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February 7, 2025

Via Electronic Filing

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Re: Docket No. FD 36817, *Kansas Department of Transportation and
Sunflower Redevelopment, LLC—Petition for Declaratory Order*

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding is a Petition for Declaratory Order. The sum of \$1,400, representing the appropriate fee for this filing, has been paid electronically via Pay.gov.

Please do not hesitate to contact me with any questions regarding this filing.

Respectfully submitted,

/s/ *Allison C. Davis*

Allison C. Davis

Counsel for Sunflower Redevelopment, LLC

Sidley Austin (DC) LLP is a Delaware limited liability partnership doing business as Sidley Austin LLP and practicing in affiliation with other Sidley Austin partnerships.

FILED
February 7, 2025
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
February 7, 2025
SURFACE TRANSPORTATION BOARD

EXPEDITED CONSIDERATION REQUESTED

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**KANSAS DEPARTMENT OF TRANSPORTATION
AND SUNFLOWER REDEVELOPMENT, LLC—
PETITION FOR DECLARATORY ORDER**

Docket No. FD 36817

PETITION FOR DECLARATORY ORDER

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Dated: February 7, 2025

INTRODUCTION

Petitioners Kansas Department of Transportation (“KDOT”) and Sunflower Redevelopment, LLC (“SRL”), pursuant to 5 U.S.C. § 554(e) and 49 U.S.C. § 1321, hereby petition for a declaratory order confirming that a certain segment of rail track (and the underlying easements) in De Soto, Kansas are not subject to the jurisdiction of the Surface Transportation Board.

Petitioners are filing this petition to ultimately facilitate KDOT’s construction of a new highway interchange at K-10 and Lexington Avenue in De Soto. KDOT is preparing for the economic and community change associated with the development of a new electric vehicle battery plant in De Soto, which represents the largest economic development project in Kansas history. Petitioners have an agreement in principle for KDOT to acquire railroad easements that contain approximately 1,850 feet of track (the “Project Area”) from SRL.¹ In order to facilitate the easements acquisition by KDOT and remove any regulatory uncertainty surrounding the future highway interchange project, Petitioners jointly request the aforementioned declaratory order on the basis of the facts as compiled and represented herein by SRL.

The Project Area is outside of the Board’s regulatory jurisdiction. As will be explained in greater detail below, the Project Area track was constructed and owned by the U.S. Government for use in serving the Government’s former Sunflower Army

¹ The Project Area also includes about 100 feet where track was previously removed in the vicinity of Commerce Drive. The Project Area extends from just north of Commerce Drive (but south of the current terminus of existing track) to West 95th Street.

Ammunition Plant (the “SFAAP”). The Project Area track was only ever used for rail operations when it was owned by the U.S. Government to access the Government’s SFAAP. When the Government closed the SFAAP and removed the track within the SFAAP, all rail use of the Project Area track ceased. At Congress’s direction, the U.S. Government then conveyed the SFAAP and Project Area track to SRL as part of an effort to facilitate the re-use of the property for economic development and revitalization. There has been no rail activity over the Project Area since before SRL acquired it—indeed, it has been at least 25 years since any rail service has occurred over the Project Area track. An aerial view of the SFAAP and the Project Area track is attached as Exhibit A. Under the Board’s precedents, the Project Area track is plainly outside the Board’s jurisdiction, and a declaratory order to that effect will clear the way for KDOT to plan for the right-of-way acquisition and future construction of a new highway interchange at K-10 and Lexington Avenue in De Soto.

Petitioners also respectfully request expedited consideration of this petition. As explained below, an expeditious Board decision would allow KDOT to move forward with right-of-way acquisition for the proposed interchange project.

BACKGROUND

I. Identity and interest of the Petitioners

KDOT is the agency of the State of Kansas that is responsible for the planning, development, and operation of various modes and systems of transportation in Kansas, among other duties.

SRL is a limited liability corporation organized under the laws of Kansas, with its principal place of business in Missouri. SRL was formed for the sole purpose of acquiring and developing the real property commonly known as the Sunflower Army Ammunition Plant. In 2005 and 2007, respectively, SRL acquired from the U.S. Government the SFAAP and certain right-of-way easements leading to the SFAAP, all located in De Soto, Kan. SRL is not a rail carrier subject to the Board's jurisdiction.

In 2005, Congress passed the Sunflower Act, which authorized the Army to convey the former SFAAP to a private entity for the purpose of “facilitat[ing] the re-use of the property for economic development and revitalization.” Sunflower Act, Pub. L. No. 108-375 § 2841(a), 118 Stat. 2135 (2005). Later that year, the Army conveyed to SRL fee simple title to the property containing the former SFAAP.

SRL worked closely with the State of Kansas and others to recruit Panasonic Energy to Kansas. As a result of that work, Panasonic Energy is currently constructing a \$4 billion, 4.7 million square-foot lithium-ion electric vehicle battery manufacturing plant on a portion of the property of the former SFAAP. This new development is projected to create a \$2.5 billion annual economic impact for the city of De Soto, with an estimated increase of 7,800 total jobs in the region—4,000 jobs in the manufacturing industry, and another 3,800 jobs in ancillary industries.² KDOT, along with other government agencies and organizations, supported the recruitment

² See *Panasonic Electric Vehicle Battery Facility*, De Soto, KS | Official Website, <https://www.desotoks.us/394/Panasonic-Electric-Vehicle-Battery-Facil> (last visited Jan. 29, 2025).

of Panasonic Energy to Kansas. The project represents the largest economic development project in Kansas history.³

To accommodate the job growth anticipated as a result of the project, major improvements to the transportation infrastructure in De Soto are necessary. De Soto presently has a population of approximately 6,500 people, and its surrounding infrastructure reflects that fact. The new development, called Astra Enterprise Park, requires major infrastructure work in the area to prepare for the economic and community growth associated with the Panasonic Energy development. This infrastructure work is a collaborative effort, with contributions from KDOT, De Soto, and Johnson County, Kansas.

For its part, KDOT is undertaking comprehensive transportation infrastructure work in the area. It includes construction and reconstruction of four miles of local roads, which includes the first half mile of Astra Parkway—the main road leading to the property on which the former SFAAP was located. The total project cost, including right of way acquisition, preliminary engineering, construction costs, and construction engineering is in excess of \$80 million. Additional infrastructure work in the area will include a new interchange at K-10 and Lexington Avenue. The current configuration of the Lexington Avenue interchange⁴ results in

³ *Kansas Lands \$4B, 4,000-Job Panasonic Energy Electric Vehicle Battery Plant*, Kan. Off. of the Governor (July 13, 2022), <https://governor.kansas.gov/kansas-lands-4b-4000-job-panasonic-energy-electric-vehicle-battery-plant/>.

⁴ The current configuration is what is referred to as a “folded diamond.” The current folded diamond interchange design at K-10 and Lexington is what causes traffic back-ups on K-10, and the current design is in place because of the tracks that ran along the east side of Lexington Avenue.

traffic back-ups on K-10, which are a safety concern. Such traffic back-ups will increase with the opening of the Panasonic Energy plant and other development in the area. To address these concerns, KDOT is planning to construct a new interchange and is currently in the National Environment Policy Act (“NEPA”) process.⁵ KDOT’s preferred alternative for the new interchange is a single point urban interchange.⁶ *Of significance to this proceeding, KDOT’s preferred alternative will require highway ramps to be constructed across the Project Area.* KDOT expects the Federal Highway Administration (“FHWA”) to issue a Finding of No Significant Impact (“FONSI”) by May 2025. KDOT wants to move forward with the highway interchange project at the preferred alternative, which will be less expensive to the State and less disruptive to the De Soto area, with regulatory certainty regarding the status of the Project Area track. Therefore, before moving forward with the preferred alternative, KDOT has requested a declaratory order from the Board regarding the status of the Project Area track. An STB decision in this proceeding would enable KDOT to move forward with the right-of-way acquisition for the preferred alternative.

⁵ The NEPA study includes approximately 16 miles of K-10 in Johnson County, including the interchange at K-10 and Lexington. K-10 and Lexington is a key access for the city of De Soto, Panasonic Energy, and future development at the former SFAAP.

⁶ KDOT has also evaluated a second alternative, which would move Lexington Avenue off current alignment and disrupt the local street system. This alternative would cost three times more than the preferred alternative but would not require the ramps to cross the Project Area track.

II. History of the Project Area Track and the SFAAP

These are the facts and history pertaining to the Project Area track and the SFAAP, as best determined by SRL.⁷ The property on which the SFAAP was located was purchased in 1942 by the U.S. Government for the purpose of building an army ammunition plant. In May of that same year, the Government entered into an agreement with Hercules Powder Company for Hercules to become the operating contractor for the ammunition plant.⁸ In late 1942 and into early 1943, the Government acquired a series of easements in order “to construct, operate, maintain, repair, rebuild and patrol a railroad” leading up to the Atchison, Topeka & Santa Fe Railroad (“Santa Fe”) main line. Exhibit C, Easements for Project Area track (Oct. 1942).⁹

The SFAAP was a massive operation. At the time of its construction, it was the world’s largest powder and propellant plant, housing over 1,800 production facilities, and it had a peak employment of over 12,000 workers during World War II. The SFAAP itself contained 71 miles of railroad track, including a classification

⁷ This factual background section was developed by SRL based on its knowledge and historical investigation. KDOT has not independently verified this factual background.

⁸ Nat’l Park Serv., Dep’t of the Interior, Hist. Am. Eng’g Rec. No. KS-3, Sunflower Army Ammunition Plant 19–20, 23 (1985). Excerpts from this report are attached as Exhibit F, and also available from the Library of Congress at <https://loc.gov/pictures/item/ks0073/> (last visited Jan. 29, 2025).

⁹ There are three conveyance instruments which pertain to the Project Area. Note that only one of the tracts identified in Miscellaneous Record No. 28 pertain to the Project Area track.

yard.¹⁰ The U.S. Government also constructed and owned approximately two miles of track on right-of-way leading from the SFAAP to a connection with the Santa Fe. The Project Area track is approximately 1,850 feet in length and is located on the southern end of the right-of-way leading to the SFAAP.¹¹

The SFAAP was initially operative from 1942 until 1948, when the Army placed the plant on “standby” status. The plant was subsequently rehabilitated and reactivated for periods of time as a result of the Korean and Vietnam Wars, with Hercules once again working as operating contractor.¹²

As best determined by SRL, it appears that Hercules (on behalf of the U.S. Government) conducted rail operations “on the premises [of the Sunflower Ordnance Works]¹³ for the transfer of commodities and goods in and about the plant.” *Kniffen v. Hercules Powder Co.*, 164 Kan. 196, 199 (1948). In addition, in October of 1942, Hercules contracted with the Santa Fe for the carrier to perform “switching operations” over the Government’s right-of-way and into the Government’s

¹⁰ Agency for Toxic Substances & Disease Registry, Dep’t of Health & Hum. Servs., Public Health Assessment, Sunflower Army Ammunition Plant 3–5 (2002). Excerpts from this report are attached as Exhibit G, and also available from the National Technical Reports Library at <https://ntrl.ntis.gov/NTRL/dashboard/searchResults/titleDetail/PB2002104687.xhtml> (last visited Jan. 29, 2025).

¹¹ Because it is SRL’s understanding that BNSF Railway Company uses certain track to the north of the Project Area Track near the BNSF main line, SRL is providing a copy of this petition to BNSF. However, the relief requested in this declaratory order petition pertains only to the Project Area Track and does not impact any track or service that may be occurring to the north.

¹² Exhibit F at 2, 40, 45.

¹³ From the time of its construction through the Korean War, the SFAAP was known as the Sunflower Ordnance Works.

Classification Yard in the SFAAP. Exhibit E, Contract for Industry Track between Hercules Powder Company and The Atchison, Topeka, and Santa Fe Railway Company (Oct. 1942), at 1.¹⁴

After the 1960 deactivation of the SFAAP, it appears that while most production facilities within the SFAAP were on standby, some chemical manufacturing production facilities continued in operation until the 1990s. *See* Exhibit F at 45, 47; Exhibit G at 5. It is SRL's understanding that Santa Fe may have provided some level of service to some of these facilities in the 1990s, but these facilities (indeed, all facilities in the SFAAP) closed over two decades ago.

From 1992 onward, the major onsite activities were maintenance, environmental stabilization, and remediation. *See* Exhibit B, Todd Tripkos Verified Statement ¶ 3; Exhibit G, HHS Sunflower Assessment, at 5. As best as SRL can determine, there has been no rail service into the SFAAP since approximately 1995. Exhibit B ¶ 6. The SFAAP was declared excess government property by the Army in 1997–98. Soon thereafter, the Government removed the locomotive and rail track in the SFAAP because rail was needed at another Army plant.¹⁵ All track in the SFAAP from the Classification Yard south was removed by approximately 2001. *Id.* ¶ 3.

¹⁴ Santa Fe was to conduct switching operations during “the period of construction” of the SFAAP and “the period of operations” (when “manufacturing operations have commenced”).

¹⁵ *See* Deposition of Iain Blaine Hastings 60:19–61:16, *Kansas Waste Water, Inc. v. Alliant Techsystems, Inc.*, No. 2:02-cv-2605, ECF No. 159-35 (D. Kan. Jan. 4, 2005) (deposition of GSA employee who had familiarity with disposition of the SFAAP in the late 1990s describing the Army's decision to remove rail tracks). Excerpts are attached as Exhibit H.

In 2005, Congress passed the Sunflower Act, which authorized the Army to convey the SFAAP property to a private entity for the purpose of “facilitat[ing] the re-use of the property for economic development and revitalization.” Sunflower Act § 2841(a). Later that year, the Army conveyed to SRL fee simple title to the property on which the SFAAP was located. Two years later, the Army conveyed to SRL the easements for the right-of-way leading to the SFAAP, including the easements which contain the Project Area track. *See* Exhibit D, Assignment of Railroad Right-of-Way Easements by and between the United States of America and Sunflower Redevelopment, LLC (Apr. 2007). Since the time of the conveyance, SRL and the Army have been engaged in a joint effort to remediate the property, which had been contaminated from decades of manufacturing high explosives at the site. The new Panasonic Energy battery manufacturing facility is planned for a part of the SFAAP property where remediation has been completed.

The Project Area track is currently in a state of disrepair. The ties (to the extent they are in place) are rotten and the track is overgrown with vegetation in places. Exhibit B ¶ 7. The tracks at the north end of the Project Area, in the vicinity of Commerce Drive, were removed in 2016 by the City of De Soto as part of a road improvement project. *See id.* ¶ 8. Tracks to the south in the SFAAP were removed by the U.S. Government by 2001. *Id.* ¶ 3; Exhibit H.

ARGUMENT

I. The Board has authority to issue a declaratory order to remove uncertainty regarding the status of the Project Area.

Under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321, the Board has discretionary authority to issue a declaratory order to terminate a controversy or remove uncertainty. *See Delegation of Auth.—Declaratory Ord. Proc.*, 5 I.C.C.2d 675 (1989); *see also Intercity Transp. Co. v. United States*, 737 F.2d 103, 106–07 (D.C. Cir. 1984).

The requested declaratory order directly relates to the subject-matter jurisdiction of the Board. The Board has routinely granted petitions for declaratory orders regarding the regulatory status of rail track. *See, e.g., JGB Props., LLC—Pet. for Declaratory Ord.*, Docket No. FD 35817 (STB served Dec. 10, 2015); *Action Envtl. Sys., LLC, DH Prop. Holdings, LLC & Bridge Indus., LLC—Pet. for Declaratory Ord.*, Docket No. FD 36559 (STB served May 10, 2022).

Further, the requested declaratory order would remove any and all uncertainty regarding the regulatory status of the Project Area track so as to allow Petitioners to proceed with the sale of the property. The requested order will facilitate needed improvements to the transportation infrastructure in De Soto as a result of economic and community growth associated with the Panasonic Energy development. Facilitating the economic revitalization and redevelopment of the SFAAP property is consistent with the animating purpose behind the Government designating the property as “excess” and conveying it to SRL. *See Sunflower Act* § 2841(a) (“The purpose of the conveyance is to facilitate the re-use of the property for economic development and revitalization.”).

II. The Project Area is not within the Board's jurisdiction.

Petitioners seek a declaratory order from the Board that the Project Area is not subject to the Board's jurisdiction.

First, the Project Area track has never been owned by a rail carrier. During the entire period of its use, the Project Area track was owned by the U.S. Government. As described above, the Project Area track (along with other track) was built, owned, and maintained by the U.S. Government and its contractors to serve the Government's SFAAP.¹⁶ But when the SFAAP was shuttered, all rail service over the Project Area track ceased, and no rail service has occurred over the track in at least 25 years.

The Board has previously recognized that the U.S. Government may own a rail line without operating it as a common carrier. *See Saratoga & N. Creek Ry., LLC—Operation Exemption—Tahawus Line*, Docket No. FD 35559 (STB served May 14, 2012) (case involving track built by U.S. Government and sold as private track to non-carrier) (citing *Camp Lejeune R.R. Co.—Abandonment Exemption—in Onslow Cnty., N.C.*, AB 290 (Sub-No. 209X) (STB served Feb. 2, 2001)).

After the SFAAP was closed and rail service was terminated, SRL acquired the SFAAP from the U.S. Government in 2005 and the rail easements in 2007. During

¹⁶ See Exhibit E at 1 (“[Industry agrees] That it will maintain the Track and the Plant Site Track from the point of intersection with Railway Company’s property line in a reasonably safe condition without expense to the Railway Company.”); Exhibit B ¶ 2 (“[While working for Hercules between 1979 and 1995], I installed rail ties and maintained the track owned by the U.S. Government from the point of connection with the Santa Fe to the SFAAP.”).

the entirety of SRL's ownership of the Project Area, no rail operations or holding out have occurred. The Project Area track has not seen any use since SRL acquired it from the U.S. Government.

Second, there is no indication that the Project Area track was ever regulated main line track or considered to be subject to the Board's licensing jurisdiction. As discussed above, the Project Area track has never been owned by a common carrier, and SRL could locate no evidence that any common carrier sought licenses of any kind from the agency relating to the Project Area track. In other words, there is no indicia that anyone has considered the Project Area track to be regulated track subject to the Board's licensing jurisdiction.

Third, whatever the nature of the rail operations that occurred historically, those operations do not impact the non-jurisdictional nature of the tracks. As best determined by SRL, it appears that some of the rail operations that occurred in the vicinity of the SFAAP were private carrier operations.¹⁷ Further, SRL is aware that the U.S. Government, through its contractor, contracted with Santa Fe to conduct switching operations over the U.S. Government's track, including the Project Area

¹⁷ As noted above, the U.S. Government's contractor operator of the SFAAP, Hercules, did apparently operate a locomotive within the SFAAP, but as the Supreme Court of Kansas held in 1948, "[t]hat railroad was not a commercial railroad or a public carrier of property or passengers," but rather "a private tramway or railroad used only in the conduct of another business." *Kniffen*, 164 Kan. at 208; *accord Hanson Nat. Res. Co.—Non-Common Carrier Status—Pet. for Declaratory Ord.*, Docket No. FD 32248, 1994 WL 673712, at *15 (ICC served Nov. 15, 1994) ("A railroad is a private carrier railroad if its railroad operations are performed solely as an arm of its, or an affiliate's, non-transportation business.").

track, and into the SFAAP. SRL is also aware that Santa Fe likely operated over the Project Area track to chemical facilities located within the SFAAP.

To resolve this petition, it is not necessary for the Board to determine whether the operations that had historically been conducted over the Project Area track were private contract operations¹⁸ or excepted § 10906 operations.¹⁹ Even if such *operations* at some point occurred over the Project Area track, that alone would not have brought the Government's *underlying right-of-way* itself within the Board's jurisdiction. The Board has held that rail track itself can be outside the Board's jurisdiction when regulated operations occur over that track. *See, e.g., Iowa Traction Ry. Co.—Discontinuance of Serv. Exemption—in Cerro Gordo Cnty., Iowa*, Docket No. AB 1269 (Sub-No. 1X) at 3 (STB served Apr. 6, 2020) (explaining that operations by a non-owning carrier over an abandoned line places only the transportation service, not the track itself, within the Board's jurisdiction).²⁰

¹⁸ The owner of a private track may arrange for a contractor to conduct operations over track to serve the owner and such operations are not subject to the Board's jurisdiction. Here, the U.S. Government built and owned the Project Area track to serve the Government's ammunition plant. As discussed above, the SFAAP was immense and contained numerous facilities, which were all part of the SFAAP.

¹⁹ Under 49 U.S.C. § 10906, the agency lacks licensing authority over the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks.

²⁰ Although this case discussed an abandoned rail line, the principle would apply equally to private track. Once abandonment of a rail line is consummated, the line becomes "no different than any other real estate" that is outside the Board's jurisdiction. *Union Pac. R.R.—Pet. for Declaratory Ord.—Rehabilitation of Mo.-Kan.-Tex. R.R. Between Jude & Ogden Jct., Tex.*, Docket No. FD 33611 (STB served Aug. 21, 1998). *See also Devens Recycling Center—Pet. for Declaratory Ord.*, Docket No. FD 34952 (STB served Jan. 10, 2007) (private track is outside of the Board's jurisdiction); *cf.* 49 C.F.R. § 171.8 (Private track is defined in part as "(t)rack located

The operations that happened over the Project Area stopped over two decades ago when the Government decided to close the SFAAP and removed the track within the SFAAP. The purpose of the Project Area track was to serve the SFAAP, and when the Government closed the SFAAP and sold it and associated rights-of-way used to access the SFAAP to a private developer, any and all rail operations that may have occurred over it ceased. This is confirmed by the state of the Project Area itself. The track (to the extent it exists) is currently in a state of disrepair. Various parts of the track are unusable due to rotten ties and vegetative overgrowth. Exhibit B ¶ 7. The track that is still in the ground is currently “stranded.” The tracks at the north of the Project Area, in the vicinity of Commerce Drive, were removed in 2016 by the City of De Soto as part of a road improvement project. *See id.* ¶ 8. Tracks to the south in the SFAAP were removed by the U.S. Government by 2001. *Id.* ¶ 3.

Whatever the nature of the operations that occurred when it was owned by the U.S. Government, those operations ceased when the U.S. Government closed the SFAAP and Congress directed the Army to sell the SFAAP for redevelopment. The situation is similar to other tracks constructed as part of former Army ammunition plants which were decommissioned and that have not been considered jurisdictional track. For example, in *Omni River Ridge, LLC—Operation Exemption—in Clark County, Ind.*, Docket No. FD 36625 (STB served July 15, 2022), the Board authorized a non-carrier to initiate common carrier service over track that was previously private

outside of a carrier’s right-of-way, yard, or terminals where the carrier does not own the rails, ties, roadbed, or right-of-way.”).

track. The applicant explained that the track was constructed in support of the Indiana Army Ammunition Plant, was later purchased by a development association after the plant was decommissioned, and that up until the point of the Board's authorization, it was private track outside of the scope of the Board's jurisdiction.²¹ *See also Cornhusker Railways LLC—Acquisition & Operation Exemption—Rail Line of DTE Rail Services, Inc.*, Docket No. FD 34719 (STB served July 20, 2005) (publishing notice of exemption where applicant explained that the track, which had been part of the Cornhusker Army Ammunition Plant, was purchased as private track from the U.S. Government).

Based on the foregoing, it is clear that when SRL acquired the track it was non-jurisdictional track, and that it remains so today.

REQUEST FOR EXPEDITED CONSIDERATION

Petitioners respectfully request expedited consideration of this petition. An expeditious Board decision would allow KDOT to move forward with new right-of-way acquisition for the interchange at K-10 and Lexington Avenue as soon as the NEPA process for the interchange project is concluded. KDOT's preferred alternative, which is less disruptive to De Soto and will cost significantly fewer taxpayer dollars, requires highway ramps to be built on and across the Project Area. KDOT is currently in the NEPA process and expects the FHWA to issue a FONSI on KDOT's proposed construction of the new interchange by May 2025. A expeditious

²¹ Verified Notice of Exemption at 2-4 & n.4, *Omni River Ridge, LLC—Operation Exemption—in Clark County, Ind.*, Docket No. FD 36625 (filed June 29, 2022).

decision would allow KDOT to move forward with right-of-way acquisition for the preferred alternative once the FONSI issues. In addition to the Panasonic Energy project, there is also the possibility of other large economic development that could move onto the former SFAAP. If that would occur, the additional traffic in the area would further exacerbate the safety concerns of back-ups onto mainline K-10. Having a decision on the STB's jurisdiction of the Project Area would enable KDOT to speed up the development and construction of the preferred alternative and alleviate those safety concerns.

CONCLUSION

For the foregoing reasons, Petitioners respectfully request that the Board issue a declaratory order confirming that it does not have jurisdiction over the Project Area.

Respectfully submitted,

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*Counsel for Sunflower
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Dated: February 7, 2025

EXHIBIT A

Maps

BNSF MAIN LINE

PRIVATE TRACK
TO REMAIN

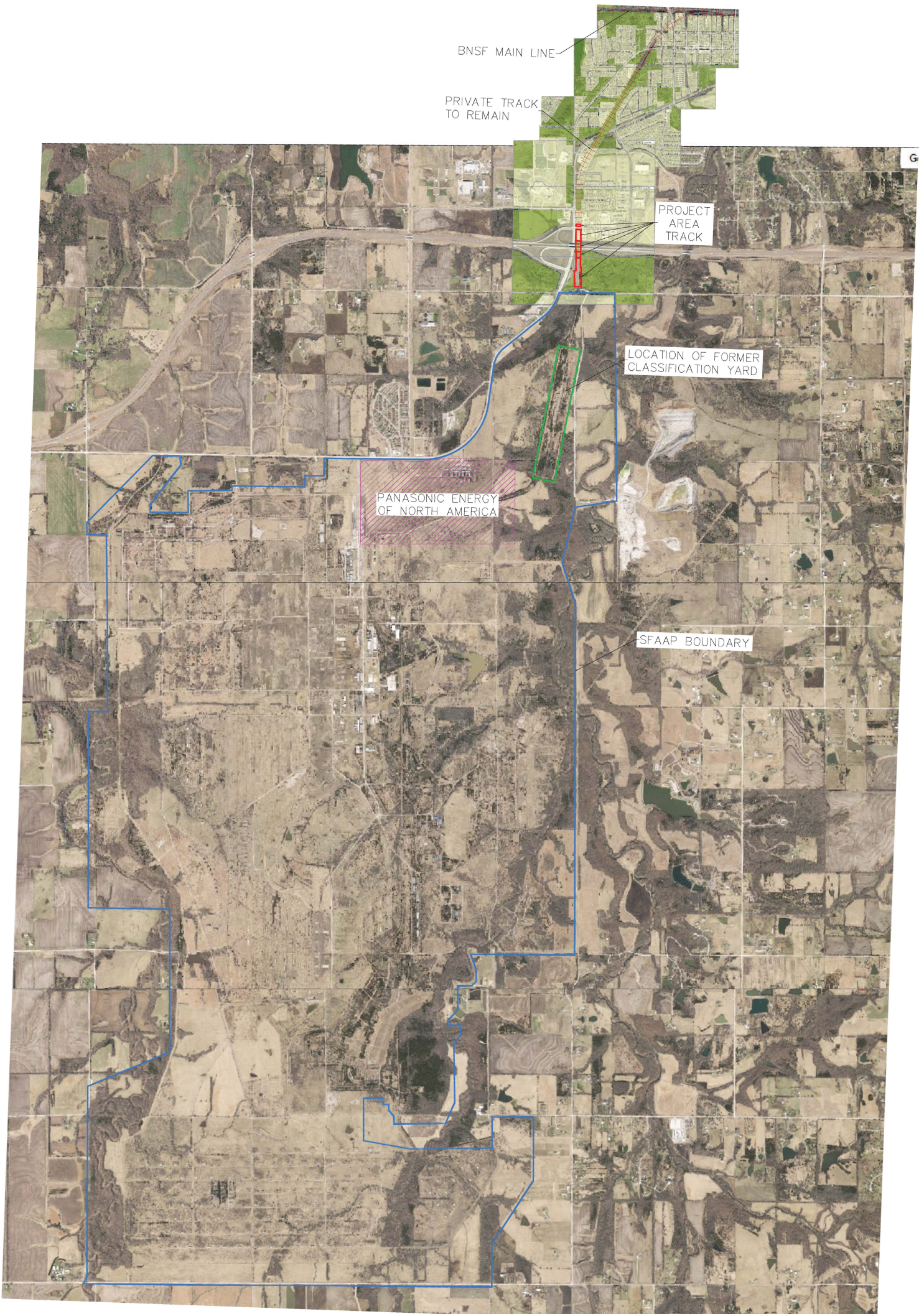
PROJECT
AREA
TRACK

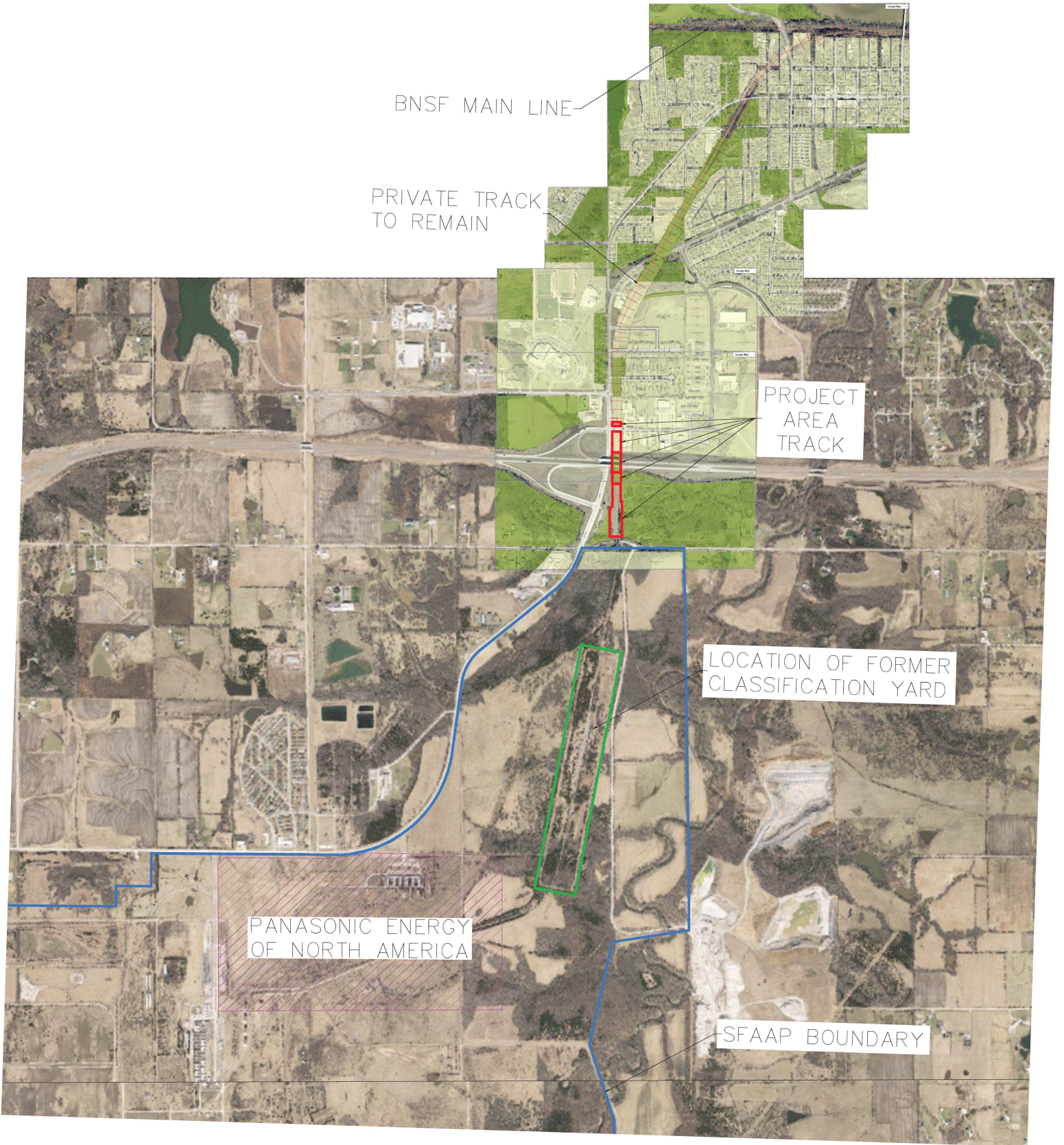
LOCATION OF FORMER
CLASSIFICATION YARD

PANASONIC ENERGY
OF NORTH AMERICA

SFAAP BOUNDARY

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BNSF MAIN LINE

PRIVATE TRACK
TO REMAIN

PROJECT
AREA
TRACK

LOCATION OF FORMER
CLASSIFICATION YARD

PANASONIC ENERGY
OF NORTH AMERICA

SFAAP BOUNDARY

EXHIBIT B

Verified Statement of Todd Tripkos

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36817

**KANSAS DEPARTMENT OF TRANSPORTATION AND SUNFLOWER
REDEVELOPMENT, LLC
—PETITION FOR DECLARATORY ORDER**

VERIFIED STATEMENT OF TODD TRIPKOS

1. My name is Todd Tripkos. I am employed by Kessinger Hunter & Co., which is a member of Sunflower Redevelopment, LLC, as Site Manager at the former Sunflower Army Ammunition Plant (the “SFAAP” or “Property”). In that position, I am responsible for maintaining perimeter fencing and occupied structures; mowing the fenceline, easements, and certain areas within the Property; and coordinating on-site visits of the Property, among other things. I began working for Kessinger Hunter in 2005.

2. I have worked on site at the former SFAAP nearly continuously for approximately 45 years. I began working at the SFAAP in approximately 1979 for Hercules Incorporated (formerly Hercules Powder Company), which was the contract operator of the SFAAP for the U.S. Government. I worked continuously for Hercules for the next 16 years performing various functions in and around the SFAAP. During that time, I installed rail ties and maintained the track owned by the U.S. Government from the point of connection with the Santa Fe to the SFAAP. I also maintained the tracks within the SFAAP.

3. For a short period, between 1995 and 1997, I was employed elsewhere. But in 1997 I returned to working at the SFAAP, first for Alliant Techsystems and then for SpecPro Professional Services. Between 1997 and 2005, my work at the SFAAP primarily involved demolition of buildings, disassembling equipment, and decontamination. During this time, I observed and helped in the removal of rail ties from the SFAAP. All track in the SFAAP from the Classification Yard south was removed by approximately 2001.

4. Since 2005, when I began working for Kessinger Hunter, I have continued to work on site at the Property.

5. Given my current and prior positions working on site at the Property, I am familiar with the current state of the track that extends from just north of Commerce Drive (but south of the current terminus of existing track) in De Soto, Kan., to West 95th Street in De Soto, Kan (the "Project Area Track"). I am also familiar with the history of the usage of the Project Area Track.

6. I personally have not seen any rail service occur over the Project Area Track and into the former SFAAP since approximately 1995. At that time, shipments of calcium carbonate cake were brought into the SFAAP's Classification Yard, at which point they were picked up by a U.S. Government/Hercules switch engine for placement within the SFAAP.

7. The Project Area Track (to the extent it is in place) is in a state of disrepair and the ties are rotten. I mow the right-of-way over which the Project Area Track is located, but the track is overgrown with vegetation in places.

8. At the north end of the Project Area Track, in the vicinity of Commerce Drive, track was removed in approximately 2016 by the City of De Soto.

9. South of the Project Area Track, there is a small amount of existing rail track from West 95th Street to what was formerly the SFAAP's Classification Yard. At that point, the track ends, as all track within the SFAAP has been removed.

VERIFICATION

I, Todd Tripkos, declare under penalty of perjury that the foregoing information is true and correct to the best of my knowledge and belief. Further, I certify that I am qualified and authorized to make this statement.

/s/ Todd Tripkos
Todd Tripkos

Dated: February 7, 2025

EXHIBIT C

Easements for the Project Area Track

DEED RECORD 187

No. 310889

FROM

CHARLES NEASE ET AL

TO

UNITED STATES OF AMERICA

STATE OF KANSAS, JOHNSON COUNTY, ss.

This instrument was filed for record on the 14

day of Oct., A. D., 1942, at 3:05

o'clock P. M.

FEE, \$

Ruth S. Terry
Register of Deeds.

(SEAL)

By Deputy.

THIS INDENTURE, Made on this 11 day of September, A. D., 1942, between Charles Nease, a single man and Bertha Parr Sterling, formerly Mrs. Bertha Adams, and John Lester Sterling, her husband of Johnson County, in the State of Kansas, of the first part, and the United States of America and its assigns of the second part:

WITNESSETH, that said parties of the first part, in consideration of the sum of Twelve Hundred and Fifty and No/100 Dollars (\$1,250.00)

the receipt whereof is hereby acknowledged, do - by these presents, grant, bargain, sell, convey and warrant unto said party of the second part and its assigns ~~a permanent easement and right-of-way in, over, upon and across~~ all of the following described Real Estate, situated in the County of Johnson, State of Kansas, to-wit:

U. S. REV. STAMP \$ 1.65 ATTACHED.

Beginning sixty-seven and three tenths (67.3) feet East of the West one-fourth (1/4) corner of Section Thirty-three (33), Township Twelve (12) South, Range Twenty-two (22) East.

Thence South one thousand three hundred seventeen and fourteen hundredths (1317.14) feet to the East and West center line of the Southwest one-fourth (1/4) of Section 33-T12-R22, to a point sixty-three and four tenths (63.4) feet East of the West line of the Section:

Thence East one hundred fifty and six tenths (150.6) feet; thence North one thousand three hundred seventeen and fourteen hundredths (1317.14) feet to the East and West center line of said Section 33:

Thence West one hundred fifty (150) feet to the point of beginning.

P. 2.

PIECE

UNDER

K-10

TO HAVE AND TO HOLD THE SAME, Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, unto the United States of America, party of the second part and its assigns, forever.

The parties of the first part for ~~themselves~~ and for their heirs, executors, or administrators, do - hereby covenant, promise and agree to and with said party of the second part that at the delivery of these presents they are ~~he~~ ~~is~~ lawfully seized in ~~their~~ own right of an absolute and indefeasible estate of inheritance, in fee simple and of and in all and singular the above granted and described premises with the appurtenances; that the same are free, clear, discharged and unincumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments and incumbrances of what nature or kind soever. Said parties of the first part further releases the above described Real Estate from all rights of homestead, dower, curtesy, and other interests which the said grantor may have including any and all of the right, title and interest in and to any roads, right-of-ways, ways, strips, or gores abutting or adjoining the land, unto the United States of America and its assigns, and does further covenant, promise and agree to and with said party of the second part that they will WARRANT AND FOREVER DEFEND the above described real estate unto said party of the second part and its assigns against said parties of the first part, their heirs and all and every person or persons whomsoever, lawfully claiming or to claim the same.

IN WITNESS WHEREOF, the said parties of the first part has hereunto set their hands the day and year first above written.

Charles Nease
Bertha Parr Sterling
John Lester Sterling

State of Kansas
County of Johnson ss.

BE IT REMEMBERED, that on this 14 day of October, A. D., 1942, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Charles Nease, a single man

who is personally known to me to be the same person - who executed the within instrument of writing, and such person - duly acknowledged the execution of the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

My commission expires April 8, 1944 (Seal)

O. A. Durr

Notary Public.

STATE OF MISSOURI COUNTY OF DOUGLAS SS

BE IT REMEMBERED, that on this 11 day of September A. D. 1942 before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Bertha Parr Sterling, formerly Mrs. Bertha Adams, and John Lester Sterling, her husband, who are personally known to me to be the same persons who executed the within instrument of writing, and such persons duly acknowledged the execution of the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

My commission expires Oct. 8, 1945 (seal)

John A. Putman
Notary Public

Said land conveyed as a permanent easement and right-of-way and said easement and right-of-way shall be for the following purposes; Namely, the perpetual right to enter and to construct, operate, maintain, repair, rebuild and patrol a railroad including all appurtenances and privileges thereunto belonging, together with the right to trim, cut, fell and remove all trees and underbrush within the limits of the above described right-of-way and for such distance beyond the limits and adjacent thereto as is necessary to provide adequate clearance and to eliminate hazards to said railroad.

No. 310984

FROM

KENNETH DRAKE

TO

UNITED STATES OF AMERICA

STATE OF KANSAS, JOHNSON COUNTY, ss.

This instrument was filed for record on the 15

day of Oct., A. D., 1942, at 3:35

o'clock P. M.

FEE, \$

Ruth L. Terry
Register of Deeds.

(SEAL)

By

Deputy.

THIS INDENTURE, Made on this 15th day of October, A. D., 1942, between Kenneth Drake, a single man of Johnson County, in the State of Kansas, of the first part, and the United States of America and its assigns of the second part:

WITNESSETH, that said party of the first part, in consideration of the sum of

Seven Hundred and No/100 Dollars (\$700.00)

the receipt whereof is hereby acknowledged, do esby these presents, grant, bargain, sell, convey and warrant unto said party of the second part and its assigns, a permanent easement and right-of-way, in, over, upon and across State of Kansas, to-wit:

U. S. REV. STAMP \$ 1.10 ATTACHED.

Part of the Southwest Quarter (SW $\frac{1}{4}$) of Section Thirty-three (33), Township Twelve (12), South, Range Twenty-two (22) East, more particularly described as follows, to-wit:

beginning at a point thirty-three (33) feet East of the Southwest Corner of Section 33-T12-R22; Thence North eight hundred five and eighty-eight hundredths (805.88) feet; thence East Twenty-five (25) feet; thence North five hundred eleven and twenty-six hundredths (511.26) feet, thence East one hundred fifty and six tenths (150.6) feet along the East and West center line of the Southwest quarter (SW $\frac{1}{4}$) of Section 33; thence South five hundred eleven and eighty-six hundredths (511.86) feet thence East twenty-five (25) feet; thence South six hundred twenty-eight and three tenths (628.3) feet.

Thence Southeasterly three hundred nine and seven tenths (309.7) feet to an intersection with the South line of said Section 33;

Thence West three hundred fifty-six (356) feet to the center line of the Railway as now constructed and four hundred fifty-six (456) feet to the point of beginning and four hundred eighty-nine (489) feet to the Southwest corner of said Section 33-T12-R22.

South of
K-16

DEED RECORD 187

TO HAVE AND TO HOLD THE SAME, Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, unto the United States of America, party of the second part and its assigns, forever.

The party of the first part for himself and for his heirs, executors, or administrators, do es hereby covenant, promise and agree to and with said party of the second part that at the delivery of these presents - he is lawfully seized in his own right of an absolute and indefeasible estate of inheritance, in fee simple and of and in all and singular the above granted and described premises with the appurtenances; that the same are free, clear, discharged and unincumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments and incumbrances of what nature or kind soever. Said party of the first part further releases the above described Real Estate from all rights of homestead, dower, curtesy, and other interests which the said grantor may have including any and all of the right, title and interest in and to any roads, right-of-ways, ways, strips, or gores abutting or adjoining the land, unto the United States of America and its assigns, and does further covenant, promise and agree to and with said party of the second part that he will WARRANT AND FOREVER DEFEND the above described real estate unto said party of the second part and its assigns against said party of the first part, his heirs and all and every person or persons whomsoever, lawfully claiming or to claim the same.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand the day and year first above written.

Kenneth Drake

State of Kansas

County of Johnson ss.

BE IT REMEMBERED, that on this 15th day of Oct. , A. D., 1942, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Kenneth Drake, a single man

who is personally known to me to be the same person - who executed the within instrument of writing, and such person - duly acknowledged the execution of the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

My commission expires Dec. 29, 1943 (Seal)

S. L. Daniel

Notary Public.

Said land conveyed as a permanent easement and right-of-way and said easement and right-of-way shall be for the following purposes: Namely, the perpetual right to enter and to construct, operate, maintain, repair, rebuild and patrol a railroad including all appurtenances and privileges thereunto belonging together with the right to trim, cut, fell and remove all trees and underbrush within the limits of the above described right-of-way and for such distance beyond the limits and adjacent thereto as is necessary to provide adequate clearance and to eliminate hazards to said railroad.

Miscellaneous Record No. 28

UNITED STATES OF AMERICA

309762

67

TO

JUDGMENT ON THE DECLARATION OF TAKING

FRED GORDON ETAL

IN THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF KANSAS, FIRST DIVISION

UNITED STATES OF AMERICA

Plaintiff,

vs.

CIVIL ACTION NO. 4735

.116 of an acre of land, more or
less, situate in Johnson County,
State of Kansas, and Fred Gordon,
et al Defendants

JUDGMENT ON THE DECLARATION OF TAKING

This cause coming on to be heard at this term of Court upon the motion of the plaintiff, the United States of America, to enter a judgment on the Declaration of Taking filed in the above-entitled cause on August 28th, 1942, and for an order fixing the date when immediate possession of the property herein described is to be surrendered to the United States of America, and upon consideration thereof and of the condemnation petition filed herein, said Declaration of Taking, the statutes in such cases made and provided, and it appearing to the satisfaction of the Court:

First: That the United States of America is entitled to acquire property by eminent domain for the purposes as set out and prayed in said petition;

Second: That a petition in condemnation was filed at the request of the Secretary of War, the authority empowered by law to acquire the lands described in said petition, and also under authority of the Attorney General of the United States:

Third: That said petition and Declaration of Taking state the authority under which, the public use for which said lands were taken, that said Declaration of Taking was signed by the Secretary of War, who was and is the person duly authorized and empowered by law to acquire lands such as are described in the petition, for, on behalf and in the name of the United States of America, for the purposes and uses of providing for a railroad in connection with an ordnance munitions plant and for other military uses in connection with the Sunflower Ordnance Works, Kansas, and for the uses mentioned in the Declaration of Taking, as authorized by law, and that the Attorney General of the United States is the person Authorized by law to direct the institution of such condemnation proceedings;

Fourth: That a proper description of the lands taken, sufficient for identification thereof, is set out in said Declaration of Taking;

Fifth: That said Declaration of Taking contains a statement of the estate or interest in the said lands taken for said public use;

Sixth: That a plan or map showing the lands taken is incorporated in said Declaration of Taking;

Seventh: That a statement is contained in said Declaration of Taking of a sum of money, estimated by said acquiring authority to be just compensation for said lands taken, together with all buildings and improvements thereon and all appurtenances thereunto belonging, in the total estimated amount of \$60.00, and that said sum was deposited in the registry of this Court for and to the use of the persons entitled thereto, upon and at the time of the filing of said Declaration of Taking; and that of the aforesaid total deposit, the amount estimated to be just compensation and allocated for each of the tracts comprising said lands is as follows:

<u>Tract No.</u>	<u>Estimated Compensation</u>
R/w 19	\$20.00
R/w 20	15.00
R/w 18	25.00
Total	\$60.00

Eighth: That a statement is contained in said Declaration of Taking that the amount of the ultimate award of compensation for the taking of said property in the opinion of the

Miscellaneous Record No. 28

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Secretary of War, will be within any limits prescribed by law as to the price to be paid therefor;

IT IS THEREFORE ADJUDGED, ORDERED AND DECREED that a perpetual easement in and to the lands lying and being in the County of Johnson, State of Kansas, more particularly described as follows:

TRACT NO. R/w 19

A perpetual easement for the construction, operation, maintenance, and patrol of a railroad over, upon and across the following described land: Commencing at the Southeast corner of the West Half (W $\frac{1}{2}$) of the Southwest Quarter (SW $\frac{1}{4}$) of the Northeast Quarter (NE $\frac{1}{4}$) of the Southwest Quarter (SW $\frac{1}{4}$) of Section Twenty-eight (28), Township Twelve (12) S; Range Twenty-two (22) East; thence North 53' along North South property line; thence Southwest in a straight line 63' to a point 28' West of the point of beginning; thence East 28' to the point of beginning; containing 0.019 acres, more or less, Johnson County, Kansas.

Name of Purported Owner: Gladys Colescott
Address of Purported Owner: 318 S. 7th St., Grand Junction, Colorado

TRACT NO. R/w 20

A perpetual easement for the construction, operation, maintenance and patrol of a railroad over, upon and across the following described land: Commencing at the Northwest corner of Block Eleven (11), bounded by Ottawa Street on the East, Second Street on the South, Kickapoo Street on the West, and First Street on the North, in the town of DeSoto, Kansas; thence East 23.6' along the North boundary of said Block; thence Southwest to a point on the West side of said Block, 23.5' South of the point of beginning; thence North to point of beginning; containing 0.007 of an acre, more or less, Johnson County, Kansas.

Name of Purported Owners: James Kennedy, Incompetent,
H. E. Miller & Harry Dicken, Guardians
Address of Purported Owners: DeSoto, Kansas

TRACT NO. R/w 18

A perpetual easement for the construction, operation, maintenance, and patrol of a railroad over, upon and across the following described land: Commencing at a point twenty feet (20) West (W) and one hundred and two feet (102) North (N) of the Southeast corner (SE cor) of Section Thirty-two (32), Township Twelve (12) South (S), Range Twenty-two (22) East, Johnson County, Kansas; thence South (S) eighty-two (82) feet; thence West (W) ninety-four (94) feet; thence in a Northeasterly direction 124.8 feet to point of beginning, containing .09 acres, more or less.

Names and addresses of Purported Owners:

Fred Gordon DeSoto, Kansas
Ruth Gordon Kansas City, Ks., c/o University of Kansas Hospital
May Gordon Dexter, Mo., c/o Farm Bureau
1st Lt. Alfred N. Gordon-- Training Sq., Naval Air Station Miami, Florida
Bernice Morris 205 Walnut St., Venice, California

vested in the United States of America upon the filing of said Declaration of Taking and the depositing in the registry of this Court in the amount of \$60.00 as hereinabove recited;

That the United States is now entitled to the possession of the above described premises for the complete use and enjoyment of the perpetual easement therein for the construction, operation, maintenance and patrol of a railroad, and after service of a certified copy of this judgment upon the defendants in possession of said premises, or if no defendants are found in actual possession thereof then after the posting of such certified copy at a conspicuous place upon said premises, the United States of America and its agents are hereby authorized to enter upon said premises and take full and complete possession thereof for the full and complete use and enjoyment of the perpetual easement herein granted, and this cause is held open for such other and further orders, judgments and decrees as may be necessary in the premises; and

It is further ordered that the United States Marshal be and he is hereby directed and instructed forthwith to serve a certified copy of this judgment upon any of the defendants now in possession of the above described premises, or if no such defendants are found in actual possession of said premises, then he is ordered to post such certified copy at a conspicuous place upon said premises, and forthwith make due return of said service to this Court.

Adjudged, ordered and decreed this 29th day of August, 1942.

Richard J. Hopkins Judge
United States District Court District
of Kansas

O.K. Paul L. Aylward, Special Attorney.

Miscellaneous Record No. 28

69

Endorsed: No. 4735 Judgment on Declaration of Taking. Filed Aug. 29, 1942
Howard F. McCue, Clerk

UNITED STATES OF AMERICA

SS

DISTRICT OF KANSAS

I, Howard F. McCue, Clerk of the United States District Court in and for the District of Kansas, do hereby certify that the annexed and foregoing is a true and full copy of the original Judgment on the Declaration of Taking in Case No. 4735, entitled United States of America v. .116 of an acre of land, more or less, situate in Johnson County, State of Kansas, and Fred Gordon, et al now remaining among the records of the said Court in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Topeka this 31st day of August, A. D. 1942.

(seal)

Howard F. McCue Clerk
By Nelle Clough Deputy Clerk

This instrument was filed for record and recorded Sept. 11, 1942 at 9:50 o'clock A. M.

(seal)

Ruth S. Terry.
Register of Deeds

EXHIBIT D

**Assignment of Railroad Right-of-Way Easements by and between
the United States of America and Sunflower Redevelopment, LLC**

ASSIGNMENT OF RAILROAD RIGHT-OF-WAY EASEMENTS

STATE OF KANSAS

KNOW ALL BY THESE PRESENTS:

COUNTY OF JOHNSON

THIS Assignment of Railroad Right-of-Way Easements is made this the 30th day of April, 2007 by and between the UNITED STATES OF AMERICA, acting by and through the Department of the Army, (the United States, the Army, and Government hereinafter collectively referred to as "Grantor"), under and pursuant to authority of that special legislation enacted into law covering the conveyance of the Sunflower Army Ammunition Plant, Johnson County, Kansas, found at PL 108 375, Title XXVIII, Subtitle D, Part 1, Section 2841 (118 STAT. 2135) ("Sunflower Act"), and SUNFLOWER REDEVELOPMENT, LLC, a Kansas limited liability company, (hereinafter "Grantee").

WITNESSETH:

WHEREAS, all the railroad right-of-way easements hereinafter described herein and situated in Johnson County, State of Kansas to be assigned herein are available for assignment pursuant to the Sunflower Act.

NOW, THEREFORE, Grantor and Grantee make the following respective conveyances, grants, assignments, reservations, restrictions, covenants, exceptions, notifications, conditions, and agreements hereinafter set forth.

Assignment of the Railroad Right-of-Way Easements

Grantor, for and in consideration of: (1) all good and valuable consideration specified in the separate written MEMORANDUM OF AGREEMENT BETWEEN THE UNITED STATES OF AMERICA, ACTING BY AND THROUGH THE ARMY, AND SUNFLOWER REDEVELOPMENT, LLC FOR THE CONVEYANCE OF LAND AND PROPERTY COMPRISING THE FORMER SUNFLOWER ARMY AMMUNITION PLANT JOHNSON COUNTY KANSAS, (the "Conveyance Agreement") dated August 3, 2005, and recorded by abstract in the records of the Johnson County, Kansas Clerk in Book 200308, at Page 003601; and, (2) the specific agreements hereinafter made by Grantee, for itself and its successors and assigns, to abide by and take subject to all reservations, restrictions, covenants, exceptions, notifications, conditions and agreements hereinafter set forth in this Assignment of Railroad Right-of-Way Easements, does hereby assign and forever quitclaim to the Grantee, its successors and assigns, under and subject to all of the reservations, restrictions, covenants, exceptions, notifications, conditions and agreements hereinafter set forth, all of the following railroad right-of-way easements currently held by Grantor situate, lying, and being in Johnson County, State of Kansas, and described in detail in the Attachment, titled "Legal Descriptions for Various Railroad Right-of-Way Easements", which is attached hereto and made a part hereof.

Covenants, Agreements and Notices Affecting the Easements

1. Except as otherwise provided in the Conveyance Agreement as a material part of the consideration for the Property being conveyed, the Grantee is taking the Property "AS IS, WHERE IS" with any and all latent and patent defects, and there is no warranty by the Grantor that the Property has a particular financial value or is fit for a particular purpose. Except as otherwise provided in the Conveyance Agreement, the Grantee further acknowledges and stipulates that the Grantee is not relying on any representation, statement, or other assertions with respect to the condition of the Property. The Grantee takes the Property with the express understanding and stipulation that there are no express or implied warranties except as otherwise provided for in the Conveyance Agreement.

env - General Services Admin

2. To the extent permitted by applicable law, Grantee, for itself and its respective successors and assigns, agree to indemnify, protect, defend, save and hold harmless, the Grantor, and its employees, officers representatives, attorneys and agents, from and against any and all debts, duties, obligations, liabilities, suits, claims, demands, causes of action, damages, losses, costs and expenses (including, without limitation, attorney fees and expenses and court costs) in any way relating to, connected with, and/or arising out of the release, remedial investigations, response actions, remedial actions, corrective actions, or oversight activities concerning any hazardous substance(s) or petroleum product(s) or their derivatives released on the real property previously encumbered by the easements described herein after the date of this Assignment of Railroad Right-of-Way.

IN WITNESS WHEREOF, the **United States of America**, by and through its authorized representatives, has caused these presents to be executed this 30th day of April, 2007.

UNITED STATES OF AMERICA
Acting by and through the
Secretary of the Department of the Army

By: WT Birney
WILLIAM T. BIRNEY
Acting Deputy Assistant Secretary of the Army
(Installations and Housing)
OASA(I&E)

COMMONWEALTH OF VIRGINIA
COUNTY OF ARLINGTON

BEFORE ME, a Notary Public in and for the State of Virginia, on this day personally appeared William T. Birney, known to me to be the person whose name is subscribed to the foregoing ASSIGNMENT OF RAILROAD RIGHT-OF-WAY EASEMENTS, and known to me to be the Acting DASA, Department of the Army, Islands, and acknowledged to me that the same was the act and deed of the United States of America and of the Secretary of the Department of the Army and that he executed the same as the voluntary act of the United States of America and of the Secretary of the Department of the Army for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE at _____, this 30th day of April, 2007.

Elizabeth Mitchell
Notary Public, State of Virginia
My Commission Expires March 31st 2010

CONCURRENCE:

UNITED STATES OF AMERICA

Acting by and through the
Administrator of General Services

By: J. Ferracci
JAMES L. FERRACCI
Director
Real Property Disposal Division
Greater Southwest Region
General Services Administration

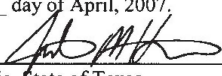


THE STATE OF TEXAS)

COUNTY OF TARRANT)

BEFORE ME, a Notary Public in and for the State of Texas, on this day personally appeared James L. Ferracci, known to me to be the person whose name is subscribed to the foregoing ASSIGNMENT OF RAILROAD RIGHT-OF-WAY EASEMENTS, and known to me to be, Director of Real Property Disposal Division, Greater Southwestern Region, General Services Administration (GSA), and is the duly authorized representative for the GSA Administrator and acknowledged to me that the same was the act and concurrence to the deed of the United States of America and of the Department of the Army, and that he executed the same as the voluntary act of the United States of America and of the Administrator of General Services for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 16 day of April, 2007.



Notary Public, State of Texas
My Commission Expires: _____

Attachment:
Legal Descriptions for Various Railroad Right-of-Way Easements



ATTACHMENT

LEGAL DESCRIPTIONS FOR VARIOUS RAILROAD
RIGHT-OF-WAY EASEMENTS

Legal Description
Book 187, Page 329
Tract No. R/W 1 (B149E)

All that part of Lot 2 on Wea Street, in the City of DeSoto, Johnson County, Kansas, lying North of a straight line running from the Northeast corner of said Lot 2 in a Southwesterly direction to a point 33.7 feet South of the Northwest corner of said Lot 2, in the City of DeSoto, Kansas, containing 0.055 acres, more or less.

Legal Description
Book 187, Page 229
Tract No. R/W 2 (B148E)

A part of Lot 1, Peoria Street, City of DeSoto, Johnson County, Kansas; more particularly described as follows:

Beginning at the Northeast corner of said Lot 1, Peoria Street, DeSoto, Kansas, thence Northwest along the North line of said Lot 1, 143.1 feet to the Northwest corner of said Lot, thence South 91.2 feet, thence Northeast in a straight line to a point 39.6 feet South of the point of beginning; thence North to the point of beginning, containing 0.213 acres, more or less.

Legal Description
Condemnation Action – U.S. v 5.025 acres
U.S. District Court, District of Kansas, Case No. CA 4775
Tract No. R/W 3 (B147E)

Commencing at a point 23.1 feet South of the Northeast corner of Mill Lot, bounded by Peoria Street on the East, First Street on the South, Ottawa Street on the West and Santa Fe railroad property on the North, in the Town of DeSoto, Kansas, thence Southwesterly to a point 185.8 feet South of the Northwest corner of said Lot, thence South along the West line of said Lot 112.8 feet, thence Northeasterly to a point on the East line of said Lot 104.2 feet South of the point of beginning, thence North to the point of beginning, containing 0.765 of an acre, more or less, Johnson County, Kansas.

Legal Description
Condemnation Action – U.S. v 5.025 acres
U.S. District Court, District of Kansas, Case No. CA 4775
Tract No. R/W 4 (B146E)

All that part of Lots 4, 6, 8 and 10, on Ottawa Street, and of Lots 5, 7 and 9 on Kickapoo Street, in the Town of DeSoto, Kansas, in the Block bounded by Ottawa Street on the East, First Street on the South, Kickapoo Street on the West and Santa Fe Railroad property on the North, described as follows: Commencing at a point 42.3 feet North and 33.2 feet West of the Southeast corner of said Lot 4; thence Southwesterly to a point 37.7 feet North of the

Southwest corner of said Lot 7, thence South to the Southwest corner of said Block, thence East 101.5 feet, thence Northeasterly to a point 53.8 feet North of the Southeast corner of said Lot 8, thence North along the West boundary line of Ottawa Street to a point 42.3 feet North of the Southeast corner of said Lot 4, thence West 33.2 feet to point of beginning, containing 1.25 acres, more or less, Johnson County, Kansas.

Legal Description
Book 187, Page 269
Tract No. R/W 5 (B144E)

All that part of Lot 10, Kickapoo Street, in the City of DeSoto, Johnson County, Kansas, more particularly described as follows, to-wit: Beginning at the Southeast corner of said Lot 10, Kickapoo Street, in DeSoto, Kansas, thence North 61.7 feet, thence Southwest (in a straight line) to a point 58.8 feet West of the point of beginning, thence East to the point of beginning.

Legal Description
Book 187, Page 293
Tract No. R/W 6 (B143E)

All of Lot 12, Kickapoo Street, in the City of DeSoto, Johnson County, Kansas, except that part which lies North and West of a line, which line is described as follows: Beginning at a point on the North line of said Lot 12, 13.4 feet East from the Northwest corner of said Lot 12, thence running in a straight line Southwest to a point 17 feet South from the Northwest corner of said Lot 12, Kickapoo Street, DeSoto, Kansas, containing .34 acres of land more or less.

Legal Description
Condemnation Action – U.S. v 5.025 acres
U.S. District Court, District of Kansas, Case No. CA 4775
Tract No. R/W 7 (B142E)

That part of the Southeast Quarter of the Northwest Quarter of Section 28, Township 12 South [Recorded Easement states North], Range 22 East, Johnson County, Kansas, described as follows: Commencing 75.5 feet West of the Center of said Section 28; thence Northeast to a point 2.8 feet South of the Northwest corner of Lot #18, Kickapoo Street, in the Town of DeSoto, Kansas, thence North 251.8 feet, thence Southwest to a point 172 feet West of the point of beginning, thence East to the point of beginning.

Also that part of Lots 14 and 16, on Kickapoo Street in the Town of DeSoto, Kansas, described as follows: Beginning at the Southwest corner of Lot 16, Kickapoo Street, thence North 150 feet to the Northwest corner of Lot 14, Kickapoo Street, thence East 122.5 feet, thence Southwest to a point 13.7 feet East of the point of beginning, thence West to the point of beginning; containing in all 1.15 acres, more or less, in Johnson County, Kansas.

Legal Description**Condemnation Action – U.S. v 5.025 acres****U.S. District Court, District of Kansas, Case No. CA 4775****Tract No. R/W 8 (B139E)**

A fractional part of the Northeast Quarter of the Southwest Quarter of Section 28, Township 12 South [Recorded Easement states North], Range 22 East, more particularly described as follows: Beginning at a point 75.5 feet West of the center of said Section 28, thence South 30 degrees 29 minutes West, 688.15 feet to a point 426.8 feet West of the Southeast corner of the Northeast Quarter of the Southwest Quarter of said Section 28; thence North 89 degrees 46 minutes West, 173.8 feet, thence North 30 degrees 29 minutes East 691.06 feet to the East and West center line of Section 28; thence South 89 degrees 09 minutes East 172 feet to the point of beginning, containing 1.86 acres, more or less, in Johnson County, Kansas.

Legal Description**Book 187, Page 345****Tract No. R/W 09 (B138E)**

Part of the Southwest one-fourth (1/4) of Section, Twenty-eight (28), Township Twelve (12) South, Range Twenty-two (22) East; more particularly described as follows, to-wit:

Beginning at a point five-hundred eighty-nine and four tenths (589.4) feet South and four hundred twenty-six and eight tenths (426.8) feet West of the center corner of said Section 28, Township 12, Range 22, which point is seventy-five (75) feet at right angle from the center line of the track; Thence South thirty degrees twenty-nine minutes (30 degrees 29 minutes) West seven hundred ninety-one and twenty-six hundredths (791.26) feet to an intersection with the North and South center line of the East one-half (1/2) of the Southwest one-fourth (1/4) of the Northeast one-fourth (1/4) of the Southwest one-fourth (1/4) of said Section 28; Thence North two hundred ninety-eight and fifty-seven hundredths (298.57) feet to an intersection with the West railway right of way line at a point seventy-five (75) feet at right angle to the center line of track; Thence North thirty degrees twenty-nine minutes (30 degrees 29 minutes) East, four hundred forty-six and seventy-one hundredths (446.71) feet parallel to and seventy-five (75) feet distant from the center line of the railway track; Thence East one hundred seventy-three and four tenths (173.4) feet to the place of beginning.

Legal Description**Book 187, Page 327****Tract No. R/W 10 (B137E)**

Part of the Southwest one-fourth of Section Twenty-eight (28), Township Twelve (12) South, Range Twenty-two (22) East, more particularly described as follows, to-wit:

Beginning at a point three hundred thirty-one (331) feet East of the center corner of the Southwest one-fourth (1/4) of Section 28-T12-R22; thence East one hundred fifty-seven and nine tenths (157.9) feet to an intersection with the East Railway boundary line; thence North thirty degrees twenty-nine minutes (30 degrees 29 minutes) East sixteen and twenty-four hundredths (16.24) feet to an intersection with the center line of the East one-half (1/2) of the Southwest one-fourth (1/4) of the Northeast one-fourth (1/4) of the Southwest one-fourth (1/4) of said Section 28; Thence North two hundred ninety-eight and fifty-seven (298.57) feet to the West line of Railway right-of-way; Thence South thirty degrees twenty-nine minutes (30 degrees 29 minutes) West three hundred twenty-eight and seventy-four hundredths (328.74) feet following a line parallel to a line seventy-five (75) feet distant at right angle to the center line of the railway tract to an intersection with the North and South center line of the Southwest one-fourth (1/4) of the Northeast one-fourth (1/4) of the Southwest one-fourth (1/4) of said Section 28-T12-R22; Thence South twenty-five and eighty-eight hundredths (25.88) feet to the place of beginning.

Legal Description
Book 187, Page 337
Tract No. R/W 11 (B135E)

Part of the Southwest Quarter (SW 1/4) of Section Twenty-eight (28), Township Twelve (12), South, Range Twenty-two (22) East, more particularly described as follows:

Beginning on the East and West center line of the Southwest Quarter (SW 1/4) of Section 28-T12-R22, at a point three hundred sixteen (316) feet East of the center corner of said Southwest Quarter Section 28-T12-R22; Thence East three hundred twenty-eight (328) feet, thence South forty-three degrees forty minutes (43 degrees 40 minutes) West two hundred thirty-nine and sixty-five hundredths (239.65) feet; thence South thirty degrees twenty-nine minutes (30 degrees 29 minutes) West two hundred seventeen (217.00) feet; thence South forty-eight degrees thirty-seven minutes (48 degrees 37 minutes) West one hundred nine (109.00) feet; thence South thirty degrees twenty-nine minutes (30 degrees 29 minutes) West five hundred twelve and six tenths (512.6) feet to an intersection with the North and South center line of said Southwest Quarter (SW 1/4) of said Section 28-T12-R22; Thence North five hundred twenty and three tenths (520.3) feet; Thence East one hundred twenty-eight and six tenths (128.6) feet; Thence North thirty degrees twenty-nine minutes (30 degrees 29 minutes) East three hundred seventy-three and eight tenths (373.8) feet to the place of beginning.

Legal Description
Book 187, Page 339
Tract No. R/W 12 (B134E)

Beginning on the South line of Section Twenty-eight (28), Township Twelve (12) South, Range Twenty-two (22) East, at a point eight hundred eighty-six and eight tenths (886.8) feet East of the Southwest corner of said Section 28. Thence North thirty degrees twenty-nine minutes (30 degrees 29 minutes) East eight hundred seventy-two and twenty-five hundredths (872.25) feet following a line parallel to and seventy five (75) feet distant from the center line of the railway track to the North and South center line of the Southwest Quarter (SW1/4) of said Section 28; thence South two hundred ninety-eight and eighty-five hundredths (298.85) feet following said center line to a point on the East boundary line of said Railway right-of-way; thence South thirty degrees twenty-nine minutes (30 degrees 29 minutes) West two-hundred sixty and two tenths (260.2) feet; thence Southeasterly one hundred (100) feet to a point one hundred seventy-five (175) feet at right angle from center line of said tract; thence South thirty degrees twenty-nine minutes (30 degrees 29 minutes) West two hundred thirteen and four tenths (213.4) feet to the South line of said Section 28; thence West two hundred eighty-five and one tenths (285.1) feet to the place of beginning.

Also beginning on the North line of Section Thirty-Three (33), Township Twelve (12) South, Range Twenty-two (22) East at a point eight hundred eighty-six and eight tenths (886.8) feet East of the Northwest corner of said Section 33; thence South thirty degrees twenty-nine minutes (30 degrees 29 minutes) West seven hundred sixty-seven and six tenths (767.6) feet to the East and West center line of the Northwest Quarter (NW1/4) of the Northwest Quarter (NW 1/4) of said Section 33; thence East two hundred seventy-five and one tenths (275.1) feet; thence North thirty degrees twenty-nine minutes (30 degrees 29 minutes) East seven hundred seventy (770) feet; thence West two hundred eight-five and one tenths (285.1) feet to the place of beginning.

Legal Description
Book 187, Page 313
Tract No. R/W 13 (B133E)

Part of the Northwest one-fourth (1/4) of Section Thirty-three (33) Township Twelve (12) South, Range Twenty-two (22) East more particularly described as follows, to wit:

Beginning on the East and West center line of the Northwest one-fourth (1/4) of the Northwest one-fourth (1/4) of Section 33-T12-R22 at a point five hundred three and five tenths (503.5) feet East of the West line of said Section 33-T12-R22 on the West line of the Railway right-of-way line which point is seventy-five (75) feet at right angle from the center line of the track; thence South thirty degrees twenty-nine minutes (30 degrees 29 minutes) West three hundred thirty-three and thirty-five hundredths (335.35) feet to the beginning of Railway curve, (with radius one thousand nine-hundred eighty-five (1985.0) feet Southeastward); thence in a Southerly direction one thousand twenty-nine (1029) feet following the curved line of the railway parallel to and seventy-five (75) feet distant from the center line of the railway track to the point of ending of the curve; thence South sixty-one and fifteen hundredths (61.15) feet; thence East two hundred twenty-five (225.0) feet; thence North sixty and fifty-five hundredths (60.55) feet; thence North ten degrees and one minute (10 degrees 1 minutes) East four hundred fifty-eight and seven tenths (458.7) feet; thence North twenty-one degrees four minutes (21 degrees 4 minutes) East four hundred fifty-eight and seven tenths (458.7) feet; thence North thirty degrees twenty-nine minutes (30 degrees 29 minutes) East four hundred sixty-four and five tenths (464.5) feet to an intersection with the East and West center line of the Northwest one-fourth (1/4) of the Northwest one-fourth (1/4) of said Section 33-T12-R22; thence West two hundred seventy-five and one tenth (275.1) feet to the place of beginning.

Legal Description
Book 187, Page 333
Tract No. R/W 14 (B132E)

A part of the Northwest one-fourth (1/4) of Section Thirty-three (33), Township Twelve (12) South, Range Twenty-two (22) East, more particularly described as follows, to-wit:

Beginning at a point sixty-seven and three tenths (67.3) feet East of the West one-fourth (1/4) corner of Section 33-T12-R22 which point is the West Railway right-of-way line; thence East one hundred fifty (150) feet to the East railway right-of-way line; thence North three hundred seventy-one and six tenths (371.6) feet parallel to the center of the railway track; thence East seventy-five (75) feet; thence North two hundred ninety-six and five tenths (296.5) feet, on a line parallel to and one hundred fifty (150) feet East of the centerline of the railway track; thence West two hundred and twenty-five (225) feet to the West Railway right-of-way line; thence South six hundred sixty-eight and one tenth (668.1) feet to the place of beginning.

Legal Description
Book 187, Page 315
Tract No. R/W 15 (B131E)

Beginning sixty-seven and three-tenths (67.3) feet East of the West one-fourth (1/4) corner of Section Thirty-three (33), Township Twelve (12) South, Range Twenty-two (22) East; Thence South one thousand three hundred seventeen and fourteen hundredths (1317.14) feet to the East and West center line of the Southwest one-fourth (1/4) of Section 33-T12-R22, to a point sixty-three and four tenths (63.4) feet East of the West line of the Section; Thence East one hundred fifty and six tenths (150.6) feet; thence North one thousand three hundred seventeen and fourteen hundredths (1,317.14) feet to the East and West center line of said Section 33; Thence West one hundred fifty (150) feet to the point of beginning.

Legal Description:
Book 187, Page 331
Tract No. R/W 16 (B129E)

Part of the Southwest Quarter (SW1/4) of Section Thirty-three (33), Township Twelve (12) South, Range Twenty-two (22) East, more particularly described as follows, to-wit:

Beginning at a point thirty-three (33) feet East of the Southwest Corner of Section 33-T12-R22; Thence North eight hundred five and eighty-eight hundredths (805.88) feet; thence East Twenty-five (25) feet; thence North five hundred eleven and twenty-six hundredths (511.26) feet; thence East one hundred fifty and six tenths (150.6) feet along the East and West center line of the Southwest quarter (SW1/4) of Section 33; thence South five hundred eleven and eight-six hundredths (511.86) feet thence East twenty-five (25) feet; thence South six hundred twenty-eight and three tenths (628.3) feet; Thence Southeasterly three hundred nine and seven tenths (309.7) feet to an intersection with the South line of said Section 33; Thence West three hundred fifty-six (356) feet to the center line of the Railway as now constructed and four hundred fifty-six (456) feet to the point of beginning and four hundred eighty-nine (489) feet to the Southwest corner of said Section 33-T12-R22.

Legal Description:
Condemnation Action – U.S. v .116 acre
U.S. District Court, District of Kansas, Case No. CA 4735
Tract No. R/W 18 (B128E)

Commencing at a point twenty feet (20) West (W) and one hundred and two feet (102) North (N) of the Southeast corner (SE) of Section Thirty-two (32), Township Twelve (12) South (S), Range Twenty-two (22) East, Johnson County, Kansas; thence South (S) eighty-two (82) feet; thence West (W) ninety-four (94) feet; thence in a Northeasterly direction 124.8 feet to point of beginning, containing .09 acres, more or less.

Legal Description:
Condemnation Action – U.S. v .116 acre
U.S. District Court, District of Kansas, Case No. CA 4735
Tract No. R/W 19 (B136E)

Commencing at the Southeast corner of the West Half (W1/2) of the Southwest Quarter (SW1/4) of the Northeast Quarter (NE1/4) of the Southwest Quarter (SW1/4) of Section Twenty-eight (28), Township Twelve (12) S; Range Twenty-two (22) East; thence North 53 feet along North South property line; thence Southwest in a straight line 63 feet to a point 28 feet West of the point of beginning; thence East 28 feet to a point of beginning; containing 0.019 Acres, more or less, Johnson County, Kansas.

Legal Description:
Condemnation Action – U.S. v .116 acre
U.S. District Court, District of Kansas, Case No. CA 4735
Tract No. R/W 20 (B145E)

Commencing at the Northwest corner of Block Eleven (11), bounded by Ottawa Street on the East, Second Street on the South, Kickapoo Street on the West, and First Street on the North, in the town of DeSoto, Kansas; thence East 23.6 feet along the North boundary of said Block; thence Southwest to a point on the West side of said Block, 23.5 feet South of the point of beginning; thence North to a point of beginning, containing 0.007 of an acre, more or less, Johnson County, Kansas.

EXHIBIT E

**Contract for Industry Track between Hercules Powder Company
and The Atchison, Topeka, and Santa Fe Railway Company**

SUN RAILROAD
SWITCHING CONTRACT
NO. 1

CONTRACT FOR INDUSTRY TRACK

AGREEMENT, Made this 29th day of October, 1942
between The Atchison, Topeka, and Santa Fe Railway Company,
a Kansas Corporation, hereinafter called the "Railway Company",
party of the first part, and the Hercules Powder Company, a
Delaware Corporation, hereinafter called the "Industry",
party of the second part.

RECITALS:- Industry has been employed by the United States
Government as consultant and operator of the Sunflower Ordnance
Works now under construction near DeSoto, Kansas, on
property owned by the Government, in accordance with United
States Government Contract No. W-ORD-633.

The Industry has requested the Railway Company to perform
switching service during the period of operations hereinafter
defined and during the period of construction hereinafter
defined on a certain track extension extending southwesterly
from a point on the Railway Company's southerly property
line opposite Railway Company's Milepost 11, plus 2985 feet,
to the south boundary line of and including the interchange
or Classification Yard, more specifically described on the
drawing attached hereto to serve the Sunflower Ordnance
Works near DeSoto, Johnson County, Kansas, said track extension
to be referred to hereinafter as the "Track".

Further, the Industry has requested the Railway Company to
conduct switching operations during "the period of construction"
hereinafter defined, on the track located and extended
from the south boundary of the Classification Yard and to
points within the area, hereinafter called the "Plant Site"
being the Sunflower Ordnance Works near DeSoto, Johnson County,
Kansas, said Track to be hereinafter referred to as the "Plant
Site Track."

AGREEMENT

ARTICLE I

In consideration of the covenants of the Railway Company, the
Industry agrees as follows:

1. That it will maintain the Track and the Plant Site Track
from the point of intersection with Railway Company's property
line in a reasonably safe condition without expense
to the Railway Company.
2. That in recognition of the fact that the movement of
railroad locomotives involves some risk of fire, the

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Industry hereby assumes all responsibility for and agrees to indemnify the Railway Company against loss or damage to property of the Industry, or to property upon its premises, regardless of the Railway Company's negligence, arising from fire caused by locomotives operated by the Railway Company on the Track or the Plant Site Track or in the vicinity thereof for the purpose of serving the Industry, except to the premises of the Railway Company and to rolling stock belonging to the Railway Company or to others and to shipments in the course of transportation.

The Industry also agrees to indemnify and hold harmless the Railway Company for loss, damage or injury from any act or omission of the Industry, its employees or agents, to the person or property of the parties hereto and their employees, and to the person or property of any other person or corporation, while on or about the Track or the Plant Site Track; and if any claim or liability other than from fire shall arise from the joint or concurring negligence of both parties hereto, it shall be borne by them equally.

Industry has advised Railway Company that other persons and corporations, as well as the United States Government will receive shipments over the said Track and Plant Site Track, consequently, the indemnity assumed by Industry herein is limited to property owned by Industry or property upon premises under the exclusive control of Industry at the time any such loss or damage is sustained; and it is expressly agreed that Industry assumes no liability whatever for any other property or premises, or for any other loss or damage.

3. That it will pay to the Railway Company from time to time within thirty (30) days after bills are rendered, the rates and charges prescribed by lawful published tariffs for all operations for and on behalf of the Industry.
4. That it will for such parts of the Track and Plant Site Track as are under its exclusive supervision and control, at all times keep a space of six (6) feet from the nearest rail of any railroad track entirely clear of structures, material and obstructions of every sort and will observe an overhead clearance of not less than twenty-five (25) feet above the top of rail; but, nevertheless, the Industry may erect loading platforms which shall not be higher than three (3) feet and six (6) inches above the top of the rails and which at no point shall be nearer than four (4) feet to the nearest rail of such track; provided, however, if by statute or order of competent public authority different clearances shall be required than those provided for in this Section; then the Industry shall strictly comply with such statute or order.

In case of a breach of these obligations, or any of them, the Industry assumes and agrees to indemnify the Railway Company against all liability for loss, damage, in-

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jury and death arising therefrom and to reimburse the Railway Company for any sums which the Railway Company may have been required to pay in the way of damages, fines, penalties or other expense resulting from the violation by the Industry of any statute or order as aforesaid.

ARTICLE II

1. In consideration of the covenants of the Industry, and the faithful performance thereof, the Railway Company, subject to the provisions of Section I of Article I, hereby agrees to perform switching service according to the terms hereof during the period of this agreement subject to and to the extent as contemplated by lawful tariffs applicable thereto.
2. Railway Company agrees to maintain, at its own expense, any part of said Track situated upon its property.
3. Railway Company hereby agrees that the entire plant area covered by Sunflower Ordnance Works is within the switching limits of DeSoto, and Railway Company further agrees that, should at any time said Track or Plant Site Track be extended within the present property boundaries of Sunflower Ordnance Works, the DeSoto rates shall apply.
4. During the construction period the Railway Company agrees that in the performance of all switching under this contract all cars consigned to Industry will be spotted according to the directions of a duly authorized representative of the Industry.
5. Industry agrees that all shipments consigned to it for delivery on the said Track or Plant Site Track shall be deemed to be delivered as soon as the car or cars containing such shipments shall have been properly placed and braked upon the property of Sunflower Ordnance Works and at the end of the switching operation, at the place designated by Industry's representative finally detached from the engine or train by which it was moved, and the Railway Company shall thereupon be relieved of and from any liability therefor as a common carrier or bailor. The terms of this paragraph, however, shall not be construed to relieve the Railway Company from any liability theretofore incurred or from any liability for the consequences of its own negligence.

ARTICLE III

The parties hereto mutually agree as follows:

1. The term of this contract shall be one year from the effective date of this contract, as stated herein and thereafter from month to month until such time as the Industry shall notify the Railway Company in writing

that the Industry or the government no longer desires the performance of switching by the Railway Company.

2. If the industry shall fail for a period of six (6) months in any period of twelve months to operate the Plant, or shall fail or refuse to comply with or carry out any of the covenants or agreements herein contained, the Railway Company may, at its option, expressed in writing, terminate this agreement; but no termination shall release the Industry from any liability or obligation under this agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination.
3. The Railway Company shall have the right to inspect all trackage described herein in order that it may take reasonable precaution for safety purposes, and in order to comply with all laws of the state of Kansas and of the United States pertaining thereto. Such inspections are to be made by the Railway Company in accordance with Industry's rules and regulations governing the protection of the Plant Site area, and the admission of persons thereon.
4. There is attached hereto and made a part hereof a drawing showing location of the Track and also the Classification Yard to be erected on the Plant Site.
5. It is contemplated that no switching is to be performed by the Railway Company on the Plant Site Track during the period of operations as herein defined. If, during said period, in the opinion of the Industry's Plant Manager an emergency should arise, requiring the use of locomotives of the Railway Company; the Railway Company agrees to furnish such locomotive service as may be required at rates customarily charged for such service. When the "period of operations" begins as defined herein, the Industry will conduct all switching between the Classification Yard and points on the Plant Site Track.
6. Switching operations shall commence when mutually agreed upon by the Industry, and the Railway Company.
7. The Industry shall in no event be held responsible for any switching operations performed by the Railway Company for and on behalf of any other person or corporation in connection with construction work on the Plant Site, nor shall any provision of this contract be deemed to have been executed for their use or benefit. But nothing herein shall be construed as restricting the Railway Company from performing operations on the Track and Plant Site Track on behalf of persons and/or corporations engaged in work and construction under contracts approved by the United States Government.
8. Any notice to be given by the Railway Company to the Industry hereunder shall be deemed to be properly served

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if the same be delivered to Industry's Plant Manager, or if deposited in the post office, postpaid by Registered Mail, addressed to the Industry at Sunflower Ordnance Works, De Soto, Kansas.

9. All the covenants and provisions of this agreement shall be binding upon the successors and assigns of the Industry to the same extent and effect as the same are binding upon the Industry, and each and every covenant herein shall inure in favor of and run to the successors and assigns of the Railway Company and to each and every person, firm or corporation which may hereafter own or be in possession of or operate the railroad of the Railway Company to the same extent and as fully as though such person, firm or corporation were specifically named in this agreement in the place and stead of the Railway Company; provided, however, no assignment hereof by the Industry shall be binding upon the Railway Company without the written consent of the President or a Vice-President of the Railway Company in each instance, except that the whole or any part of this contract is assignable to the United States of America regardless of consent of the Railway Company.
10. Definitions:- The term "period of operations" as used herein is defined as that period beginning with the date of receipt of Notice in writing by the Railway Company from the Industry notifying the Railway Company that manufacturing operations have commenced. The "period of construction" begins upon the effective date of this contract and shall be terminated for the purposes of this contract upon the written notification to the Railway Company that manufacturing operations have commenced as provided in this paragraph. The term, "Contracting Officer" as used herein shall be the duly appointed officer of the Ordnance Department, United States Army in command of the Sunflower Ordnance Works, or his duly authorized representative.
11. The Railway Company is to provide adequate fire prevention measures in the performance of operations hereunder in compliance with state and federal laws and regulations. Industry shall provide at the entrance to its Classification Yard spark arresters to be attached on all locomotives entering the Plant premises, and Railway Company agrees to attach and use the same on all engines while within the said premises performing switching hereunder.
12. The Railway Company shall be responsible that its employees strictly observe the laws of the United States affecting all operations under the Contract. It shall comply with all applicable Federal and State laws and regulations under which it is operating.
13. Anti-Discrimination. The Railway Company in the performance of operations hereunder shall not discriminate

against any worker because of race, creed, color, or national origin.

14. Covenant Against Contingent Fees. The Railway Company warrants that it has not employed any person to solicit or secure this Contract upon any agreement for a commission, percentage, brokerage or contingent fee.
15. No member of, or Delegate to Congress, or resident commissioner shall be admitted to any share or part of this contract or to any benefit that may arise therefrom.
16. Ownership of Track. The Track and the Plant Site Track are owned by the United States Government.
17. Termination for Convenience of the Government. Pursuant to Principal Contract W-ORD-633, Industry's contract with the U.S. Government, the government may terminate the said contract at any time by written notice to the Industry. In the event of such termination by the government, Industry may terminate this contract by written notice to the Railway Company.

The effective date of this contract shall be the 29th day of October, 1942.

IN WITNESS WHEREOF, The parties have executed this agreement in duplicate the day and year first above written.

APPROVED:

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY

As to Form

Authorized for execution

in open contract file

M-44588 By J. S. Sullivan

General Attorney

Its Vice-President

As to Description

HERCULES POWDER COMPANY

APPROVED FOR UNITED STATES
GOVERNMENT:

By J. R. Louke Jr.

Charles H. Pruden, Jr.

CHARLES H. PRUDEN, JR.

MAJOR, ORDNANCE DEPT.

COMMANDING OFFICER

Its

Plant Manager

FORM APPROVED:

H. J. Brockett

35327

I, R. D. Brown, certify that I am the
Assistant Secretary of the Corpor-
ation named as Railway Company herein; that
F. S. Gurler who signed this contract
on behalf of the Railway Company was then
Vice President of said corporation; that
said contract was duly signed for and in behalf of said
corporation by authority of its governing body and is within
the scope of its corporate powers.

R. D. Brown

Date November 5, 1942

CORPORATE SEAL:

AT 85823

I, E. C. Stump, do hereby certify that the following is a true and correct excerpt from the minutes of the regular meeting of the Board of Directors of Hercules Incorporated, a Delaware corporation, held at the office of the Company in the City of Wilmington, State of Delaware, on the 27th day of April, 1966, as the same appears of record on the minute books of said Company.

WHEREAS, the Board of Directors on September 29, 1965 approved changing the name of the Company and recommended to the stockholders that they amend the Amended Certificate of Incorporation to change the name of the Company; and

WHEREAS, the stockholders, at their annual meeting on March 15, 1966, adopted an amendment to the Amended Certificate of Incorporation changing the name of the Company to HERCULES INCORPORATED;

NOW, THEREFORE, BE IT RESOLVED, That after the close of business on April 29, 1966, all acts of the corporation done in the name of Hercules Powder Company on and prior to such date, be and the same are hereby approved, confirmed and ratified; and be it

FURTHER RESOLVED, That after April 29, 1966, all the powers and authority theretofore specifically conferred by resolution of the Board of Directors, the Executive Committee, or the Finance Committee upon officers of the Company and upon the agents and employees of this Company, and not rescinded by resolution of the Board of Directors, the Executive Committee, or the Finance Committee, shall be and hereby are confirmed, renewed and continued in the name of Hercules Incorporated.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of said Company this 2nd day of September, 1966.

FORM APPROVED

GENERAL ATTORNEY, KANSAS


Assistant Secretary
Hercules Incorporated

26-1752



HERCULES INCORPORATED

LEGAL DEPARTMENT • WILMINGTON, DELAWARE 19899 • PHONE 302-656-9811

September 6, 1966

Mr. C. A. Walton, Division Freight Agent
Freight Traffic Department
The Atchison, Topeka and Santa Fe Railway Company
Topeka, Kansas 66612

YOUR REF: W-26-1752

Subject: Change of Name - Hercules Powder Company
to Hercules Incorporated

Dear Mr. Walton:

Your letter of August 26, 1966, to Mr. M. E. Jones has been referred to me for reply.

The assignment form attached to your letter is returned herewith, unexecuted by Hercules. Hercules Powder Company changed its name to "Hercules Incorporated", effective with the close of business on April 29, 1966. Other than the change of name, there was no change made in the corporate structure and all agreements and undertakings entered into by Hercules Powder Company prior to April 29, 1966, are binding on Hercules Incorporated to the same extent as if they had originally been entered into by Hercules Incorporated.

Enclosed are two certified copies of a resolution taken from the regular minutes of the Board of Directors of Hercules Incorporated at its meeting on April 27, 1966. I trust that this resolution will answer all questions which you may have concerning this matter and I feel confident that you will agree that this resolution makes it unnecessary for Hercules to execute the assignment contract which you forwarded.

Very truly yours,

S. Maynard Turk
Senior Counsel

SMT/mg

Enclosures

VIA AIR MAIL

CC

Mr. M. E. Jones

Div. of Sales
Topeka, Kansas
C.A.W.
G.R.B.
R.L.H.
H.E.

EXHIBIT F

**Excerpts from Nat'l Park Serv., Dep't of Interior, Hist. Am.
Eng'g Rec. No. KS-3, Sunflower Army Ammunition Plant (1985)**

Sunflower Army Ammunition Plant
De Soto
Johnson County
Kansas

HAER No. KS-3

HAER
KANS.
46-DESO,
1-

WRITTEN HISTORICAL AND DESCRIPTIVE DATA

Historic American Engineering Record
National Park Service
Department of the Interior
Washington, DC 20013-7127

HAER
KANS.
46-DESOT
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HISTORIC AMERICAN ENGINEERING RECORD

Sunflower Army Ammunition Plant

KS-3

Location: Near the Kansas River, about 3 miles south of De Soto, Kansas in Johnson County.

Date of Construction: Established in 1942.

Owner: Department of the Army

Significance: One of six smokeless powder plants constructed during WWII, Sunflower AAP produced propellants for small arms, cannon, and rocket.

Historical Report
Prepared by: Robert Ferguson, 1984.

Prepared for
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EXECUTIVE SUMMARY

The Sunflower Army Ammunition Plant (SFAAP) is a government-owned, contractor-operated installation under the Army's Armament, Munitions and Chemical Command (AMCCOM). The plant is situated on 9,063 acres near the Kansas River, about three miles south of DeSoto, Kansas, between Kansas City and Lawrence. One of six very similar smokeless powder plants constructed between 1940 and 1945, the SFAAP produced small-arms, cannon, and rocket propellant during World War II. The plant was rehabilitated and reactivated during the Korean and Vietnam Wars. Major modernization construction projects undertaken since the Korean War include: mechanized facilities for rolling rocket propellant paste, developed at and still unique to SFAAP; continuous nitroglycerin production facilities; and the first nitroguanidine manufacturing plant in the United States, completed in 1983.

The SFAAP currently comprises approximately 1,200 buildings. Nearly 1,000 of these date from the original construction period, but because of subsequent modification, no World War II-era production lines remain intact.

There are no Category I or II historic properties at the SFAAP. The Roberts House (now called the Recreation Building, Building FH-3) is a Category III historic property because it is important as a local architectural landmark and as an intact example of an historic regional building style.

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Chapter 2

HISTORICAL OVERVIEW

BACKGROUND

The Sunflower Army Ammunition Plant (SFAAP) is a government-owned, contractor-operated installation located on a 9,063-acre site near the Kansas River, about three miles south of DeSoto, Kansas, between Kansas City and Lawrence (Figure 1). One of six very similar smokeless powder plants constructed between 1940 and 1945, the SFAAP produced propellants for small arms, cannon, and rockets during World War II. In response to increased demand, the rocket lines were expanded several times during this period. Following World War II, the plant produced ammonium nitrate liquor for two years before entering "standby" status.

The SFAAP was rehabilitated and reactivated in 1951 for the Korean War, and remained in production until 1960. This period saw the development of mechanized facilities for rolling solventless double-base rocket propellant paste.

Reactivated in 1965 to support the Vietnam War, the SFAAP entered a period of modernization and expansion that continues to the present. Facilities for continuous production of nitroglycerin were completed in 1971. Although active production stopped in that year, major construction since then has included new acid facilities, second-generation mechanized paste rolling units, and the first nitroguanidine manufacturing plant in the United States, completed in 1983.

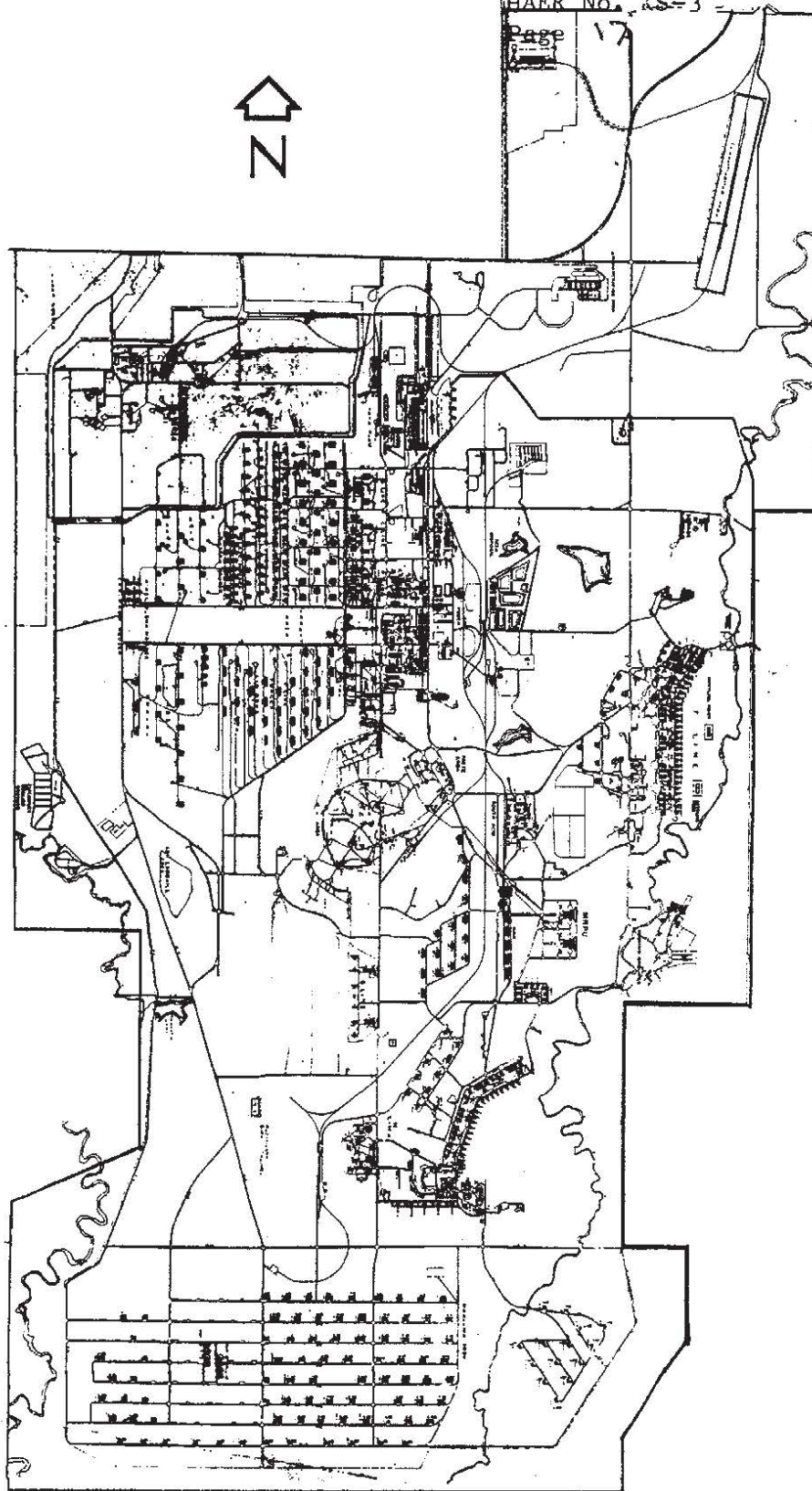


Figure 1: Sunflower Army Ammunition Plant. Current Site Plan, dated 3/31/80, prepared by Hercules, Inc. (Source: Contractor files, Sunflower AAP)

The SFAAP currently comprises about 1,200 structures. Nearly 1,000 of these date from the World War II period, but because of subsequent modifications, no original production lines remain intact.

WORLD WAR II

Although the United States constructed an extensive munitions-manufacturing network during World War I, few facilities survived the country's "return to normalcy" and disarmament of the 1920s. The dismantling of powder and explosives works was particularly thorough. By the mid-1930s, there were only four active plants for manufacturing single-base smokeless powder, which was the primary propellant for American military ammunition. Two of these installations were owned and operated by the federal government: the Army's Picatinny Arsenal in New Jersey, and the Navy's Indian Head Plant in Maryland. The other two, both located in New Jersey, were owned by private industry: the Carney's Point Plant of E.I. du Pont de Nemours & Co, Inc., and the Kenvil Plant of Hercules Powder Co., Inc. Although these facilities employed modern manufacturing techniques, their combined capacities were barely equal to the task of supplying the nation's peacetime armed forces. As a first step toward expanding American smokeless powder capability, the U.S. Ordnance Department in 1937-1938 requested Hercules and du Pont to assist in the preparation of engineering specifications for a series of new plants. At the same time, the government began stockpiling "powder machinery and specialized equipment . . . that might not be readily available in an emergency."¹ The emergency came with the fall of France in the summer of 1940, when Congress appropriated defense funds for three new powder plants.

Two more powder plants were among the 25 ordnance plants authorized in 1941, and another two, including Sunflower AAP, were among the 25 plants that began construction between January and August 1942, after the attack on Pearl Harbor.²

Site Selection and Former Land Use

The U.S. Navy Bureau of Ordnance, surveying over 200 potential sites for munitions plants, first tentatively selected a site near DeSoto, Kansas, the future SFAAP site, in November 1940.³ Although that site was not among the five the Navy finally chose, it came to the attention of the Army Ordnance Department, which began a similar search in April 1941. The basic criteria for locations "suitable for construction of a TNT, DNT, Smokeless Powder Plant" included:

- (1) a mid-continental location as a defense against enemy bombardment;
- (2) proximity to main roads and railroad lines;
- (3) availability of a suitable labor force;
- (4) ample water supply for processing purposes;
- (5) access to cotton, a basic raw material for smokeless powder production, and toluene, an oil-refining by-product used in high explosive manufacture;
- (6) large, isolated tracts of land for safety in explosives manufacturing.⁴

The DeSoto site satisfied these criteria: it was adjacent to Kansas State Highway 10, the Atchison, Topeka & Santa Fe Railroad, and the Kansas (locally called the Kaw) River, and it was close enough to Kansas City and Lawrence to permit workers to commute. The government purchased about 10,474 acres of relatively flat, clear and lightly wooded land, and on 26 February 1942 announced the construction of an ammunition plant.⁵

The land purchased for the plant had comprised some 150 farms and a small community called Prairie Center. Prairie Center's cemetery was moved outside the plant boundaries to the west,⁶ and of the various houses, barns, and outbuildings that originally occupied the site, only one remains today (Building FH-3 / Figure 2). Overlooking Roberts Lake near the western boundary of SFAAP, Building FH-3 is the former home of a locally prominent dentist, Dr. Sam Roberts, and is officially called the Recreation Building, although it is more commonly known as the Roberts Lake House. With its massive chimneys and double-height living space, the two-story yellow sandstone house is a good example of the vigorous, rustic masonry style popular in early twentieth-century Kansas City and the surrounding area (Figure 3). Traces of its lineage can be seen in two nineteenth-century buildings in nearby DeSoto.

Construction

The SFAAP^{*} was originally intended to produce both (propellant) smokeless

* From the time of its construction through the Korean War, SFAAP was officially known as Sunflower Ordnance Works. For the sake of clarity and brevity, this report will use the current name, Sunflower Army Ammunition Plant, the official designation since 1 August 1963.

powder and the high explosive TNT. But the Ordnance Department soon revised the plans to provide facilities only for smokeless powder and nitroglycerin, an ingredient in multiple-base powders, along with the necessary acids and solvents.⁷ Much of the design work for buildings and production lines had already been done, since Hercules Powder Company, the operating contractor, had been working with the Ordnance Department on the design of smokeless powder facilities since the late 1920s. Their Radford Ordnance Works in Virginia, among the first of the new plants authorized in 1940, was the first to start production, in March 1941. Experience gained at Radford went onto the design of a new and larger plant, the Badger Ordnance Works in Wisconsin. Construction of Badger had just begun when Hercules signed the contract for Sunflower AAP in May 1942.

Sunflower was to be virtually identical to Badger: the overall layout was adapted to the different site conditions, but the Hercules-designed production buildings and their arrangements in self-contained production lines were duplicated with only occasional minor changes.⁸

Architectural, engineering, and construction management (AEM) services, including design of nonproduction buildings and hiring of subcontractors, were performed by a team made up of William S. Lozier, Inc., of Rochester, New York, and Broderick & Gordon, of Denver, Colorado. William S. Lozier - Broderick & Gordon signed their contract just after Hercules, in May 1942, and construction began immediately.⁹

7814, later called Dowel and Multi-Wrap House; Milling and Inspection House, Building 7894). The final inspection performed at this point was the culmination of a series of inspections at critical points throughout the process (Figure 5).¹⁷

In addition to manufacturing finished propellant, the SFAAP also produced nitroglycerin for use with nitrocellulose in double- and multiple-base powders; ether, used with alcohol in solvent powders; and nitric and sulfuric acids for production of nitrocellulose and nitroglycerin. The acid-production facilities were conventional; by 1983 most had been demolished and the remainder substantially altered.

Following V-J Day, the Army reduced powder production schedules at SFAAP, but did not officially place the plant in "standby" status until 1948. Hercules Powder Company continued as operating contractor until that time, producing ammonium nitrate liquor for use in making fertilizer for the government's foreign-aid program. In June 1948, Hercules turned the SFAAP over to the Ordnance Corps and vacated the plant.¹⁸

KOREAN WAR

The government reactivated SFAAP in early 1951. Hercules Powder Company returned to its World War II role as operating contractor, and the Massman-Patti-Tanner and Mitchell Construction Company provided AEM services for rehabilitation and new construction, which lasted until May 1955.¹⁹ During this period, the SFAAP produced double-base cannon and rifle and triple-base cannon powder, and several types of rocket propellant grains.²⁰

An important development at SFAAP during the Korean War period was the invention of the "Sunflower Blender." The disadvantages of the Sweetie Barrels used for blending solventless rocket propellant paste (they were slow, dangerous, and space-consuming) had led to a search for an alternative. According to veterans of the period, Chief Project Engineer Merle Siegmund, considering the problem while driving to work, found himself behind a cement mixer and decided to apply that technology to his needs. The Sunflower Blender (Figure 12), which Siegmund designed in 1953, incorporated the cement mixer's revolving barrel and its interior fins for mixing and scraping the sides of the barrel. The prototype, made of aluminum, developed fractures, and stainless steel was used thereafter. Fulfilling their intended purpose, Sunflower Blenders replaced Sweetie Barrels at SFAAP, where new buildings to accommodate the new blenders were constructed in 1955 (Buildings 7825 and 7829; Building 7825 was destroyed by fire in 1970). The Sunflower Blender was also adopted by other smokeless powder plants.²¹

The Army did not deactivate SFAAP immediately after the Korean War. Production continued until 1957, and experiments and testing continued until June 1960.²² One subject of these experiments was mechanization of the process of rolling rocket propellant paste into sheets. As previously performed on differential and evenspeed rolling mills, this process had been a particularly labor-intensive and hazardous part of rocket propellant manufacture. In the early 1950s, Hercules engineers began to explore ways to automate the process; equipment prototypes were tested at SFAAP by 1956, and the Pilot Mechanized Roll Plant (Building 7884) north of F Line began production in 1958 (Figure 13). A 1966 plant news release explained its operation:

As the name (Mechanized) implies, the operation is almost completely automatic. The equipment is operated from the control room, the nerve center where an electric control panel activates each step, and where closed circuit television cameras monitor each phase of production.

The production begins in the service room where paste is emptied into a hopper. Once inside, the paste is weighed automatically and discharged onto a conveyor belt which carries it through a metal detector and then on into a dielectric heater for preheating to 140 degrees. The conveyor carries the paste into the hopper which carries it to the pre-roll. Here it is cooked and colloided into a plastic sheet. This sheet is conveyed to the final roll where it is cut into a continuous strip four and three-fourths inches wide. The excess powder automatically goes back into the final roll in a continuous working operation.

The rolled strip is fed into a cooling tank where it travels through water for cooling. This is accomplished by threading the powder in a method similar to a movie projector. The strip is then dried by rubber wipers and a warm air jet and continues on to the carpet roll winding machine. After a roll reaches the required fifteen inch size, the machine ejects it and pushes it through a door to the loading room where it is tied by hand and loaded in a buggy to be shipped to the Press Area.²³

After the Korean War, the Corps of Engineers sold Sunflower Village, the plant housing project, to private buyers. This has been the only major change in the plant boundaries since World War II; another small tract of land was transferred to Headquarters, 1st Infantry Division (M), Fort Riley, Kansas, in 1960. Hercules began putting the SFAAP's buildings and equipment into layaway in 1958 and finished the process in 1960. From that time until 1965, the only active production facility was the Acid Area, operated by U.S. Industrial Chemical Co. of New York to produce sulfuric acid.²⁴

VIETNAM WAR TO THE PRESENT

On 20 August 1965 the Army reactivated the SFAAP to produce propellant grains for the 2.75" Folding Fin Air Rocket, for air-to-ground use in Vietnam. Known upon its introduction in 1952 as the "Mighty Mouse," this light and versatile rocket could carry any of several types of warheads and could be fired singly or in groups from small airplanes or helicopters. The propellant grain for this rocket was similar in design and production to those formerly produced at SFAAP. Hercules used D Line, which had been maintained at a higher level than the other lines, to make nitrocellulose, and rehabilitated the South Acid Area, the Nitroglycerin Area, and F and N Rocket Lines for the new operation.²⁵ No major new construction took place at this time.

In 1965 Hercules and the Corps of Engineers began work to install a system for continuous nitration of nitroglycerin at SFAAP. The Corps accepted a construction bid in 1969, and the Continuous Nitrator (Building 5662) was complete by 1971 (Figure 14). The equipment used was the Swiss-made "Biazzi" system, common in the industry since the early 1950s. Like the Mechanized Roll facility, this installation represented the replacement of a labor-intensive "batch" process with an automated "continuous" one. While production capacity was only slightly higher than that of the batch process, fewer workers were exposed to dangerous materials, and the possibility of operator error, a particular hazard of the batch process, was greatly reduced.²⁶

Active production of rocket propellant ended in June 1971, but the SFAAP, although deactivated, entered a new period of expansion and modernization. Hercules (called Hercules, Inc., since 1 May 1966) continued to serve as operating contractor, as they do today. Major projects during the 1970s included continuous paste facilities (Buildings 9801, 9802, 9824), completed in 1976 in the Nitroglycerin Area; a Nitric Acid Concentrator/Sulfuric Acid Concentrator (NAC/SAC, Building 903-1), completed in 1977; and a Sulfuric Acid Recovery Unit (SAR, Building 729), completed in 1979. Second-generation Mechanized Roll facilities (Buildings 9807-1, 9807-2), located between F and N Lines, were completed in 1977.²⁷

The most recent large construction at SFAAP is the Nitroguanidine Plant, completed in 1983. Nitroguanidine, the third active ingredient (with nitrocellulose and nitroglycerin) in triple-base cannon powder, is used to reduce flash and therefore prolong gun-barrel life.²⁸ When the Canadian plant that had been the Army's sole source for nitroguanidine was closed in 1975, the Army began construction of its own facility. The prime contractor, through the Corps of Engineers, was Hensel Phelps Constructors of Greeley, Colorado.²⁹ Two buildings (Buildings 2000, 2012) on the former Nitrocellulose B Line were remodelled as a pilot plant to test the process. The main Nitroguanidine Plant consists of some 30 buildings (major production buildings include Buildings G0000, G0010, G0040, G0050, G2000, G2020, G2500, G2700, G2720, G6900, and GS300), and occupies the northwest corner of the SFAAP, near the old Staff Housing Area, most of which had been cleared by 1968. Using the British Acquafusion Process, the plant is the only facility of its kind in the United States.³⁰

EXHIBIT G

**Excerpts from Agency for Toxic Substances & Disease Registry, Dep't of
Health & Hum. Servs., Pub. Health Assessment, Sunflower Army
Ammunition Plant (2002)**

PUBLIC HEALTH ASSESSMENT

SUNFLOWER ARMY AMMUNITION PLANT

DESOTO, JOHNSON COUNTY, KANSAS

EPA FACILITY ID: KS3213820878

Prepared by:

**Federal Facilities Assessment Branch
Division of Health Assessment and Consultation
Agency for Toxic Substances and Disease Registry**

THE ATSDR PUBLIC HEALTH ASSESSMENT: A NOTE OF EXPLANATION

This Public Health Assessment was prepared by ATSDR pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) section 104 (i)(6) (42 U.S.C. 9604 (i)(6)), and in accordance with our implementing regulations (42 C.F.R. Part 90). In preparing this document, ATSDR has collected relevant health data, environmental data, and community health concerns from the Environmental Protection Agency (EPA), state and local health and environmental agencies, the community, and potentially responsible parties, where appropriate.

In addition, this document has previously been provided to EPA and the affected states in an initial release, as required by CERCLA section 104 (i)(6)(H) for their information and review. The revised document was released for a 30-day public comment period. Subsequent to the public comment period, ATSDR addressed all public comments and revised or appended the document as appropriate. The public health assessment has now been reissued. This concludes the public health assessment process for this site, unless additional information is obtained by ATSDR which, in the agency's opinion, indicates a need to revise or append the conclusions previously issued.

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SUMMARY

Sunflower Army Ammunition Plant (SFAAP) is a government-owned, contractor-operated installation that began operation in 1942. It is located near the small town of DeSoto, Kansas, in Johnson County. The plant occupies approximately 9,065 acres in the shape of a north-south rectangle about 6 miles long by 3 miles wide. The plant's primary mission was to manufacture smokeless gunpowder and munition propellants for World War II, the Korean Conflict, and the Vietnam Conflict. Three explosives compounds (nitroglycerine, nitrocellulose, and nitroguanidine), as well as sulfuric and nitric acids, were manufactured. Munitions testing was also conducted at the site. Since 1992, SFAAP has been in inactive status. The major activities have been maintenance, environmental stabilization, and remediation. In early 1998, the U.S. Department of the Army (Army) declared that it no longer needed SFAAP and is in the process of selling the site.

During SFAAP's operations, various hazardous substances were inadvertently or intentionally released into the environment during standard disposal practices from production line areas, magazine storage areas, and solid waste management units (SWMUs). Inorganics, explosives, and nitrate compounds located in on-site soil, sediment, and groundwater are the primary contaminants.

In 1995, the U.S. Environmental Protection Agency (EPA) proposed SFAAP for the National Priorities List; however, the site was never listed. Under the Resource Conservation and Recovery Act (RCRA) Corrective Action Program a total of 65 SWMUs and 22 Areas of Concern have been identified at SFAAP and are in varying stages of investigation and remediation. Both EPA and Kansas Department of Health and Environment (KDHE) provide oversight to the program.

In September 1995, Agency for Toxic Substances and Disease Registry (ATSDR) staff conducted an initial site visit to SFAAP and in January 2000, returned to begin the data collection process for the public health assessment. During the second site visit, ATSDR met with SFAAP, EPA, and KDHE representatives and a local community group, Taxpayers Opposed to Oz (TOTO).

The pathways discussed in this public health assessment were chosen based on evaluations made during the site visits, an examination of environmental data, and concerns raised by local citizens. Based on a thorough review of the available data, ATSDR has reached the following conclusions.

Air Pathway. Under the Environmental Stabilization Project many explosive-contaminated buildings are being destroyed via open burning. Specific meteorological conditions must be met before a scheduled burn can occur. In addition, control measures are used to contain the amount

of asbestos fibers and lead that are released into the air. In 1997, SFAAP conducted air sampling during three test burns to determine the levels of asbestos and lead being released by the smoke plume. Based upon the information collected during the test burns and a thorough review of the toxicological and epidemiological literature, ATSDR does not expect that people who live around SFAAP are being exposed to harmful levels of airborne asbestos or lead generated during the open burning when proper burning procedures are followed.

Surface Water and Sediment Pathway. Kill Creek, Spoon Creek, and Captain Creek are located along SFAAP's northeast, southeast, and southwest borders, respectively. Each creek drains several contaminated areas at SFAAP. Because children may play in these creeks downstream from the site, ATSDR evaluated the potential exposure to recreational users. Surface water and sediment sampling were conducted in 1994 and 1995—the detected concentrations were below levels of health concern. Therefore, recreational exposure to the surface water and sediment in Kill Creek, Spoon Creek, and Captain Creek are not expected to cause adverse health effects in children who may play in the creeks.

Kill Creek, Spoon Creek, and Captain Creek eventually discharge into the Kansas River, a designated state drinking water source. However, contamination from SFAAP is not expected to negatively affect the water quality since the levels of chemicals detected are also too low to be of health concern for anyone who may drink untreated water from these creeks on a daily basis.

Soil Pathway. The soil in many areas of SFAAP is contaminated as a result of various site activities. However, access to SFAAP is restricted by fences, and visitors are required to sign in with the guard at the entrance gate. Only the occasional trespasser might potentially come in contact with contaminated soils. This type of infrequent exposure is not expected to cause adverse health effects. SFAAP is in the process of being sold. At this time, the future use of SFAAP is uncertain. To be protective of public health, continued soil sampling and appropriate remediation would be required before the general public has access to the soils at SFAAP.

Groundwater Pathway. The groundwater at SFAAP is contaminated; however, this water is not used as a drinking water source. Therefore, no exposures are occurring and no public health hazards exist from on-site groundwater. Twenty-two off-site private groundwater wells within one mile of SFAAP are being used to supply water to households. Hydrogeologic and sampling data suggests that groundwater contamination at SFAAP is not negatively influencing the quality of drinking water at 13 of these private wells. ATSDR cannot determine the impact to nine of the private drinking water wells because data at potential sources of contamination and data from the private wells themselves are not available. This does not imply that these wells are being negatively affected, simply that additional sampling may be necessary before a determination can be made.

BACKGROUND

Site Description

Sunflower Army Ammunition Plant (SFAAP) encompasses approximately 9,065 acres near the small town of DeSoto, Kansas, in the northwest corner of Johnson County—about 28 miles southwest of Kansas City, Missouri (Figure 1, Burns 2000, Burns & McDonnell 1997a, 2002). The shape is rectangular (6 miles long by 3 miles wide) with a north-south orientation. Historically, SFAAP had 71 miles of railroad—including storage capacity for 200 cars, 79 miles of paved roads, and 35 miles of patrol roads. A total of 2,296 facilities were located on site, including 1,803 production facilities, 334 administrative buildings, and various storage structures (Aguirre 1998).

Since 1992, the majority of the site has been in standby. In 1998, SFAAP was listed as excess by the U.S. Department of the Army (Army). Negotiations for selling the site are ongoing. As of October 1, 2001, the Army changed to a maintenance contractor and reduced the number of buildings used to an office building, an environmental laboratory, the old guard headquarters as a records repository, and the guard shack at the main gate.

For the purposes of investigating the site to determine the extent of environmental contamination, SFAAP was divided into nine segments, based on major industrial processes (Figure 2, Aguirre 1998). These segments are described below.

- Segment 1 is located in the northeastern corner of SFAAP and was used mainly for support activities, with the exception of the North Acid Area. In 1998, the land was being leased for cattle grazing. The Former and Current Administration Areas, River Intake Area, River Water Treatment Plant/Filtration Area, Water Treatment Plant, Midway Relay Station, Main Sewage Treatment Plant, Office Paper Burning Grounds, Decontamination Oven, Salvage Yard, Power Area, Classification Yard, Shop Area, North Acid Area, Industrial Wastewater Treatment Plant, Pond A, and Pond B are located within Segment 1. Very few of the facilities in this segment were removed under the Environmental Stabilization Program (please see a description of this program under Remedial and Regulatory History).
- Segment 2 is located along the eastern border of SFAAP and includes areas that manufactured and machined solventless double-based propellant, the ballistics proving ground, and land leased by the Kansas State Horticulture Center. Most of the facilities in this segment were removed under the Environmental Stabilization Program.
- Segment 3 is located in the east-central part of SFAAP and was the area used to manufacture concentrated nitric and sulfuric acid. It is generally referred to as the South

Acid Area and contains the Nitric Acid Concentrator, Sulfuric Acid Production, Sulfuric Acid Concentrator, Liquid Waste Treatment Plant, and Pyott's Pond. Only one of the facilities in this segment was removed under the Environmental Stabilization Program.

- Segment 4 is located in the south end of SFAAP and was originally used to store finished propellant products. Recently, a portion of the magazines (i.e., buildings where ammunition is stored) were converted to store hazardous waste. Currently, 110 storage magazines exist in the segment—15 are igloo type and 95 are above ground nonstandard type. None of the facilities in this segment were removed under the Environmental Stabilization Program.
- Segment 5 is located in the west-central section of SFAAP. It includes areas used for the production of single-based propellant and production, glazing, blending, and packing of triple-based propellant. It contains four tunnel dryers for calcium carbonate cake and forced and passive air dryers for paste drying. Many of the facilities in this segment were removed under the Environmental Stabilization Program.
- Segment 6 is located along the western border of SFAAP. It contains landfills, waste incinerators, explosives burning grounds, and the Lead Decontamination and Recovery Unit. The majority of the land is undeveloped and has not been used for SFAAP operations. Only one of the facilities in this segment was removed under the Environmental Stabilization Program.
- Segment 7 is located in the center of SFAAP and contains the Nitroglycerine Area, Paste Area, and Hazard Analysis and Ballistics Laboratory. Most of the facilities in this segment were removed under the Environmental Stabilization Program.
- Segment 8 is located in the north-central section of SFAAP and contains the Nitrocellulose Production Area, Laboratory Support, Propellant Mixing/Forming Area, Nitroguanidine Support Area, and Tank Farms. Almost all of the facilities in this segment were removed under the Environmental Stabilization Program.
- Segment 9 is located in the northwestern corner of SFAAP and is the area that used to manufacture nitroguanidine. It contains the Calcium Cyanamide Facility, Wet and Dry Guanidine Nitrate Facilities, Wet and Dry Nitroguanidine Facilities, Pack House, Tank Farm, Sulfuric Acid Concentration Plant, Nitrogen House, and Operations Support Facilities. None of the facilities in this segment were removed under the Environmental Stabilization Program.

Operational History

SFAAP began operation in 1942 as a government-owned, contractor-operated installation called Sunflower Ordnance Works (Aguirre 1998, Burns & McDonnell 1997b). At that time, SFAAP was the world's largest powder and propellant plant, employing over 10,000 workers (Burns 2000, Johnson County 1998). During World War II, the time of peak operations, SFAAP employed over 12,000 workers (GSA 1999). The number of employees decreased as operations at SFAAP were reduced. In December 1996, SFAAP employed only 107 people (79 Alliant Techsystems employees, 21 Koch employees, 6 Army personnel, and 1 Kansas State employee) [Burns & McDonnell 1997b, Law 1997]. As of October 1, 2001, SpecPro, Inc. is the current maintenance contractor.

In 1963, the site was renamed Sunflower Army Ammunition Plant (Aguirre 1998). The plant's primary mission was to manufacture smokeless gunpowder and munitions propellants for World War II, the Korean Conflict, and the Vietnam Conflict. Two explosives compounds were manufactured for use as propellants: nitroglycerine and nitrocellulose. SFAAP has also been used to manufacture and regenerate nitric and sulfuric acids and to conduct munitions testing. The majority of the plant was put in standby, inactive status in 1971 (ATSDR 1995, EPA 1995a). In 1980, nitroguanidine production began, but ceased in 1992 (EPA 2000a). Since 1992, the major activities have been maintenance, environmental stabilization, and remediation. In early 1998, the Army declared that it no longer needed SFAAP; therefore, the General Services Administration is in the process of selling the site.

During SFAAP's operations various hazardous substances were inadvertently and intentionally released into the environment during standard disposal practices from production line areas, magazine storage areas, and solid waste management units (SWMUs). Inorganics, explosives, and nitrate compounds located in on-site soil and sediment, and groundwater beneath the site are the primary contaminants.

Remedial and Regulatory History

In 1976, Congress passed the Resource Conservation and Recovery Act (RCRA) to regulate hazardous waste practices that may have adverse effects on human health and the environment. SFAAP was issued a RCRA permit in September 1991 that authorizes SFAAP to store certain hazardous wastes for greater than 90 days and requires investigation and cleanup of releases of hazardous wastes from the SWMUs and Areas of Concern (AOCs) [EPA 2000a]. In 1995, the U.S. Environmental Protection Agency (EPA) proposed SFAAP for the National Priorities List; however, to date, the site has not been listed. Under the RCRA Corrective Action program SFAAP is working with EPA and the Kansas Department of Health and Environment (KDHE) to remediate the property. SFAAP has an active Restoration Advisory Board (RAB) that discusses restoration activities and gathers community input.

To date, 65 SWMUs and 22 AOCs have been identified at SFAAP and are in varying stages of RCRA evaluation (Figure 3). All have undergone the initial phase, called a RCRA Facility Assessment, which involves identifying sites that may affect human or environmental health. Some SWMUs are involved with more than one RCRA phase. Two SWMUs received clean closure from EPA and KDHE, and have been omitted from the RCRA evaluation. Two SWMUs were found to pose an immediate threat to human health or to the environment; therefore, interim measures were conducted to remediate the sites. Currently, RCRA Facility Investigations are being conducted on 44 SWMUs to identify the type of contaminants present. At twelve SWMUs, the contaminants have been identified and Corrective Measures Studies will be conducted to assess various cleanup options for the sites. After reviewing the public's comments on the proposed remedy, EPA, KDHE, Army Corps of Engineers, and SFAAP will adopt and follow through with a remediation plan during the Corrective Measures Implementation phase. Currently, corrective measures are ongoing at four of the SWMUs that were found to contain contamination. At the end of fiscal year 1999, one SWMU's RCRA evaluation was complete and three required long-term monitoring (Burns 2000). Investigations are planned to begin in 2003 to identify whether contamination is present at levels of concern at the 22 AOCs.

The Environmental Stabilization Program was initiated to decontaminate facilities on SFAAP and to stabilize the environment. Many of the facilities on the site were physically unsafe because of structural problems or explosive contamination. In addition, many of these facilities contained lead- and/or asbestos-containing material, however, because of the risk of explosion some of the facilities were burned prior to removal of the lead- and/or asbestos-containing material. Asbestos-containing material was removed from 455 accounts.

Through the Environmental Stabilization Program, open burning was conducted on 186 days over the past six years (this number includes building burns, reflash burns, and grass burns). Alliant Techsystems conducted a total of 228 burns, including reflash and grass burns (sometimes more than one burn occurred on the same day). A total of 1,463 accounts (i.e., numbered structures) that previously manufactured nitrocellulose, nitroglycerine, multi-based propellant, or were support facilities for propellant manufacture were included in this project. There are an additional 200 to 300 buildings that need to be demolished. However, they all contain explosive contamination that is not friction sensitive, so the asbestos siding and shingles can be removed before burning. SFAAP does not know when the funds will become available to continue the burns (KDHE 2001c).

ATSDR Activities

As part of the public health assessment process, ATSDR conducted an initial site visit to SFAAP in September 1995. The intent of the visit was to determine if immediate public health actions were needed and to prioritize the site for a public health assessment. Two documents resulted from that visit: 1) a site summary, dated December 1995, that describes SFAAP conditions and

2) a public health consultation, dated February 1996, that addresses cattle grazing on SFAAP. These documents are provided in Appendix A.

In January 2000, ATSDR returned to SFAAP to begin the data collection process for the public health assessment. They met SFAAP, EPA, and KDHE representatives, and a local community group, Taxpayers Opposed to Oz (TOTO), in order to gain an understanding of site conditions and remedial actions, and to identify community concerns. In order to monitor community concerns as they develop, ATSDR has maintained contact with regulators and members of TOTO during the public health assessment process.

Demographics and Land Use

ATSDR examines demographic information (i.e., population information) to identify the presence of sensitive populations, such as young children and the elderly in the vicinity of a site. Demographics also provide details about residential history in a particular area—information that helps ATSDR assess time frames of potential human exposure to contaminants. Demographic and land use information for SFAAP and the residential areas surrounding SFAAP are presented in this section.

Demographics

Johnson County lies in the eastern section of Kansas and is bordered by the Kansas River (also known as the KAW River) to the north and the Missouri state line to the east. The county population was estimated to be 375,000 in 1998 (DeSoto 1999). It occupies approximately 476 square miles and is home to 21 cities (Burns & McDonnell 1997a).

There are no residences on SFAAP and the area surrounding SFAAP is privately owned, sparsely populated rural land, primarily used for agriculture. The three closest towns are: Clearview City, DeSoto, and Eudora.

- Clearview City is a retirement community located 100 feet north of SFAAP. It is located on a 65-acre parcel of private property in an unincorporated section of Johnson County. It consists of 230 multi-family units that were built during World War II to house SFAAP workers. The population is between 300-350 people (Burns & McDonnell 1997a).
- The city of DeSoto is approximately 3 miles northeast of SFAAP and is located on 1.5 square miles along the south bank of the Kansas River (Burns & McDonnell 1997a, 2002). It was estimated to have a population of about 3,000 in 1998 (DeSoto 1999).

- Eudora is about 4 miles northwest of SFAAP and is located on 1.2 square miles between the Wakarusa and Kansas Rivers in Douglas County (Burns & McDonnell 1997a, 2002). In 1990, the population was about 3,000 (Burns & McDonnell 1997a).

The closest school is Countryside Elementary which is located approximately 650 feet north of the SFAAP boundary. About 300 first to fourth grade students are enrolled at the school (Burns & McDonnell 1997a).

Current Land Use at SFAAP

Access to SFAAP is limited by a 6-foot high fence that surrounds the entire site. An armed security guard is positioned at the main entrance located on the main road linking DeSoto and Eudora. In addition, there is another internal fence that surrounds the manufacturing areas where most of the SWMUs and AOCs are located. A security gate is located at the entrance to this area, as well. There is no through traffic at SFAAP (Law 1997). The perimeter fence is periodically damaged, however, and occasional trespassing has been known to occur.

A few private companies lease areas of SFAAP under the Facilities Re-use Program. Currently, Southwestern Bell and Sprint operate a communication tower and Kansas State University leases over 300 acres in the southwest corner of SFAAP for agricultural research (Johnson County 1998). About 5,500 acres of undeveloped land is leased for agriculture and grazing cattle (ATSDR 1996a; Burns & McDonnell 1997b). Until their contract ended on September 30, 2001, Kansas Wastewater, Inc. leased the Industrial Wastewater Plant to treat non-hazardous wastewater from off-site facilities.

Current Land Use Surrounding SFAAP

Primarily, agricultural farmland that produces soybeans, corn, sorghum, alfalfa, and wheat surrounds SFAAP. Low density residences with large land holdings, an apartment complex, Sunflower Park (40 acres), light industry, warehouse operations, and a tire repair shop are located to the north of SFAAP. Kill Creek Park (850 acres), low density residences, and Hunt Midwest Quarry are off the eastern boundary. DeSoto Park (50 acres) and the Lexington Township cemetery are to the southwest. Land to the west is primarily agricultural with a few low density residences (Johnson County Planning Department 1998).

Proposed Future Land Use at SFAAP

Johnson County has developed a conceptual land use plan for future development at SFAAP. Future development depends on the cooperation of Kansas State, Johnson County, and the U.S. General Services Administration, and is contingent upon the transfer of sale from the federal

government. To date, SFAAP has not been sold and no definitive plans have been made. Proposed re-use plans include the following (Johnson County Planning Department 1998):

- Public park land will be established along the east, south, and west boundaries to provide a green belt buffer zone to the surrounding properties.
- About 3,000 acres will be used for residences. Urban design criteria would allow for three to four houses an acre, as well as multi-family units in a buffer zone.
- Near the center of the development, light industry related to high technology would encompass approximately 400 acres. It would include existing facilities such as the water treatment plant and sewage plant.
- A town center with schools, churches, government offices, medical facilities, and downtown retail and small office establishments would cover approximately 600 acres.
- The remaining 2,000 plus acres will be designated for a business center at the northern boundary, a research and technology center, and highway commercial zones.

Quality Assurance and Quality Control

To prepare this public health assessment, ATSDR reviewed and evaluated information which is provided in the referenced documents. Documents prepared for the RCRA programs must meet specific standards for adequate quality assurance and control measures for chain-of-custody procedures, laboratory procedures, and data reporting. The environmental data presented in this public health assessment are from reports produced by the U.S. Army Center for Health Promotion and Preventive Medicine (CHPPM), and the Army Corps of Engineers. The limitations of these data have been identified in the associated reports.

Intertek Testing Services Environmental Laboratories, Inc. (ITS) was a laboratory used by one of the Army contractors, Burns and McDonnell, to analyze samples taken from SWMUs at SFAAP. In 1999, EPA informed SFAAP that data generated by ITS at the laboratories in Richardson and Houston, Texas, are unreliable and cannot be used for decision-making at 26 SWMUs (7, 8, 9, 15, 16, 17, 20, 25, 26, 30, 33, 34, 35, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 49, 51, and 52) [EPA 1999]. Because of the unreliability of the data, ATSDR did not base any health decisions upon results generated by ITS laboratories in Richardson or Houston, Texas.

EXHIBIT H

**Excerpts from Deposition of Iain Blaine Hastings (Sept. 16, 2003), Kansas
Waste Water, Inc. v. Alliant Techsystems, Inc., No. 2:02-2605, ECF No. 159-35**

ENVIRONMENTAL MANAGEMENT, et al. vs.

ALLIANT TECHSYSTEMS

DEPOSITION IAIN BLAINE HASTINGS

SEPTEMBER 16, 2003

Metropolitan Court Reporters, Inc. 913-317-8800

9200 Indian Creek Parkway, Suite 205, Overland Park, KS 66210

ENVIRONMENTAL MANAGEMENT, et al. Multi-Page™ DEPOSITION IAIN BLAINE HASTINGS
ALLIANT TECHSYSTEMS **SEPTEMBER 16, 2003**

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1 A. Okay.
 2 Q. So is it fair to say, for the last 20
 3 years, you have worked with or for the federal
 4 government with regard to real estate
 5 transactions?
 6 A. Yes.
 7 Q. And for -- and during your period with
 8 GSA, has it all been involved with disposals of
 9 federally owned properties?
 10 A. No.
 11 Q. Okay. Can you tell me generally, from
 12 the beginning of your work with GSA, in general
 13 what your work has been?
 14 A. Yes. In 1990, I was hired to be a real
 15 estate specialist, basically handling property
 16 acquisition, primarily leasing. And I held that
 17 position, working various areas here in the -- in
 18 this region, until 1995. In 1995 I applied for
 19 and was promoted to property disposal.
 20 Q. Okay. You were promoted to property
 21 disposal --
 22 A. Into property disposal.
 23 Q. Into property disposal. What was your
 24 job title in 1995?
 25 A. Real estate specialist.

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1 Q. And that was when you were in charge of
 2 property disposal?
 3 A. Yes. It had the same title.
 4 Q. Okay. And what region -- you mentioned
 5 that that was for a region.
 6 A. I worked for Region 7 in Fort Worth,
 7 Texas.
 8 Q. Okay. And, once again, what -- what
 9 region did that cover, other than obviously
 10 Texas, I guess.
 11 A. It covers basically what -- GSA's
 12 Regions 6, 7, and 8, which are the states from
 13 the Gulf of Mexico to the Canadian border,
 14 basically the central United States.
 15 Q. So that would include Kansas?
 16 A. It does include Kansas, yes, sir.
 17 Q. And you said you got that job in 1995.
 18 A. Yes, sir.
 19 Q. Do you still -- still continue to hold
 20 that same -- same job with GSA?
 21 A. Yes. I mean, I'm still doing property
 22 disposal. Yes, sir.
 23 Q. Okay. Do you still have the same title?
 24 A. Well, the title that is generally used
 25 is, I am a manager or director of the Auburn

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1 field office.
 2 Q. Okay. But you're still doing real
 3 estate property disposal --
 4 A. Yes.
 5 Q. -- for Region 7 of GSA?
 6 A. No, no. I'm doing for Region 9.
 7 Q. Okay.
 8 A. Sorry.
 9 Q. Now you are doing Region 9?
 10 A. Yes, sir.
 11 Q. Do you still do Kansas?
 12 A. I have one case that I am still handling
 13 in Kansas.
 14 Q. And is that case the Sunflower Army
 15 Ammunition Plant?
 16 A. Yes, sir.
 17 Q. So have you had within your area of
 18 coverage for property disposal -- even though I
 19 don't think the Sunflower plant was being
 20 considered for disposal in 1995, the Sunflower
 21 plant has been within your area since 1995?
 22 A. Yes.
 23 Q. Can you tell me generally -- well, let
 24 me step back. Is there a standard process that
 25 has gone through for disposal of federally owned

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1 property?
 2 A. Yes, sir.
 3 Q. Can you tell me generally what that
 4 process is?
 5 A. An agency will make a determination that
 6 the property is no longer necessary to meet their
 7 mission's requirement. The agency will prepare a
 8 report of excess after determining there's no
 9 further need for the property within that agency.
 10 They will then convey the report of excess to the
 11 General Services Administration if we are going
 12 to be the disposing parties, and in which case
 13 then we take over the disposal of the property as
 14 far as doing the federal screening for other
 15 federal interests, homeless screening for
 16 homeless interests, public body screening, and
 17 eventually the sale of the property.
 18 MS. NAY: Excuse me, Mr. Hastings.
 19 Could you speak up a little bit? We have a big
 20 group here and --
 21 THE WITNESS: Okay. I'm sorry,
 22 I'm sorry. The microphone I was thinking was --
 23 MS. NAY: We don't want Mr. Ford
 24 to be the only one who can hear you.
 25 THE WITNESS: I understand.

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1 but we did not get into specifics, no. I'm
2 assuming this is the question you are asking.
3 Q. My question was whether you talked about
4 them on a number of occasions.
5 A. Yes, yes.
6 Q. We earlier mentioned and referred to an
7 e-mail in which you had spoken to Warren Wiebbe,
8 who was representing, at least according to your
9 e-mail, Sunflower Aquaculture. Do you remember
10 anything else about that conversation with
11 Mr. Wiebbe other than was reflected in that
12 e-mail?
13 A. They were very upset about the news
14 article, because the -- I guess Aquaculture was
15 going in for additional financing to do some
16 improvements and upgrades, and the news article
17 hit in the middle of their negotiations and was
18 making it -- either killed it or made it
19 extremely difficult for them to get any sort of
20 financing.
21 Q. Do you remember anything else about that
22 conversation?
23 A. Well, I -- you know, I told them -- I
24 said they were talking way out of place, that the
25 Army and the state and everybody, you know,

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1 wishing them well to be successful, and the plan
2 was for them to stay on site and to operate if
3 they so desired.
4 Q. Did you have any further discussions
5 with anyone from Sun Aqua that you can recall?
6 A. Not -- not that I can recall
7 specifically, no.
8 Q. Did you ever have any discussions with
9 Sun Aqua about whether Oz would allow them to
10 continue operating on the property?
11 A. Again, based on my conversations at the
12 time, the -- nobody in the team, working on this,
13 had any -- any thoughts of terminating Sun
14 Aquaculture.
15 Q. But did you specifically have any -- any
16 discussions with Sun Aqua that you can recall
17 about whether Oz would allow them to continue?
18 A. Not that I can recall.
19 Q. Did you get involved with any
20 discussions with Sun Aqua about whether Oz would
21 issue a letter to Sun Aqua, stating that
22 intention to allow them to remain?
23 A. Again, not that I can recall the
24 specifics of it.
25 Q. Okay. Did you have conversations with

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1 representatives of Kansas Wastewater during the
2 period of time that you were working on disposal
3 of the Sunflower property?
4 A. Yes.
5 Q. Do you remember when the first of those
6 might have been?
7 A. No.
8 Q. Would it have been relatively early in
9 the excessing process?
10 A. Boy, it's been such a long time.
11 "Relatively early." Relative to now, yes.
12 Q. How many times do you think you spoke to
13 representatives of Kansas Wastewater?
14 A. Several times.
15 Q. More than five?
16 A. More than five.
17 Q. Okay. And do you recall who you spoke
18 to at Kansas Wastewater?
19 A. Mr. McCall, I believe, was who I spoke
20 to.
21 Q. How about Tom McNally?
22 A. McNally? Okay. McNally. Who is
23 McCall? McNally.
24 Q. Do you recall speaking to Mr. McNally
25 about the fact that rail was going to be removed

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1 at the Sunflower property?
2 A. Yes.
3 MS. NAY: Objection, leading.
4 A. Yes, I did talk to -- I believe it --
5 yes, I did talk to him about that.
6 Q. (By Mr. Ford) I just asked you yes or
7 no. I don't think that is particularly leading.
8 A. I will let you all work that out.
9 Q. Yeah, we will work that out. What do
10 you recall talking to Mr. McNally about
11 concerning the rail line?
12 A. As I recall, he was very concerned
13 because he was using that to bring in product to
14 be processed --
15 Q. Okay. And what --
16 A. -- or planning to. I'm not sure.
17 Q. What did you tell him in regard to his
18 concerns?
19 A. That Army had screened the property, as
20 they are required to do, and that they were -- my
21 understanding was that the -- another plant,
22 which was still in the operation and having
23 ongoing operation, was needing rail line, and
24 that they were going to take it to another plant.
25 Q. Was Mr. McNally satisfied with that

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1 response as far as you could tell?

2 A. I don't think he was happy with it, no.

3 Q. Was the -- you talked about the

4 screening of this property, the federal

5 screening. So that was a part of the sale

6 process that you mentioned earlier?

7 A. But this would have been prior to us

8 getting the property. The agency has to screen

9 within its own agency for use of the property.

10 In other words, the -- if it's DOD, does anybody

11 else in DOD need this property, before they

12 declare it excess to the agency's needs. And so

13 that is what was going on.

14 Q. Now, do you recall where the track was

15 going to go?

16 A. I think Oklahoma, McAlester?

17 (Hastings Exhibit 328 was marked

18 for identification by the reporter.)

19 Q. (By Mr. Ford) I'll hand you what has

20 been marked as Deposition Exhibit No. 328 and

21 really just give you this more for a time frame.

22 Does that discuss --

23 MS. NAY: Can I see that?

24 Q. (By Mr. Ford) -- the track?

25 A. Uh-huh. Yes, it does. I'm sorry. Yes,

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1 it does.

2 Q. Would your conversation with Mr. McNally

3 have been before this date or after this date?

4 A. I couldn't -- I couldn't give you that

5 specific a time. We had several conversations

6 and --

7 Q. Okay. Tell me what else you recall

8 about your initial conversation with Mr. McNally

9 concerning the removal of rail at the facility.

10 A. That's about it, that the Army was going

11 to pull rail, because they had a request from

12 another plant site and they had no longer any

13 mission, need for it there.

14 Q. Just from a timing perspective, that

15 conversation occurred prior to the rail being

16 removed? Correct?

17 A. I think so. I couldn't -- again, I

18 couldn't give you an exact date.

19 Q. You said you had subsequent

20 conversations with Mr. McNally?

21 A. Yeah.

22 Q. Okay. Can you tell me about those

23 conversations, what you discussed with him?

24 A. Primarily he was calling for an update

25 on where we were with the negotiations.

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1 Q. And did he tell you why he was making

2 those calls?

3 A. He was -- I think he was concerned about

4 their ongoing -- how long they would have to

5 operate there, etcetera. We didn't go into any

6 great details. More or less I think he was

7 concerned about, you know, what -- what was going

8 to happen and when, more than anything else, when

9 was it going to happen.

10 Q. Did you discuss with him whether Kansas

11 Wastewater was going to be able to remain long

12 term at the facility?

13 A. I don't think I said -- no, I don't

14 think I actually discussed the specifics. I

15 think it was a pretty open question. It was

16 open. I mean, nothing that we are reading about

17 in these e-mails was out to the public, and I was

18 not -- you know, not giving out any information

19 that was going on in the negotiations at that

20 time.

21 Q. Did you ultimately have discussions with

22 Mr. McNally concerning the fact that they would

23 not be able to remain long term at the property?

24 A. Probably did, because at some time I

25 think the Army notified them that -- that, you

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1 know, they wouldn't be offering him in that.

2 Q. And do you believe that you spoke to him

3 after that point in time?

4 A. Again, I can't -- I did not keep records

5 of our conversations, because they were usually

6 fairly informal, and --

7 Q. All right.

8 (Hastings Exhibit 329 was marked

9 for identification by the reporter.)

10 Q. (By Mr. Ford) I'll hand you what has

11 been marked as Deposition Exhibit No. 329.

12 There's a long list of people where this was sent

13 to, and I think your name is on the list.

14 A. Oh, okay. Yeah, there it is.

15 Q. What is this e-mail? And I'm not sure

16 the second page, which is GSA 00077, goes with

17 the first page, which is GSA 00071. I don't know

18 that. But you are copied on both of them.

19 A. Uh-huh.

20 Q. So referring to GSA 00071, which is the

21 first page of Exhibit No. 329, can you tell me

22 what that is, please?

23 A. Setting up a meeting, I'm guessing in

24 Rock Island, and that we are going to be

25 discussing what to do with -- with Kansas