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KARL MORELL

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September 14, 2009



The Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423-0001

Re: STB Finance Docket No. 35164, BNSF Railway Company –
Petition For Declaratory Order
STB Docket No. AB-6 (Sub-No. 430X), BNSF Railway Company –
Abandonment Exemption – In Oklahoma County, OK

225729

225730

Dear Acting Secretary Quinlan:

Attached for filing are the original and ten copies of BNSF Railway Company's Reply to Petition to Reopen.

The filing contains color photographs.

Please time and date stamp the extra copy of the Reply and return it with our messenger.

If you have any questions, please contact me.

ENTERED
Office of Proceedings

SEP 14 2009

Part of
Public Record

Sincerely yours,

Karl Morell

Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 35164

BNSF RAILWAY COMPANY – PETITION FOR DECLARATORY ORDER

STB DOCKET NO. AB-6 (SUB-NO. 430X)



BNSF RAILWAY COMPANY – ABANDONMENT EXEMPTION – IN OKLAHOMA
COUNTY, OK

REPLY TO PETITION TO REOPEN

(THE FILING CONTAINS COLOR PHOTOGRAPHS)

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Attorneys for:
BNSF Railway Company

Dated: September 14, 2009

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 35164

BNSF RAILWAY COMPANY – PETITION FOR DECLARATORY ORDER

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BNSF RAILWAY COMPANY – ABANDONMENT EXEMPTION – IN OKLAHOMA
COUNTY, OK

REPLY TO PETITION TO REOPEN

By decision served on May 20, 2009, in these proceedings (“**May 20 Decision**”), the Surface Transportation Board (“**Board**”) granted, in part, BNSF Railway Company’s (“**BNSF**”) petition for declaratory order and, on its own motion, granted BNSF exemptions from the provisions of 49 U.S.C. §§ 10903, 10904 and 10905 permitting BNSF to abandon the rail line located between mileposts 540.15 and 541.69 on BNSF’s Chickasha Subdivision in Oklahoma City, Oklahoma (“**Line**”).

On June 8, 2009, John Kessler (“**J. Kessler**”) filed a Petition for Reconsideration.¹
BNSF replied to the Petition for Reconsideration on June 26, 2009.

On June 11, 2009, Edwin Kessler (“**Kessler**”) and James Riffin (“**Riffin**”) filed a Petition for Review of the May 20 Decision with the United States Court of Appeals for the District of

¹ By decision served June 12, 2009, in these proceedings, the Board denied J. Kessler’s request that the Petition for Reconsideration be treated as an appeal of right.

Columbia Circuit ("**DC Circuit**"). On June 12, 2009, Kessler and Riffin filed a Petition for Stay ("**Stay Request**") of the May 20 Decision with the DC Circuit.² The Board responded to the Stay Request on June 16, 2009. On or about July 2, 2009, Kessler and Riffin filed an "Emergency Motion For An Administrative Stay" with the DC Circuit.

On June 25, 2009, six individuals filed an Application with the Oklahoma Corporation Commission ("**OCC**") seeking an order from the OCC that would overrule the Board's May 20 Decision.³ The Oklahoma Department of Transportation ("**ODOT**") filed a Motion to Dismiss the Application on July 10, 2009. BNSF filed its Motion to Dismiss the Application on July 23, 2009.

On June 29, 2009, Oklahomans For New Transportation Alternatives Coalition ("**ONTRAC**") filed comments in these proceedings ("**Comments**"). On July 17, 2009, BNSF filed a Motion to Strike the Comments.

On August 25, 2009, Kessler filed a Petition to Reopen and Reconsider the May 20 Decision ("**Petition**") to which BNSF hereby responds.⁴ The Petition is the latest in a long line of deceitful and disingenuous attempts to derail a critical highway project in Oklahoma City ("**Highway Project**") by a small group of individuals. These self-anointed guardians of the public good seek a realignment of the Highway Project, even though such a realignment would

² The May 20 Decision became effective June 9, 2009.

³ The relief requested included an order from OCC precluding BNSF from: (1) abandoning the Line; and (2) rerouting traffic over the parallel Packingtown Lead.

⁴ The Petition contains a number of procedural infirmities which warrant the rejection of the Petition. For example, the Petition and its attachments significantly exceed the 30-page limit set forth in 49 C.F.R. § 1152.25(e)(3). Also, Kessler seeks reopening of the proceeding in STB Finance Docket 35164 and not STB Docket No. AB-6 (Sub-No. 430X) wherein the abandonment was authorized. Moreover, the Petition was not served on all parties of record in these proceedings.

waste hundreds of millions of dollars, in order to save a former rail yard adjacent to a former passenger rail terminal. Their tactics have been abusive: they have made countless filings with the Board, the courts and Oklahoma state agencies. They also do not feel morally compelled to tell the truth: in the past five years certain individuals opposed to the Highway Project have filed pleadings containing fraudulent documents, forged signatures and false information and the Petition does not disappoint in that regard.

The rail exemption procedures at 49 C.F.R. § 1121.4, incorporate the standards of 49 C.F.R. §§ 1115 and 1152.25(e) for seeking the reopening of an abandonment exemption. Under these standards, a petition to reopen must state in detail the respects in which the proceeding involves material error, new evidence, or substantially changed circumstances to warrant the reopening of a proceeding. STB Docket No. AB-441 (Sub-No. 2X), *SWKR Operating Co. – Abandonment Exemption – In Cochise County, AZ* (not printed), served September 29, 1998.

In addition, to warrant revocation of an abandonment exemption granted by the Board, a petition must demonstrate that regulation is necessary to carry out the rail transportation policy of 49 U.S.C. § 10101. The statutory standard for revoking an exemption is whether regulation of the abandonment under 49 U.S.C. § 10903 is necessary to carry out that policy. The party seeking revocation of an exemption has the burden of proof, and a petition to revoke must be based on reasonable, specific concerns demonstrating that reconsideration of the exemption is warranted and regulation of the abandonment is necessary. *CSX Transp., Inc. – Aban. – In Randolph County, WV*, 9 I.C.C.2d 447, 449 (1992).

Kessler does not allege, much less demonstrate, that the May 20 Decision involves material error or that substantially changed circumstances warrant the reopening of the proceeding. Instead, Kessler alleges that new evidence warrants reopening. While the Petition is

riddled with false and misleading information it also suffers in a major and fatal respect: the evidence Kessler alleges is new is, in fact, not new as prior filings in these proceedings readily demonstrate, including filings made by Kessler.

Kessler shamelessly states that he has received “new evidence that numerous tank cars with red diamond placards indicating hazardous materials loads are traveling on the [Packingtown Lead]....” Petition at 2-3. Kessler claims that this “new train traffic” began to be rerouted from the Line to the Packingtown Lead after the issuance of the May 20 Decision.

As numerous prior filings in these proceedings clearly demonstrate, Kessler’s latest contention is absurd and patently false. All remaining traffic formerly moving over the Line was necessarily rerouted to the Packingtown Lead at least 19 months ago when the Line was severed. Attached to Kessler’s Motion for Stay filed with the DC Circuit on January 29, 2008 is an affidavit of Thomas Elmore (“Elmore”) dated January 28, 2008 in which Elmore stated that certain segments of track had been removed severing the Line from the interstate network. In his Comments filed February 15, 2008 with the Board, Kessler stated that Elmore had witnessed the cutting of the Line on February 14, 2008. Similarly, attached to his Motion for Cease and Desist Order filed on March 24, 2008, is an affidavit of Elmore pointing out that a crossing signal was erected in the middle of the tracks to the west of the Line. In its Reply filed February 20, 2008, BNSF expressly noted that a portion of the Line was cut on January 25, 2008. Moreover, attached to the ONTRAC Comments is an affidavit alleging train delays on January 9, 2009, as a result of the rerouting of traffic over the Packingtown Lead. Indeed, the May 20 Decision specifically recognized that the traffic had already been rerouted from the Line to the Packingtown Lead.

As numerous filings in these proceedings make clear, all of the overhead traffic formerly moving over the Line was rerouted over the Packingtown Lead by no later than January 25, 2008. Kessler and Elmore where aware of the fact that the Line had been severed no later than January 28, 2008, and that the remaining traffic was being rerouted over the Packingtown Lead. The evidence Kessler now seeks to introduce – the movement of tank cars over the Packingtown Lead – is not new and was clearly available to Kessler and Elmore about 19 months ago.⁵ It is simply not plausible to assume that Kessler and Elmore where not aware of the rerouting of traffic since they have been obsessed with taking pictures of everything that has happened on the Line and the Packingtown Lead for the past four years. Kessler and his cohorts have made numerous filings in these proceedings during the past 19 months in which they could have brought this information to the attention of the Board. Since the evidence is not new, the Petition should be denied. *See B. Willis – Petition For Declaratory Order*, 6 S.T.B. 280, 283 (2002).

Even if the proffered evidence were new, it would not in any way undermine the May 20 Decision. The Petition is replete with false, misleading and totally irrelevant assertions.

Attached as Exhibits A-12 and A-13 to the Petition are the affidavits of Elmore and Wanda Stapleton (“Stapleton”). In their affidavits, Elmore and Stapleton claim to have seen one tank car with a hazardous materials placard on August 13, 2009, and 10 tank cars with hazardous materials placards on August 17, 2009 traversing the Packingtown Lead. Their list of tank cars (Exhibit A) and photographs of the tank cars (Exhibits A-1 through A-11) are highly misleading. As a careful review of the photographs reveals, there was only one tank car moved over the Packingtown Lead on August 13th (CTCX 730998), and only two tank cars moved over the

⁵ Kessler correctly points out that he could not have brought this information to the Board’s attention until the train traffic over the Packingtown Lead commenced. As Kessler’s prior filings in these proceedings demonstrates, the train traffic over the Packingtown Lead commenced at least 19 months ago.

Packingtown Lead on August 17th (CTCX 731033 and ECUX 371043). Exhibit A-1 is a photograph of car number CTCX 730998. Exhibit A-2 is a photograph of car number CTCX 731033. Exhibit A-3 is a photograph of car number ECUX 371043, as is Exhibit A-4. It is, of course, impossible to determine which, if any, tank cars are depicted in Exhibit A-5. Exhibit A-6 once again depicts car numbers CTCX 731033 and ECUX 371043. Exhibit A-7 once again depicts car number ECUX 371043. Exhibit A-8 once again depicts car number CTCX 731033. Exhibit A-9 once again depicts car number ECUX 371043. Exhibit A-10 once again depicts car number CTCX 731033. And Exhibit A-11 once again depicts car number ECUX 371043. In short: many pictures, much deception but only 3 cars.⁶

Kessler next makes the unsupported, and unsupportable, contention that the Chickasha Subdivision routing was safer than the current routing over the Packingtown Lead. First, Kessler points out that the Packingtown routing crosses two at-grade crossings located at South Walker Avenue and South Robinson Avenue. But such information in isolation is totally meaningless. The prior routing over the Chickasha Subdivision involved 11 at-grade crossings and 3 separated grade crossings. The current routing over the Packingtown Lead involves 7 at-grade crossings and 3 separated crossings. Also, the tracks on the Packingtown Lead are in much better condition than the tracks on the Line and the Packingtown Lead routing is only 0.3 miles longer than the routing over the Line. Consequently, contrary of Kessler's contention, the current routing is as safe if not safer than the prior routing.

⁶ Any notion that these repetitive photographs were not intended to mislead the Board is dispelled by Kessler's false assertion that the photographs demonstrate that numerous tank cars traverse the Packingtown Lead. Petition at 2-3. Kessler also claims that the tank cars were "filled to the brim with hazardous materials." Petition at 8. Kessler, however, has failed to demonstrate whether the tank cars were loaded or empty.

Second, Kessler contends that the hazardous commodities are being routed through a residential community and adjacent to a park and a residence for the elderly and disabled. But that is the situation with most rail routings in urban areas. In any event, the Chickasha Subdivision also passes through a residential community and is located adjacent to the Wheeler Park Softball Stadium.⁷ Kessler, of course, is less concerned for the citizens inhabiting the community along the Chickasha Subdivision since routings over that line would preserve Kessler's precious rail yard. Moreover, the portion of the Packingtown Lead adjacent to South Robinson Avenue and in the vicinity of the park and Andrews Square has been an active rail line handling, among others, tank cars for decades. Attached as Exhibit 1 are three aerial photographs of the Packingtown Lead at the intersection of South Robinson Avenue. The first, dated April 2002, illustrates a tank car standing on the track adjacent to South Robinson Avenue. The second, dated December 29, 2003, illustrates three tank cars standing on those same tracks. The third, dated September 28, 2006, illustrates two tank cars standing on those same tracks. As these aerial photographs demonstrate, tank car traffic has been handled over the Packingtown Lead at the intersection of South Robinson Avenue for many years.

Third, Kessler refers to the potential major threats to the public arising from shipments of chlorine moving over the Packingtown Lead. As Kessler well knows from the placards on the three tank cars, the traffic moving over the Packingtown Lead in the tank cars is petroleum (code 1268) and methanol (code 1230) and not chlorine. Unlike chlorine, petroleum and methanol rail routings are not regulated under the Pipeline and Hazardous Materials Safety Administration's routing regulations and, instead, are left to the discretion of the railroad. In routing hazardous commodities, BNSF considers a number of factors including population density, the condition of

⁷ See correspondence from the Oklahoma Tourism & Recreation Department attached as Exhibit G to BNSF's Environmental Report in STB Docket No. AB-6 (Sub-No. 430X).

the rail and nature and number of crossings. Overall, these factors favor the Packingtown Lead over the Chickasha Subdivision.

Kessler further contends that BNSF's response to 49 C.F.R. § 1105.7 (e)(7)(ii) in its Environmental Report was inaccurate in light of the rerouting of tank car traffic. Kessler's contention is both legally and factually flawed.

The rerouting of overhead traffic from the Chickasha Subdivision to the Packingtown Lead was a matter within the discretion of the railroad and did not require Board approval. *See, e.g., Futurex Industries, Inc. v. ICC*, 897 F.2d 866 (7th Circuit 1990); *People of State of Illinois v. ICC*, 698 F.2d 868, 873 (7th Cir. 1983) ("This policy reflects the well-established principle that the routing of overhead traffic and the selection of alternative routes for the handling of such traffic is a matter of managerial discretion."); *Central Michigan Ry. Co. – Abandonment*, 7 I.C.C.2d 557 (1991); *Southern Pacific Transp. Co. – Abandonment*, 360 I.C.C. 138 (1979). Consequently, any traffic formerly traversing the Chickasha Subdivision could have been rerouted over the Packingtown Lead without any prior approval by the Board.

The National Environmental Policy Act requires all federal agencies to consider the environmental consequences of "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4334(2)(c). The Council on Environmental Quality has defined "major federal actions" to include projects regulated or approved by federal agencies. 40 C.F.R. § 1508.18. Because the rerouting of traffic does not come within the jurisdiction of the Board, the Board's environmental rules do not apply to reroutings. *See Union Pacific RR Co. – Petition – Rehabilitation Of MO-KS-TX RR*, 3 S.T.B. 646 (1998); *City of Auburn v. United States*, 154 F.3d 1025 (9th Cir. 1998); STB Finance Docket No. 34662, *CSX Transportation, Inc. – Petition For Declaratory Order* (not printed), served May.3, 2005. Even if the abandonment

exemption were revoked, overhead traffic would continue to be routed over the Packingtown Lead since that is the safer route and allows service to existing customers such as Cargill, Inc.

At the time BNSF prepared and filed its Environmental Report in STB Docket No. AB-6 (Sub-No. 430X), BNSF was not handling any petroleum or methanol traffic over the Line. Even if BNSF had been handling hazardous commodities over the Line which could be rerouted over the Packingtown Lead, the Environmental Report would still be accurate. BNSF fully explained that any overhead traffic would be rerouted over another line through Oklahoma City. Any rerouting of petroleum or methanol traffic over an essentially parallel line that has better track conditions, fewer crossings and is only 0.3 miles longer would not pose a threat to the environment.⁸

Kessler has failed to demonstrate that reconsideration of the exemption is warranted and that regulation of the abandonment of the Line is necessary. No shipper has come forward to complain about a loss of direct rail service or a deterioration of service as a result of the rerouting of overhead traffic. The abandonment of the Line has resulted in no adverse environmental consequences. Under 49 U.S.C. § 10505(d), the Board may revoke an exemption if it finds that regulation is necessary to carry out the rail transportation policy of 49 U.S.C. § 10101. Kessler, however, has not alleged, much less demonstrated, that regulation of the abandonment is necessary to carry out that policy. Revocation of the exemption granted by the Board in the May 20 Decision would serve no useful purpose. BNSF would be required to file an application which would once again be unopposed by users of rail service. Requiring BNSF to do so would be contrary to several provisions of the rail transportation policy.

⁸ Contrary to Kessler's assertion, the Board's environmental rules do not require consultations with Oklahoma Homeland Security Office. Kessler has also failed to cite any provision of the Oklahoma Homeland Security Act with which BNSF has failed to comply.

In the alternative, Kessler requests that the Board order BNSF “to install substantial fences along the [Packingtown Lead] and require BNSF to replace the hazardous at-grade crossings at South Walker Avenue and South Robinson Avenue ... with grade separated crossings.” Petition at 10. As Kessler well knows, whether the current crossings at South Walker and South Robinson Avenues comply with Federal and state standards is not a matter for the Board to decide. The Federal Railroad Administration is the proper Federal agency to regulate rail crossings. The Oklahoma Corporation Commission (“OCC”) asserts state jurisdiction over grade crossings.

In 2006, Stillwater sought and obtained approval from the OCC to upgrade five crossings on the Packingtown Lead. Attached as Exhibit 2 is a copy of the OCC order. BNSF recently filed an Application with the OCC for approval of the at-grade crossings at South Walker and South Robinson Avenues in Cause No. TD-200900036 which remains pending at the OCC. Kessler’s discussion of OCC Cause No. TD-200900032 is totally misleading. BNSF is not objecting to OCC’s review of the crossings, as Kessler suggests. In fact, BNSF has filed to obtain OCC’s review. BNSF and ODOT have filed motions to dismiss the Application in Cause No. TD-200900032 to the extent Applicants seek an order from OCC that would overrule the May 20 Decision.

Finally, Kessler’s fear mongering over terrorist attacks and his absurd contention that BNSF’s conduct has undermined American soldiers fighting in Iraq and Afghanistan are shameless and despicable. These and other contentions in the Petition demonstrate that Kessler, in his quixotic quest to save a rail yard that no longer exists, has lost all sense of decency. The pictures attached to the Petition of the elderly at Andrews Square and the youth playing at Wiley Post Park illustrate the lengths to which Kessler will go to derail the Highway Project.

For all the foregoing reasons, BNSF respectfully urges the Board to reject the Petition.
Alternatively, BNSF urges the Board to deny the relief requested.

Respectfully submitted,

A handwritten signature in cursive script, reading "Karl Morell", positioned above a horizontal line.

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Attorneys for:
BNSF Railway Company

Dated: September 14, 2009

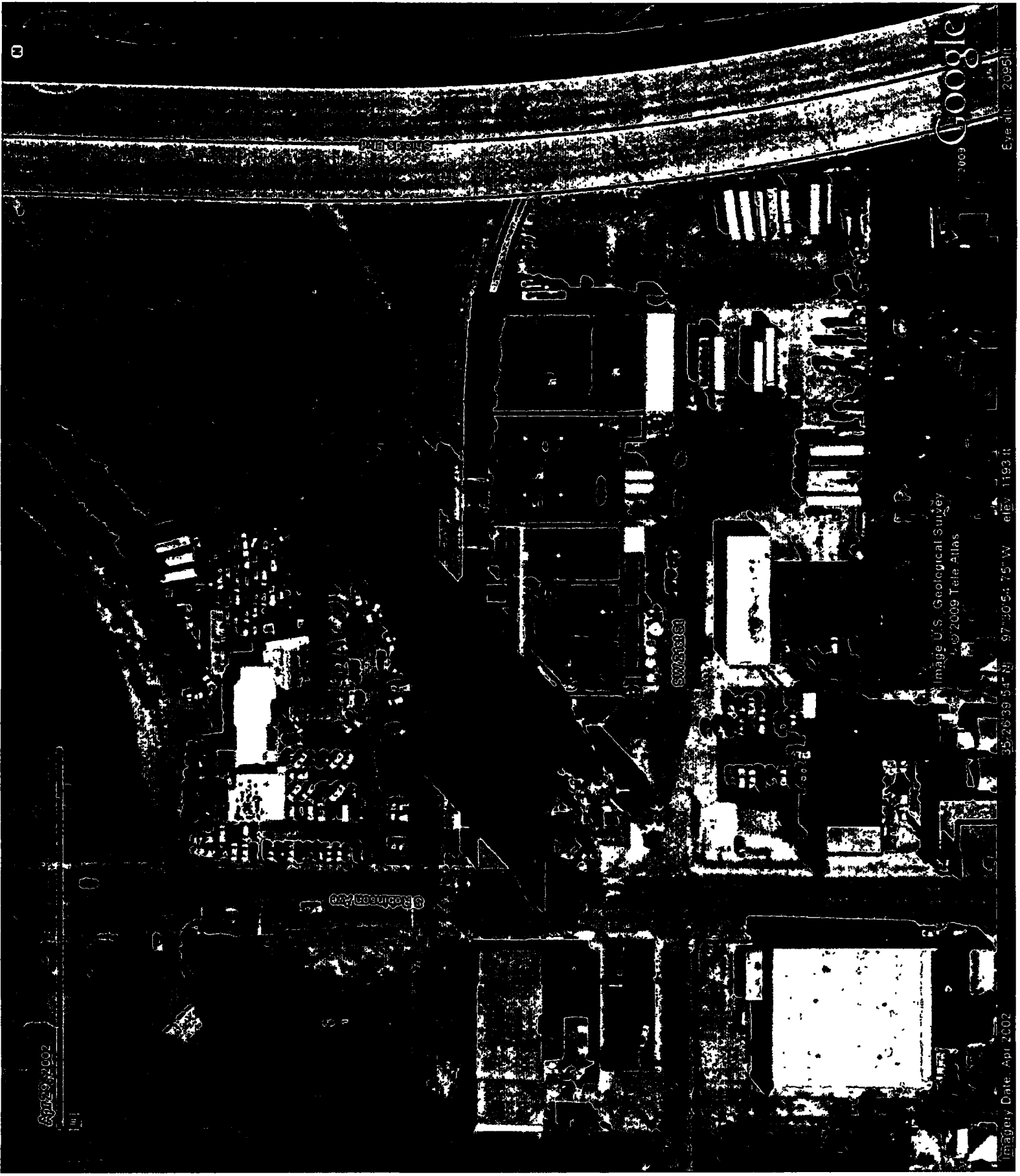
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Strike has been served on all parties of record by first class mail this 14th day of September, 2009.

A handwritten signature in cursive script, reading "Karl Morell", is written over a horizontal line.

Karl Morell

EXHIBIT 1



April 2, 2002

© Robinson 2002

10th Street

SW 21st St

Image U.S. Geological Survey
© 2009 Tele Atlas

Google

2009

Imagery Date: April 2002

35°26'39.54"N 97°30'54.75"W

elev 1193 ft

Eye alt: 2085 ft



Google

Eye alt 2734 ft

Shirley St

S Broadway Ave

S Robinson Ave

SW 2nd St

SW 12th St

S Harvey Ave

Image © 2009 DigitalGlobe

© 2009 Tele Atlas

35°28'39.17" N 97°30'57.45" W elev 1164 ft

Dec 28, 2003

Imagery Date: Dec 29, 2003

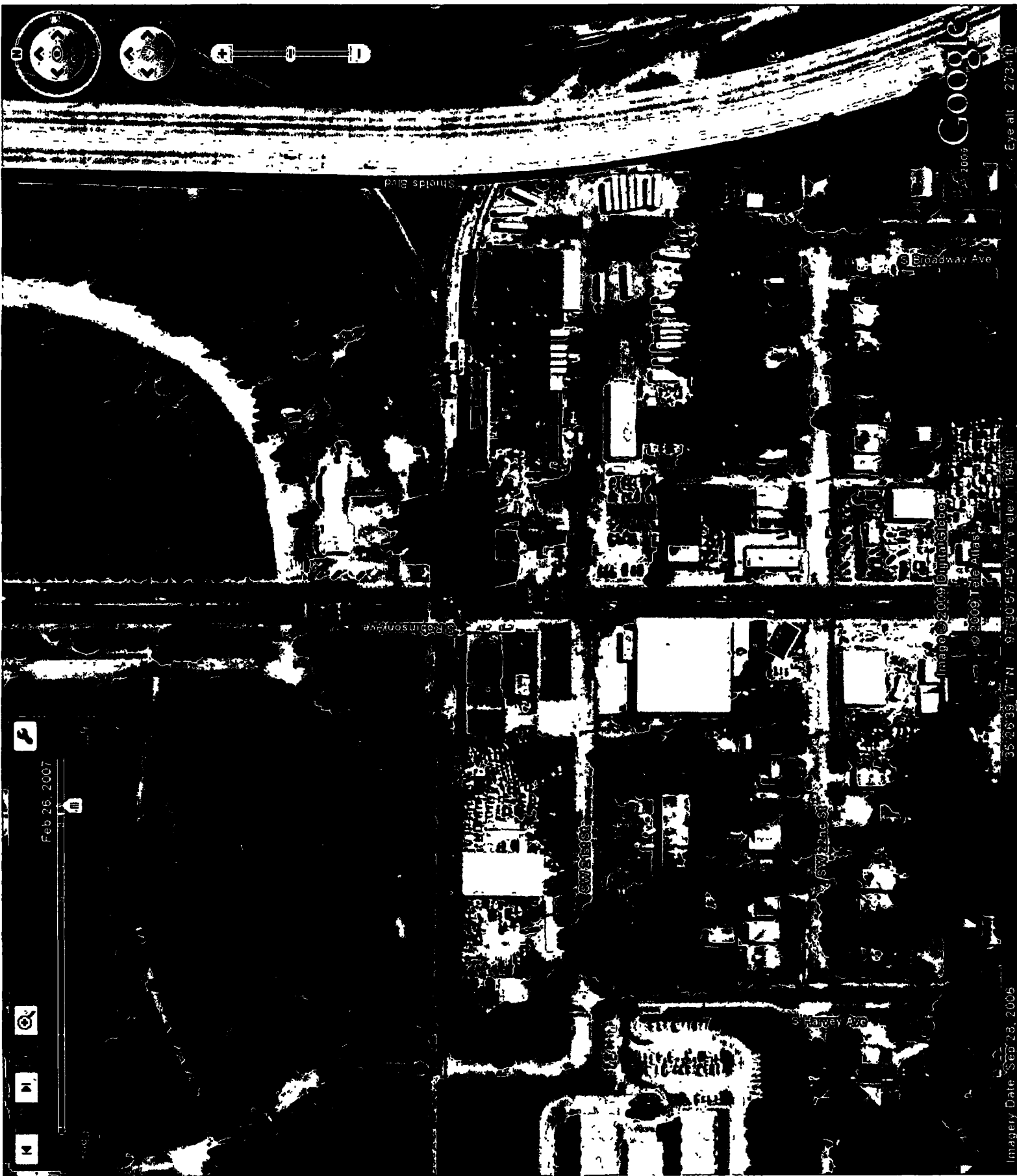


EXHIBIT 2

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICATION OF STILLWATER CENTRAL	)	
RAILROAD FOR APPROVAL OF THE INSTALLATION	)	CAUSE NO. TD 200600022
OF IMPROVEMENTS TO BE INSTALLED AT MCKINLEY	)	
AVENUE, WESTWOOD AVENUE, PENNSYLVANIA	)	
AVENUE, WESTERN AVENUE, AND AGNEW AVENUE	)	
IN OKLAHOMA CITY, OKLAHOMA COUNTY, STATE	)	ORDER NO. 525384
OF OKLAHOMA	)	

HEARING: May 23, 2006
Before Maribeth D. Snapp, Administrative Law Judge

APPEARANCES: Jeffrey P. Southwick, Deputy General Counsel and Kathy L. Nelson,
Assistant General Counsel, Transportation Division, Oklahoma Corporation
Commission; and
Hugh D. Rice, Attorney, Stillwater Central Railroad

PROTESTANTS: None.

FINAL ORDER

BY THE COMMISSION:

The Oklahoma Corporation Commission ("Commission") of the State of Oklahoma being regularly in session and the undersigned Commissioners participating, the above-entitled cause comes on for consideration and for an order of the Commission in this proceeding.

Stillwater Central Railroad ("Applicant"), in its Application filed April 18, 2006, seeks an order of the Commission approving an agreement with the Department of Transportation of the State of Oklahoma ("ODOT") for the installation of equipment as detailed on Exhibit "A" (the "Improvements") at McKinley Avenue, Westwood Avenue, Pennsylvania Avenue, Western Avenue and Agnew Avenue (the "Crossings"), in Oklahoma City, Oklahoma County, State of Oklahoma.

Pursuant to Notice of Hearing, this cause was set before the Administrative Law Judge for hearing and recommendation. Notice was given as required and a hearing was held on the day above indicated before the undersigned Administrative Law Judge.

The Corporation Commission has jurisdiction in this proceeding pursuant to the provisions of Article IX, §§ 18 and 27 of the Oklahoma Constitution and Title 17, O.S. § 81, *et seq.*

SUMMARY OF EVIDENCE

The verified Application of Applicant was relied upon by the Applicant since no party appeared and filed a pleading or testified in opposition to the verified Application of the Applicant. Since the allegations in the Application have not been controverted by a pleading or testimony of any party, these uncontroverted allegations in the verified Application of the Applicant are adopted as a summary of the evidence as follows:

1. The Applicant signed an Agreement on the 8th day of August, 2005, which was accepted by ODOT on the 11th day of August, 2005, covering the installation of the Improvements at the Crossings. (See Agreement - Exhibit "B".)
2. The Agreement recites that ODOT proposes to upgrade the Crossings with the Improvements described on Exhibit "A" attached hereto and made a part hereof by reference.
3. The Agreement recites that this is Federal Aid Project No. OKCY-XTWN-0(019)000HP, Job Piece No. 17428(37), in Oklahoma County, Oklahoma.
4. The Agreement further recites that ODOT desires to use a portion of Applicant's property, which is agreeable with Applicant upon the terms and conditions recited in the Agreement.
5. The Agreement further recites that the Improvements will be installed at the Crossings at no cost to the Applicant in accordance with the Federal-Aid Policy Guide issued by the Federal Highway Administration on April 1, 2002. Therefore, the Agreement further provides that in accordance with the Federal-Aid Policy Guide, the Applicant will not be required to participate in the cost of the Improvements at the Crossings. In conjunction therewith, the Agreement further provides that ODOT shall use state and federal funds to pay all costs of engineering or supervision of the work performed under the Agreement.
6. The proposed installation of the Improvements at the Crossings is in the best overall interest and convenience of the traveling public and will improve motor vehicle and rail safety.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the uncontroverted allegations in the verified Application of the Applicant, the Administrative Law Judge makes the following findings of fact and conclusions of law:

Notice of this proceeding was given and made as required by law and the rules of the Commission. The Commission has jurisdiction over the parties and the subject matter of this

proceeding pursuant to Article IX, §§ 18 and 27 of the Oklahoma Constitution and Title 17, O.S. § 81, *et seq.*

It is the determination of the State of Oklahoma by and through ODOT and the Oklahoma Corporation Commission that the proposed installation of the Improvements at the Crossings is in the best overall interest and convenience of the traveling public and will improve motor vehicle and rail safety.

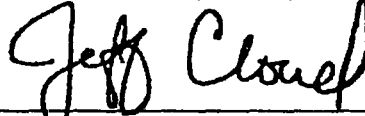
ORDER

IT IS THEREFORE THE ORDER OF THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA that the findings of the Administrative Law Judge be adopted as the Findings and Conclusions of the Commission.

IT IS FURTHER ORDERED that the Improvements be installed at the Crossings in accordance with the requirements imposed by the Federal Government and the State of Oklahoma by and through ODOT and the Commission and that no changes in the Improvements at the Crossings in regard to the method and/or design of operation may be made without written approval by the State of Oklahoma.

IT IS FURTHER ORDERED that in the event the Crossings are ever abandoned, the Automatic Devices installed as part of the Improvements at the Crossings shall not be removed by the Applicant to any point other than that which is mutually agreed upon by ODOT and the Applicant, and in compliance with an order first issued by the Commission.

OKLAHOMA CORPORATION COMMISSION



JEFF CLOUD, Chairman

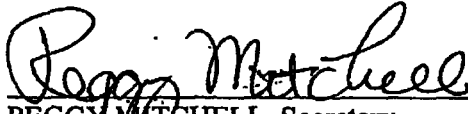


DENISE A. BODE, Vice Chairman



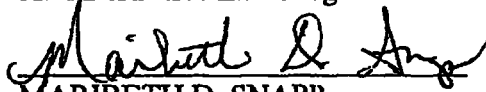
BOB ANTHONY, Commissioner

DONE AND PERFORMED THIS 25 DAY OF MAY, 2006, BY ORDER OF THE COMMISSION.


PEGGY MITCHELL, Secretary

REPORT OF THE ADMINISTRATIVE LAW JUDGE

The foregoing Findings and Order are the Report and Recommendations of the Administrative Law Judge.


MARIBETH D. SNAPP
Administrative Law Judge

5-23-06
Date

FEDERAL-AID RAILROAD GRADE CROSSING PROJECTS

IMPROVEMENTS AT:

<u>CROSSING</u>	<u>FEDERAL AID PROJECT NO.</u>	<u>DOT NO.</u>	<u>IMPROVEMENTS</u>
McKinley Avenue Oklahoma City, OK	OKCY-XTWN-0(019)000HP J/P # 17428(37)	012165K	To install a grade crossing signal system consisting of two (2) mast flasher assemblies with gates and 12" LED flashing lights, one (1) electronic bell, crossbuck signs, and associated material, with prediction circuitry.
Westwood Avenue Oklahoma City, OK	OKCY-XTWN-0(019)000HP J/P # 17428(37)	012164A	To install a grade crossing signal system consisting of two (2) mast flasher assemblies with gates and 12" LED flashing lights, one (1) electronic bell, crossbuck signs, and associated material, with prediction circuitry.
Pennsylvania Avenue Oklahoma City, OK	OKCY-XTWN-0(019)000HP J/P # 17428(37)	012163T	To install a grade crossing signal system consisting of two (2) mast flasher assemblies with gates and two (2) cantilever assemblies with 12" LED flashing lights and two (2) electronic bells, crossbuck signs, and associated material, with prediction circuitry.
Western Avenue Oklahoma City, OK	OKCY-XTWN-0(019)000HP J/P # 17428(37)	012166N	To install a grade crossing signal system consisting of two (2) mast flasher assemblies with gates and two (2) cantilever assemblies with 12" LED flashing lights and two (2) electronic bells, crossbuck signs, and associated material, with prediction circuitry.
Agnew Avenue Oklahoma City, OK	OKCY-XTWN-0(019)000HP J/P # 17428(37)	012162L	To install a grade crossing signal system consisting of two (2) mast flasher assemblies with gates and two (2) cantilever assemblies with 12" LED flashing lights and two (2) electronic bells, crossbuck signs, and associated material, with prediction circuitry.

EXHIBIT "A"