

Bond Case Briefs

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PABs - FLORIDA

Indian River County v. Rogoff

United States District Court, District of Columbia - June 10, 2015 - F.Supp.3d - 2015 WL 3616109

AAF Holdings, LLC is in the process of constructing and operating an express railway between Orlando and Miami. AAF requested that the United States Department of Transportation exempt from federal taxes \$1.75 billion in PABs. The PABs would be issued by the Florida Development Finance Corporation, a Florida development agency, and then sold to investors by AAF, which would be solely responsible for the repayment obligation. The DOT provisionally authorized the requested \$1.75 billion PAB allocation in December 2014.

Indian River and Martin Counties contend that construction and operation of the railway will cause a variety of environmental harms to them and their residents. The Federal Railroad Administration is currently conducting an environmental review of these potential environmental effects. The counties allege that DOT's authorization of the tax exemption prior to the completion of the ongoing environmental review violated the National Environmental Policy Act ("NEPA") and will slant the review towards approval of the railway as currently proposed. They also contend that the project does not qualify for tax-exempt financing under the applicable federal statute. The counties have moved for a preliminary injunction vacating DOT's authorization of the tax exemption.

DOT and AAF, which intervened as a defendant, mounted several defenses to the counties' motion. They first contend that the counties lack standing. They argue that because AAF would proceed with the project with or without the tax-exempt bonds, the counties' alleged injuries are not traceable to DOT's actions and would not be remedied ("redressed" in standing terminology) by the requested injunction. They also contended that the counties' alleged injuries are not irreparable as required for a preliminary injunction.

The District Court concluded that the counties lacked standing, holding that:

- The issuance of the PABs would not redress the counties' alleged environmental injuries, as the developer was prepared to proceed using alternate sources of financing; and
- The counties' concerns about the impact of PAB authorization on FRA's environmental review did not, standing alone, establish a redressable injury that could form the basis of a federal lawsuit.