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January 4, 2022

VIA E-FILING

Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: North Coast Railroad Authority – Abandonment Exemption – In Mendocino, Trinity, and Humboldt Counties, CA, AB-1305X

Dear Ms. Brown:

On December 15, 2021, the California Coastal Commission (“CCC”) filed: (1) a Motion for Leave to File Late Reply in Support of North Coast Railroad Authority’s Motion for Exemption from Offers of Financial Assistance (“CCC’s Motion”), and (2) a Reply in Support of North Coast Railroad Authority’s Motion for Exemption from Offers of Financial Assistance (“CCC’s Reply”). Mendocino Railway (“Mendocino”) is submitting this letter to explain why the Board should deny the CCC’s Motion and, even if the Board grants CCC leave to late file CCC’s Reply, why neither the CCC’s impermissible attempt to regulate rail operations, nor the CCC’s flawed analysis offers, warrants exempting North Coast Railroad Authority (“NCRA”) from the Offer of Financial Assistance (“OFA”) provisions statutorily created by Congress.

As a preliminary matter, the Board should deny the CCC’s Motion as untimely. The CCC has known about this proceeding for over six months¹ and only now seeks to intervene – long past the deadline to reply to NCRA’s motion to be exempted from the OFA requirements.² In support of its request for leave, the CCC asserts its good cause is two-fold: (1) because the

¹ The CCC was served a copy of the environmental and historic report for the AB-1305X abandonment over six months ago. As such, it has had notice of the pendency of the proceeding since that time.

² NCRA’s motion for exemption from the OFA provisions was filed on July 26, 2021. Replies in support or in opposition were due 20 days later—August 16th. NCRA did not file until December 15th.

Cynthia T. Brown, Chief

January 4, 2022

Page 2

proceeding remains in abeyance; and (2) because as the primary state agency responsible for the regulation of land use within California's coastal zone, its voice should be heard. Given its desire 'to be heard', it is surprising that the CCC did not seek to be heard in a timely manner, instead waiting until mid-December to seek special permission to belatedly intervene in the proceeding. Should the Board allow the CCC leave to intervene, it will be sending a message to future parties that they can file comments at their convenience irrespective of established Board procedural schedules. The CCC has offered no reason whatsoever for why its reply was late. As such, the Board should deny the CCC's Motion. See Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903, 1 STB 894 (S.T.B. served Dec. 24, 1996)(noting that the Board will reject any pleading filed after its due date unless good cause is shown for why the pleading was filed late).

If the Board is inclined to grant the motion and accept the reply filing, for the reasons expressed herein and as previously expressed by Mendocino in its August 16, 2021 filing and the reply filed by the North Coast Railroad Company, L.L.C. ("NCRC") on the same date, the Board should still reject any requests to exempt the NCRA abandonment from the regular OFA process. The CCC's reply does not support any other result, demonstrating as it does a complete lack of understanding of 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27. It appears the CCC believes the Board should exempt NCRA from the OFA provisions because the CCC desires to see a rail line replaced with a trail trumps the public need for continued rail service.³ However, the Board's and its predecessor, the ICC's, precedent is clear: absent another strong public purpose, the mere potential use of a rail corridor for a trail does not justify a waiver from the statutory right to file an OFA.⁴ Accordingly, OFA waivers are rarely granted, and only when there is no continued

³ The CCC's intervention in this proceeding is yet another attempt by the CCC to regulate rail operations contrary to ICCTA. The CCC is currently attempting to regulate Mendocino's yard used for transload operations; a dispute that is currently the subject of court proceedings. The CCC has also intervened in Mendocino's RRIF application claiming jurisdiction to review and control any operations that would occur as a result of RRIF funding.

⁴ The Board has rejected time and time again a request for a waiver from the OFA provisions when that request is not justified by a strong public purpose beyond that of the establishment of a trail. See CSX Transp., Inc.--Abandonment Exemption--In Chesterfield and Darlington Counties, S.C., 2008 STB LEXIS 179, slip op at 9 (S.T.B. served Jan. 19, 2011) (holding the desire to establish a trail does not justify an exemption from the OFA process); see also Roaring Fork R.R. Holding Auth. – Abandonment Exemption – In Garfield, Eagle, and Pitkin Counties, Co., AB-547X, slip op at 5 (S.T.B. served Oct. 16, 1998) (denying OFA exemption because there was minimal traffic on the line, active shippers, and OFA proponent expressed desire for rail service to continue, even though local government had plans to establish trail use pending future reactivation of rail service and noting that statute contemplates multiple offers to subsidize or purchase a rail line could be made); see also 1411 Corp. – Abandonment Exemption – In Lancaster Cty., PA, Middletown & Hummelstown R.R. Co. – Abandonment Exemption – In Lancaster Cty., PA, AB-581X, AB-529X, slip op at 5 (S.T.B. served Sept. 6, 2001) ("1411 Corporation") (Denying OFA exemption despite absence of traffic for over a decade when the

Cynthia T. Brown, Chief
January 4, 2022
Page 3

interest in rail service and a pressing public purpose⁵ -- beyond the establishment of a mere recreational trail – that outweighs the strong Congressional intent to preserve existing or future rail service.

As with the previous precedents rejecting requests for a waiver from the OFA process, the Board should likewise do so here for several reasons. First, the CCC's Reply asserts several contradictory and peculiar statements, none of which warrants exempting NCRA from the OFA provisions of 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27. The CCC's statement that there is no overriding public need for continued rail service is incorrect and contradicted in its own statement. The CCC's own pleading acknowledges there is interest in resuming freight operations on the line. See CCC's Reply at 2. Indeed, there are two parties interested in restoring freight rail service on the line (though Mendocino's interest is limited to a small portion of the line far south of Humboldt Bay, outside the CCC's area of concern). The CCC itself acknowledges that NCRC's business plan anticipates over 100,000 cars per year. See CCC's Reply at 3. Thus, one cannot conclude based upon the CCC's statements that there is no interest in resuming rail service. There is. Parties should have an opportunity to make their case that an OFA is warranted.⁶

Second, the CCC devotes several pages to discussing certain instances where an OFA exemption was granted when there was no interest in continued rail service. The facts of those cases are, obviously, not analogous to the circumstances here. Here, as will be established during the OFA process, there is a need for continued rail service. Contrary to the CCC's claims, just because no shippers have used the line in many years does not mean that no overriding public need for continued rail service can exist, which the Board has itself recognized in 1411 Corporation. The CCC's application of the cases on pages 4-6 of its Reply confuses the requirements necessary to justify an exemption from the OFA process itself with the Board's requirements for granting an OFA. It is in the public interest that Mendocino and NCRC be allowed to file an OFA for the portions of the line where a continued interest in rail service

shipper was the OFA proponent and provided an explanation for using other modes of transportation during the same period and rejecting argument that trail use was such an important public purpose that it should be prioritized over continued rail service).

⁵ Such purposes would include flood control, municipal redevelopment, highway realignment, or airport expansion projects.

⁶ Mendocino's intent in potentially bringing an OFA is for continued freight service is to serve those shippers who have a continued interest in rail service and for which the traffic justifies providing rail service. It may be that neither Mendocino nor NCRC will be successful in obtaining approval for an OFA, but neither should be foreclosed from trying simply because the CCC supports the use of the corridor as a trail. It is NCRA's burden to justify the OFA exemption it seeks to foreclose potential offerors with an interest in providing continued rail service from filing an OFA. NCRA has not met that burden. The contradictory statements offered by the CCC do nothing to bridge the gap.

Cynthia T. Brown, Chief
January 4, 2022
Page 4

exists. If, as NCRA or the CCC suggests, there is not enough traffic to warrant continued rail operations that would be flushed out in the OFA process. But the mere fact that there has not been rail service over the line for over a decade is not a basis for granting a waiver from the OFA process.

Third, while rail-banking the line to establish a Great Redwood Trail may serve a valid public purpose, including advancing the State of California's statutory coastal protection and access policies under the California Coastal Act (Coastal Act), such desire does not override the Congressional statutory mandate favoring preservation of continued rail service via the OFA process. Moreover, the CCC completely disregards the fact that Mendocino could file an OFA for a smaller segment of the line, rather than the whole line, and that the Great Redwood Trail could either proceed on portions of the line where no continued interest in rail service exists or could exist side-by-side with an active railroad line (as rails and trails coexist on many lines across the United States). Allowing continued rail operations where there is a continued need, and railbanking the remainder of the rail line,⁷ would promote both the federal and state objectives. To be clear, Mendocino filed in opposition to the NCRA abandonment and OFA exemption request precisely because there are potential shippers north of Willits who have expressed an interest in shifting aggregate shipments from truck to rail, something that would prove environmentally beneficial. But beyond those shippers, Mendocino has no desire to frustrate the trail use plans for the rest of the line.⁸

Since Mendocino filed in opposition to NCRA's railbanking of the entire line, Mendocino has been the subject of various, and apparently coordinated, attacks by NCRA and the CCC. Mendocino has been forced to fight off claims in other forums that it is not a Board regulated common carrier and that the CCC has the right to regulate its rail operations. The CCC has targeted Mendocino's transload operations and is interfering with Mendocino's RRIF application – all because it and others are trying to force Mendocino to back off of its OFA plans. Mendocino would prefer to work with the CCC and others so that both a trail and continued rail service could coexist, but the CCC is making that difficult with its continued retaliatory attacks on Mendocino's operations.

In conclusion, the CCC's untimely filing should be rejected, or, if it is accepted, its requested relief, which is that NCRA be exempted from the OFA provisions, should be denied.

⁷ Mendocino has no objection to such a scenario. Indeed, the photos included in the CCC's filing, which show railroad tracks along the Pacific Ocean, and the environmental concerns expressed by the CCC, involve portions of the line far north of Willits and would not be implicated in an OFA brought by Mendocino.

⁸ Mendocino desires to promote continued rail operations over its rail line, which is why it has sought a RRIF loan, and it desires to provide service to potential shippers on a portion of the NCRA line, which is why it is contemplating filing an OFA. Mendocino does not, however, oppose a trail for the vast majority of the NCRA line and would also be willing to discuss a rail and trail on the portion of the NCRA line that it would acquire under the OFA process.

BAKER & MILLER PLLC

Cynthia T. Brown, Chief

January 4, 2022

Page 5

The CCC has failed to provide good cause for its late filing and has failed to satisfy the burden required for the Board to exempt NCRA from 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27.

Sincerely,

/s/ William A. Mullins

William A. Mullins

cc: Parties of Record