

BALL JANIK LLP

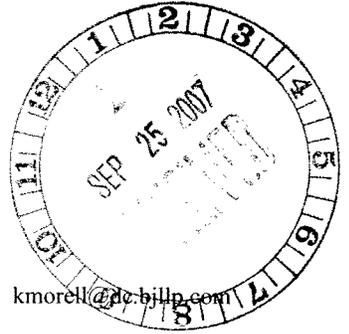
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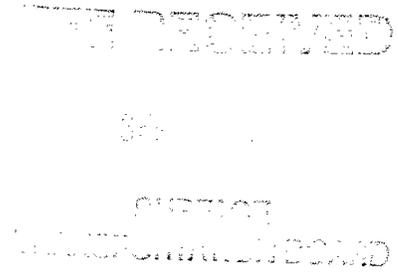
KARL MORELL



September 25, 2007

The Honorable Vernon Williams
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423

220331



Re: STB Docket No. AB-1013X, Kaw River Railroad, Inc. –
Discontinuance of Service Exemption – In Clay County, Missouri

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 \$3,200 filing fee.

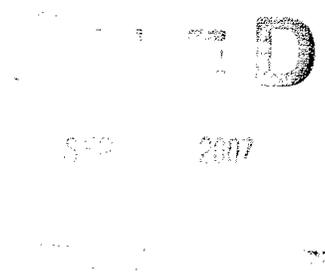
Kaw River Railroad, Inc. ("KRR") consulted with the Section of Environmental Analysis ("SEA") and was informed by SEA that they had no objection to KRR's use in this proceeding of the Environmental and Historic Reports filed by BNSF Railway Company in STB Docket No. AB-6 (Sub-No. 450X).

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



ENTERED
Office of Proceedings

SEP 25 2007

Office of
Public Record

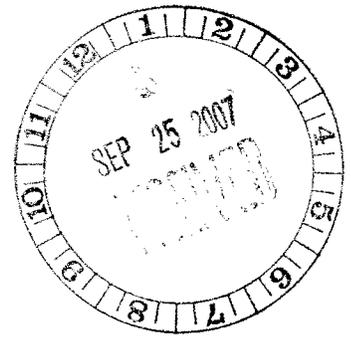
Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB-1013X

KAW RIVER RAILROAD, INC.
-- DISCONTINUANCE OF SERVICE EXEMPTION --
IN CLAY COUNTY, MISSOURI

NOTICE OF EXEMPTION



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

Attorney for:
KAW RIVER RAILROAD, INC.

Dated: September 25, 2007

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB-1013X

KAW RIVER RAILROAD, INC.
-- DISCONTINUANCE OF SERVICE EXEMPTION --
IN CLAY COUNTY, MISSOURI

NOTICE OF EXEMPTION

Kaw River Railroad, Inc. ("KRR") files this Verified Notice of Exemption pursuant to the class exemption at 49 C.F.R. § 1152.50 to discontinue service over the 0.27-mile rail line located between Milepost 199.86 and Milepost 200.13, in Kearney, Clay County Missouri (the "Line").

1. Proposed consummation date.

The proposed consummation date is November 14, 2007.

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.

Kaw River Railroad, Inc.

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

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

(3) Relief sought.

KRR seeks to use the class exemption at 49 C.F.R. § 1152.50 to discontinue its lease operations over the 0.27-mile rail line located between Milepost 199.86 and Milepost 200.13 in Kearney, Clay County, Missouri.¹ There has been no local or overhead traffic on the Line in over two years. The Line is stub-ended and not capable of handling overhead traffic. BNSF Railway Company (“BNSF”), the owner of the Line, is seeking to abandon the Line in STB Docket No. AB-6 (Sub-No. 450X), *BNSF Railway Company – Abandonment Exemption – In Clay County, MO*, Notice of Exemption filed July 26, 2007. While BNSF is seeking to abandon its rail line located between Milepost 199.07 and Milepost 200.13, KRR’s lease only extends to Milepost 199.86. Therefore, KRR is not seeking to discontinue service over the 0.79-mile end segment between Milepost 199.86 and Milepost 199.07.

(4) Map.

A Map depicting the trackage covered by the proposed discontinuance 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

¹ KRR leased the Line and began operations in April 2005. See STB Finance Docket No. 34693, *Kaw River Railroad, Inc. – Lease and Operation Exemption – BNSF Railway Company* (not printed), served May 12, 2005.

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

The Line traverses ZIP Code 64060.

- (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 right-of-way may be suitable for use for other public purposes.

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

- 4. The level of labor protection.

The interests of railroad employees who may be adversely affected by the proposed discontinuance 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) was prepared by BNSF and is contained in the Notice of Exemption filed July 26,

2007 in STB Docket No. AB-6 (Sub-No. 450X). A copy of the Board's Environmental Assessment is attached as Exhibit D.

7. Historic Report.

The Historic Report containing information required by 49 C.F.R. § 1105.8(d) was prepared by BNSF and is contained in the Notice of Exemption filed July 26, 2007 in STB Docket No. AB-6 (Sub-No. 450X).

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:
KAW RIVER RAILROAD, INC.

Dated: September 25, 2007

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

STATE OF KANSAS)
) ss.
COUNTY OF CRAWFORD)

I, Arthur E. McKechnie III, being duly sworn depose and state that I am Executive Vice President of Kaw River Railroad ("KRR"), that I am authorized to make this verification, and that I have read the foregoing Notice of Exemption and know the facts asserted therein are true and accurate as stated to the best of my knowledge, information, and belief.

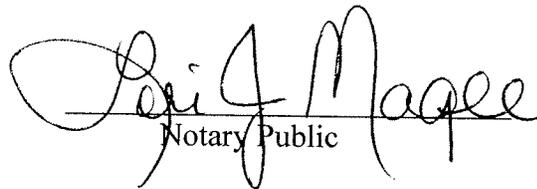
I hereby certify that no local traffic has been handled to or from any customer over the rail line located between Milepost 199.86 and Milepost 200.13, in Kearney, Clay County, Missouri (the "Line") for at least two (2) years prior to the date hereof. Also, no overhead traffic has been handled on the Line for at least two (2) years prior to the date hereof. The Line is stub-ended and, therefore, not capable of handling overhead traffic. Further, no formal complaint filed by a user of rail service on the Line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board or any U.S. District Court or has been decided in favor of a complainant within the two-year period.

The foregoing certification is made on behalf of KRR 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.

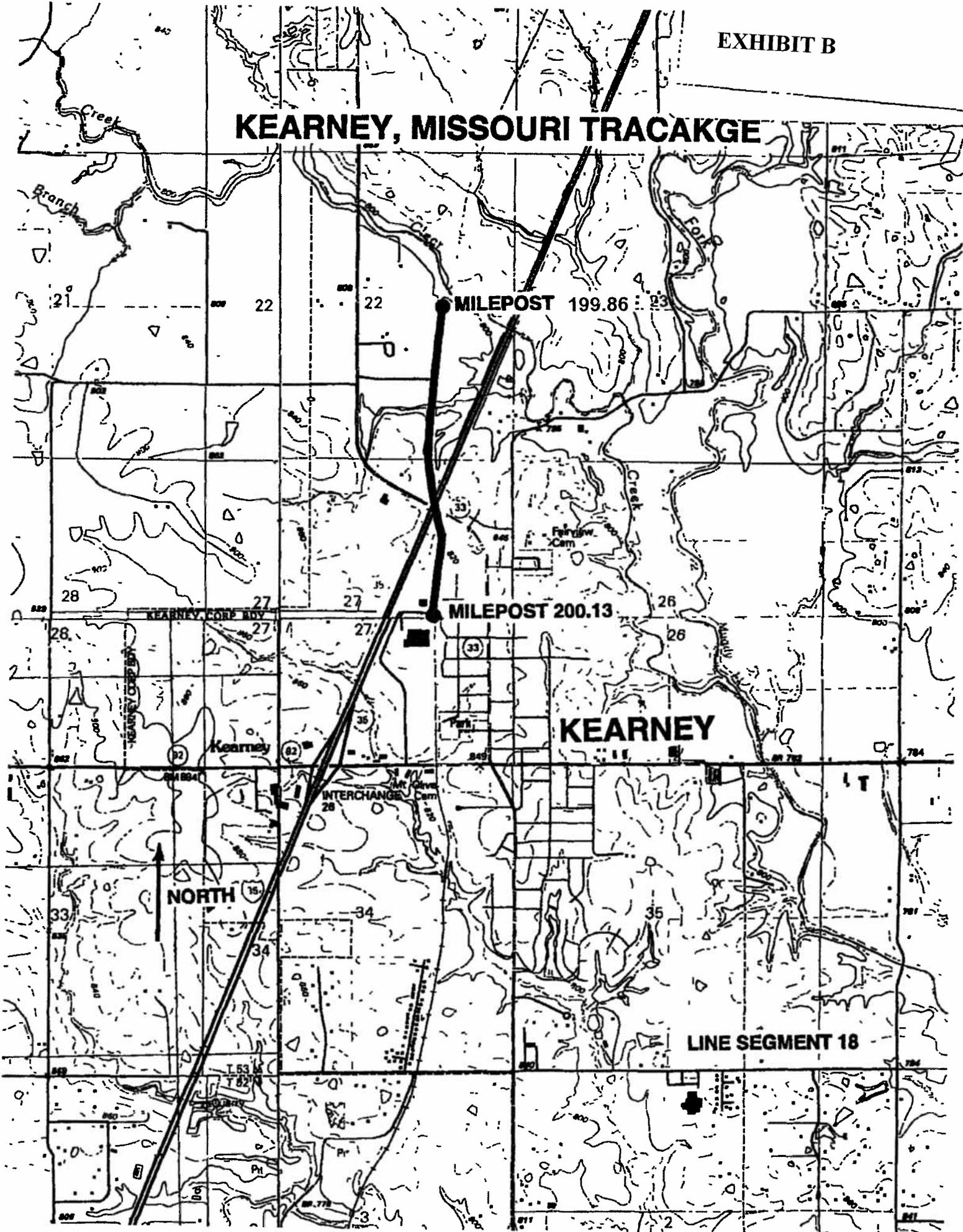

Arthur E. McKechnie III

SUBSCRIBED AND SWORN TO before me this 24 day of September, 2007.

My Commission Expires: 8/16/08


Notary Public

KEARNEY, MISSOURI TRACKAGE



CERTIFICATE OF SERVICE

Pursuant to 49 C.F.R. § 1152.50(d)(1), the undersigned hereby certifies that notice of the proposed discontinuance of lease operations in STB Docket No. AB-1013X was mailed via first class mail on September 6, 2007 to the following parties:

State Public Service Commission

Missouri Public Service Commission
Governor Office Building
200 Madison Street
P.O. Box 360
Jefferson City, MO 65102-0360

Brad Wise
Senior Realty Specialist
Missouri Department of Transportation
Kansas City Area District
600 NE Colbern Road
Lee's Summit, MO 64086

Military Traffic Management Command

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

National Park Service

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

National Park Service
1709 Jackson Street
Omaha, NE 68102

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: September 25, 2007

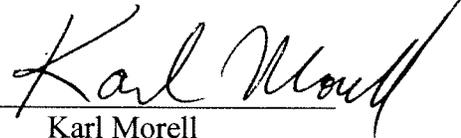


Karl Morell

CERTIFICATE OF PUBLICATION

The undersigned hereby certifies that notice of the proposed discontinuance of lease operations in STB Docket No. AB-1013X was published on August 30, 2007 in The Kearney Courier, a newspaper of general circulation in Clay County, Missouri as required by 49 C.F.R. § 1105.12.

Dated: September 25, 2007



Karl Morell

38266
SEA

SERVICE DATE – AUGUST 20, 2007

**SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423**

ENVIRONMENTAL ASSESSMENT

STB Docket No. AB-6 (Sub-No. 450X)

**BNSF Railway Company –
Abandonment Exemption –
In Clay County, MO**

BACKGROUND AND DESCRIPTION OF RAIL LINE

In this proceeding, the BNSF Railway Company (BNSF) filed a notice under 49 CFR 1152.50 seeking exemption from the requirements of 49 U.S.C. 10903 in connection with the abandonment of a line of railroad in Clay County, Missouri. The line to be abandoned travels through Kearney, a city located on the northeast edge of the Kansas City metropolitan area, and extends from Milepost 199.07 to Milepost 200.13, a distance of 1.06 miles.

BNSF indicates that in 1860, the Kansas City, Galveston and Lake Superior Railroad Company purchased a portion of the line and in 1866, changed its name to the Kansas City and Cameron Railroad Company (KC&C). KC&C continued to purchase real estate by quit claim deed till 1870 and by adverse possession till 1900. In 1867, the 54-mile line began operating from Cameron to Kansas, via Kearney. BNSF states that in 1870, KC&C consolidated its railroad with two other companies to form Hannibal & St. Joseph Railroad. In 1884, the line was purchased by Chicago, Burlington & Quincy Railroad Company, and in 1970, it merged with Great Northern Railway Company, Northern Pacific Railway, and Pacific Coast Railroad Company to become Burlington Northern, Inc. In 1981, the line changed its name to Burlington Northern Railroad Company (BNRR) and in 1996, merged with the Atchison, Topeka and Santa Fe Railway Company to become the Burlington Northern and Santa Fe Railway Company, later changing its name to BNSF.

The rail line to be abandoned passes under Interstate 35 and Interstate 33; crosses one stream; and terminates at the Mack Porter park at its northern terminus. Land uses surrounding the rail line consist of a mix of residential, commercial, light industrial, and open space. BNSF indicates that the right-of-way width is generally 100-feet and the portion of line to be abandoned traverses Zip Code 64060. BNSF certifies that there are no customers on the line and no revenue cars have used the line for at least two years. As BNSF indicates, the rail line to be abandoned lies immediately north of the Cameron Junction to Kearney, a segment of line that was abandoned by the Chicago, Burlington and Quincy Railroad Company in 1962. During the same time, Interstate 35 was constructed through Kearney. The completion of the interstate shifted the demand for surface transportation from freight to trucks. As a result, BNSF states that there was no need for rail service, and no customers or apparent potential for customers

northward of Interstate 35 through the area near the rail line proposed for abandonment. The shift in markets prompted BNSF to salvage its track and ties, with the exception of one bridge, on the line now proposed for abandonment, and use them elsewhere for local operations.¹

BNSF states that, following abandonment, the City of Kearney is interested in using the railroad right-of-way north of Interstate 33 as a trail. Additionally, the Missouri Department of Transportation (MDOT) has indicated its interest in maintaining existing roadway easements along the portion of tracks associated with Interstate 33 and Interstate 35. BNSF states that there are no structures on the line 50 years or older; however, the Missouri Department of Natural Resources (MDNR), State Historic Preservation Office (SHPO) indicates that there is a moderate to high potential for the presence of archaeological sites near and within the area of the proposed abandonment. The SHPO is therefore requesting that BNSF prepare and submit an archaeological survey. A map depicting the line in relationship to the area served is appended to this Environmental Assessment (EA).

ENVIRONMENTAL REVIEW

BNSF submitted an environmental report that concludes the quality of the human environment would not be affected significantly as a result of the abandonment or any post-abandonment activities, including salvage and disposition of the right-of-way. BNSF served the environmental report on a number of appropriate Federal, state, and local agencies as required by the Surface Transportation Board's (Board) environmental rules [49 CFR 1105.7(b)].² The Board's Section of Environmental Analysis (SEA) has reviewed and investigated the record in this proceeding.

Diversion of Traffic

BNSF states that no local traffic has moved over the line for at least two years and no overhead traffic would be rerouted. Accordingly, the proposed abandonment would not adversely impact the development, use and transportation of energy resources or recyclable commodities; transportation of ozone-depleting materials; or result in the diversion of rail traffic to truck traffic that could result in significant impacts to air quality or the local transportation network.

¹ Should the Board deny this abandonment, BNSF could be required to replace the track and ties, which were removed while BNSF still held common carrier authority on the rail line.

² The railroad's environmental and historic reports are available for viewing on the Board's website at www.stb.dot.gov by going to "E-Library," selecting "Filings," and then conducting a search for AB-6 (Sub-No. 450X).

Salvage Activities

Impacts from salvage and disposal of a rail line typically include removal of tracks and ties, removal of ballast, dismantling of any bridges or other structures that may be present on the rail right-of-way, and regrading of the right-of-way. Salvage may be performed within the right-of-way, or, if necessary, via the construction of new access points to the right-of-way. As stated previously, BNSF has indicated that with the exception of a bridge, the track and ties were salvaged over several years time and used for local operations.

SEA believes that any air emissions associated with salvage operations would be temporary and would not have a significant impact on air quality. Noise associated with salvage activities would also be temporary and should not have a significant impact on the area surrounding the proposed abandonment.

The City of Kearney commented that its land use plan does contemplate a proposed trail system within the railroad right-of-way north of Interstate 33, commenting further that it believes the abandonment is being initiated to facilitate a sale of land to Dell Foods, an adjacent landowner, for building expansion, which the City supports. The City further commented that in the mid-1950s, it acquired the water plant, wells and water lines from BNSF. This infrastructure served as the City's first drinking water system, which is still in use today. In 1994, the City acquired a water line easement from the water plant, which crosses the area to be abandoned between Major Street and Clear Creek. The City also commented that it is utilizing the railroad right-of-way north of Interstate 33 for access to Mack Porter Park, a municipal park at the northern terminus of the proposed abandonment. SEA has included the City of Kearney on the service list for this proceeding and will incorporate any comments that the agency may have on the EA.

The County Office of Planning and Zoning wrote in support of the proposed abandonment, citing that the segment of rail line to be abandoned is a key part of its trail designation for the Liberty Holt Trail.

MDOT commented that it is interested in the section of tracks relating to Interstate 33 and Interstate 35, due to exiting roadway easements. MDOT further indicates that it is imperative that said easements remain in its transportation system. MDOT has requested more time to research deeds and make a formal response to this proceeding. As such, SEA has included the MDOT on the service list for this proceeding and will incorporate any comments that the agency may have on the EA.

The Natural Resources Conservation Service (NRCS) commented that the proposed railroad abandonment is not subject to the Farmland Protection Policy Act because the existing right-of-way was purchased prior to the effective date of the law. However, the agency also commented that it was concerned about possible soil erosion as a result of salvage activities, and recommended the use of best management practices along low lying areas, adjacent to streams.

Therefore SEA has included NRCS on the service list for this proceeding and will incorporate any comments that the agency may have on the EA.

The U.S. Fish and Wildlife Service (USFWS) commented that the proposed abandonment would not likely have an adverse effect on Federally listed species or designated critical habitat. Therefore, USFWS has determined that the Section 7 consultation process has been concluded. In addition, the Missouri Department of Conservation (MDC) commented that it has no records of species and/or habitats of Federal or state conservation concern within the area of the proposed abandonment. However, it did recommend that best management practices be utilized along streams and other riparian corridors during salvage. Therefore SEA has included MDC on the service list for this proceeding and will incorporate any comments that the agency may have on the EA.

The National Park Service commented that it has reviewed the proposed abandonment with regard to possible conflicts with the Land and Water Conservation Fund and the Urban Park and recreation Recovery programs and could find no issues. Therefore, SEA finds that no further consultation is required.

The Bureau of Land Management (BLM) commented that it has no Federal lands within the proposed abandonment. However, a search of its records indicated that this railroad right-of-way might be subject to the Railroad Right-of-Way Forfeiture and Abandonment Act of March 8, 1922, 43 U.S.C § 912 and the National Trails System Improvement Act of October 4, 1988, Public Law 100-470, 16 U.S.C. § 1248 (c) – (f). As such, SEA has included BLM on the service list for this proceeding and will incorporate any comments that the agency may have on the EA.

The Missouri Department of Natural Resources, Division of State Parks commented that there are no state parks or historic sites within the area of the proposed abandonment. Therefore, SEA has determined that no further consultation is needed.

The MDNR Water Protection Program, commented that it could not determine whether the proposed action would require a General Permit for Land Disturbance for the National Pollutant Discharge Elimination System (NPDES) program. However, it did specify that the permit requirement would be triggered if the action resulted in land disturbance, including removal of topsoil, of more than one acre. Conversely, a permit would not be needed if the action were limited to the removal of track and ties. In addition, SEA received correspondence from MDNR, Solid Waste Management Program. In its letter, MDNR commented that the area of the proposed abandonment may contain previously unidentified hazardous waste or other materials from spills, particularly near loading and switch areas. MDNR further commented that lead from lead based paint could be problematic on bridges and other structures associated with the rail line. MDNR recommends that the site be inspected prior to salvage to ensure proper handling of any contaminated materials. Given, that BNSF has indicated that salvage has already occurred, SEA believes that any further land disturbance would not be likely. However, SEA is recommending a condition that BNSF consult with the MDNR to ensure that any outstanding issues are addressed.

The Army Corps of Engineers (ACOE) commented that a Section 404 permit of the Clean Water Act would not be required for the proposed abandonment, as long as the action did not result in any land disturbance activities. ACOE further stated that under its program, the removal of rail road track and ties is not considered a land disturbance activity, and therefore would not require a permit under its Section 404 program. Given, that BNSF indicated that salvage has already occurred, SEA believes that any disturbance to the ground would not be likely. However, SEA has included ACOE on the service list for this proceeding and will incorporate any comments that the agency may have on the EA.

Based on all information available to date, SEA does not believe that salvage activities would cause significant environmental impacts. In addition to the parties on the Board's service list for this proceeding, SEA is providing a copy of this EA to the following agencies for review and comment: the City of Kearney; the MDNR; the BLM; the U.S. Environmental Protection Agency; the MDOT; Clay County Planning and Zoning; ACOE; and the National Geodetic Survey.

HISTORIC REVIEW

BNSF served the historic report on the MDNR SHPO pursuant to 49 CFR 1105.8(c). BNSF indicates that there are no structures fifty years or older in age on the line that would be affected by the abandonment. However, the SHPO indicates that there is a moderate to high potential for the presence of archaeological sites near and within the area of the proposed abandonment. The SHPO is therefore requesting that BNSF prepare and submit an archaeological survey prior to the Board granting approval of the abandonment. Since the SHPO has not completed its evaluation of the potential impact of this project on archaeological resources, BNSF shall retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way that are eligible for listing or listed in the National Register of Historic Places until completion of the Section 106 process of the National Historic Preservation Act, 16 U.S.C. § 470(f).

SEA conducted a search of the National Park Service's Native American Consultation Database <http://home.nps.gov/nacd/> to identify Federally recognized tribes that may have ancestral connections to the project area and may therefore have an interest in the project's potential impacts on any areas of tribal interest. The tribes include the Iowa Tribe of Kansas and Nebraska, the Iowa Tribe of Oklahoma, the Omaha Tribal Council, the Otoe-Missouria Tribe of Indians, the Peoria Tribe of Oklahoma, the Sac and Fox Nation of Missouri, the Sac and Fox Nation of Oklahoma, and the Sac and Fox Tribe of Mississippi in Iowa. SEA has added the tribes to the service list for this proceeding to ensure they receive a copy of this EA for their comment.

CONDITIONS

We recommend that the following conditions be imposed on any decision granting abandonment authority:

1. To ensure appropriate consideration of the Missouri Department of Natural Resources' (MDNR) comments regarding stormwater management issues and the possible need for a National Pollutant Discharge Elimination System (NPDES) permit, and the concern for potential contamination on the right-of-way, the BNSF Railway Company (BNSF) shall consult with MDNR prior to commencement of any salvage activities, or prior to consummation of the abandonment, if the rail line has already been completely salvaged, as BNSF indicates.
2. BNSF shall retain its interest in and take no further steps to alter the historic integrity of all sites, buildings, and structures within the project right-of-way that are eligible for listing or listed in the National Register of Historic Places until the Section 106 process of the National Historic Preservation Act, 16 U.S.C. § 470(f), has been completed. BNSF shall report back to the Section of Environmental Analysis regarding any consultations with the Missouri Department of Natural Resources, State Historic Preservation Office and any other Section 106 consulting parties. BNSF may not file its consummation notice or initiate any salvage activities related to abandonment until the Section 106 process has been completed and the Surface Transportation Board has removed this condition.

CONCLUSIONS

Based on the information provided from all sources to date, SEA concludes that, as currently proposed, and if the recommended condition is imposed, abandonment of the line will not significantly affect the quality of the human environment. Therefore, the environmental impact statement process is unnecessary.

Alternatives to the proposed abandonment would include denial (and therefore no change in operations), discontinuance of service without abandonment, and continued operation by another operator. In any of these cases, the existing quality of the human environment and energy consumption should not be affected.

PUBLIC USE

Following abandonment and salvage of the rail line, the right-of-way may be suitable for other public use. A request containing the requisite four-part showing for imposition of a public use condition (49 CFR 1152.28) must be filed with the Board and served on the railroad within the time specified in the Federal Register notice.

TRAILS USE

A request for a notice of interim trail use (NITU) is due to the Board, with a copy to the railroad, within 10 days of publication of the notice of exemption in the Federal Register. Nevertheless, the Board will accept late-filed requests as long as it retains jurisdiction to do so in a particular case. This request must comply with the Board's rules for use of rights-of-way as trails (49 CFR 1152.29).

PUBLIC ASSISTANCE

The Board's Office of Public Services (OPS) responds to questions regarding interim trail use, public use, and other reuse alternatives. You may contact OPS directly at (202) 245-0230, or mail inquiries to Surface Transportation Board, Office of Public Services, Washington, DC 20423.

COMMENTS

If you wish to file comments regarding this Environmental Assessment, send an **original and two copies** to Surface Transportation Board, Case Control Unit, Washington, DC 20423, to the attention of Diana Wood, who prepared this Environmental Assessment. Environmental comments may also be filed electronically on the Board's web site, www.stb.dot.gov, by clicking on the "E-FILING" link. **Please refer to Docket No. AB-6 (Sub-No. 450X) in all correspondence, including e-filings, addressed to the Board.** If you have any questions regarding this Environmental Assessment, please contact Diana Wood, the environmental contact for this case, by phone at (202) 245-0302, fax at (202) 245-0454, or e-mail at woodd@stb.dot.gov.

Date made available to the public: August 20, 2007.

Comment due date: September 5, 2007.

By the Board, Victoria Rutson, Chief, Section of Environmental Analysis.

Vernon A. Williams
Secretary

Attachment