

209075



July 15, 2003

Victoria Rutson
Chief, SEA
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

**Re: Surface Transportation Board Docket No. AB-6 (Sub-No. 405X);
The Burlington Northern and Santa Fe Railway Company
Abandonment of Pawnee, Nebraska to Endicott, Nebraska**

Attorneys at Law

311 South Wacker Drive
Suite 3000
Chicago, Illinois
60606-6677
Tel 312.360.6000

Michael A. Smith
Senior Counsel
Direct 312.360.6724
Fax 312.360.6598
msmith@
freebornpeters.com

Dear Ms. Rutson:

On or after August 4, 2003, we are filing with the Surface Transportation Board ("STB") a Notice of Exemption seeking authority to abandon or discontinue service of 59.23 miles of railroad line between Mile Post 57.80 near Pawnee, Nebraska and Mile Post 117.03 near Endicott, Nebraska which traverses through United States Postal ZIP Codes 68420, 68323, 68381, 68466, 68310, 68415, 68342, 68352 and 68350. Attached are the original and ten copies of the Environmental and Historic Report describing the proposed action and any expected environmental or historic effects, as well as a map of the affected area.

Chicago

Springfield

Sincerely,

Michael A. Smith

Enclosures

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BEFORE THE
SURFACE TRANSPORTATION BOARD

In the Matter of The
Burlington Northern and Santa Fe
Railway Company Abandonment and
Discontinuance of Service Exemption Between
M.P. 57.80 near Pawnee, Nebraska
and M.P. 117.03 near Endicott, Nebraska
in and through Jefferson, Gage and
Pawnee Counties, Nebraska

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Docket No. AB-6
(Sub No. 405X)

ENVIRONMENTAL REPORT

The Burlington Northern and Santa Fe Railway Company (BNSF) proposes to file a petition under 49 U.S.C. § 10502 (a) for an exemption from 49 U.S.C. § 10903 for abandonment and discontinuance between M.P. 57.80 near Pawnee, Pawnee County, Nebraska and M.P. 117.03 near Endicott, Jefferson County, Nebraska, a total distance of approximately 59.23 miles. The following information is submitted to the Surface Transportation Board ("Board" or "STB") by BNSF in accordance with the Board's reporting requirements as set forth in 49 C.F.R. § 1105.7 for the purpose of assisting the Board's preparation of an environmental document regarding BNSF's proposed Petition for Exemption.

(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.

BNSF seeks to abandon and discontinue service of the line. A map of the line is attached as Exhibit A.

(2) Transportation system: Describe the effect 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 exemption will have a minimal effect on regional or local transportation systems and patterns. Shippers along the line used to include Southeast Nebraska Coop at Burchard, Wymore Fertilizer at Wymore, Farmers Coop of Odell, Firth Coop at Diller and Endicott Clay Products ("Endicott") at Endicott. Due to June, 2003 heavy rains which resulted in washouts near Wymore and Diller, the line east of Endicott was embargoed. As a result, those shippers other than Endicott have been and will continue to utilize alternative transportation arrangements. More recent heavy rains and additional washouts discussed below also took place in late June of 2003 that resulted in washouts east of Endicott. BNSF is temporarily detouring trains over the Union Pacific Railroad's ("UP") line between Hastings and Endicott in order to serve Endicott Clay Products and is also working with the UP in order to provide alternate service permanently to Endicott Clay Products. Following abandonment of the line, Endicott Clay Products will continue to receive UP service via part of the trackage proposed for abandonment and discontinuance. However, that portion of trackage will be designated as industrial trackage.

(3) Land Use:

(i) Based on consultation with local and/or regional planning agencies and/or 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.

To the best of its knowledge, BNSF believes that the proposed exemption will be consistent with local or regional land use plans. See

Exhibit B, letter from the Jefferson County Attorney. The Board of Commissioners of Pawnee and Gage Counties were notified by letters dated April 30, 2003. See Exhibits C and D. As of the date of this report, neither has responded. BNSF will provide the Board copies of any response it may receive.

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

The abandonment will have no effect on prime agricultural land along the rail line. See Exhibit E, letter from the Natural Resources Conservation Service, Fairbury Field Office. As long as the roadbed remains intact, there will be no adverse effect to prime agricultural farmland in Pawnee County, Nebraska. See Exhibit F, e-mail from the Natural Resources Conservation Service, Pawnee City Field Office.

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

N/A

(iv) If the proposed action is abandonment, state whether or not the right-of-way is suitable for alternative public use under 49 U.S.C. § 10906 and explain why.

The proposed abandonment is consistent with local land use plans. See Exhibit B, letter from the Jefferson County Attorney. The Board of Commissioners of Pawnee and Gage Counties were notified by letters dated April 30, 2003. See Exhibits C and D. As of the date of this report, neither has responded. The right of way may be suitable for alternative

public use; however title considerations could potentially affect suitability for such purposes, depending on the circumstances.

(4) Energy:

(i) Describe the effect of the proposed action on transportation of energy.

To the best of BNSF's knowledge there are no undeveloped energy resources such as oil, natural gas or coal in the vicinity of this line.

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

The proposed abandonment and discontinuance will not adversely affect movement or recovery of recyclable commodities as this line is out of service.

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

This abandonment will not result in an increase or decrease in overall energy efficiency as the line is out of service.

(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 the energy consumption and show the data and methodology used to arrive at the figure given.

Since the track is currently out of service, no diversions would result. In 2002, the line had a total of 419 cars, which does not affect wither threshold in subsections (A) or (B) above.

(5) Air:

(i) If the proposed action will result in either:

(A). An increase in rail traffic of at least 100% (measured in gross ton miles annually) or an increase of at least eight trains a day on any segment of the line effected by the proposed, or

No.

(B). An increase in rail yard activity of at least 100% (measured by carload activity), or

No.

(C). An average increase in truck traffic of more than 10% of the average daily traffic ("ADT") or 50 vehicles a day ("VPD") on any affected road segment, quantify the anticipated effect on air emissions.

The action will not involve an increase in truck traffic of more than 10% ADT or 50 VPD on any affected road segment as the line is out of service. Even when the line was in service, abandonment would not have resulted in truck traffic increases by more than 10% of ADT or 50 VPD.

(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% (measured in gross ton miles annually) or an increase of at least three train a day on any segment of rail line, or

(B) An increase in rail yard activity of at least 20% (measured by carload activity), or

(C) An average increase in truck traffic or more than 10-% of the average daily traffic of 50 vehicles a day on a given road segment, then state whether any expected increased emissions are within the parameters established by State implementation Plan. However, for a rail construction under 49 U.S.C. § 10901 (or 49 U.S.C. § 10505) or in a case involving the reinstatement of service over a previously abandoned line, only the three train a day threshold in this item shall apply.

The proposed abandonment will not result in an increase of rail or truck traffic because the line is out of service. Moreover, this area of proposed action is not within a Class I or non-attainment area under the Clean Air Act.

(iii) If the transportation of ozone depleting materials (such as nitrogen oxide and from) 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.

This action will have no effect on the transportation of ozone-depleting materials as the line is out of service. Moreover, this line has not traditionally accommodated shipment of ozone depleting materials.

(6) Noise: If any of the thresholds identified in item (5)(c) 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,

N/A

(ii) An increase to a noise level of 76 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 those receptors if the thresholds are surpassed.

N/A

(7) Safety:

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

This proposed abandonment and discontinuance is not expected to adversely effect health or public safety. There are 82 public crossings and

46 private crossings. During salvage operations on the line, precautions will be taken to ensure public safety, and contractors will be required to satisfy all applicable health and safety laws and regulations.

(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 and accidental release of hazardous materials.

Abandonment and discontinuance will not result in transportation of hazardous materials.

(iii) If there are any known hazardous waste site 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.

Diesel fuel contamination from locomotive fueling in Wymore, Nebraska is likely to have occurred. Wymore was formerly a division point with a roadhouse at one time. However, there have been no environmental assessments done at this location. BNSF is not aware of any other known hazardous waste site or sites where there have been known hazardous materials spills on the right of way.

(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.

BNSF is not aware of any endangered or threatened species or areas designated as critical habitat which would be adversely affected. No federally listed or proposed threatened or endangered species are expected

to occur within the project area. See Exhibit G, letter from the Fish and Wildlife Service.

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

The proposed exemption should not affect wildlife sanctuaries or refuges, nor National or State parks or forests. The proposed project does not appear to impact federal fish and wildlife management facilities. See Exhibit G, letter from the Fish and Wildlife Service. The proposed abandonment will not affect any public lands administered by the Bureau of Land Management. See Exhibit H, e-mail from the Bureau of Land Management. The Rock Glen Wildlife Management Area (WMA), Rock Creek Station State Historical Park (SHP) and the Rock Creek State Recreation Area (SRA) are located near the proposed abandonment near Endicott, Nebraska. See Exhibit I, letter from the Nebraska Game and Parks Commission. The Rock Glen/Rock Creek Station complex has a number of 19th Century historical features and biological attributes, which lie adjacent to the proposed abandonment. During salvage operations on the line, precautions will be taken to ensure that any historical features or biological attributes located adjacent to the proposed abandonment will not be affected.

(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.

BNSF believes that the proposed exemption will be consistent with applicable Federal, State or local water quality standards. Simply removing tracks and ties without grading the right-of-way would not trigger the need for an NPDES permit. See Exhibit J, letter from the Nebraska Department of Environmental Quality, Wastewater Section.

(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 floodplains will be affected. Describe the effects.

Permits under 404 of the Clean Water Act are not required for the proposed exemption. See Exhibits K, letter from the Army Corps of Engineers.

BNSF does not believe that the proposed exemption will affect any designated wetlands or 100-year flood plains. The proposed abandonment will not affect the 100 year floodplains in Jefferson County. See Exhibit B, letter from the Jefferson County Attorney. The officials for Gage County and Pawnee County were notified by letters dated April 30, 2003. See Exhibits L and M. As of the date of this report, neither has responded.

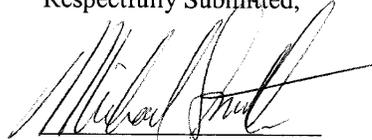
(iii) State whether permits under Section 402 of the Clean Water Act (33 U.S.C. § 1344) are required for the proposed action. (Applicants should contact the U.S. Environmental Protection Agency or the state environmental protection or equivalent agency if they are unsure whether such permits are required.

Permits under 402 of the Clean Water Act are not required for the proposed exemption. See Exhibit J, letter from the Nebraska Department of Environmental Quality, Wastewater Section.

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

Any salvage operations that may result will be in accordance with BNSF's general practice of requiring its private contractors to comply with all federal, state and local laws and regulations pertaining to the environment, including, but not limited to noise, air quality, water quality, and items of historical or archaeological significance. The project itself should mitigate the environmental effects of reinstating active rail operations in the area.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Michael Smith", written over a horizontal line.

Michael Smith
Freeborn & Peters
311 S. Wacker Dr. Suite 3000
Chicago, Illinois 60606-6677
Phone: (312) 360-6724
Fax: (312) 360-6598

Dated: July 14, 2003

BEFORE THE
SURFACE TRANSPORTATION BOARD

In the Matter of The
Burlington Northern and Santa Fe
Railway Company Abandonment and
Discontinuance of Service Exemption Between
M.P. 57.80 near Pawnee, Nebraska
and M.P. 117.03 near Endicott, Nebraska
in and through Jefferson, Gage and
Pawnee Counties, Nebraska

Docket No. AB-6
(Sub No. 405X)

HISTORICAL REPORT

The following is submitted to the Surface Transportation Board by The Burlington Northern and Santa Fe Railway Company (BNSF) in accordance with the Board's reporting requirements set forth in 49 C.F.R. § 1105.8 for the purpose of assisting the Board's environmental and historical assessment regarding BNSF's proposed Petition for Exemption for abandonment and discontinuance of its line between M.P 57.80 near Pawnee, Pawnee County, Nebraska and M.P. 117.03 near Endicott, Jefferson County, Nebraska, total distance of 59.23 miles, in and through Jefferson, Gage and Pawnee Counties, Nebraska.

(1) A U.S.G.S. topographic map (or 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 the railroad structures that are 50 years old or older and are part of the proposed action;

One copy of a U.S.G.S. Topographical map has been provided to the Nebraska State Historical Society and one copy is being provided to the Surface Transportation Board's Section of the Environmental Analysis upon filing of this Report.

(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 is rural in nature. Major crops grown in this area include corn, wheat, soybeans and milo. The adjacent land is generally flat to rolling. Small rural towns are located at intervals along the line.

The towns along the line include Burchard, Liberty, Wymore, Odell, Diller and Endicott. During the ten years between the 1990 census and the 2000 US census, the combined population of these six communities increased from 2,609 to 2,616, an increase of 0.3%. Wymore is the largest community along the line with a 2000 population of 1,656 followed by Odell with 345, Diller with 287, Endicott with 139, Burchard with 103 and Liberty with 86. There is a very good two lane highway network with a light amount of traffic in the vicinity of the line.

The right of way is generally 100 feet wide except for station grounds at stations located along the line and other rural locations where the right of way is wider.

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

There are no railroad structures that are 50 years or older in the immediate area of the line other than certain identified bridges. Photographs and descriptions of the thirty-three bridges that are 50 years or older are attached to this report. See Exhibit N.

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

See Exhibit N.

(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 completed by the Republican Valley Railroad Company in 1881. In 1882 The Republican Valley Railroad Company merged into Chicago Burlington and Quincy Railroad Company (CBQ). The majority of the right of way was acquired by various deeds from 1880 through 1890. In 1970 the CBQ merged with Northern Pacific Railway Company and Great Northern Railway Company to become The Burlington Northern Railroad Company (BN). In 1995 The Atchison Topeka and Santa Fe Railway merged with BN to become The Burlington Northern and Santa Fe Railway Company.

Since the line is out of service, no significant changes in carrier operations are expected.

(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 to be historic;

Typical documents in BNSF's possession concerning this abandonment may but do not necessarily include alignment maps showing the right-of-way and/or station maps. Such documents are too large for practical reproduction in this report, but can be furnished upon request, if they are 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 C.F.R. § 60.4), and whether there is a likelihood of archaeological 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);

To the best of BNSF's knowledge, the proposed abandonment should have no appreciable effects on any known sites or properties listed, or eligible for listing in the National Register of Historic Places. BNSF is not aware of any unique sites or structures with significant historical associations located within the right of way. The Nebraska

Game and Parks Commission has noted the existence of the Rock Creek Station Historical Park complex near Endicott. See Exhibit I, letter from the Nebraska Department of Game and Parks. There will be no historic properties affected by the proposed project. See Exhibit O, letter from the Nebraska State Historical Society.

(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 archaeological recovery of resources (such as swampy conditions or the presence of toxic wastes), and the surrounding terrain.

BNSF is not aware of any known prior subsurface ground disturbance or fill or any other environmental conditions (naturally occurring or man-made) that might affect the recovery of archaeological resources.

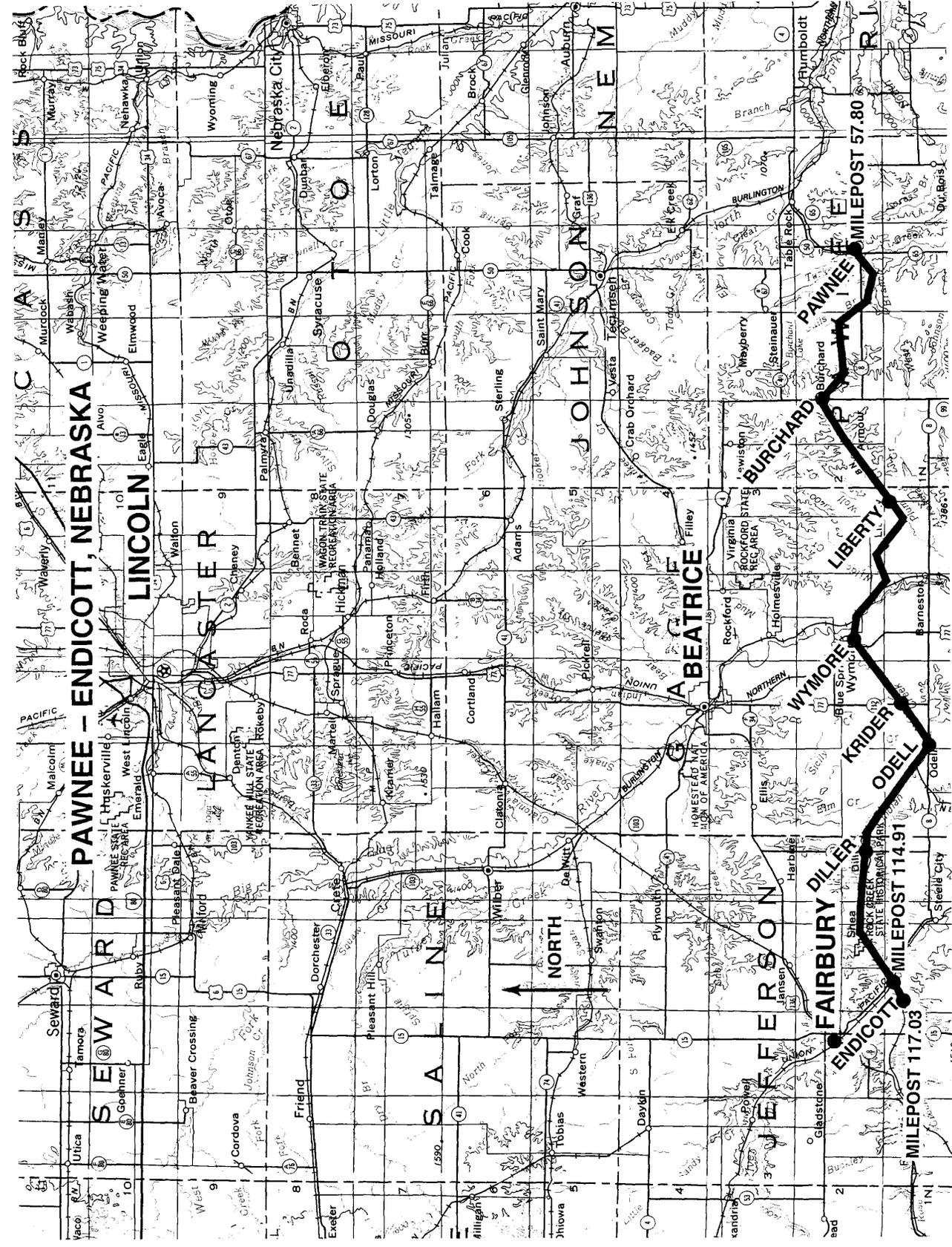
Respectfully submitted,



Michael Smith
Freeborn & Peters
311 S. Wacker Dr. Suite 3000
Chicago, Illinois 60606-6677
Phone: (312) 360-6724
Fax: (312) 360-6598

Date: July 14, 2003

A



Pawnee - Endicott, Nebraska

Lincoln

Lancaster

Seward

Kearney

Nemaha

Johnson

Beatrice

Fairbury

Diller

Odele

Murray

Nebraska City

Beatrice

Lincoln

Lancaster

Johnson

Beatrice

Fairbury

Diller

Odele

Beatrice

Fairbury

Diller

Odele

Beatrice

Murray

Nebraska City

Beatrice

Lincoln

Lancaster

Johnson

Beatrice

Fairbury

Diller

Odele

Beatrice

Fairbury

Diller

Odele

Beatrice

B

Linda A. Bauer
JEFFERSON COUNTY ATTORNEY
411 4TH Street
Fairbury, NE 68352
(402) 729-2584
email: jeffersoncoatty@alltel.net

June 2, 2003

Brian Nettles
Freeborn & Peters
311 South Wacker Drive
Suite 3000
Chicago, IL 60606-6677

RE: Abandonment of Burlington Northern railroad line
in Jefferson County, Nebraska

Dear Mr. Nettles:

As a follow up to our phone conversation last week, this letter will confirm that the proposed abandonment of railroad line will not affect any 100-year floodplains in our County provided the roadbed is left intact. This will further confirm that the proposed action is consistent with local land use plans.

Please feel free to contact me if you require further information.

Very truly yours,



Linda A. Bauer

LAB:s

C

Freeborn & Peters

April 30, 2003

Don Luedders
Commissioner, Chair
Pawnee County Board of Commissioners
P.O. Box 431
County Courthouse
Pawnee City, NE 68420-0431

Attorneys at Law

311 South Wacker Drive
Suite 3000
Chicago, Illinois
60606-6677
Tel 312.360.6000

Brian Nettles
Paralegal
Direct 312.360.6336
Fax 312.360.6596
bnettl@
freebornpeters.com

Chicago

Springfield

Re: *The Burlington Northern and Santa Fe Railway Company Abandonment of Table Rock, Nebraska to Endicott, Nebraska*

Dear Mr. Luedders:

BNSF plans on filing with the Surface Transportation Board ("STB") a Petition for Exemption seeking authority to abandon 69.01 miles of railroad line between Milepost 48.02 in Table Rock, Nebraska and Milepost 117.03 in Endicott, Nebraska.

As part of the environmental report BNSF needs to know whether or not the proposed action is consistent with local land use plans and if there are any alternate public uses for the corridor such as a recreational trail.

The proposed abandonment may require the removal of the track materials such as the rails and ties but the roadbed will be left intact.

For your reference I have enclosed a map of the above referenced railroad line. If you have any questions, or if you would like to discuss this matter further, please do not hesitate to contact me at (312) 360-6336.

Thank you in advance for your cooperation.

Sincerely,



Brian Nettles

/bn
Enclosure

D

Freeborn & Peters

April 30, 2003

David Anderson
Chairman
Gage County Board of Supervisors
P.O. Box 429
County Courthouse
Beatrice, NE 68310-0429

Attorneys at Law

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Brian Nettles
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bnettl@
freebornpeters.com

Chicago

Springfield

Re: *The Burlington Northern and Santa Fe Railway Company Abandonment of Table Rock, Nebraska to Endicott, Nebraska*

Dear Mr. Anderson:

BNSF plans on filing with the Surface Transportation Board ("STB") a Petition for Exemption seeking authority to abandon 69.01 miles of railroad line between Milepost 48.02 in Table Rock, Nebraska and Milepost 117.03 in Endicott, Nebraska.

As part of the environmental report BNSF needs to know whether or not the proposed action is consistent with local land use plans and if there are any alternate public uses for the corridor such as a recreational trail.

The proposed abandonment may require the removal of the track materials such as the rails and ties but the roadbed will be left intact.

For your reference I have enclosed a map of the above referenced railroad line. If you have any questions, or if you would like to discuss this matter further, please do not hesitate to contact me at (312) 360-6336.

Thank you in advance for your cooperation.

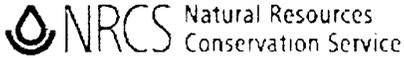
Sincerely,



Brian Nettles

/bn
Enclosure

E



Fairbury Field Office
305 Fifth Street
Fairbury, NE 68352

<http://www.ne.nrcs.usda.gov>

May 6, 2003

Freeborn & Peters
311 South Wacker Drive
Suite 3000
Chicago, IL 60606-6677

*Re: The Burlington Northern and Santa Fe Railway Company Abandonment
of Table Rock, Nebraska to Endicott, Nebraska*

Dear Mr. Nettles:

The abandonment of the BNSF railroad line between Milepost 48.02 in Table Rock, NE and Milepost 117.03 in Endicott, NE, as described in the April 30, 2003 letter sent to our office, will have no effect on the prime agricultural lands along the rail line.

If you have further questions on this matter please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "John Mayberger".

John Mayberger
Resource Conservationist

F

Nettles, Brian

From: Terry Newell [terrance.newell@ne.usda.gov]
Sent: Monday, May 19, 2003 10:53 AM
To: bnettles@freebornpeters.com
Cc: wesley pope
Subject: Railway Abandonment

Brian,

I have reviewed your company's request to abandon railroad line near Table Rock, Nebraska. As I understand your request, your company is considering removing rails and ties but will keep the roadbed intact. I see no adverse effect to prime farmland as long as the roadbed remains intact.

Questions that I do have is, who will maintain ownership of this roadbed? Will your company revert the ownership back to the current landowner or will your company maintain full ownership? As I've stated, as long as the roadbed remains intact I see no adverse effect to prime agricultural farmland here in Pawnee County, Nebraska.

Thank you for allowing me to comment on your intentions.

Terry Newell, Resource Conservationist
NRCS, Pawnee City Field Office

G



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
Nebraska Field Office
203 West Second Street
Grand Island, Nebraska 68801

May 7, 2003

Mr. Brian Nettles
Freeborn & Peters
311 South Wacker Drive
Suite 3000
Chicago, IL 60606-6677

Dear Mr. Nettles:

This responds to your April 30, 2003, letter requesting comments from the U.S. Fish and Wildlife Service on a proposal by the Burlington Northern and Santa Fe Railway Company to abandon 69.01 miles of railroad line between Milepost 48.02 in Table Rock, Nebraska and Milepost 117.03 in Endicott, Nebraska. These comments are provided as technical assistance and predevelopment consultation and do not constitute a Service report under authority of the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.) on any required Federal environmental review or permit.

The Service has responsibility, under a number of authorities, for conservation and management of fish and wildlife resources. Chief among the federal statutes with which our office deals are the Coordination Act, Endangered Species Act of 1973, and the National Environmental Policy Act. The Coordination Act requires that fish and wildlife resources be given equal consideration in the planning, implementation, and operation of Federal and federally funded, permitted, or licensed water resource developments. Section 7 of the Endangered Species Act of 1973 outlines procedures for interagency consultations on the effects of Federal actions on federally listed threatened and endangered species. The Service participates in scoping and review of actions significantly affecting the quality of the environment under authority of the National Environmental Policy Act. In addition to these statutes, the Service has authority under several other legislative, regulatory, and executive mandates to promote conservation of fish and wildlife resources for the benefit of the public.

In Nebraska, the Service has special concerns for migratory birds, endangered and threatened species, and other important fish and wildlife resources. We also are concerned about any impacts on Federal and State wildlife refuges and management areas and other public lands, as well as to other areas that support sensitive habitats. Habitats frequently used by important fish and wildlife resources are wetlands, streams, and riparian (streamside) woodlands. Special attention is given to proposed developments that include modification of wetlands, or stream alteration, or contamination of important habitats. The Service recommends ways to avoid, minimize, rectify, reduce, or compensate for damaging impacts to important fish and wildlife resources and their habitats that may be attributed to land and water resource development proposals.

H

Nettles, Brian

From: Bill_Carson@blm.gov
Sent: Monday, May 12, 2003 2:55 PM
To: bnettles@freebornpeters.com
Subject: BNSF Abandonment - Table Rock, NE to Endicott, NE

We have analyzed the proposed railroad abandonment and found that it will not affect any public lands (Federal lands) administered by the Bureau of Land Management.

Bill Carson
Realty Specialist
Bureau of Land Management
Newcastle Field Office
1101 Washington Blvd
Newcastle, WY 82701

307-746-6607

I



Nebraska Game and Parks Commission

2200 N. 33rd St. / P.O. Box 30370 / Lincoln, NE 68503-0370

Phone: 402-471-0641 / Fax: 402-471-5528 / <http://www.ngpc.state.ne.us/>

May 29, 2003

Brian Nettles
Project Coordinator
Freeborn & Peters
Attorneys-at-Law
311 South Wacker Dr., Ste. 3000
Chicago, IL 60606-6677

RE: Petition to abandon 69.01 miles of Burlington Santa Fe railroad: M.P. 48.02 at Table Rock (Pawnee County) to M.P. 117.03 at Endicott (Jefferson County) in southeastern Nebraska.

Dear Mr. Nettles,

This is in response to your request for the Nebraska Game & Parks Commission staff to review and comment on the proposed action identified above. The principal concerns we wish to point out are associated with the Rock Glen Wildlife Management Area (WMA), Rock Creek Station State Historical Park, (SHP) and the Rock Creek State Recreation Area (SRA), all of which are located near Endicott, as shown on the enclosed aerial photograph based on a 1999 G.I.S. imagery. The Rock Glen/Rock Creek Station complex has a number of 19th Century historical features and biological attributes, which lie adjacent to the proposed abandonment. We will not try to provide details about the historical and natural resources values of the area at this time. We have enclosed brief general publications about the area, which give some high points you may want to note in your review.

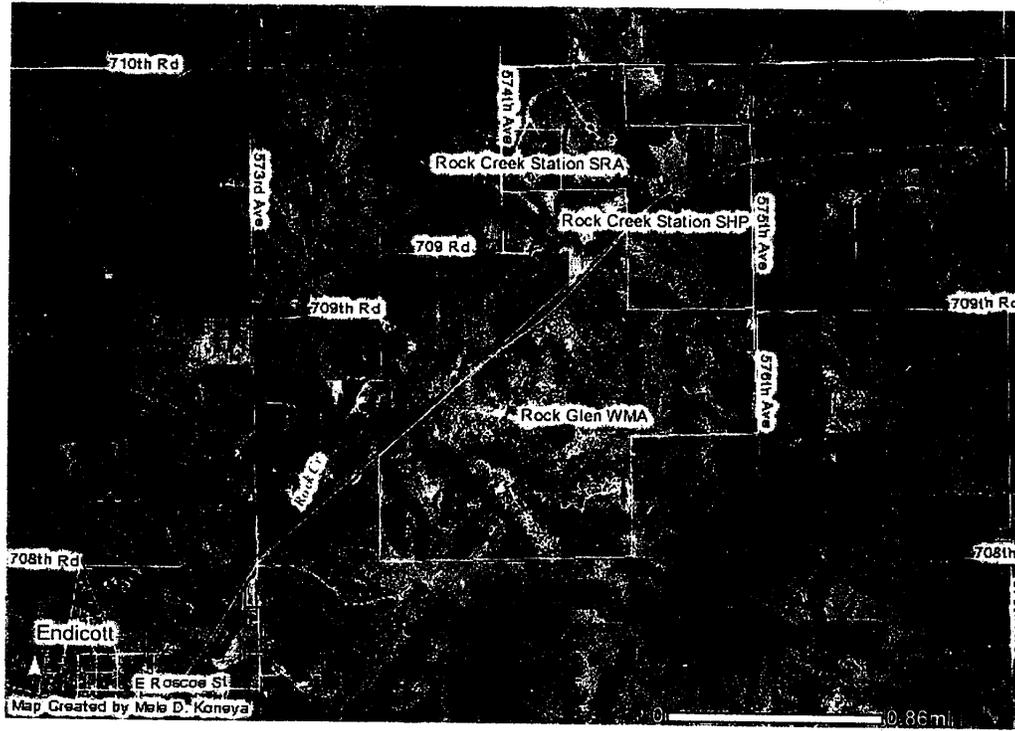
Please advise if further review and/or additional details will be needed at this time. We appreciate the opportunity to review the proposed activity and to provide our agency's comments.

Sincerely,

Bruce K. Sackett
Division Administrator
Realty & Environmental Services Division

Cc: Wayne Brandt NGPC Parks Division
Brad Seitz NGPC Wildlife Division
Frank Albrecht NGPC Realty & Environmental Services Division

Encl: * NGPC publication
* Aerial photo (1999 G.I.S. coverage)



Rock Creek Station



In the spring of 1859, Dave McCandles was on his way to the Colorado gold fields. He became discouraged as he met returning miners and heard their tales of disappointment. He decided to take up road ranching instead and bought Rock Creek Station. That summer and fall, he built a log cabin and dug a good well on the east side of Rock Creek. Later, he built a toll bridge across the creek, eliminating the crude rock ford. His normal fee ranged from 10 to 50 cents, depending on a person's ability to pay.

The following year, he rented the East Ranch to Russell, Majors and Waddel, owners of the Overland Stage Company and founders of the Pony Express. Rock Creek was used as a stage station, as well as a swing station where Pony Express riders could quickly change their mounts. Overland used its own men to run the station. . . . Horace Wellman as company agent/ station keeper and Dock (sic) Brink as stock tender. Early in 1861, James Butler Hickok was hired as stable hand.

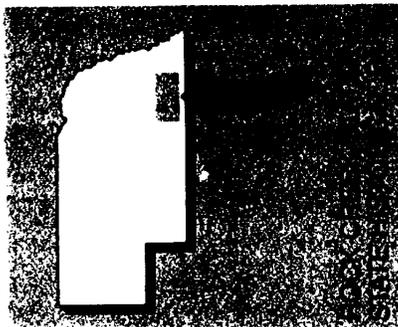
Later, Overland bought the East Ranch from McCandles, apparently making a cash down pay

Rock Creek Station might have faded into obscurity, like so many other stage and Pony Express stations, except for one fateful day in 1861. On that July afternoon, one James Butler Hickok killed David McCandles there and began his bloody career as a gunfighter.

Today, Rock Creek is a state historical park, being developed by the Nebraska Game and Parks Commission. It encompasses some 350 acres of prairie hilltops, timber-studded creek bottoms, and rugged ravines and draws about 6 miles southeast of Fairbury, off of Nebraska Highway 8. Deep ruts, carved by the many wagons that traveled the Oregon Trail, are plainly visible there. They bear mute testimony to the rich history of the area.

Established in 1857 by S. C. Glenn, Rock Creek Station evolved from a small cabin with a lean-to and barn, situated on the west side of Rock Creek. This road ranch catered to stages, freight lines, and emigrant traffic on the Oregon Trail. The lean-to was set up as a primitive store, where hay, grain, and supplies could be bought, sold, or traded.

Glorified by Harper's Magazine, Wild Bill Hickok was addicted to cards. He was gunned down by Jack McCall at Saloon No. 10 in Deadwood, South Dakota, on August 2, 1876. He held two pairs - aces and eights - the now famous "dead man's hand". He was 39 years old.



ROCK CREEK STATION
 State Historical Park
 57426 710 Ave
 Fairbury, NE 68015
 Phone: 402-728-2277

The Agency for Cultural Resources
 Parks and Recreation
 1000 North 17th Street
 Lincoln, NE 68502

Courtesy of Nebraska State Historical Society



The weapon used by Hickok to kill McCandles was this .56 caliber percussion rifle marked only "Birn-Nealon & Co." It was donated to the Historical Society in 1931 by a person who got it from the McCandles family.



gent, with the remainder in installments. The company fell behind on payments, and Wellman went to Brownville for supplies and to get the money due McCandles. He was accompanied by Monroe McCandles, David's 12-year-old son. When they returned, Monroe saw his father's horse at a neighboring ranch and went to greet him, while Wellman went on to the station. The date was July 12, 1861. Monroe then accompanied his father and two hired men, James Woods and James Gordon, to the station to ask Wellman about the payments. At the house, McCandles was confronted by Mrs. Wellman and then by Hickok. Wellman did not come out of the cabin. After talking with Hickok, McCandles went to another door, Hickok shot him from ambush, as he entered the doorway... ironically with McCandles' own rifle. He had left the gun for Wellman to use to defend the station.

Woods ran around to the north side of the house, where he fell and was killed with a grub hoe, presumably wielded by Wellman. Although wounded, Gordon tried to escape in the brush of Rock Creek but was tracked down and killed with a load of buckshot. Monroe dodged a blow from the grub hoe and escaped death by fleeing into a ravine. Wellman, Brink, and Hickok were arrested and tried for murder in Beatrice, but they were all acquitted after pleading self-defense. Monroe stoutly claimed that his father and the other two men were unarmed, but he was not allowed to testify. No one really knows why Hickok fired the shots that began this bloody and seemingly one-sided fight. Many explanations have been offered, including romantic versions of love, hate, theft, and even the conflict between the North and the South. Probably the best known version of the story was written by Col. Ward Nichols and published in the February 1867 issue of Harpers Magazine. His story glamorized Hickok, now dubbed "Wild Bill", as a fighting frontier hero. In

Nichols' account, Hickok single-handedly fought and killed 10 men with a gun and Bowie knife. "The M'Kandilas's Gang... reckless, blood-thirsty devils who would fight as long as they had strength to pull a trigger." Although supposedly carrying 11 buckshot and 13 knife wounds, Hickok emerged the victor. Nichols' story, along with others by such writers as Ned Buntline and J. W. Buel, glorified Hickok to the exclusion of the facts. Hickok became a western legend, and the true story of the fight at Rock Creek Station faded from memory.

After the killings, the Pony Express rode its last ride and the East Ranch was operated as a home station for the Ben Holliday* Stage Line. The West Ranch was owned by Wolf and Hagersten, who were also involved in Overland Trail traffic. In 1865, D.C. Jenkins set up the second post office in Jefferson County on the West Ranch and ran the toll bridge. Holliday sold his East Ranch holdings to the Wells Fargo Stage Line in 1866. Within a

*Some historical sources spell this name as "Holladay".

Courtesy of California State Library, Sacramento



Old-time photo shows cabin, station, and stable, looking toward the northwest. Barely visible in the top right is the West Ranch.



Rock Creek Station served one of the many feeder trails that came out of Kansas and Missouri to merge near Fort Kearny as the Oregon or Overland Trail.



James Butler "Wild Bill" Hickok was a real "dandy" and born in Latsdale County, Ill., on May 27, 1837.

J

STATE OF NEBRASKA



Mike Johanns
Governor

May 22, 2003

DEPARTMENT OF ENVIRONMENTAL QUALITY

Michael J. Linder

Director

Suite 400, The Atrium

1200 'N' Street

P.O. Box 98922

Lincoln, Nebraska 68509-8922

Phone (402) 471-2186

FAX (402) 471-2909

web site : www.deq.state.ne.us

Brian Nettles
Freeborn & Peters
311 South Wacker Drive
Chicago, IL 60606-6677

RE: NPDES permitting requirements for railroad line abandonment to be carried-out by the Burlington Northern and Santa Fe Railway Company

Dear Mr. Nettles:

From the description provided in your letter of April 30, 2003, it appears that an NPDES permit will not be required for track and tie removal from the 69.01- mile segment of railroad line being abandoned.

NPDES permit coverage is required for storm water discharges from construction sites where 1 or more acres of land are graded or disturbed. However, simply removing tracks and ties without grading the right-of-way would not trigger the need for an NPDES permit pursuant to these requirements.

If you have any questions, please contact me at 402/471-2023.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Yeggy".

Jim Yeggy, Program Specialist
Wastewater Section

c: NPDES construction storm water file NPDES NER100059

K



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
NEBRASKA REGULATORY OFFICE - KEARNEY
1430 CENTRAL AVENUE SUITE 4
KEARNEY, NE 68847-6856

June 19, 2003

Mr. Brian Nettles
Freeborn & Peters
311 South Wacker Drive, Suite 300
Chicago, Illinois 60606-6677

Dear Mr. Nettles:

This letter pertains to the proposal of the Burlington Northern and Santa Fe Railway for a track abandonment extending from Milepost 48.02 in Table Rock, Nebraska to Milepost 117.03 in Endicott, Nebraska.

After reviewing the materials you provided, the project will not require a Department of the Army permit.

If, in the future, you plan to place fill material in any waters of the United States please provide this office with an application for review for possible permit requirements.

Although a Department of the Army permit pursuant to Section 404 of the Clean Water Act and/or Section 10 of the River and Harbor Act is not required for this project, this does not eliminate the requirement that you obtain other applicable Federal, State, Tribal and/or Local permits as required.

If you have any questions regarding this matter, please feel free to contact me at the above address or call (308) 234-1403 and refer to file number NE 03-10591.

Sincerely,

A handwritten signature in cursive script, reading "Keith Tillotson".

Keith Tillotson
Senior Project Manager

Freeborn & Peters

April 30, 2003

Sandra Eltiste
Gage County Clerk
612 Grant St.
P.O. Box 429
Beatrice, NE 68310

Attorneys at Law

311 South Wacker Drive
Suite 3000
Chicago, Illinois
60606-6677
Tel 312.360.6000

Brian Nettles
Paralegal
Direct 312.360.6336
Fax 312.360.6596
bnettl@
freebornpeters.com

Re: *The Burlington Northern and Santa Fe Railway Company Abandonment of Table Rock, Nebraska to Endicott, Nebraska*

Dear Ms. Eltiste:

BNSF plans on filing with the Surface Transportation Board ("STB") a Petition for Exemption seeking authority to abandon 69.01 miles of railroad line between Milepost 48.02 in Table Rock, Nebraska and Milepost 117.03 in Endicott, Nebraska.

As part of the environmental report BNSF needs to know if the proposed abandonment will affect any 100-year floodplains. If so, please furnish 8 & ½ by 11 black and white maps in the area of each designated floodplain if they are available.

The proposed abandonment may require the removal of the track materials such as the rails and ties but the roadbed will be left intact.

For your reference I have enclosed a map of the above referenced railroad line. Please provide this information by June 1, 2003. If you have any questions, or if you would like to discuss this matter further, please do not hesitate to contact me at (312) 360-6336.

Thank you in advance for your cooperation.

Sincerely,



Brian Nettles

/bn
Enclosure

Chicago

Springfield

M

Freeborn & Peters

April 30, 2003

Carol Young
Pawnee County Clerk
P.O. Box 431
County Courthouse
Pawnee City, NE 68420-0431

Attorneys at Law

311 South Wacker Drive
Suite 3000
Chicago, Illinois
60606-6677
Tel 312.360.6000

Brian Nettles
Paralegal
Direct 312.360.6336
Fax 312.360.6596
bnettl@
freebornpeters.com

Chicago

Springfield

Re: *The Burlington Northern and Santa Fe Railway Company Abandonment of Table Rock, Nebraska to Endicott, Nebraska*

Dear Ms. Young:

BNSF plans on filing with the Surface Transportation Board ("STB") a Petition for Exemption seeking authority to abandon 69.01 miles of railroad line between Milepost 48.02 in Table Rock, Nebraska and Milepost 117.03 in Endicott, Nebraska.

As part of the environmental report BNSF needs to know if the proposed abandonment will affect any 100-year floodplains. If so, please furnish 8 & ½ by 11 black and white maps in the area of each designated floodplain if they are available.

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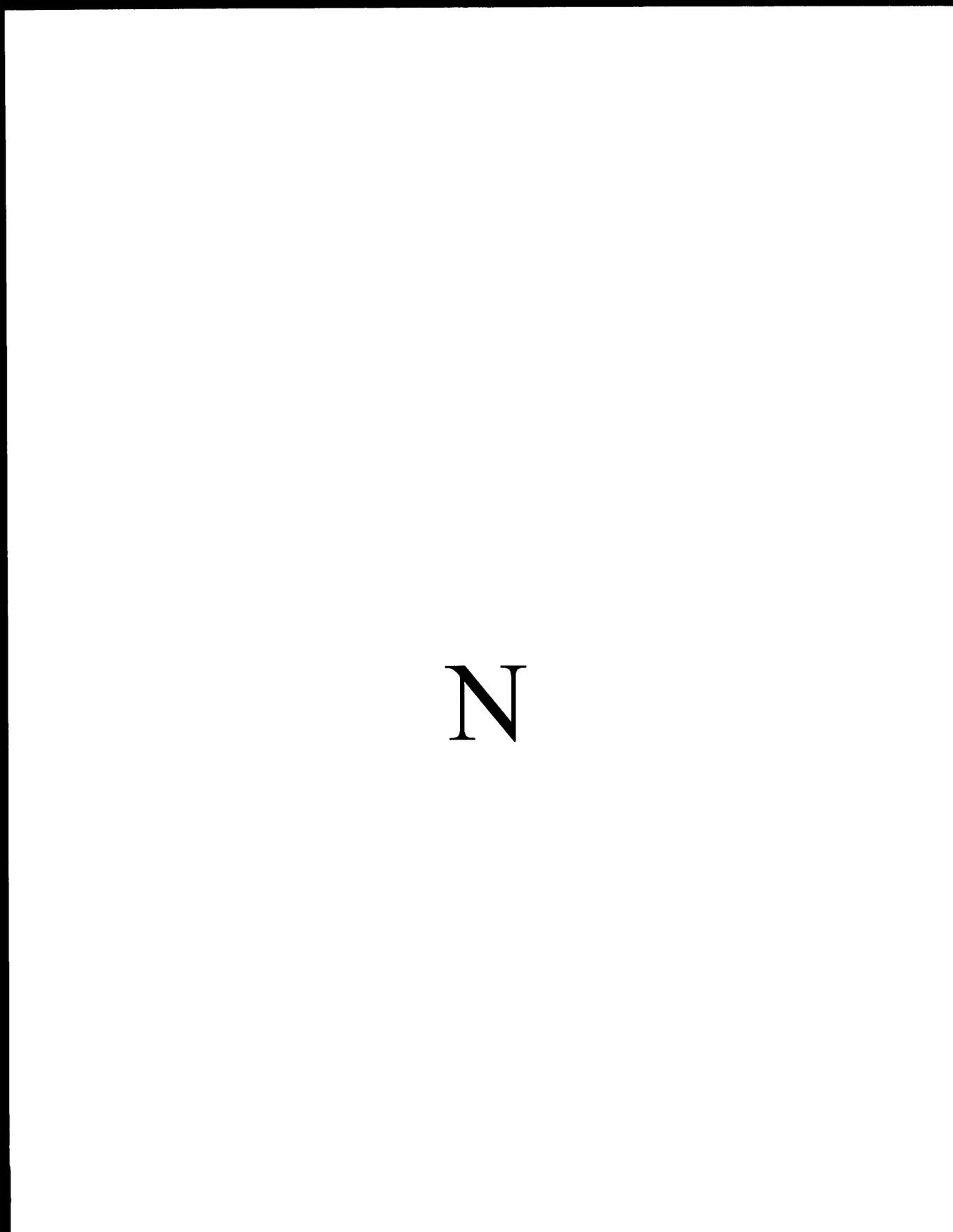
Thank you in advance for your cooperation.

Sincerely,



Brian Nettles

/bn
Enclosure



N

*Pawnee City, Nebraska to Endicott, Nebraska
(M.P. 57.80 to M.P. 117.03)*

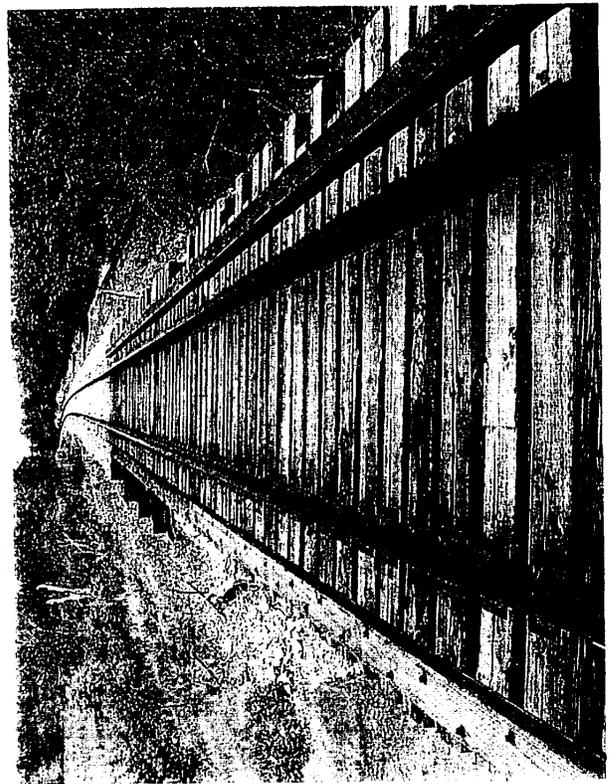
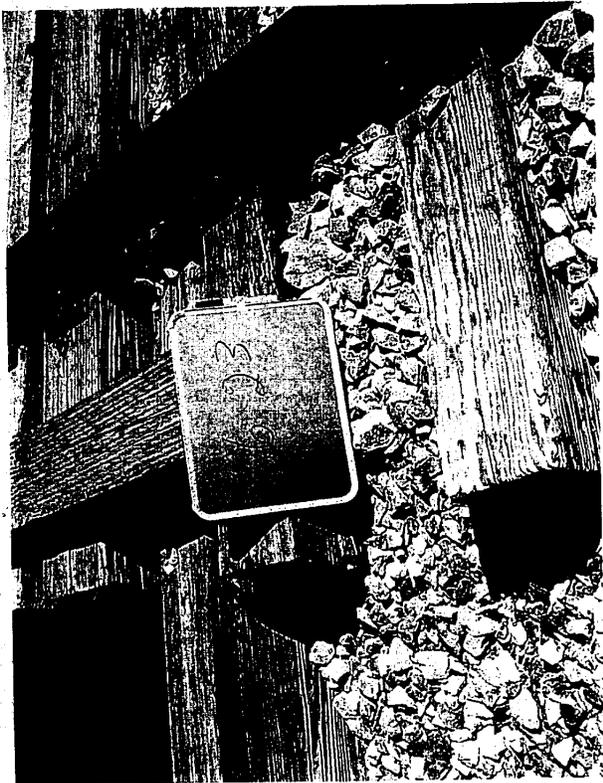
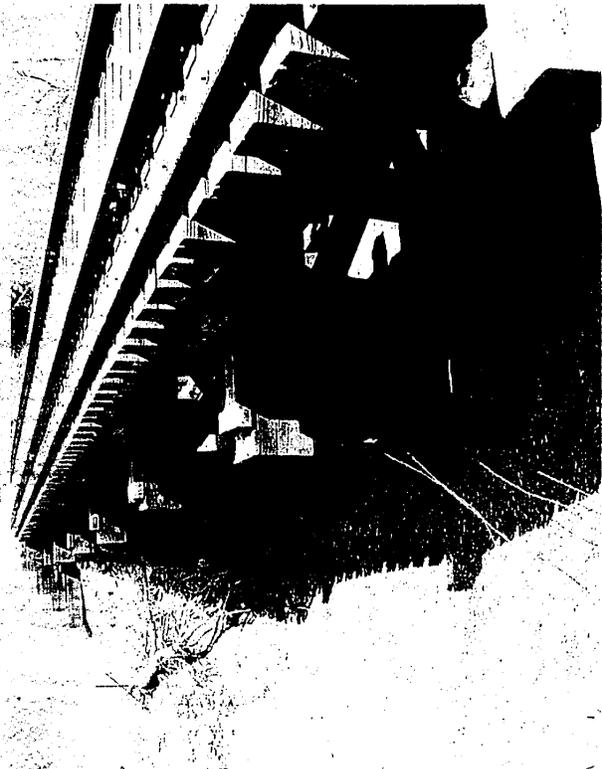
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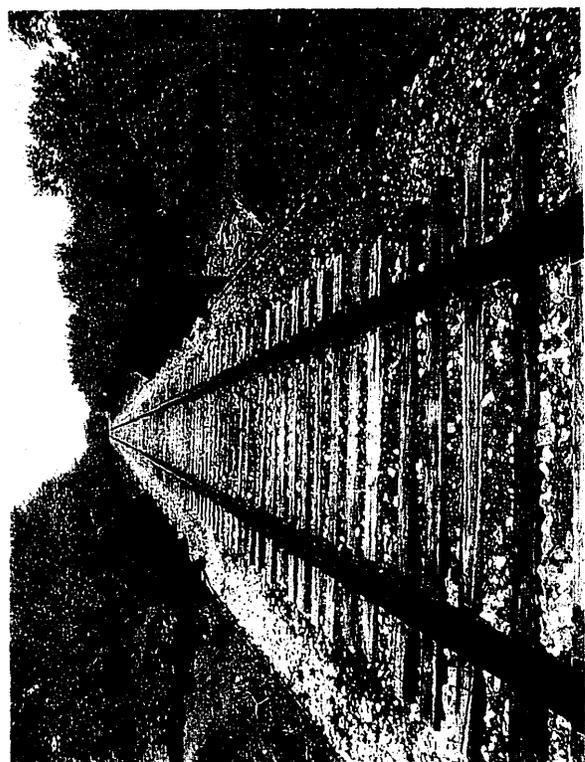
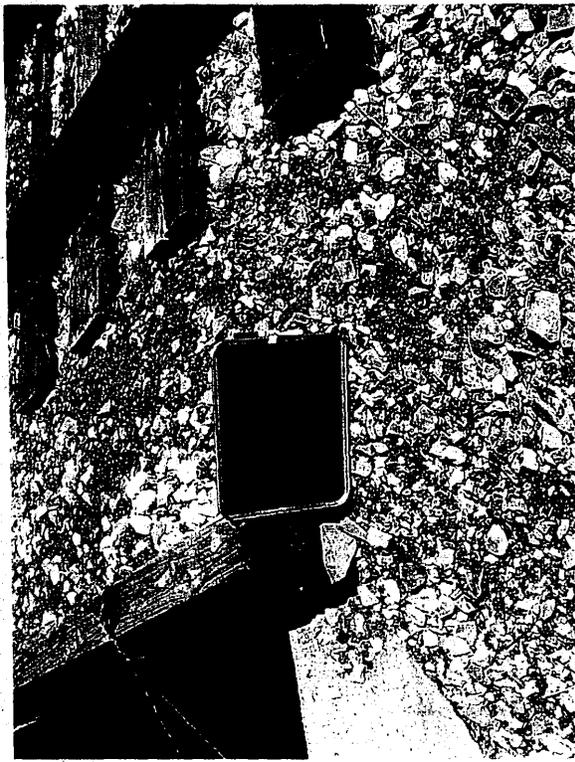
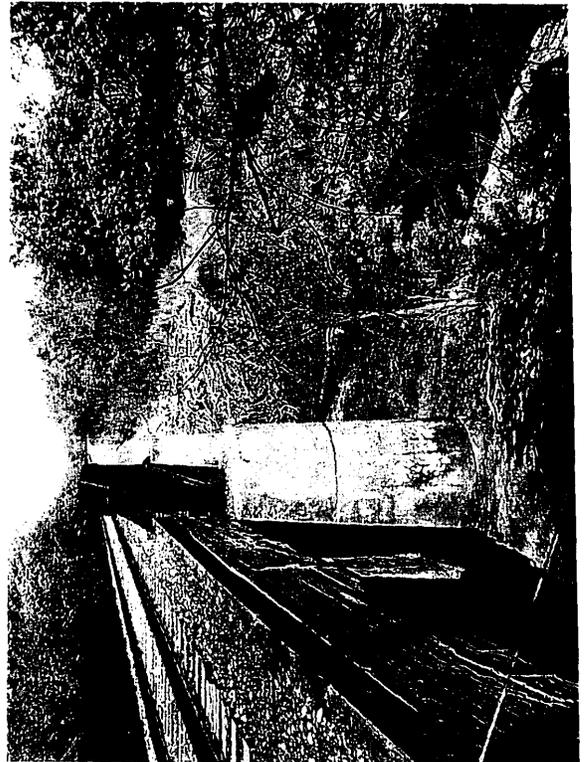
Abandonment Documentation (M.P. 57.80 to M.P. 117.03)

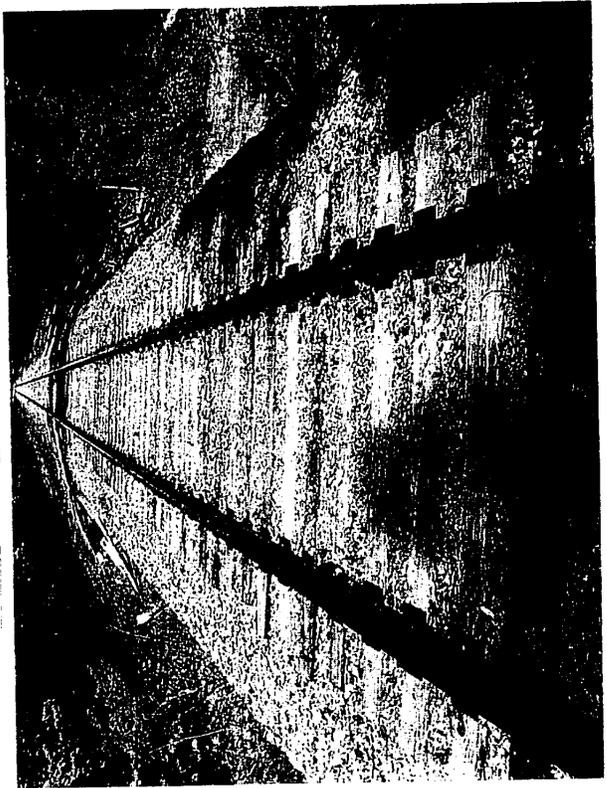
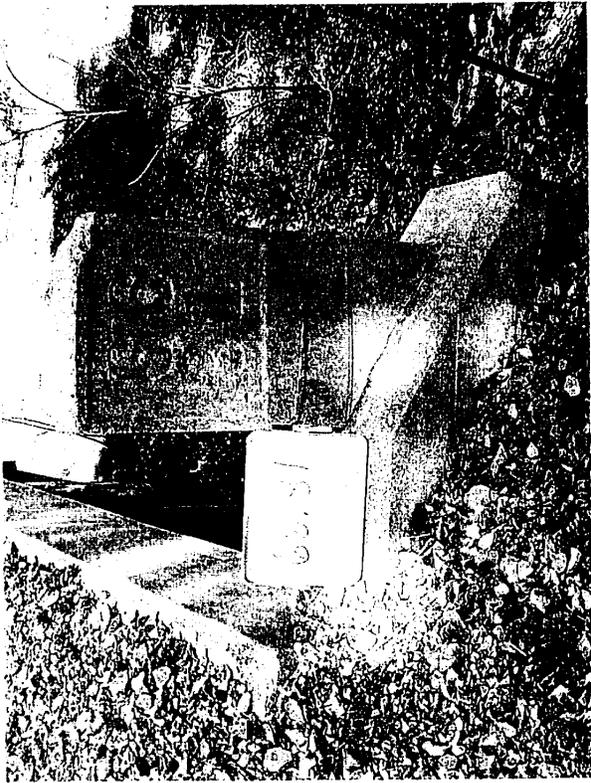
List of Bridges

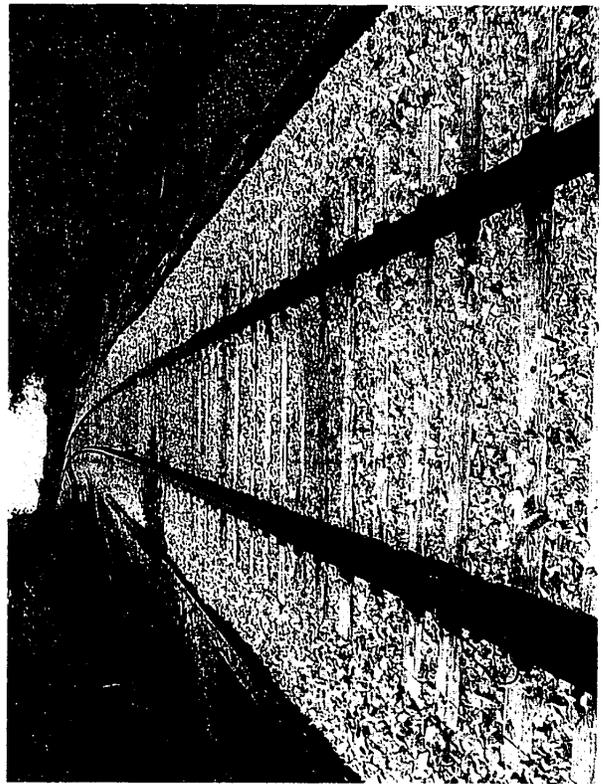
Bridge: 59.31	Built: 1910	Length: 141'	Height: 26'	Description: Steel and Concrete	Obstacle: Water
Bridge: 66.23	Built: 1924	Length: 83'	Height: 15'	Description: Wood	Obstacle: Water
Bridge: 66.81	Built: 1923	Length: 80'	Height: 13'	Description: Concrete	Obstacle: Water
Bridge: 67.79	Built: 1914	Length: 80'	Height: 16'	Description: Concrete	Obstacle: Water
Bridge: 68.53	Built: 1912	Length: 121'	Height: 26'	Description: Steel and Concrete	Obstacle: Water
Bridge: 69.09	Built: 1918	Length: 105'	Height: 23'	Description: Concrete	Obstacle: Water
Bridge: 70.05	Built: 1917	Length: 80'	Height: 16'	Description: Concrete	Obstacle: Water
Bridge: 73.45	Built: 1921	Length: 109'	Height: 13'	Description: Steel and Concrete	Obstacle: Water
Bridge: 73.71	Built: 1910	Length: 80'	Height: 13'	Description: Concrete	Obstacle: Water
Bridge: 75.50	Built: 1921	Length: 117'	Height: 22'	Description: Concrete	Obstacle: Water
Bridge: 76.69	Built: 1920	Length: 70'	Height: 13'	Description: Concrete	Obstacle: Water
Bridge: 81.24	Built: 1907	Length: 164'	Height: 22'	Description: Steel and Concrete	Obstacle: Water
Bridge: 83.29	Built: 1926	Length: 43'	Height: 14'	Description: Wood	Obstacle: Water
Bridge: 83.74	Built: 1917	Length: 100'	Height: 19'	Description: Concrete	Obstacle: Water
Bridge: 84.86	Built: 1941	Length: 123'	Height: 7'	Description: Wood	Obstacle: Water
Bridge: 86.28	Built: 1914	Length: 574'	Height: 38'	Description: Steel and Concrete	Obstacle: Water
Bridge: 88.27	Built: 1904	Length: 240'	Height: 24'	Description: Steel	Obstacle: Water
Bridge: 89.54	Built: 1944	Length: 116'	Height: 24'	Description: Steel and Wood	Obstacle: Water
Bridge: 94.46	Built: 1923	Length: 96'	Height: 15'	Description: Concrete	Obstacle: Water
Bridge: 94.93	Built: 1923	Length: 100'	Height: 17'	Description: Concrete	Obstacle: Water
Bridge: 95.28	Built: 1905	Length: 155'	Height: 24'	Description: Steel	Obstacle: Water
Bridge: 99.39	Built: 1915	Length: 144'	Height: 20'	Description: Concrete	Obstacle: Water
Bridge: 99.87	Built: 1899	Length: 116'	Height: 26'	Description: Steel	Obstacle: Water
Bridge: 103.43	Built: 1923	Length: 134'	Height: 25'	Description: Concrete	Obstacle: Water
Bridge: 104.76	Built: 1912	Length: 148'	Height: 28'	Description: Steel and Concrete	Obstacle: Water
Bridge: 105.46	Built: 1914	Length: 166'	Height: 22'	Description: Steel and Concrete	Obstacle: Water
Bridge: 106.28	Built: 1921	Length: 105'	Height: 19'	Description: Concrete	Obstacle: Water
Bridge: 114.16	Built: 1911	Length: 125'	Height: 23'	Description: Steel and Concrete	Obstacle: Water

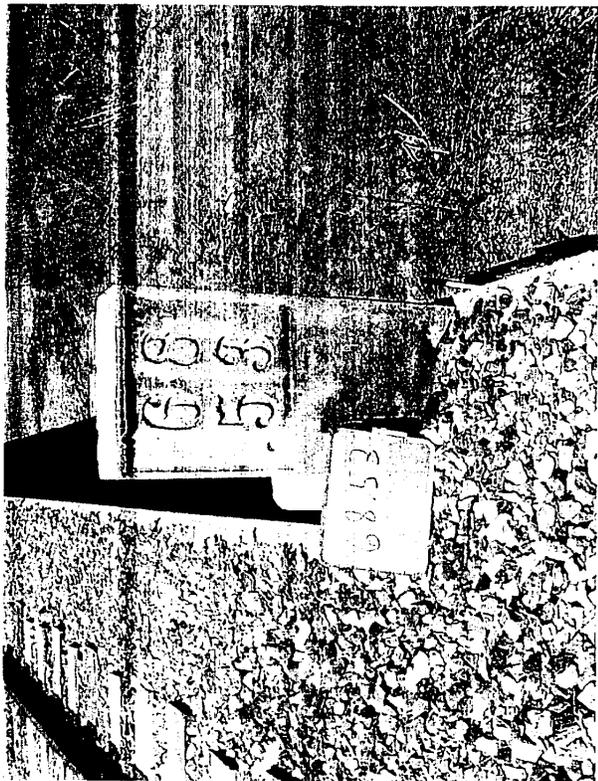
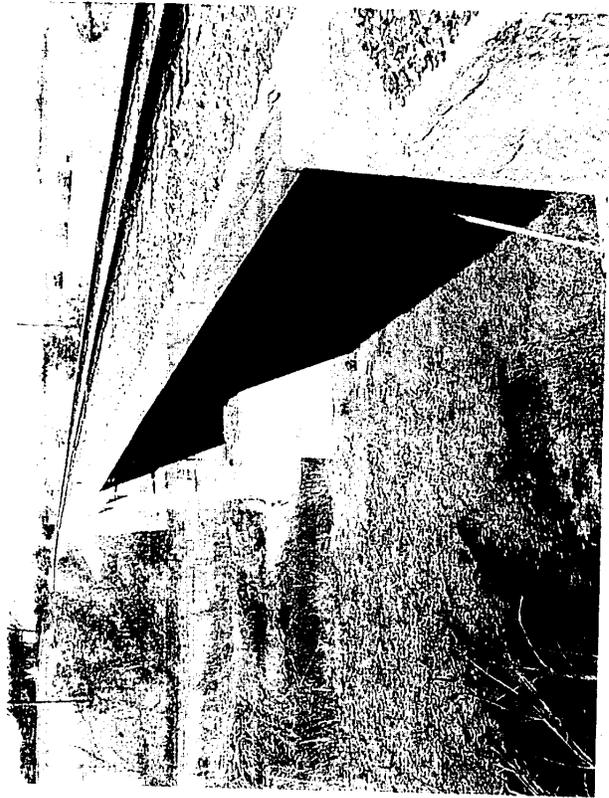
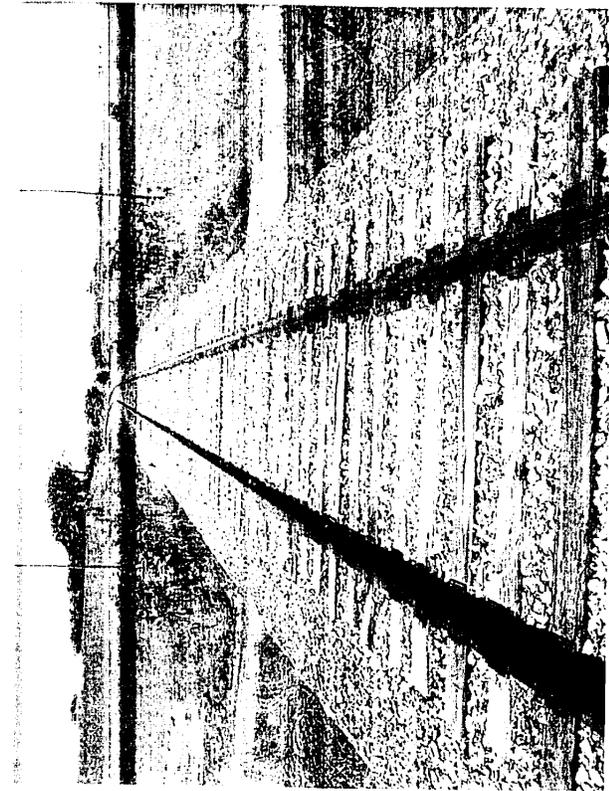
Bridge: 115.24	Built: 1919	Length: 244'	Height: 17'	Description: Concrete	Obstacle: Water
Bridge: 115.53	Built: 1916	Length: 200'	Height: 15'	Description: Concrete	Obstacle: Water
Bridge: 115.92	Built: 1920	Length: 669'	Height: 25'	Description: Steel and Concrete	Obstacle: Water
Bridge: 117.03	Built: 1904	Length: 184'	Height: 26'	Description: Steel	Obstacle: Water

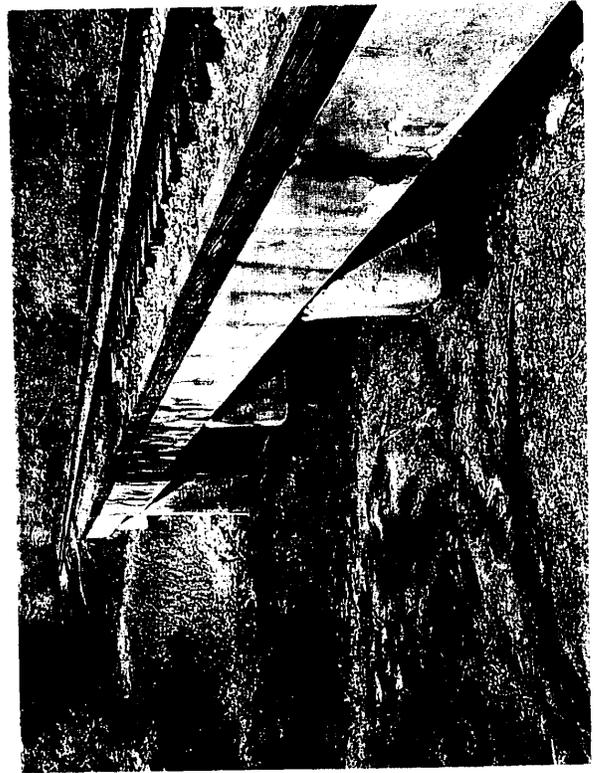
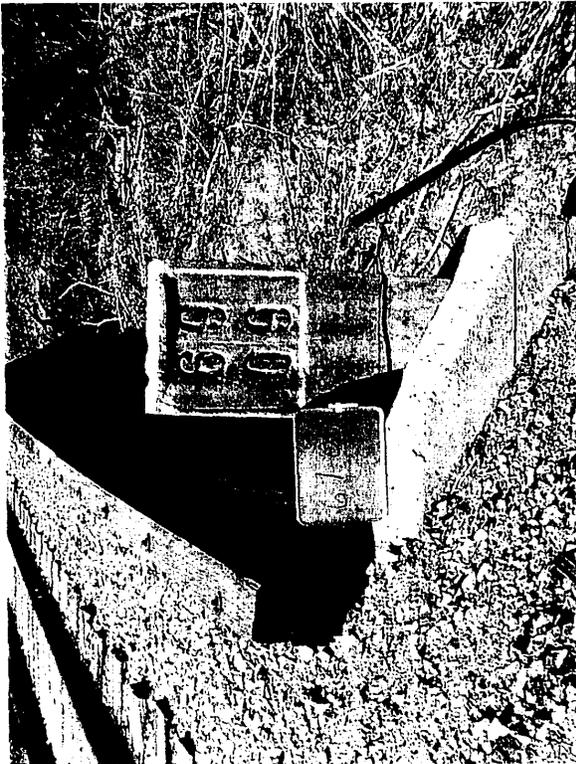
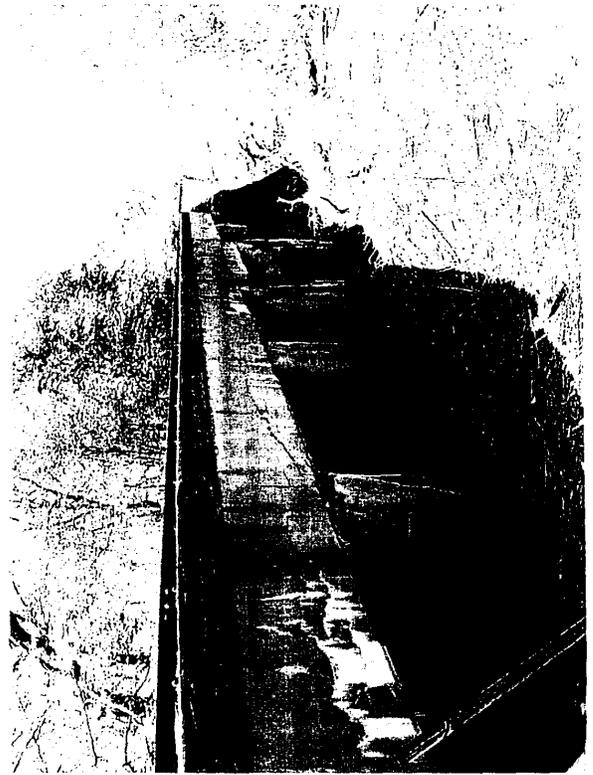


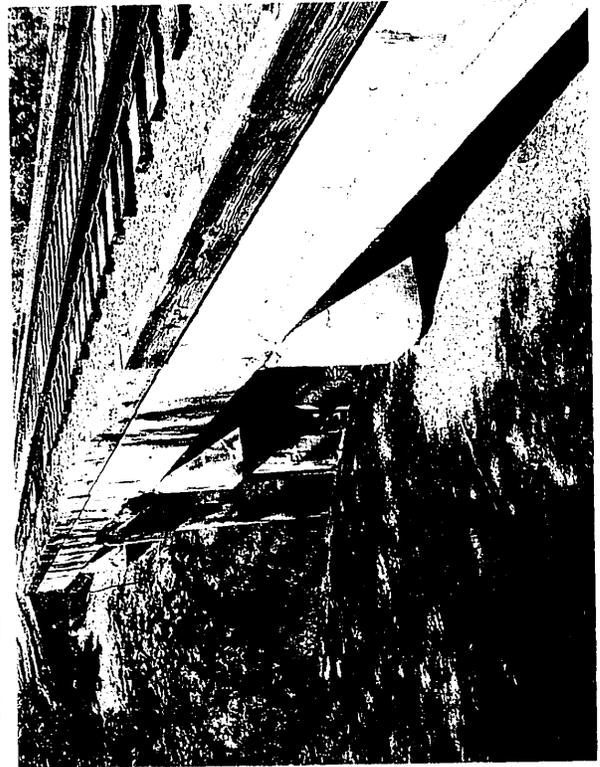
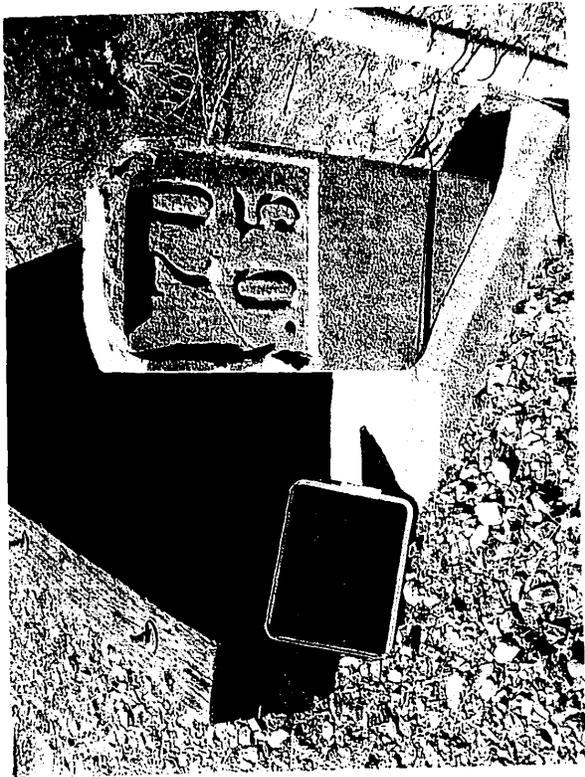
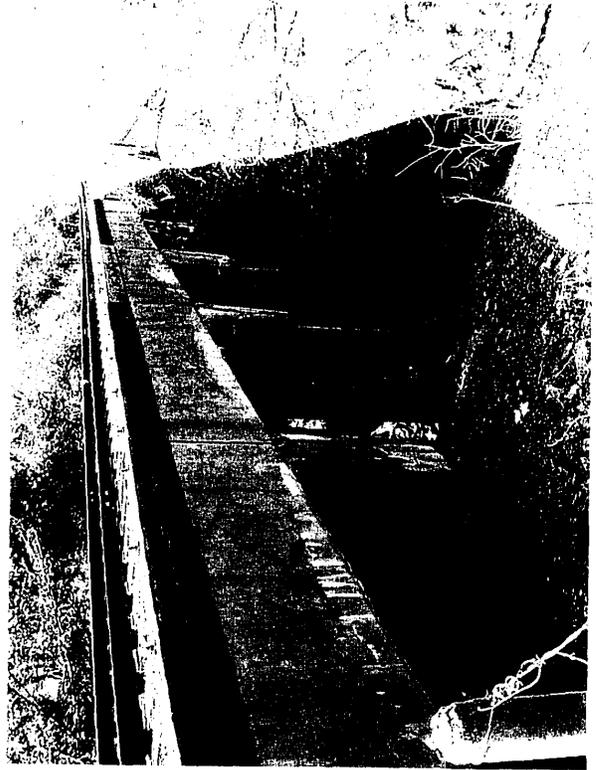


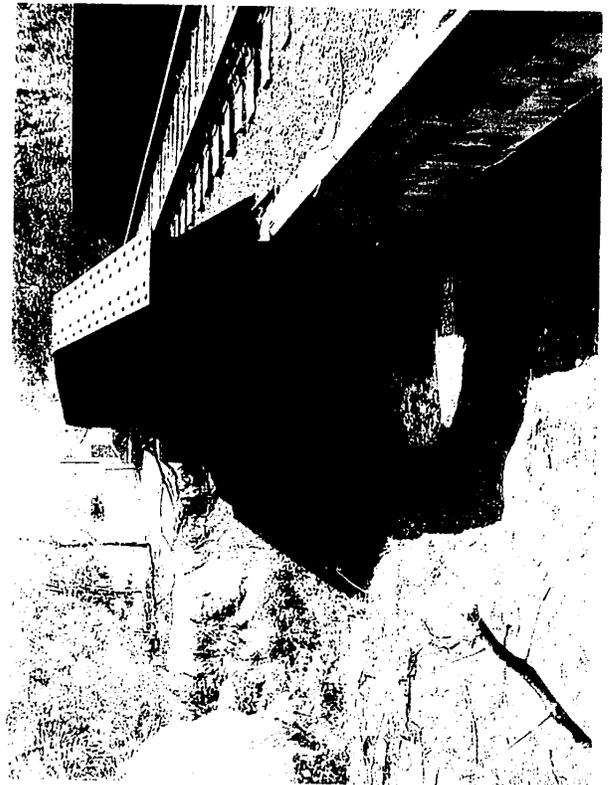
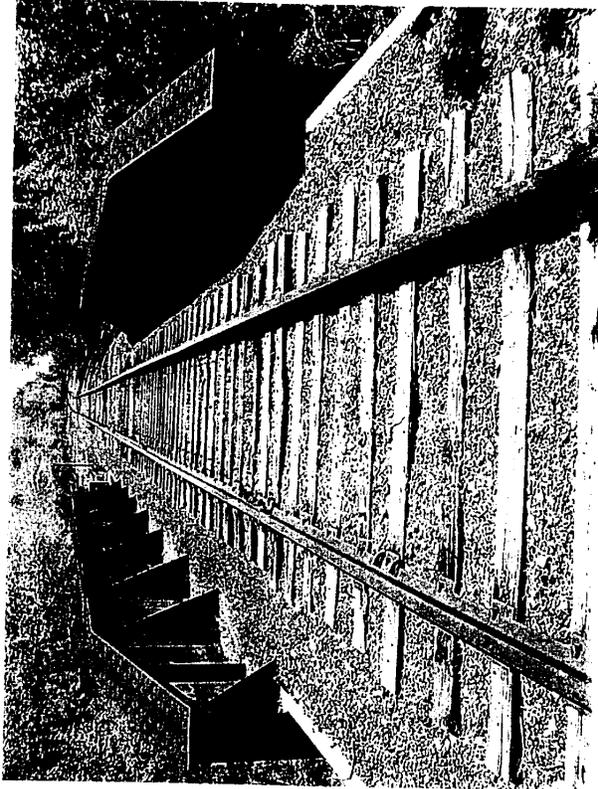


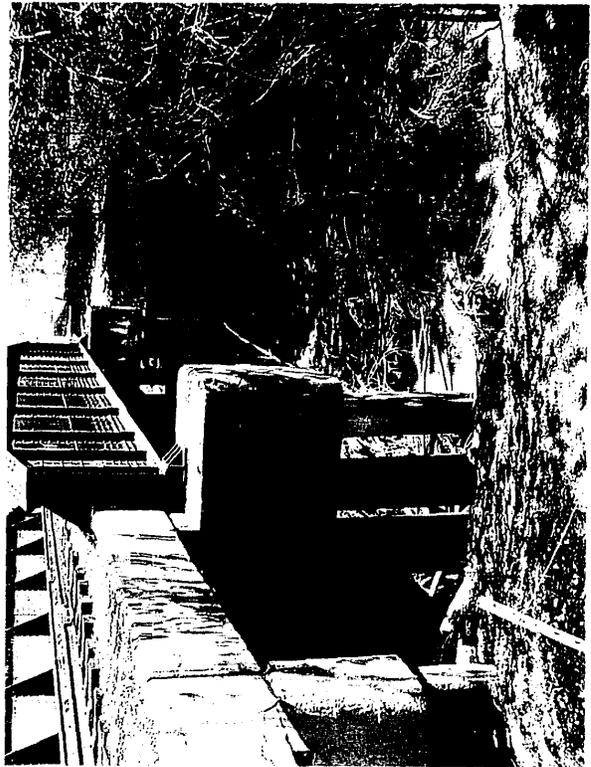
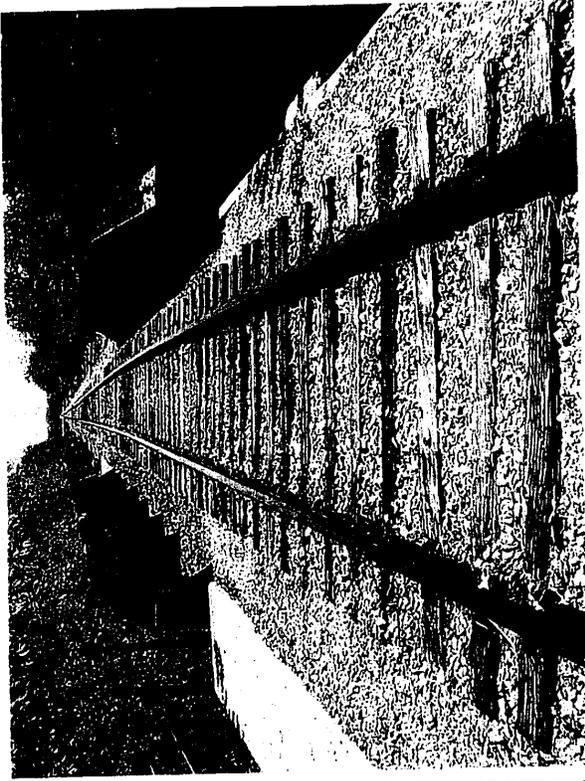


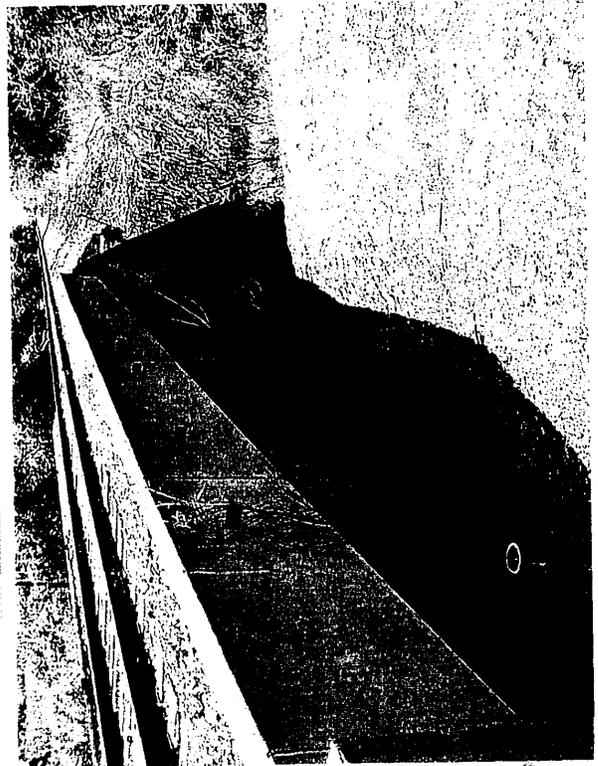
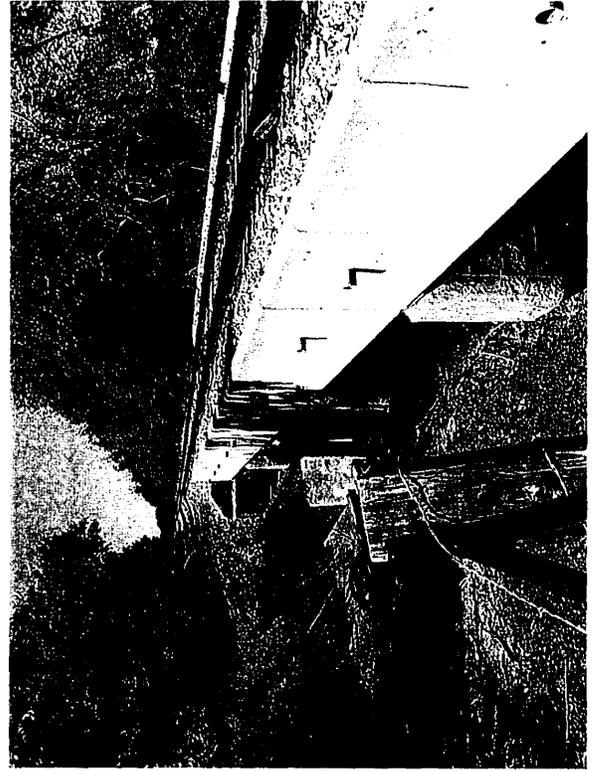
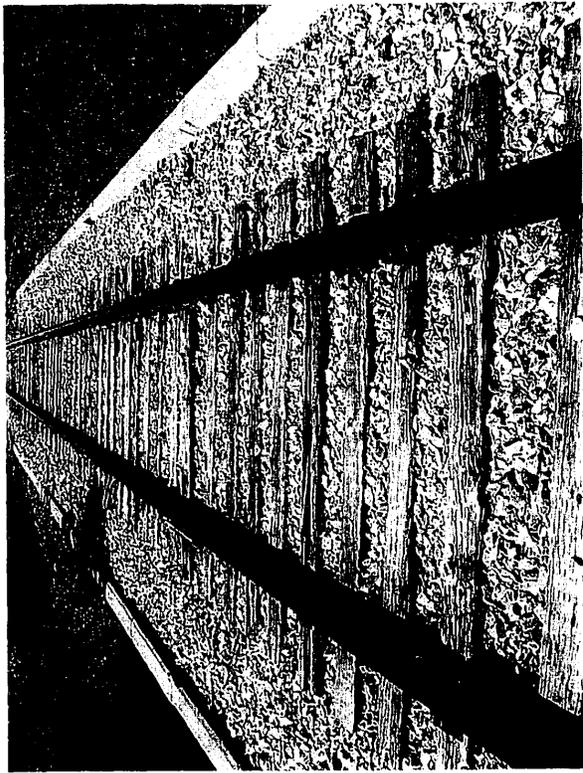


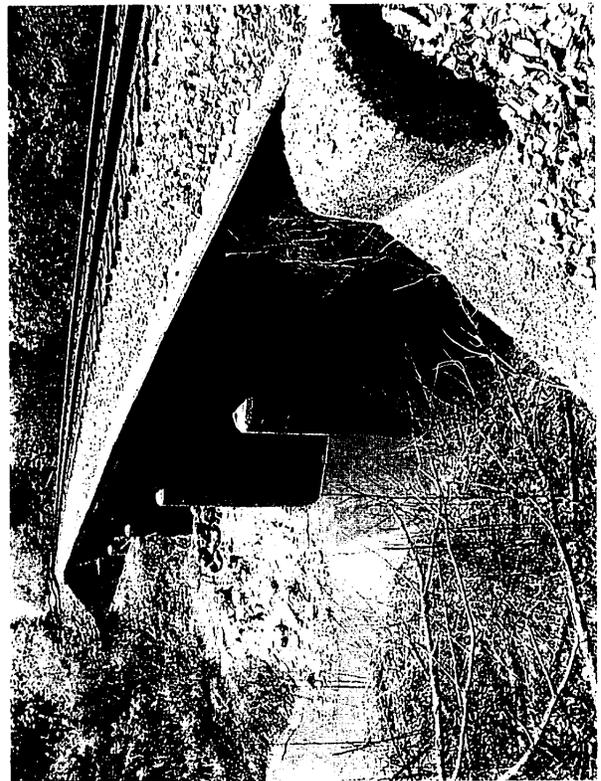
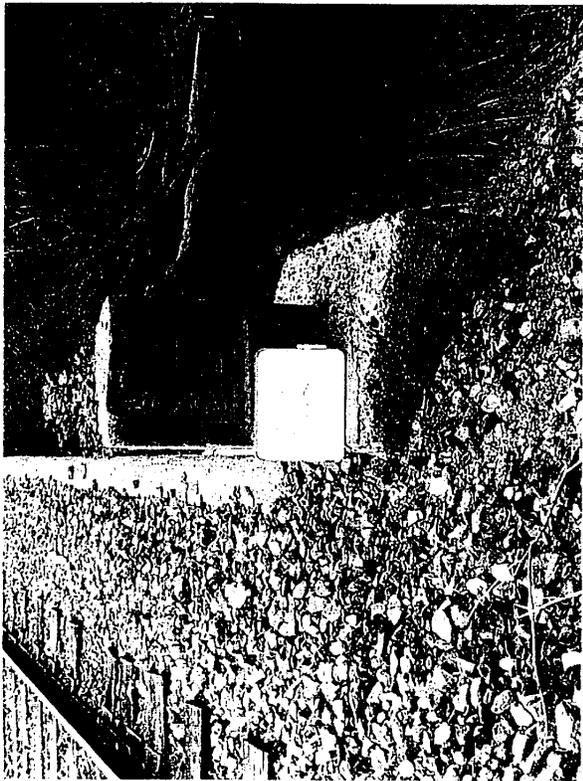
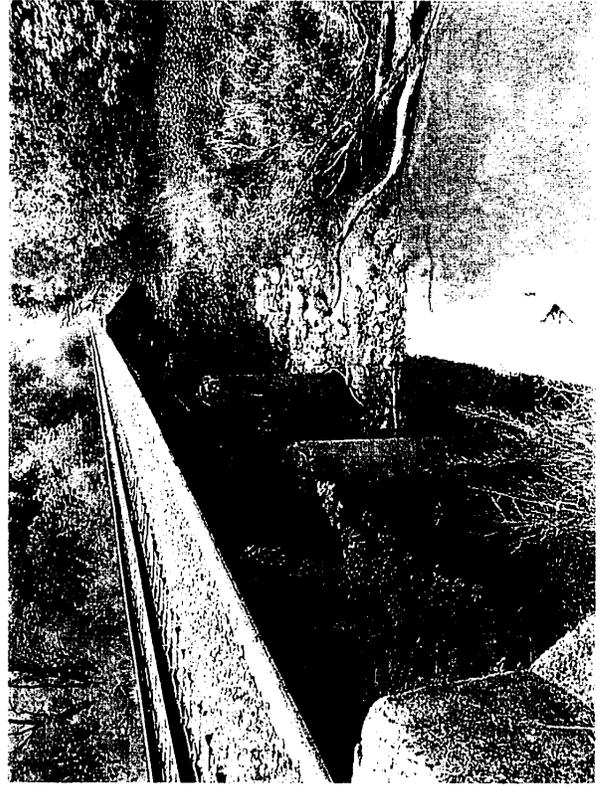
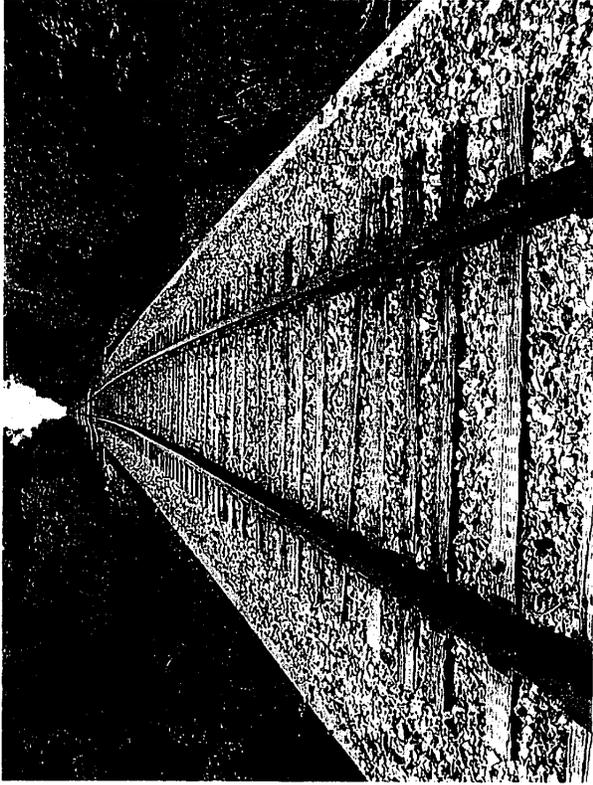


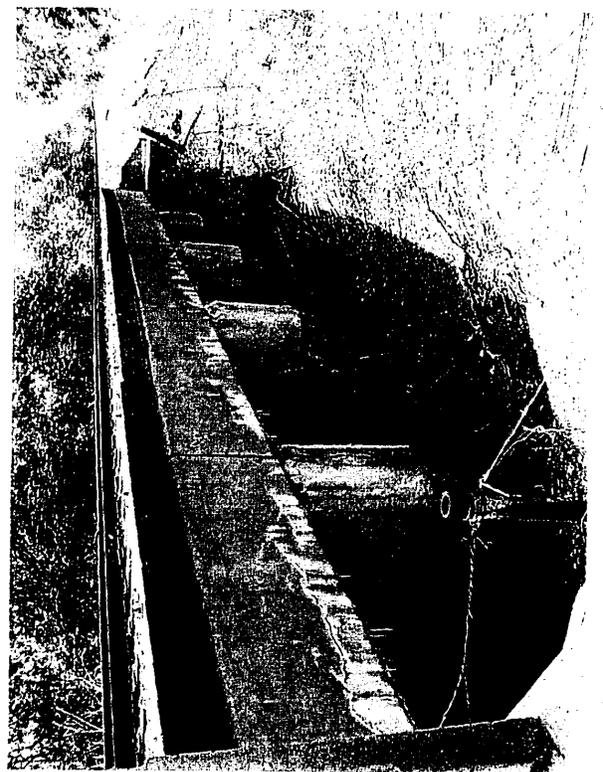
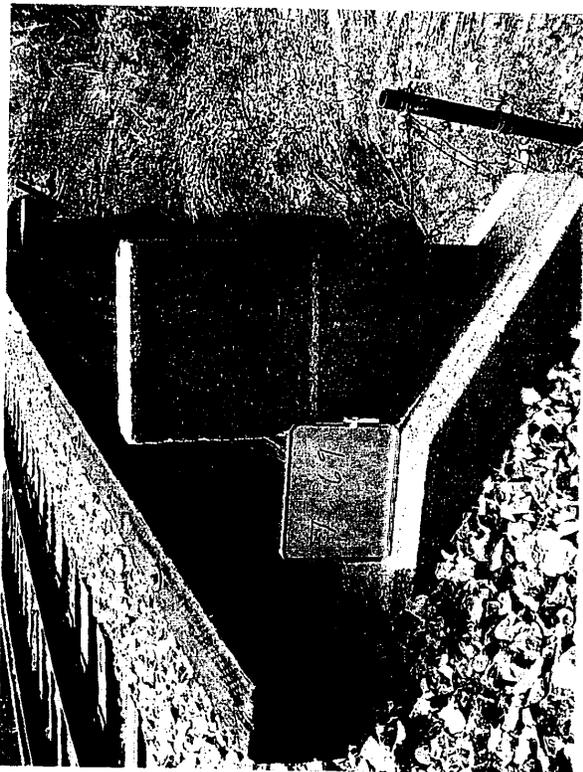
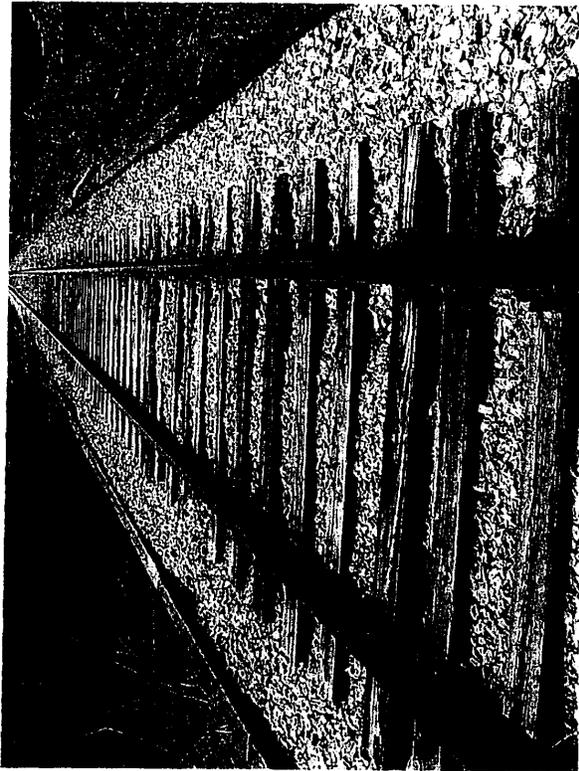


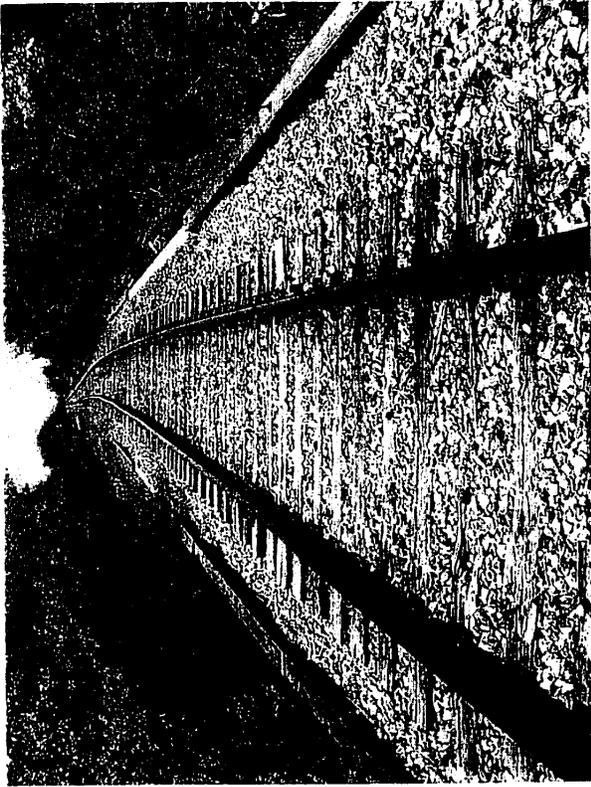


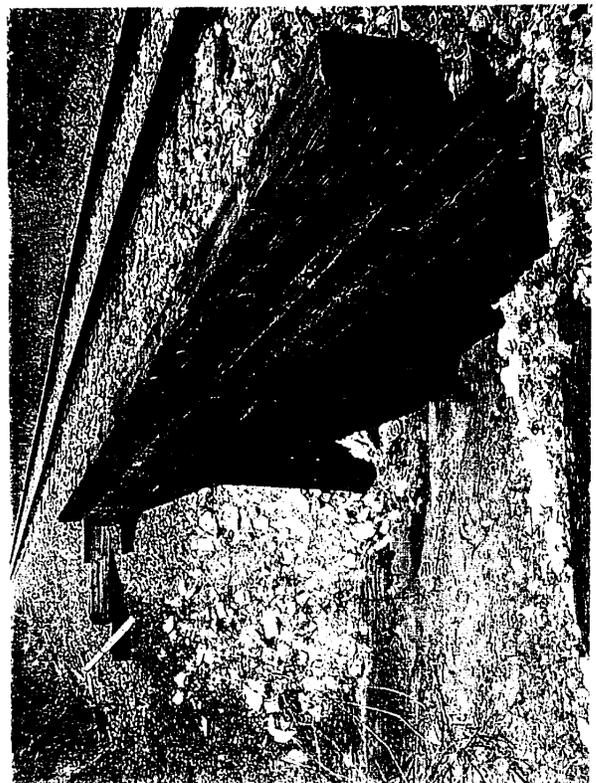
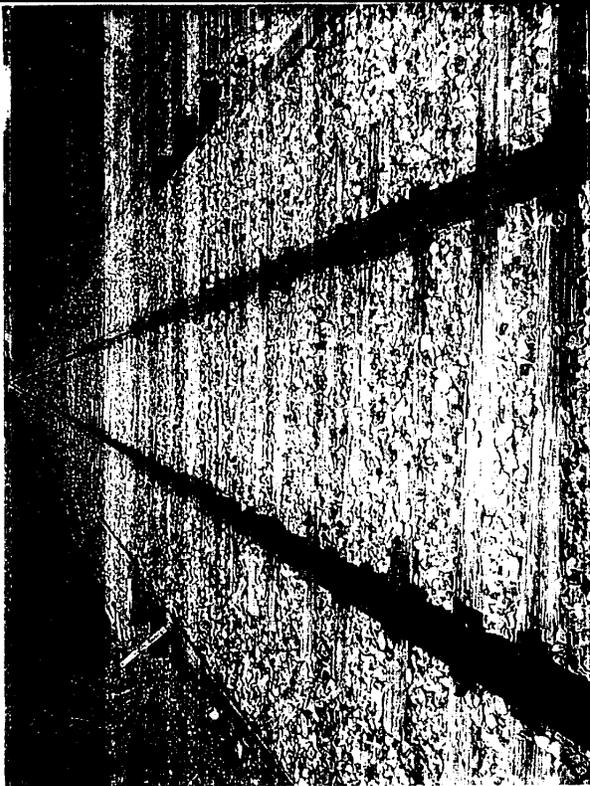


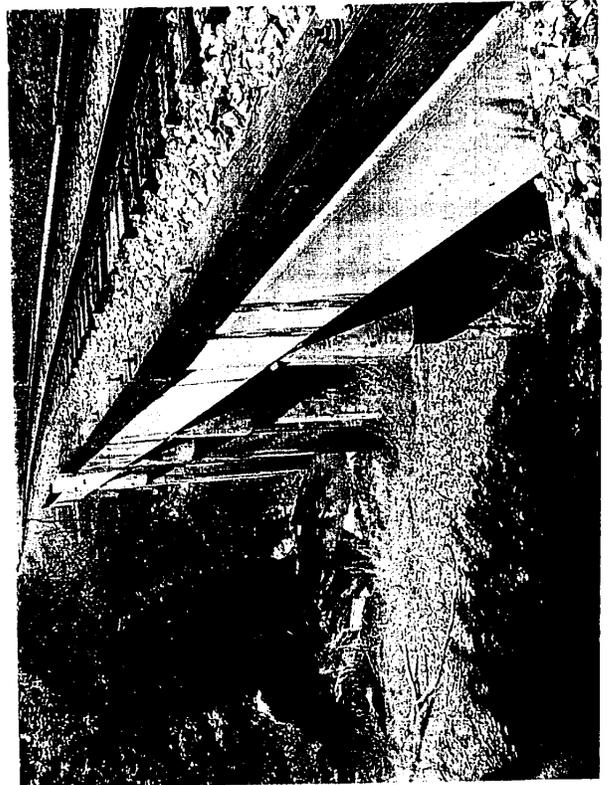


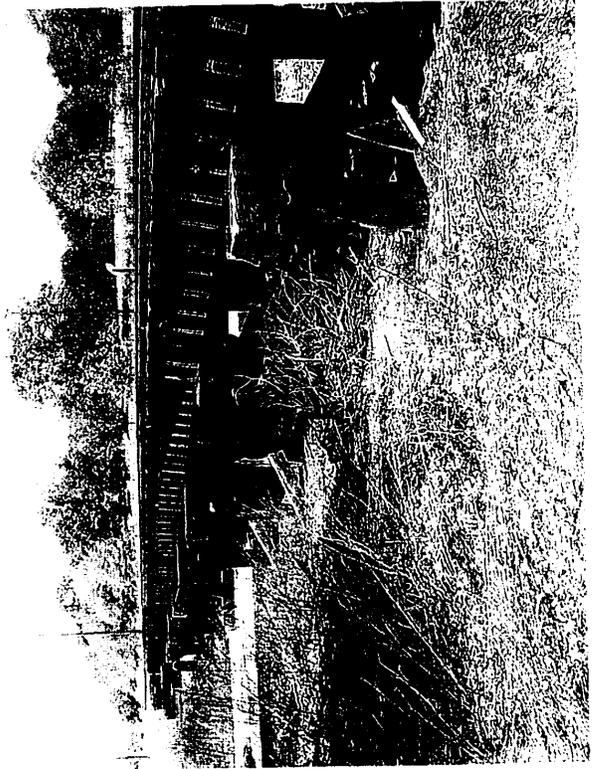
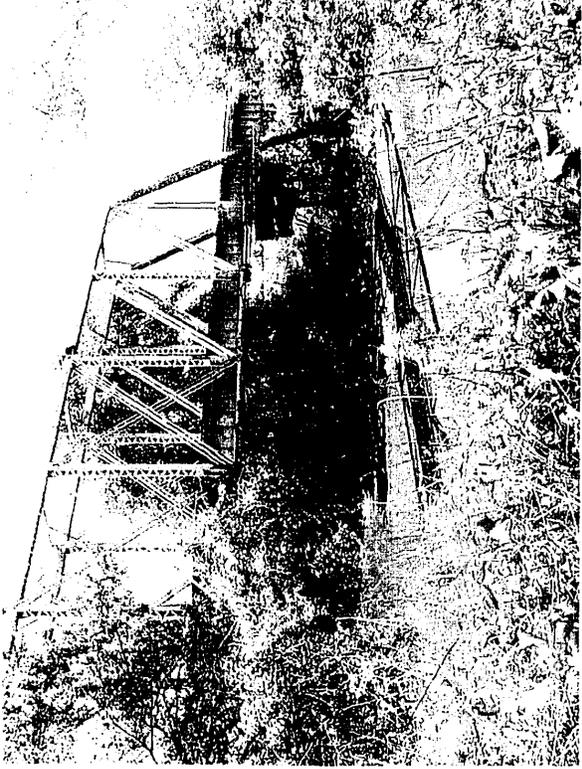


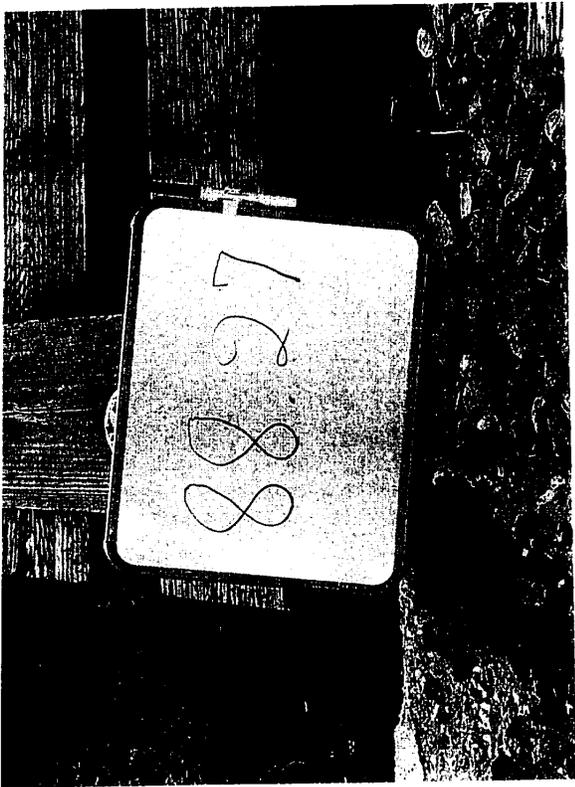


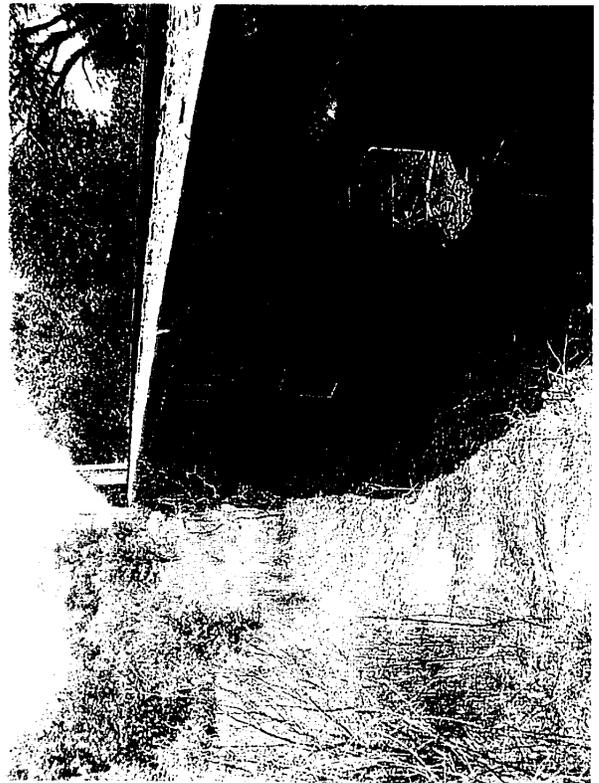
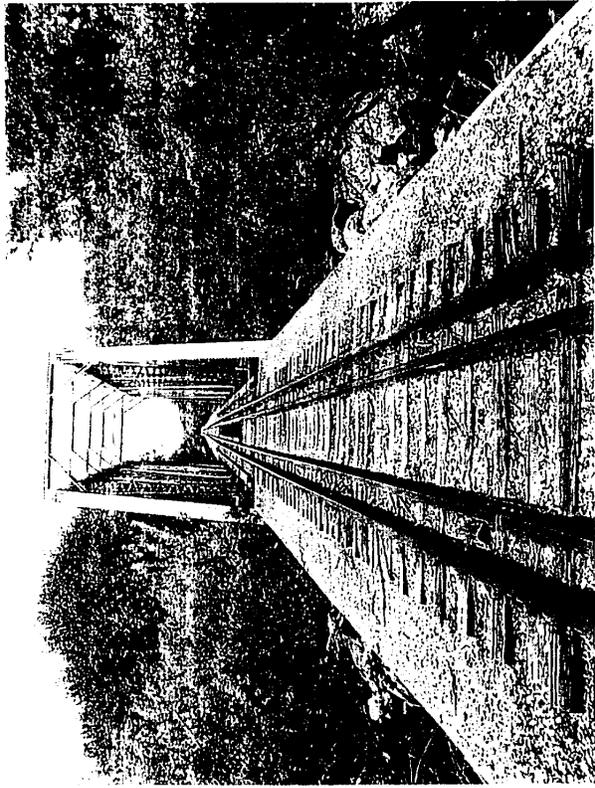




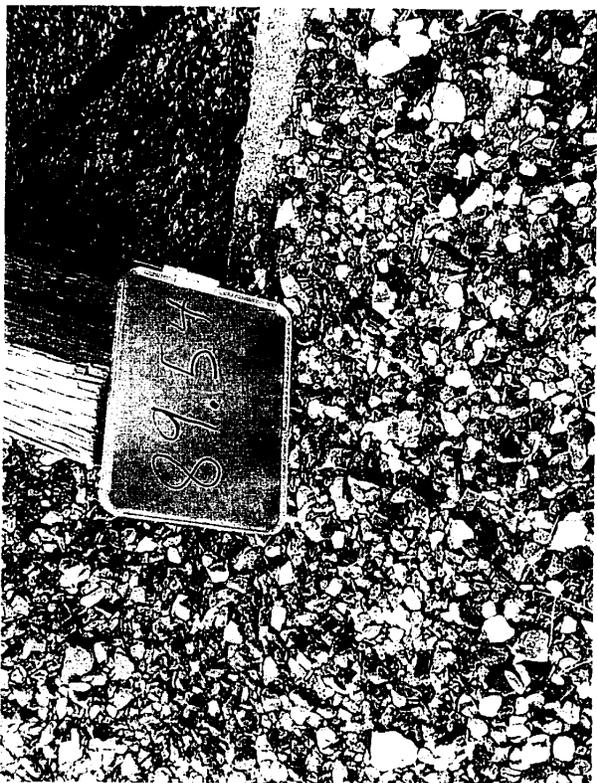


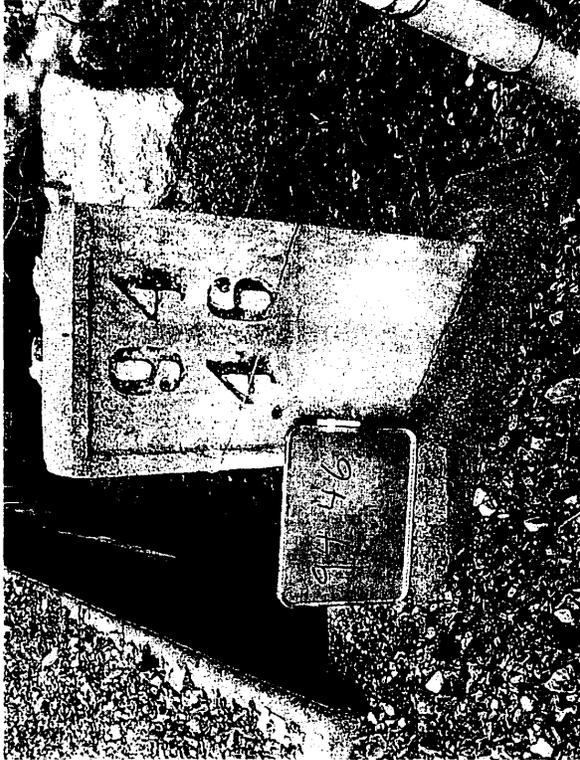
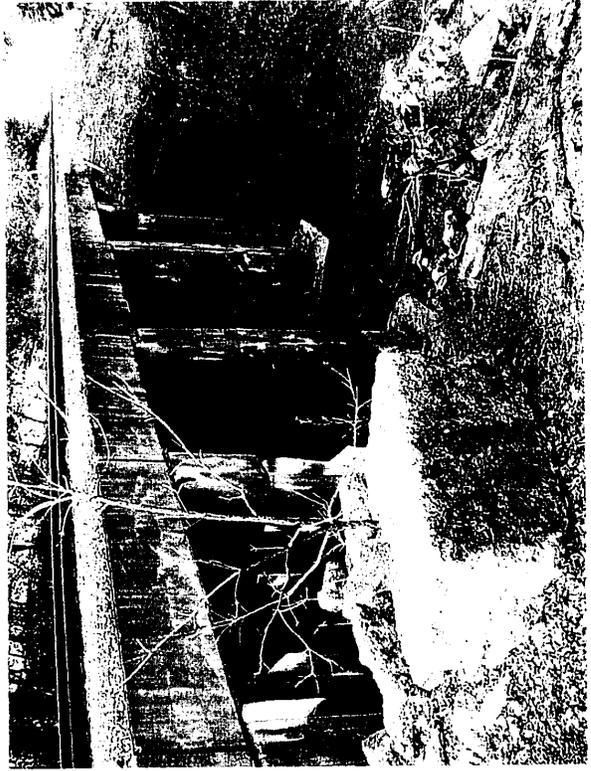


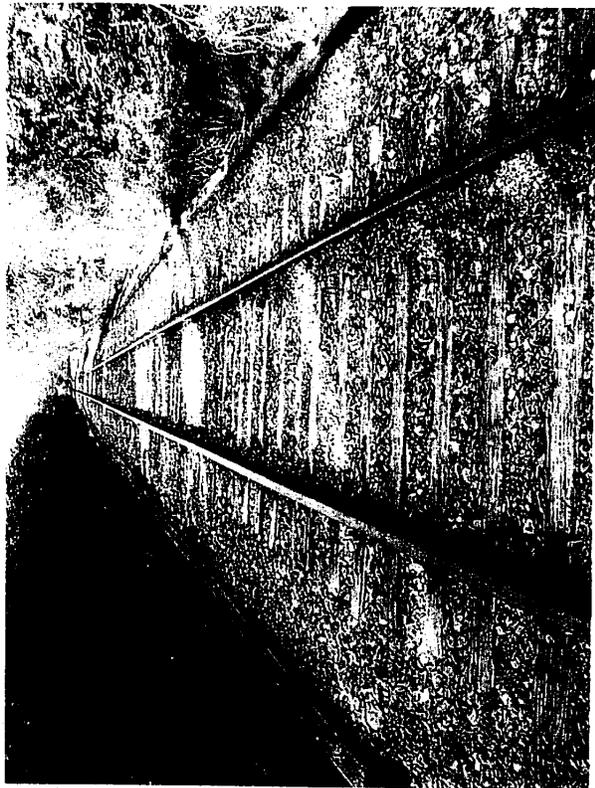




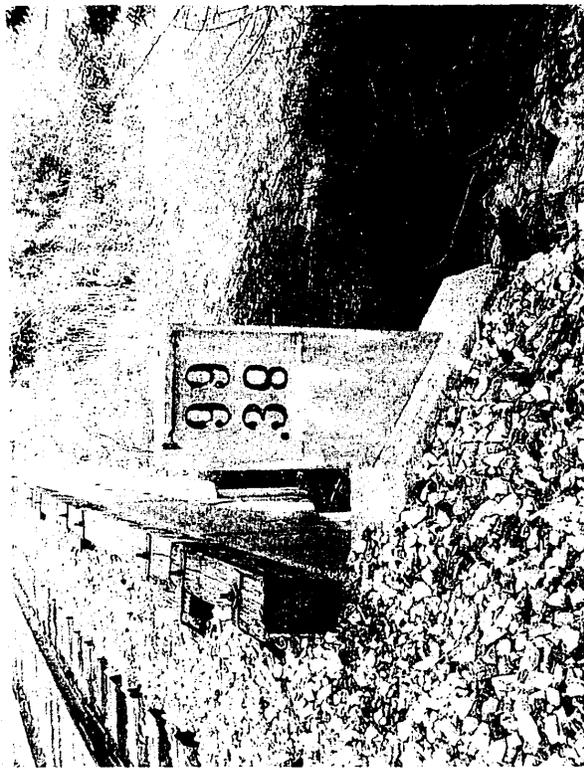
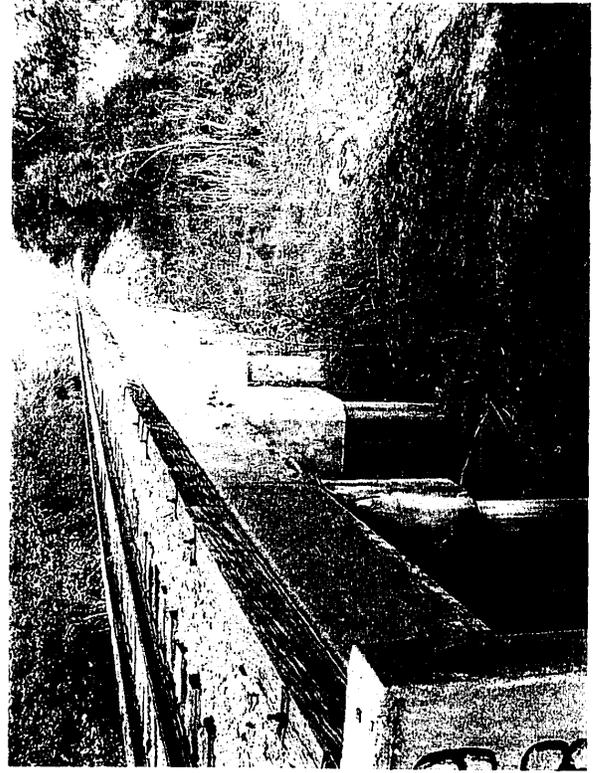
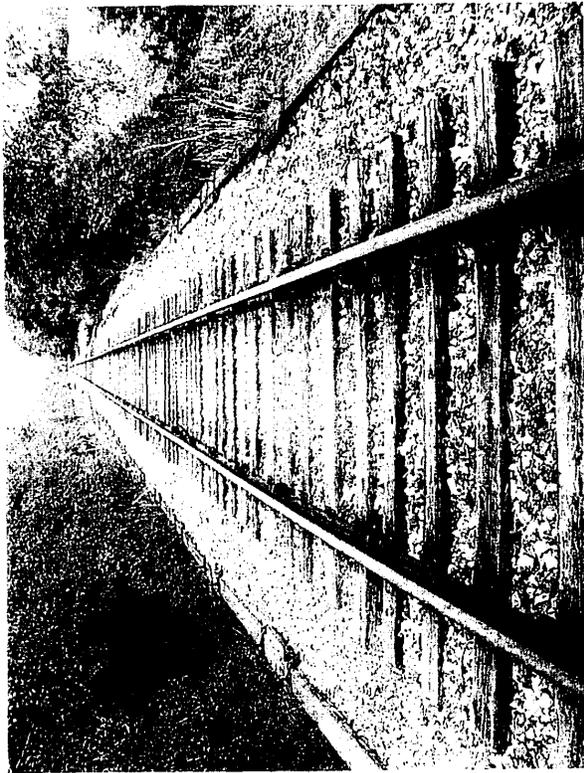


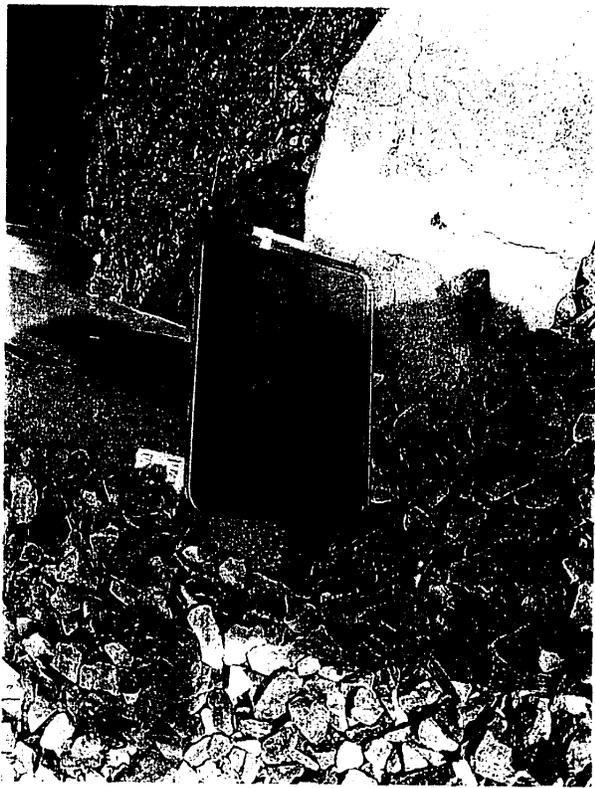
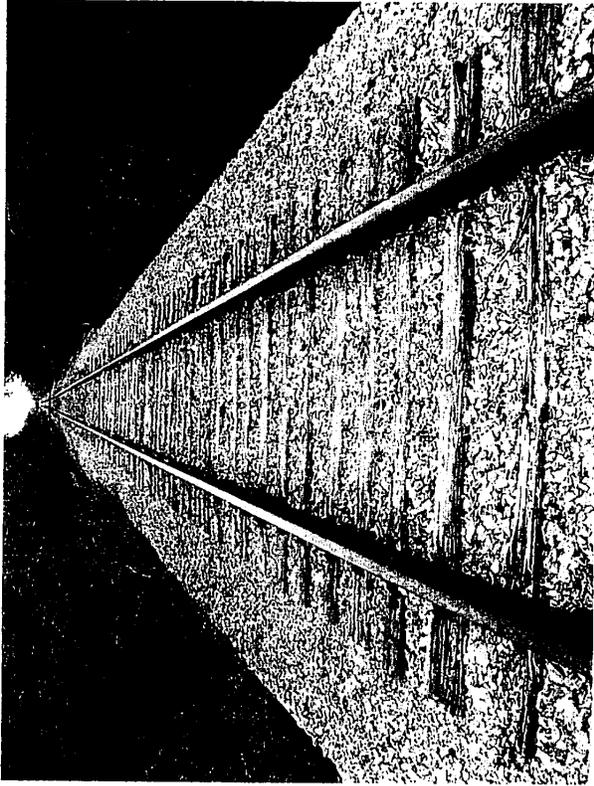


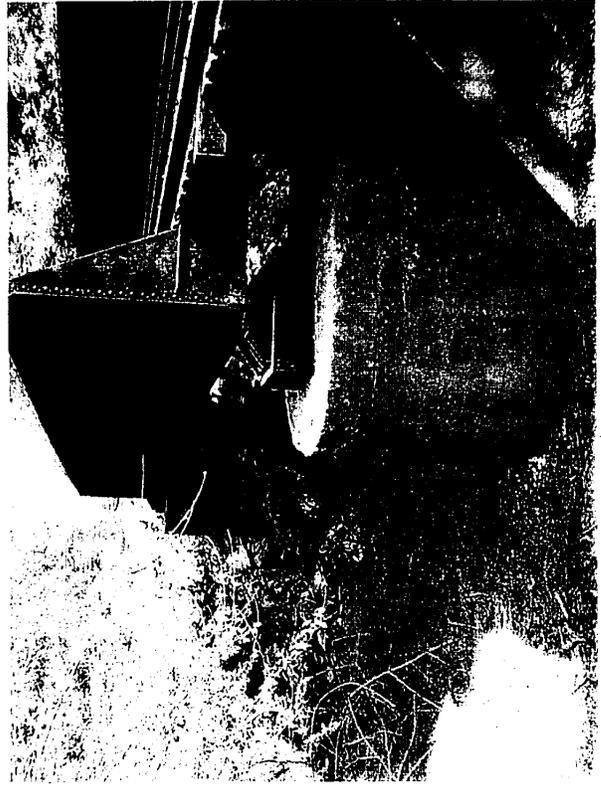


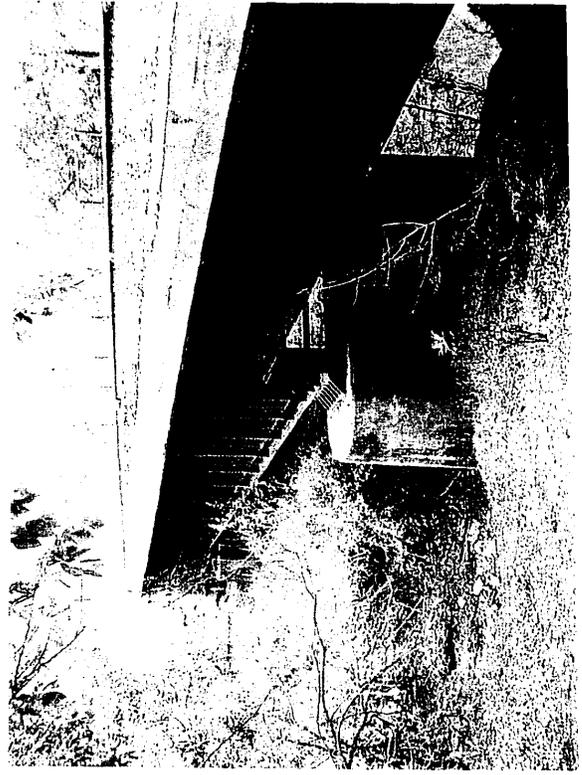


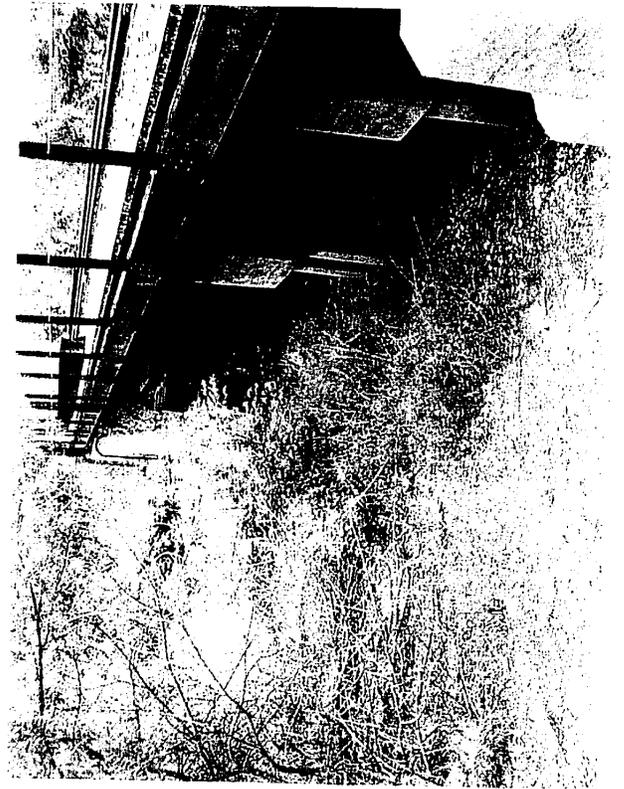
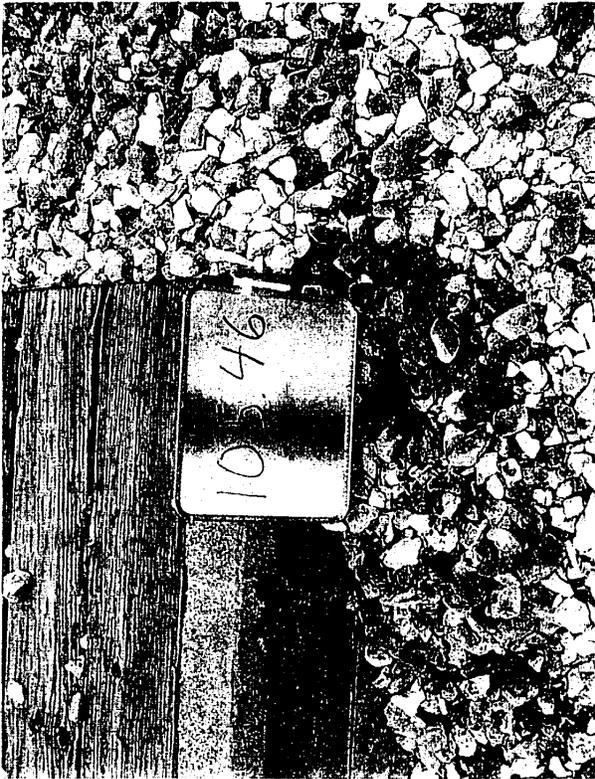
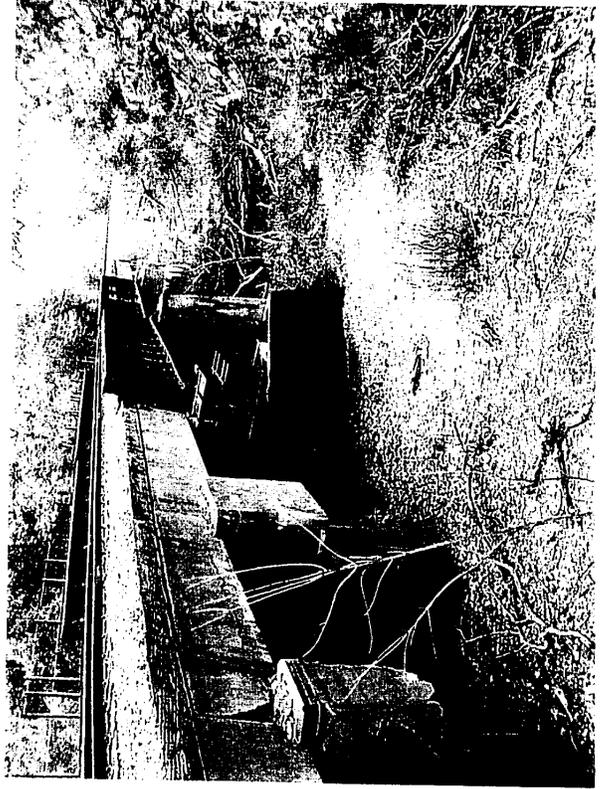
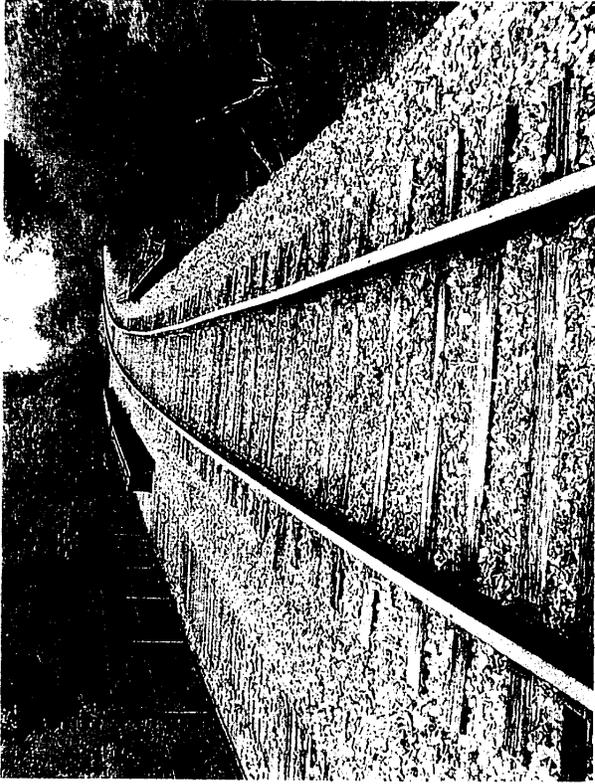


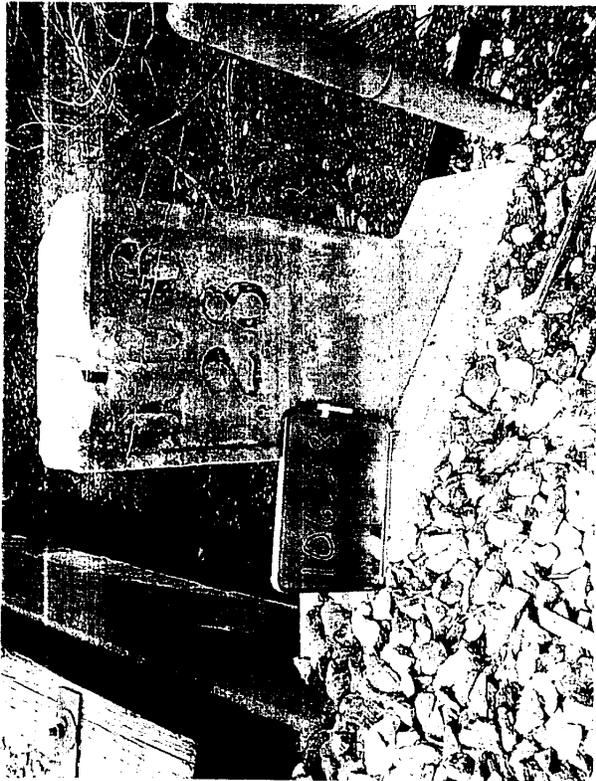
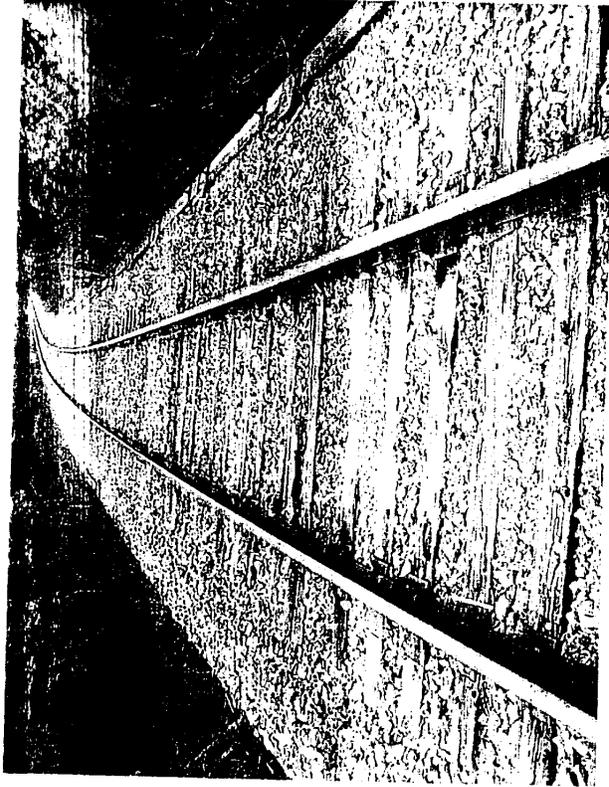


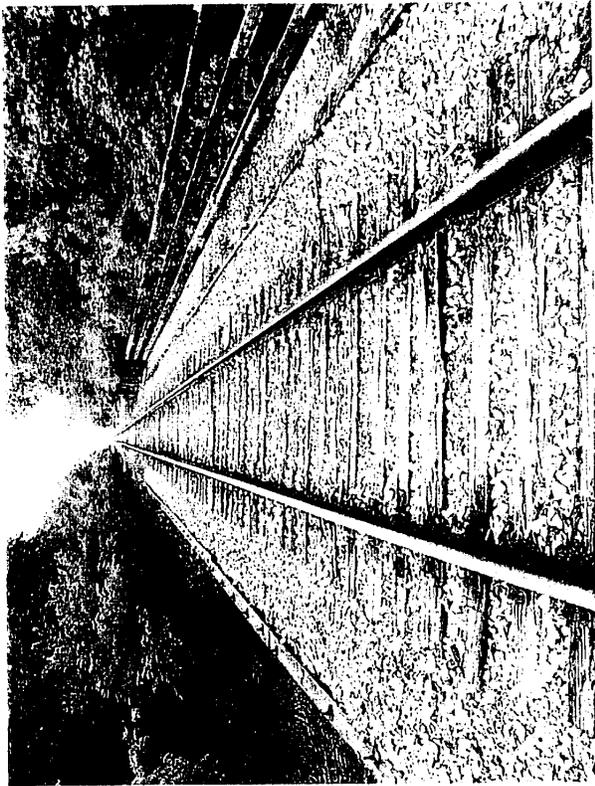


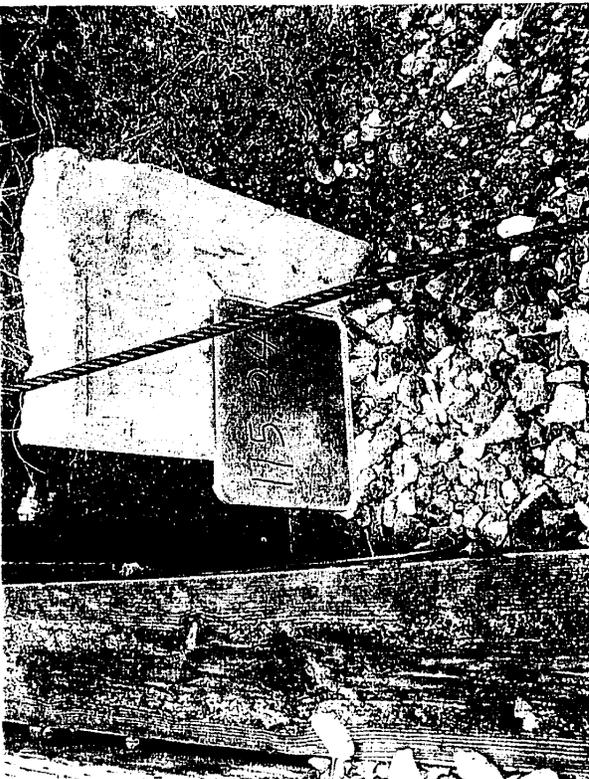
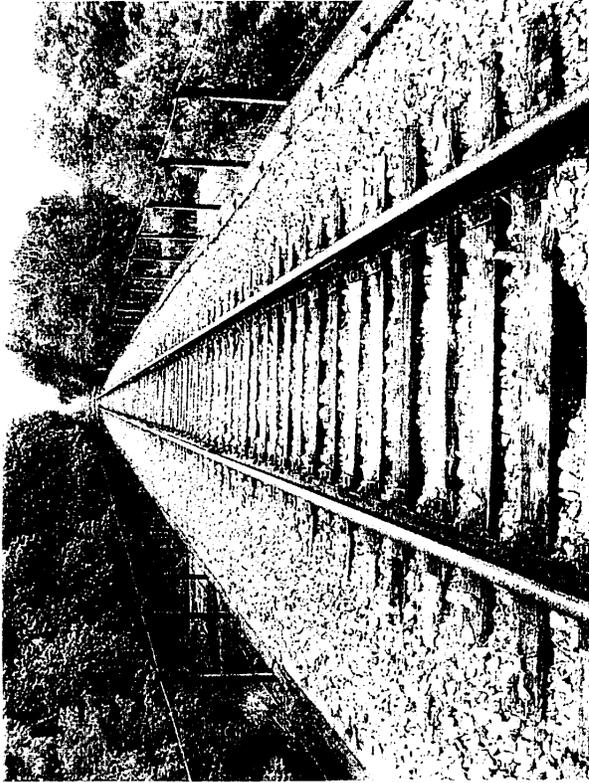


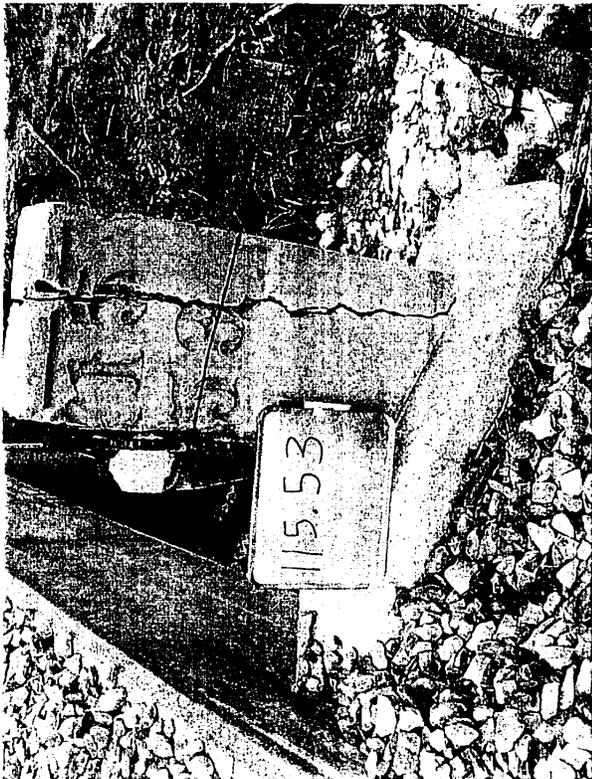
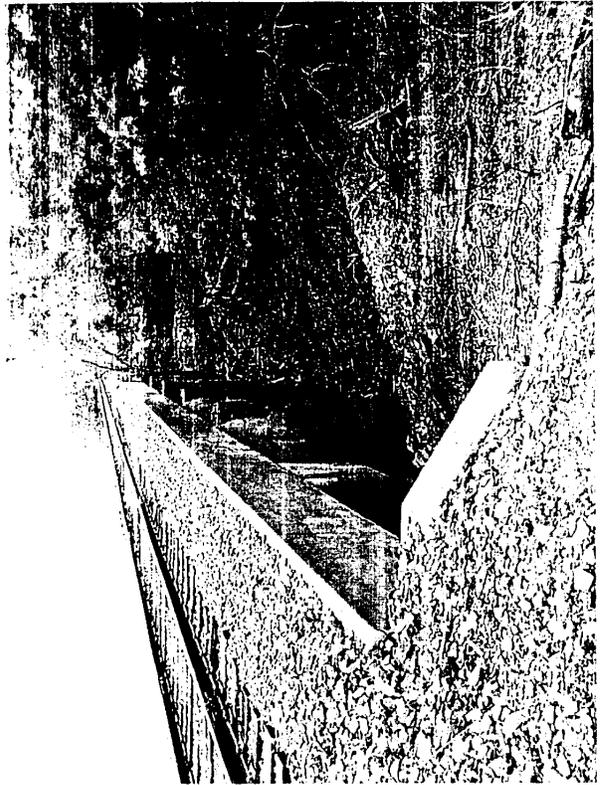
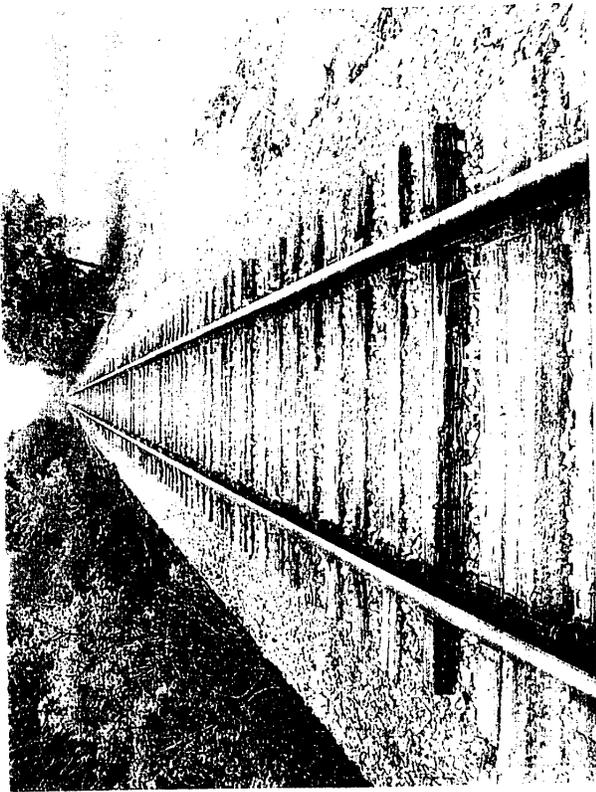


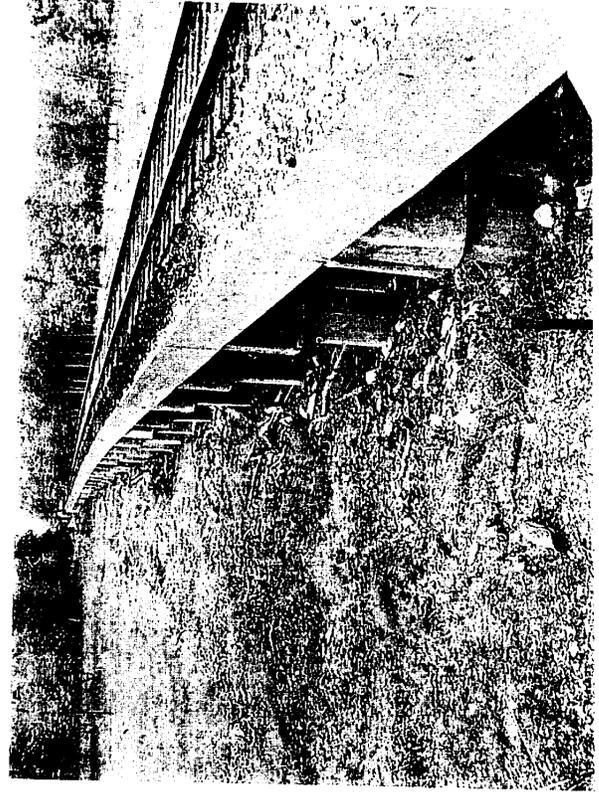
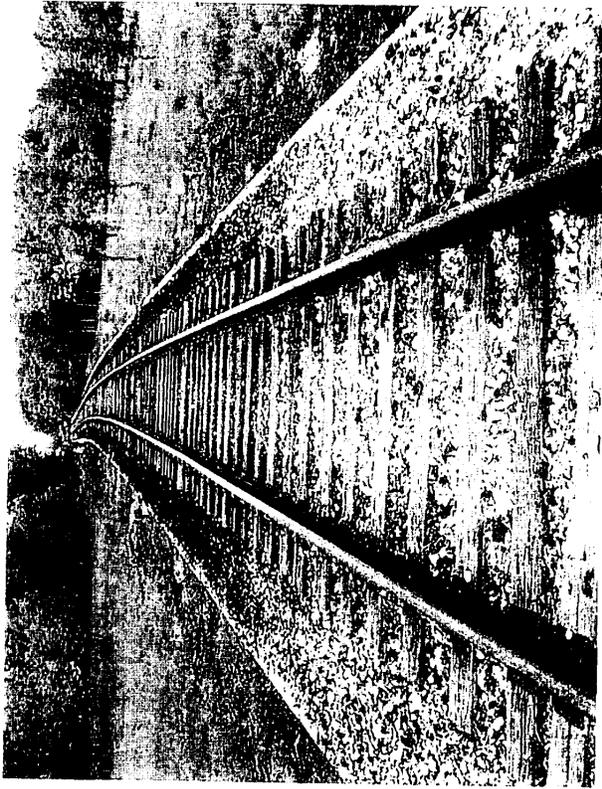


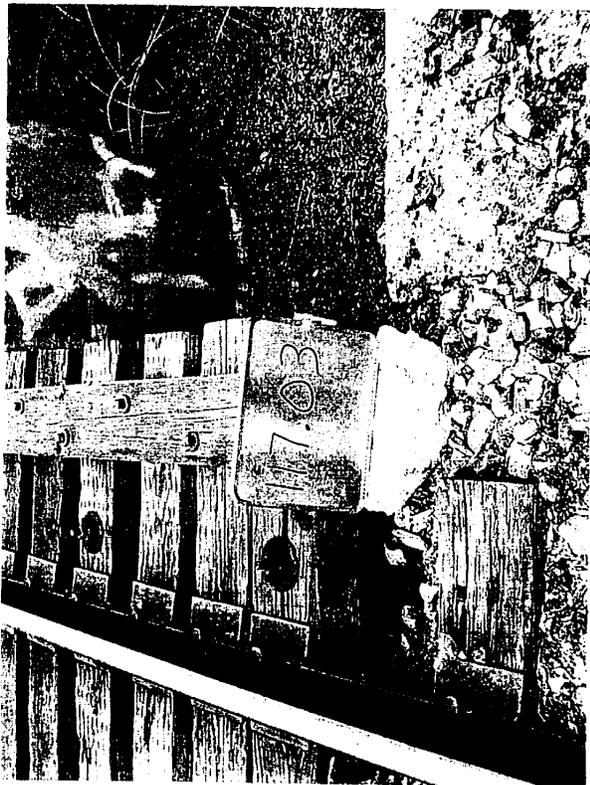
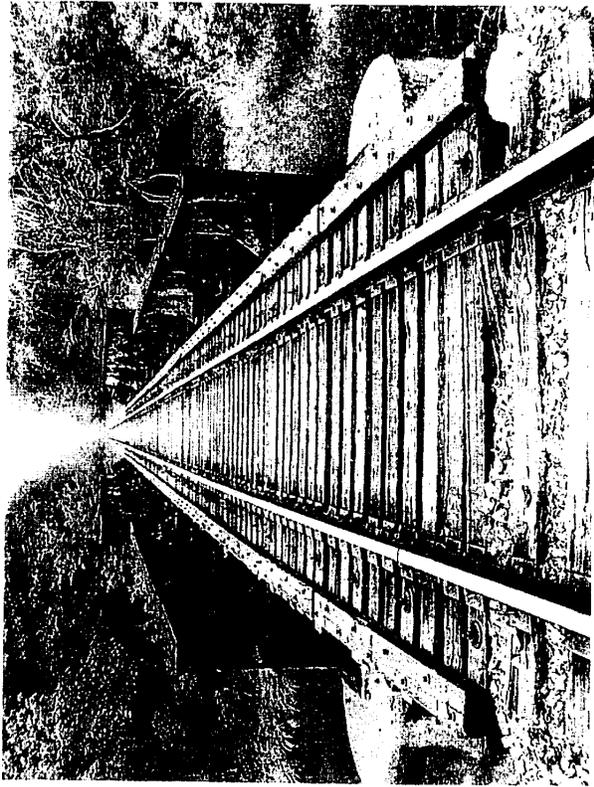












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NEBRASKA STATE HISTORICAL SOCIETY

1500 R STREET, P.O. BOX 82554, LINCOLN, NE 68501-2554
(402) 471-3270 Fax: (402) 471-3100 1-800-833-6747 www.nebraskahistory.org

July 7, 2003

Mr. Brian Nettles
Freeborn & Peters
311 South Wacker Drive, Suite 3000
Chicago, IL 60606-6677

RE: Burlington Northern & Santa Fe Railway Company Abandonment
of Pawnee City to Endicott (Nebraska)
HP #0306-061-01

Dear Mr. Nettles:

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.

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.

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 do not hesitate to call Greg Miller at 402/471-4775.

Sincerely,

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

MAP TO BE
SCANNED
LATER