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ENTERED
Office of Proceedings
September 20, 2019
Part of
Public Record

September 20, 2019

Allison C. Davis
Office of Proceedings
Surface Transportation Board
395 E Street SW
Washington, DC 20423

Re: STB Docket No. 853 (Sub-No. 1X) - South Kansas & Oklahoma Railroad
Petition to Reopen

Dear Ms. Davis,

In response to the Board's Order of September 13, 2019, I will repeat two primary points from my letter of June 5, 2019.

The Bill of Sale and Quitclaim Deeds are invalid under Kansas Law.

66-525. Railroad right-of-way; abandonment, when; requirements; release; notice; exception.

...

(f) Except where a railroad company conveys its right, title and interest in and to railroad right-of-way which it owns in fee simple, **any conveyance by a railroad company of any actual or purported right, title or interest in property acquired in strips for right-of-way to any party other than the owner of the servient estate shall be null and void**, unless such conveyance is made with a manifestation of intent that the railroad company's successor shall maintain railroad operations on such right-of-way. (emphasis added)

These two documents are "null and void" and of no effect whatsoever, probative or otherwise.

Also, as I pointed out in my previous filings, this issue has been fully researched and litigated and proven contrary to Sunflower's position. In *Farmers Co-op. Co. v. U.S.*, 98 Fed.Cl. 797 (2011), the Court expressly found that all NITUs including Sunflower's NITU expired without a rail banking agreement.

This court, like the court in *Biery*, finds the reasoning in *Barclay* applicable. Defendant is liable for the taking of Plaintiffs' reversionary interests in the corridors as follows: 1) for the CKP corridor, from the issuance of the original NITU on November 25, 2003, until **the expiration of the Sunflower NITU on August 2, 2008**; ...

Thus, the Court concluded that the responsibility of the United States for its "taking" of this property concluded upon the expiration of these NITUs without consummation of an agreement.

In researching the tax records in Kiowa County, the County Appraiser reports that the last name on record for this right of way is American Trails Association (ATA). (See letter from Kristy Zenger attached.) As one might recall ATA is the predecessor trail company that secured, and later abandoned, a NITU on this property.

On November 12, 2003, the American Trails Association ("ATA") submitted comments to the STB and requested that a NITU be issued to allow for the possibility of railbanking of the two rights-of-way. . . . Consequently, on November 25, 2003, the STB issued a NITU for both the CKP and Hodgeman corridors.

On December 31, 2007, Sunflower Recreational Trails, Inc. ("Sunflower") filed a request with the STB for the issuance of a NITU on the CKP corridor (and Statement of Willingness). On February 4, 2008, the STB issued a NITU on the CKP corridor . . . , noting that the negotiation period for this NITU expired on August 2, 2008. Farmers Coop.

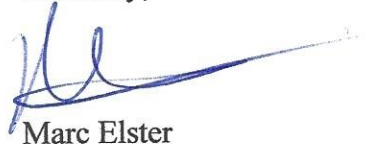
There is no record in Kiowa County supporting a Sunflower rail banking agreement.

An interesting note on the documents provided by Sunflower. The earlier dated Quitclaim Deed (dated in 2009) that mentions the Line Donation Contract was never filed in Kiowa County. (See email from Karen Butler and attachment.) That Quitclaim document was abandoned, presumably when the rail banking agreement failed. The only Quitclaim document that was filed in Kiowa County (two years later in 2011) does not mention the Line Donation Contract. The fact that Sunflower abandoned and never filed the first Quitclaim document and subsequently replaced it with the latter Quitclaim Deed, well after the Sunflower NITU expired on August 2, 2008, without mention of the Line Donation Contract is certainly evidence that the Line Donation Contract was never completed. Also, if consummated, this series of purported events would have surfaced in the Farmers Coop court case at the time of that case (June 24, 2011.)

The documents provided by Sunflower are "null and void" and of no effect. The issue of any Sunflower rail banking agreement was researched and litigated in Farmers Co-op. Co. v. U.S., 98 Fed.Cl. 797 (2011), where the Court expressly found that all NITUs including Sunflower's NITU expired without a rail banking agreement. In addition, the Quitclaim document that was filed in Kiowa County does not mention a Line Donation Contract, which is an admission that the agreement was never consummated.

The issue of any Sunflower rail banking agreement is and has been resolved. No such agreement was ever consummated prior to the expiration of the Sunflower NITU on August 2, 2008.

Sincerely,



Marc Elster

cc:

Kansas & Oklahoma Railroad, L.L.C.
WATCO Companies
c/o Karl Morell & Associates
655 15th Street, NW, Suite 225
Washington, DC 20005
(202) 595-9045
karlm@karlmorell.com

Clark Coan
Sunflower Rails-Trails Conservancy, Inc.
P.O. Box 44-2043
Lawrence, Kansas 66044
(785) 842-3458
clarkcoan@yahoo.com

Doug Davis, General Counsel
American Trails Association, Inc
Tel: 801.977.6347 | Cell: 801.815.1689
PO Box 30076, Salt Lake City, UT 84130
ddavis@akrailroad.com

marcelster@yahoo.com

From: Karen Butler <karen.butler@kiowacountyks.org>
Sent: Wednesday, September 18, 2019 12:14 PM
To: marcelster@yahoo.com
Subject: RE: Ref ID: R4018 & 4058
Attachments: 20190918123155159.pdf

Marc,
Here is the index for Section 9, Township 30, Range 16. I did not see any other deeds for Sunflower Rails-Trails. The index is for the years 1996 to present. If there is anything else I can help you with let me know.

Karen
Register of Deeds
Kiowa County

PLEASE REMEMBER THE REGISTER OF DEEDS IS THE RECORDER OF DOCUMENTS, NOT RESEARCHERS. WE WILL NOT BE RESPONSIBLE FOR ANY MISSED DOCUMENTS. CONTACT A TITLE COMPANY OR ABSTRACT OFFICE FOR A COMPLETE RECORD SEARCH

From: marcelster@yahoo.com <marcelster@yahoo.com>
Sent: Wednesday, September 18, 2019 11:32 AM
To: Karen Butler <karen.butler@kiowacountyks.org>
Subject: RE: Ref ID: R4018 & 4058

Can you please send me information evidencing the fact that there are no other Quitclaim Deeds or other evidences of a trails agreement with K&O Railroad and Sunflower in the 2008 – 2011 time frame – other than the one at D86, Page 4099.

From: Kiowa County Appraiser <appraiser@kiowacountyks.org>
Sent: Wednesday, September 18, 2019 8:08 AM
To: marcelster@yahoo.com
Subject: RE: Ref ID: R4018 & 4058

Marc – Here is a map of your property. I glanced at your deed and it does mention the S2 NW4 which is contained in the shortened legal description as show on the tax statement: W2 Sec lyg S of RR.....This explains why it is 157 acres less the R/R.

I will have my supervisor take a look at the document you sent us. I see that Kiowa County is mentioned but the legal descriptions mentioned are not actually in Kiowa County so we may need something different. Will get back with you.

Thanks,
Kristy

From: marcelster@yahoo.com <marcelster@yahoo.com>
Sent: Tuesday, September 17, 2019 12:57 PM
To: appraiser@kiowacountyks.org
Subject: Ref ID: R4018 & 4058

I spoke with you on the phone earlier today and you were super helpful.

SECTION 4

RANGE 16

Date of Issuance				GRANTEE	GRANTOR	Book	Page	RE	NE	SE	SW	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW	NE	NW</
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September 20, 2019

Dear Marc Elster,

Regarding your question of who is being taxed for the Railroad Right of Way that is adjoining your property in Kiowa County in Section 8 and 9, Township 30, Range 16: the last recorded taxpayer was American Trails Association Inc. The 2012 tax year was the last year they received a tax statement from Kiowa County. If you need further assistance, you can contact the Kiowa County Treasurer's Office as they are the official collector of taxes.

Thank you,

Kristy Zenger
Deputy Appraiser