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

Re: Jackson County, Missouri – Reply to Motion for Adverse Abandonment, Finance
Docket No. 35982

Dear Ms. Brown:

Enclosed for filing in the above-referenced docket is the Reply by Jackson County, Missouri to the Landowners' Motion for Adverse Abandonment.

If you have any questions, please contact me.

Respectfully submitted,

A handwritten signature in black ink that reads "Carolyn Kraska".

Carolyn Kraska

Associate
Carolyn.Kraska@hoganlovells.com
D +1 202 637 4649

**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 MOTION FOR ADVERSE ABANDONMENT

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(816) 881-3355

Counsel for Jackson County, Missouri

Dated: September 3, 2019

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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**JACKSON COUNTY, MISSOURI
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Background

In February of 2016, Jackson County received authority through the Board’s class exemption process at 49 C.F.R. § 1150.31 to acquire from Union Pacific Railroad Company (“UP”) and operate approximately 17.7 miles of rail line in Jackson County, Missouri (the “Line”). Jackson County acquired the Line from UP in April of 2016.

In October of 2018, Deborah S. Groh *et al* (the “Landowners”) filed a petition asking the Board to revoke the Jackson County exemption. In November of 2018, Jackson County filed a reply in opposition to the Landowners’ revocation petition and over the course of the next five months, Jackson County and the Landowners filed additional evidence and argument regarding whether the Jackson County exemption should be revoked.¹

¹ A detailed summary of the procedural history is set forth in Jackson Cty., Mo.—Acquis. & Operation Exemption—Union Pac. R.R., FD 35982, (STB served July 31, 2019)(the “Revocation Decision”).

On July 2, 2019, the Landowners and Jackson County reached a partial settlement agreement pursuant to which Jackson County would seek Board authority to abandon the Line and then railbank it and commence interim trail use under the Trails Act.² For its part, the Landowners agreed to not oppose the abandonment or the trail use.³ On July 23, 2019, Jackson County initiated preparation of an environmental report for the planned abandonment filing by sending an inquiry letter to certain environmental and historic preservation stakeholders as required under the Board's abandonment regulations.⁴

In a decision served on July 31, 2019, the Board revoked Jackson County's acquisition and operation exemption. Jackson County's removal of track from the Line and its trail construction directly on the rail bed within the right-of-way contradicted earlier representations that it would not remove track for the trail and that the trail would be adjacent to the rail line. Revocation Decision at 7. The Board concluded in the Revocation Decision that it was necessary to revoke Jackson County's exemption to "ensure the integrity of the Board's processes and therefore help ensure the continuity of a sound transportation system." *Id.* It was never Jackson County's intention to act in contravention of the Board's processes. Jackson County ceased all track removal and trail construction on the roadbed upon receipt of the Board's Revocation Decision.⁵

² In the three years and five months of Jackson County's ownership, no one has made a request for freight service on the Line.

³ A copy of the email exchange between counsel setting forth the partial settlement agreement is attached. See Exhibit 1.

⁴ See Exhibit 2.

⁵ See Exhibit 1, Jackson County Reply to Landowners' Motion for Injunction and Declaratory Relief. Upon receipt of the Revocation Decision, out of an abundance of caution, Jackson County ceased all trail construction activity on the Line. After carefully reviewing the decision and in order to minimize increased trail construction costs that would result from protracted delay, Jackson County restarted trail construction off the road bed and without any further track removal.

On August 12, 2019, the Landowners filed a Motion for Adverse Abandonment and Injunctive and Declaratory Relief (the “Motion”) in which they requested a “finding of adverse abandonment.” Motion at 2.⁶

On August 14, 2019, Landowners indicated their intention to oppose railbanking of the Line and interim trail use by Jackson County. See Exhibit 3.

Argument

1. Landowners’ Motion For Adverse Abandonment Should Be Denied

Landowners’ Motion for Adverse Abandonment should be denied. An adverse abandonment requires the filing of an application. E.g., Alloy Property Company, LLC -- Adverse Aban. -- Chicago Terminal Railroad in Chicago, Ill., AB 1258 (STB served April 30, 2018); Denver & Rio Grande Railway Historical Foundation-- Adverse Aban. --in Mineral County, AB 1014 (STB served May 23, 2008)(“DRGRHF Abandonment”).

In addition, granting the Motion would put Landowners in a position to attempt to block interim trail use and railbanking, which Landowners have said they intend to do. This would contravene the partial settlement agreement.⁷ Although Jackson County would oppose the Landowners’ effort to block interim trail use and railbanking and it is not the Board’s role to enforce the partial settlement agreement, it is the Board’s longstanding policy to encourage the private resolution of disputes through voluntary negotiations. E.g., United States Department of Energy and the United States Department of Defense v. Baltimore & Ohio Railroad Company et al, NOR 38302S, (STB served June 28, 2017). By denying the Motion, the Board would facilitate Landowners’ compliance with the partial settlement agreement. This would encourage

⁶ Jackson County replied to the Motion for Injunctive and Declaratory Relief on August 20, 2019.

⁷ In fact, the mere filing of the Motion for Adverse Abandonment is inconsistent with the Landowners’ agreement not to oppose Jackson County’s planned railbanking and interim trail use.

parties to settle disputes privately and without concern that a party could use the Board's processes to contravene a settlement agreement.

2. Jackson County and Union Pacific Railroad Company Intend To Jointly Seek Authorization For Abandonment And To Implement Railbanking and Trail Use, Which Is Consistent With The Revocation Decision And The Partial Settlement Agreement

Jackson County and UP intend to jointly file a petition for exemption for authority to abandon the Line.⁸ If the Board authorizes abandonment of the Line, Jackson County will seek issuance of a certificate of interim trail use based on the filing of a Statement of Willingness to Assume Financial Responsibility for the Line and then UP and Jackson County intend to enter into an trail use/railbanking agreement that complies with the Board's Trails Act regulations.

The planned joint abandonment petition is consistent with the Revocation Decision. In the Revocation Decision, the Board noted that removal of track from a rail line to develop and construct a trail and later removal of the trail before reconstructing the track and track bed for possible future reactivation of freight service is proper under the Trails Act. Revocation Decision at 6.

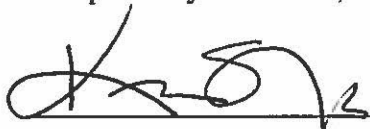
The planned joint abandonment petition also is consistent with the Jackson County/Landowners partial settlement agreement. If the Board authorizes abandonment, the Line will be railbanked and placed in interim trail use, as contemplated by the partial settlement agreement.

⁸ It is clear from the Revocation Decision that UP is an appropriate party to seek abandonment authorization. To avoid any doubt about whether Jackson County, the owner of the Line subject to the Board's jurisdiction, also needs abandonment authorization in these circumstances, Jackson County also will seek such authorization.

Conclusion

For the foregoing reasons, Jackson County respectfully requests that the Landowners' Motion for Adverse Abandonment be denied.

Respectfully submitted,



Kevin M. Sheys
Edward J. Fishman
Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street NW
Washington, DC 20004
(202) 637-5600

Counsel for Jackson County, Missouri

Bryan O. Covinsky
County Counselor
Jackson County Courthouse-2nd Floor
415 East 12th Street
Kansas City, MO 64106
(816) 881-3355

Dated: September 3, 2019

Exhibit 1

Sheys, Kevin

From: Sheys, Kevin
Sent: Tuesday, July 2, 2019 7:14 PM
To: Thomas S. Stewart
Cc: Elizabeth G. McCulley
Subject: Re: Groh v Jackson-STB

Yes, but we are trying to have a written record with all points confirmed. Thanks

Sent from my iPhone

> On Jul 2, 2019, at 7:12 PM, Thomas S. Stewart <Stewart@swm.legal> wrote:

>

> That is correct, as we have previously stated on numerous occasions now!!

>

> Sent from my iPhone

>

>> On Jul 2, 2019, at 5:58 PM, Sheys, Kevin <kevin.sheys@hoganlovells.com> wrote:

>>

>> But your filing with the CFC would not question or challenge the abandonment filing and rail banking, correct?

>>

>> Thanks,

>>

>> Kevin

>>

>> -----Original Message-----

>> From: Thomas S. Stewart [<mailto:Stewart@swm.legal>]

>> Sent: Tuesday, July 2, 2019 6:53 PM

>> To: Sheys, Kevin

>> Cc: Elizabeth G. McCulley

>> Subject: Re: Groh v Jackson-STB

>>

>> Kevin, we will confirm our prior agreement, restated again today, to not oppose your effort to seek abandonment authority and pursue railbanking. I will also confirm that the agreement applies to all of our clients, both in Groh and Morris. But, although we agree not to file anything further before the STB, we will not agree to not pursue or file anything before the CFC related to the pending action before the STB pursuant to 28 U.S.C. sec 1336(b) and, in fact, we intend to file that pleading on July 10, as we said earlier today, unless Jackson County is interested in resolving the state court actions too.

>>

>> Sent from my iPhone

>>

>>> On Jul 2, 2019, at 4:15 PM, Sheys, Kevin <kevin.sheys@hoganlovells.com> wrote:

>>>

>>> Liz and Tom,

>>>

>>> Thanks for your time earlier today. Sorry for the delay in sending this email.

>>>

>>> Per our conversation, this email is to confirm that you have agreed that you will not oppose the Jackson County abandonment filing, wherein Jackson County will seek abandonment authority and then seek a NITU and rail bank the

line. For avoidance of doubt, I would ask you to confirm that this promise applies to all of your clients (and not just those named in the STB pleadings) and further that your agreement to not oppose means you will not file anything at the STB pertaining to the abandonment filing or the trail use/rail banking or encourage or assist others to do so. I will also repeat our shared understanding that your agreement does not in any way limit your litigation outside of the STB on related matters.

>>>

>>> If the foregoing is consistent with our call, please confirm by reply email.

>>>

>>> Thanks, Kevin

>>>

>>>

>>>

>>>

>>> Kevin Sheys

>>> Partner

>>> Hogan Lovells US LLP

>>> Columbia Square

>>> 555 Thirteenth Street, NW

>>> Washington, DC 20004

>>> Tel: +1 202 637 5600

>>> Direct: +1 202 637 3680

>>> Fax: +1 202 637 5910

>>> Email: kevin.sheys@hoganlovells.com

>>>

>>> www.hoganlovells.com

>>>

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>>>

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>>>

>>

>

Exhibit 2

July 23, 2019

**ALL AGENCIES SHOWN ON THE
ATTACHED SERVICE LIST**

**Re: Jackson County, Missouri – Abandonment Exemption
Surface Transportation Board Docket No. AB-1278X**

To Whom It May Concern:

This letter is to advise you that Jackson County, Missouri ("Jackson County"), doing business as Rock Island Rail Corridor Authority, intends to file for the abandonment of the segment of its lines of railroad formerly operated by Union Pacific Railroad extending between Milepost 288.3 and Milepost 270.6 in Jackson County, Missouri (the "Subject Line"). The Subject Line is in United States Postal Service ZIP Codes 64063, 64081, 64082, 64086, 64129, 64133, 64138, and 64139. A map of the Subject Line is attached as Exhibit A.

Jackson County plans to seek Surface Transportation Board ("STB") authorization for its abandonment through a notice of exempt abandonment pursuant to the provisions of 49 CFR § 1152.50 on or about September 30, 2019 in Surface Transportation Board Docket No. AB-1278X.

Based upon information in Jackson County's possession, the Subject Line does not contain federally granted rights of way. Any documentation in Jackson County's possession will be made available promptly to those requesting it. Jackson County intends to preserve the right of way through rail banking and interim trail use. Jackson County believes that rail banking and interim trail use is in the public interest.

No local service has been provided on the Subject Line since well before Jackson County acquired the lines in 2015. Jackson County does not believe that there are any alternatives to the proposed action. Although the line is unusable condition, Jackson County intends to remove and sell or dispose of the remaining track and track material. Jackson County believes removal of such remaining material, and rail banking and interim trail use will not have a significant effect upon the environment or any historic preservation effects. Even if Jackson County were to consummate the abandonment, it believes that the abandonment would not have a significant effect upon the environment or historic preservation effects.

In advance of preparing an environmental and historic report as required by applicable STB regulations, we are consulting with appropriate agencies such as yours regarding any concerns which they may have as to environmental and historic preservation effects of the proposed abandonment.

We would appreciate an expression from you by August 23, 2019 that, within the area of your authority, you do not perceive that the abandonment would have a significant effect upon the environment or historical preservation of the area (or expressing any concerns that you have). If you have any questions about the railroad's proposal or if you need assistance in this matter, please call me at (202) 637-4649.

Thank you for your cooperation.

Best regards,

A handwritten signature in cursive script, appearing to read "CG Kraska".

Carolyn Gaut Kraska

Associate
carolyn.kraska@hoganlovells.com
D +1 202 637 8568

AGENCY SERVICE LIST

Missouri Dept. of Transportation
Kansas City District
600 NE Colbern Rd.
Lee's Summit, MO 64086

Missouri Dept. of Natural Resources
Division of Environmental Quality
P.O. Box 176
Jefferson City, MO 65102

Missouri Department of Conservation
Kansas City Regional Office
12405 SE Ranson Rd.
Lees Summit, MO 64082

U.S. Environmental Protection Agency
Region 7
11201 Renner Boulevard
Lenexa, KS 66219

U.S. Fish and Wildlife Service
Midwest Region
5600 American Blvd. West, Suite 990
Bloomington, MN 55437-1458

Missouri Dept. of Natural Resources
State Historic Preservation Office
1659 East Elm Street
Jefferson City, MO 65101

US Army Corps of Engineers
Kansas City District
601 E. 12th St.
Kansas City, MO 64106

National Park Service
1849 C Street NW
Washington, DC 20240

National Park Service, Midwest Region
601 Riverfront Drive
Omaha, NE 68102-4226

U.S. Dept. of Agriculture
Natural Resources Conservation Service
1400 Independence Ave., S.W.
Washington, DC 20250

U.S. Dept. of Agriculture
Natural Resources Conservation Service
Blue Springs Service Center
1972 NW Copper Oaks Cir.
Blue Springs, MO 64015-8300

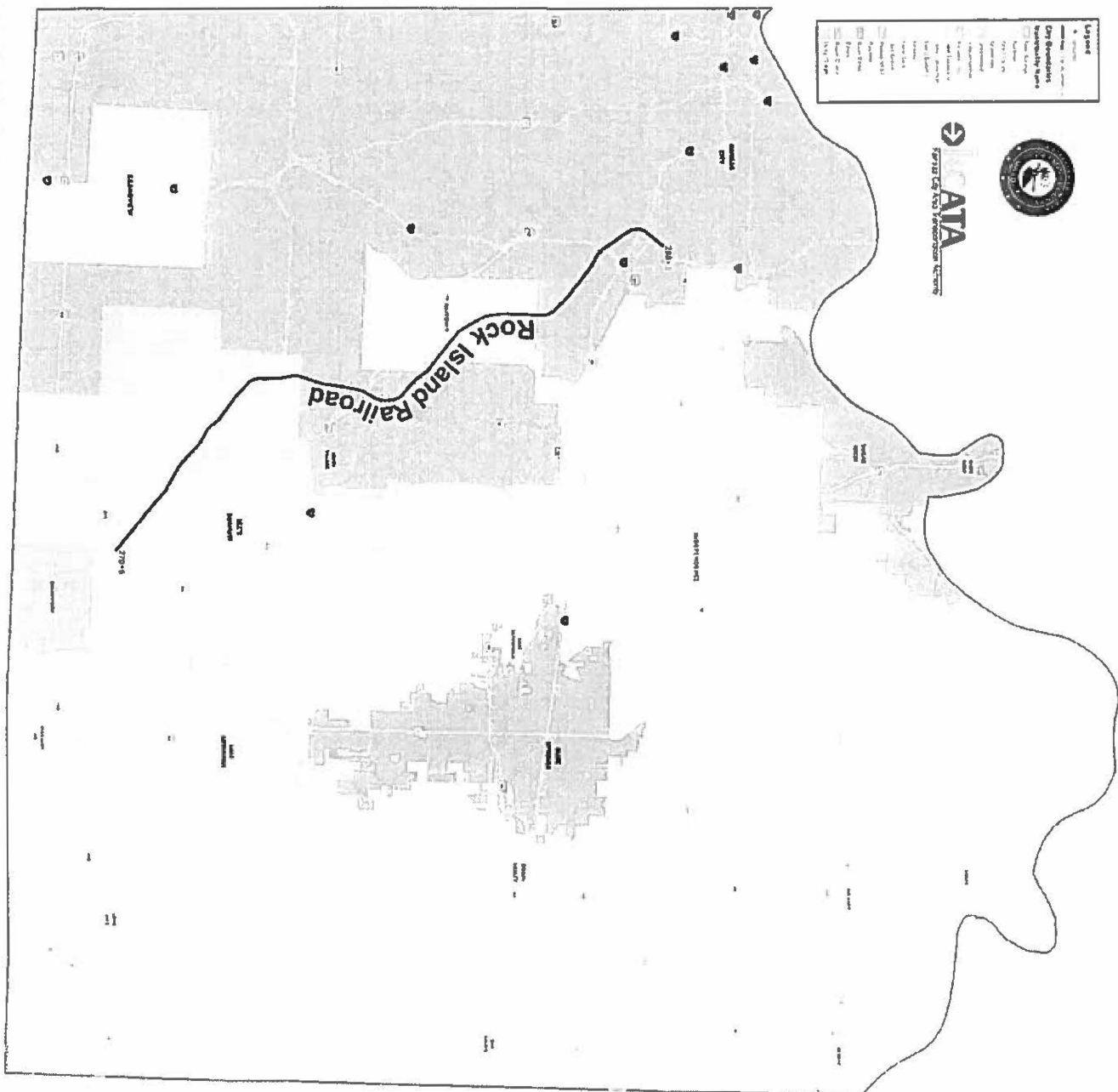
National Geodetic Survey/NOAA
Communications and Outreach Branch
NOAA, N/NGS12
National Geodetic Survey, SSMC3 #9340
1315 East-West Highway
Silver Spring, MD 20910-3282

EXHIBIT A

Map



1. good
 2. ☐ bad
 3. ☐ very good
 4. ☐ very bad
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 98. ☐ none
 99. ☐ none
 100. ☐ none



**Jackson County, Missouri
GIS Department**

[illegible]

Exhibit 3

Sheys, Kevin

From: Sheys, Kevin
Sent: Wednesday, August 14, 2019 3:11 PM
To: Thomas S. Stewart
Cc: Elizabeth G. McCulley
Subject: Re: Groh

I am talking about our email exchange on July 2. That exchange clearly includes rail banking not to mention the adverse abandonment filing.

Kevin

Sent from my iPhone

> On Aug 14, 2019, at 1:28 PM, Thomas S. Stewart <Stewart@swm.legal> wrote:

>

> Kevin, I am growing tired of your sanctimonious preaching to me—you have been wrong on every issue and you are wrong again. The law is quite clear—we won't oppose the abandonment b/c we want that too but we will oppose railbanking and I have no idea what you are talking about some obligation not to oppose that!!

>

> Sent from my iPhone

>

>> On Aug 14, 2019, at 1:23 PM, Sheys, Kevin <kevin.sheys@hoganlovells.com> wrote:

>>

>> Tom,

>>

>> Your clients are obligated not to oppose Jackson County's abandonment and the fact that I do not have anything further to report to you at this time does not excuse you from your obligation.

>>

>> Thanks,

>>

>> Kevin

>>

>>

>> -----Original Message-----

>> From: Thomas S. Stewart [<mailto:Stewart@swm.legal>]

>> Sent: Wednesday, August 14, 2019 1:17 PM

>> To: Sheys, Kevin

>> Subject: Re: Groh

>>

>> I don't understand that. I specifically told you I was going to seek abandonment and that wouldn't impact you seeking abandonment too. But, now, without an agreement from you re the Trails Act, the Plaintiffs will oppose railbanking and the Trails Act. Thanks.

>>

>> Sent from my iPhone

>>

>>> On Aug 14, 2019, at 1:11 PM, Sheys, Kevin <kevin.sheys@hoganlovells.com> wrote:

>>>

>>> The report seemed mooted by your filing. I have nothing to report at this time. Thanks Kevin

>>>

>>> Sent from my iPhone

>>>

>>>> On Aug 14, 2019, at 11:00 AM, Thomas S. Stewart <Stewart@swm.legal> wrote:

>>>>

>>>> Kevin, I thought you promised to get back to me by the close of business Tuesday. Any report??

>>>>

>>>> Sent from my iPhone

>>>>

>>>

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>>>

>>>

CERTIFICATE OF SERVICE

I, Carolyn Kraska, hereby certify that on September 3, 2019, a true and correct copy of Jackson County's Reply to Landowners' Motion for Adverse Abandonment was sent via electronic mail to the following:

Sandra L. Brown
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Washington, DC 20036

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Kansas City, MO 64108

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Carolyn Gaut Kraska