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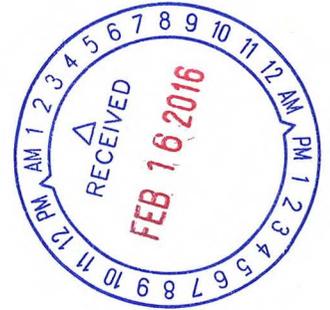
February 16, 2016

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BY HAND DELIVERY

Cynthia Brown  
Chief, Section of Administration  
Surface Transportation Board  
Office of Proceedings  
395 E Street, SW  
Washington, DC 20423

ENTERED  
Office of Proceedings  
February 16, 2016  
Part of  
Public Record



Re: Docket No. AB-1182X, Brandon Railroad, L.L.C. -- Abandonment  
Exemption -- In Douglas County, Nebraska

Dear Ms. Brown:

Attached for filing are the original and ten copies of a Petition for Exemption under 49 U.S.C. § 10502. Also attached is a check covering the \$6,700 filing fee.

If you have any questions, please call me.

Sincerely,

A handwritten signature in blue ink that reads "Karl Morell".

Karl Morell

FILED  
February 16, 2016  
Surface Transportation Board

FEE RECEIVED  
February 16, 2016  
Surface Transportation Board

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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DOCKET NO. AB-1182X

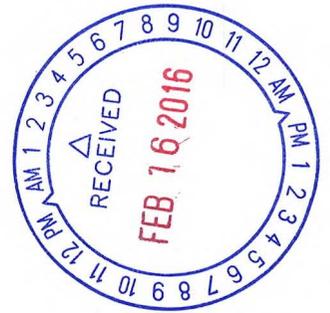
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BRANDON RAILROAD, L.L.C.  
--ABANDONMENT EXEMPTION--  
IN DOUGLAS COUNTY, NEBRASKA

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PETITION FOR EXEMPTION

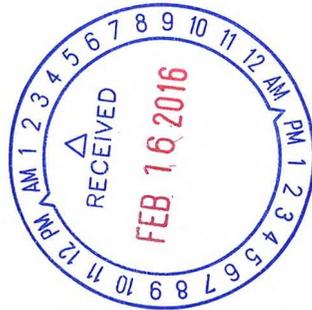
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Karl Morell  
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Washington, D.C. 20005  
(202) 595-9045

Attorney for:  
BRANDON RAILROAD, L.L.C.

Dated: February 16, 2016



BEFORE THE  
SURFACE TRANSPORTATION BOARD

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DOCKET NO. AB-1182X

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BRANDON RAILROAD, L.L.C.  
--ABANDONMENT EXEMPTION--  
IN DOUGLAS COUNTY, NEBRASKA

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PETITION FOR EXEMPTION

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Brandon Railroad, L.L.C. ("BRR") petitions the Surface Transportation Board ("STB" or "Board") to exempt, under 49 U.S.C. § 10502, from the prior approval requirements of 49 U.S.C. § 10903, BRR's abandonment of its 17.3 miles of rail lines located in Douglas County, Nebraska.

**PROPOSED TRANSACTION**

BRR proposes to abandon its 17.3 miles of rail lines located in Omaha, Nebraska (the "Lines").<sup>1</sup> The Lines traverse U.S. Postal Service Zip Code 68107. A map of the Lines is attached as Exhibit A.

Based on information in BRR's possession, the Lines do not contain any federally granted right-of-way. Any documentation in BRR's possession will be made available to those requesting it. There are no stations on the Lines.

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<sup>1</sup> There are no mileposts associated with the Lines.

## STATEMENT OF FACTS

BRR obtained authority to acquire the Lines in STB Finance Docket No. 34930, *Brandon Railroad LLC – Acquisition Exemption – Brandon Corp* (not printed), served September 26, 2006. The Lines comprised part of the former South Omaha Terminal Railway (“Terminal Railway”) located in Omaha, NE. Terminal Railway was acquired by Brandon Corporation (“Brandon”) in 1978. BRR acquired all of the assets of Brandon in 2006 as part of a much larger transaction.<sup>2</sup>

In the late 1970’s, Brandon served some ten industries located along the Lines and performed intermediate switching for eight railroads that served the area. When BRR acquired the assets of Brandon, Brandon had no employees and was no longer providing rail operations. At that time, there were still two industries located along the Lines that could potentially use common carrier rail service and two Class 1 railroads connecting with the Lines. Today there is one remaining company, United States Cold Storage, Inc. (“Cold Storage”), that could potentially use common carrier rail service. Also, GBW continues to utilize the Lines to provide private carriage for the rail cars moving to and from its repair facilities on the Lines.

Given the lack of demand for common carrier rail service along the Lines, BRR has decided to abandon its common carrier operations. In August 2015, BRR entered into a long-term Confidential Private Transportation Services Agreement with Cold Storage in the event Cold Storage decides to once again utilize rail service. Consequently, once the proposed abandonment is authorized by the Board and consummated, the Lines will continue to be used by

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<sup>2</sup> An affiliate of BRR, Gunderson Rail Services LLC (“GRS”), acquired the railcar repair facilities located on the Lines. Those facilities are now part of GBW Railcar Services, LLC (“GBW”), a joint venture by Greenbrier Companies and Watco Companies.

GBW to provide private carriage and by BRR to provide contract (not common carrier) service for Cold Storage.

### **EXEMPTION REQUESTED**

BRR seeks an exemption under 49 U.S.C. § 10502 from the applicable requirements of 49 U.S.C. § 10903 in order for BRR to abandon its common carrier operations on the Lines.

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

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

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

The policy underlying this provision is that while Congress has been able to identify broad areas of commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress. The conferees expect that, consistent with the policies of this Act, the Commission will pursue partial and complete exemption from remaining regulation.

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

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

Detailed scrutiny of this transaction is not necessary to carry out the rail transportation policy. An exemption would minimize the unnecessary expenses associated with the filing of a formal abandonment application, expedite regulatory decisions and reduce regulatory barriers to exit [49 U.S.C. § 10101(2) and (7)]. *See, e.g., Norfolk & W. Ry. Co. – Abandonment Exem. – Cinn., Hamilton County, OH*, 3 S.T.B. 110 (1998); STB Docket No. AB-367 (Sub-No. 2X), *Georgia Central Railroad, L.P. – Abandonment Exemption – In Chatham County, GA* (not printed), served September 17, 1997 (“*Georgia Central*”). By abandoning its common carrier operations over the Lines, BRR will be able to avoid the added costs associated with holding out common carrier services on the Lines. Granting the exemption will thus foster sound economic conditions and encourage efficient management. 49 U.S.C. § 10101(5) and (9). *See, e.g., STB Docket No. AB-318 (Sub-No. 4X), Louisiana & Delta Railroad, Inc. – Abandonment Exemption – In Lafourche and Assumption Parishes, LA* (not printed), served August 26, 1997; STB Docket No. AB-497 (Sub-No. 1X), *Minnesota Northern Railroad, Inc. – Abandonment Exemption – In Red Lake and Polk Counties, MN* (not printed), served November 14, 1997. Other aspects of the rail transportation policy are not affected adversely. For example, competition is not affected since there are no active common carrier shippers on the Lines.

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

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

The proposed transaction is clearly of limited scope. BRR is seeking to abandon common carrier operations over 17.3 miles of rail lines that traverse southern Omaha and have had no demand for common carrier rail service for some time. The shortness of the Lines, the limited geographic area involved, and the lack of use for common carrier rail service all demonstrate the limited scope of the proposed abandonment. *See, e.g.*, Docket No. AB-397 (Sub-No. 3X), *Tulare Valley Railroad Company – Abandonment Exemption – In Tulare And Fresno Counties, CA* (not printed), served February 9, 1995.

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

The only remaining prior user of common carrier rail service located on the Lines has entered into a transportation contract with BRR and thus no longer has any need for common carrier rail service. GBW will continue to meet its transportation needs through private carriage as it has in the past. To the extent Cold Storage should require rail service in the future, BRR will meet those needs pursuant to the transportation contract which operations are not subject to the Board's jurisdiction. *Consolidated Rail Corp. – Petition For Declaratory Order*, 1 I.C.C. 2d 294 (1984). Therefore, regulation is not necessary to protect shippers from an abuse of market

power. *See, e.g.*, STB Docket No. AB-55 (Sub-No. 576) *CSX Transportation, Inc. – Abandonment Exemption – In Guernsey County, OH* (not printed), served November 22, 1999; STB Docket No. AB-55 (Sub-No. 563X), *CSX Transportation, Inc. – Abandonment Exemption – In Harrison County, WV* (not printed), served September 25, 1998; *Georgia Central*.

### **ENVIRONMENTAL AND HISTORIC REPORTS**

The Environmental Report and the Historic Report containing the information required by 49 C.F.R. §§ 1105.07 and 1105.08 was filed with the Board on December 7, 2015. The Certificate of Service is attached as Exhibit C.

### **FEDERAL REGISTER NOTICE**

A draft Federal Register notice is attached to this Petition as Exhibit B.

### **LABOR PROTECTION**

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

## CONCLUSION

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

Respectfully submitted,

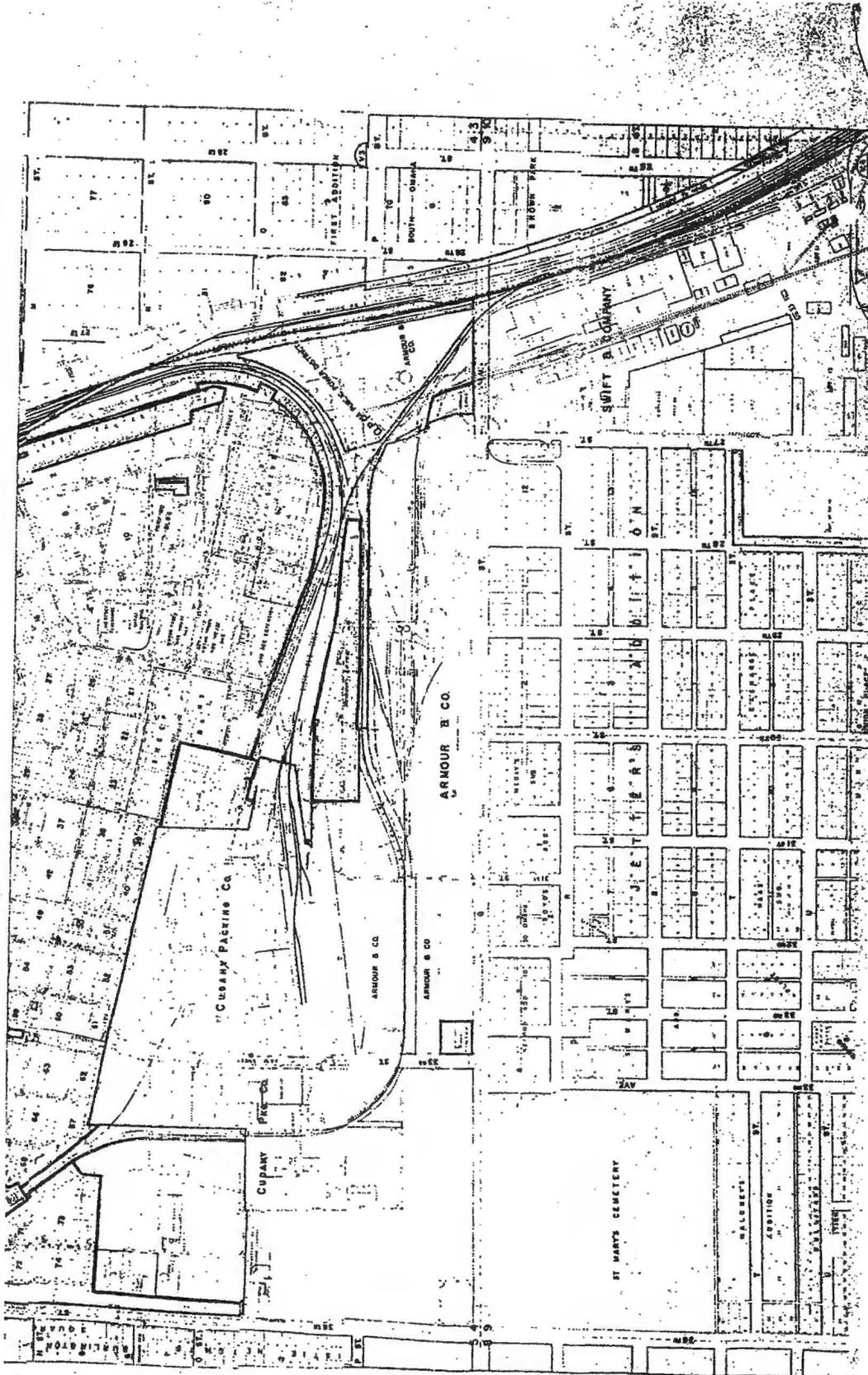
A handwritten signature in blue ink that reads "Karl Morell". The signature is written in a cursive style and is positioned above a horizontal line.

Karl Morell  
Karl Morell & Associates  
655 Fifteenth Street, N.W.  
Suite 225  
Washington, D.C. 20005  
(202) 595-9045

Attorney for: Brandon Railroad, L.L.C.

Dated: February 16, 2016

**EXHIBIT A**  
**Maps**



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**EXHIBIT B**

**SURFACE TRANSPORTATION BOARD**

**DOCKET NO. AB-1182X**

**BRANDON RAILROAD, L.L.C.  
--ABANDONMENT EXEMPTION--  
IN DOUGLAS COUNTY, NEBRASKA**

On February 16, 2016, Brandon Railroad, L.L.C. (BRR) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 for BRR to abandon its 17.3 miles of rail lines located in Omaha, Nebraska. The lines traverse U.S. Postal Service Zip Code 68107. There are no stations on the lines.

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

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

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued within 90 days (by May \_\_, 2016).

Any offer of financial assistance under 49 C.F.R. 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer of financial assistance must be accompanied by the filing fee, which currently is set at \$1,600. *See* 49 C.F.R. 1002.2(f)(25).

Because the rail lines will not be salvaged but will continue to be used for private and possibly contract carrier rail service, the lines will not be available for other public use such as interim trail use.

All filings in response to this notice must refer to Docket No. AB-1182X and must be sent to: (1) Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001; and (2) Karl Morell, Karl Morell & Associates, 655 Fifteenth Street, N.W., Suite 225, Washington, DC 20005. Replies to the petition are due on or before \_\_\_\_\_, 2016.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245-0238 or refer to the full abandonment regulations at 49 C.F.R. Part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis at (202) 245-0291 [TDD for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Office 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 Office of Environmental Analysis. EAs in these abandonment proceedings normally will be available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: \_\_\_\_\_ 2016.

By the Board, Rachel D. Campbell, Director, Office of Proceedings,

**EXHIBIT C**

**CERTIFICATE OF SERVICE**

Pursuant to 49 C.F.R. § 1152.60(d), the undersigned hereby certifies that the Petition for Exemption in Docket No. AB-1182X was mailed via first class mail on February 16, 2016, to the following parties:

<p><b>State Public Service Commission</b></p> <p>Nebraska Public Service Commission P.O. Box 94927 Lincoln, NE 68509-4927</p> <p><b>Military Traffic Management Command</b></p> <p>Military Surface Deployment &amp; Distribution Command ATTN: SDTE-SA (Railroads for National Defense) 1 Soldier Way, Building 1900W Scott AFB, IL 62225-5006</p>	<p><b>National Park Service</b></p> <p>Chief of National Recreation and Trails U.S. Dept. of Interior - Nat'l. Park Service Recreation Resources Assistance Division 1849 C Street, NW Washington, DC 20240-0001</p> <p>Midwest Region 601 Riverfront Drive Omaha, NE 68102-4226</p> <p><b>U.S. Department of Agriculture</b> U.S. Department of Agriculture Chief of the Forest Service 4th Floor N.W., Yates Building 201 14<sup>th</sup> Street SW Washington, DC 20250</p>
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Dated: February 16, 2016

  
Karl Morell

**CERTIFICATE OF PUBLICATION**

The undersigned hereby certifies that notice of the proposed abandonment in Docket No. AB-1182X was published on February 12, 2016, in the Omaha Star, Inc., a newspaper of general circulation in Douglas County, Nebraska as required by 49 C.F.R. § 1105.12.

Dated: February 16, 2016

  
\_\_\_\_\_  
Karl Morell

**ENVIRONMENTAL REPORT  
CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, in Docket No. AB-1182X , the transmittal letter required by 49 C.F.R. § 1105.11, was mailed to all agencies listed in 49 C.F.R. § 1105.7(b), as well as the additional agencies listed below via first class mail on the December 7, 2015.

Pursuant to the requirements of 49 C.F.R. § 1105.7, the undersigned hereby certifies that a copy of the Environmental Report in STB Docket No. AB-1182X was mailed via first class mail on December 7, 2015, to the following parties:

Douglas County Commissioners 1819 Famam Street Omaha, NE 68183	U.S. Environmental Protection Agency 901 N. 5 <sup>th</sup> Street Kansas City, KS 66101
Mr. Wayne Vanek USDA-NRCS Fed. Bldg. Rm. 152 100 Centennial Mall North Lincoln, NE 68508-3866	Corps of Engineer, Kansas City District 601 E. 12 <sup>th</sup> Street Kansas City, KS 64106
U.S. Fish and Wildlife Service 134 Union Blvd. Lakewood, CO 80228	The National Geodetic Survey 1315 East-West Highway Silver Spring, MD 20910-3282
National Park Service Recreational Resources Assistance Division 601 Riverfront Drive Omaha, NE 68102	Nebraska Public Services Commission P.O. Box 94927 Lincoln, NE 68509-4927
Nebraska Environmental Protection Agency P.O. Box 98922 Lincoln, NE 68509-8922	

Dated: February 16, 2016



Karl Morell

**HISTORIC REPORT  
CERTIFICATE OF SERVICE**

Pursuant to the requirements of 49 C.F.R. § 1105.8(c), the undersigned hereby certifies that a copy of the Historic Report in Docket No. AB-1182X was mailed via first class mail on December 7, 2015, to the following party:

Nebraska State Historical Society  
P.O. Box 82554 1500 R. Street  
Lincoln, NE 68509-4927

Dated: February 16, 2016

  
\_\_\_\_\_  
Karl Morell