

210014



February 2, 2004

Victoria Rutson
Chief, SEA
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

**Re: *Surface Transportation Board Docket No. AB-6 (Sub-No. 408X);
The Burlington Northern and Santa Fe Railway Company
Abandonment from Aurora, Nebraska to Central City, Nebraska***

Attorneys at Law

311 South Wacker Drive
Suite 3000
Chicago, Illinois
60606-6677
Tel 312.360.6000

Michael A. Smith
Senior Counsel
Direct 312.360.6724
Fax 312.360.6598
msmith@
freebornpeters.com

Dear Ms. Rutson:

On or after February 23, 2004, we are filing with the Surface Transportation Board ("STB") a Notice of Exemption seeking authority to abandon 15.60 miles of railroad line between M.P. 1.90 in Aurora, Nebraska to M.P. 17.50 in Central City, Nebraska, which traverses through United States Postal ZIP Codes 68818, 68854 and 68826 in Hamilton County, Nebraska and Merrick County, Nebraska. Attached are ten copies plus the original of the Environmental and Historic Report describing the proposed action and any expected environmental or historic effects, as well as a map of the affected area.

Sincerely,

Michael A. Smith

Chicago

Springfield

Enclosures

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BEFORE THE
SURFACE TRANSPORTATION BOARD



In the Matter of The
Burlington Northern and Santa Fe
Railway Company Notice of Exemption
to Abandon Its Line of Railroad
Between M.P. 1.90 in Aurora, Nebraska
and M.P. 17.50 in Central City, Nebraska

Docket No. AB-6
(Sub No. 408X)

ENVIRONMENTAL REPORT

The following information is submitted to the Surface Transportation Board by The Burlington Northern and Santa Fe Railway Company (BNSF) in accordance with the Board's reporting requirements as set forth in 49 C.F.R. § 1105.7 for the purpose of assisting the Board's preparation of an environmental document regarding BNSF's Notice of Exemption for abandonment of its line between M.P. 1.90 near Aurora, Hamilton County, Nebraska and M.P. 17.50 near Central City, Merrick County, Nebraska, total distance of 15.60 miles.

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

BNSF seeks to abandon and discontinue service of the line. A map of the line is attached as Exhibit A.

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

The proposed abandonment will have no affect on existing transportation systems or patterns as the line is out of service.

(3) Land Use:

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

BNSF believes that the proposed exemption will be consistent with existing land use plans. The Hamilton County Board of Commissioners and Merrick County Board of Commissioners were notified by letters dated December 5, 2003. See Exhibits B and C. As of the date of this report, neither has not responded. BNSF will provide the Board copies of any response it may receive.

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

BNSF does not believe that prime agriculture will be effected by the proposed abandonment. The Natural Resource Conservation Service was notified by letters dated December 5, 2003. See Exhibits D and E. As of the date of this report, The Natural Resource Conservation Service has not responded. BNSF will provide the Board copies of any response it may receive.

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

N/A

(iv) If the proposed action is abandonment, state whether or not the right-of-way is suitable for alternative public use under 49 U.S.C. § 10906 and explain why.

The right of way may be suitable for use as a nature trail. This abandonment is in the Nebraska State Trails Plan for future development. See Exhibit F, letter from the Nebraska Game and Parks Commission.

(4) Energy:

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

To the best of BNSF's knowledge there are no undeveloped energy resources such as oil, natural gas or coal in the vicinity of this line.

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

This abandonment and discontinuance will not adversely affect movement or recovery of recyclable commodities as the line is out of service.

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

This abandonment will not result in an increase or decrease in overall energy efficiency as the line is out of service.

(iv) If the proposed action will cause diversions from rail to motor carriage of more than:

(A) 1,000 rail carloads a year, or

(B) An average of 50 rail carloads per mile per year for any part of the affected line, quantify the resulting net change in the energy consumption and show the data and methodology used to arrive at the figure given.

There will be no diversions of traffic because the line is out of service.

(5) Air:

(i) If the proposed action will result in either:

(A). An increase in rail traffic of at least 100% (measured in gross ton miles annually) or an increase of at least eight trains a day on any segment of the line effected by the proposed, or

No.

(B). An increase in rail yard activity of at least 100% (measured by carload activity), or

No.

(C). An average increase in truck traffic of more than 10% of the average daily traffic or 50 vehicles a day on any affected road segment, quantify the anticipated effect on air emissions.

The action will not involve an increase in truck traffic of more than 10% or 50 vehicles a day on any affected road segment as the line is out of service.

(ii) If the proposed action affects a Class I or nonattainment area under the Clean Air Act, and will result in either:

(A) An increase in rail traffic of at least 50% (measured in gross ton miles annually) or an increase of at least three train a day on any segment of rail line, or

(B) An increase in rail yard activity of at least 20% (measured by carload activity), or

(C) An average increase in truck traffic or more than 10-% of the average daily traffic of 50 vehicles a day on a given road segment, then state whether any expected increased emissions are within the parameters established by State implementation Plan. However, for a rail construction under 49 U.S.C. § 10901 (or 49 U.S.C. § 10505) or in a case involving the reinstitution of service over a previously abandoned line, only the three train a day threshold in this item shall apply.

The proposed abandonment will not result in an increase of rail or truck traffic because the line is out of service.

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

The proposed abandonment will not result in an increase of rail or truck traffic because the line is out of service.

(6) Noise: If any of the thresholds identified in item (5)(c) of this section are surpassed, state whether the proposed action will cause:

(i) An incremental increase in noise levels of three decibels Ldn or more,

N/A

(ii) An increase to a noise level of 76 decibels Ldn or greater. If so, identify sensitive receptors (e.g. schools, libraries, hospitals, residences, retirement communities and nursing homes) in the project area and quantify the noise increase for those receptors if the thresholds are surpassed.

N/A

(7) Safety:

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

This abandonment should have no adverse effect on health or public safety. There are 17 public crossings and 20 private crossings. During salvage operations on the line, if any may be required, precautions will be taken to ensure public safety, and contractors will be required to satisfy all applicable health and safety laws and regulations.

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

Abandonment will not result in transportation of hazardous materials.

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

There is no evidence of known hazardous waste site or sites where there have been known hazardous materials spills on the right of way.

(8) Biological resources:

(i) Based on consultation with the U.S. Fish and Wildlife Service, state whether the proposed action is likely to adversely affect endangered or threatened species or areas designated as a critical habitat, and if so, describe the effects.

The whooping crane (*Grus Americana*), bald eagle (*Haliaeetus leucocephalus*), the interior least tern (*Sterna antillarum athalassos*), the piping plover (*Charadrius melodus*), the western prairie fringed orchid (*Platanthera praeclara*) and the small white lady's slipper (*Cypripedium candidum*) are within close proximity to the proposed abandonment. The overall project should have no direct impacts on the bird species. See Exhibit G, letter from the Nebraska Game and Park Commission. The bald eagle (*Haliaeetus leucocephalus*), the interior least tern (*Sterna antillarum athalassos*) and the piping plover (*Charadrius melodus*) may occur within the proposed project area. See Exhibit H, letter from the U.S. Fish and

Wildlife Service. The potential for any temporary impacts to bird species during salvage will be addressed pursuant to the requirements of the Nebraska Game and Parks Commission and mitigation measures identified in Exhibit G, page 2. In addition, salvage contractors will be required to perform advance field surveys and fulfill other recommendations set forth in the U.S. Fish and Wildlife Service letter attached as Exhibit H.

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

BNSF believes the proposed abandonment will have no effect on wildlife sanctuaries, refuges, National or State parks or forests. The proposed abandonment will not affect any public lands administered by the Bureau of Land Management. See Exhibits I, e-mail from the Bureau of Land Management.

(9) Water:

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

BNSF believes that the proposed exemption will be consistent with applicable Federal, State or local water quality standards. The Nebraska Department of Environmental Quality was notified by letter dated December 3, 2003. See Exhibit J. As of the date of this report, the Nebraska Department of Environmental Quality has not responded. BNSF will provide the Board copies of any response it may receive.

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

A Section 404 permit is not needed. See Exhibit K, letter from the Army Corps of Engineers. BNSF believes that the proposed abandonment will not affect the 100-year floodplains. Officials from Hamilton County and Merrick County were notified by letters dated December 5, 2003. See Exhibits L and M. As of the date of this report, neither has responded. BNSF will provide the Board copies of any response it may receive.

(iii) State whether permits under Section 402 of the Clean Water Act (33 U.S.C. § 1344) are required for the proposed action. (Applicants should contact the U.S. Environmental Protection Agency or the state environmental protection or equivalent agency if they are unsure whether such permits are required.

BNSF believes that permits under Section 402 of the Clean Water Act are not required for the proposed abandonment. The Nebraska Department of Environmental Quality was notified by letter dated December 3, 2003. See Exhibit J. As of the date of this report, the Nebraska Department of Environmental Quality has not responded. BNSF will provide the Board copies of any response it may receive.

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

Any salvage operations that may result will be in accordance with BNSF's general practice of requiring its private contractors to comply with all federal, state and local laws and regulations pertaining to the environment, including, but not limited to noise, air quality, water quality, and items of archaeological significance. The project itself should mitigate the environmental effects of reinstating active rail operations.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Michael Smith", written over a horizontal line.

Michael Smith
Freeborn & Peters
311 S. Wacker Dr. Suite 3000
Chicago, Illinois 60606-6677
Phone: (312) 360-6724
Fax: (312) 360-6598

Date: February 2, 2004

BEFORE THE
SURFACE TRANSPORTATION BOARD

In the Matter of The
Burlington Northern and Santa Fe
Railway Company Notice of Exemption
to Abandon Its Line of Railroad
Between M.P. 1.90 in Aurora, Nebraska
and M.P. 17.50 in Central City, Nebraska

Docket No. AB-6
(Sub No. 408X)

HISTORICAL REPORT

The following is submitted to the Surface Transportation Board by The
Burlington Northern and Santa Fe Railway Company (BNSF) in accordance with the
Board's reporting requirements set forth in 49 C.F.R. § 1105.8 for the purpose of assisting
the Board's environmental and historical assessment regarding BNSF's Notice of
Exemption to abandon its line of railroad between M.P. 1.90 near Aurora, Nebraska to
M.P. 17.50 near Central City, Nebraska, total distance of 15.60 miles.

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

One copy of a U.S.G.S. Topographical map has been provided to the Nebraska
State Historical Society and one copy is being provided to the Surface Transportation
Board's Section of the Environmental Analysis upon filing of this Report.

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

The Aurora to Central City, Nebraska line is located in a rural farming area of
central Nebraska. The line connects the towns of Aurora, Marquette Central City and the

station of Overland. The 2000 census lists the population of Aurora at 4,225, Marquette with 282 and Central City as 2,998. 2002 estimates as furnished by the Nebraska Department of Economic Development for the towns are 4,210 for Aurora, 280 for Marquette and 2,917 for Central City which is a slightly declining trend. Overland is a railroad station. Aurora is on BNSF's main line between Omaha and Alliance, Nebraska and Central City is on the Union Pacific mainline between Omaha and Cheyenne, Wyoming.

The line crosses the Platte River just south of Central City. Much of the land adjoining the right of way is agricultural with corn and soybeans being the major crops for the area. The land along the right of way is flat to gently rolling and hilly in places. The right of way is 100 feet wide except for station grounds which can vary in width.

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

There are six bridges that are 50 years or older in the immediate area of the abandonment. Photographs of the six bridges are attached to this report. See Exhibit N.

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

The dates of construction of the bridges are included with the photographs. See Exhibit N.

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

The right of way was acquired by the Republican Valley Railroad, a predecessor to the Chicago Burlington and Quincy Railroad (CBQ). In 1970 the CBQ merged with

other railroads to become part of the Burlington Northern Railroad (BN). In 1995 BN merged with The Atchison Topeka and Santa Fe Railway to become The Burlington Northern and Santa Fe Railway Company (BNSF).

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

Documents in BNSF's possession concerning this abandonment may include alignment maps showing the right-of-way and/or station maps. Such documents are too large for practical reproduction in this report, but can be furnished upon request, if they are available.

(7) An opinion (based on readily available information in the railroad's possession) as to whether the site and/or structures meet the criteria for listing on the National Register of Historic Places (36 C.F.R. § 60.4), and whether there is a likelihood of archaeological resources or any other previously unknown historic properties in the project area, and the basis for these opinions (including any consultations with the State Historic Preservation Office, local historical societies or universities);

To the best of BNSF's knowledge, the proposed abandonment should have no appreciable effects on any known sites or properties listed, or eligible for listing in the National Register of Historic Places. BNSF is not aware of any unique sites or structures with significant historical associations. There will be no historic properties affected by the project as proposed. See Exhibit O, letter from the Nebraska State Historical Society.

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

BNSF is not aware of any known prior subsurface ground disturbance or fill or any other environmental conditions (naturally occurring or man-made) that might affect the recovery of archaeological resources.

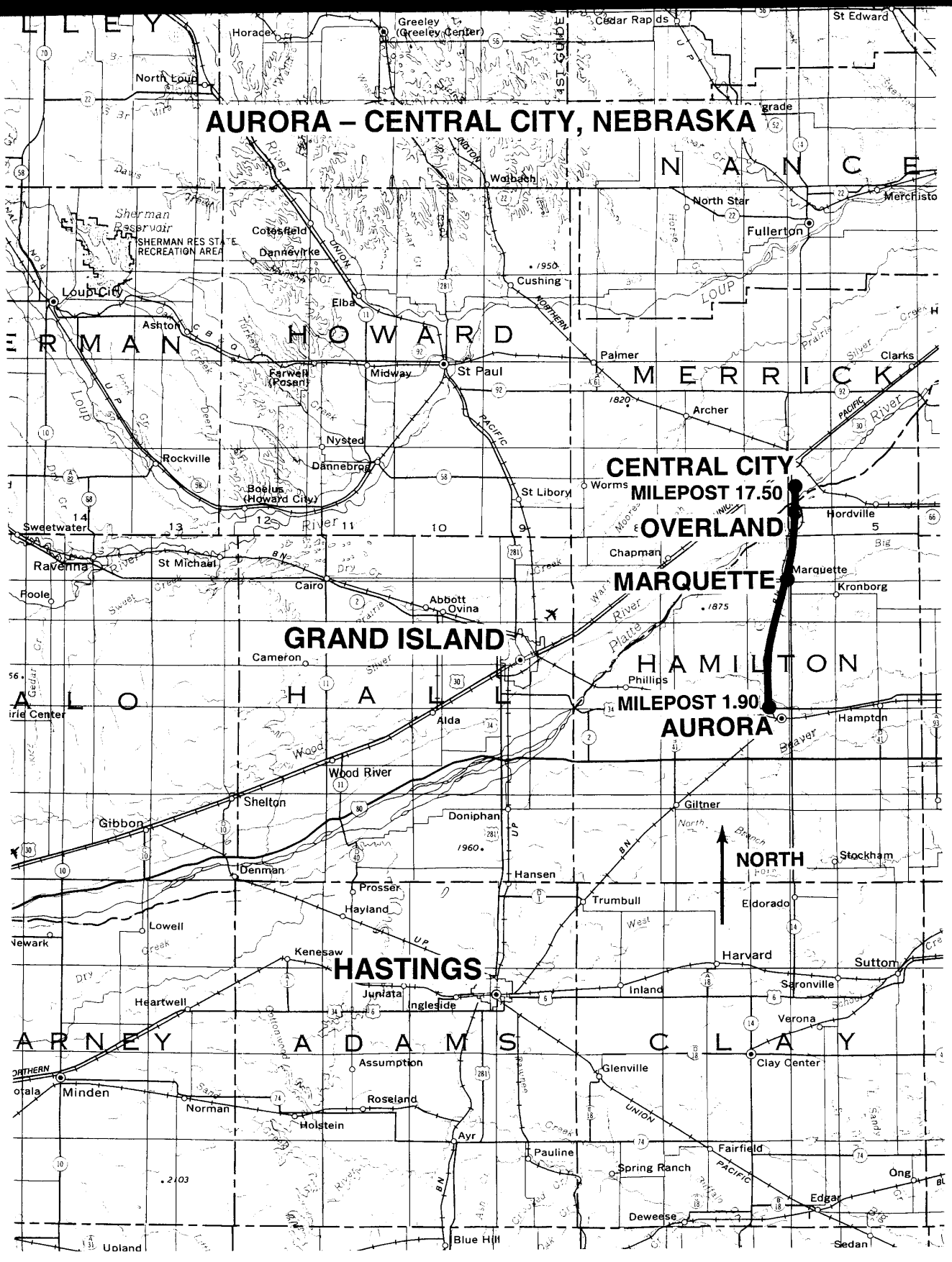
Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael Smith", written over a horizontal line.

Michael Smith
Freeborn & Peters
311 S. Wacker Dr. Suite 3000
Chicago, Illinois 60606-6677
Phone: (312) 360-6724
Fax: (312) 360-6598

Date: February 2, 2004

A



AURORA – CENTRAL CITY, NEBRASKA

CENTRAL CITY

MILEPOST 17.50

OVERLAND

MARQUETTE

MILEPOST 1.90

AURORA

GRAND ISLAND

HAMILTON

HASTINGS

NORTH

ARNEY

ADAMS

CLAY

B

Freeborn & Peters LLP

December 5, 2003

Paul Kemling
Commissioner, Chair
Hamilton County Board of Commissioners
1306 North S Rd
Aurora, NE 68818

**Re: *The Burlington Northern and Santa Fe Railway Company Abandonment
of Aurora, Nebraska to Central City, Nebraska***

Attorneys at Law

311 South Wacker Drive
Suite 3000
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60606-6677
Tel 312.360.6000

Brian Nettles
Paralegal
Direct 312.360.6336
Fax 312.360.6596
bnettl@
freebornpeters.com

Chicago

Springfield

Dear Mr. Kemling:

BNSF plans on filing with the Surface Transportation Board ("STB") a Notice of Exemption seeking authority to abandon 15.60 miles of railroad line between M.P. 1.90 in Aurora, Nebraska to M.P. 17.50 in Central City, Nebraska.

As part of the environmental report BNSF needs to know whether or not the proposed action is consistent with local land use plans and if there are any alternate public uses for the corridor such as a recreational trail.

The proposed abandonment may require the removal of the track materials such as the rails and ties but the roadbed will be left intact.

For your reference I have enclosed a map of the above referenced railroad line. If you have any questions, or if you would like to discuss this matter further, please do not hesitate to contact me at (312) 360-6336.

Thank you in advance for your cooperation.

Sincerely,



Brian Nettles

/bn
Enclosure

C

Freeborn & Peters LLP

December 5, 2003

Norman Euse
Supervisor, Chair
Merrick County Board of Supervisors
P.O. Box 27
County Courthouse
Central City, NE 68826-0027

**Re: *The Burlington Northern and Santa Fe Railway Company Abandonment
of Aurora, Nebraska to Central City, Nebraska***

Attorneys at Law

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bnettl@
freebornpeters.com

Chicago

Springfield

Dear Mr. Euse:

BNSF plans on filing with the Surface Transportation Board ("STB") a Notice of Exemption seeking authority to abandon 15.60 miles of railroad line between M.P. 1.90 in Aurora, Nebraska to M.P. 17.50 in Central City, Nebraska.

As part of the environmental report BNSF needs to know whether or not the proposed action is consistent with local land use plans and if there are any alternate public uses for the corridor such as a recreational trail.

The proposed abandonment may require the removal of the track materials such as the rails and ties but the roadbed will be left intact.

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Thank you in advance for your cooperation.

Sincerely,



Brian Nettles

/bn
Enclosure

D

Freeborn & Peters LLP

December 5, 2003

Natural Resources Conservation Service
Aurora Service Center
1218 K Street
Aurora, NE 68818-2012

**Re: *The Burlington Northern and Santa Fe Railway Company Abandonment
of Aurora, Nebraska to Central City, Nebraska***

Dear Sir or Madam:

Attorneys at Law

311 South Wacker Drive
Suite 3000
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Paralegal
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BNSF plans on filing with the Surface Transportation Board ("STB") a Notice of Exemption seeking authority to abandon 15.60 miles of railroad line between M.P. 1.90 in Aurora, Nebraska to M.P. 17.50 in Central City, Nebraska.

As part of the environmental report BNSF needs to know whether or not the proposed abandonment will have any effect on prime agricultural lands.

The proposed abandonment may require the removal of the track materials such as the rails and ties but the roadbed will be left intact.

Please provide this information by January 5, 2004. Thank you for your cooperation.

For your reference I have enclosed a map of the above referenced railroad line. If you have any questions, or if you would like to discuss this matter further, please do not hesitate to contact me at (312) 360-6336.

Thank you in advance for your cooperation.

Sincerely,



Brian Nettles

/bn
Enclosure

Chicago

Springfield

E

Freeborn & Peters LLP

December 5, 2003

Natural Resources Conservation Service
Central City Service Center
715 16th Street
Central City, NE 68826-5245

**Re: *The Burlington Northern and Santa Fe Railway Company Abandonment
of Aurora, Nebraska to Central City, Nebraska***

Attorneys at Law

311 South Wacker Drive
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Chicago

Springfield

Dear Sir or Madam:

BNSF plans on filing with the Surface Transportation Board ("STB") a Notice of Exemption seeking authority to abandon 15.60 miles of railroad line between M.P. 1.90 in Aurora, Nebraska to M.P. 17.50 in Central City, Nebraska.

As part of the environmental report BNSF needs to know whether or not the proposed abandonment will have any effect on prime agricultural lands.

The proposed abandonment may require the removal of the track materials such as the rails and ties but the roadbed will be left intact.

Please provide this information by January 5, 2004. Thank you for your cooperation.

For your reference I have enclosed a map of the above referenced railroad line. If you have any questions, or if you would like to discuss this matter further, please do not hesitate to contact me at (312) 360-6336.

Thank you in advance for your cooperation.

Sincerely,



Brian Nettles

/bn
Enclosure

F



Nebraska Game and Parks Commission

2200 N. 33rd St. / P.O. Box 30370 / Lincoln, NE 68503-0370

Phone: 402-471-0641 / Fax: 402-471-5528 / <http://www.ngpc.state.ne.us/>

December 11, 2003

Brian Nettles
Freeborn & Peters LLP
311 South Wacker Dr. Ste. 3000
Chicago, IL 60606-6677

**RE: The Burlington Northern and Santa Fe Railway Company Abandonment of
Aurora, Nebraska to Central City, Nebraska.**

Dear Mr. Nettles:

The Nebraska Game and Parks Commission is in receipt of your letter dated December 5, 2003 and wanted to respond to your request regarding the effects of the railroad abandonment. Between Aurora and Central City, Nebraska Game and Parks Commission does not own any properties that will be affected by the pending abandonment. This abandonment is in our State Trails Plan for future development and I do know of several local groups interested in obtaining the abandoned railroad to develop it into a regional trail.

I will forward this information to those local groups and perhaps they will be contacting your firm in the future regarding this. I will also point them in the direction of the National Rails-to-Trails Conservancy organization that could assist them in this venture.

On behalf of Nebraska Game and Parks Commission, I thank you for notifying us and requesting our input on this abandonment. If you have any questions at all regarding this, please do not hesitate to contact me at (402) 471-5425 or email me at mstryker@ngpc.state.ne.us. Have a good day!

Sincerely,

Michelle Stryker
Outdoor Recreation Planner
Acting Trails Grant Administrator

G



Nebraska Game and Parks Commission

2200 N. 33rd St. / P.O. Box 30370 / Lincoln, NE 68503-0370

Phone: 402-471-0641 / Fax: 402-471-5528 / www.outdoornebraska.org

05 January 2004

Mr. Brian Nettles
311 South Wacker Drive
Suite 3000
Chicago, IL 60606-6677

Dear Mr. Nettles:

Please make reference to your 5 December 2003 letter requesting an endangered and threatened species review for BNSF plans on filing with the Surface Transportation Board ("STB") a Notice of Exemption seeking authority to abandon 15.60 miles of railroad line between M.P. 1.90 in Aurora, Nebraska. We have completed our review of the proposed project site under Neb. Rev. Stat. § 37-807 (3) of the Nongame and Endangered Species Conservation Act and we offer the following comments.

We have records of and/or are aware of suitable habitat for the following species in or within close proximity to the site:

<u>SPECIES</u>	<u>STATE LISTING</u>	<u>FEDERAL LISTING</u>
Whooping crane (<i>Grus Americana</i>)	Endangered	Endangered
Bald eagle (<i>Haliaeetus leucocephalus</i>)	Threatened	Threatened
Interior least tern (<i>Sterna antillarum athalassos</i>)	Endangered	Endangered
Piping plover (<i>Charadrius melodus</i>)	Threatened	Threatened
Western Prairie Fringed Orchid (<i>Platanthera praeclara</i>)	Threatened	Threatened
Small White Lady's slipper (<i>Cypripedium candidum</i>)	Threatened	

While we do not feel the overall project will have direct impacts on bird species habitat, we are concerned that track and materials removal activities may impact many of bird species temporarily. Therefore we are requiring that a survey be conducted for these species prior to any removal activities. For whooping cranes, operation of heavy equipment during removal of track or track materials could deter the cranes from using wetland habitats. To avoid this, we will require that removal operations be suspended if whooping cranes are sighted utilizing the wetlands. Removal activities can be resumed once the cranes have left the area. The fall whooping crane migration through Nebraska typically occurs between September 25th and November 10th.

The project site does occur in an area designated as critical habitat for the Piping plover. Piping plovers and Interior least terns, a species closely associated with the piping plover, nesting seasons are May 1 to August 15. Piping plovers utilize sandbar and sandpits habitats that can be found in areas on or near the Platte River. A qualified biologist should survey any sandpits or sandbars if they occur within the project site. If any nests are discovered within 0.5 miles of the removal of track or track materials we request that you stop activities until after the nesting season ends.

The bald eagle utilizes the area near the Platte River for nesting and as a stopover site during their migration. However, the proposed project is not likely to adversely affect this species.

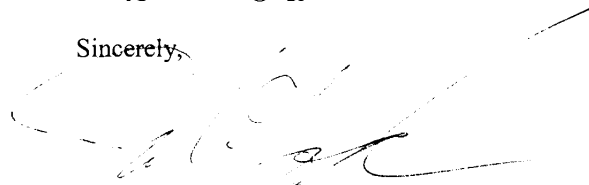
We recommend that you include the following measures in the project specifications given our above concerns that the proposed project may impact whooping cranes, terns and piping plovers, as well as wetlands, wet meadow/wetlands, sandbars, and sandpits:

- a) Stabilize soils on the sideslope embankment during and after removal of the track materials to avoid sediment transport and deposition into adjacent wetlands and wet meadows. Such methods may include, but not be limited to placement of mulch, silt barriers, erosion control mats. Establish a vegetation cover. Do not use invasive grass species such as smooth brome (*Bromus inermis*) or reed canarygrass (*Phalaris arundinacea*).
- b) Do not construct temporary roadways in wetlands, wet meadows or sandbars to access the site.
- c) Keep construction equipment out of wetland and sandbars area. Stage equipment in dry upland sites only.

All federally listed threatened and endangered species are also state listed. However, for assessment of potential impacts on federal listed, candidate or proposed threatened or endangered species, please to contact Wally Jobman, Nebraska Field Office, U.S. Fish and Wildlife Service, 203 W. Second St., Grand Island, NE 68801.

Thank you for providing us with information about the project. If you have any questions, need additional information, or wish to discuss the above in detail, please contact this office at 402-471-5444 or email us at jgodberson@ngpc.state.ne.us

Sincerely,



Julie Godberson
Environmental Analyst Supervisor
Nebraska Natural Heritage Program
jgodberson@ngpc.state.ne.us
402-471-5444

Cc: Carey Grell, NGPC
Wally Jobman, USFWS

H



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
Nebraska Field Office
203 West Second Street
Grand Island, Nebraska 68801

December 10, 2003

Mr. Brian Nettles
Paralegal
Freeborn & Peters LLP
311 South Wacker Drive
Suite 3000
Chicago, IL 60606-6677

Dear Mr. Nettles:

This responds to your December 5, 2003, letter requesting comments from the U.S. Fish and Wildlife Service (Service) on a proposal by the Burlington Northern and Santa Fe Railway Company (BNSF) to abandon 15.60 miles of railroad line between M.P. 1.90 in Aurora, Nebraska to M.P. 17.50 in Central City, Nebraska. These comments are provided as technical assistance and predevelopment consultation and do not constitute a Service report under authority of the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.) on any required Federal environmental review or permit.

The Service has responsibility, under a number of authorities, for conservation and management of fish and wildlife resources. Chief among the federal statutes with which our office deals are the Coordination Act, Endangered Species Act of 1973 (ESA), as amended, and the National Environmental Policy Act. The Coordination Act requires that fish and wildlife resources be given equal consideration in the planning, implementation, and operation of Federal and federally funded, permitted, or licensed water resource developments. Section 7 of the Endangered Species Act of 1973 outlines procedures for interagency consultations on the effects of Federal actions on federally listed threatened and endangered species. The Service participates in scoping and review of actions significantly affecting the quality of the environment under authority of the National Environmental Policy Act. In addition to these statutes, the Service has authority under several other legislative, regulatory, and executive mandates to promote conservation of fish and wildlife resources for the benefit of the public.

In Nebraska, the Service has special concerns for migratory birds, endangered and threatened species, and other important fish and wildlife resources. We also are concerned about any impacts on Federal and State wildlife refuges and management areas and other public lands, as well as to other areas that support sensitive habitats. Habitats frequently used by important fish and wildlife resources are wetlands, streams, and riparian (streamside) woodlands. Special attention is given to proposed developments that include modification of wetlands, or stream alteration, or contamination of important habitats. The Service recommends ways to avoid, minimize, rectify, reduce, or compensate for damaging impacts to important fish and wildlife resources and their habitats that may be attributed to land and water resource development proposals.

We have reviewed the plans for the proposed abandonment and offer the following comments:

In accordance with Section 7(c) of the ESA the Service has determined that the following federally listed species and designated critical habitat may occur within the proposed project area:

<u>Listed Species</u>	<u>Expected Occurrence</u>
Bald eagle (<i>Haliaeetus leucocephalus</i>)	Migration, winter resident
Interior least tern (<i>Sterna antillarum</i>)	Migration, nesting
Piping plover (<i>Charadrius melodus</i>)	Migration, Nesting, Designated Critical Habitat

Bald eagles migrate statewide and utilize mature riparian timber near streams, lakes, and wetlands as feeding and roosting sites. Migrant and wintering bald eagles commonly occur along the Platte River in the vicinity of the BNSF bridge over the Platte River south of Central City, Nebraska. The primary bald eagle migration and wintering period is mid-November to April 1.

Least terns and piping plovers nest on unvegetated or sparsely vegetated sandbars in the Platte River and sand and gravel piles resulting from mining operations along the Platte River. The nesting season for the least tern and piping plover is from April 15 to August 15. If activities associated with the abandonment are planned in the vicinity of the BNSF Platte River bridge during the nesting season, we request that BNSF contact the Service to determine if nesting piping plovers or least terns may be affected.

The Service has designated critical habitat for the northern Great Plains breeding population of the piping plover on the Platte River between Lexington, Nebraska and the confluence of the Platte and Missouri rivers. This designation includes the BNSF Platte River crossing. Habitat included in the federal designation is comprised solely of river channel and riverine sandbars within the high banks.

If wetlands or streams will be impacted by the proposed project, a Department of the Army permit from the U.S. Army Corps of Engineers may be needed. The Service recommends that impacts to wetlands and streams be avoided or minimized. If unavoidable impacts are to occur to aquatic habitats, the Service recommends that compensation (i.e., restoration of a degraded wetland or creation) occur for like wetland type at a ratio of 1.5:1 (acres of wetlands restored/created to acres of wetlands impacted). For unavoidable impacts to streams, the Service recommends that the pattern, profile, and dimension be replaced on a 1:1 basis. Additionally, compensation for impacts to riparian habitats should occur at a minimum ratio of 3:1 (i.e., acres of riparian habitat replaced for acres of riparian habitat impacted). The 3:1 ratio is based on the loss of the habitat and the amount of time that will be required for planted trees to reach maturity.

Under the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703-712: Ch. 128 *as amended*) construction activities in grassland, wetland, and woodland habitats, and those that occur on bridges (e.g., which may affect swallow nests on bridge girders) that would otherwise result in the taking of migratory birds, eggs, young, and/or active nests should be avoided. Although the provisions of the MBTA are applicable year-round, most migratory bird nesting activity

in Nebraska occurs during the period April 1 to July 15. However, some migratory birds are known to nest outside of the aforementioned primary nesting season period. For example, raptors can be expected to nest in woodland habitats during February 1 through July 5, whereas sedge wrens which occur in some wetland habitats normally nest from July 15 to September 10. If the proposed construction project is planned to occur during the primary nesting season or at any other time which may result in the take of nesting migratory birds, the Service recommends that the project proponent (or construction contractor) arrange to have a qualified biologist conduct a field survey of the affected habitats and structures to determine the absence or presence of nesting migratory birds. Surveys must be conducted during the nesting season. It is further recommended that the results of field surveys for nesting birds, along with information regarding the qualifications of the biologist(s) performing the surveys, be thoroughly documented and that such documentation be maintained on file by the project proponent (and/or construction contractor) for potential review by the Service (if requested) until such time as construction on the proposed project has been completed. The Service's Nebraska Field Office should be contacted immediately for further guidance if a field survey identifies the existence of one or more active bird nests which cannot be avoided by the planned construction activities. Adherence to these guidelines will help to avoid the unnecessary take of migratory birds and the possible need for law enforcement action.

Should you have any further questions, please contact Mr. Wally Jobman within our office at (308)382-6468, extension 16. Thank you for the opportunity to offer comments.

Sincerely,


Steve Anschutz
Nebraska Field Supervisor

cc: NGPC; Lincoln, NE (Attn: Julie Godberson)

I

Nettles, Brian

From: Bill_Carson@blm.gov
Sent: Tuesday, December 30, 2003 4:09 PM
To: bnettles@freebornpeters.com
Subject: BNSF Abandonment from Aurora, NE to Central City, NE

We have evaluated the proposed Burlington Northern and Santa Fe Railway Company Abandonment from Aurora, Nebraska to Central City, Nebraska. We found that the proposed abandonment will not affect any public lands (Federal lands) administered by the Bureau of Land Management.

Bill Carson
Realty Specialist
Bureau of Land Management
Newcastle Field Office
1101 Washington Blvd
Newcastle, WY 82701
307-746-6607

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REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
NEBRASKA REGULATORY OFFICE - KEARNEY
1430 CENTRAL AVENUE SUITE 4
KEARNEY, NE 68847-6856

January 13, 2004

Mr. Brian Nettles
Freeborn & Peters LLP
311 South Wacker Drive, Suite 3000
Chicago, Illinois 60606-6677

Dear Mr. Nettles:

This letter pertains to the abandonment of 15.60 miles of railroad line between M.P. 1.90 in Aurora, Nebraska and M.P. 17.50 in Central City, Nebraska.

After reviewing the materials you provided, the project will not require a Department of the Army permit.

If, in the future, you plan to place fill material in any waters of the United States please provide this office with an application for review for possible permit requirements.

Although a Department of the Army permit pursuant to Section 404 of the Clean Water Act and/or Section 10 of the River and Harbor Act is not required for this project, this does not eliminate the requirement that you obtain other applicable Federal, State, Tribal and/or Local permits as required.

If you have any questions regarding this matter, please feel free to contact me at the above address or call (308) 234-1403 and refer to file number NE 03-11553.

Sincerely,

A handwritten signature in black ink, reading "Keith Tillotson", is positioned above the typed name.

Keith Tillotson
Senior Project Manager

L

Freeborn & Peters LLP

December 5, 2003

Randy Warner
Hamilton County Emergency Manager
715 12th St
Aurora, NE 68818-2306

**Re: *The Burlington Northern and Santa Fe Railway Company Abandonment
of Aurora, Nebraska to Central City, Nebraska***

Attorneys at Law

311 South Wacker Drive
Suite 3000
Chicago, Illinois
60606-6677
Tel 312.360.6000

Brian Nettles
Paralegal
Direct 312.360.6336
Fax 312.360.6596
bnettl@
freebornpeters.com

Chicago

Springfield

Dear Mr. Warner:

BNSF plans on filing with the Surface Transportation Board ("STB") a Notice of Exemption seeking authority to abandon 15.60 miles of railroad line between M.P. 1.90 in Aurora, Nebraska to M.P. 17.50 in Central City, Nebraska.

As part of the environmental report BNSF needs to know if the proposed abandonment will affect any 100-year floodplains. If so, please furnish 8 & ½ by 11 black and white maps in the area of each designated floodplain if they are available.

The proposed abandonment may require the removal of the track materials such as the rails and ties but the roadbed will be left intact.

For your reference I have enclosed a map of the above referenced railroad line. Please provide this information by January 5, 2004. If you have any questions, or if you would like to discuss this matter further, please do not hesitate to contact me at (312) 360-6336.

Thank you in advance for your cooperation.

Sincerely,



Brian Nettles

/bn
Enclosure

M

Freeborn & Peters LLP

December 5, 2003

Gloria Broekemeier
Merrick County Clerk
P.O. Box 27
County Courthouse
Central City, NE 68826-0027

**Re: *The Burlington Northern and Santa Fe Railway Company Abandonment
of Aurora, Nebraska to Central City, Nebraska***

Attorneys at Law

311 South Wacker Drive
Suite 3000
Chicago, Illinois
60606-6677
Tel 312.360.6000

Brian Nettles
Paralegal
Direct 312.360.6336
Fax 312.360.6596
bnettl@
freebornpeters.com

Chicago

Springfield

Dear Ms. Broekmeier:

BNSF plans on filing with the Surface Transportation Board ("STB") a Notice of Exemption seeking authority to abandon 15.60 miles of railroad line between M.P. 1.90 in Aurora, Nebraska to M.P. 17.50 in Central City, Nebraska.

As part of the environmental report BNSF needs to know if the proposed abandonment will affect any 100-year floodplains. If so, please furnish 8 & ½ by 11 black and white maps in the area of each designated floodplain if they are available.

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Thank you in advance for your cooperation.

Sincerely,



Brian Nettles

/bn
Enclosure

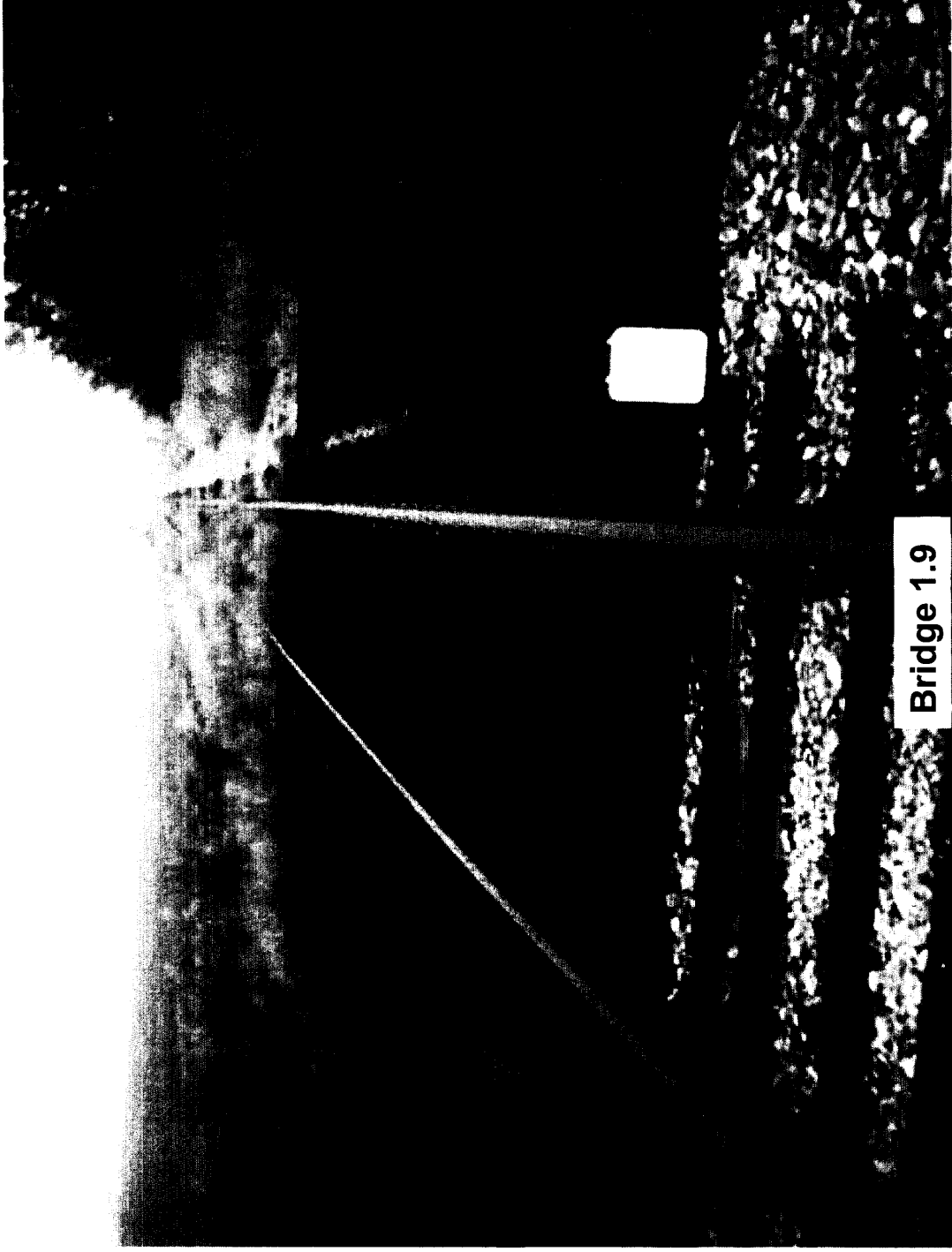
N

Abandonment Documentation (M.P. 1.90 to M.P. 17.50)

List of Bridges

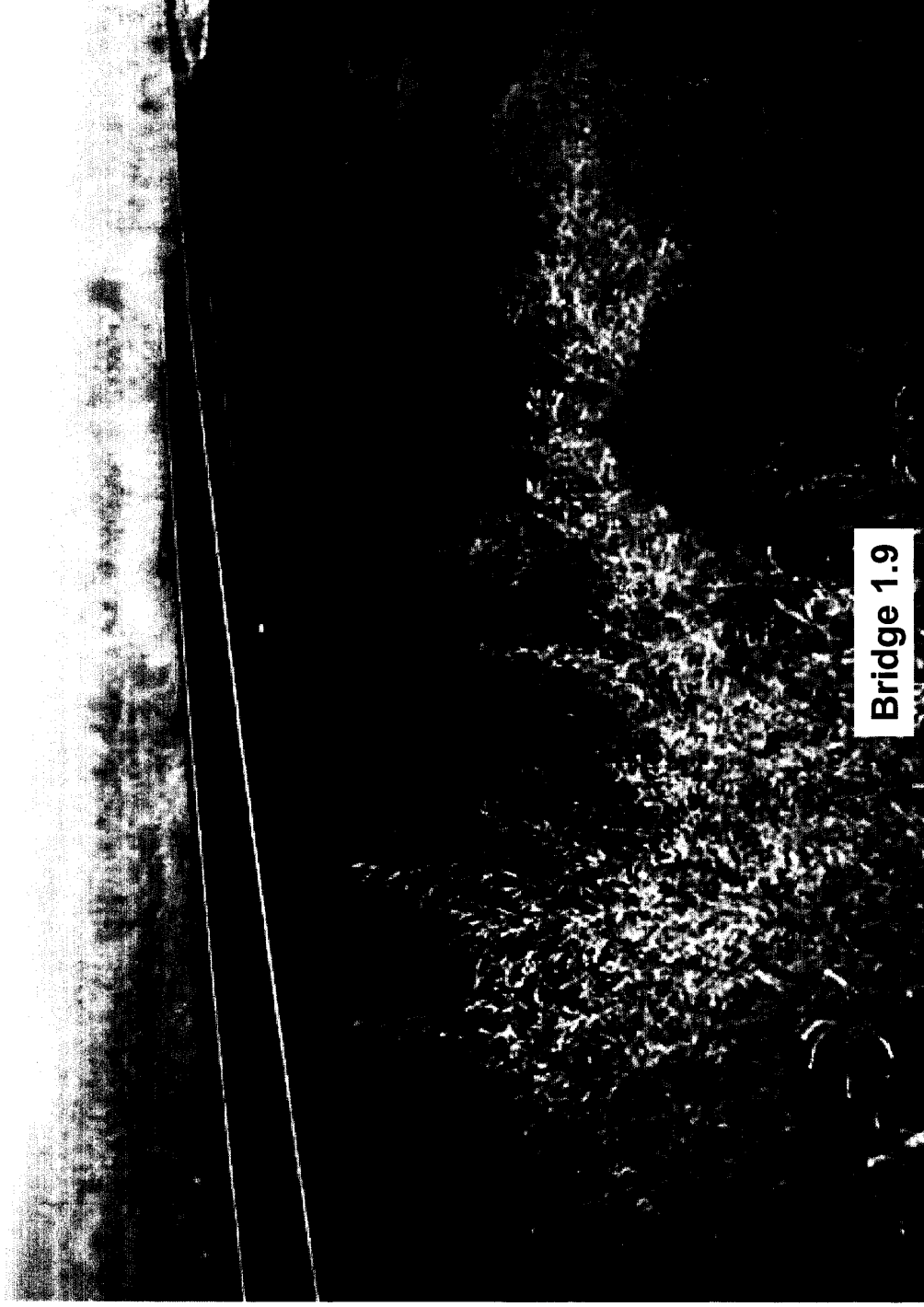
Bridge:	1.90	Built: 1933	Length: 42'	Height: 9'	Description: Open Deck Pile Trestle	Obstacle: Drainage
Bridge:	2.29	Built: 1932	Length: 108'	Height: 14'	Description: Open Deck Pile Trestle	Obstacle: Water
Bridge:	3.57	Built: 1925	Length: 15'	Height: 7'	Description: Ballast Deck Pile Trestle	Obstacle: Drainage
Bridge:	8.70	Built: 1922	Length: 84'	Height: 13'	Description: Ballast Deck Pile Trestle	Obstacle: Water
Bridge:	9.65	Built: 1930	Length: 124'	Height: 20'	Description: Open Deck Pile Trestle	Obstacle: Water
Bridge:	15.04	Built: 1929	Length: 8'	Height: 6'	Description: Rail	Obstacle: Stock Pass

Aurora to Central City, NE



Bridge 1.9

Aurora to Central City, NE



Bridge 1.9

Aurora to Central City, NE



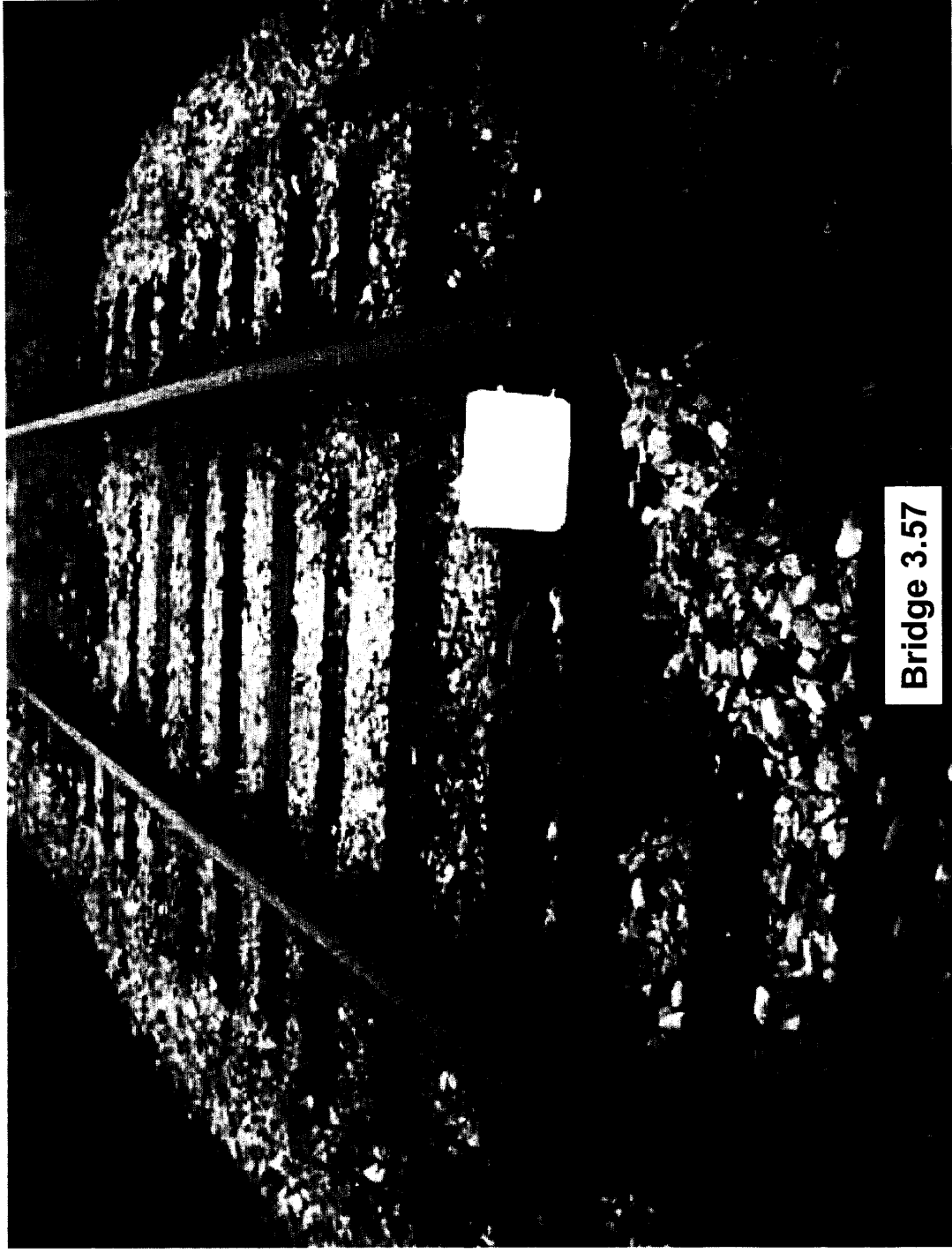
Bridge 2.29

Aurora to Central City, NE



Bridge 2.29

Aurora to Central City, NE



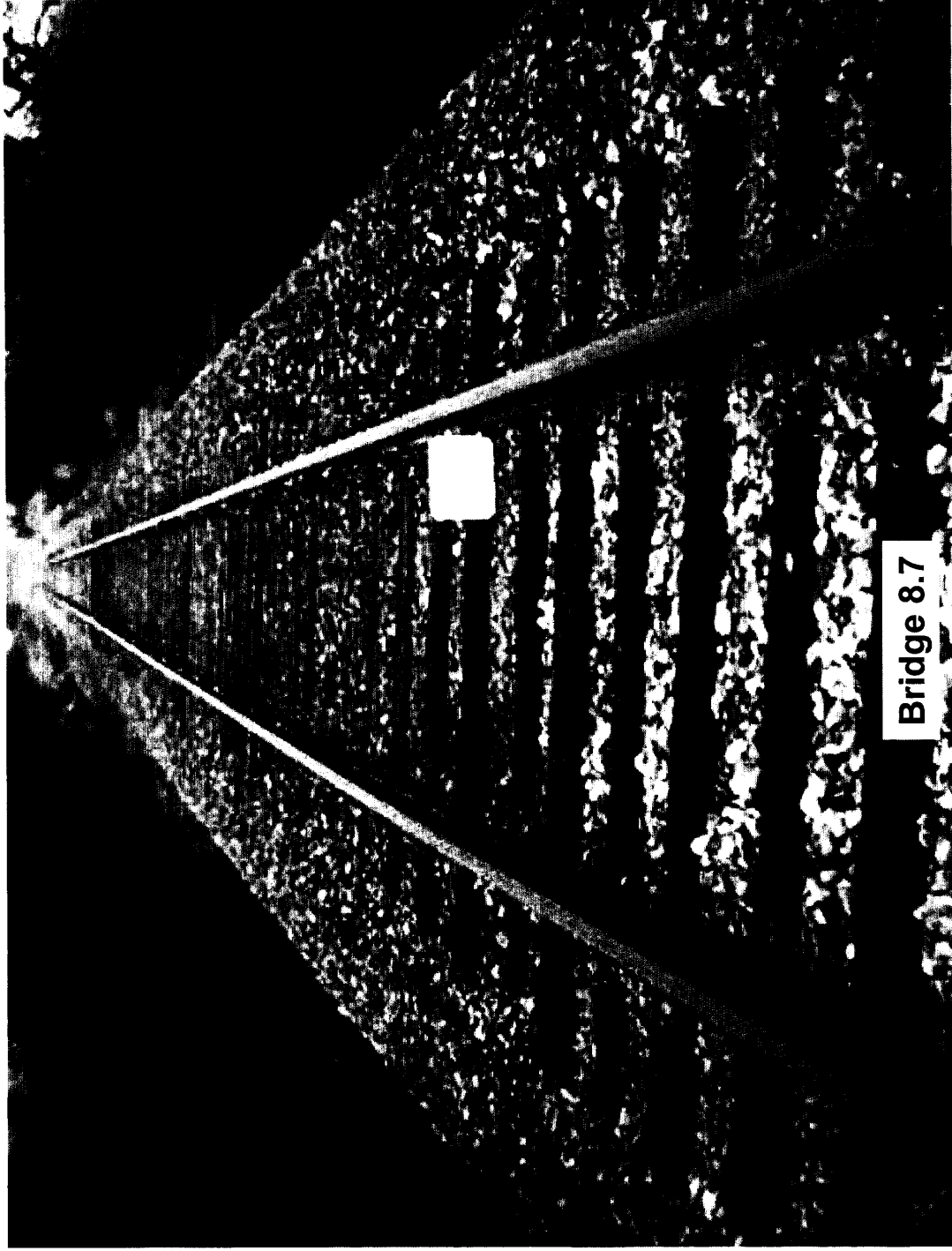
Bridge 3.57

Aurora to Central City, NE



Bridge 3.57

Aurora to Central City, NE



Bridge 8.7

Aurora to Central City, NE



Bridge 8.7

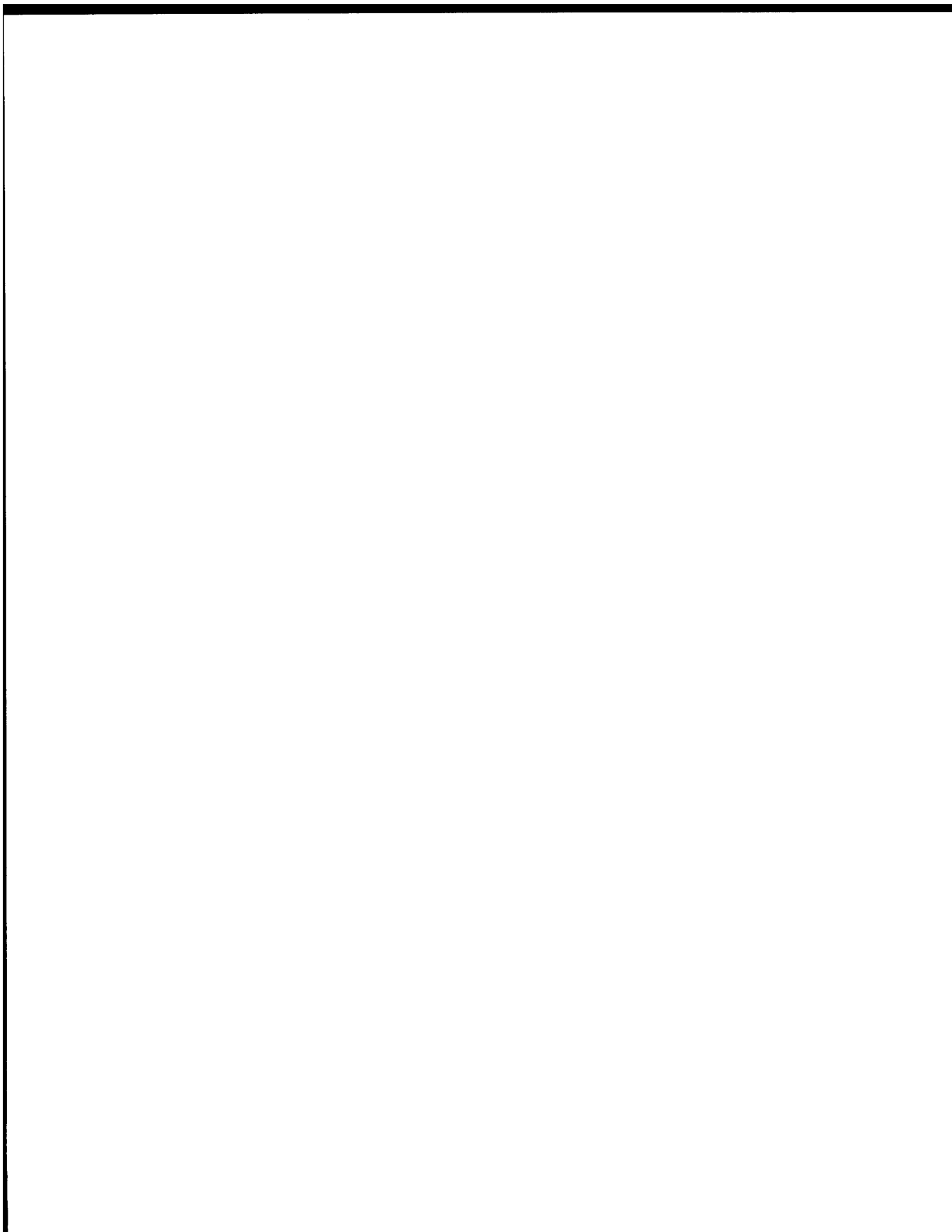
Aurora to Central City, NE



Aurora to Central City, NE



Bridge 9.65



Aurora to Central City, NE



Bridge 15.04

Aurora to Central City, NE



Bridge 15.04

O



NEBRASKA STATE HISTORICAL SOCIETY

1500 R STREET, P.O. BOX 82554, LINCOLN, NE 68501-2554
(402) 471-3270 Fax: (402) 471-3100 1-800-833-6747 www.nebraskahistory.org

January 13, 2004

Brian Nettles
Freeborn & Peters LLP
311 South Wacker Drive, Suite 3000
Chicago, IL 60606-6677

RE:

hp_num	descr
0312-029-01	ABANDON 15.60 MILES OF RAILROAD BET MP 1.90 TO 17.50 (AURORA TO CENTRAL CITY); BURLINGTON NORTHERN & SANTA FE RR

Dear Mr. Nettles:

Thank you for submitting the referenced project proposal for our review and comment. Our comment on this project and its potential to affect historic properties is required by Section 106 of the National Historic Preservation Act of 1966, as amended, and implementing regulations 36 CFR Part 800.

Given the information provided, in our opinion there will be no historic properties affected by the project as proposed. Therefore, in accordance with 36 CFR 800.4(d)(1), you may proceed with the project as planned. Should any changes in the project be made or in the type of funding or assistance provided through federal or state agencies, please notify this office of the changes before further project planning continues.

There is always the possibility that previously unsuspected archaeological remains may be uncovered during the process of project construction. We request that this office be notified immediately under such circumstances so that an evaluation of the remains may be made, along with recommendations for future action.

Please retain this correspondence and your documented finding in order to show compliance with Section 106 of the National Historic Preservation act, as amended. If you have any questions, please do not hesitate to contact Greg Miller at 402/471-4775.

Sincerely,

L. Robert Puschendorf
Deputy State Historic Preservation Officer
Nebraska State Historic Preservation Office

AURORA - CENTRAL CITY, NEBRASKA

