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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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AB-33 (SUB-NO. 164X)

**UNION PACIFIC RAILROAD COMPANY
-ABANDONMENT EXEMPTION-
IN BONNE TERRE, MISSOURI**

**REPLY TO UNION PACIFIC MOTION TO DISMISS AND REPLY
TO PETITION TO REOPEN**

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Dated: January 7, 2015

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Asarco LLC’s (“Asarco”) petition to reopen an abandonment that was authorized and consummated through Union Pacific’s fraud should be granted and an appropriate procedural order issued. Based upon the uncontroverted evidence of contamination and knowing abandonment of contaminated rail line, Union Pacific Railroad Company’s (“Union Pacific” or “UP”) Motion to Dismiss should be denied.

I. PROCEDURAL POSTURE

Although Union Pacific styled its Motion to Dismiss as a “Reply” to Asarco’s Petition to Reopen, it is evident upon review of the “Reply” that Union Pacific has moved the STB to dismiss Asarco’s Petition to Reopen Abandonment Exemption, AB-33 (Sub-No. 164X) (“Petition”) in its entirety. *See e.g.*, Reply/Motion at 3 (“...the Petition should be dismissed...”). Asarco therefore submits this Reply in opposition to what is clearly a Motion to address those issues.

In the event the Surface Transportation Board (“Board” or “STB”) finds that the UP submission is not a motion to dismiss, good cause exists for waiver of that rule. *See Missouri Pac. R.R. Co. – Abandonment in Douglas, Champaign & Vermilion Counties, IL (Westville and Jamaica Branches) in the Matter of a Request to Set Terms and Conditions*, AB-3 (Sub-No. 103) (STB served June 4, 1993). *See also Delaware & Hudson R. Co. v. Consolidated Rail Corp.*, 9 I.C.C. 2d 989, 990 (1993). Asarco requests the Board accept this filing because:

1. Asarco is responding to surprising assertions that Asarco could not anticipate, such as arguments that: the Board lacks jurisdiction to address abandonments obtained via fraud; principles of comity apply to the Board’s exclusive and plenary jurisdiction over abandonments and could somehow be shared with a district court; the Board does not have inherent authority to protect the integrity of its processes; and UP does not bear the burden of diligently investigating the status of its lines prior to abandonment and could simply rely on third-party government agencies failure to do so.

2. Much of Asarco’s filing here would “add” to the agency’s “understanding of the issues” and should be deemed a “supplement” to Asarco’s original Petition, given there are complicated factual and related legal arguments in the UP filing that should be addressed. *James Riffin D/B/A Northern Central R.R. – Acq. & Oper. Exemption – in York County, PA*, STB Finance Dkt. No. 34501, File No. 35195 at 3-4 (STB served February 23, 2005) (“*Riffin*”) (denying motion for leave to file reply to reply since the proposed filing did not add to the Board’s understanding of the issues).

3. Asarco’s present filing would clarify the parties’ legal arguments without prejudicing other parties or unduly prolonging the proceedings, particularly because UP’s “Reply/Motion” seeks affirmative legal relief and raises entirely new legal issues. *See BNSF R.*

Co. –Discontinuance of Trackage Rights Exemption – In Peoria and Tazewell Counties, IL., AB 6 (Sub-No. 470X), Slip Op. at 1 (STB served June 4, 2010).

4. Verified Statements included in Asarco’s present filing are necessary to provide a complete factual record.

5. Asarco’s filing here clarifies the record and does not seek an order violating STB duties and responsibilities.

6. Accepting Asarco’s filing here would facilitate the Board’s deliberations and promote administrative economy, as UP’s “Reply/Motion” adds material and argument that confuses the record and needs clarification.

II. OVERVIEW

Through its effort to dismiss Asarco’s Petition, Union Pacific seeks to perpetuate its fraud resulting in continued detriment to human health and the environment in the Bonne Terre, Missouri community. UP’s fraud must be addressed to ensure the STB’s processes regarding rail abandonments are not manipulated by railroad companies who knew, or should have known, of the presence and release of dangerous metals and hazardous substances into the environment, which release constitutes a continuing detriment to persons, places and businesses in Bonne Terre. Union Pacific failed to controvert evidence that the materials it abandoned are contaminated with extremely high levels of dangerous metals posing a significantly high risk of harm to human health, particularly young children. The fact the fraudulently gained abandonment authorization and subsequent consummation took place fourteen years ago does not change the Board’s continuing duty to protect its decision making processes, particularly where such fraud facilitates harm to persons, businesses, and communities of our nation to this day.

First, the Board has jurisdiction over rail line abandonments to protect the integrity of its processes. It cannot allow railroads through deliberate or negligent filings replete with fraud and misstatements to abandon their rail lines throughout the country and let that go unaccounted. In addition, the Board has jurisdiction to order Union Pacific to prepare a report on the environmental conditions of the abandonment here and of all other abandoned lines in Southeast Missouri to ensure UP has not engaged in any other fraudulent practices to circumvent, intentionally or negligently, the Board's exclusive and plenary authority over rail abandonments. This is particularly true where the fruit of UP's actions continue to harm the health and safety of the Bonne Terre community and may be subjecting other communities to a similar plight.

Indeed, if the other lines show similar levels of contaminants, this would be evidence of a much wider manipulation of the STB's procedures over rail line abandonments. This is clearly something the Board should be interested in determining and ending, particularly where, as here, there is evidence of fraud in Union Pacific's exemption filings at issue.

Second, Asarco has established that Union Pacific knew, or at bare minimum should have known, that its rail lines were negatively impacting the environment. Union Pacific has not controverted or even denied that its abandoned right-of-way has released and is still releasing hazardous substances into the surrounding environment. Through its failure to provide any test results, data or reports that contradicts Asarco's statements, Union Pacific tacitly admits that its rail lines are negatively impacting the environment. Instead, UP rests upon a ministerial evidentiary misunderstanding where a designated corporate witness on a number of issues was unable to locate the exact GPS coordinates of where Asarco's sampling, commissioned to separate third-party experts, had occurred based upon the lab's sampling data. The importance of Union Pacific's failure to controvert that its abandonment has and is negatively impacting the

environment cannot be overlooked. UP also withheld material facts from the Board in its application, misrepresenting the environmental condition of the line it sought to abandon. UP should not be allowed to engage in such conduct and rest upon the findings of third-party governmental agencies when seeking abandonments.

Third, as explained at length above, the STB has overriding duties to protect the integrity of its rail line processes against fraud and to uphold the National Transportation Policy. These duties when weighed against the interests of repose and finality supersede the latter. Further, UP should not be able to saddle the reversionary land owners, the Bonne Terre Industrial Development Authority, the Bonne Terre community at large, and others with the burden and cost of correcting UP's fraud and failure to investigate diligently its own lines.

Fourth, judicial standing requirements are not strictly applied by administrative agencies. Here, the interests of preservation of transportation policies and the Board's own processes override a stringent application of standing. Moreover, even if one were to apply those exacting requirements, Asarco clearly has standing as the entity that paid millions of dollars to address the cleanup of any hazardous substances that have come to be located in Southeast Missouri ("SEMO"). Should UP not investigate and remediate its own contamination, the money for the cleanup will come from the millions of dollars Asarco has paid to the United States Environmental Protection Agency ("EPA").

Fifth, UP's attempt to use pending district court litigation to dismiss the Petition under a theory of comity is nothing more than an attempt to continue to relieve itself of its duties to reasonably investigate the environmental impact of its rail lines prior to abandonment and to remediate its own contamination. No district court has jurisdiction over rail line abandonments. UP's argument that the Board has no jurisdiction to "reopen" an abandonment of 1.1 miles of

track in Bonne Terre, Missouri, for which there is evidence of fraud, contravenes: (1) the Board's exclusive and plenary jurisdiction of rail abandonments; (2) the Board's duty to protect the integrity of its procedures and practices; and (3) the Board's authority to revoke abandonments of rail lines obtained through fraud.

UP needs to stop its charade of covering up its fraud and shirking its responsibilities to reasonably investigate its rail lines before it seeks abandonment. UP's catch-me-if-you-can practices are simply an affront to the Board and the Bonne Terre community.

III. ARGUMENT

A. The Board Has Jurisdiction to Reopen the Bonne Terre Abandonment.

The Board has exclusive and plenary jurisdiction over rail line abandonments, including the Bonne Terre abandonment. *See Chicago & North Western Transp. Co. v. Kalo Brick & Tile*, 450 U.S. 311, 320 (1981). Within this exclusive and plenary jurisdiction is regulatory authority to "reopen" the abandonment of a former rail line that was abandoned via fraud, in order to protect the agency's statutory processes from abuse. Indeed, the former Interstate Commerce Commission ("ICC") and this Board have repeatedly indicated that they have such jurisdiction when there is evidence an abandonment approval was obtained based on fraud or misleading representations. *See S.R. Investors, Ltd., D/B/A Sierra R.R. Co. – Abandonment – In Tuolumne County, CA*, AB-239X, Slip Op. at 4, n. 9 (STB served July 20, 1987) (noting that the Commission may revoke an exemption when it finds that application of the Interstate Commerce Act is necessary to carry out the rail transportation policy under 49 U.S.C. § 10101a). *See also id.* at n. 10 (referencing the ICC's decisions in: 1) *Chicago & Eastern Illinois R. R. Co. – Abandonment Between Joppa Junction and Fayville Junction, IL.*, AB-11, Slip Op. at 3 (STB served July 28, 1981) where the ICC emphasized it can reopen a consummated abandonment obtained via fraud (citing *Florida E. C. Ry. Co. Petition for Declaratory Order*, 360 I.C.C. 272

(1979) for the proposition that even “after an abandonment is exercised, a reviewing court could order the abandonment proceeding reopened, since it possesses the power to enjoin abandonments not properly authorized by the Commission”), and 2) *Chicago & N. W. Transp. Co. – Abandonment Exemption in Hardin County, IA*, AB-1 (Sub-No. 183X) (not printed) (STB served July 18, 1985)).

UP contends that in *Hayfield Northern R. Co. v. Chicago & N. W. Transp. Co.*, 467 U.S. 622 (1984) (“*Hayfield*”), the Supreme Court ruled that the Board’s jurisdiction terminates upon consummation of an abandonment. However, the AB-239X decision clarified that the *Hayfield* rule did not apply “when there is fraud, misrepresentation, or ministerial error in authorizing abandonment.” AB-239X, Slip. Op. at 4 (citing *Hayfield*). It is clear the *Hayfield* rule does not eliminate the agency’s inherent authority to protect its statutory processes from abuse. UP’s arguments are simply wrong.

Authorizations obtained via fraud are unlawful abandonments for which the STB has a duty to protect the integrity of its statutory processes from abuse, including revoking exemption authority under 49 U.S.C. § 10502(d) or treating such exemption authority as void *ab initio* if the exemption notice is found to have contained false or misleading information. *See Class Exemption – Acq. & Oper. of R. Lines Under 49 U.S.C. 10901*, 1 I.C.C.2d 810, 812, 817 (1985), *aff’d sub nom Illinois Commerce Comm’n v. ICC*, 817 F.2d 145 (D.C. Cir. 1987). *See, e.g., Riffin*, Slip Op. at 6 (STB revoked the exemption in STB Finance Docket No. 34501 out of concern that Riffin “may” be using the licensing process in improper ways); *see also The Land Conservancy of Seattle and King County – Acq. & Oper. Exemption – The Burlington Northern and Santa Fe R. Co.*, STB Finance Docket No. 33389 (STB served Sept. 26, 1997); *ICC v.*

American Trucking Ass'ns, 467 U.S. 354, 364-65 (1984) (“*American Trucking*”) (agency has an inherent authority to protect its statutory processes from abuse).

The Supreme Court 1984 decision in *Hayfield* in no way overrides the Supreme Court 1984 decision in *American Trucking* that an agency has inherent authority to protect its statutory processes from abuse. Accordingly, the STB has authority to reopen the Bonne Terre abandonment to correct for fraud or misrepresentation.

B. Asarco Presented Undisputed Evidence That Union Pacific Knew, or Should Have Known, That Its Line Was Contaminating the Environment.

Asarco presented unsurmountable, uncontroverted evidence through its data and expert report of the contamination caused by the line UP abandoned. Asarco’s Petition and this Reply also establish that Union Pacific knew, or should have known, that its rights-of-way constructed with mining waste adversely impact the environment. Union Pacific has not denied this fact. Asarco established an identical situation as proposed in *Hayfield*, mandating reopening of a consummated abandonment when a railroad either knew the line was contaminated, or failed to diligently investigate that line, before seeking abandonment.

1. Asarco’s Evidence That the Line Adversely Impacts the Environment Stands Uncontroverted.

Union Pacific failed to controvert with any evidence the data and other evidence submitted by Asarco establishing the dangerous environmental conditions to the Bonne Terre environment and surrounding community posed by Union Pacific’s abandonment of its Bonne Terre Industrial Lead (“Line”). With all of Union Pacific’s resources, it failed to provide the STB with *any* environmental data, reports or even unsupported statements denying that the abandoned Line is not harming human health and the environment in Bonne Terre. In contrast, Asarco submitted detailed evidence including not only concrete lab data, showing the leaching of hazardous substances, but also a thorough expert analysis of that data, which conclusively

determined that the Line has been adversely impacting the environment for years. In spite of that evidence, Union Pacific did not even deny Asarco's claims or its expert's conclusions. Instead of addressing the substance of Asarco's claims, *i.e.* that the Line is, and has been, leaching hazardous substances for years, Union Pacific attacks the weight of Asarco's evidence. Union Pacific has conceded the point. Until properly addressed, the Line will continue to pollute the environment and cause harm to human health.

UP's primary assault on the Petition to Reopen is to argue that Asarco has not submitted evidence as to where the samples were taken. This argument is false. The Petition stated where the samples were taken and also included a map overlay of the original abandonment map indicating the locations of the samples. (Pet. P. 5; Evans Decl., Ex. H.) In addition, attached to this filing is yet another verified statement detailing the sampling locations to clarify any alleged ambiguity. *See generally* concurrently filed Declaration of Nick Zurweller.

2. Union Pacific Withheld Material Facts from the Board Regarding the Line and Its Impact on the Environment.

UP's suggestion that Asarco has not submitted evidence of fraud or material misrepresentation is erroneous. (UP Reply/Motion p. 9-11.) Asarco's Petition to Reopen details the new evidence showing fraud and misrepresentation (Pet. p. 4-12).

Union Pacific's Reply/Motion attempts to confuse the record regarding its fraud. At the time of the proposed abandonment of the Line, Union Pacific had already entered into two consent decrees in Idaho related to its contamination at its rights-of-ways. Surely, Union Pacific would not have entered consent decrees paying to address the contamination of the very type at issue in this Petition without becoming aware that the mining waste problem was present in all of its abandoned lines, particularly those in a mining district like Bonne Terre.

On September 12, 1995, the court entered a consent decree in *United States v. Union Pacific R.R. Co., et al.*, Civ. No. 95-0152-N-HLR (D. Idaho) (“1995 Decree”). Union Pacific’s remedial action statement of work, attachment F to the 1995 Decree, states that the “principal objective of remediation activities along the [Union Pacific Railroad Right-of-way (RROW)] is to control direct contact risk and migration of contaminants originating from the RROW through air and water. This objective will be met by removal of ballast and/or contaminated soil with concentration of lead in excess of 30,000 ppm not attributable to tailings and/or waste rock, and subsequent barrier placement for areas with lead concentration of 1,000 ppm or greater.” Union Pacific Area Bunker Hill Remedial Action Statement of Work at 3 (March 8, 1995). Based on its work under the 1995 Consent Decree, Union Pacific knew that contaminants were present at the Line when it filed its Notice of Exemption and would migrate. It should have disclosed those conditions to the Board.

On August 25, 2000, the court entered a consent decree in *United States v. Union Pacific R.R. Co.*, Civ. No. 99-0606-N-EJL (D. Idaho), settling claims “relating to the Union Pacific Wallace and Mullan Branches in northern Idaho” (“2000 Decree”). Union Pacific admits that its ballast may contain mine waste and material contaminated by mine waste. *See* Union Pacific’s Statement of Work, Appendix G to the Consent Decree for the Union Pacific Wallace-Mullan Branch Response Action (December 1999) (“Appendix G”) at 2. Further, Union Pacific was required to remove and dispose materials or place protective barriers to isolate the mine waste materials from potential exposure pathways. *See, e.g.*, Flood Damage Repair Work Plan: Attachment B to the Statement of Work [Appendix G] for the Union Pacific Railroad Wallace-Mullan Branch Response Action (Dec. 1999) at 1. There is no question that materials used in

Union Pacific's rights-of-ways are hazardous and must be removed or covered to prevent exposure and that Union Pacific knew of this hazard.

Once Union Pacific representatives signed those decrees, acknowledging their contents, the district court entered them. Thereafter, on November 30, 2000, Union Pacific filed a Notice of Exemption to abandon this Line under the expedited procedures of the class exemption of 49 C.F.R. § 1152.50, claiming, among other things, no traffic had moved over the Line for at least two years and that there were *no environmental concerns*, despite the fact that the Line had been built using hazardous mining material and despite the fact that hazardous material had moved over the Line for more than 100 years. In the abandonment proceeding before this body, UP remained silent as to the environmental concerns posed by its rail lines built with mining waste even though it had full knowledge: (1) there had been more than 100 years of movement of hazardous materials over the Line, and (2) the Line had been constructed utilizing hazardous materials.

UP's silence, under the circumstances, was clearly intentional and an act of fraud that undermines the integrity of the Board's processes. Asarco's Petition is based upon conclusive testing and a thorough expert analysis of those results, none of which is countered by UP's own evidence, data, written reports or expert testimony.

3. Union Pacific, Not Third-Party Government Agencies, Bears the Burden of Diligently Investigating the Status of Its Lines Prior to Abandonment.

UP's argument suggesting an absence of fraud because its filings were made with the full knowledge of the EPA, Missouri environmental authorities, and the City of Bonne Terre is of no merit, as the fraud was perpetrated against these agencies as well as the STB. The EPA had no duty to study and act upon UP's proposed abandonment of rail line built with toxic mining waste. It was UP's affirmative duty to know what it was abandoning and how that might impact

human health and the environment. Union Pacific's representation to the STB is demonstrably false and misleading.

Indeed, UP's contention – that it consulted with federal and state environmental authorities in advance of filing the abandonment exemption, and that no party expressed any concern about the abandonment or considered that the abandonment would have any negative impact on the environment – misses the mark, as those entities, like the Board, were never placed on notice of the underlying environmental problems of the Line by UP.

There is no evidence on record that UP ever indicated to the public agencies its knowledge that the Line had moved hazardous mining material for more than 100 years and that the underlying roadbed had been constructed utilizing hazardous mining material. Instead, UP stated falsely that there were no environmental concerns associated with the abandoned Line. UP improperly attempts to shift the burden to the government through its claims that it asked government agencies whether or not *those agencies* knew if its rail lines were adversely impacting the environment and those agencies responded no. Union Pacific, not third-parties, is obligated to know the status of its own rights-of-way and to disclose those conditions honestly. The STB is entitled to rely upon the truthfulness of an applicant's statements. When the Board conducted its own environmental review, it accepted UP's representations, as the proprietor of the Line, of no environmental concerns at face value and imposed no conditions to address the hazardous material.

In this regard, it is noteworthy that UP did not serve its replies on those entities it now claims had "consulted" with UP. Asarco is including a copy of UP's Reply/Motion as an attachment to this filing, so all the parties of record will be aware of UP's characterization of its communications with them. If the proceeding is reopened, the Board could obtain additional

evidence showing the nature of such consultation and extent of Union Pacific's purported "consultation" with these agencies.

Asarco's evidence in conjunction with the new information UP has submitted shows clearly that UP in fact knew of the environmental contamination issues but intentionally chose not to disclose this to the Board. Such underhand actions shows the fraud on UP's part was intentional. The Board has a clear basis to reopen this proceeding.

C. The STB Has a Duty to Protect the Integrity of the STB's Rail Line Abandonment Processes Against Fraud and to Uphold the National Transportation Policy; These Duties Override Interests of Repose and Finality.

UP argues the interest of repose and finality weigh against reopening the proceeding. (Reply/Motion p. 12.) This argument, however, ignores the fact that the ICC and STB have consistently held that evidence of fraud overrides this argument. *See* prior discussion at 5-6, *infra*. Rooted in the ICC/STB precedent is the ICC/STB duty to protect the integrity of the STB's rail line abandonment approval processes against fraud and the concurrent duty to uphold the National Transportation Policy. *See id.*

Accordingly, the amount of time that has passed subsequent to a rail line abandonment does not dampen in any way the ICC/STB's duty to protect the integrity of its rail line abandonment processes. Indeed, quite the opposite to UP's suggestions, the interests of persons that have acquired the contaminated right-of-way in reliance on that abandonment obtained via fraud weigh strongly in favor of reopening to ameliorate the damage caused by the fraud. As stated *infra* at 5, the cases cited by UP in footnotes 11-13 at p. 12 do not apply to cases, involving fraud, such as this one.

Here, the need to correct the consequences of UP's fraud is abundantly clear as the post abandonment land owners (including Bonne Terre Industrial Development Authority, the Egyptian Concrete Company, and reversionary interest holders of land over which the Line had

been built), and the community of Bonne Terre, particularly the children—the most endangered in the community by health hazards attributable to the contaminated Line—have been subject to hazards of the contaminated land for more than fourteen years and are now burdened with the liability and health risks from the contaminated land after UP’s fraud.

D. Judicial Standing Requirements Do Not Apply in the Reopening of Abandonment Proceedings.

Despite recognizing that the STB does not have a “strict” standing requirement, UP still argues that Asarco has no standing to seek reopening because Asarco allegedly suffered no injury that is traceable to the abandonment decision. (Reply/Motion p. 13-15.) UP’s arguments lack merit.

First, the ICC and STB have consistently held that the judicial standing requirements do not apply in these situations. For example, in *Riffin, supra*, at p. 5, the STB emphasized that “[a]dministrative agencies are not bound by the strict requirements of standing that otherwise govern judicial proceedings....” *Id.* (citing *North Carolina R.R. Co. – Petition to Set Trackage Compensation and Other Conditions – Norfolk Southern Ry.*, STB Finance Docket No. 33134, Slip Op. at n. 9 (STB served May 27, 1997) & *Missouri Pac. R.R. Co. – Abandonment – In Douglas Champaign and Vermilion Counties, IL (Westville and Jamaica Branches)*, Docket AB-3 (Sub-No. 103), Slip Op. at 3 n.4 (ICC served Nov. 3, 1994) (stating that because “the Commission is an administrative agency and does not act in a strictly judicial capacity, Simmons is correct in stating that we do not exclude parties for lack of standing.”).

One inherent capacity of the STB, as noted above, is the ability to ensure its processes are not abused. Concurrently, the STB is also endowed with the enforcement capacity to stop such abuses. Thus, the STB should welcome parties that inform it as to fraud against its processes, irrespective as to whether they suffer any direct injury. Indeed, when there is fraud, there is

injury to us all – the Board, the Bonne Terre community, Asarco and the national community at large.

In any event, there is injury to Asarco as it paid nearly \$80 million in SEMO to address all locations where hazardous substances have come to be located. (*See* concurrently filed Declaration of Laura G. Brys (“Brys Decl.”), Ex. 1 at 1.) The injury is traceable to UP’s contamination caused by the Line. EPA has already stated that it recognizes the contamination attributable to abandoned rail lines and has plans to address that contamination. (Brys Decl., Exs. 2 & 3.) The Board can and should issue orders that ameliorate the impacts of the fraud (from which Asarco has suffered injury) with appropriate conditions for cleaning up the area.

In sum, the Board, the community of Bonne Terre, Asarco and our nation has a stake in preventing fraud against the STB’s processes. Asarco’s request that the Board require Union Pacific to conduct testing and compile environmental reports on all lines abandoned by Union Pacific and by Missouri Pacific in SEMO should be granted. Such an order would permit the Board to design a remedy of a potentially broader scope to address abandonment of contaminated rail lines without appropriate environmental conditions that ameliorate harm to the health and safety.

E. The Board Has Exclusive and Plenary Jurisdiction Over Rail Line Abandonments and Reopenings That Cannot Be Delegated.

The red herring issue of existing litigation in district court should not affect the STB’s overriding jurisdiction, and duty, over abandonments. UP has urged the Board not to grant Asarco’s Petition to Reopen because there is pending litigation between UP and Asarco which UP contends will adjudicate whether UP is liable for any contamination in or along the abandoned right-of-way at issue. (Reply/Motion p. 15.) Importantly, UP emphasizes that the Board’s ruling on Asarco’s Petition to Reopen will have no substantive impact on the pending

litigation; yet, UP concurrently argues the Board should decline Asarco's Petition to Reopen because it concerns the same matter pending in the Court litigation. *Compare id.* 15 with 16.

UP's contentions are specious for several reasons. First, as noted above, the Board alone has exclusive and plenary jurisdiction over rail line abandonments, including petitions to reopen such proceedings; and, this jurisdiction cannot be delegated. *See Union Pac. R.R. Co. – Abandonment – Wallace Branch, ID*, STB Docket No. AB-33 (Sub-No. 70) served June 26, 2000, p. 4, citing *State of Idaho v. ICC*, 35 F.3d 585 (D.C. Cir. 1994) (concluding the ICC had improperly attempted to delegate its responsibilities to look at potential environmental impacts of a proposed abandonment of Union Pacific's contaminated line).

Second, the present STB proceeding and the Court litigation do not concern the same matters. The present STB proceeding concerns this Board's jurisdiction and discretion to reopen an abandonment proceeding in which there is evidence of fraud or misrepresentation and to make findings and issue orders that seek to ameliorate the impact of the fraud and abuse of the STB's processes. This matter is not before the court at all.

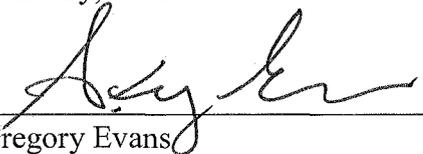
Third, as to the cases UP cites in support of its "comity" arguments, those cases all involve federal preemption disputes for which there is no applicable exclusive and plenary jurisdiction—not jurisdiction over abandonment proceedings for which the Board's jurisdiction is exclusive and plenary.

In short, the Board should not permit UP to continue to make an end-run around the Board's inherent authority to ensure that its processes are not abused by fraud or misrepresentation; the Board should take corrective ameliorative actions that eliminate the impact of the fraud and ensure the health and safety of the Bonne Terre community, consistent with the national transportation policies to protect health and safety.

IV. CONCLUSION

For the reasons stated above, the Board should grant Asarco's Petition to Reopen. The Board has authority to reopen a consummated abandonment where there is evidence of fraud or misrepresentation. Asarco has provided evidence of fraud and misrepresentation in the proceeding. Reopening the proceeding would permit the Board to protect the integrity of its exclusive and plenary jurisdiction and related processes over rail line abandonments as well as its duties to carry out national transportation policies to protect the health and safety.

Respectfully submitted this 7th day of January, 2015.

By:  _____

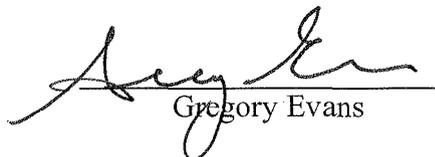
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CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing Reply to Union Pacific Motion to Dismiss and Reply to Petition to Reopen by regular mail this 7th day of January, 2015, upon all parties of record on the STB's service list.

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Non-Party	Governor of Missouri	State Capitol Building P.O. Box 720 Jefferson City, MO 65102
Non-Party	Missouri Department of Natural Resources	P.O. Box 176 Jefferson City, MO 65102
Non-Party	Missouri Department of Transportation	105 West Capitol Avenue P.O. Box 270 Jefferson City, MO 65102
Non-Party	Missouri Public Service Commission	200 Madison Street Jefferson City, MO 65102-0360
Non-Party	Missouri State Clearinghouse	P.O. Box 809 Jefferson City, MO 65102
Non-Party	U.S. Army Corps of Engineers	601 E. 12th Street Room 736 Kansas City, MO 64106-2896
Non-Party	U.S. Department of Transportation Federal Motor Carrier Safety Administration	1200 New Jersey Avenue, S.E. Washington DC 20590
Non-Party	U.S. Environmental Protection Agency, Region 7	11201 Renner Boulevard Lenexa, KS 66219
Non-Party	U.S. Fish And Wildlife Service	101 Park De Ville Drive, #A Columbia, MO 65203-0007


Gregory Evans

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing Reply to Union Pacific Motion to Dismiss and Reply to Petition to Reopen by e-mail this 7th day of January, 2015, upon the following parties of record on the STB's service list.

Type	Party Name	Address
Party of Record	Raymond A. Atkins Matthew J. Warren Hanna M. Chouest	Sidley Austin LLP 1501 K Street, N.W. Washington, D.C. 20005



Gregory Evans

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

AB 33 (SUB-NO. 164X)

**UNION PACIFIC RAILROAD COMPANY
-ABANDONMENT EXEMPTION-
IN BONNE TERRE, MISSOURI**

**DECLARATION OF LAURA BRYN IN SUPPORT
OF PETITION TO REOPEN**

Laura Bryn, pursuant to 28 U.S.C. § 1746, makes the following declaration (the “Declaration”) under penalty of perjury.

1. I am over 21 years of age, and I suffer from no legal disability. I am an attorney at Integer Law Corporation. I am familiar with the above-captioned action as a result of my role as counsel for ASARCO LLC (“Asarco”) and I have personal knowledge of the facts stated herein.

2. I submit this declaration in support of Asarco LLC’s Petition to Reopen.

3. Attached as Exhibit 1 is a true and correct copy of the Settlement Agreement Regarding the Southeast Missouri (SEMO) Sites in the case *In re ASARCO LLC, et al.*, Case No. 05-21207, in the Southern District of Texas, Corpus Christi Division.

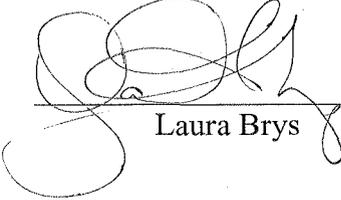
4. Attached as Exhibit 2 is a true and correct copy of a letter received by my firm from the United States Environmental Protection Agency (“US EPA”) dated March 21, 2003, discussing the EPA’s strategy to address the lead contamination present in abandoned rail lines in Southeast Missouri and in the Southeast Missouri Mining sites.

5. Attached as Exhibit 3 is a true and correct copy of an email received by

Asarco's consultants on Asarco's behalf, at my firm's direction, on March 5, 2013, from US EPA, detailing the topics of discussion at an upcoming meeting.

I, Laura Brys, 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. Executed on January 7, 2015.



Laura Brys

EXHIBIT 1

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

In re:)	
)	Case No. 05-21207
ASARCO LLC, et al.)	Chapter 11
)	
Debtors.)	

**SETTLEMENT AGREEMENT REGARDING THE SOUTHEAST MISSOURI
(SEMO) SITES**

WHEREAS, the Southeast Missouri (SEMO) sites (the “SEMO Sites”) consist of the Big River Mine Tailings/St. Joe Minerals Corp. Site, the Federal Mine Tailings Site, the Madison County Mines Site, the West Fork Mine/Mill property, the Sweetwater Mine/Mill property, and the Glover Smelter property, and any location at which hazardous substances from any of these properties have come to be located.

WHEREAS, pursuant to its authority under Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.* (“CERCLA”), § 9604, the United States Environmental Protection Agency (“EPA”) previously added the Big River Mine Tailings/St. Joe Minerals Corp. Site, and the Madison County Mines Site to the National Priority List.

WHEREAS, the SEMO Sites have been heavily mined over the last century by ASARCO LLC (“ASARCO”) and others;

WHEREAS, ASARCO and various subsidiaries (collectively, the “Debtors”) have filed with the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division (the “Bankruptcy Court”) voluntary petitions for relief under the United States Bankruptcy Code (the “Bankruptcy Cases”);

WHEREAS, proofs of claim were filed in the Bankruptcy Cases by the United States (numbers 10745 and 10746), the Missouri Department of Natural Resources (the “State”) (numbers 11116 through 11169 inclusive), and The Doe Run Resources Corporation d/b/a The Doe Run Company (“Doe Run Resources”) (number 10539) and DR Land Holdings LLC (number 10540) (“DR,” and together with Doe Run Resources, “Doe Run”) (collectively, the proofs of claim filed by the United States, the State and Doe Run, together with all supplements and amendments thereto, shall be referred to herein as the “Proofs of Claim”) asserting various claims under CERCLA, the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6901 *et seq.*, the Clean Water Act (“CWA”), 33 U.S.C. § 1251 *et seq.*, state environmental laws and/or common law for past and future response costs, natural resource damages (“NRD”), past and future NRD assessment costs, and future oversight and maintenance costs in connection with the SEMO Sites and other sites, as well as other alleged obligations of Debtors;

WHEREAS, the Debtors have disputed the amount of the liabilities with respect to the SEMO Sites filed by the United States, the State and Doe Run as set forth in the Proofs of Claim and the expert reports filed by the United States and the State;

WHEREAS, the Bankruptcy Court established a process for estimating the liabilities with respect to the SEMO Sites;

WHEREAS, the parties hereto desire to settle, compromise and resolve certain of their disputes which may have otherwise been the subject of an estimation hearing, without the necessity of an estimation hearing;

WHEREAS, in consideration of, and in exchange for, the promises and covenants herein, the parties hereby agree to the terms and provisions of this Settlement Agreement ("Settlement Agreement"); and

WHEREAS, this Settlement Agreement is in the public interest and is an appropriate means of resolving this matter.

NOW, THEREFORE, without the admission of liability or any adjudication on any issue of fact or law, and upon the consent and agreement of the parties by their attorneys and authorized officials, it is hereby agreed as follows:

I. JURISDICTION

1. The Bankruptcy Court has jurisdiction over the subject matter hereof pursuant to 28 U.S.C. §§ 157, 1331, and 1334.

II. PARTIES BOUND; SUCCESSION AND ASSIGNMENT

2. This Settlement Agreement applies to, is binding upon, and shall inure to the benefit of the parties hereto, their legal successors and assigns, and any trustee, examiner or receiver appointed in the Bankruptcy Case.

III. ALLOWANCE OF CLAIMS

3. In settlement and satisfaction of all claims and causes of action of the United States and the State with respect to any and all costs of response incurred, or to be incurred, in connection with the SEMO Sites (including but not limited to the liabilities and other obligations asserted in the Proofs of Claim and other pleadings filed in the Bankruptcy Court related to response costs at the SEMO Sites by the United States or the State), the United States on behalf of EPA shall have an allowed general unsecured claim in the total amount of \$37,500,000, which shall be allocated as follows: Big River Mine

Tailings/St. Joe Minerals Corp. Site - \$17,072,427; the Federal Mine Tailings Site - \$7,743,418; and the Madison County Mines Site - \$12,684,155. Distributions received by EPA shall be deposited in site specific special accounts for the Big River Mine Tailings/St. Joe Minerals Corp. Site, the Federal Mine Tailings Site, and the Madison County Mines Site within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with such sites, or to be transferred by EPA to the EPA Hazardous Substances Superfund.

4. In settlement and satisfaction of all claims and causes of action of the United States, on behalf of DOI, and the State, on behalf of the Director, Missouri Department of Natural Resources, for joint federal-state natural resource damages and costs of assessment incurred or to be incurred in connection with the SEMO Sites (including but not limited to any natural resource damages allegedly attributable in whole or in part to releases of hazardous substances from any portion of the SEMO Sites and any other claims set forth in the Proofs of Claim related to the SEMO Sites filed on behalf of the federal or States' respective trustees), (a) the United States on behalf of DOI shall have an allowed general unsecured claim for past natural resource damage assessment costs in the total amount of \$233,000; (b) the United States on behalf of DOI and the State on behalf of the Director, Missouri Department of Natural Resources shall have a joint, indivisible allowed general unsecured claim for natural resource damages in the total amount of \$34,767,000, which shall be distributed to DOI as provided below and which shall be allocated as follows: Big River Mine Tailings/St. Joe Minerals Corp./Federal Mine Tailings Site - \$28,267,000; Madison County Mines Site - \$1,500,000; the West Fork Mine/Mill property - \$ 1,000,000; the Sweetwater Mine/Mill property - \$2,000,000;

and the Glover Smelter property - \$2,000,000. Distributions received by the trustees shall be deposited into the DOI Natural Resource Damage Assessment and Restoration Fund, Account No. 14X5198. A separate, site-specific numbered account for the sites listed in subparagraph (b) of this Paragraph has been or will be established within DOI's Natural Resource Damage Assessment and Restoration Fund ("Restoration Accounts"). The funds received shall be assigned pursuant to subparagraph (b) of this Paragraph 4 to these site-specific Restoration Accounts to allow the funds to be maintained as segregated accounts within the DOI Natural Resource Damage Assessment and Restoration Fund. The trustees shall use the funds in the Restoration Accounts, including all interest earned on such funds, for restoration activities at or in connection with each Site as directed by the Missouri Trustee Council, but shall not be used to conduct assessment activities. For purposes of voting on plan confirmation, with respect to the undivided allowed claim referred to in subparagraph (b) of this Paragraph 4, the United States shall vote 50% (\$17,383,500) and the State shall vote 50% (\$17,383,500).

5. In settlement and satisfaction of all claims and causes of action of the State with respect to any and all costs of response incurred, or to be incurred, in connection with the SEMO Sites (including but not limited to the liabilities and other obligations asserted in the Proofs of Claim and other pleadings filed in the Bankruptcy Court related to the SEMO Sites by the State) and in settlement and satisfaction of all claims and causes of action of the State for the Director of the Missouri Department of Natural Resources' past assessment costs incurred in connection with the SEMO Sites (including but not limited to any natural resource damages allegedly attributable in whole or in part to releases of hazardous substances from any portion of the SEMO Sites and any other claims set forth

in the Proofs of Claim related to the SEMO Sites filed on behalf of the federal or the State's respective trustees), the State on behalf of the Director, Missouri Department of Natural Resources shall have an allowed general unsecured claim for past natural resource damage assessment costs and future oversight and/or maintenance response costs in the total amount of \$1,250,000. Distribution and notices of distribution shall be sent to the addresses provided by counsel for the State.

6. In settlement and satisfaction of all claims and causes of action of the State and Doe Run against Debtors with respect to the Glover Smelter (including but not limited to any such liabilities and other obligations asserted in the Proofs of Claim and other pleadings filed in the Bankruptcy Court by the State and Doe Run), (a) the State and Doe Run shall have an allowed general unsecured claim in the total amount of \$5,000,000, to be allocated in whole or in part between them as may be determined later; and (b) Doe Run shall have an allowed general unsecured claim in the total amount of \$3,835.50 for past costs incurred by Doe Run with respect to the Glover Smelter.

7. In settlement and satisfaction of all claims and causes of action of Doe Run against Debtors in connection with any and all past or future response costs or NRD related to the Big River Mine Tailings/St. Joe Minerals Corp. Site, Federal Mine Tailings Site and/or Madison County Mines Site (including but not limited to any such liabilities and other obligations asserted in the Proofs of Claim and other pleadings filed in the Bankruptcy Court by Doe Run), Doe Run shall have an allowed general unsecured claim in the amount of \$759,327.80.

8. All allowed claims under this Settlement Agreement shall not be subordinated to other general unsecured claims pursuant to any provisions of the Bankruptcy Code or

other applicable law that may be contended to authorize or provide for subordination of allowed claims, including without limitation sections 105 and 510 of the Bankruptcy Code. Upon approval of this Settlement Agreement by the Bankruptcy Court, and the State Court's modification or conformance of the Glover Smelter Consent Decree to the terms of this Settlement Agreement, said allowed claims shall be finally, irrevocably and unconditionally allowed for all purposes and not subject to further review or reconsideration, notwithstanding the provisions of 11 U.S.C. § 502(j).

9. Although the claims granted to the United States herein are described as general unsecured claims, this description is without prejudice to the United States' alleged secured right of set-off against ASARCO's claim for tax refunds and nothing in this Settlement Agreement shall modify or waive such alleged secured claim of set-off.

10. With respect to the allowed unsecured claims set forth in Paragraphs 3, 4, and 5 for the United States on behalf of EPA and DOI, and for the State, only the amount of cash received respectively by each such agency or the State for such allowed claims (and net cash received by each such agency or the State on account of any non-cash distributions) in the Bankruptcy Cases, and not the total amount of the allowed claims, shall be credited by each such agency or the State to its account for a particular site, which credit shall reduce the liability to such agency or the State of non-settling potentially responsible parties (or responsible parties that have only partially settled their liability) for the particular site by the amount of the credit. Nothing in this Paragraph specifies any particular allocation of proceeds among operable units or subsites within the SEMO Sites for which ASARCO is liable, and nothing in this Paragraph precludes any potentially responsible party, including Doe Run, from contesting any agency's or the

State's future allocations of proceeds to operable units or subsites within the SEMO Sites in any action by the United States or the State against potentially responsible parties; provided however, that no potentially responsible party may contest the allocations described in Paragraphs 3 through 7 of this Settlement Agreement.

IV. OUTSTANDING OBLIGATIONS

11. Except as specifically provided in Paragraph 21, all obligations of Debtors to perform work pursuant to any outstanding Consent Decree, Unilateral Administrative Order or Administrative Order on Consent, including but not limited to a) the Administrative Order on Consent for a Remedial Investigation and Feasibility Study for Big River Mine Tailings Site (*In the Matter of St. Francois County Mining Area*, Docket No. VII-97-F-0002); b) the Administrative Order on Consent for an Engineering Evaluation/Cost Analysis for the Federal Mine Tailings Site (*In the Matter of Federal Tailings Pile Site*, Docket No. VII-97-F-0009); and c) the Consent Decree between ASARCO and the State of Missouri Department of Natural Resources entered September 6, 1994, settling certain claims and requiring that certain work be performed related to the Glover Smelter site (*ASARCO Inc., Missouri Lead Division v. State of Missouri and Missouri Department of Natural Resources*, Missouri State Court, Circuit Court of Iron County, Case No. CV594-119CC) (the "Glover Smelter Consent Decree"), are fully resolved and satisfied and Debtors shall be removed as a party to such orders or decrees pursuant to the terms hereof; provided, however, that all requirements to retain records shall remain in full force and effect until the date a plan of reorganization or liquidation is confirmed by the Bankruptcy Court in this bankruptcy, and that Debtor shall produce, or make available for production, any such records so retained to EPA in accordance with

the terms of Paragraph 12. Such orders or decrees shall be modified or otherwise conformed to the terms of this Settlement Agreement. The modification or conformance to the terms of this Settlement Agreement of the Glover Smelter Consent Decree shall be subject to approval by the Circuit Court of Iron County, Missouri (the “State Court”).

12. Between the date this Settlement Agreement is lodged with the Bankruptcy Court and the date a plan of reorganization or liquidation is confirmed by the Bankruptcy Court, EPA may request that Debtor provide or make available any records retained pursuant to the Orders and Decrees identified in Paragraph 11. Debtors shall produce such records, or make such records available for production, to EPA within thirty (30) days of any such request and in any event prior to the confirmation of a plan of reorganization or liquidation.

13. Doe Run shall enter into an agreement with the State (the “Doe Run/Missouri Agreement”) to perform certain work required by the Glover Smelter Consent Decree; provided, however, the effectiveness of this Settlement Agreement shall not be delayed by, and is not contingent upon, the Doe Run/Missouri Agreement.

V. COVENANTS NOT TO SUE

14. With respect to the SEMO Sites (including releases of hazardous substances from any portion of the Sites, and all areas affected by natural migration of such substances from the Sites) and except as specifically provided in Section VI (Reservation of Rights), the United States, on behalf of natural resource trustee DOI, the State, on behalf of its natural resource trustee, and Doe Run covenant not to sue or assert any civil claims or causes of action against ASARCO pursuant to Sections 106, 107(a) or 113 of CERCLA, 42 U.S.C. §§ 9606, 9607, and 9613; the CWA, or any similar state law for any natural

resource damage liabilities or obligations asserted relating to the SEMO Sites in their Proofs of Claim.

15. With respect to the SEMO Sites (including releases of hazardous substances from any portion of the Sites, and all areas affected by natural migration of such substances from the Sites) and except as specifically provided in Section VI (Reservation of Rights), the United States, on behalf of EPA, the State, and Doe Run covenant not to sue or assert any civil claims or causes of action against ASARCO pursuant to Sections 106, 107(a) or 113 of CERCLA, 42 U.S.C. §§ 9606, 9607, and 9613; Section 7003 of RCRA, 42 U.S.C. § 6973; or any similar state law for any liabilities or obligations asserted relating to the SEMO Sites in the Proofs of Claim.

16. This Settlement Agreement in no way impairs the scope and effect of the Debtors' discharge under Section 1141 of the Bankruptcy Code as to any third parties or as to any claims that are not addressed by this Settlement Agreement.

17. Without in any way limiting the covenants not to sue (and the reservations thereto) set forth in Paragraphs 14 and 15, and notwithstanding any other provision of this Settlement Agreement, such covenant not to sue shall also apply to ASARCO's successors, assigns, officers, directors, employees, agents, and trustees, but only to the extent that the alleged liability of the successor, assign, officer, director, employee, agent, or trustee of ASARCO is based solely on its status as and in its capacity as a successor, assign, officer, director, employee, agent, or trustee of ASARCO.

18. The covenants not to sue contained in Paragraphs 14 and 15 of this Settlement Agreement extend only to ASARCO and the persons described in Paragraphs 14, 15 and 17 above and do not extend to any other person. Nothing in this Agreement is intended

as a covenant not to sue or a release from liability for any person or entity other than ASARCO, Doe Run, the United States, the State, and the persons described in Paragraph 17. The United States, Doe Run, the State and ASARCO expressly reserve all claims, demands, and causes of action either judicial or administrative, past, present or future, in law or equity, which the United States, Doe Run, the State or ASARCO may have against all other persons, firms, corporations, or other entity for any matter arising at or relating in any manner to the SEMO Sites and/or claims addressed herein.

19. Nothing in this Settlement Agreement shall be deemed to limit the authority of the United States to take response action under Section 104 of CERCLA, 42 U.S.C. § 9604, or any other applicable law or regulation, or to alter the applicable legal principles governing judicial review of any action taken by the United States pursuant to that authority. Nothing in this Settlement Agreement shall be deemed to limit the information gathering authority of the United States under Sections 104 and 122 of CERCLA, 42 U.S.C. §§ 9604 and 9622, or any other applicable federal law or regulation, or to excuse the Debtors from any disclosure or notification requirements imposed by CERCLA, RCRA, or any other applicable federal law or regulation.

20. Debtors covenant not to sue and agree not to assert any claims or causes of action against the United States, the State, and Doe Run with respect to the SEMO Sites, including but not limited to: any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113, 42 U.S.C. §§ 9606(b), 9607, 9611, 9612, 9613, or any other provision of law; any claims against the United States, the State, or Doe Run, including any of their departments, agencies or

instrumentalities, under Section 107 or 113 of CERCLA, 42 U.S.C. §§ 9607, 9613; and any claims arising out of the response or NRD restoration activities at the SEMO Sites. Nothing in this Settlement Agreement shall be construed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

VI. RESERVATION OF RIGHTS

21. The covenants not to sue set forth in Section V do not pertain to any matters other than those expressly specified therein. The United States, the State, and Doe Run reserve, and this Settlement Agreement is without prejudice to, all rights against the Debtors or other persons with respect to all other matters, including but not limited to: (i) any action to enforce the terms of this Settlement Agreement; and (ii) liability for response costs, natural resource damages (including natural resource damage assessment costs), and injunctive relief under CERCLA Sections 106 and 107 for Debtors' future acts creating liability under CERCLA that occur after the date of this agreement. Debtors' future acts creating liability under CERCLA do not include continuing releases related to Debtors' pre-petition conduct at the SEMO Sites.

22. The United States and the State each specifically reserve, and this Settlement Agreement is without prejudice to, all rights against Doe Run with respect to all matters, including but not limited to, liability for response actions, response costs, natural resource damages (including natural resource damage assessment costs), and injunctive relief under CERCLA Sections 104, 106, 107, and 113; RCRA Section 7003; and any similar state law, at the SEMO Sites; provided, however, that nothing in this Paragraph shall preclude any rights Doe Run has under 42 U.S.C. § 9613(f)(2).

23. Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Settlement Agreement.

24. Nothing in this Settlement Agreement shall be construed to alter the obligations of any party other than Debtors under any of the Orders or Decrees referred to in Paragraph 11.

VII. CONTRIBUTION PROTECTION

25. The parties hereto agree that, as of the Effective Date, ASARCO is entitled to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2) for all matters addressed in this Settlement Agreement, except with respect to the claim allowed to Doe Run under Paragraphs 6(b) and 7. The matters addressed in this Settlement Agreement include all costs of response incurred or to be incurred by the United States, the State, and Doe Run and all claims for natural resource damages and past and future costs of assessment relating to or in connection with the SEMO Sites.

VIII. PUBLIC COMMENT

26. This Settlement Agreement will be subject to a thirty (30) day public comment period following notice published in the Federal Register, which may take place concurrent with the judicial approval process under paragraph 27 hereof. The United States reserves the right to withdraw or withhold its consent if the public comments regarding the Settlement Agreement disclose facts or considerations that indicate that this Settlement Agreement is inappropriate, improper, or inadequate. At the conclusion of the public comment period, the United States will provide the Bankruptcy Court with copies of any public comments and its response thereto.

IX. JUDICIAL APPROVAL

27. The settlement reflected in this Settlement Agreement shall be subject to approval by the Bankruptcy Court pursuant to Bankruptcy Rule 9019. The Debtors shall move promptly for court approval of this Settlement Agreement and shall exercise commercially reasonable efforts to obtain such approval.

X. RETENTION OF JURISDICTION

28. The Bankruptcy Court shall retain jurisdiction over both the subject matter of this Settlement Agreement and the parties hereto such that any of the parties can apply to the Bankruptcy Court at any time for such further order, direction and relief as may be necessary or appropriate for the construction or interpretation of this Settlement Agreement, or to effectuate or enforce compliance with its terms. The Bankruptcy Court shall also retain jurisdiction over Asarco's compliance with the document retention provisions of the Orders and Decrees identified in Paragraph 11 and any disputes regarding compliance with the document production requirements of Paragraphs 11 and 12.

XI. EFFECTIVE DATE

29. This Settlement Agreement shall be effective upon approval by the Bankruptcy Court in accordance with Paragraphs 26 and 27 hereof.

XII. SIGNATORIES/SERVICE

30. The signatories for the parties each certify that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to execute and bind legally such Party to this document.

THE UNDERSIGNED PARTIES ENTER INTO THIS SETTLEMENT AGREEMENT

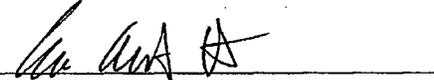
FOR THE UNITED STATES

Date: 15 Feb. 2008



Ronald J. Tenpas
Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice

Date: Feb-26 2008



Alan S. Tenenbaum
David L. Dain
Eric D. Albert
David L. Gordon
Arnold S. Rosenthal
Environment and Natural Resources
Division
Environmental Enforcement Section
U.S. Department of Justice

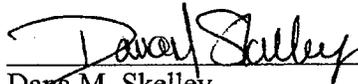
FOR THE UNITED STATES (Continued)

Date: 2/20/08



Cesilia Tapia
Director, Superfund Division
U.S. Environmental Protection Agency, Region VII
901 North 5th Street
Kansas City, Kansas 66101

Date: 2/15/08



Dana M. Skelley
Associate Regional Counsel
U.S. Environmental Protection Agency, Region VII
901 North 5th Street
Kansas City, Kansas 66101

FOR THE STATE OF MISSOURI

Date:

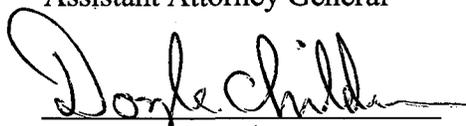
February 15, 2008


JEREMIAH W. (JAY) NIXON
Attorney General

SHELLEY A. WOODS
Assistant Attorney General

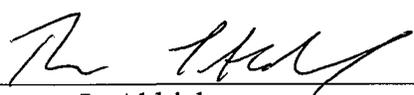
Date:

2-14-08


Doyle Childers
Director
Missouri Department of Natural Resources

FOR ASARCO, LLC

Date: 2-8-08



Thomas L. Aldrich
Vice President, Environmental Affairs

Date: 2-8-08



Douglas E. McAllister
Executive Vice President, General Counsel

**FOR THE DOE RUN RESOURCES CORPORATION d/b/a THE DOE RUN
COMPANY**

Date: 4 FEB 08



Louis Maruchau
Vice President - Law

EXHIBIT 2



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7

11201 Renner Boulevard
Lenexa, Kansas 66219

MAR 21 2013

RE: Southeast Missouri Mining District

Gregory Evans
Integer Law Corporation
811 West 7th Street, 12th Floor
Los Angeles, California 90017

Dear Mr. Evans:

Thank you for your letter regarding lead contamination in Southeast Missouri.

Please be assured that the United States Environmental Protection Agency, Region 7 (EPA) is aware of the lead contamination present in abandoned rail lines in Southeast Missouri and that EPA has a strategy in place to address this contamination. However, because the Southeast Missouri Mining District sites are very large and complex, EPA has implemented a strategy for the Southeast Missouri Mining sites that addresses risk to human health first.

For instance, in the Big River Mine Tailing Site located in St. Francois County, Missouri, EPA with cooperation from potentially responsible parties, including in the past Asarco LLC, addressed the large mine waste piles that are the primary source of lead contamination first. To date, most of these waste piles have been addressed. Therefore, in September 2011, EPA issued a Record of Decision to address lead contamination in residential yard soil. The Record of Decision is available on EPA's website at:

http://www.epa.gov/region7/cleanup/npl_files/mo_rod_big_rivers.pdf

Additional information about the Big River site is also available on EPA's website:

http://www.epa.gov/region7/cleanup/npl_files/mod981126899.pdf

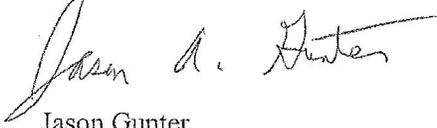
As set forth on page 14 of the Record of Decision, other identified risks to human health and the environment will be addressed by future clean up decisions. These future actions will include lead contamination present in and around abandoned rail lines, streams, and other areas where residual contamination exists.

Thank you again for your concern regarding the Southeast Missouri Mining District. Please contact me if you have additional questions and concerns.



Printed on Recycled Paper

Sincerely,

A handwritten signature in cursive script that reads "Jason D. Gunter". The signature is written in black ink and is positioned above the typed name.

Jason Gunter
Remedial Project Manager
US EPA Region 7
11201 Renner Blvd.
Lenexa, KS. 66219

EXHIBIT 3

[REDACTED]

From: Gunter, Jason <gunter.jason@epa.gov>
Sent: Tuesday, March 05, 2013 8:44 AM
To: [REDACTED]
Cc: Kring, Debbie; Kellerman, Daniel
Subject: Big River Mine Tailings and Madison County Mines: Rail Lines

Follow Up Flag: Follow up
Flag Status: Flagged

[REDACTED]

Debbie Kring forwarded your email to me. I am the Remedial Project Manager for the Big River Mine Tailings Site. I wanted to inform you that the meetings this week are focusing on the residential yards in St. Francois County and Madison County. The rail lines are being addressed under separate operable units in both counties and will not be the focus of discussion; however, if you have questions about the rail lines in St. Francois County please feel free to contact me or if you have questions about the Madison County rail lines please contact Dan Kellerman at 913-551-7603 or at kellerman.daniel@epa.gov.

Sincerely,

Jason Gunter
913-551-7358
gunter.jason@epa.gov

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

AB 33 (SUB-NO. 164X)

**UNION PACIFIC RAILROAD COMPANY
-ABANDONMENT EXEMPTION-
IN BONNE TERRE, MISSOURI**

**DECLARATION OF NICHOLAS ZURWELLER IN SUPPORT
OF PETITION TO REOPEN**

Nicholas Zurweller, pursuant to 28 U.S.C. § 1746, makes the following declaration (the “Declaration”) under penalty of perjury.

1. My name is Nicholas Zurweller. I submit this declaration in support of Asarco LLC’s (“Asarco”) Petition to Reopen.

2. I am an Associate at ENVIRON International Corporation (“Environ”). Environ was retained by Asarco in this matter to conduct environmental sampling on behalf of Asarco in Bonne Terre, Missouri.

3. I possess a Bachelor of Science degree in Geology and Geophysics from the Missouri University of Science and Technology. I am certified under the OSHA 40-hour Hazardous Waste Operations and Emergency Response Standard (HAZWOPER). I have more than six years of experience conducting complex geologic investigations where I have planned and implemented site investigations to characterize soil, bedrock, groundwater, surface water and sediment conditions at facilities predominantly in the Midwest. Further, I have experience in various drilling and sampling methodologies and management of multiple site investigations which included follow-up remediation. I have performed due diligence

assessments of commercial and industrial facilities with operations that included metal fabrication and plating, rubber and adhesive fabrication, retail stores and movie theaters.

4. At Asarco’s request, I conducted sampling at the following locations in Bonne Terre, Missouri, in latitude and longitude:

SB-1	37°55'2.59"N	90°33'1.59"W
SB-2	37°55'46.28"N	90°33'3.33"W
SB-3	37°55'42.95"N	90°33'0.14"W
SB-4	37°55'38.96"N	90°32'57.73"W

5. Three of these locations were along the 1.1 miles of the Bonne Terre Industrial Lead in Bonne Terre, St. Francois County, Missouri (“Line”) that Union Pacific Railroad Company (“Union Pacific”) abandoned through its Notice of Abandonment Exemption filed on November 30, 2000 with the Surface Transportation Board (“STB”) in Docket No. Ab-33 (Sub-No. 164X) (“Notice”). These three locations are: SB-2, SB-3, and SB-4.

6. Attached as Exhibit F to Asarco’s Petition to Reopen filed on November 28, 2014 with the STB (the “Petition”) is a true and correct copy of the laboratory report prepared by Teklab, Inc. dated November 4, 2013 that I commissioned, analyzing the samples I collected on the Line SB-2, SB-3 and SB-4.

7. As described above, I am familiar with the area where the Line was abandoned. At Asarco’s request, my firm, Environ, using Geographic Information System (GIS) technology, revised a true and correct copy of the map submitted by Union Pacific with its Notice to reflect the locations of the samplings that I took (SB-2, SB-3 and SB-4) on the Line at issue. Attached as Exhibit H to the Petition is a true and correct copy of the revised map of the Line submitted by

Union Pacific with its Notice that accurately reflects the locations of the samplings that I took on the Line.

I, Nicholas Zurweller, 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. Executed on January 7, 2015.



Nicholas Zurweller