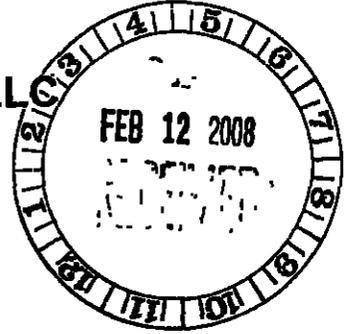


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SIDNEY STRICKLAND AND ASSOCIATES, PLLC

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TELEPHONE: 202-338-1325
FAX: 202-295-3854



SIDNEY L. STRICKLAND, JR
SIDNEY.STRICKLAND@STRICKLANDPLLC.COM

February 12, 2008

ENTERED
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Part of
Public Record

Anne K. Quinlan, Acting Secretary
Surface Transportation Board
395 E. Street N.W.
Washington, DC 20423-0001

*Re: STB Docket No. AB-6 (Sub-No. 430X) BNSF Railway Company—
Abandonment Exemption—in Oklahoma County, OK*

Dear Acting Secretary Quinlan:

Enclosed for filing in the above referenced docket are an original and ten copies of a Reply to February 7, 2008 Chairman Order.

Please acknowledge receipt of this material by date stamping the enclosed copy of this letter and returning it to me in the enclosed self-addressed stamped envelope.

Sincerely,

Sidney L. Strickland, Jr.

SLS/cew
Encs.

cc: John Sims

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**BNSF RAILWAY COMPANY --
ABANDONMENT EXEMPTION --
IN OKLAHOMA COUNTY, OK**

**STB DOCKET NO. AB-6
(SUB-NO. 430X)**

REPLY TO FEBRUARY 7, 2008 CHAIRMAN ORDER

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

**ENTERED
Office of Proceedings**

FEB 12 2008

**Part of
Public Record**

**By: SIDNEY L. STRICKLAND, JR
SIDNEY STRICKLAND AND ASSOCIATES
888 16th Street, N.W.,
Suite 800
Washington, DC 20006
(202) 338-1325**

Attorneys for BNSF Railway Company

DATED: February 12, 2008

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**BNSF RAILWAY COMPANY --
ABANDONMENT EXEMPTION --
IN OKLAHOMA COUNTY, OK**

**STB DOCKET NO. AB-6
(SUB-NO. 430X)**

REPLY TO FEBRUARY 7, 2008 CHAIRMAN ORDER

BNSF RAILWAY COMPANY (“BNSF”) hereby replies to the Chairman’s February 7, 2008 order. In his order, the Chairman noted: “In a decision served January 26, 2007, the Board, inter alia, denied a petition filed by Bio-Energy Wellness Center and the North American Transportation Institute to reject BNSF’s notice of Exemption. On February 21, 2007, Edwin Kessler filed a petition to reopen and reconsider that decision, and supplemented his petition on March 12, 2007.” The Chairman’s order noted further that Mr. Kessler alleges that the BNSF notice of exemption is void ab initio because it contains false and misleading information and that Mr. Kessler submitted new evidence allegedly demonstrating that BNSF, contrary to its September 2005 certification, served shippers on the line within the 2-year period prior to the filing of its notice, as well as recently. The Chairman also noted that “rather than addressing the substance of Mr. Kessler’s allegations, BNSF merely argues that Mr. Kessler’s evidence constitutes an

impermissible reply to reply and is hearsay and speculative.” The Chairman then asks for our response within 5 days of the service date of his decision.

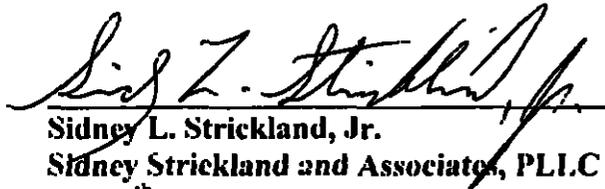
In response, BNSF first reiterates that Kessler’s filing is an impermissible reply to reply and is hearsay and speculative. In addition, BNSF has once again investigated whether there have been movements as suggested by Mr. Kessler and once again has determined that there have not been such movements. In this regard, Lawrence E. Cole has prepared a verified statement, which like that of Richard Batic, dated September 22, 2005, verifies that the last shipment over the line in issue was to Boardman Lumber, and had a waybill date of July 9, 2003 and a received by date of August 1, 2003. Mr. Cole emphasizes that BNSF records show no shipments to or from Boardman Lumber or any other BNSF customer on the subject line since that time. See attached verified statement.

We also requested information from the terminal manager in Oklahoma City, Stephen Sergas, and, contrary to the speculation of the Verified Affidavit of Thomas Elmore, dated March 20, 2007, Verified Statement items 3 and 4, Producers’ Coop is served from the Red Rock Subdivision and has been for more than two years prior to the filing of AB-6 Sub –No. 430. As to the photographs, we can only speculate that they are on the Red Rock Subdivision, as there are no markings from which we can determine the photographs locations.

As to item, 5 of the Elmore Verified Statement, the track there has to do with the removal of a Union Pacific diamond and has nothing to do with the line in issue. Similarly, the August 22, 2005 letter to Jim Hatt has nothing to do with this case, as it deals with a different project and different track.

**BNSF respectfully urges the Board to accept the present Reply to February
7, 2008 Chairman Order.**

Respectfully submitted,

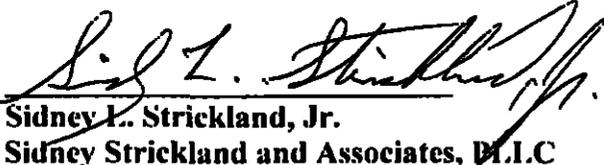


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(202) 338-1325
(202) 672-5399 FAX**

**ATTORNEYS FOR BNSF RAILWAY
COMPANY**

CERTIFICATE OF SERVICE

BNSF Railway Company by and through its counsel, Sidney L. Strickland, Jr., certifies that on February 12, 2008, BNSF served a copy of the foregoing "REPLY TO FEBRUARY 7, 2008 CHAIRMAN ORDER " by mailing copies thereof by first-class mail to Edwin Kessler at: Common Cause *Oklahoma*, 1510 Rosemont Drive, Norman, Oklahoma, 73072, and to Karl Morell at: Ball Janik LLP, 1455 F Street N.W., Suite 225, Washington, D.C. 20005, and to Fritz Kahn, 8th Floor 1920 N Street, NW, Washington, DC 20036-1601.



**Sidney L. Strickland, Jr.
Sidney Strickland and Associates, D.I.C
888 16th Street, N.W.,
Suite 800
Washington, DC 20006
(202) 338-1325**

**Attorneys for:
BNSF RAILWAY COMPANY**

**VERIFICATION AND CERTIFICATION THAT RAIL LINE MEETS
CRITERIA OF 49 C.F.R. SECTION 1152.50(b)**

I, Richard A Batie, being duly sworn depose and state that I am Manager, Network Development in the Network Development Department of the BNSF Railway Company ("BNSF"), that I am authorized to make this verification, and that I have read the foregoing Notice of Exemption and know the facts asserted therein are true and accurate as stated to the best of my knowledge, information, and belief

In accordance with 49 C.F.R § 1152.50(b), I hereby certify that, with respect to the line which is the subject of the Notice of Exemption filed in Docket Nos. AB-6 (Sub-No 430X) and AB-1040X, no local traffic has moved on the line for at least two (2) years prior to the date hereof. Also, the overhead traffic handled on the Line can be rerouted over other lines. Further, no formal complaint filed by a user of rail service on the Line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board or any U.S District Court or has been decided in favor of a complainant within the two-year period.

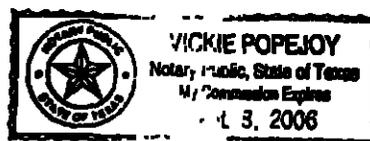
The foregoing certification is made on behalf of BNSF by the undersigned after due and careful investigation of the matters herein certified and based on the best of the knowledge, information, and belief of the undersigned.

Richard A. Batie

Richard A Batie
Manager, Network Development

Subscribed and sworn to
before me the 2nd day of September 2005

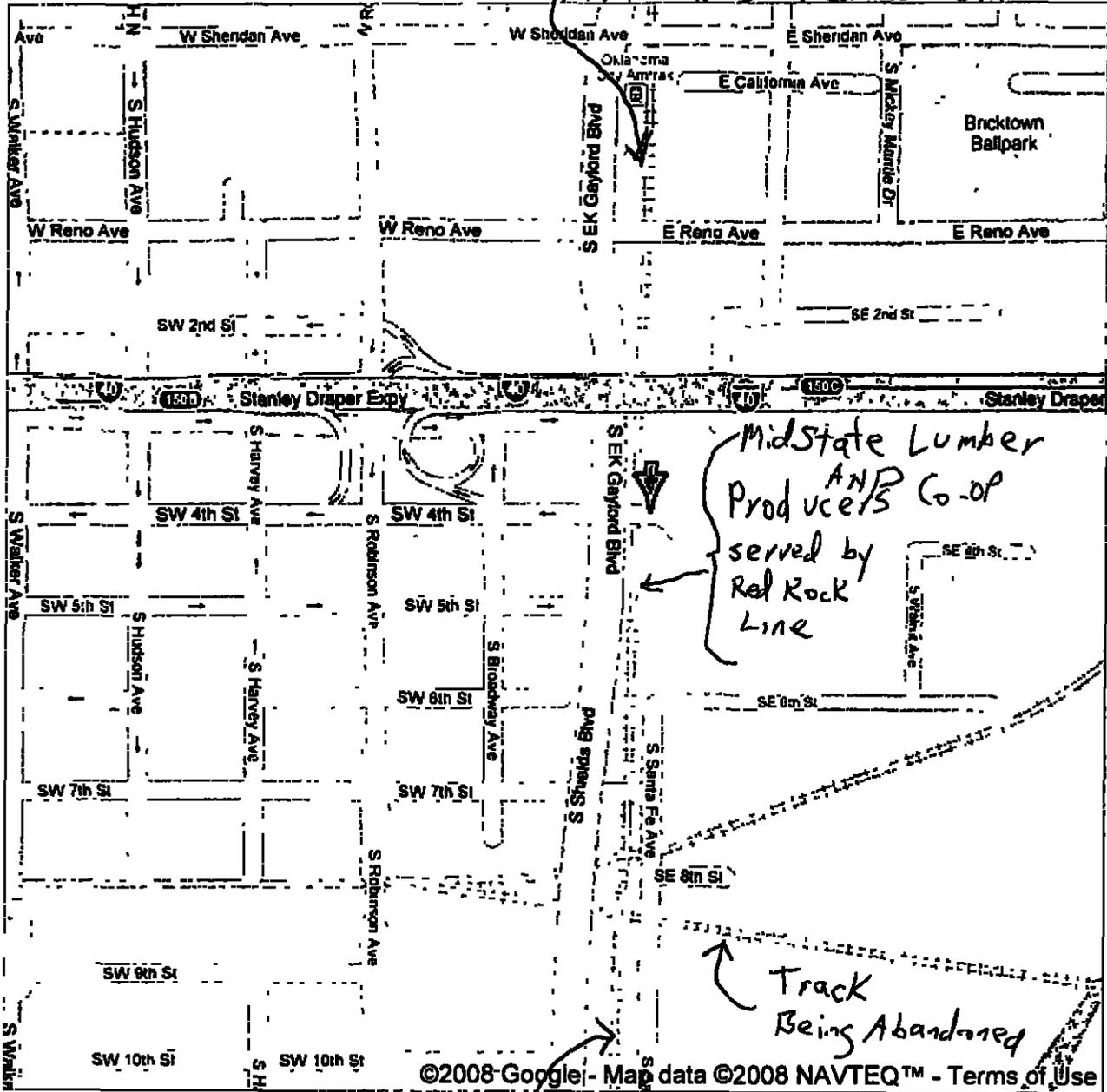
Vickie Popejoy
Notary Public



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Oklahoma City, OK 73129

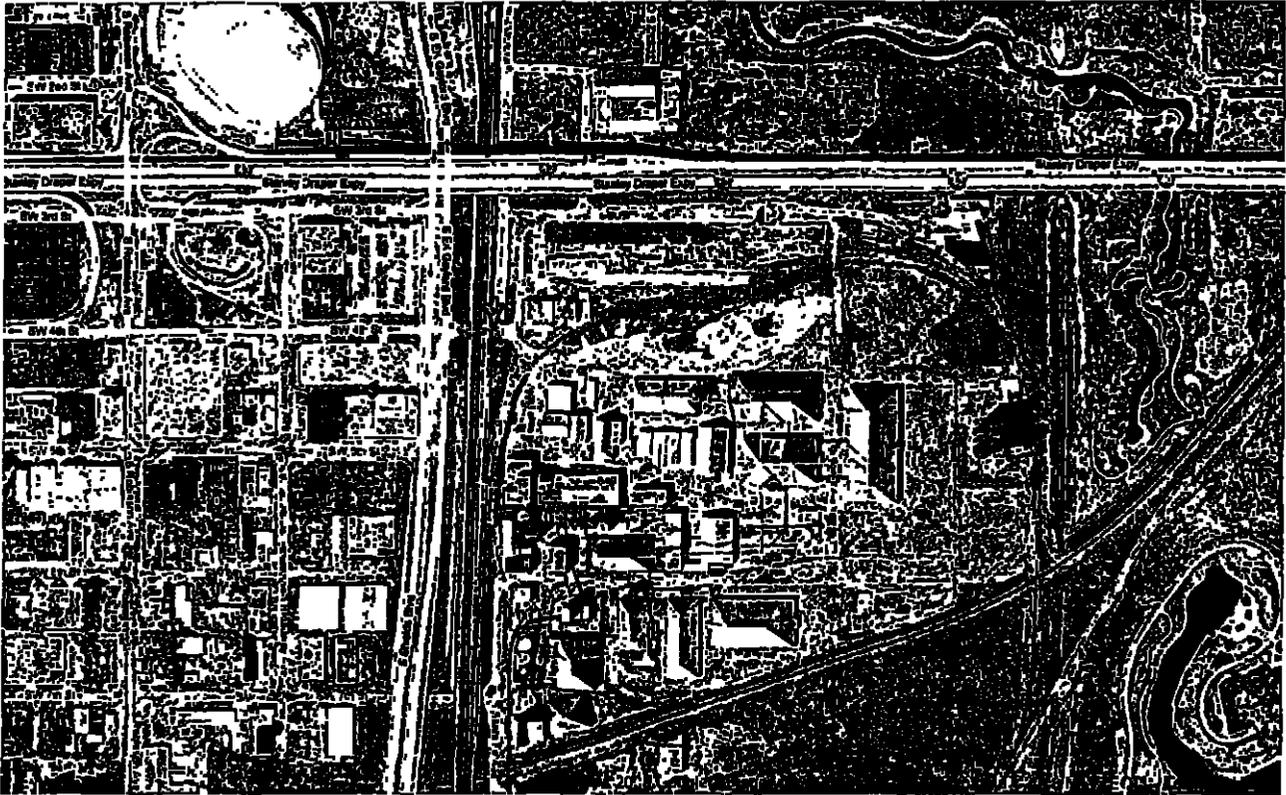
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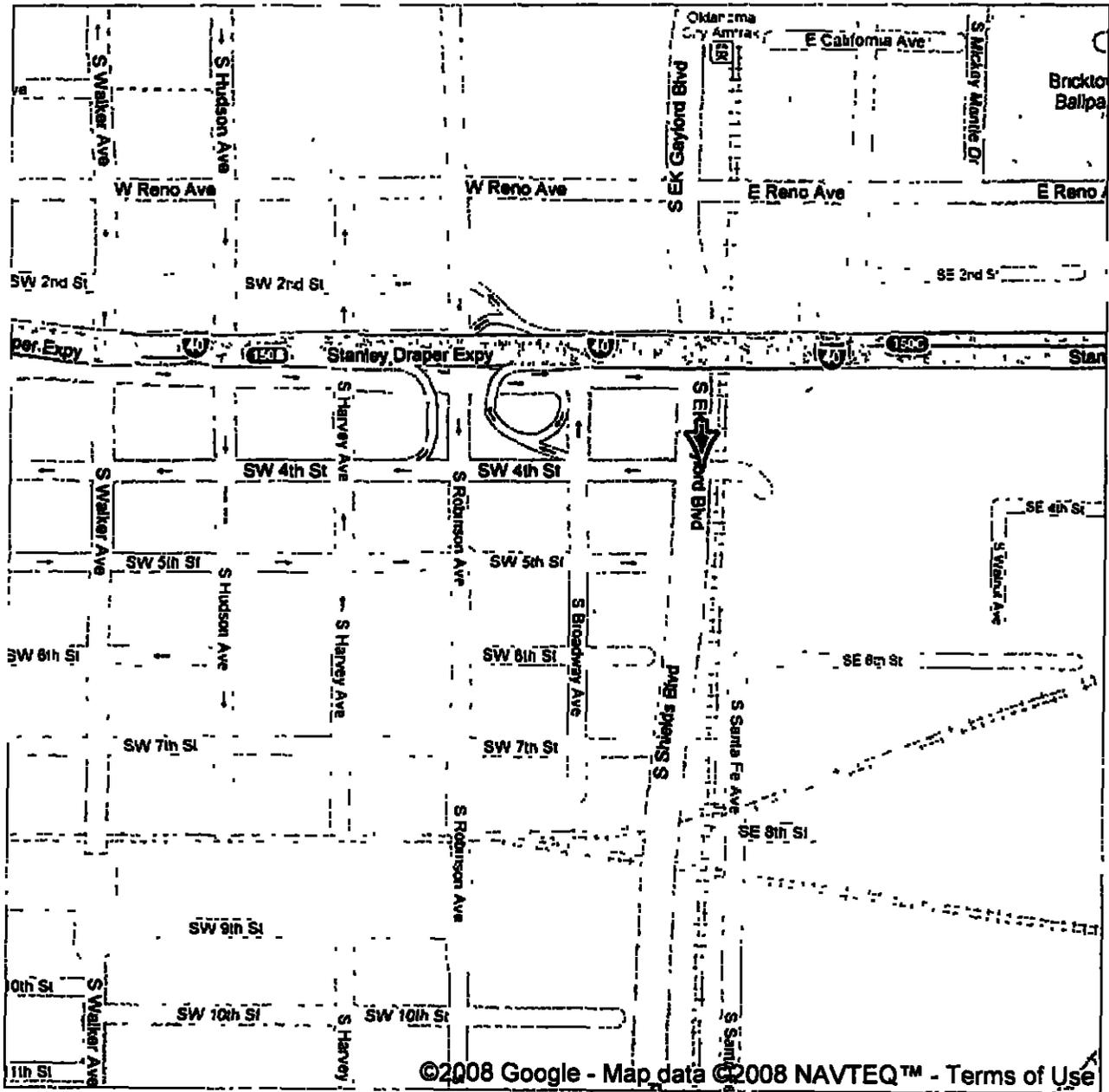
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