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August 27, 2019

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

By Electronic Filing

**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 Jackson County's Motion to Strike the Landowners' Sur-Reply.

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 MOTION TO STRIKE

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Dated: August 27, 2019

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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JACKSON COUNTY’S MOTION TO STRIKE

Pursuant to 49 C.F.R. § 1104.8 and 49 C.F.R. § 1117.1, Jackson County, Missouri (“Jackson County”), a political subdivision of the State of Missouri, files this Motion to Strike the Sur-Reply filed by the Petitioners in this proceeding on August 23, 2019.

On August 12, Deborah S. Groh *et al* (“Landowners”) filed Landowners’ Motion for Adverse Abandonment and Injunctive and Declaratory Relief (the “Motion”). Jackson County replied on August 20, 2019. On August 23, the Landowners filed a Sur-Reply (the “Sur-Reply”).

The Sur-Reply should be stricken from the record because it is not allowed under the Board’s rules,¹ and it contains only redundant, irrelevant and scandalous matter.²

In their Sur-Reply, the Landowners argue that Jackson County’s construction of a trail off of the roadbed is not consistent with its common carrier obligation. Sur-Reply at 2-4. This same argument was made at length in the Motion (see Motion at 3-6) and therefore is redundant in the

¹ 49 C.F.R. § 1104.13(c). Landowners did not file a Motion or otherwise seek leave or show good cause to file the Sur-Reply, although reference is made to such a motion in the last sentence of the Sur-Reply.

² Under 49 C.F.R. § 1104.8, the “Board may order that any redundant, irrelevant, immaterial, impertinent or scandalous matter be stricken from any document.”

Sur-Reply. In any case, by their favorable quotation and reliance on statements made in the STB's decision revoking Jackson County's exemption (see Motion at 3 [enumerated item 1], and 5 [enumerated items 10, 11 and 15]), Landowners have conceded that trail construction in the right-of-way without track removal is consistent with a common carrier obligation.

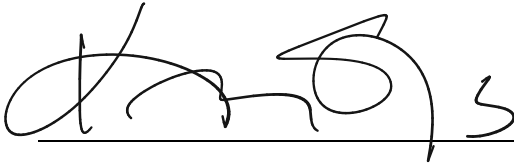
Next, the Landowners argue that Jackson County's construction of a trail off of the roadbed is not consistent "with basic concepts of property law and property rights." Sur-Reply at 5. This argument also was made in the Motion (see Motion at 14-19) and therefore is redundant in the Sur-Reply. Moreover, the argument is irrelevant. Landowners have already admitted that the Board is not the appropriate venue for resolution of Landowners' state property law claims. See Motion at 18, n. 28.³

Landowners are not entitled to a second opportunity to meet their burden of persuasion for issuance of an injunction, but even on their second try Landowners fail to add anything relevant to the record. Landowners' argument on the likelihood of success on the merits is a rehash of the Motion. See Sur-Reply at 6 and compare to Motion at 12-13. Landowners again fail to show that they will be irreparably harmed absent issuance of an injunction (again referring only to money damages based upon state law property claims), or that Jackson County or the public would not be substantially harmed by issuance of an injunction. See Sur-Reply at 7.

For the reasons set forth above, Jackson County respectfully requests that the Board strike Landowner's Sur-Reply.

³ Landowners' assertion on page 5 that Jackson County is "attempting to issue a middle finger salute" to the Board is both unprofessional and scandalous and should be stricken.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'K. Sheys', is written over a horizontal line.

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Counsel for Jackson County, Missouri

Dated: August 27, 2019

CERTIFICATE OF SERVICE

I, Jessica Bartlett, hereby certify that on August 27, 2019, a true and correct copy of the attached Motion to Strike was sent via electronic mail to the following:

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