

**BALL JANIK LLP**

A T T O R N E Y S

1455 F STREET, NW, SUITE 225  
WASHINGTON, D.C. 20005

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TELEPHONE 202-638-3307

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KARL MORELL

**FILED**

APR 20 2006

Surface  
**TRANSPORTATION BOARD**

kmorell@dc.bjllp.com

April 20, 2006

216311



**BY HAND DELIVERY**

The Honorable Vernon Williams  
Surface Transportation Board  
1925 K Street NW  
Suite 715  
Washington, DC 20423-001

ENTERED  
Office of Proceedings

APR 20 2006

Part of  
Public Record

Re: STB Docket No. 853 (Sub-No. 3X), Kansas & Oklahoma Railroad, Inc. -- Abandonment Exemption -- In Rice County, KS

Dear Secretary Williams:

Attached for filing are the original and ten copies of a Notice of Exemption under 49 C.F.R. 1152.50. Also attached is a check covering the \$3,100 filing fee.

Please time and date stamp the extra copy of the Notice of Exemption and return it with our messenger.

If you have any questions, please call me.

Sincerely,

Karl Morell

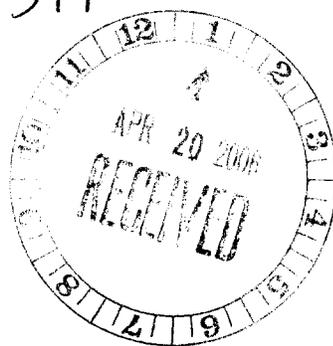
Enclosures

**FEE RECEIVED**

APR 20 2006

TRANSPORTATION BOARD

216311



BEFORE THE  
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-853 (SUB-NO. 3X)

KANSAS & OKLAHOMA RAILROAD, INC.  
-- ABANDONMENT EXEMPTION --  
IN RICE COUNTY, KANSAS

NOTICE OF EXEMPTION

**FILED**  
APR 20 2006  
SURFACE TRANSPORTATION BOARD

ENTERED  
Office of Proceedings  
APR 20 2006  
FILED BY  
PUBLIC RECORD

**FILED**  
APR 20 2006  
SURFACE TRANSPORTATION BOARD

Karl Morell  
Of Counsel  
Ball Janik LLP  
1455 F St., N.W.  
Suite 225  
Washington, D.C. 20005  
(202) 638-3307

Attorney for:  
KANSAS & OKLAHOMA  
RAILROAD, INC.

Dated: April 20, 2006

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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DOCKET NO. AB-853 (SUB-NO. 3X)

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KANSAS & OKLAHOMA RAILROAD, INC.  
-- ABANDONMENT EXEMPTION --  
IN RICE COUNTY, KANSAS

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NOTICE OF EXEMPTION

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Kansas & Oklahoma Railroad, Inc. ("K&O"), files this Verified Notice of Exemption pursuant to the class exemption at 49 C.F.R. § 1152.50 to abandon its 6-mile rail line located between milepost 85.0, at Chase, and milepost 91.0, at Silica, in Rice County, Kansas (the "Line").

1. Proposed consummation date.

The proposed consummation date is June 9, 2006.

2. Certification required by 49 C.F.R. § 1152.50(b).

The required certification is attached hereto as Exhibit A.

3. Information required by 49 C.F.R. § 1152.22(a)(1) through (4), (7), and (8), and (e)(4).

- (a) General.

- (1) Exact name of applicant.

Kansas & Oklahoma Railroad, Inc.

- (2) Whether applicant is a common carrier by railroad subject to 49 U.S.C. Subtitle IV, Chapter 105.

K&O is a common carrier by railroad subject to 49 U.S.C. Subtitle IV, Chapter 105.

(3) Relief sought.

K&O seeks to use the class exemption at 49 C.F.R. § 1152.50 to abandon its 6-mile rail line located between milepost 85.0, at Chase, and milepost 91.0, at Silica, in Rice County, Kansas. There has been no local traffic on the Line in over two years. Any overhead traffic can be rerouted over an essentially parallel rail line owned by K&O.<sup>1</sup>

(4) Map.

A Map depicting the trackage covered by the proposed abandonment is attached as Exhibit B.

(7) Name, title, and address of representative of applicant to whom correspondence should be sent.

Karl Morell  
Ball Janik LLP  
1455 F St., N.W., Suite 225  
Washington, DC 20005  
(202) 638-3307

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<sup>1</sup> In 2004, K&O leased a portion of the Line between mileposts 87.0 and 91.0 to Atlantic & Pacific Railroad and Transportation Company (“APR”). See STB Finance Docket No. 34451, *Atlantic & Pacific Railroad and Transportation Company – Lease and Operation Exemption – Line of Kansas & Oklahoma Railroad* (not printed), served July 20, 2004. APR, however, never handled any freight traffic on the portion of the Line it leased and is currently seeking to discontinue service on the 4-mile segment of the Line. See STB Docket No. AB-992X, *Atlantic & Pacific Railroad and Transportation Company – Discontinuance of Service Exemption – in Rice County, KS* (not printed), served March 22, 2006. Moreover, under the lease arrangement with APR, K&O remained the primary operator of the Line.

- (8) List of all United States Postal Service ZIP Codes that the line proposed for abandonment traverses.

The Line traverses ZIP Codes 67524 and 67573.

- (e) Rural and community impact.
- (4) Statement of whether the properties proposed to be abandoned are appropriate for use for other public purposes, including roads and highways, other forms of mass transportation, conservation, energy production or transmission, or recreation. If the applicant is aware of any restriction on the title to the property, including any reversionary interest, which would affect the transfer of title or the use of property for other than rail purposes, this shall be disclosed.

The Line traverses a predominately rural area that has adequate road and highway networks. Therefore, there is little or no likelihood that the rail corridor is needed for transit or highway corridors. The right-of-way may be suitable for a recreational trail. The property underlying the rights-of-way is reversionary, which would affect the transfer of the property for other than rail or rail-banking purposes.

4. The level of labor protection.

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

5. Certification.

Certificates of compliance with the notice requirements of 49 C.F.R. §§ 1152.50(d)(1) and 1105.12 are attached as Exhibit C.

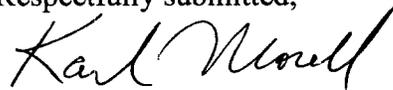
6. Environmental Report.

The Environmental Report containing information required by 49 C.F.R. § 1105.7(e) is attached hereto as Exhibit D. Based on information in our 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.

7. Historic Report.

The Historic Report containing information required by 49 C.F.R. § 1105.8 is attached hereto as Exhibit E.

Respectfully submitted,



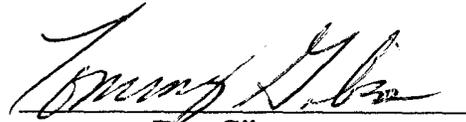
Karl Morell  
Of Counsel  
Ball Janik LLP  
1455 F St., N.W., Suite 225  
Washington, D.C. 20005  
(202) 638-3307

Attorney for:  
KANSAS & OKLAHOMA  
RAILROAD, INC.

Dated: April 20, 2006



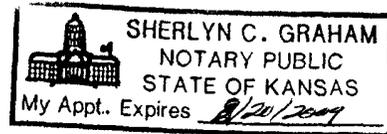
The foregoing certification is made on behalf of K&O by the undersigned after due and careful investigation of the matters herein certified and based on the best of the knowledge, information, and belief of the undersigned.

  
Tom Gibson

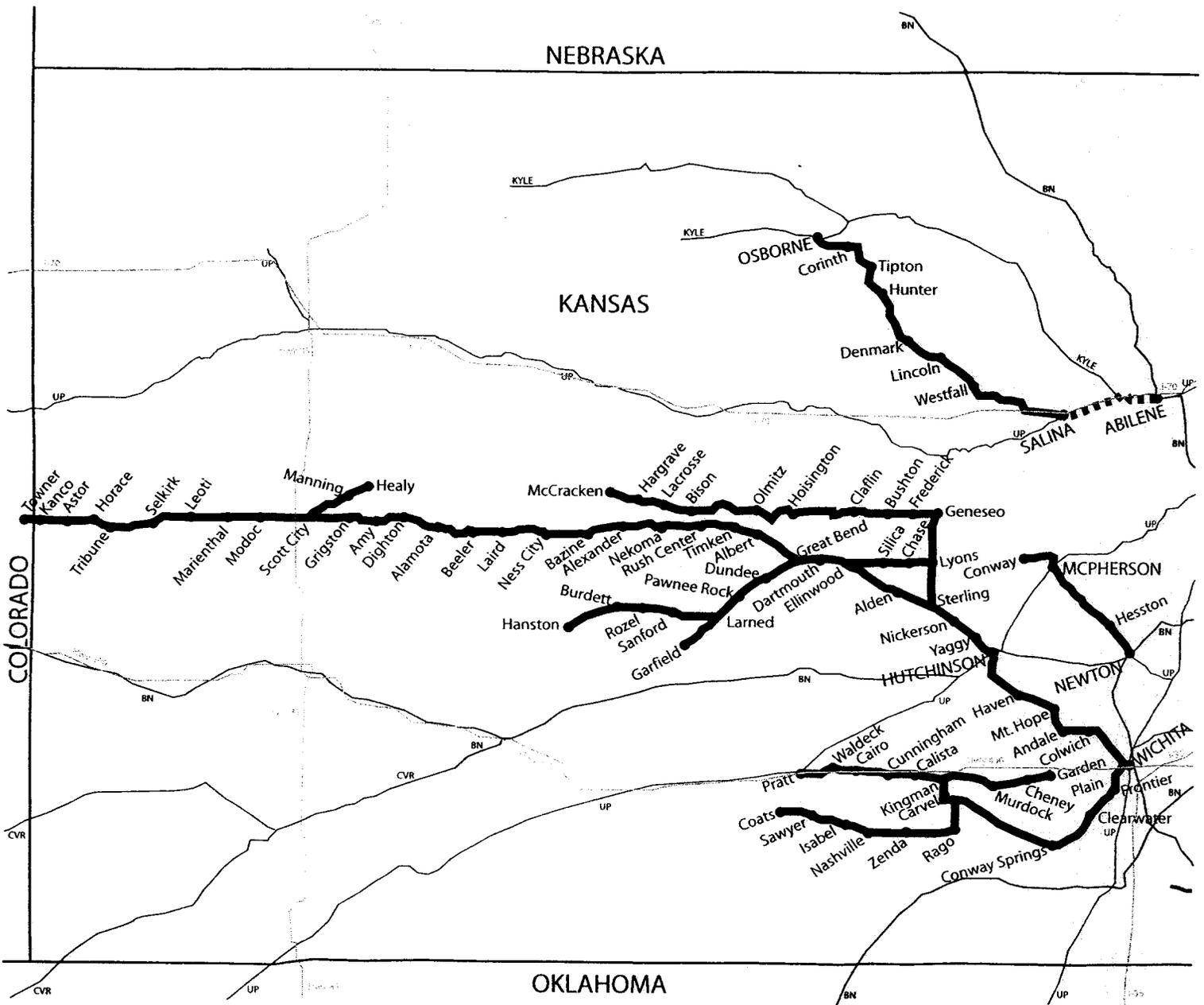
SUBSCRIBED AND SWORN TO before me this 13 day of April, 2006.

My Commission Expires: 7/20/2009

  
Notary Public



# EXHIBIT B



LEGEND:	
Kansas & Oklahoma RR (KO)	
Kansas & Oklahoma Trackage Rights	
South Kansas & Oklahoma RR (SKO)	
Kyle Railroad (KYLE)	
Cimmaron Valley Railroad (CVR)	
<b>Interchanges</b>	
	UP - Hutchinson, McPherson, Salina, Wichita
	BNSF - Abilene, Hutchinson, Newton, Wichita
	KYLE - Osborne
	SKOL - Wichita

**CERTIFICATE OF SERVICE**

Pursuant to 49 C.F.R. § 1152.50(d)(1), the undersigned hereby certifies that notice of the proposed abandonment in Docket No. AB-853 (Sub-No. 3X) was mailed via first class mail on April 7, 2006 to the following parties:

State Public Service Commission

Dept. of Transportation  
700 S.W. Harrison Street  
Topeka, KS 66603-3754

Kansas Corporation Commission  
1500 SW Arrowhead Road  
Topeka, KS 66604

Military Traffic Management Command

MTMCTEA  
ATTN: Railroads for National Defense  
720 Thimble Shoals Blvd.  
Suite 130  
Newport News, VA 23606-2574

National Park Service

Mr. Tom Ross  
U.S. Department of Interior - National Park Service  
P.O. Box 37127  
Washington, DC 20013-7127

U.S. Department of Interior  
Recreation and Conservation  
1849 C Street, NW  
Washington, D.C. 20240-0001

U.S. Department of Agriculture

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

Dated: April 20, 2006

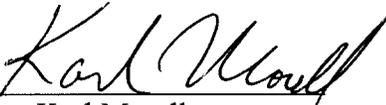
A handwritten signature in cursive script, appearing to read "Karl Morell", written over a horizontal line.

Karl Morell

**CERTIFICATE OF PUBLICATION**

The undersigned hereby certifies that notice of the proposed abandonment in Docket No. AB-853 (Sub-No. 3X) was advertised on April 18, 2006 in The Lyons News, a newspaper of general circulation in Rice County, Kansas, as required by 49 C.F.R. § 1105.12.

Dated: April 20, 2006

  
\_\_\_\_\_  
Karl Morell

**ENVIRONMENTAL REPORT  
CERTIFICATE OF SERVICE**

Pursuant to the requirements of 49 C.F.R. § 1105.7, the undersigned hereby certifies that a copy of the Environmental Report in Docket No. AB-853 (Sub-No. 3X) was mailed via first class mail on March 30, 2006, to the following parties:

Department of Transportation  
700 S.W. Harrison Street  
Topeka, KS 66603-3754

Kansas Corporation Commission  
1500 SW Arrowhead Road  
Topeka, KS 66604

Rice County Commissioners  
Rice County Courthouse  
101 W. Commercial  
Lyons, KS 67554

Jess F. Crockford  
Assistant State Conservationist  
USDA Natural Resources Conservation Service  
9 West 28<sup>th</sup> Suite B  
Hutchinson, KS 67502-3453

Michael J. LeValley  
U.S. Fish and Wildlife Service  
315 Houston Street, Suite E  
Manhattan, KS 66502-6172

National Park Service  
Recreational Resources Assistance Division  
1849 C Street, NW  
Washington, D.C. 20240-0001

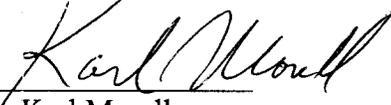
Department of Health and Environment  
Division of Environment  
1000 S.W. Jackson Street  
Suite 400  
Topeka, KS 66612-1367

Joseph E. Cothorn  
U.S. Environmental Protection Agency  
901 N 5<sup>th</sup> Street  
Kansas City, KS 66101-2907

Matthew J. Mikulecky  
U.S. Army Engineer District, Kansas City  
107 Riverside Drive  
Marquette, Kansas 67464

The National Geodetic Survey  
Department of Commerce/NOAA  
SSMC3  
Station 9356  
1315 E. West Highway  
Silver Spring, MD 20910

Date: April 20, 2006

  
Karl Morell

**HISTORIC REPORT  
CERTIFICATE OF SERVICE**

Pursuant to the requirements of 49 C.F.R. § 1105.8(c), the undersigned hereby certifies that a copy of the Historic Report in Docket No. AB-853 (Sub-No. 3X) was mailed via first class mail on March 30, 2006, to the following party:

Patrick Zollner  
Kansas State Historical Society  
6425 S.W. 6<sup>th</sup> Avenue  
Topeka, KS 66615-1099

Date: April 20, 2006

A handwritten signature in cursive script, reading "Karl Morell". The signature is written in black ink and is positioned above a horizontal line.

Karl Morell

**ENVIRONMENTAL REPORT**

**(49 C.F.R. 1105.7)**

**Docket No. AB-853 (Sub-No. 3X)**

**KANSAS & OKLAHOMA RAILROAD, INC.  
--ABANDONMENT EXEMPTION--  
IN RICE COUNTY, KANSAS**

*(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.*

Kansas & Oklahoma Railroad, Inc. ("K&O"), proposes to abandon its 6-mile line of railroad located between milepost 85.0, at Chase, and milepost 91.0, at Silica, in Rice County, Kansas (the "Line"). Upon receipt of abandonment authority, K&O intends to remove the rail, track material, and crossties. There are currently no plans to remove the one bridge located on the Line.

K&O acquired the Line in June 2001 from Central Kansas Railway, L.L.C.<sup>1</sup> To the best of K&O's knowledge, no local traffic has moved over the Line in many years, if ever. Any overhead traffic can be rerouted over an essentially parallel line owned by K&O.

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<sup>1</sup> See STB Docket No. 34030, *Kansas & Oklahoma Railroad, Inc. - Acquisition Exemption - Central Kansas Railway, L.L.C.* (not printed), served June 12, 2001.

The Line has had no traffic in recent years and has recently been used for car storage.<sup>2</sup> In addition, no maintenance has been performed on this Line for some time. Therefore, the proposed abandonment will have no impact on rail freight operations and maintenance practices on the Line.

The only alternative to abandonment would be not to abandon the Line thereby forcing K&O to pass the opportunity costs of retaining the Line to other K&O customers. This would not be a prudent use of carrier resources.

A map of the proposed abandonment is attached hereto as Exhibit 1.

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

No passenger traffic will be diverted to other modes as a result of the proposed abandonment. No local traffic has been handled on the Line for many years and any overhead traffic can be rerouted over an essentially parallel line owned by K&O. Since the Line no longer handles rail traffic, the proposed abandonment will have no adverse effects on regional or local transportation systems and patterns.

*(3) Land Use. (i) Based on consultation with local and/or regional planning agencies and/or a review of the official planning documents prepared by such agencies, state whether the*

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<sup>2</sup> In 2004, K&O leased the portion of the Line between mileposts 87.0 and 91.0 to Atlantic & Pacific Railroad and Transportation Company ("APR"). See STB Finance Docket No. 34451, *Atlantic & Pacific Railroad and Transportation Company – Lease and Operation Exemption – Line of Kansas & Oklahoma Railroad* (not printed), served July 20, 2004. APR, however, never handled any freight traffic on the portion of the Line they leased and is currently seeking to discontinue service on the 4-mile segment of the Line. See STB Docket No. AB-992X, *Atlantic & Pacific Railroad and Transportation Company – Discontinuance of Service Exemption – in Rice County, KS* (not printed), served March 22, 2006. Moreover, under the lease agreement with APR, K&O remained the primary operator of the Line.

*proposed action is consistent with existing land use plans. Describe any inconsistencies. (ii) Based on consultation with the U.S. Soil Conservation Service, state the effect of the proposed action on any prime agricultural land. (iii) If the action affects land or water uses within a designated coastal zone, include the coastal zone information required by 1105.9. (iv) If the proposed action is an abandonment, state whether or not the right-of-way is suitable for alternative public use under 49 U.S.C. § 10905 and explain why.*

(i) K&O is confident that the proposed abandonment is consistent with existing land use plans. K&O contacted the Rice County Commissioners. See Exhibit 2. To date, no response to this inquiry has been received. A copy of this Report has been mailed to the appropriate local and state agencies for their information and comment.

(ii) The proposed abandonment will not have any detrimental effect on any prime agricultural land. K&O notified the State Conservationist of the proposed abandonment and requested assistance in identifying any potential effects on prime agricultural land. See Exhibit 3. According to the Assistant State Conservationist, the proposed abandonment will have no adverse environmental effect on matters for which the Natural Resources Conservation Service is responsible. See Exhibit 3. A copy of this Report is being supplied to the USDA Natural Resources Conservation Service for its information and further comment.

(iii) The Line does not pass through a designated coastal zone.

(iv) The right-of-way involved does not appear to be suitable for alternative public use other than a recreational trail since it is located in a rural, sparsely populated area. To date, no state or local entity has expressed an interest in the right-of-way.

(4) Energy. (i) Describe the effect of the proposed action on transportation of energy resources. (ii) Describe the effect of the proposed action on recyclable commodities. (iii) State whether the proposed action will result in an increase or decrease in overall energy efficiency and explain why. (iv) If the proposed action will cause diversions from rail to motor carriage of more than: (A) 1,000 rail carloads a year; or (B) an average of 50 rail carloads per mile per

*year for any part of the affected line, quantify the resulting net change in energy consumption and show the data and methodology used to arrive at the figure given.*

(i) The proposed abandonment will have no effect on the transportation of energy resources.

(ii) The proposed abandonment will have no effect on the transportation of recyclable commodities.

(iii) The proposed abandonment will have no effect on overall energy efficiency as no local traffic has been handled on the Line in many years and any overhead traffic can be rerouted.

(iv) The proposed abandonment will not cause diversions of rail traffic to motor carriage, since no local traffic has been handled on the Line in many years and any overhead traffic can be rerouted.

*(5) Air. (i) If the proposed action will result in either: (A) An increase in rail traffic of at least 100 percent (measured in gross ton miles annually) or an increase of at least eight trains a day on any segment of rail line affected by the proposal, or (B) an increase in rail yard activity of at least 100 percent (measured by carload activity), or (C) an average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on any affected road segment, quantify the anticipated effect on air emissions. For a proposal under 49 U.S.C. § 10901 (or § 10505) to construct a new line or reinstitute service over a previously abandoned line, only the eight train a day provision in sub-section (5)(i)(A) will apply. (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 percent (measured in gross ton miles annually) or an increase of at least three trains a day on any segment of rail line; (B) an increase in rail yard activity of at least 20 percent (measured by carload activity); or (C) an average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on a given road segment, then state whether any expected increased emissions are within the parameters established by the State Implementation Plan. However, for a rail construction under 49 U.S.C. § 10901 (or 49 U.S.C. § 10505), or a case involving the reinstatement of service over a previously abandoned line, only the three train a day threshold in this item shall apply. (iii) If transportation of ozone depleting materials (such as nitrogen oxide and freon) is contemplated, identify: the materials and quantity; the frequency of service; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and spills; contingency plans to deal with accidental spills; and the likelihood of an accidental release of ozone depleting materials in the event of a collision or derailment.*

(i) The proposed abandonment will not result in meeting or exceeding the specified thresholds.

(ii) The proposed abandonment will not result in meeting or exceeding the specified thresholds.

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

Not applicable

*(7) Safety. (i) Describe any effects of the proposed action on public health and safety (including vehicle delay time at railroad grade crossings). (ii) If hazardous materials are expected to be transported, identify: the materials and quantity; the frequency of service; whether chemicals are being transported that, if mixed, could react to form more hazardous compounds; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and hazardous spills; the contingency plans to deal with accidental spills; and the likelihood of an accidental release of hazardous materials. (iii) If there are any known hazardous waste sites or sites where there have been known hazardous materials spills on the right-of-way, identify the location of those sites and the types of hazardous materials involved.*

(i) The proposed abandonment will have no detrimental effects on public health and safety. The removal of grade crossings and the associated signs and structures will enhance public safety by eliminating distractions to vehicular traffic crossing the Line.

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

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

*(8) Biological Resources. (i) Based on consultation with the U.S. Fish and Wildlife Service, state whether the proposed action is likely to adversely affect endangered or threatened species or areas designated as a critical habitat, and if so, describe the effects. (ii) State whether wildlife sanctuaries or refuges, National or State parks or forests will be affected, and describe any effects.*

(i) The proposed abandonment will not have an adverse affect on endangered or threatened species or areas designated as a critical habitat. K&O notified the U.S. Fish and Wildlife Service of the proposed abandonment and requested assistance in determining whether endangered or threatened species or areas designated as a critical habitat are likely to be adversely affected. See Exhibit 4. According to the U.S. Fish and Wildlife Service, the proposed abandonment will have no adverse impacts to fish and wildlife resources, including threatened and endangered species. A copy of this Report is being supplied to the U.S. Fish and Wildlife Service for its information and further comment.

(ii) K&O does not believe that any wildlife sanctuaries or refuges, National or State parks or forests would be adversely affected by the proposed abandonment. K&O notified the National Parks Service of the proposed abandonment and requested assistance in identifying any potential effects on wildlife sanctuaries or refuges, National or State parks or forests. See Exhibit 5. To date, no response to this request has been received. A copy of this Report is being supplied to the National Park Service for its information and comment.

*(9) Water. (i) Based on consultation with State water quality officials, state whether the proposed action is consistent with applicable Federal, State or local water quality standards. Describe any inconsistencies. (ii) Based on consultation with the U.S. Army Corps of Engineers, state whether permits under section 404 of the Clean Water Act (33 U.S.C. § 1344) are required for the proposed action and whether any designated wetlands or 100-year flood plains will be affected. Describe the effects. (iii) State whether permits under section 402 of the Clean Water Act (33 U.S.C. § 1342) are required for the proposed action.*

(i) K&O is confident that the proposed abandonment will be consistent with applicable water quality standards. K&O contacted the Kansas Department of Health and Environment (“KDHE”) and the U.S. Environmental Protection Agency (“EPA”) concerning this matter requesting assistance in determining whether the proposed abandonment is consistent with applicable Federal, State, or local water quality standards. See Exhibit 6. The EPA found no regulatory or remedial activity within the rail line’s alignment. According to the EPA, a NPDES stormwater permit may be required depending on the extent of soil disturbance. See Exhibit 6. To date, no response has been received from KDHE. A copy of this Report is being supplied to the EPA and the KDHE for their information and comment.

(ii) K&O is confident that no designated wetlands or 100-year flood plains will be adversely affected by the proposed abandonment. K&O contacted the Corps of Engineers concerning these matters. See Exhibit 7. According to the Corps of Engineers, no Department of Army permit authorization will be required for the proposed abandonment. See Exhibit 7. A copy of this Report is being supplied to the U.S. Army Corps of Engineers for its information and further comment.

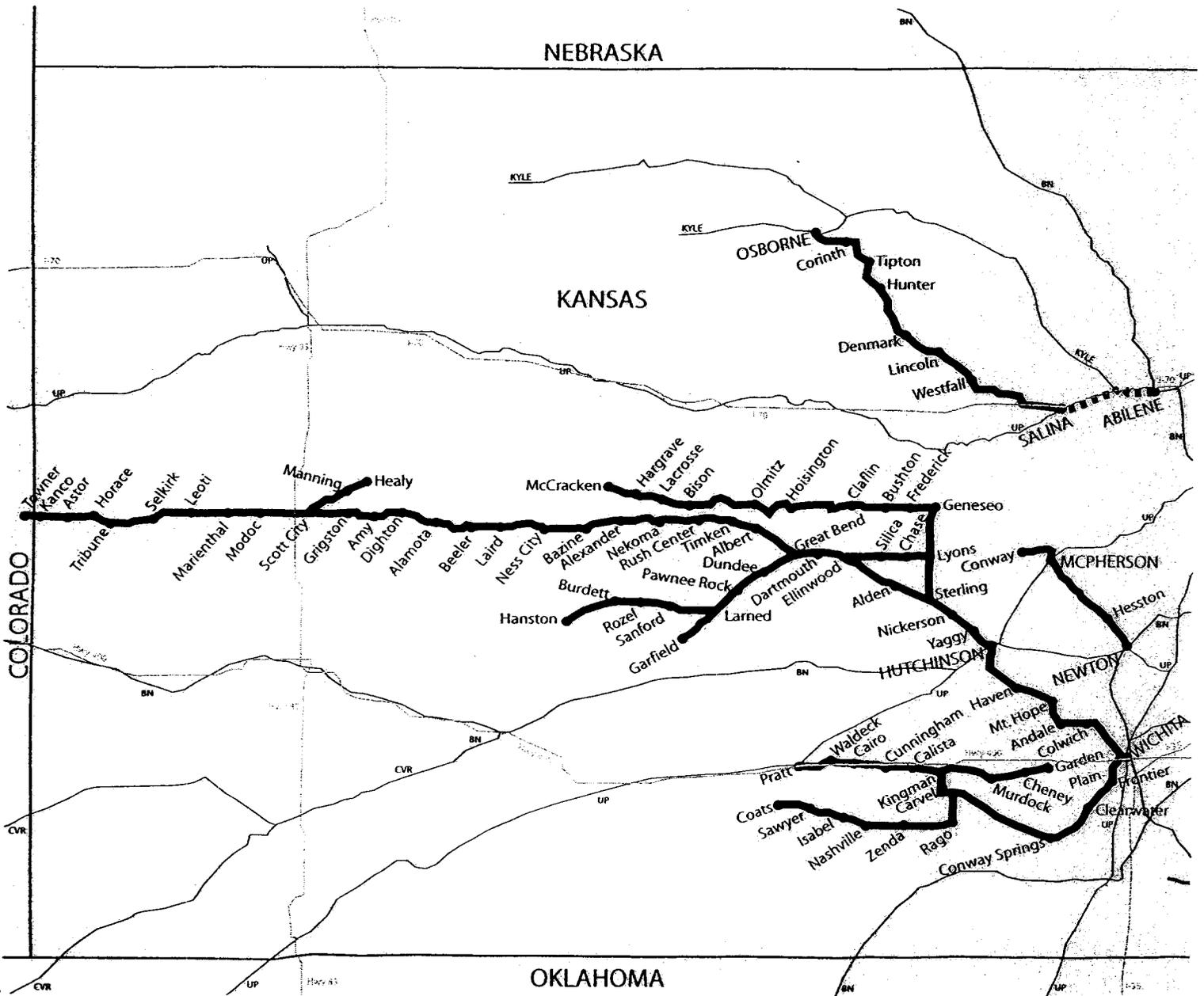
(iii) K&O believes the proposed abandonment will not require the issuance of any permits under Section 402 of the Clean Water Act. K&O contacted the EPA concerning this matter and requested assistance in identifying any potential effects on applicable water quality

standards and determining whether the proposed abandonment is consistent with applicable Federal, State, or local water quality standards. See Exhibit 6. The EPA found no regulatory or remedial activity within the rail line's alignment. See Exhibit 6. A copy of this Report is being supplied to the EPA for its information and further comment.

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

K&O does not expect any adverse environmental impact from the proposed abandonment and, therefore, sees no need for any mitigating actions. K&O will, of course, adhere to any remedial actions suggested by the recipients of this Report and required by the Board.

# EXHIBIT 1



LEGEND:		Interchanges
Kansas & Oklahoma RR (KO)		UP - Hutchinson, McPherson, Salina, Wichita
Kansas & Oklahoma Trackage Rights		BNSF - Abilene, Hutchinson, Newton, Wichita
South Kansas & Oklahoma RR (SKO)		KYLE - Osborne
Kyle Railroad (KYLE)		SKOL - Wichita
Cimmaron Valley Railroad (CVR)		

BALL JANIK LLP

A T T O R N E Y S

1455 F STREET, NW, SUITE 225  
WASHINGTON, D.C. 20005

www.balljanik.com

TELEPHONE 202-638-3307  
FACSIMILE 202-783-6947

KARL MORELL  
OF COUNSEL

kmorell@bjllp.com

January 24, 2006

Rice County Commissioners  
Rice County Courthouse  
101 W. Commercial  
Lyons, KS 67554

**RE: Docket No. AB-853 (Sub-No. 3X), Kansas & Oklahoma  
Railroad, Inc. --Abandonment Exemption--In Rice County,  
Kansas**

Dear Sir/Madam:

Kansas & Oklahoma Railroad, Inc. ("K&O") is planning to file a Notice of Exemption with the Surface Transportation Board ("STB"), on or about March 15, 2006, for K&O to abandon its 6-mile line of railroad located between milepost 85.0, at Chase, and milepost 91.0, at Silica, in Rice County, Kansas. A map of the proposed abandonment is attached.

Pursuant to the STB's environmental regulations at 49 C.F.R., Part 1105, we are advising you of this proposed action so that you may assist us in identifying any potential effects on existing land use plans. We must determine whether the proposed abandonment is inconsistent with existing land use plans.

We would appreciate your review of the proposed abandonment and any comments you may wish to offer. We would also appreciate you providing us with a written response so that we can forward it to the STB.

BALL JANIK LLP

January 24, 2006

Page 2

Thank you in advance for your prompt assistance. If you have any questions concerning this matter, please contact me.

Sincerely,

A handwritten signature in black ink that reads "Karl Morell". The signature is written in a cursive style with a large, prominent initial "K".

Karl Morell

Attorney for:

Kansas & Oklahoma Railroad, Inc.

BALL JANIK LLP

A T T O R N E Y S

1455 F STREET, NW, SUITE 225  
WASHINGTON, D.C. 20005

www.balljanik.com

TELEPHONE 202-638-3307  
FACSIMILE 202-783-6947

KARL MORELL  
OF COUNSEL

kmorell@bjllp.com

January 24, 2006

State Conservationist  
USDA Natural Resource Conservation Service  
760 South Broadway  
Salina, KS 67401-4642

**RE: Docket No. AB-853 (Sub-No. 3X), Kansas & Oklahoma  
Railroad, Inc. --Abandonment Exemption--In Rice County,  
Kansas**

Dear Sirs:

Kansas & Oklahoma Railroad, Inc. ("K&O") is planning to file a Notice of Exemption with the Surface Transportation Board ("STB"), on or about March 15, 2006, for K&O to abandon its 6-mile line of railroad located between milepost 85.0, at Chase, and milepost 91.0, at Silica, in Rice County, Kansas. A map of the proposed abandonment is attached.

Pursuant to the STB's environmental regulations at 49 C.F.R., Part 1105, we are advising you of this proposed action so that you may assist us in identifying any potential effects on prime agricultural land.

We would appreciate your review of the proposed abandonment and any comments you may wish to offer. We would also appreciate you providing us with a written response so that we can forward it to the STB.

BALL JANIK LLP

January 24, 2006

Page 2

Thank you in advance for your prompt assistance. If you have any questions concerning this matter, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Karl Morell". The signature is written in a cursive style with a large, prominent initial "K".

Karl Morell

Attorney for:

Kansas & Oklahoma Railroad, Inc.



*"A Partner in Conservation Since 1935"*

United States Department of Agriculture  
Natural Resources Conservation Service  
9 West 28<sup>th</sup> Suite B  
Hutchinson, Kansas 67502-3453

Phone: 620-663-3501  
FAX: 620-663-3866  
[www.ks.nrcs.usda.gov](http://www.ks.nrcs.usda.gov)

February 16, 2006

Mr. Karl Morell, Attorney  
Ball Janik LLP Attorneys  
1455 F Street, NW  
Suite 225  
Washington, D.C. 20005

Dear Mr. Morell:

Thank you for the opportunity to review the request to abandon 6 miles of track for Kansas & Oklahoma Railroad, Inc. (K&O) in Rice County, Kansas.

Because the project is on lands already owned by K&O, there are no negative impacts to important farmland as defined by the Farmland Protection Policy Act. I see no other adverse environmental effects for which the Natural Resources Conservation Service is responsible for evaluating.

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

Sincerely,

JESS F. CROCKFORD  
Assistant State Conservationist

cc:

Harold L. Klaege, State Conservationist, NRCS, Salina, Kansas  
Lynn E. Thurlow, Soil Conservationist, NRCS, Salina, Kansas  
Ron R. Klein, District Conservationist, NRCS, Lyons, Kansas

BALL JANIK LLP

A T T O R N E Y S

1455 F STREET, NW, SUITE 225  
WASHINGTON, D.C. 20005

www.balljanik.com

TELEPHONE 202-638-3307  
FACSIMILE 202-783-6947

KARL MORELL  
OF COUNSEL

kmorell@bjllp.com

January 24, 2006

U.S. Fish and Wildlife Service  
315 Houston Street, Suite E  
Manhattan, KS 66502-6172

**RE: Docket No. AB-853 (Sub-No. 3X), Kansas & Oklahoma  
Railroad, Inc. --Abandonment Exemption--In Rice County,  
Kansas**

Dear Sirs:

Kansas & Oklahoma Railroad, Inc. ("K&O") is planning to file a Notice of Exemption with the Surface Transportation Board ("STB"), on or about March 15, 2006, for K&O to abandon its 6-mile line of railroad located between milepost 85.0, at Chase, and milepost 91.0, at Silica, in Rice County, Kansas. A map of the proposed abandonment is attached.

Pursuant to the STB's environmental regulations at 49 C.F.R., Part 1105, we are advising you of this proposed action so that you may assist us in determining whether it is likely to adversely affect endangered or threatened species or areas designated as a critical habitat.

We would appreciate your review of the proposed abandonment and any comments you may wish to offer. We would also appreciate you providing us with a written response so that we can forward it to the STB.

BALL JANIK LLP

January 24, 2006

Page 2

Thank you in advance for your prompt assistance. If you have any questions concerning this matter, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Karl Morell". The signature is written in a cursive style with a large, sweeping initial "K".

Karl Morell

Attorney for:

Kansas & Oklahoma Railroad, Inc.



# United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Kansas Field Office  
315 Houston Street, Suite E  
Manhattan, Kansas 66502-6172

February 22, 2006

Karl Morell  
Ball Janik, LLP Attorneys  
1455 F Street, NW, Suite 225  
Washington, DC 20005

RE:

FWS Tracking # 2006-P-0104

Dear Mr. Morell:

This is in response to your letter of January 24, 2006, describing a proposed abandonment of six miles of existing railway line near milepost 85.0, at Chase and milepost 91.0, at Silica, in Rice County, Kansas. We have reviewed this proposal and conclude that there should be no adverse impacts to fish and wildlife resources, including threatened and endangered species. Therefore, the U.S. Fish and Wildlife Service (USFWS) has no objection to your proposal as planned.

The USFWS encourages the Kansas and Oklahoma Railway Company to keep the right-of-way in a natural condition for the benefit of native wildlife, plants, and the public. You may wish to contact the National Park Service, Omaha, Nebraska, 402-221-3350, for more information on the "Rails to Trails" Program. You may also wish to contact the Kansas Department of Wildlife and Parks in Pratt, Kansas, 620-672-5911, to determine their interest in "Railbanking" of this potential abandoned line.

Thank you for the opportunity to comment on this proposal.

Sincerely,

for: Michael J. LeValley  
Field Supervisor

cc: KDWP, Pratt, KS (Environmental Services)

BALL JANIK LLP

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WASHINGTON, D.C. 20005

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TELEPHONE 202-638-3307  
FACSIMILE 202-783-6947

KARL MORELL  
OF COUNSEL

kmorell@bjllp.com

January 24, 2006

National Park Service  
Recreational Resources Assistance Division  
1849 C Street, NW  
Washington, D.C. 20240-0001

**RE: Docket No. AB-853 (Sub-No. 3X), Kansas & Oklahoma  
Railroad, Inc. --Abandonment Exemption--In Rice County,  
Kansas**

Dear Sirs:

Kansas & Oklahoma Railroad, Inc. ("K&O") is planning to file a Notice of Exemption with the Surface Transportation Board ("STB"), on or about March 15, 2006, for K&O to abandon its 6-mile line of railroad located between milepost 85.0, at Chase, and milepost 91.0, at Silica, in Rice County, Kansas. A map of the proposed abandonment is attached.

Pursuant to the STB's environmental regulations at 49 C.F.R., Part 1105, we are advising you of this proposed action so that you may assist us in identifying any potential effects on wildlife sanctuaries or refuges, National or State parks or forests.

We would appreciate your review of the proposed abandonment and any comments you may wish to offer. We would also appreciate you providing us with a written response so that we can forward it to the STB.

BALL JANIK LLP

January 24, 2006

Page 2

Thank you in advance for your prompt assistance. If you have any questions concerning this matter, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Karl Morell". The signature is written in black ink and is positioned above the printed name.

Karl Morell

Attorney for:

Kansas & Oklahoma Railroad, Inc.

**BALL JANIK** LLP

**EXHIBIT 6**

A T T O R N E Y S

1455 F STREET, NW, SUITE 225  
WASHINGTON, D.C. 20005

www.balljanik.com

TELEPHONE 202-638-3307  
FACSIMILE 202-783-6947

KARL MORELL  
OF COUNSEL

kmorell@bjllp.com

January 24, 2006

Department of Health and Environment  
Division of Environment  
1000 S.W. Jackson Street  
Suite 400  
Topeka, KS 66612-1367

**RE: Docket No. AB-853 (Sub-No. 3X), Kansas & Oklahoma  
Railroad, Inc. --Abandonment Exemption--In Rice County,  
Kansas**

Dear Sirs:

Kansas & Oklahoma Railroad, Inc. ("K&O") is planning to file a Notice of Exemption with the Surface Transportation Board ("STB"), on or about March 15, 2006, for K&O to abandon its 6-mile line of railroad located between milepost 85.0, at Chase, and milepost 91.0, at Silica, in Rice County, Kansas. A map of the proposed abandonment is attached.

Pursuant to the STB's environmental regulations at 49 C.F.R., Part 1105, we are advising you of this proposed action so that you may assist us in identifying any potential effects on applicable water quality standards. We also seek your assistance in determining whether the proposed abandonment is consistent with applicable Federal, State or local water quality standards. K&O does not believe any permits under Section 402 of the Clean Water Act will be required.

We would appreciate your review of the proposed abandonment and any comments you may wish to offer. We would also appreciate you providing us with a written response so that we can forward it to the STB.

BALL JANIK LLP

January 24, 2006

Page 2

Thank you in advance for your prompt assistance. If you have any questions concerning this matter, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Karl Morell". The signature is fluid and cursive, with the first name "Karl" being more prominent than the last name "Morell".

Karl Morell

Attorney for:

Kansas & Oklahoma Railroad, Inc.

# BALL JANIK LLP

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WASHINGTON, D.C. 20005

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TELEPHONE 202-638-3307  
FACSIMILE 202-783-6947

KARL MORELL  
OF COUNSEL

kmorell@bjllp.com

January 24, 2006

U.S. Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, KS 66101-2907

**RE: Docket No. AB-853 (Sub-No. 3X), Kansas & Oklahoma  
Railroad, Inc. --Abandonment Exemption--In Rice County,  
Kansas**

Dear Sirs:

Kansas & Oklahoma Railroad, Inc. ("K&O") is planning to file a Notice of Exemption with the Surface Transportation Board ("STB"), on or about March 15, 2006, for K&O to abandon its 6-mile line of railroad located between milepost 85.0, at Chase, and milepost 91.0, at Silica, in Rice County, Kansas. A map of the proposed abandonment is attached.

Pursuant to the STB's environmental regulations at 49 C.F.R., Part 1105, we are advising you of this proposed action so that you may assist us in identifying any potential effects on applicable water quality standards. We also seek your assistance in determining whether the proposed abandonment is consistent with applicable Federal, State or local water quality standards. K&O does not believe any permits under Section 402 of the Clean Water Act will be required.

We would appreciate your review of the proposed abandonment and any comments you may wish to offer. We would also appreciate you providing us with a written response so that we can forward it to the STB.

BALL JANIK LLP

January 24, 2006

Page 2

Thank you in advance for your prompt assistance. If you have any questions concerning this matter, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Karl Morell".

Karl Morell

Attorney for:

Kansas & Oklahoma Railroad, Inc.

## Morell, Karl

---

**From:** Cothorn.Joe@epamail.epa.gov  
**Sent:** Thursday, February 09, 2006 2:16 PM  
**To:** Morell, Karl  
**Subject:** STB Docket No. AB-853 (Sub-No. 3X) Kansas & Oklahoma Railroad, Inc. Abandonment Exemption in Rice County, Kansas

Dear Mr. Morell,

This e-mail responds to your January 24, 2006 consultation request regarding the proposed rail line abandonment from Milepost 85.0 (Chase) to Milepost 91.0 (Silica) in Rice County, Kansas.

In evaluating this action, I referred to EPA Region 7's Geographic Information Systems for spatial relationships of environmentally regulated facilities and remediation sites. In this evaluation, no regulatory or remedial activity was found to be within the rail line's alignment that would influence the abandonment proposal. Depending upon the extent of soil disturbance along this route, a NPDES stormwater permit (CWA 402 delegated to State of Kansas) may be needed.

Kansas Department of Health and Environment program and contact information can be found here:  
<http://www.kdheks.gov/stormwater/index.html>

Thank you for including EPA in your coordination efforts.

Sincerely,

Joseph E. Cothorn  
NEPA Team Leader  
U.S. Environmental Protection Agency  
Region 7 - Kansas City  
(913) 551-7148  
cothorn.joe@epa.gov

**BALL JANIK** LLP

**EXHIBIT 7**

A T T O R N E Y S

1455 F STREET, NW, SUITE 225  
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TELEPHONE 202-638-3307  
FACSIMILE 202-783-6947

KARL MORELL  
OF COUNSEL

kmorell@bjllp.com

January 24, 2006

U.S. Army Engineer District, Tulsa  
1645 S. 101<sup>st</sup> East Avenue  
Tulsa, Oklahoma 74128-4609

**RE: Docket No. AB-853 (Sub-No. 3X), Kansas & Oklahoma  
Railroad, Inc. --Abandonment Exemption--In Rice County,  
Kansas**

Dear Sirs:

Kansas & Oklahoma Railroad, Inc. ("K&O") is planning to file a Notice of Exemption with the Surface Transportation Board ("STB"), on or about March 15, 2006, for K&O to abandon its 6-mile line of railroad located between milepost 85.0, at Chase, and milepost 91.0, at Silica, in Rice County, Kansas. A map of the proposed abandonment is attached.

Pursuant to the STB's environmental regulations at 49 C.F.R., Part 1105, we are advising you of this proposed action so that you may assist us in identifying any potential effects on designated wetlands or 100-year flood plains. K&O does not believe any permits under Section 404 of the Clean Water Act will be required.

We would appreciate your review of the proposed abandonment and any comments you may wish to offer. We would also appreciate you providing us with a written response so that we can forward it to the STB.

BALL JANIK LLP

January 24, 2006

Page 2

Thank you in advance for your prompt assistance. If you have any questions concerning this matter, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Karl Morell".

Karl Morell

Attorney for:

Kansas & Oklahoma Railroad, Inc.



**DEPARTMENT OF THE ARMY**  
KANSAS CITY DISTRICT, CORPS OF ENGINEERS  
REGULATORY BRANCH – KANOPOLIS SATELLITE OFFICE  
107 RIVERSIDE DRIVE  
MARQUETTE, KANSAS 67464

REPLY TO  
ATTENTION OF:

February 16, 2006

Kanopolis Satellite Office  
(200600878)  
(Rice, KS, NPR)

Mr. Karl Morell  
Ball Janik LLP  
1455 F Street NW, Suite 225  
Washington, District of Columbia, 20005

Dear Mr. Morell:

This is in response to your letter received on February 15, 2006, requesting a Department of the Army (DA) permit determination concerning the proposed abandonment of 6.0 miles of railroad located between mile post 85.0 at Chase and mile post 91.0 at Silica. The approximate segment center is located in Section 35, Township 19 south, Range 10 west, Rice County, Kansas.

The Corps of Engineers has jurisdiction over all waters of the United States. Discharges of dredged or fill material in waters of the United States, including wetlands, require prior authorization from the Corps under Section 404 of the Clean Water Act (33 USC 1344). The implementing regulation for this Act is found at 33 CFR 320-330.

This letter contains an approved jurisdictional determination for the proposed project. If you object to this determination, you may request an administrative appeal under Corps regulations at 33 C.F.R. Part 331. Enclosed you will find a Notification of Administrative Appeal Options and Process (NAP) and Request for Appeal (RFA) form. If you request to appeal this (determination/decision) you must submit a completed (RFA) form to the Northwestern Division Office at the following address:

Mores V. Bergman, Appeals Review Officer  
U.S. Army Corps of Engineers  
Northwestern Division (ATTN: CENWD-CM-OR)  
12565 West Center Road  
Omaha, NE 68144-3869  
Voice 402-697-2533, FAX 402-697-2538

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 C.F.R. part 331.5, and that it has been received by the Division Office within 60 days of the date of the NAP. Should you decide to submit and RFA form, it must be received at the above address by April 16, 2006.

It is not necessary to submit an RFA form to the Division Office if you do not object to the determination in this letter.

We have reviewed the information furnished and have determined that the proposed activity will not involve the discharge of dredged or fill material in waters of the United States. Therefore, Department of the Army permit authorization is not required. Other Federal, state and/or local permits may be required, however, and you should verify this yourself.

Mr. Matthew J. Mikulecky, Regulatory Specialist, reviewed the information furnished and made this determination. If you have any questions concerning this matter, please feel free to contact Mr. Mikulecky at 785-546-2130 (FAX 785-546-2050).

Enclosure

Copies Furnished:

Environmental Protection Agency,  
Watershed Planning and Implementation Branch wo/enclosure  
Kansas Department of Wildlife  
and Parks wo/enclosure  
Kansas Department of Agriculture wo/enclosure

## NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Kansas & Oklahoma Railroad, Inc.		File Number: 200600878	Date: Feb. 16, 2006
Attached is:		See Section below	
	A. INITIAL PROFFERED PERMIT (Standard Permit or Letter of Permission)	A	
	B. PROFFERED PERMIT (Standard Permit or Letter of Permission)	B	
	C. PERMIT DENIAL	C	
<b>X</b>	D. APPROVED JURISDICTIONAL DETERMINATION	D	
	E. PRELIMINARY JURISDICTIONAL DETERMINATION	E	

**SECTION I -** The following identifies your rights and options regarding a modification, reconsideration, or administrative appeal of the above decision. Additional information may be found at <http://www.usace.army.mil/inet/functions/cw/cecwo/reg> or Corps regulations at 33 CFR Part 331.

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

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

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

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

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

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

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

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

**SECTION II**—Fill out this section and return this form to the appropriate office only if submitting a request for modification or reconsideration to the District Engineer, or if submitting a request for Administrative Appeal to the Division Engineer. All such submittals must be made within 60 days of the date of this notice.

Submit the following requests to the District Engineer

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

Submit the following requests to the Division Engineer

- B. Administrative Appeal of a PROFFERED PERMIT (Item B)
- C. Administrative Appeal of a PERMIT DENIAL (Item C)
- D. Administrative Appeal of an APPROVED JURISDICTIONAL DETERMINATION (Item D APPEAL) (for reasons other than reconsideration of an approved JD based on new information)

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

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

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

**POINT OF CONTACT FOR QUESTIONS OR INFORMATION:**

If you have questions regarding this decision and/or the appeal process you may contact:

DISTRICT ENGINEER  
**Attn: Joseph S. Hughes**  
 Chief Regulatory Branch  
 U.S. Army Engineer District, Kansas City  
 601 East 12<sup>th</sup> Street, Room 706  
 Kansas City, MO 64106-2896  
 Telephone: 816-983-3990

(Use this address for submittals to the District Engineer)

If you wish to submit an appeal or have questions regarding the appeal process you may contact:

DIVISION ENGINEER  
**Attn: Mores V. Bergman**  
 Appeal Review Officer  
 U.S. Army Engineer Division, Northwestern Division  
 12565 West Center Road  
 Omaha, NE 68144-3869  
 Telephone: 402-697-2533

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

\_\_\_\_\_  
 Signature of appellant or agent.

Date: \_\_\_\_\_

Telephone number: \_\_\_\_\_

JURISDICTIONAL DETERMINATION  
U.S. Army Corps of Engineers

Revised 8/13/04

DISTRICT OFFICE: Kansas City District (CENWK)  
FILE NUMBER: 200600878.

PROJECT LOCATION INFORMATION: Section 35, Township 19 south, Range 10 west.

State: Kansas  
County: Rice County  
Center coordinates of site (latitude/longitude): 38-21-06 / 98-23-31.  
Approximate size of area (parcel) reviewed, including uplands: 640 + acres.  
Name of nearest waterway: Spring Creek.  
Name of watershed: Cow (11030011)

JURISDICTIONAL DETERMINATION

Completed: Desktop determination  Date: February 16, 2006.  
Site visit(s)  Date(s):

Jurisdictional Determination (JD):

- Preliminary JD - Based on available information,  there appear to be (or)  there appear to be no "waters of the United States" and/or "navigable waters of the United States" on the project site. A preliminary JD is not appealable (Reference 33 CFR part 331).
- Approved JD - An approved JD is an appealable action (Reference 33 CFR part 331).  
Check all that apply:
- There are "navigable waters of the United States" (as defined by 33 CFR part 329 and associated guidance) within the reviewed area. Approximate size of jurisdictional area:
- There are "waters of the United States" (as defined by 33 CFR part 328 and associated guidance) within the reviewed area. Approximate size of jurisdictional area:
- There are "isolated, non-navigable, intra-state waters or wetlands" within the reviewed area.  
 Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No Jurisdiction.

BASIS OF JURISDICTIONAL DETERMINATION:

A. Waters defined under 33 CFR part 329 as "navigable waters of the United States":

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

B. Waters defined under 33 CFR part 328.3(a) as "waters of the United States":

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

**Rationale for the Basis of Jurisdictional Determination (applies to any boxes checked above).** *If the jurisdictional water or wetland is not itself a navigable water of the United States, describe connection(s) to the downstream navigable waters. If B(1) or B(3) is used as the Basis of Jurisdiction, document navigability and/or interstate commerce connection (i.e., discuss site conditions, including why the waterbody is navigable and/or how the destruction of the waterbody could affect interstate or foreign commerce). If B(2, 4, 5 or 6) is used as the Basis of Jurisdiction, document the rationale used to make the determination. If B(7) is used as the Basis of Jurisdiction, document the rationale used to make adjacency determination:* The abandonment of a railroad segment will not involve a discharge of dredged or fill material into waters of the United States.

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

- Ordinary High Water Mark indicated by:
- clear, natural line impressed on the bank
  - the presence of litter and debris
  - changes in the character of soil
  - destruction of terrestrial vegetation
  - shelving
  - other:
- High Tide Line indicated by:
- oil or scum line along shore objects
  - fine shell or debris deposits (foreshore)
  - physical markings/characteristics
  - tidal gages
  - other:
- Mean High Water Mark indicated by:
- survey to available datum;  physical markings;  vegetation lines/changes in vegetation types.
- Wetland boundaries, as shown on the attached wetland delineation map and/or in a delineation report prepared by:

**Basis For Not Asserting Jurisdiction:**

- The reviewed area consists entirely of uplands.
- Unable to confirm the presence of waters in 33 CFR part 328(a)(1, 2, or 4-7).
- Headquarters declined to approve jurisdiction on the basis of 33 CFR part 328.3(a)(3).
- The Corps has made a case-specific determination that the following waters present on the site are not Waters of the United States:
- Waste treatment systems, including treatment ponds or lagoons, pursuant to 33 CFR part 328.3.
  - Artificially irrigated areas, which would revert to upland if the irrigation ceased.
  - Artificial lakes and ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.
  - Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.
  - Water-filled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States found at 33 CFR 328.3(a).
  - Isolated, intrastate wetland with no nexus to interstate commerce.
  - Prior converted cropland, as determined by the Natural Resources Conservation Service. Explain rationale:
  - Non-tidal drainage or irrigation ditches excavated on dry land. Explain rationale:
  - Other (explain): Proposal to abandon a railroad segment will not involve a discharge of dredged or fill material into waters of the United States.

**DATA REVIEWED FOR JURISDICTIONAL DETERMINATION (mark all that apply):**

- Maps, plans, plots or plat submitted by or on behalf of the applicant.
- Data sheets prepared/submitted by or on behalf of the applicant.
- This office concurs with the delineation report, dated \_\_\_\_\_, prepared by (company):
- This office does not concur with the delineation report, dated \_\_\_\_\_, prepared by (company):
- Data sheets prepared by the Corps.
- Corps' navigable waters' studies:
- U.S. Geological Survey Hydrologic Atlas:
- U.S. Geological Survey 7.5 Minute Topographic maps: .
- U.S. Geological Survey 7.5 Minute Historic quadrangles: Chase & Raymond.
- U.S. Geological Survey 15 Minute Historic quadrangles:
- USDA Natural Resources Conservation Service Soil Survey:
- National wetlands inventory maps:
- State/Local wetland inventory maps:
- FEMA/FIRM maps (Map Name & Date):
- 100-year Floodplain Elevation is: \_\_\_\_\_ (NGVD)
- Aerial Photographs (Name & Date):
- Other photographs (Date):
- Advanced Identification Wetland maps:
- Site visit/determination conducted on:
- Applicable/supporting case law:
- Other information (please specify): .

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

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

**HISTORIC REPORT**

**(49 C.F.R. 1105.8)**

**Docket No. AB-853 (Sub-No. 3X)**

**KANSAS & OKLAHOMA RAILROAD, INC.  
--ABANDONMENT EXEMPTION--  
IN RICE COUNTY, KANSAS**

The Historic Report should contain the information required by 1105.7(e)(1) of the Environmental Report. The following is excerpted from the Environmental Report prepared for the proposed abandonment:

*(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.*

Kansas & Oklahoma Railroad, Inc. ("K&O"), proposes to abandon its 6-mile line of railroad located between milepost 85.0, at Chase, and milepost 91.0, at Silica, in Rice County, Kansas (the "Line"). Upon receipt of abandonment authority, K&O intends to remove the rail, track material, and crossties. There are currently no plans to remove the one bridge located on the Line.

K&O acquired the Line in June 2001 from Central Kansas Railway, L.L.C.<sup>1</sup> To the best of K&O's knowledge, no local traffic has moved over the Line in many years, if ever. Any overhead traffic can be rerouted over an essentially parallel line owned by K&O.

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<sup>1</sup> See STB Docket No. 34030, *Kansas & Oklahoma Railroad, Inc. - Acquisition Exemption - Central Kansas Railway, L.L.C.* (not printed), served June 12, 2001.

The Line has had no traffic in recent years and has recently been used for car storage.<sup>2</sup>

In addition, no maintenance has been performed on this dormant Line for some time.

Therefore, the proposed abandonment will have no impact on rail freight operations and maintenance practices on the Line.

The only alternative to abandonment would be not to abandon the Line thereby forcing K&O to pass the opportunity costs of retaining the Line to other K&O customers. This would not be a prudent use of carrier resources.

A map of the proposed abandonment is attached hereto as Exhibit 1.

### HISTORIC REPORT

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

Maps and the identification of all structures on the Lines that are 50 years old or older have been supplied to the Kansas State Historical Society ("KSHS"). See Exhibit 2.

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;*

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<sup>2</sup> In 2004, K&O leased the portion of the Line between mileposts 87.0 and 91.0 to Atlantic & Pacific Railroad and Transportation Company ("APR"). *See* STB Finance Docket No. 34451, *Atlantic & Pacific Railroad and Transportation Company - Lease and Operation Exemption - Line of Kansas & Oklahoma Railroad* (not printed), served July 20, 2004. APR, however, never handled any freight traffic on the portion of the Line they leased and is currently seeking to discontinue service on the 4-mile segment of the Line. *See* STB Docket No. AB-992X, *Atlantic & Pacific Railroad and Transportation Company - Discontinuance of Service Exemption - in Rice County, KS* (not printed), served March 22, 2006. Moreover, under the lease agreement with APR, K&O remained the primary operator of the Line.

The right-of-way is predominately 100 feet in width. The 6-mile rail line is located between Chase and Silica, in Rice County, Kansas, beginning at milepost 85.0, at Chase, and running generally in a westerly direction to milepost 91.0, at Silica. The Line traverses a predominately flat, rural area.

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

The only structure on the Line associated with the proposed abandonment that is 50 years old or older is one bridge. The bridge is an open deck wood pile trestle which is of quite common design and construction and of no historical significance. A more detailed description and picture of the bridge is contained in Exhibit 2.

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;*

There is one bridge located on the Line which is fifty years old or older. The bridge was originally constructed in 1911. K&O is not in possession of any engineering documents regarding the maintenance or repair of this bridge.

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;*

To the best of K&O's knowledge, the Line was previously used primarily to transport overhead movements of grain and grain products. No local traffic has moved over the Line in many years, if ever.

The Line is in fair condition and has not seen any traffic in recent years. In order to restart freight operations, rehabilitation would be required. Because no traffic has moved on the

Line in many years, no changes to current transportation patterns are anticipated upon the abandonment of the Line.

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;*

There are no available individual drawings for the bridge on the Line. The bridge is quite common in design and construction and is of no historical significance. It is typical of many bridges found throughout North America.

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

The bridge is quite common in design and construction. It has no historical significance as to the history of railroad construction or operation. It is a common structure found on numerous railroads throughout North America. According to the KSHS, the proposed project will not adversely affect any property listed or eligible for listing on the National Register of Historic Places. See Exhibit 3. There are also no known archeological resources in the project area.

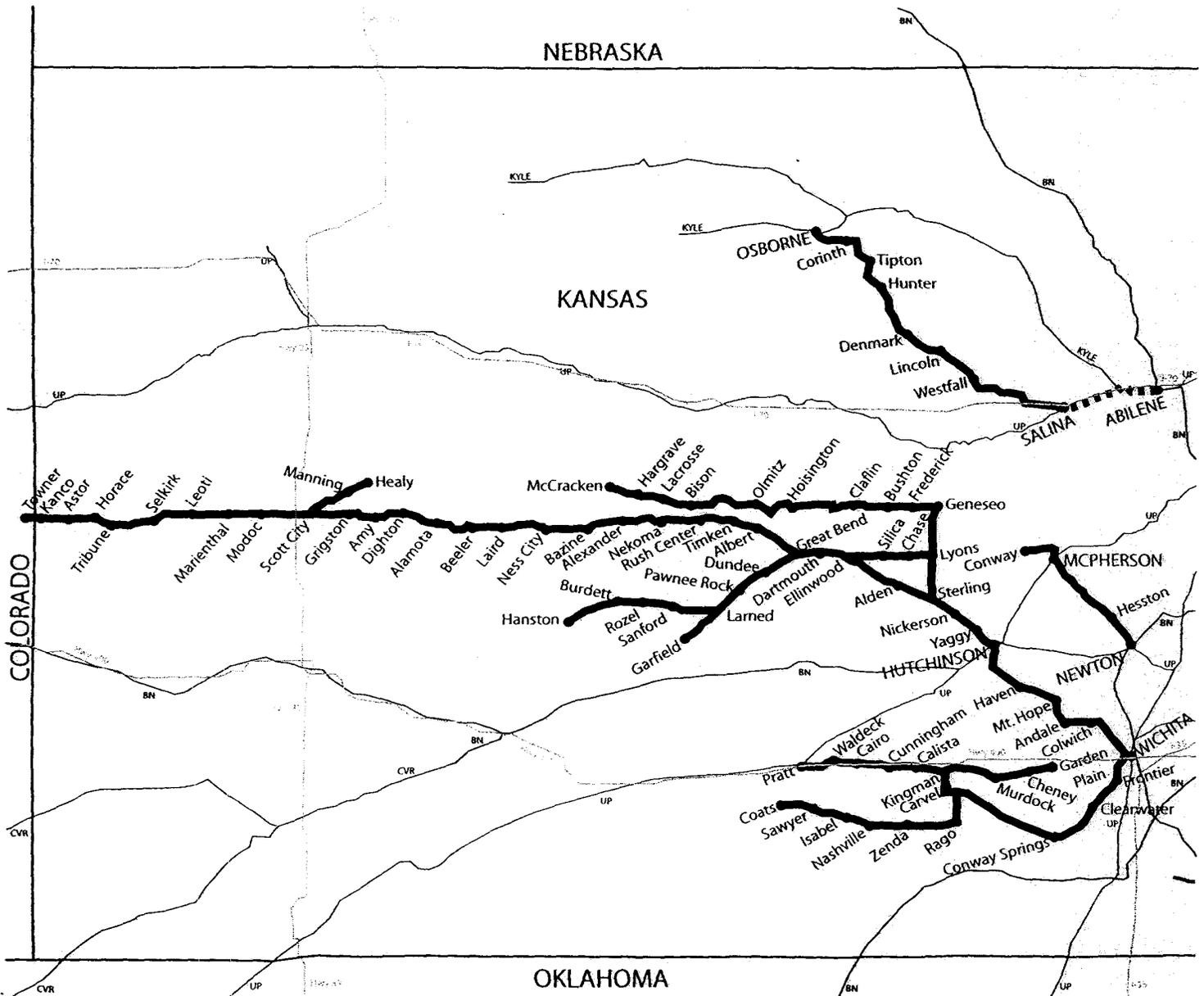
8. *A description (based on readily available information in the railroad's possession) of any known prior subsurface ground disturbance or fill, environmental conditions (naturally occurring or manmade) that might affect the archeological recovery of resources (such as swampy conditions or the presence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

There are no existing records as to the nature of any known subsurface ground disturbance or fill, or environmental condition that might affect the archeological recovery of any potential resources.

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

K&O does not foresee the likelihood that any additional information will need to be supplied in association with the proposed line abandonment other than that information previously submitted. But, if any additional information is requested, K&O will promptly supply the necessary information.

# EXHIBIT 1



LEGEND:		
Kansas & Oklahoma RR (KO)		<b>Interchanges</b>
Kansas & Oklahoma Trackage Rights		UP - Hutchinson, McPherson, Salina, Wichita
South Kansas & Oklahoma RR (SKO)		BNSF - Abilene, Hutchinson, Newton, Wichita
Kyle Railroad (KYLE)		KYLE - Osborne
Cimmaron Valley Railroad (CVR)		SKOL - Wichita

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KARL MORELL  
OF COUNSEL

kmorell@bjllp.com

February 13, 2006

Kansas State Historical Society  
6425 S.W. 6<sup>th</sup> Avenue  
Topeka, KS 66615-1099

**RE: Docket No. AB-853 (Sub-No. 3X), Kansas & Oklahoma  
Railroad, Inc. --Abandonment Exemption--In Rice County,  
Kansas**

Dear Sir/Madam:

Kansas & Oklahoma Railroad, Inc. ("K&O") is planning to file a Notice of Exemption with the Surface Transportation Board ("STB"), on or about March 15, 2006, for K&O to abandon its 6-mile line of railroad located between milepost 85.0, at Chase, and milepost 91.0, at Silica, in Rice County, Kansas. A map of the proposed abandonment is attached. One of the requirements for this filing with the STB is that the carrier contact the State Historic Preservation Office regarding the proposed abandonment.

Enclosed are two U.S. Geological Survey maps depicting the area where the rail line is located. The proposed abandonment will involve the removal of the rail, track material, and crossties; however, there are currently no plans to remove any existing structures along the track.

The rail line K&O seeks to abandon is located in Rice County, Kansas. The line begins at milepost 85.0, at Chase, and extends generally in a westerly direction to the end of the line at milepost 91.0, at Silica. The line crosses through predominately flat, rural areas.

There is one bridge on the rail line between Chase and Silica that is 50 years old or older. It is located at milepost 85.1 and is an open deck 6-bents bridge. This structure is quite common in design and construction and, in K&O's view, has no historical significance. A picture of the bridge will be forwarded to you shortly.

BALL JANIK LLP

February 13, 2006

Page 2

We will send you a copy of the Historic Report as soon as it is completed. If I can of further assistance regarding this matter, please call me at (202) 638-3307.

Sincerely,

A handwritten signature in cursive script that reads "Karl Morell".

Karl Morell

Attorney for

Kansas & Oklahoma Railroad, Inc.

Enclosures

**BALL JANIK LLP**

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KARL MORELL  
OF COUNSEL

[kmorell@bjllp.com](mailto:kmorell@bjllp.com)

February 24, 2006

Kansas State Historical Society  
6425 S.W. 6<sup>th</sup> Avenue  
Topeka, KS 66615-1099

**RE: Docket No. AB-853 (Sub-No. 3X), Kansas & Oklahoma  
Railroad, Inc. --Abandonment Exemption--In Rice County,  
Kansas**

Dear Sir/Madam:

On February 13, 2006, we forwarded to you a letter concerning the proposed abandonment by Kansas & Oklahoma Railroad, Inc. ("K&O") of its 6-mile line of railroad located between milepost 85.0, at Chase, and milepost 91.0, at Silica, in Rice County, Kansas. We enclosed two U.S. Geological Survey maps depicting the area where the rail line is located.

In the February 13<sup>th</sup> letter, we pointed out that there is one bridge on the rail line between Chase and Silica that is 50 years old or older. It is located at milepost 85.1 and is an open deck 6-bents bridge. Enclosed please find a picture and a more detailed description of the bridge at milepost 85.1

If I can of further assistance regarding this matter, please call me at (202) 638-3307.

Sincerely,



Karl Morell  
Attorney for  
Kansas & Oklahoma Railroad, Inc.

Enclosures

# Kansas & Oklahoma Railroad



Bridge 85.1

# Kansas & Oklahoma Railroad

LINE: Ellinwood Industrial Lead

## INSPECTION SUMMARY

BRIDGE # **85.1**

MILEPOST: 85.10

SECTION# 1

TYPE: ODPT

LOCATION: Chase, KS

INSPECTION DATE: 11/ 1/2005

INSPECTOR: G. Grumke & D. Glick

## Findings:

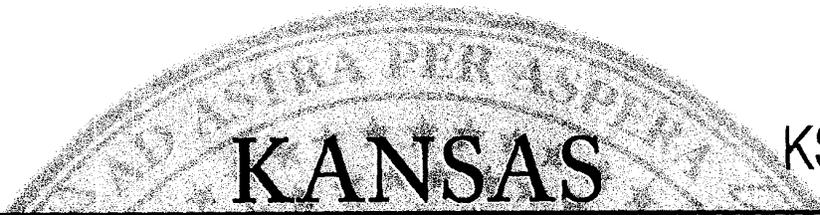
- Bent 1  
Pile 4 - Reject  
1" Gap over Pile 2  
1" Gap over Pile 3  
Cap rolling East
- Bent 3  
Pile 4 - Reject
- Bent 4  
1/4" Gap over Pile 2  
1/4" Gap over Pile 3
- Bent 5  
Pile 4 - Possible Reject
- Bent 6  
1/2" Tapered Gap over Pile 1  
1/2" Tapered Gap over Pile 2  
1/2" Tapered Gap over Pile 3  
1/2" Tapered Gap over Pile 4

Ties - Fair (12 reject)  
Headwalls - Poor  
Approaches - Low (losing trackbed)

## Recommended Work and Work Accomplished

### RECOMMENDED WORK

ITEM #	REF #	PRIORITY	WHO FIXES	RECOMMENDED WORK
1	1.9	2	RAILROAD	Add ballast and tamp up both approaches.
2	1.3	2	OSMOSE	Cut Pile tops down and: - Install an 8" Subcap on existing cap of Bent 1 (4 pile bent)
3	1.11	3	OSMOSE	Post: - Pile 4 of Bent 1 (4 pile bent)
4	1.10	3	OSMOSE	Replace: - Both headwalls
5	1.7	3	OSMOSE	Install: - Wingwalls at West approach - Wingwalls at East approach
6	1.5	3	OSMOSE	Cut Pile tops down and: - Install an 8" Subcap on existing cap of Bent 6
7	1.8	4	OSMOSE	In-place preservatively treat piles, caps and stringers.
8	1.4	4	OSMOSE	Spot replace 12 bridge ties.
9	1.2	4	OSMOSE	Shim or Epoxy: - Over Pile 2 of Bent 4 - Over Pile 3 of Bent 4
10	1.1	4	OSMOSE	Post: - Pile 4 of Bent 3
11	1.6	5	RAILROAD	Monitor: - Pile 4 of Bent 5



KSR&C No. 06-02-155

Kansas State Historical Society  
Cultural Resources Division

KATHLEEN SEBELIUS, GOVERNOR

February 24, 2006

Karl Morell, Attorney  
Ball Janik LLP  
1455 F Street NW Suite 225  
Washington DC 20005

RE: Abandonment Exemption for K&O Rail Line Near Silica – Docket No. AB-853 (Sub-No.3X)  
Rice County

Dear Mr. Morell:

Our staff has reviewed the materials received February 13, 2006 regarding the above referenced project in accordance with 36 CFR 800. The SHPO has determined the proposed project will not adversely affect any property listed or eligible for listing on the National Register of Historic Places.

If you have any questions regarding this review, please contact Robert Bettis (785) 272-8681 ext. 226.

Sincerely,

Jennie Chinn  
State Historic Preservation Officer

for  
Patrick Zollner  
Deputy State Historic Preservation Officer