

Freeborn & Peters LLP

May 7, 2004

VIA FEDERAL EXPRESS

FEE RECEIVED

Mr. Vernon A. Williams

MAY 10 2004

Secretary

Surface Transportation Board

**SURFACE
TRANSPORTATION BOARD**

1925 K Street, N.W.

Washington, DC 20423-0001



Re: Surface Transportation Board Docket No. AB-6 (Sub-No. 412X); The Burlington Northern and Santa Fe Railway Company Abandonment in Ponca City, Oklahoma

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 Secretary Williams:

210827

Enclosed for filing in the referenced docket are the original and ten copies of The Burlington Northern and Santa Fe Railway Company's Notice of Exemption, and a check for \$2,800.00, covering the filing fee.

Please acknowledge receipt of this material by date stamping the enclosed copy of this letter and returning it to me in the enclosed self-addressed stamped envelope.

The environmental and historic reports have been forwarded to the responsible agencies and copies have been directed to the Section of Environmental Analysis. The Notice of Exemption includes a certificate of notice upon various interested state and federal authorities (the U. S. Department of the Interior – National Park Service, Recreation and Conservation Assistance Program; the U. S. Department of the Interior – National Park Service, Land Resource Division; the Department of Defense, Military Traffic Management Command; the Oklahoma Corporation Commission; the Oklahoma Department of Transportation; and the Chief of Forest Service, U.S. Department of Agriculture). As of this date, I have not received the affidavit of publication from the Cavalier County Republican. I will forward the affidavit when I receive it.

Sincerely,

Brian Nettles

/bn
Enclosures

**ENTERED
Office of Proceedings**

MAY 10 2004

**Part of
Public Record**

FILED
MAY 10 2004
**SURFACE
TRANSPORTATION BOARD**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Abandonment of a line of Railroad
Between BNSF M.P. 138.00 and
M.P. 142.14 in and near Ponca City,
Kay County, Oklahoma

NOTICE OF EXEMPTION
Docket No. AB-6
(Sub-No. 412X)



TO THE SURFACE TRANSPORTATION BOARD:

210827

The Burlington Northern and Santa Fe Railway (BNSF) hereby notifies the Board that it intends to abandon its line of railroad between BNSF M.P. 138.00 and M.P. 142.14 in and near Ponca City, Kay County, Oklahoma, a total distance of 4.14 miles, pursuant to the Board's Exemption of Out of Service Rail Lines, 49 C.F.R. § 1152.50 and in support of the Notice, respectfully provides the following information:

- I. Proposed consummation date for the abandonment.

July 19, 2004
- II. Certification required in 49 C.F.R. § 1152.50(b)

FILED
MAY 10 2004
SURFACE
TRANSPORTATION BOARD

The attached Certification of Michael Smith certifies that no formal complaint filed by a user of rail service on this line (or a state or local government entity acting on behalf of such user) regarding cessation of service at the Board or any U.S. District Court or *Original* a complainant within the last two years. The Board certifies that no local traffic on the line can be rerouted over other lines.

- III. Information required by C.F.R. § 1152.22(a)(1-4), (7), (8) and (e)(4).

FEE RECEIVED

MAY 10 2004

SURFACE
TRANSPORTATION BOARD

ENTERED
Office of Proceedings
MAY 10 2004
Part of
Public Record

(a) General

- (1) Exact name of Applicant.

The Burlington Northern and Santa Fe Railway
Company

- (2) Whether applicant is a common carrier by railroad subject to 49 U.S.C. Subtitle IV, Chapter 105.

Applicant is a common carrier by railroad subject to 49 U.S.C. Subtitle IV, Chapter 105.

- (3) Relief sought.

BNSF seeks an exemption from Surface Transportation Board approval authorizing the abandonment and discontinuance of service of the Ponca City, Oklahoma line specified above.

- (4) Detailed map of the subject line.

See Exhibit A.

- (5) Name, title and address of representative of applicant to whom correspondence should be sent.

Michael Smith
Freeborn & Peters
311 S. Wacker Dr., Suite 3000
Chicago, IL 60606-6677

- (6) List of all United State Postal Service ZIP Codes that the line traverses.

The Ponca City, Oklahoma line traverses United States Postal Service Zip codes 74601.

- (7) Statement of whether the properties proposed to be abandoned are suitable for other public purposes, including roads or highways, other forms of mass transportation, conservation, energy production or transmission or recreation. If the applicant is aware of any restriction on the title to the property, including any reversionary interest, which would affect the transfer of title or the use of property for other than rail purposes, this shall be disclosed.

The right of way may be suitable for use for other public purposes such as a trail. On part of the properties involved, title considerations may affect the conveyance of the land for use other than railroad purposes. Based on information in our possession, the line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

IV. Level of protection.

The interest of railroad employees will be protected by the conditions imposed in Oregon Short Line RR Co. - Abandonment - Goshen, 360 I.C.C. 91 (1979)

- V. Certification that the notice requirements of §§ 1152.50(d)(1) and 1105.11 have been met is attached.

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: May 7, 2004

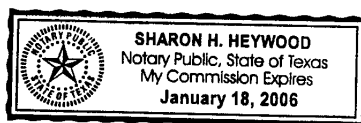
VERIFICATION

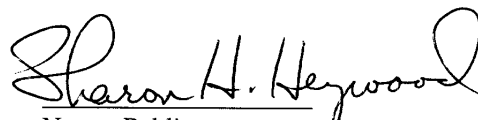
STATE OF TEXAS)
)ss
COUNTY OF TARRANT)

Richard A. Batie makes oath and says he is Manager, Shortline Development in the Network Development department of The Burlington Northern and Santa Fe Railway Company; that he has been authorized by the Applicant to verify and file with the Surface Transportation Board the foregoing Notice of Exemption in AB-6 (Sub-No. 412X); that he affirms that the line has had no local traffic in the prior two (2) years and that there is no overhead traffic to be rerouted; that he has carefully examined all of the statements in the Notice; that he has knowledge of the facts and matters relied upon in the Notice; and that all representations set forth therein are true and correct to the best of his knowledge, information, and belief.


Richard A. Batie
Manager, Shortline Development

Subscribed and sworn to before me the 26 day of March, 2004.




Notary Public

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY
NO. AB-6 (Sub No. 412X)

CERTIFICATION

I hereby certify that (1) no formal complaint filed by a user of rail service on this line (or a state or local government entity acting on behalf of such user) regarding cessation of service over the line is pending with the Board or any U.S. District Court or has been decided in favor of a complainant within the last two (2) years; (2) service of notice upon the U.S. Department of the Interior, National Park Service, Recreation Park Service, Land Resource Division; the Department of Defense, Military Traffic Management Command; the Oklahoma Corporation Commission; the Oklahoma Department of Transportation; and the Chief Forest Service, U.S. Department of Agriculture was accomplished by mailing a copy thereof on April 15, 2004; (3) the environmental and historic reports were serviced upon the agencies identified in 49 C.F.R. § 1105.7(b) and the State Historic Preservation Offices on April 15, 2004; (4) service of notice upon the State Clearinghouses was accomplished by mailing a copy thereof on April 15, 2004; and (5) the publication requirements of 49 C.F.R. § 1105.12 have been complied with, to wit: publication of notice was accomplished on April 25, 2004 in the Ponca City News, affidavit of publication is attached.



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

Date: May 7, 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. 138.00 and M.P. 142.14
in Ponca City, Oklahoma

Docket No. AB-6
(Sub No. 412X)

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. 138.00 and M.P. 142.14 Ponca City, Kay County, Oklahoma, total distance of 4.14 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 effect 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.

The abandonment is consistent with local land use plans. See Exhibit B, letter from the Board of Commissioners, Kay County, Oklahoma.

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

The proposed abandonment will have no negative effect on prime agricultural lands. See Exhibit C, letter from the Natural Resources Conservation Service.

(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.

Kay County, Oklahoma has no plans to use the land for any public purposes. See Exhibit B, letter to the Board of Commissioners, Kay County, Oklahoma.

(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 3 public crossings and no 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.

BNSF is not aware of any 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 proposed abandonment is not likely to adversely affect federally listed or proposed species or their habitats. See Exhibit D, response from the U.S. Fish and Wildlife Service. There are no state threatened and endangered species occurring within the area defined. See Exhibit E, letter from the Oklahoma Department of Wildlife Conservation.

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

The proposed project will have no adverse impact on any federally funded park or recreation area or state park. See Exhibit F, response from the Oklahoma Tourism and Recreation Department. There are no wildlife sanctuaries, refuges or critical habitats present. See Exhibit D, response from the U.S. Fish and Wildlife Service.

(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. Any unpermitted discharge of pollutants to waters of the State has some potential to violate Water Quality Standards. See Exhibit G, letter from the Oklahoma

Department of Environmental Quality. However no discharge of pollutants to the waters of the State of Oklahoma is anticipated.

(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 permit under Section 404 of the Clean Water Act is required for the proposed exemption. See Exhibit H, letter from the Army Corps of Engineers. As of the date of this report, the Army Corps of Engineers has not responded. BNSF will provide the Board copies of any response it may receive. The proposed exemption will not affect the 100-year floodplain. See Exhibit B, letter from the Kay County Emergency Management, Exhibit I, letter from the City of Ponca City, Oklahoma and Exhibit J, letter from the Army Corps of Engineers.

(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.

Based on BNSF's past experience with similar out of service abandonments, BNSF believes that permits under 402 of the Clean Water Act should not be required for the proposed exemption. Construction and soil disturbing activities that disturb or have the potential to disturb more than one acre, cumulative over the entire common plan of development, will require a Storm Water Construction General Permit from the Department of Environmental Quality. See Exhibit G, Letter from the Oklahoma Department of Environmental Quality.

(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', with a horizontal line underneath it.

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

Date: May 7, 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. 138.00 and M.P. 142.14
in and near Ponca City, Oklahoma

Docket No. AB-6
(Sub No. 412X)

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. 138.00 in to M.P. 142.14 in and near Ponca City, Oklahoma, a total distance of 4.14 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 Oklahoma 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 Ponca City, Oklahoma Trackage goes through the western portion of Ponca City and then continues westerly a few miles into a rural area of Kay County, Oklahoma. The population of Ponca City is 25,919. The rail line corridor varies from 100 to 200 feet 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 four bridges that are 50 years or older in the immediate area of the abandonment. Photographs of the four bridges are attached to this report. See Exhibit K.

(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 K.

(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 Hutchinson & Southern Railway Company (H&S) between 1899 and 1900. The H&S was a predecessor to The Atchison Topeka and Santa Fe Railway Company (ATSF). In 1995 the ATSF merged with the Burlington Northern Railroad Company (BN) 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 are no historic properties affected by the proposed abandonment. See Exhibit L, letter from the Oklahoma 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,



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

Date: May 7, 2004

CERTIFICATION PURSUANT TO 49 C.F.R.1105.7(c)

The Burlington Northern and Santa Fe Railway Company ("BNSF") by and through its authorized representative, Michael Smith, certifies that on April 15 2004, BNSF sent copies of the foregoing Environmental and Historical Reports by first class mail to the following agencies:

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

Charles S. Wallis, Jr.
State Historic Preservation Office
Oklahoma Historical Society
2704 Villa Prom
Oklahoma City, OK 73107

U.S. Department of the Interior
National Park Service
Land Resource Division
1849 C Street, N.W.
Washington, DC 20240

Bureau of Land Management
Oklahoma Field Office
7906 E. 33rd Street, Suite 101
Tulsa, OK 74145-1352

Susan Henry
Director, Division of Planning and
Development
Oklahoma Tourism and Recreation Dept.
Oklahoma State Parks
15 N. Robinson, Suite 100
Oklahoma City, OK 73102

Wayne Leven
Chairman
Kay County Board of Commissioners
P.O. Box 450
County Courthouse
Newkirk, OK 74647-0450

US Army Corps of Engineers
Tulsa District
1645 S. 101st E. Ave.
Tulsa, OK 74128-4629

Chris Henderson
Community Development Director
Floodplain Administrator
City of Ponca City
400 E. Central, Suite 305
P.O. Box 1450
Ponca City, OK 74602

David Martinez
Fish & Wildlife Biologist
U.S. Fish & Wildlife Service
222 S. Houston, Suite A
Tulsa, Oklahoma 74127

Melynda Hickman
Biologist
Oklahoma Department of Wildlife
Conservation
P.O. Box 53465
Oklahoma City, OK 73152-3465

M Darrel Dominick
State Conservationist
United States Department of Agriculture
Natural Resources Conservation Service
100 USDA, Suite 206
Stillwater, OK 74074-2655

Mark Derichsweiler, P.E.
Engineering Manager
Watershed Planning and Storm Water
Permitting Section
Oklahoma Department of Environmental
Quality
P.O. Box 1677
Oklahoma City, OK 73101-1677

Buddy Combs
Manager, Railroad Section
Transportation Division
Oklahoma Corporation Commission
P.O. Box 52000
Oklahoma City, OK 73152-2000

Richard Snay
National Geodetic Survey
1315 East-West Highway
Silver Spring, MD 20910

Richard Zetterberg
District Conservationist
Natural Resources Conservation Service
Newkirk Service Center
115 S Maple Ave
Newkirk, OK 74647-4026

United States EPA
Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202

Oklahoma Department of Transportation
Office of Rail Programs & Safety
200 N.E. 21st Street
Oklahoma City, OK 73105

The required cover letters (pursuant to 49 C.F.R. 1105.11) are attached hereto. BNSF has consulted with all appropriate agencies in preparing the reports.



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

Date: May 7, 2004

A

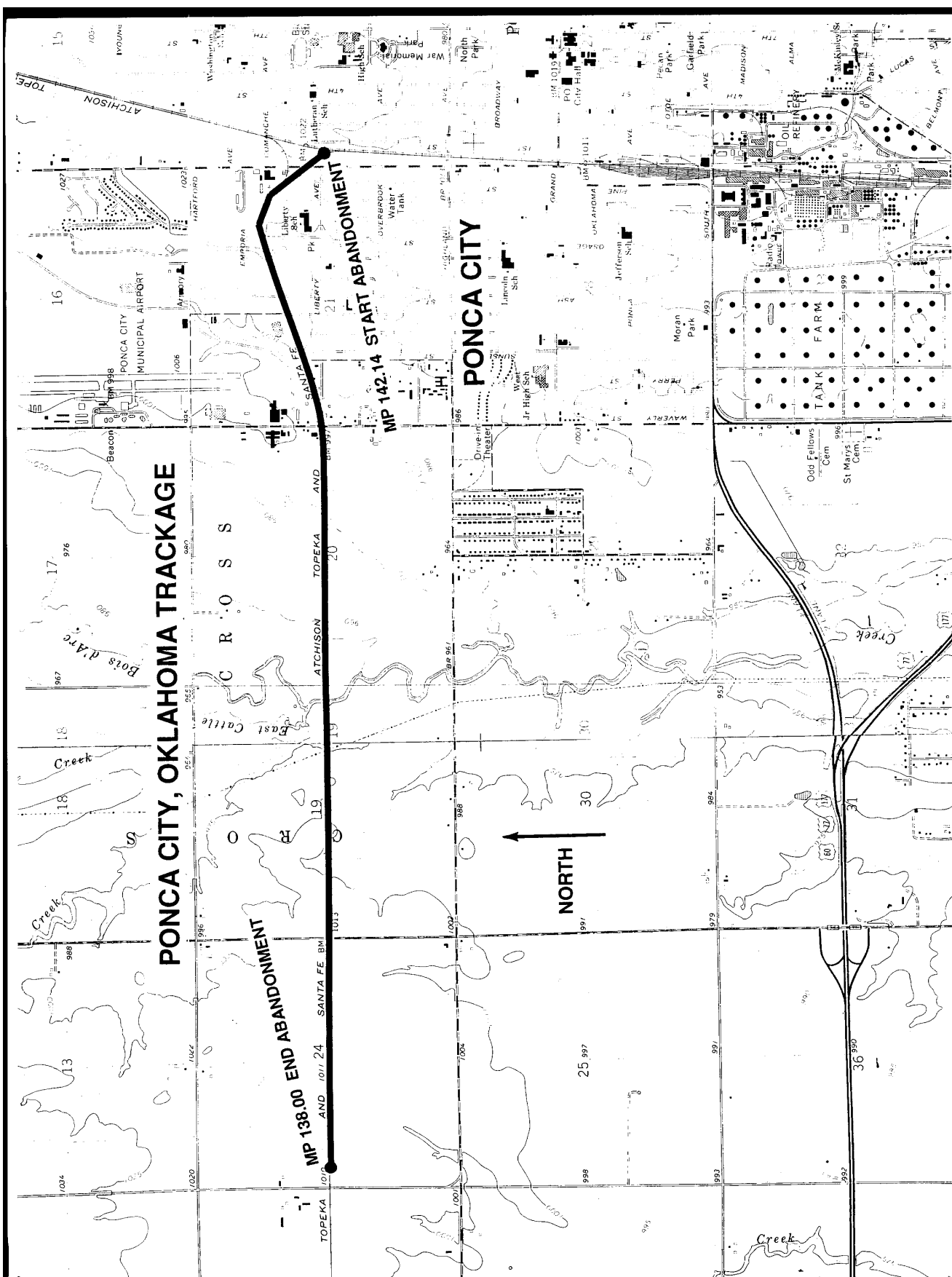
PONCA CITY, OKLAHOMA TRACKAGE

MP 138.00 END ABANDONMENT

MP 142.14 START ABANDONMENT

PONCA CITY

NORTH



B

DEE SCHIEBER
2026 East Coleman Road
Ponca City, Oklahoma 74604
District #1
(580) 765-3237

WAYNE LEVEN
1125 West Dry Road
Newkirk, Oklahoma 74647
District #2
(580) 362-2231

LAILE WILSON
1814 West Dewey
Blackwell, Oklahoma 74631
District #3
(580) 363-0160

**BOARD OF COUNTY COMMISSIONERS
KAY COUNTY, OKLAHOMA**

August 11, 2003

Brian Nettles
Freeborn & Peters LLP
Attorneys at Law
311 S. Wacker Drive
Suite 3000
Chicago, IL 60606-6677

Dear Sir:

We received your letter of August 1, 2003 concerning the abandonment of a part of the Burlington Northern and Santa Fe Railway located in Kay County. The issues you have requested to be addressed are as follows:

- The Abandonment's affect to the 100-year floodplain
- The Abandonment is consistent with local land use plans
- Any alternate public uses for the corridor

The information you provided to Dennis Bonewell, Emergency Management Director, has been determined that the abandonment will not affect the 100-year floodplain. Kay County does not have any zoning and therefore, use of the land that is situated in the county is not restricted. At this time, there are no plans to use the land for any public purposes.

It is our request that as you provide for the removal of track materials you also remove the bridge over Bois d'Arc Creek.

Any questions or concerns on this project can be addressed to Dee Schieber, County Commissioner District #1 at 580-765-3237.

Sincerely,

Board of County Commissioners of Kay County, Oklahoma



Wayne Leven, Chairman
Board of County Commissioners
County of Kay, State of Oklahoma

C

United States Department of Agriculture



Natural Resources Conservation Service
Newkirk Field Office
115 South Maple
Newkirk, OK 74647
Telephone (580) 362-3362

November 28, 2003

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

RE: BNSF Line Abandonment near Ponca City, Oklahoma

Dear Brian Nettles,

The proposed abandonment of the BNSF lines will have no negative effect on prime agricultural lands.

Sincerely,

A handwritten signature in black ink that reads "Richard Zetterberg".

Richard Zetterberg
District Conservationist

D

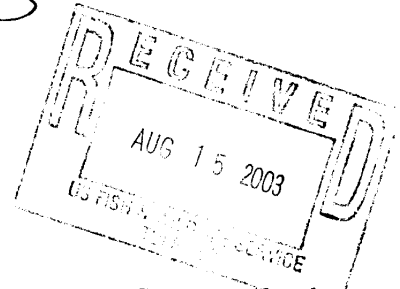
02-14-03-I-1190 R
ADM 8/6

Freeborn & Peters LLP

August 1, 2003

David Yazzie
Assistant Regional Director
U.S. Fish & Wildlife Service
Region 2
P.O. Box 1306
500 Gold Ave., S.W.
Albuquerque, NM 87103

TO: ES



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 312.360.6396
bnettl@
freebornpeters.com

Re: The Burlington Northern and Santa Fe Railway Company Abandonment of Ponca City, Oklahoma

Dear Mr. Yazzie:

BNSF plans on filing with the Surface Transportation Board ("STB") a Notice of Exemption seeking authority to abandon 4.14 miles of railroad line between Milepost 138.00 and Milepost 142.14 in Ponca City, Oklahoma.

As part of the environmental report BNSF needs to know whether or not there are any endangered or threatened species, wildlife sanctuaries or refuges or areas designated as critical habitat adjacent or near the line and if so, what effects the proposed action may have.

Chicago

Springfield

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 September 1, 2003. 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

NOT LIKELY TO ADVERSELY AFFECT FINDING	
The described action is not likely to adversely affect federally-listed or proposed species or their habitats.	
Date:	16 Sept. 2003
Consultation #:	02-14-03-I-1190
Approved by:	David Martinez
U.S. FISH and WILDLIFE SERVICE, TULSA, OK	
No T-E species, sanctuaries/refuges, or critical habitat present	
FWS	

/bn
Enclosure

RECEIVED - USFWS REG 2

AUG 08 2003

FWE

Rcv'd Region 2

AUG 8 2003

ARD-Budget & Admin.

E

WILDLIFE CONSERVATION COMMISSION

Lewis Stiles
CHAIRMAN
Mac Maguire
VICE CHAIRMAN
Douglas Schones
SECRETARY
John D. Groendyke
MEMBER

John S. "Jack" Zink
MEMBER
Harland Stonecipher
MEMBER
Bruce Mabrey
MEMBER
Bill Phelps
MEMBER



FRANK KEATING, GOVERNOR
GREG D. DUFFY, DIRECTOR

DEPARTMENT OF WILDLIFE CONSERVATION

1801 N. Lincoln

P.O. Box 53465

Oklahoma City, OK 73152

PH. 521-3851

August 21, 2003

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

Dear Mr. Nettles:

This letter is in response to your letter of August 4, 2003 regarding the following:

Location: Railroad Line between Milepost 138.00 and Milepost 142.14, Ponca City, OK

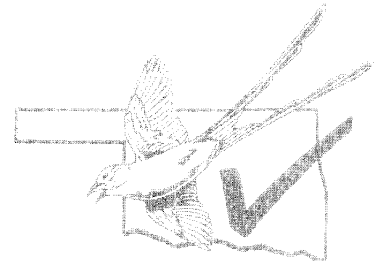
Project: Burlington Northern and Santa Fe Railway Company Abandonment

Based on our database, there are no State threatened and endangered species occurring within the area defined. However, please note that we have not conducted an on-site survey in this area. Please also note that our response only concerns State listed species. We recommend you contact the US Fish and Wildlife Services regarding federally-listed species.

We appreciate the opportunity to comment. Please do not hesitate to contact me if you have any questions at 405-424-0099 or mahickman@odwc.state.ok.us.

Sincerely,

Melynda Hickman
Biologist



Search for the Scissortail
on Your State Tax Form

An Equal Opportunity Employer

F

Susan Henry

Freeborn & Peters LLP

August 1, 2003

Oklahoma Tourism and Recreation Dept.
Oklahoma State Parks
15 N. Robinson, Suite 100
Oklahoma City, OK 73102

Attorneys at Law

314 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

Re: *The Burlington Northern and Santa Fe Railway Company Abandonment of Ponca City, Oklahoma*

Dear Sir or Madam:

BNSF plans on filing with the Surface Transportation Board ("STB") a Notice of Exemption seeking authority to abandon 4.14 miles of railroad line between Milepost 138.00 and Milepost 142.14 in Ponca City, Oklahoma.

As part of the environmental report BNSF needs to know whether or not there are any wildlife sanctuaries or refuges, National or State parks or forests in the proposed project impact area and if so, what effects would occur as a result of the abandonment.

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 September 1, 2003. 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.

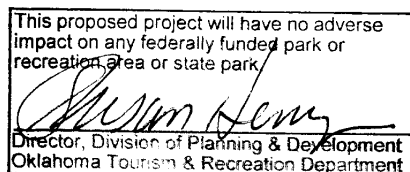
Thank you in advance for your cooperation.

Sincerely,



Brian Nettles

/bn
Enclosure



G



STEVEN A. THOMPSON
Executive Director

OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY

BRAD HENRY
Governor

August 11, 2003

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

RE: Burlington Northern and Santa Fe Railway Company Abandonment of Ponca City,
Oklahoma

The DEQ received your letter of August 1, 2003 in which you requested information pertaining to requirements of Oklahoma's Water Quality Standards and possible applicability of Clean Water Act Section 402 permits.

This project would require NPDES discharge permits only if a discharge of pollutants occurs to waters of the State. Any discharge of pollutants to waters of the State has the some potential to violate the Water Quality Standards. The information provided in your letter implies that there will be no discharge to waters of the State. Construction and soil disturbing activities that disturb or have the potential to disturb more than one acre, cumulative over the entire common plan of development, will require a Storm Water Construction General Permit from the DEQ. Information and forms regarding the Oklahoma stormwater program are available on the Internet at www.deq.state.ok.us/WQDnew/stormwater/index.html.

Additional information regarding the Oklahoma's Water Quality Standards can be obtained from the Oklahoma Water Resources Board. Copies of the Oklahoma Water Quality Standards can be obtained by calling (405) 530-8800 or on the Internet at www.owrb.state.ok.us.

Sincerely,

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

Mark Derichsweiler, P.E.
Engineering Manager
Watershed Planning and Storm Water Permitting Section



H



DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, TULSA DISTRICT
1645 SOUTH 101ST EAST AVENUE
TULSA, OKLAHOMA 74128-4609

March 18, 2004

Planning, Environmental, and Regulatory Division
Regulatory Branch

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

Dear Mr. Nettles:

Please reference your letter dated February 20, 2004, regarding your request for comments related to the proposed abandonment of an existing railway. The proposed activity is located in Sections 19, 20, 21, and 24, Township 26 North, Range 2 East, west of Ponca City, Kay County, Oklahoma.

The provided information does not indicate that a placement of dredged or fill material will be required, permanently or temporarily, into any "waters of the United States," including jurisdictional wetlands. Therefore, your proposal is not subject to regulation pursuant to Section 404 of the Clean Water Act, and a Department of the Army (DA) permit will not be required. Should your method of construction necessitate such a discharge, we suggest that you resubmit that portion of your project so that we may determine whether an individual DA permit will be required.

Although DA authorization is not required, this does not preclude the possibility that other Federal, State, or local permits may be required.

Your project has been assigned Identification Number 13653. Please refer to this number during future correspondence. If further assistance is required, contact Mr. Allen Ryan at 918-669-7618.

Sincerely,


Larry D. Hogue, P.E.
Chief, Planning, Environmental,
and Regulatory Division

PRELIMINARY JURISDICTIONAL DETERMINATION (JD)
INFORMATION SHEET

Preliminary JD's are not subject to appeal under the Administrative Appeal Process (AAP) of the U.S. Army Corps of Engineers (Corps). If you wish to challenge Corps regulatory jurisdiction for this project site, you may request an approved JD, which is subject to appeal under the AAP. If you desire to provide new information regarding this project site to the Corps for further consideration in reevaluation of the JD, it is recommended that any information be submitted prior to or accompanying your request for a final approved JD. Once the appeal process is underway for an approved JD, the AAP rules do not allow for submission of new information. You are not required to respond to the Corps regarding a preliminary JD if you concur with the determination.

For obtaining an approved JD, there are two options. The first option is to obtain the services of a consultant trained in the identification and delineation of wetlands and waters of the United States. A list of consultants in the area may be obtained from the Corps office. Any wetland delineation performed by a consultant must be completed in accordance with the 1987 Corps of Engineers Wetland Delineation Manual and supplemental guidance. The submitted wetland delineation should be accompanied by appropriate documentation and will be subject to review and validation by the Corps. A properly prepared and supported wetland delineation report provided by a consultant will expedite project review under the authority of Section 404 of the Clean Water Act. The second option is to request an approved wetland delineation from the Corps office. However, due to resource limitations and the size of the proposed development, the Corps cannot conduct the delineation of wetlands on these lands without a substantial delay for the permit applicant. If you desire the Corps to delineate the wetlands, expect a delay of at least 3 months for us to begin this service. To accomplish this task, you will need to provide notice to the Corps that you elect not to complete the delineation process through a private consultant. You should also provide written right-of-entry for the Corps to access the properties related to this project for wetland delineation purposes.

In addition to the above information, we also request site-specific construction plans that describe, at least in concept, any proposed excavation or filling activity on the subject site. Upon receipt of this information, an site investigation of the property may be conducted. The Corps will then provide a formal wetland delineation describing the extent or absence of wetlands on the property likely to be affected by the proposed project. In accordance with Federal mitigation policy, we may also recommend ways the proposal can be altered to avoid impacting aquatic environments and wetlands. The final wetland determination will be the official position of the Corps used to ascertain the subsequent need for a Section 404 permit for the proposed work, and as an approved JD will be subject to the AAP.

Contact:

Regulatory Branch
U.S. Army Corps of Engineers
1645 S. 10th East Ave.
Tulsa, OK 74128-4609



CITY OF PONCA CITY
Community Development Department

400 E. Central, Suite 305 P.O. Box 1450, Ponca City, OK 74602* Phone (580) 767-0334* Fax (580) 767-0325

August 14, 2003

**Brian Nettles
Freeborn and Peters
311 South Wacker Drive
Chicago, ILL 60606-6677**

Re: Adverse impact of proposed abandonment of BNSF tracks in Ponca City, OK

Dear Brian:

As proposed, the abandonment of BNSF railroad tracks at the mileposts identified in the letter dated August 1, 2003, will traverse the designated 100-year floodplain at four separate locations. These locations are noted on the attached flood maps for Ponca City and Kay County. If the physical abandonment of the railroad line will be limited to the removal of rails and ties, while leaving the roadbed intact, there will be no impact to the floodplain as it currently exists.

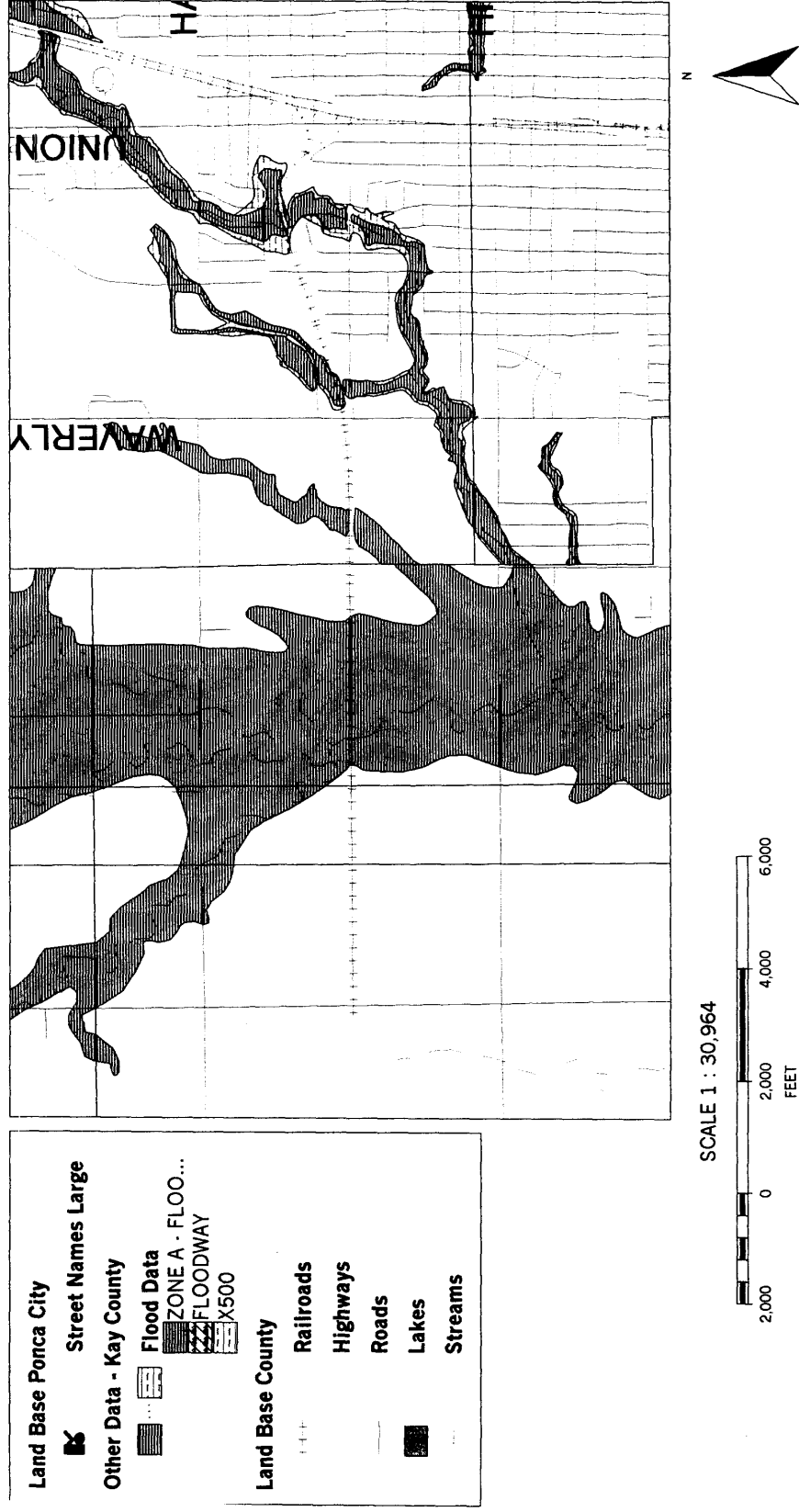
With regard to the structures that are in place where the railroad tracks cross the floodplain, i.e. trestles, box culverts, piping, etc, the floodplain may be impacted if one of these is functioning as a control structure. Where a trestle remains, the removal should be of no consequence, however. The trestle bridge crossing Bois D'Arc creek has been washed away and no longer physically exists.

If you should have any further questions, please call 767-0334 anytime.

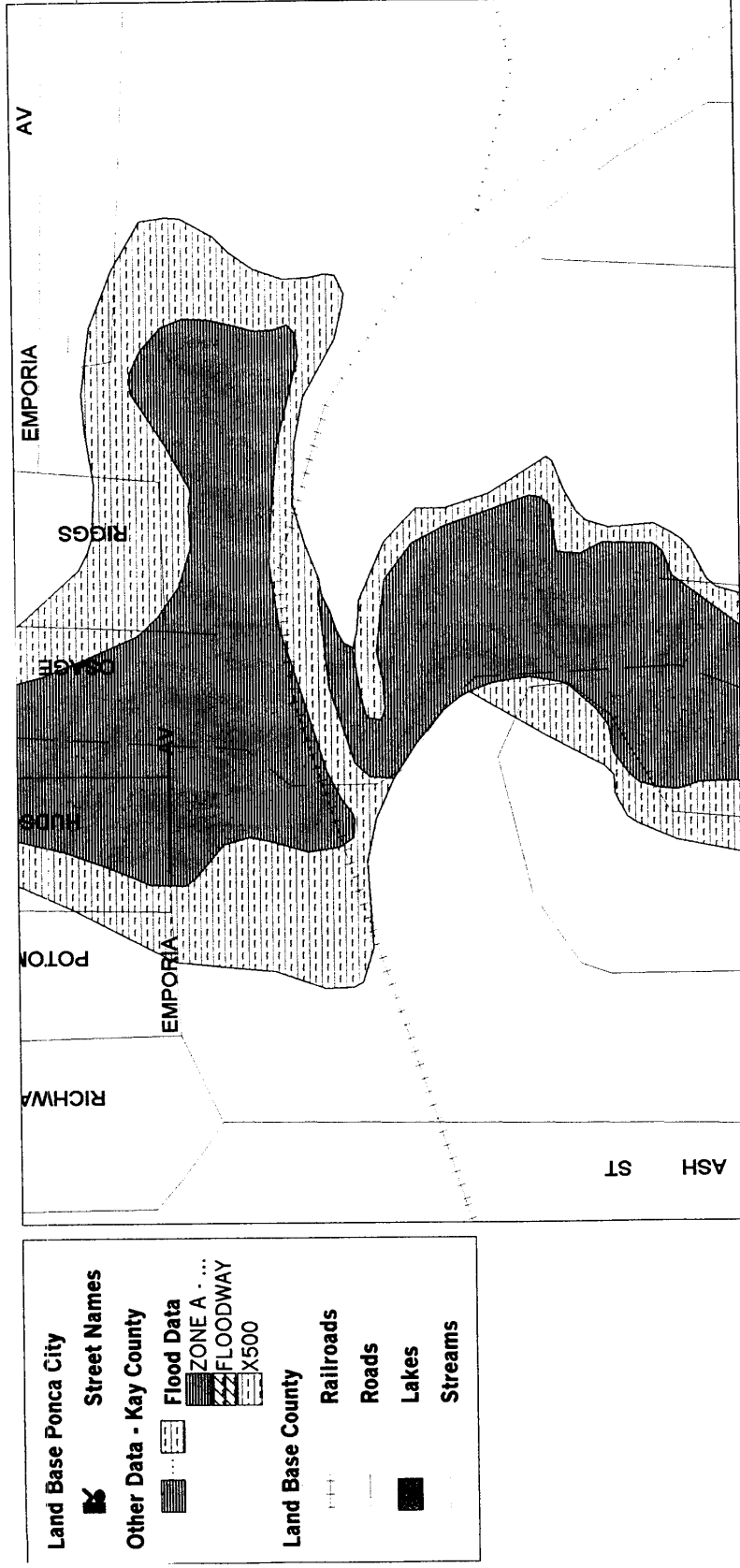
Sincerely,

**Chris Henderson
Community Development Director
Floodplain Administrator
City of Ponca City**

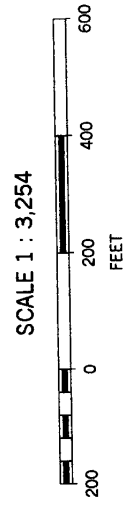
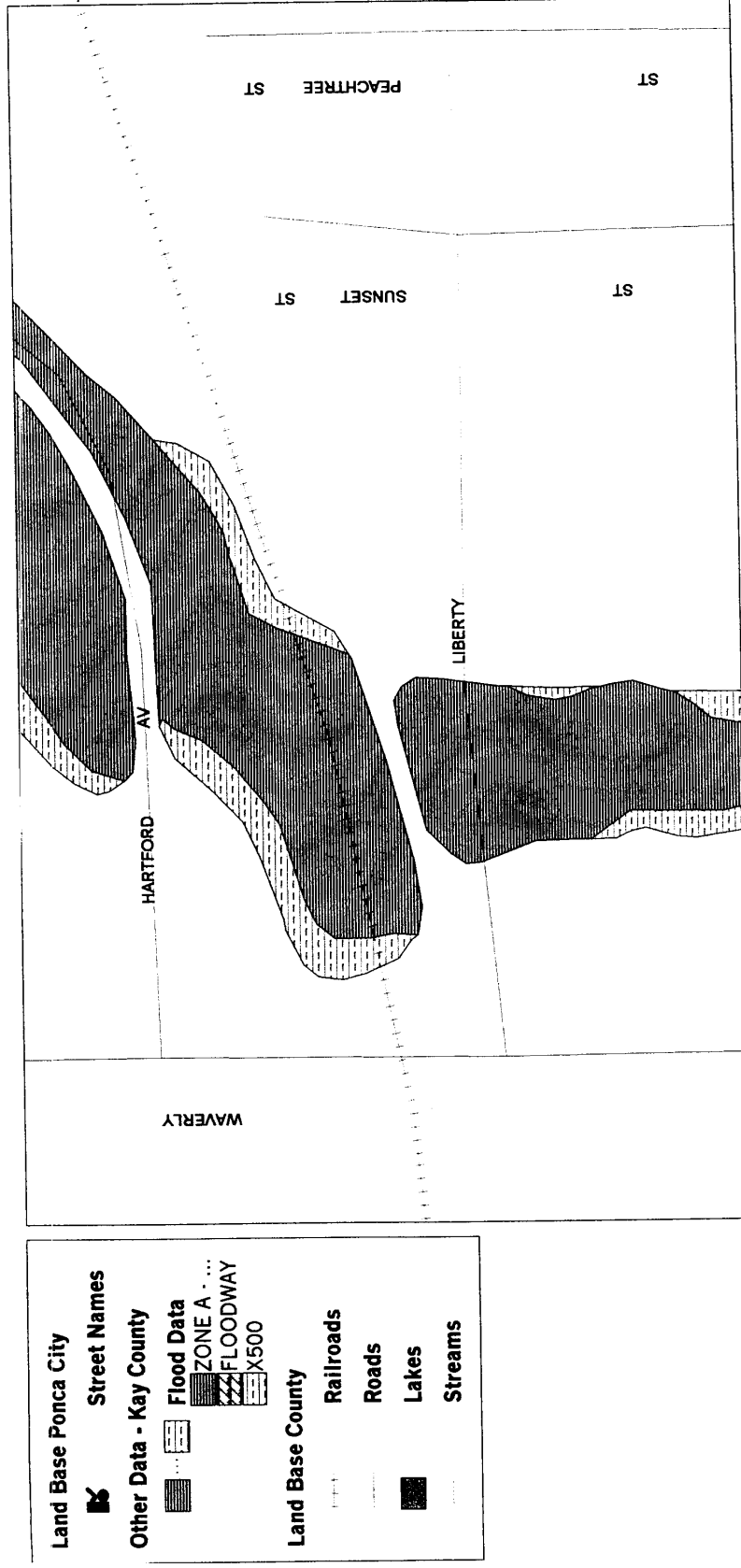
Ponca City Maps



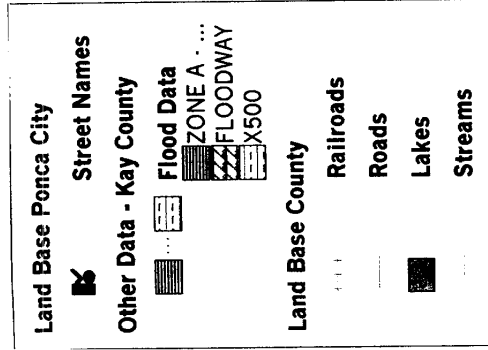
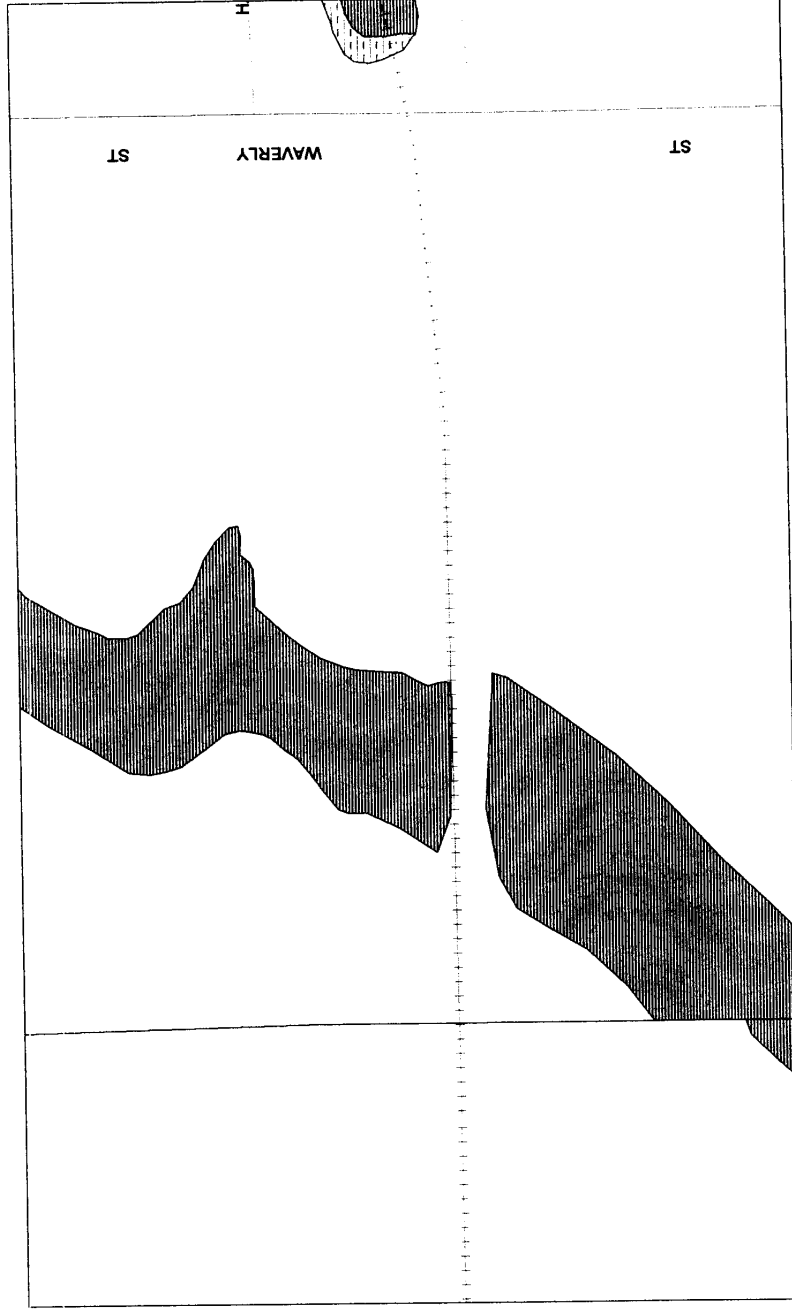
Ponca City Maps



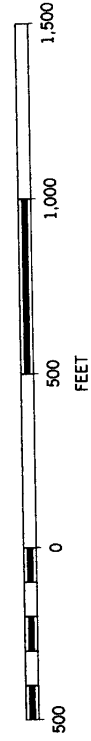
Ponca City Maps



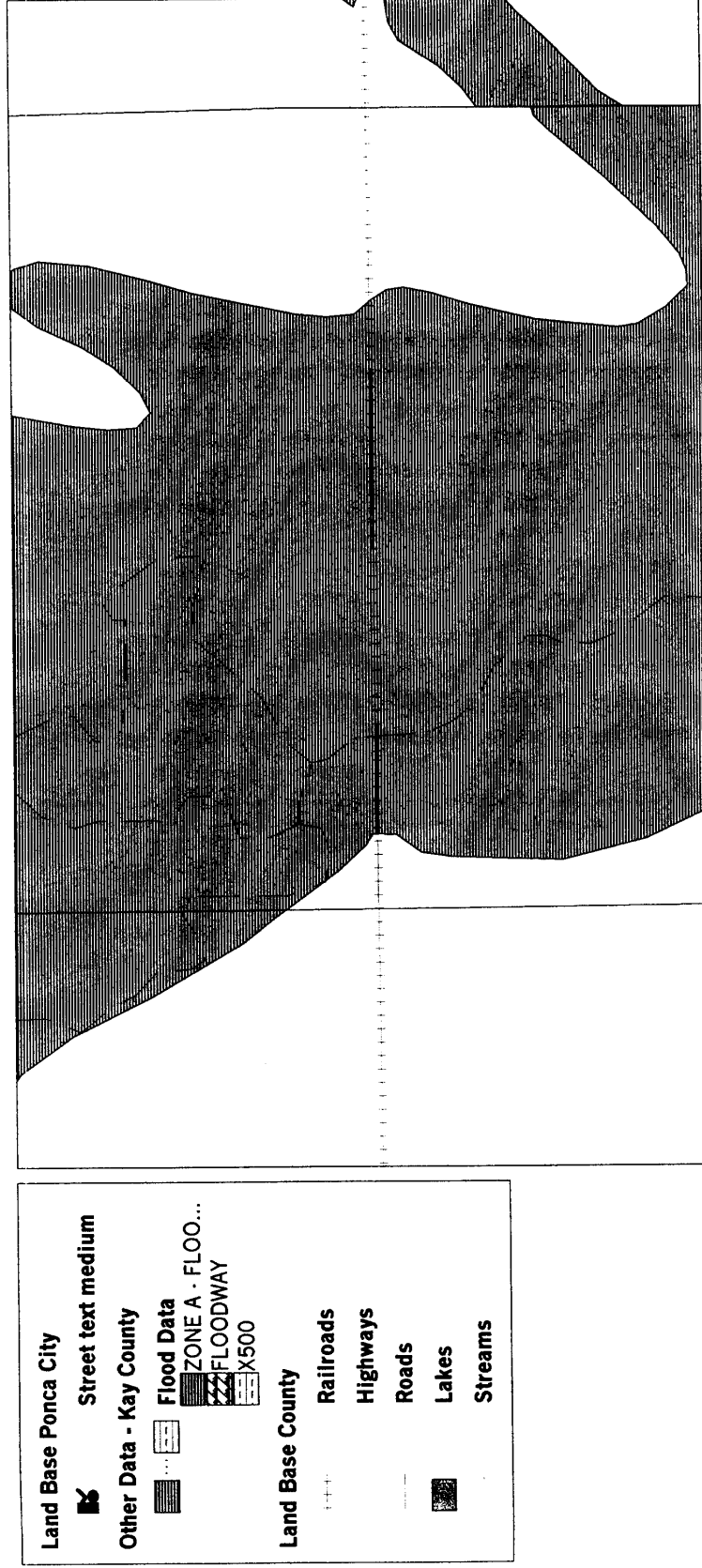
Ponca City Maps



SCALE 1 : 5,480



Ponca City Maps



Land Base Ponca City

Street text medium

Other Data - Kay County

Flood Data

ZONE A - FLOODWAY

FLOODWAY X500

Land Base County

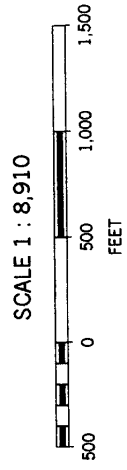
Railroads

Highways

Roads

Lakes

Streams



J



DEPARTMENT OF ARMY
CORPS OF ENGINEERS, TULSA DISTRICT
1645 SOUTH 101ST EAST AVENUE
TULSA, OKLAHOMA 74128-4609

April 26, 2004

Planning, Environmental, and Regulatory Division
Planning Branch

Reference: Surface Transportation Board Docket No. AB-6 (Sub-No. 412X)

Mr. Michael A. Smith
Attorneys at Law
311 South Wacker Drive, Suite 3000
Chicago, IL 60606-6677

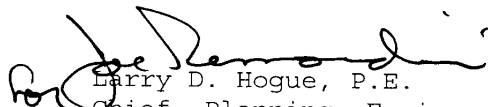
Dear Mr. Smith:

This is in response to your April 14, 2004, letter requesting flood plain comments for the referenced project in Ponca City, Kay County, Oklahoma. If there are any wetland or Section 404 permit issues to be addressed, that information will come from our Regulatory Branch under separate cover.

The actual abandonment of the railroad tracks would have no adverse effect on the flood plain. However, if physical changes are made to the railroad alignment, they should be done in a manner that does not increase flooding. Any changes should also be in compliance with all local, State, and Federal flood plain regulations. If ownership of the properties changes, the new owners should be notified of any potential flood hazards.

If you have questions, please call Mr. Joe Remondini, Flood Plain Management Services Program Manager at 918-669-7197. To more promptly respond to your needs, please send any future requests to his attention at the above address.

Sincerely,


Larry D. Hogue, P.E.
Chief, Planning, Environmental,
and Regulatory Division

K

Abandonment Documentation (M.P. 138.00 to M.P. 142.14)

List of Bridges

Bridge: 138.3	Built: 1909	Length: 19.6'	Height: 5.0'	Description: Open Deck Pile Trestle	Obstacle: Drainage
Bridge: 139.9	Built: 1909	Length: 138.0'	Height: 25.0'	Description: Open Deck Pile Trestle	Obstacle: Water
Bridge: 140.1	Built: 1909	Length: 139.3'	Height: 11.0'	Description: Open Deck Pile Trestle	Obstacle: Water
Bridge: 141.0	Built: 1902	Length: 41.5'	Height: 12.0'	Description: Open Deck Pile Trestle	Obstacle: Drainage

































L



Oklahoma Historical Society

Founded May 27, 1893

State Historic Preservation Office • 2704 Villa Prom • Shepherd Mall • Oklahoma City, OK 73107-2441

Telephone 405/521-6249 • Fax 405/947-2918

March 8, 2004

Mr. Brian Nettles
Freeborn & Peters LLP
311 S. Wacker Drive, Ste. 3000
Chicago, IL 60606-6677

RE: File #0963-04; Burlington Northern & Santa Fe Railway Company
Abandonment of 4.14 miles of Railroad between Milepost #138 to
Milepost #142.14, near Ponca City

Dear Mr. Nettles:

We have received and reviewed the documentation concerning the referenced project in Kay County. Additionally, we have examined the information contained in the Oklahoma Landmarks Inventory (OLI) files and other materials on historic resources available in our office. We find that there are no historic properties affected by the referenced project.

Thank you for the opportunity to comment on this project. We look forward to working with you in the future.

If you have any questions, please contact Charles Wallis, RPA, Historical Archaeologist, at 405/521-6381.

Should further correspondence pertaining to this project be necessary, the above underlined file number must be referenced. Thank you.

Sincerely,

Melvena Heisch
Deputy State Historic
Preservation Officer

MH:pm