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BALL JANIK LLP

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TELEPHONE 202-638-3307
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KARL MORELL

kmorell@bjllp.com

May 26, 2004

BY HAND DELIVERY

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

ENTERED
Office of Proceedings

MAY 26 2004

Part of
Public Record

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

Dear Ms. Rutson:

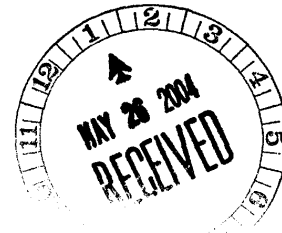
Attached please find 10 copies of the Environmental Report and Historic Report in the above-captioned matter. Butler County expects to file its Notice of Exemption on or shortly after June 15, 2004.

Sincerely,



Karl Morell

Enclosures



ENTERED
Office of Proceedings

MAY 26 2004

EXHIBIT D

Part of
Public Record

ENVIRONMENTAL REPORT

(49 C.F.R. 1105.7)

Docket No. AB-870X

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Not applicable

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

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

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

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

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

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

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

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

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

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

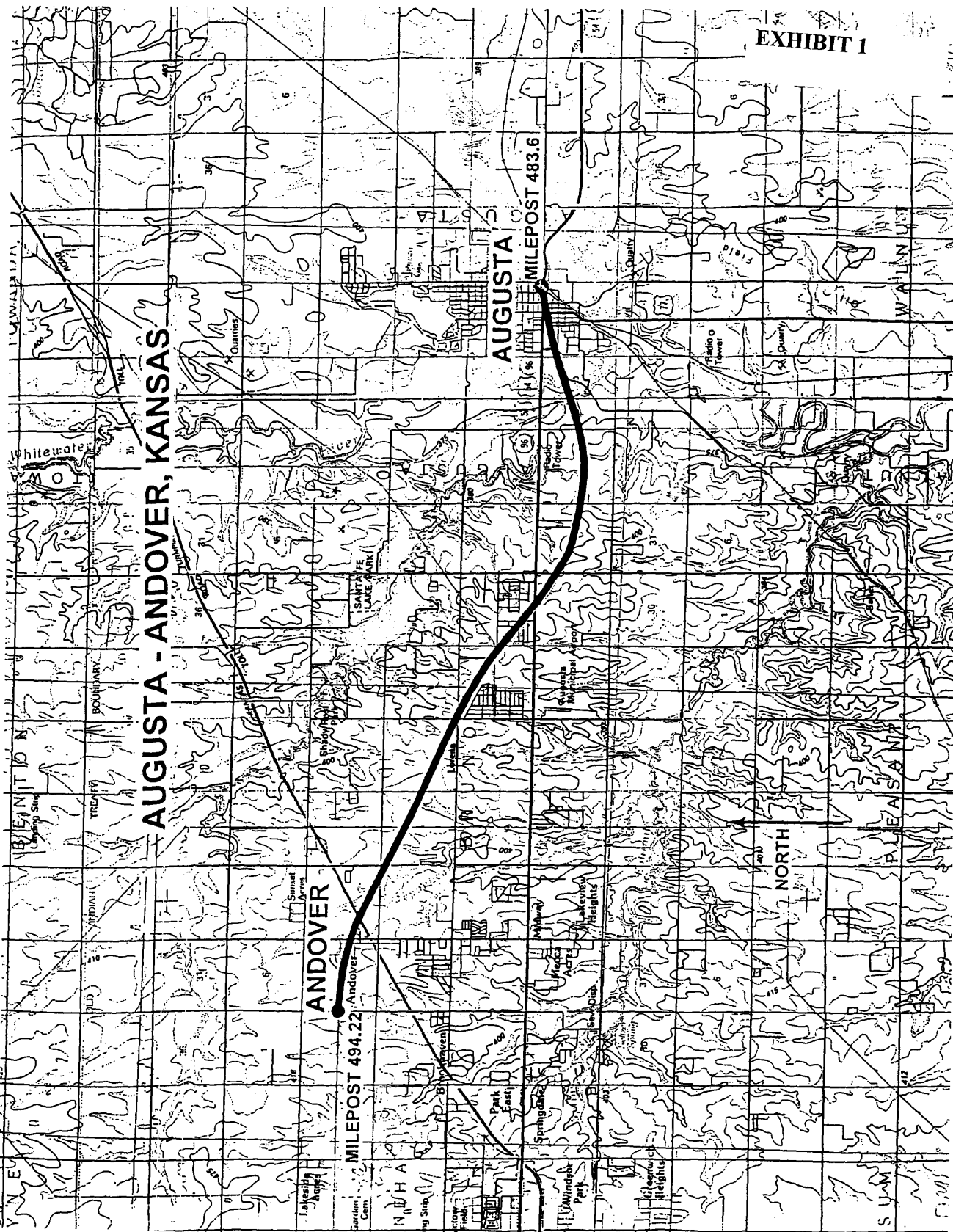
(ii) The County is confident that no designated wetlands or 100-year flood plains will be adversely affected by the proposed abandonment. The County contacted the Corps of Engineers concerning these matters. See Exhibit 10. According to the Corps of Engineers, no Department of Army permit authorization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

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

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

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

AUGUSTA - ANDOVER, KANSAS



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KARL MORELL
OF COUNSEL

kmorell@bjllp.com

March 11, 2004

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

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

Dear Sir/Madam:

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

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

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

BALL JANIK LLP

March 11, 2004

Page 2

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

Sincerely,

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

Karl Morell

Attorney for:

Butler County, Kansas



March 19, 2004

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

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

Dear Mr. Morell,

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

Sincerely,



William H. Johnson, Jr.
Butler County Administrator

xc: County Commission
File

William H. Johnson, Jr., County Administrator

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KARL MORELL
OF COUNSEL

kmorell@bjllp.com

March 11, 2004

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

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

Dear Sir/Madam:

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

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

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

BALL JANIK LLP

March 11, 2004
Page 2

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

Sincerely,

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

Karl Morell
Attorney for:
Butler County, KS

EXHIBIT 5



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

2917 West Highway 50
Emporia, KS 66801-5140

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

March 30, 2004

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

Dear Mr. Morell:

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

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

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

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

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

Sincerely,

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

cc:

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

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KARL MORELL
OF COUNSEL

kmorell@bjllp.com

March 11, 2004

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

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

Dear Sir/Madam:

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

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

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

BALL JANIK LLP

March 11, 2004
Page 2

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

Sincerely,

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Karl Morell
Attorney for:
Butler County, KS



United States Department of the Interior

FISH AND WILDLIFE SERVICE

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

March 19, 2004

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

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

Dear Mr Morell:

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

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

Thank you for this opportunity to comment on your proposal.

Sincerely,

for: [Signature]
William H. Gill
Field Supervisor

cc: KDWP, Pratt, KS (Environmental Services)

WHG/dwm

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KARL MORELL
OF COUNSEL

kmorell@bjllp.com

March 11, 2004

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

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

Dear Sir/Madam:

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

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

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

BALL JANIK LLP

March 11, 2004

Page 2

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

Sincerely,

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Karl Morell

Attorney for:

Butler County, Kansas

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EXHIBIT 9

KARL MORELL
OF COUNSEL

kmorell@bjllp.com

March 11, 2004

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

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

Dear Sir/Madam:

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

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

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

BALL JANIK LLP

March 11, 2004

Page 2

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

Sincerely,

A handwritten signature in 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:

Butler County, Kansas

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KARL MORELL
OF COUNSEL

kmorell@bjllp.com

March 11, 2004

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

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

Dear Sir/Madam:

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

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

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

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March 11, 2004

Page 2

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Karl Morell

Attorney for:

Butler County, Kansas

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KARL MORELL
OF COUNSEL

kmorell@bjllp.com

March 11, 2004

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

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

Dear Sir/Madam:

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

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

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

BALL JANIK LLP

March 11, 2004
Page 2

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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 and last names being clearly legible.

Karl Morell
Attorney for:
Butler County, Kansas



EXHIBIT 11

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

REPLY TO
ATTENTION OF:

March 19, 2004

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

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

Dear Mr. Morell:

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

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

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

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

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

Enclosures

Copies Furnished:

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

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

APPLICANT: Butler County, Ks NUMBER: 200400798

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

PROJECT REVIEW COMPLETED: ☒ Office ☐ Field

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

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

BASIS FOR JURISDICTIONAL DETERMINATION:

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

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

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

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

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

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

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

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

Thomas A. McCabe

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

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

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

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

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

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

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

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

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

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

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

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

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

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

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

Submit the following requests to the District Engineer

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

Submit the following requests to the Division Engineer

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

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

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

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

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

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

DISTRICT ENGINEER

Attn: Joseph S. Hughes

Chief Regulatory Branch

U.S. Army Engineer District, Kansas City

601 East 12th Street, Room 706

Kansas City, MO 64106-2896

Telephone: 816-983-3990

(Use this address for submittals to the District Engineer)

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

DIVISION ENGINEER

Attn: Mores V. Bergman

Appeal Review Officer

U.S. Army Engineer Division, Northwestern Division

12565 West Center Road

Omaha, NE 68144-3869

Telephone: 402-697-2533

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

Signature of appellant or agent.

Date: _____

Telephone number: _____

EXHIBIT E

HISTORIC REPORT

(49 C.F.R. 1105.8)

Docket No. AB-870X

ENTERED
Office of Proceedings

MAY 26 2004

Part of
Public Record

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



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

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

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

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

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

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

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

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

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

HISTORIC REPORT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

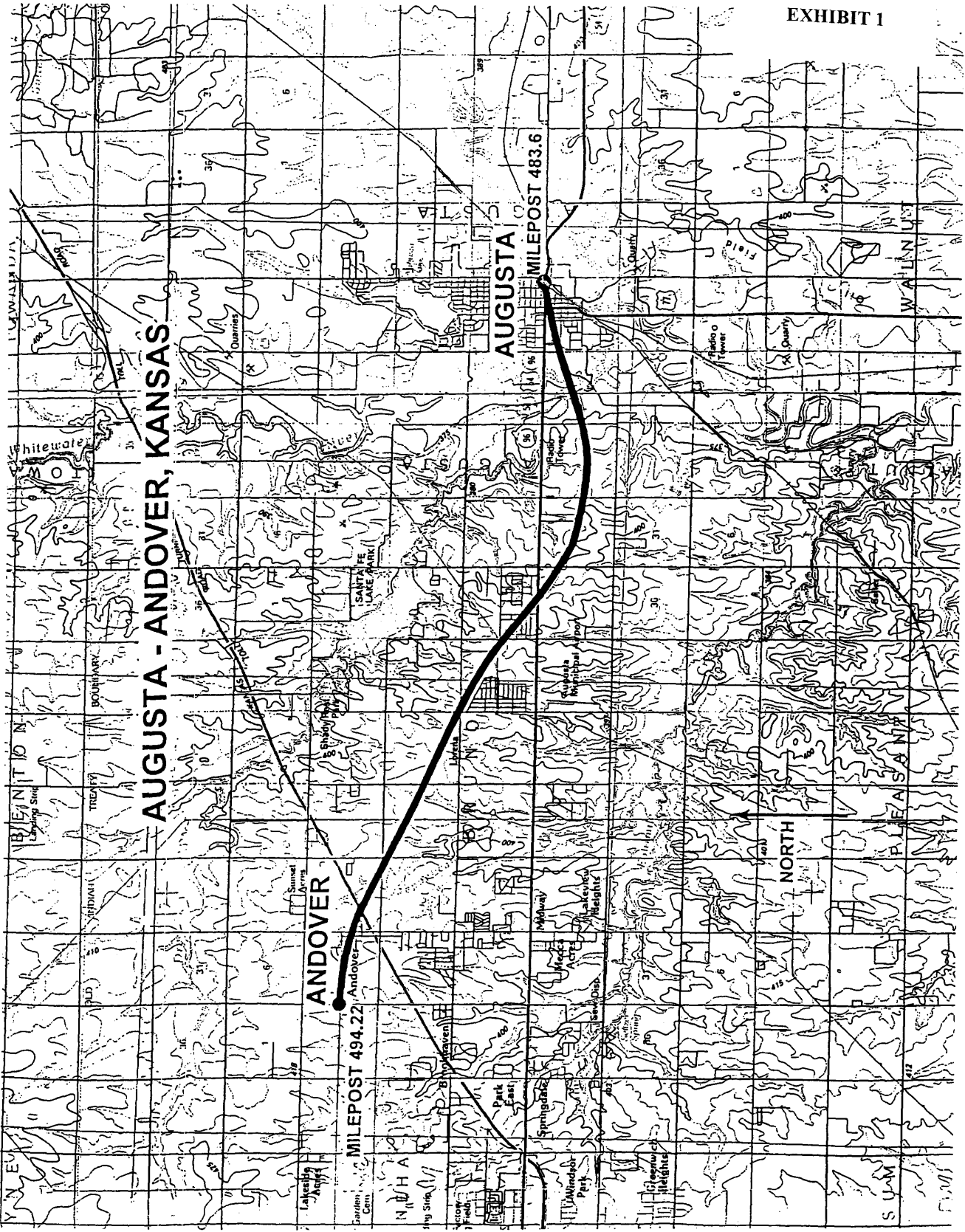
See Exhibit 3. There are also no known archeological resources in the project area.

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

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

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

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



BALL JANIK LLP

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TELEPHONE 202-638-3307

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KARL MORELL
OF COUNSEL

kmorell@bjllp.com

March 18, 2004

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

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

Dear Sir/Madam:

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

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

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

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

BALL JANIK LLP

March 18, 2004
Page 2

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

Sincerely,

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

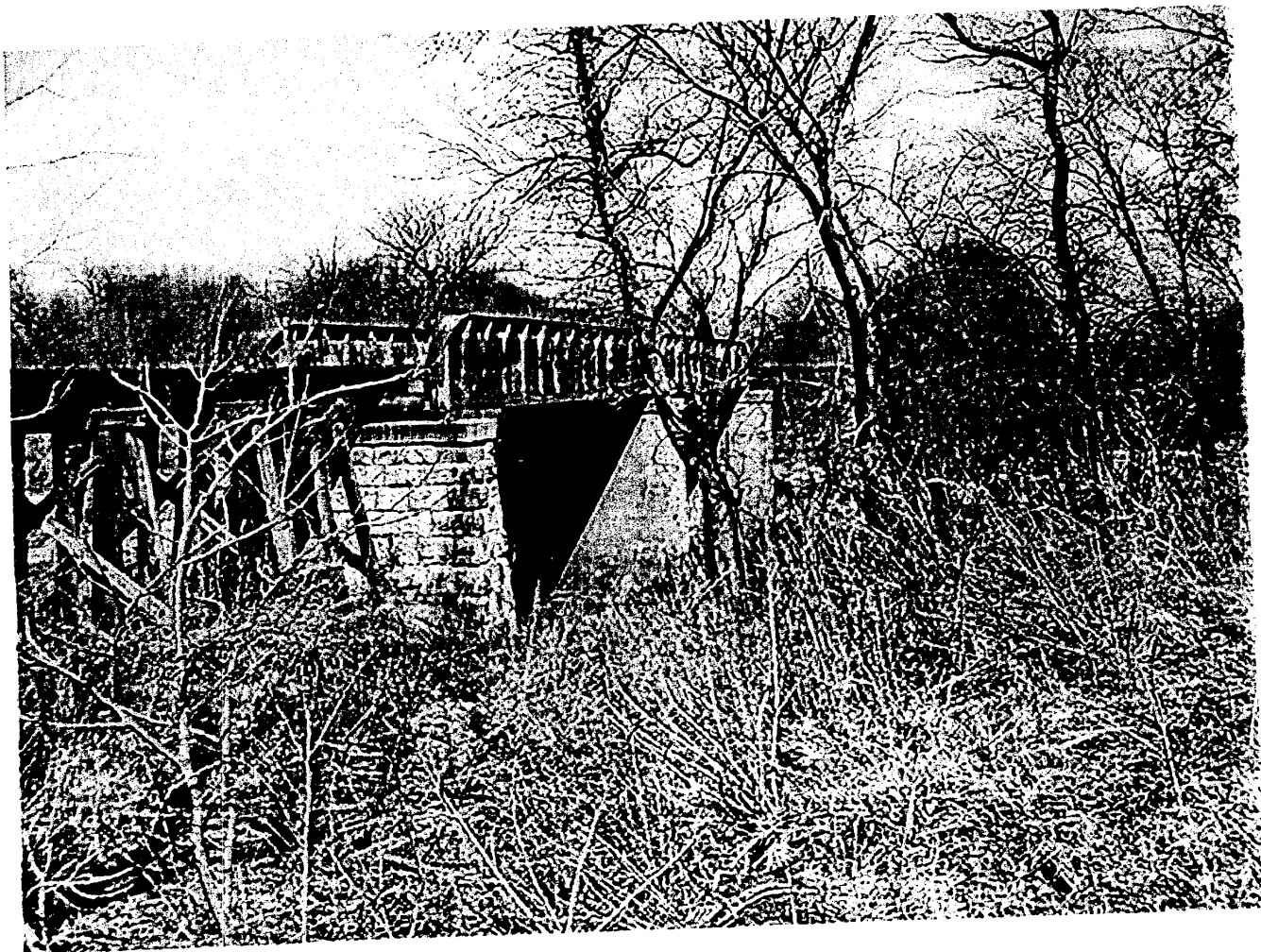
Karl Morell
Attorney for
Butler County, Kansas

A topographic map of the area around Augusta and Andover, Kansas. The map features a grid system with latitude and longitude coordinates. A thick black line indicates a route between two points: "MILEPOST 494.22 Andover" and "MILEPOST 483.6 AUGUSTA". The route starts near Andover, Kansas, and ends near Augusta, Kansas. The map shows various geographical features, including hills, valleys, and water bodies. Labels for "ANDOVER" and "AUGUSTA" are prominent. Other labels include "SANTA FE LAKE PARK", "WHITEWATER", "QUARRY", "FIELD", "PARK", "SCHOOL", "CHURCH", "CAMP", "CITY", "TOWN", "VILLAGE", "HAMLET", "COTTAGE", "FARM", "RANCH", "ESTATE", "PLOT", "TRACT", "PARCEL", "SECTION", "TOWNSHIP", "COUNTY", "STATE", "NATION". The map also shows a "BOUNDARY" line and a "TRAIL" line. The map is oriented with North at the top.

[illegible]

A topographic map of the area around Augusta and Andover, Kansas. The map features a grid system with latitude and longitude coordinates. Key locations labeled include Augusta, Andover, and various smaller towns and landmarks. A route is marked with a thick black line, starting from Augusta and heading towards Andover. The map also shows contour lines indicating elevation, and various geographical features like hills and valleys. The text "AUGUSTA - ANDOVER, KANSAS" is prominently displayed across the center of the map.

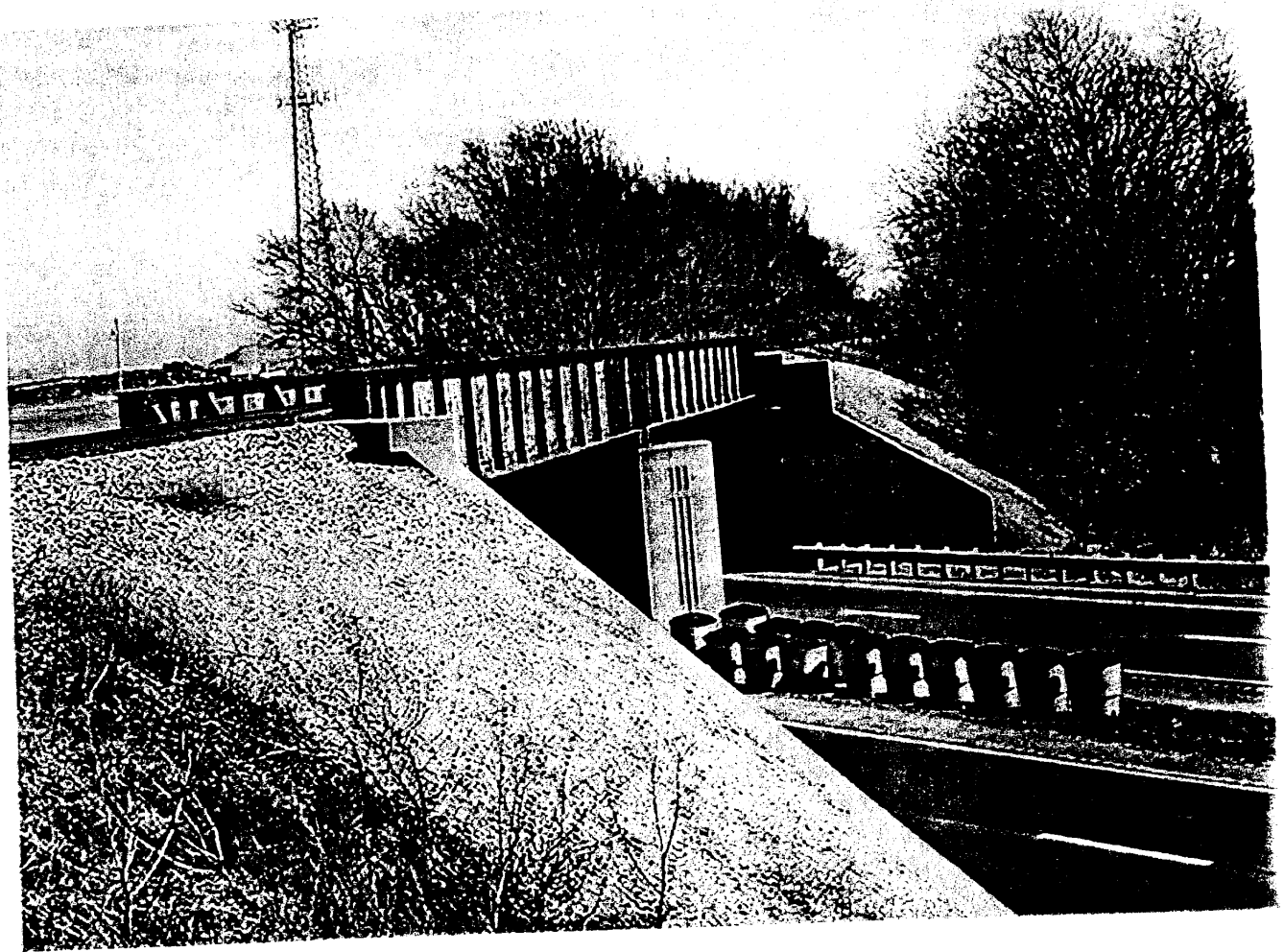
[illegible][illegible]



MP 485.2



MP 485.2



MP 488.3

KANSAS

KSR&G No. 04-03-156

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

KATHLEEN SEBELIUS, GOVERNOR

March 23, 2004

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

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

Dear Mr. Morell:

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

Sincerely yours,

Terry Marmet
Acting State Historic Preservation Officer



Richard Pankratz, Director
Cultural Resources Division

clg