

STATEMENT OF JOSEPH LEVIN
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STB Docket No. AB-855 (Sub-No. 1X)
A & R LINE, INC.–ABANDONMENT EXEMPTION–
IN CASS AND PULASKI COUNTIES, IN

Good morning Chairman Nober, Vice Chairman Mulvey and Commissioner Buttrey.

In this case, the Board granted an exemption for A&R Line to abandon a 21-mile rail line in Cass and Pulaski Counties, IN. As relevant here, the Board imposed environmental conditions regarding removal and salvage activities, including bridge maintenance activities following abandonment. The Board also imposed a condition requested by the Indiana Trails Fund authorizing negotiations for interim trail use under the Trails Act.

The Board of Commissioners of Pulaski County asked the Board to require the railroad and the trail sponsor to post a performance bond or to escrow funds to guarantee payment of removal and clean-up costs. The County is concerned that the trail sponsor might not have the financial means to maintain structures on the line, such as bridges, trestles, culverts and tunnels, or pay for removing or cleaning up those structures. The County says that it wants to protect taxpayers and property owners from being obligated to pay future removal or clean-up costs associated with the rail line.

The draft decision before you denies the County's request. The decision indicates that, in enacting the Trails Act, Congress intended to lift from the railroad the cost of paying taxes or other maintenance expenses for the property during the period of interim trail use. Requiring a railroad to post a performance bond or establish escrow funds would be contrary to Congress' intent. Moreover, the decision notes that, should an interim trail use agreement not be reached or be terminated and should A&R fully abandon the line, the carrier would then be required to comply with environmental conditions imposed in this case that address removal and salvage activities.

The decision also addresses the County's concern about the financial ability of the trail sponsor to maintain the line during the period of interim trail use. The decision notes that the Board applies a rebuttable presumption that any private organization that files a statement of willingness meets the statutory requirement to serve as a trail sponsor, and there is nothing in this record rebutting the presumption. The Board has imposed a trail use condition because the statutory criteria of the Trails Act were met. If the Indiana Trails Fund were shown to be unable to meet the its responsibilities as a trail sponsor under the statute, the interim trail use authority would be revoked.

The decision explains that the trail sponsor must also comply with state and local public health and safety laws. These laws can impose substantial responsibilities on the trail sponsor in the areas of maintenance, removal and clean-up. The decision points out that, if the trail sponsor is

not managing the line in a lawful manner, the Board remains available to consider whether to revoke the trail use authority issued in the proceeding.

In sum, the draft decision would find that the County has failed to show that the protections available to it are deficient or that further relief is warranted.

We are available for your questions.