MP 1034.75

Size 56 Foot



Scene Type Open Deck Bridge
Location MP 1035.12

2011

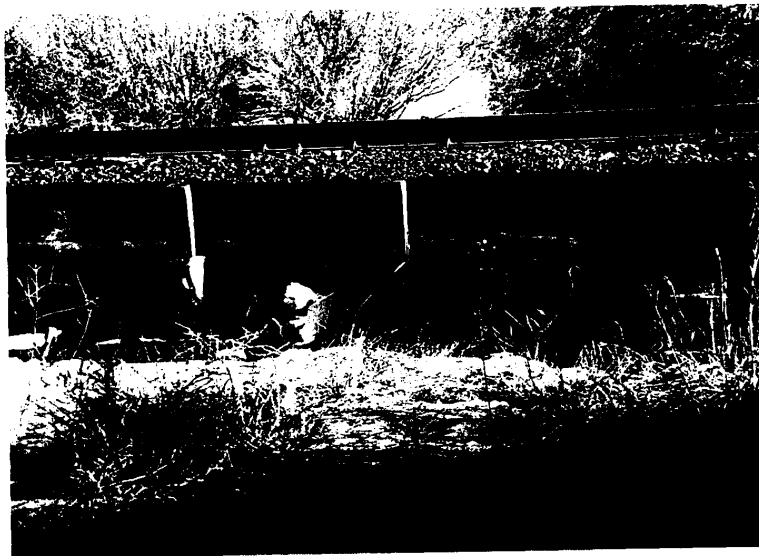
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2, 3, 5

Scene Type Ballast Deck Bridge
Location MP 1035.35

Size 28 Foot



Scene Type Ballast Deck Bridge
Location MP 1035.86

Size 28 Foot

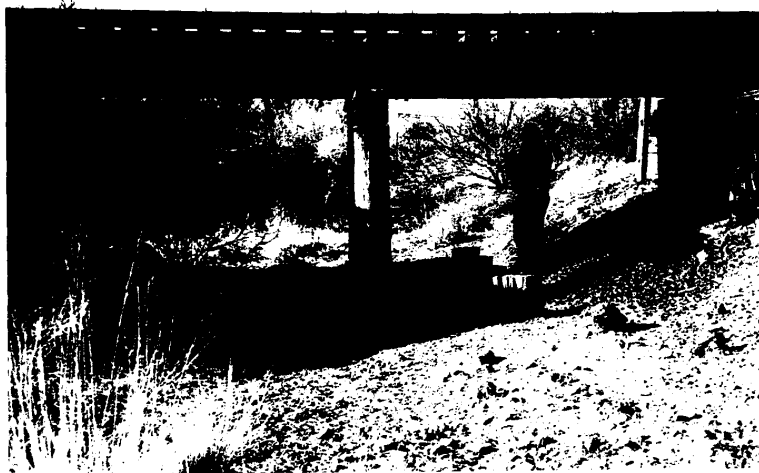
2 . 8 . 6



Scene Type Open Deck Bridge
Location MP 1036.27

Size 30 Foot

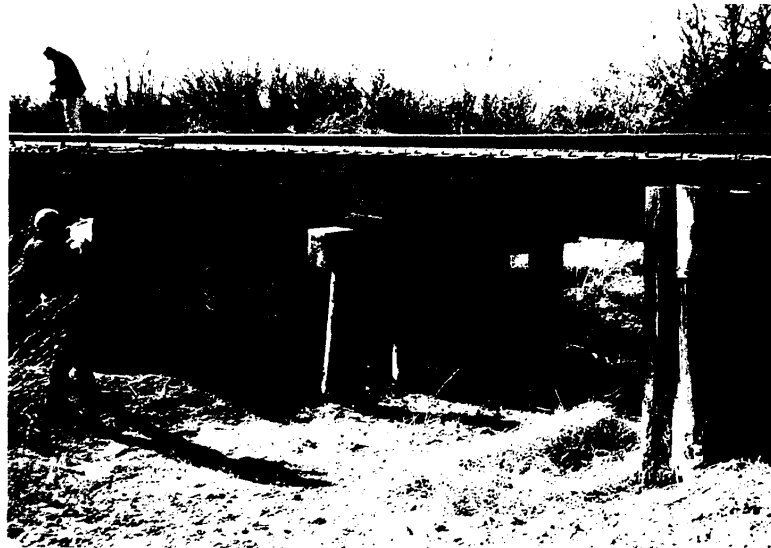
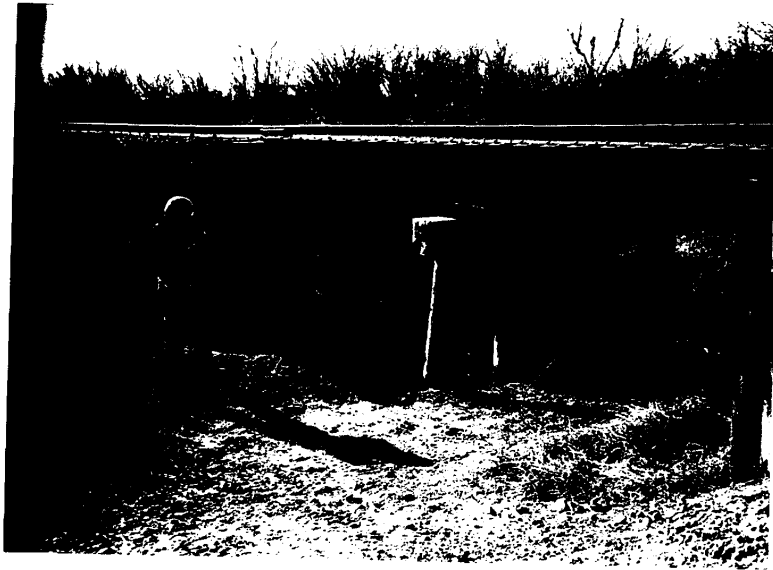
3.2.7



Scene Type Open Deck Bridge
Location MP 1036.70

Size 30 Foot

307



Scene Type Open Deck Bridge
Location MP 1036.90

Size 29 Foot

3' 9"



Scene Type Open Deck Bridge
Location MP 1037.43

Size 15 Foot

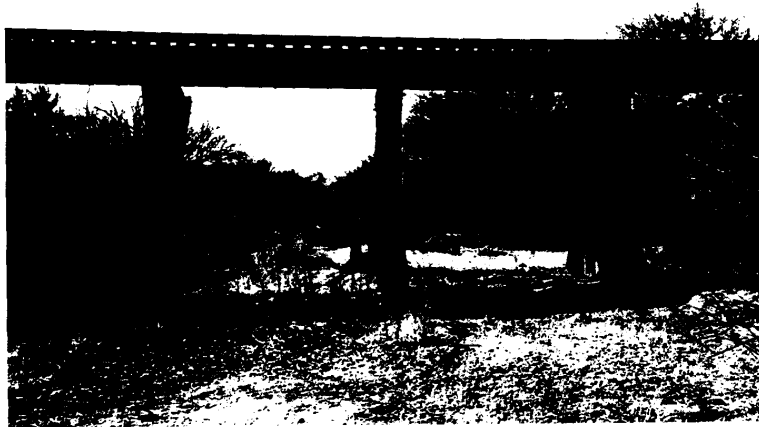
4.4.3



Scene Type Open Deck Bridge

Size 105 Foot

Location MP 1038.32 5.3.2



Scene Type Open Deck Bridge
Location MP 1038.70

Size 45 Foot



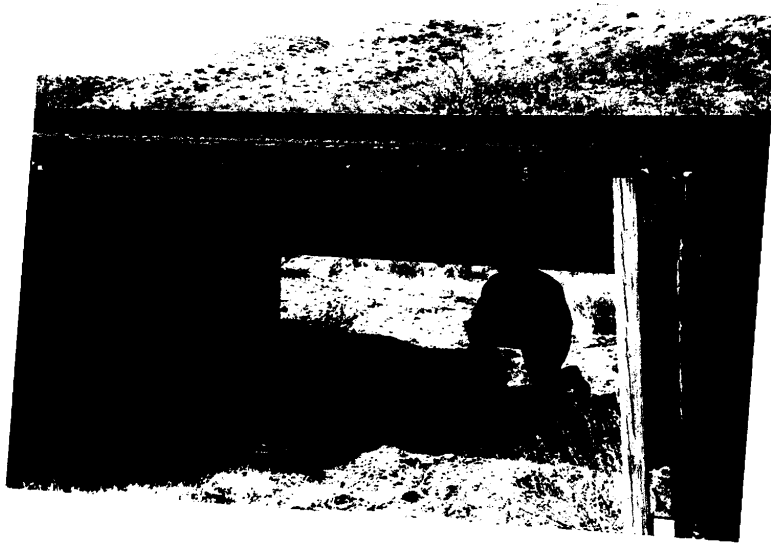
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Location MP 1039.91

Size 45 Foot



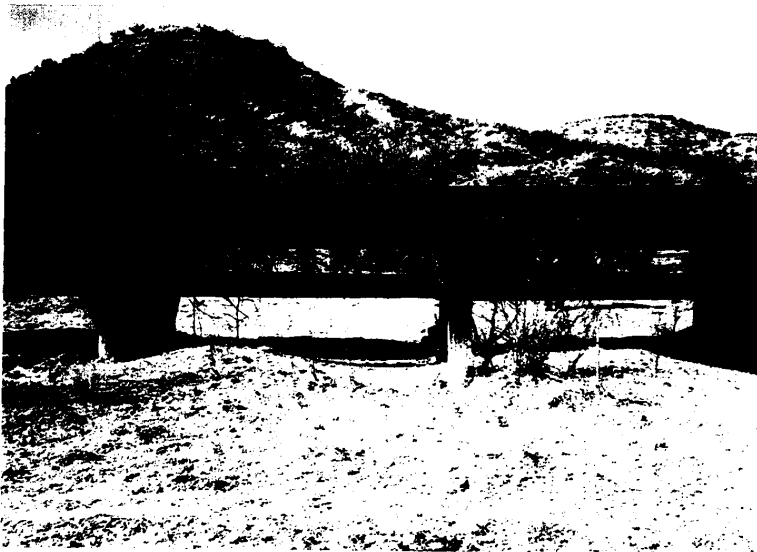
Scene Type Open Deck Bridge
Location MP 1040.58

Size 15 Foot



Scene Type Open Deck Bridge
Location MP 1040.70

Size 84 Foot



Scene Type Open Deck Bridge
Location MP 1041.10

Size 60 Foot



Scene Type Open Deck Bridge
Location MP 1042.97

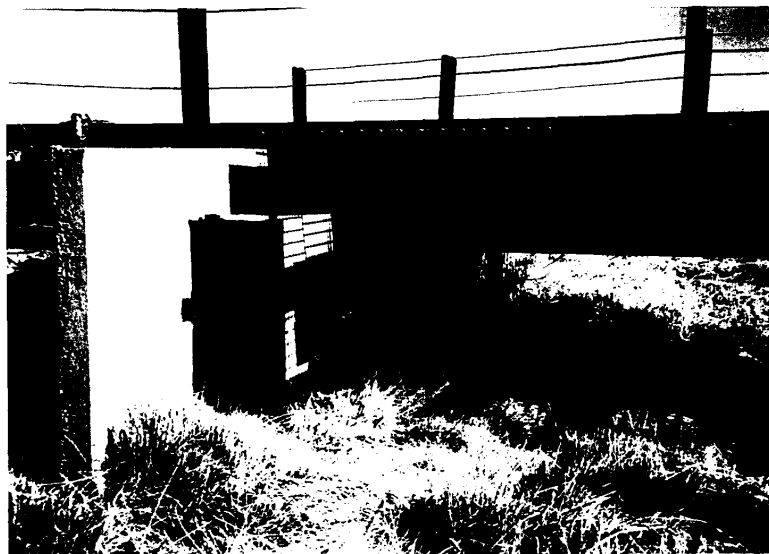
Size 46 Foot

9.9.1



Scene Type Open Deck Trestle
Location MP 1043.44

Size 23 Foot



Scene Type Open Deck Bridge Size 154 Foot
Location MP 1044.40 *A number of bad pillings and stringers



Scene Type *Open Deck Bridge*

Size *154 Foot*

Location *MP 1044.40 *A number of bad pillings and stringers*



Scene Type PS Concrete Bridge
Location MP 1044.78

Size 160 Foot



Scene Type Open Deck Bridge
Location MP 1045.96

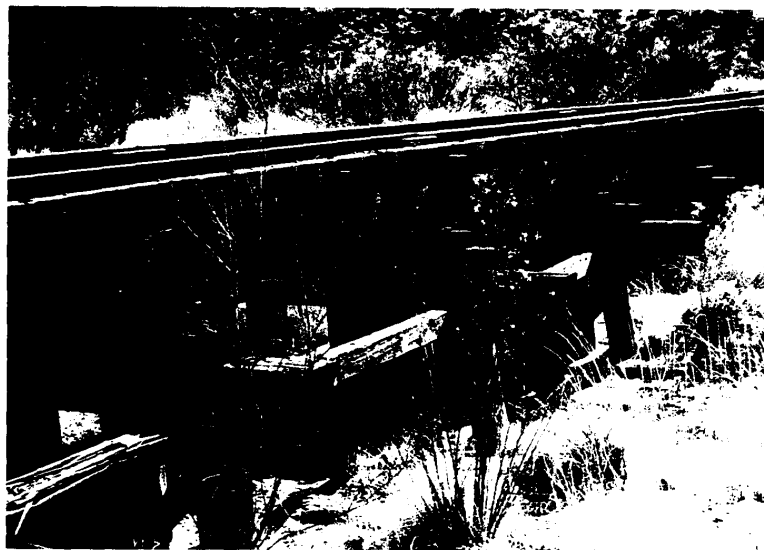
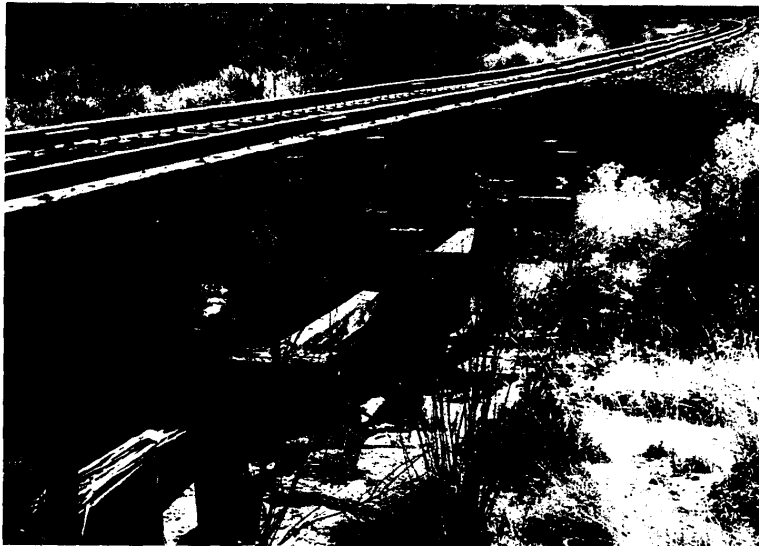
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Scene Type Open Deck Bridge
Location MP 1046.52

Size 70 Foot

13.5



Scene Type Ballast Deck Bridge
Location MP 1046.77

Size 43 Foot



Scene Type Ballast Deck Bridge
Location MP 1047.16 1047.16

Size 56 Foot



Scene Type Open Deck Bridge
Location MP 1047.57

Size 45 Foot



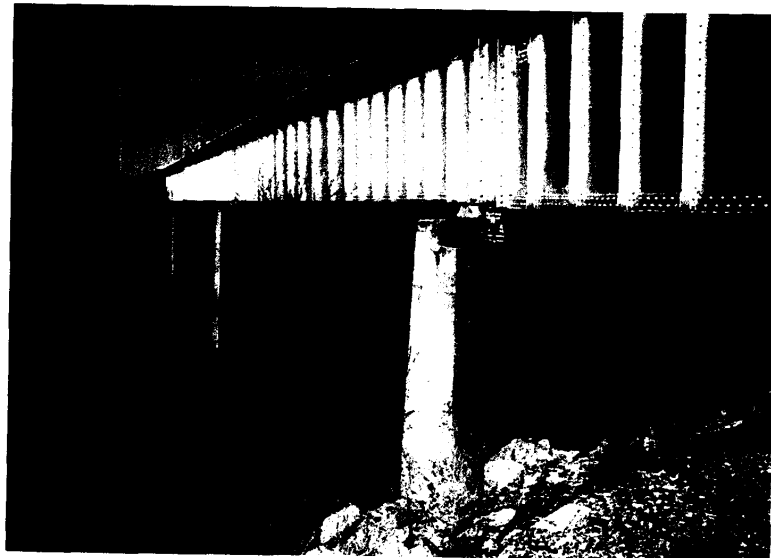
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Location MP 1049.23

Size 58 Foot



Scene Type Open Deck Steel Gurder
Location MP 1046.93

Size 361 Foot



Scene Type Ballast Deck Concrete Slab
Location MP 1047.52

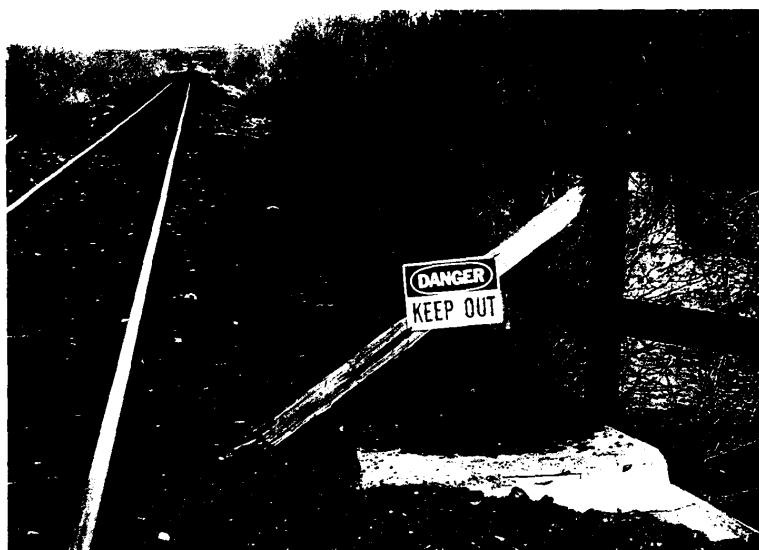
Size 110 Foot

18.6.5
14.7



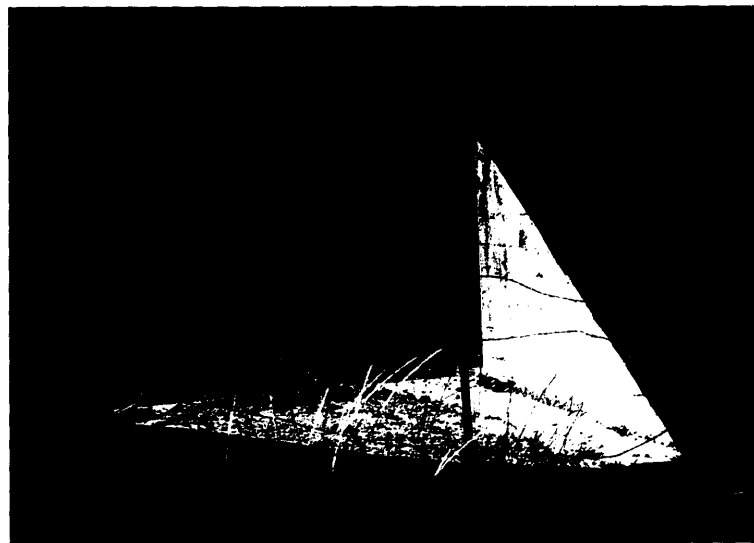
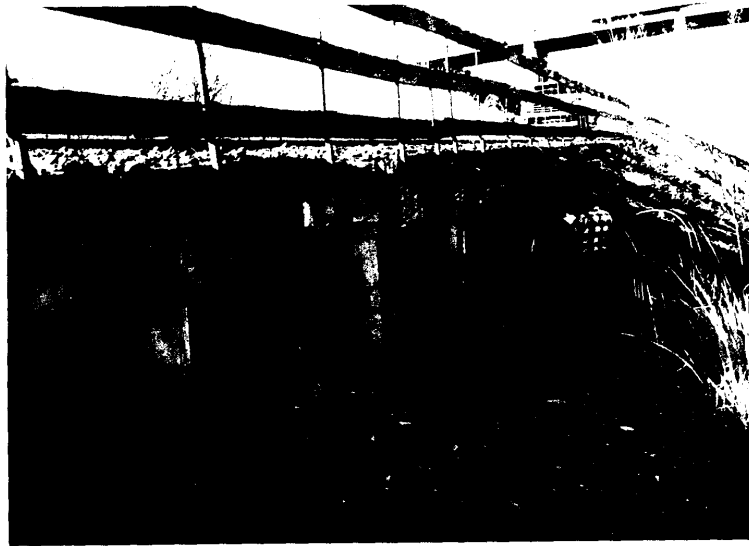
Scene Type Gard Rail Condition on Bridge-
Location MP 1047.52

Size 110 Foot



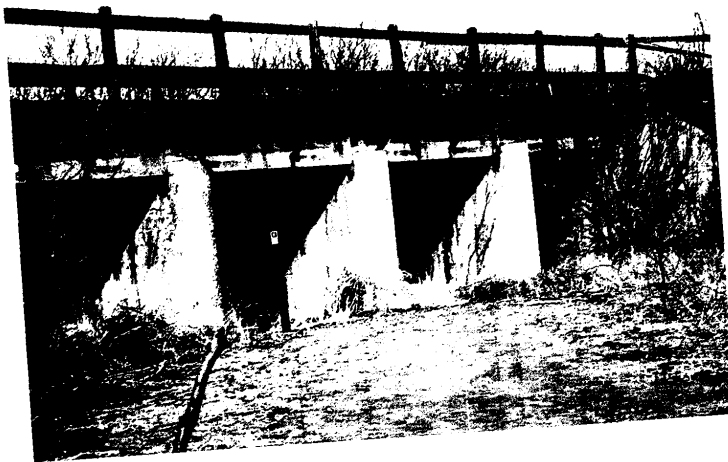
Scene Type Ballast Deck Concrete Slab
Location MP 1047.64

Size 110 Foot



Scene Type Gard Rail Condition on Bridge-
Location MP 1047.64

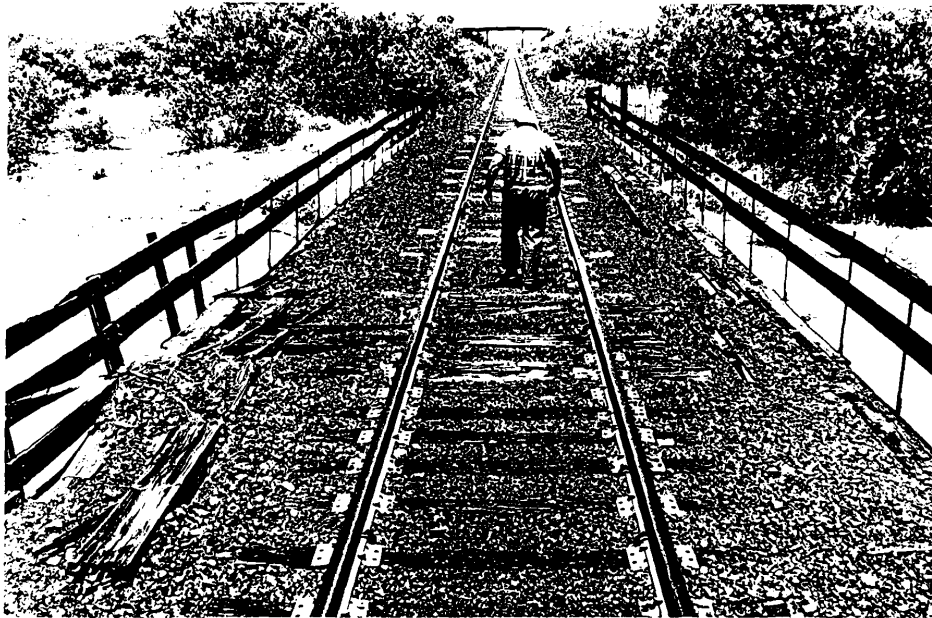
Size 110 Foot



Scene Type Ballast Deck Concrete Slab
Location MP 1047.76

Size 110 Foot

12.96



Scene Type Ballast Deck Concrete Slab
Location MP 1047.76

Size 110 Foot

18, 94

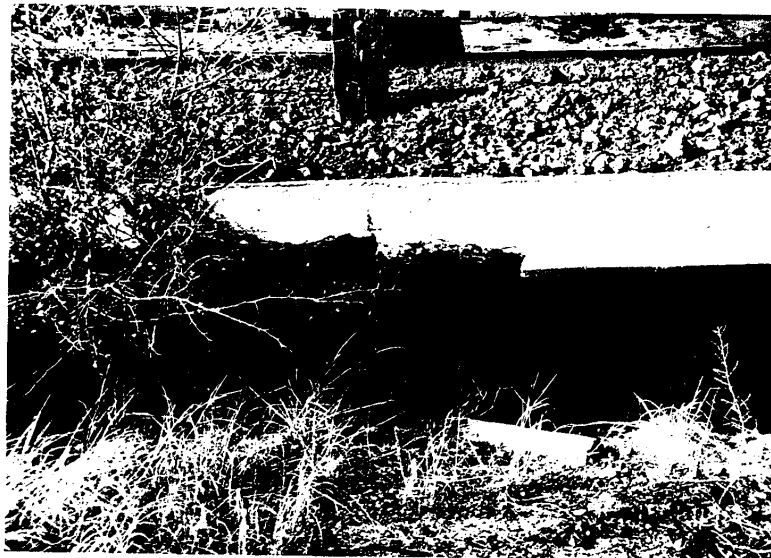


18, 94



Scene Type Ballast Deck (Concrete Arch)
Location MP 1048.37

Size 10 Foot



Scene Type Ballast Deck Concrete Slab
Location MP 1048.96

Size 50 Foot



Scene Type Ballast Deck Concrete Slab
Location MP 1049.78

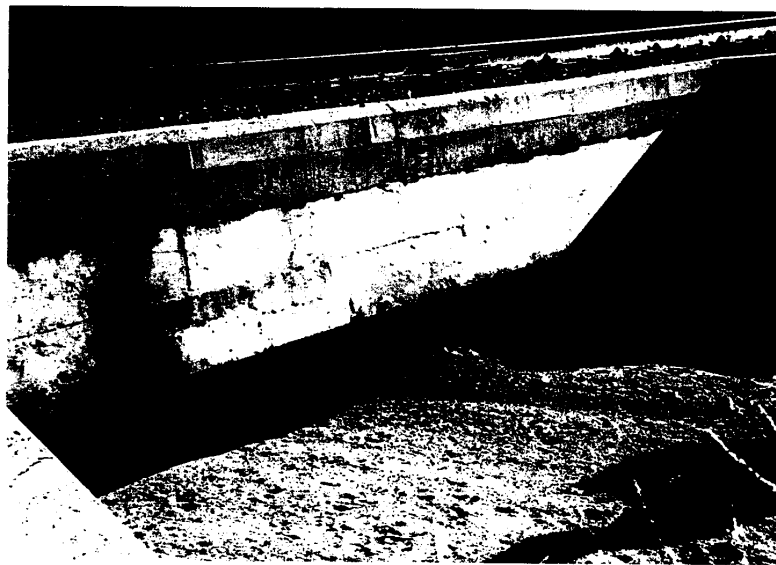
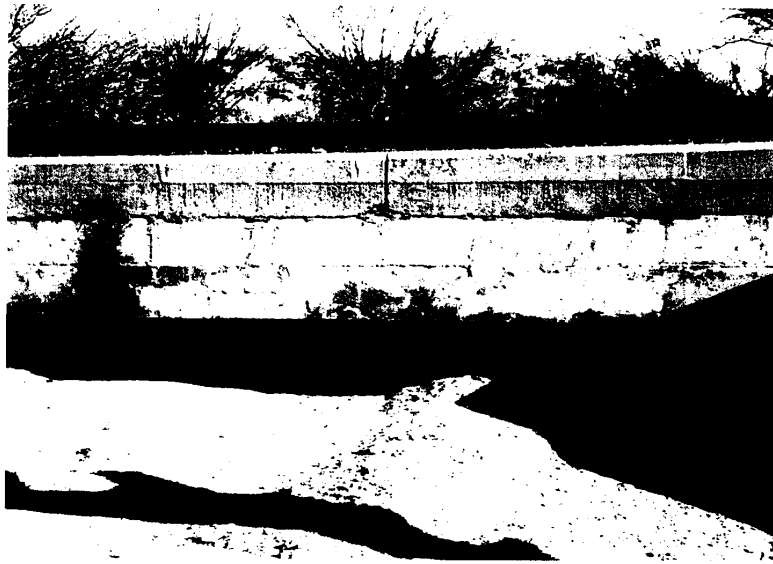
Size 62 Foot



Scene Type Ballast Deck Concrete Slab
Location MP 1050.33

Size 28 Foot

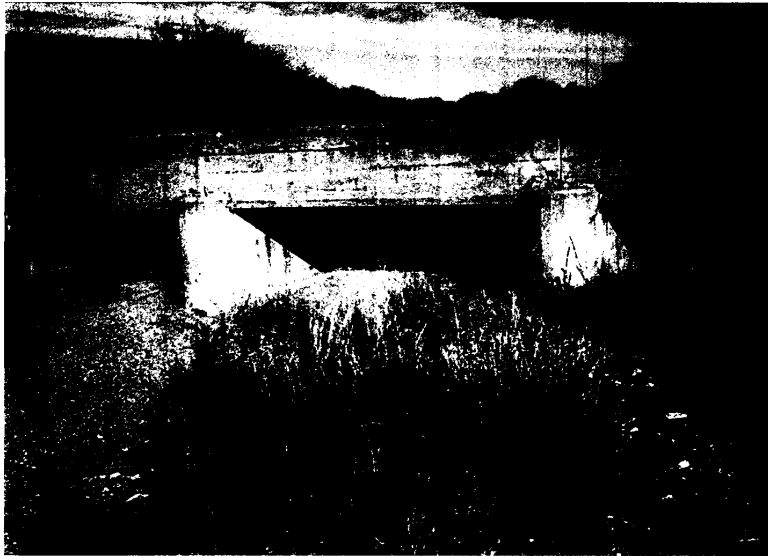
~~21.75~~
21.75



Scene Type Ballast Deck Concrete Slab
Location MP 1052.46

Size 78 Foot

23.7



Scene Type Ballast Deck (Concrete Arch)
Location MP 1054.32

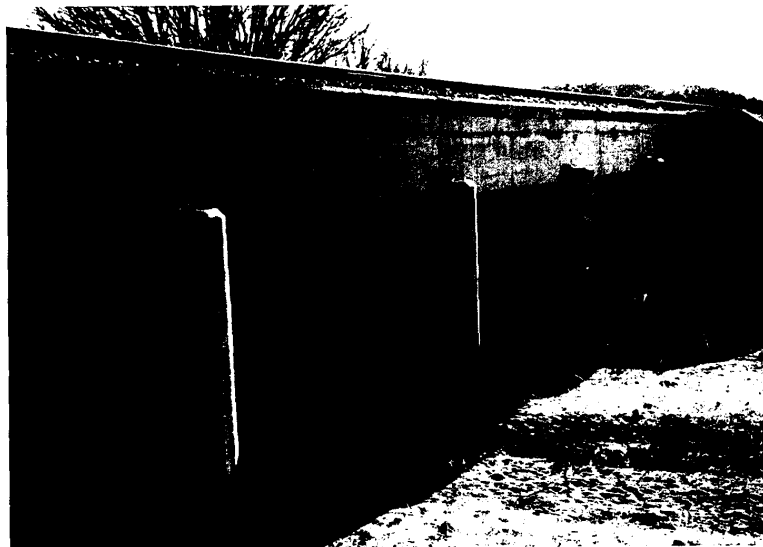
Size 28 Foot



Scene Type Ballast Deck Concrete Slab
Location MP 1056.59

Size 110 Foot

27.9



Scene Type Ballast Deck Bridge
Location MP 1058.59

Size 120 Foot



EXHIBIT D-FEDERAL REGISTER NOTICE

DOCKET NO. AB-441 (Sub-No. 3X)

SWKR OPERATING CO.—ABANDONMENT EXEMPTION—IN COCHISE COUNTY, AZ

Notice of Petition for Exemption to Abandon

On July 17, 2003 SWKR Operating Co. filed with the Surface Transportation Board, Washington, D.C. 20423, a petition for exemption for the abandonment of a line of railroad known as the Fairbank line a 19.9-mile rail line between near Curtis, milepost 7.00 (formerly milepost 1040.15), and near Charleston, the end of the line, milepost 26.9 (formerly milepost 1055.8), all of which traverses through United States Postal Service ZIP Codes 85602, 85621, and 85615, in Cochise County, AZ. The line for which the abandonment exemption request was filed includes the station of Fairbank at milepost 19.1.

The line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

Any request for a public use condition and any request for trail use/rail banking will be due no later than 20 days after notice of the filing of the petition for exemption is published in the Federal Register.

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

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Section 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 Section of Environmental Analysis. EAs in these abandonment proceedings normally will be made available within **60** days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

EXHIBIT E-CERTIFICATE OF PUBLICATION

CERTIFICATION

I, Louis E. Gitomer certify that on July 16, 2003, SWKR Operating Co., in Docket No. AB-441 (Sub-No. 3X) has published in a newspaper of general circulation in each county through which the line passes a notice that alerts the public to the proposed abandonment, to available reuse alternatives, and to how it may participate in the Surface Transportation Board proceeding.



Louis E. Gitomer
July 17, 2003

EXHIBIT F-CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

Pursuant to 49 CFR §1152.60(d), the undersigned hereby certifies that the Petition for Exemption in Docket No. AB-441 (Sub-No. 3X), *SWKR Operating Co.-Abandonment Exemption-in Cochise County, AZ* was mailed via first class mail, postage prepaid, on July 17, 2003, to the following parties:

State Public Service Commission

Public Service Commission of Arizona
Arizona Corporation Commission
Admin Division
1200 West Washington
Phoenix, AZ 85007

Military Traffic Management Command

MTMCTEA
ATTN: Railroads for National Defense
720 Thimble Shoals Blvd.
Suite 130
Newport News, VA 23606-2574

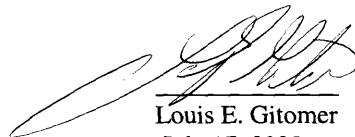
National Park Service

Mr. Tom Ross
Chief of National Recreation and Trails
U.S. Department of Interior - National Park Service
Recreation Resources Assistance Division
P.O. Box 37127
Washington, DC 20013-7127

U.S. Department of Interior
National Park Service
Land Resources Division
800 North Capitol St., N.E.
Room 540
Washington, DC 20002

U.S. Department of Agriculture

U.S. Department of Agriculture
Chief of the Forest Service
4th Floor, NW
Sidney R. Yates Building
201 14th Street, S.W.
Washington, DC 20250



Louis E. Gitomer
July 17, 2003