

Karl Morell & Associates

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E-FILED

238390

May 14, 2015

ENTERED
Office of Proceedings
May 14, 2015
Part of
Public Record

Ms. Victoria Rutson
Chief, Office of Environmental Analysis
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423-0001

Re: Docket No. AB-1032X, Nebraska, Kansas & Colorado Railway, L.L.C. - Abandonment
Exemption – in Decator, Norton, and Phillips Counties, Kansas and Harlan County
Nebraska

Dear Ms. Rutson:

Enclosed for filing in Docket No. AB-1032X are Nebraska, Kansas & Colorado Railway,
L.L.C.'s ("NKCR") Environmental and Historic Reports.

NKCR is planning on filing a Notice of Exemption on or shortly after June 3, 2015.

Sincerely,

Karl Morell

ENVIRONMENTAL REPORT

(49 C.F.R. 1105.7)

Docket No. AB-1032X

NEBRASKA, KANSAS & COLORADO RAILWAY --ABANDONMENT EXEMPTION-- IN DECATUR, NORTON, AND PHILLIPS COUNTIES, KANSAS AND HARLAN COUNTY, NEBRASKA AND DISCONTINUANCE OF TRACKAGE RIGHTS IN NORTON COUNTY, KANSAS

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

Nebraska, Kansas & Colorado (“NKCR”) proposes to abandon 57.31 miles of rail lines located: between mileposts 3.35, near Orleans, Nebraska, and milepost 29.84, at Almena, Kansas; (2) between milepost 47.23, at Reager, Kansas, and milepost 78.05, at Oberlin, Kansas; and (3) the Norton Spur located in Norton, Kansas (the “Lines”). NKCR will also be seeking to discontinue its trackage rights over the rail line owned by Kyle Railroad located between Almena and Reager, Kansas. Upon receipt of abandonment authority, NKCR intends to remove the rail, track material, and crossties. The culverts and ballast will remain in place along the Lines.

The Lines have had no local or overhead traffic for well over two years. Also, any future overhead traffic can be rerouted over other rail lines. Because of the lack of traffic on the Lines, only very limited maintenance has been performed on the Lines for some time. Therefore, the proposed abandonment will have no impact on rail freight operations and maintenance practices on the Lines.

The only alternative to abandonment would be to not abandon the Lines and forego the opportunity costs from salvaging the Lines.

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

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

No passenger or freight traffic will be diverted to other modes as a result of the proposed abandonment. No local or overhead traffic has moved over the Lines in well over 2 years. Therefore, the proposed abandonment will have no adverse effects on local or regional transportation systems or patterns.

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

(i) NKCR expects that the proposed abandonment will be consistent with existing land use plans. NKCR contacted the Counties of Decatur, Norton and Phillips, Kansas and Harlan,

Nebraska. See Exhibit 2. Harlan County supports the abandonment of the line between Orleans and Almena. See Exhibit 3. To date, none of the other Counties has responded. A copy of this Report is being supplied to the appropriate local and state agencies for their information and comment.

(ii) The proposed abandonment will have no adverse effect on prime agricultural land.

NKCR contacted the Natural Resources Conservation Service in Nebraska and Kansas about the proposed abandonment. The Conservation Service in Kansas responded that this project is exempt from the Farmland Protection Act. See Exhibit 4. A copy of this Report is being supplied to the USDA Natural Resources Conservation Service for its information.

(iii) The Lines do not pass through a designated coastal zone.

(iv) The involved rights-of-way do not appear to be suitable for alternative public use other than a recreational trail.

(4) Energy. (i) Describe the effect of the proposed action on transportation of energy resources. (ii) Describe the effect of the proposed action on recyclable commodities. (iii) State whether the proposed action will result in an increase or decrease in overall energy efficiency and explain why. (iv) If the proposed action will cause diversions from rail to motor carriage of more than: (A) 1,000 rail carloads a year; or (B) an average of 50 rail carloads per mile per year for any part of the affected line, quantify the resulting net change in energy consumption and show the data and methodology used to arrive at the figure given.

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

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

(iii) The proposed abandonment will have no adverse effect on overall energy efficiency since no local or overhead traffic has moved over the Lines in well over 2 years. The traffic that previously moved over the Lines has been transferred either to other modes or other routings.

(iv) The proposed abandonment will not cause the diversion of any rail traffic to motor carriage since no local or overhead traffic has been handled over the Lines in well over 2 years.

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

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

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

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

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

Not applicable

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

(i) The proposed abandonment will have no detrimental effects on public health and safety.

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

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

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

(i) NKCR contacted the U.S. Fish and Wildlife Service. See Exhibit 5. To date, no response to this request has been received. A copy of this Report is being supplied to the U.S. Fish and Wildlife Service for its information and comment.

(ii) NKCR does not believe that any wildlife sanctuaries or refuges, National or State parks or forests would be adversely affected by the proposed abandonment. NKCR notified the National Parks Service of the proposed abandonment and requested assistance in identifying any potential effects on wildlife sanctuaries or refuges, National or State parks or forests. See Exhibit 6. To date, no response to this request has been received. A copy of this Report is being supplied to the National Park Service for its information and comment.

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

(i) The proposed abandonment, in NKCR's view, will be consistent with applicable water quality standards. NKCR contacted the Kansas Environmental Agency ("KSEPA"), the Nebraska Environmental Protection Agency ("NEEPA") and the U.S. Environmental Protection Agency ("US EPA") concerning this matter and requesting assistance in determining whether the

proposed abandonment is consistent with applicable Federal, State, or local water quality standards. See Exhibit 7. To date, no responses have been received to these requests. A copy of this Report is being supplied to the KSEPA, NEEPA and US EPA for their information and comment.

(ii) NKCR contacted the Department of the Army Corps of Engineers concerning these matters. The Army Corps of Engineers determined that the proposed abandonment would not result in the discharge of dredged or fill material into any waters of the United States. Therefore, Department of Army permit authorization is not required. See Exhibit 8. A copy of this Report is being supplied to the Army Corps of Engineers for its information and further comment.

(iii) NCRC believes the proposed abandonment will not require the issuance of any permits under Section 402 of the Clean Water Act. NKCR contacted the US EPA concerning this matter and requested assistance in identifying any potential effects on applicable water quality standards and determining whether the proposed abandonment is consistent with applicable Federal, State, or local water quality standards. See Exhibit 7. To date, no response to this request has been received. A copy of this Report is being supplied to the US EPA for its information and comment.

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

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

Oberlin Subdivision Abandonment

Abandonment Section	MP Begin	MP End
East End	3.35	29.84
West End	47.23	78.05
Branch Line (Norton, KS)	1.65 Miles of Spur Track and Sidings accessed via Trackage Rights over KYLE RR	

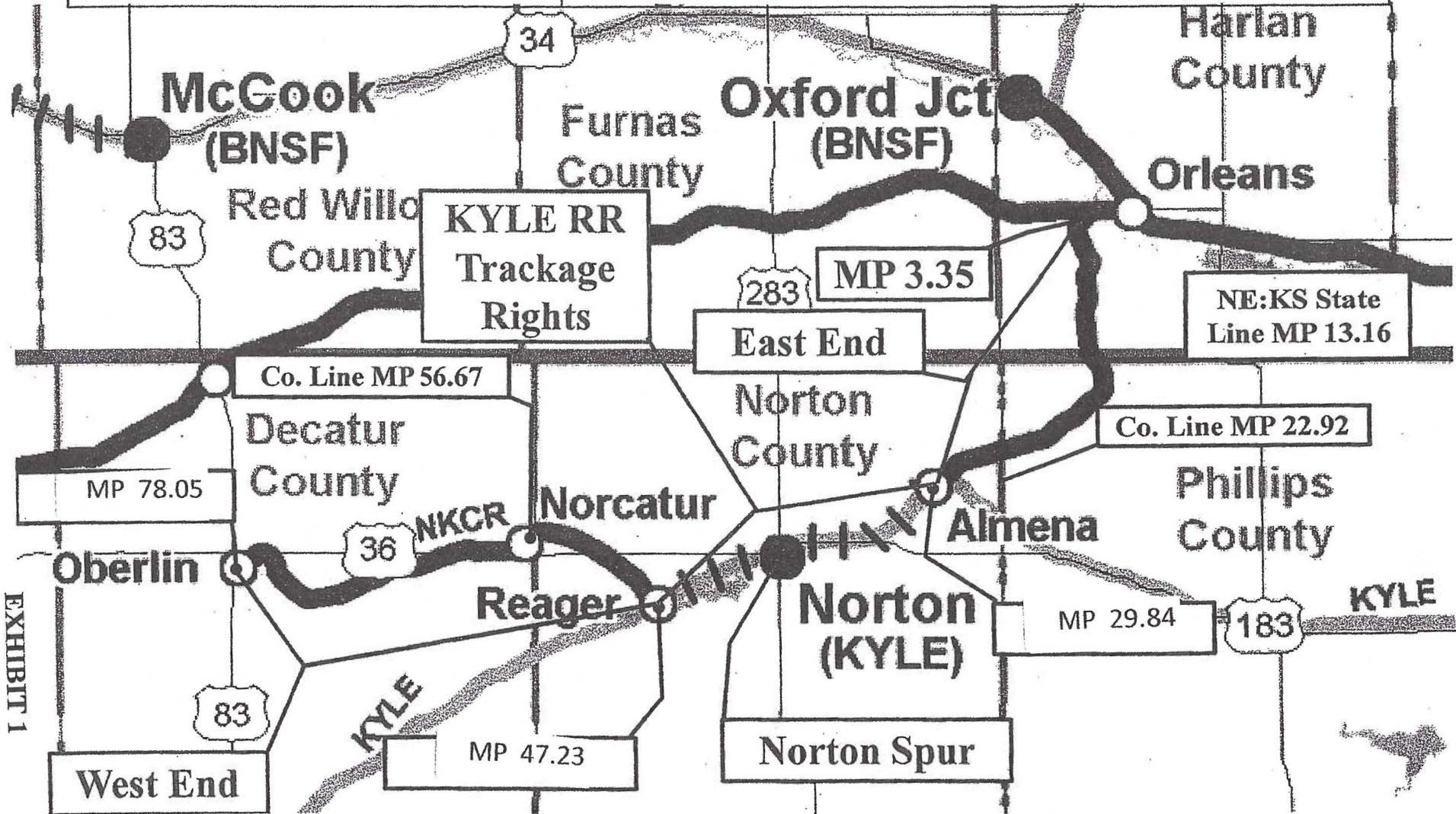


EXHIBIT 1



655 Fifteenth Street, NW, Suite 225
Washington, DC 20005

balljanik.com

t 202.638.3307
f 202.783.6947

EXHIBIT 2

KARL MORELL
OF COUNSEL

kmorell@bjllp.com

September 24, 2014

Decatur County Commissioners
120 E. Hall, P.O. Box 28
Oberlin, KS 67749

**RE: Docket No. AB-1032, Nebraska, Kansas & Colorado Railway,
L.L.C. --Abandonment Exemption--In Decatur, Norton, and
Phillips Counties, Kansas and Harlan County, Nebraska**

Dear Sirs:

Nebraska, Kansas & Colorado Railway, L.L.C. ("NKCR") is planning to file a Notice of Exemption with the Surface Transportation Board ("STB"), on or about November 24, 2014, for NKCR to abandon its rail lines located: (1) between milepost 3.35, near Orleans, Nebraska, and milepost 29.6, at Alma, Kansas; (2) between milepost 47.3, at Reager, Kansas, and milepost 78.0, at Oberlin, Kansas; and (3) the Norton Spur located in Norton, Kansas. NKCR will also be seeking to discontinue its trackage rights over the rail line owned by Kyle Railroad located between Alma and Reager, Kansas. A map of the proposed abandonment and discontinuance is attached.

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

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



September 24, 2014
Page 2

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

Sincerely,

A handwritten signature in cursive script that reads "Karl Morell".

Karl Morell

Attorney for:

Nebraska, Kansas & Colorado
Railway, L.L.C.



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KARL MORELL
OF COUNSEL

kmorell@bjllp.com

September 24, 2014

Norton County Commissioners
105 S Kansas, P.O. Box 70
Norton, KS 67654

**RE: Docket No. AB-1032, Nebraska, Kansas & Colorado Railway,
L.L.C. --Abandonment Exemption—In Decatur, Norton, and
Phillips Counties, Kansas and Harlan County, Nebraska**

Dear Sirs:

Nebraska, Kansas & Colorado Railway, L.L.C. ("NKCR") is planning to file a Notice of Exemption with the Surface Transportation Board ("STB"), on or about November 24, 2014, for NKCR to abandon its rail lines located: (1) between milepost 3.35, near Orleans, Nebraska, and milepost 29.6, at Alma, Kansas; (2) between milepost 47.3, at Reager, Kansas, and milepost 78.0, at Oberlin, Kansas; and (3) the Norton Spur located in Norton, Kansas. NKCR will also be seeking to discontinue its trackage rights over the rail line owned by Kyle Railroad located between Alma and Reager, Kansas. A map of the proposed abandonment and discontinuance is attached.

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September 24, 2014

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Karl Morell

Attorney for:

Nebraska, Kansas & Colorado

Railway, L.L.C.



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KARL MORELL
OF COUNSEL

kmorell@bjllp.com

September 24, 2014

Phillips County Commissioners
301 State Street, Suite A
Phillipsburg, KS 67661

**RE: Docket No. AB-1032, Nebraska, Kansas & Colorado Railway,
L.L.C. --Abandonment Exemption--In Decatur, Norton, and
Phillips Counties, Kansas and Harlan County, Nebraska**

Dear Sirs:

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

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September 24, 2014
Page 2

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Karl Morell

Attorney for:

Nebraska, Kansas & Colorado
Railway, L.L.C.



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KARL MORELL
OF COUNSEL

kmorell@bjllp.com

September 24, 2014

Harlan County Board of Supervisors
706 W 2nd Street
Alma, NE 68920

**RE: Docket No. AB-1032, Nebraska, Kansas & Colorado Railway,
L.L.C. --Abandonment Exemption--In Decatur, Norton, and
Phillips Counties, Kansas and Harlan County, Nebraska**

Dear Sirs:

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September 24, 2014

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Sincerely,

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Karl Morell

Attorney for:

Nebraska, Kansas & Colorado

Railway, L.L.C.

October 27, 2014

Karl Morell
Ball Janik LLP
655 Fifteenth Street, NW, Suite 225
Washington, DC 20005

RE: Docket No. AB-1032, Nebraska, Kansas & Colorado Railway L.L.C. – Abandonment Exemption—In Harlan County, Nebraska

Dear Mr. Morell:

Thank you for your September 24, 2014 letter regarding the closure of the Nebraska, Kansas & Colorado Railway, L.L.C. (NKCR). I have reviewed the closure plan with the Harlan County Board of Supervisors (Board) and with the Harlan County Road Superintendent. The Board determined that it would be in the best interests of the County to support such a closure.

Where the NKCR currently crosses Harlan County roads, there have been some issues with steep grading at the crossings. The Board believes that the abandonment of the NKCR would allow the road department to address this issue and make the crossings safer for vehicular traffic. Such closure is not inconsistent with our existing land use plans and would not have any effect on the County's land use. Please consider this letter as our support for the closure for the NKCR between milepost 3.35, near Orleans, Nebraska, and milepost 29.6 at Almena, Kansas.

Thank you for including the Board in this decision. If you need further assistance, please do not hesitate to contact Harlan County.

Sincerely,


Doug Horwart
Chairman
Harlan County Board of Supervisors

Morell, Karl

From: Remley, Chad - NRCS, Salina, KS <chad.remley@ks.usda.gov>
Sent: Wednesday, October 01, 2014 4:09 PM
To: Morell, Karl
Cc: Lucas, Cynthia - NRCS, Salina, KS
Subject: Docket No. AB-1032 Nebraska, Kansas & Colorado

Your request for review for compliance with the provision of the Farmland Protection Policy Act (FPPA) is complete with a finding that your project is exempt from FPPA.

If you have any questions please let us know. Thanks

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OF COUNSEL

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kmorell@bjllp.com

September 24, 2014

State Conservationist
Natural Resources Conservation Service
100 Centennial Mall North, Rm 152
Lincoln, NE 68508

**RE: Docket No. AB-1032, Nebraska, Kansas & Colorado Railway,
L.L.C. --Abandonment Exemption—In Decatur, Norton, and
Phillips Counties, Kansas and Harlan County, Nebraska**

Dear Sir/Madam:

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

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



September 24, 2014

Page 2

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

Sincerely,

A handwritten signature in cursive script that reads "Karl Morell".

Karl Morell

Attorney for:

Nebraska, Kansas & Colorado

Railway, L.L.C.



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Washington, DC 20005

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EXHIBIT 5

KARL MORELL
OF COUNSEL

kmorell@bjilp.com

September 24, 2014

U.S. Fish and Wildlife Service
134 Union Blvd.
Lakewood, CO 80228

**RE: Docket No. AB-1032, Nebraska, Kansas & Colorado Railway,
L.L.C. --Abandonment Exemption--In Decatur, Norton, and
Phillips Counties, Kansas and Harlan County, Nebraska**

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

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



September 24, 2014
Page 2

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

Sincerely,

A handwritten signature in black ink that reads "Karl Morell". The signature is written in a cursive, flowing style.

Karl Morell
Attorney for:
Nebraska, Kansas & Colorado
Railway, L.L.C.



655 Fifteenth Street, NW, Suite 225
Washington, DC 20005

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EXHIBIT 6

KARL MORELL
OF COUNSEL

kmorell@bjllp.com

September 24, 2014

National Park Service
Recreational Resources Assistance Division
601 Riverfront Drive
Omaha, NE 68102

**RE: Docket No. AB-1032, Nebraska, Kansas & Colorado Railway,
L.L.C. --Abandonment Exemption—In Decatur, Norton, and
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Pursuant to the STB's environmental regulations at 49 C.F.R., Part 1105, we are advising you of this proposed action so that you may assist us in identifying any potential effects on wildlife sanctuaries or refuges, National or State parks or forests.

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



September 24, 2014
Page 2

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Karl Morell
Attorney for:
Nebraska, Kansas & Colorado
Railway, L.L.C.



655 Fifteenth Street, NW, Suite 225
Washington, DC 20005

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t 202.638.3307

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EXHIBIT 7

KARL MORELL
OF COUNSEL

kmorell@bjllp.com

September 24, 2014

Kansas Environmental Protection Agency
1000 SW Jackson Street, Suite 540
Topeka, KS 66612-1368

**RE: Docket No. AB-1032, Nebraska, Kansas & Colorado Railway,
L.L.C. --Abandonment Exemption—In Decatur, Norton, and
Phillips Counties, Kansas and Harlan County, Nebraska**

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



September 24, 2014

Page 2

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Sincerely,

Karl Morell

Attorney for:

Nebraska, Kansas & Colorado

Railway, L.L.C.



655 Fifteenth Street, NW, Suite 225
Washington, DC 20005

balljanik.com

t 202.638.3307
f 202.783.6947

KARL MORELL
OF COUNSEL

kmorell@bjllp.com

September 24, 2014

Nebraska Environmental Protection Agency
P.O. Box 98922
Lincoln, NE 68509-8922

**RE: Docket No. AB-1032, Nebraska, Kansas & Colorado Railway,
L.L.C. --Abandonment Exemption--In Decatur, Norton, and
Phillips Counties, Kansas and Harlan County, Nebraska**

Dear Sir/Madam:

Nebraska, Kansas & Colorado Railway, L.L.C. ("NKCR") is planning to file a Notice of Exemption with the Surface Transportation Board ("STB"), on or about November 24, 2014, for NKCR to abandon its rail lines located: (1) between milepost 3.35, near Orleans, Nebraska, and milepost 29.6, at Alma, Kansas; (2) between milepost 47.3, at Reager, Kansas, and milepost 78.0, at Oberlin, Kansas; and (3) the Norton Spur located in Norton, Kansas. NKCR will also be seeking to discontinue its trackage rights over the rail line owned by Kyle Railroad located between Alma and Reager, Kansas. A map of the proposed abandonment and discontinuance is attached.

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

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



September 24, 2014

Page 2

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

Sincerely,

A handwritten signature in black ink that reads "Karl Morell". The signature is written in a cursive style with a large, sweeping "K" and "M".

Karl Morell

Attorney for:

Nebraska, Kansas & Colorado

Railway, L.L.C.



655 Fifteenth Street, NW, Suite 225
Washington, DC 20005

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KARL MORELL
OF COUNSEL

kmorell@bjllp.com

September 24, 2014

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

**RE: Docket No. AB-1032, Nebraska, Kansas & Colorado Railway,
L.L.C. --Abandonment Exemption—In Decatur, Norton, and
Phillips Counties, Kansas and Harlan County, Nebraska**

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September 24, 2014

Page 2

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Sincerely,

Karl Morell

Attorney for:

Nebraska, Kansas & Colorado

Railway, L.L.C.



REPLY TO
ATTENTION OF

**DEPARTMENT OF THE ARMY
KANSAS CITY DISTRICT, CORPS OF ENGINEERS
REGULATORY BRANCH-KANOPOLIS REGULATORY FIELD OFFICE
107 RIVERSIDE DRIVE
MARQUETTE, KANSAS 67464**

October 7, 2014

Kanopolis Regulatory Field Office
(NWK-2014-01220)

Karl Morell
Balljanik
655 Fifteenth Street, NW, Suite 225
Washington, D.C. 20005

Dear NKCR:

This is in response to the information we received on October 3, 2014, requesting a Department of the Army (DA) permit determination concerning the abandonment of 57 miles of the Nebraska, Kansas & Colorado Railway in Kansas. The project is located in Decatur, Phillips, and Norton Counties, Kansas.

This letter contains an approved jurisdictional determination for your project site. If you object to this determination, you may request an administrative appeal under Corps regulations at 33 C.F.R. Part 331. Enclosed you will find a Notification of Administrative Appeal Options and Process (NAP) and Request for Appeal (RFA) form. If you request to appeal this determination you must submit a completed RFA form to the Northwestern Division Office at the following address:

Division Engineer
Attn: Mary J. Hoffman
Northwestern Division Administrative Appeals Officer
U.S. Army Engineer Division, Northwestern Division
P.O. Box 2870
Portland, OR 97208-2870
Telephone: 503-808-3888

In order for an RFA to be accepted by the Corps, the Corps must determine that it is completed, that it meets the criteria for appeal under 33 C.F.R. Part 331.5, and that it has been received by the Division Office within 60 days of the date of the NAP. Should you decide to submit an RFA form, it must be received at the above address by December 7, 2014.

In the event that you disagree with an approved jurisdictional determination and you have **new information** not considered in the original determination, you may request reconsideration of that determination by the Corps District prior to initiating an appeal. To request this reconsideration based upon new information, you must submit the completed NAO-RFA form and the new information to the District Office so that it is received within 60 days of the date of the NAO-RFA. Send approved jurisdictional determination reconsideration requests to:

District Commander
ATTN: Mark D. Frazier
Chief, Regulatory Branch
U.S. Army Engineer District, Kansas City
601 East 12th Street, Suite 402
Kansas City, MO 64106-2824
Voice: 816-389-3990 – FAX: 816-389-2032

We have reviewed the information furnished and have determined that due to the activity of the proposed action, this would not result in the discharge of dredged or fill material into any waters of the United States. Therefore, Department of the Army permit authorization is not required. Other Federal, state and/or local permits may also be required, and it is recommended that you should verify this yourself.

The Corps of Engineers has jurisdiction over all waters of the United States. Discharges of dredged or fill material in waters of the United States, including wetlands require prior authorization from the Corps under Section 404 of the Clean Water Act (33 USC 1344). The implementing regulation for this Act is found at 33 CFR 320-332.

We are interested in your thoughts and opinions concerning your experience with the Kansas City District, Corps of Engineers Regulatory Program. Please feel free to complete our Customer Service Survey form on our website at:
http://corpsmapu.usace.army.mil/cm_apex/1?preregulatory_survey. You may also call and request a paper copy of the survey which you may complete and return to us by mail or fax.

Mr. Lee Wolf, Regulatory Specialist, reviewed the information furnished and made this determination. If you have any questions concerning this matter, please feel free to contact Mr. Wolf at 785-546-2130 (FAX 785-546-2050). Please reference Permit No. NWK-2014-012220 in all comments and/or inquiries relating to this project.

Copies Furnished (electronically wo/enclosures):
Environmental Protection Agency,
Watershed Planning and Implementation Branch
U.S. Fish and Wildlife Service,
Manhattan, Kansas
Kansas Department of Wildlife, Parks and Tourism
Kansas Department of Health and Environment
Kansas Department of Agriculture

**HISTORIC REPORT
(49 C.F.R. SECTION 1105.8)**

Docket No. AB-1032X

**NEBRASKA, KANSAS & COLORADO RAILWAY
--ABANDONMENT EXEMPTION--
IN DECATUR, NORTON, AND PHILLIPS COUNTIES, KANSAS AND HARLAN
COUNTY, NEBRASKA
AND DISCONTINUANCE OF TRACKAGE RIGHTS IN NORTON COUNTY,
KANSAS**

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

Nebraska, Kansas & Colorado (“NKCR”) proposes to abandon 57.31 miles of rail lines located: between mileposts 3.35, near Orleans, Nebraska, and milepost 29.84, at Alma, Kansas; (2) between milepost 47.23, at Reager, Kansas, and milepost 78.05, at Oberlin, Kansas; and (3) the Norton Spur located in Norton, Kansas (the “Lines”). NKCR will also be seeking to discontinue its trackage rights over the rail line owned by Kyle Railroad located between Alma and Reager, Kansas. Upon receipt of abandonment authority, NKCR intends to remove the rail, track material, and cross-ties. The culverts and ballast will remain in place along the Lines.

The Lines have had no local or overhead traffic for well over two years. Also, any future overhead traffic can be rerouted over other rail lines. Because of the lack of traffic on the Lines, only very limited maintenance has been performed on the Lines for some time. Therefore, the proposed abandonment will have no impact on rail freight operations and maintenance practices on the Lines.

The only alternative to abandonment would be to not abandon the Lines and forego the opportunity costs from salvaging the Lines.

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

HISTORIC REPORT

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 or older and are part of the proposed action.

A map depicting the Lines proposed for abandonment was supplied to the Kansas State Historic Preservation Agency (“KSSHPO”), See Exhibit 2, and the Nebraska Historic Preservation Office (“NESHPO”). NESHPO is of the opinion that there will be no historic properties affected by the project as proposed. (See Exhibit 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 east end of the 56.95 miles of rail lines begins at milepost 3.35 west of Orleans, Nebraska and extend south-southwesterly through rural areas to milepost 29.6, at Alma, Kansas. The west end of the rail lines begins at milepost 47.3, at Reager,

Kansas and extends westerly through rural areas to milepost 78.0, at Oberlin, Kansas.

The Lines traverse largely rural areas.

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

Pictures of the bridges in Kansas were submitted to the KSSHPO and pictures of the bridges in Nebraska were submitted to the NESHPO. There are 2 bridges that are 50 years old or older and 5 bridges of unknown age in Nebraska. There are 22 bridges that are 50 years old or older and 16 bridges of unknown age in Kansas.

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

A list of the bridges located in Nebraska is attached as Exhibit 4 and a list of the bridges in Kansas is attached as Exhibit 5.

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.

There has been no traffic on the Lines for well over 2 years. Therefore, the proposed abandonment will not result in any operational changes.

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.

NKCR does not possess any such documents.

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

The Lines contains no historic structures and NKCR is unaware of any archeological resources or railroad historic properties along the Lines. See Exhibit 3.

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

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

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

NKCR does not foresee the likelihood that any additional information will need to be supplied in association with the proposed abandonment. However, if any additional information is requested, NKCR will promptly supply the necessary information.

Oberlin Subdivision Abandonment

Abandonment Section	MP Begin	MP End
East End	3.35	29.84
West End	47.23	78.05
Branch Line (Norton, KS)	1.65 Miles of Spur Track and Sidings accessed via Trackage Rights over KYLE RR	

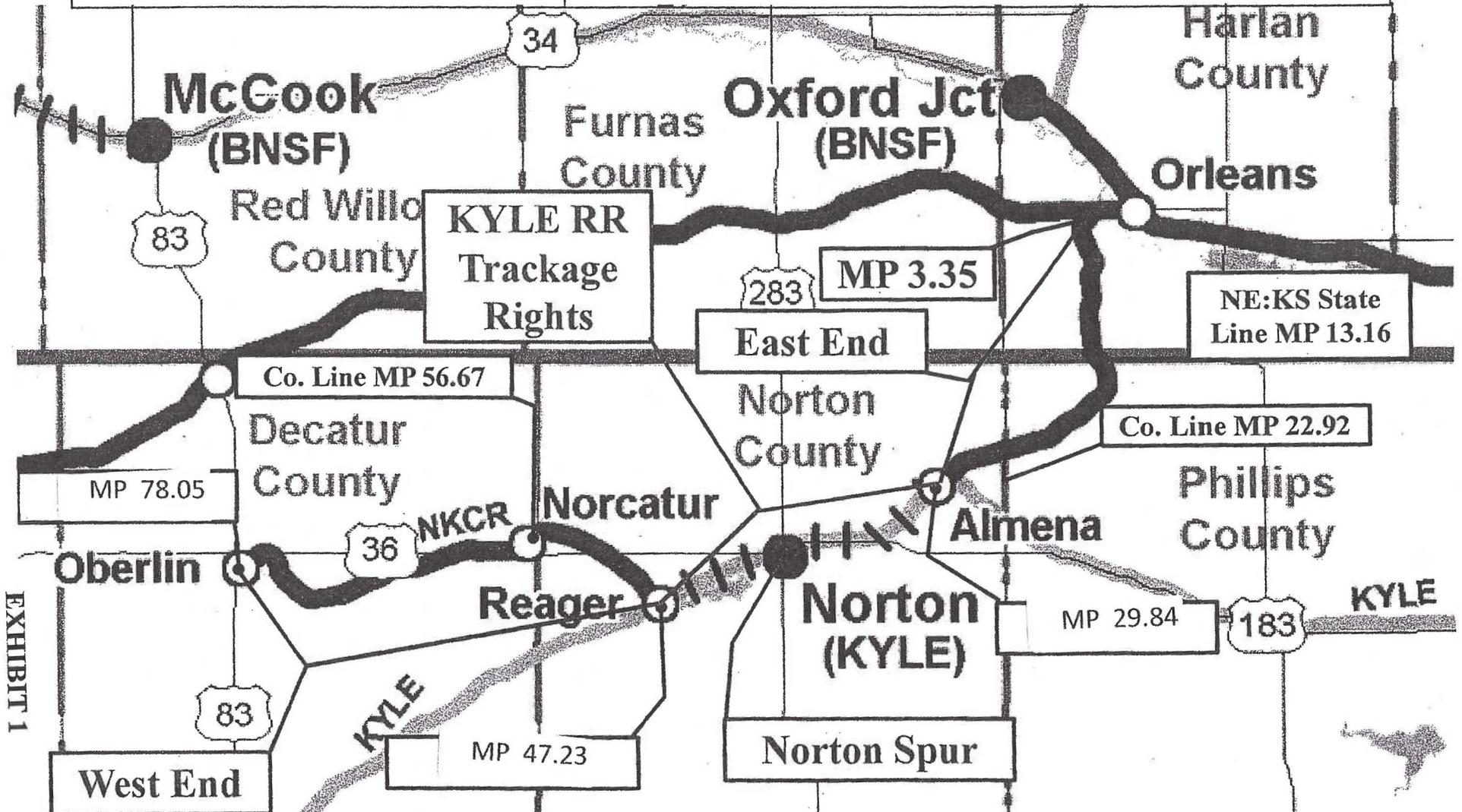


EXHIBIT 1



655 Fifteenth Street, NW, Suite 225
Washington, DC 20005

balljanik.com

t 202.638.3307

f 202.783.6947

EXHIBIT 2

KARL MORELL
OF COUNSEL

kmorell@bjllp.com

September 24, 2014

Kansas State Historic Preservation Agency
6425 SW 6th Avenue
Topeka, KS 66615

**RE: Docket No. AB-1032, Nebraska, Kansas & Colorado Railway,
L.L.C. --Abandonment Exemption--In Decatur, Norton, and
Phillips Counties, Kansas and Harlan County, Nebraska**

Dear Sir/Madam:

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

The lines to be abandoned and the trackage rights to be discontinued are located in Decatur, Norton, and Phillips Counties, Kansas and Harlan County, Nebraska.

There are 22 bridges that are 50 years old or older and 16 bridges of unknown age located in the State of Kansas. Photographs, description of the bridges and their milepost locations are attached. These structures are quite common in design and construction and, in NKCR's view, have no historical significance.



September 24, 2014
Page 2

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

Sincerely,

A handwritten signature in cursive script that reads "Karl Morell".

Karl Morell

Attorney for:

Nebraska, Kansas & Colorado
Railway, L.L.C.



EXHIBIT 3

October 20, 2014

Karl Morell
Ball Janik, LLP
655 Fifteenth Street, NW, Suite 225
Washington, DC 20005

RE:
1409-119-01 NEBRASKA, KANSAS & COLORADO RAILWAY ABANDONMENT EXEMPTION AB-1032

Dear Mr. Morell:

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.

Sincerely,


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

EXHIBIT 4

Oberlin Subdivision

Bridge Inventory List

NEBRASKA, KANSAS & COLORADO RAILWAY							Total			
Oberlin Subdivision						Year	Bridge	Span	Est. Max	Channel
Br. No.	State	County	Location	Spans	Type	Construct	Length	Length	Height	Name
4.08	NE	Harlan	Flynn	6	ODWPT	1949	84	14	57	Sappa Creek
	NE	Harlan		1	TRT		125	125		Sappa Creek
	NE	Harlan		6	ODWPT		84	14		Sappa Creek
4.75	NE	Harlan	Flynn	2	ODWPT	1949	28	14	25	Public Road
	NE	Harlan		4	ODWPT		52	13		
	NE	Harlan		2	ODWPT		24	12		
	NE	Harlan		1	DPG		40	40		

Bridge Type Descriptions	
Type	Description
ODWPT	Open Deck Wood Pile Trestle
TRT	Through Railroad Truss
DPG	Deck Plate Girder
TPG	Through Plate Girder

EXHIBIT 5

Oberlin Subdivision

Bridge Inventory List

NEBRASKA, KANSAS & COLORADO RAILWAY										
Oberlin Subdivision						Year	Total	Span	Est. Max	Channel
Br. No.	State	County	Location	Spans	Type	Construct	Length	Length	Height	Name
21.32	KS	Phillips	Long Island	2	ODWPT	1942	28	14	76	
	KS	Phillips		1	ODWPT		20	20		
	KS	Phillips		2	ODWPT		28	14		
22.18	KS	Phillips	Long Island	4	ODWPT	1948	56	14	10	
22.58	KS	Phillips	Almena	4	ODWPT	1939	56	14	8	
23.93	KS	Norton	Almena	3	ODWPT	1930	42	14	6	
23.97	KS	Norton	Almena	3	ODWPT	1930	42	14	6	
24.41	KS	Norton	Almena	3	ODWPT	1917	21	7	5	Stock pass
24.64	KS	Norton	Almena	3	ODWPT	1942	42	14	10	
24.72	KS	Norton	Almena	5	ODWPT	1925	70	14	14	
25	KS	Norton	Almena	3	ODWPT	1933	24	8	6	
25.28	KS	Norton	Almena	2	ODWPT	1928	28	14	6	Stock pass
26.12	KS	Norton	Almena	8	ODWPT	1929	112	14	22	Sand Creek
27.27	KS	Norton	Almena	6	ODWPT	1929	84	14	18	Horse Creek
	KS	Norton		1	ODWPT		20	20	18	Horse Creek
	KS	Norton		2	ODWPT		28	14	18	Horse Creek
27.6	KS	Norton	Almena	4	ODWPT	1925	56	14	10	
28.13	KS	Norton	Almena	1	ODWPT	1939	17	17	13	Prairie Dog Creek
	KS	Norton		1	ODWPT		18	18	13	Prairie Dog Creek
	KS	Norton		1	ODWPT		17	17	13	Prairie Dog Creek
28.31	KS	Norton	Almena	3	ODWPT	1926	42	14	26	Prairie Dog Creek
	KS	Norton		6	ODWPT		120	20	26	Prairie Dog Creek
	KS	Norton		3	ODWPT		42	14	26	Prairie Dog Creek
39.46	KS	Norton	Norton	10	ODWPT	1925	140	14	0	Trk 7 in Norton
47.53	KS	Norton	Reager	1	DPG	1963	65	65	40	Spring Creek
	KS	Norton		1	DPG		90	90	40	Spring Creek
	KS	Norton		1	DPG		65	65	40	Spring Creek
75.5	KS	Decatur	Oberlin	2	ODWPT	1929	28	14	30	Parker Draw
	KS	Decatur		5	ODWPT		100	20	30	Parker Draw
	KS	Decatur		2	ODWPT		28	14	30	Parker Draw
76.19	KS	Decatur	Oberlin	2	ODWPT	1927	28	14	35	Sappa Creek
	KS	Decatur		10	ODWPT		200	20	35	
	KS	Decatur		2	ODWPT		28	14	35	
77.11	KS	Decatur		1	ODWPT	1925	14	14	7	
77.95	KS	Decatur		3	ODWPT	1925	42	14	16	State Highway

Bridge Type Descriptions	
Type	Description
ODWPT	Open Deck Wood Pile Trestle
TRT	Through Railroad Truss
DPG	Deck Plate Girder
TPG	Through Plate Girder