

**BEFORE THE SURFACE AND TRANSPORTATION BOARD
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JACKSON COUNTY, MISSOURI—ACQUISITION AND OPERATION EXEMPTION

**LANDOWNERS' SUR-REPLY TO JACKSON COUNTY'S REPLY
TO LANDOWNERS' MOTION FOR DECLARATORY AND INJUNCTIVE RELIEF**

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Dated: August 23, 2019

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I. INTRODUCTION

The Landowners are Plaintiffs in the case of *Groh v. United States*, which is a Rails-to-Trails case pending before the Court of Federal Claims. The Landowners filed a Petition to revoke Jackson County's exemption on October 22, 2018. The Board revoked Jackson County's acquisition and operation exemption on July 31, 2019 because Jackson County's "recent activity" was incompatible with statements made by Jackson County when the Board's Decision granting the exemption was made in February of 2016. The Board made it clear that Jackson County was not authorized to construct a hiking and biking trail, that construction of a hiking and biking trail on the rail bed itself was improper, and that if Jackson County desired to build a hiking and biking trail they should have done so pursuant to the Trails Act.

The Landowners' motion for adverse abandonment and injunctive and declaratory relief was filed on August 12, 2019. The Board issued its Decision on August 19, 2019 and directed Jackson County to reply to the injunction request by August 23, 2019 and to the remainder of the filing by September 3, 2019. Jackson County did indeed file its reply concerning the Landowners' motion for an injunction on August 20, 2019. Because Jackson County's Reply shows a blatant disregard for the Board's revocation Decision of July 31, 2019 and contains numerous misstatements of both law and fact, this sur-reply is necessary.

II. ARGUMENT

A. Jackson County's Statement that Their Plan to Build a Hiking and Biking Trail Adjacent to the Rail Bed is Consistent with Their Obligation as a Common Carrier is Both a Gross Misstatement of Fact and a Grossly Irrelevant Statement of Law

Following the Board's revocation of Jackson County's exemption on July 31, 2019, Jackson County issued a press release to state that they were resuming their construction of the

trail.¹ Jackson County now attempts to justify their continued construction of the hiking and biking trail by referring back to the Board's initial Decision to grant Jackson County's exemption by stating that "[I]n a decision served February 4, 2016, the Board found that Jackson County's plan to build a trail in the right-of-way of the Line was consistent with its obligation to operate the Line as a common carrier."² Jackson County's statement is both a gross mischaracterization of the Board's decision in 2016 and a blatant disregard for the Board's Decision revoking their exemption on July 31, 2019.

Jackson County's attempt to somehow utilize the Board's Decision of February 4, 2016 as support for the proposition that Jackson County could construct the hiking and biking trail on the corridor is outrageous. The Board's Decision of February 4, 2016 merely transferred the common carrier obligation to Jackson County and, as made abundantly clear in the Board's Decision of July 31, 2019, never authorized the construction of the hiking and biking trail at all. Although the Board did conclude in the Decision of July 31, 2019 that the placement of the hiking and biking trail on top of the rail bed itself was inconsistent with Jackson County's common carrier obligation, the Board also made it abundantly clear that they did not authorize the construction of the hiking and biking trail either on the rail bed itself or adjacent to the rail bed unless Jackson County properly followed the procedures under the Trails Act.

As anticipated, Jackson County is attempting to separate the issue of the earlier construction of the hiking and biking trail on top of the rail bed itself, primarily in the southern section, from the work that is supposed to continue by constructing the hiking and biking trail

¹ Jackson County's response admits all of the facts necessary for the Board to issue an injunction by stating that "in a News Release posted on August 5, 2019, Jackson County advised the public that all work initially had stopped on the trail on the Line following the STB's Revocation Decision, but that upon further evaluation of the decision it had restarted trail work on the Line." See Jackson County's Reply at 2.

² See Jackson County's Reply at 1.

adjacent to the rail bed on the northern section, based on their statement that they will no longer remove the rails and ties on the northern segment. Jackson County gives lip service to the Board's Decision of July 31, 2019 about placing the hiking and biking trail on the rail bed itself as "a step that is contrary to the acquisition of a rail line,"³ and then immediately attempts to rely on its statement that "it would not remove the rail for the trail and that the trail would be adjacent to the rail line"⁴ on the northern segment.

The distinction that Jackson County is attempting to make has no merit whatsoever because Jackson County was not authorized to build the hiking and biking trail on either the southern segment or the northern segment because they did not follow the Board's procedures. Jackson County is attempting to say that "what is done is done" on the southern segment and "additional construction on the northern segment is okay" because it is adjacent to the rail bed and not in place of the rail bed and is therefore consistent with the common carrier obligation they purportedly received in February of 2016.

Jackson County obviously had no right to construct the hiking and biking trail on the southern segment on top of the rail bed itself. But, Jackson County also has no right to continue construction on the northern segment of the rail line either. In fact, since Jackson County's common carrier obligation has been revoked by and through the Board's Decision on July 31, 2019, Jackson County has no right to even set foot on the railroad corridor at this point, let alone continue construction on the northern segment of the line.

³ *Id.* at 2.

⁴ *Id.*

B. Jackson County's Stated Intention to Continue Construction of the Hiking and Biking Trail is a Blatant and Outrageous Disregard of the Board's Decision of July 31, 2019

Jackson County readily admits that, after they “advised the public that all work initially had stopped on the trail..., that upon further evaluation of the Decision it had restarted trail work on the Line.”⁵ Jackson County even went further, however, and specifically attempted to justify their continued construction on the trail by re quoting the press release that said “moving forward, no rail, ties, or other track materials will be removed from the rail bed.”⁶ The attempted ruse was finally completed when Jackson County admitted to their attempted distinction between the construction that has already occurred on the southern segment and the continued construction on the northern segment by stating that “Jackson County has ceased all track, rail and track material removal from the Line and has ceased trail construction in the road bed of the Line.”⁷

Jackson County is totally missing the point. The Board's Decision of July 31, 2019 revoked Jackson County's exemption and, as a result, it makes no difference whether Jackson County is now constructing the hiking and biking trail on the corridor without removing the rail and track material or not. The point is that Jackson County was never authorized to construct a hiking and biking trail in the first place, because they did not follow the law and the Board's procedures, and now that Jackson County's exemption has been revoked, Jackson County has no right to continue the construction because their exemption to even occupy the corridor has been revoked. Jackson County is attempting to issue a middle finger salute to the Board's processes and procedures, the Board's Decision of July 31, 2019, and basic concepts of property law and property rights.

⁵ *Id.* at 2.

⁶ *Id.*

⁷ *Id.*

C. All of the Prerequisites for the Issuance of an Injunction are Easily Established Under these Facts

Jackson County's attempted argument that the Landowners are not likely to prevail on the merits is ludicrous. Jackson County attempts to state that the Landowners are not likely to prevail on the merits "because Jackson County is not removing rail from the Line or conducting any trail construction on the road bed or otherwise contravening the revocation Decision."⁸ But, Jackson County was not authorized to build the trail when they received their exemption. Since Jackson County has not followed the Board's procedures to construct a hiking and biking trail in the first place, since Jackson County's exemption has been revoked so that Jackson County has no legal right to even acquire or operate a rail line on the corridor, let alone construct a hiking and biking trail, and since the construction of a hiking and biking trail on top of a railroad purposes easement is not permitted under basic property law or Missouri law, the landowners will obviously prevail on the merits.

Jackson County also attempts to argue that the "Landowners have not shown that they would be irreparably harmed in the absence of the requested relief."⁹ Since these Landowners own the underlying fee in the right-of-way, Jackson County has no right, under the Trails Act or state law, to come in and use their land without paying for it. Obviously, the placement of a hiking and biking trail on top of the Landowners' land will irreparably harm all of these Landowners and will entitle them to damages for the value of the land, if the taking is allowed to stand, and for trespass if the taking is not allowed to stand. Either way, since Jackson County is violating these Landowners' basic property rights, they will suffer irreparable harm, in addition to the irreparable harm already incurred, if construction of the hiking and biking trail is allowed to continue.

⁸ *Id.* at 3.

⁹ *Id.* at 4.

Jackson County’s statement that the “Landowners have not shown that issuance of the injunction will not substantially harm other parties”¹⁰ is specious. If Jackson County does not pursue the Trails Act, even if they were allowed to do so at this point, the Landowners would either get their land back without Jackson County invading and trespassing on their land, or they would be paid the value of the land for the taking under the Fifth Amendment. Jackson County will obviously not be harmed if an injunction is issued, and in fact should be benefited, by stopping their illegal activity, and they cannot ultimately be harmed because they have a proper remedy under the Trails Act if it is pursued.

Jackson County’s tongue in cheek statement that the “Landowners have not shown that issuance of the injunction is in the public interest”¹¹ is also specious. Obviously, granting the injunction is in the public interest because it protects private property rights. Granting the injunction also is in the public interest so that Jackson County is not allowed to repeatedly and blatantly and outrageously spurn the Board’s Decision of July 31, 2019.

III. CONCLUSION

The Board should grant the Landowners’ motion to file their sur-reply and should issue an injunction against Jackson County to stop the further construction of the hiking and biking trail.

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¹⁰ *Id.* at 5.

¹¹ *Id.*

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CERTIFICATE OF SERVICE

I certify that I have this day served copies of document upon all parties of record in this proceeding, by U.S. Mail this 23rd day of August, 2019.

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