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February 18, 2005

BY HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

RE: Finance Docket No. 34335
Keokuk Junction Railway Co.--Feeder Railroad Development Application
--Line Of Toledo, Peoria & Western Railway Corporation Between
La Harpe and Hollis, IL

Dear Secretary Williams:

In its February 7, 2005 decision, the Surface Transportation Board ("STB" or "Board") ordered the "carriers involved [to] fulfill their responsibilities to restore the Bushnell diamond" and ordered the "Bushnell diamond [to] be restored on or before February 10, 2005." See the Board's February 7 decision at 14-15 & Ordering Paragraph 8. Late in the day on February 9, BNSF Railway ("BNSF") advised the Board by letter that "it will likely take at least 180 days to reinstall the crossing diamonds from the time the new material is ordered and obtained from the manufacturer."¹

Promptly after receiving BNSF's February 9 letter, Keokuk Junction Railway Co. ("KJRY") contacted BNSF in an effort to negotiate a solution. Those discussions have been occurring since February 10 and at times have appeared positive. Numerous arrangements have

¹ BNSF's letter asserts that BNSF is merely correcting the record regarding Toledo, Peoria and Western Railway Corporation's ("TP&W") misrepresentation of BNSF's position. However, in a March 15 letter from David Clifton, General Manager of BNSF's Springfield Division, which was filed with the Board in TP&W's June 4 filing, BNSF stated that "[i]n the event of an emergency the crossing diamonds will be re-installed within 5 days of notification." Thus, BNSF's statements are not merely a correction of the record but rather a reversal of what BNSF itself had represented to TP&W and to the Board.

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been discussed and proposed.² Unfortunately, those talks, while cordial, have thus far been unsuccessful in negotiating a mutually-acceptable arrangement. Because of the urgency of the situation, KJRY must ask the Board to take action to enforce its February 7, 2005 Order.

Requiring immediate reinstallation of the diamonds should not come as a surprise to BNSF or TP&W. BNSF and TP&W have consistently told the Board and KJRY that the crossing diamonds could be restored within five days.³ Furthermore, BNSF provided the same assurances in private conversations with KJRY. Indeed, KJRY contacted BNSF several times since the Board's October 28, 2004 decision to discuss the need to reinstall the crossing diamonds and at no time prior to its February 9 letter did BNSF ever indicate that it could not reinstall the diamonds. Given these assurances and KJRY's phone calls, KJRY and the Board had no reason to believe that these commitments would not be honored. As service must be restored, it is now time for BNSF and TP&W to comply with their representations.

KJRY understands that it may take some time to physically perform the task of reinstalling the diamonds⁴ and has therefore proposed an alternate temporary arrangement whereby KJRY would "cross-over" the existing gap at Bushnell by getting onto BNSF's tracks east of Bushnell, traveling over the BNSF for two or three miles, and then getting back on KJRY's tracks near the location of the former Bushnell diamonds. See attached Exhibits 1 and

² Through those discussions it became clear that the ADM detour arrangement at Bushnell would not work because it was not physically viable for through trains and would involve numerous operational and safety issues. Indeed, ADM has informed KJRY that it will not allow the use of that arrangement for the movement of through trains. Likewise, BNSF's alternate proposal to provide KJRY with haulage rights over BNSF's line through Galesburg is not commercially reasonable nor does it restore the through line that KJRY's shippers need.

³ On June 4, 2004, TP&W stated that "BNSF has also stated that in the event of an emergency, the diamonds will be reinstalled within five days of notification to BNSF." June 4, 2004 TP&W Response at 4. That same pleading included a copy of the aforementioned March 15 letter of David Clifton at 12. Furthermore, in a July 8, 2004 pleading, TP&W again reiterated the ability of BNSF to reinstall the diamonds, claiming that "BNSF has agreed to replace the diamonds upon TP&W's request" and that BNSF could do so "expeditiously when necessary." July 8 TP&W Response, Verified Statement of Scott Hulstrom at 11 and 12.

⁴ It may be that the previous diamonds are unusable, as BNSF now claims, but the notion that it would take 180 days to reinstall the diamonds *after the materials are ordered and received* is outrageous. It stretches credulity to believe that a carrier the size of BNSF does not have two crossing diamonds in its inventory that it can transport to Bushnell and install, at least on a temporary basis, or that it would take a half a year to install new ones *after they are received*.

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2.⁵ This arrangement would suffice as a temporary measure, and unless BNSF can immediately restore the diamonds, which BNSF now claims that it cannot do, the Board should order BNSF to adopt this arrangement until such time as the diamonds are reinstalled.

The need for immediate action is not fanciful. As the Board is aware, there are major agricultural shippers that need through service over the KJRY Line between Peoria and Keokuk restored no later than the end of February. KJRY is committed to serving those shippers. KJRY thought, as the Board obviously did, that BNSF and TP&W would honor their representations and restore the diamonds by February 10. That has not yet occurred. Because service must be restored very soon, BNSF cannot drag its feet any longer. Absent the physical ability to restore the diamonds immediately, BNSF should be required to provide KJRY with the proposed alternative arrangement until such time as the diamonds are restored.

If there are any questions about this matter, please contact me directly, either by telephone: (202) 663-7823 or by e-mail: wmullins@bakerandmiller.com. There are an original and eleven copies of this letter. Please time stamp the extra copy and return to the courier for delivery to me. Furthermore, by my signature below, I certify that I have on this date caused copies of this submission to be delivered to Louis E. Gitomer and Gordon P. MacDougall by courier, to Michael E. Roper, counsel for BNSF, by fax, and to be served on other parties of record by first class mail.

Respectfully submitted,

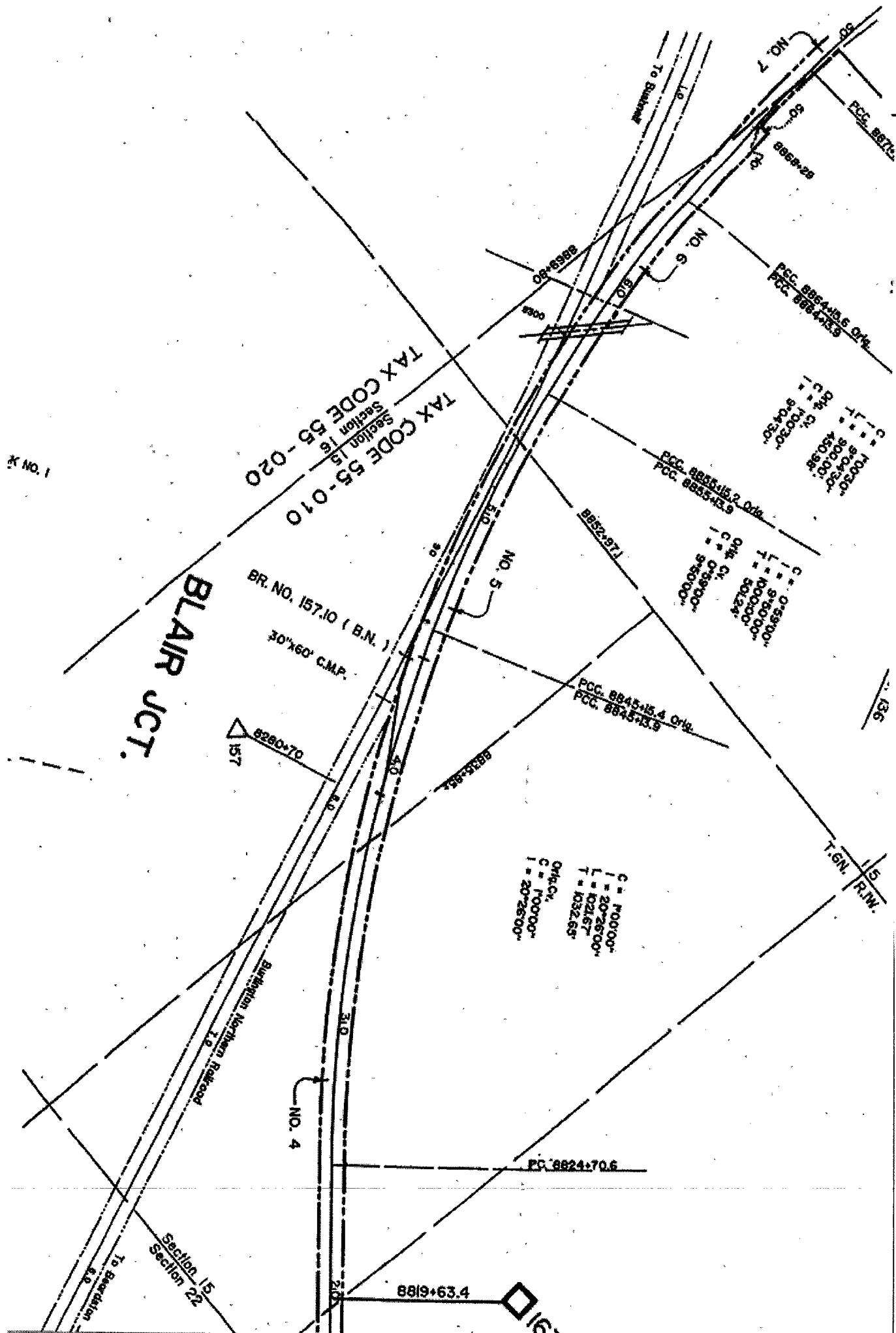


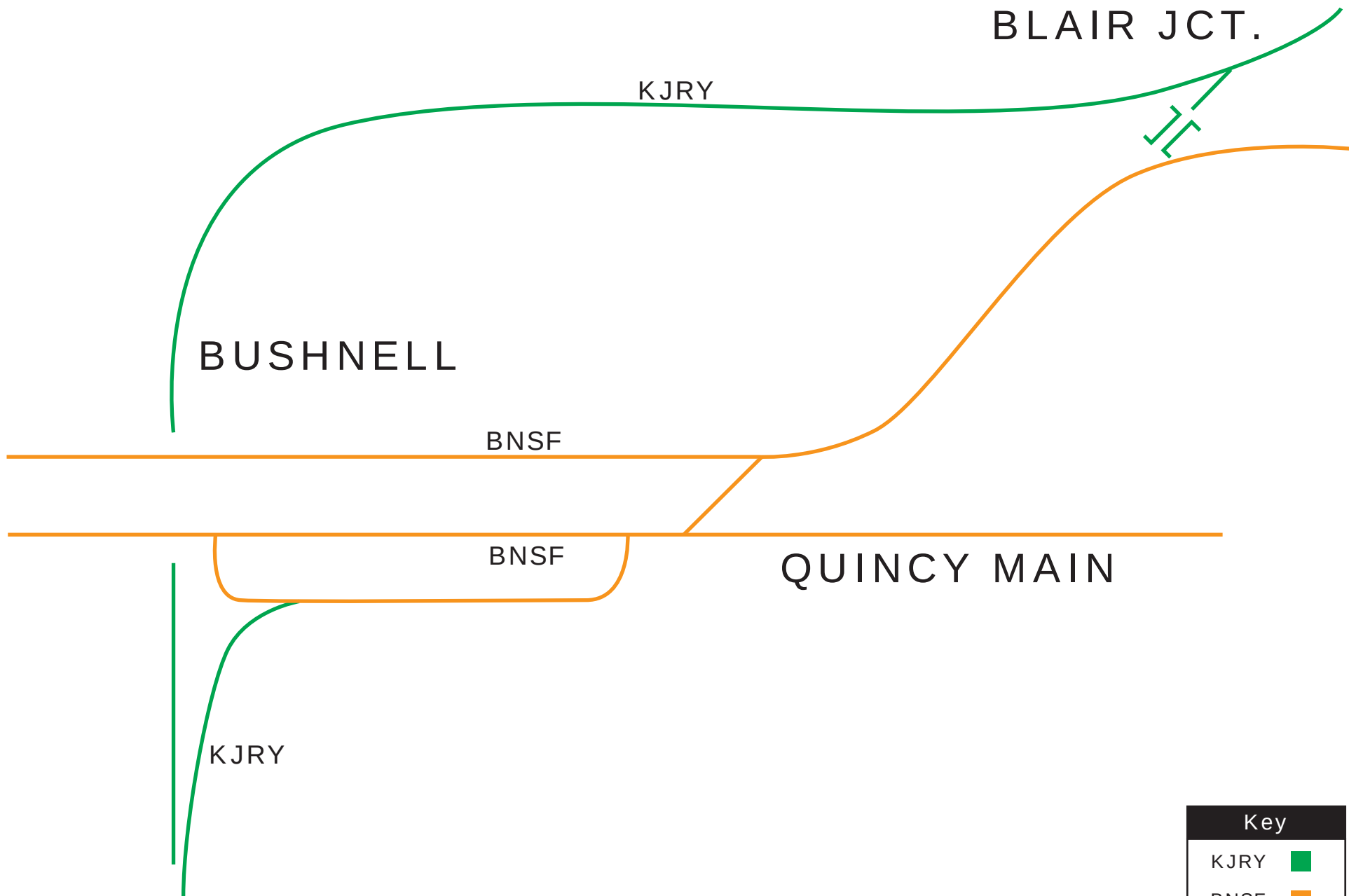
William A. Mullins

Attorney for Keokuk Junction Railway Co.

cc: All Parties of Record

⁵ Exhibit 1 is a copy of the valuation map produced in this proceeding dating from around 1985. It shows the close proximity of the BNSF and former TP&W (now KJRY) lines and the fact that the lines then connected at what was known as Blair Junction, east of Bushnell. While the switches have been removed, the connection could be restored relatively quickly. Exhibit 2 is a hand drawn schematic showing how KJRY's proposed alternative temporary arrangement would physically work.





NOT TO SCALE