

211807

August 13, 2004

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

ENTERED  
Office of Proceedings

AUG 16 2004

Part of  
Public Record



**Re: Surface Transportation Board Docket No. AB-6 (Sub-No. 425X);  
The Burlington Northern and Santa Fe Railway Company  
Abandonment between Neva, Kansas and Lost Springs, Kansas**

*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 September 1, 2004, we are filing with the Surface Transportation Board ("STB") a Notice of Exemption seeking authority to abandon 25.45 miles of railroad line between Milepost 0.00 in Neva, Kansas and Milepost 25.45 near Lost Springs, Kansas, which traverses through United States Postal ZIP Codes 66838, 66850, 66859 and 66869 in Chase, Morris, Marion and Dickinson Counties, Kansas. Attached are ten copies plus the original 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,

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

Michael A. Smith

Enclosures

BEFORE THE  
SURFACE TRANSPORTATION BOARD

In the Matter of The  
Burlington Northern and Santa Fe  
Railway Company Notice of Exemption  
to Abandon Its Line of Railroad  
Between M.P. 0.00 near Neva, Kansas and  
M.P. 25.45 near Lost Springs, in Chase,  
Morris, Marion and Dickinson Counties Kansas



Docket No. AB-6  
(Sub No. 425X)

**ENVIRONMENTAL REPORT**

The following information 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 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 Notice of Exemption for abandonment of its line between M.P. 0.00 near Neva, Kansas and M.P. 25.45 in Lost Springs, in Chase, Morris, Marion and Dickinson Counties, Kansas, total distance of 25.57 miles.

**(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 abandonment will have no affect on existing transportation systems or patterns as the line is out of service.

**(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.

BNSF believes that the proposed exemption will not be inconsistent with local or regional land use plans. The Morris County Board of Commissioners is opposed to the creation of a recreational trail on this rail corridor. See Exhibit B, letter from the Office of the Morris County Attorney. BNSF will work with Morris County, Kansas in regards to concerns raised about the potential development of the rail corridor.

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

The abandonment does not affect prime farmland soils, as defined by the Farmland Protection Policy Act. See Exhibit C, letter from the Natural Resources Conservation Service.

(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 Board of Commissioners of Morris County is opposed to the creation of a recreational trail on the rail corridor. BNSF will work with

Morris County, Kansas in regards to concerns raised about the potential development of the rail corridor.

**(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.

This abandonment and discontinuance will not adversely affect movement or recovery of recyclable commodities as the 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.

There will be no diversions of traffic because the line is out of service.

**(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 or 50 vehicles a day 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% or 50 vehicles a day on any affected road segment as the line is out of service.

(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.

(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.

The proposed abandonment will not result in an increase of rail or truck traffic because the line is out of service.

**(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 abandonment should have no adverse effect on health or public safety. There are 22 public crossings and 36 private crossings.

During salvage operations on the line, if any may be required, 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 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.

There is no evidence of 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.

The railway line to be abandoned crosses three streams from which the federally listed endangered Topeka shiner (*Notropis topeka*) has been found. The streams, all located on the segment between Neva and Hymer, include Gannon Creek, Mulvane Creek, and Schaffer Creek, in Chase County. As long as no abandonment or removal activities will affect the streams or stabilizing riparian vegetation in any way, there should be no adverse impact to this listed species. See Exhibit D, letter from the U.S. Fish and Wildlife Service.

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

BNSF believes the proposed abandonment will have no effect on wildlife sanctuaries, refuges, National or State parks or forests. The Bureau of Land Management and the Kansas Department of Wildlife and

Parks were notified by letters dated June 2, 2004. See Exhibits E and F. As of the date of this report, neither has responded. BNSF will provide the Board copies of any response it may receive.

**(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. The Kansas Department of Health and Environment was notified by a letters dated June 2, 2004. See Exhibit G. As of the date of this report the Kansas Department of Health and Environment has not responded. BNSF will provide the Board copies of any response it may receive.

(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.

No work is proposed within any jurisdictional waters, including wetlands, and the proposed activity will not involve the discharge of dredged or fill material in waters of the United States. Therefore, Department of the Army permit authorization is not required. See Exhibit H, 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 area in question is not in a designated flood plain. See Exhibit I, letter from the Office of County Clerk, Morris County Courthouse. It appears that the section of BNSF

Railway running north from Neva, Kansas passes through several areas of 100 year floodplain. See Exhibit J, letter from the Office of County Engineer, Chase County. The proposed abandonment appears to be in a floodplain. See Exhibit K, letter from the Office of the County Clerk, Marion County, Kansas.

(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.

BNSF believes that permits under 402 of the Clean Water Act are not required for the proposed exemption. The Kansas Department of Health and Environment was notified by a letters dated June 2, 2004. See Exhibit G. As of the date of this report the Kansas Department of Health and Environment has not responded. BNSF will provide the Board copies of any response it may receive.

**(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 archaeological significance. The project itself should mitigate the environmental effects of reinstating active rail operations.

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

Date: August 11, 2004

BEFORE THE  
SURFACE TRANSPORTATION BOARD

In the Matter of The  
Burlington Northern and Santa Fe  
Railway Company Notice of Exemption  
to Abandon Its Line of Railroad  
Between M.P. 0.00 near Neva, Kansas and  
M.P. 25.45 near Lost Springs, in Chase,  
Morris, Marion and Dickinson Counties Kansas

Docket No. AB-6  
(Sub No. 425X)

**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 Notice of Exemption to abandon its line of railroad between M.P. 0.00 near Neva, Kansas to M.P. 25.45 near Lost Springs, in Chase, Morris, Marion and Dickinson Counties, Kansas a total distance of 25.57 miles.

(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 Kansas 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 Lost Springs to Neva, Kansas line is located in a rural farming area of central Kansas. The line connects the stations of Burdick, Hymer and Diamond Springs. Rockland is also shown as a state location but not a railroad station. The station of Burdick shows a recent population of 1. The other stations and location on the line do not have any population according to the Kansas Department of Commerce.

Lost Springs has a population of 99 and Neva has no population. The town of Strong City is located near Neva and has a population of 625 according to the Kansas Department of Commerce.

Most of the cropland adjoining the Lost Springs to Neva, Kansas line grows primarily wheat and other grains. The land along the right of way is generally flat to rolling. The right of way is 100 feet in width.

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

There are 9 bridges that are 50 years or older in the immediate area of the abandonment. See Exhibit L.

(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;

The dates of the construction of the bridges are included in Exhibit L.

(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 right of way was acquired by the Chicago Kansas & Western Railroad, a predecessor to the Atchison Topeka and Santa Fe Railway (ATSF) in 1887. In 1995 the

ATSF merged with the Burlington Northern Railroad (BN) to become The Burlington Northern and Santa Fe Railway (BNSF).

(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;

Documents in BNSF's possession concerning this abandonment may 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. The proposed abandonment should not affect any property listed on the National Register of Historic Places or otherwise identified in our files as having historic significance. See Exhibit M, letter from the Kansas 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,

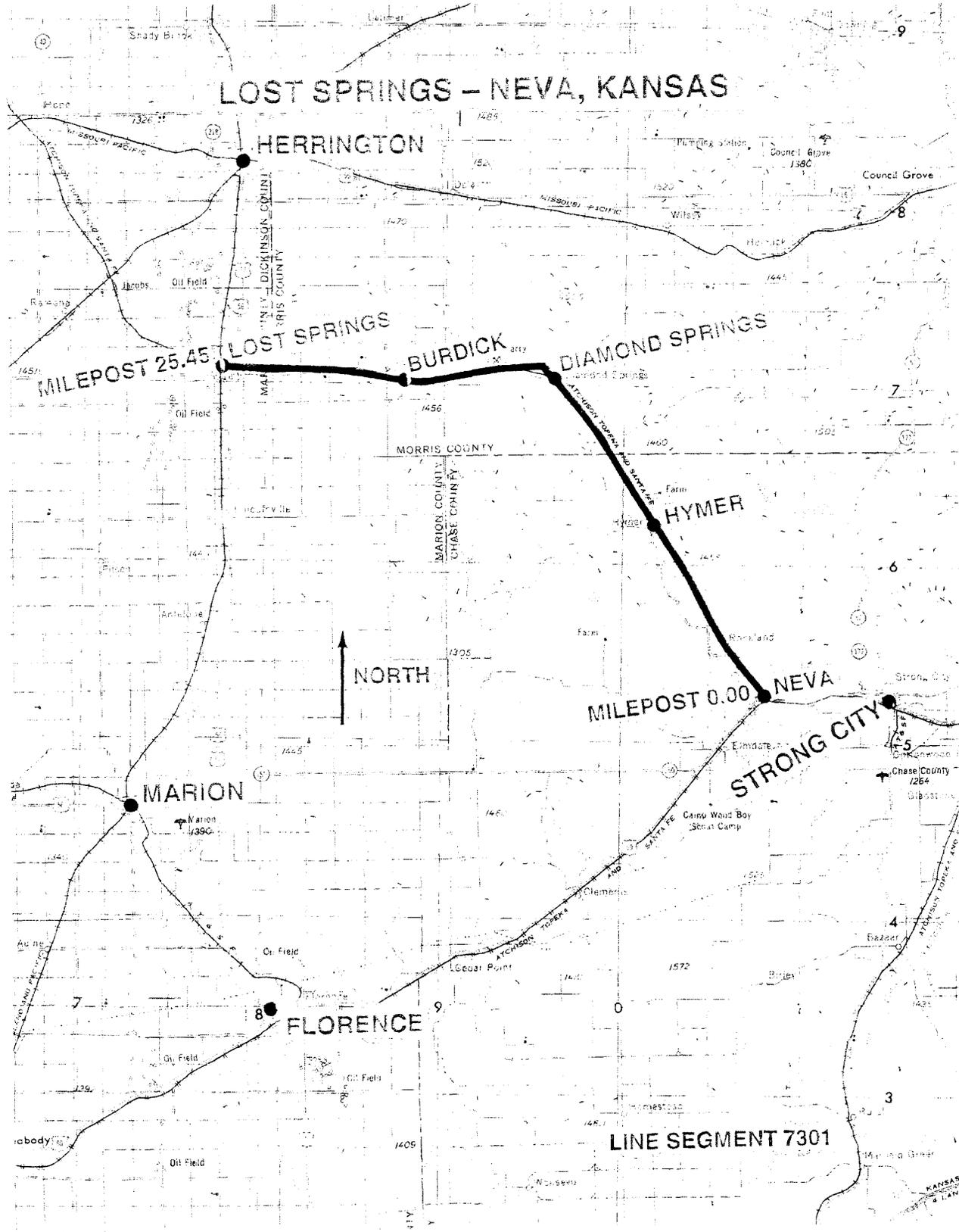
A handwritten signature in black ink, appearing to read "Michael Smith", written over a horizontal line.

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

Date: August 11, 2004

A

# LOST SPRINGS - NEVA, KANSAS



LINE SEGMENT 7301

**B**

**STATE OF KANSAS**  
**OFFICE OF THE MORRIS COUNTY ATTORNEY**

July 1, 2004

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

RE: BNSF Rail Abandonment Between Neva and Lost Springs, Kansas

Dear Mr. Nettles,

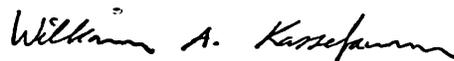
I have been instructed by the Morris County Board of Commissioners (Board) to respond to your letter of June 2, 2004. The Board is opposed to the creation of a recreational trail on this rail corridor.

There is already a recreational trail on a rail corridor in Morris County and there are numerous problems with that trail ranging from negative impact on county road crossings to not maintaining drainage passages under the trails, failure to follow state laws on noxious weeds or maintaining fences.

The line BNSF proposes to abandon in southwest Morris County crosses an important drainage several times. The maintenance of the bridge crossings to keep safe and clear of debris is a major concern. Any blockage of Diamond Creek could cause serious damage to adjoining property owners.

For the above reasons the Board is opposed to a rail trail being allowed on this rail corridor.

Sincerely,



William A. Kassebaum  
Assistant County Attorney

C

United States Department of Agriculture



Natural Resources Conservation Service  
1125 Westport Drive  
Manhattan, Kansas 66502-2860

Phone: 785-776-5182  
FAX: 785-539-7983  
www.ks.nrcs.usda.gov

June 16, 2004

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

Re: The Burlington Northern and Santa Fe Railway Company Abandonment between  
Neva, Kansas and Lost Springs, Kansas.

Dear Mr. Nettles:

Thank you for the opportunity to review the proposed abandonment of 25.45 miles of  
rail line between Neva, Kansas and Lost Springs, Kansas.

Since the direct abandonment does not affect prime farmland soils, as defined by the  
Farmland Protection Policy Act, I see no initial problems. Furthermore, I see no other  
negative environmental effects for which the Natural Resources Conservation Service is  
responsible for evaluating.

If I can be of further assistance, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Alan R. Boerger", with a long horizontal line extending to the right.

Alan R. Boerger  
Resource Conservationist

Cc: Rod Egbarts, Soil Conservationist, NRCS, Salina, Kansas.  
Kenneth W. Hoffman, ASTC, NRCS, Manhattan, Kansas.  
Joe Hecht, District Conservationist, NRCS, Council Grove, Kansas.

D



## United States Department of the Interior

### FISH AND WILDLIFE SERVICE

Kansas Field Office  
315 Houston Street, Suite E  
Manhattan, Kansas 66502-6172

June 25, 2004

Brian Nettles  
Freeborn & Peters LLP  
311 South Wacker Drive  
Suite 3000  
Chicago, Illinois 60606

RE: BNSF RR abandonment between Neva and Lost Springs, Kansas

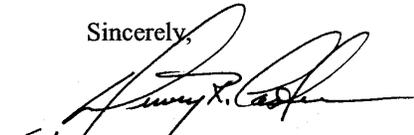
Dear Mr. Nettles:

This is in response to your letter of June 2, 2004, describing Burlington Northern and Santa Fe Railway Company's proposed abandonment of 25.45 miles of existing railway line between Neva and Lost Springs, Kansas, in Chase, Marion and Morris counties, Kansas. We have reviewed this proposal and offer the following comments.

The railway line to be abandoned crosses three streams from which the federally listed endangered Topeka shiner (*Notropis topeka*) have been found. The streams, all located on the segment between Neva and Hymer, include Gannon Creek, Mulvane Creek, and Schaffer Creek, in Chase County. As long as no abandonment or removal activities will affect the streams or stabilizing riparian vegetation in any way, there should be no adverse impact to this listed species. If it is determined the abandonment may in some way impact the stream please contact this office for a determination of the need for formal consultation pursuant to section 7 of the Endangered Species Act.

There are no other fish and wildlife resources which are expected to be impacted during the proposed abandonment. The Service encourages the BNSF Railway Company to keep the right-of-way in a natural condition for the benefit of native wildlife, plants, and the public. You may wish to contact the National Park Service, Omaha, Nebraska, 402-221-3350, for more information on the "Rails to Trails" Program. You may also wish to contact the Kansas Department of Wildlife and Parks in Pratt, Kansas (316-672-5911) to determine their interest in acquiring a nature trail.

Sincerely,

  
For: William H. Gill  
Field Supervisor

cc: KDWP, Pratt, KS (Environmental Services)

E

Freeborn & Peters LLP

June 2, 2004

Bureau of Land Management  
Amarillo Field Office  
801 S. Filmore Street, Suite 500  
Amarillo, TX 79101-3545

*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  
between Neva, Kansas and Lost Springs, Kansas***

Dear Sir or Madam:

BNSF plans on filing with the Surface Transportation Board ("STB") a Notice of Exemption seeking authority to abandon 2.88 miles of railroad line between Milepost 0.00 in Neva, Kansas and Milepost 25.45 near Lost Springs, Kansas.

As part of the environmental report BNSF needs to know whether or not there are any wildlife sanctuaries or refuges, National or State parks or forests in the proposed project impact area and if so, what effects would occur as a result of the abandonment.

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

Please provide this information by July 2, 2004. Thank you for your cooperation.

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

**F**

Freeborn & Peters LLP

June 2, 2004

Kansas Department of Wildlife and Parks  
512 SE 25<sup>th</sup> Avenue  
Pratt, KS 67124

*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  
between Neva, Kansas and Lost Springs, Kansas***

Dear Sir or Madam:

BNSF plans on filing with the Surface Transportation Board ("STB") a Notice of Exemption seeking authority to abandon 25.45 miles of railroad line between Milepost 0.00 in Neva, Kansas and Milepost 25.45 near Lost Springs, Kansas.

As part of the environmental report BNSF needs to know whether or not there are any wildlife sanctuaries or refuges, National or State parks or forests in the proposed project impact area and if so, what effects would occur as a result of the abandonment.

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

Please provide this information by July 2, 2004. Thank you for your cooperation.

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

G

Freeborn & Peters LLP

June 2, 2004

Karl Mueldener, Director  
Kansas Department of Health and  
Environment  
Division of Environment  
Bureau of Water  
1000 SW Jackson St., Suite 420  
Topeka, KS 66612-1367

*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  
between Neva, Kansas and Lost Springs, Kansas*

Dear Mr. Mueldener:

BNSF plans on filing with the Surface Transportation Board ("STB") a Notice of Exemption seeking authority to abandon 25.45 miles of railroad line between Milepost 0.00 near Neva, Kansas and Milepost 25.45 near Lost Springs, Kansas.

As part of the environmental report BNSF needs to know whether or not this action will be consistent, with Federal, State or local water quality standards. Also, please state whether or not Section 402 and/or NPDES permits are required as a result of the proposed abandonment.

The proposed abandonment may require the removal of the track materials such as the rails and ties but the roadbed will be left intact. No placement of dredge or fill material in any inland waterways is anticipated to result from abandonment and/or salvage.

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

*Chicago*

*Springfield*

H



DEPARTMENT OF THE ARMY  
KANSAS CITY DISTRICT, CORPS OF ENGINEERS  
STATE REGULATORY PROGRAM OFFICE - KANSAS  
2710 N.E. SHADY CREEK ACCESS ROAD  
EL DORADO, KANSAS 67042

REPLY TO  
ATTENTION OF:

June 8, 2004

Kansas State Regulatory Office  
(200401643)  
(Chase, Morris, Marion, KS, NPR)

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

Re: The Burlington Northern and Santa Fe Railway Company Abandonment between  
Neva, Kansas and Lost Springs, Kansas

Dear Mr. Nettles:

This is in response to your letter received on June 7, 2004, requesting a Department of the Army (DA) permit determination concerning the abandonment of 25.45 miles of railroad line between milepost 0.00 near Neva, Kansas and milepost 25.45 near Lost Springs, Kansas. The project is located in Chase, Morris, and Marion Counties, all in Kansas.

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 320-330.

The enclosed Jurisdictional Determination (JD) form describes the extent of waters of the United States on the project site. Also, the enclosed Notification of Administrative Appeal Options and Process and Request for Appeal form (FORM) describes your options in Section E of the FORM.

We have reviewed the information provided in your letter stating that no work is proposed within any jurisdictional waters, including wetlands, and have determined that the proposed activity will not involve the discharge of dredged or fill material in waters of the United States. Therefore, Department of the Army permit authorization is not required. Other Federal, state and/or local permits may be required, however, and you should verify this yourself.

Ms. Sarah M. Reznicek, Regulatory Specialist, reviewed the information furnished and made this determination. If you have any questions concerning this matter, please feel free to contact Ms. Reznicek at 316-322-8247 (FAX 316-322-8259).

Enclosures

**Copies Furnished:**

**Environmental Protection Agency,  
Water Resources Protection Branch wo/enclosure**

**Kansas Department of Wildlife and Parks  
wo/enclosure**

**Kansas Department of Agriculture wo/enclosure**

**JURISDICTIONAL DETERMINATION**  
U.S. Army Corps of Engineers, Kansas City District

**APPLICANT:** Burlington Northern And Santa Fe Railway Company **NUMBER:** 200401643

**LOCATION/WATERWAY:** Various locations in Chase, Morris, & Marion Counties, KS

**PROJECT REVIEW COMPLETED:**  Office  Field

**JURISDICTIONAL DETERMINATION (JD)** (For sites regulated under 33 CFR 320-330):

- Preliminary JD – Based on available information, there appear to be no waters of the U.S. on the project site. A preliminary JD is not appealable.
- Approved JD – There are no waters of the United States on the project site, as identified in the basis of jurisdiction determination indicated below. An approved JD is an appealable action (33 CFR 331). (Note: JDs prepared by the U.S. Environmental Protection Agency are not appealable to the Corps of Engineers.)

**BASIS FOR JURISDICTIONAL DETERMINATION:**

**Waters defined under 33CFR 328.3(a) as “waters of the United States:”**

- (1) The presence of waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.
- (2) The presence of interstate waters including interstate wetlands<sup>1</sup>.
- (3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could effect interstate commerce including any such waters:
- (i) which are or could be used by interstate or foreign travelers for recreational or other purposes.
  - (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
  - (iii) which are or could be used for industrial purposes by industries in interstate commerce.
- (4) Impoundments of waters defined as a Water of the U.S.
- (5) The presence of a tributary to a water identified in (1) – (4) above.
- (6) The presence of territorial seas.
- (7) The presence of wetlands adjacent<sup>2</sup> to interstate or other waters of the U.S., except for those wetlands adjacent to other wetlands.

**Waters defined under 33CFR 329 as “navigable waters of the United States:”**

- The presence of waters that are subject to the ebb and flow of the tide and/or are presently used or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

**Rationale for Basis (Applies to any boxes checked above):** The proposed project will not involve the discharge of dredge or fill material in to waters of the U.S., including wetlands.

**Lateral Extent of Jurisdiction (33 CFR 328 and 329):**

Ordinary High Water Mark indicated by:

- clear, natural line impressed on the bank
- the presence of litter and debris
- changes in the character of soil
- destruction of terrestrial vegetation
- shelving
- other (hydrologic study, etc.): \_\_\_\_\_

High Tide Line indicated by:

- oil or scum line along shore objects
- fine shell or debris deposits (foreshore)
- physical markings/characteristics
- tide gages
- other: \_\_\_\_\_

Mean High Water Mark indicated by:

- survey to available datum;  physical markings;  vegetation lines/changes in vegetation types

In ocean or coastal area, site is in a zone three geographic (nautical) miles seaward of the baseline<sup>3</sup>

Wetland, as shown on the attached wetland delineation map, and/or in a jurisdictional report prepared by \_\_\_\_\_, and dated \_\_\_\_\_.

Additional supporting information attached and/or multiple JD forms completed for sites with multiple water categories.

**Preparer:** Regulatory Specialist, Sarah Reznicek **Date:** 8 June 2004

<sup>1</sup> Wetlands are identified and delineated using the methods and criteria established in the 1987 Corps of Engineers Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

<sup>2</sup> The term “adjacent” means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.

<sup>3</sup> Baseline is the line on the shore reached by the ordinary low tides from which the distance of three miles is measured.

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND  
REQUEST FOR APPEAL

Applicant: Burlington Northern and Santa Fe Railway Co.	File Number: 200401643	Date: 8 June 2004
Attached is:		See Section below
	A. INITIAL PROFFERED PERMIT (Standard Permit or Letter of Permission)	A
	B. PROFFERED PERMIT (Standard Permit or Letter of Permission)	B
	C. PERMIT DENIAL	C
	D. APPROVED JURISDICTIONAL DETERMINATION	D
XX	E. PRELIMINARY JURISDICTIONAL DETERMINATION	E

SECTION I: The following identifies your rights and options regarding a modification, reconsideration, or administrative appeal of the above decision. Additional information may be found at <http://www.usace.army.mil/haq/Transitions/ow/ceow/ceas/corpsregulations/corpsregulations.html> or Corps regulations at 33 CFR Part 320.

**A: INITIAL PROFFERED PERMIT:** You may accept or request modification of the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the District Engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **REQUEST MODIFICATION:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the District Engineer. Your objections must be received by the District Engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the District Engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the District Engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

**B: PROFFERED PERMIT:** You may accept or appeal the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the District Engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the Division Engineer (address on page 2). This form must be received by the Division Engineer within 60 days of the date of this notice.

**C: PERMIT DENIAL:** You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the Division Engineer (address on page 2). This form must be received by the Division Engineer within 60 days of the date of this notice.

**D: APPROVED JURISDICTIONAL DETERMINATION:** You may accept the approved JD, appeal the approved JD, or submit new information and request reconsideration of the approved JD.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the Division Engineer (address on page 2). This form must be received by the Division Engineer within 60 days of the date of this notice.
- **RECONSIDERATION BASED ON NEW INFORMATION:** You may submit new information to the District Engineer for reconsideration of an approved JD. You must submit the information within 60 days of the date of this notice.

**E: PRELIMINARY JURISDICTIONAL DETERMINATION:** You do not need to respond to the Corps regarding the preliminary JD. The preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION 1: Fill out this section and return this form to the appropriate office only if submitting a request for modification or reconsideration to the District Engineer or if submitting a request for Administrative Appeal to the Division Engineer. All such submissions must be made within 90 days of the date of this notice.

Submit the following requests to the District Engineer:

- (A) Modification of an INITIAL PROFFERED PERMIT (Item A)
- (B) Reconsideration of an APPROVED JURISDICTIONAL DETERMINATION based on NEW INFORMATION (Part D RECONSIDERATION)

Submit the following requests to the Division Engineer:

- (A) Administrative Appeal of a PROFFERED PERMIT (Item A)
- (C) Administrative Appeal of a DENIED PERMIT (Item C)
- (D) Administrative Appeal of an APPROVED JURISDICTIONAL DETERMINATION (Item D APPEAL) (for cases that require reconsideration of an approved JD based on new information)

Note: Preliminary Jurisdictional Determinations (Item E) are not appealable. If you have concerns regarding preliminary Jurisdictional Determination, you may request an approved Jurisdictional Determination.

**REASONS FOR APPEAL OR OBJECTIONS:** (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

**SUBMITTAL OF NEW OR ADDITIONAL INFORMATION:** The District Engineer may accept and consider new information if you request a modification to an initial proffered permit (Part A), or a reconsideration of an approved JD (Part D). An administrative appeal to the Division Engineer is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the administrative record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

**CONTACT INFORMATION FOR QUESTIONS OR INFORMATION**

If you have questions regarding this decision and/or the appeal process you may contact:  
**DISTRICT ENGINEER**  
**Attn: Joseph Hughes**  
**Chief Regulatory Branch**  
**U.S. Army Engineer District, Kansas City**  
**601 East 12<sup>th</sup> Street, Room 706**  
**Kansas City, MO 64106-2896**  
**Telephone: 816-983-3990**  
 (Use this address for submittals to the District Engineer)

If you wish to submit an appeal or have questions regarding the appeal process you may contact:  
**DIVISION ENGINEER**  
**Attn: Mores V. Bergman**  
**Appeal Review Officer**  
**U.S. Army Engineer Division, Northwestern Division**  
**12565 West Center Road**  
**Omaha, NE 68144-3869**  
**Telephone: 402-697-2533**

**RIGHT OF ENTRY:** Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

_____ Signature of appellant or agent.	Date:	Telephone number:
---	-------	-------------------

I

COUNTY CLERK  
(620) 767-5518  
(620) 767-6861 FAX

OFFICE OF COUNTY CLERK  
**MORRIS COUNTY COURTHOUSE**

501 W. Main  
COUNCIL GROVE, KANSAS 66846-1791  
e-mail: morris@cgtelco.net

COUNTY  
COMMISSIONERS  
(620) 767-5700

June 24, 2004

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

**RE: Flood Plain Zone(s) in Morris County, Ks**

In response to your request concerning flood plain information with respect to the BNSF Railway Company, the area in question is not in a designated flood plain.

Per the Federal Emergency Management Agency (FEMA), there are only two (2) areas in Morris County that have been designated as being in a flood plain zone. They are that portion of the City of Council Grove along the Neosho River, and the City of Dunlap which is located in the extreme southeast corner of the county.

There are no other areas in Morris County designated as being in a flood plain zone.

Sincerely,



Michelle Garrett  
Morris County Clerk

Meet 1st Monday of Month and every Tuesday

J

# Chase County

OFFICE OF  
COUNTY ENGINEER  
P. O. Box 100  
Cottonwood Falls, Kansas 66845  
Tel. 316-273-6386

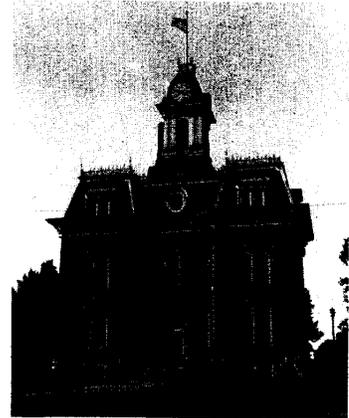


Photo by Donita Rogers  
1871 - 1872

June 7, 2004

Freeborn & Peters LLP  
Attorneys at Law  
Attn: Brian Nettles  
Suite 3000  
Chicago, Illinois 60606-6677

Dear Mr. Nettles:

After reviewing maps at the NRCS office in Chase County, it appears that the section of BNSF Railway running north from Neva, Kansas passes through several areas of 100 year floodplain.

Maps showing the 100 year designated floodplain are available on-line at the FEMA website.

Sincerely,

Paul Jones, Road Supervisor  
Chase County, Kansas

PJ/ds

K



MARION COUNTY COURTHOUSE

MARION COUNTY, KANSAS  
**OFFICE OF THE COUNTY CLERK**

P.O. BOX 219  
MARION, KANSAS 66861  
620-382-2185

CAROL A. MAGGARD, CLERK  
COUNTY ELECTION OFFICER

COUNTY COMMISSIONERS  
ROBERT G. HEIN  
HOWARD COLLETT  
LEROY A. WETTA

June 21, 2004

Mr. Brian Nettles  
Freeborn & Peters LLP  
311 S. Wacker Dr., Suite 3000  
Chicago, IL 60606-6677

Dear Mr. Nettles:

I received your request for 100-year floodplain information for the area where BNSF railroad enters Marion County from Morris County to Lost Springs, KS.

I have provided copies of the Legend, plus the area of interest, which appears to be in a floodplain.

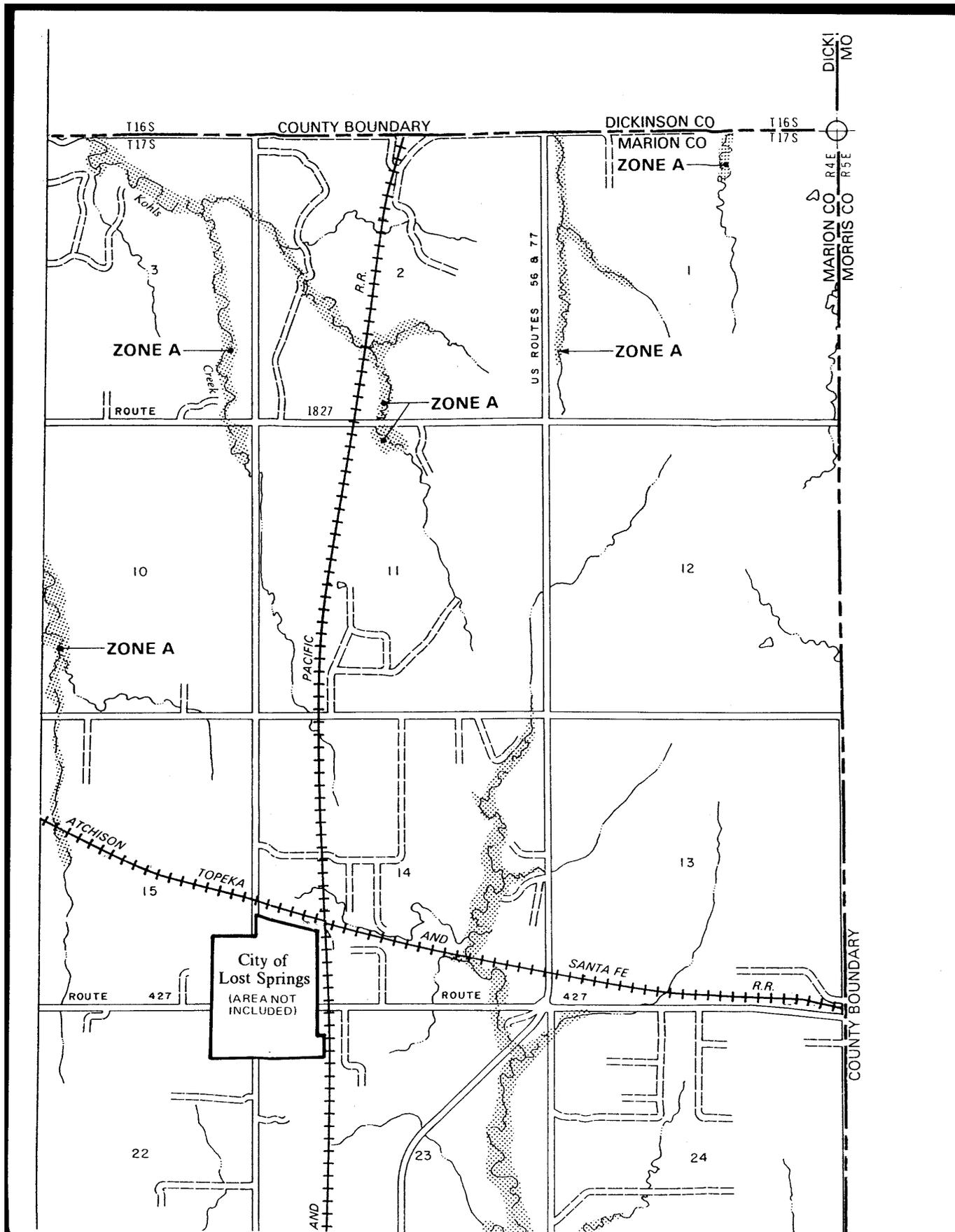
If I can be of further assistance to you, please let me know.

Sincerely,

Carol Maggard  
County Clerk

CM/mw

Enclosures





## LEGEND

SPECIAL FLOOD HAZARD  
AREA

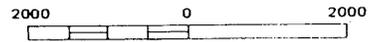


ZONE A

Note: These maps may not include all Special Flood Hazard Areas in the community. After a more detailed study, the Special Flood Hazard Areas shown on these maps may be modified, and other areas added.

**TO DETERMINE IF FLOOD INSURANCE IS AVAILABLE IN THIS COMMUNITY, CONTACT YOUR INSURANCE AGENT, OR CALL THE NATIONAL FLOOD INSURANCE PROGRAM, AT (800) 638-6620, OR (800) 424-8872.**

APPROXIMATE SCALE IN FEET:



L

Abandonment Documentation (M.P. 0.00 to M.P. 25.45)

List of Bridges

Bridge: 9.10	Built: 1929	Length: 70.0'	Height: 22.0'	Description: 5-14.0' Rail	Obstacle: Boehnitys Creek
Bridge: 12.40	Built: 1940	Length: 84.0'	Height: 18.0'	Description: Open Deck Pile Trestle	Obstacle: Silver Creek
Bridge: 13.50	Built: 1949	Length: 11.0'	Height: 5.0'	Description: 1-11.0' Rail	Obstacle: Waterway
Bridge: 13.60	Built: 1945	Length: 11.0'	Height: 7.0'	Description: 1-11.0' Rail	Obstacle: Waterway
Bridge: 15.50	Built: 1924	Length: 110.0'	Height: 23.0'	Description: 1-14.0' Rail ,42.0' DPG, 40.0' DPG,14.0' Rail	Obstacle: Six Mile Creek
Bridge: 17.10	Built: 1932	Length: 70.0'	Height: 17.0'	Description: 5-14.0' Rail	Obstacle: Spring Creek
Bridge: 17.70	Built: 1949	Length: 42.0'	Height: 9.0'	Description: Open Deck Pile Trestle	Obstacle: Spring Creek
Bridge: 22.60	Built: 1944	Length: 30.0'	Height: 7.0'	Description: 3-10.0' Rail	Obstacle: Waterway
Bridge: 25.00	Built: 1946	Length: 56.0'	Height: 11.0'	Description: Open Deck Pile Trestle	Obstacle: Waterway

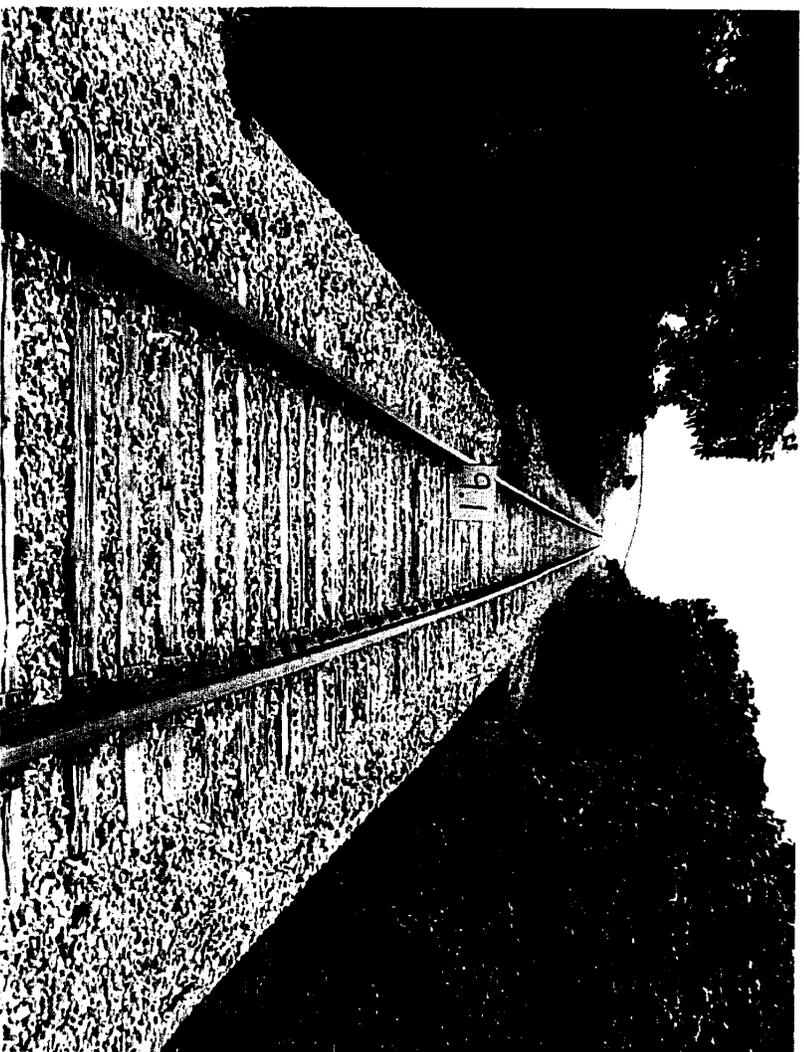
Bridge 9.1 L/S 7301  
Left side



**Bridge 9.1 L/S 7301**  
**Right side**



**Bridge 9.1 L/S 7301**  
**Center View**



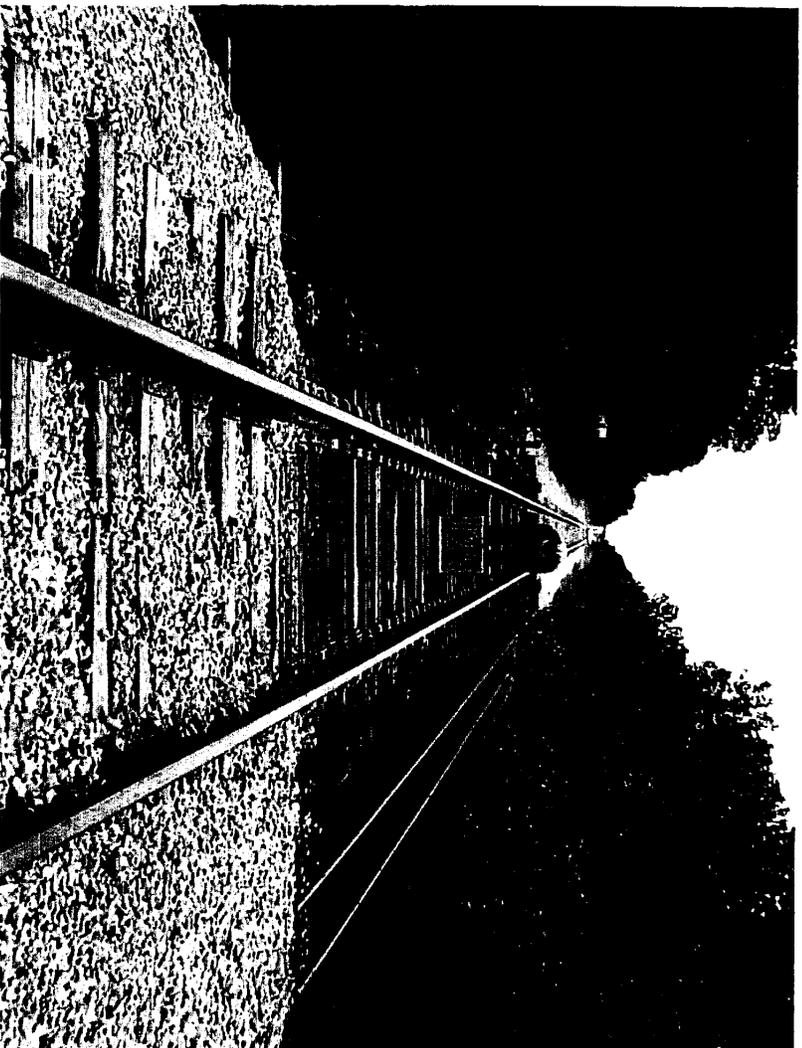
**Bridge 12.4 L/S 7301**  
**Left side**



Bridge 12.4 L/S 7301  
Right side



**Bridge 12.4 L/S 7301  
Center View**



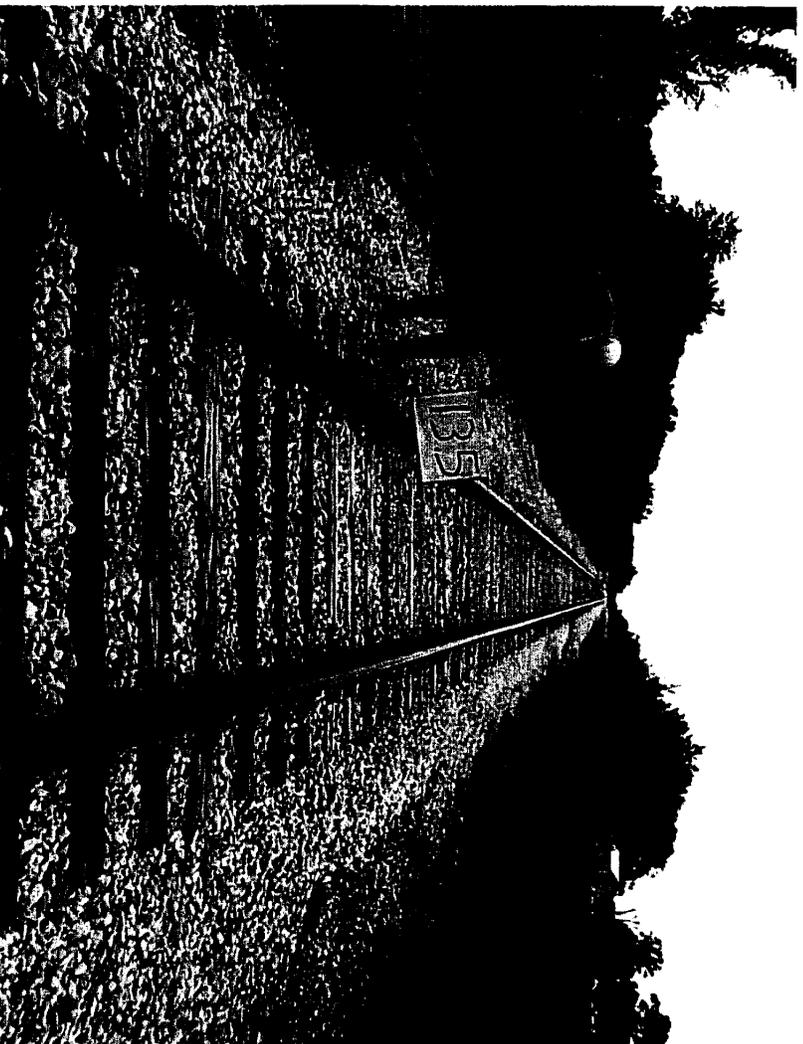
Bridge 13.5 L/S 7301  
Left side



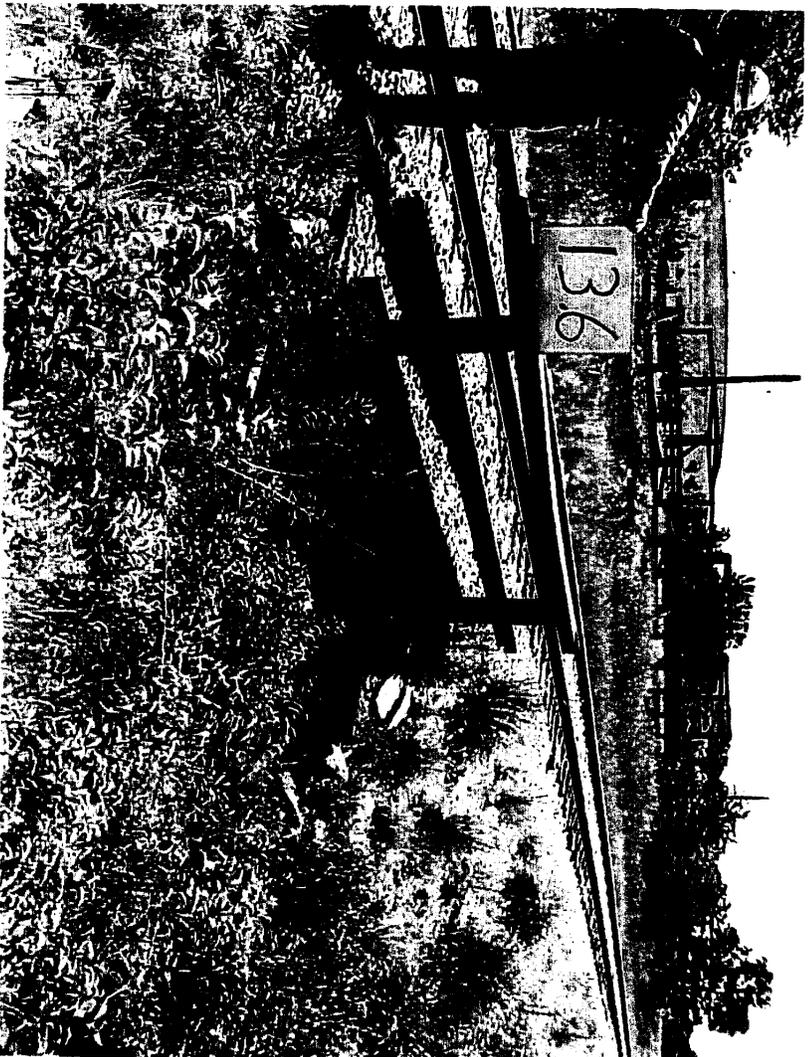
Bridge 13.5 L/S 7301  
Right side



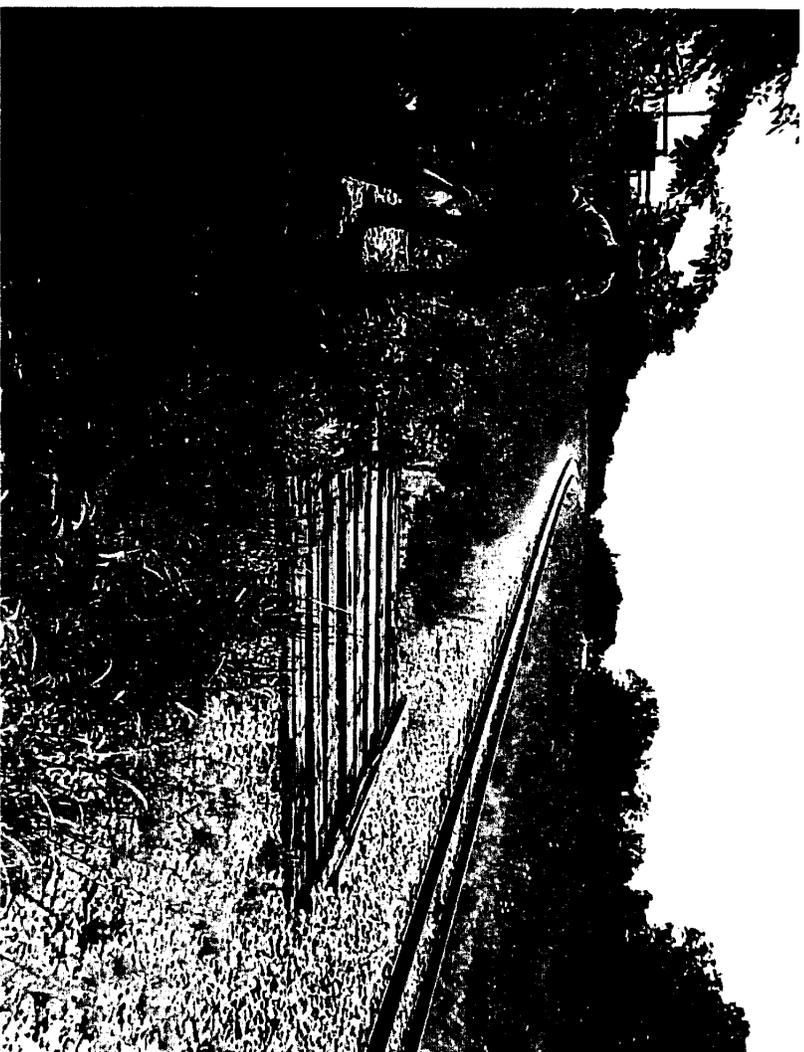
Bridge 13.5 L/S 7301  
Center View



Bridge 13.6 L/S 7301  
Left side



Bridge 13.6 L/S 7301  
Right side



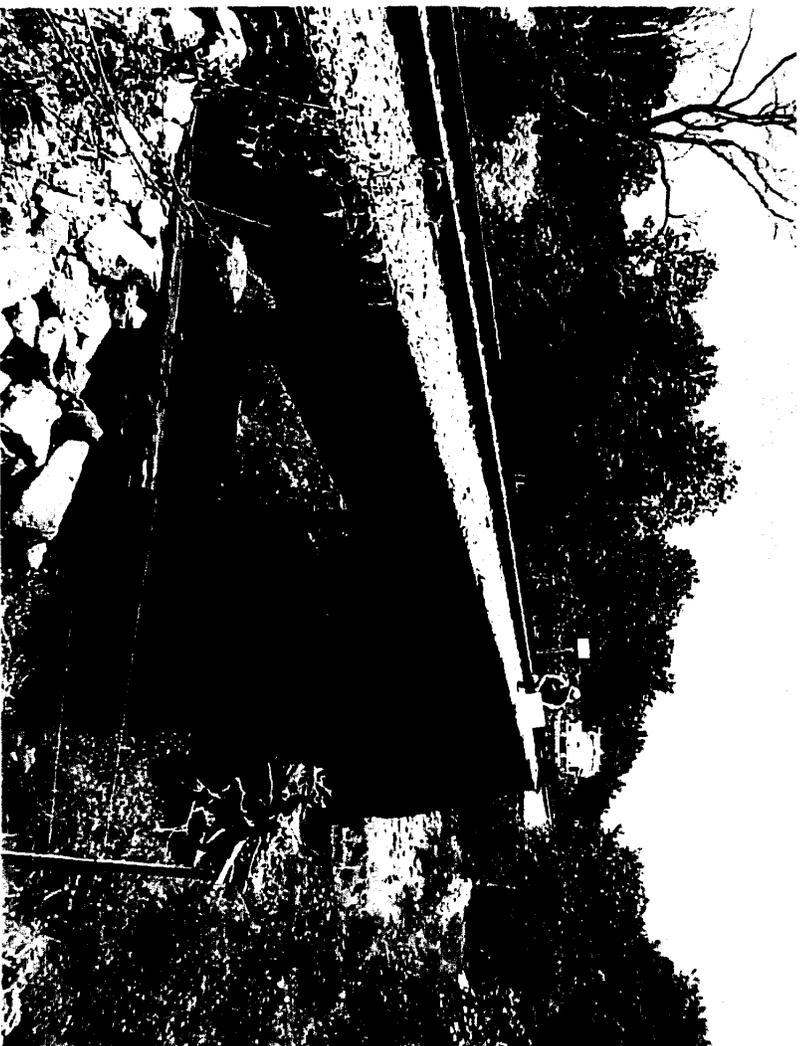
**Bridge 13.6 L/S 7301**  
**Center View**



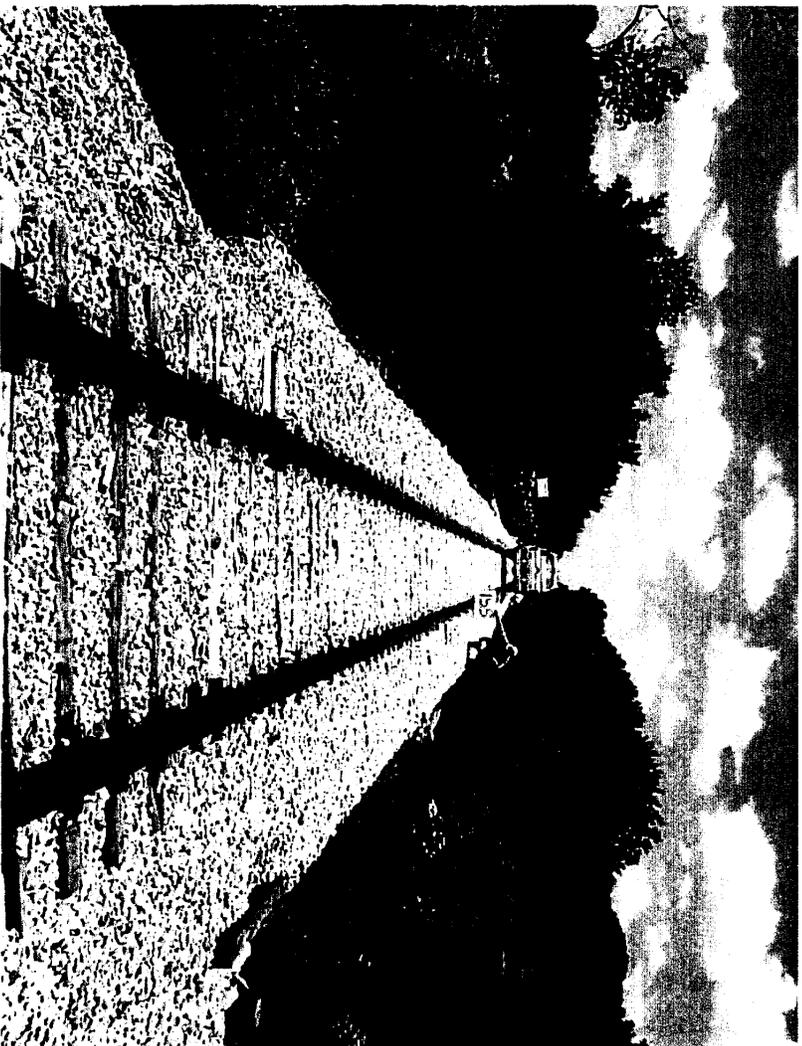
**Bridge 15.5 L/S 7301**  
**Left side**



**Bridge 15.5 L/S 7301**  
**Right side**



**Bridge 15.5 L/S 7301**  
**Center View**



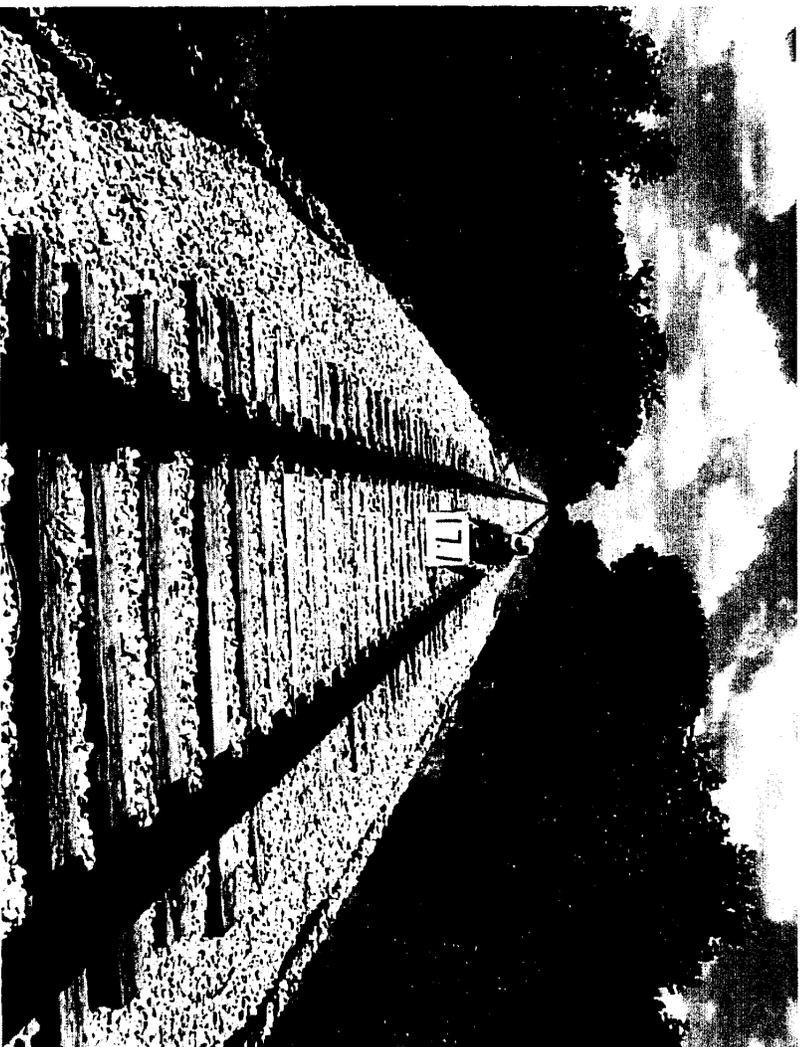
**Bridge 17.1 L/S 7301**  
**Left side**



**Bridge 17.1 L/S 7301**  
**Right side**



# Bridge 17.1 L/S 7301 Center View



# Bridge 17.7 L/S 7301

## Left side



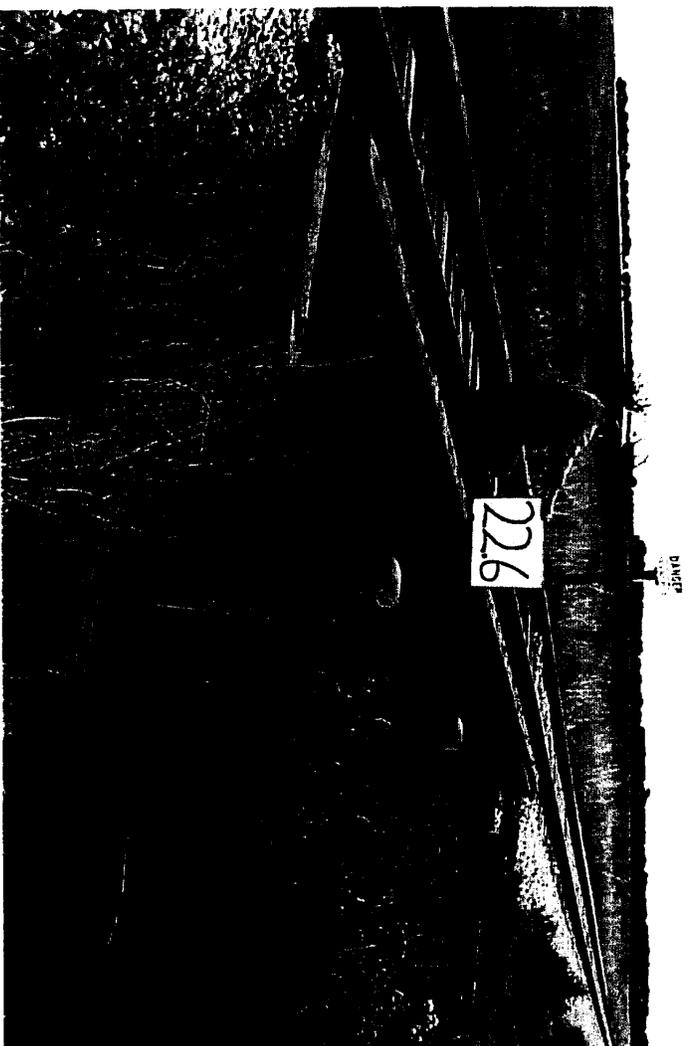
Bridge 17.7 L/S 7301  
Right side



**Bridge 17.7 L/S 7301  
Center View**



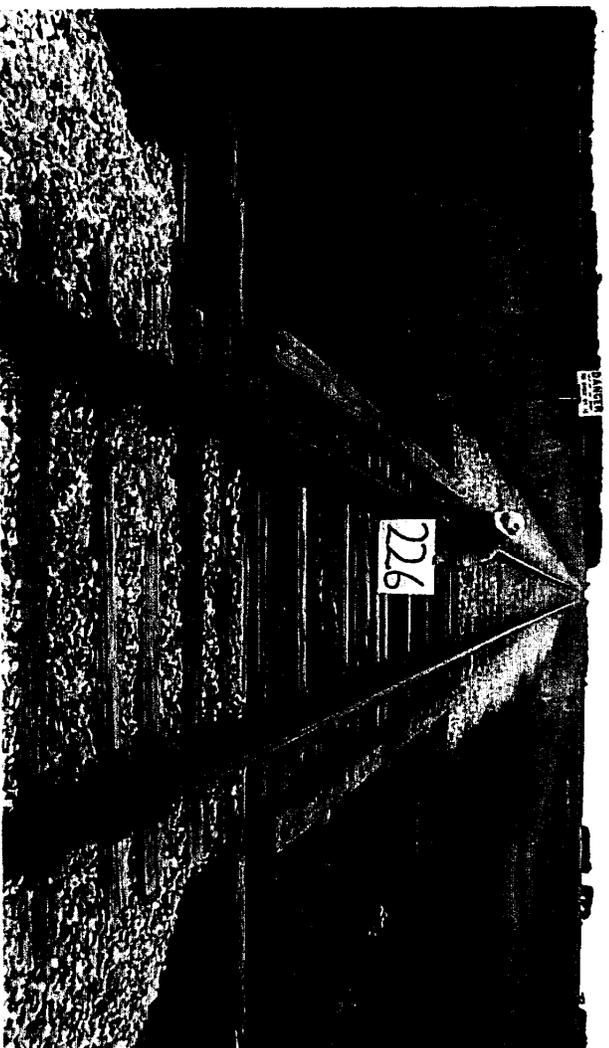
Bridge 22.6 L/S 7301  
Left side



Bridge 22.6 L/S 7301  
Right side



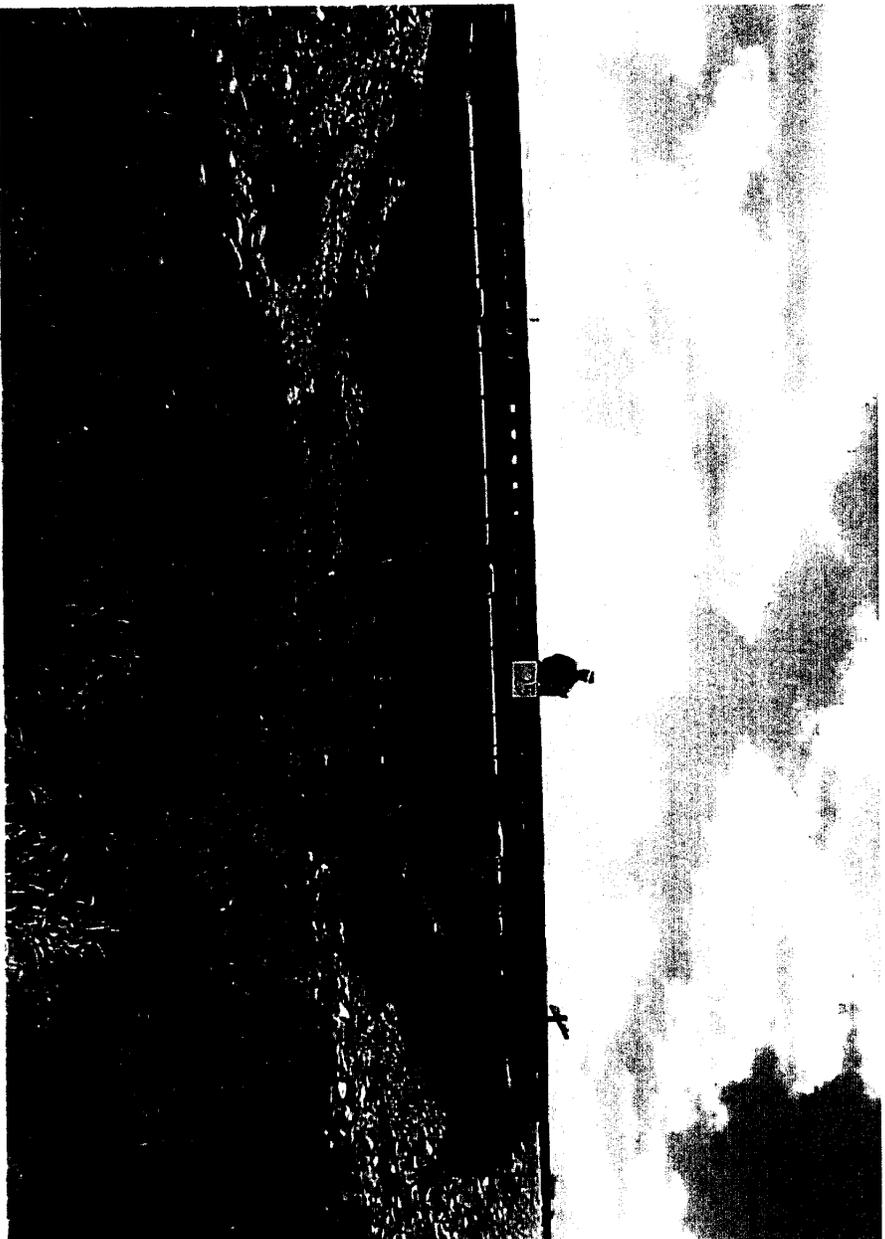
Bridge 22.6 L/S 7301  
Center View



**Bridge 25.0 L/S 7301**  
**Left side**



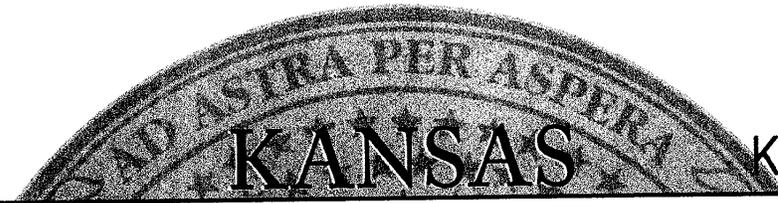
**Bridge 25.0 L/S 7301**  
**Right side**



**Bridge 25.0 L/S 7301  
Center View**



M



KSR&C No. 04-06-172

Kansas State Historical Society  
Dick Pankratz, Director, Cultural Resources Division

KATHLEEN SEBELIUS, GOVERNOR

June 28, 2004

Brian Nettles  
Freeborn & Peters LLP  
311 S Wacker Dr Suite 3000  
Chicago IL 60606-6677

RE: Abandon BNSF Railroad Line From Neva to Lost Springs  
Chase, Morris and Marion Counties

Dear Mr. Nettles:

We have reviewed the project identified above and have determined that it should not affect any property listed on the National Register of Historic Places or otherwise identified in our files as having historical significance. This office has no objection to implementation of the project.

Sincerely yours,

Terry Marmet  
Acting State Historic Preservation Officer

Richard Pankratz, Director  
Cultural Resources Division

clg