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SIDNEY L. STRICKLAND, JR.  
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219739



July 11, 2007

Vernon A. Williams, Secretary  
Surface Transportation Board  
395 E Street, S.W.  
Washington, DC 20423-0001

**Re: STB Docket No. AB-6 (Sub. No. 460X) BNSF Railway Company—  
Abandonment Exemption – in Webster County, NE**

Dear Secretary Williams.

Enclosed please find an original and 10 copies of the Petition for Exemption under 49 U.S.C. 10502 for filing with the Board in the above-referenced matter.

Also enclosed is a check in the amount of \$5,400 for the filing fee.

Very truly yours,

  
Sidney L. Strickland, Jr.  
Attorney for BNSF Railway Company

**FEE RECEIVED**  
JUL 11 2007  
SURFACE  
TRANSPORTATION BOARD

ENTERED  
Office of Proceedings  
JUL 11 2007  
Part of  
Public Record

**FILED**  
JUL 11 2007  
SURFACE  
TRANSPORTATION BOARD

BEFORE THE  
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB-6 (SUB. NO. 460X)

BNSF RAILWAY COMPANY  
--ABANDONMENT EXEMPTION--  
IN WEBSTER COUNTY, NE

PETITION FOR EXEMPTION



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TRANSPORTATION BOARD

SIDNEY L. STRICKLAND, JR.  
ELIZABETH E. WAITE  
Attorneys for:  
BNSF Railway Company  
3050 K Street, N.W.  
Suite 101  
Washington, DC 20007

Dated: July 11, 2007

BEFORE THE

SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB-6 (SUB. NO. 460X)

BNSF RAILWAY COMPANY  
--ABANDONMENT EXEMPTION--  
IN WEBSTER COUNTY, NE

PETITION FOR EXEMPTION



BNSF Railway Company ("BNSF") petitions the Surface Transportation Board ("STB" or "Board") to exempt, under 49 U.S.C. § 10502, from the prior approval requirements of 49 U.S.C. § 10903, BNSF's abandonment of a 8.41-mile rail line located in Webster County, Nebraska.

**PROPOSED TRANSACTION**

BNSF proposes to abandon its rail line located between Milepost 193.60 and Milepost 202.01, near Red Cloud in Webster County, Nebraska (the "Line"). The Line traverses U.S. Postal Service Zip Codes 68970 and 68952. A map of the Line is attached as Exhibit A.

Based on information in BNSF's possession, the Line does not contain any federally granted right-of-way. Any documentation in BNSF's possession will be made available to those requesting it.

## STATEMENT OF FACTS

Prior to 1983, the Line was part of a through route between Kansas City, Missouri, and Denver, Colorado. In 1983, a bridge west of Red Cloud was damaged, rendering this overhead route unserviceable. All overhead traffic was rerouted to other lines. Since 1983, only local traffic could move over the 5.25-mile portion of the Line between Milepost 196.76 and Milepost 202.01 ("Western Line Segment"), but there have been no customers since that time. BNSF has recently identified the Western Line Segment as having poor track conditions, and the one (1) bridge located on the line is damaged. Rehabilitation costs to fix the bridge are estimated at approximately \$870,000. Upon abandonment authorization, the Western Line Segment will be salvaged. In sum, BNSF is currently unable to operate the Western Line Segment on a profitable basis. There are no customers on this portion of the line and BNSF does not anticipate customers in the future, making continued maintenance of the Western Line Segment impractical and unprofitable. Consequently, BNSF is left with no option other than to abandon the Western Line Segment.

Currently, Red Cloud Grain, LLC ("RCG") leases and operates its shuttle service on the 3.16-mile portion of the Line between Milepost 193.60 and Milepost 196.76 ("Eastern Line Segment"). RCG is the only customer which has used that portion of the Line within the last two (2) years. The Eastern Line Segment has been recently rehabilitated to allow for the expansion of RCG's elevator operation to a shuttle facility.

RCG's operations include supplying wheat to markets in the eastern half of the United States via transportation over BNSF lines. RCG has the capacity to load 110-car

shuttles. Currently, BNSF operates one (1) shuttle from the facility approximately every two (2) weeks. After abandonment, RCG will purchase the Eastern Line Segment and the underlying real estate and will use this as a private spur to continue service with BNSF and for future expansion of RCG's shuttle service.

Abandonment and sale of the Eastern Line Segment will relieve BNSF of future maintenance costs, and will allow RCG to remain as an active shipper and to expand its operations.

### **EXEMPTION REQUESTED**

BNSF seeks an exemption under 49 U.S.C. § 10502 from the applicable requirements of 49 U.S.C. § 10903 to permit BNSF to abandon this 8.41-mile rail line.

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

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

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

predecessor to use liberally the expanded exemption authority under former Section 10505:

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

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

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

Detailed scrutiny of this transaction is not necessary to carry out the rail transportation policy. An exemption would minimize the unnecessary expenses associated with the filing of a formal abandonment application, expedite regulatory decisions and reduce regulatory barriers to exit [49 U.S.C. § 10101(2) and (7)]. *See, e.g., Norfolk & W. Ry Co – Abandonment Exem. – Cinn., Hamilton County, OH*, 3 S.T.B. 110 (1998), STB Docket No. AB-367 (Sub-No 2X), *Georgia Central Railroad, L P – Abandonment Exemption - In Chatham County, GA* (not printed), served September 17, 1997 (“*Georgia Central*”). By abandoning the Line, BNSF will be able to avoid the

significant opportunity costs associated with retaining this Line. Granting the exemption will thus foster sound economic conditions and encourage efficient management.

49 U.S.C. § 10101(5) and (9). *See, e.g.*, STB Docket No. AB-497 (Sub-No. 1X), *Minnesota Northern Railroad, Inc – Abandonment Exemption – In Red Lake and Polk Counties, MN* (not printed), served November 14, 1997; STB Docket No. AB-318 (Sub-No. 4X), *Louisiana & Delta Railroad, Inc – Abandonment Exemption – In Lafourche and Assumption Parishes, LA* (not printed), served August 26, 1997. BNSF will be able to rid itself of a line that has not seen traffic in two (2) years on the Western Line Segment and would also avoid future maintenance costs for the Eastern Line Segment. BNSF will be able to utilize the salvage and sales funds to maintain the tracks on the remainder of BNSF's system. Other aspects of the rail transportation policy are not adversely affected. For example, competition and the continuation of a sound rail transportation system are not affected. There are no active shippers on the Western Line Segment, and there is no need for rail service on that portion of the Line. Furthermore, the one (1) active shipper located on the Eastern Line Segment will continue to receive rail service post-abandonment.

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

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

*Company – Abandonment Exemption – Gilchrist and Levy Counties, FL* (not printed), served January 16, 1992, Docket No. AB-6 (Sub No. 349X).

The proposed transaction is clearly of limited scope. BNSF is seeking to abandon an 8.41-mile line that traverses a predominantly rural area where there is only one (1) shipper on the Eastern Line Segment and no shipper on the Western Line Segment. The shortness of the line, the limited geographic area involved, and limited use, all demonstrate the limited scope of the proposed abandonment. *See, e.g.,* Docket No. AB-397 (Sub-No. 3X), *Tulare Valley Railroad Company – Abandonment Exemption – In Tulare And Fresno Counties, CA* (not printed), served February 9, 1995.

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

There is only one (1) active shipper on the Eastern Line Segment. That shipper will purchase that portion of Line and will continue its shuttle operations with BNSF. There are no shippers on the Western Line Segment. Therefore, regulation is not necessary to protect shippers from an abuse of market power. *See, e.g.,* STB Docket No. AB-55 (Sub-No. 576) *CSX Transportation, Inc. – Abandonment Exemption – In Guernsey County, OH* (not printed), served November 22, 1999; STB Docket No. AB-55 (Sub-No. 563X), *CSX Transportation, Inc. – Abandonment Exemption – In Harrison County, WV* (not printed), served September 25, 1998; *Georgia Central*.

**ENVIRONMENTAL AND HISTORIC REPORTS**

The Environmental Report and the Historic Report containing the information required by 49 C.F.R. §§ 1105.07 and 1105.08 were forwarded to the Board on June 8, 2007. The Certificate of Service for this Petition for Exemption is attached as Exhibit B.

## FEDERAL REGISTER NOTICE

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

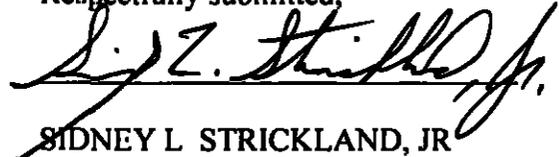
### LABOR PROTECTION

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

### CONCLUSION

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

Respectfully submitted,



SIDNEY L. STRICKLAND, JR.  
Attorney for  
BNSF Railway Company  
3050 K Street, N.W.  
Suite 101  
Washington, DC 20007

Dated: July 11, 2007

EXHIBIT A

# RED CLOUD, NEBRASKA TRACKAGE

NORTH

WEBSTER COUNTY

INAVALE

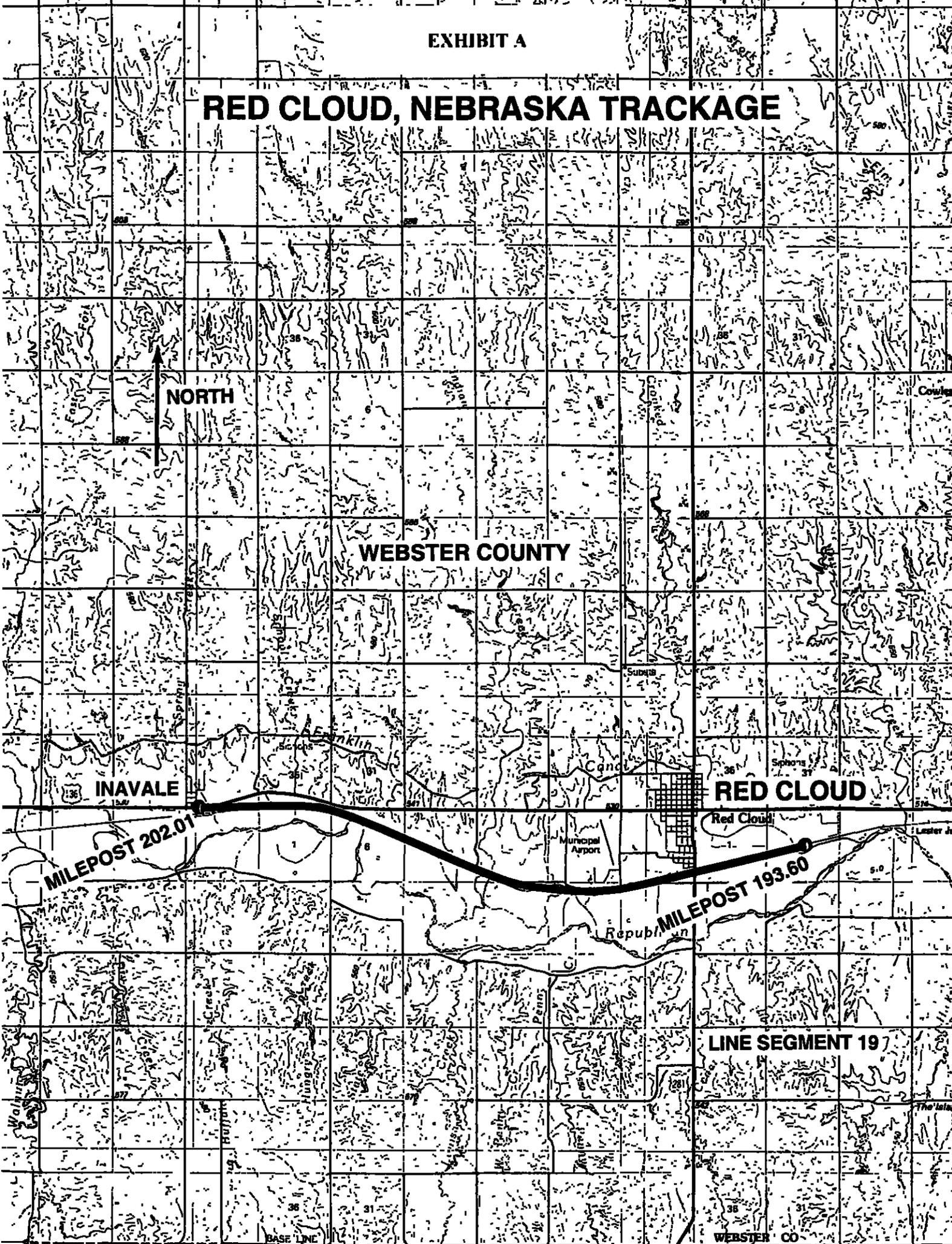
RED CLOUD

MILEPOST 202.01

MILEPOST 193.60

LINE SEGMENT 19

WEBSTER CO



**EXHIBIT B**

**CERTIFICATE OF SERVICE**

Pursuant to 49 C.F.R. § 1152 60(d), the undersigned hereby certifies that the Petition for Exemption in STB Docket No. AB-6 (Sub-No. 460X) was mailed via first class mail on July 11, 2007, to the following parties:

**State Public Service Commission**

Nebraska Public Services Commission  
P O. Box 94927  
Lincoln, NE 68509-4927

**Military Traffic Management Command**

Military Traffic Management Control  
ATTN: Railroads for National Defense  
720 Thimble Shoals Blvd., #130  
Newport News, VA 23606-2574

**National Park Service**

U.S. Department of the Interior  
National Park Service  
Recreation Resources Assistance Division  
1849 C Street, NW  
Washington, DC 20240-0001

**U.S. Department of Agriculture**

U.S. Department of Agriculture  
Chief of the Forest Service  
4th Floor N.W., Yates Building  
201 14<sup>th</sup> Street, SW  
Washington, DC 20250

Dated: July 11, 2007

  
Sidney L. Strickland, Jr.

**EXHIBIT C**

**SURFACE TRANSPORTATION BOARD**

**STB DOCKET NO. AB-6 (SUB-NO. 460X)**

**BNSF RAILWAY COMPANY  
--ABANDONMENT EXEMPTION--  
IN WEBSTER COUNTY, NE**

On July 11, 2007, BNSF Railway Company (BNSF) filed with the Surface Transportation Board a petition under 49 U.S.C. 10502 for exemption from the provision of 49 U.S.C. 10903 for BNSF to abandon a line of railroad extending from Milepost 193.60 to Milepost 202.01, near Red Cloud, Nebraska, which traverses U.S. Postal Service Zip Codes 68970 and 68952, a distance of 8.41 miles in Webster County, Nebraska. There are no stations on the line for which abandonment exemption was filed.

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

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

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued within 90 days (by October 9, 2007).

Any offer of financial assistance under 49 C.F.R. 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption.

All interested persons should be aware that following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use.

Any request for a public use condition under 49 C.F.R. 1152.28 and any request for trail use/rail banking under 49 C.F.R. 1152.29 will be due no later than 20 days after notice of the filing of the petition for exemption is published in the *Federal Register*.

All filings in response to this notice must refer to STB Docket No. AB-6 (Sub-No. 460X) and must be sent to: (1) Office of the Secretary, Case Control Unit, Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001; and (2) Sidney Strickland, Sidney Strickland and Associates, PLLC, 3050 K Street N.W., Suite 101, Washington, DC, 20007.

Persons seeking further information concerning abandonment procedures may contact the Surface Transportation Board or refer to the full abandonment or discontinuance regulations at 49 C.F.R. Part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Section of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Section of Environmental Analysis. EAs in these abandonment proceedings normally will be available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

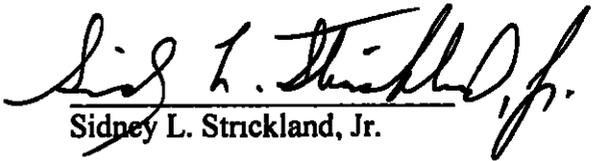
Decided: \_\_\_\_\_ 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings,  
Vernon A. Williams

**CERTIFICATE OF PUBLICATION**

The undersigned hereby certifies that notice of the proposed abandonment in STB Docket No. AB-6 (Sub-No. 460X) was published on June 24, 2007, in the *Omaha World Herald*, a newspaper of general circulation in Webster County, Nebraska as required by 49 C.F.R. § 1105.12

Dated: July 11, 2007

  
Sidney L. Strickland, Jr.

**CERTIFICATION PURSUANT TO 49 C.F.R. 1105.7(c) and 8(c)**

BNSF Railway Company ("BNSF"), by and through its authorized representative, Sidney L. Strickland, Jr., certifies that on June 8, 2007, BNSF sent copies of the foregoing Environmental and Historic Reports by first class mail to the following agencies.

Stephen Crick, State Conservationist  
Natural Resources Conservation Service  
USDA  
152 Federal Building  
100 Centennial Mall  
Lincoln, NE 68508-3866

Hugh Stirts, PhD  
NEPA Coordinator  
State of Nebraska  
Department of Environmental Quality  
P.O. Box 98922  
Lincoln, NE 68509-8922

Keith Tillotson  
Senior Project Manager  
U.S. Army Corps of Engineers  
Nebraska Regulatory Office—Kearney  
1430 Central Avenue, Suite 4  
Kearney, NE 68847-6856

U.S. Fish and Wildlife Service  
Region 6  
P.O. Box 25486  
Denver Federal Center  
Denver, CO 80225

Bureau of Land Management  
P.O. Box 1828  
Cheyenne, WY 82003-1828

C. Ardell Talkington  
Highway Superintendent  
621 N. Cedar Street  
Red Cloud, NE 68970

Jay Hall  
City Administrator  
540 N. Webster  
Red Cloud, NE 68970

Bob Rankin, P.E.  
Railroad Liaison Engineer  
Nebraska Department of Roads  
Rail and Public Transportation  
P.O. Box 94759  
Lincoln, NE 68509-4759

Robert Maydwell  
U.S. National Park Service  
Midwest Region  
601 Riverfront Drive  
Omaha, NE 68102-4226

Kimberly J. Hill  
Nebraska NPDES Permit Coordinator  
Wastewater and Infrastructure  
Management Branch  
U.S. Environmental Protection Agency  
Region 7  
901 N. 5th Street  
Kansas City, KS 66101

Webster County Commissioners  
621 North Cedar Street  
County Courthouse  
Red Cloud, NE 68970-2300

Terry Steinacher  
H.P. Archaeologist  
Nebraska State Historical Society  
P.O. Box 82554  
1500 R Street  
Lincoln, NE 68501-2554

Steve Anschutz  
Nebraska Field Supervisor  
Fish and Wildlife Service  
Ecological Services  
Nebraska Field Office  
203 West Second Street  
Grand Island, Nebraska 68801

Environmental Coordinator  
U.S. National Park Service  
Midwest Regional Office  
601 Riverfront Drive  
Omaha, NE 68102

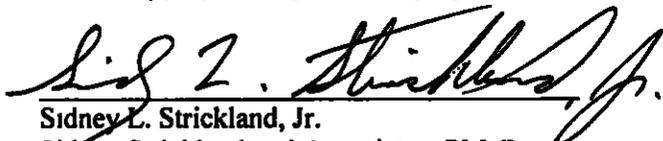
Bill Carson  
Realty Specialist  
Bureau of Land Management  
Newcastle Field Office  
Newcastle WY 82701

Ms. Victoria Rutson  
Chief, SEA  
Surface Transportation Board  
395 E Street, S.W  
Washington D.C. 20423-0001

National Oceanic and Atmospheric Administration  
National Geodetic Survey  
1315 East-West Highway  
Silver Springs, MD 20910-3282

Nebraska Public Services Commission  
P.O. Box 94927  
Lincoln, NE 68509-4927

The required cover letters (pursuant to 49 C.F.R. 1105.11) are attached hereto BNSF has consulted with all appropriate agencies in preparing the reports

  
Sidney L. Strickland, Jr.  
Sidney Strickland and Associates, PLLC  
3050 K Street N W.,  
Suite 101  
Washington, D C 20007

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**BNSF RAILWAY COMPANY --  
ABANDONMENT EXEMPTION --  
IN WEBSTER COUNTY, NE**

**DOCKET NO. AB-6  
(SUB. NO. 460X)**

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**ENVIRONMENTAL AND HISTORIC REPORTS**

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BNSF RAILWAY COMPANY  
2650 Lou Menk Drive  
P.O. Box 96157  
Fort Worth, TX 76161-0057

By SIDNEY I. STRICKLAND, JR.  
ELIZABETH E. WAITE  
SIDNEY STRICKLAND AND ASSOCIATES  
3050 K Street, N.W.  
Suite 101  
Washington, DC 20007  
(202) 338-1325

*Attorneys for BNSF Railway Company*

DATED: June 8, 2007

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

---

**BNSF RAILWAY COMPANY --  
ABANDONMENT EXEMPTION --  
IN WEBSTER COUNTY, NE**

**DOCKET NO. AB-6  
(SUB. NO. 460X)**

**ENVIRONMENTAL AND HISTORIC REPORTS  
(49 C.F.R. 1105.7 AND 49 C.F.R. 1105.8)**

Pursuant to 49 C.F.R. § 1105.7 and § 1105.8, BNSF Railway Company (BNSF) (referred to as "Applicant") hereby files Environmental and Historic Reports. These Reports constitute Applicant's assessment of the environmental effects and historic effects of abandonment of rail service on the involved rail line. Persons who review these Reports are entitled to provide comments to the Surface Transportation Board (STB), Section of Environmental Analysis (SEA), 325 E Street, S.W., Washington, DC 20423. There is information in the Applicant's files to indicate that the rail line covered by these Reports does not contain a federally granted right-of-way. *See* 49 C.F.R. § 1152.60(d). These Reports have been prepared in conjunction with the prospective filing of a Petition for Exemption for abandonment of the involved rail line. STB regulations provide that the Petition for Exemption cannot be filed until at least 20 days after these Reports are submitted.

I  
**ENVIRONMENTAL REPORT**  
**(49 C.F.R. 1105.7)**

The following information is submitted to the STB by BNSF in accordance with the Board's reporting requirements as set forth in 49 C.F.R. § 1105.7 for the purpose of assisting the Board's preparation of an environmental document regarding BNSF's Petition for Exemption seeking authority to abandon 8.41 miles of railroad line between Milepost 193.60 and Milepost 202.01, near Red Cloud in Webster County, Nebraska (the "Line")

**(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 the Line. The proposed abandonment may include the removal of the rails and ties, including any bridges, structures and crossings. BNSF bids its salvage packages out to independent contractors. The selected contractor will start work with the removal of the rails and metal parts of the track structure. Next, the wooden ties will be removed and separated into second-hand ties, landscape quality ties and scrap ties (which are disposed of at an appropriate site). The bridges and crossings as well as any other structures will be removed last. Culverts and the rail line embankment will stay intact so as not to alter the prevailing waterflows along the line. Any bridge pilings will be pulled out, cut off at ground level or broken off at or below the mud line. Steel bridges will be dismantled and removed. If there are concrete abutments or piers

involved, they may be left intact. BNSF salvage contractors are not permitted to place fills or other material in water bodies, including inland waterways.

Contractors are also required to limit their activities to the width of the right-of-way. When the salvage process is complete, waterflows in the area should not be disrupted. In this instance, there are seven (7) bridges and twenty six (26) culverts on the Line and BNSF is not aware of any other structures. 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 adverse effect on existing transportation systems or patterns. The Red Cloud Elevator shuttle project ("RCE") is operational between Milepost 193.60 and Milepost 196.76. Upon consummation of the abandonment, that portion of Line between Milepost 193.60 and Milepost 196.76 will be reclassified as industrial spur for RCE's continued operations. There is no local traffic between Milepost 196.76 and Milepost 202.01. There is no overhead traffic to be rerouted on the Line.

**(3) Land Use:**

(1) 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.

The proposed abandonment should not be inconsistent with local or regional land use plans. The City of Red Cloud ("City") indicates the City Council discussed the proposed abandonment at its December 12, 2006 meeting. The City further indicates the abandonment is outside the city limits and requires

no action by the council. Finally, the City adds that there are local groups, including the Lower Republican River Visionaries and the Trailblazer RC &D Council who may be interested in talking with BNSF. See Exhibit B, letter dated February 15, 2007, from Jay Hall, City Administrator, City of Red Cloud, Nebraska. BNSF is sending copies of this Report to the two above mentioned local groups.

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

The proposed abandonment should have no effect on prime agricultural lands. The Natural Resources Conservation Service ("NRCS") (formerly known as the U.S. Soil Conservation Service) was contacted regarding potential impacts to prime agricultural lands. In response, the NRCS indicates the "[p]roject as described is cleared of Farmland Protection Policy Act (FPPA) concerns." See Exhibit C, letter dated November 27, 2006, from Stephen K. Crick, State Conservationist, Natural Resources Conservation Service, U.S. Department of Agriculture.

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

The proposed abandonment may be suitable for alternative public use. As noted above, the City indicates the abandonment requires no council action, but local groups exist that may be interested in talking to BNSF. See Exhibit B, letter

dated February 15, 2007, from Jay Hall, City Administrator, City of Red Cloud, Nebraska.

Also, the Nebraska Department of Roads ("NDR") indicates there are no planned highway relocation projects scheduled by the NDR in the area of the proposed abandonment. NDR further indicates it has no comments regarding alternative public uses. See Exhibit D, electronic correspondence dated February 9, 2007, from Robert Rankin, P.E., Railroad Liason Engineer, Nebraska Department of Roads

**(4) Energy:**

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

There are no known recoverable energy resources along the Line

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

This abandonment will not adversely affect movement or recovery of recyclable commodities

(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 because the only operations currently being conducted on the Line are limited to RCI's shuttle operations between Milepost 193.60 and Milepost 196.76, and upon consummation of the abandonment, that portion of Line between Milepost 193.60 and Milepost 196.76 will be reclassified as industrial spur for RCI's continued operations. There is no local traffic between Milepost 196.76 and Milepost 202.01. There is no overhead traffic to be rerouted on the Line

(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 only operations currently being conducted on the Line are limited to RCF's shuttle operations between Milepost 193.60 and Milepost 196.76. and upon consummation of the abandonment, that portion of Line between Milepost 193.60 and Milepost 196.76 will be reclassified as industrial spur for RCE's continued operations. There is no local traffic between Milepost 196.76 and Milepost 202.01. There is no overhead traffic to be rerouted on the Line.

**(5) Air:**

(1) 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

(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.

The action will not result in meeting or exceeding the specified thresholds.

Moreover, the action will not involve an increase in truck traffic of more than 10% or 50 vehicles a day on any affected road segment because the only operations currently being conducted on the Line are limited to RCE's shuttle operations between Milepost 193.60 and Milepost 196.76, and upon

consummation of the abandonment, that portion of Line between Milepost 193.60 and Milepost 196.76 will be reclassified as industrial spur for RCE's continued operations. There is no local traffic between Milepost 196.76 and Milepost 202.01. There is no overhead traffic to be rerouted on the Line.

(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 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 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 action will not result in meeting or exceeding the specified thresholds because the only operations currently being conducted on the Line are limited to RCL's shuttle operations between Milepost 193.60 and Milepost 196.76, and upon consummation of the abandonment, that portion of Line between Milepost 193.60 and Milepost 196.76 will be reclassified as industrial spur for RCL's continued operations. There is no local traffic between Milepost 196.76 and Milepost 202.01. There is no overhead traffic to be rerouted on the Line.

(iii) If the 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

The proposed abandonment will not affect the transportation of ozone

depleting materials

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

(1) An incremental increase in noise levels of three decibels Ldn or more,

N/A

(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 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 six (6) public crossings and eight (8) private crossings on the line. During salvage operations, 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.

The abandonment will not result in the 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 are no 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 U.S. Fish and Wildlife Service (“FWS”) indicates “[b]ased on the activities anticipated to be conducted and location of the proposed project site, it is unlikely that any federally listed species identified on our web site. .would occur in the vicinity of the proposed project ” FWS adds that the proposed project will not adversely affect federally listed threatened and endangered species or their designated critical habitat. Regarding specific species, FWS indicates “[b]ased 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.” Furthermore, FWS recommends that if the proposed construction project is planned to occur during the primary nesting season or at any other time which may result in the taking of nesting migratory birds, the project proponent should arrange to have a qualified biologist conduct a field survey to determine the absence or presence of nesting migratory birds FWS adds the survey should be conducted during the nesting season and should be thoroughly documented. FWS also requests that should any of the above mentioned conditions occur, it be provided, prior to construction activities, with a copy of any surveys conducted, a written description of any avoidance measures

implemented, and a description of any circumstances where active bird nests cannot be avoided. FWS further indicates a Department of the Army permit may be required if wetlands or streams will be impacted, and recommends impacts to wetlands, streams, and riparian areas be avoided or minimized. Finally, FWS has determined that the proposed abandonment does not appear to impact any of the seven wildlife areas managed by FWS in Nebraska. See Exhibit E, letter dated January 25, 2007, from Steve Anschutz, Nebraska Field Supervisor, U.S. Fish and Wildlife Service, U.S. Department of the Interior.

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

The National Park Service ("Service") indicates it has "reviewed the project in relation to any possible conflicts with the Land and Water Conservation Fund and the Urban Park and Recreation Recovery programs and find there are none." The Service further indicates it has no additional comments. See Exhibit F, letter dated December 27, 2006, from Robert Maydwell, Grants Management Assistant, Partnerships-Grants, Midwest Region, National Park Service, U.S. Department of the Interior. In an additional response from the Service, it indicates the Service has no comment on the proposed action. See Exhibit G, correspondence postmarked January 9, 2007, from the Regional Environmental Coordinator, Midwest Regional Office, National Park Service, U.S. Department of the Interior.

The Bureau of Land Management ("BLM") indicates it has "reviewed the proposed abandonment and found that it will not affect any public lands (federal lands administered by the Department of the Interior through the Bureau of Land

Management).” See Exhibit H, electronic correspondence dated December 7, 2006, from Bill Carson, Realty Specialist, Newcastle Field Office, Bureau of Land Management, U.S. Department of the Interior.

**(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.

The proposed exemption should be consistent with applicable Federal, State and local water quality standards. The Nebraska Department of Environmental Quality (“NDEQ”) indicates permits may be required prior to beginning construction. NDEQ also indicates information regarding Construction Storm Water/Industrial Storm Water permitting can be received from Ron Asch at NDEQ. See Exhibit I, letter dated January 9, 2007, from Hugh Surts, PhD, NEPA Coordinator, State of Nebraska Department of Environmental Quality

As recommended, BNSF contacted Ron Asch at NDEQ. Mr. Asch indicates, via telephone conversation, that a Construction Water/Industrial Storm Water permit should not be required provided there is no excavation or grading involved in the proposed project. Mr. Asch further indicates he will contact BNSF after reviewing this report should he determine any other action be required. Mr. Asch can be reached at (402) 471-2188.

Finally, NDEQ indicates, via separate telephone conversation with Terry Hickman, if no fill material is placed in any water, a Section 401 water quality certification should not be required for the proposed abandonment. Ms. Hickman can be reached at (402) 471-2875.

The U.S. Environmental Protection Agency (“EPA”) indicates the NDEQ

should be contacted regarding Section 401 water quality certifications. See Exhibit J, letter dated December 15, 2006, from Kimberly J. Hill, Nebraska NPDES Permit Coordinator, Wastewater and Infrastructure Management Branch, U.S. Environmental Protection Agency. As mentioned above, BNSF contacted the NDEQ regarding Section 401 water quality certifications.

(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.

The proposed abandonment should not require a Section 404 permit. The U.S. Army Corps of Engineers ("CORPS") indicates that because the project will not involve fill materials being placed into jurisdictional waters of the United States, no permit pursuant to Section 404 of the Clean Water Act is required. See Exhibit K, letter dated January 9, 2007, from Keith Tillotson, Senior Project Manager, Nebraska Regulatory Office—Kearney, Omaha District, Army Corps of Engineers, Department of the Army.

With respect to the proposed abandonment's effect on 100-year flood plains, the Red Cloud Highway Department ("Highway Department") was notified by a letter dated November 20, 2006. See Exhibit L. As of the date of this report, the Highway Department has not responded. BNSF will provide the Board copies of any response it may receive.

(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.)

A permit under Section 402 of the Clean Water Act should not be required.

for the proposed action. The EPA indicates that the NDEQ administers the National Pollutant Discharge Elimination System ("NPDES") program. The EPA also indicates that construction activities that disturb more than one acre require a permit for discharge of storm water from the site. See Exhibit J, letter dated December 15, 2006, from Kimberly J. Hill, Nebraska NPDES Permit Coordinator, Wastewater and Infrastructure Management Branch, U.S. Environmental Protection Agency.

The NDEQ indicates, via telephone conversation with Mary Schroer, no NPDES permits should be required for the proposed abandonment if less than one (1) acre will be affected and if best management practices are used to prevent sediment from disturbing land and if any bare earth is stabilized with grass seeding. Ms. Schroer can be reached at (402) 471-8330.

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

The project itself should mitigate the environmental effects of reinstating active rail operations.

## II

### HISTORIC REPORT (49 C.F.R. 1105.8)

Applicants hereby submit the following information required by 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.*

The required topographic map is attached to this Report as Exhibit A

*(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 line of railroad between Red Cloud and Inavale is located in the Lower Republican River Valley of Webster County, Nebraska at an approximate elevation of 1,700 feet. Red Cloud, named after the famous Native American Oglala Teton-Sioux chief who was born in the area, is the county seat. It was founded in 1871, just seven years before the Republican Valley Railroad Company was formed to serve the needs of farmers in the valley. The railroad company connected Hastings to the north with St. Louis and Kansas City to the east and Denver to the west. The local economy continues to be agricultural. In 2000, the U S government census showed Red Cloud with a population of 1,131 and Inavale with an estimated population of 184.

The right-of-way is 100 feet, widening to 150 feet at both Red Cloud and Inavale. There are no federally granted rights-of-way involved.

*(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 seven (7) bridges and twenty-six (26) culverts located on the Line. BNSF is aware of no other structures on the property that are 50 years old or older. Photographs of seven (7) bridges are attached as Exhibits M-1—M-14

Bridge 193.68 is a railroad bridge in or near Lester Junction. It is near Milepost 193.68. This bridge is 77 feet long, 9 feet high, and is three (3) spans of 16-foot miscellaneous concrete girder and two (2) spans of 15-foot miscellaneous concrete girder.

Bridge 198.00 is a railroad bridge in or near Red Cloud. It is near Milepost 198.00. This bridge is 191 feet long, 6 feet high, and is two (2) spans of 20-foot reinforced concrete trestle, three (3) spans of 25-foot reinforced concrete trestle, one (1) span of 16-foot reinforced concrete trestle, and one (1) span of 60-foot thru plate girder.

Bridge 198.46 is a railroad bridge in or near Red Cloud. It is near Milepost 198.46. This bridge is 26 feet long, 5 feet high, and is one (1) span of 13-foot rail stringer, one (1) span of 17-foot rail stringer, and another one (1) span of 13-foot rail stringer.

Bridge 198.86 is a railroad bridge in or near Inavale. It is near Milepost 198.86. This bridge is 191 feet long, 6 feet high, and is one (1) span of 16-foot reinforced concrete trestle, two (2) spans of 30-foot beams, and another span of 16-foot reinforced concrete trestle.

Bridge 199.90 is a railroad bridge in or near Inavale. It is near Milepost

199.90. This bridge is 40 feet long, 8 feet high, and is two (2) spans of 20-foot reinforced concrete trestle.

Bridge 200.91 is a railroad bridge in or near Inavale. It is near Milepost 200.91. This bridge is 72 feet long, 10 feet high, and is one (1) span of 16 foot reinforced concrete trestle, two (2) spans of 20 foot reinforced concrete trestle, and another span of 16 foot reinforced concrete trestle

Bridge 201.53 is a railroad bridge in or near Inavale. It is near Milepost 201.53. This bridge is 30 feet long, 6 feet high, and is one (1) span of 30 foot miscellaneous steel span.

*(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,*

Bridge 193 68 was built in 1913. It is unknown whether or not there has been significant alteration to the bridge structure since that time.

Bridge 198 00 was built in 1916. It is unknown whether or not there has been significant alteration to the bridge structure since that time

Bridge 198 46 was built in 1948. It is unknown whether or not there has been significant alteration to the bridge structure since that time

Bridge 198 86 was built in 1923. It is unknown whether or not there has been significant alteration to the bridge structure since that time

Bridge 199.90 was built in 1908. It is unknown whether or not there has been significant alteration to the bridge structure since that time

Bridge 200 91 was built in 1923. It is unknown whether or not there has been significant alteration to the bridge structure since that time.

Bridge 201 53 was built in 1910. It is unknown whether or not there has

been significant alteration to the bridge structure since that time.

*(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 Republican Valley Railroad Company ("RVRR") was established March 28, 1878. Railroad maps from as early as 1880 refer to the line as the Republican Valley Division of the Chicago, Burlington & Quincy Railroad Company ("CB&Q"). RVRR was deeded to CB&Q on June 1, 1888. CB&Q merged with Great Northern Railway Company to form Burlington Northern Inc ("BN") in 1970. BN merged with the Atchison, Topeka and Santa Fe Railway Company in 1996, and changed its name to The Burlington Northern and Santa Fe Railway Company. The latter changed its name to BNSF Railway Company in January, 2005.

*(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,*

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.

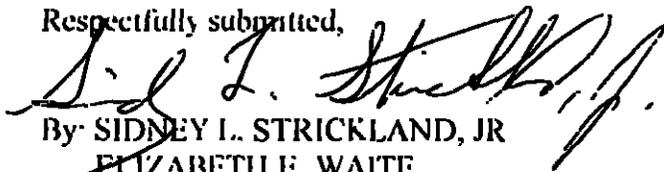
*(7) An opinion (based on readily available information in the railroad's possession) as to whether the site and/or structures meet the criteria for listing on the National Register of Historic Places (36 CFR 60.4), and whether there is a likelihood of archeological resources or any other previously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

The Nebraska State Historical Society ("NSHS") indicates three archaeological sites are located on or adjacent to the proposed project. NSHS further indicates it recommends that the locations be examined by qualified personnel to determine if the project will affect the sites. See Exhibit M, letter dated December 21, 2006, from L. Robert Puschendorf, Deputy SHPO, Nebraska State Historical Society. As recommended by NSHS, BNSF has hired qualified personnel who are currently surveying the project area and the three archaeological sites to determine potential affects.

*(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*

There are no known prior subsurface ground disturbance or fill, or environmental conditions that might affect the archeological recovery of resources and the surrounding terrain.

Respectfully submitted,



By: SIDNEY L. STRICKLAND, JR

ELIZABETH E. WAITE

SIDNEY STRICKLAND AND ASSOCIATES

3050 K Street, N W , Suite 101

Washington, DC 20007

(202) 338-1325

Attorneys for BNSF Railway Company

DATED: June 8, 2007

# RED CLOUD, NEBRASKA TRACKAGE

NORTH

WEBSTER COUNTY

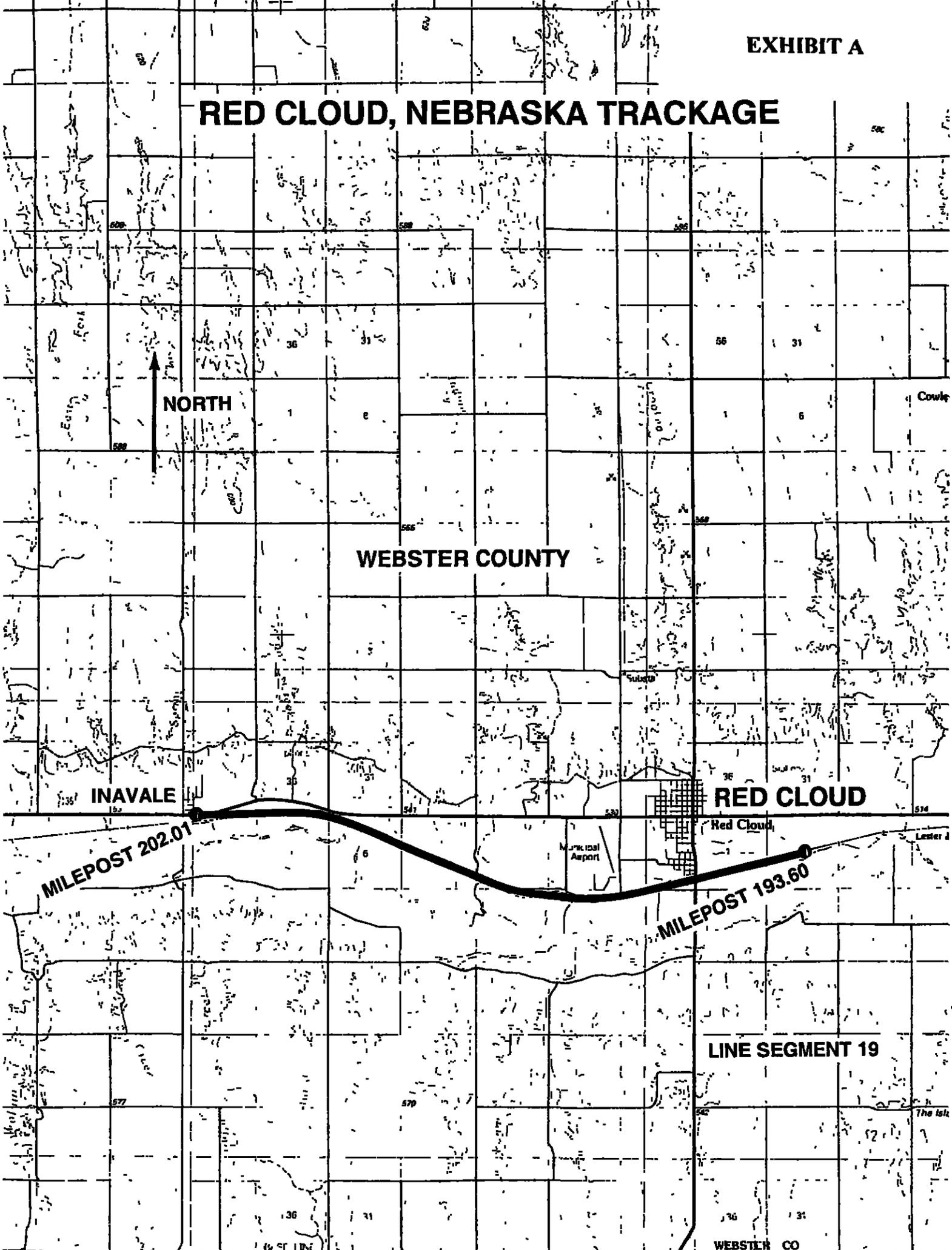
INAVALE

RED CLOUD

MILEPOST 202.01

MILEPOST 193.60

LINE SEGMENT 19



Mayor  
Gary Ratzlaff

Council Members  
Fred Schultz President  
Barbara Sprague  
Ron Lambrecht  
Ron Olson

Utility Superintendent  
Albert Wood  
(402) 746-2214  
cityalbert@gpc.com net

City Clerk  
Sue McIne  
(402) 746-2215  
citysue@gpc.com net

City Administrator  
Jay Hall  
(402) 746-2303  
cityofredcloud@gpc.com net

# City of Red Cloud

540 North Webster Street  
Red Cloud, Nebraska, 68970  
(402) 746-2215  
Fax (402) 746-2393



## EXHIBIT B

February 15, 2007

Sidney Strickland and Associates  
3050 K Street N.W.  
Suite 101  
Washington, D.C. 20007-5108

Re: STB Docket No. AB-6 (Sub. No. 460X) BNSF Railway Company – Abandonment Exemption – in Webster County, NE

Dear Sidney Strickland and Associates,

The City Council of the City of Red Cloud Nebraska has received your letter, written November 20<sup>th</sup>, 2006 with attached documents concerning the BNSF Railway abandonment in Webster County.

According to the minutes of the December 12<sup>th</sup>, 2006 meeting of the City Council, ***“Next, a letter from Sidney Strickland and Associates was received pertaining to the abandonment of 8.41 miles of railroad lines near Red Cloud. As part of the environmental report, BNSF needs to know whether or not the proposed action is consistent with local land use plans and if there are any alternate public uses for the corridor such as a highway relocation project and/or recreational trail. Since this is well outside the city limits the council felt this required no action by the council.”***

There are local groups who do have some interest in using abandoned railway lines for recreational trails. One such group is the Lower Republican River Visionaries. The mailing address of this organization is 605 North Webster Street, Red Cloud, NE 68970. Another group is the Trailblazer RC&D Council at 437 N. Elm St., Red Cloud, NE 68970-2450. I would suggest that you contact those organizations. They most certainly would be interested in talking with you and BNSF.

I thank you for your consideration in this matter.

Regards,

Jay Hall  
City Administrator  
City of Red Cloud, Nebraska



**CITY COUNCIL PROCEEDINGS  
TUESDAY, DECEMBER 12, 2006**

As per published notice in The Red Cloud Chief, the Mayor and City Council met in regular session on Tuesday, December 12, 2006 at 7.30 p.m. held at the Community Center Conference room. This meeting is a continuation of the meeting originally scheduled for Tuesday, December 5<sup>th</sup> at which there was not a quorum of the council. Members present: Mayor Ratzlaff; Council members Schultz, Ockinga, Olson, Lambrecht; Attorney Garwood; City Administrator Hall and Clerk Meline. Superintendent Wood was absent.

The council held a discussion on the Personnel Manual. Administrator Hall presented the council with a copy of recommendation from Attorney Gail S. Perry. She recommends removing the cumbersome procedures that limit the usability of the manual as well as the job descriptions. This should be maintained separate from the manual. Per a Supreme Court decision all earned but unused vacation pay must be paid out. The section pertaining to telephone/internet use as been relaxed from the original manual as long as it does not interfere with work or disrupt the workplace. Also using the phone/computer for business or financial gain is prohibited. She also stated she had reworked the military leave a bit. After further discussion, Schultz made the motion and was seconded by Lambrecht to approve the changes to the Personnel Manual. Motion carried.

Bill Anders, Virgil Zade, Harriet Zade, Norma June Peterson and Barb Wiseloge met with the council in regards to a recent notice about cats published in the Visionary newsletter. Harriet Zade was the spokesperson for the group. She also read a couple of letters from those unable to attend the meeting. The council assured the group it is not their intention to pick up their pets. The problem is the stray cat population. The group and council working together came up with the possible good remedies to the problem. It was the consensus of the group and the council to hold a work session to further pursue ways to control the problem.

At the November meeting Jeff Reicks had met with the council to give them the first option to purchase his property up by the old meat pack plant. After a brief discussion, Schultz made the motion and was seconded by Olson thanking Jeff for giving them first option but at this time they feel the land would be of no benefit to the city. Motion carried.

Schultz made the motion and was seconded by Ockinga to approve the minutes from the last meeting. Motion carried.

Olson made the motion and was seconded by Schultz to approve the November financial reports. Motion carried.

Olson made the motion and was seconded by Schultz to approve the claims for payment. Motion carried. These will be listed in full at the end of the minutes.

Sheriff Disney was in attendance. The council asked if he had any questions. The council thanked Sheriff Disney for the job the officers are doing.

Next Administrator Hall brought the council up to date on the repairs being made to the #2 engine at the power plant. He stated there were more problems than just the governor but hopefully all repairs would be completed soon.

He then asked the council if they had any questions about his written report for the month of November. Councilman Lambrecht asked about his discussion with Tony Hilburn concerning a wide range of community development projects. He stated at this time he was not really at liberty to reveal much except to say there is interest in developing a new section of land within the City Limits.

A copy of a letter from GSI pertaining to the Cather Foundation plans on renovating five contiguous business bays on Main Street. The purpose of the letter was regarding any environmental impacts the council may identify for the proposed project pursuant to the National Environmental Policy Act. The only concern the council expressed was what would happen to the existing businesses during construction. The council would also like to see the plans for the renovation.

Next a letter from Sidney Strickland and Associates was received pertaining to the abandonment of 8.41 miles of railroad line near Red Cloud. As part of the environmental report, BNSF needs to know whether or not the proposed action is consistent with local land use plans and if there are any alternate public uses for the corridor such as a highway relocation project and/or recreational trail. Since this is well outside the city limits the council felt this required not action by the council.

Plans for the proposed airport terminal and drive were presented to the council for their approval. It was noted that no municipal funds are needed for this project. Schultz made the motion and was seconded by Ockinga to approve the plans as presented. Motion carried.

Next a company submitting a state bid for road work north of Cowles had inquired about the cost of purchasing water from Red Cloud. They would need 920,000 gallons. Administrator Hall stating they are willing to pay \$5.00 per thousand gallons. The council stating a tapping fee should also be collected.

Administrator Hall presented the council a copy of the strategic goals and issues laid out in the 1999 Comprehensive Plan with goals set at 2 yrs, 5 yrs., 10 yrs., and 20 yrs. The council went through noting what has been accomplished and what should be considered as priority.

The council held some discussion as to the fact they would like to have Administrator Hall attend the Nebraska Municipal Power Pool meetings.

Attorney Garwood stated the condemned property at 830 North Seward Street is in the process of being sold and situation will be handled.

Copies of three building permits were part of the agenda packet. The permits issued since the last meeting were. sign for Jared Lewis, chain link fence and wood fence for Kris Holling at two different locations.

Ockinga made the motion and was seconded by Schultz to approve the following nominations to the City Boards: Kipp Pedersen and Barb Wiselogel – Library Board; Monica Schmitz, Jan Wilson, Laura Roybal and Helen Mathew – Historic Preservation Commission; Rex Paul, Tony Hilburn – Planning Commission, Paula Hammond, Virgil Goos, Mike Delka – Zoning Board of Adjustment; Rita Ricks, Don Miner – Cemetery Board; Rollie Redeker – Housing Authority; Darrel Caraway, Anna Eberly, Teri Theobald, Mike Kenny, Laura Roybal, Gary Thompson, Don Theobald, Steve Wilson – Economic Development Board. Schultz made the motion and was seconded by Olson to combine the Tree Board/Park Board with the following: Jim Fitzgibbon, Janet Maruhn, Kim Nibbe, Dan Albers with Ellen Hoffman as the alternate. All motions carried.

Mayor  
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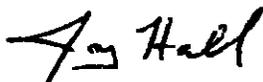
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Sheriff Disney was in attendance. The council asked if he had any questions. The council thanked Sheriff Disney for the job the officers are doing.

Next Administrator Hall brought the council up to date on the repairs being made to the #2 engine at the power plant. He stated there were more problems then just the governor but hopefully all repairs would be completed soon.

He then asked the council if they had any questions about his written report for the month of November. Councilman Lambrecht asked about his discussion with Tony Hilburn concerning a wide range of community development projects. He stated at this time he was not really at liberty to reveal much except to say there is interest in developing a new section of land within the City Limits.

A copy of a letter from GSI pertaining to the Cather Foundation plans on renovating five contiguous business bays on Main Street. The purpose of the letter was regarding any environmental impacts the council may identify for the proposed project pursuant to the National Environmental Policy Act. The only concern the council expressed was what would happen to the existing businesses during construction. The council would also like to see the plans for the renovation.

Next a letter from Sidney Strickland and Associates was received pertaining to the abandonment of 8.41 miles of railroad line near Red Cloud. As part of the environmental report, BNSF needs to know whether or not the proposed action is consistent with local land use plans and if there are any alternate public uses for the corridor such as a highway relocation project and/or recreational trail. Since this is well outside the city limits the council felt this required not action by the council.

Plans for the proposed airport terminal and drive were presented to the council for their approval. It was noted that no municipal funds are needed for this project. Schultz made the motion and was seconded by Ockinga to approve the plans as presented. Motion carried.

Next a company submitting a state bid for road work north of Cowles had inquired about the cost of purchasing water from Red Cloud. They would need 920,000 gallons. Administrator Hall stating they are willing to pay \$5.00 per thousand gallons. The council stating a tapping fee should also be collected.

Administrator Hall presented the council a copy of the strategic goals and issues laid out in the 1999 Comprehensive Plan with goals set at 2 yrs., 5 yrs., 10 yrs., and 20 yrs. The council went through noting what has been accomplished and what should be considered as priority.

The council held some discussion as to the fact they would like to have Administrator Hall attend the Nebraska Municipal Power Pool meetings.

Attorney Garwood stated the condemned property at 830 North Seward Street is in the process of being sold and situation will be handled.

Copies of three building permits were part of the agenda packet. The permits issued since the last meeting were sign for Jared Lewis, chain link fence and wood fence for Kris Holling at two different locations.

Ockinga made the motion and was seconded by Schultz to approve the following nominations to the City Boards: Kipp Pedersen and Barb Wiselogel – Library Board; Monica Schmitz, Jan Wilson, Laura Roybal and Helen Mathew – Historic Preservation Commission, Rex Paul, Tony Hilburn – Planning Commission; Paula Hammond, Virgil Goos, Mike Delka – Zoning Board of Adjustment; Rita Reicks, Don Miner – Cemetery Board, Rollie Redeker – Housing Authority; Darrel Caraway, Anna Eberly, Teri Theobald, Mike Kenny, Laura Roybal, Gary Thompson, Don Theobald, Steve Wilson – Economic Development Board. Schultz made the motion and was seconded by Olson to combine the Tree Board/Park Board with the following Jim Fitzgibbon, Janet Maruhn, Kim Nibbe, Dan Albers with Ellen Hoffman as the alternate. All motions carried.

✓ COUNCIL PROCEEDINGS  
JANUARY 9, 2007

As per notice in The Red Cloud Chief, the Mayor and City Council met in regular session on Tuesday, January 9, 2007 at 7 30 p.m. held at the Red Cloud Community Center Conference Room. Members present: Mayor Ratzlaff; Council members Schultz, Olson, Sprague; Attorney Garwood; Administrator Hall, Superintendent Wood and Clerk Meline. Councilman Lambrecht was absent.

✓ Betty Kort met with the council to present the "Moon Block" project to the council. The Cather Foundation plans to restore the "Moon Block" contingent on available funds. She stated upon a building analysis it was determined the back of the buildings are unsound, water in the basement, mold, asbestos and lead to name of few of the problems. They plan to make the facade authentic. The foundation is seeking grants as well as private donations. She reminded the council the Cather Foundation has a non-profit status. After her presentation Olson made the motion and was seconded by Sprague to designate Mayor Ratzlaff as an authorized agent to sign the Environmental Study. Motion carried. This is something that needs to be done in order for the project to precede.

Schultz made the motion and was seconded by Olson to approve the report submitted by Sheriff Disney Motion carried.

Olson made the motion and was seconded by Schultz to approve the minutes from the December 2006 meeting. Motion carried.

Mayor Ratzlaff asked the council if they would like to prepare the City Dad's Feed meal again this year for the volunteer Firemen. After a short discussion Olson made the motion and was seconded by Schultz to have The Palace cater the meal using the \$700 allowed in the 2006-07 Budget. Motion carried.

Schultz made the motion and was seconded by Olson to approve the financial reports and city sales tax report. Motion carried. The sales tax for October 2006 received in December of 2006 was \$7,797 02 compared to \$7,421.06 for the same period last year.

The council was asked if they would like to adopt the Nebraska Basic Code of Ordinances for Cities of the Second Class received from American Legal Publishing Corporation After some discussion Olson made the motion and was seconded by Sprague to leave things as is and not to adopt. Motion carried.

Olson made the motion and was seconded by Schultz to pay the claims submitted for payment excluding one invoice to Kenny Lumber that was submitted in error to the City and the invoice to American Legal Publishing for updates on the non approved Nebraska Code Book. Motion carried. These will be published in full at the end of the minutes.

Next the compensation for the Fire Chief was discussed. In the past the Fire Chief has received the same compensation as the Mayor At the December meeting the compensation for the Mayor and Council was increased but not the Fire Chief. Olson made the motion and was seconded by Sprague to table this issue until the Rural Fire District Board could be contacted since they pay half of the compensation. Motion carried Olson then made the motion and was seconded by Schultz to approve Ordinance #582 setting the compensation for the council members and mayor. Motion carried.

Next put on the agenda by Councilwoman Sprague was the appearance of the downtown business district as to the sidewalks not being swept and the historic lights in

SAS

# SIDNEY STRICKLAND AND ASSOCIATES, PLLC

3050 K ST. N.W., SUITE 101  
WASHINGTON, DC 20007-5108  
TELEPHONE: 202-338-1325  
FAX: 202-295-3854

EXHIBIT C

SIDNEY L. STRICKLAND, JR  
[Sidney.Strickland@stricklandpllc.com](mailto:Sidney.Strickland@stricklandpllc.com)

Project as described is cleared of Farmland Protection  
Policy Act (FPPA) concerns.

November 20, 2006

NOV 27 2008

Natural Resources Conservation Service  
USDA  
152 Federal Building  
100 Centennial Mall  
Lincoln, NE 68508-3866

  
State Conservationist

Date

**Re: STB Docket No. AB-6 (Sub. No. 460N) BNSF Railway Company—Abandonment  
Exemption – in Webster County, NE**

Dear Sir or Madam:

BNSF Railway Company ("BNSF") plans on filing with the Surface Transportation Board ("STB") a Petition for Exemption seeking authority in the above docket to abandon 8.41 miles of railroad line between Milepost 193.60 and Milepost 202.01, near Red Cloud in Webster County, Nebraska.

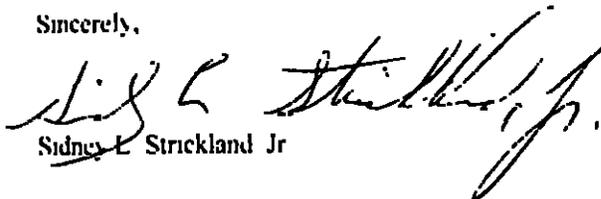
The proposed abandonment may include the removal of the rails and ties, including any bridges, structures and crossings. BNSF bids its salvage packages out to independent contractors. The winning bidder will start work with the removal of the rails and metal parts of the track structure. Next the wooden ties are removed and separated into second hand ties, landscape quality ties and scrap ties (which are disposed of at an appropriate site). The bridges and crossings as well as any other structures are removed last. Culverts and the rail line embankment stay intact so as not to alter the prevailing waterflows along the line. Any bridge pilings are pulled out, cut off at ground level or broken off at or below the mud line. Steel bridges are dismantled and removed. If there are concrete abutments or piers involved, they may be left intact. BNSF salvage contractors are required not to place fills or other material in water bodies, including inland waterways. Contractors are also required to limit their activities to the width of the right-of-way. When the salvage process is complete, waterflows in the area should not be disrupted.

As part of the environmental report, BNSF needs to know whether or not the proposed abandonment will have any effect on prime agricultural lands.

For your reference, I have enclosed a map of the above referenced railroad line. Please provide this information to me by December 18, 2006. If you have any questions, do not hesitate to contact me at (202) 338-1325.

I thank you in advance for your cooperation.

Sincerely,

  
Sidney L. Strickland Jr.

Enclosures  
SI/S/c

NOV 24 2006



Home Compose Address Book Options Logout \*

Username: Liz  
(liz.waite@stri

- Inbox (10)**
- Drafts**
- Deleted Items (13)**
- Sent**
- More Sent**
- Scheduled**

### Message

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-----Original Message-----

From Robert Rankin [mailto:RobertRankin@dor.state.ne.us]  
 Sent Friday, February 09, 2007 9:09 AM  
 To Sidney Strickland@stricklandplc.com  
 Subject Re: STB Docket No AB-6 (Sub no 460X) BNSF Railway Company-  
 Abandonment

Dear Sir or Madam,

I have reviewed the documents associated with the BNSF abandonment in Webster County, Nebraska. There are no planned highway relocation projects scheduled by the Nebraska Department of Roads in this area, and we have no comments for alternate public uses.

Thank You,

Bob Rankin P.E.  
 Railroad Liaison Engineer  
 Nebraska Department of Roads  
 robertrankin@dor.state.ne.us  
 (402) 479-4434

Add Folder

Edit Folder

Search

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Search Inbox

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Advanced Search



## United States Department of the Interior

### FISH AND WILDLIFE SERVICE

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

January 25, 2007

**FWS: 2007-180**

Sidney I. Strickland Jr  
Sidney Strickland and Associates, PLLC  
3050 K Street, N.W., Suite 101  
Washington, D.C. 20007-5108

**RE: STB Docket No. AB-6 (Sub. No. 460X) BNSF Railway Company-Abandonment  
Exemption, Webster County, Nebraska**

Dear Mr. Strickland:

This responds to your November 20, 2006, 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 BGLPA, 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](mailto: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)



# United States Department of the Interior

National Park Service

Midwest Region  
601 Riverfront Drive  
Omaha Nebraska 68102-4226



650.2(MWR-P/G)

**EXHIBIT F**

Mr. Sidney L. Strickland, Jr  
Sidney Strickland and Associates, PLLC  
3050 K St. N W , Suite 101  
Washington, D.C. 20007-5108

DEC 27 2006

Dear Mr. Strickland:

This is in response to your November 20, 2006, request that the National Park Service respond to STB Docket No AB-6 (Sub No. 460X) BNSF Railway Company Abandonment Exemption in Webster County, Nebraska.

We have reviewed this project in relation to any possible conflicts with the Land and Water Conservation Fund and the Urban Park and Recreation Recovery programs and find there are none. Accordingly, we have no additional comments at this time.

You may contact me at 402-661-1546 if you have questions or need more information

Sincerely,

Robert Maydwell  
Grants Management Assistant  
Partnerships- Grants

Environmental Coordinator  
National Park Service  
Midwest Regional Office  
601 Riverfront Drive  
Omaha, NE 68102



EXHIBIT G

Sidney Strickland  
Sidney Strickland and Assoc., PLLC  
3050 K Street N.W., Suite 101  
Washington, DC 20007-5108

Re STB Docket AB-6 (Sub 452X) and STB Docket AB-6 (Sub 460X), BNSF Abandonments IL & NE

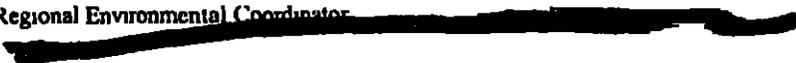
We have received your letters of November 20, 2006 concerning the above referenced projects

- We have no comment on your proposed actions
- Please address any further correspondence about these projects or any project to the following address

Regional Environmental Coordinator  
National Park Service  
Midwest Regional Office  
601 Riverfront Drive  
Omaha, NE 68102

*Due to limited staff and the number of requests we receive for early coordination, we ask that companies/agencies assume we will have no comments on projects if they have not heard from us within 30 days of our receipt of the request*

Thank you,

Regional Environmental Coordinator  


**C. A. Curry**

---

**EXHIBIT H**

**From:** Bill\_Carson@blm.gov  
**Sent:** Thursday, December 07, 2006 11:12 AM  
**To:** Sidney Strickland@stricklandpllc.com  
**Subject:** BNSF - Abandonment - Webster Co - NE

Re: Letter dated 11/20/06; SPB Docket No. AB-6 (Sub. No. 460X) BNSF Railway Company - Abandonment Exemption - in Webster County, NE

We have reviewed the proposed abandonment and found that it will not affect any public lands (federal lands administered by the Department of the Interior through the Bureau of Land Management).

Bill Carson  
Realty Specialist  
Bureau of Land Management  
Newcastle Field Office  
Newcastle WY 82701  
office (307) 746-6607  
fax: (307) 746-6639



**Dave Heineman**  
Governor

# STATE OF NEBRASKA

**DEPARTMENT OF ENVIRONMENTAL QUALITY**  
**Michael J Linder**  
Director

Suite 400, The Atrium  
1200 'N' Street  
PO Box 98922

Lincoln, Nebraska 68509-8922

Phone (402) 471-2186

FAX (402) 471-2909

website [www.deq.state.ne.us](http://www.deq.state.ne.us)

## EXHIBIT I

January 9, 2007

Sidney Strickland  
Sidney Strickland and Associates, PLLC  
3050 K St. N.W., Suite 101  
Washington, DC 20007-5108

RE. STB Docket No. AB-6 (Sub. No. 460X) BNSF Railway Company Abandonment  
Exemption – in Webster County, NE

Dear Mr. Strickland:

The Nebraska Department of Environmental Quality (NDEQ) has been asked to review the above referenced project.

As with any industrial facility, permits may be required prior to beginning construction or operation. At minimum, you should be aware of the possible requirement for a Construction Storm Water/Industrial Storm Water permit. Information regarding this type of permit can be received from Ron Asch at (402) 471-2188.

Until further along in the planning process, it is unknown whether there may be additional regulatory requirements. We strongly urge the project sponsors to make contact with the Department. It has been our experience that early and open communication helps facilitate the permitting process.

If you have questions about the permitting process, or any other questions, feel free to contact me at (402) 471-8697.

Sincerely,

Hugh Sturts, PhD  
NEPA Coordinator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII  
901 NORTH 5TH STREET  
KANSAS CITY, KANSAS 66101

EXHIBIT J

1 8 DEC 2006

Mr. Sidney L. Strickland, Jr.  
Sidney Strickland and Associates, PLLC  
3050 K St. N.W., Suite 101  
Washington, DC 20007-5108

Dear Mr. Strickland.

Your letter of November 20, 2006, asked of two questions concerning BNSF Railway Company's plans to abandon a section of railroad line in Webster County, Nebraska. The following is the Environmental Protection Agency's response to those questions.

1. You stated that BNSF needs to know whether or not this action will be consistent with federal, state, or local water quality standards. This office does not make such a determination. The Nebraska Department of Environmental Quality (NDEQ) does issue what are known as Section 401 WQ Certifications. Ms. Terry Hickman, NDEQ's contact for these certifications, can be reached at (402)471-2875.
2. Also requested was a statement concerning the National Pollutant Discharge Elimination System (NPDES) permit program requirements. Such a permit is required for a discharge of pollutants from a point source into waters of the United States. The NDEQ is administering the NPDES program and should be contacted if a discharge is planned. One aspect of the NPDES program which may be triggered is the requirement for construction activities, which disturb greater than one acre, to obtain a NPDES permit for discharge of storm water from the site. Ms. Mary Schroer is NDEQ's contact for the storm water portion of the NPDES program. Her telephone number is (402)471-8330.

The NDEQ's web site, which contains information about both the 401 Certification program and the NPDES program can be found at: <http://www.deq.state.ne.us>. If you have any questions, please contact me at (913) 551-7841.

Sincerely,

Kimberly J. Hill  
Nebraska NPDES Permit Coordinator  
Wastewater and Infrastructure  
Management Branch

cc Terry Hickman, NDEQ  
Mary Schroer, NDEQ





REPLY TO  
ATTENTION OF

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

**EXHIBIT K**

<https://www.nwo.usaco.army.mil/html/od-me/nehome.html>

January 9, 2007

Ms Liz Waite  
Sidney Strickland and Associates, PLLC  
3050 K Street Northwest, Suite 101  
Washington, D.C. 20007-5108

RE: 2006-285-KEA

Dear Ms Waite:

This letter pertains to Burlington Northern Santa Fe Railway Company's request for our review of track abandonment in Webster County, Nebraska from Milepost 193.60 to Milepost 202.01. The work will be carried out in accordance with plans received on November 27, 2006. The project is located from Section 6, Township 1 North, Range 10 West to Section 35, Township 2 North, Range 12 West.

Based on the information provided, the project will not involve fill materials to be placed into jurisdictional waters of the United States. Therefore, the activity is not subject to Department of the Army (DA) regulatory authorities and no permit pursuant to Section 404 of the Clean Water Act is required from the Corps of Engineers. If you disagree with this jurisdictional determination, you have the right to appeal the decision. If you would like more information on the jurisdictional appeal process, contact this office.

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

Although a DA permit is not required for this project, this does not eliminate the requirement that you obtain any other applicable Federal, State, Tribal and/or Local permits as required.

If you have any questions regarding this determination, please contact me at the above address or call (308) 234-1403 and refer to file number NE 2006-285-KEA.

Sincerely,

Keith Tillotson  
Senior Project Manager

# SIDNEY STRICKLAND AND ASSOCIATES, PLLC

3050 K ST. N.W., SUITE 101  
WASHINGTON, DC 20007-5108  
TELEPHONE: 202-338-1325  
FAX: 202-295-3854

**EXHIBIT L**

SIDNEY L. STRICKLAND, JR.  
[Sidney.Strickland@stricklandpllc.com](mailto:Sidney.Strickland@stricklandpllc.com)

November 20, 2006

C Ardell Talkington  
Highway Superintendent  
621 N Cedar Street  
Red Cloud, NE 68970

**Re: STB Docket No. AB-6 (Sub. No. 460X) BNSF Railway Company—Abandonment  
Exemption – in Webster County, NE**

Dear Mr Talkington

BNSF Railway Company ("BNSF") plans on filing with the Surface Transportation Board ("STB") a Petition for Exemption seeking authority in the above docket to abandon 8.41 miles of railroad line between Milepost 193.60 and Milepost 202.01, near Red Cloud in Webster County, Nebraska

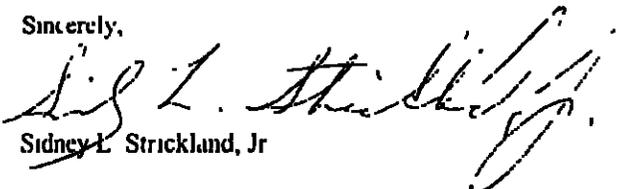
The proposed abandonment may include the removal of the rails and ties, including any bridges, structures and crossings. BNSF bids its salvage packages out to independent contractors. The winning bidder will start work with the removal of the rails and metal parts of the track structure. Next the wooden ties are removed and separated into second hand ties, landscape quality ties and scrap ties (which are disposed of at an appropriate site). The bridges and crossings as well as any other structures are removed last. Culverts and the rail line embankment stay intact so as not to alter the prevailing waterflows along the line. Any bridge pilings are pulled out, cut off at ground level or broken off at or below the mud line. Steel bridges are dismantled and removed. If there are concrete abutments or piers involved, they may be left intact. BNSF salvage contractors are required not to place fills or other material in water bodies, including inland waterways. Contractors are also required to limit their activities to the width of the right-of-way. When the salvage process is complete, waterflows in the area should not be disrupted.

As part of the environmental report, BNSF needs to know if the proposed abandonment will affect any 100-year floodplains. If so, please furnish 8½ by 11 black and white maps in the area of each designated floodplain if they are available.

For your reference, I have enclosed a map of the above referenced railroad line. Please provide this information to me by December 18, 2006. If you have any questions, do not hesitate to contact me at (202) 338-1325.

Thank you in advance for your cooperation.

Sincerely,

  
Sidney L. Strickland, Jr.

Inclosures  
SLS/cac



**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](http://www.nebraskahistory.org)

December 21, 2006

Sidney L. Strickland, Jr.  
Sidney Strickland and Associates, PLLC  
3050 K Street N.W., Suite 101  
Washington, D.C. 20007-5108

Re: STB Docket No. AB-6 (Sub. No. 460X) BNSF Railway Company—Abandonment  
Exemption—in Webster County, NE  
H.P. #0611-072-01

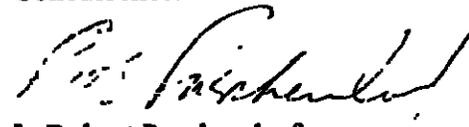
Dear Mr. Strickland:

A review of our files indicates that three archaeological sites (25WT501), (25WT506, and 25WT5) are located on or adjacent to the proposed project. It is recommended that the locations be examined by qualified personnel to determine if the project will affect the sites.

Sincerely,

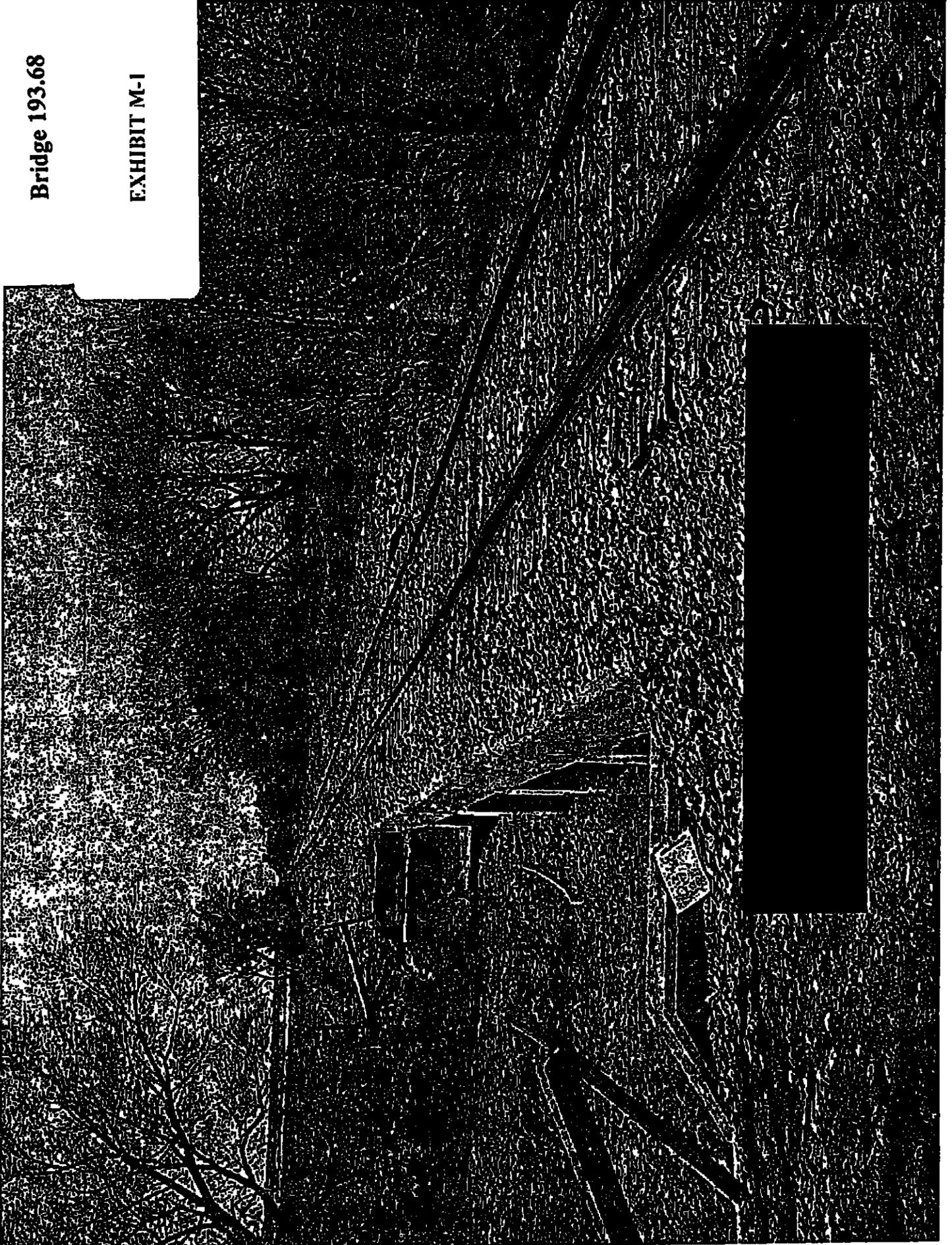
  
Terry Stenacher  
H.P. Archaeologist

Concurrence:

  
L. Robert Puschendorf  
Deputy NeSHPO

Bridge 193.68

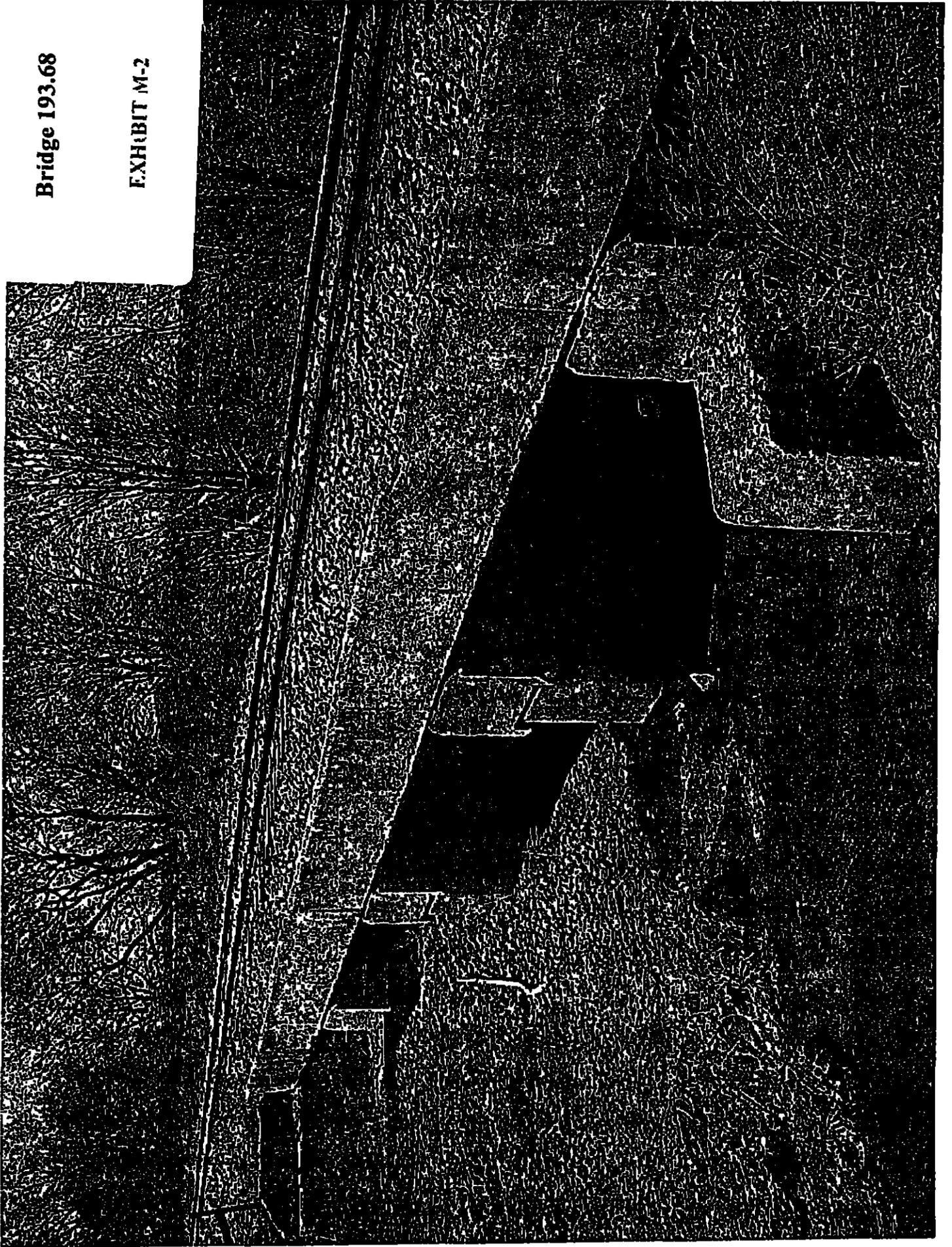
EXHIBIT M-1



Bridge 193.68

1

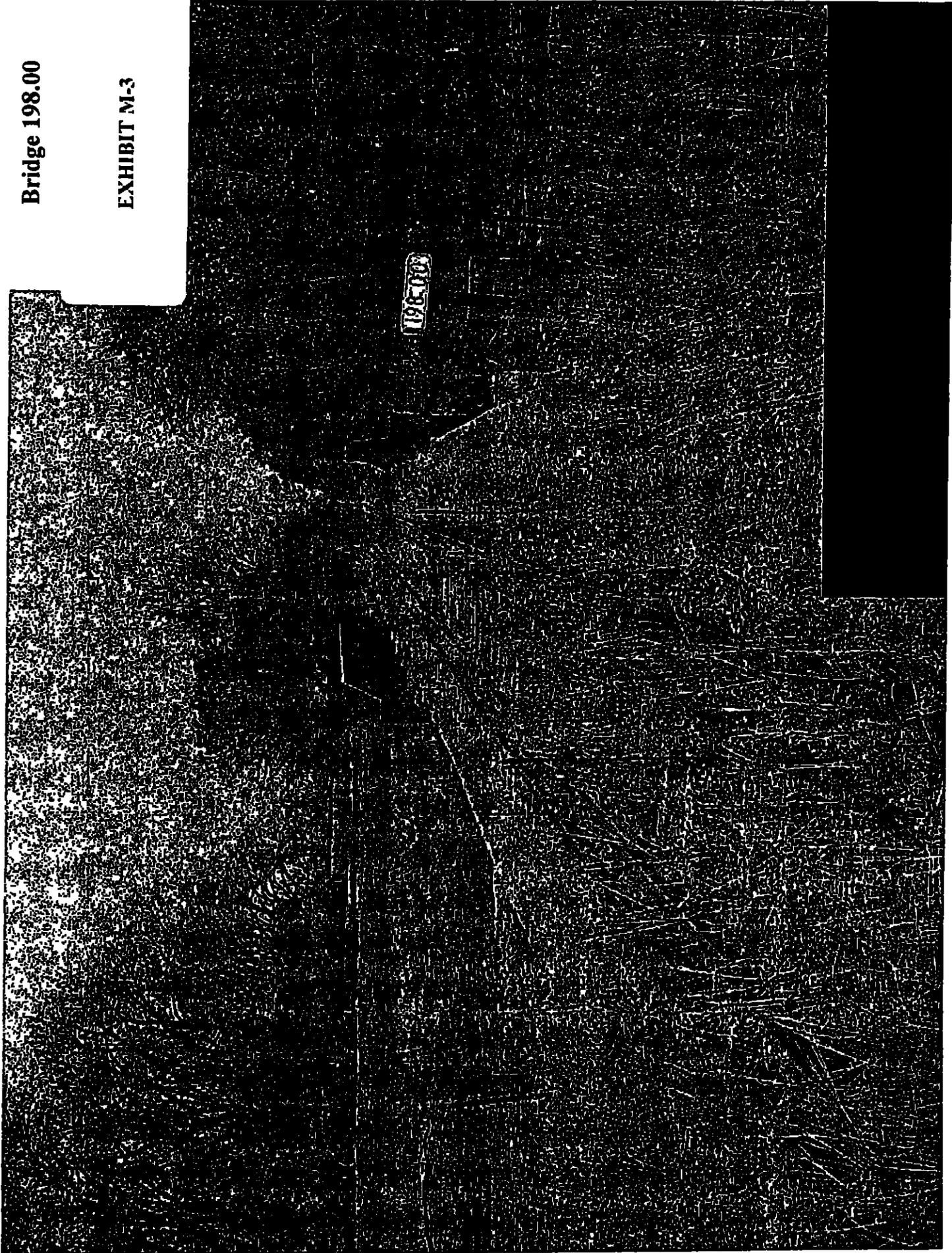
EXHIBIT M-2



Bridge 198.00

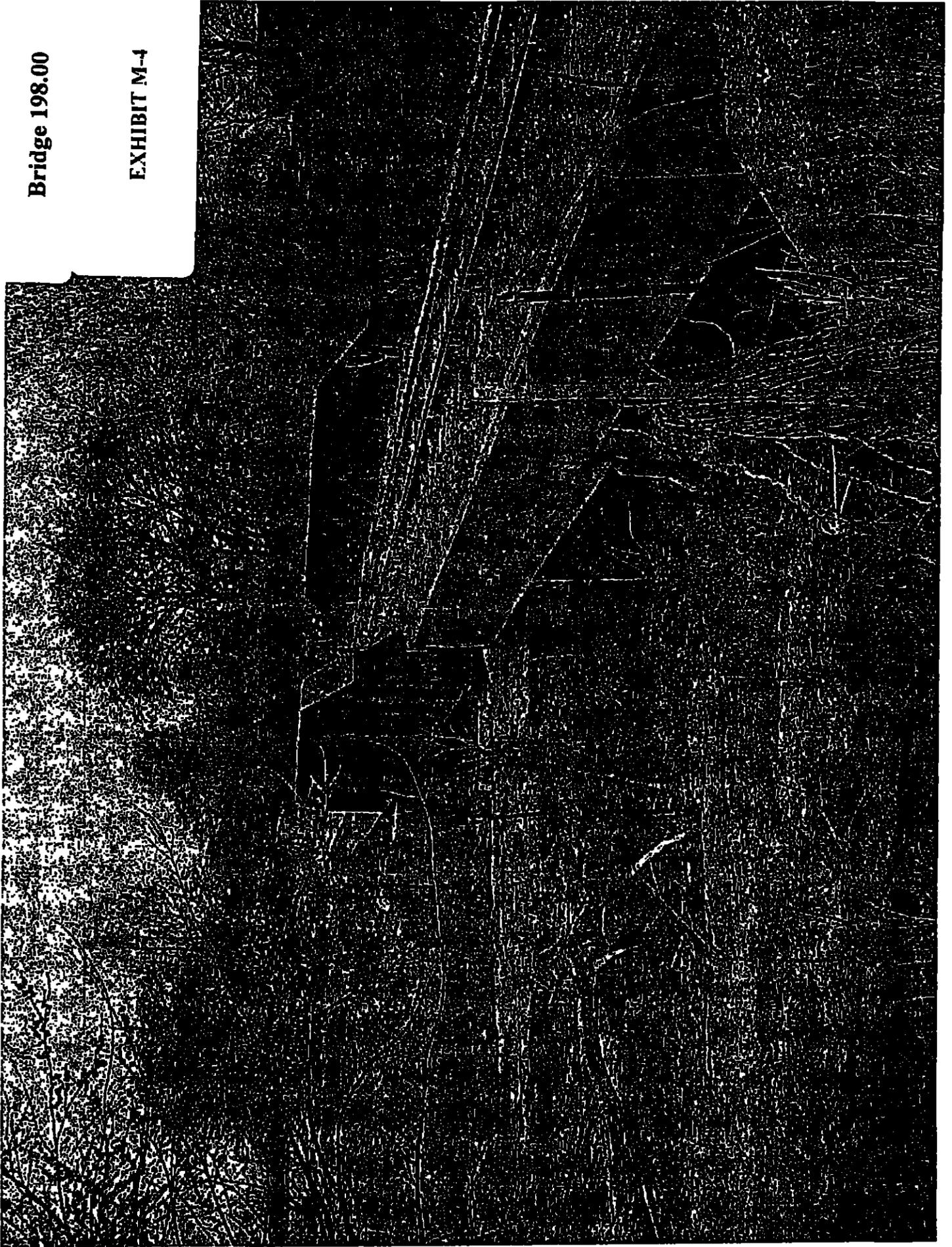
EXHIBIT M-3

198-003



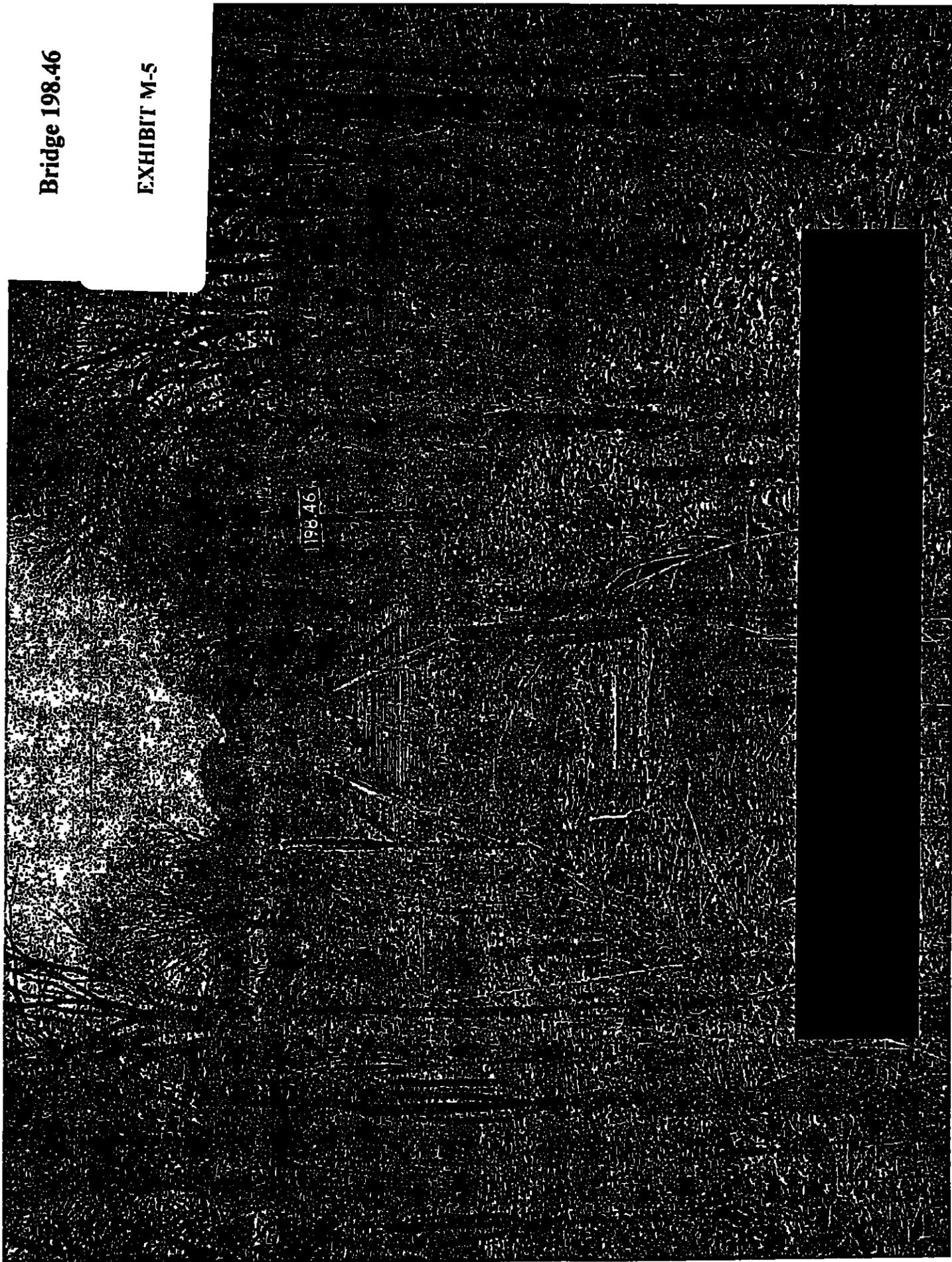
Bridge 198.00

EXHIBIT M-4



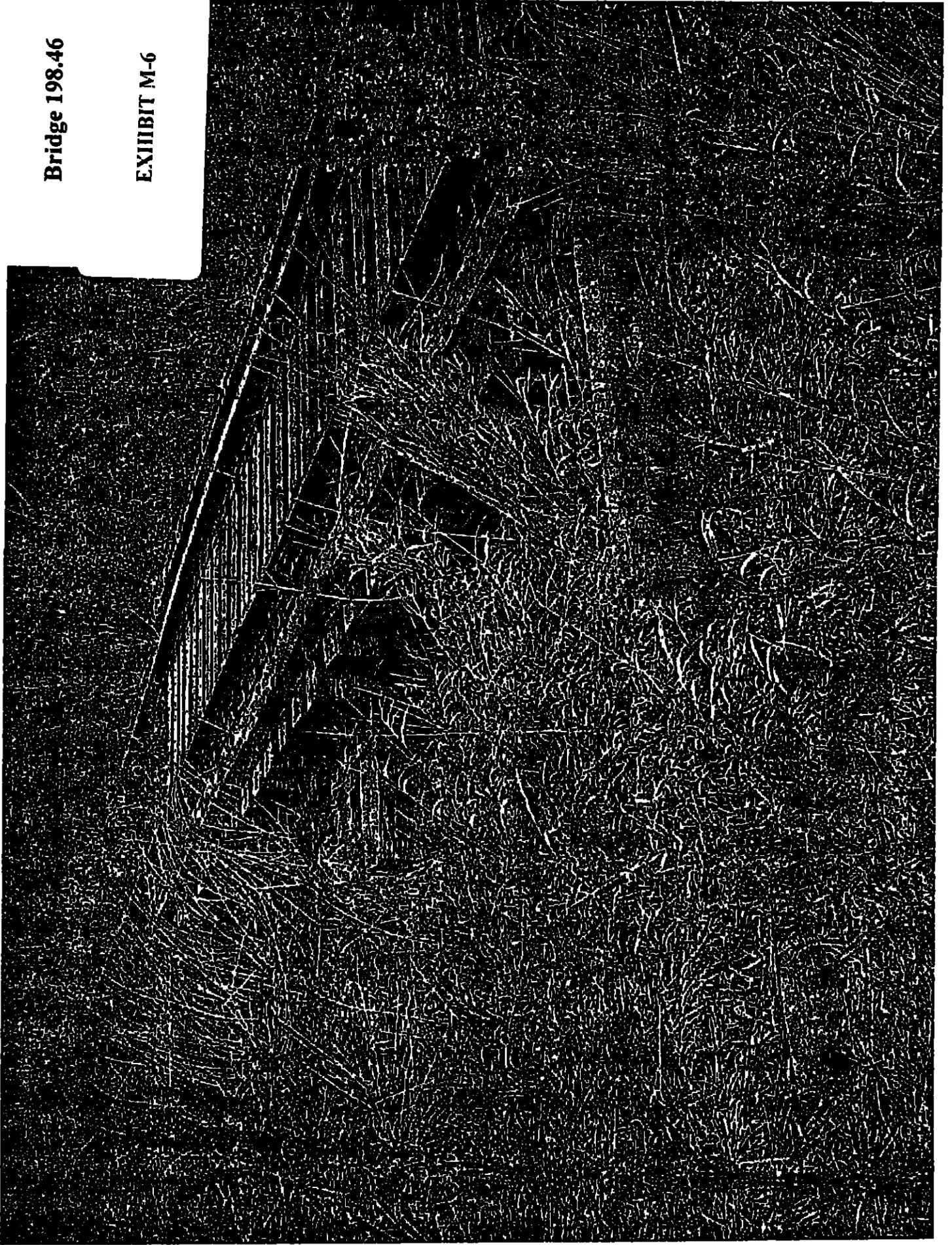
Bridge 198.46

EXHIBIT M-5



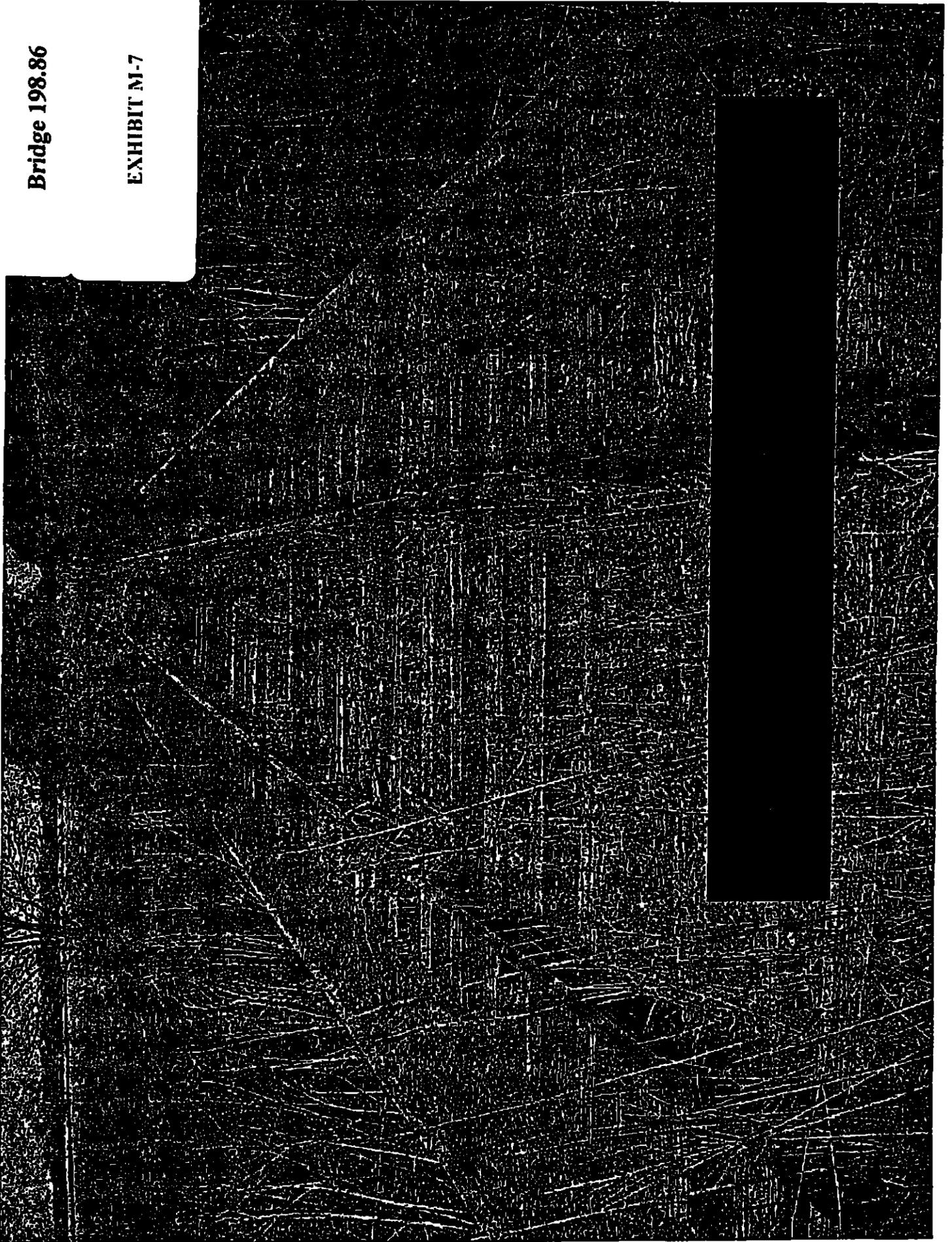
**Bridge 198.46**

**EXHIBIT M-6**



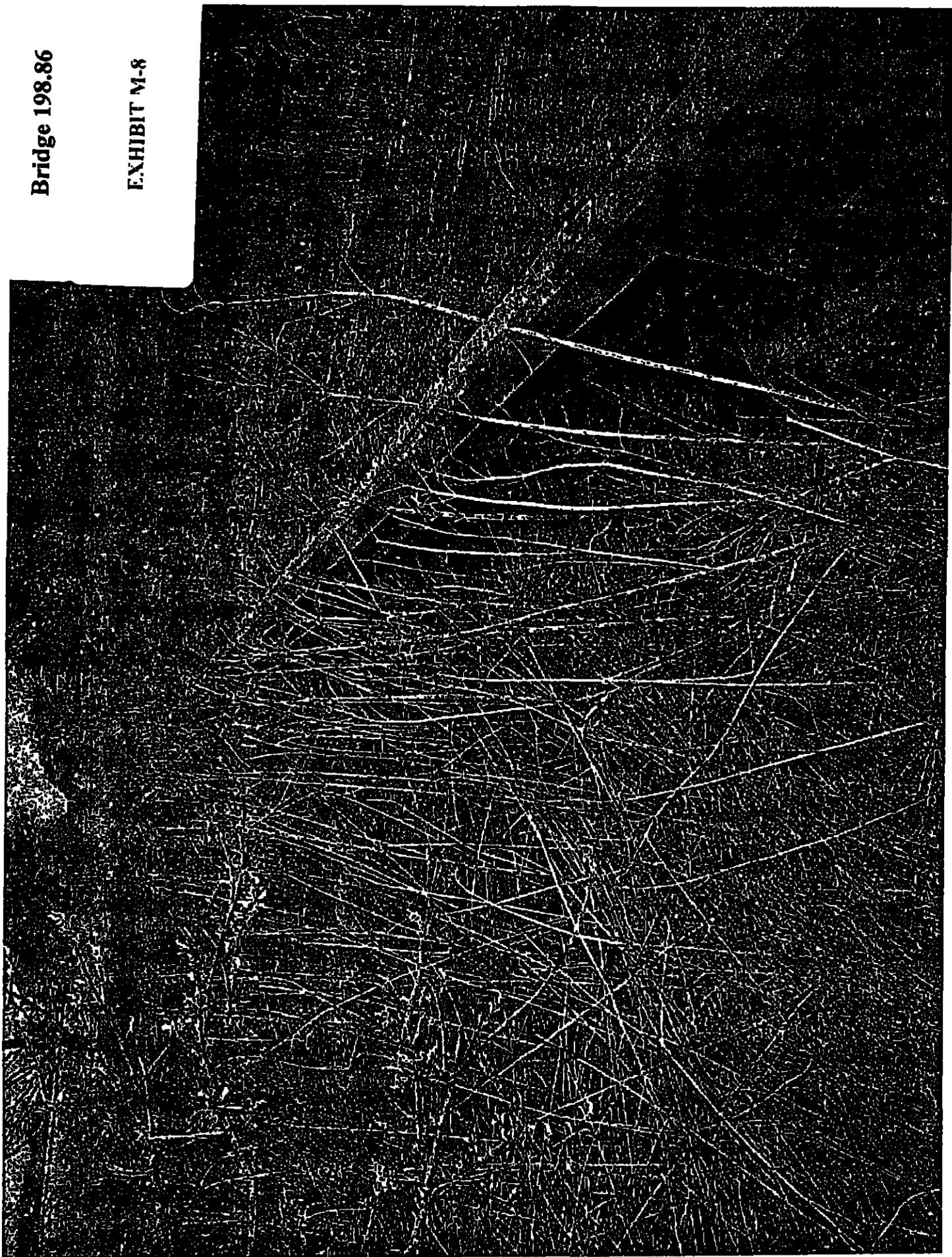
Bridge 198.86

EXHIBIT M-7



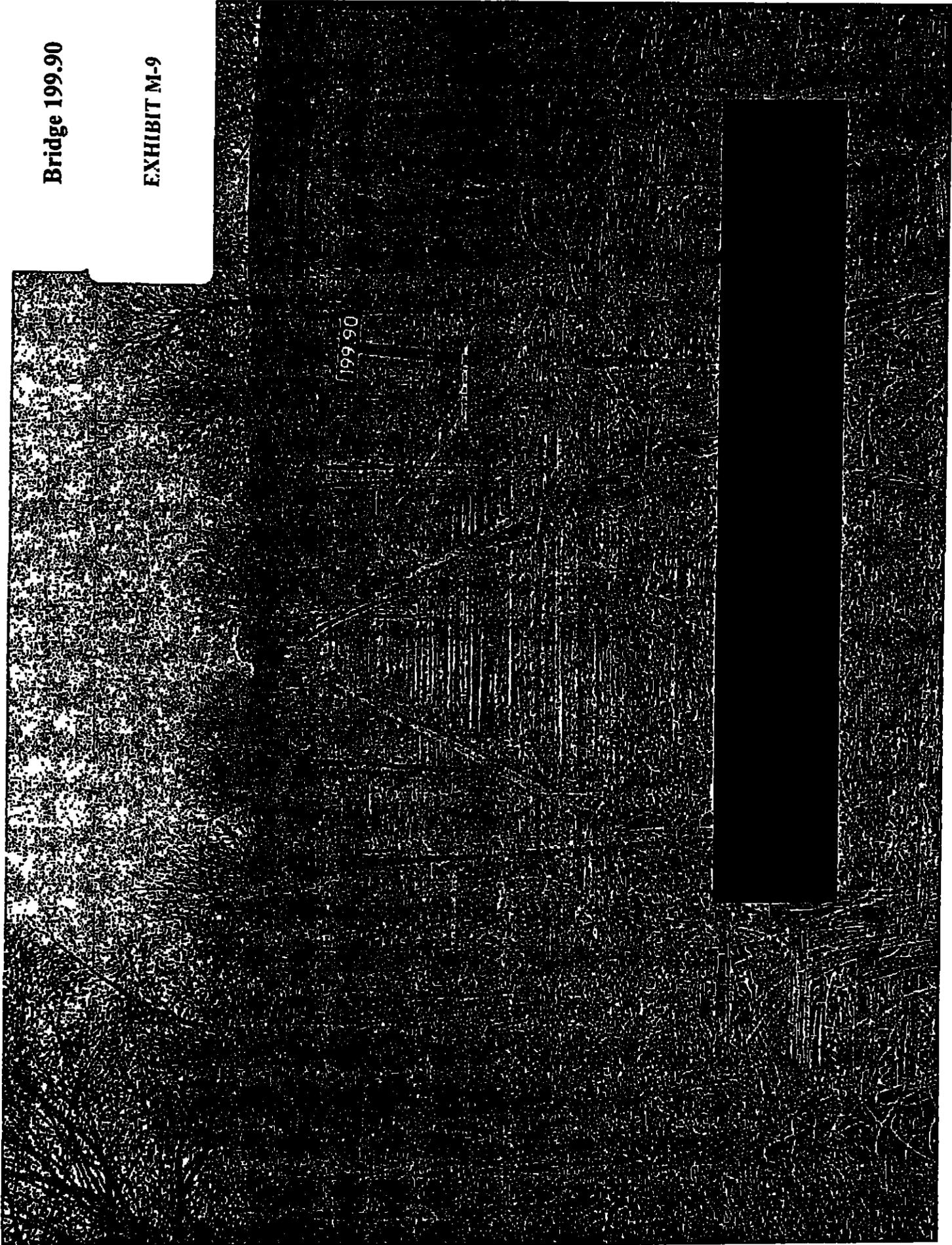
**Bridge 198.86**

**EXHIBIT M-8**



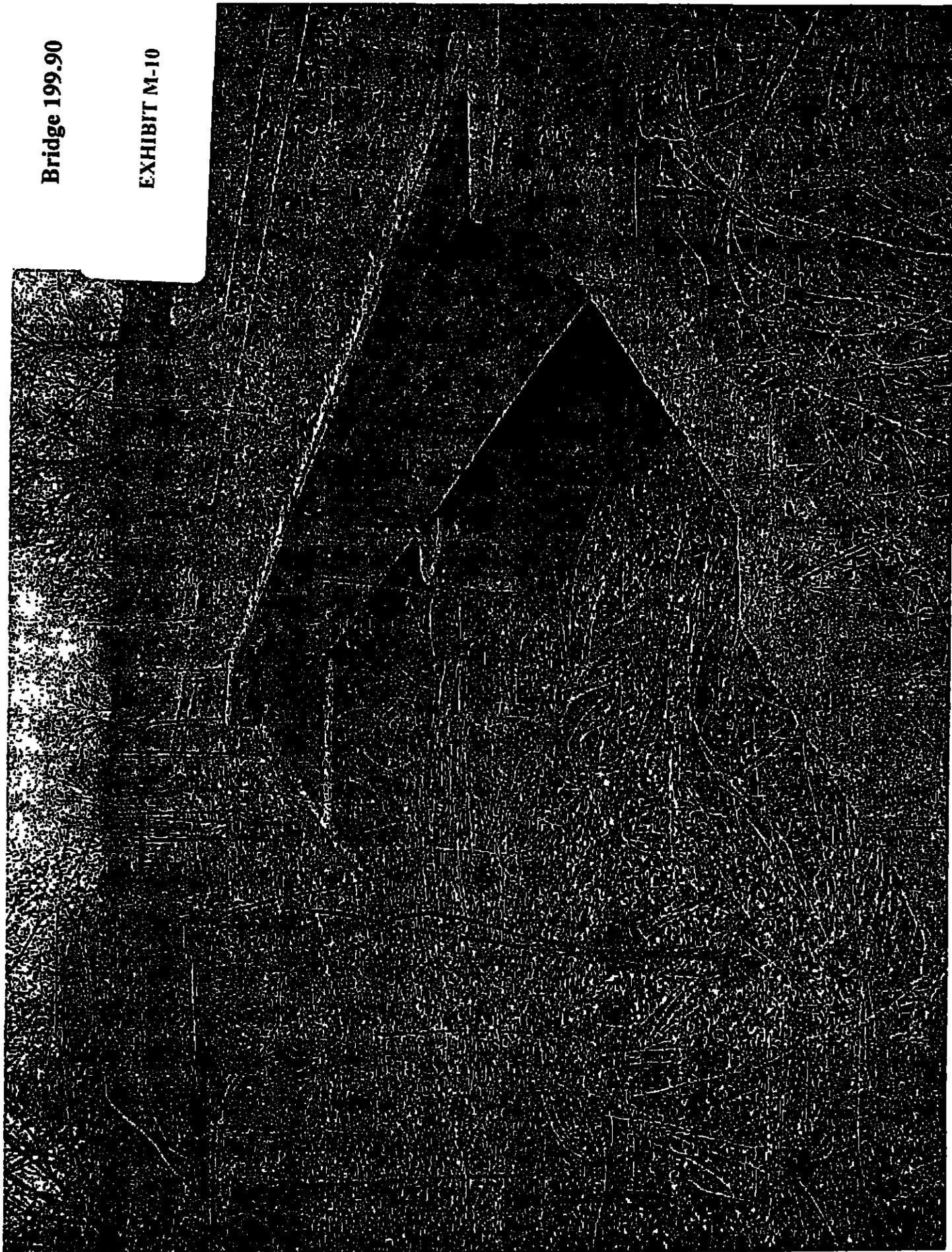
**Bridge 199.90**

**EXHIBIT M-9**



**Bridge 199.90**

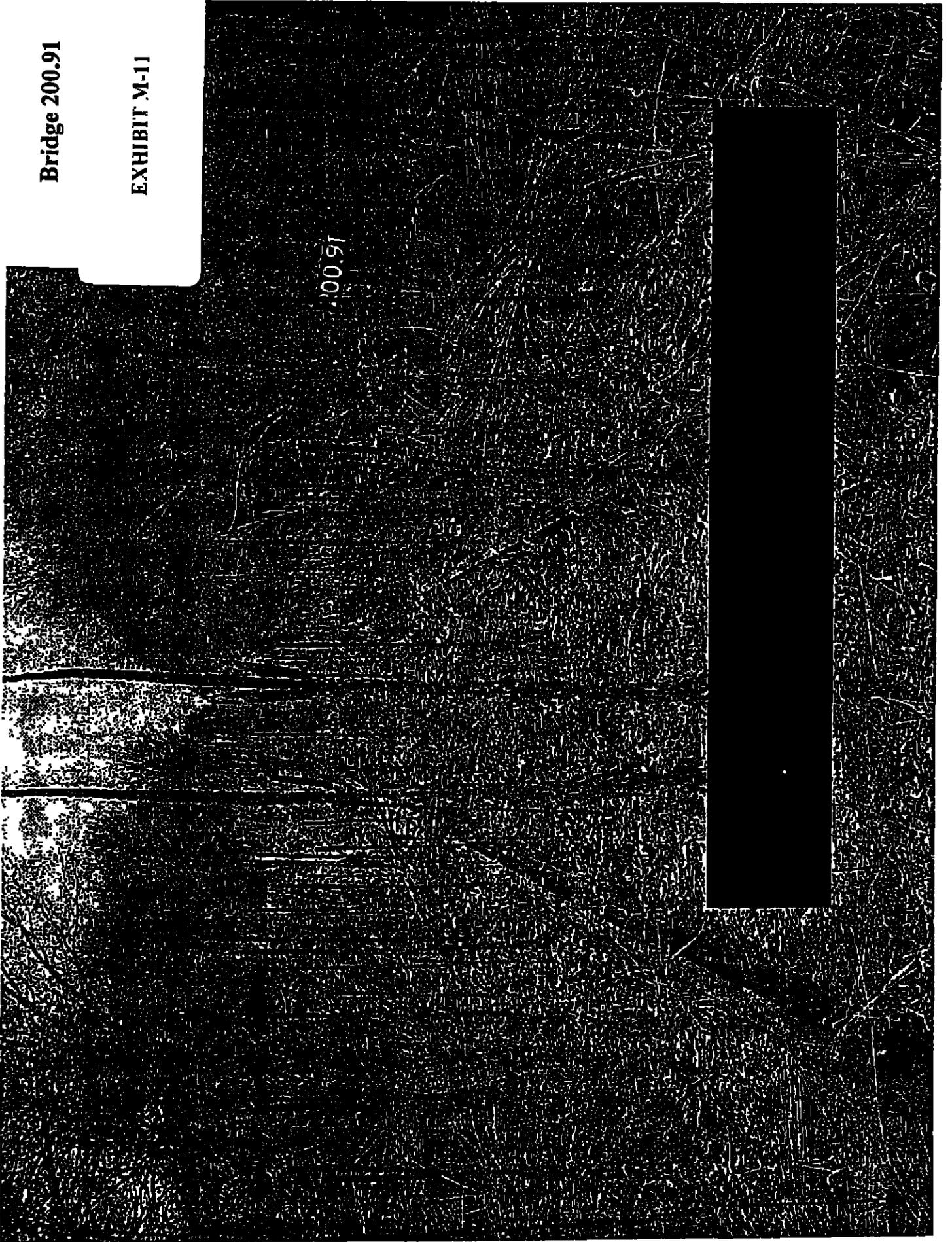
**EXHIBIT M-10**



Bridge 200.91

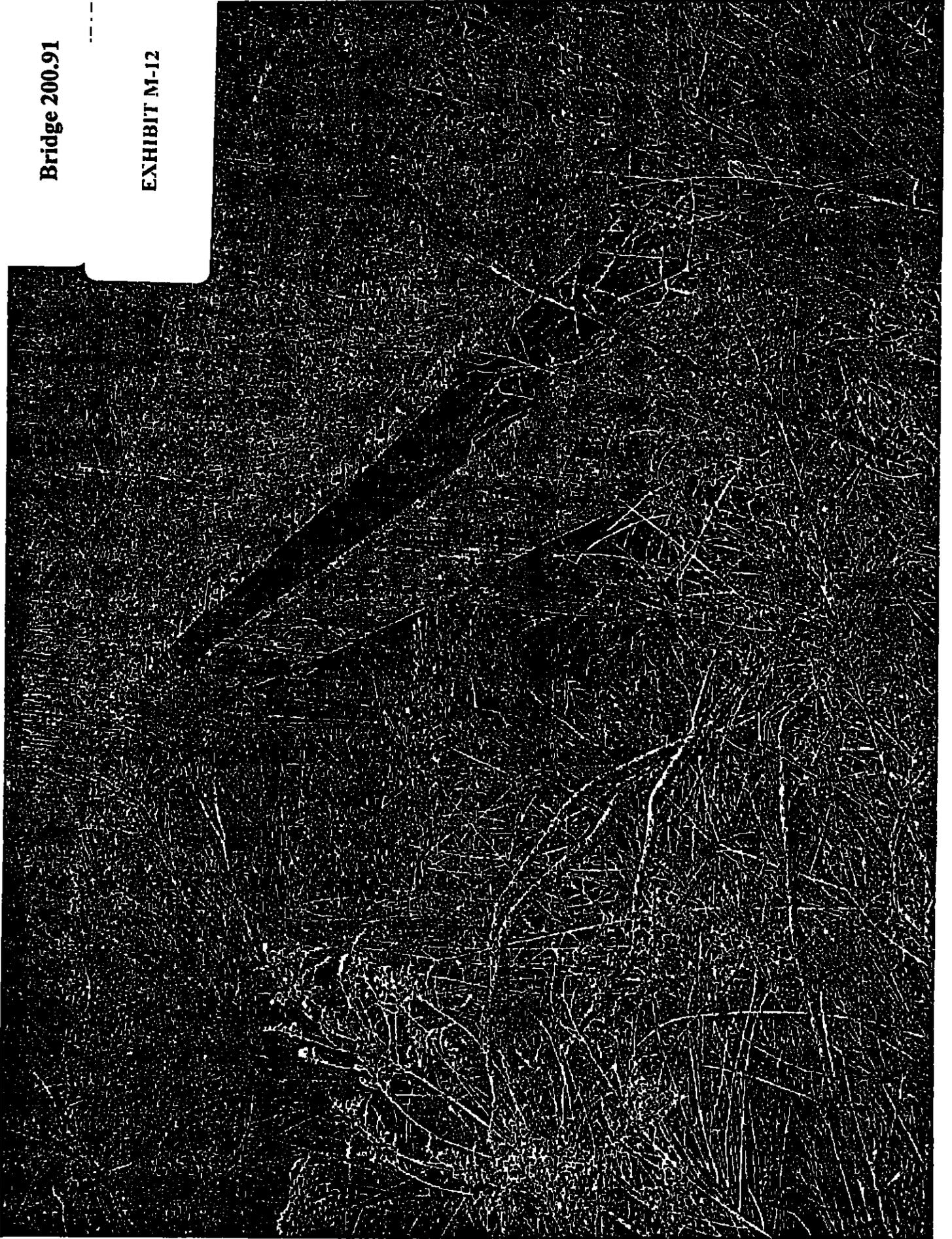
EXHIBIT M-11

200.91



**Bridge 200.91**

**EXHIBIT M-12**

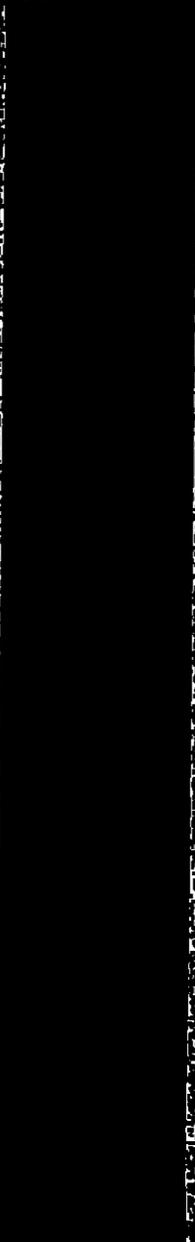


Bridge 201.93

EXHIBIT M-13

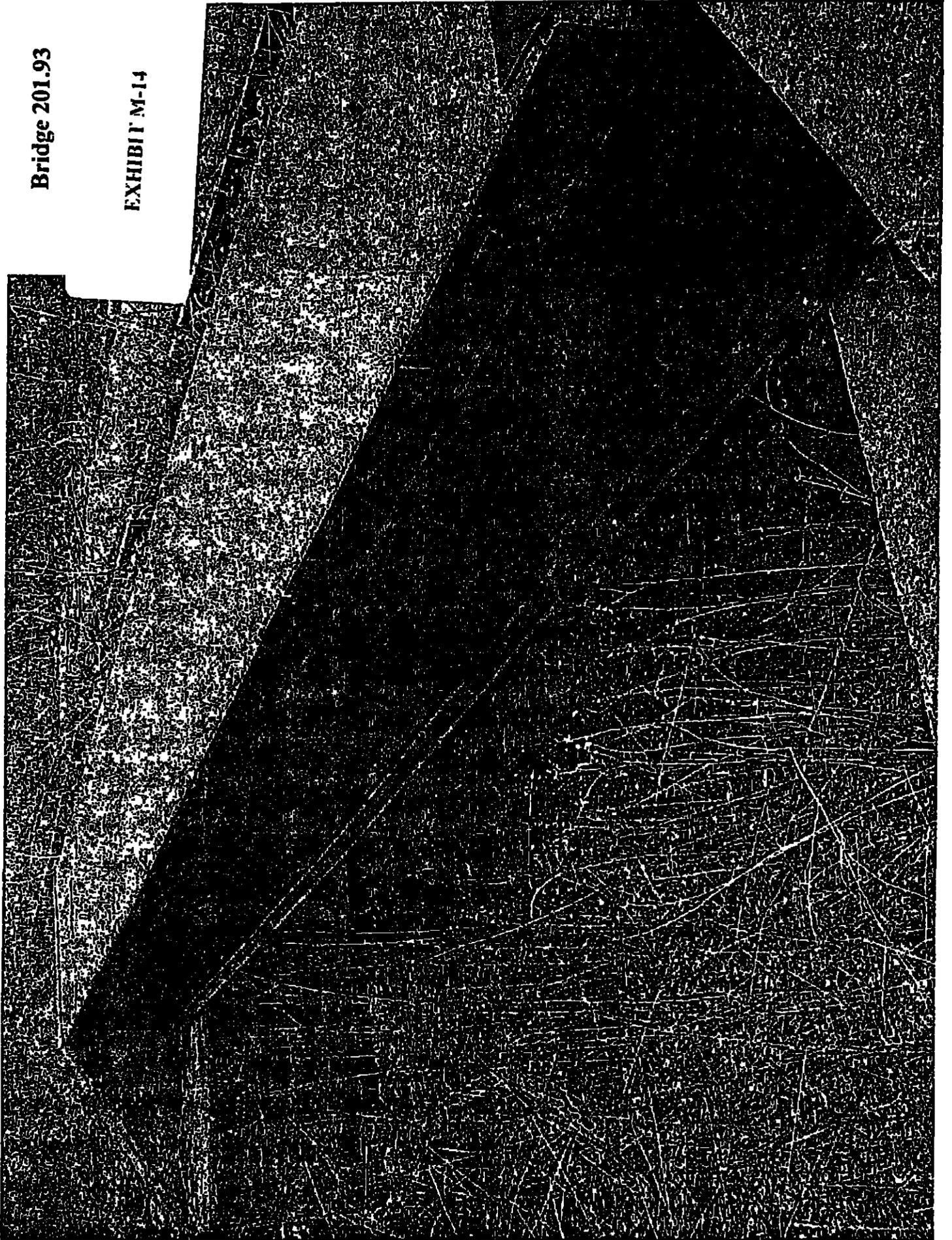
201.93

201.93



**Bridge 201.93**

**EXHIBIT M-14**



**CERTIFICATION PURSUANT TO 49 C.F.R. 1105.7(c) and 8(c)**

BNSF Railway Company ("BNSF"), by and through its authorized representative, Sidney L Strickland, Jr., certifies that on June 8, 2007, BNSF sent copies of the foregoing Environmental and Historic Reports by first class mail to the following agencies:

Stephen Crick, State Conservationist  
Natural Resources Conservation Service  
USDA  
152 Federal Building  
100 Centennial Mall  
Lincoln, NE 68508-3866

Hugh Stirts, PhD  
NEPA Coordinator  
State of Nebraska  
Department of Environmental Quality  
P.O. Box 98922  
Lincoln, NE 68509-8922

Keith Tillotson  
Senior Project Manager  
U S Army Corps of Engineers  
Nebraska Regulatory Office—Kearney  
1430 Central Avenue, Suite 4  
Kearney, NE 68847-6856

U S Fish and Wildlife Service  
Region 6  
P O Box 25486  
Denver Federal Center  
Denver, CO 80225

Bureau of Land Management  
P O Box 1828  
Cheyenne, WY 82003-1828

C. Ardell Talkington  
Highway Superintendent  
621 N. Cedar Street  
Red Cloud, NE 68970

Jay Hall  
City Administrator  
540 N Webster  
Red Cloud, NE 68970

Bob Rankin, P.E.  
Railroad Liaison Engineer  
Nebraska Department of Roads  
Rail and Public Transportation  
P O. Box 94759  
Lincoln, NE 68509-4759

Robert Maydwell  
U S National Park Service  
Midwest Region  
601 Riverfront Drive  
Omaha, NE 68102-4226

Kimberly J. Hill  
Nebraska NPDES Permit Coordinator  
Wastewater and Infrastructure  
Management Branch  
U.S. Environmental Protection Agency  
Region 7  
901 N 5th Street  
Kansas City, KS 66101

Webster County Commissioners  
621 North Cedar Street  
County Courthouse  
Red Cloud, NE 68970-2300

Terry Steinacher  
H P Archaeologist  
Nebraska State Historical Society  
P.O. Box 82554  
1500 R Street  
Lincoln, NE 68501-2554

Steve Anschutz  
Nebraska Field Supervisor  
Fish and Wildlife Service  
Ecological Services  
Nebraska Field Office  
203 West Second Street  
Grand Island, Nebraska 68801

Environmental Coordinator  
U S. National Park Service  
Midwest Regional Office  
601 Riverfront Drive  
Omaha, NE 68102

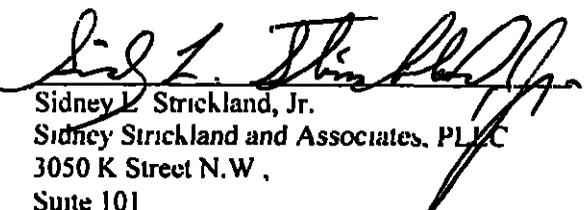
Bill Carson  
Realty Specialist  
Bureau of Land Management  
Newcastle Field Office  
Newcastle WY 82701

Ms. Victoria Rutson  
Chief, SEA  
Surface Transportation Board  
395 E Street, S W.  
Washington D C 20423-0001

National Oceanic and Atmospheric Administration  
National Geodetic Survey  
1315 East-West Highway  
Silver Springs, MD 20910-3282

Nebraska Public Services Commission  
P.O. Box 94927  
Lincoln, NE 68509-4927

The required cover letters (pursuant to 49 C.F.R. 1105.11) are attached hereto. BNSF has consulted with all appropriate agencies in preparing the reports.

  
Sidney V. Strickland, Jr.  
Sidney Strickland and Associates, PLLC  
3050 K Street N.W.,  
Suite 101  
Washington, D C 20007

**SIDNEY STRICKLAND AND ASSOCIATES, PLLC**  
**3050 K ST. N.W., SUITE 101**  
**WASHINGTON, DC 20007-5108**  
**TELEPHONE: 202-338-1325**  
**FAX: 202-295-3854**

SIDNEY I. STRICKLAND, JR.  
[Sidney.Strickland@stricklandpllc.com](mailto:Sidney.Strickland@stricklandpllc.com)

June 8, 2007

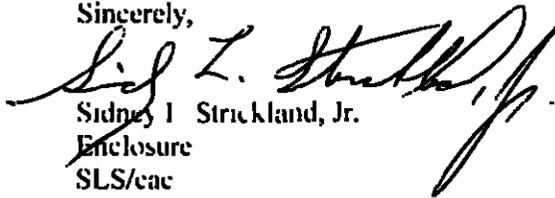
Ms Victoria Rutson  
Chief, SI A  
Surface Transportation Board  
395 F Street, S.W.  
Washington D C 20423-0001

Re STB Docket No. AB-6 (Sub No 460X) BNSF Railway Company—Abandonment  
Exemption – in Webster County, Nebraska

Dear Ms Rutson

On or about June 28, 2007, BNSF Railway Company (“BNSF”) plans on filing with the Surface Transportation Board (“STB”) a Petition for Exemption seeking authority to abandon 8.41 miles of railroad line between Milepost 193.60 and Milepost 202.01 near Red Cloud in Webster County, Nebraska (the “Line”). Attached are Environmental and Historic Reports describing the proposed action and any expected environmental and historic effects, as well as a map of the affected area.

Sincerely,

  
Sidney I. Strickland, Jr.  
Enclosure  
SLS/cac

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WASHINGTON, DC 20007-5108  
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June 8, 2007

Nebraska Public Services Commission  
P O. Box 94927  
Lincoln, NE 68509-4927

Re STB Docket No AB-6 (Sub. No 460X) BNSF Railway Company—Abandonment  
Exemption – in Webster County, Nebraska

Dear Sir or Madam

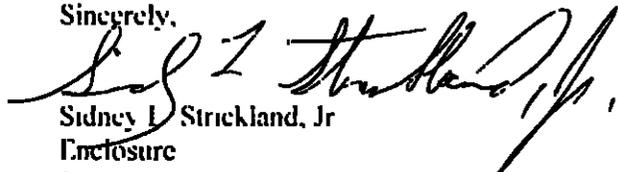
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We are providing these reports so that you may review the information that will form the basis for the STB’s independent environmental and historic analyses of this proceeding. If any of the information is misleading or incorrect, if you believe that pertinent information is missing, or if you have any questions about the STB’s environmental review process, please contact the Section of Environmental Analysis (SEA), Surface Transportation Board, 395 I Street, S.W., Washington, DC 20423-0001, Telephone (202) 245-0295, and refer to the above Docket No AB-6 (Sub No 460X). Because the applicable statutes and regulations impose stringent deadlines for processing this action, your written comments to SEA (with a copy to the undersigned) would be appreciated within three weeks.

Your comments will be considered by the STB in evaluating the environmental and/or historic preservation impacts of the contemplated action. If there are any questions concerning this proposal, please contact the undersigned by telephone at (202) 338-1325 or by mail at Sidney Strickland and Associates, PLLC, 3050 K Street, N.W., Suite 101, Washington, DC 20007.

Thank you in advance for your cooperation.

Sincerely,

  
Sidney L. Strickland, Jr.  
Enclosure  
SLS/cac

**SIDNEY STRICKLAND AND ASSOCIATES, PLLC**  
3050 K ST. N.W., SUITE 101  
WASHINGTON, DC 20007-5108  
TELEPHONE: 202-338-1325  
FAX: 202-295-3854

SIDNEY L. STRICKLAND, JR.  
[Sidney.Strickland@stricklandpllc.com](mailto:Sidney.Strickland@stricklandpllc.com)

June 8, 2007

National Oceanic and Atmospheric Administration  
National Geodetic Survey  
1315 East-West Highway  
Silver Springs, MD 20910-3282

Re STB Docket No AB-6 (Sub No 460X) BNSF Railway Company—Abandonment  
Exemption – in Webster County, Nebraska

Dear Sir or Madam

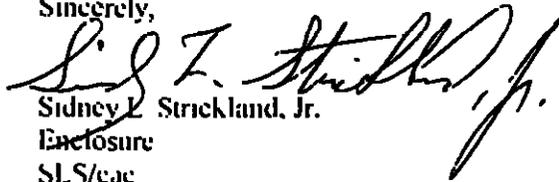
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[Sidney.Strickland@stricklandpllc.com](mailto:Sidney.Strickland@stricklandpllc.com)

June 8, 2007

Environmental Coordinator  
U S National Park Service  
Midwest Regional Office  
601 Riverfront Drive  
Omaha, NE 68102

Re STB Docket No AB-6 (Sub No 460X) BNSF Railway Company—Abandonment  
Exemption – in Webster County, Nebraska

Dear Sir or Madam

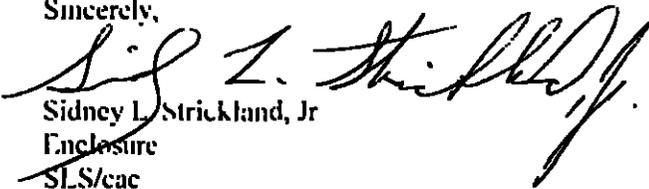
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SLS/cac

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SIDNEY L. STRICKLAND, JR.  
Sidney.Strickland@stricklandpllc.com

June 8, 2007

Steve Anschutz  
Nebraska Field Supervisor  
Fish and Wildlife Service  
Ecological Services  
Nebraska Field Office  
203 West Second Street  
Grand Island, Nebraska 68801

Re STB Docket No AB-6 (Sub. No 460X) BNSF Railway Company—Abandonment  
Exemption – in Webster County, Nebraska

Dear Mr Anschutz

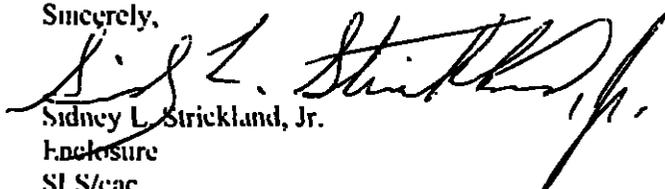
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Thank you in advance for your cooperation.

Sincerely,

  
Sidney L. Strickland, Jr.

Enclosure  
SLS/cac

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SIDNEY L. STRICKLAND, JR.  
[Sidney.Strickland@stricklandpllc.com](mailto:Sidney.Strickland@stricklandpllc.com)

June 8, 2007

Terry Stemacher  
H P Archaeologist  
Nebraska State Historical Society  
P O Box 82554  
1500 R Street  
Lincoln, NE 68501-2554

Re. STB Docket No. AB-6 (Sub. No. 460X) BNSF Railway Company—Abandonment  
Exemption – in Webster County, Nebraska

Dear Mr. Stemacher:

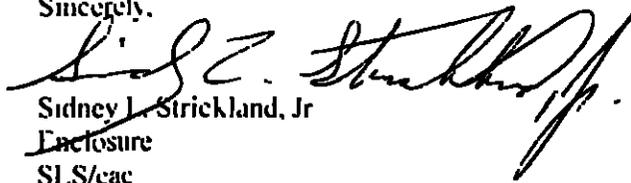
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SIDNEY I. STRICKLAND, JR.  
[Sidney.Strickland@stricklandpllc.com](mailto:Sidney.Strickland@stricklandpllc.com)

June 8, 2007

Webster County Commissioners  
621 North Cedar Street  
County Courthouse  
Red Cloud, NE 68970-2300

Re STB Docket No AB-6 (Sub No 460X) BNSF Railway Company—Abandonment  
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Dear Sirs or Madams

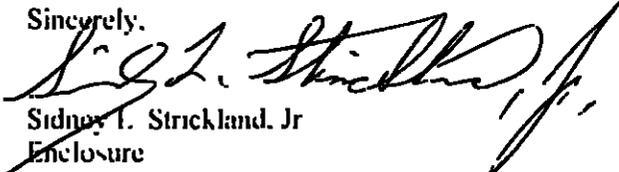
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Sidney I. Strickland, Jr.  
Enclosure  
SLS/cac

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**3050 K ST. N.W., SUITE 101**  
**WASHINGTON, DC 20007-5108**  
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[Sidney.Strickland@stricklandpllc.com](mailto:Sidney.Strickland@stricklandpllc.com)

June 8, 2007

Kimberly J Hill  
Nebraska NPDES Permit Coordinator  
Wastewater and Infrastructure Management Branch  
U S Environmental Protection Agency  
Region 7  
901 N 5<sup>th</sup> Street  
Kansas City, KS 66101

Re SIB Docket No AB-6 (Sub No 460X) BNSF Railway Company—Abandonment  
Exemption – in Webster County, Nebraska

Dear Ms. Hill:

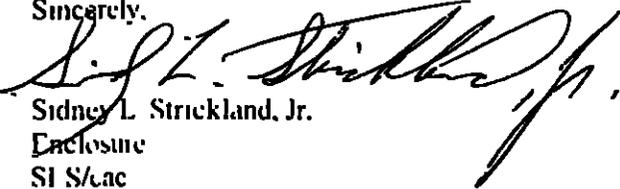
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Enclosure  
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June 8, 2007

Robert Maydwell  
U.S. National Park Service  
Midwest Region  
601 Riverfront Drive  
Omaha, NE 68102-4226

Re: STB Docket No. AB-6 (Sub No. 460X) BNSF Railway Company—Abandonment  
Exemption – in Webster County, Nebraska

Dear Mr. Maydwell:

On or about June 28, 2007, BNSF Railway Company (“BNSF”) plans on filing with the Surface Transportation Board (“STB”) a Petition for Exemption seeking authority to abandon 8.41 miles of railroad line between Milepost 193.60 and Milepost 202.01 near Red Cloud in Webster County, Nebraska (the “Line”). Attached are Environmental and Historic Reports describing the proposed action and any expected environmental and historic effects, as well as a map of the affected area.

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I thank you in advance for your cooperation.

Sincerely,

  
Sidney L. Strickland, Jr.  
Enclosure  
SLS/cae

**SIDNEY STRICKLAND AND ASSOCIATES, PLLC**  
**3050 K ST. N.W., SUITE 101**  
**WASHINGTON, DC 20007-5108**  
**TELEPHONE: 202-338-1325**  
**FAX: 202-295-3854**

SIDNEY L. STRICKLAND, JR.  
[Sidney.Strickland@stricklandpllc.com](mailto:Sidney.Strickland@stricklandpllc.com)

June 8, 2007

Bob Rankin, P.E.  
Railroad Liaison Engineer  
Nebraska Department of Roads  
Rail and Public Transportation  
P O Box 94759  
Lincoln, NE 68509-4759

Re STB Docket No AB-6 (Sub No. 460X) BNSF Railway Company—Abandonment  
Exemption – in Webster County, Nebraska

Dear Mr Rankin

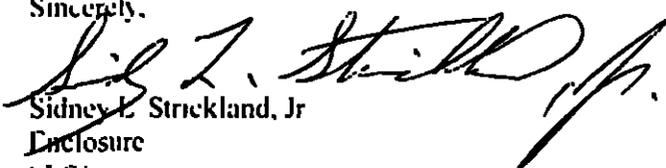
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SIDNEY I. STRICKLAND, JR  
[Sidney.Strickland@stricklandpllc.com](mailto:Sidney.Strickland@stricklandpllc.com)

June 8, 2007

Jay Hall  
City Administrator  
540 N. Webster  
Red Cloud, NE 68970

Re STB Docket No AB-6 (Sub No. 460X) BNSF Railway Company—Abandonment  
Exemption – in Webster County, Nebraska

Dear Mr Hall

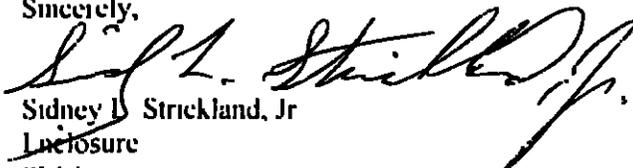
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SIDNEY L. STRICKLAND, JR.  
[Sidney.Strickland@stricklandpllc.com](mailto:Sidney.Strickland@stricklandpllc.com)

June 8, 2007

C. Ardell Talkington  
Highway Superintendent  
621 N Cedar Street  
Red Cloud, NE 68970

Re SIB Docket No AB-6 (Sub No 460X) BNSF Railway Company—Abandonment  
Exemption – in Webster County, Nebraska

Dear Mr. Talkington

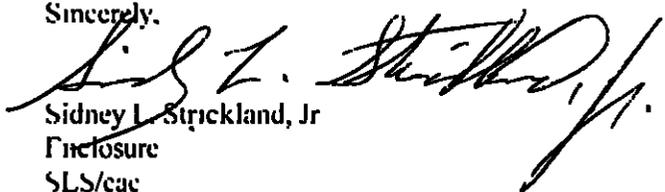
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SIDNEY L. STRICKLAND, JR.  
[Sidney.Strickland@stricklandpllc.com](mailto:Sidney.Strickland@stricklandpllc.com)

June 8, 2007

Bill Carson  
Realty Specialist  
Bureau of Land Management  
Newcastle Field Office  
Newcastle WY 82701

Re: SIB Docket No AB-6 (Sub No 460X) BNSF Railway Company—Abandonment  
Exemption – in Webster County, Nebraska

Dear Mr. Carson:

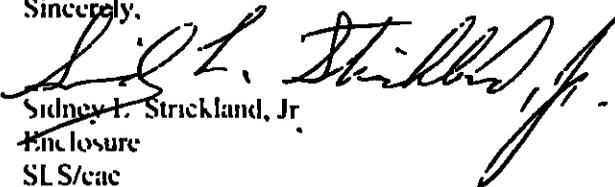
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SIDNEY L. STRICKLAND, JR.  
[Sidney.Strickland@stricklandpllc.com](mailto:Sidney.Strickland@stricklandpllc.com)

June 8, 2007

Bureau of Land Management  
P O Box 1828  
Cheyenne, WY 82003-1828

Re: STB Docket No. AB-6 (Sub No. 460X) BNSF Railway Company—Abandonment  
Exemption – in Webster County, Nebraska

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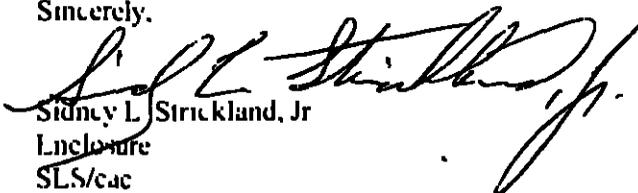
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SIDNEY L. STRICKLAND, JR.  
[Sidney.Strickland@stricklandpllc.com](mailto:Sidney.Strickland@stricklandpllc.com)

June 8, 2007

U.S. Fish and Wildlife Service  
Region 6  
P.O. Box 25486  
Denver Federal Center  
Denver, CO 80225

Re: STB Docket No. AB-6 (Sub. No. 460X) BNSI Railway Company— Abandonment  
Exemption — in Webster County, Nebraska

Dear Sir or Madam:

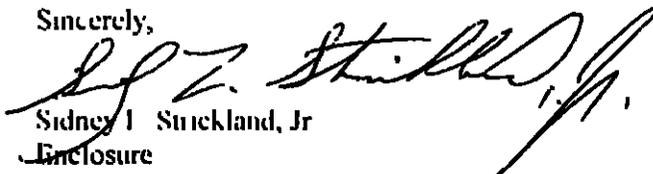
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SIDNEY L. STRICKLAND, JR.  
[Sidney.Strickland@stricklandpllc.com](mailto:Sidney.Strickland@stricklandpllc.com)

June 8, 2007

Keith Tillotson  
Senior Project Manager  
U.S. Army Corps of Engineers  
Nebraska Regulatory Office- Kearney  
1430 Central Avenue, Suite 4  
Kearney, NE. 68847-6856

Re: STB Docket No. AB-6 (Sub No. 460X) BNSF Railway Company- Abandonment  
Exemption - in Webster County, Nebraska

Dear Mr. Tillotson,

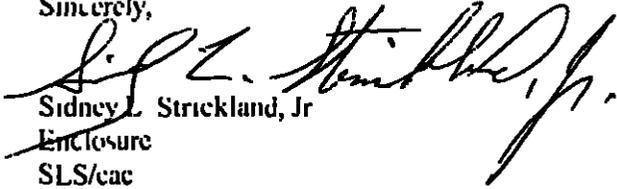
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SIDNEY L. STRICKLAND, JR.  
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June 8, 2007

Hugh Stirts, PhD  
NEPA Coordinator  
State of Nebraska  
Department of Environmental Quality  
P O Box 98922  
Lincoln, NE 68509-8922

Re: STB Docket No AB-6 (Sub No 460X) BNSF Railway Company—Abandonment  
Exemption – in Webster County, Nebraska

Dear Mr Stirts.

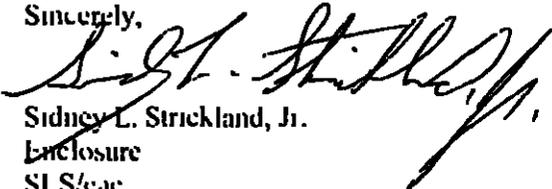
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June 8, 2007

Stephen Crick, State Conservationist  
Natural Resources Conservation Service  
USDA  
152 Federal Building  
100 Centennial Mall  
Lincoln, NE 68508-3866

Re: STB Docket No. AB-6 (Sub No. 460X) BNSF Railway Company—Abandonment  
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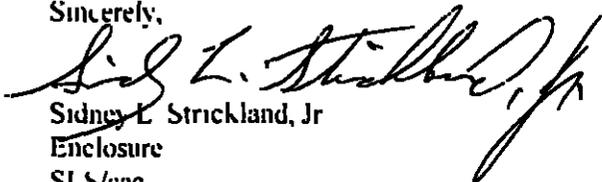
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