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mcculley@swm.legal

September 15, 2022

Ms. Danielle Gosselin
Director
Office of Environmental Analysis
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

Re: Docket No. AB 857 (Sub-No. 2)
Colorado Landowners—Adverse Abandonment—
Great Western Railway of Colorado, LLC, In Weld County, CO

Dear Ms. Gosselin:

Pursuant to the Board's Decision dated September 7, 2022 holding this proceeding in abeyance until 20 days after Landowners file and serve the revised E&H Report, the Landowners filed a revised E&H Report and served the E&H Report in accordance with 49 C.F.R § 1105.7(b) and 1105.8(c).

The Landowner's inadvertently omitted the Colorado Office of Archaeology and Historic Preservation from their agency letters. At this time, the Landowners request that the attached letter to the Colorado Office of Archaeology and Historic Preservation be filed with the Board.

Very truly yours,


Elizabeth Gepford McCulley

cc: To All Parties of Record

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WWW.SWM.LEGAL

September 15, 2022

Colorado Office of Archaeology and Historic Preservation
1200 Broadway
Denver, CO 80203

RE: Docket No. AB-857 (Sub-No. 2), Landowners Adverse Abandonment in Weld County, CO.

Dear Sir/Madam:

Landowners owning land abutting and underlying the railroad purposes easement held by Great Western Railway of Colorado, LLC ("GWRC"), plan on filing an Application for Adverse Abandonment of the Welty Line, located between milepost 0.0 at Johnstown, and milepost 6.2 at Welty, in Weld County Colorado. A map of the proposed abandonment is attached, with the 6.2 miles highlighted.

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

There are no structures 50 years old or older associated with the abandonment of the 6.2 mile Rail Line. The Landowners believe there is no likelihood of archaeological resources or previously unknown properties in the right-of-way of the Rail Line. Any such properties would have been exposed long ago when the line deteriorated.

GWRC owns the track materials in the Rail Line but the Rail Line is held pursuant to an easement for railroad purposes. Upon abandonment, the land held by easement would no longer be burdened by that easement. If GWRC were to refuse to remove the track materials upon approval of abandonment, and to voluntarily relinquish its easements for railroad purposes, the Landowners would seek an order of ejectment of GWRC under Colorado law. Upon removal of the track materials, the Landowners would make productive nonrail uses of the right-of-way land formerly subject to GWRC's easement.

In 2021, GWRC filed a Environmental and Historic Report with the STB, which was also sent to you for comments. I have attached a copy of your response to GWRC for your review.

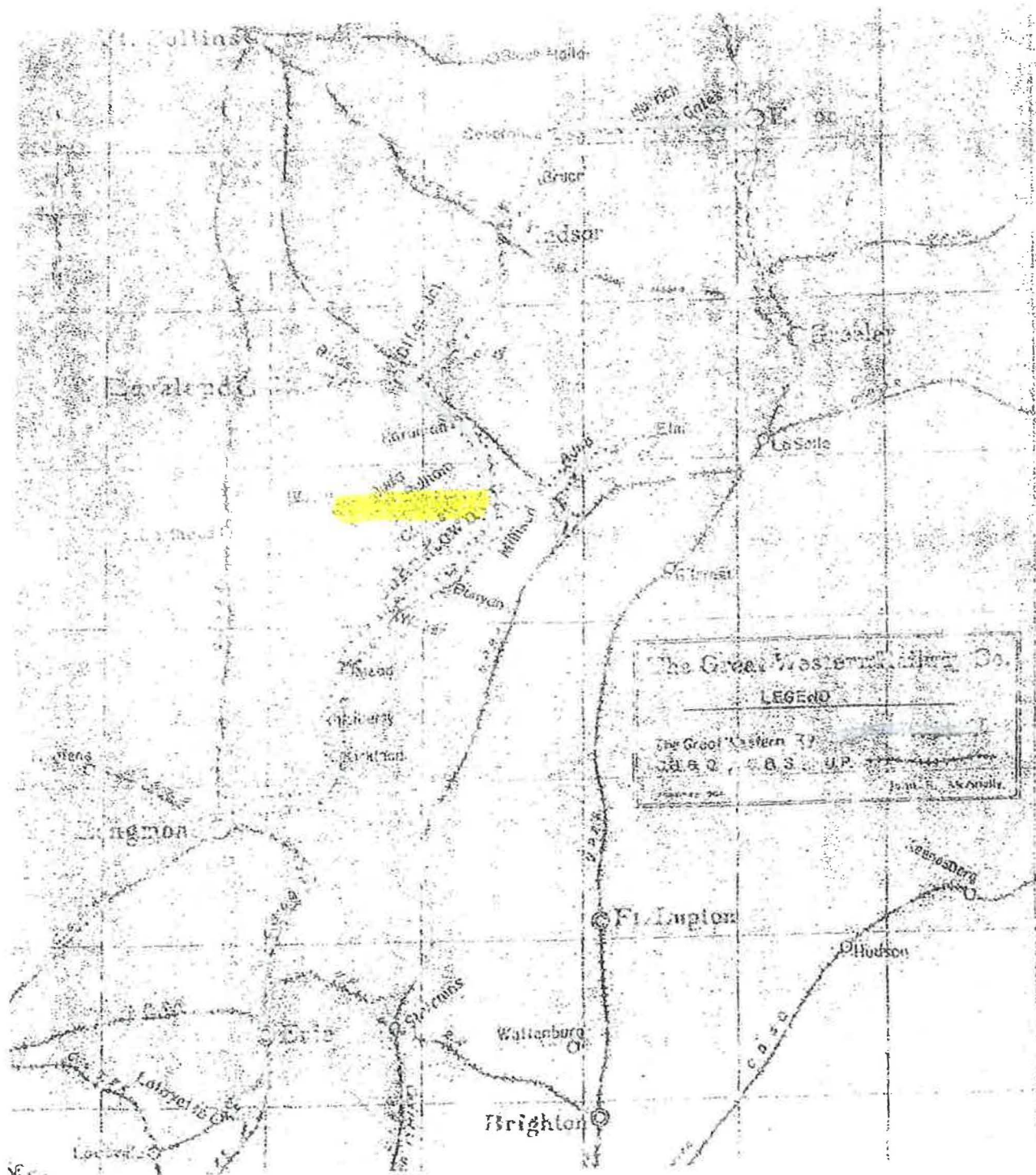
We would appreciate your review of the proposed abandonment and any comments you may wish to offer. We would also appreciate you providing us with a written response so that we can forward it to the STB.

Thank you for your time and assistance. If you have any questions, please call or email me at mcculley@swm.legal or (816) 585-7076 (cell).

Sincerely,



Elizabeth Gepford McCulley



10 January 2022

IIC #80837

Karl Morell
Karl Morell & Associates
440 1st St., NW, Suite 440
Washington, DC 20001

RE: Abandonment Exemption, Great Western Railway of Colorado, MP 0.0 to MP 6.2,
Johnstown to Welty, Weld County (Docket No. AB-857 (Sub-No. 3))

Dear M. Morell:

Thank you for your recent correspondence received 4 January 2022, concerning the proposed abandonment and railbanking of a section of track in Weld County. Our office has reviewed the submitted materials. This section of the Welty Branch (5WL.841.15) supports to overall eligibility of the resource. We concur with your assessment that the proposed undertaking will have no adverse effect on historic properties, provided the Railway remains committed to railbanking this section of the track.

If you have any questions, please contact Joseph Saldibar, Architectural Services Manager, at (303) 866-3741 or (303) 842-5619.

Sincerely,

Dr. Holly Kathryn Norton Digitally signed by Dr. Holly Kathryn Norton
Date: 2022.01.12 11:23:51 -07'00'

Dawn DiPrince
State Historic Preservation Officer

BEFORE THE
SURFACE TRANSPORTATION BOARD

LANDOWNERS – ADVERSE)
ABANDONMENT – GREAT WESTERN) DOCKET NO. AB-857 (SUB-NO. 2)
RAILWAY OF COLORADO. IN)
WELD COUNTY, CO.)

ENVIRONMENTAL AND HISTORIC REPORT

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Attorneys for Applicants

Dated: September 13, 2022

BEFORE THE
SURFACE TRANSPORTATION BOARD

LANDOWNERS – ADVERSE	)	
ABANDONMENT – GREAT WESTERN	)	DOCKET NO. AB-857 (SUB-NO. 2)
RAILWAY OF COLORADO. IN	)	
WELD COUNTY, CO.	)	

ENVIRONMENTAL AND HISTORIC REPORT

Pursuant to 49 C.F.R. § 1105.7(e); 49 C.F.R. § 1105.8, and the Board’s Decision in this proceeding served September 7, 2022, the Landowners listed in Appendix 1 (the Landowners) hereby submit an Environmental and Historic Report (“E&H Report”) for circulation to interested agencies and opportunity for comment.

I. ENVIRONMENTAL REPORT

The Landowners hereby submit the following information required by 49 C.F.R. § 1105.7(e):

(1) Proposed action and alternatives. Describe the proposed action, including commodities transported, the planned disposition (if any) of any rail line and other structures that may be involved, and any possible changes in current operations or maintenance practices. Also describe any reasonable alternatives to the proposed action. Include a readable, detailed map and drawings clearly delineating the project.

The action is an Application for Adverse Abandonment in which the Landowners seek a finding that the present or future public convenience and necessity require or permit abandonment of a rail line that extends (1) between Milepost 0.0 at Johnstown and Milepost 6.2 near Welty, a total distance of 6.2 miles. A map of the Rail Line is attached as Appendix 2.

Great Western Railway of Colorado, LLC (“GWRC”) previously filed a notice of exemption under 49 CFR 1152.50 in May, 2008 seeking exemption to abandon the Rail Line. *See* STB Docket No. AB 857 (Sub. No. 1X), *Great Western Railway of Colorado, LLC—Abandonment Exemption—in Weld County, Colorado*, served May 6, 2008. In December, 2021, GWRC sent another proposed abandonment to the agencies listed in 49 C.F.R § 1105.7 and

requested comments. Although GWRC served their own E&H Report, GWRC has not followed through with the filing of an Abandonment Exemption. As a result, the Landowners are now sending this E&H Report for circulation to interested agencies and opportunity for comment in conjunction with their Application for Adverse Abandonment.

On February 21, 2008, as part of the first federal abandonment process, initiated by GWRC, GWRC filed a E&H Report and expressly admitted and confirmed that “[t]he Line has not been used for local traffic in over 20 years and no maintenance has been performed on any portion of the Line” and that there had been no railroad traffic, no customers, and no railroad use for over 20 years. In the second E&H Report filed by GWRC on August 1, 2022, GWRC stated that “the Line has not been used for local traffic in many years. The Line is stub-ended and not capable of handling overhead traffic. Therefore, the proposed abandonment will not change rail freight operations on the Line.” The Landowners agree that the Rail Line has not been used for rail freight operations for 43 years. In addition, the Rail Line has not been maintained and, in addition to not being capable of handling rail traffic, is in a state of disrepair and is dangerous. Upon effectiveness of the requested abandonment, the federal interest in the Rail Line would terminate. Disposition of the Rail Line assets would take place under Colorado law. GWRC owns the track materials in the Rail Line but the Rail Line is held pursuant to an easement for railroad purposes.

Upon abandonment, the land held by easement would no longer be burdened by that easement. If GWRC were to refuse to remove the track materials upon approval of abandonment, and to voluntarily relinquish its easements for railroad purposes, the Landowners would seek an order of ejectment of GWRC under Colorado law. Upon removal of the track materials, the Landowners would make productive nonrail use of the right-of-way land formerly subject to GWRC’s easement.

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

The proposed abandonment will have no impact on regional or local transportation systems or patterns. For that reason, too, no passenger or freight rail traffic would be diverted to other transportation systems or modes as a result of the proposed abandonment.

(3) Land use. (i) Based on consultation with local and/or regional planning agencies and/or a review of the official planning documents prepared by such agencies, state whether the proposed action is consistent with existing land use plans. Describe any inconsistencies.

The proposed abandonment would be consistent with existing land use regulations in the affected territory. Local land use has not suffered in the past 40 years due to the absence of traffic on the Rail Line.

Appendix 3 of this Report is a letter to local agencies and representatives providing notice of the proposed action, and seeking their views regarding the proposed abandonment. In regard to Land Use, that letter was sent to representatives of Weld County and the Town of Johnston. Any replies will be sent promptly to the Board.

(3)(ii) Based on consultation with the U.S. Soil Conservation Service, state the effect of the proposed action on any prime agricultural land.

Inasmuch as no rail shipments have moved over the Rail Line for more than 40 years, abandonment of that Rail Line would not have an adverse effect on prime agricultural land.

(3)(iii) If the action affects land or water uses within a designated coastal zone, include the coastal zone information required by Sec. 1105.9.

The proposed abandonment would not affect a designated coastal zone.

(3)(iv) If the proposed action is an abandonment, state whether or not the right-of-way is suitable for alternative public use under 49 U.S.C. 10905 and explain why.

The Landowners believe that the Rail Line is not suitable for alternative public use. Negotiations concluded unsuccessfully for railbanking and interim recreational trail use. The

population has now grown from 3,827 people in 2008 to 18,827 people in 2022 with schools and residences. The line is stub-ended and cannot transport goods anywhere and has laid in waste for decades. The line bisects farms and makes farming operations more difficult and more expensive. There is no need for the land in the Rail Line for additional highway or utility use, which is adequate in the involved territory.

(4) Energy. (i) Describe the effect of the proposed action on transportation of energy resources.

There having been no rail traffic over the Rail Line in more than 40 years, abandonment of the Line would not have an adverse effect on energy resources.

(4)(ii) Describe the effect of the proposed action on recyclable commodities.

For the same reason, abandonment would not have an adverse effect on transportation of recyclable commodities.

(4)(iii) State whether the proposed action will result in an increase or decrease in overall energy efficiency and explain why.

For the same reason, abandonment would not have an effect on energy efficiency.

(4)(iv) If the proposed action will cause diversions from rail to motor carriage of more than: (A) 1,000 rail carloads a year; or (B) An average of 50 rail carloads per mile per year for any part of the affected line, quantify the resulting net change in energy consumption and show data and methodology used to arrive at the figure given. To minimize the production of repetitive data, the information on overall energy efficiency in Sec. 1105.7(e)(4)(iii) need not be supplied if the more detailed information in Sec. 1105.7(e)(4)(iv) is required.

For the same reason, abandonment would not result in any diversion of rail traffic to motor carriage.

(5) Air. (i) If the proposed action will result in either: (A) An increase in rail traffic of at least 100 percent (measured in gross tons miles annually) or an increase of at least eight trains a day on any segment of rail line affected by the proposal, or (13) An increase in rail yard activity of at least 100 percent (measured by car load activity), or (C) An average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on any affected road segment, quantify the anticipated effect on air emissions. For a proposal under 49 U.S.C. 10901

(or 10505) to construct a new line or reinstitute service over a previously abandoned line, only the eight train a day provision in subsection (5)(i)(A) will apply.

The above thresholds will not be exceeded.

(5)(ii) If the proposed action affects a class I or nonattainment area under the Clean Air Act, and will result in either: (A) An increase in rail traffic of at least 50 percent (measured in gross tons miles annually) or an increase of at least three trains a day on any segment of the rail line, (13) An increase in rail yard activity of at least 20 percent (measured by carload activity). or (C) An average increase in truck traffic of more than 10 per cent of the average daily traffic of 50 vehicles a day on a given road segment, then state whether any expected increased emissions are within the parameters established by the State Implementation Plan. However, for a rail construction under 49 U.S.C. 10901 (or 49 U.S.C. 10505), or a case involving the reinstitution of service over a previously abandoned line, only the three train a day threshold in this item shall apply.

The above thresholds will not be exceeded.

(5)(iii) If transportation of ozone depleting materials (such as nitrogen oxide and freon) is contemplated, identify: the materials and quantity; the frequency of service; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and spills; contingency plans to deal with accidental spills; and the likelihood of an accidental release of ozone depleting materials in the event of a collision or derailment.

Not applicable.

(6) Noise. If any of the thresholds identified in item (5)(i) of this section are surpassed, state whether the proposed action will cause: (i) An incremental increase in noise levels of three decibels Ldn or more;

None of the above thresholds will be exceeded.

(6)(ii) An increase to a noise level of 65 decibels Ldn or greater. If so, identify sensitive receptors (e.g. schools, libraries, hospitals, residences, retirement communities, and nursing homes) in the project area, and quantify the noise increase for these receptors if the thresholds are surpassed.

None of the above thresholds will be exceeded.

(7) Safety. (i) Describe any effects of the proposed action on public health and safety (including vehicle delay time at railroad grade crossings).

Abandonment would not result in an increase in delay at public crossings, nor any other effect on public health or safety.

(7)(ii) If hazardous materials are expected to be transported, identify: the materials and quantity; the frequency of service; whether chemicals are being transported that, if mixed, could react to form more hazardous compounds; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and hazardous spills; the contingency plans to deal with accidental spills; and the likelihood of an accident release of hazardous materials.

Not applicable.

(7)(iii) If there are any known hazardous waste sites or sites where there have been known hazardous materials spills on the right-of-way, identify the location of those sites and types of hazardous materials involved.

There are no such known sites.

(8) Biological resources. (i) Based on consultation with the U.S. Fish and Wildlife Service, state whether the proposed action is likely to adversely affect endangered or threatened species or areas designated

GWRC sent the proposed abandonment to the U.S. Fish and Wildlife Service for its views in 2008, and in 2021. Landowners now send the Environment and Historic Report to the U.S. Fish and Wildlife Service for its views. There are no endangered or threatened species that will be adversely affected and the abandonment should have no adverse effect on endangered or threatened species or their habitat.

(8)(ii) State whether wildlife sanctuaries or refuges, National or State parks or forests will be affected, and describe any effects.

The proposed abandonment will have no effect on National or State Parks. Landowners now send the Environment and Historic Report to the National Park Service and other entities listed in 49 C.F.R §1105.7(b) for its views and comments, if any.

(9) Water. (i) Based on consultation with State water quality officials, state whether the proposed action is consistent with applicable Federal, State or local water quality standards. Describe any inconsistencies.

GWRC sent the proposed abandonment to the Colorado Department of Public Health and Environment, and the U.S. Environmental Protection Agency in 2008 and 2021. Landowners now send the Environment and Historic Report to the Colorado Department of Public Health and

Environment, and the U.S. Environmental Protection Agency. The proposed abandonment will be consistent with applicable water quality standards.

(9)(ii) Based on consultation with the U.S. Army Corps of Engineers, state whether permits under section 404 of the Clean Water Act (33 U.S.C. 1344) are required for the proposed action and whether designated wetlands or 100-year flood plains will be affected. Describe the effects.

GWRC sent the proposed abandonment to the to the U.S. Army Corps of Engineers in 2008 and 2021. Landowners now send the Environment and Historic Report to the U.S. Army Corps of Engineers. The proposed abandonment will not require permits under section 404 of the Clean Water Act. No designated wetlands or 100-year flood plans will be affected.

(9)(iii) State whether permits under section 402 of the Clean Water Act (33 U.S.C. 1342) are required for the proposed action. (Applicants should contact the U.S. Environmental Protection Agency or the state environmental protection or equivalent agency if they are unsure whether such permits are required.)

No permit under Section 402 of the Clean Water Act will be required for the proposed abandonment.

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

Not applicable.

II. HISTORIC REPORT

The Landowners hereby submit the following information required by 49 C.F.R. § 1105.8(d):

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

Two U.S. Geological Survey maps depicting the Line proposed for abandonment were supplied to the Colorado Office of Archaeology and Historic Preservation (“SHPO”). There are no structures 50 years or older associated with the abandonment of the Line.

(2) A written description of the right-of-way (including approximate widths, to the extent known), and the topography and urban and/or rural characteristics of the surrounding area;

The Line branches off GWRC's mainline at the intersection of route 17 and N 2nd Street in Johnstown population 18,787 (<https://worldpopulationreview.com/us-cities/johnstown-co-population>, last visited 9/7/22), extends in a southwesterly direction through Johnstown until it reaches route 15 and then extend westerly through a predominantly rural area to the end of the line just west of Interstate Hwy 25. The basic rail corridor right-of-way is approximately 80 feet in width for the majority of the length of the Line.

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

There are no railroad structures on the line that are 50 years old or older.

(4) The date(s) of construction of the structure(s), and the date(s) and extent of any major alterations, to the extent such information is known;

There are no railroad structures on the line that are 50 years old or older.

(5) A brief narrative story of carrier operations in the area, and an explanation of what, if any, changes are contemplated as a result of the proposed action;

GWRC has not provided transportation over the Rail Line in more than 40 years, however, GWRC has refused to voluntarily relinquish its railroad easement. Landowners' adverse abandonment application seeks elimination of GWRC's federal interest in the Rail Line so that they can seek remedial action under Colorado law to force GWRC off the Line.

(6) A brief summary of documents in the carrier's possession, such as engineering drawings, that might be useful in documenting a structure that is found to be historic.

There are no such documents in the Landowners' possession.

(7) An opinion (based on readily available information in the railroad's possession) as to whether the site and/or structures meet the criteria for listing on the National Register of Historic Places (36 CFR 60.4), and whether there is a likelihood of archeological resources or any other previously unknown historic properties in the project area, and the basis for these

opinions (including any consultations with the State Historic preservation Office, local historical societies or universities);

In the opinion of the Landowners, no bridges are linked to events of historic significance.

In the Landowners' view, there is no likelihood of archaeological resources or previously unknown properties in the right-of-way of the Rail Line. Any such properties would have been exposed long ago when the line deteriorated long ago.

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

None.

Respectfully submitted,

CINDY SAUER, ET AL., LANDOWNERS
c/o Stewart, Wald & McCulley
2100 Central Street, Suite 22
Kansas City, MO 64108
Applicants

/s/ Thomas S. Stewart
/s/ Elizabeth G. McCulley
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Attorneys for Applicants

Dated: September 13, 2022

CC: Parties of Record