

**BEFORE THE SURFACE AND TRANSPORTATION
BOARD STB DOCKET NO. AB 1032 (Sub No. 2)**

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**NEBRASKA, KANSAS & COLORADO RAILWAY, LLC—IN DECATUR, NORTON
AND PHILLIPS COUNTIES, KANSAS AND HARLAN COUNTY, NEBRASKA**

LANDOWNERS' MOTION FOR DECLARATORY AND INJUNCTIVE RELIEF

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Dated: June 7, 2019

LANDOWNERS' MOTION FOR DECLARATORY AND INJUNCTIVE RELIEF

I. INTRODUCTION

The Landowners are Plaintiffs in the case of *Flying S. Land Co. v. United States*,¹ United States Court of Federal Claims Case No. 15-1253L, and *Dawson v. United States*,² Case No. 15-1268, which are Rails-to-Trails cases pending before the Court of Federal Claims, the Honorable Marian Blank Horn. The Landowners own land adjacent to and underlying the railroad corridor at issue in STB Docket No. AB 1032 X. The railroad, Nebraska, Kansas & Colorado Railway (“NKCR”), filed a Verified Notice of Exemption with the Board on June 12, 2015. After the Sunflower Rails-to-Trails Conservancy (“Sunflower”) filed a request with the Board for the issuance of a Notice of Interim Trail Use (“NITU”), the Board issued a NITU on October 22, 2015. After the NITU expired on October 16, 2016, NKCR has requested and received several extensions from the Board for the consummation of abandonment pursuant to 49 C.F.R. § 1152.29(e)(2). The most recent extension expires on March 1, 2020.

While the NITU was in place and before the NITU expired, NKCR removed the rails and ties and effectively abandoned the corridor under Kansas state law.³ The rails and ties were

¹ The Landowners in *Flying S* are Flying S. Land Company, Flying S Partnership, Edna M. Boettger Trust, Jonathan and Karen Cozad, Dale and Lenora Soderlund, William C. and Bertha G. Rea, Oberlin Concrete Company, Judith E. Nelson, J&C Partnership L.P., James & Janice Bocker, Clayton & Catherine Cox, Garth Gebhard, United Methodist Church, Paul & Tammy Vincent, James Holterman, Orville Holterman Revocable Trust and Pauline Holterman Revocable Trust, Sauvage Gas Service, Inc., Culbertson Farms, LLC, Silverstone & Dake’s Canal, Inc., Dolores M. Koerperich Revocable Living Trust, Gerry & Theresa Tally, Perry & Ila Mae Schelling, Leo & Carolyn Zodrow, Clem Koerperich, Edward Braun, Cecil & La Von Wright, Kevin L. Tubbs Living Trust, GRS Revocable Trust, AG Valley Cooperative, Arnold K. Graham, Gibert T. Graham, Joan G. Poulos, Mar Gayle Morin, Richard & Robert McChesney.

² The Landowners represented by the undersigned counsel in *Dawson* are David Bremer, John E. Bremer and Linda Tomasch; John E. Bremer Trust; Joe Dawson; Rosemary Mathes; Derek T. Kats Revocable Trust and the Shirley Kats Family Trust; Iris L. Smith; Carol K. Ross; Shawn Guinn; Lloyd E. Edgett; and Duane R. and Darlene McEwen.

³ The Kansas statute pertaining to abandonment is K.S.A. 66-525 (attached hereto as Exhibit A). Under Kansas law, pursuant to K.S.A. 66-525(a)(1), the railroad’s right-of-way is considered abandoned under Kansas law when “the tracks, ties, and other components necessary for operation of the rail line are removed from the right-of-way following the issuance of an abandonment order by the appropriate federal or state authority.” The issue of state law abandonment will be litigated before Judge Horn in *Flying S* and is not the subject of the Landowners’ motion herein.

removed from the corridor in late 2015 and early 2016.⁴ After the rails and ties were removed, and after the NITU expired, and during the several extensions to consummate abandonment under federal law granted by the Board, NKCR entered into an agreement to transfer their interest in the corridor to an entity entitled LI RR LLC. Neither NKCR nor LI RR LLC has sought Board approval for this proposed sale and transfer of the line. LI RR LLC is not a “rail carrier” as defined by 49 U.S.C. 10102(5) (“‘rail carrier’ means a person providing common carrier railroad transportation for compensation, but does not include street, suburban, or interurban electric railways not operated as part of the general system of rail transportation.”) Furthermore, the terms of the transaction require that LI RR LLC execute “call option” deeds to the individual landowners for their land underlying the right-of-way in exchange for a set price. The Landowners are to pay LI RR LLC for their own land, but will only get use of their land back at some point in the future when and if LI RR LLC pays the balance due to NKCR. If LI RR LLC is not able to pay the balance due to NKCR, LI RR LLC will purportedly return the funds to the Landowners.

The attempted transfer to LI RR LLC, a non-carrier, is an effort to extort and force the Landowners to buy their own land back, in order to prevent trail use, and they are utilizing the carrot of consummating federal law abandonment in order to complete the extortion. Since NKCR’s scheme ignores and violates the Board’s rules and regulations and plenary authority over railroad abandonments, and violates both federal law and state law, NKCR’s scheme must be enjoined under 49 U.S.C. § 1321(b)(4). Alternatively, if the Board will not enjoin NKCR from selling its line to LI RR LLC absent Board approval, the Landowners request the Board place a condition on the abandonment authority granted by the Board so that NKCR may not enter into

⁴ See Affidavit of Arnold K. Graham, attached hereto as Exhibit B, and the Affidavit of Patrick Shirley, attached hereto as Exhibit C.

any agreement to quit claim or otherwise transfer property interests to a non-carrier for portions of its right-of-way in which it holds only an easement.

II. THE PROCEDURAL HISTORY AND PRESENT POSTURE OF THIS ABANDONMENT

There is no dispute concerning the applicable facts, which are as follows:

1. On June 12, 2015, the Nebraska, Kansas & Colorado Railway (“NKCR”) filed a verified Notice of Exemption with the Surface Transportation Board (“STB”) pursuant to 49 C.F.R. 1152.50 to abandon a rail line through Nebraska and Kansas, specifically (1) from milepost 3.35 near Orleans, Nebraska to milepost 29.84 at Alma, Kansas; (2) from milepost 47.23 at Reager, Kansas to milepost 78.05 at Oberlin, Kansas; and (3) the Norton Spur in Norton, Kansas (the “Rail Line”).
2. On June 23, 2015, NKCR filed a Supplemental Notice of Exemption.
3. On September 2, 2015, Sunflower Rails-to-Trails Conservancy (“Sunflower”) filed a Statement of Willingness to Assume Financial Responsibility.
4. On September 14, 2015, Sunflower filed a request with the Board for the issuance of a Notice of Interim Trail Use or Abandonment (“NITU”) under 49 C.F.R. § 1152.29(a) and (d) for the Rail Line.
5. On September 24, 2015, NKCR filed a notice that it was willing to negotiate with Sunflower concerning the Rail Line.
6. On October 22, 2015, the Board issued a NITU allowing the parties to negotiate an interim trail use agreement under 49 C.F.R. § 1152.29 for 180 days, until April 19, 2016.
7. On March 29, 2016, Sunflower requested an extension to extend the NITU until October 16, 2016.
8. On April 14, 2016, the Board granted Sunflower’s request to extend the NITU until October 16, 2016, to allow for further negotiations between NKCR and Sunflower.
9. On September 16, 2016, Sunflower requested an extension of the NITU until April 14, 2017 to allow for further negotiations between NKCR and Sunflower.
10. On October 3, 2016, NKCR replied and objected to Sunflower’s request for an extension of the NITU.
11. The NITU expired on October 16, 2016.

12. On November 18, 2016, the Board denied Sunflower's request to extend the NITU and held that NKCR could fully abandon the Rail Line.
13. On December 14, 2016, NKCR requested an extension for the consummation of abandonment until March 25, 2017.
14. On December 16, 2016, the Board granted NKCR's request for an extension for the consummation of abandonment until March 15, 2017.
15. On February 17, 2017, NKCR requested an extension for the consummation of abandonment until September 11, 2017.
16. On March 6, 2017, the Board granted NKCR's request for an extension for abandonment until September 11, 2017.
17. On September 7, 2017, NKCR requested an extension to consummate abandonment until March 1, 2018.
18. On September 11, 2017, the Board granted NKCR's request for an extension of abandonment until March 1, 2018.
19. On February 23, 2018, NKCR requested an extension for abandonment until March 1, 2019.
20. On February 28, 2018, the Board granted NKCR's request for an extension for abandonment until March 1, 2019.
21. On February 8, 2019 NKCR requested an extension for abandonment until March 1, 2020.
22. On February 22, 2019, the Board granted NKCR's request for an extension of abandonment until March 1, 2020.

III. THE BOARD HAS THE AUTHORITY TO ISSUE AN INJUNCTION AND TO PLACE A CONDITION ON NKCR'S AUTHORITY TO ABANDON PURSUANT TO 49 U.S.C. § 1321(b)(4)

Under 49 U.S.C. § 1321(b)(4), the Board has authority to issue an appropriate order, such as a preliminary injunction, when necessary to prevent irreparable harm. A party seeking a preliminary injunction must establish that (1) it is likely to prevail on the merits of any challenge to the action sought to be preliminarily enjoined; (2) it will be irreparably harmed in the absence of the requested relief; (3) issuance of the injunction will not substantially harm other parties; and

(4) granting the injunction is in the public interest. *See, e.g., Wash. Metro. Area Transit Comm’n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977); *Union Pac. R.R. v. BNSF Ry. Co.*, FD 36197, slip op. at 3 (STB served June 29, 2018); *Am. Chemistry Council v. Ala. Gulf Coast Ry.*, NOR 42129, slip op. at 4 (STB served May 4, 2012). Since a preliminary injunction is an extraordinary remedy, the party seeking it “carries the burden of persuasion on all of the elements required for [such] extraordinary relief.” *See BP Amoco Chem. Co. v. Norfolk S. Ry.*, NOR 42093, slip op. at 4 (STB served June 6, 2005) (quoting *San Joaquin Valley R.R.—Aban. Exemption—In Tulare & Kern Ctys., Cal.*, AB 398 (Sub-No. 5X), slip op. at 4 (STB served Apr. 3, 1998)); *Middletown & New Jersey R.R.—Lease and Operation Exemption—Norfolk S. Ry.*, FD 35412 at 2 (STB served Oct. 6, 2010); 5 U.S.C. § 556(d).

Since the Landowners herein are seeking a preliminary injunction, they must establish they are likely to succeed on the merits, will suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in their favor, and that an injunction is in the public interest. *See Ferring Pharmaceuticals, Inc. v. Watson Pharmaceuticals, Inc.*, 765 F.3d 205, 210 (3d Cir. 2014). In this case, NKCR’s proposed transfer of the line to LI RR LLC is not authorized by the Board and is illegal under Kansas state law, so there is little doubt the Landowners will prevail on the merits. If LI RR LLC and NKCR are allowed to continue in this scheme and take money from these Landowners for a quit claim deed to property they already own, these Landowners are, and will continue to be, irreparably harmed. While the documents pertaining to the transfer make a representation that LI RR LLC will return the Landowners’ money if LI RR LLC cannot pay NKCR the balance due, there is no guarantee of when and how those funds will be returned, if ever. The various documents that have been generated by NKCR and LI RR LLC that document

the scheme are collectively attached hereto as Exhibit D.⁵ In this situation there is a presumption of irreparable harm.

The proposed transaction between NKCR and LI RR LLC is also contrary to the public interest. If allowed, the transaction frustrates Kansas law, which holds that such a quit claim deed by the railroad to a non-carrier is “null and void” (see K.S.A. 66-525(f)), and it is also not in furtherance of any of the policies this Board is charged to carryout by Congress as set forth in 49 U.S.C. § 10101. Under these facts, the Board should be compelled to enjoin NKCR from carrying out the proposed transfer of the line to LI RR LLC and the Board should impose a condition on NKCR’s abandonment authority so that it may not sell a property interest in portions of its line in which it does not hold the fee estate.

IV. THE RAILROAD IS USING THIS BOARD’S RULES TO EXTORT THESE LANDOWNERS BY ATTEMPTING TO ELICIT PAYMENT VIA A THIRD-PARTY IN RETURN FOR CONSUMMATING ITS ABANDONMENT

The Board’s rules are set up to carry out the “Rail Transportation Policies” set forth by Congress in 49 U.S.C. § 10101. Nothing about the transfer of the line from NKCR to LI RR LLC furthers any of these policies. To the contrary, allowing this transfer to go forward would thwart these policies and turn this Board’s rules into a weapon of blackmail and extortion by railroad corporations over Landowners who possess valid property rights under Kansas state law.

NKCR filed their Notice of Exemption with the Board on June 12, 2015. On October 22, 2015, the Board issued a NITU and the NITU allowed the parties to negotiate an interim trail use agreement for 180 days, until August 19, 2016.⁶ On March 29, 2016, Sunflower requested an

⁵ As set forth in Exhibit D, LI RR LLC is also planning to salvage and sell the ballast at \$15 a ton. Although it is unknown at this point who salvaged the rails and ties, or how much was received, the ballast is not owned by LI RR LLC and is not theirs to sell.

⁶ The NITU also allowed NKCR to remove and salvage the rails and ties, which they then did in late 2015 and early 2016.

extension to extend the NITU until October 16, 2016, which the Board granted. On September 16, 2016, Sunflower requested another extension of the NITU until April 14, 2017 to allow for further negotiations between NKCR and Sunflower, but NKCR replied and objected to Sunflower's request for an extension of the NITU and the NITU expired on October 16, 2016, presumably so NKCR could work on a deal with LI RR LLC. On November 18, 2016, the Board denied Sunflower's request to extend the NITU and held that NKCR could fully abandon the rail line.

After the NITU expired on October 16, 2016, even though the rails and ties were already removed such that state law abandonment has already occurred, instead of consummating abandonment under federal law pursuant to 49 C.F.R. § 1152.29(e)(2), NKCR sought and received several extensions from the Board for the consummation of abandonment under federal law. The most recent extension to consummate abandonment under federal law granted by the Board runs until March 1, 2020. In the meantime, NKCR is attempting to sell property rights in the line that it does not own. The scheme requires the Landowners to buy their own land back in order to purportedly prevent trail use and to compel the railroad to consummate its abandonment. NKCR's efforts violate both federal law and state law.

The exact details of the scheme are still being discovered, but the documents attached as Exhibit D illustrate the general components of the transaction. First, several individuals have formed an entity called LI RR LLC. *See* Ex. D, p. 7. LI RR LLC is currently acting as NKCR's broker to ask landowners to sign contracts so that the Landowners can get their own land back. *See* Ex. D, pp. 7-9. LI RR LLC has purportedly already acquired a quit claim deed from the railroad and is now in the process of selling the land back to Landowners under the guise that the ultimate deed received from LI RR LLC will avoid a recreational trail. *See* Ex. D, p. 2. Apparently,

the scheme works like this: NKCR has already issued a quit claim deed to LI RR LLC (Ex. D, p. 1); who in turn will issue a quit claim deed to the adjacent Landowners upon payment for their own land back (Ex. D, p. 2); the money received from the Landowners by LI RR LLC is then to be transmitted back to NKCR (Ex. D, p. 2); and NKCR will then consummate federal law abandonment when the money is received and the contract is fulfilled (Ex. D, p. 2).

V. NKCR CANNOT LEGALLY TRANSFER THE RIGHT-OF-WAY TO LI RR LLC UNDER EITHER FEDERAL OR STATE LAW AND THE LANDOWNERS WILL SUFFER IRREPARABLE HARM UNLESS NKCR'S SCHEME IS ENJOINED

The federal government has exercised plenary authority over railroad abandonments since enactment of the Transportation Act of 1920. *See* 41 Stat. 456 (1920); *see also* 49 U.S.C. § 10501(b). As stated by the Supreme Court, “[T]he authority of the [STB] to regulate abandonments is exclusive.” *See Chi. & N.W. Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 320 (1981). Because NKCR has received several extensions to consummate abandonment under federal law and has chosen not to exercise the authority to consummate the abandonment pursuant to the permission to abandon granted by the Board, the corridor remains within the Board’s jurisdiction.

Since the corridor is still within the jurisdiction of the Board, and since 49 U.S.C. § 10903 still applies, NKCR cannot transfer their legal interest or their operations in the corridor to LI RR LLC unless both NKCR and LI RR LLC comply with 49 C.F.R. § 1150.31. The transfer by NKCR and the acquisition by LI RR LLC are both subject to the exemption process as set forth in § 1150.31, which provides as follows:

§ 1150.31 Scope of exemption.

- (a)** Except as indicated below, this exemption applies to all acquisitions and operations under section 10901 (*See* 1150.1, *supra*). This exemption also includes:

- (1) Acquisition by a noncarrier of rail property that would be operated by a third party;
- (2) Operation by a new carrier of rail property acquired by a third party;
- (3) A change in operators on the line; and
- (4) Acquisition of incidental trackage rights. Incidental trackage rights include the grant of trackage rights by the seller, or the assignment of trackage rights to operate over the line of a third party that occur at the time of the exempt acquisition or operation. This exemption does not apply when a class I railroad abandons a line and another class I railroad then acquires the line in a proposal that would result in a major market extension as defined at § 1180.3(c).

At a minimum, the scheme implemented by NKCR and LI RR LLC does not comply with the Board's rules and regulations. Not only is the scheme perpetrating a fraud on the Landowners, but NKCR's actions and lack of notice to the Board amount to a fraud on the Board's plenary authority over abandonments and a conscious and blatant disregard of the rules and regulations pertaining to the acquisitions and transfers of operations. The only remedy for the scheme, since the Board has already granted another extension for consummation of abandonment until March 1, 2020, is to immediately enjoin the transfer from NKCR to LI RR LLC because the transfer will undoubtedly be completed long before the current deadline of March 1, 2020. Alternatively, the Board should place a condition on the abandonment authority it granted to NKCR prohibiting NKCR from selling in any way, by quit claim or otherwise, any interest in the portions of the line to which it holds only an easement, and any quit claim deeds which have already been executed should be declared null and void.

Although the issue of state law abandonment is not directly related to the Board's plenary authority over abandonments, it is relevant in the pending takings cases pending before the Court of Federal Claims. Since the Court of Federal Claims has already ruled that NKCR only held an easement for railroad purposes and since NKCR has already abandoned the right-of-way under

state law pursuant to K.S.A. 66-525(a)(1), NKCR has no right to transfer any interest under state law either. In fact, under K.S.A. 66-525(f), the transfer from NKCR to LI RR LLC would be and is “null and void.” See Exhibit A.

Under these facts, the Board must issue a preliminary injunction stopping the transfer of the corridor from NKCR to LI RR LLC because the Landowners will suffer irreparable harm in the absence of such a ruling. Obviously, under these facts, absent an injunction, the economic harm suffered by these Landowners by the payment of money to LI RR LLC and then to NKCR may be irreversible.⁷ Furthermore, the Landowners are likely to succeed on the merits because the exemption process set forth in § 1150.31 was not complied with by either NKCR or LI RR LLC and the Landowners have no other current avenue available to stop the transaction. In addition, no other interested parties will be substantially harmed by an injunction, other than other Landowners in other pending lawsuits before the Court of Federal Claims, because there are no customers on the corridor, there have been no customers for many years, and a delay in the transaction between NKCR and LI RR LLC will not harm any rail customers. Finally, an injunction is also in the public interest and the Board’s interest because NKCR’s transfer of the corridor has not been authorized by the Board, frustrates the railroad policies the Board is tasked with carrying out, and is not compliant with state law.⁸

⁷ The Board has found irreparable harm to exist where economic harm is “unredressable.” See *Colorado Wheat Administrative Comm. v. V&S Railway, LLC*, STB Docket No. 42140, slip. op. at 5 (served May 7, 2015).

⁸ Although the documents in Exhibit D outline the nature of the scheme, more time is needed to hear from NKCR and LI RR LLC and to allow for discovery to “permit full consideration of the issues.” See *General Railway Corp. d/b/a Iowa Northwestern Railroad—Exemption for Acquisition of Railroad Line—in Osceola and Dickinson Counties, IA*, STB Docket No. 348767, slip. op. at 1 (served July 3, 2006) (describing stay imposed by the Board in a decision served May 25, 2006); *Class Exemption for the Acquisition and Operation of Rail Lines Under 49 U.S.C. 10901, 1 I.C.C. 2nd 810, 811 (1985); Milwaukee Industrial Trade Center, LLC, d/b/a Milwaukee Terminal Railway—Acquisition and Operation Exemption-line owned by Milwaukee Industrial Trade Center, LLC, d/b/a Milwaukee Terminal Railway*, STB Docket No. 35133, slip. op. at 8 (served June 16, 2010) (the Board shows great concern when a party “us[es] the Board’s Class Exemption process for non-rail purposes”).

VI. CONCLUSION

The Landowners respectfully request an Order from the Board enjoining NKCR from quit claiming the right-of-way to LI RR LLC because NKCR and LI RR LLC have not followed the rules and regulations of the Board as set forth in 49 C.F.R. § 1150.31. Neither NKCR or LI RR LLC have any legal right to transfer the right-of-way without following the rules and regulations of the Board and NKCR does not have the right to transfer the corridor to LI RR LLC, or anyone else, because they cannot transfer what they do not own. Alternatively, the Board should place a “condition” on NKCR’s permissive abandonment authority under 49 C.F.R. § 1152.29(e)(2) by stating that NKCR cannot transfer or sell their interest in the line prior to exercising their permissive abandonment authority. Finally, the Landowners’ request an Order from the Board directing NKCR to immediately consummate abandonment pursuant to 49 C.F.R. § 1152.29(e)(2) as a sanction against NKCR’s attempts to defraud the Landowners.

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CERTIFICATE OF SERVICE

I certify that I have this day served copies of document upon all parties of record in this proceeding, by U.S. Mail this 7th day of June, 2019.

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West's Kansas Statutes Annotated
Chapter 66. Public Utilities
Article 5. Powers of Railroad Companies

K.S.A. 66-525

66-525. Railroad right-of-way; abandonment, when; requirements; release; notice; exception

Currentness

(a) For purposes of this section, a railroad right-of-way shall be considered abandoned when:

(1) The tracks, ties, and other components necessary for operation of the rail line are removed from the right-of-way following the issuance of an abandonment order by the appropriate federal or state authority;

(2) if, within two years after the exercise of such an order, removal of such components is not completed and railroad operating authority is not restored or reissued by an appropriate court or other federal or state authority; or

(3) if no rail line is placed on the right-of-way within 10 years after the right-of-way is acquired. A railroad right-of-way shall not be considered abandoned if the railroad company or any other entity continues to use the right-of-way for railroad purposes after abandonment authority has been issued.

(b) If the grantee or assignee of record of a recorded railroad right-of-way abandons such right-of-way, such grantee or assignee shall:

(1) Remove crossbucks and modify signal devices or install "exempt" signs at all locations within 90 days of abandonment; and

(2) file a release of all right, title and interest in the right-of-way with the register of deeds of the counties in which the property is located, within 180 days after being requested by any owner of property servient to the right-of-way.

(c) If a grantee or assignee of record of a railroad right-of-way refuses or neglects to file a release when required by subsection (b), the owner of the servient property may bring an action in a court of competent jurisdiction to recover from the grantee or assignee of record damages in the amount of \$500, together with costs and reasonable attorney fees for preparing and prosecuting the action. The owner may recover such additional damages as the evidence warrants, and may obtain injunctive relief to quiet the title and eject any unauthorized parties from the property.

(d) A grantee or assignee of railroad right-of-way, at any time, may file a general release of all right, title and interest in the right-of-way of one or more particular rail lines or portions thereof with the register of deeds of the county or counties in which such property is located. If such action has been taken, the grantee or assignee shall be relieved of any further obligation under this section to file individual releases of any right-of-way included in such a general release.

(e) Within 30 days after entering abandoned railroad right-of-way property upon the tax rolls pursuant to [K.S.A. 79-401 et seq.](#), and amendments thereto, the county clerk of each county in which such property is so entered shall forward to the most recent railroad company holder of such property for right-of-way purposes, a certified list of the names and addresses of all property owners so entered upon the tax rolls following abandonment.

Within 30 days after receipt of such certified list by the railroad company, it shall send a notice of abandonment by first-class mail to each landowner at the address provided. The grantee or assignee of record of a recorded railroad right-of-way who abandons such right-of-way and provides the notice of such abandonment required by this subsection shall incur no civil or criminal liability for failure to notify any person who claims, or may claim, ownership of property servient to the abandoned right-of-way, nor shall such grantee or assignee incur any civil or criminal liability for notifying any person who has no legal claim to ownership of property servient to the abandoned right-of-way. The notice required by this subsection shall not create any legal right, be construed as a warranty or guarantee, nor shall such notice impair or cloud any lawful claim, right, title or interest of any person.

(f) Except where a railroad company conveys its right, title and interest in and to railroad right-of-way which it owns in fee simple, any conveyance by a railroad company of any actual or purported right, title or interest in property acquired in strips for right-of-way to any party other than the owner of the servient estate shall be null and void, unless such conveyance is made with a manifestation of intent that the railroad company's successor shall maintain railroad operations on such right-of-way.

(g) As used in this section, "railroad company" has the meaning of such term as defined in [K.S.A. 66-2,123](#), and amendments thereto.

Credits

Laws 1986, ch. 247, § 1; Laws 1987, ch. 258, § 1; [Laws 1993, ch. 105, § 1](#); [Laws 2005, ch. 21, § 9](#); [Laws 2006, ch. 108, § 3](#).

[Notes of Decisions \(2\)](#)

K. S. A. 66-525, KS ST 66-525

Current through 2019 Regular Session laws effective June 6, 2019. Some statute sections may be more current. See credits for details.

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

FLYING S. LAND CO. ET AL,	)	
	)	
Plaintiffs,	)	No. 15-1253L
	)	
vs.	)	Judge Marian Blank Horn
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

AFFIDAVIT OF ARNOLD K. GRAHAM

I, Arnold K. Graham, being first duly sworn, depose and state as follows:

1. I am over the age of 18 years, I am legally competent and capable of making this Affidavit, and all the statements made in this Affidavit are true and correct to the best of my knowledge, information and belief.

2. I enrolled in this lawsuit on May 12, 2016.

3. I personally own (2) parcels of land which are included in this lawsuit, one which is located in Phillips County associated with Parcel ID No. 074-059-31-0-00-00-004.00-0, and one of which is located in Norton County associated with Parcel ID No. 069-017-36-0-00-005.00-0. I am also a one-fourth co-owner of another parcel with my siblings located in Phillips County associated with Parcel ID No. 074-059-31-0-00-001.00-0.

4. Nebraska, Kansas & Colorado Railway LLC ("NKCRR") operated the railroad corridor from Southern Nebraska to Oberlin, Kansas.

5. NKCRR last ran trains on the corridor prior to 2013.

6. The rails, tracks, cross-ties have been pulled up and removed from the corridor. The spikes, rails, and ties were removed from the Almena sector going east into Nebraska in 2015, and

west from Almena in 2016. The removal of the spikes, rails and ties completely severed all use of the corridor. NKCRR procured a storage yard east of the City of Almena which it has continuously used to store the removed rails and ties until they could be sold or disposed of. Some of the ballast on the corridor has also been removed and salvaged.

Further affiant sayeth not.



Arnold K. Graham

(Notarized signature attached.)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

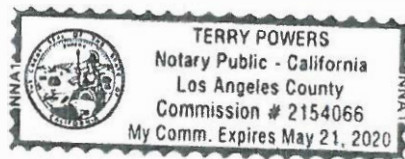
STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)

On April 18, 2019 before me, Terry Powers, Notary Public (here insert name and title of the officer), personally appeared Arnold K. Graham who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature *Terry Powers* (Seal)

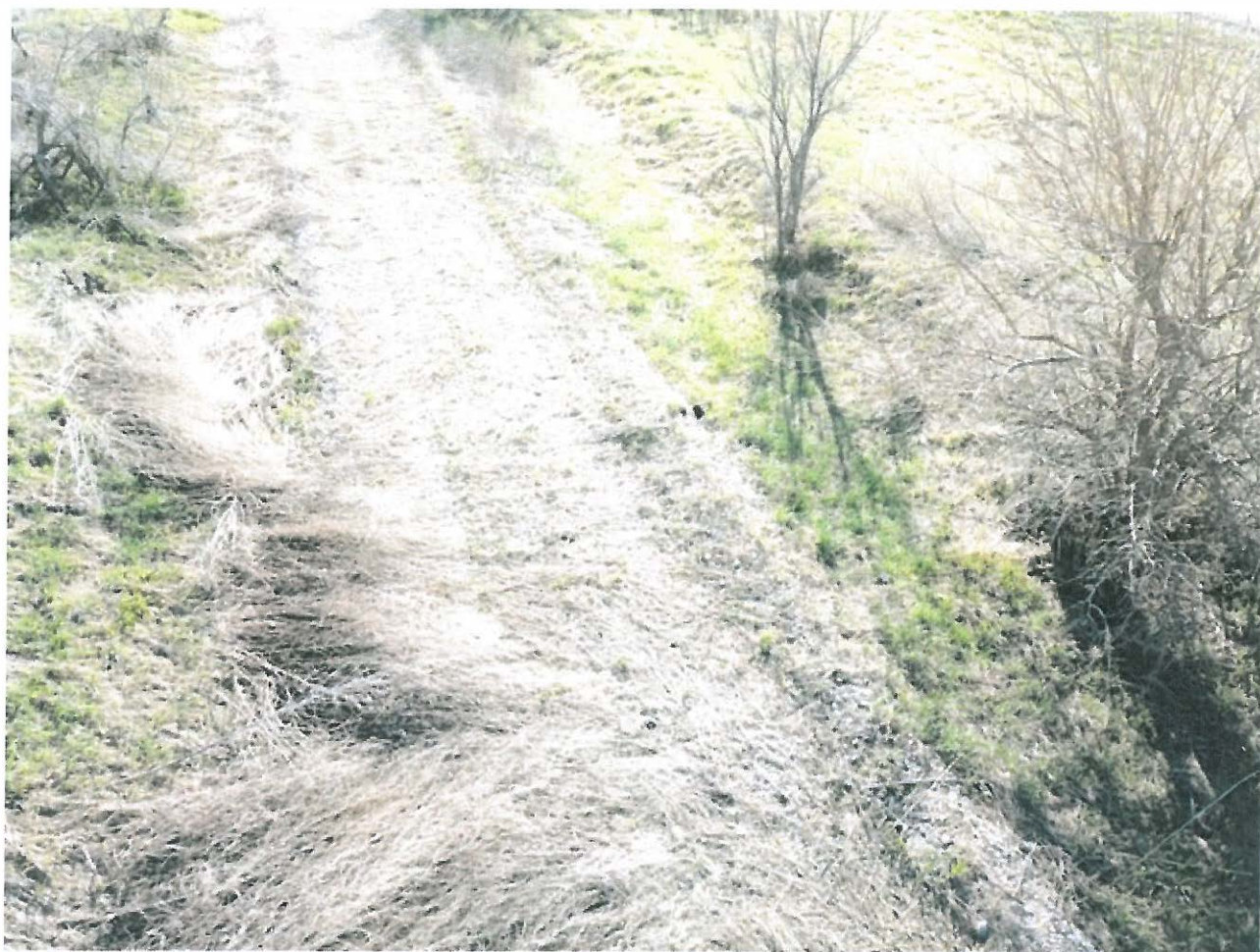
















IN THE UNITED STATES COURT OF FEDERAL CLAIMS

FLYING S. LAND CO. ET AL,)
)
 Plaintiffs,) No. 15-1253L
)
 vs.) Judge Marian Blank Horn
)
 THE UNITED STATES OF AMERICA,)
)
 Defendant.)

AFFIDAVIT OF PATRICK SHIRLEY

I, Patrick Shirley, being first duly sworn, deposes and states as follows:

1. I am over the age of 18 years, I am legally competent and capable of making this Affidavit, and all the statements made in this Affidavit are true and correct to the best of my knowledge, information and belief.

2. I am the corporate representative for the Flying S Land Corporation located in Norcatur, ~~Nebraska~~ *Kansas*

3. I enrolled in this lawsuit on behalf of the Flying S Land Corporation on August 15, 2015.

4. Flying S Land Corporation has five (5) parcels of land included in this lawsuit located in Decatur County.

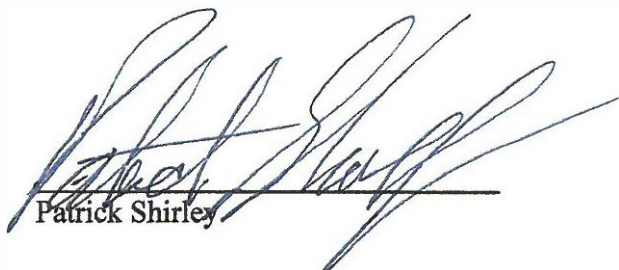
5. Nebraska, Kansas & Colorado Railway LLC ("NKC") operated the railroad corridor

6. NKC last ran trains on the corridor on *NA*.

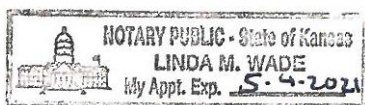
7. The rails, tracks, cross-ties have been pulled up and removed from the corridor. The ballast on the corridor has been removed and salvaged. *Spring of 2016* ~~May~~

8. I contacted Stewart Wald & McCulley on or about October 15, 2018 to inform my attorneys that I have received notice about a meeting for the landowners to buy back the land included in the former railroad corridor.

Further affiant sayeth not.


Patrick Shirley

Subscribed and sworn to before me this 10th day of April, 2019.




Notary Public





NKC
076791B
US DOT-AAR

TO REPORT STALLED VEHICLE
BLOCKING CROSSING
OR OTHER EMERGENCY, CALL
1-800-533-9416
REFER TO CROSSING #
076791B

OBERLIN LINE RIGHT OF WAY PURCHASE AGREEMENT

This Oberlin Line Right of Way Purchase Agreement ("Contract") is made by and between Nebraska, Kansas & Colorado Railway, LLC, a Delaware limited liability company ("Seller"), and LI RR, LLC, a Kansas limited liability company ("Buyer"); and is effective on the last date this Contract is signed by both parties (the "Effective Date") as shown on the signature page of this Contract.

1. **Purchase Price.** The purchase price for the Property is XXXXXXXXXXXXXXXXXXXX (the "Purchase Price").
2. **Deposit.** Buyer shall make an earnest money deposit of XXXXXXXXXXXXXXXXXXXX (the "Deposit") by wire to a bank account as specified by Seller within five (5) business days of the Effective Date. The earnest money deposit is non-refundable pursuant to the provisions of paragraph 3 of this Contract.
3. **Payment.** Buyer agrees to pay to Seller the total amount of XXXXXXXXXXXX for title to Seller's railroad right-of-way, generally described as follows:

"Approximately 57.31 miles of rail line between (1) milepost 3.35 near Flynn Junction, Nebraska, and milepost 29.84 at Alma, Kansas; (2) milepost 47.23 at Reager, Kansas, and milepost 78.05 at Oberlin, Kansas; and (3) the Norton Spur in Norton, Kansas. Buyer does not hold title to and cannot convey any type of ownership to the 17.7-mile line of railroad owned by Kyle Railroad between milepost 29.6 at Alma and milepost 47.3 at Oronoque Junction, Kansas. Consummation of the abandonment proceeding more fully addressed in Section 6, herein, will also discontinue the trackage rights over this section of railroad."

Buyer will pay XXXXXXXXXXXXXXXXXXXX as described in paragraph 2 of this Contract. Buyer subsequently, will sell calls to adjacent landowners along the right-of-way who have expressed interest in purchasing that adjacent land from Buyer. If Buyer gets the participation anticipated from adjacent landowners, Buyer will pay Seller the XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX within one hundred twenty (120) days from the Effective Date. If Buyer fails to secure the balance due to Seller within one hundred twenty (120) days from the Effective Date, Buyer will forfeit its earnest money deposit as described in paragraph 2 of this Agreement. Upon delivery of the balance due to Seller, Seller will sign a Quitclaim Deed conveying its right, title and interest in the subject right-of-way to Buyer. Buyer agrees to provide Seller with ten (10) days' notice if it is unable to consummate the transaction. Subsequent to Buyer's receipt of a deed from Seller, Buyer intends to offer title to adjacent landowners based on what it has purchased from Seller as more fully described in paragraph 4 of this Contract. Seller has no interest in and is not a party to any of the transactions contemplated between Buyer and landowners adjacent to Seller's right-of-way. Buyer will indemnify, defend and hold harmless Seller from and against all claims, damages, losses and expenses (including reasonable attorneys' fees) with respect to any claim arising out of or related to any interaction, negotiation, assignment or agreement between Buyer and a third party.

4. **Call Options for Deeds.** Call options are defined as short-term contracts that specify Buyer will deliver a deed for title to respective adjacent landowners' properties along Sellers right-of-way as described in paragraph 3 above. Any conveyance between Buyer and any adjacent landowner has been previously agreed upon between Buyer and the adjacent landowner and Seller has no knowledge of the content of any such agreement nor is it a party in any fashion to the transactions that have occurred or will occur between Buyer and the adjacent landowners. Any deposit received by Buyer from any adjacent landowner will be deposited into an escrow account with the First National Bank of Long Island, Kansas and will be returned to the landowner if Buyer is unable to secure the funds to consummate the final XXXXXXXXXXXXXXXXXXXXXXXXXX payment to Seller.

5. **Property Condition.** The Property is offered and shall be sold in its "as-is/where-is" condition. Seller makes no representation or warranty, express or implied, to Buyer regarding the value, profitability, legal compliance, merchantability, fitness, environmental or physical condition, or usefulness of the Property; and Seller makes no representation or warranty, express or implied, to Buyer regarding Seller's title to the Property other than pursuant to the Closing Documents in the form attached hereto as Exhibits. Buyer hereby waives any right to conduct further due diligence or inspection of the Property, and waives any right to receive further information or deliverables from Seller other than the Closing Documents expressly provided for pursuant to Section 8 below. In addition, but without limiting the generality of the foregoing: (i) all documents, reports, studies, and other information or materials delivered or disclosed to Buyer by Seller, including, without limitation, any environmental reports, surveys, maps and other information provided to Buyer by or on behalf of Seller (collectively, "Seller Documents"), are being provided to Buyer for informational purposes only and only as an accommodation to Buyer; (ii) Seller has not made, is not making, and will not make any representation, warranty, or promise of any kind, express or implied, concerning the accuracy or completeness of all or any part of such Seller Documents; and (iii) any inaccuracy, incompleteness, or deficiency in any part of such Seller Documents and/or other information shall be solely the risk and responsibility of Buyer, shall not be chargeable in any respect to Seller, and shall not form the basis of any claims by Buyer against Seller or any person or entity that prepared, authored, compiled, or created any part of the information, such claims being expressly waived and relinquished by Buyer. Buyer agrees to indemnify and hold harmless Seller for any damages, loss, harm or claim (including without limitation, reimbursement of Seller's reasonable attorneys' fees incurred related thereto) suffered or alleged against Seller related to Buyer's inspection or due diligence of the Property, including without limitation access of the Property by any principal, officer, employee, agent or contractor of Buyer. Buyer acknowledges that Seller has not reviewed the title record for the entire Property, and Buyer agrees any review of title or Seller's rights to the Property is solely Buyer's obligation to perform. The terms of this Section expressly survive the Closings and termination of this Contract.

6. **STB Action.** Buyer is aware that Seller has filed for abandonment of the Property as a rail line with the Surface Transportation Board ("STB") under STB Docket No. AB-1032X. Subsequent to filing its initial Notice of Intent, Seller has filed a number of continuances. The most recent continuance was filed on February 8, 2019, and extends the consummation deadline through March 1, 2020. Once a Closing Date is scheduled, this Contract has been

fully executed, and the transaction has been closed and funds transferred, Seller will consummate the abandonment and the Property will no longer be considered an active well line subject to STB jurisdiction.

7. **Decatur Cooperative Association.** Decatur Cooperative facility sites along the Osage line in Decatur County were sold to the Decatur Cooperative Association on November 26, 2018, and existing leases voided. These sites will be exempted from the land being conveyed to Buyer by Seller pursuant to the Quitclaim deed.
8. **Closings.** At Closing, Buyer shall transfer the balance of the Purchase Price, in full, to Seller.

Buyer shall pay all costs, charges and fees of Escrow Agent, including all recording fees. Except as otherwise expressly allocated in this Contract, each party will bear its own costs incurred related to this Contract and Closings. Buyer will complete and file the Kansas real estate sales validation questionnaire(s), and any similar filing required regarding the Nebraska portion of the Property and provide copies of such documentation to Seller. The Closing Agent will be Jolene Wiese of Norton County Abstract Co., Inc., 214 East Washington, Norton, Kansas 67654; (785)877-2141; jwsac@nuraltel.net.

Upon Closing, Seller will transfer the Property as identified in Exhibit A, to Buyer, pursuant to the terms of a Quitclaim deed, Exhibit B, a general bill of sale as to all personal property, if any, and Exhibit C, an assignment of contract and lease rights associated with the property being purchased. No payments under any contracts or leases will be pro-rated, but rather Seller will retain all payments delivered from any counterparty of an assigned contract or lease as of the Closing Date, and Buyer will retain all payments delivered from any counterparty of an assigned contract or lease after Closing Date. Seller has no obligation to enforce, pursue or account for any contract or lease payments not made by a counterparty, or prepaid by a counterparty. Within sixty (60) days after Closing, Buyer shall send notice to all counterparties of the assigned contracts or leases, with copies to Seller, that such contract or lease has been assigned to Buyer.

The terms of this Section expressly survive the Closings and termination of this Contract.

9. **Taxes and Assessments.** All general taxes and special assessment installments due or to become due regarding the property transferred at a Closing for prior years has been paid by Seller. Seller did not receive tax notices from Norton or Phillips Counties for the previous tax year due to the fact no valuation was assigned to those counties by the state assessor. Tax notices for Decatur, and Harlan Counties have been paid in full. New notices should be expected in December of 2019 or early 2020 and will become the responsibility of the Buyer or the adjacent landowners.
10. **Default and Remedies.** Following a default by Buyer under this Contract, which default continues for more than 10 days after receiving notice of such default from the Seller, Seller has the following remedies:

Upon an uncured Buyer default of Closing, Seller's sole remedy is to terminate this Contract by written notice to Buyer, Seller retains the Deposit as originally contemplated in Section 2 of the

Contract, and all other funds and deliverables delivered into escrow will be promptly returned to the depositing party, and this Contract will be considered terminated, null and void. Additionally, Seller's remedies for Buyer's default under Sections 5, 116, and 117 shall include all remedies available at law or in equity, and include Seller's right to be awarded reimbursement of its reasonable attorneys' fees incurred to enforce the terms of this Contract.

The terms of this Section expressly survive the Closings and termination of this Contract.

11. **Governing Law.** This Contract is governed by the laws of the State of Kansas. The terms of this Section expressly survive the Closings and termination of this Contract.
12. **Execution; Entire Agreement; Modification; Construction.** This Contract may be executed in counterparts, and signatures delivered via email, .pdf or other copy/image (and not "wet ink") are binding. This Contract and the exhibits attached hereto constitute the entire agreement of the parties concerning the Property and may be modified only by a written agreement signed by both parties. There are no oral agreements, understandings, representations or promises made by either party which modify, contradict, or supersede this Contract. Both parties were represented by legal counsel in the negotiation and drafting of this Contract, and no portion of this Contract will be more strictly construed against the drafter thereof.
13. **Timing.** Time is of the essence for the performance of every obligation under this Contract. Any date for performance or deadline under this Contract that falls on a Saturday, Sunday, or legal holiday shall be deemed to be the date of the first business day thereafter.
14. **Assignment.** Buyer may not assign this Contract or any rights or obligations hereunder without Seller's prior written consent.
15. **1031 Exchange.** Either party may involve the Property in a like-kind exchange, provided that such involvement may not cause any delay of the Closings, and may not obligate the other party to incur any additional risk or cost.
16. **Brokers/Commissions.** Each party agrees to indemnify and hold harmless the other party against any claim by a third party that a commission, finder's fee or similar payment or fee is due related to this Contract pursuant to an agreement for such fee with the indemnifying party. The terms of this Section expressly survive the Closings and termination of this Contract. due from Seller.
17. **Further assurances.** Each party agrees to take further reasonable actions to fulfill the intent of this Contract. If, after the Closings, Seller discovers that not all of its interests related to the Oberlin Line were transferred to Buyer, Seller shall convey to Buyer and Buyer shall accept the additional interests via a conveyance document of the same form as those attached hereto as Exhibit A. The terms of this Section expressly survive the Closings and termination of this Contract.
18. **Confidentiality.** Unless required by operation of law, for two years neither party shall disclose to any third party or publicly the price term of this Contract or proposed transaction. Each party

may disclose this Contract or proposed transaction to its respective agents, accountants, lenders, counsel, and publicly, to the extent reasonably necessary or prudent, including without limitation, to comply with any legal or regulatory requirements or as part of any legal dispute, provided that in each instance of sharing the information with a private third party, the disclosing party agrees to indemnify and hold harmless the other party from any loss, damage or harm if the private third party does not keep the Contract or proposed terms confidential, or uses such information for the private third party's own benefit. Seller may disclose this Contract or terms hereof to the Kansas Department of Transportation, and provide any necessary notices, including without limitation, to county offices and the Kansas Department of Revenue. The terms of this Section expressly survive the Closings and termination of this Contract.

Seller will grant Buyer the right to share a redacted version of this contract with adjacent property owners if they so request. The financial terms of this Contract may not be disclosed.

19. **Notice.** Any required notice shall be sent by hand-delivery, facsimile (if the confirmation sheet is retained as proof of delivery) with follow up by one of the other permitted notice delivery methods, certified mail return receipt requested, or overnight delivery service. Notice is deemed given when received (or, if undeliverable due to a party providing incorrect notice delivery information, then on the first date of delivery attempt). Notice shall be delivered to the following addresses, which either party may update at any time by providing notice of such update to the other party:

The rest of this page left intentionally blank.

To Seller:
Nebraska, Kansas & Colorado Railway, LLC
c/o Onnitrex, Inc.
Attn: General Counsel
252 Clayton Street, 4th Floor
Denver, CO 80206
Phone: 303-398-4500

To Buyer:
LI RR, LLC
Attn: Terry Nelson
PO Box 38
Long Island, KS 67647
Fax: _____

With copy to:
John McClymont
McClymont Law Office, PA
120 S State St.
P.O. Box 364
Fax: 785-877-3368
Email: jfinc@att.net

**Nebraska, Kansas & Colorado
Railway, LLC**

LI RR, LLC

By: _____

By: _____

Printed Name: _____

Terry Nelson, its _____

Title: _____

Date: _____

Date: _____

Nebraska, Kansas and Colorado Railway, LLC filed for abandonment and removed the rails and had every intention of donating to Sunflower Rails for Trails.

Because of a meeting with several people and a lobbyist in the Phillips Co. Court house to pursue purchase of RR for a realignment of HWY 383 from Alma through Long Island, Kansas, we realized that it could not happen if we ended up with a Rails for Trails.

Terry Nelson formed LI RR LLC and after hundreds of phone calls, emails and text messages we were able to get NKC to drop the Rails for Trails arrangement for a hybridized arrangement to transfer the complete set of deed's and property for the 57 miles of what is known as the Oberlin Spur to LI RR LLC.

Today there are five shareholders and board members of LI RR LLC that include: Steven L Cox, Jerry Cox, Chris Cox, Craig Ingram and Terry Nelson.

At this point there are several possible outcomes:

1. Sell contracts for "Quit Claim" deeds to each Landowner adjacent to the RR that will pay for the contract negotiated with NKC so landowners can stop "Rails for Trails" and actually receive deeds for the RR ROW traversing through their property. We have 120 days from May 6, 2019 to complete. Landowners absolutely have control of the outcome TODAY!
2. NKC could continue to ask for an additional "extension to abandon the railroad for another year" every March 1 for an indefinite amount of time that allows NKC to relay the railroad rails anytime.
3. Wait for a "Rails for Trails" agreement and then all of the landowners would have a class action lawsuit against the Federal Government for a takings action. When completed, you will have a "Rails for Trails"
4. Have different attorney's acquire permission from multiple landowners to file a class action lawsuit against the Federal Government for a "Takings Action" which green lights any "Rails for Trails" to assume any or all of the property and NKC could have the ability to re-establish the railroad any time in the future.

Additional proposal:

It appears that LI RR LLC needs additional funding to consummate the agreement with Nebraska, Kansas and Colorado Railway, LLC, LI RR LLC will remove the ballast and make it available for sale at \$15/ton. Landowner will receive a \$1/ton royalty for all rock removed from their property. Rock will be screened from dirt and steel.

(A)

Contract for Deeds from LI RR LLC to land owner and description:

"Call options for the deeds" Calls are merely short term contracts that specifies that LI RR LLC will deliver a deed for the description of the landowner's property that the NKC railroad currently traverses. That deed will specify that LI RR LLC has purchased all of the property and holds the deeds from the 57 miles of the NKC Railroad from the Orleans interchange to Oberlin as described in NKC's deed description and we will provide a deed from LI RR LLC to the landowner for a dollar consideration agreed on between LI RR LLC and the landowner. That dollar amount will be deposited in an escrow account in the First National Bank in Long Island, Kansas and will be returned to the landowner if we are unable to secure enough funds to consummate the \$XXXXXXXX final installment. To be specific: The deed from NKC to LI RR LLC and the deed from LI RR LLC to the landowner should happen simultaneously on the same day. LI RR LLC will retain the right to remove and pile the ballast on the RR ROW until December 31, 2021.

LI RR LLC has received a contract for a Quit Claim Deed from NKC for the property below and will transfer to the landowner below when the contract is consummated or return funds.

Legal: 36-1s-21w of 6th PM S2 Norton

Description: POB is east side of 36-1s-21w and center of NKC RR ROW going SW down RR ROW 2770 feet that include the north 50 feet from the center of the rails. = @3.17 acres x 2000 = \$6359.00

Owner:

ARNOLD K GRAHAM

768 FOREST GREEN DR

LACANADA, CA 91011

N. Terry Nelson, Managing Member for LI RR LLC

STATE OF KANSAS)

) ss

COUNTY OF _____)

This instrument was acknowledged before me this day of _____,
2019,

Notary Public _____

My Appointment Expires: _____.



LI RR LLC "Quit Claim Deed" to Landowner

LI RR LLC has consummated and received a Quit Claim Deed from the Nebraska, Kansas & Colorado Railway, LLC for the property described below. LI RR LLC is therefore issuing a "Quit Claim Deed" to the entity or owner described below and releases any claim to said property:

County: NORTON

Legal: 36-1s-21w of 6thPM

Description: POB is east side of 36-1s-21w and center of NKC RR ROW going SW down RR ROW 2770 feet that include the north 50 feet from the center of the rails. =@3.17 Acres +/-

LI RR LLC will retain the right to remove and pile the ballast on the RR ROW until December 31, 2021.

Owner:

ARNOLD K GRAHAM

768 FOREST GREEN DR

LACANADA, CA 91011

N. Terry Nelson Managing Partner for LI RR LLC

STATE OF KANSAS)

) ss

COUNTY OF _____)

This instrument was acknowledged before me this day of _____, 2019,

Notary Public _____

My Appointment Expires: _____.

(c)

LI RR LLC "Quit Claim Deed" to Landowner

LI RR LLC has consummated and received a Quit Claim Deed from the Nebraska, Kansas & Colorado Railway, LLC for the property described below. LI RR LLC is therefore issuing a "Quit Claim Deed" to the entity or owner described below and releases any claim to said property:

NT

1-3-25 SE 4

Point from: Center of road W 10 and NKC RR ROW, 3013 feet toward the NW
100 feet wide $\approx$ 6.91 acres x 700=\$4841.83

Harold Harvey and Kristelle Ann Mizell

16733 Road W13

Norton, Kansas 67654-5528

N. Terry Nelson Managing Partner for LI RR LLC

STATE OF KANSAS)

) ss

COUNTY OF _____)

This instrument was acknowledged before me this day of _____,
2019,

Notary Public _____

My Appointment Expires: _____ .

QUIT CLAIM Deed for Kansas Department of Transportation

The Nebraska, Kansas and Colorado Railway, LLC has quit claimed a deed to LI RR LLC and LI RR LLC has quit claim a deed to the land owner described below and the below landowner and the description of the property below is QUITCLAIMING their deed to the Kansas Department of Transportation so that State Highway 383 can re-align over next to or on top of the existing NKC RR Right of Way property from Almena, Kansas East of Long Island, Kansas.

FOR CLARITY: Other than bridges and ballast, the Property does not include any rail, railroad ties, other track material, remaining powered or passive grade crossing equipment, or other railroad improvements or salvage. LI RR LLC has until December 31, 2021 to remove the ballast from the NKC RR ROW.

28-1s-20w of 6th PM SE4 PH Nelson

POB East side of SE4 and center of NKC RR ROW going west down ROW includes the south 50ft from the center of the tracks for $2760 \text{ feet} = 3.16 \text{ A} \times 2000/\text{A} = \6336.00

By: _____

Printed Name: _____

Title: _____

STATE OF _____)
COUNTY OF _____) ss.

This instrument was acknowledged before me on _____, 2016, by _____, as _____ of Nebraska, Kansas & Colorado Railway, LLC, a Delaware limited liability company.

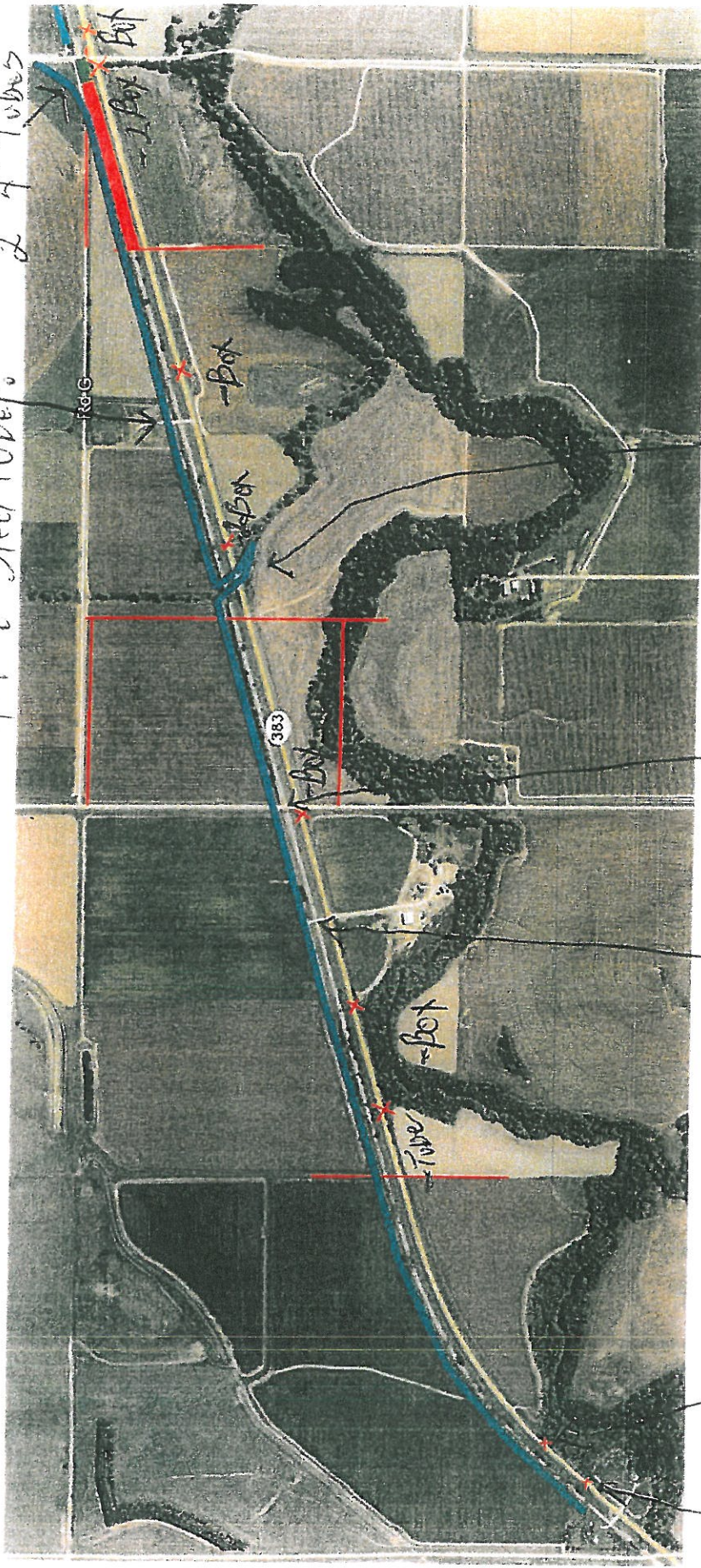
Notary Public

My Appointment Expires: _____

Printed Name: _____



+ 1 6' Steel Tubes
+ 2 4' Tubes



+ 6' Tube

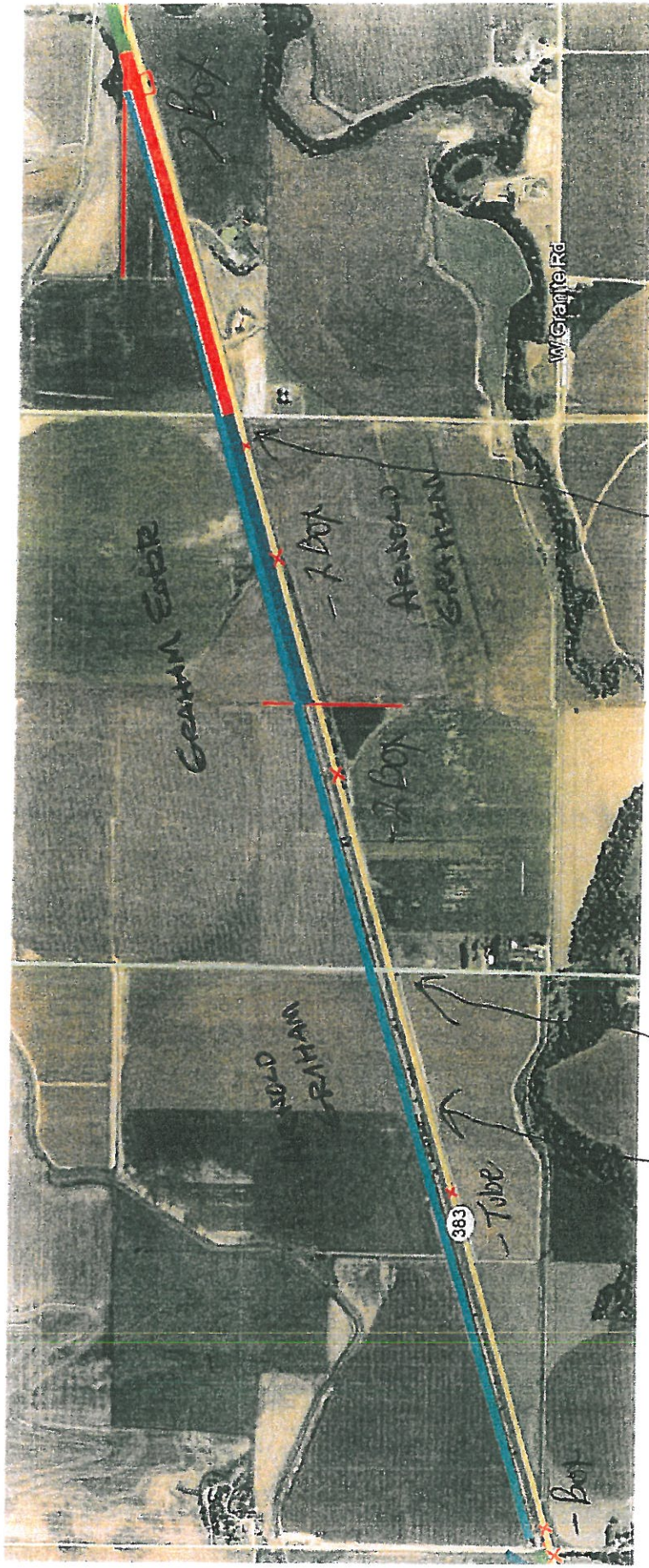
+ 3' Box
In Co Road

Bridge
New

Summary
Driveway

- 1 Tube Concrete
- 1 Tube "
- 1 Tube "
- 1 Box
- 2 Box
- 2 box
- 1 box
- 2 Box

- + 1 6' Tube Driveway? Dick Role
- + 1 3' Box Concrete Co. Rd
- + 2 4' Steel Tubes Co. Rd
- + 1 6' Steel Tubes Ceevliq



+ 3' Tube / ?
Driveway

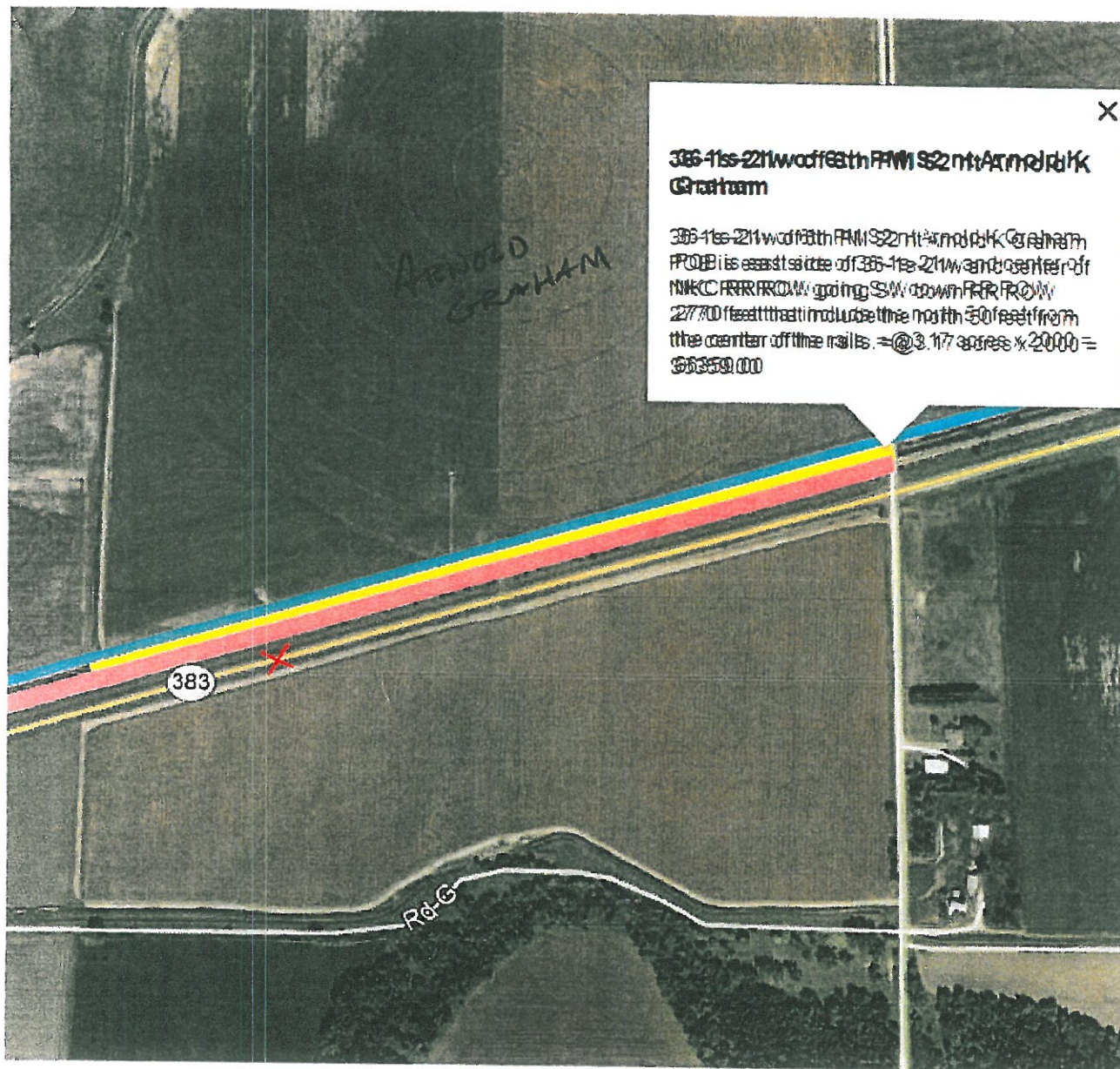
+ 3' Tube

+ 2' Tube

Summary

- 1 Box Concrete
- 1 Tube "
- 2 Box "
- = 2 Box "
- = 1 Tube "

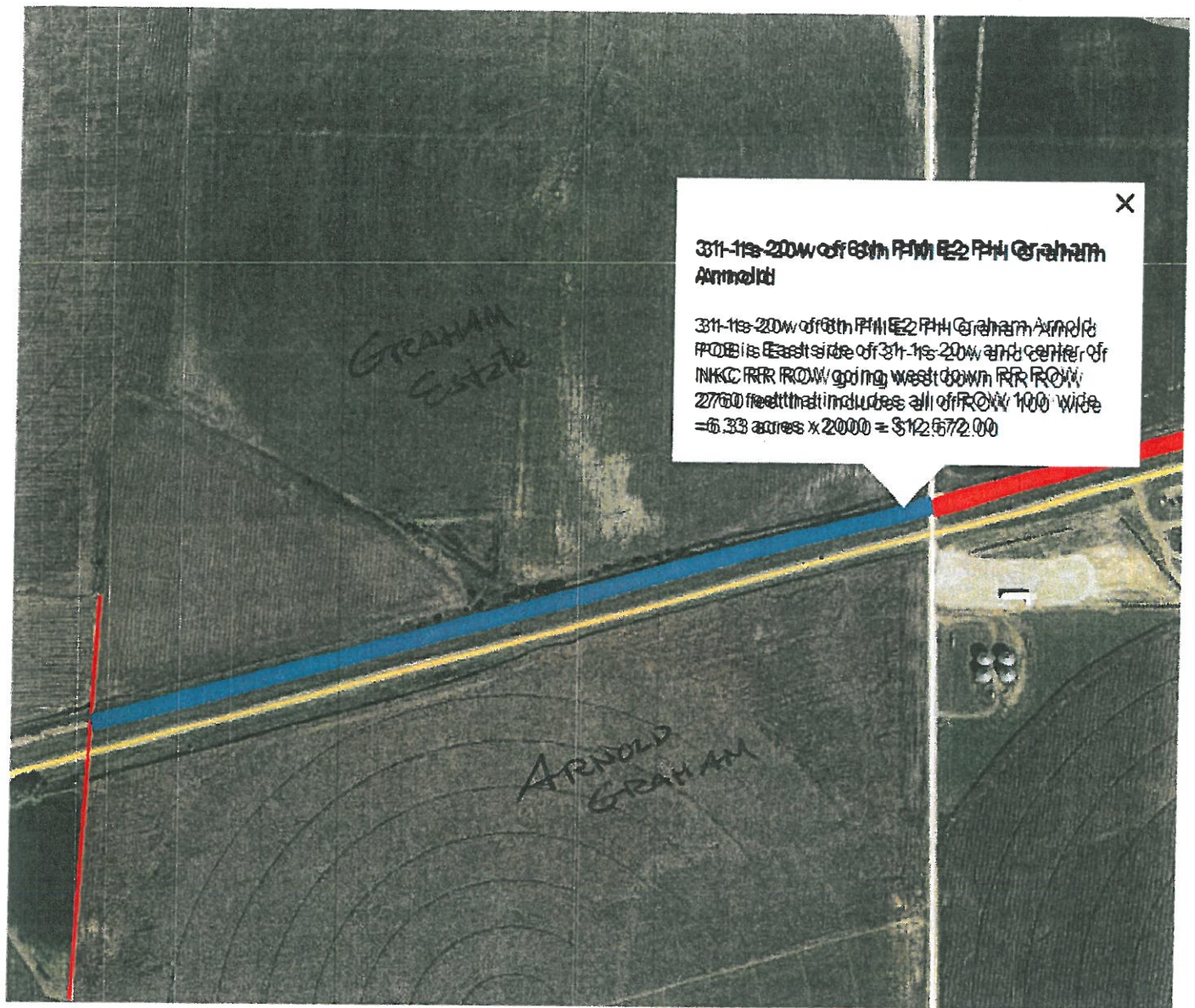
- + 3' Steel Tube - Driveway ?
- + 3' steel Tube Co Rd
- + 2' Steel Tube Co Rd



36-1s-21w of 6th PM S2 n1/4 Arnold K Graham

POB is east side of 36-1s-21w and center of NKC RR ROW going SW down RR ROW 27770 feet that include the north 50 feet from the center of the rails. = @ 3.17 acres x 2000 = \$6359.00





31-1s-20w of 6th PM E2 PH Graham Arnold

POB is East side of 31-1s-20w and center of NKK RRR ROW/ going west down RRR ROW/ 2760 feet that includes all of ROW/ 100' wide = 6.33 acres x 2000 = \$12,672.00