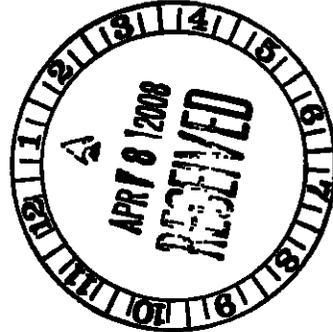


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**SIDNEY STRICKLAND AND ASSOCIATES, PLLC**

888 16<sup>TH</sup> ST. N.W., SUITE 800  
WASHINGTON, DC 20006  
TELEPHONE: 202-338-1325  
FAX: 202-355-1399

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



April 8, 2008

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

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

Dear Acting Secretary Quinlan:

Enclosed for filing in the above referenced docket are an original and ten copies of a BNSF Reply to Motion for Cease and Desist Order of Edwin Kessler Filed March 24, 2008, and Related Second Supplement to Comments of Edwin Kessler Filed March 24, 2008.

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

Sincerely,

*Sidney L. Strickland, Jr.*  
Sidney L. Strickland, Jr.

Encs.

cc: John Sims

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Office Proceedings  
APR - 8 2008  
Part of  
Public Record

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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

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

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**BNSF Reply to Motion for Cease and Desist Order of Edwin Kessler Filed March  
24, 2008, and Related Second Supplement to Comments of Edwin Kessler Filed  
March 24, 2008**

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

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

**Attorney for BNSF Railway Company**

**DATED: April 8, 2008**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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

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

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**BNSF Reply to Motion for Cease and Desist Order of Edwin Kessler Filed March  
24, 2008, and Related Second Supplement to Comments of Edwin Kessler Filed  
March 24, 2008**

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**BNSF RAILWAY COMPANY ("BNSF") hereby replies to the Motion for  
Cease and Desist Order of Edwin Kessler Filed March 24, 2008, and Related Second  
Supplement to Comments of Edwin Kessler Filed March 24, 2008. In Mr. Kessler's  
Motion for Cease and Desist Order and related Second Supplement to Comments,  
Mr. Kessler essentially repeats his earlier allegations that BNSF has consummated  
abandonment of the line contrary to Chairman Nottingham's February 7, 2008  
order.**

**BNSF has checked Mr. Kessler's new assertions and has found them once  
again to contain incomplete information and to draw inaccurate conclusions. In this  
regard, BNSF stands by its previous representations that the Line has not been  
consummated against the Chairman's direction.**

**Mr. Kessler now refers to the construction of a signal on the Line proposed for abandonment as being contrary to Chairman Nottingham's February 7, 2008 order. As explained below, Kessler's arguments are specious.**

**First, BNSF is in full compliance with Chairman Nottingham's February 7, 2008 order. In his order, the Chairman ordered BNSF not to consummate abandonment of the Line. BNSF will abide by that order and will not consummate the abandonment. BNSF emphasizes:**

- 1. BNSF acknowledges track was removed on January 25, 2008 and BNSF is prepared to reconstruct such track if BNSF is not permitted to consummate abandonment of the Line..**
- 2. Pursuant to the continuing construction activities in the area, small areas of track have been removed by unauthorized parties without BNSF's knowledge or authorization.**
- 3. After being made aware of the activity described in 2. above, BNSF made concerted efforts to ensure there would be no other permanent track removal without BNSF authorization.**
- 4. Any rail that has been or will be removed as a result of ongoing construction in the vicinity can and will be replaced by BNSF if BNSF is not permitted to consummate abandonment of the Line.**

**Mr. Kessler now advises the Board through the Verified Affidavit of Thomas Elmore (March 5, 2008), that a new signal mast was erected February 22, 2008. BNSF had been unaware of this activity that was completed on behalf of others under contracts independent of BNSF. Specifically, BNSF's investigations since Mr. Kessler's March 24, 2008 Second Supplement to Comments of Edwin Kessler have revealed that Railroad Controls Ltd. (RCL) installed the signal pursuant to an ongoing contract with Watco Companies since September 20, 2005. Per Garth Armstrong, Signal Supervisor for RCL, the signal work was completed on February**

**21, 2008, for the Oklahoma Department of Transportation by Watco Companies. RCL was a subcontractor for Watco under this contract. Per Armstrong, RCL understood the signal work was to be performed once the Packingtown Lead was complete. Since the Packingtown work was completed on January 25, 2008, RCL finished its contractual obligation by installing the signal at Agnew according to engineering specifications. Although BNSF was unaware of RCL's presence on the Line while installing the Agnew Street signal, BNSF recognizes, as does the STB, that signals are, of course, necessary safety measures that must be maintained whether the Board permits consummation of the abandonment or not. .**

**Other necessary safety measures have been hampered as a result of Kessler's dilatory tactics to disrupt to the I-40 project. For example, in February 2008, The City of Oklahoma City was forced to close two lanes of traffic at Western Avenue because of rough crossings on the Line – crossings that are no longer needed for rail purposes but have not been permanently removed and paved out of concern that this would potentially put in jeopardy continued Board approval for BNSF to consummate the abandonment. Similarly, there is need for ODOT to install a necessary drainage structure that requires BNSF to remove temporarily approximately 200 feet of track on the Line to be abandoned to allow Muskogee Bridge Company, an ODOT contractor, to complete the drainage structure for ODOT. This temporary track removal has begun as of April 7, 2008 to ensure proper drainage systems for the welfare and safety of Oklahoma citizenry, which is necessary whether the line is abandoned or not. Indeed, in this regard, BNSF is prepared to accommodate ODOT consistent with Board precedent. As the Board**

recently noted in STB Docket No. AB-103 (Sub No. 21 X), The Kansas City Southern Railway Company – Abandonment Exemption – Line in Warren County, MS, In the Matter of a Request to Set Terms and Conditions, served February 22, 2008, p. 9: “. . . a carrier may remove track, as long as no shipper seeks service and as long as the carrier is prepared to restore the track should it receive a request for service.” Moreover, cases are legion that the STB applies the ICTA with concern about safety to the public as a measure not to be ignored. See for example, STB Finance Docket No. 34335, Keokuk Junction Railway – Feeder Line Acquisition – Line of Toledo Preoria and Western Railway Corporation Between La Harpe and Hollis, Il., , served October 28, 2004 cited at 2004 STB Lexis 694 at {\*17},- wherein the Agency noted that safety is taken into account in the Board’s application of the Interstate Commerce Act.

Importantly, here, no shippers seek service over the line in question; BNSF is prepared to restore the track should it receive a request for service over the line to be abandoned in this proceed; as noted above with respect to any track that has been removed, the track will be replaced in the event our Notice of Exemption to abandon the Line is denied; and the pendency of an abandonment consummation does not and cannot eliminate the need to maintain safety for the public at large. .

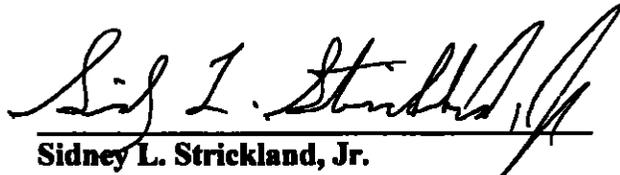
Finally, Kessler also gives further explanation as to how photos (Exhibits 14-1 through 14-6) allegedly show movements to Producers Coop on 2-27-07 via the line to be abandoned instead of the Red Rock Subdivision. However, the evidentiary problems with the exhibits previously noted in BNSF’s earlier filings still remain. Accordingly, BNSF has filed all statements in good faith and stands by

**its claims that local traffic is being served from the Red Rock Subdivision main line and no customers are being adversely affected by the abandonment.**

**Each day this decision is delayed because of Mr. Kessler's actions, costs considerable federal, state and city tax dollars, and now public safety. An expeditious decision is in the best interest of all, including the highway expansion project and the citizenry of Oklahoma City..**

**BNSF respectfully urges the Board to accept the present BNSF Reply to Motion for Cease and Desist Order of Edwin Kessler Filed March 24, 2008, and Related Second Supplement to Comments of Edwin Kessler Filed March 24, 2008.**

**Respectfully submitted,**

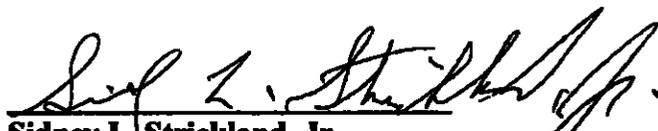


**Sidney L. Strickland, Jr.  
Sidney Strickland and Associates, PLLC  
888 16<sup>th</sup> Street N.W.  
Suite 800  
Washington DC 20006  
(202) 338-1325  
(202) 355-1399 FAX**

**ATTORNEY FOR BNSF RAILWAY  
COMPANY**

**CERTIFICATE OF SERVICE**

**BNSF Railway Company by and through its counsel, Sidney L. Strickland, Jr., certifies that on April 8, 2008, BNSF served a copy of the foregoing “BNSF Reply to Motion for Cease and Desist Order of Edwin Kessler Filed March 24, 2008, and Related Second Supplement to Comments of Edwin Kessler Filed March 24, 2008” by mailing copies thereof by first-class mail to Edwin Kessler at: Common Cause Oklahoma, 1510 Rosemont Drive, Norman, Oklahoma, 73072, and to Karl Morell at: Ball Janik LLP, 1455 F Street N.W., Suite 225, Washington, D.C. 20005, and to Fritz Kahn, 8<sup>th</sup> Floor 1920 N Street, NW, Washington, DC 20036-1601.**

  
**Sidney L. Strickland, Jr.**  
**Sidney Strickland and Associates, PLLC**  
**888 16<sup>th</sup> Street, N.W.,**  
**Suite 800**  
**Washington, DC 20006**  
**(202) 338-1325**

**Attorney for:**  
**BNSF RAILWAY COMPANY**