

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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DOCKET NO. 36799

UTAH DEPARTMENT OF TRANSPORTATION –
PETITION FOR DECLARATORY ORDER

JOINT STIPULATION

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Date: January 7, 2025

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Utah Department of Transportation (“UDOT”), petitioner in the above-captioned matter and Plaintiff in the related U.S. District Court for the District of Utah matter, *Utah Department of Transportation v. Oveson et al*, 2:23-cv-00789-JNP-DBP (D. Utah Jul. 15, 2024), along with Andrea Oveson, Trustee of SHCH Alaska Trust (“SHCH”) and Jana Gunderson, Trustee of Rock Mountain Holding Trust (“RMHT”; collectively with SHCH, the “Trusts,” and collectively with SHCH and UDOT, the “Parties”), Defendants in same, hereby submit the Parties’ Joint Stipulation.

JOINT STIPULATION

As explained in UDOT’s Petition for Declaratory Order of July 29, 2024 (“Petition”), this matter was referred to the Surface Transportation Board (“STB” or “Board”) upon the order (“Order”) of the U.S. District Court for the District of Utah in *Utah Department of Transportation v. Oveson et al*. (attached to Petition as Exhibit 1).

State Agency UDOT asserts ownership of a railroad right-of-way within portions of Lots 4 and 5, situated in the western half of the Southeast Quarter of Section 13, Township 5 South, Range 3 East, Salt Lake Base and Meridian. This right-of-way, approximately 100 feet on either side of a historical rail line that once ran between present-day US-189 and the Provo River, is referred to as the “Right-of-Way.” The Trusts claim ownership of the real property underlying the historical Right-of-Way. Despite their adversarial stance in the underlying court matter, UDOT and

the Trusts have reached a joint stipulation, affirming that the rail line has been abandoned, and any conditions associated with this abandonment have been met.

The District Court's referring this matter to the Board stems, in effect, from three related questions, the analysis for each of which depends on the previous:

1. Given that STB (then the Interstate Commerce Commission ("ICC")) stated in its July 17, 1969 certificate and order of abandonment that same was "subject to the same conditions for the protection of employees as set forth in Chicago, B. & Q. R. Co. Abandonment, 257 I.C.C. 700," *have those conditions been met?*¹ See, e.g., Order at 8 (noting, "'where an abandonment is conditional, the STB retains jurisdiction over a railroad right-of-way until it has been abandoned pursuant to the conditions imposed by the agency. 'In such cases, the agency also retains exclusive, plenary jurisdiction to determine whether there has been an abandonment sufficient to terminate its jurisdiction.'") (internal citations omitted).
2. *To the extent that said conditions for protection of employees in fact constituted a condition, has abandonment occurred?*
3. *As a consequence of previous factors, has STB jurisdiction ended?*

The Parties hereby stipulate that the conditions for protection of employees required by the ICC's authorization were in fact met. In the ICC's July 17, 1969, certificate and order, the ICC recognized that no passenger service has occurred since 1945, no local freight traffic is occurring

¹ The certificate and order also directed the Railroad Company to submit, "for the consideration of [the ICC,] two copies of the journal entries showing retirement of the line from service," and to notify the ICC, immediately after abandonment of the line of the railroad, the date on which the abandonment actually took place[.]" *Id.* The certificate and order was served on July 29, 1969 and, on September 16, 1969, the Railroad Company transmitted to the ICC a notice advising the ICC that it "exercised the authority granted in the [Certificate and Order]" and "retire[d] [] the line from service[.]" *Id.* The ICC received the notice on September 19, 1969.

on that line, and the costs to repair the line would be \$40,625 over a five-year period. Most likely, the employees of the Denver & Rio Grande Western Railroad Company were not affected concerning the abandonment of this line as there was no rail service thereon. In addition, the protection of employees is a separate process that ensures the labor protective conditions are met. If an adversely affected employee has a labor protection claim, he/she would submit it to the railroad. If the parties disagree, they can arbitrate the issue. The arbitrator then can decide whether the claim is valid. This decision also can be appealed to the ICC/STB and then the courts. Therefore, to the extent that such protection of employees was a condition, such condition clearly was satisfied, and abandonment occurred. As a result of such abandonment, the jurisdiction of the STB/ICC came to an end.

The Parties therefore request that STB exercise its plenary jurisdiction in determining that abandonment has in fact occurred and STB's jurisdiction has ended. The Parties request an expedited determination from STB as the ongoing litigation of their dispute cannot proceed until a decision is made. The Parties are facing substantial increased construction costs and loss of significant revenue while they wait for the quiet title case to be resolved.

WHEREFORE, the Parties submit the foregoing stipulations.

/s/ Daniel R. Elliott

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January 7, 2025

Certificate of Service

I certify that I have, this 7th day of January 2025, served by email copies of the foregoing document on all parties of record in this proceeding.

/s/ Daniel R Elliott
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Attorney for Utah Department of Transportation