

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

CYNTHIA SMALLEY; CLIFFORD R.	§	
MOORE, JR. AND CATHERINE M.	§	
MOORE, TRUSTEES ON BEHALF OF	§	CIVIL ACTION NO. 6:18-CV-00180-JDK
C.R. & C.M. MOORE LIVING TRUST;	§	
AND JERRY SELWYN, D/B/A SELWYN	§	
PROPERTIES, SP;	§	
	§	
Plaintiffs,	§	
	§	
v.	§	
	§	
UNION PACIFIC RAILROAD	§	
COMPANY,	§	
	§	
Defendant.	§	
	§	


**ORDER ADOPTING REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

The above entitled and numbered civil action was referred to United States Magistrate Judge John D. Love pursuant to 28 U.S.C. § 636. On December 4, 2018, the Magistrate Judge issued his Report and Recommendation (Doc. No. 42), recommending that Defendant’s Motion to Dismiss in Part the Second Amended Complaint (Doc. No. 30) be granted-in-part and denied-in-part and that Defendant’s Motion to Dismiss in Part the First Amended Complaint (Doc. No. 13) be denied as moot. The Report further recommended an expedited schedule for filing summary judgment motions on preemption. No objections to the Report and Recommendation have been presented for consideration within the prescribed time period for such objections. Therefore, the Court adopts the Report and Recommendation of the United States Magistrate Judge (Doc. No. 42) as the findings of this Court.

Accordingly, it is hereby **ORDERED** that all objections are **OVERRULED** and Defendant's Motion to Dismiss in Part the Second Amended Complaint (Doc. No. 30) be **GRANTED-IN-PART** and **DENIED-IN-PART**. Specifically, the Court **ORDERS** that Defendant's Motion (Doc. No. 30) be **GRANTED** with respect to Plaintiffs' takings claims alleged in Counts III and IV and **DENIED** with respect to preemption of Counts I and II. The Court **FURTHER ORDERS** that Defendant's Motion to Dismiss in Part the First Amended Complaint (Doc. No. 13) be **DENIED** as **MOOT**.

The Court **FURTHER ORDERS** any summary judgment motion on the issue of preemption be filed no later than **February 18, 2019**.

So **ORDERED** and **SIGNED** this 20th day of December, 2018.


Jeremy D. Kernodle
United States District Judge