



Surface Transportation Board
Washington, D.C. 20423-0001

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Office of the General Counsel

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Meeting under Section 5, STB Reauthorization Act

Office of Proceedings

December 30, 2020

January 24, 2020

Part of

Public Record

Present: Members Begeman, Fuchs, and Oberman
Staff Allison Davis, Ellen Erichsen, Christopher Falcone, Sarah Fancher,
Amanda Gorski, Theodore Hunt, Craig Keats, Evelyn Kitay, Barbara Miller,
Valerie Quinn, Lisa Novins

Topic: Docket No. FD 36369, Association of American Railroads—Petition for
Declaratory Order

Summary of the Matters Discussed, Prepared by General Counsel Craig Keats:

At this meeting, staff and Board Members discussed issues related to the petition filed by the Association of American Railroads (AAR) for a declaratory order to eliminate uncertainty regarding the applicability of certain Clean Water Act (CWA) provisions to regulated rail carriers. Specifically, AAR asks the Board to find that the discharge permitting regime under the CWA, which is generally administered by the states, is preempted by 49 U.S.C. § 10501(b) with regard to discharges incidental to the normal operation of rail cars in transit.

Staff and Board Members discussed the following issues:

1. Relevant statutes, including § 10501(b) and the CWA.
2. Principles and precedents for issuing declaratory orders.
3. Past and possible future litigation on the issue raised by AAR.
4. Whether to initiate a declaratory order proceeding, and if so, how to structure the proceeding.