

**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

KMORELL@BJLLP.COM

**FEE RECEIVED**

JUN 29 2004

June 29, 2004

**SURFACE  
TRANSPORTATION BOARD**

BY HAND DELIVERY

ENTERED  
Office of Proceedings

JUN 29 2004

Part of  
Public Record

The Honorable Vernon Williams  
Surface Transportation Board  
1925 K Street, N.W., Suite 715  
Washington, DC 20423-0001

Re: *STB Docket No. AB-33 (Sub-No. 214X), Union Pacific Railroad  
Company--Abandonment Exemption--In Lane, Ness and Rush Counties,  
Kansas*  
*STB Docket No. AB-853 (Sub-No. 2X), Kansas & Oklahoma Railroad,  
Inc.--Discontinuance Exemption--In Lane, Ness and Rush Counties,  
Kansas*

211456

211457

Dear Secretary Williams:

Attached for filing are the original and ten copies of a joint Petition for Exemption under 49 U.S.C. § 10502 and two checks each for \$4,700 to cover the two filing fees. Also enclosed is a 3.5-inch diskette containing the Petition and Federal Register Notice.

Please time and date stamp the extra copy of the Petition for Exemption and return it with our messenger.

If you have any questions, please call me.

Sincerely,

*Karl Morell*

Karl Morell

**FILED**

JUN 29 2004

Enclosures

**SURFACE  
TRANSPORTATION BOARD**



**ORIGINAL**

BEFORE THE  
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-33 (SUB-NO. 214X)

UNION PACIFIC RAILROAD COMPANY  
--ABANDONMENT EXEMPTION--  
IN LANE, NESS AND RUSH COUNTIES, KANSAS



ENTERED  
Office of Proceedings  
JUN 29 2004

DOCKET NO. AB-853 (SUB-NO. 2X)

KANSAS & OKLAHOMA RAILROAD, INC.  
--DISCONTINUANCE EXEMPTION--  
IN LANE, NESS AND RUSH COUNTIES, KANSAS

Part of  
Public Record

PETITION FOR EXEMPTION

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TRANSPORTATION BOARD

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SURFACE  
TRANSPORTATION BOARD

UNION PACIFIC RAILROAD COMPANY

KANSAS & OKLAHOMA  
RAILROAD, INC.

Mack H. Shumate, Jr., Senior General Attorney  
101 North Wacker Drive, Room 1920  
Chicago, Illinois 60606  
(312) 777-2055

Karl Morell  
Of Counsel  
Ball Janik LLP  
1455 F Street, N.W.  
Suite 225  
Washington, D.C. 20005  
(202) 638-3307

Dated: June 29, 2004

BEFORE THE  
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-33 (SUB-NO. 214X)

UNION PACIFIC RAILROAD COMPANY  
--ABANDONMENT EXEMPTION--  
IN LANE, NESS AND RUSH COUNTIES, KANSAS



DOCKET NO. AB-853 (SUB-NO. 2X)

KANSAS & OKLAHOMA RAILROAD, INC.  
--DISCONTINUANCE EXEMPTION--  
IN LANE, NESS AND RUSH COUNTIES, KANSAS

PETITION FOR EXEMPTION

Union Pacific Railroad Company ("UP") and Kansas & Oklahoma Railroad, Inc. ("K&O") (collectively, "Petitioners") petition the Surface Transportation Board ("STB" or "Board") to exempt, under 49 U.S.C. § 10502, from the prior approval requirements of 49 U.S.C. § 10903, UP's abandonment of, and K&O's discontinuance of service over, a 58.5-mile rail line located between Healy and McCracken, Kansas.

**PROPOSED TRANSACTION**

UP proposes to abandon, and K&O proposes to discontinue service over, the 58.5-mile rail line located between Mileposts 664.5, near Healy, and Milepost 606.0, near McCracken, in Lane, Ness and Rush Counties, Kansas (the "Line"). The Line traverses through U.S. Postal Service Zip Codes 67556, 67521, 67572, 67515, 67584, 67839, and 67850. A map of the Line is attached as Exhibit A.

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

#### SHIPPER AND TRAFFIC INFORMATION

In October 1997, the Central Kansas Railway, L.L.C. ("CKR"), leased 270.7 miles of rail lines from UP, including the Line.<sup>1</sup> K&O acquired substantially all of the assets of CKR in June 2001.<sup>2</sup>

As the following table illustrates, in 2000 through 2003, K&O and its predecessor handled an average of 243 local cars annually on the Line.

| <u>YEAR</u> | <u>ANNUAL CARLOADS</u> | <u>CARLOADS PER MILE</u> |
|-------------|------------------------|--------------------------|
| 2000        | 275                    | 4.7                      |
| 2001        | 65                     | 1.1                      |
| 2002        | 401                    | 6.9                      |
| 2003        | 231                    | 3.9                      |

The following three companies are currently the only active rail shippers on the Line:

Farmers Coop Elevator & Merc. Assn. ("Farmers Coop"), with facilities at Shields, Ransom and Utica; Right Cooperative Association ("Right Coop"), with facilities at Arnold; and Collingwood Grain, Inc. ("Collingwood"), with facilities at Brownell.<sup>3</sup>

The local traffic moving on the Line consists predominately of outbound shipments of wheat and grains. In 2003, the following local traffic was handled by K&O on the Line: (1) Farmers Coop shipped 9 carloads of sorghum grain and 55 carloads of wheat from its Shields

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<sup>1</sup> See STB Finance Docket No. 33470, *Central Kansas Railway, L.L.C. —Lease Exemption— Union Pacific Railroad Company* (not printed), served October 9, 1997.

<sup>2</sup> See STB Finance Docket No. 34030, *Kansas & Oklahoma Railroad, Inc. – Acquisition Exemption – Central Kansas Railway, L.L.C.* (not printed), served June 12, 2001.

<sup>3</sup> Collingwood also maintains facilities at McCracken which are located to the east of the Line and will continue to be served by K&O post abandonment.

facility, 22 carloads of wheat from its Ransom facility, and 43 carloads of wheat from its Utica facility; (2) Right Coop shipped 77 carloads of grain from its Arnold facility; and (3) Collingwood shipped 10 carloads of milo and 15 carloads of wheat from its Brownell facility.

Alternative rail and truck service is available to the shippers on the Line. K&O will continue to operate rail lines in the area. K&O owns and operates a parallel main line 10 to 15 miles south of the Line. K&O will also continue to operate the rail lines to the west and east of the Line. The line to the west connects with the rest of the K&O system at Scott City and the line to the east connects with the rest of the K&O system at Geneseo. In addition, UP operates a main line parallel to the Line about 30 to 40 miles to the north. Indeed, there is a co-loading facility in Wakeeney that is served by UP and, to best of K&O's knowledge, is already being utilized by some of the shippers on the Line.

There is also an adequate highway network in the area. For example, State Highways 4 and 96 parallel the Line, connecting with U.S. Highway 183 east of the Line and with U.S. Highway 83 west of the Line. In addition, U.S. Highway 283 crosses the Line near Ransom. There are also several County roads located along or near the Line.

Transportation service is available from numerous general commodity, heavy hauling and bulk carriers that serve the area, including:<sup>4</sup>

Circle C Farms Trucking Inc.  
DWK Trucking  
Eaton Enterprise Inc.  
George W. Ross Trucking  
Herrman & Sons  
John D Smith Trucking  
J Unruh Trucking, Inc.  
Kraft Trucking Corp.  
Miller Trucking Inc.

Petz Trucking Inc.  
Randy's Truck Service  
R&JB Trucking  
Roy Wideman Trucking  
S&S Trucking  
S R Smith Trucking  
Triple D Enterprises  
Whipple Trucking  
3 S Bar Trucking

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<sup>4</sup> Yellow Pages for Healy, Utica, Ransom, Scott City, Brownell and La Crosse, KS.

Mr. P's Truck'n Inc.  
Pablo's Trucking

Accordingly, the shippers on the Line will continue to have access to rail service nearby and all of the shippers have competitive and effective motor carrier service readily available.

#### **REVENUE AND COST DATA**

During 2003, K&O generated the following revenues on the Line:

| <u>Revenue:</u>                                     | <u>2003</u> |
|-----------------------------------------------------|-------------|
| Freight Originating and/or<br>Terminating On-Branch | \$137,170   |
| Bridge Traffic                                      | 0           |
| Other Income                                        | <u>0</u>    |
| Total Revenues                                      | \$137,170   |

K&O's on-branch costs for 2003 were as follows:

#### On-Branch Costs:

|                                            |             |
|--------------------------------------------|-------------|
| a. Maintenance-of-Way and Structures       | \$292,500   |
| b. Transportation                          | 24,768      |
| c. General & Administrative                | 18,198      |
| d. Deadheading, Taxi and Hotel             | 0           |
| e. Overhead Movement                       | 0           |
| f. Freight Car Costs - Car Hire            | 17,325      |
| g. Property Taxes                          | 13,229      |
| Total On-Branch Costs                      | \$366,020   |
| Avoidable (Loss) or Profit from Operations | (\$228,850) |

#### **REVENUES**

The identified freight revenues generated by K&O in 2003 were all from traffic originating or terminating on the Line. All of the bridge traffic moving over the Line can be rerouted over other K&O lines and thus will not be lost to K&O as a result of this abandonment.

All of the revenues generated from leases along the Line are retained by UP. The Line, therefore, does not generate any other income for K&O.

#### **AVOIDABLE COSTS**

Lines a through g under On-Branch Costs represent the on-branch avoidable costs for operating the Line during 2003. Maintenance-of-way and structure costs (line a) equal \$292,500 and are based on normalized maintenance levels necessary to maintain the Line in Class 1 operating conditions. The actual maintenance-of-way costs based on the system-wide average per mile cost incurred by K&O in 2003 are estimated to be approximately \$226,161 for the Line.<sup>5</sup> The Board and its predecessor have long recognized the appropriateness of considering normalized maintenance costs in instances of deferred maintenance. *See Chicago and North Western Transp. Co. – Abandonment*, 366 I.C.C. 373, 377 (1982) (“Normalized maintenance is the amount needed for economic and efficient operation over the long term. \*\*\* We have, in the past, applied normalized maintenance calculations to actual maintenance figures and found that costs for normalized maintenance when compared to actual maintenance expenditures are indicative of deferred maintenance and are to be given consideration in determining whether or not the public convenience and necessity permit abandonment of a line.”)

The normalized maintenance costs of \$5,000 per mile being utilized by K&O are very conservative and based on the per mile maintenance costs accepted by the Board and its predecessor in other abandonment proceedings. For example, the Board and its predecessor found as reasonable per mile normalized maintenance costs of \$10,943 in STB Docket No. AB-33 (Sub-No. 156), *Union Pacific Railroad Company – Abandonment – In Harris, Fort Bend*,

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<sup>5</sup> The estimated actual costs are derived from K&O’s system-wide average per mile cost for maintenance of way of \$3,866 in 2003.

*Austin, Wharton and Colorado Counties, TX* (not printed), served November 8, 2000; \$6,957 in STB Docket No. AB-564 *Camas Prairie Railnet, Inc. – Abandonment – In Lewis, Nez Perce, and Idaho Counties, ID* (not printed), served September 13, 2000; \$5,355 in STB Docket No. AB-497 (Sub-No. 1X) *Minnesota Northern Railroad, Inc. – Abandonment Exemption in Red Lake and Polk Counties, MN* (not printed) served November 14, 1997; \$6,029 in STB Docket No. AB-441 (Sub-No. 2X), *SWKR Operating Co. – Abandonment Exemption in Cochise County, AZ* (not printed), served February 14, 1997, slip op. at 5 (“We know from extensive experience that \$6,000 per mile/per year is a reasonable figure for maintenance by a Class III railroad.”); \$5,000 in STB Docket No. AB-55 (Sub-No. 618), *CSX Transportation, Inc. – Discontinuance – At Memphis, In Shelby County, TN* (not printed), served October 28, 2002, slip op. at 5 (the \$5,000 per-mile cost “fall[s] within the range we would expect to see for a line maintained at Federal Railroad Administration Class 1 safety standards”).

Transportation costs (line b) include crew costs and locomotive costs. The 231 cars that moved to and from the Line in 2003, required an estimated 30 train movements utilizing two-man crews and two GP-38 locomotives. The trains spent an average of 8 hours on the Line. Given K&O’s average wage and fringe benefit cost of \$20.80 per hour, per person in 2003, the two-man crew costs for each train averaged \$332.80 [8 hours x 2 (two-man crew) x \$20.80 = \$332.80 per train] or \$9,984 for the 30 trips. K&O’s locomotive costs, including fuel, sand, maintenance and supplies, averaged \$30.80 per hour system-wide in 2003.<sup>6</sup> Consequently, the locomotive costs for each trip averaged \$492.80 [8 hours x 2 (locomotives) x \$30.80], or \$14,784 for the 30 trips. Accordingly, K&O’s estimated on-line transportation costs for handling the 231

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<sup>6</sup> K&O is not allocating any locomotive depreciation costs to the Line.

cars in 2003 were \$24,768.

K&O's property and liability insurance costs that are avoidable as a result of the abandonment of the Line are set forth under General & Administrative costs (line c). These costs are based on K&O's system-wide insurance costs of \$311.08 per mile. No other administrative costs are being deemed avoidable by K&O in this proceeding.

Deadheading, Taxi and Hotel costs (line d) are not being charged to the Line.

No Overhead Movement costs (line e) have been attributed to the Line.

Freight car costs – Car Hire (line f) represents the actual time and mileage car hire payments made by K&O for the cars utilized in hauling the traffic to and from the Line in 2003. K&O's car-hire costs averaged \$15 per day in 2003 and the cars utilized for local traffic on the Line incurred an average of 5 days of car hire. Consequently, K&O estimates that the car hire expenses incurred for moving the local traffic on the Line in 2003 were \$17,325 [\$75 per car x 231 cars].<sup>7</sup>

Pursuant to the Lease Agreement between K&O and UP, K&O is responsible for the payment of all property taxes associated with the Line. During 2003, Property Taxes (line g) paid by K&O and attributable to the Line were \$13,229. The property taxes attributable to the Line were derived from K&O's system-wide per-mile cost of \$226.13.

As the above revenue and on-line cost figures demonstrate, K&O incurred a total avoidable loss of \$228,850 in operating the Line in 2003. The estimated loss, however, significantly understates the actual loss incurred by K&O because no off-branch costs have been attributed to K&O's operations. The crews serving the Line are stationed at either Hoisington or

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<sup>7</sup> Freight car cost-return on value is equal to \$0, as the cars used on the Line are all foreign cars. K&O is not allocating any locomotive-return on value costs to the Line.

Scott City, Kansas. The traffic moving to and from the Line is interchanged at Hutchinson, KS or Wichita, Kansas. Accordingly, the off-branch Transportation costs incurred by K&O are between two and three times the on-branch Transportation costs. Consequently, K&O's actual avoidable losses were nearly \$300,000 in 2003.

#### **EXEMPTION REQUESTED**

UP and K&O seek an exemption under 49 U.S.C. § 10502 from the applicable requirements of 49 U.S.C. § 10903 in order for UP to abandon and K&O to discontinue service over this 58.5-mile rail line.

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

- (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and
- (2) either:
  - (a) the transaction is of limited scope, or
  - (b) regulation is not necessary to protect shippers from the abuse of market power.

The legislative history of Section 10502 reveals a clear Congressional intent that the STB should liberally use its exemption authority to free certain transactions from the administrative and financial costs associated with continued regulation. In enacting the Staggers Act of 1980, Pub. L. No. 96-448, 94 Stat. 1895, Congress encouraged the STB's predecessor to liberally use the expanded exemption authority under former Section 10505:

The policy underlying this provision is that while Congress has been able to identify broad areas of commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining

specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress. The conferees expect that, consistent with the policies of this Act, the Commission will pursue partial and complete exemption from remaining regulation.

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

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

Detailed scrutiny of this transaction is not necessary to carry out the rail transportation policy. An exemption would minimize the unnecessary expenses associated with the filing of formal abandonment and discontinuance applications, expedite regulatory decisions and reduce regulatory barriers to exit [49 U.S.C. § 10101(2) and (7)]. *See, e.g., Norfolk & W. Ry. Co. – Abandonment Exem. – Cinn., Hamilton County, OH*, 3 S.T.B. 110 (1998); STB Docket No. AB-367 (Sub-No. 2X), *Georgia Central Railroad, L.P. – Abandonment Exemption – In Chatham County, GA* (not printed), served September 17, 1997 (“*Georgia Central*”). By abandoning the Line and discontinuing service, K&O will be able to avoid the \$228,850 in annual losses associated with properly maintaining and operating the Line. In addition, UP will be able to avoid the significant opportunity costs associated with retaining a line that is underutilized. Granting the exemption will thus foster sound economic conditions and encourage efficient management. 49 U.S.C. § 10101(5) and (9). *See, e.g., STB Docket No. AB-318 (Sub-No. 4X)*,

*Louisiana & Delta Railroad, Inc. – Abandonment Exemption – In Lafourche and Assumption Parishes, LA* (not printed), served August 26, 1997; STB Docket No. AB-497 (Sub-No. 1X), *Minnesota Northern Railroad, Inc. – Abandonment Exemption – In Red Lake and Polk Counties, MN* (not printed), served November 14, 1997. K&O will be able to rid itself of a financially draining operation which, if not corrected, threatens economically to undermine other operations on the K&O system. Other aspects of the rail transportation policy are not affected adversely. For example, competition and the continuation of a sound rail transportation system are not affected since the few active shippers on the Line can continue to receive rail service at nearby locations and have adequate alternative truck services available.

**B. This Transaction Is Of Limited Scope**

In determining whether a proposed transaction is of limited scope, the Board considers a variety of factors, such as the length of the rail line, the number of shippers on the line and the traffic volume. *See, e.g.,* Docket No. AB-347 (Sub-No. 1X), *Florida West Coast Railroad Company – Abandonment Exemption – Gilchrist and Levy Counties, FL* (not printed), served January 16, 1992; Docket No. AB-6 (Sub No. 349X), *Burlington Northern Railroad Company – Abandonment Exemption – In Greene and Polk Counties, MO* (not printed), served August 27, 1993.

The proposed transaction is of limited scope. UP is seeking to abandon, and K&O is seeking to discontinue service over, a 58.5-mile line that traverses a predominantly rural area where there has been limited demand for rail service in recent years. The shortness of the Line, the limited geographic area involved, and the limited use all demonstrate the limited scope of the proposed abandonment. *See, e.g.,* Docket No. AB-397 (Sub-No. 3X), *Tulare Valley Railroad*

*Company – Abandonment Exemption – In Tulare And Fresno Counties, CA* (not printed), served February 9, 1995.

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

There has been limited freight traffic on the Line in recent years. The area surrounding the Line has an adequate network of roadways and federal and state highways capable of handling truck traffic for the limited shipments that originate or terminate on the Line. There are numerous trucking companies located nearby that have adequate capacity to handle the traffic moving to and from the Line. In addition, K&O and UP will be able to continue serving the customers located on the Line from nearby locations. Indeed, the shippers on the Line are already utilizing trucks and UP rail service. Therefore, regulation is not necessary to protect shippers from an abuse of market power. *See, e.g., STB Docket No. AB-55 (Sub-No. 576) CSX Transportation, Inc. – Abandonment Exemption – In Guernsey County, OH* (not printed), served November 22, 1999; *STB Docket No. AB-55 (Sub-No. 563X), CSX Transportation, Inc. – Abandonment Exemption – In Harrison County, WV* (not printed), served September 25, 1998; *Georgia Central*.

**ENVIRONMENTAL AND HISTORIC REPORTS**

The Environmental Report containing the information required by 49 C.F.R. § 1105.7 and the Historic Report containing the information required by 49 C.F. R. § 1105.8 were filed with the Board on December 12, 2003, and were served in accordance with 49 C.F.R §§ 1105.7(b) and 1105.8(c) on December 11, 2003. A copy of the Certificate of Service is attached.

**FEDERAL REGISTER NOTICE**

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

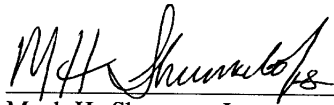
#### **LABOR PROTECTION**

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

## CONCLUSION

Application of the regulatory requirements and procedures of 49 U.S.C. § 10903 is not required to carry out the rail transportation policy set forth in 49 U.S.C. § 10101, as previously described. Nor is STB regulation required to protect shippers from the abuse of market power. Moreover, this abandonment and discontinuance of service is of limited scope. Accordingly, UP and K&O respectfully urge the Board to grant the abandonment and discontinuance.

Respectfully submitted,



Mack H. Shumate, Jr.,  
Senior General Attorney  
101 North Wacker Drive, Room 1920  
Chicago, Illinois 60606  
(312) 777-2055

Attorney for:  
Union Pacific Railroad Company

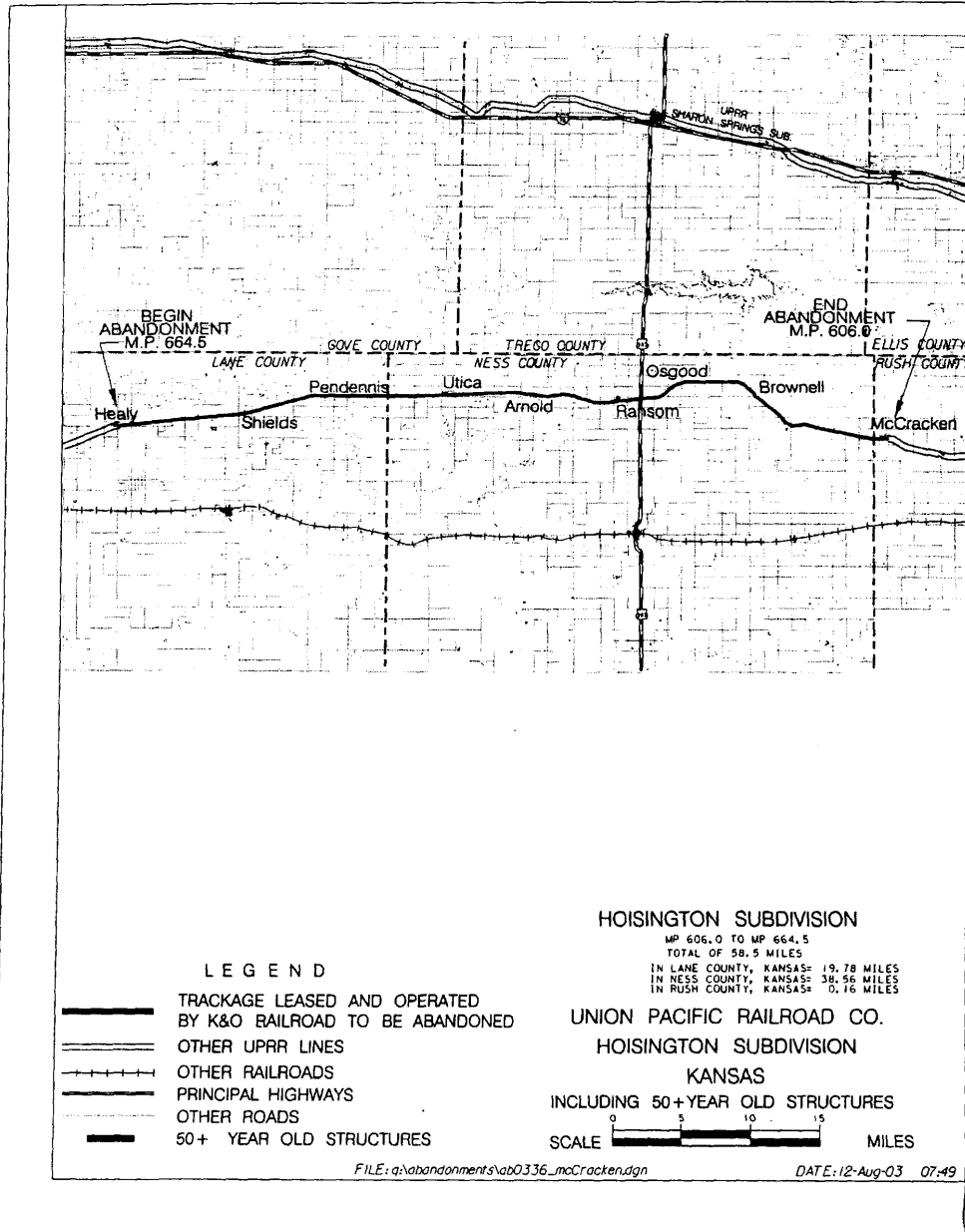


KARL MORELL  
Of Counsel  
BALL JANIK LLP  
Suite 225  
1455 F Street, N.W.  
Washington, DC 20005  
(202) 638-3307

Attorney for:  
Kansas & Oklahoma Railroad, Inc.

Dated: June 29, 2004

# EXHIBIT A



**EXHIBIT B**

**SURFACE TRANSPORTATION BOARD**

**DOCKET NO. AB-33 (SUB-NO. 214X)**

**UNION PACIFIC RAILROAD COMPANY  
--ABANDONMENT EXEMPTION--  
IN LANE, NESS AND RUSH COUNTIES, KANSAS**

**DOCKET NO. AB-853 (SUB-NO. 2X)**

**KANSAS & OKLAHOMA RAILROAD, INC.  
--DISCONTINUANCE EXEMPTION--  
IN LANE, NESS AND RUSH COUNTIES, KANSAS**

On June \_\_, 2004, Union Pacific Railroad Company (UP) and Kansas & Oklahoma Railroad, Inc. (K&O) filed with the Surface Transportation Board a petition under 49 U.S.C. 10502 for exemption from the provision of 49 U.S.C. 10903 for UP to abandon and K&O to discontinue service over a line of railroad extending from railroad milepost 664.5, near Healy, KS, to railroad milepost 606.0, near McCracken, KS, which traverses U.S. Postal Service Zip Codes 67556, 67521, 67572, 67515, 67584, 67839, and 67850, a distance of 58.5 miles in Lane, Ness and Rush Counties, Kansas. Shields, Pendennis, Utica, Arnold, Ransom, Osgood and Brownell are the stations on the line for which the abandonment and discontinuance exemption was filed.

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

The interests of railroad employees will be protected by the conditions set forth in Oregon Short Line R. Co. – Abandonment – Goshen, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued within 90 days (by September \_\_, 2004).

Any offer of financial assistance under 49 C.F.R. 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer of financial assistance must be accompanied by the filing fee, which currently is set at \$1,100. *See* 49 C.F.R. 1002.2(f)(25).

All interested persons should be aware that following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 C.F.R. 1152.28 and any request for trail use/rail banking under 49 C.F.R. 1152.29 will be due no later than 20 days after notice of the filing of the petition for exemption is published in the *Federal Register*. Each trail use request must be accompanied by a \$150 filing fee. *See* 49 C.F.R. 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket Nos. AB-33 (Sub-No. 214X) and AB-853 (Sub-No. 2X) and must be sent to: (1) Office of the Secretary, Case Control Unit, Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001, (2) Karl Morell, Of Counsel, Ball Janik LLP, 1455 F Street, N.W., Suite 225, Washington, DC 20005, and (3) Mack H. Shumate, 101 North Wacker Drive, Room 1920, Chicago, IL 60606.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565-1592 or refer to the full abandonment or discontinuance regulations at 49 C.F.R. Part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis at (202) 565-1545 [TDD for the hearing impaired is available at (202) 565-1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Section of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other

persons who would like to obtain a copy of the EA (or EIS) may contact the Section of Environmental Analysis. EAs in these abandonment proceedings normally will be available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Decided: \_\_\_\_\_ 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings,

Vernon A. Williams

Secretary

## **CERTIFICATE OF SERVICE**

Pursuant to 49 C.F.R. § 1152.60(d), the undersigned hereby certifies that the Petition for Exemption in Docket Nos. AB-33 (Sub-No. 214X) and AB-853 (Sub-No. 2X) was mailed via first class mail on June 29, 2004, to the following parties:

### **State Public Service Commission**

Dept. of Transportation  
Room 800 N  
Docking State Office Bldg.  
Topeka, KS 66612

Kansas Corporation Commission  
1500 SW Arrowhead Road  
Topeka, KS 66604

### **Military Traffic Management Command**

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

### **National Park Service**

Mr. Tom Ross  
Chief of National Recreation and Trails  
U.S. Department of Interior - National Park Service  
Recreation Resources Assistance Division  
1849 C Street, NW  
Washington, DC 20240-0001

**U.S. Department of Agriculture**

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

Dated: June 29, 2004

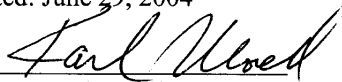


Karl Morell

### **CERTIFICATE OF PUBLICATION**

The undersigned hereby certifies that notice of the proposed abandonment in Docket Nos. AB-33 (Sub-No. 214X) and AB-853 (Sub-No. 2X) was published on May 26, 2004, in the Dighton Herald, a newspaper of general circulation in Lane County, Kansas; on May 27, 2004, in the Ness County News, a newspaper of general circulation in Ness County, Kansas; and on May 27, 2004, in the Rush County News, a newspaper of general circulation in Rush County, Kansas, as required by 49 C.F.R. § 1105.12.

Dated: June 29, 2004

  
Karl Morell

**CERTIFICATE OF SERVICE**  
**OF THE**  
**COMBINED ENVIRONMENTAL AND HISTORIC REPORT**

The undersigned hereby certifies that a copy of the foregoing Combined Environmental and Historic Report in Docket No. AB-33 (Sub-No. 214X) and Docket No. AB-853 (Sub-No. 2X), a portion of the Hoisington Subdivision in Lane, Ness and Rush Counties, Kansas was served by first class mail on the 11<sup>th</sup> day of December, 2003 on the following:

**State Clearinghouse (or alternate):**

Transportation Planning Bureau  
Kansas Department of Transportation  
Docking State Office Building  
915 West Harrison  
Topeka, KS 66612

Kansas Corporation Commission  
1500 SW Arrowhead Road  
Topeka, KS 66604

**State Environmental Protection Agency:**

Kansas Department of Health and Environment  
1000 SW Jackson  
Topeka, KS 66612

**State Coastal Zone Management Agency**

**(if applicable):**  
Not Applicable

**Head of County (Planning):**

County Commissioners  
Lane County Courthouse  
144 S. Lane, P. O. Box 788  
Dighton, KS 67839-0788

County Commissioners  
Ness County Courthouse  
202 West Sycamore Street  
Ness City, KS 67560-1558

County Commissioners  
Rush County Courthouse  
P. O. Box 220  
La Crosse, KS 67548-0220

**Environmental Protection Agency**  
**(regional office):**

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

**U.S. Fish and Wildlife:**

U.S. Fish & Wildlife Service, Region 6  
Assistant Regional Director  
Box 25486  
Denver Federal Center  
Denver, CO 80225

**U.S. Army Corps of Engineers:**

U.S. Army Engineer Division - Kansas City District  
700 Federal Building  
Kansas City, MO 64106-2896

**National Park Service:**

National Park Service  
William D. Shaddox  
Chief, Land Resources Division  
1849 "C" St., N. W., #MS2540  
Washington, DC 20240

**U.S. Natural Resources Conservation Service:**

Natural Resource Conservation Service  
760 South Broadway  
Salina, KS 67401

**National Geodetic Survey:**

National Geodetic Survey  
Edward J. McKay, Chief  
Spatial Reference System Division  
NOAA N/NGS2  
1315 E-W Highway  
Silver Spring, MD 20910-3282

**State Historic Preservation Office:**

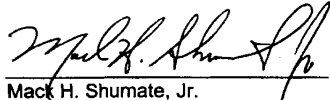
Kansas State Historical Society  
6425 SW Sixth Avenue  
Topeka, KS 66615

**Other Agencies Consulted:**

Wildlife & Parks Department  
900 Southwest Jackson Street, #502 N  
Topeka, KS 66612

Water Resources Division  
921 S. Kansas Ave., Fl 2  
Topeka, KS 66612

Dated this 11<sup>th</sup> day of December, 2003.

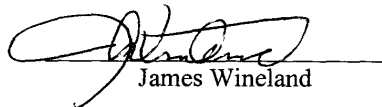
  
Mack H. Shumate, Jr.

  
Karl Morell

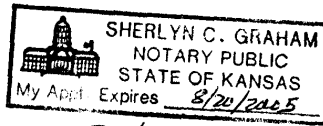
VERIFICATION

STATE OF KANSAS           )  
                                      )  
COUNTY OF SEDGWICK    )    ss.

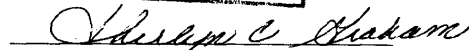
I, James Wineland, being duly sworn depose and state that I am General Manager of Kansas & Oklahoma Railroad, Inc., that I am authorized to make this verification, and that I have read the foregoing Petition For Exemption and know the facts asserted therein are true and accurate to the best of my knowledge, information, and belief.

  
James Wineland

SUBSCRIBED AND SWORN TO before me this 28th day of June, 2004, in the County of Sedgwick, State of Kansas.



My Commission Expires: 8/20/2005

  
Notary Public