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TWENTY-FIVE YEARS OF RAIL BANKING:
A REVIEW AND LOOK AHEAD

WRITTEN TESTIMONY OF RICHARD F. TIMMONS, PRESIDENT
AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION

I am Richard Timmons, President of the American Short Line and Regional Railroad Association. The American Short Line and Regional Railroad Association (ASLRRRA) is the national trade organization for over 550 class II and class III railroads operating across the nation. I greatly appreciate the opportunity to submit this written testimony for the record in this proceeding on behalf of our member railroads.

It is difficult to imagine that there is any ambiguity in the language of §8(d) of the National Trails System Act that could lead to any confusion about its intent: rail rights of way that might otherwise be lost forever to abandonment may instead be converted temporarily to 'interim' trail use. There are both short term and long term potential benefits arising from this program. On the short run, railroads are freed from the financial burden of paying taxes on and maintaining unused or underused right of way. They are also able to liberate assets such as rail for more productive use elsewhere. And from a longer perspective in theory at least the program should preserve the right of way for future use as part of the national rail system should freight or passenger demand again warrant it.

Clearly rail banking has achieved its short-term goals. The many miles of right of way that have been 'banked' are all testaments to costs saved by railroads by avoiding capital expenditures, maintenance costs and taxes on lines that produce no return. However, in my

experience the program has been a dismal failure in its long-term goal to preserve the rights of way for future return to a productive role in the interstate railroad system.

The history of the program strongly suggests that the “interim” conversion to trail or other non-railroad use for the right of way is a misnomer: in fact, the reality is that rail banking means “infinite” conversion to trail use. In the five years before I became President of ASLRRA I was the Resident Vice President of Norfolk Southern Corporation for the state of Pennsylvania. In those years I spent a great deal of time working on and observing the effect of ‘rail banking’ initiatives, and I had a firsthand opportunity to observe the near impossibility of successfully returning a rail line to the system once it had been ‘banked’ for another non-rail purpose. The protracted proceedings in STB Finance Docket No. 35116 to which the Board referred in its May 21, 2009 Notice of Public Hearing involving an attempt by RJ Corman Railroad Company/Pennsylvania Lines to obtain a construction and operation exemption is a timely reminder that the difficulties I observed continue undiminished today.

There are a host of reasons the ultimate goal of returning ‘banked’ rail lines to their productive place in the national rail infrastructure has been so unsuccessful. First, the interplay between state and federal law is a complicating factor. The purposes expressed in §8(d) of the National Trails System Act cannot be achieved without the extensive application of real property laws, which are the almost exclusive responsibility of the states. Since there is no uniformity among state property laws, there is no consistency about reversionary rights when easements for rights-of-way are no longer used for operating rail lines. If state law determines that an easement is extinguished when the property is no longer used for the purposes intended when it was granted, then reopening a line in that jurisdiction might require a condemnation action. That specter alone would doom almost every plan to return a line to service.

Local political and community pressures are another obvious complication. Rail banking arrangements have such long horizons that when the time comes to reopen a line typically no one is around who remembers why the rail line was ‘banked’ in the first place. Over decades new development occurs near the former right of way which may be consistent with a recreational trail, but not with heavy industrial use such as a freight rail line. Communities and their elected

representatives use whatever legal and political means are available to them to prevent the rights of way from returning to rail service.

Even changing federal priorities over the decades between the time a rail line is initially 'banked' and its eventual candidacy for reuse as rail line can inhibit the successful return of a rail line to service. Again, one needs look no further than the current RJ Corman proceeding before this Board for an example. There the Board's Section of Environmental Analysis has determined that the law requires a full Environmental Impact Statement before the line might be reopened despite the fact that approximately ten miles of the line is 'banked' right of way formerly used for operating rail transportation. It is unknowable whether the line would have been placed into the rail bank program years ago had its owners foreseen that to take it back would require a protracted and extremely costly environmental analysis before permission would be granted, but it illustrates the blind risk the owner takes when entering into a rail banking arrangement, and the unforeseeability of federal policies over so long a period is yet another reason why the long term goals of rail bank programs have generally not been met.

Finally, besides conflicting state and federal laws and ever changing political priorities, there is a very human reason these programs do not succeed. Even if 'banked' rights of way do not become leafy trails communities hate to give up, over time they can become physically occupied by people in ways that are complicated, time consuming and controversial to reverse. Farmers create ad hoc crossings to reach their fields more conveniently. Recreational users build boathouses, fishing camps or cottages to enjoy nearby rivers, lakes and streams. Adjoining commercial interests encroach the easement for their storage, parking and even building needs. With no operating line the railroad no longer is around to object and if no local government is using the line to create a trail decades can pass with no objection or even observation of these

developments. Adverse possession becomes an issue, but even if there is no legal support for these unauthorized uses and the return to railroad use is sanctioned by regulators and courts, physically removing the encroaching parties becomes a costly, protracted and emotionally charged tinderbox discouraging potential operators from undertaking the steps necessary to retake the right of way for rail use.

With so many daunting and complicated obstacles to fulfilling the long term promise of the rail banking program, not the least of which for small railroads with limited resources is the enormous and unpredictable cost of fighting through every legal, regulatory and political gauntlet that is thrown in the path of rail line restoration, one must question whether this program is misbegotten and unsalvageable. Unfortunately, at the present time there are few other palatable alternatives for railroads that both preserve right of way for future generations and address the short term necessity of releasing under used assets for more productive purposes. Abandonment, the only real alternative, serves the short-term purpose, but absent the intervening offer of financial assistance, usually leads to the demise of the line. And that comes only after protracted and expensive proceedings before the Board that have been characterized as the last vestige of pre-Staggers Act protracted regulatory review.

ASLRRA does not believe that there are easy or clear solutions to the complex issues that beset the rail banking program. While the myriad issues surrounding rail banking can be highlighted in the context of this single hearing, on so complex a subject it is unlikely that comprehensive solutions can be identified and agreed upon. For that reason ASLRRA would like to make a modest proposal. To move all constituencies toward a reinvigorated program to save underperforming rail lines for future return to productive use ASLRRA proposes that this Board appoint a Blue Ribbon Commission composed of knowledgeable representatives of all

interested groups: large and small railroads, local communities, federal policy makers, legal scholars, urban planners, transportation experts and others to study in depth the history of rail banking and all the issues it raises. From that study can come a report to the Board of recommendations to change, replace or strengthen the current rail-banking concept. New or model state or federal legislation may be proposed. At the very least a Commission Report will form a comprehensive resource for all constituencies from which future dialogue, planning and action can spring. Should the Board decide to take up this proposal, ASLRRA pledges its best efforts to participate actively and promote a robust and comprehensive Commission study and report about the place of rail banking in our national rail transportation infrastructure. The rail banking concept has so much unfulfilled potential for America's transportation network. It deserves the in depth analysis a Blue Ribbon Study can produce.

Respectfully submitted,



Richard F. Timmons, President
American Short Line and Regional Railroad Association

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First Name: * Keith
Middle Name: * T
Last Name: * Borman
Address: * Suite 7020
50 F Street N.W.
City: * Washington
State: * D.C.
Zip Code: * 20001-1564
Email Address: * kborman@aslrra.org
Group/Affiliation: * American Short Line and Regional Railroad Association
Message: * Attached is a (1) cover letter and (2) written testimony of Richard Timmons, President, American Short Line and Regional Rail Association, for filing in the record of the above referenced proceeding.