

LAW OFFICE  
**THOMAS F. MCFARLAND, P.C.**  
208 SOUTH LASALLE STREET - SUITE 1890  
CHICAGO, ILLINOIS 60604-1112  
TELEPHONE (312) 236-0204  
FAX (312) 201-9695  
*mcfarland@aol.com*

236281

ENTERED  
Office of Proceedings  
July 7, 2014  
Part of  
Public Record

THOMAS F. MCFARLAND

July 3, 2014

By UPS overnight mail  
(Monday delivery)

Ms. Cynthia T. Brown, Chief  
Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington, DC 20024



Re: Docket No. AB-1106X, *ABE Fairmont, LLC -- Abandonment Exemption -- in Fillmore County, NE*

Docket No. AB-6 (Sub-No. 488X), *BNSF Railway Company -- Discontinuance of Service Exemption -- in Fillmore County, NE*

Dear Ms. Brown:

Hereby transmitted is the original and 10 copies of a Joint Petition For Exemption for filing with the Board in the above referenced matters.

Also enclosed is a check in the amount of \$6,700 for the filing fee.

Very truly yours,

A handwritten signature in cursive script that reads 'Tom McFarland'.

Thomas F. McFarland

*TMcF:kl:enc:wp8.0\1562-B\ltrSTB1*

FILED  
July 7, 2014  
SURFACE  
TRANSPORTATION BOARD

FEE RECEIVED  
July 7, 2014  
SURFACE  
TRANSPORTATION BOARD

BEFORE THE  
SURFACE TRANSPORTATION BOARD

ABE FAIRMONT, LLC --	)	DOCKET NO.
ABANDONMENT EXEMPTION -- IN	)	AB-1106X
FILLMORE COUNTY, NE	)	
	)	
BNSF RAILWAY COMPANY --	)	DOCKET NO.
DISCONTINUANCE OF SERVICE	)	AB-6 (SUB-NO. 488X)
EXEMPTION -- IN FILLMORE	)	
COUNTY, NE	)	

**JOINT PETITION FOR EXEMPTION**

BNSF RAILWAY COMPANY  
2650 Lou Menk Drive  
P.O. Box 961039  
Fort Worth, TX 76161-0039

ABE FAIRMONT, LLC  
8000 Norman Center Drive  
Suite 610  
Bloomington, MN 55437

*Petitioners*

KARL MORELL  
Of Counsel  
BALL JANIK LLP  
Suite 225  
655 Fifteenth Street  
Washington, DC 20005  
(202) 638-3307

THOMAS F. McFARLAND  
THOMAS F. McFARLAND, P.C.  
208 South LaSalle Street, Suite 1890  
Chicago, IL 60604-1112  
(312) 236-0204  
(312) 201-9695 (fax)  
mcfarland@aol.com

*Attorney for BNSF Railway Company*

*Attorney for ABE Fairmont, LLC*

DATE FILED: July 7, 2014

BEFORE THE  
SURFACE TRANSPORTATION BOARD

ABE FAIRMONT, LLC --	)	DOCKET NO.
ABANDONMENT EXEMPTION -- IN	)	AB-1106X
FILLMORE COUNTY, NE	)	
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BNSF RAILWAY COMPANY --	)	DOCKET NO.
DISCONTINUANCE OF SERVICE	)	AB-6 (SUB-NO. 488X)
EXEMPTION-- IN FILLMORE COUNTY,	)	
NE	)	

**JOINT PETITION FOR EXEMPTION**

**RELIEF SOUGHT**

Pursuant to 49 U.S.C. § 10502 and 49 C.F.R. § 1152.60 *et seq.*, ABE FAIRMONT, LLC (“ABE”) hereby petitions for an exemption from 49 U.S.C. § 10903 for its abandonment of a rail line (the “Line”) between Milepost 0.93 near the east-west main line of BNSF Railway Company (“BNSF”) at Fairmont, NE, and Milepost 3.70 at the north property line of Fillmore County Road H near Fairmont, NE, a distance of approximately 2.77 miles.<sup>1</sup> The Line is located within Fillmore County, NE.

Similarly, pursuant to 49 U.S.C. § 10502 and 49 C.F.R. § 1152.60 *et seq.*, BNSF hereby petitions for an exemption from 49 U.S.C. § 10903 to discontinue its overlapping trackage rights operations over the northern portion of the Line (the “Northern Segment”) between Milepost 0.93 at Fairmont and Milepost 1.70 near Fairmont, a distance of approximately 0.77 miles.

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<sup>1</sup> The Line is depicted on the map attached hereto as Appendix 1.

## **DESCRIPTION OF THE SUBJECT RAIL LINE**

The Line extends southerly from a point near the east-west main line of BNSF at Fairmont, NE (MP 0.93) to the end of track at the north property line of Fillmore County Road H near Fairmont, NE (MP 3.70), a distance of approximately 2.77 miles. The rail line is shaded in yellow on a map that is attached to this Joint Petition as Appendix 1. The Northern Segment for which BNSF petitions for a discontinuance exemption is the northern-most 0.77-mile segment of the rail line for which ABE petitions for an abandonment exemption.

## **VERIFICATION**

Attached to this Joint Petition as Appendix 2 is the verification of Richard Peterson, Chief Executive Officer of ABE, attesting to Joint Petitioners' compliance with Board regulations for Petitions for Exemption of abandonment and discontinuance, including service of this Petition on persons identified in 49 C.F.R. § 1152.60(d), and to the truth of the factual allegations in the Joint Petition.

## **OVERVIEW**

The objective of these proceedings is neither to remove the track that comprises the Line nor to preclude BNSF from having access to the track to continue to provide service to the two shippers who use the Line. Rather, the purpose is to enable all 2.77 miles of track south of BNSF's main line at Fairmont, NE, to be legally reclassified from a Board-regulated line of railroad to private, shipper-owned industry track. Such a legal status change has been requested by the Line's largest shipper, Flint Hill Resources Fairmont, LLC ("FHR-Fairmont"), who intends to purchase the track in order to facilitate more efficient and cost effective industrial switching operations over the Line in a post-abandonment/discontinuance environment.

Despite the legal “abandonment” of ABE’s and BNSF’s common carrier obligations on the Line (including termination of BNSF’s common carrier trackage rights operations over the Northern Segment), BNSF would retain the contractual right to operate over designated portions of the Line pursuant to an Industry Track Agreement (“ITA”) between BNSF and FHR-Fairmont. This ITA would allow BNSF to serve FHR-Fairmont, the sole shipper actually on the Line. Pursuant to the ITA, BNSF would also have the right to operate over the FHR-Fairmont private track to reach a rail spur owned by The Andersons, Inc., d.b.a. O’Malley Grain Company (“Andersons”). Andersons own a grain loading facility and a private spur line which currently connects to the ABE Line. BNSF currently operates over the Northern Segment to reach the Anderson spur. The BNSF/FHR-Fairmont ITA would allow BNSF to continue to provide rail service to the Andersons and transport Anderson traffic over the Line.

In exchange for contractual access rights pursuant to the aforementioned ITA, ABE, FHR-Fairmont, and BNSF have agreed to the proposed abandonment and reclassification of the track, as well as the discontinuance of BNSF’s trackage rights. In addition, ABE, FHR-Fairmont, and BNSF are informed and have reason to believe that Andersons is not opposed to the reclassification of the Line. Indeed, BNSF and FHR-Fairmont have been in full communication and negotiation regarding BNSF’s continued right to operate over the Line, pursuant to the ITA, in order to continue to serve both the Andersons and FHR-Fairmont. Andersons has not objected to the proposal. Nonetheless, ABE and BNSF have served a copy of this Joint Petition on Andersons to provide them with a full opportunity to participate in this proceeding.

## **BACKGROUND**

The 2.77-mile Line was owned and operated for many years by BNSF's predecessors as part of a 64.5-mile cluster of branch lines extending in a generally southerly direction from what is now BNSF's east-west-oriented main line at Fairmont, NE. In 1996, a BNSF predecessor sold that cluster of branch lines to Fillmore Western Railway Company ("FWRY"), except for the 0.77-mile Northern Segment (Milepost 0.93 to Milepost 1.7). *See Fillmore Western Railway Company – Acq. & Oper. Exemption – Burlington Northern Railroad Company*, STB Docket No. FD 33299 (STB served Dec. 12, 1996).

In 2001, FWRY obtained an exemption from the Board to abandon its rail line from the connection with BNSF at Milepost 1.7 near Fairmont, NE to the end of its track at Milepost 10.0 near Geneva, NE (the "Fairmont-Geneva Line"). *See Fillmore Western Railway Company – Aband. Exempt. – in Fillmore County, NE*, STB Docket No. AB-492 (Sub.-No. 2X), (STB served Jun. 27, 2001). Although FWRY secured the appropriate authority to abandon the Fairmont-Geneva Line, most of the subject trackage remained in place and was not immediately salvaged.

In 2006, ABE completed construction of an ethanol plant in Fairmont adjacent to a portion of the tracks that had comprised the Fairmont-Geneva Line. Believing the Fairmont-Geneva Line, at least the portion connecting its plant with the BNSF Northern Segment, was no longer a regulated line of railroad, ABE purchased approximately two miles of the Fairmont-Geneva Line from FWRY between the point of connection to BNSF at Milepost 1.7 and the north property line of Fillmore County Road H at approximately Milepost 3.7 (the "Southern Segment") on the basis that such track was private industrial track.<sup>2</sup> As such, ABE could use the

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<sup>2</sup> Joint Petitioners understand that FWRY removed the track materials from the south end of the Southern Segment to the balance of the Fairmont-Geneva line south of the Southern Segment. Joint Petitioners also understand that FWRY no longer operates any rail lines.

Southern Segment for what it believed were private switching purposes on private industry track not subject to Board jurisdiction. At the same time, ABE entered into a series of agreements with BNSF, including a lease and an industry track agreement, one of which contained an option to purchase the Northern Segment at end of that term, for both BNSF's and ABE's use of the Northern and Southern Segments. These agreements allowed ABE to use the Line for private industry track operations and for interchanging its traffic to BNSF. BNSF continued to serve the Anderson spur via the Northern Segment.

Roughly five years later, when ABE sought to sell its ethanol plant to FHR-Fairmont, ABE and FHR-Fairmont became aware, during due diligence, that FWRV, despite having secured the appropriate abandonment authority, had failed to provide timely notice of abandonment consummation to the Board for the Fairmont-Geneva rail line, or to seek any extension of the original consummation notice deadline.<sup>3</sup> FWRV's common carrier obligation on the Southern Segment was thus never extinguished. Accordingly, ABE unknowingly had acquired a portion of FWRV's legally "active" Board-regulated line of railroad without the appropriate STB authority and contrary to its view that it had acquired private track. To remedy this good faith mistake, ABE needed to obtain post-transaction Board authority to acquire the former FWRV line.

As it was preparing to obtain Board authority for its previously acquired Southern Segment, ABE determined to exercise its purchase option to acquire the Northern Segment from BNSF. Because the Northern Segment was still an active line of railroad subject to the Board's

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<sup>3</sup> 49 C.F.R. § 1152.29(e)(2) provides that in order to exercise abandonment authority, a notice of consummation of an authorized rail abandonment must be filed with the Board within one year after the service date of the decision that authorized or exempted the abandonment. That regulation provides that, in the absence of such timely notice, the railroad's abandonment authority lapses, and the rail line remains subject to Board jurisdiction. FWRV failed to provide the requisite notice.

jurisdiction, ABE either had to have BNSF abandon the line and then acquire it as private track, or ABE could purchase the line as regulated track subject to the Board's jurisdictional approval. As it was now clear that the Southern Segment also was an active line of railroad, ABE chose to seek STB authority to acquire both the Northern Segment from BNSF as an active line of railroad and to bring itself into legal compliance by obtaining Board authority to own and operate the Southern Segment. ABE obtained the requisite Board authority for the Southern and Northern Segments, respectively, in *ABE Fairmont, LLC -- Acq. & Oper. Exempt. -- Fillmore Western Railway Company*, STB Docket No. FD 35673 (STB served Sept. 21, 2012), and *ABE Fairmont, LLC -- Acq. & Oper. Exempt. -- BNSF Railway Company*, STB Docket No. FD 35683 (STB served Oct. 31, 2012 and Jul. 19, 2013). As the record in the FD 35683 proceeding reflects, BNSF retained trackage rights over the Northern Segment in order to provide rail service to the spur connecting Andersons' facility to the Northern Segment. As of this filing, ABE owns both the Northern and Southern Segments and BNSF serves the Anderson's via its retained trackage rights.

FHR-Fairmont, which now owns the former ABE ethanol plant, has no desire to own or operate a common carrier line of railroad. Like ABE thought it was doing those many years ago, FHR-Fairmont desires to own and operate the Line as private track and undertake its own private switching operations over the Line, and to exchange cars with BNSF on this trackage pursuant to an industry track agreement. However, because ABE continues to own both the Northern and Southern Segments as a regulated line of railroad, FHR-Fairmont cannot acquire the Line as private track and conduct private switching operations until such time as ABE obtains abandonment authority to remove the common carrier obligation on the Line and BNSF obtains discontinuance authority for its trackage rights operations. Assuming this Joint Petition is

granted, ABE will convey both segments to FHR-Fairmont as private industry track, thus permitting FHR-Fairmont to avoid the regulatory processes associated with the acquisition of an active, STB-regulated line of railroad. To ensure continued rail service to the Andersons, BNSF and FHR-Fairmont have entered into a private agreement allowing BNSF to operate over what will become FHR-Fairmont's private track in order to serve both FHR-Fairmont and the Andersons.

To effectuate ABE's, and now FHR-Fairmont's plans for the subject trackage, while preserving the Andersons' access to BNSF, this Joint Petition for Exemption seeks both abandonment and discontinuance authority, although the Line will not be salvaged but will merely be converted to private track. Specifically, if this Joint Petition for Exemption is granted:

1. ABE would timely notify the Board of its consummation of abandonment and BNSF would consummate its discontinuance authority;
2. The Northern and Southern Segments would be reclassified as private industry track in keeping with FHR-Fairmont's purposes;
3. ABE would convey the Northern and Southern Segments to FHR-Fairmont for purposes of FHR-Fairmont's industrial switching operations, subject to BNSF's contractual right of access over the Northern Segment to continue to serve Andersons;
4. BNSF would operate over the reclassified Northern Segment pursuant to an agreement between BNSF and FHR-Fairmont.

As established above, no shipper will lose rail service as a result of the proposed abandonment and discontinuance. FHR-Fairmont, the only shipper on the Line and the substantial majority shipper of all traffic over the Line, is strongly in favor of the proposed abandonment and reclassification of track. ABE has been informed and believes that Andersons is likewise not opposed to this arrangement either. ABE, FHR-Fairmont, BNSF, and Andersons have been in communication throughout this process. FHR-Fairmont and BNSF have reached an agreement that preserves Andersons' access to BNSF rail service via the Northern Segment.

Nonetheless, to ensure that the Andersons have full notice of this filing and an opportunity to comment, a copy of this Joint Petition has been served on them.

## ARGUMENT

### THE JOINT PETITION FOR EXEMPTION SHOULD BE GRANTED

The Joint Petitioners are aware that ABE's abandonment petition follows relatively closely after its acquisition of regulatory authority to acquire both the Northern and Southern Segments. While the timing may seem unusual on its surface, it is not unprecedented, and the underlying circumstances and objectives behind the current effort do not run counter to Board policy. The Joint Petitioners recognize that, as a general rule, the Board does not welcome the filing of an abandonment petition so soon after the abandoning entity has acquired a rail line,<sup>4</sup> but here there several factors justifying favorable action on the Joint Petition. Those factors are as follows:

- But for FWRV's inexplicable failure to file an abandonment consummation notice in 2001 or 2002 for the Fairmont-Geneva Line, the Southern Segment, which constitutes the majority of the Line that is the subject of this Joint Petition, would already exist as ABE-owned private industry track beyond the scope of the Board's jurisdiction.
- Although not common, there is precedent for the Board's acceptance of an abandonment petition shortly after the subject line has been the subject of an STB-authorized transfer, particularly where the circumstances show that the Board's regulatory processes are not abused thereby.<sup>5</sup>

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<sup>4</sup> See The Land Conservancy of Seattle and King County – Acquis. and Operation Exemption – The Burlington N. & Santa Fe Ry., 2 S.T.B. 673 (1997) (revoking an acquisition and operation exemption where the party acquiring a rail line had done so not to conduct rail operations but to immediately abandon and railbank it), reconsideration denied, FD 33389 (STB served May 13, 1998). See also, Track Tech, Inc. – Abandonment Exemption In Adair and Union Counties, IA, et al., 4 S.T.B. 427, 431 (“when an acquiring noncarrier initiates abandonment proceedings within days after consummating the acquisition of the line, *and there are no extenuating circumstances*, our processes are being abused”) (emphasis added).

<sup>5</sup> Almono LP – Acquisition and Operation Exemption – Line of Monongahela Connecting Railroad Company, STB Docket No. FD 34250, slip op. at fn. 2 (STB served Oct. 2, 2002) (“if Almono elects to file for abandonment authority [so soon after acquiring the line], it must submit evidence showing that abandonment . . . is warranted under the Board's statutory authority and

- The objective behind the Joint Petition is to facilitate the re-classification of the Line from an STB-regulated line of railroad to private industry track – a plan of action that the Board has facilitated in other abandonment proceedings.<sup>6</sup>
- No current user of the Line will lose rail service as a result of the STB’s approval of the Joint Petition. Moreover, although BNSF will relinquish its common carrier trackage rights, BNSF nevertheless will continue to operate over portions of the Line under contractual arrangements that will enable FHR-Fairmont and Andersons to retain access to BNSF line-haul service.
- The undertaking here will not act as a subterfuge to avoid labor protection conditions. BNSF and ABE acknowledge that the abandonment and discontinuance of trackage rights will be subject to the usual protections for employees.
- Favorable action on the Joint Petition will promote the use of rail transportation, and will make the provision of rail service more efficient and economical for FHR-Fairmont, and should not affect service to Andersons.

Abandonment of a rail line requires advance Board approval under 49 U.S.C. § 10903.

However, the Board is directed to exempt a proposed abandonment from the formal requirements of that statute if it finds under 49 U.S.C. § 10502(a) that: (1) application of section 10903 is not required to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either:(a) the proposed abandonment is of limited scope, or (b) regulation is not necessary to protect shippers from abuse of market power.

The legislative history of section 10502 reveals a clear Congressional intent that the Board should liberally use its exemption authority to free certain transactions from the administrative and financial costs associated with continued regulation. In enacting the Staggers

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rules, and must, under these circumstances, demonstrate . . . that the interests of the shipper here will be protected”).

<sup>6</sup> See, e.g., CSX Transportation, Inc. – Abandonment Exemption – in Washington County, Md., Docket No. AB-55 (Sub No. 727X) (STB served Aug. 27, 2013); Wisconsin Central Ltd. – Abandonment Exemption – in Winnebago County, Wis., Docket No. AB 303 (Sub-No. 41X) (STB served Aug. 22, 2013); BNSF Railway Company – Abandonment Exemption – In Page and Fremont Counties, Iowa, STB Docket No. AB-6 (Sub-No. 479X) (STB served Jun. 8, 2012).

Rail Act of 1980, Pub. L. No. 96-488, 94 Stat. 1895, Congress encouraged the Board's predecessor agency 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, 96 the 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 provision 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**

Application of 49 U.S.C. § 10903 here is not necessary to carry out the Rail Transportation Policy (“RTP”) of 49 U.S.C. § 10101. The requested exemptions would, among other things, minimize the expenses associated with the joint preparation and filing of a formal application seeking abandonment and discontinuance of service, expedite regulatory decisions, and reduce regulatory barriers to exit in furtherance of RTP objectives set forth at 49 U.S.C. §10101 (2), (7), and (15). Moreover, granting the requested exemptions will promote a safe and efficient rail transportation system, foster sound economic conditions in transportation, and encourage efficient management of railroads in keeping with the RTP objectives of 49 U.S.C.

§10101 (3), (5) and (9), all by permitting the re-classification of a rail line to better meet the needs of shippers.

The end result of the requested exemptions will be the re-deployment of rail track as private industry track to deliver more economical, responsive, and efficient rail service to shippers while avoiding unnecessary Board oversight in the future, all of which is, as discussed above, consistent with the RTP. In fact, none of the RTP objectives would be thwarted by a grant of the Joint Petition. For example, competition and the continuation of a sound rail transportation system are not affected since the public will not be deprived of rail service.

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

The proposed transaction is of limited scope, involving a branch line that is only 2.77 miles in length, most of which had previously been authorized for abandonment.

**C. The Transaction Will Not Result In An Abuse Of Market Power**

As has been explained throughout, the largest shipper on the Line, FHR-Fairmont, fully supports the proposed transactions and has provided a letter in support of this Joint Petition (attached as Appendix 3). Likewise, because FHR-Fairmont and BNSF have reached a private agreement which preserves the Andersons' full access to BNSF line-haul service, ABE understands that the Andersons do not object to the proposed abandonment and discontinuance or the re-classification of the Line to private industry track. A copy of this petition has been served on the Andersons to provide them with a full opportunity to comment. As result of the various private agreements that have been entered into among the parties, the only shippers served via the Line will not lose access to BNSF rail service as a result of this transaction. In addition, the proposed action will have no impact on intermodal or intramodal transportation competition.

The standards of 49 U.S.C. § 10502(a) are thus shown to be satisfied. Accordingly, requested exemptions for the proposed abandonment and discontinuance of trackage rights should be granted.

### **ENVIRONMENTAL AND HISTORIC CONSIDERATION**

Attached to this Joint Petition as Appendix 4 are copies of a Draft Environmental and Historic Report (DEHR), dated October 23, 2012, and a Supplement to DEHR, dated September 26, 2013. Both the DEHR and the Supplement to DEHR have been sent to all agencies entitled by Board regulations to receive the DEHR.

In the DEHR, it was stated that a Petition for Exemption of abandonment would be filed in November, 2012. However, the filing of that Petition was materially delayed as a result of complications regarding ABE's contractual and property interests in the rail line. Those matters have been resolved.

In view of that material delay, a Supplement to DEHR was sent to all of the agencies in September, 2013. That Supplement correctly identified the proposed exemption for abandonment and for discontinuance of BNSF trackage rights. All of the pertinent agencies were invited to comment on the Supplement to DEHR.

The DEHR and the Supplement to DEHR satisfy the obligations of the Joint Petitioners in regard to environmental and historic matters because:

- (1) there will be minimal or no environmental or historic effect as a result of the proposed abandonment and discontinuance because no trackage or bridges in the Rail Line will be removed in the event of issuance of an exemption (the rail line will continue in place as private industry track);

- (2) No shipper would lose rail service as a result of the proposed abandonment and discontinuance; and
- (3) All agencies entitled to receive the DEHR have received the DEHR and the Supplement to DEHR and have had an opportunity to comment on both of those documents (comments appear in Appendix 5 attached to this Joint Petition).

#### **COMMENTS ON DRAFT ENVIRONMENTAL AND HISTORIC REPORT**

Attached to this Joint Petition as Appendix 5 are copies of environmental and historic comments on the DEHR and Supplement to DEHR submitted by agencies to whom those documents were sent. Most notable in that respect is the Comment in behalf of the Review and Compliance Coordinator of the Nebraska State Historical Society, dated October 28, 2013, stating that “there will be no historic properties affected by the project as proposed.”

#### **EMPLOYEE PROTECTION**

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

#### **DRAFT FEDERAL REGISTER NOTICE**

The draft Federal Register notice is attached to this Petition as Appendix 6.

#### **NEWSPAPER NOTICE**

Joint Petitioners hereby certify that a notice of the filing of this Petition was published in a newspaper of general circulation in Fillmore County, Nebraska in accordance with 49 C.F.R. §1105.12, a copy of which is attached as Appendix 7.

**NO FEDERALLY GRANTED RIGHT-OF-WAY**

In accordance with 49 C.F.R. § 1152.60(d), Joint Petitioners hereby certify that based on information in their possession, the subject rail line does not contain federally-granted right-of-way. Any documentation in Joint Petitioners' possession will be made available promptly to those requesting it.

**CONCLUSION AND REQUESTED RELIEF**

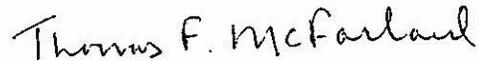
WHEREFORE, the Board should grant the requested exemptions from 49 U.S.C. §10903 for abandonment and discontinuance of rail service over the subject rail line.

Respectfully submitted,

BNSF RAILWAY COMPANY  
2650 Lou Menk Drive  
P.O. Box 961039  
Fort Worth, TX 76161-0039

ABE FAIRMONT, LLC  
8000 Norman Center Drive  
Suite 610  
Bloomington, MN 55437

*Petitioners*



KARL MORELL  
Of Counsel  
BALL JANIK LLP  
Suite 225  
655 Fifteenth Street  
Washington, DC 20005  
(202) 638-3307

THOMAS F. McFARLAND  
THOMAS F. McFARLAND, P.C.  
208 South LaSalle Street, Suite 1890  
Chicago, IL 60604-1112  
(312) 236-0204  
(312) 201-9695 (fax)  
mcfarland@aol.com

*Attorney for BNSF Railway Company*

*Attorney for ABE Fairmont, LLC*

DATE FILED: July 7, 2014

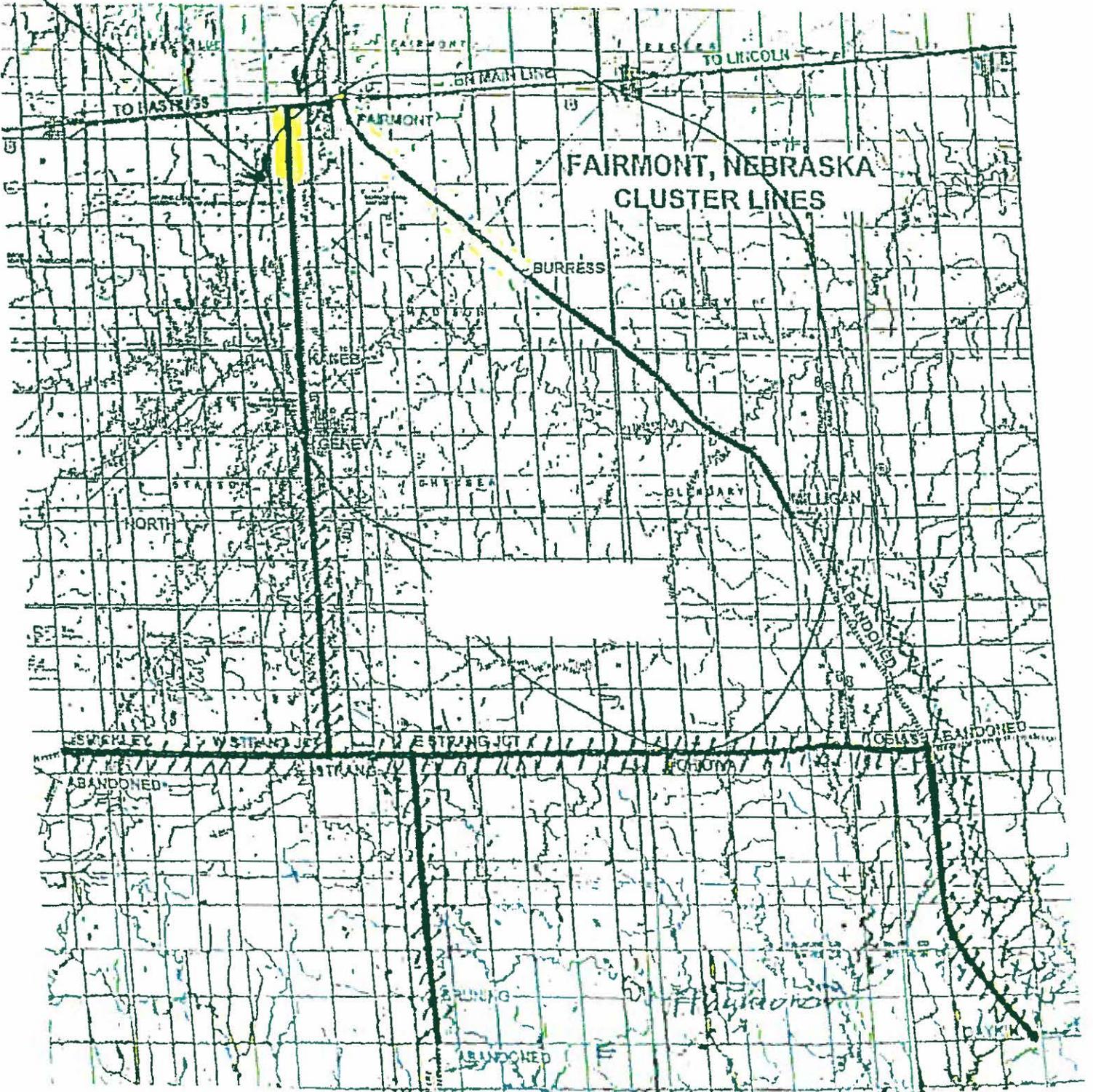
Joint Petition For Exemption

Appendix 1

(Map)

COUNTY ROAD H

BNSF  
MAIN LINE



Joint Petition For Exemption

Appendix 2

(Verification)

VERIFICATION

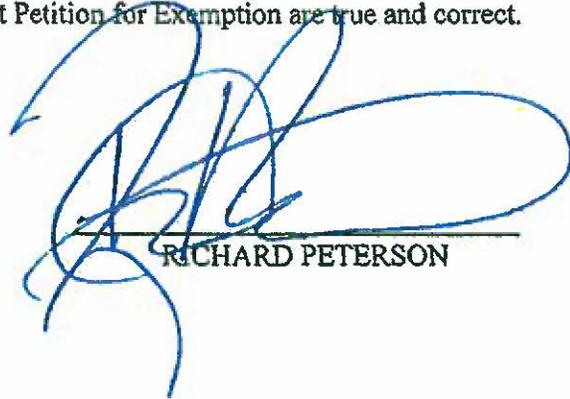
STATE OF MINNESOTA        )  
  ) SS:  
CITY OF BLOOMINGTON        )

RICHARD PETERSON, being duly sworn, states that:

1. He is President of ABE Fairmont, LLC (ABE), one of the rail carriers having filed a Petition for Exemption under 49 C.F.R. § 1152.60 in this proceeding; and
2. In accordance with 49 C.F.R. § 1150.60(d), a copy of this Petition has been sent to the Nebraska Public Service Commission; the United States Department of Defense, Military Traffic Management Command, Railroads for National Defense Program; the National Park Service, Recreation Resources Assistance Division; and the United States Department of Agriculture, Chief of the Forest Service, naming ABE and BNSF as Joint Petitioners, describing the subject rail line, including the USPS Zip Codes affected, stating that in the near future a Petition for Exemption is to be filed with the Board; and including a statement that to Joint Petitioner's knowledge the subject rail line does not contain federally-granted right-of-way; and
3. In accordance with 49 C.F.R. § 1105.7(b), Joint Petitioners have timely sent a copy of their Draft Environmental and Historic Report to the Nebraska Public Service Commission; the Nebraska Environmental Protection Agency; the Board of Commissioners of the City of Fairmont, NE, the County of Fillmore, NE; the Regional Office of the United States Environmental Protection Agency; the United States Fish & Wildlife Service; the United

States Army Corps of Engineers; the National Park Service; the United States Natural Resources Conservation Service (formerly the United States Soil Conservation Service); the National Geodetic Survey; and the Nebraska Historical Preservation Office; and

4. All other factual allegations in the Joint Petition for Exemption are true and correct.



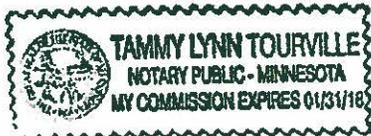
RICHARD PETERSON

SUBSCRIBED and SWORN to  
before me in and for the State and  
County above named, this 4 day  
of Feb, 2014.



Notary Public

My Commission expires: 1/31/18



Joint Petition For Exemption

Appendix 3

(FHR support letter)



July 1, 2014

Cynthia T. Brown, Chief  
Section of Administration, Office of Proceedings  
Surface Transportation Board  
395 E Street, SW  
Washington, D.C. 20423-0001

Re: *ABE Fairmont, LLC – Abandonment Exemption – In Fillmore County, NE,*  
*STB Docket No. AB-1106X; and*  
*BNSF Railway Company – Discontinuance of Trackage Rights Exemption – In*  
*Fillmore County, NE, STB Docket No. AB-6 (Sub-No. 488X).*

Dear Ms. Brown:

I am writing on behalf of Flint Hills Resources Fairmont, LLC (“FHR-Fairmont”) to request favorable Board action on the above-referenced abandonment and discontinuance joint petition. FHR-Fairmont is one of two shippers served via the railroad line that ABE Fairmont, LLC (“ABE”) seeks to abandon. FHR-Fairmont supports the exemptions that ABE and BNSF Railway Company (“BNSF”) seek because FHR-Fairmont desires to acquire and operate the track as private industrial track. In keeping with this plan, FHR-Fairmont has negotiated an industry track agreement with BNSF that will preserve FHR-Fairmont’s access to BNSF service once the abandonment and discontinuance exemptions are granted.

Through the subject joint petition, ABE seeks to reclassify the subject track from a Board-regulated line of railroad to private industry track beyond the scope of this agency’s jurisdiction. There is no intent to salvage any of the subject trackage. FHR-Fairmont fully supports ABE’s abandonment request and BNSF’s related request to discontinue its common carrier obligation on the line, because such steps are fully consistent with FHR-Fairmont’s interests. Reclassification of the subject rail line into a private industry track will permit FHR-Fairmont to acquire and operate the subject trackage as private industrial switching and storage track supporting its operations at the Fairmont ethanol facility. FHR-Fairmont has no desire to own or operate common carrier rail track, and the arrangement will give FHR-Fairmont much more flexibility in conducting switching as part of its plant operations. In fact, but for the oversight of a previous short line owner of the line who had previously sought and obtained abandonment authority but never gave formal notice of abandonment consummation in keeping with Board requirements, FHR-Fairmont would already own the subject track as private track. Granting ABE’s and BNSF’s joint petition will allow FHR-Fairmont and ABE to finally resolve track-related jurisdictional issues and allow the parties to implement the intended plan.

For the reasons set forth above, FHR-Fairmont urges swift and favorable action on the above-referenced abandonment and discontinuance exemption requests.

Sincerely,

Mark Kruse  
Director – Renewables

Joint Petition For Exemption

Appendix 4

(DEHR)

LAW OFFICE  
**THOMAS F. MCFARLAND, P.C.**  
208 SOUTH LASALLE STREET - SUITE 1890  
CHICAGO, ILLINOIS 60604-1112  
TELEPHONE (312) 236-0204  
FAX (312) 201-9695  
*mcfarland@aol.com*

THOMAS F. MCFARLAND

September 26, 2013

**State Clearinghouse**

Nebraska Public Service Commission  
P.O. Box 94927  
Lincoln, NE 68509-4927

**State Environmental Protection Agency**

Nebraska Dept. of Environmental Quality  
P.O. Box 98922  
Lincoln, NE 68509-8922

**County Commissioners:**

Fillmore County Commissioners  
Ray Capek, Chairman  
2209 Road Q  
Milligan, NE 68406

**City Planner:**

City of Fairmont, Nebraska  
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Fairmont, NE 68354-0156

**Environmental Protection Agency**

**(regional office):**

Environmental Protection Agency - Region 7  
901 N. 5<sup>th</sup> Street  
Kansas City, KS 66101

**U.S. Fish & Wildlife Service:**

U.S. Fish & Wildlife Service - Region 6  
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P.O. Box 25486  
Denver, CO 80225

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U.S. Army Corps of Engineers  
Omaha District  
1616 Capitol Ave., Ste. 9000  
Omaha, NE 68102

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Craig Derickson  
100 Centennial Mall N, Suite 152  
Lincoln, NE 68508-3866

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Planning and Compliance Office  
National Park Service - Midwest Region  
601 Riverfront Drive  
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**Nebraska Historical Preservation Office:**

Nebraska State Historical Society  
P.O. Box 82554  
Lincoln, NE 68501-2554

Re: STB Docket No. AB-1106X, *ABE Fairmont, LLC -- Abandonment Exemption -- in Fillmore County, NE*

STB Docket No. AB-6 (Sub.-No. 488X), *BNSF Railway Company -- Discontinuance of Rail Service -- in Fillmore County, NE*

THOMAS F. MCFARLAND

September 26, 2013

Page 2

Dear Agency or Governmental Representative:

Hereby transmitted is a Supplement to Draft Environmental and Historic Report prepared by ABE Fairmont, LLC and BNSF Railway Company in conjunction with the captioned matters. Your comments are solicited in regard to content of the Report that is within your jurisdiction.

Very truly yours,

A handwritten signature in black ink that reads "Tom McFarland". The signature is written in a cursive style with a large, prominent "T" and "M".

Thomas F. McFarland

*One of the Attorneys for Joint Petitioners*

*TMcF:kl:enc:\1562-BNtrDEHR2*

cc: Ms. Victoria Rutson, STB, Environmental Section, *by e-mail*  
Mr. Grant Johanson, *by e-mail*  
Mr. Richard Peterson, *by e-mail*

## **SUPPLEMENT TO DRAFT ENVIRONMENTAL AND HISTORIC REPORT**

A Draft Environmental and Historic Report (Draft Report) dated October 23, 2012 in Docket No. AB-1106X was sent to all agencies entitled by Board regulation to receive the Draft Report.

It was estimated by ABE Fairmont, LLC (ABE), the Petitioner in Docket No. AB-1106X, that a Petition for Exemption of the subject rail line would be filed in November, 2012.

However, such filing has been materially delayed as a result of complications regarding ABE's contractual and property interests in the subject rail line. Those matters have now been resolved.

In view of that passage of that time and in light of minor changes in the authority sought in this Joint Petition for Exemption, ABE and BNSF Railway Company (BNSF), the Petitioner in Docket No. AB-6 (Sub-No. 488X), are sending this Supplement to the Draft Report to all agencies that initially received the Draft Report.

### **Proposed Action and Alternatives**

The proposed action in Docket No. AB-1106X is a petition for exemption for abandonment by ABE of its rail line between Milepost 0.93 near BNSF's east-west main line at Fairmont and Milepost 3.70 at the north property line of Fillmore County Road H near Fairmont, a distance of 2.77 miles at or near Fairmont, Fillmore County, Nebraska (the Subject Rail Line). If such an exemption were to be granted, the trackage in the Subject Rail Line would not be removed; such trackage would be reclassified from Board-regulated track to private industry track. No shipper would lose existing rail service as a result of the proposed abandonment. Inasmuch as the trackage in the Subject Rail Line would not be removed, there would be minimal or no environmental or historic effect as a result of the proposed abandonment.

The proposed action in Docket No. AB-6 (Sub-No. 488X) is a petition for exemption for discontinuance of rail service by BNSF provided by means of trackage rights over ABE between Milepost 0.93 as identified above and Milepost 1.7, a distance of approximately 0.77 miles at or near Fairmont, Fillmore County, Nebraska. That segment of rail line is at the north end of the rail line proposed for abandonment by ABE. There would be no environmental or historic effect of the proposed discontinuance of rail service because no trackage would be removed.

#### **Remainder of Draft Report**

The remainder of the Draft Report is unaffected by the passage of time. These responses in the Draft Report are adopted in this Supplement.



The proposed action is abandonment as common carrier trackage of a rail line that extends between a point of connection to a main rail line of BNSF Railway Company (BNSF) at BNSF Milepost No. 114.73 and the north property line of Fillmore County Road H, a distance of approximately three miles at or near Fairmont, Fillmore county, Nebraska (the Rail Line). A map of the Rail Line is attached to this Draft Report as Appendix 1.

The trackage in the Rail Line would not be removed if the STB were to authorize the proposed abandonment. Instead, the trackage would be kept in place as private industrial track over which BNSF would operate pursuant to an Industrial Track Agreement with ABE. Thus, whereas BNSF operates over the trackage in the Rail Line as a common carrier at present, in the event of abandonment BNSF would operate over the trackage pursuant to a contract. The fact that the trackage in the Rail Line would not be removed in the event of abandonment substantially lessens the probable environmental effect of the proposed abandonment.

The commodities transported over the Rail Line are ethanol and dried distillers grain for ABE and grain for O'Malley Grain, Inc., a subsidiary of The Andersons', Inc.

As noted, there would be no disposition of the Rail Line in the event of authorization of the proposed abandonment.

Authorization of the proposed abandonment would be unlikely to result in changes in current rail operations or track maintenance practices.

There is no reasonable alternative to the proposed abandonment because both ABE and BNSF desire that the Rail Line be operated as private industrial track rather than as common carrier track.

*(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.*

The proposed abandonment will have no effect on regional or local transportation systems and patterns inasmuch as approximately the same volume of traffic will move over the Rail Line after abandonment as before the abandonment, albeit as traffic over a private industrial track rather than a common carrier track. The proposed abandonment will not result in diversion of rail traffic to other modes of transportation.

*(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.*

The proposed abandonment appears to be consistent with existing land use plans in the local area. ABE is consulting by letter with land use planning agencies for Fillmore County and the Town of Fairmont. (See Appendix 2).

*(3)(ii) Based on consultation with the U.S. Soil Conservation Service, state the effect of the proposed action on any prime agricultural land.*

The proposed abandonment would have no effect on prime agricultural land in the local area. ABE is consulting by letter with the Natural Resources Conservation Service on that subject. See Appendix 2.

*(3)(iii) If the action affects land or water uses within a designated coastal zone, include the coastal zone information required by §1105.9.*

The proposed abandonment does not affect land or water uses in a designated coastal area.

*(3)(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. 10906 and explain why.*

In ABE's view, the right-of-way of the Rail Line is not suitable for alternative public use because there are adequate public highways in the area of the Rail Line and the Rail Line is not particularly scenic as to be desirable for use as a recreational trail.

*(4) Energy. (I) Describe the effect of the proposed action on transportation of energy resources.*

The proposed abandonment will have no effect on transportation of energy resources.

*(4)(ii) Describe the effect of the proposed action on recyclable commodities.*

The proposed abandonment will have no effect on recyclable commodities.

*(4)(iii) State whether the proposed action will result in an increase or decrease in overall energy efficiency and explain why.*

The proposed abandonment will not result in a change in overall energy efficiency.

*(4)(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. To minimize the production of repetitive data, the information on overall energy efficiency in §1105.7(e)(4)(iii) need not be supplied if the more detailed information in §1105.7(e)(4)(iv) is required.*

Not applicable as no such diversions will occur.

*(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 10502) to construct a new line or reinstitute service over a previously abandoned line, only the eight train a day provision in subsection (5)(i)(A) will apply.*

Not applicable as no such increases will occur.

*(5)(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. 10502), or a case involving the reinstatement of service over a previously abandoned line, only the three train a day threshold in this item shall apply.*

Not applicable as no such increases will occur.

*(5)(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.*

Not applicable as no such transportation will occur.

*(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 as no such thresholds will be surpassed.

*(7) Safety. (i) Describe any effects of the proposed action on public health and safety (including vehicle delay time at railroad grade crossings).*

The proposed abandonment will have no effect on public safety.

*(7)(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.*

Not applicable as hazardous materials will not be transported.

*(7)(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.*

Not applicable as no such sites will be affected.

*(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.*

The proposed abandonment is unlikely to affect endangered or threatened species or areas designated as critical habitat. In accordance with this regulation, ABE is consulting by letter with the U.S. Fish and Wildlife Service. See Appendix 2.

*(8)(ii) State whether wildlife sanctuaries or refuges, National or State parks or forests will be affected, and describe any effects.*

Abandonment of the Rail Line would not affect wildlife sanctuaries or refuges, nor National or State Parks or Forests.

*(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.*

Abandonment of the Rail Line will be consistent with applicable Federal, State or local water quality standards. In accordance with this regulation, ABE is consulting by letter with local water quality officials. See Appendix 2.

*(9)(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.*

It is unlikely that the proposed abandonment would affect any designated wetlands or 100-year flood plains, thereby requiring a permit under Section 404 of the Clean Water Act. In accordance with this regulation, ABE is consulting by letter with the U.S. Army Corps of Engineers. See Appendix 2.

*(9)(iii) State whether permits under section 402 of the Clean Water Act (33 U.S.C. 1342) are required for the proposed action. (Applicants should contact the U.S. Environmental Protection Agency or the state environmental protection or equivalent agency if they are unsure whether such permits are required.)*

It is unlikely that proposed abandonment would require a permit under Section 402 of the Clean Water Act. In accordance with this regulation, ABE is consulting by letter with the U.S. Environmental Protection Agency. See Appendix 2.

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

There would be no adverse environmental impacts that would require mitigation.

## **II. DRAFT HISTORIC REPORT**

ABE hereby submits the following information required by 49 C.F.R. § 1105.8(d):

*(1) A U.S.G.S. topographic map (or an 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;*

The required topographic map is attached to this Report as Appendix 3.

*(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 of the Rail Line is generally 100 feet wide. The area surrounding the segment is generally rural.

*(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 immediately surrounding area;*

A photograph of the sole bridge on the segment is attached to this Report as Appendix 4.

*(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;*

Not known.

*(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 Rail Line was constructed in 1886 by a predecessor of BNSF. In 1996, a predecessor of BNSF conveyed the southern two miles of the Rail Line (2-mile segment) to

Fillmore Western Railway Company (FWRY). The BNSF predecessor retained ownership of the northern one mile segment of the Rail Line closest to the main line (1-mile segment).

In 2001, FWRY obtained an exemption from the STB that authorized abandonment of the 2-mile segment. However, FWRY failed to notify the STB that it consummated the authorized abandonment. Consequently, abandonment authority for the 2-mile segment lapsed.

In 2006, ABE acquired the 2-mile segment from FWRY under the mistaken belief that it was abandoned and could be operated as private industrial track. In the same year, ABE entered into a 5-year lease of the 1-mile segment with an option to purchase that segment at the conclusion of that lease following BNSF's abandonment of that segment.

As the lease of the 1-mile segment was nearing expiration, ABE learned from BNSF for the first time that abandonment authority for the 2-mile segment of the Rail Line had lapsed, with the result that ABE became an STB-regulated rail carrier upon its acquisition of that segment in 2006.

ABE owns an ethanol plant at or near Fairmont, NE adjacent to the 2-mile segment. ABE requires rail service at that plant, but desires that BNSF provide that rail service rather than ABE doing so. Accordingly, ABE has agreed with BNSF to take the following actions: (1) acquire belated STB authority for its acquisition and operation of the 2-mile segment; (2) acquire the 1-mile segment from BNSF and obtain STB authority for such acquisition and operation; (3) obtain STB authority for abandonment of both the 2-mile and 1-mile segment as regulated common carrier trackage; and (4) enter into an Industrial Track Agreement for BNSF's operation over the combined 2-mile and 1-mile segments owned by ABE as private industrial track.

This Draft Report is part of number (3) above.

*(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;*

None available.

*(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 CFR 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 Rail Line is not thought to meet the criteria for listing in the National Register of Historic Places. It is unlikely that there are archeological resources or previously unknown historic properties in the project area. In accordance with this regulation, ABE is consulting by letter with the Nebraska Historical Preservation Office. See Appendix 2.

*(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 wastes), and the surrounding terrain.*

ABE has no knowledge of any prior subsurface ground disturbance or fill, or environmental conditions that might affect the recovery of resources and the surrounding terrain.

Respectfully submitted,

ABE FAIRMONT, LLC  
1214 County Road G  
Fairmont, NE 68354

Applicant

*Thomas F. McFarland*

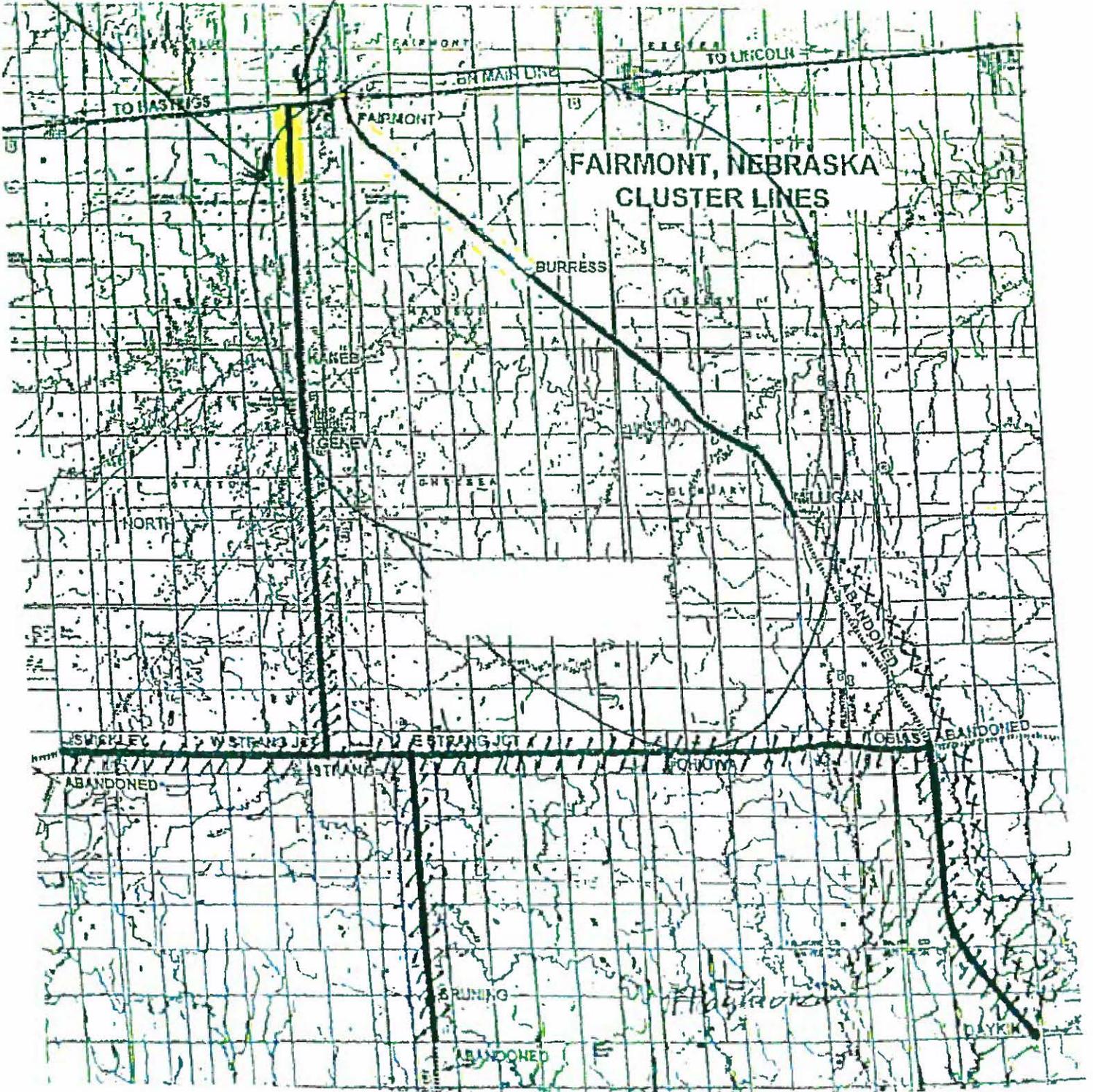
THOMAS F. McFARLAND  
THOMAS F. McFARLAND, P.C.  
208 South LaSalle Street, Suite 1890  
Chicago, IL 60604-1112  
(312) 236-0204  
(312) 201-9695 (fax)  
mcfarland@aol.com

*Attorney for Applicant*

Date Submitted: October 23, 2012

COUNTY ROAD H

BNSF  
MAIN LINE



LAW OFFICE  
**THOMAS F. MCFARLAND, P.C.**  
208 SOUTH LASALLE STREET - SUITE 1890  
CHICAGO, ILLINOIS 60604-1112  
TELEPHONE (312) 236-0204  
FAX (312) 201-9695  
*mcfarland@aol.com*

THOMAS F. MCFARLAND

October 17, 2012

State Clearinghouse

Nebraska Public Service Commission  
P.O. Box 94927  
Lincoln, NE 68509-4927

County Commissioners:

Fillmore County Commissioners  
Ray Capek, Chairman  
2209 Road Q  
Milligan, NE 68406

Environmental Protection Agency  
(regional office):

Environmental Protection Agency - Region 7  
901 N. 5<sup>th</sup> Street  
Kansas City, KS 66101

U.S. Army Corps of Engineers

U.S. Army Corps of Engineers  
Omaha District  
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National Geodetic Survey SSMC-3, #9292  
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Lincoln, NE 68501-2554

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City Planner:

City of Fairmont, Nebraska  
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Fairmont, NE 68354-0156

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Denver, CO 80225

Natural Resources Conservation Service:

Natural Resources Conservation Service  
USDA - Nebraska State Office  
Craig Derickson  
100 Centennial Mall N, Suite 152  
Lincoln, NE 68508-3866

National Park Service:

Planning and Compliance Office  
National Park Service - Midwest Region  
601 Riverfront Drive  
Omaha, NE 68102-4226

Re: STB Docket No. AB-1106X, *ABE Fairmont, LLC -- Abandonment Exemption -- in Fillmore County, NE*

THOMAS F. MCFARLAND

October 17, 2012

Page 2

Dear Agency or Governmental Representative:

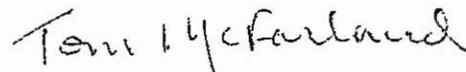
Please refer to my letter to you of September 19, 2012 in regard to the captioned matter, copy attached for ready reference.

The rail line proposed to be abandoned as common carrier track and to be reclassified and operated as private industrial track was identified in the first paragraph of that letter as an approximate 2-mile rail line between a point of connection to BNSF Railway Company at Milepost 1.7 and the north property line of Fillmore County Road H, at or near Fairmont, Fillmore County, Nebraska.

ABE Fairmont, LLC (ABE) now proposes to abandon as common carrier track an additional approximate one mile of rail line north of BNSF Milepost 1.7. Consequently, the approximate three miles of rail line now proposed for abandonment as common carrier track extends between a point of connection to a main line of BNSF Railway Company at BNSF Milepost 114.73 and the north property line of Fillmore County Road H, at or near Fairmont, Fillmore County, Nebraska.

The remainder of the September 19, 2012 letter is unchanged.

Very truly yours,



Thomas F. McFarland  
*Attorney for ABE Fairmont, LLC*

*TMcF:kl:wp8.0\1562-A\2\tr agencies 1*

cc: *(By e-mail)*  
G. Johanson  
T. Williamson  
R. Peterson  
K. O'Hara  
D. Gilchrist  
W. Mullins

COPY

LAW OFFICE  
**THOMAS F. MCFARLAND, P.C.**  
208 SOUTH LASALLE STREET - SUITE 1890  
CHICAGO, ILLINOIS 60604-1112  
TELEPHONE (312) 236-0204  
FAX (312) 201-9695  
*mcfarland@aol.com*

THOMAS F. MCFARLAND

September 19, 2012

**State Clearinghouse**

Nebraska Public Service Commission  
P.O. Box 94927  
Lincoln, NE 68509-4927

**State Environmental Protection Agency**

Nebraska Dept. of Environmental Quality  
P.O. Box 98922  
Lincoln, NE 68509-8922

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Fillmore County Commissioners  
Ray Capek, Chairman  
2209 Road Q  
Milligan, NE 68406

**City Planner:**

City of Fairmont, Nebraska  
P.O. Box 156  
Fairmont, NE 68354-0156

**Environmental Protection Agency**

**(regional office):**

Environmental Protection Agency - Region 7  
901 N. 5<sup>th</sup> Street  
Kansas City, KS 66101

**U.S. Fish & Wildlife Service:**

U.S. Fish & Wildlife Service - Region 6  
Denver Federal Center  
P.O. Box 25486  
Denver, CO 80225

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

U.S. Army Corps of Engineers  
Omaha District  
1616 Capitol Ave., Ste. 9000  
Omaha, NE 68102

**Natural Resources Conservation Service:**

Natural Resources Conservation Service  
USDA - Nebraska State Office  
Craig Derickson  
100 Centennial Mall N, Suite 152  
Lincoln, NE 68508-3866

**National Oceanic & Atmospheric Admin.:**

NGS Information Services, NOAA, N/NGS12  
National Geodetic Survey SSMC-3, #9292  
1315 East-West Highway  
Silver Spring, MD 20910

**National Park Service:**

Planning and Compliance Office  
National Park Service - Midwest Region  
601 Riverfront Drive  
Omaha, NE 68102-4226

**Nebraska Historical Preservation Office:**

Nebraska State Historical Society  
P.O. Box 82554  
Lincoln, NE 68501-2554

Re: STB Docket No. AB-1106X, *ABE Fairmont, LLC -- Abandonment Exemption -- in Fillmore County, NE*

September 19, 2012

Page 2

Dear Agency or Governmental Representative:

ABE Fairmont, LLC (ABE) is a common carrier by railroad whose address is 1214 County Road G, Fairmont, NE 68354. In the near future, ABE intends to file with the Surface Transportation Board (STB) a Petition for Exemption from 49 U.S.C. § 10903 for abandonment of its only rail line between a point of connection to BNSF Railway Company (BNSF) at BNSF Milepost 1.7 and the north property line of County Road H, a distance of approximately two miles at or near Fairmont, Fillmore County, Nebraska (the Rail Line). The Rail Line would not be removed if the abandonment were to be approved by the STB. Instead, the Rail Line would be reclassified from common carrier track to private industrial track, and would continue to be operated as at present. The Rail Line is shaded in yellow on a map that is attached to this letter as Appendix 1.

Before filing a Notice of Exemption for abandonment of the Rail Line, ABE is required to prepare and circulate to appropriate local government agencies a Draft Environmental and Historic Report that will be reviewed by the STB in conjunction with its determination of whether or not the proposed abandonment would have a significant adverse effect on the human environment or on historic resources. This letter is intended to consult with your agency in regard to the environmental and historic effects of the proposed abandonment.

Pursuant to STB regulations at 49 C.F.R. § 1105.7, this letter is to request your assistance in identifying potential environmental and historic effects of that proposed abandonment. ABE does not anticipate any adverse environmental or historic impacts; however, if you identify any such adverse impacts, please describe any action that could be taken to mitigate such adverse impacts. Please provide a written response to this letter as soon as possible so that your response can be included in a Draft Environmental and Historic Report that ABE will prepare, file with the STB, and serve on interested agencies.

COUNTY AND CITY PLANNING AGENCIES. Please state whether the proposed abandonment would be consistent with existing land-use plans. Describe any inconsistencies.

US SOIL CONSERVATION SERVICE. Please state the effect of the proposed abandonment on any prime agricultural land.

US FISH AND WILDLIFE SERVICE. Please state (1) whether the proposed abandonment is likely to adversely affect endangered or threatened species or areas designated as

September 19, 2012

Page 3

a critical habitat and, if so, please describe such effects; and (2) whether wildlife sanctuaries or refuges, National or State parks or forests will be affected and, if so, please describe such effects.

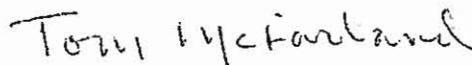
STATE WATER QUALITY OFFICIALS. Please state whether the proposed abandonment would be consistent with applicable Federal, State or Local water quality standards. Please describe any inconsistencies.

US AND STATE ENVIRONMENTAL PROTECTION AGENCIES (OR EQUIVALENT AGENCY). Please (1) identify any potential adverse environmental effects of the proposed abandonment on the surrounding area, and (2) identify the location of any known hazardous materials spills on the right-of-way of the Rail Line, and list the types of hazardous materials involved, and (3) state whether permits under Section 402 of the Clean Water Act (33 U.S.C. § 1342) are required for the proposed abandonment.

STATE HISTORICAL PRESERVATION OFFICE. Please identify any bridges on the Rail Line that are historically significant. The Rail Line was acquired by Chicago, Burlington & Quincy Railroad Company (CBQ) shortly after its construction. BNSF is the corporate successor of CBQ. The Rail Line was acquired by Fillmore Western Railway Company in 1996, and by ABE in 2003.

Please send your reply to me as ABE's attorney to: Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604-1112. You may reach me by telephone at (312) 236-0204 if you have any questions or need further information. ABE appreciates your assistance in furnishing a reply to this letter.

Very truly yours,



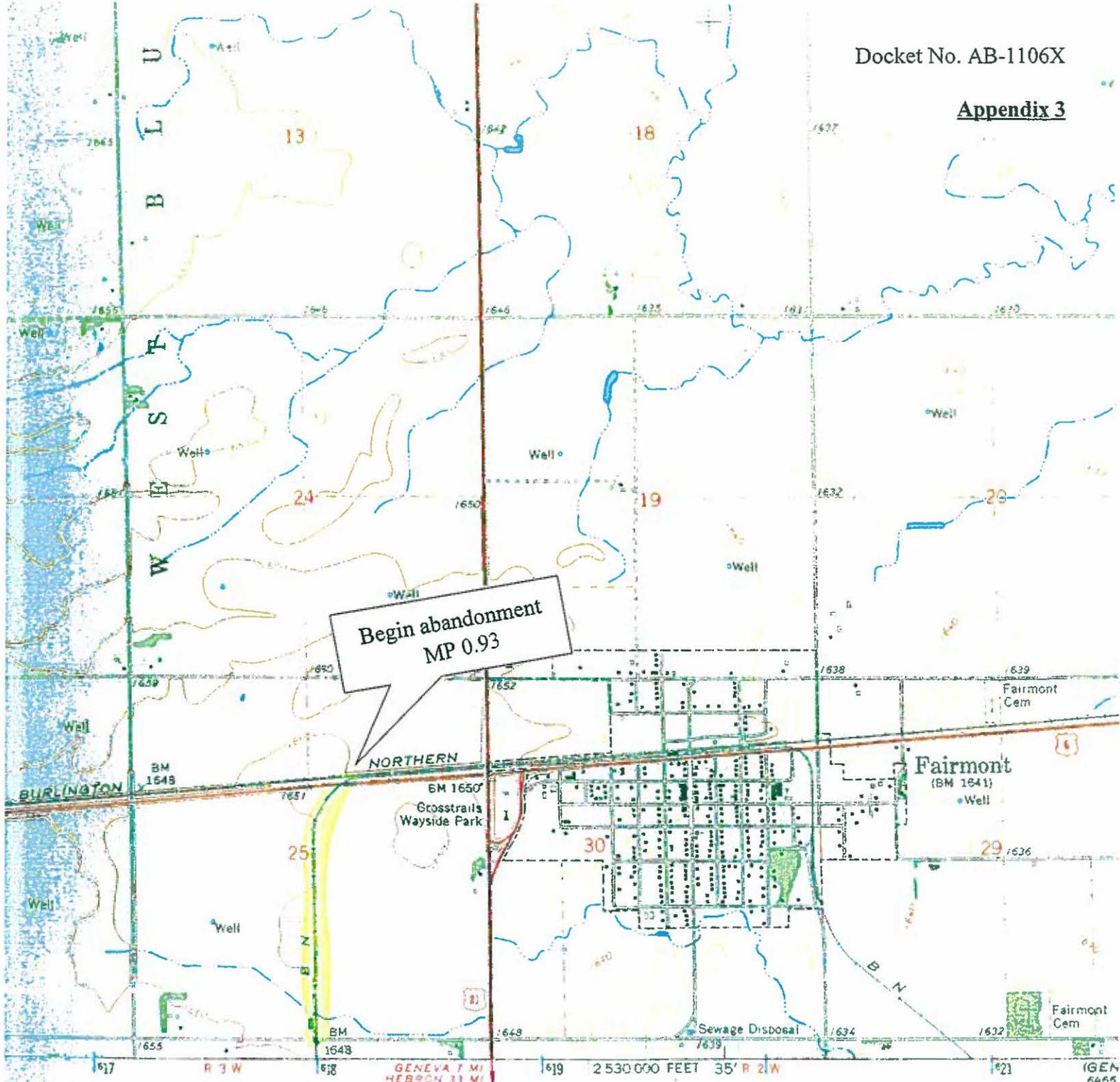
Thomas F. McFarland  
Attorney for ABE Fairmont, LLC

*TMcF:kl:wp8.0\1562\tragencies1*

cc: Mr. Grant Johanson, by e-mail  
Mr. Tom Williamson, by e-mail



**Appendix 3**

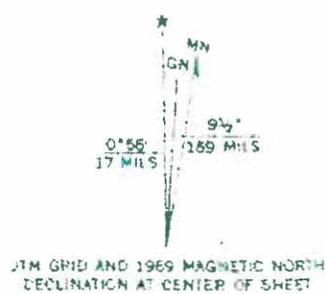


Begin abandonment  
MP 0.93

edited, and published by the Geological Survey  
of the Department of the Interior program  
development of the Missouri River Basin  
by USGS and USC&GS

by by photogrammetric methods from aerial  
photos taken 1967. Field checked 1969  
projection. 1927 North American datum  
not grid based on Nebraska coordinate system, south zone  
of Universal Transverse Mercator grid ticks,  
shown in blue

Dashed lines indicate selected fence and field lines where  
visible on aerial photographs. This information is unchecked



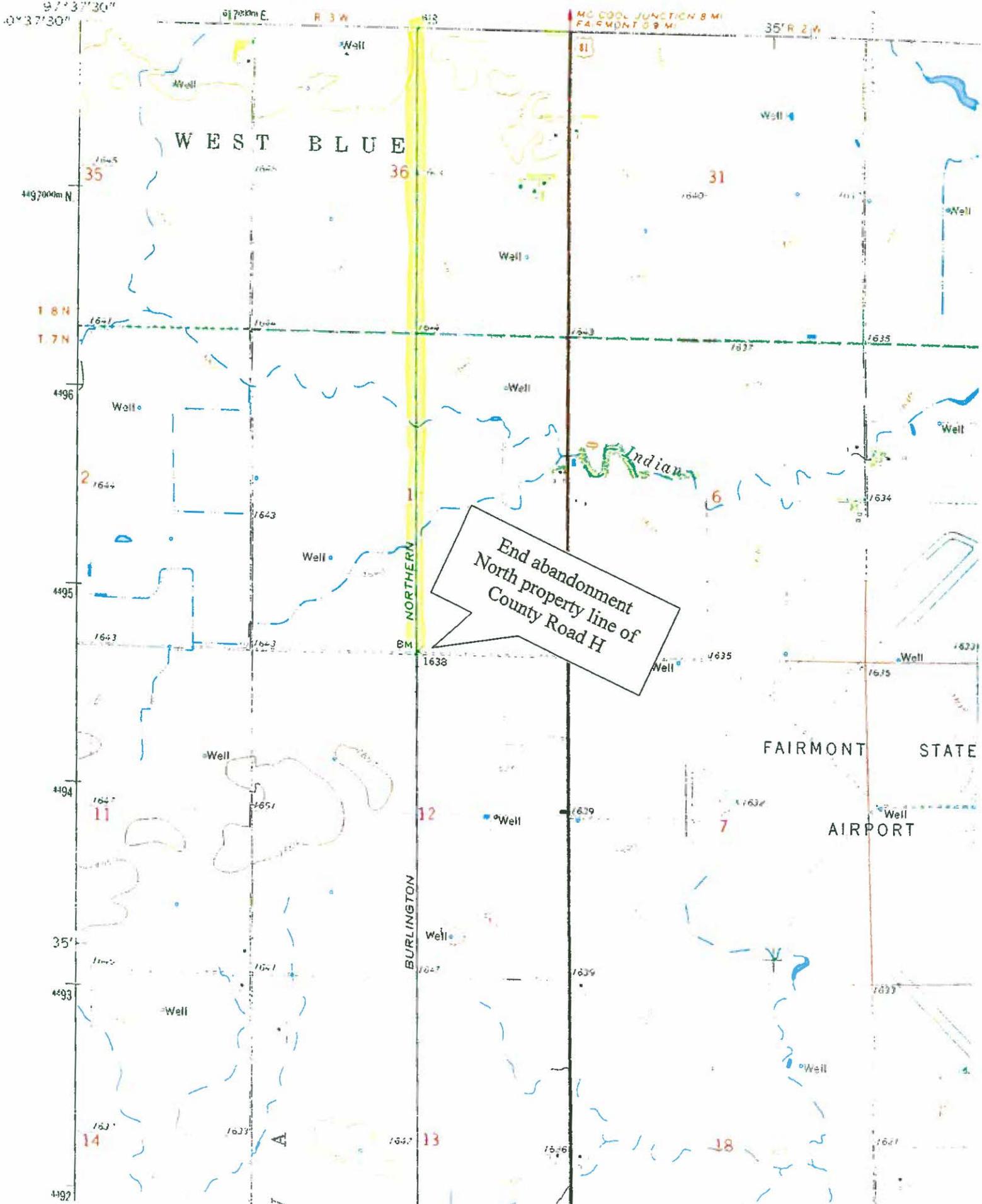
GTM GRID AND 1969 MAGNETIC NORTH  
DECLINATION AT CENTER OF SHEET



CONTOUR: INTI  
DOTTED LINES PEPPES  
DATUM IS ME

THIS MAP COMPLIES WITH NATI  
FOR SALE BY U. S. GEOLOGICAL SURVEY, DENVI  
A FOLDER DESCRIBING TOPOGRAPHIC MAP

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
GEOLOGICAL SURVEY



End abandonment  
North property line of  
County Road H



Bridge over Indian Creek in south half of rail line looking SSW

Joint Petition For Exemption

Appendix 5

(Comments on DEHR)

**From:** Simon Monroe <simon.monroe@noaa.gov>

**To:** mcfarland <mcfarland@aol.com>

**Cc:** Surface Transportation Board <sea@stb.dot.gov>; Lucy Hall - NOAA Federal <lucy.hall@noaa.gov>; James Richardson <James.Richardson@noaa.gov>; Simon Monroe <Simon.Monroe@noaa.gov>

**Subject:** NGS Response, STB Docket AB-1106X & AB-06 (SUB NO. 488X)

**Date:** Fri, Nov 22, 2013 3:44 pm

---

Thank you for sharing your railroad abandonment environmental report for FAIRMONT, Fillmore County, NEBRASKA.

Approximately 00 geodetic survey marks may be located in the area described. These marks may or may not be disturbed.

If marks will be disturbed by the abandonment, [THE RAILROAD] shall consult with the National Geodetic Survey (NGS) at least 90 days prior to beginning salvage activities that will disturb, or destroy any geodetic station

marks are described on the attached file. Additional advice is provided at

<http://geodesy.noaa.gov/marks/railroads/>

|----|-----|  
-|-----|-----|-----|----|-----

No Stations Found.



October 28, 2013

Thomas F. McFarland  
Thomas F. McFarland, P.C.  
208 S LaSalle Street, Suite 1890  
Chicago, IL 60604-1112

RE: HP 1209-173-01 STB Docket No. AB-1106X, ABE Fairmont, LLC  
Abandonment Exemption, Fillmore County, NE

STB Docket No. AB-6(Sub-No. 488X), BNSF Railway Co.  
Discontinuance of Rail Service, Fillmore County, NE

Dear Mr. McFarland:

Thank you for submitting the referenced project proposal for our review and comment. Our comment on this project and its potential to affect historic properties is required by Section 106 of the National Historic Preservation Act of 1966, as amended, and implementing regulations 36 CFR Part 800. This review does not constitute the opinions of any Tribes that may have an interest in Traditional Cultural Properties potentially affected by this project.

Given the information provided, in our opinion there will be no historic properties affected by the project as proposed. Therefore, in accordance with 36 CFR 800.4(d)(1), you may proceed with the project as planned. Should any changes in the project be made or in the type of funding or assistance provided through federal or state agencies, please notify this office of the changes before further project planning continues.

There is always the possibility that previously unsuspected archaeological remains may be uncovered during the process of project construction. We request that this office be notified immediately under such circumstances so that an evaluation of the remains may be made, along with recommendations for future action.

Please retain this correspondence and your documented finding in order to show compliance with Section 106 of the National Historic Preservation Act, as amended. If you have any questions, please contact me at 402-471-4773 or [jill.dolberg@nebraska.gov](mailto:jill.dolberg@nebraska.gov).

Sincerely,

A handwritten signature in blue ink that reads "Jill Dolberg".

Jill E. Dolberg  
Review and Compliance Coordinator  
Nebraska State Historical Society

1500 R Street  
PO Box 82554  
Lincoln, NE 68501-2554  
p: (800) 833-6747  
(402) 471-3270  
f: (402) 471-3100  
[www.nebraskahistory.org](http://www.nebraskahistory.org)



REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**  
**CORPS OF ENGINEERS, OMAHA DISTRICT**  
1616 CAPITOL AVENUE  
OMAHA NE 68102-4901

RECEIVED

OCT 28 2013

McFARLAND, P.C.

October 21, 2013

Planning, Programs, and Project Management Division

Tom McFarland  
Law Office of Tom McFarland, P.C.  
208 South LaSalle Street, Suite 1890  
Chicago, Illinois 60604

Dear Mr. McFarland:

The U.S. Army Corps of Engineers, Omaha District (Corps) has reviewed your Draft Environmental and Historic Report dated September 26, 2013 regarding ABE Fairmont, LCC's (ABE) proposed action to abandon the following rail lines:

- ABE's rail line between BNSF's Milepost 1.7 and the north property line of County Road H, 2 miles nearby Fairmont, Nebraska located in Fillmore County as addressed in your office's letter dated September 19, 2012.
- ABE rail line between Milepost 0.93 near BNSF's east-west main line at Fairmont, Nebraska and Milepost 3.70 at the north property line of Fillmore County, Nebraska.

For the additional rail line, please refer to the Corps' comments provided to the applicant in a letter dated October 12, 2012, which is attached for your reference. The Corps has no additional comments to provide on the Draft Environmental and Historic Report regarding the proposed abandonment of the mentioned rail lines. Please provide the Corps with notification once the final report has been completed and finalized.

if you have any questions, please contact Amanda Ciurej of my staff at (402) 995-2897.

Sincerely,

Eric Laux  
Acting Chief, Environmental Resources and Missouri  
River Recovery Program Plan Formulation Section



REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
CORPS OF ENGINEERS, OMAHA DISTRICT  
1616 CAPITOL AVENUE  
OMAHA NE 68102-4901

October 12, 2012

Planning, Programs, and Project Management Division

Tom McFarland  
Law Office of Tom McFarland, P.C.  
208 South LaSalle Street, Suite 1890  
Chicago, Illinois 60604

Dear Mr. McFarland:

The U.S. Army Corps of Engineers, Omaha District (Corps) has reviewed your letter dated September 19, 2012 regarding ABE Fairmont, LCC's future proposed action to abandon their only rail line between BSNF Milepost 1.7 and the north property line of County Road H, 2 miles nearby Fairmont, Nebraska located in Fillmore County. The Corps offers the following comments.

Your plans should be coordinated with the state water quality office in which the project is located to ensure compliance with federal and state water quality standards and regulations mandated by the Clean Water Act and administered by the U.S. Environmental Protection Agency (USEPA). Please coordinate with the Nebraska Department of Environmental Quality concerning state water quality programs.

If you have not already done so, it is recommended you consult with the U.S. Fish and Wildlife Service and the Nebraska Game and Parks Commission regarding fish and wildlife resources. In addition, the Nebraska State Historic Preservation Office should be contacted for information and recommendations on potential cultural resources in the project area.

Since the proposed project does not appear to be located within Corps owned or operated lands, we are providing no floodplain or flood risk information. To determine if the proposed project may impact areas designated as a Federal Emergency Management Agency special flood hazard area, please consult the following floodplain management office:

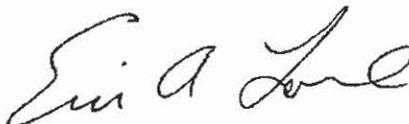
Nebraska Department of Natural Resources  
Attention: Shuhai Zheng  
301 Centennial Mall South, 4th Floor  
P. O. Box 94876  
Lincoln, Nebraska 68509-4876  
[shuhaizheng@nebraska.gov](mailto:shuhaizheng@nebraska.gov)  
T-402-471-3936  
F-402-471-2900

Any proposed placement of dredged or fill material into waters of the United States (including jurisdictional wetlands) requires Department of the Army authorization under Section 404 of the Clean Water Act. You can visit the Omaha District's Regulatory website for permit applications and related information. Please review the information on the provided website to determine if this project requires a 404 permit (<http://www.nwo.usace.army.mil/html/od-rne/nehome.html>). For a detailed review of permit requirements, preliminary and final project plans should be sent to:

U.S. Army Corps of Engineers  
Wehrspann Regulatory Office  
Attention: CENWO-OD-R-NE/Moeschen  
8901 South 154th Street  
Omaha, Nebraska 68138-3621

If you have any questions, please contact Amanda Ciurej of my staff at (402) 995-2897.

Sincerely,

A handwritten signature in cursive script, appearing to read "Eric A. Laux".

Eric Laux  
Acting Chief, Environmental Resources and Missouri River  
Recovery Program Plan Formulation Section



REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
CORPS OF ENGINEERS, OMAHA DISTRICT  
1616 CAPITOL AVENUE  
OMAHA NE 68102-4901

RECEIVED

OCT 15 2012

McFARLAND, P.C.

October 12, 2012

Planning, Programs, and Project Management Division

Tom McFarland  
Law Office of Tom McFarland, P.C.  
208 South LaSalle Street, Suite 1890  
Chicago, Illinois 60604

Dear Mr. McFarland:

The U.S. Army Corps of Engineers, Omaha District (Corps) has reviewed your letter dated September 19, 2012 regarding ABE Fairmont, LCC's future proposed action to abandon their only rail line between BSNF Milepost 1.7 and the north property line of County Road H, 2 miles nearby Fairmont, Nebraska located in Fillmore County. The Corps offers the following comments.

Your plans should be coordinated with the state water quality office in which the project is located to ensure compliance with federal and state water quality standards and regulations mandated by the Clean Water Act and administered by the U.S. Environmental Protection Agency (USEPA). Please coordinate with the Nebraska Department of Environmental Quality concerning state water quality programs.

If you have not already done so, it is recommended you consult with the U.S. Fish and Wildlife Service and the Nebraska Game and Parks Commission regarding fish and wildlife resources. In addition, the Nebraska State Historic Preservation Office should be contacted for information and recommendations on potential cultural resources in the project area.

Since the proposed project does not appear to be located within Corps owned or operated lands, we are providing no floodplain or flood risk information. To determine if the proposed project may impact areas designated as a Federal Emergency Management Agency special flood hazard area, please consult the following floodplain management office:

Nebraska Department of Natural Resources  
Attention: Shuhai Zheng  
301 Centennial Mall South, 4th Floor  
P. O. Box 94876  
Lincoln, Nebraska 68509-4876  
[shuhaizheng@nebraska.gov](mailto:shuhaizheng@nebraska.gov)  
T-402-471-3936  
F-402-471-2900

Any proposed placement of dredged or fill material into waters of the United States (including jurisdictional wetlands) requires Department of the Army authorization under Section 404 of the Clean Water Act. You can visit the Omaha District's Regulatory website for permit applications and related information. Please review the information on the provided website to determine if this project requires a 404 permit (<http://www.nwo.usace.army.mil/html/od-rne/nehome.html>). For a detailed review of permit requirements, preliminary and final project plans should be sent to:

U.S. Army Corps of Engineers  
Wehrspann Regulatory Office  
Attention: CENWO-OD-R-NE/Moeschen  
8901 South 154th Street  
Omaha, Nebraska 68138-3621

If you have any questions, please contact Amanda Ciurej of my staff at (402) 995-2897.

Sincerely,

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

Eric Laux  
Acting Chief, Environmental Resources and Missouri River  
Recovery Program Plan Formulation Section

**From:** Vanek, Wayne - NRCS, Lincoln, NE, Lincoln, NE <Wayne.Vanek@ne.usda.gov>  
**To:** mcfarland <mcfarland@aol.com>  
**Subject:** STB Docket No. AB-1106X, ABE Fairmont, LLC -- Abandonment Exemption -- in Fillmore County, Nebraska  
**Date:** Mon, Oct 22, 2012 1:12 pm



**ATTENTION: Thomas F. McFarland – P.C.**

I am responsible for the Farmland Protection Policy Act (FPPA) concerns and have reviewed the information you sent regarding the project for which you requested review of impacts. This review only covers FPPA concerns and does not include any other environmental concerns such as wetlands or endangered species. For general conservation concerns or questions relating to wetlands under the jurisdiction of the Food Security Act, contact your local county Natural Resources Conservation Service office.

It has been determined that a Farmland Conversion Impact Rating For Corridor Types Projects form (NRCS-CPA-106) will not be needed on this project since the project occurs on originally classified transportation-railroads (non-agricultural land), thus, **NRCS has determined that your project was found to be cleared of FPPA significant concerns.** We encourage you to continue to be aware of prime and important farmlands in general and the role they play in current and future projects.

Wayne Vanek  
USDA-NRCS  
Fed. Bldg. Rm. 152  
100 Centennial Mall North  
Lincoln, NE. 68508-3866  
402.437.4125  
wayne.vanek@ne.usda.gov

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# United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Ecological Services  
Nebraska Field Office  
203 West Second Street  
Grand Island, Nebraska 68801

RECEIVED

OCT 31 2012

October 27, 2012

McFARLAND, P.C.

**FWS-NE: 2013-036**

Thomas F. McFarland- Law Office  
208 South LaSalle Street- Suite 1890  
Chicago, IL 60604-1112

**RE: BNSF Railroad Abandonment**

Dear Mr. McFarland:

This responds to your October 1, 2012, request to the U.S. Fish and Wildlife Service (Service) regarding the subject project. The Service has responsibility for the conservation and management of fish and wildlife resources for the benefit of the American public under the following authorities: 1) Endangered Species Act of 1973, 2) Fish and Wildlife Coordination Act, 3) Bald and Golden Eagle Protection Act, and 4) Migratory Bird Treaty Act. The National Environmental Policy Act requires compliance with all of these statutes and regulations.

**Based on the information you have provided, at this time, it appears unlikely that your project would have significant environmental impacts on the trust resources under our authority.** Should changes to the proposed project occur or new information regarding fish and wildlife resources become available, further consultation with the Service should be initiated to assess any potential impacts.

All federally listed species under ESA are also State-listed under the Nebraska Nongame and Endangered Species Conservation Act. However, there are also State-listed species that are not federally listed. To determine if the proposed project may affect State-listed species, the Service recommends that the project proponent contact Michelle Koch, Nebraska Game and Parks Commission, 2200 N. 33<sup>rd</sup> Street, Lincoln, NE 68503-0370.

The Service appreciates the opportunity to review and comment on the subject project. Should you have questions regarding these comments, please contact Mrs. Angelina Wright within our office at [angelina\\_wright@fws.gov](mailto:angelina_wright@fws.gov) or (308)382-6468, extension 21.

Sincerely,

  
Michael D. George  
Nebraska Field Supervisor

cc: NGPC; Lincoln, NE (Attn: Michelle Koch)  
NGPC; Lincoln, NE (Attn: Carey Grell)

1562-13



November 8, 2012

Thomas McFarland  
208 S LaSalle St., Suite 1890  
Chicago, IL 60604-1112

RE:

hp_num	descr
1209-173-01	ABE FAIRMONT LLC -- ABANDONMENT EXEMPTION; STB DOCKET NO AB-1106X

Dear Mr. McFarland:

Thank you for submitting the referenced project proposal for our review and comment. Our comment on this project and its potential to affect historic properties is required by Section 106 of the National Historic Preservation Act of 1966, as amended, and implementing regulations 36 CFR Part 800. This review does not constitute the opinions of any Tribes that may have an interest in Traditional Cultural Properties potentially affected by this project.

Given the information provided, in our opinion there will be no historic properties affected by the project as proposed. Therefore, in accordance with 36 CFR 800.4(d)(1), you may proceed with the project as planned. Should any changes in the project be made or in the type of funding or assistance provided through federal or state agencies, please notify this office of the changes before further project planning continues.

There is always the possibility that previously unsuspected archaeological remains may be uncovered during the process of project construction. We request that this office be notified immediately under such circumstances so that an evaluation of the remains may be made, along with recommendations for future action.

Please retain this correspondence and your documented finding in order to show compliance with Section 106 of the National Historic Preservation Act, as amended. If you have any questions, please contact Jill Dolberg at 402-471-4773.

Sincerely,

  
 L. Robert Puschendorf  
 Deputy State Historic Preservation Officer  
 Nebraska State Historic Preservation Office

1500 R Street  
 PO Box 82554  
 Lincoln, NE 68501-2554  
 p: (800) 833-6747  
 (402) 471-3270  
 f: (402) 471-3100  
 www.nebraskahistory.org

Joint Petition For Exemption

Appendix 6

(Draft Federal Register Notice)

**DRAFT FEDERAL REGISTER NOTICE PER 49 C.F.R. 1152.50(d)(3)**

**STB Docket No. AB-1106X, ABE Fairmont, LLC -- Abandonment Exemption  
-- in Fillmore County, NE**

**STB Docket No. AB-6 (Sub-No. 488X), BNSF Railway Company -- Discontinuance  
of Service Exemption -- in Fillmore County, NE**

**Petition for Exemption to Abandon Rail Line**

On July 7, 2014, ABE FAIRMONT, LLC (ABE) and BNSF Railway Company (BNSF), filed with the Surface Transportation Board, Washington, DC, a Joint Petition for Exemption from 49 U.S.C. § 10903 for ABE's abandonment of a rail line between Milepost 0.93 near the east-west main line of BNSF Railway Company (BNSF) at Fairmont, NE, and Milepost 3.70 at the north property line of Fillmore County Road H near Fairmont, NE, a distance of approximately 2.77 miles at and near Fairmont, Fillmore County, NE, which traverses through United States Postal Service Zip Code 68354.

Pursuant to 49 C.F.R. § 1152.60, BNSF hereby petitions for an exemption from 49 U.S.C. § 10903 for discontinuance of rail service pursuant to trackage rights over ABE's rail line between Milepost 0.93 as identified above, and Milepost 1.70 near Fairmont, NE, a distance of approximately 0.77 miles at and near Fairmont, Fillmore County, NE, which traverses through United States Postal Service ZIP Code 68354. There are no rail stations on the Rail Line to be abandoned.

The rail line is not known to contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

The interest of railroad employees would be protected by imposition of conditions to approval of abandonment imposed in *Oregon Short Line R. Co. - Abandonment - Goshen*, 360 I.C.C. 91 (1979).

Any offer of financial assistance will be due no later than 10 days after service of a decision granting the notice of exemption.

All interested persons should be aware that following abandonment of the rail line as common carrier track, it is proposed that rail operations will continue over the track as private industry track.

Any request for a public use condition and any request for trail use/rail banking will be due no later than 20 days after notice of the filing of the petition for exemption is published in the Federal Register.

Persons seeking further information concerning abandonment procedures may contact the Surface Transportation Board 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.

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 made 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.

Joint Petition For Exemption

Appendix 7

(Newspaper notice)

BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, D.C. 20423

STB Docket No. AB-1106X  
**ABE FAIRMONT, LLC**  
**-- ABANDONMENT EXEMPTION --**  
**IN FILLMORE COUNTY, NE**

STB Docket No. AB-6 (Sub-No. 488X)  
**BNSF RAILWAY COMPANY**  
**--DISCONTINUANCE OF RAIL SERVICE EXEMPTION --**  
**IN FILLMORE COUNTY, NE**

**NOTICE OF INTENT TO FILE A JOINT PETITION  
FOR EXEMPTION FOR ABANDONMENT  
AND FOR DISCONTINUANCE OF RAIL SERVICE**

ABE FAIRMONT, LLC (ABE) and BNSF RAILWAY COMPANY (BNSF) give notice that on or about July 7, 2014, they intend to file with the Surface Transportation Board, Washington, D.C. 20423, a Joint Petition for Exemption under 49 USC 10502(a) and 49 CFR 1152.60 permitting ABE's abandonment of a rail line between Milepost 0.93 near the east-west main line of BNSF at Fairmont, NE, and Milepost 3.70 at the north property line of Fillmore County Road H near Fairmont, NE, in Fillmore County, Nebraska, which traverses through United States Postal Zip Code 68354. The proceeding is docketed as STB Docket No. AB-1106X, *ABE Fairmont, LLC -- Abandonment Exemption -- in Fillmore County, NE*.

BNSF petitions for an exemption for discontinuance of rail service pursuant to trackage rights over ABE's rail line between Milepost 0.93 as identified above, and Milepost 1.70 near Fairmont, NE, a distance of approximately 0.77 miles at and near Fairmont, Fillmore County, NE. The proceeding is docketed as STB Docket No. AB-6 (Sub-No. 488X), *BNSF Railway Company -- Discontinuance of Rail Service -- in Fillmore County, NE*.

The Board's Section of Environmental Analysis (SEA) will generally prepare an Environmental Assessment (EA), which will normally be available 60 days after the filing of the notice of exemption. Comments on environmental and energy matters should be filed no later than 30 days after the EA becomes available to the public and will be addressed in a Board decision. Interested persons may obtain a copy of the EA or make inquiries regarding environmental matters by writing to the Section of Environmental Analysis (SEA), Surface Transportation Board, Washington, DC 20423 or by calling that office at 202-245-0295.

Appropriate offers of financial assistance to continue rail service can be filed with the Board. Requests for environmental conditions, public use conditions, or rail banking/trails use also can be filed with the Board. An original and 10 copies of any pleading that raises matters other than environmental issues (such as trails use, public use, and offers of financial assistance) must be filed directly with the Board's Office of the Secretary, 395 E Street, SW, Washington, DC 20423 [See 49 CFR 1104.1(a) and 1104.3(a)], and one copy must be served on applicants' representative, [See 49 CFR 1104.12(a)]. Questions regarding offers of financial assistance, public use, or trails use may be directed to the Board's Office of Congressional and Public Services at 202-245-0230. Copies of any comments or requests for conditions should be served on the applicant's representative: Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604-1112, phone 312-236-0204.



**CERTIFICATE OF SERVICE**

I hereby certify that on July 3, 2014, I served the foregoing document, Joint Petition For Exemption, by first-class, U.S. mail, postage prepaid, on the following:

Nebraska Public Service Commission  
P.O. Box 94927  
Lincoln, NE 68509-4927

U.S. Dept. of Defense (SDDCTEA)  
Attn: Railroads for National Defense  
709 Ward Drive  
Bldg. 1990, Room 2E264  
Scott AFB, IL 62225

U.S. Department of Interior  
National Park Service  
Cultural Resources, Rm. 3126  
1849 C Street, N.W.  
Washington, DC 20240

U.S. Department of Agriculture  
Chief of the Forest Service  
4<sup>th</sup> Floor N.W., Sidney R. Yates Federal Bldg.  
14<sup>th</sup> Street & Independence Ave., SW  
Washington, DC 20250

Kim M. O'Hara, Esq.  
Flint Hills Resources, LP  
4111 E. 37<sup>th</sup> Street North  
Wichita, KS 67206

The Andersons  
P.O. Box 119  
480 W. Dussel Dr.  
Maumee, OH 43537

*Thomas F. McFarland*

\_\_\_\_\_  
Thomas F. McFarland