

LAW OFFICES  
FRITZ R. KAHN, P.C.  
EIGHTH FLOOR  
1920 N STREET, N.W.  
WASHINGTON, D.C. 20036-1601

(202) 263-4152  
FAX (202) 331-8330  
e-mail: xicgc@worldnet.att.net

215260



December 1, 2005

VIA HAND DELIVERY - RETURN COPY

Hon. Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, NW (7<sup>th</sup> fl.)  
Washington, DC 20423-0001

Office of Proceedings  
Public Record

Dear Secretary Williams:

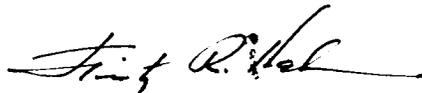
Enclosed for filing in STB Docket No. AB-988X, Nebkota Railway, Inc.-Abandonment Exemption-In Sheridan and Cherry Counties, NE, are the original and ten copies of the Petition for Exemption of Nebkota Railway, Inc.

Petitioner's check for \$5,200 in payment of the filing fee is attached.

Additional copies of the Petition and of this letter are enclosed for you to stamp to acknowledge your receipt of them and to return them to me via the messenger.

If you have any questions concerning the Petition or if I otherwise can be of assistance, please let me know.

Sincerely yours,

  
Fritz R. Kahn

FILED

TRAINING BOARD

BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, D.C. 20423

ORIGINAL

215260



STB Docket No. AB-988X

NEBKOTA RAILWAY, INC.  
-- ABANDONMENT EXEMPTION --  
IN SHERIDAN AND CHERRY COUNTIES, NE

PETITION FOR EXEMPTION  
OF  
NEBKOTA RAILWAY, INC.

FILED

TRANSPORTATION BOARD

INDEXED  
Office of Proceedings

DEC 1 2005

Part of  
Public Record

Fritz R. Kahn  
Fritz R. Kahn, P.C.  
1920 N Street, NW (8<sup>th</sup> fl.)  
Washington, DC 20036-1601  
Tel.: (202) 263-4152

Attorney for

NEBKOTA RAILWAY, INC.

Dated: December 1, 2005

BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, D.C. 20423



---

STB Docket No. AB-988X

NEBKOTA RAILWAY, INC.  
-- ABANDONMENT EXEMPTION --  
IN SHERIDAN AND CHERRY COUNTIES, NE

---

PETITION FOR EXEMPTION  
OF  
NEBKOTA RAILWAY, INC.

Nebkkota Railway, Inc., of Chadron, Nebraska ("NRI"), pursuant to 49 U.S.C. 10502 and 49 C.F.R. 1121.1, et seq., petitions the Board to exempt the proposed abandonment of a 43-mile segment of its line from the prior approval requirements of 49 U.S.C. 10903 and 49 C.F.R. 1152.1, et seq.

A.

PROPOSED TRANSACTION

NRI is a common carrier railroad subject to the jurisdiction of this Board, having acquired the railroad line in Nebraska between Chadron and Merriman, with incidental overhead trackage rights between Crawford and Chadron, pursuant to the Decision of the Interstate Commerce Commission in Finance Docket No. 32442, Nebkota Railway, Inc.-Acquisition and Operation

Exemption–Line of Chicago and North Western Transportation Company, served February 4, 1994. The NRI is a part of what had been The Cowboy Trail of the Chicago and North Western Transportation Company, mostly abandoned pursuant to the Decision of the Interstate Commerce Commission in Docket No. AB-1 (Sub-No. 249X), Chicago and North Western Transportation Company–Abandonment Exemption–Between Norfolk and Merriman, NE, served June 2, 1994.

NRI line is an agrarian railroad line, serving country grain elevators situated along its right-of-way. The eastern end of the line lately has proved to be a drain on the remainder of NRI. As shown on the table of traffic data for the Rushville-to-Merriman segment, attached as Exhibit A, the revenue carloads have dropped from 346 in 2002 to 108 in 2004. The table of revenue/cost data demonstrates the consequences of the decline in traffic. In the three-year period, 2002-2004, NRI sustained an operating loss of \$24,309.80 in operating the Rushville-to-Merriman segment. The line carries no overhead traffic, and no increase in local traffic is anticipated within the foreseeable future.

NRI, accordingly, seeks the Board’s authorization to abandon its railroad line extending between Milepost 374 at Rushville 69360 and the end of the line at Milepost 331 at Merriman 69218, a distance of 43 miles in Sheridan and Cherry Counties, Nebraska.

The line traverses U.S. Postal Zones 69218, 69343 and 69360. The line includes the stations of Clinton, Gordon, Irwin and Merriman.

If the Board were to authorize the proposed abandonment of the Rushville-to-Merriman segment, the tracks, ties and other track materials will be salvaged and sold in the hope that NRI will be able to retain and profitably operate the remainder of the railroad, extending between Chadron and Rushville, with incidental overhead trackage rights between Chadron and Crawford.

The shippers which heretofore have used the line, Farmers Co-op Elevator Company of Gordon, Retzlaff Grain Co., Inc., and West Plains Grain, Inc., have been notified of the proposed abandonment, and none offers any objection to it.

Based on information in NRI's possession, the line proposed for abandonment contains no Federally granted right-of-way. Any document in NRI's possession concerning title will be made available to those requesting it.

A schematic map of the line is attached as Exhibit B. The Environmental and Historic Report is attached as Exhibit C. The Federal Register notice is attached as Exhibit D. The affidavits of newspaper publication are attached as Exhibit E. The certificate of publication is attached as Exhibit F. The Certificate of Service is Exhibit G.

B.

#### ARGUMENT SUPPORTING THE EXEMPTION

As the Board said in its recent decision in STB Docket No. AB-914X, McCloud Railway Company—Abandonment and Discontinuance of Service Exemption—In Siskiyou, Shasta, and Modoc Counties, CA, served October 14, 2005:

Under 49 U.S.C. 10903, a rail line may not be abandoned or service discontinued without our prior approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction is limited in scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

The instant petition fully satisfies the foregoing requirements.

Rail transportation policy. As already note, the traffic on the Rushville-to-Merriman segment of NRI's railroad line has declined dramatically over the past few years, and no increase

is anticipated in the foreseeable future. The decline in traffic has resulted in significant operating losses, which have been a drain on the railroad. If the proposed abandonment were authorized by the Board, the tracks, ties and other track materials of the Rushville-to-Merriman segment would be salvaged and sold in the hope that the remainder of the NRI, between Chadron and Rushville, with incidental overhead trackage rights between Crawford and Chadron, will be able to be retained and profitably operated.

In the circumstances, detailed scrutiny by the Board of the proposed abandonment is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of the application process, an exemption will reduce the regulatory barriers to exit, in furtherance of 49 U.S.C. 10101(7). An exemption, moreover, will foster sound economic conditions and encourage efficient management by relieving NRI of the burden of continuing to operate a portion of its railroad at operating losses and by allowing NRI to apply its assets more productively to the remainder of the railroad which it is retaining, in furtherance of 49 U.S.C. 10101(5) and (9). Other aspects of the rail transportation policy will not be adversely affected.

Limited scope of transaction. While the Rushville-to-Merriman segment of NRI's railroad line may be 43 miles long, it has been used to move very little traffic. In 2002, the line handled a total of 346 inbound and outbound carloads of revenue freight. That is fewer than one car per month per mile. By 2004, the traffic had declined significantly, and the line handled an even smaller number of carloads of revenue freight, a total of 108 inbound and outbound cars. That comes to one fifth of a car per month per mile. The proposed abandonment of the Rushville-to-Merriman segment, accordingly, would have an effect on an almost insignificant volume of traffic. That may be a reason why none of the shippers which heretofore made use of

the line oppose the proposed abandonment. The transaction unquestionably is of limited scope.

Absence of abuse of market power. The very reason for seeking the Board's authorization to abandon the Rushville-to-Merriman segment of NRI's railroad line is to attempt to safeguard the future of the remainder of the railroad and to enable the farmers in northwestern Nebraska and southwestern South Dakota to have access to railroad service. As already noted, the proposed abandonment of the Rushville-to-Merriman segment, if approved by the Board, will stop NRI's mounting operating losses and, moreover, will permit the salvaging and sale of the track, ties and other track materials in the hope of being able to retain and profitably operate the remainder of the NRI, between Chadron and Rushville, with incidental overhead trackage rights between Crawford and Chadron. Moreover, the line is paralleled by U.S. Highway 20, and thus trucking alternatives are readily available. Again, it bears noting that none of the shippers which previously made use of the railroad line, Farmers Co-op Elevator Company of Gordon, Retzlaff Grain Co., Inc., and West Plains Grain, Inc., opposes the proposed abandonment. Regulation of the proposed transaction assuredly is not necessary to protect shippers from the abuse of market power.

C.

#### EMPLOYEE PROTECTION

The interests of NRI's employees will be protected by the conditions of Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

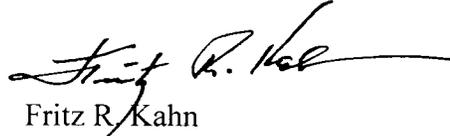
WHEREFORE, Nebkkota Railway, Inc., pursuant to 49 U.S.C. 10502 and 49 C.F.R. 1121.1, et seq., asks that the Board exempt the proposed abandonment of the 43-mile Rushville-to-Merriman segment of its line from the prior approval requirements of 49 U.S.C. 10903 and 49

C.F.R. 1152.1, et seq.

Respectfully submitted,

NEBKOTA RAILWAY, INC.

By its attorney,

A handwritten signature in black ink, appearing to read "Fritz R. Kahn", with a long horizontal flourish extending to the right.

Fritz R. Kahn  
Fritz R. Kahn, P.C.  
1920 N Street, NW (8<sup>th</sup> fl.)  
Washington, DC 20036-1601  
Tel.: (202) 263-4152

Dated: December 1, 2005

**EXHIBIT A**

**NEBKOTA RAILWAY, INC.**

**Rushville-to-Merriman Segment**

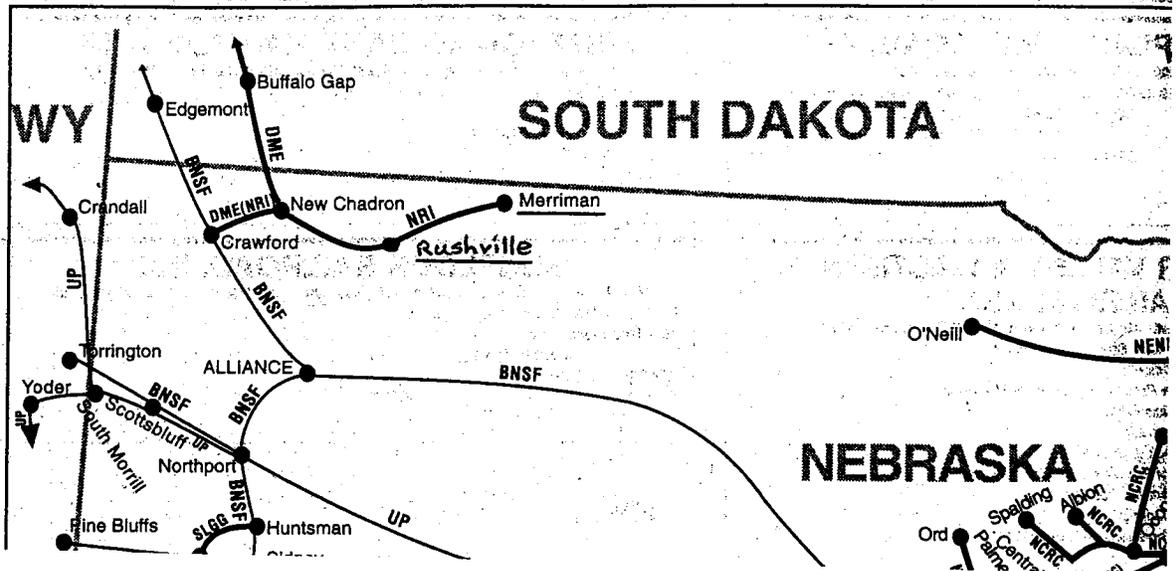
**TRAFFIC DATA**

	<u>Clinton</u>	<u>Gordon</u>	<u>Merriman</u>
<u>2002</u>			
Outbound carloads	–	133	64
Inbound carloads	–	89	60
<u>2003</u>			
Outbound carloads	–	37	60
Inbound carloads	–	19	75
<u>2004</u>			
Outbound carloads	–	28	68
Inbound carloads	–	12	--

**REVENUE/COST DATA**

	<u>Revenue</u>	<u>Operating costs</u>	<u>Loss</u>
<u>2002</u>	\$39,453.60	\$46,233.20	\$6,779.60
<u>2003</u>	\$28,024.80	\$43,378.60	\$15,353.80
<u>2004</u>	\$20,296.00	\$22,472.40	\$2,176.40

**EXHIBIT B**



**EXHIBIT C**

BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, D.C. 20423

---

STB Docket No. AB-988X

NEBKOTA RAILWAY, INC.  
-- ABANDONMENT EXEMPTION --  
IN SHERIDAN AND CHERRY COUNTIES, NE

---

ENVIRONMENTAL AND HISTORIC REPORT  
OF  
NEBKOTA RAILWAY, INC.

Nebkkota Railway, Inc. of Chadron, NE ("NRI"), pursuant to 49 C.F.R. 1105.7, submits this Environmental and Historic Report in support of its Petition for Exemption.

1. Proposed action and alternatives. The railroad line segment which NRI proposes to abandon extends between Milepost 374 at Rushville 69360 and the end of the line at Milepost 331 at Merriman, a distance of 43 miles in Sheridan and Cherry Counties, Nebraska. The line segment has been used largely to serve the grain elevators at Gordon and Merriman, and the revenue carloads handled on the line have declined steadily from 346 in 2002 to 108 in 2004.. The volume of traffic has generated insufficient revenues to cover the operating costs of rendering service on it – the loss for the three year period 202-2004 totaled \$24,309.80 -- and by abandoning the segment and salvaging the rails, ties and other track materials, NRI hopes to be

able to retain and profitably operate the remainder of the railroad, extending between Chadron and Rushville, with trackage rights between Crawford, NE, and Chadron. None of the shippers which had used the line segment, Farmers Co-op Elevator Company of Gordon, Retzlaff Grain Co., Inc., and West Plains Grain, Inc., opposes the proposed abandonment. Accordingly, there is no practicable alternative to the line segment's abandonment, the authorization for which NRI herein seeks. The Nebraska Single Point of Contact, Nebraska Public Service Commission, by letter from NRI's representative, dated October 24, 2005, a copy of which was mailed to Victoria J. Rutson, Esq., Chief of the Board's Section of Environmental Analysis, was notified of the proposed actions of NRI, and in the meantime no written response have been received from it. In a follow-up telephone call on November 7, 2005, NRI's representative was advised that the absence of a written response indicated that the PUC had no concern about the proposed abandonment.

2. Transportation systems. The line segment proposed for abandonment has been experiencing a decline in traffic, from 346 revenue carloads in 2002 to 108 revenue carloads in 2004. The revenues have failed to cover the operating costs of rendering service on the line segment, with the loss for the three year period, 2002- 2004, totaling \$24,309.80. As already noted, by abandoning the line segment and salvaging the tracks, ties and other track materials, NRI hopes to be able to retain and profitably operate the remainder the railroad between Chadron and Rushville, with trackage rights between Crawford and Chadron. By letter dated October 24, 2005, respectively, with copies to Ms. Rutson, the Nebraska Single Point of Contact, the Nebraska Public Service Commission, was notified of the proposed abandonment, and it has not sent a reply in the meantime. In a follow-up telephone call on November 7, 2005, NRI's

representative was advised that the absence of a written response indicated that the PUC had no concerns about the proposed abandonment.

3. Land use. The proposed abandonment will affect no presently pending land use plans for Sheridan and/or Cherry Counties of which NRI is aware. By letter dated October 24, 2005, NRI's representative wrote to the State Conservationist of the U. S. Department of Agriculture's Natural Resources Conservation Service, with copy to Ms. Rutson, to apprise the office of the proposed action of NRI, and no response has been received in the meantime. In a follow-up telephone call by NRI's representative on November 7, 2005, he was assured that a written response would be forthcoming. Attached is a copy of the e-mailed response, dated November 10, 2005, stating that the proposed abandonment was cleared of Farmland Protection Policy Act concerns.

4. Energy. No significant change in the number or nature of the shipments by rail to and from the grain elevator at Merriman will result from the proposed abandonment. It is estimated that the proposed abandonment on average will add only two trucks a day on the busily traveled U.S. Highway 20, which parallels the railroad line. The abandonment certainly will affect far fewer than an average of 50 carloads per mile per year, and, therefore, the Petition for Exemption, if granted, will have no material effect on energy consumption. Neither are recyclable commodities affected by the proposed abandonment. By letters, dated October 24, 2002, the representative of NRI notified the regional office of the U. S. Environmental Protection Agency and the Nebraska Department of Environmental Quality, with copies to Ms. Rutson, of the proposed abandonment. In follow-up telephone calls to both agencies on November 7, 2005, NRI's representative left his name and telephone number, but his call have not been returned..

No response has been received from NEPA. A copy of NEDQ's response, dated November 18, 2005, stating that it had no comments concerning the proposed abandonment is attached.

5. Air. No significant diversion of traffic from rail to truck transportation will occur as a result of the proposed abandonment. It is estimated that the proposed abandonment on average will add only two trucks a day to the heavily traveled U.S. Highway 20, which parallels the railroad line. Accordingly, no significant increase in emissions will follow if the Petition for Exemption were approved. By letters dated October 24, 2005, NRI's representative wrote to the regional office of the U. S. Environmental Protection Agency and the Nebraska Department of Environmental Quality, with copies to Ms. Rutson, to advise them of the proposed abandonment. In follow-up telephone calls to both agencies on November 7, 2005, NRI's representative left his name and telephone number, but his calls have not been returned. No response has been received from NEPA. A copy of NDEQ's letter, dated November 18, 2005, stating that the agency has no comments concerning the proposed abandonment is attached.

6. Noise. Little diversion of traffic from rail to truck transportation will occur as a result of NRI's proposed abandonment. It is estimated that the proposed abandonment on average will add only two truck a day to the heavily traveled U.S. Highway 20, which parallels the railroad line. Thus, there will not be an increase of truck traffic of more than ten percent of the average daily traffic or fifty vehicles a day on any affected road segment, and, therefore, no significant increase in noise will result if the Petition for Exemption were approved. As already noted, the representative of NRI, by letters dated October 24, 2005, with copies to Ms. Rutson, alerted the regional office of the U. S. Environmental Protection Agency and the Nebraska Department of Environmental Quality to the abandonment proposal. In follow-up telephone calls on November

7, 2005, NRI's representative left his name and telephone number, but his calls have not been returned. No response has received from NEPA. Attached is a copy of NDEQ's letter, dated November 18, 2005, stating that the agency had no comments concerning the proposed abandonment.

7. Safety. The proposed abandonment of the line will result in no significant increase in highway traffic, estimated to be on average no more than two trucks a day on busily traveled U.S. Highway 20, which parallels the railroad line, and, therefore, will not jeopardize the safety of the traveling public. Nevertheless, in accordance with the Board's rules, by letter dated October 24, 2005, with copies to Ms. Rutson, the Nebraska Single Point of Contact, the Nebraska Public Service Commission, was notified of the abandonment proposal, but no expressions of concern for safety has been received from the agency in the meantime. In a follow-up telephone call on November 7, 2005, NRI's representative was advised that the absence of a written response indicated that the PUC had no concerns about the proposed abandonment. The abandonment, moreover, will affect neither the transportation nor the dumping of hazardous materials or substances.

8. Biological resources. The proposed abandonment of the line segment will not adversely affect endangered or threatened species or areas designated as critical habitat, as far as NRI is aware. By letters dated October 24, 2005, with copies to Ms. Rutson, the representative of NRI notified the Regional Office of the U. S. Fish and Wildlife Service, the Nebraska Department of Environmental Quality and the regional office of the U. S. Environmental Protection Agency of the proposed abandonment. In follow-up telephone calls to the three agencies on November 7, 2005, NRI's representative left his name and telephone number, but his

calls have not been returned. Neither the Fish & Wildlife Service nor NEPA has responded. A copy of NDEQ's reply, dated November 18, 2005, stating that the agency had no comments concerning the proposed abandonment is attached.

9. Water. The proposed abandonment of the line segment will have no effect upon Federal, State or local water quality standards of which NRI is aware. The representative of NRI, by letter dated October 24, 2005, advised the District Office of the U. S. Army Corps of Engineers of the proposed action. In his response to his follow-up telephone call on November 7, 2005, NRI's representative was asked to facsimile transmit another copy of his October 24, 2005, letter, which he did. A copy of the Corps' response, dated November 15, 2005, is attached. It asks that a permit be sought if the proposed abandonment will involve filling activity in waters. None is contemplated.

10. Mitigation. Since NRI is unaware of any significant adverse environmental impact that the proposed abandonment would occasion, it perceives of no need for mitigating measures. Nevertheless, in accordance with the Board's regulations, in addition to the Federal and State of Nebraska agencies previously identified, the representative of NRI, by letters dated October 24, 2005, with copies to Ms. Rutson, wrote to the Recreational Resources Assistance Division, National Park Service of the U.S. Department of Interior and the Nebraska Public Service Commission to advise them of the abandonment proposal, but to date neither agency has responded to express any concerns about it. In follow-up telephone calls to both agencies on November 7, 2005, NRI's representative was informed that the fact that they had not responded indicated that neither agency had any concerns about the proposed abandonments. The representative of NRI, by letter, dated October 24, 2005, also wrote to the National Geodetic

Survey of the National Oceanic and Atmospheric Administration, and no reply has been received to date. A follow-up telephone call on November 7, 2005, by NRI's representative was uninformative.

Historical Effects.

1. Map. A map of the line proposed for abandonment is attached.
2. Description. The railroad line segment which NRI proposes to abandon extends between Milepost 374 at Rushville and the end of the line at Milepost 331 at Merriman, a distance of 43 miles in Sheridan and Cherry Counties, Nebraska.
3. Photographs. CHS knows of no structure along the line segment proposed for abandonment which is 50 years old or older which would be dismantled or removed as a result of the abandonment. If the abandonment were authorized, the tracks, ties and other track materials would be salvaged in anticipation that the remainder of the NRI, between Chadron and Rushville, with trackage rights between Crawford and Chadron, might be retained and profitably operated.. No trestles, bridges or other structures along the line, regardless of its age, will be dismantled or removed.
4. Dates. CHS knows of no structure along the line proposed for abandonment which is 50 years old or older which would be dismantled or removed as a result of the abandonment. No trestles, bridges or other structures along the line, regardless of its age, will be dismantled or removed
5. History. The line proposed for abandonment formerly was owned and operated by the Chicago and North Western Transportation Company.
6. Documents. CHS has no documents in its possession that confirm the dates of

construction of the line. Such documents are likely to be in the possession of the Union Pacific Railway Company, whose predecessor, the Chicago and North Western Transportation Company, had owned and operated the line.

7. Opinion. NRI believes that there is no structures threatened with dismantling or removal as a result of the proposed abandonment on the railroad line segment which warrants being listed in the Register of Historic Places. Similarly, NRI is unaware of any archeological resources or any other previously unknown historic properties in the area. Notice of the proposed abandonment was given the Nebraska State Historic Preservation Officer by letter from the representative of the NRI, dated October 24, 2005, with copy to Ms. Rutson. In a follow-up telephone call on November 7, 2005, NRI's representative was assured that his call would be returned, but it has not been. A copy of the reply of the Nebraska State Historical Society, dated November 14, 2005, stating that in the agency's opinion there will be no historic properties affected by the proposed abandonment, is attached.

Respectfully submitted,

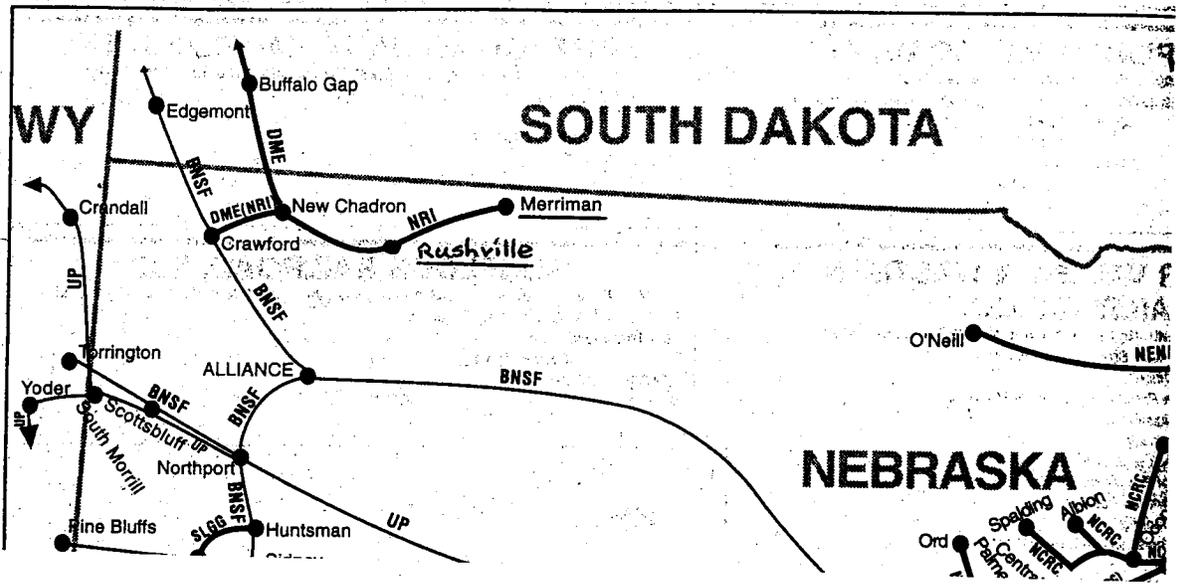
NEBKOTA RAILWAY, INC.

By its attorney,



Fritz R. Kahn  
Fritz R. Kahn, P.C.  
1920 N Street, NW (8<sup>th</sup> fl.)  
Washington, DC 20036-1601  
Tel.: (202) 263-4152

Dated: December 1, 2005



[\[Print\]](#) [\[Close\]](#)

From: "Vaughn, Richard - Lincoln, NE" <richard.vaughn@ne.usda.gov>  
To: <xiccgc@worldnet.att.net>  
Subject: FPPA response for Nebkota Railway, Inc. of Chadron NE line abandonment (Docket No. AB-988X)  
Date: Thu, 10 Nov 2005 14:08:15 +0000

Fritz R. Kahn, P.C.  
Eighth Floor  
1920 N Street, N.W.  
Washington DC 20036-1601

**Subject:** FPPA response for Nebkota Railway, Inc. of Chadron NE line abandonment (Docket No. AB-988X).  
09 November 2005

Mr. Fritz Kahn

The USDA Natural Resources Conservation Service assists in addressing the Farmland Protection Policy Act (FPPA). Federal agencies are to take into account the adverse effects of Federal programs on important farmlands and minimize those effects. Important farmlands consist of prime farmland, unique farmland, and farmland of statewide or local importance. The purpose of the Farmland Protection Policy Act and 7 CFR Part 658 are to minimize the extent to which Federal programs contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses and to assure that Federal programs are administered in a manner that, to the extent practicable, will be compatible with State, unit of local government, and private programs and policies to protect farmland. NRCS shall use the criteria provided in regulations found at 7 CFR 658.5 to identify and take into account the adverse effects of Federal programs on the protection of farmland. With the help of NRCS, Federal agencies are to consider alternative actions, as appropriate, that could lessen such adverse effects on farmland conversion to nonagricultural uses.

I have reviewed the project information regarding the Nebkota Railway, Inc. of Chadron NE line abandonment project for which you requested review of impacts to prime and important farmlands as per the Farmland Protection Policy Act (FPPA). This review only covers FPPA concerns and does not include any other environmental concerns such as wetlands or endangered species. For general conservation concerns or questions relating to wetlands under the jurisdiction of the Food Security Act, contact your county Natural Resources Conservation Service office. As relayed above the FPPA focuses on agricultural land that it being converted for non-agricultural purposes. In the case of this project there is no such conversion. If at a later date the abandoned line is utilized for other purposes such as a trail system and facilities such as a parking lot are developed then at that point those projects would be evaluated. Thus, NRCS has determined that your project was found to be cleared of FPPA concerns. We encourage you to continue to be aware of prime and important farmlands in general and the role they play in current and future projects.

*Richard Vaughn*  
*Environmental Specialist*

Natural Resources Conservation Service

Federal Building, Room 152  
100 Centennial Mall North  
Lincoln NE 68505-3866  
PH: 402-437-4127  
Fax: 402-437-4184  
richard.vaughn@ne.usda.gov



**Dave Heineman**  
Governor

# STATE OF NEBRASKA

DEPARTMENT OF ENVIRONMENTAL QUALITY

**Michael J. Linder**

Director

Suite 400, The Atrium

1200 'N' Street

P.O. Box 98922

Lincoln, Nebraska 68509-8922

Phone (402) 471-2186

FAX (402) 471-2909

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

November 18, 2005

Fritz R. Kahn, P.C.  
Law Offices  
Eighth Floor  
1920 N Street, N.W.  
Washington, DC 20036-1601

RE: Nebkota Railway, Inc., of Chadron, Nebr., Petition for Exemption

Dear Mr. Kahn:

The Nebraska Department of Environmental Quality (NDEQ) has reviewed the above referenced project. We have no comments regarding this project that would fall under the jurisdiction of our programs.

If you have questions, feel free to contact me at (402) 471-8697.

Sincerely,

A handwritten signature in black ink, appearing to read "H. Stirts".

Hugh Stirts, PhD  
NEPA Coordinator



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

November 15, 2005

Mr. Fritz Kahn  
1920 N Street, Northwest, eighth floor  
Washington, D.C. 20036-1601

RE: NE 2005-11301

Dear Mr. Kahn:

I am writing in regard to the proposing track abandonment for the Nebkota Railway, Inc. from Milepost 374 at Rushville, Nebraska to Milepost 331 at Merriman, Nebraska. The Corps of Engineers regulates filling activities in waters of the United States under the authority of Section 404 of the Clean Water Act. In the event that track abandonment will involve filling activity in waters of the United States, Nebkota will need to apply for a Department of the Army permit. If you have any questions, feel free to call me at 308-234-1403.

Sincerely,

A handwritten signature in black ink that reads "Keith Tillotson".

Keith Tillotson  
Senior Project Manager

Copy Furnished:

Nebkota Railway



**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

November 14, 2005

Fritz R. Kahn  
 1920 N Street NW, 8th Floor  
 Washington, DC 20036-1601

RE:

hp num	descr	proj num
0510-111-01	NEBKOTA RAILWAY ABANDONMENT OF MP374 AT RUSHVILLE AND MP 331 AT MERRIMAN	AB-988X

Dear Mr. Kahn:

Thank you for submitting the referenced project proposal for our review and comment. Our comment on this project and its potential to affect historic properties is required by Section 106 of the National Historic Preservation Act of 1966, as amended, and implementing regulations 36 CFR Part 800.

Given the information provided, in our opinion there will be no historic properties affected by the project as proposed. Therefore, in accordance with 36 CFR 800.4(d)(1), you may proceed with the project as planned. Should any changes in the project be made or in the type of funding or assistance provided through federal or state agencies, please notify this office of the changes before further project planning continues.

There is always the possibility that previously unsuspected archaeological remains may be uncovered during the process of project construction. We request that this office be notified immediately under such circumstances so that an evaluation of the remains may be made, along with recommendations for future action.

Please retain this correspondence and your documented finding in order to show compliance with Section 106 of the National Historic Preservation act, as amended. If you have any questions, please do not hesitate to contact Greg Miller at 402/471-4775.

Sincerely,

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

**EXHIBIT D**

## DRAFT FEDERAL REGISTER NOTICE

STB No. Docket No. AB-988X

### NOTICE OF PETITION FOR EXEMPTION TO ABANDON

On December 1, 2005, Nebkota Railway, Inc., of Chadron, NE (“NRI”), filed with the Surface Transportation Board, Washington, D.C. 20423, a petition for exemption for the abandonment a line of railroad from railroad milepost 374 at Rushville 69360 to the end of line at rail milepost 331 at Merriman 69218, which traverses through United States Postal Service ZIP Codes 69360, 69343 and 69218, a distance of 43 miles, in Sheridan and Cherry Counties, Nebraska. The line for which the abandonment exemption request was filed includes the stations of Merriman, Irwin, Gordon and Clinton. 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 interest of railroad employees will be protected by the conditions of Oregon Short Line R. Co.– Abandonment - Goshen, 360 I.C.C. 91 (1979). Any offer of financial assistance 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 and any request for trail use/rail banking will be due no later than 20 days after notice of the filing of the petition for exemption is published in the Federal Register. Persons seeking further information concerning abandonment procedures may contact the Surface Transportation Board or refer to the full abandonment or discontinuance regulations at 49 CFR 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 made 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

**EXHIBIT E**



## AFFIDAVIT OF PUBLIC

### OFFICIAL NOTICE STB Docket No. AB-988X NOTICE OF INTENT TO DISCONTINUE SERVICE AND ABANDON

Nebkota Railway, Inc., of Chadron, NE ("NRI"), gives notice that on or about December 1, 2005, it will file with the Surface Transportation Board, Washington, DC 20423, a Petition for Exemption for permission to discontinue service and abandon its line between Milepost 374 at Rushville 69360 and the end of the line at Milepost 331 at Merriman 69218, a distance of 43 miles in Sheridan and Cherry Counties, Nebraska, traversing U.S. Postal Zones 69218, 69343 and 69360. The line includes the stations of Merriman, Irwin, Gordon and Clinton.

The line is being abandoned because it has carried insufficient traffic, namely, occasional grain shipments from the elevator at Merriman, to be self-sustaining, and the discontinuance and abandonment are being proposed to arrest the operating losses and to permit the continued operation of the remainder of the railroad, between Chadron

43 days from the date of filing of the Petition. All interested persons should be aware that following any 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 U.S.C. 10905 (§1152.28 of the Board's rules) and any request for a trail use condition under 16 U.S.C. 1247 (d) (§1152.29 of the Board's rules) must also be filed within 45 days from the date of filing of the Petition. Persons who may oppose the abandonment or discontinuance but who do not wish to participate fully in the process by appearing at any oral hearing or by submitting verified statements of witnesses, containing detailed evidence, should file comments. Persons interested only in seeking public use or trail use conditions should also file comments. Persons opposing the proposed abandonment or discontinuance that do wish to participate actively and fully in the process should file a protest.

Protests must contain that party's entire case in opposition (case in chief) including the following: (1) protestant's name, address and business, (2) a statement describing the protestant's interest in the proceeding, including a description of the protestant's use of the line, if the protestant does not use the line, information concerning the group or public interest it represents and if the protestant's interest is limited to the retention of service over a portion of the line, a description of the portion of the line subject to protestant's interest (with milepost designations if available) and evidence that the applicant can operate the portion of the line profitably, including an appropriate return on its investments for those operations, (3) specific reasons why protestant opposes the Petition including information regarding protestant's reliance on the involved service (this information must be supported by affidavits of persons with personal knowledge of the facts) and (4) any rebuttal of material submitted by NRI.

In addition, a commenting party or protestant may provide a statement of position and evidence regarding (i) intent to offer financial assistance pursuant to 49 U.S.C. 10904; (ii) environmental impact; (iii) impact on rural and community development; (iv) recommended provisions for protection of interests of employees;

together with a certificate of service attesting that copies of the comments on protests have been served on NRI's counsel, Fritz R. Kahn, Fritz R. Kahn, P.C., 1920 N Street, NW (8<sup>th</sup> fl.), Washington, DC 20036.

Protests and comments will be considered by the Board in determining what disposition to make of the Petition. The commenting party or protestant may participate in the proceedings as its interests may appear.

If an oral hearing is desired, the requester must make a request for an oral hearing and provide reasons why an oral hearing is necessary. Oral hearing requests must be filed with Board no later than ten (10) days after the Petition is filed.

Those parties filing protests to the proposed discontinuances of service and abandonment should be prepared to participate actively either in an oral hearing or through the submission of their entire opposition case in the form of verified statements and arguments at the time they file their protests.

Persons seeking further information concerning discontinuance and abandonment procedures may contact the Board's Office of Public Service at (202) 565-1592 or refer to the text of the discontinuance and abandonment regulations at 49 C.F.R. 1152.1, et seq. which can be viewed at [www.gpo.gov/nara.cfr](http://www.gpo.gov/nara.cfr).

Written comments and protests, including all requests for public use and trail use conditions should indicate the proceeding designation, Docket No. AB-988X and must be filed the Secretary, Surface Transportation Board, Washington, DC 20423, no later than 45 days after the date NRI intends to file its Petition. Interested persons may file a written comment or protest with the Board to become a party to this discontinuance

primarily interested party in the subsidy and the minimum price required to keep the line in operation. The carrier's representative to whom inquiries may be made concerning sale or subsidy terms is stated above.

A copy of the Petition will be available for public inspection on or after the date the Petition is filed at each agency station or terminal on the line proposed to be discontinued and abandoned. NRI shall furnish a copy of the Petition to any interested person proposing to file a protest or comments, upon request.

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 person who would like to obtain a copy of the EA (or EIS) may contact the Section of Environmental Analysis. EA's in these abandonment proceedings normally will be made available within 33 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. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

Notary Public

RY - State of Nebraska  
JOHANSEN  
m. Exp. April 11, 2009

Proof of Publication

State of Nebraska } SS  
County of Cherry

*Dee Kay Fowler*

being by me first duly sworn on oath says that he/she is employed by the Valentine Midland News, a newspaper published in Valentine, Nebraska, and personally knows that said newspaper is a legal weekly newspaper under the statutes of the state of Nebraska, having a bonafide circulation of over three hundred copies, has been published in said county for more than fifty-two successive weeks prior to the first publication of the attached notice and is printed in an office maintained in the City of Valentine, in said county, which said city is the place of its publication; that the notice hereto attached was published in said newspaper in the regular issues thereof.

Date of Publication 11/2  
11/9  
11/16

Dated this 16th day of November 20 05  
*Dee Kay Fowler*

Subscribed and sworn to before me dated this 16th day of November, 20 05  
*Dana Anderson*

Notary Public

Fees \$ \_\_\_\_\_

[SEAL]



Official Notice

...is hereby notified that the Board of Surface Transportation has received a petition for abandonment of the line of the Valentine Midland News, a newspaper published in Valentine, Nebraska, and personally knows that said newspaper is a legal weekly newspaper under the statutes of the state of Nebraska, having a bonafide circulation of over three hundred copies, has been published in said county for more than fifty-two successive weeks prior to the first publication of the attached notice and is printed in an office maintained in the City of Valentine, in said county, which said city is the place of its publication; that the notice hereto attached was published in said newspaper in the regular issues thereof.

# Official Notice

## STB Docket No. AB-988X NOTICE OF INTENT TO DISCONTINUE SERVICE AND ABANDON

Nebraska Railway, Inc. of Chadron, NE (NRI), gives notice that on or about December 1, 2005, it will file with the Surface Transportation Board, Washington, DC 20423, a Petition for Exemption for permission to discontinue service and abandon its line between Milepost 374 at Ashville 69369 and the end of the line at Milepost 381 at Merriman 69218, a distance of 43 miles in Sheridan and Cherry Counties, Nebraska, traversing U.S. Postal Zones 69218, 69339 and 69360. The line includes the stations of Merriman, Irwin, Gordon and Clinton.

The line is being abandoned because it has carried insufficient traffic to comply with occasional grain shipments from the elevator at Merriman, to be self-sustaining, and the discontinuance and abandonment are being proposed to arrest the operating losses and to permit the continued operation of the remainder of the railroad between Chadron and Ashville.

Based on information in the railroad's possession, 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 the railroad's employees will be protected by the conditions of Oregon Short Line Railroad Abandonment Goshen 360 I.C.R. 21 (1972).

The Petition will include NRI's entire case for discontinuance and abandonment. Any interested person, after the Petition is filed on or about December 1, 2005, may file with the Surface Transportation Board its protest of, or written comments concerning, the proposed discontinuance and abandonment identifying them by the proceedings' docket numbers. These filings are due 45 days from the date of filing of the Petition. All interested persons should be aware that following any abandonment of rail service and salvage of the line, the line may be suitable for other use, including intermodal use. Any request for a public use condition under 49 U.S.C. 10905 (4152.23 of the Board's rules) and any request for a trail use condition under 16 U.S.C. 1247 (d) (4152.29 of the Board's rules) must also be filed within 45 days from the date of filing of the Petition. Persons who may oppose the abandonment or discontinuance but who do not wish to participate fully in the process by appearing at an evidentiary hearing should file their protest or comments, upon request, by submitting their protest or comments to the Secretary of the Board at 1925 K Street, NW, Washington, DC 20006, together with a certificate of service to each interested party and ten copies of the comments. Protests or comments need to be notarized or verified and an original and ten copies are required to be filed with the Secretary of the Board at 1925 K Street, NW, Washington, DC 20006, together with a certificate of service to each interested party and ten copies of the comments. Protests or comments need to be notarized or verified and an original and ten copies are required to be filed with the Secretary of the Board at 1925 K Street, NW, Washington, DC 20006, together with a certificate of service to each interested party and ten copies of the comments. Protests or comments need to be notarized or verified and an original and ten copies are required to be filed with the Secretary of the Board at 1925 K Street, NW, Washington, DC 20006, together with a certificate of service to each interested party and ten copies of the comments.

ing the Protestants' interest in the proceeding, including a description of the protestant's use of the line, if the Protestants cannot use the line, information concerning the group or public interest represented and the protestant's interests in the retention of service over abandonment of the line, a description of the portion of the line subject to protestant's interest (with milepost designations, if available) and evidence that the applicant can operate the portion of the line profitably, including an appropriate return on its investment for those operations, (3) specific reasons why protestant opposes the Petition, including information regarding Protestants' reliance on the involved service, this information must be supported by affidavits of persons with personal knowledge of the facts) and (4) any relevant material submitted by NRI.

In addition, a commenting party or protestant may provide a statement of position and evidence regarding (i) intent to offer financial assistance pursuant to 49 U.S.C. 10904; (ii) environmental impacts; (iii) historical and community development; (iv) recommended provisions for protection of interests of employees; (v) suitability of the proposed use of the right-of-way for intermodal use and rail banking under 16 U.S.C. 1247(c) and 16 U.S.C. 229.

A protest may demonstrate that (1) the protestant filed a feeder line application under 49 U.S.C. 10907; (2) the feeder line application involves any portion of the rail line involved in the discontinuance and abandonment Petition; (3) the feeder line application was filed prior to the date of the discontinuance and abandonment Petition; and (4) the feeder line application is pending before the Board.

Protests or comments need to be notarized or verified and an original and ten copies are required to be filed with the Secretary of the Board at 1925 K Street, NW, Washington, DC 20006, together with a certificate of service to each interested party and ten copies of the comments. Protests or comments need to be notarized or verified and an original and ten copies are required to be filed with the Secretary of the Board at 1925 K Street, NW, Washington, DC 20006, together with a certificate of service to each interested party and ten copies of the comments.

Protests and comments will be considered by the Board in determining what disposition to make of the Petition. The commenting party or protestant may participate in the proceedings as its interests may appear. An evidentiary hearing will be held at the discretion of the Board. Any interested party who wishes to appear at the hearing should file a request with the Secretary of the Board at 1925 K Street, NW, Washington, DC 20006, together with a certificate of service to each interested party and ten copies of the request.

information concerning discontinuance and abandonment of the line, if the Protestants cannot use the line, information concerning the group or public interest represented and the protestant's interests in the retention of service over abandonment of the line, a description of the portion of the line subject to protestant's interest (with milepost designations, if available) and evidence that the applicant can operate the portion of the line profitably, including an appropriate return on its investment for those operations, (3) specific reasons why protestant opposes the Petition, including information regarding Protestants' reliance on the involved service, this information must be supported by affidavits of persons with personal knowledge of the facts) and (4) any relevant material submitted by NRI.

Protests or comments need to be notarized or verified and an original and ten copies are required to be filed with the Secretary of the Board at 1925 K Street, NW, Washington, DC 20006, together with a certificate of service to each interested party and ten copies of the comments. Protests or comments need to be notarized or verified and an original and ten copies are required to be filed with the Secretary of the Board at 1925 K Street, NW, Washington, DC 20006, together with a certificate of service to each interested party and ten copies of the comments.

R. Kaim, P.E., 2000 K Street, NW, Eighth Floor, Washington, DC 20006. The original and ten copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, each document filed with the Board must be served on all parties to the abandonment proceeding. 49 CFR 1104.12(a).

The line sought to be discontinued and abandoned will be available for subsidy or sale for continued rail use, if the Board decides to permit the discontinuance and abandonment in accordance with applicable laws and regulations (49 U.S.C. 10904 and 49 CFR 1152.23). No subsidy arrangement approved under 49 U.S.C. 10904 shall remain in effect for more than 1 year unless renewed by mutually agreed by the parties (49 U.S.C. 10904 (c) (4)). Each applicant will promptly provide, upon request, an interested party an estimate of the subsidy and the minimum purchase price required to keep the line in operation. The carrier's representative to whom inquiries may be made concerning sale or subsidy terms is stated above.

A copy of the Petition will be available for public inspection on or after the date that the Petition is filed at each agency station terminal on the line proposed to be discontinued and abandoned. NRI will furnish a copy of the Petition to any interested person proposing to file a protest or comments, upon request.

An environmental assessment of the proposed discontinuance and abandonment (EIS), if necessary, prepared by the Section of Environmental Analysis will be served upon all parties of record and other agencies or other persons who are identified during the assessment. Any other person who wishes to obtain a copy of the EIS should contact the Analyst, EA's in the case of a protest.

ISEAL1  
Fees \$ \_\_\_\_\_  
Notary Public

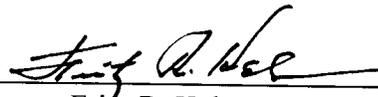
being by me first duly sworn on  
*Dee Dore Foster*

**EXHIBIT F**

## CERTIFICATE OF PUBLICATION

NRI., by its attorney, certifies that on November 10, 2005, it sent copies of the Preliminary Environmental and Historic Report, with individually addressed letters couched in the wording of 49 C.F.R. 1105.11, to each of the Federal and Nebraska agencies listed in 49 C.F.R. 1105.7(b), with which NRI's representative had sought to consult in preparing the Report.

NRI, by its attorney, further certifies that on November 17, 2005, it sent notices of the proposed exemption to each of the agencies identified in 49 C.F.R. 1152.50(d).



---

Fritz R. Kahn

**EXHIBIT G**

CERTIFICATE OF SERVICE

I certify that I this day have served a copy of the foregoing Petition upon each of the Federal and Nebraska agencies heretofore consulted or notified of the proposed abandonment, pursuant to 49 C.F.R. 1105.7(b), and upon each of the shippers who heretofore used the line, Farmers Co-op Elevator Company of Gordon, Retzlaff Grain Co., Inc., and West Plains Grains, Inc..

Dated at Washington, DC, this 1<sup>st</sup> day of December 2005

  
Fritz R. Kahn