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231467

December 9, 2011

VIA ELECTRONIC FILING and VIA FEDEX OVERNIGHT

FILED

Ms. Cynthia T. Brown
Chief, Section of Administration,
Office of Proceedings,
Surface Transportation Board,
395 E Street, SW
Washington, DC 20423-0001

DEC 12 2011

**SURFACE
TRANSPORTATION BOARD**



Re: **Docket No 35581 – Buddy Hatcher and Holley Hatcher v. Union Pacific Railroad Company, RailAmerica Operations Shared Services, Inc., RailAmerica Operations Support Group, Inc., San Joaquin Railroad Company and RailAmerica, Inc.**

Dear Ms. Brown:

Enclosed is a copy of the above referenced Petition for a Declaratory Order and Complaint of Buddy Hatcher and Holley Hatcher, E-Filed on December 9, 2011. A copy of the check for the \$1400.00 filing fee was sent by Facsimile transmission on December 9, 2011 and the original check was sent by FedEx Overnight mail on the same day. Copies of this letter and the enclosed Petitioner/Complaint have by sent by first class US mail to legal counsel for Union Pacific Railroad Company, RailAmerica Operations Shared Services, inc., RailAmerica Operations Support Group, inc., San Joaquin Railroad Company and RailAmerica, Inc. in this matter.

If you have any questions or need anything further concerning this filing, please don't hesitate to contact me.

Yours Truly,

Alexander Reed-Krase, Esq.
Attorney for Buddy Hatcher and Holley Hatcher

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DEC 12 2011

**SURFACE
TRANSPORTATION BOARD**

SURFACE TRANSPORTATION BOARD

231467

Docket No 35581

BUDDY HATCHER AND HOLLEY HATCHER

Complainants,

v.

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



Respondents,

FILED
DEC 12 2011
SURFACE
TRANSPORTATION BOARD

LAW OFFICES OF ROBERT KRASE

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Office of Proceedings

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Public Record

Attorneys for

BUDDY HATCHER
HOLLEY HATCHER

FEE RECEIVED

DEC 12 2011

SURFACE
TRANSPORTATION BOARD

DATED: DECEMBER 9, 2011

SURFACE TRANSPORTATION BOARD

Docket No 35581

BUDDY HATCHER AND HOLLEY HATCHER

Complainants,

v.

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

Respondents,

**PETITION FOR DECLARATORY ORDER
AND COMPLAINT OF
BUDDY HATCHER AND HOLLEY HATCHER**

Complainants Buddy Hatcher and Holley Hatcher (“Plaintiffs”) request this Board issue a declaratory order to eliminate controversy and remove uncertainty, pursuant to 5 U.S.C. 554(e) and 49 U.S.C. 721, and, if applicable, Plaintiffs request this Board provide any remedies which the Board is authorized to provide Plaintiffs if the Board determines that the Board has jurisdiction over Plaintiffs underlying State Law Causes of Action. Plaintiffs state:

1. On October 27, 2011 Plaintiffs filed an action in California state court to recover damages sustained due to the City of Porterville, Tulare County, RailAmerica, Inc., RailAmerica Operations Shared Services, Inc., RailAmerica Operations Support Group, Inc., San Joaquin Railroad Company and Union Pacific Railroad Company (collectively referred to as “Defendants”) unreasonable diversion of surface water, inverse condemnation, trespass, nuisance, and causing emotional distress and other damages. A copy of the state court complaint is attached hereto as Exhibit 1 and incorporated herein by reference.

2. All causes of action in Plaintiffs state court complaint were based in California state law and arose as a result of all Defendants failure to comply with California State law in removing tracks along an abandoned rail-line. Plaintiffs are not challenging whether Defendants had authority to remove the tracks. Plaintiffs are only seeking monetary relief to compensate Plaintiffs for damages actually sustained as a result of Defendants failure to protect surrounding landowners and comply with California law in performing the authorized removal.

3. Defendant Union Pacific Railroad Company (hereinafter “Union Pacific”) filed an answer alleging as a defense that Plaintiffs claims based in California State Law are preempted by 49 U.S.C § 10101 *et. seq.* and that administrative remedies had not been exhausted. A copy of Union Pacific’s answer is attached hereto as Exhibit 2 and incorporated herein by reference.

4. RailAmerica, Inc., RailAmerica Operations Shared Services, Inc., RailAmerica Operations Support Group, Inc., San Joaquin Railroad Company (hereinafter referred to collectively as “RailAmerica”) filed an answer alleging as a defense that Plaintiffs claims based

in California State Law are preempted by 49 U.S.C § 10101 *et. seq.* A copy of Defendant RailAmerica's answer is attached hereto as Exhibit 3 and incorporated herein by reference.

5. Defendant RailAmerica filed to remove the state court proceedings to Federal Court in the Eastern District of California on December 7, 2011. A copy of the removal pleadings is attached hereto as Exhibit 4 and incorporated herein by reference. Plaintiffs will file a motion to remand the case back to State Court on or before January 5th, 2012, as required by the Federal Rules of Civil Procedure.

6. Plaintiffs request the Surface Transportation Board exercise its discretionary authority under 5 U.S.C. 554(e) and 49 U.S.C. 721 and issue a declaratory order stating that Plaintiffs California state law causes of action, as alleged in Exhibit 1, are NOT preempted by 49 U.S.C. § 10101 *et seq.* Union Pacific's and RailAmerica's allegations and actions have shown that an actual controversy exists between the parties and that a declaratory order from the Board may be necessary.

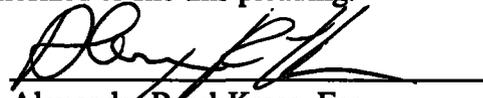
7. Plaintiffs' state law claims do NOT seek to prevent or unreasonably interfere with railroad operations. Plaintiffs' state law claims do NOT seek to regulate railroad transportation. Plaintiffs' state law claims do NOT seek to regulate railroad related activities. Plaintiffs' state law claims are limited to recovering actual damages sustained as a result of Union Pacific's and RailAmerica's disregard for state law and the safety of surrounding landowners in performing the authorized removal of the railroad tracks. Under the precedent set in previous Surface Transportation Board Decisions, Plaintiffs are NOT preempted by federal law. *See* STB Finance Docket No. 34599, *Mid-America Locomotive and Car Repair, Inc. – Petition for Declaratory Order, decided June 6, 2005*; STB Finance Docket No. 34354, *Maumee & Western Railroad Corporation and RMW Ventures, LLC – Petitioner for Declaratory Order, decided March 2, 2004*; STB Finance Docket No. 33466, *Borough of Riverdale – Petition For Declaratory Order, decided September 9, 1999.*

7. Plaintiffs state law causes of action are not preempted under the precedent set in the Federal Courts as the applicable remedy to ALL of Plaintiffs' state law claims would be monetary relief; Plaintiffs have not sought to deny Defendants the ability to operate or to proceed with an STB-approved activity. *See Emerson v. Kansas City Southern Railway Company*, 503 F.3d 1126 (10th Circ., 2007); *Irish v. Burlington Northern Santa Fe R. Co.*, 632 F. Supp. 2d 871 at 877 (W.D. Wis. 2009); *PCS Phosphate Co., Inc. v. Norfolk Southern Corp.*, 520 F.Supp.2d 705, 717 (W.D.N.C. 2007); *South Dakota ex rel. South Dakota R.R. Authority v. Burlington Northern & Santa Fe Ry. Co.*, 280 F.Supp.2d 919 (D.S.D.2003); *Rushing v. Kansas City Southern Railway Co.*, 194 F.Supp.2d 493, 501 (S.D.Miss.2001).

8. In the event that the Board finds the Plaintiffs case distinguishable from the previous Surface Transportation Board decisions and Federal Court opinions, Plaintiffs re-allege all facts, statements, causes of action and requests for relief alleged in the original state court complaint, attached hereto as Exhibit one, as though fully alleged herein, and Plaintiffs request any such other relief as the Board deems just and proper.

I, Alexander Reed-Krase, Esq., declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this pleading.

Dated: 12/9/11


Alexander Reed-Krase, Esq.,
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I certify that I this day served the forgoing Petition for a Declaratory Order and Complaint of Buddy Hatcher and Holley Hatcher on counsel for Union Pacific Railroad Company, by facsimile transmission and prepaid first-class US mail to Thomas A. Cregger, Esq. of Randolph, Cregger & Chalfant, LLP, fax no 916-443-2124, and Counsel for RailAmerica Operations Shared Services, inc., RailAmerica Operations Support Group, inc., San Joaquin Railroad Company and RailAmerica, Inc. by facsimile transmission and prepaid first-class US mail to William T. McLaughlin II, Esq. of Lang, Richert & Patch, fax no 229-228-6727.

Dated: 12/9/11



Alexander Reed-Krase, Esq.,
Attorney for Plaintiffs

1 **ROBERT KRASE, ESQ., #073388**
2 **ALEXANDER REED-KRASE, ESQ., #272603**
3 **THE LAW OFFICES OF ROBERT KRASE**
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5 Attorney for Buddy Hatcher and Holley Hatcher

FILED
TULARE COUNTY SUPERIOR COURT
VISALIA DIVISION

OCT 27 2011

LARAYNE CLEEK, CLERK

BY: _____

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF TULARE**

11 **BUDDY HATCHER AND HOLLEY**
12 **HATCHER, HUSBAND AND WIFE**
13 **Plaintiffs,**

14 v.

15 **CITY OF PORTERVILLE, A PUBLIC**
16 **ENTITY; COUNTY OF TULARE, A**
17 **PUBLIC ENTITY; RAILAMERICA, INC., A**
18 **BUSINESS ENTITY, FORM UNKNOWN;**
19 **RAILAMERICA OPERATIONS SHARED**
20 **SERVICES, INC, A CALIFORNIA**
21 **CORPORATION; RAILAMERICA**
22 **OPERATIONS SUPPORT GROUP, INC, A**
23 **CALIFORNIA CORPORATION; SAN**
24 **JOAQUIN VALLEY RAILROAD**
25 **COMPANY, A CALIFORNIA**
26 **CORPORATION; UNION PACIFIC**
27 **RAILROAD COMPANY, A CALIFORNIA**
28 **CORPORATION; and DOES 1 through 1000,**
inclusive,

Defendants.

Case No. **11-244777**

COMPLAINT FOR UNREASONABLE
DIVERSION OF SURFACE WATER,
INVERSE CONDEMNATION,
TRESPASS, NUISANCE, EMOTIONAL
DISTRESS AND OTHER DAMAGES

CASE MANAGEMENT CONFERENCE

Hearing Date: 2-27-2012

Time: 8:30 am

Department: 7

24 **I. ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

25 1. Plaintiffs Buddy Hatcher and Holley Hatcher ("Plaintiffs") are and at all relevant times were
26 the owners of real property at 476 West Westfield Avenue, Porterville, County of Tulare, California
27 93257, ("Plaintiffs' Property") which real property is the site of damages at issue in this action.

28 2. The true names and identities of Defendants sued herein under the names of Does 1 through
1000 are unknown to Plaintiff, who will amend this Complaint to show their true names and

1 identities when the same have been ascertained. Does 1 through 100 are public entities that may own
2 an interest in the public right of ways or drainage from the public right of ways. Does 101 through
3 200 are individuals or business entities, form unknown, who may own an interest in the public right
4 of ways, drainage from the public right of ways, and/or drainage from real property that uses the same
5 drainage as the public right of way. Does 201 through 300 are persons whose capacities are unknown
6 to Plaintiffs. Does 301-1000 are persons who are agents of the City of Porterville, County of Tulare,
7 San Joaquin Valley Railroad Company, Rail America Incorporated, RailAmerica Operations Shared
8 Services, inc., RailAmerica Operations Support Group, inc., RailAmerica, Inc., Union Pacific
9 Railroad Company, or of any of the foregoing Doe Defendants.

10 3. Defendant City of Porterville, a public entity located in Tulare County, California and Does 1
11 through 400, hereinafter referred to collectively as "City," own and at all times owned the public right
12 of way named Main Street, and is responsible for all surface water drainage from Main Street and the
13 surrounding area, including that drainage affecting Plaintiffs' Property at all relevant times.

14 4. Defendant County of Tulare, a public entity located in California, and Does 1 through 300 and
15 401 through 500, hereafter referred to collectively as "County", own and at all times owned the public
16 right of way commonly named West Westfield Avenue, and are responsible for all surface water
17 drainage from West Westfield Avenue and the surrounding area, including that drainage affecting
18 Plaintiffs' Property at all relevant times.

19 5. County owns and at all relevant times owned and / or controlled the storm drain located on the
20 northwest corner of West Westfield Avenue and Main Street.

21 6. Defendant San Joaquin Valley Railroad Company, RailAmerica Operations Shared Services,
22 Inc., RailAmerica Operations Support Group, Inc. and Does 1 through 300 and 501 through 800 own,
23 control, and / or have an interest in, and at all relevant times owned, had an interest in, and / or
24 controlled that real property that is adjacent to and shares the northeast boundary of Plaintiffs'
25 Property located at 476 West Westfield Avenue, Porterville, California, 93257, Plaintiffs' Property.

26 7. RailAmerica Operations Shared Services, inc., RailAmerica Operations Support Group, inc.,
27 San Joaquin Railroad Company, and Does 1 through 300 and 501 through 800 are thought to be
28 entirely owned and controlled by RailAmerica, Inc., a foreign corporation, and Does 1 through 300
and Does 801 through 900, but their actual relationship is unknown to Plaintiffs. RailAmerica Inc.
and Does 1 through 300 and Does 801 through 900 are doing business in California by and through
subsidiary corporations RailAmerica Operations Shared Services, Inc., RailAmerica Operations

1 Support Group, Inc., San Joaquin Railroad Company, and Does 1 through 300 and 501 through 800
2 and by and through these subsidiary corporations own, control, and / or have an interest in, and at all
3 relevant times owned, had an interest in, and / or controlled that real property that is adjacent to and
4 shares the northeast boundary of Plaintiffs' Property located at 476 West Westfield Avenue,
5 Porterville, California, 93257, and due to actions and ownership of the subsidiary corporations are
6 subject to California's jurisdiction.

7 8. Defendant Union Pacific Railroad Company and Does 1-300 and 901-1000 own, control, and
8 / or have an interest in, and at all relevant times owned, had an interest in, and / or controlled that real
9 property that is adjacent to and shares the northeast boundary of Plaintiffs' Property located at 476
10 West Westfield Avenue, Porterville, California, 93257, Plaintiffs' Property.

11 9. RailAmerica Operations Shared Services, inc., RailAmerica Operations Support Group, inc.,
12 San Joaquin Railroad Company, RailAmerica, Inc., Union Pacific Railroad Company and Does 1
13 through 300 and 501 through 1000, are hereinafter referred to collectively as "Railroad Defendants."

14 10. City, County and Railroad Defendants are hereinafter referred to collectively as "All
15 Defendants."

16 11. Plaintiffs' Property is located in what is commonly referred to as a County island. Their real
17 property is located on a tract of land controlled by only the County, which tract is completely
18 surrounded by land controlled by City. In other words, if Plaintiffs were to drive in any direction they
19 would enter land controlled by City.

20 12. From 1890 to 2010 railroad tracks have been located on that real property that is adjacent to
21 and shares the northeast boundary of Plaintiffs' Property located at 476 West Westfield Avenue,
22 Porterville, California, 93257, Plaintiffs' Property.

23 13. From 1890 to the present the Pioneer Ditch, currently operated by the Lower Tule River
24 Irrigation Financing Corporation, has run along the northeast side of the railroad tracks and then
25 crossed to the western side of the railroad tracks roughly 1000 to 2000 yards from the intersection of
26 West Westfield Avenue and the railroad tracks.

27 14. The most recent Tulare County Master Flood Control Plan integrates the Pioneer Ditch as part
28 of its plan to control surface water runoff from undeveloped land, developed land and streets in heavy
rain years, including for once-in-50-year concentrations of rainfall, for the Porterville area. Pioneer
Ditch traverses the slope of the land taking water north of Porterville and pursuant to the Tulare
County Master Flood Control Plan was capable of capturing excess surface water runoff and

1 protecting properties west of Pioneer Ditch. The area impacting the Plaintiffs' Property is included in
2 this portion of the Tulare County Master Flood Control Plan, which was meant to be protected by
3 Pioneer Ditch.

4 15. County owns a storm drain located at the northwest corner of Main Street and West Westfield
5 Avenue. This storm drain carries water roughly 100-200 yards in an underground pipe and diverts
6 surface water runoff from Main Street into Pioneer Ditch, about 20-50 yards northwest of the
7 intersection of the railroad tracks and West Westfield avenue.

8 16. The most recent City of Porterville Storm Water Management Program requires City to
9 annually inspect and survey City's storm drain system, including individual storm drains. Although
10 City channeled surface water into the storm drain located at the northwest corner of Main Street and
11 West Westfield Avenue, the storm drain does not appear on the City's survey and is not inspected
12 annually by the City.

13 17. At some time between May, 2010 and December, 2010 Railroad Defendants abandoned and
14 removed the railroad tracks that ran from Strathmore, California through Porterville, California to
15 Jovista, California, and including removal of the tracks that ran adjacent to 476 West Westfield,
16 Porterville, California, Plaintiffs' Property, along property controlled by the Railroad Defendants.

17 18. During the removal Railroad Defendants filled Pioneer Ditch with earth, debris and otherwise
18 blocked the historic drainage. Railroad defendants also covered the exit to the storm drain that
19 carried surface water runoff from the northwest corner of West Westfield Avenue and Main street
20 with earth and debris and otherwise blocked the drainage infrastructure.

21 19. After removal of the tracks, the railroad bed was graded, lowered, and widened. Pioneer ditch
22 was not restored and the exit for the storm drain was not cleared and uncovered. By lowering and
23 grading the tracks, the ability of the railroad bed to capture and divert surface water was eliminated.

24 20. Railroad Defendants later removed the tracks that crossed West Westfield Avenue, a public
25 right of way. Historically, the tracks created two grooves that would divert surface water from West
26 Westfield Avenue northwest into pioneer ditch and along the railroad tracks. After Railroad
27 Defendants removed the tracks they made the section of the road level with the grade of the rest of
28 the road and did not put in any infrastructure to divert surface water from West Westfield Avenue
northwest along the railroad tracks and into Pioneer Ditch.

21. Upon completion of track removal from the public right of way and land controlled by
Railroad Defendants, Railroad Defendants had significantly altered the historic surface water

1 drainage and the City and County planned infrastructure for surface water drainage. Railroad
2 Defendants had filled and obstructed Pioneer Ditch with earth and debris. Railroad Defendants had
3 blocked the exit to the storm drain that carried water from the northwest corner of Main Street and
4 West Westfield, reducing the amount of surface water the storm drain was able to capture and
5 diverting more surface water along West Westfield Avenue. Railroad Defendants had removed all
6 other infrastructure that had traditionally diverted water along the eastern side of the rail road tracks.
7 Railroad Defendants had removed the railroad track bed, substantially increase the amount of surface
8 water diverted into Plaintiffs property.

8 22. After completion of the railroad track removal, but before damage to Plaintiffs had occurred,
9 neither the City nor County adequately inspected the track removal or reviewed the railroad track
10 removal's impact on the Master Drainage Plans. Neither entity inspected the storm drain or provided
11 any maintenance to the storm drain.

11 23. After completion of the railroad track removal, but before damage to Plaintiffs had occurred
12 the drainage along West Westfield avenue along the north side of the street, west of the County's
13 Storm drain was blocked with years of dirt, grass, tree roots, trash and other debris. The drainage for
14 West Westfield Avenue was not properly maintained.

15 24. City and County negligently maintained their respective surface water drainage systems.

16 25. On or about December 20, 2010 Plaintiffs awoke in the early morning hours to find the
17 ground floor of their two story home was wet. Plaintiffs discovered that their home was being
18 flooded by surface water from uphill lands diverted by All Defendants, and each of them, as
19 described above.

20 26. Plaintiffs immediately moved as much personal property as possible to the second story of
21 their home to limit property damage.

22 27. Plaintiffs discovered that surface water from Main Street was being directed into the storm
23 drain at the northwest corner of West Westfield Avenue. The storm drain appeared blocked, and
24 water then ran out into West Westfield avenue. At the historic railroad bed, most of the water flowed
25 across the bed and directly down into Plaintiffs' Property.

26 28. Water from the County's storm drain bubbled up from underground and large pools of water
27 formed above Plaintiffs' Property. The water flowed across the historic railroad track bed and down
28 into Plaintiffs' Property.

29. Water pooled in additional places along the tracks, leading more water to flow across the

1 graded rail road track bed. The pooled water further impeded the storm drain, reducing the amount of
2 surface water the storm drain could accept from Main Street. As a result, more water from Main
3 Street was channeled down West Westfield Avenue, across the old railroad track bed and down into
4 Plaintiffs' Property.

5 30. Plaintiffs filled sandbags to protect their home. Plaintiffs cleared debris from West Westfield
6 Avenue and tried to reestablish the historic drainage system. Plaintiffs called the City of Porterville
7 and Tulare County to request help in redirecting the water, and Plaintiffs rented a pump and
8 purchased materials in an effort to lower the water level on Plaintiffs property.

9 31. The City and the County never sent anyone to help Plaintiffs redirect the water. The pump
10 Plaintiffs had rented was unable to keep up with the water coming onto Plaintiffs property across the
11 historic railroad bed, diverted from the City and County streets.

12 32. Plaintiffs' ground floor was inundated with about two and a half feet of water. Plaintiffs'
13 garage was filled with nearly two (2) feet of water and Plaintiffs storage shed was filled with over
14 three (3) feet of water.

15 33. Plaintiffs lost extensive personal property, family heirlooms, Christmas presents, clothes and
16 other belongings as well as the family Christmas tree.

17 34. Plaintiffs fearing for the health and safety of their family were forced to move to a hotel to
18 spend Christmas. Instead of being able to spend Christmas with his family, Plaintiff Mr. Hatcher
19 spent the holidays digging ditches, pumping water and trying to do everything he could to save his
20 home.

21 35. Plaintiff Mr. Hatcher was required to take time off of work, resulting in a loss of wages, to try
22 and salvage his home and find a suitable alternative residence for his family. Plaintiffs' home was
23 rendered uninhabitable by the damage and the Plaintiffs were forced to rent an alternative residence
24 in early January, 2011.

25 36. Plaintiffs' life savings were wiped out by the costs of renting the pump, the deposit and first
26 months rent to move to a new residence, the replacement of emergency personal property, and other
27 costs associated with being forced from their dream home.

28 37. Plaintiffs owned the subject property since 2004 and had never seen the property flood before.

38. As a result of the flooding, Plaintiffs home and foundation was severely damaged. Plaintiffs'
garage was damaged, Plaintiffs' storage shed was severely damaged, and considerable personal
property was damaged or destroyed.

1 39. Plaintiffs experienced great emotional distress over the loss of their home, being forced out of
2 their home, being forced out of their home at Christmas, the loss of their life-savings, the financial
3 burdens and debts caused by the flooding, and threat to the health and safety of their family.

4 40. Plaintiffs submitted their claim for damages to City on June 3, 2011. City rejected Plaintiffs'
5 claim on June 7, 2011 since Plaintiffs had included a courtesy estimate of damages which the City
6 interpreted as a fixed amount contrary to California law. On June 8, 2011 Plaintiffs' submitted an
7 amended claim to City. On July 7, 2011 Plaintiffs received City's notice of rejection of the claim.

8 41. Plaintiffs submitted their claim for damages to the County on June 3, 2011. On June 8, 2011
9 Plaintiffs' submitted an amended claim to County. On August 1, 2011 Plaintiffs received County's
10 notice of rejection of the claim.

11 42. On June 14, 2011 Plaintiffs sent notice of the impending action to San Joaquin Railroad
12 Company in Exeter, California and RailAmerica, Inc in Jacksonville, Florida. On September 6, 2011
13 Plaintiffs received notice from RailAmerica, Inc., who purported to be answering on behalf of all
14 Railroad Defendants except Union Pacific Railroad Company and denied all liability associated with
15 Plaintiffs' claim.

16 43. Having exhausted all administrative and alternative remedies, Plaintiffs file the present action.

17 **II. FIRST CAUSE OF ACTION - UNREASONABLE DIVERSION OF SURFACE**
18 **WATER (AS TO RAILROAD DEFENDANTS ONLY)**

19 44. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 43 of this Complaint as
20 though fully set forth herein.

21 45. Railroad Defendants at all relevant times owned, controlled or had an interest in the real
22 property adjacent to Plaintiffs' Property along its eastern boundary.

23 46. Railroad Defendants are uphill landowners since property, owned, controlled or in which
24 Railroad Defendants otherwise had an interest, is uphill, or at higher elevation, than Plaintiffs'
25 Property.

26 47. From at least 1890 until some time between May, 2010 and December, 2010, Railroad
27 Defendants' property had railroad tracks. The railroad tracks, rail bed, and other improvements were
28 an integral part of the City and County's surface water drainage infrastructure and the Tulare County
Master Drainage Plan.

48. Railroad Defendants removal of the railroad tracks unreasonably modified surface water
drainage.

1 49. Railroad Defendants obstruction of the Pioneer Ditch and the exit from the storm drain that
2 collected water from the northwest corner of Main Street and West Westfield Avenue, unreasonably
3 obstructed and modified surface water drainage.

4 50. Railroad Defendants' unreasonable changes to surface water drainage greatly increased the
5 amount of surface water that was directed onto Plaintiffs' Property, causing flooding of Plaintiffs'
6 Property, causing great damage to improvements on Plaintiffs' real property, great damage and loss
7 of personal property, loss of enjoyment of real property, loss of use of real property, loss of wages,
8 loss of money to mitigate flooding, causing Plaintiffs great emotional distress, and such other
9 damages as may be shown at the time of trial.

10 51. Prior to the discovery of the problem created by Railroad Defendants and the flooding of
11 Plaintiffs' Property, Plaintiffs had made no changes to the surface water drainage at issue in this case.

12 52. Railroad Defendants have unreasonably changed surface water drainage, resulting in great
13 damage to Plaintiffs and Plaintiffs' Property.

14 53. As a result of all the foregoing, Railroad Defendants are liable to Plaintiffs for all damages to
15 Plaintiffs in an amount to be proven at trial.

16 54. Plaintiffs have reasonably incurred attorney's fees and are entitled to recover from Railroad
17 Defendants reasonable attorney's fees incurred by Plaintiffs in bringing this action, and for the costs
18 of suit.

19 **III. SECOND CAUSE OF ACTION - INVERSE CONDEMNATION (AS TO CITY AND**
20 **COUNTY ONLY)**

21 55. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 54 of this Complaint as
22 though fully set forth herein.

23 56. City at all times owned, controlled or had an interest in the public right of way called Main
24 Street, a public street that travels through the City of Porterville, and at all relevant times was
25 responsible for surface water drainage from and around Main Street.

26 57. County at all time owned, controlled or had an interest in the public right of way called West
27 Westfield Avenue and at all relevant times was responsible for surface water drainage from West
28 Westfield Avenue.

58. County at all relevant times owned, controlled or had an interest in the storm drain and
underground pipes that carry surface water 100-200 yards from the northwest corner of Main Street
and West Westfield Avenue to the Pioneer ditch on the eastern side of the historic railroad tracks bed.

City's ownership interest in this same storm drain is unknown to Plaintiffs.

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59. County negligently maintained the drainage from Main Street and West Westfield Avenue east of the Plaintiffs' Property. The drainage along the street was filled with grass, earth, roots, trash and other debris. The storm drain was not adequately inspected or maintained and the exit for the storm drain was in fact obstructed by earth and debris from the removal of the railroad tracks by the Railroad Defendants.

60. County did not adequately inspect the removal of the railroad tracks from West Westfield Avenue after Railroad Defendants had completed the removal. Since the removal was done on public lands the removal was a public work and qualifies as a public improvement project. After completion of the public improvement project, County did not adequately verify that the master drainage plan had not been altered, and did not correct the fact that it had been altered.

61. The City of Porterville Storm Water Management Program requires that City annually inspect and maintain the storm drain system. The storm drain located at the northwest corner of West Westfield Avenue and Main Street is not included in the City's survey, even though a considerable amount of water is annually diverted into the storm drain. City negligently maintained this portion of its drainage system in that City did not ensure that water diverted into the County was safely, adequately and reasonably diverted into a storm drain that was reasonably maintained.

62. Surface water runoff from Main Street not captured by the storm drain located at the northwest corner of West Westfield Avenue and Main Street traveled down West Westfield Avenue, which City had failed to maintain and should have maintained since drainage along the side of West Westfield Avenue is an integral part of City's surface water drainage plan.

63. City did not adequately inspect the removal of the railroad tracks from West Westfield Avenue and did not otherwise adequately inspect how the public improvement project impacted City's surface water drainage plan. City negligently diverted surface water into the County storm drain and onto County streets.

64. As a result of City's and the County's negligent maintenance of the surface water storm drainage system, failure to mitigate changes made by Railroad Defendants to the master drainage plan including, but not limited to, filling in Pioneer Ditch and blocking the exit to a storm drain, and negligent and unreasonable modification of surface water diversion by removing the railroad tracks, surface water was not diverted according to the County's Master Drainage Plan or the City's Master Drainage Plan and surface water diverted onto Plaintiffs' Property was significantly increased.

1 65. City and County unreasonably diverted surface water onto Plaintiffs' Property and condemned
2 Plaintiffs' Property for public use for storm water storage, contrary to the Tulare County Master
3 Drainage Plan and as a result caused great damage to improvements on Plaintiffs' real property, great
4 damage and loss of personal property, loss of enjoyment of real property, loss of use of real property,
5 loss of wages, loss of money to mitigate flooding, caused Plaintiffs great emotional distress, and
6 together with other damages to be shown at trial.

7 66. Plaintiffs were forced to accept a disproportionate share of the burden for an action taken by
8 City and County that benefited the public. Damage to Plaintiffs' Property greatly exceeded the costs
9 to maintain the historic surface water drainage infrastructure and to comply with the master drainage
10 plans.

11 67. Plaintiffs took reasonable measures to protect Plaintiffs' Property from Defendants
12 unreasonable actions and condemnation of Plaintiffs' Property.

13 68. City and County condemned Plaintiffs' Property for public use and Plaintiffs were forced to
14 bear a disproportionate share of the burden for the public's benefit and Defendants, each of them,
15 must justly compensate Plaintiffs for all damages sustained by Plaintiffs, in an amount to be proven at
16 trial.

17 69. Plaintiffs have reasonably incurred attorney's fees and are entitled to recover from Railroad
18 Defendants reasonable attorney's fees incurred by Plaintiffs in bringing this action, and for the costs
19 of suit.

20 IV. THIRD CAUSE OF ACTION - TRESPASS (AS TO ALL DEFENDANTS)

21 70. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 69 of this Complaint as
22 though fully set forth herein.

23 71. Plaintiffs at all relevant times owned and controlled the real property located at 476 West
24 Westfield Avenue, Porterville, County of Tulare, California 93257.

25 72. All Defendants, and each of them, intentionally, recklessly, or negligently caused surface
26 water to enter Plaintiffs' Property.

27 73. Plaintiffs did not give All Defendants, or any of them, permission for the entry of surface
28 water and the entry of surface water greatly exceeded any permission that All Defendants, or any of
them, may have wrongly believed they had.

74. Plaintiffs were actually harmed by All Defendants', and each of them, by their Trespass.

75. All Defendants', and each of their, Trespass was a substantial factor in causing great damage

1 to improvements on Plaintiffs' real property, great damage and loss of personal property, loss of
2 enjoyment of real property, loss of use of real property, loss of wages, loss of money to mitigate
3 flooding, causing Plaintiffs great emotional distress, together with other damages to be shown at trial.

4 76. As a result of all the foregoing All Defendants, and each of them, are liable to Plaintiffs for
5 damages in an amount to be proven at trial.

6 77. Plaintiffs have reasonably incurred attorney's fees and are entitled to recover from All
7 Defendants, and each of them, reasonable attorney's fees incurred by Plaintiffs in bringing this action,
8 and for the costs of suit.

9 **V. FOURTH CAUSE OF ACTION - NUISANCE (AS TO ALL DEFENDANTS)**

10 78. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 77 of this Complaint as
11 though fully set forth herein.

12 79. Plaintiffs and all relevant times owned and controlled the real property located at 476 West
13 Westfield Avenue, Porterville, County of Tulare, California 93257.

14 80. All Defendants, and each of them, interfered with Plaintiffs' use and enjoyment of Plaintiffs'
15 land in violation of the California Civil Code §§ 3479 *et seq.*

16 81. All Defendants, and each of them, by acting or failing to act, diverted surface water onto
17 Plaintiffs' Property, creating a condition that was harmful to health, indecent and offensive to the
18 senses, and was an obstruction to the free use of property so as to interfere with the comfortable
19 enjoyment of life and property.

20 82. Plaintiffs did not consent to All Defendants', or any Defendant's, diversion of surface water
21 onto Plaintiffs' Property.

22 83. An ordinary person would be reasonably annoyed or disturbed by All Defendants', and each
23 of their, diversion of surface water onto Plaintiffs' Property.

24 84. All Defendants', and each of their, diversion of surface water onto Plaintiffs' Property was a
25 substantial factor in causing Plaintiffs' harm. All Defendants, and each of them, caused great damage
26 to improvements on Plaintiffs' real property, great damage and loss of personal property, loss of
27 enjoyment of real property, loss of use of real property, loss of wages, loss of money to mitigate
28 flooding, caused Plaintiffs great emotional distress, together with other damages to be shown at trial.

85. The seriousness of the harm caused by All Defendants, and each of them, to Plaintiffs
outweighs the public benefit of All Defendants', and each of their, diversion of surface water onto
Plaintiffs' Property.

1 86. As a result of all the foregoing All Defendants, and each of them, are liable to Plaintiffs for
2 having interfered with Plaintiffs' use and enjoyment of Plaintiffs' land and for damages in an amount
3 to be proven at trial.

4 87. Plaintiffs have reasonably incurred attorney's fees and are entitled to recover from All
5 Defendants, and each of them, reasonable attorney's fees incurred by Plaintiffs in bringing this action,
6 and for the costs of suit.

7 **VI. FIFTH CAUSE OF ACTION – NEGLIGENCE (AS TO ALL DEFENDANTS)**

8 88. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 87 of this Complaint as
9 though fully set forth herein.

10 89. All Defendants, and each of them, owe a duty to Plaintiffs to reasonably maintain and to
11 reasonably manage Defendants' property so as to avoid causing harm to Plaintiffs and Plaintiffs'
12 Property. All Defendants, and each of them, also owed a duty to Plaintiffs to abstain from changing
13 or altering Defendants' property unreasonably and in a manner that causes harm to Plaintiffs and
14 Plaintiffs' Property.

15 90. All Defendants, and each of them, breached their duty to Plaintiffs by unreasonably
16 maintaining the surface water drainage infrastructure that had previously protected Plaintiffs'
17 Property and by making changes and improvements to Defendants' property that unreasonably
18 harmed Plaintiffs' and Plaintiffs' Property.

19 91. All Defendants, and each of them, by unreasonably maintaining the surface water drainage
20 infrastructure and unreasonably diverting surface water onto Plaintiffs' Property were a substantial
21 factor in causing great damage to improvements on Plaintiffs' real property, great damage and loss of
22 personal property, loss of enjoyment of real property, loss of use of real property, loss of wages, loss
23 of money to mitigate flooding, causing Plaintiffs great emotional distress, together with other
24 damages to be shown at trial.

25 92. The harm sustained by Plaintiffs was foreseeable and the type of harm that a reasonable
26 person would expect to result from unreasonably maintaining the surface water drainage
27 infrastructure and making changes to Defendants' property that unreasonably diverted surface water
28 onto Plaintiffs' Property.

93. Plaintiffs request this Court order All Defendants, and each of them, to reimburse Plaintiffs
for all damage to improvements on Plaintiffs' real property, great damage and loss of personal
property, loss of enjoyment of real property, loss of use of real property, loss of wages, loss of money

1 to mitigate flooding, causing Plaintiffs great emotional distress, together with other damages to be
2 shown at trial.

3 **PRAYER FOR RELIEF**

4 **WHEREFORE, Plaintiffs pray for relief as follows:**

5 1. For a Judgment against City and County declaring that City and County have inversely
6 condemned Plaintiffs' Property, trespassed on Plaintiffs' Property, and created a nuisance on
7 Plaintiffs' Property and that City and County to justly compensate Plaintiffs in an amount proven at
8 trial for all damage to real property, all damage to improvements on real property, all damage and
9 loss of personal property, loss of enjoyment of property, loss of use of real property, and any other
10 damages sustained by Plaintiffs as a result of City's and County's condemnation of Plaintiff's
11 property and that City and County pay Plaintiffs' reasonable attorney's fees and costs.

12 2. For a Judgment against Railroad Defendants declaring that Railroad Defendants
13 unreasonably diverted surface water onto Plaintiffs' Property, trespassed on Plaintiffs' Property and
14 created a nuisance on Plaintiffs property, and that Railroad Defendants must compensate Plaintiffs for
15 all damage to real property, all damage to improvements on real property, all damage and loss of
16 personal property, loss of enjoyment of property, loss of use of real property, emotional distress and
17 any other damages sustained by Plaintiffs as a result of Railroad Defendants actions, in an amount to
18 be proven at trial and that Railroad Defendants pay Plaintiffs' reasonable costs and attorney's fees of
19 bringing the action.

20 3. And such other and further relief as the Court deems just and proper.

21
22 Dated: 10/25/11

23 
24 Alexander Reed-Krase, Esq.,
25 Attorney for Plaintiffs
26
27
28

VERIFICATION

1
2 I, Buddy Hatcher, Plaintiff herein, have read the foregoing VERIFIED COMPLAINT FOR
3 UNREASONABLE DIVERSION OF SURFACE WATER, INVERSE CONDEMNATION,
4 TRESPASS, NUISANCE, AND EMOTIONAL DISTRESS AND OTHER DAMAGES and
5 know the contents thereof, and I certify that the same is true to the best of my knowledge,
6 except as to those matters based upon information and belief, and as to those matters I
7 believe them to be true.
8

9
10 I declare under penalty of perjury under the laws of the State of California that the foregoing
11 is true and correct and that I executed this declaration on the __ day of October, 2011 at
12 Porterville, California.
13

14 
15 _____
16 Buddy Hatcher, Plaintiff
17
18
19
20
21
22
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26
27
28

VERIFICATION

1
2 I, Holley Hatcher, Plaintiff herein, have read the foregoing VERIFIED COMPLAINT FOR
3 UNREASONABLE DIVERSION OF SURFACE WATER, INVERSE CONDEMNATION,
4 TRESPASS, NUISANCE, AND EMOTIONAL DISTRESS AND OTHER DAMAGES and
5 know the contents thereof, and I certify that the same is true to the best of my knowledge,
6 except as to those matters based upon information and belief, and as to those matters I
7 believe them to be true.
8

9
10 I declare under penalty of perjury under the laws of the State of California that the foregoing
11 is true and correct and that I executed this declaration on the ___ day of October, 2011 at
12 Porterville, California.
13

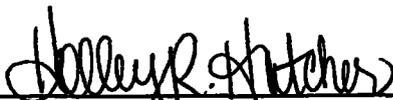
14
15 
16 _____
17 Holley Hatcher, Plaintiff
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 2

1 RANDOLPH CREGGER & CHALFANT LLP
THOMAS A. CREGGER (SBN 124402)
2 Email: tac@randolphlaw.net
MELISSA S. GREENIDGE (SBN 272669)
3 Email: mgreenidge@randolphlaw.net
1030 G Street
4 Sacramento, CA 95814
Phone: 916.443-4443
5 Fax: 916.443-2124

6 Attorneys for DEFENDANT
UNION PACIFIC RAILROAD COMPANY

8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF TULARE

11 BUDDY HATCHER AND HOLLEY
HATCHER, HUSBAND AND WIFE,

12 Plaintiff,

13 vs.

14 CITY OF PORTERVILLE, A PUBLIC
15 ENTITY; COUNTY OF TULARE, A
PUBLIC ENTITY; RAILAMERICA,
16 INC., A BUSINESS ENTITY, FORM
UNKOWN; RAILAMERICA
17 OPERATIONS SHARED SERVICES,
INC., A CALIFORNIA CORPORATION;
18 RAILAMERICA OPERATIONS
SUPPORT GROUP, INC, A
19 CALIFORNIA CORPORATION; SAN
JOAQUIN VALLEY RAILROAD
20 COMPANY, A CALIFORNIA
CORPORATION; UNION PACIFIC
21 RAIROAD COMPANY, A CALIFORNIA
CORPORATION; and DOES 1 through
22 1000, inclusive,

23 Defendants.

No.: 11-244777

**DEFENDANT UNION PACIFIC
RAILROAD COMPANY'S ANSWER TO
COMPLAINT**

Date Complaint Filed: 10/27/11
Trial Date: None Set

24
25
26 COMES NOW Defendant Union Pacific Railroad Company and in answer to the
27 Complaint on file herein and each cause of action therein stated, admits, denies and alleges as
28

1 follows:

2 1.

3 Defendant denies the allegations of the following paragraphs: None.

4 2.

5 Defendant denies the allegations of the following paragraphs: 18, 21, 25, 38, 39, 48, 49,

6 50, 53, 72, 74, 75, 76, 80, 81, 83, 84, 85, 86, 87, 89, 90, 91, 92.

7 3.

8
9 As to the allegations of the following paragraph's defendant is without sufficient
10 information to form a belief as to their truth, or not, and on that basis denies the allegations of
11 each: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 22, 23, 24, 26, 27, 28, 29, 30,
12 31, 32, 33, 34, 35, 36, 37, 40, 41, 42, 43, 45, 46, 47, 51, 52, 53, 54, 56, 57, 58, 59, 60, 61, 62, 63,
13 64, 65, 66, 67, 68, 69, 73, 77, 79, 82.

14
15 AS AND FOR A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSES,
DEFENDANT ALLEGES AS FOLLOWS:

16 1. The Complaint and each cause of action contained therein fails to state facts
17 sufficient to constitute a cause of action against this answering Defendant.

18 2. Plaintiffs were contributorily negligent with respect to the matters referred to in
19 the Complaint, and each alleged cause of action contained therein, which carelessness and
20 negligence was the proximate cause of the alleged damages sustained, if any there be.

21 3. Plaintiff assumed whatever risk or hazard, if any, that existed at the time and place
22 referred to in the Complaint, and each alleged cause of action contained therein, which assump-
23 tion of risk or hazard was the proximate cause of the alleged damages sustained, if any there be.

24 4. Plaintiffs' alleged damages, if any there be, were caused by Plaintiff's failure to
25 mitigate those damages through the exercise of reasonable diligence.

26 5. Plaintiffs have failed to exhaust administrative remedies.
27
28

1 6. At all times pertinent to the allegations of the Complaint, Defendants use of any
2 property adjacent to plaintiffs', if any, was reasonable and legal.

3 7. At all times pertinent to the allegations of the Complaint, Defendant acted
4 reasonably with respect to surface waters on any property adjacent to Plaintiffs'.

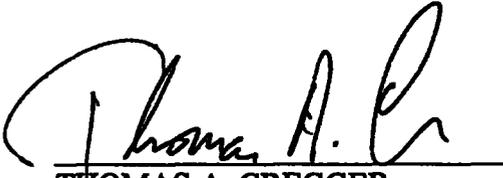
5 8. ~~Plaintiffs' Complaint, and each cause of action alleged against this Defendant, are~~
6 preempted by the Federal Railroad Safety Act, 49 U.S.C. § 10101, et seq.

7 WHEREFORE, DEFENDANT PRAYS FOR JUDGMENT AS FOLLOWS:

- 8 1. That the Complaint on file herein and each cause of action therein contained be hence
9 dismissed;
10
11 2. That Defendant be awarded costs of suit incurred herein, including attorney's fees; and
12
13 3. For such other and further relief as the Court deems fit and proper under the
14 circumstances.

15 DATE: November 27, 2011

RANDOLPH CREGGER & CHALFANT LLP



THOMAS A. CREGGER
Attorneys for DEFENDANT UNION PACIFIC
RAILROAD COMPANY

1 **PROOF OF SERVICE**

2 **CASE: Buddy and Holley Hatcher v. City of Porterville, UPRR, et al.**
3 **NO.: Tulare County Superior Court Case No.: 11-244777**

4 The undersigned declares:

5 I am a citizen of the United States and a resident of the County of Sacramento. I am
6 over the age of 18 years and not a party to the within above-entitled action; my business
7 address is 1030 G Street, Sacramento, CA 95814.

8 I am readily familiar with this law firm's practice for collection and processing of
9 correspondence for mailing with the United States Postal Service; said correspondence will
10 be deposited with the United States Postal Service the same day in the ordinary course of
11 business.

12 On the date indicated below I served the within **DEFENDANT UNION PACIFIC
13 RAILROAD COMPANY'S ANSWER TO COMPLAINT** on all parties in said action as
14 addressed below by causing a true copy thereof to be:

15 placed in a sealed envelope with first class postage thereon fully prepaid in a
16 designated area for outgoing mail;

17 delivered by hand;

18 telecopied by facsimile;

19 express mailed by overnight delivery.

20 Attorneys for Plaintiffs Buddy and Holley Hatcher

21 Robert Krase, Esq.

22 Alexander Reed-Krause, Esq.

23 The Law Offices of Robert Krase

24 132 East Morton Avenue

25 Porterville, CA 93257

26 Telephone: (559) 784-2353

27 Facsimile: (559) 784-2463

28 I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct.

Executed this November 23, 2011, at Sacramento, California.


CAROLYN A. APODACCA

1 **PROOF OF SERVICE**

2 **CASE: Buddy and Holley Hatcher v. City of Porterville, UPRR, et al.**
3 **NO.: Tulare County Superior Court Case No.: 11-244777**

4 The undersigned declares:

5 I am a citizen of the United States and a resident of the County of Sacramento. I am
6 over the age of 18 years and not a party to the within above-entitled action; my business
7 address is 1030 G Street, Sacramento, CA 95814.

8 I am readily familiar with this law firm's practice for collection and processing of
9 correspondence for mailing with the United States Postal Service; said correspondence will
10 be deposited with the United States Postal Service the same day in the ordinary course of
11 business.

12 On the date indicated below I served the within **DEFENDANT UNION PACIFIC
13 RAILROAD COMPANY'S VERIFICATION TO ANSWER TO COMPLAINT** on all
14 parties in said action as addressed below by causing a true copy thereof to be:

15 placed in a sealed envelope with first class postage thereon fully prepaid in a
16 designated area for outgoing mail;

17 delivered by hand;

18 telecopied by facsimile;

19 express mailed by overnight delivery.

20 Attorneys for Plaintiffs Buddy and Holley Hatcher

21 Robert Krase, Esq.

22 Alexander Reed-Krause, Esq.

23 The Law Offices of Robert Krase

24 132 East Morton Avenue

25 Porterville, CA 93257

26 Telephone: (559) 784-2353

27 Facsimile: (559) 784-2463

28 I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct.

Executed this December 5, 2011, at Sacramento, California.



CAROLYN A. APODACA

EXHIBIT 3

Vcal

1 William T. McLaughlin II, #116348
Lang, Richert & Patch
2 Post Office Box 40012
Fresno, California 93755-0012
3 (559) 228-6700 Phone
(559) 228-6727 Fax
4 M:\19748\Pleadings\answer to complaint.wpd:pm

5 Attorneys for Defendants RAILAMERICA, INC.; RAILAMERICA OPERATIONS SHARED
SERVICES, INC.; RAILAMERICA OPERATIONS SUPPORT GROUP, INC.; and SAN
6 JOAQUIN VALLEY RAILROAD COMPANY

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF TULARE

11 BUDDY HATCHER AND HOLLEY
HATCHER, HUSBAND AND WIFE,
12
13 Plaintiffs,

Case No. 11-244777
ANSWER TO COMPLAINT

14 v.

15 CITY OF PORTERVILLE, A PUBLIC
ENTITY; COUNTY OF TULARE, A
16 PUBLIC ENTITY; RAILAMERICA, INC., A
BUSINESS ENTITY, FORM UNKNOWN;
17 RAILAMERICA OPERATIONS SHARED
SERVICES, INC., A CALIFORNIA
18 CORPORATION; RAILAMERICA
OPERATIONS SUPPORT GROUP, INC., A
19 CALIFORNIA CORPORATION; SAN
JOAQUIN VALLEY RAILROAD
20 COMPANY, A CALIFORNIA
CORPORATION; UNION PACIFIC
21 RAILROAD COMPANY, A CALIFORNIA
CORPORATION; and DOES 1 through 1000,
22 inclusive,
23 Defendants.

24
25 COMES NOW Defendants RAILAMERICA, INC.; RAILAMERICA OPERATIONS
26 SHARED SERVICES, INC.; RAILAMERICA OPERATIONS SUPPORT GROUP, INC.; and
27 SAN JOAQUIN VALLEY RAILROAD COMPANY, and answers the Complaint herein as follows:

28 ///

1 **FIFTH AFFIRMATIVE DEFENSE**

2 **DOCTRINE OF LACHES**

3 6. AS A SEPARATE DEFENSE, these answering Defendants allege that Plaintiffs',
4 by their delay in commencing and prosecuting this action with the certain knowledge that memories
5 may grow dim, and documents and witnesses may become unavailable, has waived and is estopped
6 from proceeding herein, and Defendants further allege and aver that this action and each and every
7 claim set forth herein is barred by the doctrine of laches.

8 **SIXTH AFFIRMATIVE DEFENSE**

9 **DAMAGES SUSTAINED ARE NOT RECOVERABLE AS A MATTER OF LAW**

10 7. AS A SEPARATE DEFENSE, these answering Defendants allege on information
11 and belief that Plaintiffs have not sustained any damages recoverable under law by reason of any
12 act or omission on the part of Defendants.

13 **SEVENTH AFFIRMATIVE DEFENSE**

14 **PRIVILEGED/ EXCUSED CONDUCT**

15 8. AS A SEPARATE DEFENSE, these answering Defendants allege on information
16 and belief that any conduct attributed to them as a basis for liability in this case was privileged or
17 excused as a matter of law.

18 **EIGHTH AFFIRMATIVE DEFENSE**

19 **DEFENDANT NOT A SUBSTANTIAL FACTOR IN CAUSING DAMAGES**

20 9. AS A SEPARATE DEFENSE, these answering Defendants allege on information
21 and belief that no act or omission on their part was a substantial factor in bringing about the
22 damages alleged by Plaintiffs, nor was any act or omission a contributing cause thereof.

23 **NINTH AFFIRMATIVE DEFENSE**

24 **INTERVENING FORCE PROXIMATE CAUSE OF INJURY**

25 10. AS A SEPARATE DEFENSE, these answering Defendants alleged on information
26 and believe that any acts or omissions of Defendants was superseded by an act of nature and force
27 that was the proximate cause such that no one could have avoided the damages alleged by Plaintiffs.
28

1 **TENTH AFFIRMATIVE DEFENSE**

2 **INTERVENING ACT BY A THIRD PARTY CAUSE OF INJURY**

3 11. AS A SEPARATE DEFENSE, these answering Defendants allege on information
4 and belief that any acts or omissions of Defendants was superseded by the acts and/or omissions
5 of others, including Plaintiffs, other Defendants, and/or other individuals or entities who are not
6 parties in this lawsuit, which were the independent, intervening, proximate cause of the damage or
7 loss alleged by Plaintiffs.

8 **ELEVENTH AFFIRMATIVE DEFENSE**

9 **NO SUBJECT MATTER JURISDICTION**

10 12. Defendants allege on information and belief that subject matter jurisdiction is not
11 proper.

12 **TWELFTH AFFIRMATIVE DEFENSE**

13 **UNSTATED AFFIRMATIVE DEFENSES DISCOVERED LATER**

14 13. Defendants presently have insufficient knowledge or information upon which to
15 form a belief as to whether they may have additional, as yet unstated, affirmative defenses available.
16 Defendants reserve the right to assert additional affirmative defenses in the event discovery
17 indicates they would be appropriate.

18 WHEREFORE, Defendants, and each of them, pray for judgment as follows:

- 19 1. That judgment be entered in favor of Defendants and against Plaintiffs;
20 2. That Defendants be awarded attorneys' fees and costs as allowed by law; and
21 3. For such other and further relief as the Court determines reasonable and appropriate.

22 Dated: December 2, 2011

23 LANG, RICHERT & PATCH, P.C.

24
25 By: 

26 William T. McLaughlin II
27 Attorneys for Defendants RAILAMERICA, INC.;
28 RAILAMERICA OPERATIONS SHARED
SERVICES, INC.; RAILAMERICA OPERATIONS
SUPPORT GROUP, INC.; and SAN JOAQUIN
VALLEY RAILROAD COMPANY

1 PROOF OF SERVICE
2 (Code Civ. Proc. §§ 1013a, 2015.5)

3 STATE OF CALIFORNIA, COUNTY OF FRESNO

4 I am employed in the County of Fresno; I am over the age of 18 years and not a party to the
5 within above-entitled cause; my business address is 5200 North Palm Avenue, Suite 401, Fresno,
6 California 93704.

7 On the date of execution hereof, I served the foregoing document described as ANSWER
8 TO COMPLAINT on the interested parties in this action by placing a true copy thereof enclosed
9 in a sealed envelope and addressed as follows:

10 Robert Krase, Esq. Alexander Reed-Krause Esq. The Law Offices of Robert Krase 132 East Morton Avenue Porterville, California 93257	Attorney for Plaintiffs Buddy Hatcher and Holley Hatcher
11 Thomas A. Cregger, Esq. Randolph Cregger & Chalfant LLP 1030 G Street Sacramento, California 95814	Attorney for Defendant Union Pacific Railroad Company

14 (BY ELECTRONIC-MAIL)

15 (BY MAIL) by placing the sealed envelope with the postage thereon fully prepaid for
16 collection and mailing at our address shown above. I am readily familiar with Lang, Richert
& Patch's business practice for collecting and processing correspondence for mailing with
the United States Postal Service the same day.

17 (BY OVERNIGHT MAIL SERVICE) by placing the sealed envelope for collection
18 following our ordinary business practice for collecting and processing correspondence for
mailing with *** for overnight delivery.

19 (BY FACSIMILE) In addition to service by mail as set forth above, the person(s) by whose
20 name an asterisk is affixed was also forwarded a copy of said documents via facsimile, said
21 transmission having been reported as complete and without error. A copy of the transmission
report is attached hereto and made a part hereof.

22 (BY PERSONAL SERVICE) I caused said envelope to be delivered by hand in a manner
23 provided by law to the addressee, clerk or other person who was apparently in charge thereof
and at least 18 years of age whom I informed of the contents.

24 I am employed in the office of a member of the bar of this court at whose direction the
service was made.

25 I declare under penalty of perjury under the laws of the State of California that the foregoing
26 is true and correct.

27 EXECUTED on December 2, 2011, at Fresno, California.

28 _____
Patricia A. Mange'

EXHIBIT 4

1 William T. McLaughlin II, #116348
Lang, Richert & Patch
2 Post Office Box 40012
Fresno, California 93755-0012
3 (559) 228-6700 Phone
(559) 228-6727 Fax
4 M:\19748\Pleadings\ntc removal state court.wpd:pm

5 Attorneys for Defendants RAILAMERICA, INC.; RAILAMERICA OPERATIONS SHARED
SERVICES, INC.; RAILAMERICA OPERATIONS SUPPORT GROUP, INC.; and SAN
6 JOAQUIN VALLEY RAILROAD COMPANY

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF TULARE

10
11 BUDDY HATCHER AND HOLLEY
HATCHER, HUSBAND AND WIFE,

12 Plaintiffs,

13
14 v.

15 CITY OF PORTERVILLE, A PUBLIC
ENTITY; COUNTY OF TULARE, A
16 PUBLIC ENTITY; RAILAMERICA, INC., A
BUSINESS ENTITY, FORM UNKNOWN;
17 RAILAMERICA OPERATIONS SHARED
SERVICES, INC., A CALIFORNIA
18 CORPORATION; RAILAMERICA
OPERATIONS SUPPORT GROUP, INC., A
19 CALIFORNIA CORPORATION; SAN
JOAQUIN VALLEY RAILROAD
20 COMPANY, A CALIFORNIA
CORPORATION; UNION PACIFIC
21 RAILROAD COMPANY, A CALIFORNIA
CORPORATION; and DOES 1 through 1000,
22 inclusive,

23 Defendants.
24

Case No. 11-244777

NOTICE TO STATE COURT AND
ADVERSE PARTIES OF REMOVAL TO
FEDERAL COURT

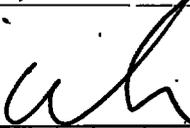
Complaint Filed: October 27, 2011
Trial Date: None

25 PLEASE TAKE NOTICE that a Notice of Removal of this action was filed by Defendants
26 RAILAMERICA, INC.; RAILAMERICA OPERATIONS SHARED SERVICES, INC.;
27 RAILAMERICA OPERATIONS SUPPORT GROUP, INC.; and SAN JOAQUIN VALLEY
28 RAILROAD COMPANY, in the United States District Court for the Eastern District of California,

1 Fresno Division on December 6, 2011. A true and correct copy of the Notice of Removal as filed
2 with the Eastern District Court is attached hereto as Exhibit "A".
3

4 Dated: December 5, 2011

5 LANG, RICHERT & PATCH, P.C.

6
7 By: 

8 William T. McLaughlin II

9 Attorneys for Defendants RAILAMERICA, INC.;
10 RAILAMERICA OPERATIONS SHARED SERVICES,
11 INC.; RAILAMERICA OPERATIONS SUPPORT
12 GROUP, INC.; and SAN JOAQUIN VALLEY RAILROAD
13 COMPANY
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EXHIBIT A

1 William T. McLaughlin II, #116348
Lang, Richert & Patch
2 Post Office Box 40012
Fresno, California 93755-0012
3 (559) 228-6700 Phone
(559) 228-6727 Fax
4 M:\19748\Pleadings\REV not of removal dist ct. wpd:pm

5 Attorneys for Defendants RAILAMERICA, INC.; RAILAMERICA OPERATIONS SHARED
SERVICES, INC.; RAILAMERICA OPERATIONS SUPPORT GROUP, INC.; and SAN
6 JOAQUIN VALLEY RAILROAD COMPANY

7
8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

10
11 BUDDY HATCHER AND HOLLEY
HATCHER, HUSBAND AND WIFE,
12
13 Plaintiffs,

14 v.

15 CITY OF PORTERVILLE, A PUBLIC
ENTITY; COUNTY OF TULARE, A
16 PUBLIC ENTITY; RAILAMERICA, INC., A
BUSINESS ENTITY, FORM UNKNOWN;
17 RAILAMERICA OPERATIONS SHARED
SERVICES, INC., A CALIFORNIA
18 CORPORATION; RAILAMERICA
OPERATIONS SUPPORT GROUP, INC., A
19 CALIFORNIA CORPORATION; SAN
JOAQUIN VALLEY RAILROAD
20 COMPANY, A CALIFORNIA
CORPORATION; UNION PACIFIC
21 RAILROAD COMPANY, A CALIFORNIA
CORPORATION; and DOES 1 through 1000,
22 inclusive,

23 Defendants.
24

Temporary Case No. 11-769

[Tulare Superior Court Action
No. 11-244777.]

NOTICE OF REMOVAL OF CIVIL
ACTION PURSUANT TO 28 U.S.C.
§ 1331 (FEDERAL QUESTION)

25 TO THE CLERK OF THE ABOVE ENTITLED COURT:

26 Defendants RAILAMERICA, INC., A BUSINESS ENTITY, FORM UNKNOWN;
27 RAILAMERICA OPERATIONS SHARED SERVICES, INC., A CALIFORNIA CORPORATION;
28 RAILAMERICA OPERATIONS SUPPORT GROUP, INC., A CALIFORNIA CORPORATION;

1 SAN JOAQUIN VALLEY RAILROAD COMPANY, hereafter collectively "Defendants," hereby
2 remove this action from the Superior Court of California for the County of Tulare (the "State
3 Court") based on this Court having jurisdiction pursuant to 28 U.S.C. Section 1331, 28 U.S.C.
4 Section 1441(b).

5
6 **PLEADINGS AND PROCEEDINGS TO DATE**

7 Defendants allege:

8 1. They are named defendants in a civil action originally filed on October 27, 2011, in
9 the California Superior Court in and for the County of Tulare, Case Number 11-244777 ("State
10 Court Action"). True and correct copies of the Summons and Complaint served on Defendants in
11 this action are attached hereto as **Exhibit "1."** No further proceedings have been had.

12 2. Defendants were served with summons and complaint on November 9, 2011, and
13 therefore this removal is timely under 28 U.S.C. Section 1446(b).

14 3. On November 23, 2011, Defendant UNION PACIFIC RAILROAD COMPANY
15 filed an answer in the State Court Action, a true and correct copy of said answer is attached hereto
16 as **Exhibit "2"**.

17 4. On December 5, 2011, Defendants filed an answer in the State Court Action, a true
18 and correct copy of said answer is attached hereto as **Exhibit "3"**.

19 5. Defendants' counsel contacted UNION PACIFIC RAILROAD COMPANY ("UP")
20 and obtained its consent to remove the separate and independent claims raising federal questions.
21 The other named defendants have been sued on claims raising only state law claims reflecting
22 separate and independent claims.

23
24 **FEDERAL QUESTION JURISDICTION EXISTS**

25 6. This Court has jurisdiction to entertain the present suit under 28 U.S.C. Section 1331
26 insofar as this action presents a federal question relating to the federal government's exclusive
27 regulation of railroads under the Commerce Clause. *See e.g. Pittsburgh & Lake Erie RR v. Railway*
28 *Labor Executives Ass'n.*, 491 U.S. 490, 510 (1989); *see also, City of Auburn v. United States*, 154

1 F.3d 1025, 1029 (9th Cir. 1998) (preclusive effect of federal legislation in regulating railroads).

2 7. 49 U.S.C. Section 10501(b)(2) provides:

3 The jurisdiction of the [STB] over the construction, acquisition, operation,
4 *abandonment*, or *discontinuance* of spur, industrial, team, switching, or side tracks,
5 or facilities, even if the tracks are located, or intended to be located, entirely in one
6 State, is exclusive. Except as otherwise provided in this part, the remedies provided
7 under this part with respect to regulation of rail transportation are *exclusive* and
8 *preempt* the remedies provided under Federal or State law. [Emphasis added.]

9 8. The Interstate Commerce Commission Termination Act ("ICCTA"), codified at 49
10 U.S.C. Section 10101 et seq., vests the Surface Transportation Board ("STB") with primary
11 jurisdiction in this matter, however this Court has concurrent jurisdiction.

12 9. Defendants are all either directly involved and participate in the railroad industry and
13 their alleged actions committed by Order of the STB are governed exclusively by federal law.

14 Defendant UP is a railroad operating throughout the United States, and abandonment of its
15 rail line, including the actions alleged by Plaintiffs, are governed exclusively by federal law.

16 Defendant SAN JOAQUIN VALLEY RAILROAD COMPANY ("SJVR") leases and
17 operates a short-line railroad on branch lines owned by UP. In 2008, SJVR, in connection with its
18 operations, requested authority from the STB to abandon and discontinue service along a certain
19 a branch line, after obtaining an Order from the STB that contained various conditions for such
20 abandonment, removed the track along the abandoned line. SJVR engaged in such conduct in
21 accordance with the ICCTA and the STB assumed exclusively authority pursuant to 49 U.S.C.
22 Section 10502 and, subsequently, issued an Order on June 6, 2008 relative to the rail line.

23 10. The State Court Action alleges state law claims arising out of SJVR's abandonment
24 of the aforementioned line, and the plaintiffs in that action seek to recover damages against SJVR
25 based on said conduct.

26 11. Defendant SJVR alleges that the nature of the plaintiffs' state law action raises
27 questions materially related to and affecting SJVR's activities performed pursuant to an order from
28 the STB and, therefore, regulated exclusively by federal law.

