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ENTERED
 Office of Proceedings
 January 7, 2021
 Part of
 Public Record

January 7, 2021

By e-filing

Ms. Allison C. Davis, Director
 Section of Administration
 Office of Proceedings
 Surface Transportation Board
 395 E Street, S.W.
 Washington, DC 20024

3

Re: Docket No. AB-1065 (Sub-No. 2), *Landowners -- Adverse Abandonment --
 Indiana Southwestern Railway Co. in Posey and Vanderburgh Counties, Ind.*

Dear Ms. Davis:

This is a request for acknowledgment by the Board that a filing fee should not be assessed for the Petition for Partial Waiver of Abandonment Regulations and for Exemption from Statutory Requirements (Petition) that is being filed concurrently with this correspondence. *See*, footnote 1 on page 4 of the Petition. In the Board's decision served December 7, 2020, the Board stated that it would waive the filing fee for an Application for Adverse Abandonment (Application) under circumstances set forth on page 3, footnote 3 of that decision. The Petition is an essential pre-condition for filing the Application. Inasmuch as a filing fee for the Application will be waived, the fee for the related Petition should also be waived.

Respectfully submitted,

/s/ Thomas F. McFarland
 Thomas F. McFarland
*One of the Attorneys for Landowners
 Identified in Appendix 1*

FILED
February 8, 2021
SURFACE
TRANSPORTATION BOARD

TMcF:mg:1899\efSTB1

cc: All parties of record

FEE RECEIVED
February 8, 2021
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

LANDOWNERS -- ADVERSE	)	
ABANDONMENT -- INDIANA	)	DOCKET NO. 3
SOUTHWESTERN RAILWAY CO. IN	)	AB-1065 (SUB-NO. 2)
POSEY AND VANDERBURGH	)	
COUNTIES, IND	)	

**PETITION FOR PARTIAL WAIVER OF ABANDONMENT
REGULATIONS AND FOR EXEMPTION
FROM STATUTORY REQUIREMENTS**

ROBERT D. BENDER, ET AL.,
LANDOWNERS IDENTIFIED IN APPENDIX 1
c/o Stewart, Wald & McCulley
2100 Central Street, Suite 22
Kansas City, MO 64108

Petitioners

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Attorneys for Petitioners

DATE FILED: January 7, 2021

BEFORE THE
SURFACE TRANSPORTATION BOARD

LANDOWNERS -- ADVERSE	)	
ABANDONMENT -- INDIANA	)	DOCKET NO. 3
SOUTHWESTERN RAILWAY CO. IN	)	AB-1065 (SUB-NO. 2)
POSEY AND VANDERBURGH	)	
COUNTIES, IND	)	

**PETITION FOR PARTIAL WAIVER OF ABANDONMENT
REGULATIONS AND FOR EXEMPTION
FROM STATUTORY REQUIREMENTS**

Pursuant to 49 U.S.C. § 10502(a), 49 C.F.R. § 1152.24(e)(5), and the Board's decision in this proceeding served December 7, 2020 at 3, the Landowners identified in Appendix 1 of this Petition hereby respectfully request that the Board:

- (1) exempt them from requirements of certain statutory provisions whose application is not required to carry out the National Rail Policy, nor to protect shippers from abuse of market power; and
- (2) waive certain Board regulations whose application is not reasonably required in a proceeding in which a party is seeking adverse abandonment of a rail line.

IDENTITY AND INTEREST OF LANDOWNERS

The Landowners own land adjacent to, and/or within the rights-of-way of the subject Rail Lines. That land is burdened by easements that permit its use by Indiana Southwestern Railway Co. (ISW) for railroad purposes. ISW has not used that land for regulated rail transportation for more than 16 years. There is no reasonable prospect for such use in the foreseeable future. The Landowners seek a determination by the Board that in those circumstances, public convenience and necessity (PC&N) permit and require abandonment of the Rail Lines, thereby extinguishing

the federal interest in the Lines, and paving the way for actions under Indiana law to free the land from the burden of the easements.

BACKGROUND

THE SUBJECT RAIL LINES

The subject Rail Lines extend:

(1) between Milepost 227.5 at or near Poseyville, IN and Milepost 240.2 at or near German Township, IN; and

(2) between Milepost 277.5 at or near Cynthiana, IN and Milepost 282.0 at or near Poseyville, IN (the Rail Lines).

ISW removed the track materials from those Lines in 2012 without having consummated an abandonment of the Rail Lines. The remaining rights-of-way total 17.2 miles in Posey and Vanderburgh Counties, IN. The Rail Lines are shaded in yellow on a map that is attached to this Petition as Appendix 2.

PROCEDURAL BACKGROUND

The procedural background of this matter is clearly and succinctly explained at pages 1 and 2 of the Board's decision in this matter served December 7, 2020. Briefly, 10 years ago, ISW obtained an exemption from the Board for abandonment of the Rail Lines. Ensuing negotiations for railbanking and interim trail use were unsuccessful. When the Notice of Interim Trail Use expired, ISW failed to consummate the authorized abandonment. As a result, authority for abandonment of the Rail Lines lapsed. *See* 49 C.F.R. § 1152.29(e)(2).

That being the case, an Application for Adverse Abandonment is required if an interested person other than ISW were to seek a determination that PC&N warrants abandonment of the federal interest in the Rail Lines. Unless exempted or waived, compliance with statutes and

Board abandonment regulations is required in conjunction with any such Application. Prior attempts by the Landowners to obtain such a determination were unsuccessful because of failure to comply with, and/or seek exemption or waiver from, those statutes and regulations. The subject Petition for Partial Waiver and Exemptions addresses the Board's procedural requirements for adverse abandonment that were not satisfied in the Landowners' prior pleadings.

**FACTUAL SUPPORT FOR A DETERMINATION
THAT PC&N REQUIRE AND PERMIT ABANDONMENT**

As contemplated by Board procedure, the Landowners' case that PC&N require and permit abandonment will be set forth in their upcoming Application. Much of that factual support has already been filed in the Landowners' Petition and Motion for Adverse Abandonment, dated November 17, 2020. The Landowners hereby adopt the content of that Petition and Motion by reference if that pleading is not already a part of the record by virtue of its filing in the related Petition and Motion in Docket No. AB-1065X. The Landowners' Application for Adverse Abandonment will build on the following irrefutable facts contained in that Petition and Motion:

- (1) no regulated rail transportation has been performed over the Rail Lines since 2004;
- (2) there is no credible evidence of a prospect for providing such transportation in the foreseeable future;
- (3) ISW removed all track materials in the Lines in 2012 without having consummated an authorized abandonment of the Lines;
- (4) absent a massive volume of new traffic over the Rail Lines, it would be prohibitively costly to replace 17.2 miles of track materials in the Rail Lines;

(5) negotiations for railbanking and interim trail use of the rights-of-way of the Lines ended unsuccessfully in 2014;

(6) ISW failed to consummate authorized abandonment of the Lines.

REGULATIONS TO BE WAIVED AND STATUTES TO BE EXEMPTED

1. NOTICE OF INTENT TO ABANDON

(a) The Landowners seek waiver of the provision in 49 C.F.R. § 1152.20(a)(1) that the Landowners serve a Notice of Intent to file an abandonment application in the format prescribed in 49 C.F.R. § 1152.21.^{1/} As explained in seeking a partial waiver of 49 C.F.R. § 1152.21, *infra*, the prescribed format is not adaptable in some respects to a notice of intent to seek an application for adverse abandonment.

(b) the Landowners seek waiver of the provision of 49 C.F.R. § 1152.20(a)(2)(i) and an exemption from 49 U.S.C. § 10903(a)(3)(d) that require a Notice of Intent be served on significant users of the Line. There are no current significant users of the Line. There have been no such users in the past 16 years.

(c) The Landowners seek waiver of the provision in 49 C.F.R. § 1152.20(a)(2)(x) that require that a Notice of Intent be served on the National Railroad Passenger Corporation. Amtrak does not operate over the Rail Line.

(d) The Landowners seek waiver of the provision in 49 C.F.R. § 1152.20(a)(2)(xii) that require that a Notice of Intent be served on the headquarters of all duly

^{1/} The Landowners seek waiver of the \$2,300 filing fee for this Petition set forth at 49 C.F.R. § 1002.2(f)(24). The Board agreed to waive the filing fee for the Application for Adverse Abandonment under circumstances set forth at page 3, note 3, of its decision in this proceeding served December 7, 2020. The same circumstances would warrant waiver of the filing fee for this Petition for Waiver.

certified labor organizations that represent employees of the affected Rail Line. The Landowners are informed and believe that there are no such labor organizations.

(e) The Landowners seek waiver of the provisions in 49 C.F.R. § 1152.20(a)(3) and an exemption from 49 U.S.C. § 10903(a)(3)(B) that require posting of the Notice of Intent at each agency station or terminal on the Line, and if there are no stations on the Line, the Notice is to be posted at any agency station through which business for the involved Line is received or forwarded. Inasmuch as service over the Line has not been conducted for the past 16 years, there are no agency stations at which the Notice of Intent could be posted.

(f) The Landowners seek waiver of the provisions of 49 C.F.R. § 1152.20(c) that require Environmental and Historic Reports to be submitted at least 20 days prior to filing an application. All environmental and historic effects of abandonment of the Rail Line were experienced 8 years ago when ISW removed all track materials from the Line without having consummated abandonment authority. Therefore, the Board should waive the requirement that the Landowners file Environmental and Historic Reports. *See, e.g.,* 49 C.F.R. § 1005.6(c)(1) (“No environmental documentation will normally be prepared for. . . (a)ny action that does not result in significant changes in carrier operations.”). The proposed adverse abandonment would not result in any change in carrier operations; any such changes were experienced 8 years ago when ISW removed track materials from the Line. *See, also,* 49 C.F.R. § 1105.8(e) that provides for waiver of the requirement of a Historic Report “when the information is not necessary to determine the presence of historic properties and the effect of the proposed action on them”. The effect of removal of track materials and the effect of such removal on historic properties were experienced in 2012 when ISW removed all such materials.

2. 49 C.F.R. § 1152.21 - FORM OF NOTICE OF INTENT

The Landowners seek a partial waiver of the form of Notice of Intent that is set forth in 49 C.F.R. § 1152.21 in order to change or eliminate statements that do not apply to proceedings involving adverse abandonment applications. The Board customarily permits applicants for adverse abandonment to provide a modified Notice of Intent in a form befitting a proposed adverse abandonment application. A Notice of Intent in that form is attached to this Petition as Appendix 3.

CONTENTS OF THE APPLICATION FOR ADVERSE ABANDONMENT

1. 49 C.F.R. § 1152.22(a)(5) - System Diagram Map

The Landowners seek waiver of the provisions of 49 C.F.R. § 1152.22(a)(5) and an exemption from 49 U.S.C. § (c)(2)(A) and (B) that require information regarding listing of the Rail Line in a System Diagram Map (SDM) in compliance with 49 C.F.R. § 1152.10 through 49 C.F.R. § 1152.13. The SDM requirements are not adaptable to noncarriers such as the Landowners.

2. 49 C.F.R. § 1152.22(b) - Condition of Properties

The Landowners seek waiver of the provision of 49 C.F.R. § 1152.22(b) that requires an abandonment applicant to provide information about the physical condition of the Rail Line. That information is not available to noncarriers such as the Landowners. ISW removed all track materials from the Rail Line in 2012 without having consummated abandonment authority for the Rail Line.

3. 49 C.F.R. § 1152.22(c) - Service Provided

The Landowners seek waiver of the provision of 49 C.F.R. § 1152.22(c) that

requires an abandonment applicant to provide information regarding service provided over the Rail Line. That information is not available to noncarriers such as the Landowners. No service at all has been provided since 2004.

4. 49 C.F.R. § 1152.22(d)(1)-(3) - Revenue & Cost Data

The Landowners seek waiver of the provision of 49 C.F.R. § 1152.22(d)(1)-(3) that requires an abandonment applicant to provide revenue and cost data resulting from its operations. That data is not available to noncarriers such as the Landowners. There could be no current revenue and cost data because ISW has not operated over the Line since 2004.

5. 49 C.F.R. § 1152.22(e)(2) - Significant Users

The Landowners seek waiver of 49 C.F.R. § 1152.22(e)(2) that requires an abandonment applicant to identify significant users of the involved rail service. That information is not available to noncarriers such as the Landowners. There have not been any significant users since 2004 when rail operations were last performed.

6. 49 C.F.R. § 1152.22(e)(3) - Alternative Transportation

The Landowners seek waiver of the provision of 49 C.F.R. § 1152.22(e)(3) that requires an abandonment applicant to identify alternate sources of transportation. That information is not available to noncarriers such as the Landowners.

7. 49 C.F.R. § 1152.22(f) - Environmental Impact

The Landowners seek waiver of 49 C.F.R. § 1152.22(f) that requires an abandonment applicant to provide the environmental and historical impact of the proposed abandonment in accordance with 49 C.F.R. § 1105.7 and 1105.8. The Landowners have already sought waiver of those requirements. *See* petition for waiver of 49 C.F.R. § 1152.20(c), *supra*. The Landowners adopt the reasoning in that request for waiver.

8. 49 C.F.R. § 1152.22(i) - Draft Federal Register Notice

The Landowners seek partial waiver of the provisions of 49 C.F.R. § 1152.22(i) that provides a format for a Draft Federal Register Notice of the filing of the Abandonment Application. Some of the provisions of that form of Notice are not reasonably adaptable to an adverse abandonment application. Attached as Appendix 4 is a revised Draft Federal Register Notice that conforms to an adverse abandonment proceeding.

OFFERS OF FINANCIAL ASSISTANCE NOT TO BE ENTERTAINED

The Landowners seek an exemption from the provisions of 49 U.S.C. § 10904 that otherwise would enable a financially responsible person to file an offer of financial assistance (OFA) for continued rail operation of the Line. The Board has consistently stated that such an OFA is not compatible with an adverse abandonment. *See, e.g., Palmer Ranch Holdings, Ltd. -- Adverse Abandonment -- Seminole Gulf Railway, LP in Sarasota County, Fla.*, 2011 WL 4386163 at *6 (Docket No. AB-400 (Sub-No. 5) served September 21, 2011).^{2/}

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, for the reasons stated, the Board should grant the requested waivers and exemptions.

^{2/} Exemption and waiver of trail use statutes and regulations will be addressed in the Application for Adverse Abandonment.

Respectfully submitted,

ROBERT D. BENDER, ET AL.,
LANDOWNERS IDENTIFIED IN APPENDIX 1
c/o Stewart, Wald & McCulley
2100 Central Street, Suite 22
Kansas City, MO 64108

Petitioners

/s/ Thomas S. Stewart
/s/ Elizabeth G. McCulley

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DATE FILED: January 7, 2021

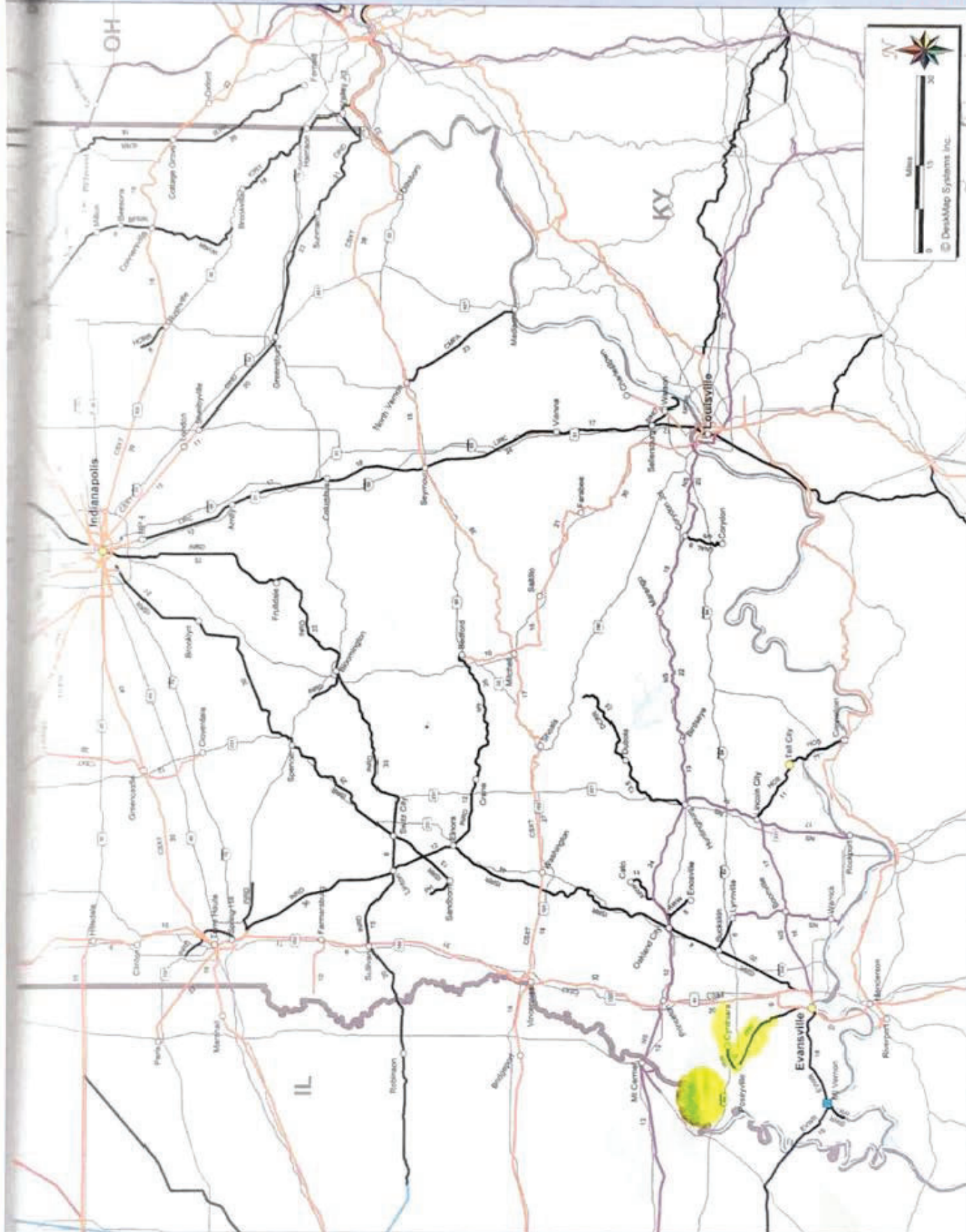
Name	Additional Co Owners	Mailing Address	City	State	Zip
Robert D. Bender William Bender Christopher Bender		9800 Bender Road	Poseyville	IN	47633
Estate of Jean Bender c/o Harold Bender, Executor		17 W. Main	Poseyville	IN	47633
Donald & Jody Blankenberger		3800 Deer Lake Dr.	Evansville	IN	47720
William & Norma Sue Butler		P.O. Box 63	Poseyville	IN	47633
Suzanne Curry		2661 Red Oak Court	Wadesville	IN	47638
F & M Damm Trust c/o Floyd and Mary Ellen Damm, Trustees		4501 Orchard Rd.	Evansville	IN	47720
Gilbert Effinger		9210 Eastlake Dr.	Wadesville	IN	47638
Barry Dean & Stacey Gaslin		11440 Northridge Dr.	Evansville	IN	47720
Alvin J. Gries & Rita A. Gries Revocable Trust of 1995 c/o Alvin & Rita Gries, Trustees		6221 St. Wendel-Cynthiana Rd.	Poseyville	IN	47633
Ivan Bender Farm, Inc. c/o Alan D. Bender, Registered Agent		10650 Hwy 165	Poseyville	IN	47633
Larry & Susan Goebel		4745 W. Boonville New Harmony Rd.	Evansville	IN	47720
Owen Halpeny		3 Ridgeview Way	Asheville	NC	28803
Joseph C. Jenkins		68 S. Sharp Street	Poseyville	IN	47633
William & Mary Jane Kight Revocable Trust of 2008 c/o Mary Jane Kight, Trustee		86 S. Sharp St.	Poseyville	IN	47633
Rita B. Kissel	Adam L. Kissel Shelter Trust c/o Joyce E. Elpers & Ronald A. Kissel, Trustees 8835 Hillview Dr. Evansville, IN 47720	6301 Posey County Line Rd. N.	Poseyville	IN	47633
Eugene & Charlotte Kuehn		8600 W. Baseline Rd.	Evansville	IN	47720

Name	Additional Co Owners	Mailing Address	City	State	Zip
Leo and Mary Jeanette Will Joint Life Estate		5501 Will Road	Poseyville	IN	47633
David & Judith Lipking		4405 Orchard Rd.	Evansville	IN	47720
Lockwood Farms LLC	Lockwood Farms, LLC c/o James Keith Lockwood, Registered Agent 8501 Highway 68, Poseyville, IN, 47633 - 9802	8505 HWY 68	Poseyville	IN	47633
William & Dorothy Luigs		15300 Trapp Rd.	Evansville	IN	47720
Bruce & Kathy Martin		7351 Water Tank Rd.	Poseyville	IN	47633
Michael & Rita Martin		16701 N. Posey County Line Rd.	Poseyville	IN	47633
McDonald Family Farms of Evansville, Inc. c/o David H. McDonald, President		15620 Big Cynthiana Rd	Evansville	IN	47720
Jeffrey Memmer		P.O. Box 6775	Evansville	IN	47719
Sylvester J. Elpers & Patricia A. Elpers Revocable Trust of 2000 c/o Sylvester & Patricia Elpers, Trustees		20105 US Highway 41 N Unit 41	Haubstadt	IN	47639
Poseyville Development LLC c/o Jacob S. Frederick		P.O Box 159 111 E. South Street	Poseyville	IN	47633
Reibel Farms, Inc. c/o Treva C. Reibel, Registered Agent		7400 Hwy. 68	Poseyville	IN	47633
Robert & Gladys Reuter		6600 St. Wendel-Cynthiana Rd.	Poseyville	IN	47633

Name	Additional Co Owners	Mailing Address	City	State	Zip
Kenneth & Rita Rexing	Scott and Kendra Straub 5733 W Boonville New Harmony Rd Evansville, IN 47720-7562	5820 Wood Gate Cir.	Evansville	IN	47720
	Kristina Hickson f/k/a Kristina Rexing 210 Higginson Place S Gallatin, TN 37066				
	Daniel J. Rexing 13005 Bartlett Drive Fishers, IN 46037-8673				
Janet Schapker		218 S Sharp St.	Poseyville	IN	47633-8603
Francis & Martha Scheller		8675 Wiggins Road	Poseyville	IN	47633
Stephen & Richard Schenk		10701 Emge Rd.	Poseyville	IN	47633
James E. and Robin A. Schmidt		12100 Saint Wendel Rd.	Evansville	IN	47720
Dorothy Schmitt		7925 Wiggins Rd.	Poseyville	IN	47633
John & Debra Schmitt		75 S. St. Francis Street	Poseyville	IN	47633
Dorothy Schmitt, Trustee of the Family Trust created under the Last Will and Testament of Francis E. Schmitt		7925 Wiggins Rd	Poseyville	IN	47633
Frank Riley		430 Beasley Rd.	Hardin	KY	42048
The Irene G. & Joseph E. Seibert Trust c/o Irene Seibert, Trustee		7700 Highway 68	Poseyville	IN	47633-9429
Glen Seibert	Brandon Seibert 11343 Hwy 65 Evansville, IN 47720	11311 Hwy 65	Evansville	IN	47720
Harold & Edna Mae Straub		11250 Gries Rd.	Poseyville	IN	47633-8757

Name	Additional Co Owners	Mailing Address	City	State	Zip
Scott & Kendra Straub		5733 W. Boonville New Harmony Rd.	Evansville	IN	47720-7562
Tenbarger Oil, Inc. c/o Roger Rutledge, Registered Agent		121 N. Cale Street	Poseyville	IN	47633
Voegel Farm LLC c/o Gary Voegel		9261 Copperline Road East	Mt. Vernon	IN	47620
Watzlavik Properties, LLC c/o Paul Watzlavik, Registered Agent		9083 Stonecreek Cir.	Newburgh	IN	47630-3718
Wayne & Jacklyn Wiggins	John R. Wiggins Box 273, 210 N. Church Street Poseyville, IN 47633	8921 Blaylock Rd.	Poseyville	IN	47633

Indiana



BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423

3
STB Docket No. AB-1065 (Sub-No. ~~2~~)

**LANDOWNERS -- ADVERSE ABANDONMENT --
INDIANA SOUTHWESTERN RAILWAY CO. IN
POSEY AND VANDERBURGH COUNTIES, IND**

**NOTICE OF INTENT TO FILE AN APPLICATION
FOR ADVERSE ABANDONMENT**

Landowners give notice that on or about March 5, 2021, they intend to file with the Surface Transportation Board, Washington, DC 20423, an application for adverse abandonment of lines of railroad that extend between railroad Milepost 227.5 at Poseyville, IN and Milepost 240.2 near German Township, IN, and between Milepost 277.5 at Cynthiana, IN and Milepost 282.0 at Poseyville, IN, a total distance of 17.2 miles. Those Rail Lines traverse through United States Postal Service ZIP Codes 47633, 46628, and 47612, a distance of 17.2 miles in Posey and Vanderburgh Counties, Indiana.

The reason for the proposed abandonment is to obtain a determination that public convenience and necessity require and permit abandonment of the federal interest in the Rail Lines. The Landowners own land adjacent and/or within the rights-of-way of the subject Rail Lines. That land is burdened by easements that permit its use by Indiana Southwestern Railway

Co. (ISW) for railroad purposes. ISW has not used that land for rail operations for more than 16 years. There is no reasonable prospect for such use in the foreseeable future. A determination by the Board that public convenience and necessity permits and requires abandonment of the Rail Line in those circumstances would extinguish the federal interest in the Line, and pave the way for actions under Indiana law to free the land from the burden of the easements.

Based on information in the Landowners' possession, the Lines do not contain federally granted rights-of-way. Any documentation in the Landowners' possession will be made available promptly to those requesting it.

To the extent that any railroad employees would be adversely affected by this action, their interest would be protected by the conditions imposed in *Oregon Short Line Railroad -- Abandonment, Goshen Branch*, 360 I.C.C. 91 (1979).

The Application can be viewed following its filing on the Board's website, www.stb.gov, or a copy can be obtained from Applicants' counsel whose name and address appear below. The Application will include the Applicant's entire case for abandonment. Any interested person, after the application is filed on or about March 5, 2021, may file with the Surface Transportation Board written comments concerning the proposed abandonment or protests to it identifying it by the proceeding's docket number. These filings are due 45 days from the date of filing of the Application. Persons who oppose the abandonment but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses, containing detailed evidence, should file comments. Persons opposing the proposed abandonment that do wish to participate actively and fully in the process should file a protest. Protests must contain that party's entire case in opposition (case in chief) including the

following: (1) Protestant's name, address and business; (2) the protestant's interest in the proceeding including their use of the Lines or the public interest represented; (3) the protestant's reasons for protesting or commenting on the proposed abandonment including their reliance on the involved service; and (4) any rebuttal of material submitted in the Application.

Comments or protests need to be notarized or verified, and are required to be filed with the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board (Board), at 395 E Street, S.W., Washington, DC 20423, together with a certificate of service attesting that copies of the comments or protests have been served on Applicants' counsel in this matter, Thomas F. McFarland, Thomas F. McFarland, P.C., 2230 Marston Lane, Flossmoor, IL 60422-1336, mcfarland@aol.com, and Thomas S. Stewart and Elizabeth G. McCulley, Stewart, Wald & McCulley, 2100 Central Street, Suite 22, Kansas City, MO 64108, stewart@swem.legal, and mcculley@swm.legal. Written comments and protests must indicate the docket number, STB AB-1065 (Sub-No. 2).

Except as otherwise set forth in 49 C.F.R. § 1152, each document filed with the Board must be served on all parties to the abandonment proceeding. Comments and protests will be considered by the Board in determining what disposition to make of the Application. A commenting party or protestant may participate in the proceeding as its interests may appear.

If an oral hearing is desired, the requester must make a request for an oral hearing and provide reasons why an oral hearing is necessary. Oral hearing requests must be filed with the Board no later than 10 days after the Application is filed.

Those parties filing protests to the proposed abandonment should be prepared to participate actively either in an oral hearing or through the submission of their entire opposition case in the form of verified statements and arguments at the time they file a protest. Parties

seeking information concerning the filing of protests should refer to 49 C.F.R. § 1152.25.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Government Assistance and Compliance at (202) 245-0230 or refer to the text of the abandonment regulations at 49 C.F.R. § 1152.1 et seq.

Docket No. AB-1065 (Sub-No. ~~2~~)

APPENDIX 4

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423

3
STB Docket No. AB-1065 (Sub-No. ~~2~~)

**LANDOWNERS -- ADVERSE ABANDONMENT --
INDIANA SOUTHWESTERN RAILWAY CO. IN
POSEY AND VANDERBURGH COUNTIES, IND**

FEDERAL REGISTER NOTICE

The Landowners (“the Applicant”) give notice that on or about March 5, 2021, they intend to file with the Surface Transportation Board, Washington, D.C. 20423, an Application for Adverse Abandonment of lines of railroad that extend between railroad Milepost 227.5 at or near Poseyville, IN and Milepost 240.2 at or near German Township, IN, and between Milepost 277.5 at or near Cynthiana, IN and Milepost 282.0 at or near Poseyville, IN, which traverse through United States Postal Service ZIP Codes 47633, 46628, and 47612, a distance of 17.2 miles, in Posey and Vanderburgh Counties, Indiana.

To the Landowners’ knowledge, the Lines do not contain federally granted rights-of-way. Any documentation on that subject in the Applicant’s possession will be made available promptly to those requesting it. The Application, when filed, can be viewed on the Board’s webpage, www.stb.gov, or a copy can be secured from Applicants’ counsel, whose name and

address appear below. The Applicants' entire case for abandonment will be filed with the Application.

The interest of railroad employees will be protected by the employee protective conditions imposed in *Oregon Short Line R. Co. - Abandonment - Goshen*, 360 I.C.C. 91 (1979).

Any interested person may file with the Surface Transportation Board its written comments, or protest concerning, the proposed abandonment within 45 days after the Application is filed identifying it by the proceeding's docket number. Persons who may oppose the abandonment but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses, containing detailed evidence should file comments. Persons opposing the proposed abandonment who wish to participate actively and fully in the process should a protest. Protests must contain that party's entire case in opposition (case in chief) including the following: (1) the protestant's name, address and business, (2) the protestant's interest in the proceeding, including their use of the Lines or the public interest represented, (3) the protestant's reasons for protesting or commenting on the proposed abandonment, including their reliance on the involved service, and (4) any rebuttal of material submitted in the Application.

Written comments and protests must indicate the docket number of the proceeding, STB No. AB-1065 (Sub-No. 2) and should be filed with the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board (Board), at 395 E Street, S.W., Washington, DC 20423, no later than 45 days after the application is filed. Interested persons may file a written comment or protest with the Board to become a party to this abandonment proceeding. A copy of each written comment or protest, together with a certificate of service, should be served upon

the representatives of the Applicant, Thomas F. McFarland, Thomas F. McFarland, P.C., 2230 Marston Lane, Flossmoor, IL 60422-1336, mcfarland@aol.com, and Thomas S. Stewart and Elizabeth G. McCulley, Stewart, Wald & McCulley, 2100 Central Street, Suite 22, Kansas City, MO 64108, stewart@swm.legal, and mcculley@swm.legal. Except as otherwise set forth in 49 C.F.R. § 1152, each document filed with the Board must be served on all parties to the abandonment proceeding.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Government Assistance and Compliance at (202) 245-0230 or refer to the text of the abandonment regulations at 49 C.F.R. § 1152.1, *et seq.*

CERTIFICATE OF SERVICE

I hereby certify that on January 7, 2021, I served the foregoing document, Petition For Partial Waiver Of Abandonment Regulations And For Exemption From Statutory Requirements, by e-mail or first-class, U.S. mail on the following:

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/s/ Thomas F. McFarland

Thomas F. McFarland