

BALL JANIK LLP

A T T O R N E Y S

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208458

KARL MORELL

kmorell@bjllp.com

July 18, 2003

BY HAND DELIVERY

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



Re: STB Docket No. AB-853 (Sub-No. 1X), Kansas & Oklahoma Railroad, Inc. -- Abandonment Exemption -- In Hodgeman, Comanche, Kiowa and Pratt Counties, Kansas

Dear Ms. Rutson:

Attached please find 10 copies of the Environmental Report and Historic Report in the above-captioned matter. Kansas & Oklahoma Railroad, Inc., expects to file its Notice of Exemption in this matter on or shortly after August 7, 2003.

Sincerely,

Karl Morell

Enclosures

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ENVIRONMENTAL REPORT

(49 C.F.R. 1105.7)

Docket No. AB-853 (Sub-No. 1X)



EXHIBIT D

KANSAS & OKLAHOMA RAILROAD, INC.

--ABANDONMENT EXEMPTION--

IN HODGEMAN, COMANCHE, KIOWA AND PRATT COUNTIES, KANSAS

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

Kansas & Oklahoma Railroad, Inc. ("K&O"), proposes to abandon the following two rail line segments: (1) the 10.7-mile section of its rail line located between milepost 36.3, at Hanston, and milepost 47.0, at Jetmore, in Hodgeman County, Kansas; and (2) the 46.8-mile rail line located between milepost 589.2, at Coats, and milepost 636.0, at Protection, in Comanche, Kiowa and Pratt Counties, Kansas (the "Lines"). Upon receipt of abandonment authority, K&O intends to remove the rail, track material, and crossties. There are currently no plans to remove any of the bridge structures along the Lines.

K&O acquired the Lines in June 2001 from Central Kansas Railway, L.L.C.¹ To the best of K&O's knowledge, no traffic has moved over the Coats to Protection for about five years and

¹ See STB Docket No. 34030, *Kansas & Oklahoma Railroad, Inc. – Acquisition Exemption – Central Kansas Railway, L.L.C.* (not printed), served June 12, 2001. After the acquisition was consummated by K&O, the mileposts on the Englewood Subdivision were renumbered and former milepost 136, at the end of the line at Protection, became milepost 636.

the Hanston to Jetmore line for about three years. Since June 2001, no local traffic has moved over the Lines. Since the Lines are stub-ended, no overhead traffic moves over the Lines.

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

The only alternative to abandonment would be not to abandon the Lines thereby forcing K&O to pass the opportunity costs of retaining the Lines to other K&O customers. This 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.

No passenger traffic will be diverted to other modes as a result of the proposed abandonment. No local traffic has been handled on the Lines for several years and the Lines are not capable of handling overhead traffic. Since the Lines no longer handle 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) K&O is confident that the proposed abandonment is consistent with existing land use plans. K&O contacted the Hodgeman County Clerk, the Comanche County Clerk, the Kiowa County Clerk and the Pratt County Commissioners. See Exhibit 2. To date, no responses to these inquiries have been received. A copy of this Report has been mailed to the appropriate local and state agencies for their information and comment.

(ii) The proposed abandonment will not have any detrimental effect on any prime agricultural land. K&O notified the State Conservationist of the proposed abandonment and requested assistance in identifying any potential effects on prime agricultural land. See Exhibit 3. According to the Assistant State Conservationist, the proposed abandonment will have no adverse environmental effect on matters for which the Natural Resources Conservation Service is responsible. See Exhibit 3. A copy of this Report is being supplied to the USDA Natural Resources Conservation Service for its information and further comment.

(iii) The Lines do not pass through a designated coastal zone.

(iv) The rights-of-way involved do not appear to be suitable for alternative public use other than a recreational trail since they are located in rural, sparsely populated areas. To date, no state or local entity has expressed an interest in the rights-of-way.

(4) Energy. (i) Describe the effect of the proposed action on transportation of energy resources. (ii) Describe the effect of the proposed action on recyclable commodities. (iii) State whether the proposed action will result in an increase or decrease in overall energy efficiency and explain why. (iv) If the proposed action will cause diversions from rail to motor carriage of more than: (A) 1,000 rail carloads a year; or (B) an average of 50 rail carloads per mile per year for any part of the affected line, quantify the resulting net change in energy consumption and show 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 Lines in several years and the Lines are not capable of handling overhead traffic.

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

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

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

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

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

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

Not applicable

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

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

(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 Lines.

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

(i) The proposed abandonment will not have an adverse affect on endangered or threatened species or areas designated as a critical habitat. K&O 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 4. According to the U.S. Fish and Wildlife Service, the proposed abandonment will have no adverse impacts to fish and wildlife resources, including threatened and endangered species. A copy of this Report is being supplied to the U.S. Fish and Wildlife Service for its information and further comment.

(ii) K&O does not believe that any wildlife sanctuaries or refuges, National or State parks or forests would be adversely affected by the proposed abandonment. K&O 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 5. 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) K&O is confident that the proposed abandonment will be consistent with applicable water quality standards. K&O 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 6. 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) K&O is confident that no designated wetlands or 100-year flood plains will be adversely affected by the proposed abandonment. K&O contacted the Corps of Engineers concerning these matters. See Exhibit 7. According to the Corps of Engineers, no Department of Army permit authorization will be required for the proposed abandonment. See Exhibit 7. A copy of this Report is being supplied to the U.S. Army Corps of Engineers for its information and further comment.

(iii) K&O believes the proposed abandonment will not require the issuance of any permits under Section 402 of the Clean Water Act. K&O 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 6. 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.

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

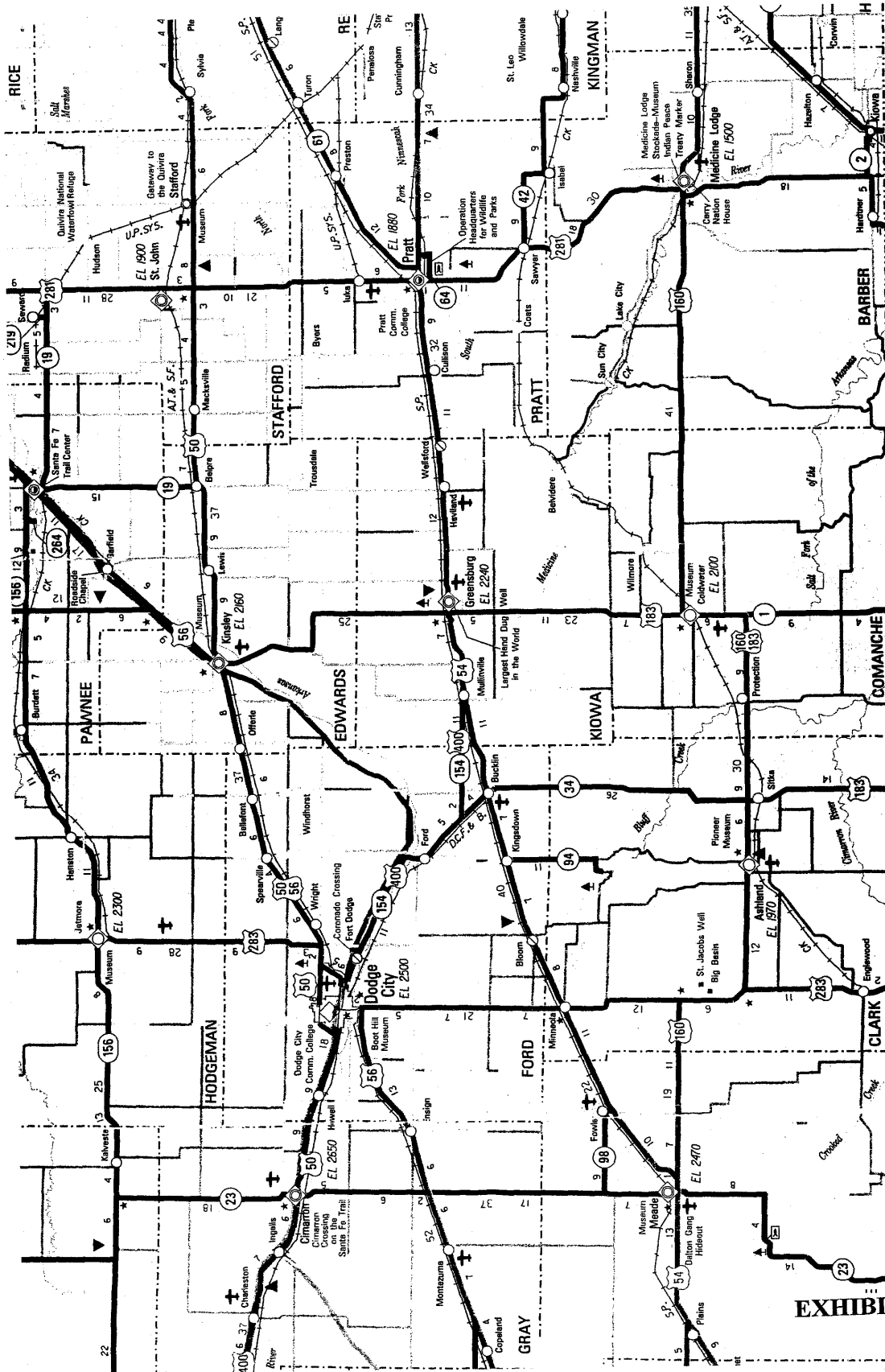


EXHIBIT 1

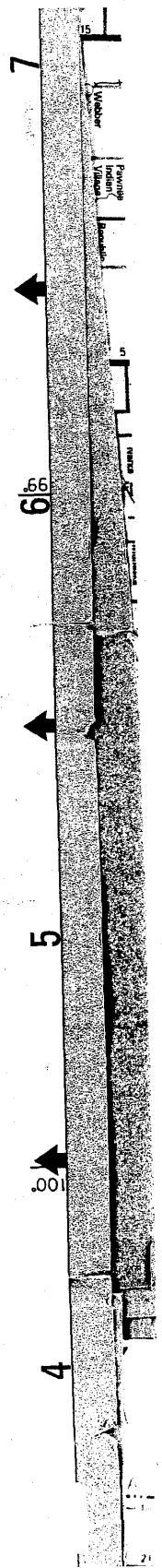


EXHIBIT 2

BALL JANIK LLP

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

KARL MORELL
OF COUNSEL

kmorell@bjllp.com

June 26, 2003

Hodgeman County Clerk
Hodgeman County Courthouse
500 Main
Jetmore, KS 67854

**RE: Docket No. AB-853 (Sub-No. 1X), Kansas & Oklahoma
Railroad, Inc. --Abandonment Exemption--In Hodgeman,
Comanche, Kiowa and Pratt Counties, Kansas**

Dear Sir/Madam:

Kansas & Oklahoma Railroad, Inc. ("K&O") is planning to file a Notice of Exemption with the Surface Transportation Board ("STB"), on or about July 21, 2003, for K&O to abandon the following two rail line segments: (1) the 10.7-mile rail line located between milepost 36.3, at Hanston, and milepost 47.0, at Jetmore, in Hodgeman County, Kansas; and (2) the 46.8-mile rail line located between milepost 589.2, at Coats, and milepost 636.0, at Protection, in Comanche, Kiowa and Pratt Counties, Kansas. A map of the proposed abandonment is attached.

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

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

BALL JANIK LLP

June 26, 2003

Page 2

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

Sincerely,

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

Karl Morell

Attorney for:

Kansas & Oklahoma Railroad, Inc.

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KARL MORELL
OF COUNSEL

kmorell@bjllp.com

June 26, 2003

Comanche County Clerk
Comanche County Courthouse
201 S. New York, Box 776
Coldwater, KS 67029

**RE: Docket No. AB-853 (Sub-No. 1X), Kansas & Oklahoma
Railroad, Inc. --Abandonment Exemption--In Hodgeman,
Comanche, Kiowa and Pratt Counties, Kansas**

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BALL JANIK LLP

June 26, 2003

Page 2

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Sincerely,

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

Karl Morell

Attorney for:

Kansas & Oklahoma Railroad, Inc.

BALL JANIK LLP

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KARL MORELL
OF COUNSEL

kmorell@bjllp.com

June 26, 2003

Kiowa County Clerk
Kiowa County Courthouse
211 E. Florida
Greensburg, KS 67054

**RE: Docket No. AB-853 (Sub-No. 1X), Kansas & Oklahoma
Railroad, Inc. --Abandonment Exemption--In Hodgeman,
Comanche, Kiowa and Pratt Counties, Kansas**

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BALL JANIK LLP

June 26, 2003

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Karl Morell

Attorney for:

Kansas & Oklahoma Railroad, Inc.

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KARL MORELL
OF COUNSEL

kmorell@bjllp.com

June 26, 2003

Pratt County Commissioners
P.O. Box 885
Pratt, KS 67124

**RE: Docket No. AB-853 (Sub-No. 1X), Kansas & Oklahoma
Railroad, Inc. --Abandonment Exemption--In Hodgeman,
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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 existing land use plans. We must determine whether the proposed abandonment is inconsistent with existing land use plans.

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BALL JANIK LLP

June 26, 2003

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Karl Morell

Attorney for:

Kansas & Oklahoma Railroad, Inc.

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KARL MORELL
OF COUNSEL

kmorell@bjllp.com

June 26, 2003

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

**RE: Docket No. AB-853 (Sub-No. 1X), Kansas & Oklahoma
Railroad, Inc. --Abandonment Exemption--In Hodgeman,
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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 prime agricultural land.

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

BALL JANIK LLP

June 26, 2003

Page 2

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

Sincerely,

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Karl Morell

Attorney for:

Kansas & Oklahoma Railroad, Inc.



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

107 Layton
Dodge City, KS 67801-2498

Phone: 620-227-2392
FAX: 620-227-6020
www.ks.nrcs.usda.gov

July 10, 2003

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

Re: Docket No. AB-853 (Sub-No. 1X)
Kansas & Oklahoma Railroad, Inc.

Dear Mr. Morell,

Thank you for the opportunity to review the proposal by Kansas and Oklahoma Railroad, Inc., for the abandonment of rail line segments in Hodgeman, and Comanche, Kiowa, and Pratt Counties, Kansas. The action of abandoning these rail lines should not have any effect on prime farmland, as related to the Farmland Policy Protection Act. Any conversion of prime farmlands would have taken place during original construction of these rail beds. As long as no additional permanent conversions take place, there should not be any effect on the prime farmlands in these counties.

I see no other adverse environmental effect for which the Natural Resources Conservation Service is responsible for evaluating.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Wright", is written over a horizontal line.

Jim Wright
Assistant State Conservationist

cc: Dale F. Younker, District Conservationist, NRCS, Jetmore, Kansas
Loren L. Graff, District Conservationist, NRCS, Coldwater, Kansas
Mark A. Janzen, District Conservationist, NRCS, Greensburg, Kansas
Erin D. Batman, District Conservationist, NRCS, Pratt, Kansas
Rodney D. Egbarts, Soil Conservationist, NRCS, Salina, Kansas

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KARL MORELL
OF COUNSEL

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June 26, 2003

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

**RE: Docket No. AB-853 (Sub-No. 1X), Kansas & Oklahoma
Railroad, Inc. --Abandonment Exemption--In Hodgeman,
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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.

BALL JANIK LLP

June 26, 2003

Page 2

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

Sincerely,

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Karl Morell

Attorney for:

Kansas & Oklahoma Railroad, Inc.



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Kansas Field Office

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

July 14, 2003

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

RE: Docket No. AB-835 (Sub-No. 1X)

Dear Mr. Morell:

This is in response to your letter of June 26, 2003, describing proposed abandonment by the Kansas & Oklahoma Railroad, Inc. of two existing railway lines in Kansas. The first is 10.7 miles between Jetmore and Hanston, in Hodgeman County. The other is 46.8 miles between Protection in Comanche County and Coats in Pratt County. We have reviewed both proposals and conclude that there should be no adverse impacts to fish and wildlife resources, including threatened and endangered species. Therefore, the U.S. Fish and Wildlife Service has no objection to your proposals as planned.

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

Thank you for this opportunity to comment on your proposal.

Sincerely,

William H. Gill
Field Supervisor

cc: KDWP, Pratt, KS (Environmental Services)

WHG/dwm

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KARL MORELL
OF COUNSEL

kmorell@bjllp.com

June 26, 2003

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

**RE: Docket No. AB-853 (Sub-No. 1X), Kansas & Oklahoma
Railroad, Inc. --Abandonment Exemption--In Hodgeman,
Comanche, Kiowa and Pratt Counties, Kansas**

Dear Sirs:

Kansas & Oklahoma Railroad, Inc. ("K&O") is planning to file a Notice of Exemption with the Surface Transportation Board ("STB"), on or about July 21, 2003, for K&O to abandon the following two rail line segments: (1) the 10.7-mile rail line located between milepost 36.3, at Hanston, and milepost 47.0, at Jetmore, in Hodgeman County, Kansas; and (2) the 46.8-mile rail line located between milepost 589.2, at Coats, and milepost 636.0, at Protection, in Comanche, Kiowa and Pratt Counties, Kansas. A map of the proposed abandonment is attached.

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

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

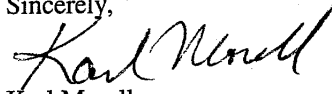
BALL JANIK LLP

June 26, 2003

Page 2

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

Sincerely,

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

Karl Morell

Attorney for:

Kansas & Oklahoma Railroad, Inc.

BALL JANIK LLP

A T T O R N E Y S

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

www.balljanik.com

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

KARL MORELL
OF COUNSEL

kmorell@bjllp.com

June 26, 2003

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

**RE: Docket No. AB-853 (Sub-No. 1X), Kansas & Oklahoma
Railroad, Inc. --Abandonment Exemption--In Hodgeman,
Comanche, Kiowa and Pratt Counties, Kansas**

Dear Sirs:

Kansas & Oklahoma Railroad, Inc. ("K&O") is planning to file a Notice of Exemption with the Surface Transportation Board ("STB"), on or about July 21, 2003, for K&O to abandon the following two rail line segments: (1) the 10.7-mile rail line located between milepost 36.3, at Hanston, and milepost 47.0, at Jetmore, in Hodgeman County, Kansas; and (2) the 46.8-mile rail line located between milepost 589.2, at Coats, and milepost 636.0, at Protection, in Comanche, Kiowa and Pratt Counties, Kansas. A map of the proposed abandonment is attached.

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

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

BALL JANIK LLP

June 26, 2003

Page 2

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

Sincerely,

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

Karl Morell

Attorney for:

Kansas & Oklahoma Railroad, Inc.

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

www.balljanik.com

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

KARL MORELL
OF COUNSEL

kmorell@bjllp.com

June 26, 2003

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

**RE: Docket No. AB-853 (Sub-No. 1X), Kansas & Oklahoma
Railroad, Inc. --Abandonment Exemption--In Hodgeman,
Comanche, Kiowa and Pratt Counties, Kansas**

Dear Sirs:

Kansas & Oklahoma Railroad, Inc. ("K&O") is planning to file a Notice of Exemption with the Surface Transportation Board ("STB"), on or about July 21, 2003, for K&O to abandon the following two rail line segments: (1) the 10.7-mile rail line located between milepost 36.3, at Hanston, and milepost 47.0, at Jetmore, in Hodgeman County, Kansas; and (2) the 46.8-mile rail line located between milepost 589.2, at Coats, and milepost 636.0, at Protection, in Comanche, Kiowa and Pratt Counties, Kansas. A map of the proposed abandonment is attached.

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

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

BALL JANIK LLP

June 26, 2003

Page 2

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

Sincerely,

A handwritten signature in black ink, appearing to read "Karl Morell". The signature is fluid and cursive, with the first name "Karl" being more prominent than the last name "Morell".

Karl Morell

Attorney for:

Kansas & Oklahoma Railroad, Inc.

BALL JANIK LLP

A T T O R N E Y S

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

www.balljanik.com

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

KARL MORELL
OF COUNSEL

kmorell@bjllp.com

June 26, 2003

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

**RE: Docket No. AB-853 (Sub-No. 1X), Kansas & Oklahoma
Railroad, Inc. --Abandonment Exemption--In Hodgeman,
Comanche, Kiowa and Pratt Counties, Kansas**

Dear Sirs:

Kansas & Oklahoma Railroad, Inc. ("K&O") is planning to file a Notice of Exemption with the Surface Transportation Board ("STB"), on or about July 21, 2003, for K&O to abandon the following two rail line segments: (1) the 10.7-mile rail line located between milepost 36.3, at Hanston, and milepost 47.0, at Jetmore, in Hodgeman County, Kansas; and (2) the 46.8-mile rail line located between milepost 589.2, at Coats, and milepost 636.0, at Protection, in Comanche, Kiowa and Pratt Counties, Kansas. A map of the proposed abandonment is attached.

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

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

BALL JANIK LLP

June 26, 2003

Page 2

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

Sincerely,

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

Karl Morell

Attorney for:

Kansas & Oklahoma Railroad, Inc.



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

REPLY TO
ATTENTION OF:

July 3, 2003

Kansas State Regulatory Office
(200301884)
(Hodgeman, KS, NPR)

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

Dear Mr. Morell:

This is in response to your letter received on June 30, 2003, requesting a Department of the Army (DA) permit determination concerning the abandonment of two rail line sections. One section consists of a 10.7-mile rail line, which runs from Hanston to Jetmore in Hodgeman County, KS. The other 46.8-mile section starts at Coats in Pratt County, KS, runs through Kiowa County, KS, and ends at Protection in Comanche County, KS. The rails and ties will be taken up, but bridges will be left in place.

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

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

We have reviewed the information furnished and 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 M. 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).

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: Kansas & Oklahoma Railroad NUMBER: 200301884

LOCATION/WATERWAY: Hodgeman, Pratt, Kiowa, and Comanche Counties, KS

PROJECT REVIEW COMPLETED: ☒ Office ☐ Field

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

- ☒ Preliminary JD – Based on available information, there appear *to be* waters of the U.S. on the project site. A preliminary JD is not appealable.
- ☐ Approved JD – There *are* waters of the United States on the project site, as identified in the basis of jurisdiction determination indicated below. An approved JD is an appealable action (33 CFR 331). (Note: JDs prepared by the U.S. Environmental Protection Agency are not appealable to the Corps of Engineers.)

BASIS FOR JURISDICTIONAL DETERMINATION (Reference 33 CFR 328.3(a)):

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

Rationale for Basis (Applies to any boxes checked above): Rails and ties will be taken up, but bridges will be left in place. If any work is to be done with the bridges, please contact us and let us know what you plan on doing so we can determine if a permit will be needed. All streams within the project area are tributaries to the Arkansas River, an interstate water of the U.S.

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

- | | |
|--|--|
| <p>☐ Ordinary High Water Mark indicated by:</p> <ul style="list-style-type: none">☐ 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.): _____ | <p>☐ High Tide Line indicated by:</p> <ul style="list-style-type: none">☐ oil or scum line along shore objects☐ fine shell or debris deposits (foreshore)☐ physical markings/characteristics☐ tide gages☐ other: _____ |
|--|--|
- ☐ Mean High Water Mark indicated by:
- ☐ survey to available datum; ☐ physical markings; ☐ vegetation lines/changes in vegetation types
- ☐ In ocean or coastal area, site is in a zone three geographic (nautical) miles seaward of the baseline³
- ☐ Wetland, as shown on the attached wetland delineation map, and/or in a jurisdictional report prepared by _____, and dated _____.
- ☐ Additional supporting information attached and/or multiple JD forms completed for sites with multiple water categories.

Preparer: Regulatory Specialist, Sarah M. Reznicek Date: 3 July 2003

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

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

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

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: _____