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236443

ENTERED

Office of Proceedings

August 14, 2014

Part of

Public Record

August 14, 2014

VIA COURIER

Surface Transportation Board
395 E Street, S.W.
Washington, DC 20024

Re: HAMP, Inc. v. CSX Transportation, Inc.

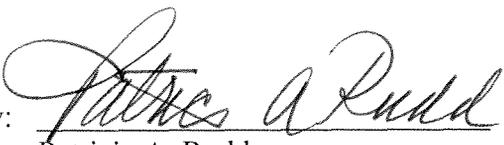
Dear Sir/Madam:

Enclosed for filing in the above referenced matter is an original and ten (10) copies of HAMP, Inc.'s Motion to Compel Responses to Interrogatories and Request for Production of Document. Please return a filed stamped copy to the Courier.

Thank you for your attention to this matter. If you have any questions, please call our office at 703-790-1911. Thank you for your assistance in this matter.

Sincerely,

REES BROOME, PC

By: 
Patricia A. Rudd
Legal Assistant to Courtney B. Harden

Enclosures

\\RBFile\clients\08\08831\00002\Corr\140814 STB.docx

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JAMES M. REES (1941-1986)

- * ALSO ADMITTED IN DC
- + ALSO ADMITTED IN MARYLAND
- ** ALSO ADMITTED IN WEST VIRGINIA
- ◊ ALSO ADMITTED TO PATENT BAR
- NOT ADMITTED TO PRACTICE IN VIRGINIA
- ADMITTED ONLY IN MD AND DC

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BEFORE THE SURFACE TRANSPORTATION BOARD

**Finance Docket No. 35832
Case 236145**

**HAMP, INC.'S MOTION TO COMPEL RESPONSES TO
INTERROGATORIES AND REQUEST FOR
PRODUCTION OF DOCUMENTS**

**Mark A. Moorstein
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BEFORE THE SURFACE TRANSPORTATION BOARD

Finance Docket No. 35832

**HAMP, INC.'S MOTION TO COMPEL RESPONSES TO INTERROGATORIES AND
REQUEST FOR PRODUCTION OF DOCUMENTS PURSUANT TO 49 C.F.R. 1114.31**

PROCEDURAL HISTORY

HAMP filed its original complaint in the Commonwealth of Virginia Circuit Court of Prince William County (“State Court”) on February 28, 2014 (following a year and multiple attempts to resolve the matter through settlement). In its April 21, 2014 response to the Complaint, CSX filed a Demurrer, a Motion to Stay, and a Plea in Bar (collectively, “responsive pleadings”), all of which argued that the HAMP’s claims are barred by 49 U.S.C. §10501 (b), and therefore, the Surface Transportation Board (“STB”) preempts all State Court jurisdiction over this matter and immediately stays any further state action. Despite the responsive pleadings, and objections to State Court jurisdiction, CSX did not file its Petition for Declaratory Order (“Petition”) with the STB until June 3, 2014, *after* HAMP had propounded discovery in the State Court. As an exhibit to the Petition, CSX filed an affidavit by its Assistant Chief Engineer of Structures, Edward D. Sparks, II (“Affidavit”), asserting facts that HAMP’s expert opines are either untrue or misleading.

CSX has asserted in both the State Court and the STB that no facts are at issue and STB preemption is strictly a legal matter.¹ Despite this assertion, CSX has included extensive argument in its Petition for Declaratory Order that CSX “will demonstrate that the claims should be preempted ‘as applied.’” CSX must prove certain facts in order to demonstrate that HAMP’s claims are preempted “as applied.” It appears that the primary purpose of the Affidavit is to lay the foundation of the facts to support this argument. Pet. For Decl. Order, p 13-16.

On July 25, 2014, HAMP propounded Interrogatories pursuant to 49 CFR 1114.26. A true and accurate copy of the Interrogatories is attached hereto as **Exhibit 1**. The Interrogatories specifically asked for the background information supporting the allegations in the Affidavit. HAMP also propounded Request for Production of Documents pursuant to 49 CFR 1114.30. A true and accurate copy of the Request for Production of Documents is attached hereto as **Exhibit 2**. On July 30, 2014, HAMP filed a Certificate of Discovery with the STB to provide the STB notice that discovery had begun. On August 4, 2014, CSX filed a letter with the STB informing the STB that it would not respond to the discovery requests, arguing that discovery is premature. A true and accurate copy of the August 4, 2014 letter is attached hereto as **Exhibit 3**.

HAMP provided CSX with 15 days to provide responses to the Interrogatories pursuant to 49 CFR 1114.26. CSX has not responded in any fashion to the Interrogatories. Nor has CSX provided any documents in response to HAMP’s request for production of documents. It appears from CSX’s August 4, 2014 letter that no documents shall be forthcoming.

¹ CSX states, “HAMP’s claims are facially preempted as a direct attempt to regulate the design and maintenance of railroad facilities used to provide interstate rail service.” Pet. for Decl. Order, p. 10. Further, CSX states, “this matter presents legal issues, for which discovery is not necessary.” CSX’s letter to the Director, Office of Proceedings dated August, 4, 2014.

ARGUMENT

HAMP is concerned with the tactics of CSX in this matter. CSX has employed a series of legal gymnastics to delay any resolution of HAMP's claims through a State Court/STB shell game: arguing in the State Court that the matter stands before the STB, and arguing in its August 4th letter to the STB that the matter is resting in the State Court. In the process, CSX is clearly hoping to leave HAMP with no adequate remedy for damages that no expert can possibly deny has been caused by CSX. At the least, it is causing further harm not only to HAMP, but to the citizens of Prince William County through its series of delay maneuvers.

As noted above, HAMP served its discovery requests in the State Court (targeting the information necessary to understand CSX's alleged facts) on CSX prior to CSX's filing its Petition for Declaratory Order with the STB. However, CSX responded by vehemently objecting to discovery before the State Court had ruled on its responsive pleadings. Fortunately, the state court judge has decided to review discovery once it resolves CSX's legal (i.e., non -factual) arguments. Perversely, CSX now objects to responding to HAMP's discovery before the STB, in which it allegedly seeks shelter from State Court scrutiny. Due process has been completely obliterated if CSX simply can refuse to respond by playing its shell game.

Pursuant to 49 U.S.C. 721(d)(1), a party to a proceeding before the STB may require the production of documents and records any time after the parties are at issue. HAMP's discovery to CSX requests records which specifically support the alleged factual assertions contained in the Affidavit. Nothing appears to prohibit discovery other than CSX's objections. 49 C.F.R. § 1114.21 states, in pertinent part,

(a) *When discovery is available.*

(1) Parties may obtain discovery under this subpart regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding *other than an informal proceeding*. ...

Notably, this is “other than an informal proceeding.” Although CSX bears the burden of proving its own alleged facts (in either the State Court or the STB), basic due process, in addition to the rules, requires CSX to disgorge historical information that tests the veracity of its factual allegations (including, we have discovered, (1) prior reinforcement of the culvert without it affecting railroad operations and (2) granting permission to the Virginia Department of Transportation to tunnel beneath the railroad without it affecting railroad operations.) The repair of the culvert, a factual matter, is at most a remedy that will occur once the State Court rules on liability. HAMP’s expert argues that fixing the culvert will have no operational effect on the railroad.

In virtually all litigation, factual assertions like these are tested in discovery, which HAMP propounded. Since CSX is relying on the Affidavit to convince the Board that a remedy — i.e, fixing an obsolete and inadequate culvert that causes flooding — in the original state case would “affect operations,” it seems only fair that CSX prove its point.

In its Petition for Declaratory Order, CSX proposed a “procedural schedule” which contains the various proposed dates for the presentation of evidence. (*See*, Petition, p. 16). The dates are thirty days apart. If the STB permits this matter to proceed, discovery is essential (despite CSX’s assertions) to discover, cross examine and counter evidence proposed by CSX (e.g. the Sparks’ Affidavit). Thirty days is insufficient to obtain the discovery, process it and

formulate counter evidence. CSX is not prejudiced in the least by producing information it clearly possesses.

Because this matter, including both liability and remedy, belongs exclusively in the State Court — and because CSX itself knows this and is merely forum shopping — its posture evidences that CSX is using the STB to delay adjudication and to avoid clear its liability for destroying HAMP’s business and its land, and harming the interests of dozens of upstream landowners.

RELIEF

HAMP therefore respectfully requests that the Surface Transportation Board compel CSX to respond promptly to discovery.

Sincerely,

REES BROOME, PC

By: 
Mark A. Moorstein
Courtney B. Harden
Mariam Tadros

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Compel was mailed, postage prepaid to:

G. Paul Moates
Hanna M. Chouest
SIDLEY AUSTIN, LLP
1501 K Street, N.W.
Washington, DC 20005

R. Eric Bilik
McGuire Woods
50 N. Laura St., Ste. 3300
Jacksonville, FL 32203

this 14th day of August, 2014.



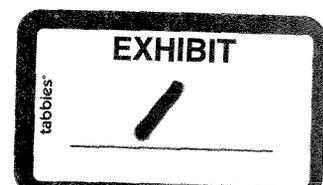
Courtney B. Harden

BEFORE THE SURFACE TRANSPORTATION BOARD

**Finance Docket No. 35832
Case 236145**

HAMP, INC.'S FIRST INTERROGATORIES

**Mark A. Moorstein
Courtney B. Harden
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HAMP'S FIRST
REQUEST FOR PRODUCTION OF DOCUMENTS

To: CSX Transportation, Inc.
c/o G. Paul Moates
Hanna M. Chouest
SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, DC 20005

R. Eric Bilik
McGuire Woods
50 N. Laura St., Ste. 3300
Jacksonville, FL 32203

HAMP, Inc., (hereinafter the "HAMP"), by counsel, and pursuant to 49 CFR 1114.26, submits the following Interrogatories to the Defendant, CSX Transportation, Inc. ("CSX"), a written response to which is to be returned to HAMP's attorney within 15 days.

DISCLAIMER: THIS MATTER IS CURRENTLY BEFORE THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY, VIRGINIA, *HAMP, INC V. CSX TRANSPORTATION, INC.*, CASE NO. CL 14-1561, AND IS ONLY SUBJECT TO A PETITION FOR DECLARATORY ORDER ("PETITION") BEFORE THIS BOARD. NO PREEMPTION HAS BEEN DECLARED, AND HAMP IS PURSUING THESE DISCOVERY REQUESTS BECAUSE CSX HAS ASSERTED FACTS IN ITS PETITION. HAMP DOES NOT IN ANY WAY CONCEDE THAT PREEMPTION IS APPROPRIATE; ON THE CONTRARY, IT BELIEVES THE FACTS WILL DEMONSTRATE THAT NO PREEMPTION BY THE BOARD IS WARRANTED OR NECESSARY AS IT IS WHOLLY A STATE MATTER.

INSTRUCTIONS

(a) If you object to any interrogatory, an answer should be made to such part of the Interrogatory to which the objection does not relate, the objection shall be stated in full. If, with respect to any particular interrogatory, you do not presently have the answer or responsive information within your possession, custody or control, then, should you later come into

possession, custody or control of such information, you shall supplement or amend your response pursuant to 49 CFR 1114.29.

(b) These requests are continuing in character, so as to require you to file supplemental responses in accordance with 49 CFR 1114.29 immediately upon obtaining additional or different information which makes a prior response no longer correct or no longer true.

(c) Where knowledge or information in possession, custody or control, of a party is requested, such a request includes knowledge of the party's agents, servants, employees, representatives and, unless privileged, its attorneys.

DEFINITIONS

(a) "CSX" shall refer to the CSX Transportation, Inc. and its agents, representatives and employees and including any wholly owned subsidiary of CSX Transportation, Inc. which is involved in primarily the same business. CSX is a common carrier railroad company which provides both passenger and freight services and owns a corridor of property adjacent to HAMP's property and is actively running trains on that corridor

(b) "HAMP" is a Virginia Corporation authorized to transact business in Virginia and is the owner of 10.37 acres of land at 13721 Jefferson Davis Highway, Woodbridge, Virginia 22191, GPIN number of 8392-93-4437, also known as Holly Acres Mobile Home Park (the "Property" or "Holly Acres"), operating as a mobile home rental park with approximately one hundred and six (106) rental pad sites.

(c) "Petition" shall refer to the Petition for Declaratory Order filed by CSX for this docket number 35832.

(d) The "Culvert" refers to the culvert located in the berm over which the CSX railroad runs adjacent to the HAMP property and which is the issue of the Petition. CSX identified the Culvert via its location at milepost CFP 88.5.

(e) "Declaration" shall refer to the Declaration of Edward D. Sparks II, which was attached to the Petition.

(f) The pronouns "you" and "your" refer to the parties to whom these Requests for Production of Documents are addressed.

(g) The terms "concerning" or "relating to" mean referring to, describing, evidencing, constituting or otherwise having a connection with.

(h) The term "person(s)" includes any individual, natural person, corporation, firm, partnership, unincorporated association, trust or other legal, business or governmental entity.

(i) The term “document” means, without limitation, the following items, whether printed, recorded or reproduced by any mechanical process or written or produced by hand: agreements, communications, correspondence, telegrams, memoranda, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, tape recordings, diaries, graphs, notebooks, charts, plans, drawings, sketches, file cards, indexes, logs, summaries or records of meetings or conferences, summaries or reports of consultants, photographs, brochures, pamphlets, circulars, press releases, drafts, letters, checks, minutes, and any and all other writings. The term “document” specifically includes emails.

(j) The term “communications” refers to any transmittal of information, in the form of facts, ideas, inquiries, or otherwise, including transmissions made in conversations, and through the use of documents, telephone calls, modem, or other electronic means, including electronic mail (e-mail), all written or oral discussions, statements, conversations, memoranda, notations, letters, or notices.

(k) “And” as well as “Or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of these Requests for Production of Documents that which might otherwise be construed to be outside their scope.

(l) “Each” shall be construed to include the word “Every” and “Every” shall be construed to include the word “Each.” “Any” shall be construed to include the word “All” and “All” shall be construed to include the word “Any.”

You are requested to answer the following:

INTERROGATORIES

Interrogatory No 1:

Identify all persons, other than counsel, who participated in answering these Interrogatories and specify each Interrogatory in which that person or persons participated.

Answer:

Interrogatory No 2:

Identify and describe the construction of the Culvert.

Answer:

Interrogatory No 3:

Identify and describe all revisions, additions and improvements to the Culvert from the time it was constructed to present day.

Answer:

Interrogatory No 4:

Identify and describe any maintenance or work on the Culvert from 1902 to present, including but not limited to cleaning and/or clearing sediment and/or debris from inside the Culvert, reinforcing or adding material, including concrete or steel, to the inside of the Culvert for any purpose, including reinforcement, dumping rip rap or any other materials into or around the Culvert, or taking any action which affects or has affected the flow of water through the Culvert.

Answer:

Interrogatory No 5:

Identify all inspections performed on the Culvert from 1902 to present, including but not limited to inspections by CSX employees (or their predecessors) and contractors, the Commonwealth of Virginia, FEMA, or any Federal Agencies.

Answer:

Interrogatory No 6:

Describe the results of the inspections identified in Interrogatory #5 and any necessary actions by CSX in response to the inspections.

Answer:

Interrogatory No 7:

Explain the statement contained in the Declaration, ¶ 17, that HAMP's requested relief would "cause and require CSXT to expend significant financial and other resources that are unnecessary to CSXT's current and anticipated railroad operation and rail transportation needs." Include in the explanation: what "significant financial resources" means; what "other resources" are; what the "current and anticipated railroad operation needs" entail (for this particular portion of railroad) and what "current and anticipated rail transportation needs" are (for this particular portion of railroad).

Answer:

Interrogatory No 8:

Identify all lawsuits in the last 10 years where CSX was named as a defendant and the claims included any or all of the following state law claims, whether in state court, federal court or in front of the Surface Transportation Board: tort claims for damages for flooding, injunctive relief for flooding, claims under the Virginia Flood Protection and Dam Safety Act, and claims for inverse condemnation.

Answer:

Interrogatory No 9:

For any of the lawsuits identified in your response to Interrogatory #8, please detail the result of the lawsuit, including any injunctive orders, court orders, or settlements.

Answer:

Interrogatory No 10:

Explain the basis of CSX's estimate in Declaration ¶ 19, that the "cost of redesigning and/or expanding the Culvert would cost at least several hundred thousand dollars, and more likely will cost in excess of \$1 million."

Answer:

Interrogatory No 11:

Identify each CSX culvert, out of all of CSX's alleged 60,000 culverts (See, Declaration, ¶7) which required some alteration to its original design/construction in order to expand its capacity to conduct water through it/under it/around it in the last 10 years, and what such alterations entailed.

Answer:

Interrogatory No 12:

For each culvert listed in the response to Interrogatory 11, list the costs of the alteration.

Answer:

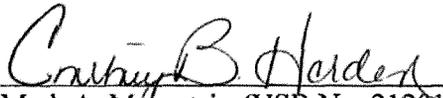
Interrogatory No 13:

For each culvert listed in the response to Interrogatory 11, provide all information pertaining to whether or not CSX railway operations were disturbed, interfered with, or halted. In each instance identified, include the period any disturbance lasted, the details of the interference,

including the names of all landowners and local governments (if any), the manner in which CSX handled the interference, the total loss of revenue in each instance to CSX, and the resolution of any conflicts with local landowners or governments. .

Answer:

HAMP, INC
By Counsel



~~Mark A. Moorstein (VSB No. 21201)~~
Courtney B. Harden (VSB No. 65470)
Mariam W. Tadros (VSB No. 75502)
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mmoorstein@reesbroome.com
charden@reesbroome.com
Counsel for HAMP, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Interrogatories was sent via first class mail, postage prepaid to:

G. Paul Moates
Hanna M. Chouest
SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, DC 20005
Pmoates@sidley.com
202-7368175

R. Eric Bilik
McGuire Woods
50 N. Laura St., Ste. 3300
Jacksonville, FL 32203
904-798-2685

this 25th day of July, 2014.

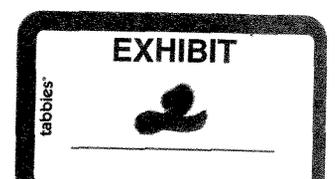

Courtney B. Harden

BEFORE THE SURFACE TRANSPORTATION BOARD

**Finance Docket No. 35832
Case 236145**

**HAMP, INC.'S FIRST REQUEST FOR PRODUCTION OF
DOCUMENTS**

**Mark A. Moorstein
Courtney B. Harden
Mariam W. Tadros
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HAMP'S FIRST
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Jacksonville, FL 32203

HAMP, Inc. (hereinafter the "HAMP"), by counsel, and pursuant to 49 CFR 1114.30, submits the following Requests for Production of Documents to the Defendant, CSX Transportation, Inc. ("CSX"), a written response to which is to be returned to HAMP's attorney within 21 days.

DISCLAIMER: THIS MATTER IS CURRENTLY BEFORE THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY, VIRGINIA, *HAMP, INC V. CSX TRANSPORTATION, INC*, CASE NO. CL 14-1561, AND IS ONLY SUBJECT TO A PETITION FOR DECLARATORY ORDER ("PETITION") BEFORE THIS BOARD. NO PREEMPTION HAS BEEN DECLARED, AND HAMP IS PURSUING THESE DISCOVERY REQUESTS BECAUSE CSX HAS ASSERTED FACTS IN ITS PETITION. HAMP DOES NOT IN ANY WAY CONCEDE THAT PREEMPTION IS APPROPRIATE; ON THE CONTRARY, IT BELIEVES THE FACTS WILL DEMONSTRATE THAT NO PREEMPTION BY THE BOARD IS WARRANTED OR NECESSARY AS IT IS WHOLLY A STATE MATTER.

INSTRUCTIONS

(a) This request is intended to include all documents or tangible physical items in possession of CSX named in this request or subject to CSX's custody or control, or subject to the custody or control of said CSX's attorneys, agents or other representatives.

(b) If any claim of privilege is asserted with respect to any document or thing, identify the privilege claimed, state the facts supporting the claimed privilege with particularity and identify any document or thing covered by such claim.

(c) If you object to any request, the reason(s) for the objection shall be stated in full. If, with respect to any particular request, you do not presently have the document or thing within your possession, custody or control, then, should you later come into possession, custody or control of such document or thing, you shall amend your response and make newly available documents or things available to Rees Broome, PC for inspection and/or copying.

(d) These requests are continuing in character, so as to require you to file supplemental responses in accordance with 49 CFR 1114.29 immediately upon obtaining additional documents or things or different information which makes a prior response no longer correct or no longer true.

(e) If any objection is made to any request, production should be made of all documents or things to which the objection does not relate.

(f) If any document required to be produced in response to a request is no longer in your possession, custody or control or the possession, custody or control of any attorney, agent, employee, investigator or representative acting on your behalf, state whether such document or thing is missing or lost, has been destroyed, has been transferred, voluntarily or involuntarily, to others or has otherwise been disposed of. In each instance, explain in detail the circumstances surrounding any authorization to make such disposition of the document or thing and the date thereof.

(g) Responsive documents and tangible physical things shall be made available for inspection and copying at the offices of Rees Broome, PC at a date and time reasonably agreeable to the parties.

DEFINITIONS

(a) As used in these requests, the term "document" or "documents" means, without limitation, any written, recorded or graphic matter, whether produced, reproduced or stored on paper, cards, tapes, film, electronic file, computer storage device, or any other tangible or intangible storage media. With respect to any document requested, if the document exists in both "hard copy" format, i.e., traditional printed paper, and in an electronic version as well, such as Adobe Acrobat Portable Document Format ("PDF"), the Request for Production includes the production of the complete PDF document, including both the image and the searchable text files created with respect to that document, if any. With respect to any such electronic files or documents, the Request for Production also includes any "automatic index information capture"

created or maintained with respect to that document or file, including any date or number matrix, document control command, indexing bar codes, custom document separator sheets, or any other document capture or retrieval codes or files.

(b) “CSX” shall refer to the CSX Transportation, Inc. and its agents, representatives and employees and including any wholly owned subsidiary of CSX Transportation, Inc. which is involved in primarily the same business. CSX is a common carrier railroad company which provides both passenger and freight services and owns a corridor of property adjacent to HAMP’s property and is actively running trains on that corridor

(c) “HAMP” is a Virginia Corporation authorized to transact business in Virginia and is the owner of 10.37 acres of land at 13721 Jefferson Davis Highway, Woodbridge, Virginia 22191, GPIN number of 8392-93-4437, also known as Holly Acres Mobile Home Park (the “Property” or “Holly Acres”), operating as a mobile home rental park with approximately one hundred and six (106) rental pad sites.

(d) “Petition” shall refer to the Petition for Declaratory Order filed by CSX for this docket number 35832.

(e) The “Culvert” refers to the culvert located in the berm over which the CSX railroad runs adjacent to the HAMP property and which is the issue of the Petition. CSX identified the Culvert via its location at milepost CFP 88.5.

(f) “Declaration” shall refer to the Declaration of Edward D. Sparks II, which was attached to the Petition.

(g) The pronouns “you” and “your” refer to the parties to whom these Requests for Production of Documents are addressed.

(h) The terms “concerning” or “relating to” mean referring to, describing, evidencing, constituting or otherwise having a connection with.

(i) The term “person(s)” includes any individual, natural person, corporation, firm, partnership, unincorporated association, trust or other legal, business or governmental entity.

(j) The term “communications” refers to any transmittal of information, in the form of facts, ideas, inquiries, or otherwise, including transmissions made in conversations, and through the use of documents, telephone calls, modem, or other electronic means, including electronic mail (e-mail), all written or oral discussions, statements, conversations, memoranda, notations, letters, or notices.

(k) “And” as well as “Or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of these Requests for Production of Documents that which might otherwise be construed to be outside their scope.

(1) "Each" shall be construed to include the word "Every" and "Every" shall be construed to include the word "Each." "Any" shall be construed to include the word "All" and "All" shall be construed to include the word "Any."

You are requested to produce the following:

REQUESTS

Request No 1:

All documents, studies, plans, revisions, additions and improvements in connection with or related to the Culvert from the time it was planned to the present.

Response:

Request No 2:

All documents pertaining to any maintenance performed or work performed on the Culvert from 1902 to present, including but not limited to cleaning and/or clearing sediment and/or debris from inside the Culvert, reinforcing or adding material, including concrete or steel, to the inside of the Culvert for any purpose, including reinforcement, dumping rip rap or any other materials into or around the Culvert, or taking any action which affects or has affected the flow of water through the Culvert.

Response:

Request No 3:

All documents in connection with or relating to any inspections performed on the Culvert from 1902 to present, including but not limited to inspections by CSX employees (or their predecessors) and contractors, the Commonwealth of Virginia, FEMA, or any Federal Agencies.

Response:

Request No 4:

Please provide the resume or curriculum vitae of Edward D. Sparks, II.

Response:

Request No 5:

All documents supporting or demonstrating CSX's allegations contained in its Declaration, ¶ 12.

Response:

Request No 6:

All documents supporting or demonstrating CSX's allegations contained in its Declaration, ¶ 13, including but not limited to copies of CSXT MWI 1401-03.

Response:

Request No 7:

All documents supporting or demonstrating CSX's allegations contained in its Declaration, ¶ 14, specifically include all documents which support the assertions in ¶ 14 that the Culvert is "inspected annually, is well maintained, is in good condition, and is structurally sound."

Response:

Request No 8:

All documents supporting or demonstrating CSX's allegations contained in its Declaration, ¶ 15.

Response:

Request No 9:

All documents supporting or demonstrating CSX's allegations contained in its Declaration, ¶ 17, including but not limited to CSX's assertions that HAMP's requested relief would "cause and require CSXT to expend significant financial and other resources that are unnecessary to CSXT's current and anticipated railroad operation and rail transportation needs."

Response:

Request No 10:

All documents within CSX's possession demonstrating any engineering analysis of the potential options to redesign and/or to expand the Culvert, whether or not "independent" as CSX references in the Declaration ¶ 18 or not.

Response:

Request No 11:

All documents supporting or demonstrating CSX's factual allegations relating to CSX's contention that the ICCTA specifically preempts HAMP's tort claims for damages and injunctive relief, claims under the Virginia Flood Protection and Dam Safety Act, and claims for inverse condemnation, including but not limited to each other case within the United States, in the last 10

years, in which CSX has been sued for any/all of these claims and had either been ordered by a Court or tribunal to perform engineering changes to the railway or has settled the matter.

Response:

Request No 12:

All documents supporting or demonstrating CSX's estimate in Declaration ¶ 19, that the "cost of redesigning and/or expanding the Culvert would cost at least several hundred thousand dollars, and more likely will cost in excess of \$1 million."

Response:

Request No 13:

All documents supporting or demonstrating the engineering solutions employed by CSX in the last 10 years to provide an increased flow of water through any culvert it maintains, including but not limited to expanding a culvert or tunneling nearby a culvert.

Response:

Request No 14:

All documents supporting or demonstrating the manner in which any CSX railroad operations were disturbed, interfered with or halted when CSX employed engineering solutions in the last 10 years to provide an increased flow of water through any culvert it maintains, including but not limited to expanding a culvert or tunneling nearby a culvert. This request includes documents which reference or refer to the period any disturbance lasted, and the total loss of revenue in each instance to CSX.

Response:

HAMP, INC
By Counsel


Mark A. Moorstein (VSB No. 21201)
Courtney B. Harden (VSB No. 65470)
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Counsel for HAMP, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Request for Production of Documents was sent via first class mail, postage prepaid to:

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R. Eric Bilik
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this 25th day of July, 2014.


Courtney B. Harden



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FOUNDED 1866

August 4, 2014

Rachel D. Campbell
Director, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Re: HAMP, Inc. v. CSX Transportation, Inc., STB Docket No. 35832

Dear Ms. Campbell:

This letter responds to HAMP, Inc.'s ("HAMP's") "Certificate of Discovery", filed in the above-referenced docket on July 31, 2014. The Board has yet to rule on the Petition for Declaratory Order ("Petition") filed by CSX Transportation, Inc. ("CSXT") on June 3, 2014.¹ Accordingly, there is no proceeding at this time, and CSXT does not intend to respond to HAMP's unauthorized discovery requests.

Moreover, assuming the Board does initiate a declaratory order proceeding in response to CSXT's Petition, discovery is not automatic, and in fact is not ordinarily permitted in preemption cases. As CSXT made clear in its petition, this matter presents legal issues, for which discovery is not necessary. *See* CSXT Petition for Declaratory Order, STB Docket 35832 (June 3, 2014) at 16 ("Petition").² Each of HAMP's state claims is facially preempted by ICCTA, and therefore the issues presented to the Board are legal in nature and can be addressed without the need for discovery.

¹ HAMP's filings in the Virginia State Court proceeding acknowledge that the Board has not yet acted on CSXT's petition.

² Contrary to HAMP's assertion in its state court filing, CSXT did not propose a discovery schedule in its Petition. Rather, CSXT's filing explicitly requested that the Board not order discovery in this matter. Petition at 16.



Rachel D. Campbell
August 4, 2014
Page 2

Because the Board has not yet acted upon CSXT's Petition and has not yet initiated a proceeding, CSXT declines to respond to HAMP's discovery requests at this time.³

Sincerely,



G. Paul Moates
Hanna M. Chouest

cc: Mark A. Moorstein
Courtney B. Harden
Mariam W. Tadros

³ Nothing in this letter is intended to waive any of CSXT's rights to challenge the content of HAMP's discovery requests should those requests be permitted if a declaratory order proceeding is initiated.