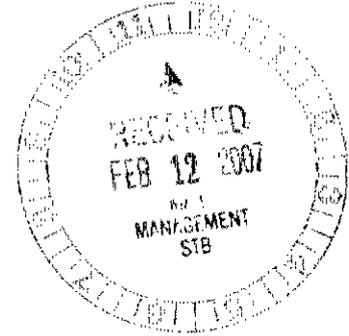


218621



Mack H. Shumate, Jr.
Senior General Attorney, Law Department

February 12, 2007



VIA U.P.S. OVERNIGHT
Surface Transportation Board
Section of Environmental Analysis
1925 "K" St., N.W., Room 504
Washington, DC 20423-0001

Attention: Victoria Rutson

Re: Proposed Abandonment of the Weeping Water Industrial Lead from M. P. 461.74 to M. P. 463.72, a distance of 1.98 miles near Weeping Water in Cass County, Nebraska; STB Docket No. AB-33 (Sub-No. 250X)

Dear Ms. Rutson:

Enclosed for filing in the above-referenced docket is the original and ten (10) copies of a Combined Environmental and Historic Report prepared pursuant to 49 C.F.R. §1105.7 and §1105.8, with a Certificate of Service, and a transmittal letter pursuant to 49 C.F.R. §1105.11.

Union Pacific anticipates filing a Petition for Exemption in this matter on or after March 5, 2007.

Sincerely,

Mack H. Shumate, Jr.

Enclosures

O:\ABANDONMENTS\33-250X\STB-EHR.doc

ENTERED
Office of Proceedings
FEB 13 2007
Part of
Public Record

bcc: w/ Enclosures

Ray Allamong, Mailstop 1350
Lynda Prucha, Mailstop 1580
Joe Bateman, Mailstop 1560
Jim Matza, Mailstop 1690
Alissa Hackel, Mailstop 1690

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. AB-33 (Sub-No. 250X)

UNION PACIFIC RAILROAD COMPANY
-- ABANDONMENT EXEMPTION --
IN CASS COUNTY, NEBRASKA
(WEEPING WATER INDUSTRIAL LEAD)

Combined Environmental and Historic Report

UNION PACIFIC RAILROAD COMPANY
Mack H. Shumate, Jr., Senior General Attorney
101 North Wacker Drive, Room 1920
Chicago, Illinois 60606
(312) 777-2055
(312) 777-2065 FAX

Dated: February 12, 2007
Filed: February 13, 2007

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. AB-33 (Sub-No. 250X)

UNION PACIFIC RAILROAD COMPANY
-- ABANDONMENT EXEMPTION --
IN CASS COUNTY, NEBRASKA
(WEEPING WATER INDUSTRIAL LEAD)

Combined Environmental and Historic Report

Union Pacific Railroad Company ("UP") submits this Combined Environmental and Historic Report pursuant to 49 C.F.R. § 1105.7(e) and 49 C.F.R. § 1105.8(d), respectively, for an exempt abandonment and discontinuance of service over a portion of the Weeping Water Industrial Lead from milepost 461.74 to milepost 463.72 near Weeping Water, a distance of 1.98 miles in Cass County, Nebraska (the "Line"). The Line traverses U. S. Postal Service Zip Code 68463.

The UP anticipates that a Petition for Exemption to abandon the Line will be filed at the STB on or after March 5, 2007.

A map of the Line marked **Attachment No. 1** is attached hereto and hereby made part hereof. UP's letter to federal, state and local government agencies marked **Attachment No. 2** is attached hereto and hereby made a part hereof. Responses received thus far to UP's letter are attached hereto and sequentially referenced as attachments in the appropriate sections of this Combined Environmental and Historic Report.

ENVIRONMENTAL REPORT
49 C.F.R. § 1105.7(e)

(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.

Response: The proposed action involves the abandonment and discontinuance of service over the Weeping Water Industrial Lead from milepost 461.74 to milepost 463.72 near Weeping Water, a distance of 1.98 miles in Cass County, Nebraska. The proposed abandonment will permit UP to eliminate two miles of operations and maintenance; however, a greater benefit will be the avoidance of a major upgrade to the Nebraska Route 50 grade crossing that would otherwise be required by the widening of that highway. Elimination of the crossing will save significant construction expense and enhance safety for both the railroad and motorists. The sole active customer on the Line is Jerico Services, Inc. ("Jerico"). Jerico's corporate officers have agreed to relocate their facility to a site immediately east of the proposed abandonment that will remain rail served by UP. Jerico's recent shipping profile is as follows:

Jerico Services, Inc.
P. O. Box 607
Indianola, IA 501215

2005: Magnesium Chloride Brine, STCC 2812659, 16 cars, 1611 tons.

2006: Magnesium Chloride Brine, STCC 2812659, 22 cars, 2162 tons.

Therefore, the abandonment of the Line will have no adverse effect on Jerico. Jerico has agreed to relocate a short distance but will remain on UP in Weeping Water.

There appears to be no reasonable alternative to the abandonment. The Line serves the sole function of accessing the lone industry track of Jerico. There is no other current rail customer on the Line and no location of a new rail served industry along the Line is anticipated. There is no overhead traffic.

The Line was constructed in the 1880's by the Missouri Pacific Railway. In 1918 and 1919 the Line was laid with 85-pound jointed rail.

The right-of-way proposed for abandonment is non-reversionary. UP does not believe the property is suitable for other public purposes, including roads or highways, other forms of mass transportation, conservation, energy production or transmission, in that the area is adequately served by existing roads and utility lines. To date, there has been no interest as a rails-to-trails corridor. The best plan for disposition may be to sell the right-of-way to the adjacent landowners. Based on information in UP's possession, the Line does not contain federally granted right-of-way. Any documentation in UP's possession will be made available to those requesting it.

A map of the Line is attached as **Attachment No. 1**.

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

Response: There should be no effect on regional or local transportation systems or patterns, and there will be no diversion to other modes or systems.

(3) **Land use.** (i) Based on consultation with local and/or regional planning agencies and/or a review of the official planning documents prepared by such agencies, state whether the proposed action is consistent with existing land use plans. Describe any inconsistencies.

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

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

(iv) If the proposed action is an abandonment, state whether or not the right-of-way is suitable for alternative public use under 49 U.S.C. § 10905 and explain why.

Response: (i) The Cass County Commissioners Office has been contacted.

To date UP has received no response.

(ii) The United States Natural Resources Conservation Service has been contacted. To date UP has received no response.

(iii) Not Applicable.

(iv) The property is generally not suitable for other public purposes including roads or highways, other forms of mass transportation, conservation, energy production or transmission, in that the area is adequately served by existing roads and utility lines at the present time.

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

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

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

(iv) If the proposed action will cause diversions from rail to motor carriage of more than:

(A) 1,000 rail carloads a year, or

(B) an average of 50 rail carloads per mile per year for any part of the affected Line, quantify the resulting net change in energy consumption and show the data and methodology used to arrive at the figure given.

Response: (i) There will be no effects on the transportation of energy resources.

(ii) There are no recyclable commodities handled over the Line.

(iii) There will be no effect on energy efficiency.

(iv)(A)(B) There will be no rail-to-motor diversion.

(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 rail line affected by the proposal, or

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

(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. For a proposal under 49 U.S.C. § 10901 (or § 10505) to construct a new line or reinstitute service over a previously abandoned line, only the eight train a day provision in §§ (5)(i)(A) will apply.

Response: There is no such effect anticipated.

(5) **Air.** (ii) If the proposed action affects a class 1 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 trains 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 of more than 10% of the average daily traffic or 50 vehicles a day on a given road segment, then state whether any expected increased emissions are within the parameters established by the State Implementation Plan. However, for a rail construction under 49 U.S.C. § 10901 (or 49 U.S.C. § 10505), or a case involving the reinstatement of service over a previously abandoned line, only the three train a day threshold in this item shall apply.

Response: There will be no increase in rail traffic, rail yard activity, or truck traffic of these magnitudes as a result of the proposed action.

(5) **Air.** (iii) If transportation of ozone depleting materials (such as nitrogen oxide and freon) is contemplated, identify: the materials and quantity; the frequency of service; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and spills; contingency plans to deal with accidental spills; and the likelihood of an accidental release of ozone depleting materials in the event of a collision or derailment.

Response: The proposed action will not affect the transportation of ozone depleting materials.

(6) **Noise.** If any of the thresholds identified in item (5)(i) of this section are surpassed, state whether the proposed action will cause:

(i) an incremental increase in noise levels of three decibels Ldn or more or

(ii) an increase to a noise level of 65 decibels Ldn or greater. If so, identify sensitive receptors (e.g., schools, libraries, hospitals, residences, retirement communities, and nursing homes) in the project area and quantify the noise increase for these receptors if the thresholds are surpassed.

Response: Not applicable.

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

(ii) If hazardous materials are expected to be transported, identify: the materials and quantity; the frequency of service; whether chemicals are being transported that, if mixed, could react to form more hazardous compounds; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and hazardous spills; the contingency plans to deal with accidental spills; and the likelihood of an accidental release of hazardous materials.

(iii) If there are any known hazardous waste sites or sites where there have been known hazardous materials spills on the right-of-way, identify the location of those sites and the types of hazardous materials involved.

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

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

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

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

Response: (i) The U. S. Fish and Wildlife Service has been contacted and concluded the proposed abandonment was unlikely to affect any federally listed species or those protected by the Bald and Golden Eagle Protection Act, the Migratory Bird Treaty Act, or the Fish and Wildlife Coordination Act. The U. S. Fish and Wildlife Service's response is attached as **Attachment No. 3**, and is hereby made part hereof.

(ii) UP is not aware of any wildlife sanctuaries or refuges, or of any National or State parks or forests, that will be affected by the proposed abandonment.

(9) **Water.** (i) Based on consultation with State water quality officials, state whether the proposed action is consistent with applicable Federal, State or local water quality standards. Describe any inconsistencies.

(ii) Based on consultation with the U.S. Army Corps of Engineers, state whether permits under section 404 of the Clean Water Act (33 U.S.C. § 1344) are required for the proposed action and whether any designated wetlands or 100-year flood plains will be affected. Describe the effects.

(iii) State whether permits under section 402 of the Clean Water Act (33 U.S.C. § 1342) are required for the proposed action. (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.)

Response: (i) The Nebraska Department of Environmental Quality has been contacted. To date UP has received no response.

(ii) The U.S. Army Corps of Engineers has been contacted and determined there are no recognized levees in the area of the proposed abandonment. The Corps of Engineers response is attached as **Attachment No. 4**, and is hereby made part hereof.

(iii) It is not anticipated there will be any requirements for Section 402 permits.

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

Response: There are no known adverse environmental impacts.

HISTORIC REPORT
49 C.F.R. § 1105.8(d)

(1) A U.S.G.S. topographic map (or an alternate map drawn to scale and sufficiently detailed to show buildings and other structures in the vicinity of the proposed action) showing the location of the proposed action, and the locations and approximate dimensions of railroad structures that are 50 years old or older and are part of the proposed action:

Response: See **Attachment No. 1**.

(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:

Response: The right-of-way is generally 100 feet wide, being 50 feet on either side of the centerline of the track. The topography of the Line is level with adjacent ground, and is in a predominately agricultural area.

(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:

Response: The Nebraska State Historic Preservation Officer has been provided with photographs of each of the structures on the property that are 50 years old or older. A copy of the letter to the State Historical Society and photographs are attached as **Attachment No. 5**, and are hereby made part hereof. The Deputy State Historic Preservation Office reviewed the information and determined there are two sites which may need to be surveyed if affected by ground disturbance in the proposed abandonment. The Deputy Historic Preservation Officer's response indicating that there will be no historic properties affected by the current project is attached hereto as **Attachment No. 6**, and is hereby made part hereof.

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

Response: Not applicable.

(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:

Response: See the preceding pages for a brief history and description of carrier operations.

(6) A brief summary of documents in the carrier's possession, such as engineering drawings, that might be useful in documenting a structure that is found to be historic:

Response: Not applicable.

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

Response: At this time, UP knows of no historic sites or structures or archeological resources on the Line or in the project area. UP believes that there is nothing in the scope of the project that merits historical comment and that any archeological sites within the scope of the right-of-way would have previously been disturbed during the construction of the Line.

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

Response: UP does not have any such readily available information.

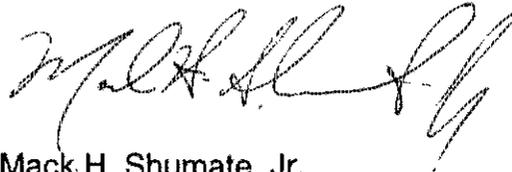
(9) Within 30 days of receipt of the historic report, the State Historic Preservation Officer may request the following additional information regarding specified nonrailroad owned properties or group of properties immediately adjacent to the railroad right-of-way. Photographs of specified properties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

Response: Not applicable.

Dated this 12th day of February, 2007.

Respectfully submitted,

UNION PACIFIC RAILROAD COMPANY



Mack H. Shumate, Jr.
Senior General Attorney
101 North Wacker Drive, Room 1920
Chicago, Illinois 60606
(312) 777-2055
(312) 777-2065 FAX

CERTIFICATE OF SERVICE
OF THE
COMBINED ENVIRONMENTAL AND HISTORIC REPORT

The undersigned hereby certifies that a copy of the foregoing Combined Environmental and Historic Report in Docket No. AB-33 (Sub-No. 250X) for the Weeping Water Industrial Lead in Cass County, Nebraska was served by first class mail on the 12th day of February, 2007 on the following:

State Clearinghouse (or alternate):

Nebraska Public Services Commission
1200 N Street, Suite 300
Lincoln, NE 68508

State Environmental Protection Agency:

Nebraska Department of Environmental Quality
1200 N Street, Suite 400
P. O. Box 98922
Lincoln, NE 68509

**State Coastal Zone Management Agency
(if applicable):**

Not applicable.

Head of County (Planning):

Cass County Commissioners
346 Main Street
County Courthouse
Plattsmouth, NE 68048-1957

**Environmental Protection Agency
(regional office):**

U.S. Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, KS 66101

U.S. Fish and Wildlife:

U.S. Fish & Wildlife Service, Region 6
Assistant Regional Director
Box 25486
Denver Federal Center
Denver, CO 80225

U.S. Army Corps of Engineers:

U.S. Army Engineer District - Omaha
106 South 15th Street
Omaha, NE 68102

National Park Service:

National Park Service
Midwest Region
1709 Jackson St.
Omaha, NE 68102

U.S. Natural Resources Conservation Service:

Natural Resource Conservation Service
Rm 152, Federal Building
100 Centennial Mall North
Lincoln, NE 68508

National Geodetic Survey:

National Geodetic Survey
Edward J. McKay, Chief
Spatial Reference System Division
NOAA N/NGS2
1315 E-W Highway
Silver Spring, MD 20910-3282

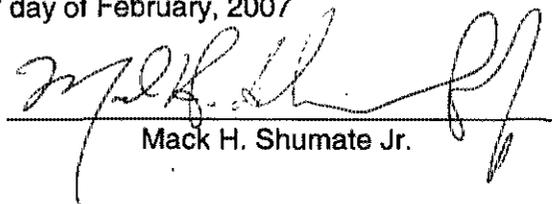
State Historic Preservation Office:

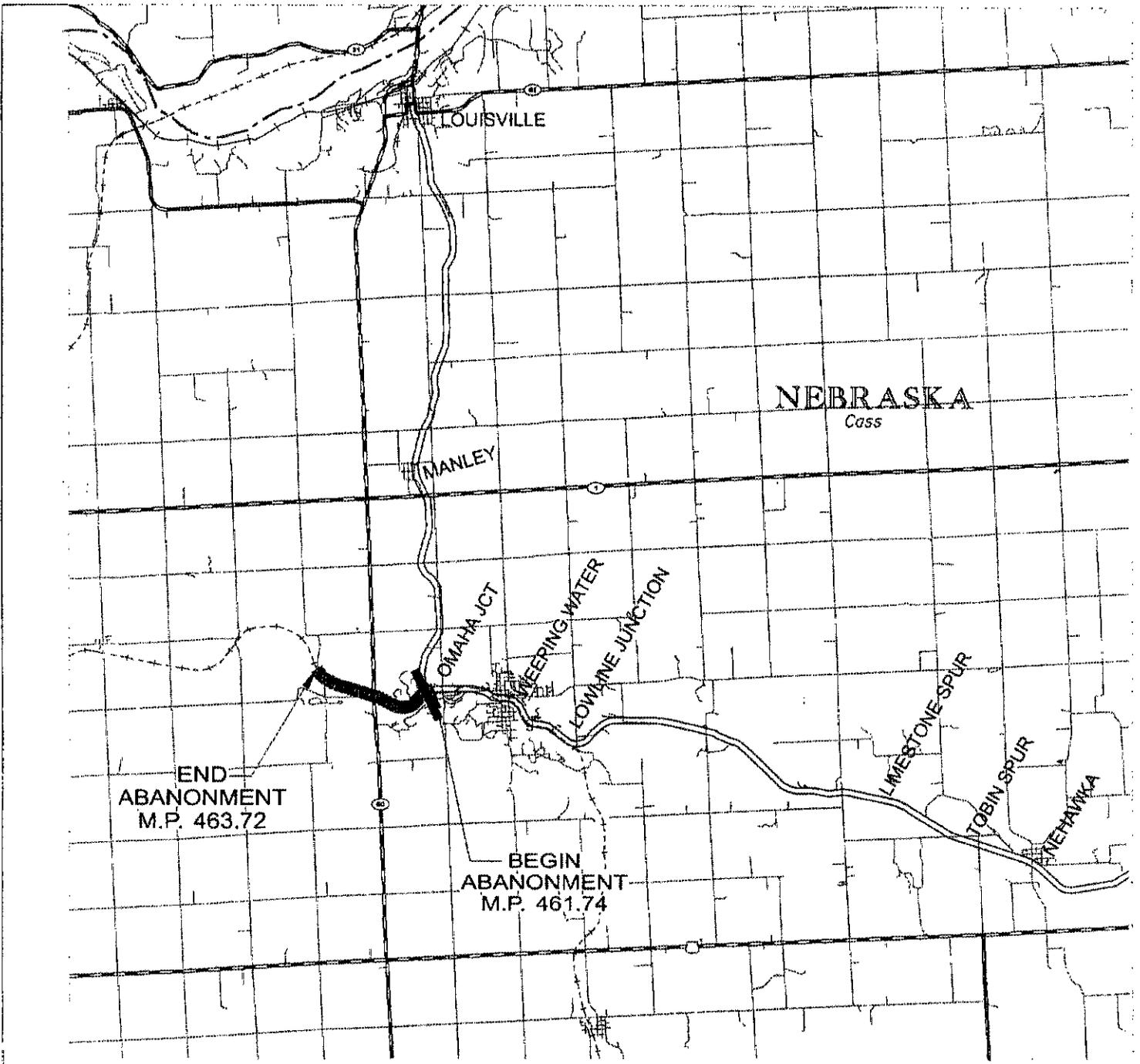
Nebraska State Historical Society
P. O. Box 82554
1500 R. Street
Lincoln, NE 68501

Shipper:

Jerico Services
P. O. Box 607
Indianola, IA 501215

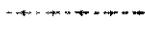
Dated this 12th day of February, 2007


Mack H. Shumate Jr.



| BRIDGE NO. | BRIDGE TYPE | TOTAL LENGTH | DATE |
|------------|---|--------------|------|
| 401.9 | 6 SPAN RAIL TIMBER PILE TRESTLE OPEN DECK (TPTOD) | 77' | 1941 |

LEGEND

-  UPRR LINES TO BE ABANDONED
-  OTHER UPRR LINES
-  OTHER RAILROADS
-  RAILROADS (abandoned)
-  PRINCIPAL HIGHWAYS
-  OTHER ROADS
-  50+ YEAR OLD STRUCTURES

WEEPING WATER INDUSTRIAL LEAD

MP 461.74 TO MP 463.72
TOTAL OF 1.98 MILES IN CASS COUNTY

**UNION PACIFIC RAILROAD CO.
WEEPING WATER INDUSTRIAL LEAD
NEBRASKA**

INCLUDING 50+ YEAR OLD STRUCTURES



FILE: O:\abandonments\ab33_250_weepingwater_v8.dgn

DATE: 12-Dec-06 14:35



(402) 501-0127 (FAX)

January 3, 2007

State Clearinghouse (or alternate):

Nebraska Public Services Commission
1200 N Street, Suite 300
Lincoln, NE 68508

State Environmental Protection Agency:

Nebraska Department of Environmental Quality
1200 N Street, Suite 400
P. O. Box 98922
Lincoln, NE 68509

**State Coastal Zone Management Agency
(if applicable):**

Not applicable.

Head of County (Planning):

Cass County Commissioners
346 Main Street
County Courthouse
Plattsmouth, NE 68048-1957

**Environmental Protection Agency
(regional office):**

U.S. Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, KS 66101

U.S. Fish and Wildlife:

U.S. Fish & Wildlife Service, Region 6
Assistant Regional Director
Box 25486
Denver Federal Center
Denver, CO 80225

U.S. Army Corps of Engineers:

U.S. Army Engineer District - Omaha
106 South 15th Street
Omaha, NE 68102

National Park Service:

National Park Service
Midwest Region
1709 Jackson St.
Omaha, NE 68102

U.S. Natural Resources Conservation Service:

Natural Resource Conservation Service
Rm 152, Federal Building
100 Centennial Mall North
Lincoln, NE 68508

National Geodetic Survey:

National Geodetic Survey
Edward J. McKay, Chief
Spatial Reference System Division
NOAA N/NGS2
1315 E-W Highway
Silver Spring, MD 20910-3282

State Historic Preservation Office:

Nebraska State Historical Society
P. O. Box 82554
1500 R. Street
Lincoln, NE 68501

Re: Proposed Abandonment of the Weeping Water Industrial Lead from M. P. 461.74 to M. P. 463.72, a distance of 1.98 miles near Weeping Water in Cass County, Nebraska; STB Docket No. AB-33 (Sub-No. 250X)

Dear Sirs:

Union Pacific Railroad Company plans to request authority from the Surface Transportation Board (STB) to abandon and discontinue service on the Weeping Water Industrial Lead from M. P. 461.74 to M. P. 463.72 near Weeping Water, a distance of 1.98 miles in Cass County, Nebraska. A map of the proposed track abandonment shown in black is attached.

Law Department

UNION PACIFIC RAILROAD
1400 Douglas St., Stop 1580, Omaha, NE 68179-1580
fx. (402) 501-0127

Pursuant to the STB's regulations at 49 C.F.R. Part 1152, and the environmental regulations at 40 C.F. R. Part 1105.7, this is to again request your assistance in identifying any potential effects of this action as indicated in the paragraphs below. We do not anticipate any adverse environmental impacts. However, if you identify any adverse environmental impacts, describe any actions that are proposed in order to mitigate the environmental impacts. Please provide us with a written response that can be included in an Environmental Report, which will be sent to the STB.

LOCAL AND/OR REGIONAL PLANNING AGENCIES. State whether the proposed action is consistent with existing land use plans. Describe any inconsistencies.

U. S. SOIL CONSERVATION SERVICE. State the effect of the proposed action on any prime agricultural land.

U. S. FISH AND WILDLIFE SERVICE (And State Game And Parks Commission, If Addressed). State (1) 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, and, (2) whether wildlife sanctuaries or refuges, National or State parks or forests will be affected, and describe any effects.

STATE WATER QUALITY OFFICIALS. State whether the proposed action is consistent with applicable Federal, State or Local water quality standards. Describe any inconsistencies.

U. S. ARMY CORPS OF ENGINEERS. State (1) whether permits under Section 404 of the Clean Water Act (33 U.S. C. § 1344) are required for the proposed action and (2) whether any designated wetlands or 100-year flood plains will be affected. Describe the effects.

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

Thank you for your assistance. Please send your reply to Union Pacific Railroad, Mr. Chuck Saylor, 1400 Douglas Street, Mail Stop 1580, Omaha, NE, 68179. If you need further information, please contact me at (402) 544-4861.

Yours truly,


Charles W. Saylor

Attachment



United States Department of the Interior

FISH AND WILDLIFE SERVICE

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

January 27, 2007

FWS: 2007-215

Charles Saylor
Union Pacific Railroad
1400 Douglas Street
Mail Stop 1580
Omaha, NE 68179

RE: Union Pacific Railroad Weeping Water Line Abandonment (STB Docket No. AB-33 (Sub-No. 250X), Cass County, Nebraska

Dear Mr. Saylor:

This responds to your January 3, 2007, request for comments and concurrence from the U.S. Fish and Wildlife Service (Service) regarding the subject project. 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 with are the Endangered Species Act (ESA) of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*), Fish and Wildlife Coordination Act (FWCA) (488 Stat. 401; 16 U.S.C. 661 *et seq.*), Bald and Golden Eagle Protection Act (BGEPA) (16 U.S.C. 688-688d, as amended), and Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703-712, as amended). Compliance with all of these statutes and regulations are required for compliance with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321-4347). In addition to these statutes, the Service has authority under several other legislative, regulatory, and executive mandates to promote the conservation of fish and wildlife resources for the benefit of the American public.

Please note that the Service's position on a project under the authorities of ESA, BGEPA, MBTA, and NEPA cannot be assumed without our official written response. Pursuant to the "take" provisions under section 9 of ESA; 16 U.S.C. 688 (a and b) of BGEPA; and 16 U.S.C. 703 of MBTA, the project proponent is responsible for compliance with these federal laws regardless of whether the Service is able to respond within your requested time frame.

Endangered Species Act (ESA)

Section 9 of ESA prohibits the taking of any federally listed endangered or threatened species. Section 3(18) of ESA defines take to mean to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Our regulations (50 CFR 17.3) define harm to include significant habitat modification or degradation which actually kills or injures wildlife by significantly impairing essential

behavioral patterns, including breeding, feeding or sheltering. Harassment is defined as an intentional or negligent action that creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, or sheltering. The ESA provides for civil and criminal penalties for the unlawful taking of listed species. Exemptions to the prohibitions against take may be obtained through coordination with the Service in two ways: through interagency consultation for projects with federal involvement pursuant to section 7 or through the issuance of an incidental take permit under section 10(a)(1)(B) of ESA.

The following "X" determination applies to the proposed project regarding ESA.

 X Based on the activities anticipated to be conducted and location of the proposed project site, it is unlikely that any of the federally listed species identified on our web site (<http://mountain-prairie.fws.gov/endspp/CountyLists/NEBRASKA.htm>) would occur in the vicinity of the proposed project. We concur that the proposed project will not adversely affect federally listed threatened and endangered species, or their designated critical habitat. No further section 7 consultation with the Service is necessary unless project plans change or new information becomes available.

_____ In accordance with section 7(c) of ESA, the Service does not concur with the project proponent that the proposed project will not have an adverse impact to federally listed species. A letter discussing our concerns will be forthcoming.

Bald and Golden Eagle Protection Act (BGEPA)

The BGEPA provides for the protection of the bald and golden eagle (*Aquila chrysaetos*) by prohibition, except under certain specific conditions, the taking, possession, and commercial use of such birds. **The following "X" determination applies to the proposed project regarding BGEPA.**

 X Based on the activities anticipated to be conducted and location of the proposed project site, it is unlikely that either the bald or golden eagle would be affected by the proposed project.

_____ In accordance with 16 U.S.C. 688 (a and b) of BGEPA, the Service does not concur with the project proponent that the proposed project will not have an adverse impact to the bald or golden eagle. A letter discussing our concerns and recommendations will be forthcoming.

Migratory Bird Treaty Act (MBTA)

Under the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703-712: Ch. 128 *as amended*) construction activities in grassland, wetland, stream, and woodland habitats, and those that occur on bridges (e.g., which may affect swallow nests on bridge girders) that would otherwise result in the taking of migratory birds, eggs, young, and/or active nests should be avoided. Although the provisions of MBTA are applicable year-round, most migratory bird

nesting activity in Nebraska occurs during the period of April 1 to July 15. However, some migratory birds are known to nest outside of the aforementioned primary nesting season period. For example, raptors can be expected to nest in woodland habitats during February 1 through July 15, whereas sedge wrens which occur in some wetland habitats normally nest from July 15 to September 10. If the proposed construction project is planned to occur during the primary nesting season or at any other time which may result in the take of nesting migratory birds, the Service recommends that the project proponent (or construction contractor) arrange to have a qualified biologist conduct a field survey of the affected habitats and structures to determine the absence or presence of nesting migratory birds. Surveys must be conducted during the nesting season. The Service further recommends that field surveys for nesting birds, along with information regarding the qualifications of the biologist(s) performing the surveys, be thoroughly documented and that such documentation be maintained on file by the project proponent (and/or construction contractor) until such time as construction on the proposed project has been completed.

The Service requests that the following be provided to this office prior to construction proceeding at the proposed project site if the above conditions occur. The purpose of the request is to assist the project proponent to avoid the unnecessary take of migratory birds and the possible need for law enforcement action:

- a) A copy of any survey(s) for migratory birds done in conjunction with this proposed project, if any. The survey should provide detail in regards to survey methods, date and time of survey, species observed/heard, and location of species observed relative to the proposed project site.
- b) Written description of any avoidance measures implemented at the proposed project site to avoid the take of migratory birds.
- c) Written description of any circumstances where it has been determined by the project proponent that one or more active bird nests cannot be avoided by the planned construction activities.

Fish and Wildlife Coordination Act (FWCA)

The FWCA 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. The comments in this letter are provided as technical assistance and predevelopment consultation and do not constitute a Service report under the authority of FWCA on any required federal environmental review or permit.

Wetlands, Streams, and Riparian Habitats

If wetlands or streams will be impacted by the proposed project, a Department of the Army permit from the U.S. Corps of Engineers may be needed. The Service recommends that impacts to wetlands, streams, and riparian areas be avoided or minimized. If unavoidable impacts are to occur to aquatic habitats, the Service recommends that compensation (i.e., restoration of a degraded wetland or creation) occur for like wetland type at a ratio of 2:1 (acres of wetlands restored/created to acres of wetlands impacted). For unavoidable impacts to streams, the Service recommends that stream pattern, profile, and dimension be mitigated at a ratio of no less than 1:1 (stream length and number, pattern, and length of meanders

created/restored versus stream length and number, pattern, and length of meanders impacted; sequence and number of pools and riffles created/restored versus sequence and number of pools and riffles impacted). Additionally, compensation for impacts to riparian habitats should occur at a minimum ratio of 3:1 (i.e., acres of riparian habitat replaces for acres of riparian habitat impacted) The 3:1 ratio is based on the loss of the habitat and the amount of time that will be required for planted trees to reach maturity.

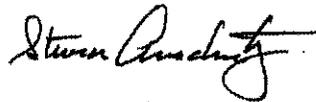
National Wildlife Refuges

In Nebraska, the Service manages six refuges and one wetland management district under the National Wildlife Refuge System. Based on the information provided, the Service has determined that the proposed project does not appear to impact any of these seven wildlife areas.

Due to budget deficits and reduced staffing in our office, it has become necessary for us to modify the manner in which we respond to formal requests (i.e., received in the mail via the U.S. Postal Service) for information or concurrences regarding the effects of proposed projects on federal trust fish and wildlife resources. If you cannot submit such request to our office electronically, but must send it to us in the form of a letter, please include a return E-mail address in your letter so that we can provide an electronic response to it. Unless requested otherwise due to special circumstances, we no longer intend to reply on paper, but only through electronic means in order to reduce our costs for postage, mail handling, and clerical support. In the future, if you are requesting information or concurrence from the Service regarding a proposed project; please submit your request electronically to the attention of Mr. John Cochnar within our office at the following E-mail address: John_Cochnar@fws.gov. Your cooperation and understanding regarding this matter is greatly appreciated.

We appreciate the opportunity to review and comment on the referenced project proposal. If you have any questions regarding our comments, please contact Mr. Cochnar at the above E-mail address or telephone number (308)382-6468, extension 20.

Sincerely,



Steve Anschutz
Nebraska Field Supervisor

cc: NGPC; Lincoln, NE (Attn: Kristal Stoner)

REPLY TO
ATTENTION OF**DEPARTMENT OF THE ARMY**
CORPS OF ENGINEERS, OMAHA DISTRICT
106 SOUTH 15TH STREET
OMAHA NE 68102-1618

January 25, 2007

Planning, Programs, and Project Management Division

Mr. Charles W. Saylor
1400 Douglas Street
Mail Stop 1580
Omaha, Nebraska 68179

Dear Mr. Saylor:

The U.S. Army Corps of Engineers, Omaha District (Corps) has reviewed your letter dated January 3, 2007 regarding the proposed abandonment of the Weeping Water Industrial Lead from M.P. 461.74 to M.P. 463.72, near Weeping Water in Cass County, Nebraska. The Corps offers the following comments:

The City of Weeping Water and Cass County, Nebraska participates in the National Flood Insurance Program. According to the Flood Insurance Rate Maps, community-panel number 3100407 0150A, dated 9/2/1982 and 310036 0001B dated 12/1/1977 there are no recognized levees in the area of the proposed project. It should be ensured that the proposed project is in compliance with flood plain management criteria of Cass County and the State of Nebraska.

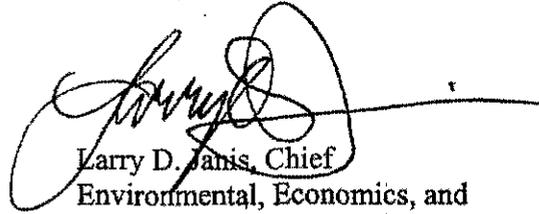
Your plans should be coordinated with the U.S. Environmental Protection Agency, which is currently involved in a program to protect ground water resources. If you have not already done so, it is recommended you consult with the U.S. Fish and Wildlife Service and the Nebraska Game and Parks Commission regarding fish and wildlife resources. In addition, the Nebraska State Historic Preservation Office should be contacted for information and recommendations on potential cultural resources in the project area.

If construction activities involve any work in waters of the United States, a Section 404 permit may be required. For a detailed review of permit requirements, preliminary and final project plans should be sent to:

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

If you have any questions, please contact Ms. Kristine Nemecek at (402) 221-4628.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry D. Janis", with a long horizontal flourish extending to the right.

Larry D. Janis, Chief
Environmental, Economics, and
Cultural Resources Section
Planning Branch



January 3, 2007

Nebraska State Historical Society
 P. O. Box 82554
 1500 R. Street
 Lincoln, NE 68501

Re: Proposed Abandonment of the Weeping Water Industrial Lead from M. P. 461.74 to M. P. 463.72, a distance of 1.98 miles near Weeping Water in Cass County, Nebraska; STB Docket No. AB-33 (Sub-No. 250X)

Dear Sir:

Enclosed for your review are three photographs of the bridge located at milepost 461.9 on the Weeping Water Industrial Lead, which is over 50 years old. Also enclosed is a map of the proposed abandonment. The bridge is described as follows:

| <u>Milepost</u> | <u>Description</u> | <u>Length</u> | <u>Year Constructed</u> |
|-----------------|--|---------------|-------------------------|
| 461.9 | 6 Span Rail Timber Pile Trestle Open Deck (TPTOD) | 77' | 1941 |

Please advise if you believe there is historical significance to the bridge. Thank you for your assistance.

Sincerely,

Charles W. Saylor
 Charles W. Saylor
 (402) 544-4861

Attachments

Law Department

UNION PACIFIC RAILROAD
 1400 Douglas St., Stop 1580, Omaha, NE 68179-1580
 Ex. (402) 501-0127



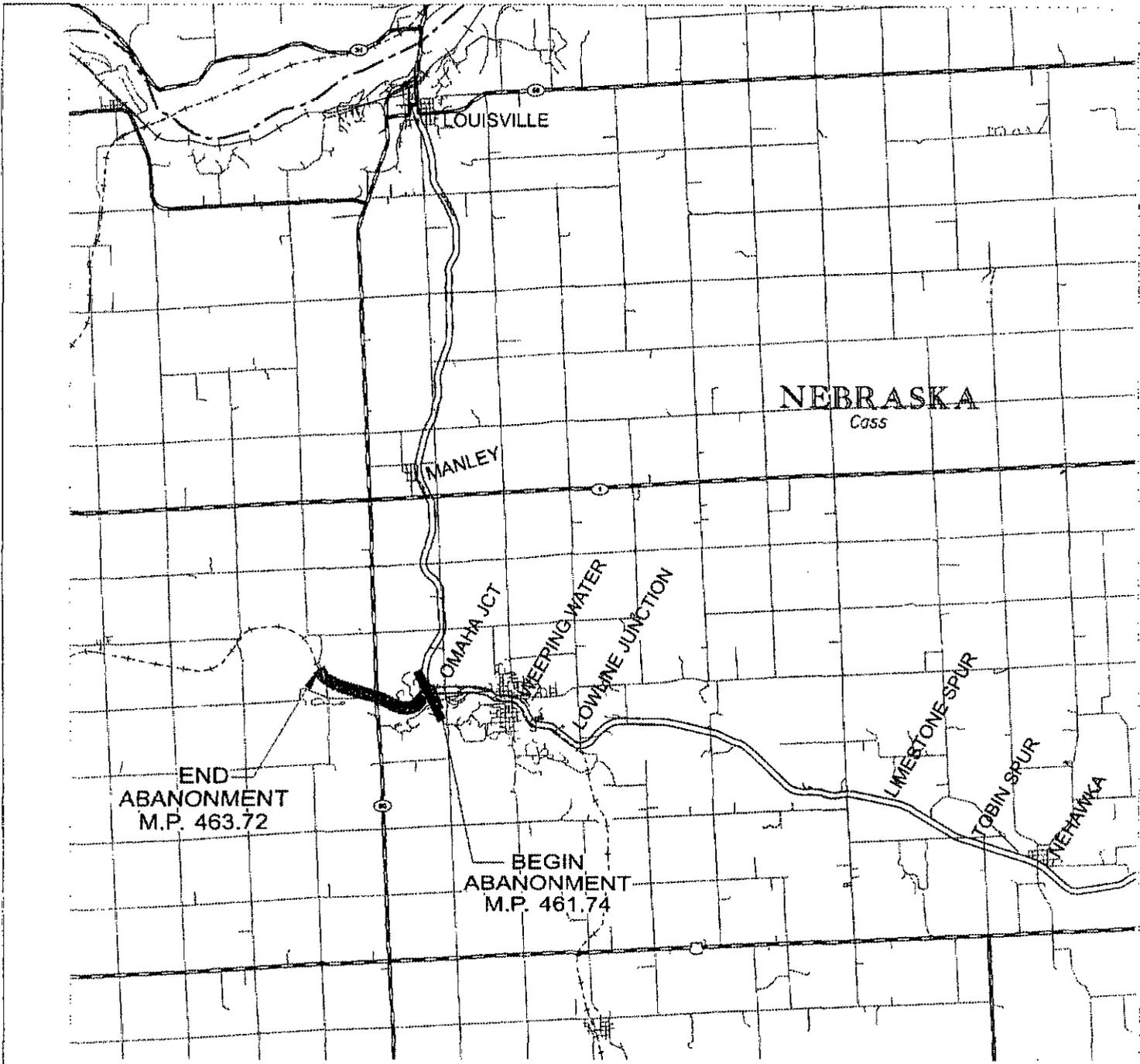
MP 461.9



MP 461.9

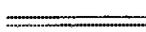
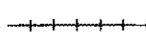
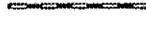


MP 461.9



| BRIDGE NO. | BRIDGE TYPE | TOTAL LENGTH | DATE |
|------------|---|--------------|------|
| 461.9 | 8 SPAN RAIL TIMBER PILE TRESTLE OPEN DECK (TPTOD) | 77 | 1941 |

LEGEND

-  UPRR LINES TO BE ABANDONED
-  OTHER UPRR LINES
-  OTHER RAILROADS
-  RAILROADS (abandoned)
-  PRINCIPAL HIGHWAYS
-  OTHER ROADS
-  50+ YEAR OLD STRUCTURES

WEeping WATER INDUSTRIAL LEAD

MP 461.74 TO MP 463.72
TOTAL OF 1.98 MILES IN CASS COUNTY

**UNION PACIFIC RAILROAD CO.
WEeping WATER INDUSTRIAL LEAD
NEBRASKA**

INCLUDING 50+ YEAR OLD STRUCTURES



FILE: O:\abandonments\ab33_250_weepingwater_v8.dgn

DATE: 12-Dec-06 14:35



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

Michael J. Smith, Director/CEO

January 19, 2007

Charles W. Saylor
 Union Pacific Railroad
 1400 Douglas Street, Stop 1580
 Omaha, NE 68179-1580

RE:

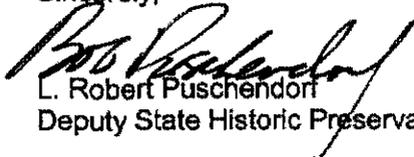
| | | |
|-------------|--|-----------------|
| 0701-009-01 | ABANDONMENT OF WEEPING WATER INDUSTRIAL LEAD BET MP 461.74 & 463.72 (1.98 MI), CASS CO NEBR | AB-33(SUB 250X) |
|-------------|--|-----------------|

Dear Mr. Saylor:

There are two listed archeological sites (see attached) in the proposed project area. If there will be ground disturbance then it is recommended that the project be surveyed by qualified personnel to determine potential affect to the sites.

If you have any questions, please contact Dr. Terry Steinacher at (308) 665-2918.

Sincerely,


 L. Robert Puschenort
 Deputy State Historic Preservation Officer

| SITENO | CONTEXT | NATREG | TWN | RNG | SECT | QUARTER |
|--------|---------|--------|------|------|------|---------|
| CC502 | EA-ICE | UNK | T10N | R11E | S 3 | NW4 |
| CC 26 | NSC WD | UNK | T10N | R11E | S 3 | NE4NW4 |

CODES FOR SITE RECORDS AND SURVEY REPORTS

SITENO (Archaeological Site Number)

CC = Cass Co.

CONTEXT (Site Cultural Affiliation)

AR = Plains Archaic
EA = European/American
EA-TRR = European/American, Transportation Routes
EA-FAR = European/American, Farm/Ranch
EA-ICE = European/American, Industrial/Commercial Enterprises
EA-MIL = Military
EA-URB = European/American, Urban
EA-CEM = European/American Cemetery
CD-PAW = Pawnee
CP = Central Plains Villagers
CP-UPR = Central Plains Villagers, Upper Republican Phase
CP-ITS = Central Plains Villagers, Itskari (Loup River) Phase
CP-NEB = Central Plains Villagers, Nebraska Phase
CP-STH = Saint Helena Phase
CO = Coalescent Villagers
CO-LWL = Lower Loup Phase
CO-RED = Redbird Phase
EN-TET = Equestrian Nomads Teton
ON-WHR = White Rock Aspect
NSC = Non-Specific Ceramic
NSP = Non-Specific Late Protohistoric/Prehistoric
PI = Paleoindian
PI-AGB = Agate Basin complex
PI-MES = Meserve Complex
SS-OMH = Omaha
UNP = Unknown Prehistoric
UNH = Unknown Historic
UNK = Unknown
UNP = Unknown Prehistoric
WD = Plains Woodland
WD-KEI = Keith Phase
WN-DIS = Western Nebraska Protohistoric, Dismal River Complex

NATREG (National Register Status)

UNK = Unknown/Unevaluated
PEL = Evaluated by Professional Archaeologist as Potentially Eligible for National Register
ONR = Listed on National Register of Historic Places
ELE = Determined as Eligible for the National Register by State Historic Preservation Officer
ELN = Determined as Not Eligible for the National Register by State Historic Preservation Officer

NRDATE (Date of Determination)

SURNO (Record Control Number)

TYPE (Type of Cultural Resource Survey)

I = Intensive Survey Conducted By a Patterned Search
R = Reconnaissance Survey Conducted By an Unpatterned Search

SIZE (of Surveyed Area)

Expressed in Acres

OTHER

NHAP-PSS = Nebraska Highway Archeology Program - Project Survey Summary