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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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September 5, 2019
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Public Record

FINANCE DOCKET NO. 35982

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

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 48 C.F.R. § 1150.31, *Et. Seq.***

**LANDOWNERS' SUR-REPLY TO JACKSON COUNTY'S REPLY TO
MOTION FOR ADVERSE ABANDONMENT**

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Dated: September 5, 2019

The Landowners' motion for adverse abandonment and injunctive and declaratory relief was filed on August 12, 2019. The Board issued an Order for Jackson County to reply to the Landowners' motion pertaining to adverse abandonment on or before September 3, 2019 and, in fact, Jackson County filed their reply on that date. Unfortunately, since Jackson County's Reply contains several misleading and irrelevant statements, this sur-reply is necessary.

First, Jackson County never directly responds in any way pertaining to the adverse abandonment issue. Instead, Jackson County apparently agrees that the corridor either has been abandoned or soon will be abandoned and repeatedly points to the fact that the Landowners and Jackson County reached a "partial settlement" pertaining to the abandonment issue.¹ The fact is that Jackson County and the Landowners never reached a "partial settlement agreement," whatever that is, whether binding or not, as evidenced by the e-mail exchanges attached by Jackson County to their Reply, and a lot has changed since preliminary discussions took place on the issue. In fact, not only has the Board revoked Jackson County's exemption, such that they do not even have the ability or the right to seek abandonment at this point, but Judge Otrrie Smith of the United States District Court for the Western District of Missouri also obliterated and eviscerated Jackson County's attempt to block the Landowners' valid state law causes of action. As a result, both the Landowners and Jackson County apparently support the entire concept of abandonment at this point and the only distinction is that the Landowners will oppose railbanking the corridor without a global resolution of all of the federal and state law causes of action, which is exactly what the Landowners have always been saying.

¹ See Jackson County Rep. at 3, 5 ("On July 2, 2019, the Landowners in 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") ("the planned joint abandonment petition also is consistent with the Jackson County/Landowners' partial settlement agreement).

Second, it is unfortunately obvious that Jackson County still does not understand or appreciate all of the issues pertaining to their construction of the hiking and biking trail either in place of the rail bed or adjacent to the rail bed. Jackson County both misinterprets the Board's original exemption granted to Jackson County concerning the construction of the hiking and biking trail on the rail bed itself, which they say is why the Board vacated their exemption, and even though the Board specifically stated that they did not authorize construction in the first place, and also ignores the fact that they cannot construct a hiking and biking trail adjacent to the rail bed under state law either.² Although Jackson County's construction of the hiking and biking trail in place of the rail bed itself violates their exemption, particularly as the Board pointed out because Jackson County never pursued the Trails Act, what Jackson County does not seem to understand or recognize is that the construction of the hiking and biking trail adjacent to the rail bed, instead of in place of the rail bed, was not authorized by the Board, even though they may have been aware of it, and also violates Missouri state law.

Third, Jackson County attempts a completely absurd argument that the "Landowners' Motion for Adverse Abandonment should be denied"³ because the Landowners could then attempt to block interim trail use and railbanking and because "Jackson County and UP intend to jointly file a petition for exemption for authority to abandon the Line."⁴ Obviously, there is no "partial settlement agreement" and Jackson County's statement that they are about to file a joint petition to abandon the line plainly contradicts their own statement that the Landowners' motion for

² *Id.* at 3, 5 ("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") ("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 reactivation of freight service is proper under the Trails Act").

³ *Id.* at 4.

⁴ *Id.* at 5.

adverse abandonment should be denied. Then, amazingly, after stating that Jackson County and UP intend to jointly file a petition for exemption for authority to abandon the line, Jackson County states that “it is clear from the Revocation Decision that UP is an appropriate party to seek abandonment authorization.”⁵ Incredibly, then, after acknowledging that UP is the proper party and not Jackson County, Jackson County states that “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.”⁶ This is an incredible statement because Jackson County is not and never has been the “owner” of the Line and, since their exemption has been revoked, they are also not “the owner of the Line subject to the Board’s jurisdiction.”

Since Jackson County never even attempts to argue against abandonment, and since UP never filed anything even though they were given the opportunity to do so, it is clear that this Line has been abandoned because there has been no and is no public convenience and necessity for continued rail traffic. As a result, the Landowners’ motion for adverse abandonment should be granted.

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⁵ *Id.* at 5, fn. 8.

⁶ *Id.* (emphasis added).

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 5th day of September, 2019.

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