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THOMAS F. MCFARLAND

August 10, 2007

By e-filing

Vernon A. Williams, Secretary
Surface Transportation Board
395 I Street, S.W., Suite 1149
Washington, DC 20024

ENTERED
Office of Proceedings
AUG 13 2007
Part of
Public Record

Re Finance Docket No. 34889, *PYCO Industries Inc. -- Alternative Rail Service --*
South Plains Switching, Ltd. Co.

Dear Mr. Williams:

Hereby transmitted is a Reply To "Motion To Permit Inspection And Repair Or, In The Alternative, Petition To Reopen Decision In Order To Permit Inspection And Repair," for filing with the Board in the above referenced matter.

Very truly yours,

Tom McFarland

Thomas F. McFarland
Attorney for South Plains
Switching, Ltd. Co.

1361 West 17th Street, Suite 100

BEFORE THE
SURFACE TRANSPORTATION BOARD

PYCO INDUSTRIES, INC. --)
ALTERNATIVE RAIL SERVICE --) FINANCE DOCKET
SOUTH PLAINS SWITCHING, LTD. CO.) NO. 34889

**REPLY TO "MOTION TO PERMIT INSPECTION AND REPAIR
OR, IN THE ALTERNATIVE, PETITION TO REOPEN
DECISION IN ORDER TO PERMIT INSPECTION AND REPAIR"**

SOUTH PLAINS SWITCHING, LTD. CO
P.O. Box 64299
Lubbock, TX 79464-4299

Replicant

THOMAS F McFARLAND
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Attorney for Replicant

DATE FILED August 10, 2007

BEFORE THE
SURFACE TRANSPORTATION BOARD

PYCO INDUSTRIES, INC --	)	
ALTERNATIVE RAIL SERVICE --	)	FINANCE DOCKET
SOUTH PLAINS SWITCHING, LTD. CO	)	NO. 34889

**REPLY TO "MOTION TO PERMIT INSPECTION AND REPAIR
OR, IN THE ALTERNATIVE, PETITION TO REOPEN
DECISION IN ORDER TO PERMIT INSPECTION AND REPAIR"**

Pursuant to 49 C.F.R. § 1103.14(a), SOUTH PLAINS SWITCHING, LTD. CO (SAW) hereby replies to a "Motion to Permit Inspection and Repair or, in the Alternative, Petition to Reopen Decision in order to Permit Inspection and Repair," filed by PYCO Industries, Inc (PYCO) on August 7, 2007

REPLY

SAW has no objection to West Texas & Lubbock Railroad (WTL) or its contractor entering onto the trackage being used for alternative rail service for the purpose of track inspection and repair and for weed cutting. SAW has never objected to WTL's entry onto that trackage for that purpose. It is necessary for WTL to enter onto that trackage for that purpose because the duty of track inspection, maintenance and repair, including weed control, is placed on WTL by virtue of 49 C.F.R. § 213.5(e), which provides as follows:

A common carrier by railroad which is directed by the Surface Transportation Board to provide service over the track of another railroad under 49 U.S.C. 11123 is considered the owner of that track for the purposes of the

application of this part during the period the directed service order remains in effect.¹⁷

That is a regulation promulgated by the Federal Railroad Administration (FRA). Other FRA regulations provide that the owner of track is responsible for track inspection, maintenance and repair.

However, SAW objects to PYCO, a noncarrier, entering onto the trackage for the purpose of track inspection, maintenance and repair because PYCO has no right nor obligation of track maintenance. SAW's consistent objection in that respect has always been directed at PYCO, not WTL. WTL requires entry onto the trackage to carry out its common carrier duty of track inspection, maintenance and repair. PYCO has no business on the trackage because it has no duty in that respect. WTL is competent to inspect, maintain and repair the trackage under consideration. WTL does not require PYCO's aid in that respect.

The upshot is that WTL is welcome to enter onto the trackage under consideration for the purpose of track inspection, maintenance and repair, including weed control, with or without an order from this Board. SAW will continue to resist PYCO's unwarranted entry for that purpose.

SAW has saved WTL the trouble of a thorough inspection of the tracks under consideration. On July 23, 2007, SAW arranged for Landieth Engineering, LLC to perform a detailed inspection of that trackage based on whether or not such trackage complies with FRA

¹⁷ PYCO's argument -- that 49 C.F.R. § 213.5(e) is not applicable because the current alternative rail service is pursuant to 49 U.S.C. § 11102 rather than 49 U.S.C. § 11123 (Motion, Ex. C at 2) -- does not mean that WTL is relieved from the duty of maintenance. A service provider under directed service or alternative service derives revenue from its operation over the trackage used for the operation. The alternative service provider is required to bear the corresponding costs of operation, including track maintenance, regardless of whether the alternative rail service is under § 11102 or § 11123. Otherwise, the alternative service provider would be unjustly enriched and the track owner would be unreasonably penalized.

Class I and Class II track safety standards and the Texas Clearance Law. The Engineering Inspection Report of Landreth Engineering, LLC is attached to this Reply as Appendix 1. The Report shows numerous violations of minimum FRA Class I track safety standards and of the Texas Clearance Law (Report Attachment 1). Those violations are illustrated in numerous photographs that make up Attachment 2 of the Report. Notably, the Landreth Report also shows that the need for track maintenance and repair to comply with FRA requirements has arisen since WTL began to operate over the trackage. In other words, the need for track repair is attributable to WTL's failure to perform its duty of track maintenance.

WTL will be expected to take steps to correct the violations identified in the Landreth Report when WTL enters onto the trackage for track repair and weed control.

CONCLUSION AND REQUESTED RELIEF

The absence of SAW opposition to the request for WTL's entry onto the trackage for track maintenance and repair (including weed control) eliminates a need for a Board order in this matter. WTL is welcome to repair the trackage and control the weeds at any time. Presumably, that will satisfy PYCO, as well it should. In that event, PYCO's Motion-Petition should be denied as moot. In the event that PYCO nevertheless seeks entry onto the trackage for itself,

despite the absence of any track maintenance right or obligation on its part, its Motion-Petition should be denied as unwarranted

Respectfully submitted,

SOUTH PLAINS SWITCHING, LTD CO
P.O. Box 64299
Lubbock TX 79464-4299

Replicant

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Attorney for Replicant

DATE FILED August 10, 2007

**ENGINEERING INSPECTION REPORT
OF
RAILROAD ASSETS**

LISTED AS

**PYCO INDUSTRIES, INC. ALTERNATIVE 2
STB FINANCE DOCKET 34890
A PORTION OF TRACKAGE OWNED BY
SOUTH PLAINS SWITCHING, LTD., CO.**

OPERATED BY

**WEST TEXAS & LUBBOCK RAILWAY COMPANY, INC.
UNDER STB DIRECTED SERVICE ORDER
STB FINANCE DOCKET 34802
(DECISION JANUARY 25, 2006)**

INSPECTED FOR:

SOUTH PLAINS SWITCHING, LTD., CO.

INSPECTION DATE.

July 23, 2007

INSPECTED BY.

**LANDRETH ENGINEERING, LLC
12231 Academy Rd., NE #301-284
Albuquerque, NM 87111**

DATE OF REPORT

August 3, 2007

A. INTRODUCTION

South Plains Switching, Ltd., Co. (SAW) engaged Landreth Engineering, LLC to inspect and evaluate the maintenance condition of approximately 7.47 miles of rail line owned by South Plains Switching, Ltd., Co. and currently operated pursuant to a Surface Transportation Board Directed Service Order by the West Texas & Lubbock Railway Company, Inc.

Landreth Engineering, LLC understands that this report may be utilized in a Civil Court and/or a Surface Transportation Board (STB) proceeding. Qualifications for Landreth Engineering, LLC are contained in Attachment "A"

The objective of this inspection was to determine the change in the maintenance condition of the track and real estate since the previous inspection by Landreth Engineering, LLC on July 18, 2006 and this inspection conducted on July 23, 2007 for the track and underlying real estate within STB Finance Docket 34890 identified as PYCO industries, Inc. Alternative 2 as of July 23, 2007. This report presents findings as to the changed maintenance condition of the track structure (rail assets) and real estate.

B. SCOPE OF INSPECTION

The railroad assets are located in Lubbock, Lubbock County, Texas. Landreth Engineering, LLC, utilized the track segments contained in the July 2006 inspection report as a guide to the track currently operated and maintained by the West Texas & Lubbock Railway Company, Inc. (WTL). The line segments described in the footnote of STB Finance Docket 34890 (Document 37144) as PYCO Alternative 2 and in the PYCO Feeder Line Application STB Finance Docket 34844 (Document 216497) are listed below for convenience:

TRACKS EAST OF BNSF MAIN LINE

CLIC 231

(AT ICC No. 65) &	1,368 TF
(FWD Interchange Track 2) (FWD ICC No. 19)	1,094 TF

<u>TEAM No. 9298</u> SAW Main Line (Original FW&D Main Line)	4,667 TF
(BNSF Removed 1,280 TF of Original FW&D Main Line)	

<u>TEAM No. 9200</u> FWD Siding (FWD ICC No. 92)	3,949 TF
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Trackage Serving Attebury Grain, LLC

CLIC No. 310 (AT ICC No. 127) Trackage to Attebury	769 TF
CLIC No. 311 (AT ICC No. 128)	255 TF
(FWD ICC No. 33)	419 TF
CLIC No. 312 (AT ICC No. 129)	129 TF
(FWD ICC No. 32)	81 TF
CLIC No. 313 (AT ICC No. 130)	49 TF
(FWD ICC No. 31)	1,474 TF

Trackage Serving Farmers Cooperative Compress

CLIC No. 310 (AT ICC No. 127) Trackage to Farmers	1,035 TF
(FWD ICC No. 37)	3,486 TF
CLIC No. 325 (FWD ICC No. 100)	398 TF
CLIC No. 324 (FWD ICC No. 101)	432 TF
CLIC No. 323 (FWD ICC No. 65) (To 50 th Street)	3,900 TF
Runaround Track (FWD ICC No. 102)	<u>1,253 TF</u>

Total Trackage East of BNSF Main Line	24,758 TF (4.69 Miles)
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TRACKS WEST OF BNSF MAIN LINE

<u>TEAM No. 9201</u> – SAW Yard Track No 1 (FWD ICC No 20)	3,330 TF
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<u>TEAM No. 9205</u> – SAW Yard Track No 5 (FWD ICC No. 34)	3,332 TF
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<u>TEAM No. ??</u> - FWD ICC No 137 – Connection Yard Track No. 5 To North Side PYCO Plant 1	98 TF
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<u>TEAM No. 9204</u> – SAW Yard Track No 4 (FWD ICC No 46) West Yard Lead & West Portion Yard Track No. 4	2,170 TF
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<u>TEAM No. ??</u> – FWD ICC No. 23 – Connection Yard Track No. 4 To South Side PYCO Plant 1	155 TF
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<u>TEAM No. ??</u> – FWD ICC No 44 – Connection ICC No 23 to PYCO Track No 403	66 TF
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<u>TEAM No. 9206</u> (FWD ICC No 73) – West Lead BN Industrial District (PYCO refers to as West Leg of Wye) Portion of Track & Property Previously Sold to Choo – Choo Properties	100 TF
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<u>TEAM No. 9298</u> - SAW Main Line (FW&D Original Main Line) West of BNSF R/W Line to East R/W Line of Avenue A (7/23/07 WTL operates BNSF R/W to EOT)	5,439 TF
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<u>Total Trackage West of BNSF Main Line</u>	14,690 TF (2 78 Miles)
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<u>Trackage segments PYCO Alternative 2</u>	39,448 TF (7 47 Miles)
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C BACKGROUND

Landreth Engineering originally inspected the tracks identified as PYCO ALTERNATIVE 2 during July 17 & 18, 2006 and provided a written report dated July 27, 2006 to the South Plains Switching, Ltd., Co.

Prior to the July 2006 inspection the tracks were operated and inspected in accordance with FRA Track Safety Standards for Excepted Track. The July 2006 inspection found that the tracks were being operated as Excepted Track but the level of maintenance would meet the FRA Track Safety Standards for Class 2 track. After the results of this inspection, the SAW gave notice to the FRA (Effective August 28, 2006) that the tracks were to be operated and inspected in accordance with FRA Track Safety Standards for Class 1 track.

The tracks identified as PYCO ALTERNATIVE 2 are operated by the West Texas & Lubbock Railway Company, Inc. (WTL) in accordance with a Surface Transportation Board Directed Service Order (Finance Docket 34802 originally served January 26, 2006)

EXHIBIT 1

July 23, 2007 Truck Inspection of Truck Owned by South Plains Switching, Ltd., Co
Trackage Operated by West Texas Lubbock Railroad in accordance with STB Directed Service Order
STB Finance Docket No. 34880

Truck Inspection FRA CL 1 Maintenance Safety Standards
Maintenance Responsibility West Texas Lubbock Railroad per FRA 213.5(e)

Track	Location	Defect	Defect Codes		Suggested Remedial Action
			FRA - Cl 1	Texas	
WTL	S rail 1st joint east HB Trk 5	Stripped Joint	121.05		Replace Bolts
Trk 5	LH Switch PL EHB Trk 5	12" Wear - No Chips			Monitor Switch Point every 30 days
Trk 5	HB East Yard Lead	Switch Points Not Seating	135.03		Adjust Switch Points
Trk 5	200' west of East HB Trk 5	Footing - Prairie Dog Hole		TX	Fill Hole
Trk 5	250' west of East HB Trk 5	Footing - Prairie Dog Hole		TX	Fill Hole
Trk 5	300' west of East HB Trk 5	Footing - Prairie Dog Hole		TX	Fill Hole
Trk 5	west of East HB Trk 5	Footing - Prairie Dog Hole		TX	Fill Hole
Trk 5	Jupiter Road grade crossing	1-1/2" Asphalt above top of rail		TX	Remove Asphalt above top of rail
Trk 5	200' west of Jupiter Road	Footing - Prairie Dog Hole		TX	Fill Hole
Trk 5	Trk 5 - 400' west of Jupiter Road	Cross Level			Surface 2 rail lengths
Trk 5	Trk 5 - 600' west of Jupiter Road	Surface			Surface low spot
Trk 5	N rail Trk 5 joint 38' east HB WTL Tie Up Trk	Joint (1-3/8" gap)	121.01		Replace Rail
Trk 5	WTL Tie Up Trk	No. 1 HB Tie Spike Dead	135.07		Replace HB Tie
Trk 5	WTL Tie Up Trk	Missing Heel Block	135.09		Replace Heel Block
Trk 5	WTL Tie Up Trk	Switch Tie Set	109.05		Replace Defect Switch Ties
Trk 5	West Switch Trk 5	Switch Target Missing	135.10		Replace Switch Target
Trk 5	West Switch Trk 5	Loose Switch Stand	135.07		Secure Switch Stand to Ties
Trk 5	West Switch Trk 5	RH Switch Point worn 10"			Monitor Switch Point every 30 days
HL	Acme Back Switch	RH Switch Point worn 10"			Monitor Switch Point every 30 days
HL	Acme Back Switch	Switch Points Not Seating	135.03		SAW Corrected by Splicing Switch Pls - Trk 1
HL	Acme Back Switch	Fixed Straight Rail in Switch	113.15		Replace Rail
HL	ML 2-1/2 Rails West of Acme Switch	Rail Pumping - Spike Dead Ties	109.04		Replace ties as needed for 3 track panels
HL	ML Pyco pet grade crossing	SW Corner Crossing 3" High		TX	Remove & Replace Crossing Boards
HL	ML Derrail east Side US Hwy 87 Grade Crossing	Open Derrail	205.02		Lock & Close Derrail
HL	ML US Hwy 87 Grade Crossing	Rubber Crossing Panel 4" High		TX	Remove and Reinstall crossing panels
HL	Frito Lay Switch	RH Switch Point worn 10"			Monitor Switch Point every 30 days
HL	Frito Lay Switch	LH Switch Point worn 16"	135.11		Repair or Replace Switch Point
HL	Bills Trucking Switch	RH Switch Point worn 8"			Monitor Switch Point every 30 days
Trk 1	150' West of EHB Trk 1	Footing - Prairie Dog Hole		TX	Fill Hole
Trk 1	200' west of Jupiter Road	Footing - Prairie Dog Hole		TX	Fill Hole
Trk 1	300' west of Jupiter Road	Unsupported Joint	129.02		Replace Joint Tie
HL	Opposite Sub Station	Vegetation	37.04		Vegetation Control
Trk 1	S Rail - Opposite Sub Station	Double Blue Jt. Bar			Replace Joint Bars & Ties
Trk 1	S Rail - 200' West of First Double Break	Double Blue Jt. Bar			Replace Joint Bars

Trk 1	S. Rail - 100' West of Second Break	Single Bin J. Bar		Replace Joint Bar
Trk 1	N. Rail - 100' West of Third Break	Single Bin J. Bar		Replace Joint Bar
Trk 1	S. Rail - 100' West of Fourth Break	Single Bin J. Bar		Replace Joint Bar
Trk 1	S. Rail - West of Fifth Break	Single Bin J. Bar		Replace Joint Bar
Trk 1	S. Rail 100' West of Sixth Break	Single Bin J. Bar		Replace Joint Bar
Trk 1	Photo at Sixth Break	Vegetation	37.04	Vegetation Control
Trk 1	S Rail opposite E. Bldg on N. Side	7" Stopped Joint	121.86	Cut In New Rail
Trk 1	S Rail 1st Joint West of Skipped J.	2 - Broken Bolts		Replace Track Bolts
Trk 1	West Switch Trk 1	Rail Bar Point worn 25"	135.11	Repair or Replace Sw. Pl.
Trk 1	Frog West Switch Trk 1	1" wide Chip 3" back from Pt.	137.02	Repair Pl. Of Frog
Trk 3	W Switch Trk 3	Switch Target Missing	135.10	Replace Switch Stand Target
ML	West Yard Lead	Vegetation	37.06	Vegetation Control
ML	Orchard Lead Switch	Switch Target Missing	135.10	Replace Switch Stand Target
ML	200' East Orchard Lead Switch	Footing - Prairie Dog Hole		Fill Hole
Trk 231	MLK Overpass	Vegetation	37.04	Vegetation Control
Trk 231	T Rail Bridge (16 TF)	Cap - Bar 2 Vertical Split		Monitor Cap every 30 days
Trk 231	500' west of Road Grade Crossing	Footing - Prairie Dog Hole		Fill Hole
Trk 231	General Comment	Missing Track Bolts		Replace Missing Track Bolts
Trk 9200	200' East ML Cr	Track Roadbed Wash Out	103.81	Replace Track Roadbed
Trk 9200	West End Curve	Track Roadbed Washout	103.81	Replace Track Roadbed
Trk 9200	East Derrill Track 9200	Open Derrill Occupied Track	205.03	Close & Lock Derrill
Trk 9200	East End Stored Tank Cars	Handbrake Not Set on Tank Car		Set Adequate Handbrakes on rail Cars
Trk 31	East Lead to Alleyway Green	Vegetation	37.04	
Trk 31	East HB Trk 31	Switch Target Missing	135.10	Replace Switch Stand Target
Trk 31	300' West East HB Trk 31	Unsupported Rail Joint	109.02	Replace Joint on
Trk 37	East HB Trk 37	Switch Target Missing	135.10	Replace Switch Stand Target
Trk 32	East HB Trk 32	Missing Cotter Pins	133.07	Replace Cotter Pins
Trk 37	East Concrete Xing	Grade King Surface 3-14" ATR		Remove & Replace Concrete Crossing
Trk 37	Between Warehouse 10 & 70	Asphalt 2" ATR @ Tiles		Remove Asphalt
Trk 310	East HB Trk 310	Switch Target Missing	135.10	Replace Switch Stand Target
Trk 310	East HB Trk 310	Nut & Cotter Pin Missing LH Pt	133.07	Replace Nut & Cotter Pin
Trk 310	2 Rails West of Plant Grade Crossing	3/8" Gage	53.02	Rampage Track
Trk 310	100' East of Stub Track	Footing - Prairie Dog Hole		Fill Hole
Trk 312	West HB Trk 312	Missing Cotter Pins	133.07	Replace Cotter Pins
Trk 65	HB Trk 65	Switch Target Missing	135.10	Replace Switch Stand Target

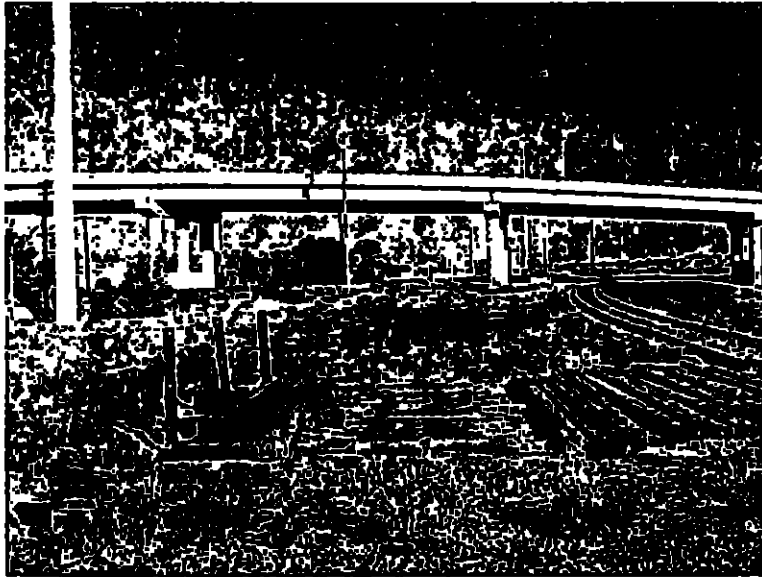
Note:

TX Clearance & Footing Violations
Not in Compliance with Texas Clearance Law
TX Statutes Chapter 11 Section 5 (1988)

Landsmith Engineering, LLC
12231 Academy Rd NE #3001-284
Albuquerque NM 87111
August 1, 2007

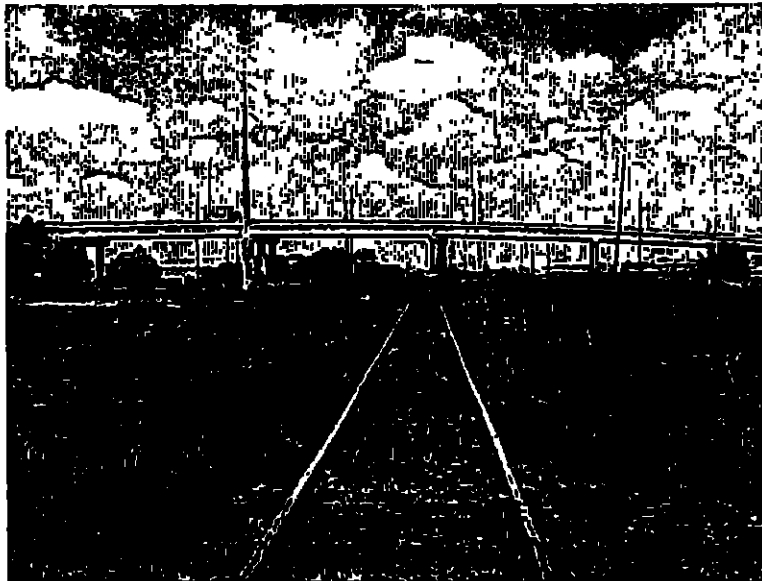
Attachment 2

July 18, 2006



**East Side of BNSF Main Line
Center Line of Removed FW&D Main Line
Looking west towards Quirt Avenue OP
Track on right side of photograph is CLIC 231
(Portion of FWD ICC No 85) 85# Rail Section**

July 23, 2007



Attachment 2

July 18, 2006



**East Side of BNSF Main Line
Looking RR West on Center Line TEAM Track No 9298 (SAW Main Line) 85# Rail
TEAM Track No. 9200 (90# Siding) is on the South Side of the Main Line**

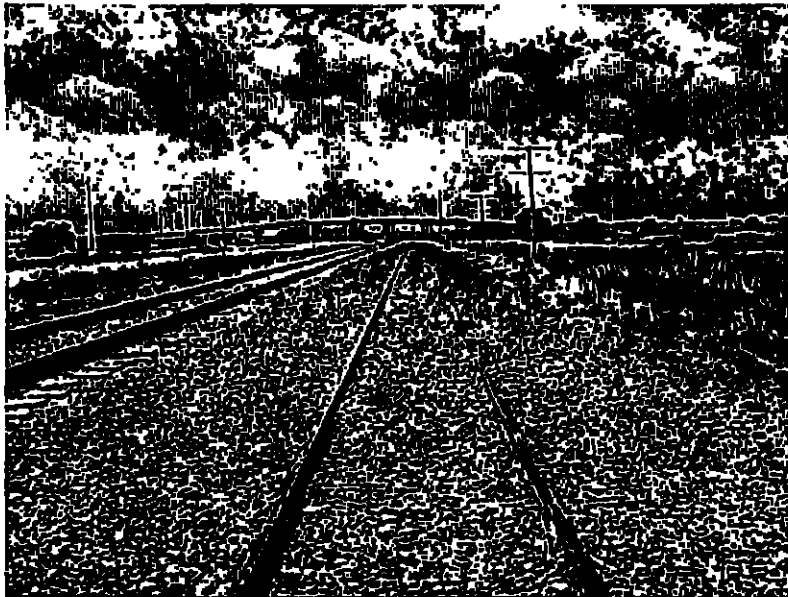
July 23, 2007



Attachment 2



**July 18, 2006
East Side of BNSF Main Line
CLIC Track 0310 (90# Rail) Looking South towards Atteberry & Farmers Compress**



**July 23, 2007
East Side of BNSF Main Line
CLIC Track 0310 (90# Rail) Looking North from Atteberry & Farmers Compress**

Attachment 2

July 18, 2006

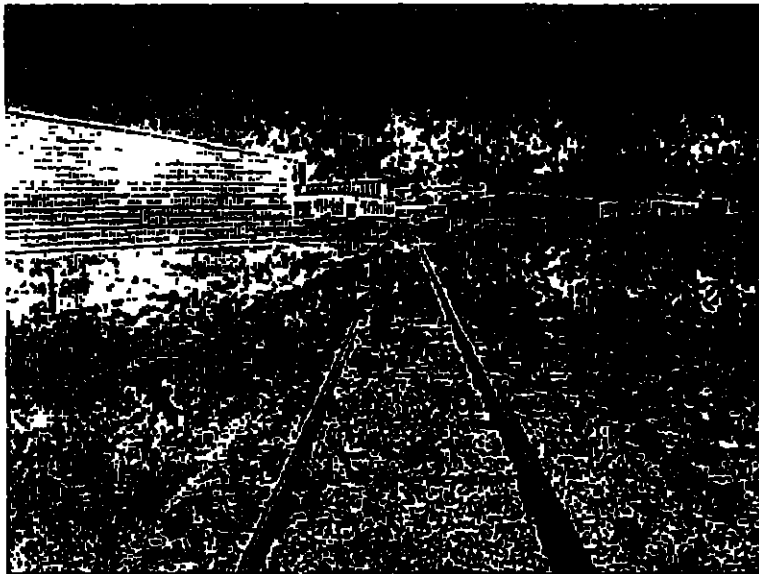


**CLIC Track 0310 (FWD ICC No 37) within Farmers Compress
Looking Geographic East**

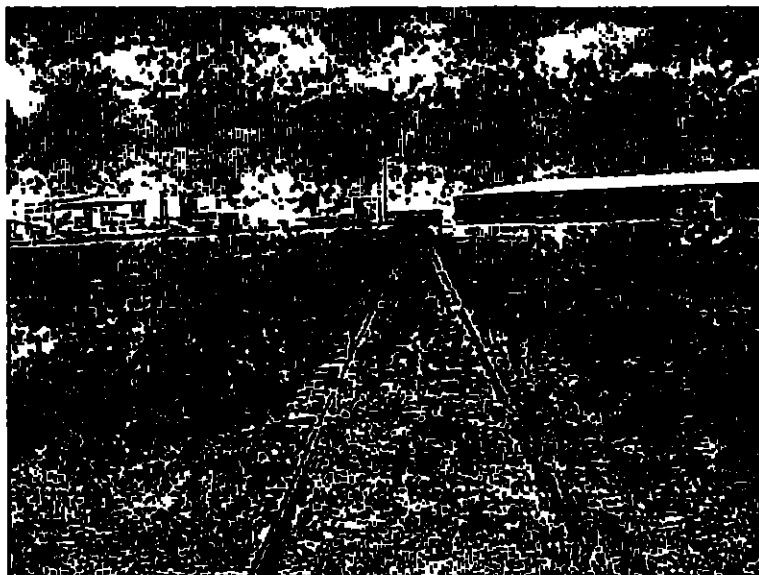
July 23, 2007



Attachment 2



**July 18, 2006
CLIC Track No 323 FWD ICC No 65 within Farmers Compress
Looking Geographically North**

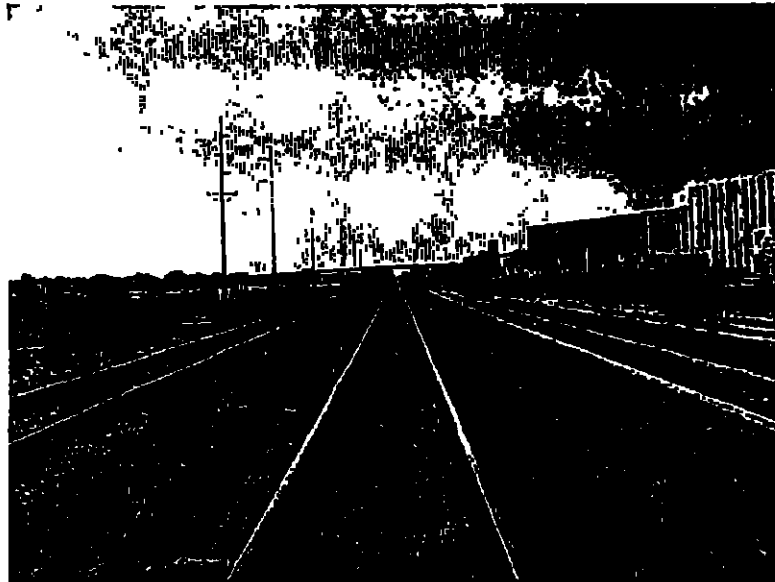


**July 23, 2007
CLIC Track No. 323 FWD ICC No. 65 within Farmers Compress
Looking Geographically South**

Attachment 2

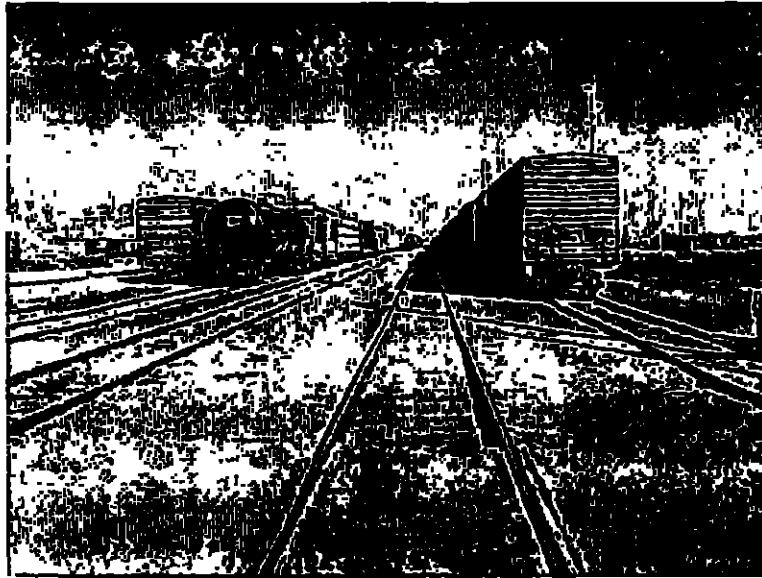


**July 18, 2006
West Side of BNSF Main Line
TEAM Track No. 9298 – SAW Main Line (Looking West from HB Orchard Lead)**



**July 23, 2007
West Side of BNSF Main Line
TEAM Track No. 9298 – SAW Main Line (Looking East from Jupiter Road)**

Attachment 2

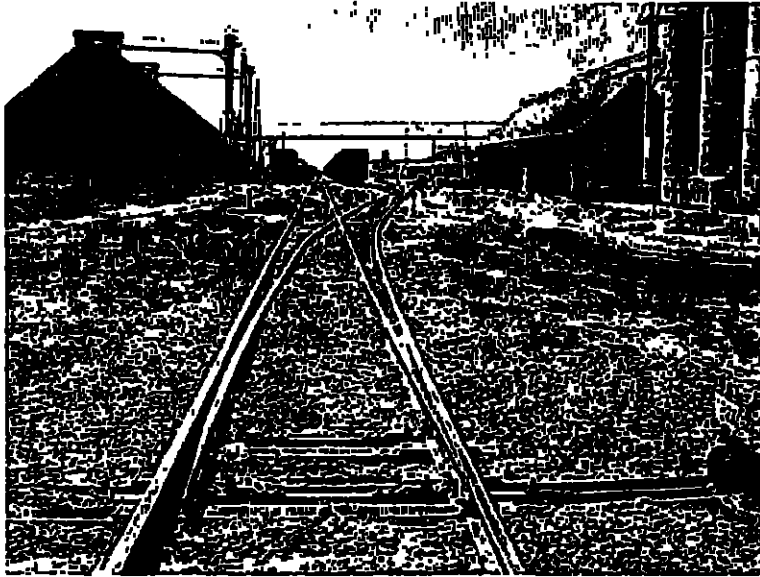


**July 18, 2006
East End SAW Yard
TEAM No 9298 (SAW Main Line) @ Center of Jupiter Rd Grade Crossing Looking West**



**July 23, 2007
East End SAW Yard
TEAM No. 9298 (SAW Main Line) @ Center of Jupiter Rd Grade Crossing Looking West**

Attachment 2



**July 18, 2006
West End SAW Yard
TEAM No 9298 (SAW Main Line) at West Switch for West Yard Lead**



**July 23, 2007
West End SAW Yard
TEAM No 9298 (SAW Main Line) at West Switch Yard Track 5**

EXHIBIT 3 – Photographs Dated July 23, 2007

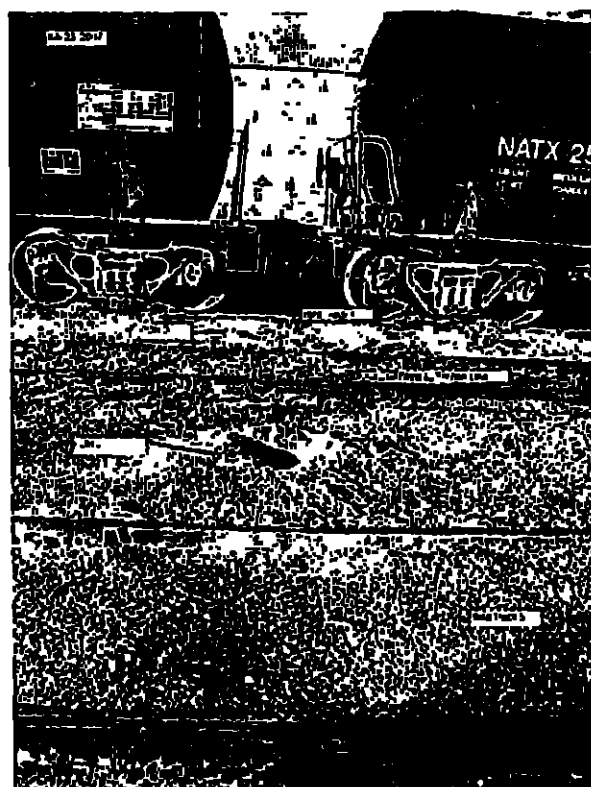
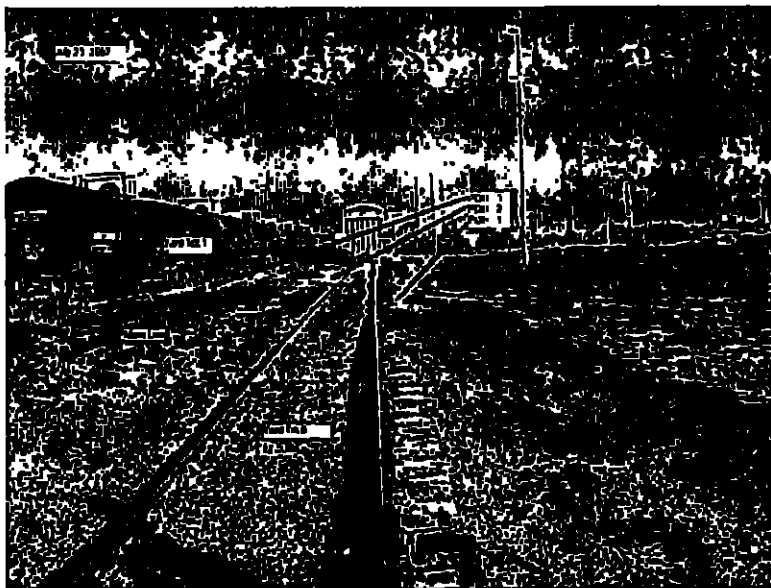


EXHIBIT 3 – Photographs Dated July 23, 2007

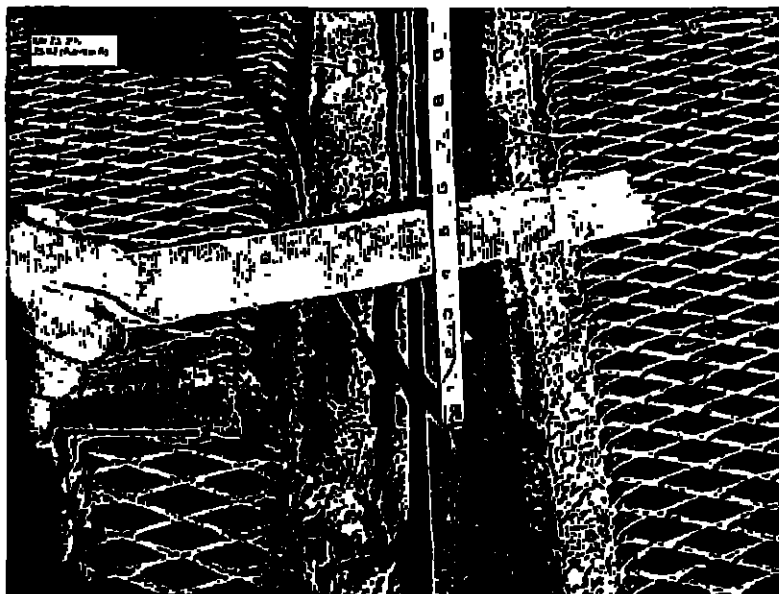
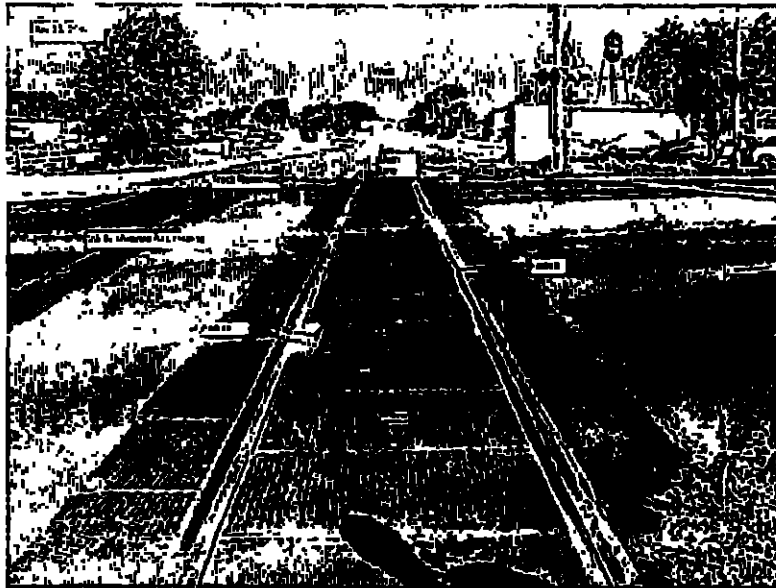


EXHIBIT 3 – Photographs Dated July 23, 2007

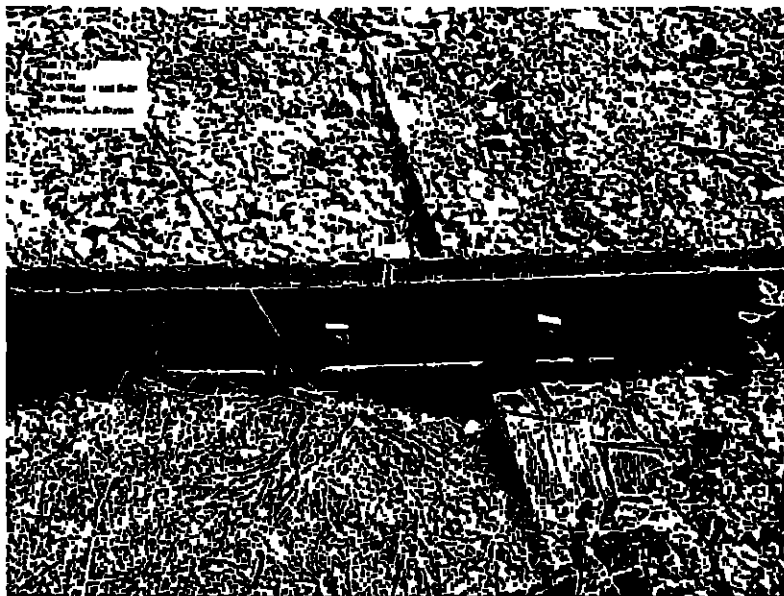
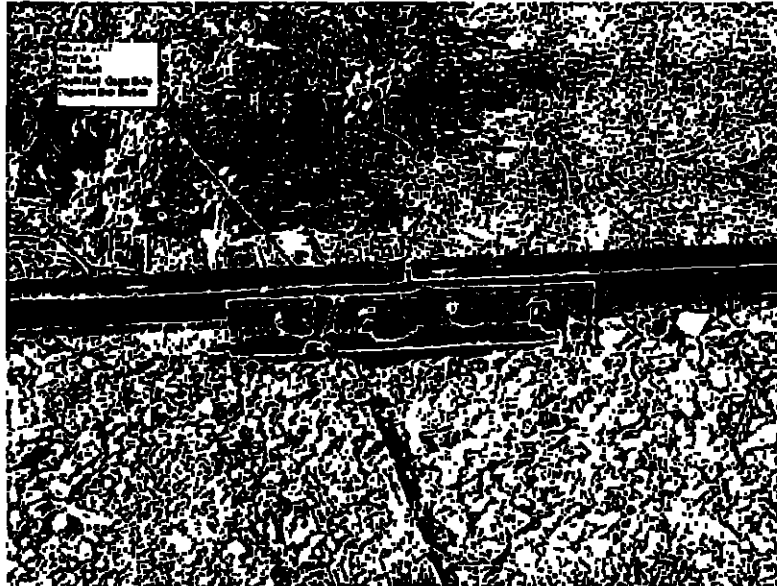


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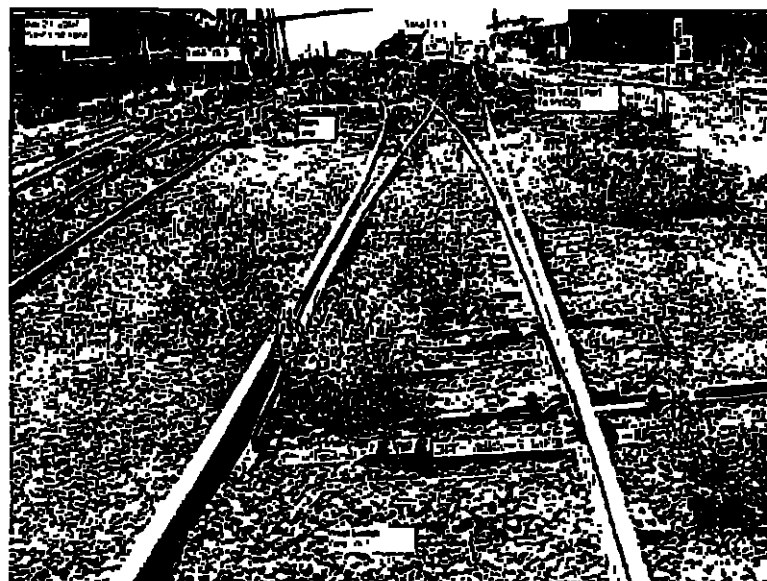


EXHIBIT 3 – Photographs Dated July 23, 2007

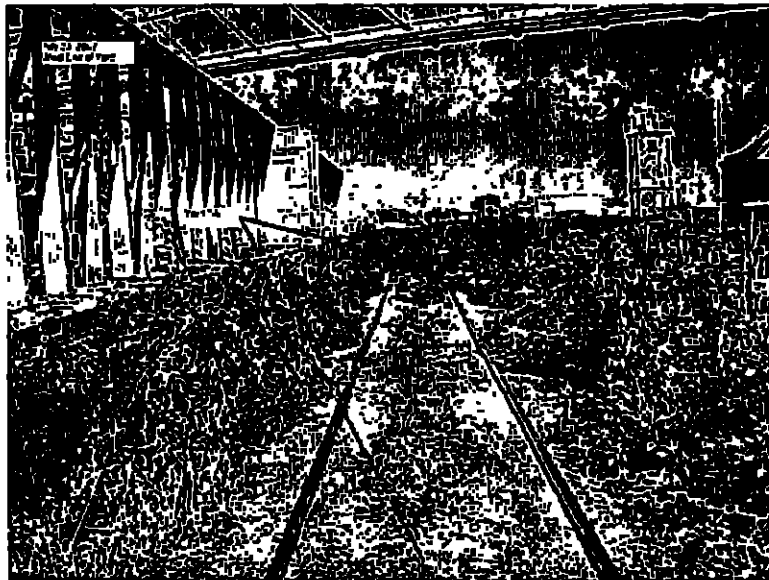


EXHIBIT 3 – Photographs Dated July 23, 2007

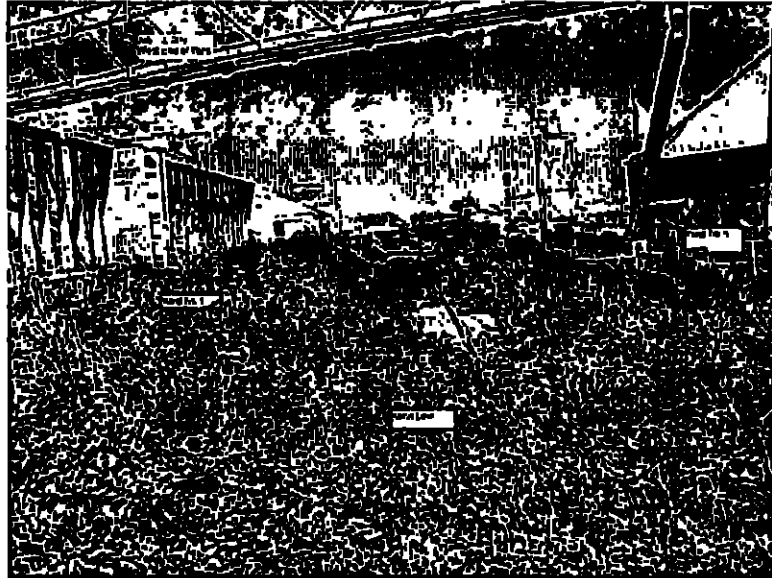


EXHIBIT 3 – Photographs Dated July 23, 2007

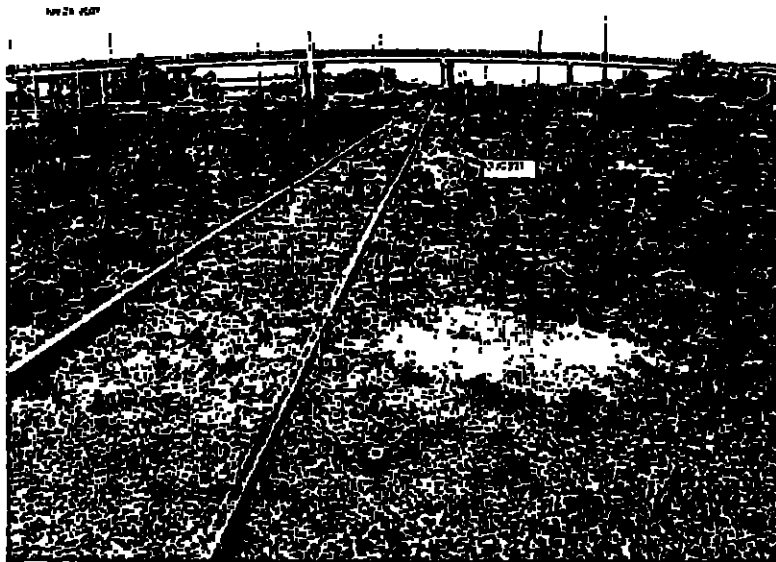


EXHIBIT 3 – Photographs Dated July 23, 2007

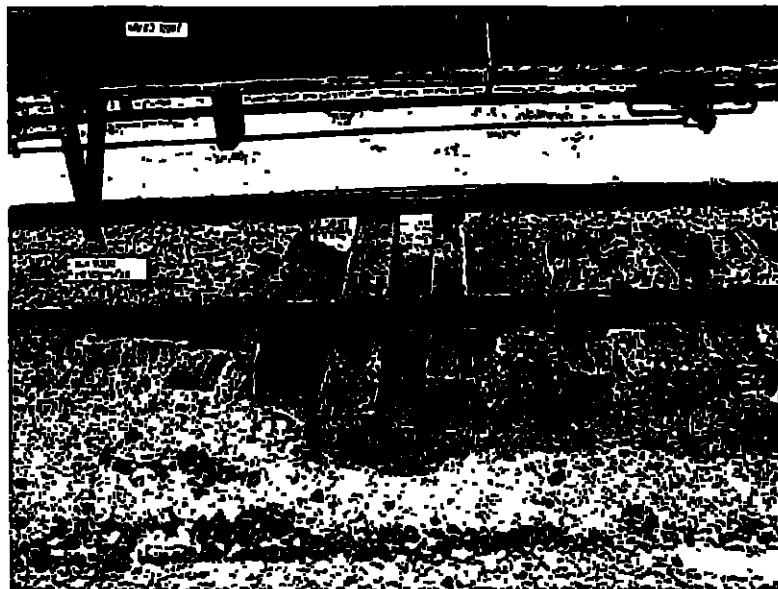


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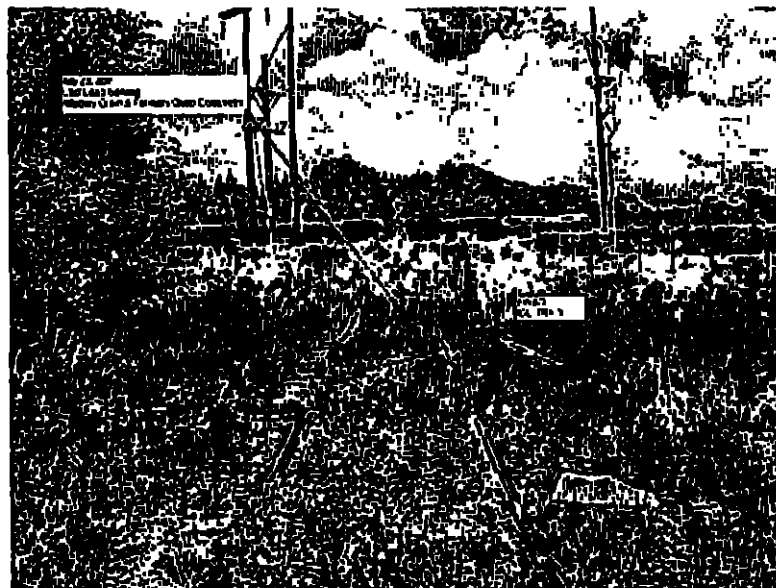


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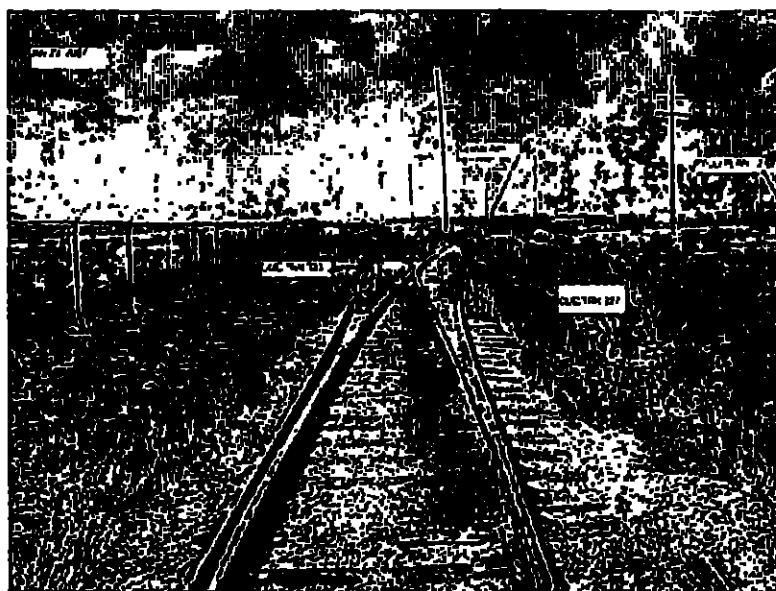


EXHIBIT 3 – Photographs Dated July 23, 2007



CERTIFICATE OF SERVICE

I hereby certify that on August 10, 2007, I served the foregoing document, Reply To
"Motion To Permit Inspection And Repair Or, In The Alternative, Petition To Reopen Decision
In Order To Permit Inspection And Repair." by e-mail on Charles H. Montange, Esq .
c. montange@verizon.net, 426 N.W. 162nd Street, Seattle, WA 98177. and on John D. Helfner,
Esq. / helfner@verizon.net, John D. Helfner, PLLC, 1920 N Street, N.W., Suite 800,
Washington, DC 20036



Thomas F. McFarland