

August 20, 2019

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Ms. Cynthia Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street SW
Washington, DC 20423

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August 20, 2019
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Public Record

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**Re: STB Financial Docket No. 35982, Jackson County, Missouri - Acquisition and
Operation Exemption - Union Pacific Railroad**

Dear Ms. Brown:

Enclosed for filing in the above-referenced docket is the Reply of Jackson County to Landowners' Motion for Injunctive and Declaratory Relief.

If you have any questions, please let me know.

Respectfully submitted,



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Enclosures

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35982

**JACKSON COUNTY, MISSOURI
-- ACQUISITION AND OPERATION EXEMPTION--
UNION PACIFIC RAILROAD COMPANY**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1150.31**

**JACKSON COUNTY'S REPLY TO LANDOWNERS' MOTION FOR INJUNCTION AND
DECLARATORY RELIEF**

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Dated August 20, 2019

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On August 12, Deborah S. Groh *et al* (“Landowners”) filed Landowners’ Motion for Adverse Abandonment and Injunctive and Declaratory Relief (the “Motion”) to *inter alia* “stop additional construction of the hiking and biking trail.” Motion at 14; see Motion at 6. For the reasons stated below, the Landowners’ motion for injunctive and declaratory relief should be denied.¹

Procedural History

In a decision served on July 31, 2019, the Surface Transportation Board (“STB” or “Board”) revoked Jackson County’s acquisition and operation exemption for a 17.7 mile rail line in Jackson County (the “Line”). See Jackson Cty., MO—Acquis. & Operation Exemption—Union Pac. R.R. (“Revocation Decision”), FD 35982 (STB served July 31, 2019). In 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. See Jackson Cty., MO—Acquis. & Operation Exemption—Union Pac. R.R. (“Exemption

¹ Jackson County will reply to Landowners’ motion for adverse abandonment in a separate filing.

Decision”), FD 35982 (STB served Feb. 4, 2016). The Exemption Decision was based in part on Jackson County’s statement that it had no plans to remove track from the Line for the planned trail. Exemption Decision, slip op. at 3. In the Revocation Decision, the Board said that “[b]y removing the track and placing the trail directly on the rail bed, where the track previously was, the County has taken a step that is contrary to the acquisition of a rail line.” Revocation Decision slip op. at 1-2. The Board said:

...the County represented in 2016 that it would not remove rail for the trail and that the trail would be adjacent to the rail line. However, in direct contradiction to those representations, the County has removed 8.75 miles of track on the southern segment of the Line and placed the trail directly on the rail bed of that segment of the Line. The County also plans to remove track in several locations on the northern segment of the Line.... Here, the County has removed track and placed a trail on the rail bed of a rail line that has not been authorized for abandonment.... The County’s actions—removing track and then placing the trail directly on the rail bed—are inconsistent with the acquisition exemption’s purpose.

Id. at 6–7 (internal citations omitted).

Statement of Facts

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. The News Release said “Moving forward, no rail, ties or other track materials will be removed from the rail bed.” See Motion, Exhibit A.

On August 2, Jackson County issued the Start Work Order attached as Exhibit 1, which says “The Contractor shall not remove any rails or ties, and may not alter the roadbed. The Contractor may clear the vegetation in these areas as noted on the Plans.”

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.

Argument

Landowners and Jackson County agree that (A) a party seeking an injunction must establish that (1) it is likely to prevail on the merits of any challenge to the action sought to be enjoined; (2) it will be irreparably harmed in the absence of the requested relief; (3) issuance of the injunction will not substantially harm other parties; and (4) granting the injunction is in the public interest² and (B) that, the party seeking an injunction “carries the burden of persuasion on all of the elements required for [such] extraordinary relief.”³ See Motion at 12–13.

Landowners have failed to meet the first two injunction requirements and have failed to even address the third and fourth requirements and therefore the Board should dismiss their motion for an injunction to stop additional construction of the hiking and biking trail.^{4,5}

1. 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

Landowners argue that “Jackson County has had no right to build any portion of the hiking and biking trail on ... the Line without properly following the Board’s processes and procedures ...” Motion at 14. Also, that “as a result of the Board’s decision, Jackson County actually has no right to even set foot on the right-of-way.” *Id.* However, the Revocation Decision does not say this or lend any support to these arguments.

² . See, e.g., *Wash. Metro. Area Transit Comm’n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977).

³ See *BP Amoco Chem. Co. v. Norfolk S. Ry.*, NOR 42093, slip op. at 4 (STB served June 6, 2005) (quoting *San Joaquin Valley R.R.—Aban. Exemption—In Tulare & Kern Ctys., Cal.*, AB 398 (Sub-No. 5X), slip op. at 4 (STB served Apr. 3, 1998)).

⁴ Landowners state their request for injunctive relief more narrowly in their conclusion. Motion at 20–21 (the Board should “issue an injunction to stop any further construction on the hiking and biking trail at any location where Jackson County has removed the rails and ties and the hiking and biking trail is being constructed in place or on top of the former railbed.”) To the extent this is read as a request for an injunction stopping trail construction outside the railbed, Landowners have not met the acknowledged standard; to the extent this is read as a request for an injunction stopping trail construction in the railbed only, it is not necessary, because Jackson County has ceased all trail construction (and track removal) in the railbed.

⁵ Despite the title of the Motion, the Landowners have not sought any declaratory relief.

The Revocation Decision says that by removing the track and placing the trail directly on the rail bed, Jackson County took a step that is contrary to the acquisition of a rail line. Revocation Decision, slip op. at 1-2. It says Jackson County removed track and placed the trail directly on the rail bed of the Line in direct contradiction to 2016 representations. *Id.*, slip op. at 6. It also says the Jackson County track removal and trail placement in the rail bed was on a line not authorized for abandonment and was not consistent with the Jackson County acquisition exemption's purpose. *Id.*, slip op. at 7. The Revocation Decision does not reverse the Exemption Decision's conclusion that a plan to build a trail in the same right-of-way with a line of railroad is consistent with a common carrier obligation; and it did not prohibit continued construction of trail in the right-of-way off the railbed. Jackson County has ceased all activities that formed the basis for the Revocation Decision.⁶

2. Landowners Have Not Shown They Would Be Irreparably Harmed in the Absence of the Requested Relief

Landowners have made no showing that they would be irreparably harmed absent injunctive relief. Landowners say "any additional construction of the hiking and biking trail will obviously result in significant irreparable harm." Motion at 14. However, Landowners present no argument or facts to support their assertion.

⁶ Landowners also loosely rely on state law, see Motion at 14-15, but in the Revocation Decision (at page 7) the Board said state and local law arguments did not inform its decision and state property law arguments should not be a basis for injunctive relief here.

3. Landowners Have Not Shown That Issuance of the Injunction Will Not Substantially Harm Other Parties

After acknowledging this requirement for a grant of injunctive relief and their burden of proof, Landowners do not even allege that Jackson County or the public would not be harmed if the Board granted the injunctive relief.

4. Landowners Have Not Shown That Issuance of the Injunction Is In The Public Interest

After acknowledging this requirement for a grant of injunctive relief and their burden of proof, Landowners do not even allege that issuance of an injunction is in the public interest.

Conclusion

For the reasons stated above, the Landowners' motion for injunctive and declaratory relief should be denied.

Respectfully submitted,

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