

LAW OFFICES OF
LOUIS E. GITOMER, LLC.

LOUIS E. GITOMER
Lou@lgrailaw.com

MELANIE B. YASBIN
Melanie@lgrailaw.com
410-296-2225

600 BALTIMORE AVENUE, SUITE 301
TOWSON, MARYLAND 21204-4022
(410) 296-2250 • (202) 466-6532
FAX (410) 332-0885

January 4, 2012

Ms. Cynthia T. Brown
Chief of the Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D. C. 20423

231609

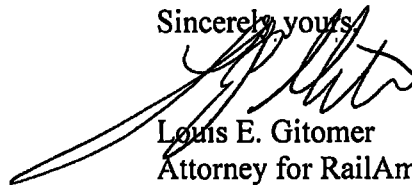
RE: **Finance Docket No. 35581, *Buddy Hatcher and Holly Hatcher v. RailAmerica, Inc., RailAmerica Operations Shared Services, Inc., RailAmerica Operations Support Group, Inc., and San Joaquin Valley Railroad Company***

Dear Ms. Brown:

Enclosed for e-filing by RailAmerica, Inc., RailAmerica Operations Shared Services, Inc., RailAmerica Operations Support Group, Inc., and San Joaquin Valley Railroad Company is the Reply to the Petition for Declaratory Order filed by Buddy Hatcher and Holly Hatcher.

Thank you for your assistance. If you have any questions please call or email me.

Sincerely yours,



Louis E. Gitomer
Attorney for RailAmerica, Inc., RailAmerica Operations
Shared Services, Inc., RailAmerica Operations Support
Group, Inc., and San Joaquin Valley Railroad Company

Enclosure

ENTERED
Office of Proceedings

JAN 04 2012

Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 35581

BUDDY HATCHER AND HOLLY HATCHER

v.

RAILAMERICA, INC., RAILAMERICA OPERATIONS SHARED SERVICES, INC.,
RAILAMERICA OPERATIONS SUPPORT GROUP, INC., SAN JOAQUIN VALLEY
RAILROAD COMPANY, AND UNION PACIFIC RAILROAD COMPANY

REPLY OF RAILAMERICA, INC., RAILAMERICA OPERATIONS SHARED SERVICES,
INC., RAILAMERICA OPERATIONS SUPPORT GROUP, INC., SAN JOAQUIN VALLEY
RAILROAD COMPANY

Scott G. Williams Esq.
Kenneth G. Charron, Esq.
RailAmerica, Inc.
Alabama Gulf Coast Railway LLC
7411 Fullerton Street, Suite 300
Jacksonville, FL 32256
(904) 538-6329

Louis E. Gitomer, Esq.
Law Offices of Louis E. Gitomer
600 Baltimore Avenue
Suite 301
Towson, MD 21204
(410) 296-2250
Lou@lgrailaw.com

Attorneys for: RAILAMERICA
OPERATIONS SHARED SERVICES,
INC., RAILAMERICA OPERATIONS
SUPPORT GROUP, INC., SAN JOAQUIN
VALLEY RAILROAD COMPANY

Dated: January 4, 2012

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 35581

BUDDY HATCHER AND HOLLY HATCHER

v.

RAILAMERICA, INC., RAILAMERICA OPERATIONS SHARED SERVICES, INC.,
RAILAMERICA OPERATIONS SUPPORT GROUP, INC., SAN JOAQUIN VALLEY
RAILROAD COMPANY, AND UNION PACIFIC RAILROAD COMPANY

REPLY OF RAILAMERICA, INC., RAILAMERICA OPERATIONS SHARED SERVICES,
INC., RAILAMERICA OPERATIONS SUPPORT GROUP, INC., SAN JOAQUIN VALLEY
RAILROAD COMPANY

RailAmerica, Inc. ("RailAmerica"), RailAmerica Operations Shared Services, Inc. ("ROSS"), RailAmerica Operations Support Group, Inc. ("ROSG"), and San Joaquin Valley Railroad Company ("SJVR") together with RailAmerica, ROSS, and ROSG are referred to as "Respondents"), pursuant to 49 C.F.R. §1104.13(a), respond to and oppose the Petition for Declaratory Order and Complaint filed pursuant to 5 U.S.C. §554(e) and 49 U.S.C. §721 by Buddy Hatcher and Holly Hatcher ("Complainants") on December 12, 2011 (the "Petition").¹ Respondents respectfully request the Board to grant the request to open a proceeding and deny the relief sought by Complainants. It is beyond clear that the abandonment of a railroad line and the salvage of that the abandonment and salvage of a railroad line may be carried out only as authorized by the Board (49 U.S.C. §10903(a)(1)) and that the Board's jurisdiction over the routes and facilities of a rail carrier is exclusive and the remedies provided in 49 U.S.C. Subtitle

¹ Respondents respectfully request the Surface Transportation Board (the "Board") to accept this Reply one day late because of the intervening holiday season. Neither Complainants nor the Union Pacific Railroad Company will be prejudiced by the Board accepting this Reply one day late.

IV Part A are exclusive and preempt the remedies provided under Federal or State law (49 U.S.C. 10501(b)).

Complainants contend that SJVR's salvage of a portion of its 30.57-mile portion of the South Exeter Branch between milepost 268.60 at Strathmore and milepost 299.17 at Jovista in Tulare County, CA failed to "comply with California State law." Petition paragraph 2. Complainants then argue that SJVR's failure to comply with California State law is not preempted because they are only seeking monetary damages instead of contending that SJVR had authority to remove the track. Complainants are wrong. Not only did SJVR have authority to abandon the Line, but its removal of the track was also subject to the control and conditions of the Board. *San Joaquin Valley Railroad Company-Abandonment Exemption-in Tulare County, CA*, STB Docket No. AB-398 (Sub-No. 7X) (STB served June 6, 2008) (the "*Abandonment Decision*").

As part of the abandonment process, SJVR filed an environmental report and a historic report with the Board. *San Joaquin Valley Railroad Company-Abandonment Exemption-in Tulare County, CA*, STB Docket No. AB-398 (Sub-No. 7X) (STB served April 18, 2008) Environmental Assessment (the "*EA*"). SJVR also published notice in the local newspapers. "SJVR served the environmental report on a number of appropriate Federal, state, and local agencies as required by the Surface Transportation Board's (Board) environmental rules [49 CFR 1105.7(b)]." *Id.* at 2. In the environmental report, SJVR indicated that "Abandonment of the line would result in the removal of the rail, crossties and possibly the upper layer of ballast. SJVR does not intend to disturb any sub grade or sub grade structures and does not intend to remove any bridge structures." *Id.* at 3. Complainants did not comment in response to the EA or raise the concerns raised in the complaint brought in California. No one, including

Complainants, raised issues concerning the impact of abandonment on the “Pioneer Ditch.” The California Public Utilities Commission (the “PUC”) did request conditions on the salvage of the Line at railroad crossings, which the Board imposed. See *EA* at 4 and the *Abandonment Decision* at 12. As demonstrated by the condition imposed by the Board in response to the request of the CPUC and the compliance of SJVR with that condition (See consummation letter filed by SJVR with the Board on November 24, 2009 indicating compliance with the condition imposed in response to the CPUC).

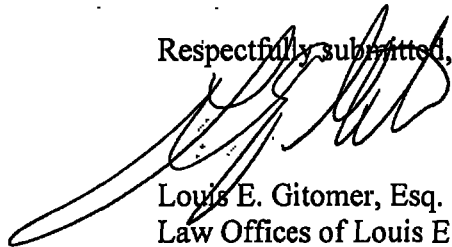
It is clear from the *Abandonment Decision* that the Board has exclusive jurisdiction over the abandonment and salvage of the railroad line. In the Petition, Complainants are seeking to substitute California law for the Board’s decision after the Board has fully addressed the salvage issue in the *Abandonment Decision*. Indeed, Complainants are seeking State regulation of railroad operations. Moreover, SJVR did not disregard any law in salvaging the Line, but complied with the conditions imposed by the Board, the only entity empowered to impose conditions upon abandonment and salvage of a railroad line. Moreover, Complainants most certainly seek to deny SJVR the ability to proceed with a Board approved activity by seeking to impose California State law upon an abandonment even though the issue was never raised before the Board, the only entity with exclusive jurisdiction over an abandonment. *Chicago and N.W. Transportation Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311 (1980) (“*Kalo Brick*”). The Supreme Court has concluded that the authority of the Board to regulate abandonments is exclusive. *Alabama Public Service Comm’n v. Southern R. Co.*, 341 U.S. 341, 346, n. 7 (1951). See *Colorado v. United States*, 271 U.S. 153, 164-166 (1926). The Commission’s authority over abandonments is also plenary. *Kalo Brick* at 320. Indeed, the *Kalo Brick* court even addressed Complainants’ argument that they are not attacking the Board’s abandonment authority, merely

SJVR's compliance with California law when it stated "It is true that not one of the three counts of respondent's state-court complaint mentions the word 'abandonment,' but compliance with the intent of Congress cannot be avoided by mere artful pleading." *Id.* at 324.

CONCLUSION

Complainants have attempted to engage in artful pleading in claiming that they are seeking mere monetary damages and not to regulate the abandonment of a railroad line by the SJVR. Respondents respectfully urge the Board to be guided by the language of the Supreme Court and open a declaratory order proceeding to declare that the salvage of the Line was subject to the Board's exclusive and plenary jurisdiction and subject to only the conditions imposed in the *Abandonment Decision*.

Respectfully submitted,



Scott G. Williams Esq.
Kenneth G. Charron, Esq.
RailAmerica, Inc.
Alabama Gulf Coast Railway LLC
7411 Fullerton Street, Suite 300
Jacksonville, FL 32256
(904) 538-6329

Louis E. Gitomer, Esq.
Law Offices of Louis E. Gitomer
600 Baltimore Avenue
Suite 301
Towson, MD 21204
(410) 296-2250
Lou@lgraillaw.com

Attorneys for: RAILAMERICA
OPERATIONS SHARED SERVICES,
INC., RAILAMERICA OPERATIONS
SUPPORT GROUP, INC., SAN JOAQUIN
VALLEY RAILROAD COMPANY

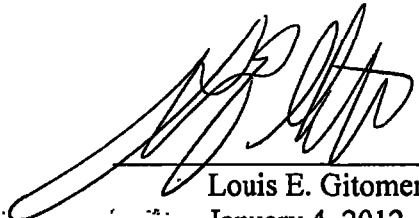
Dated: January 4, 2012

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing document was served electronically and by first class mail postage pre-paid on

Alexander Reed-Krase
Law Offices of Robert Krase
132 East Morton Avenue
Porterville, CA 93257
areedkrase@kraselaw.com

Thomas A. Cregger
Randolph, Cregger & Chalfant, LLP
1030 G Street
Sacramento, CA 95814



Louis E. Gitomer
January 4, 2012