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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

ENTERED
Office of Proceedings
January 20, 2022
Part of
Public Record

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

Dear Ms. Brown:

On January 10, 2022, the North Coast Railroad Authority (“NCRA”) filed a ‘reply to a reply’ in which it improperly seeks: (1) to respond to Mendocino Railway’s (“Mendocino”) timely-filed January 4, 2022 reply in the above-referenced matter; (2) to support the California Coastal Commission’s (“CCC”) untimely-filed reply; and, purportedly, (3) to notify the Board of an alleged name change.¹ But the NCRA’s improper January 10th Reply to Reply, and the CCC’s untimely reply, contain misleading and inaccurate statements which Mendocino believes to be material to this matter, creating an inaccurate record before the Board. Mendocino accordingly hereby requests leave to file this brief letter to correct those misleading and inaccurate statements.²

The first of the NCRA’s misleading statements is the false assertion that Mendocino, which in part offers excursion services as “the Skunk Train,” is a non-operating entity that has never offered more than excursion services.³ But as the Board is aware, Mendocino has long been a

¹ See the NCRA’s “January 10th Reply to Reply.”

² While Mendocino’s letter also constitutes a reply to reply, the scope of Mendocino’s letter is limited to correcting the record in this matter, a record which the NCRA has rendered inaccurate via the misleading statements in its January 10th Reply to Reply. The Board has the discretion to accept this letter in order to correct the record before it. See Wis. Cent., Ltd. – Petition for Declaratory Order – Interchange with Soo Line R.R. Co., FD 36397 (S.T.B. served Oct. 30, 2020) (accepting CN reply to CP reply “to complete and correct the record”); see also City of Alexandria, Va.--Petition for Declaratory Order, FD 35157, slip op. at 2 (S.T.B. served Nov. 6, 2008) (allowing a reply to a reply “[i]n the interest of compiling a full record”).

³ See January 10th Reply to Reply at pp. 2 and 5 (referring to Mendocino as an inactive (non-operating purported freight carrier).

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Class III, common carrier railroad, regulated by the Board. While a contractor's partial collapse of Mendocino's Tunnel #1 has reduced the amount of freight, and the number of non-tourist passengers, transported by Mendocino over its California Western Railroad, Mendocino has nevertheless continued to transport both freight and non-tourist passengers while taking action to reopen its tunnel and fully resume both activities, a fact the NCRA could easily have determined before making its false statements to the contrary in its January 10th Reply to Reply. Specifically, the NCRA's false and unfounded attacks fail to appreciate two key facts: (1) that Mendocino continues to hold itself out to provide common carrier transportation service to all potential users of its rail line, which extends from the coastal town of Fort Bragg, California to the town of Willits, California, 40 miles inland to the west ("Line"); and (2) that a carrier's operations, and the carrier's status, remain active and unchanged even if its operations cease intermittently until abandonment authority for Board-approved operations is sought and granted by the Board). See Reading, Blue Mountain & N. R.R. Co. –Petition for Declaratory Order, FD 35956 (S.T.B. served June 6, 2016) (confirming regulated track and operations over the same remain jurisdictional operations until abandonment authority is sought and approved by the Board). Mendocino continues to work towards fully restoring freight and passenger service over its Line and attracting customers to use the Line for freight and non-tourist passenger service, services that Mendocino has nevertheless continued to provide since the collapse of its tunnel.

Second, the NCRA continues to falsely assert that it was surprised by Mendocino's interest in the rail line that the NCRA wishes to railbank from Willits, California north. As explained in Mendocino's August 16, 2021 reply, when Robert Pinoli, Mendocino's President, wrote his November 30, 2020 letter stating that the line north of Willits was in too great of disrepair to allow for economic railroad operation and should thus be railbanked to preserve such an opportunity for the future should it again become economic to operate over that portion of the line, that statement was true for the entirety of the line from Willits, California north. However, in mid-2021, Mendocino engaged in discussions with potential shippers for a smaller portion of the NCRA rail line (just north of Willits, California) which Mendocino believes it could economically serve. At no point has Mr. Pinoli or anyone else from Mendocino disavowed interest in providing service should shippers need it. This is just one of many examples of the NCRA's mischaracterizations.

Third, the NCRA believes the Board should be estopped from allowing an Offer of Financial Assistance ("OFA") because of the NCRA's and the CCC's environmental concerns and the fact that the entire rail corridor is owned by an agency of the State of California (namely, the NCRA). But NCRA offers no precedent to support its position that the construction of a recreational trail outweighs the strong Congressional intent to preserve existing and future rail service, especially when the NCRA's trail plan would forever isolate the entire Mendocino region from the nation's interstate railroad network. In fact, the precedent offered by the NCRA continues to conflate the requirements for granting an OFA exemption with the requirements for an OFA. Despite the NCRA's purported desire to protect a scenic river, and its argument that the establishment of a "Great Redwood Trail" serves a valid public purpose, the NCRA, and the CCC completely disregard the fact that Mendocino has expressed an interest in filing an OFA

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only for a very small portion of the NCRA rail line north of Willits, California,⁴ not for the whole line, and that nothing Mendocino seeks prevents the Great Redwood Trail from proceeding on the portion of the NCRA's rail line where there is no continued interest in rail service, nor on the portion of the line where a trail and rail can peacefully exist side-by-side (as rails and trails coexist on many lines across the United States).

Fourth, contrary to the NCRA's claims, Senate Bill 69 (as passed)⁵ does not simply change the NCRA's name. The bill seeks to regulate railroad operations by directing the NCRA to focus solely on a tourism trail, requiring the NCRA to divest itself of all of its railroad interests by being required to "convey and transfer all of its rights, interests, privileges, and title, lien free, relating to its rail right-of-way south of the county line separating the Counties of Mendocino and Sonoma, including any associated real property, rail easements, branch or spur lines, leases, contracts, licenses and certificates of public convenience and necessity, common carrier obligations, and railroad assets, to the Sonoma-Marín Area Rail Transit District [SMART]."⁶ Senate Bill 69 allows SMART to engage in economic regulation of rail operations, giving SMART's Board the authority to "fix rates, rentals, charges, and classifications of freight service" to be operated by SMART,⁷ despite rail operations being subject to the Board's jurisdiction.

Fifth, to reiterate, Mendocino's intent in potentially bringing an OFA 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. While it may be that neither Mendocino nor the North Coast Railroad Company, L.L.C. ("NCRC") will be successful in obtaining approval for an OFA, neither the NCRA nor the CCC has justified their effort to foreclose Mendocino from bringing an OFA simply because the NCRA and the CCC prefer to remove their line's railroad infrastructure in favor of a tourist trail. The NCRA has the burden of justifying its request for an OFA exemption which would forever foreclose the filing of an OFA by potential offerors with an interest in providing continued rail service over at least some portion of their line. The NCRA has not met its burden.⁸

⁴ The segment of the NCRA rail line Mendocino is interested in is likely below the problematic Eel River section. Of course, NCRA would understand this if they were to discuss the matter with Mendocino. Over the years, Mendocino has provided NCRA information about potentially interested shippers for the segment from Willits, CA north. NCRA has consistently ignored or disregarded such information.

⁵ https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB69

⁶ Id.

⁷ See California Public Utilities Code § 105032(d).

⁸ As recognized by the NCRA, it will be Mendocino's burden to justify any OFA it chooses to bring consistent with the reforms set forth in Offer of Financial Assistance, EP 729 (S.T.B. served June 29, 2017). Mendocino is prepared to do so should it be afforded the opportunity.

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If any questions exist concerning this e-filing, please contact me by telephone at (202) 663-7823 or by e-mail at wmullins@bakerandmiller.com. If I am unavailable, you may contact Crystal M. Zorbaugh, by telephone at (202) 663-7831 or by e-mail at czorbaugh@bakerandmiller.com.

Sincerely,

/s/ William A. Mullins

William A. Mullins

Enclosure

cc: Parties of Record