

SURFACE TRANSPORTATION BOARD
WASHINGTON, DC

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STB Finance Docket No. 35306

LASSEN VALLEY RAILWAY LLC
--ACQUISITION AND OPERATION EXEMPTION--
UNION PACIFIC RAILROAD COMPANY

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REPLY OF LASSEN VALLEY RAILWAY LLC

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Dated: January 6, 2010

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Lassen Valley Railway LLC, pursuant to 49 C.F.R. 1104.13(a), replies to the Nevada Central Railroad's January 5, 2010, Provision of Supplemental Evidence Supporting Petition to Revoke, as follows:

1. By Mr. Kemp's belated submission of the Verification conspicuously missing from Nevada Central Railroad's December 17, 2009, pleading, Mr. Kemp has perjured himself. There simply is no truth to his allegations, on page 4 of his pleading, where he states:

Bottom Line, is that the stated intent by RTI to file an OFA within (STB: FD-33-230X), was a Complete Artifice manufactured by [UP and Schumacher] with Smoke and Mirrors, as a means of Criminally Defraud NCR for a period in excess of 2-Years from obtaining a Certificate of Public Convenience and Necessity as a Nevada state Based Rail Carrier, in order to enable UP and BNSF the necessary time to Maintain and Execute its Secret Covenant and Conspiracy with individuals employed within the U.S. Department of Energy, along with Director of Section of Environmental Analysis Victoria Rutson and her assistant David Navecky, along with Acting Secretary of STB; Ann Quinlan, to RIG and thus enable the SYSTEMATIC THEFT by UP and BNSF as defined within but not limited to the: Federal RICO Act (Hobbs), as well as the Federal Industrial Economic Espionage Act, of the [NCR-ByPass™ Legally Defined within FD: 34382], from NCR and its Shareholders."

The assertions are completely false, and Mr. Kemp committed perjury in contending under oath that “the same are true of his own knowledge.”

2. In paragraph 5 on page 5 of its December 17, 2009, filing, Nevada Central Railroad claimed to be “[c]ondemning the majority of the historic Susanville Industrial Lead, in order to institute a service connection to the BNSF Main Line System in Northern California . . .” The exhibit attached to its January 5, 2010, filing, however, discloses that the Complaint in Condemnation of Real Property was not filed in the Superior Court of California in and for the County of Lassen until January 4, 2010.

3. The Complaint in Condemnation of Real Property repeatedly refers to the abandoned Susanville Industrial Lead. The Susanville Industrial Lead, however, was never abandoned. It was acquired by Lassen Valley Railway LLC pursuant to the verified Notice of Exemption filed November 17, 2009, in STB Finance Docket No. 35306, Lassen Valley Railway LLC—Acquisition and Operation Exemption—Union Pacific Railroad Company. See 74 Fed. Reg. 63501, December 3, 2009.

4. In any event, the state court action is preempted by 49 U.S.C. 10501(b). Maynard v. CSX Transp., Inc., 360 F. Supp.2d 836 (E.D. KY 2004); Pejepscot Indus. Park, Inc. v. Maine Cent. R. Co., 297 F. Supp.2d 326 (D. Me. 2003); Cedarapids, Inc. v. Chicago, Central & Pacific R. Co., 265 F. Supp.2d 1005 (N.D. Iowa 2003).

5. Nevada Central Railroad fails to explain how revocation of the exemption of Lassen Valley Railway LLC is necessary to carry out the transportation policy of 49 U.S.C. 10101. Since Nevada Central Railroad did not sustain its burden of proof, pursuant to 49 C.F.R. 1121.4(f), its petition to revoke the Notice of Exemption of Lassen Valley Railway LLC should be denied.

Respectfully submitted,

LASSEN VALLEY RAILWAY LLC

By its attorney,



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Dated: January 6, 2010.

CERTIFICATE OF SERVICE

I certify that I this day served a copy of the foregoing Reply upon Nevada Central Railroad by e-mailing a copy to its representative, Mr. Robert A. Kemp.

Dated at Washington, DC, this 6th day of January 2010.



Fritz R. Kahn