



**American Short Line and
Regional Railroad Association**

309740

July 7, 2025

ENTERED
Office of Proceedings
July 7, 2025
Part of
Public Record

VIA E-FILING

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

Re: Mendocino Railway – Petition for Declaratory Order, FD 36868

Dear Ms. Brown,

The American Short Line and Regional Railroad Association (“ASLRRA”) submits this Motion for Leave to File Comments as Amicus Curiae and Comments in the above-referenced proceeding. Mendocino Railway, an ASLRRA member, has advised that it does not oppose the filing of these comments. If there are any questions, please feel free to contact me directly, either at (202) 585-3448, or syurasko@aslrro.org.

Sincerely,

Sarah Yurasko
SVP Law and General Counsel

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36868

MENDOCINO RAILWAY – PETITION FOR DECLARATORY ORDER

**MOTION OF THE AMERICAN SHORT LINE AND REGIONAL RAILROAD
ASSOCIATION FOR LEAVE TO FILE COMMENTS AS AMICUS CURIAE**

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July 7, 2025

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36868

MENDOCINO RAILWAY – PETITION FOR DECLARATORY ORDER

**MOTION OF THE AMERICAN SHORT LINE AND REGIONAL RAILROAD
ASSOCIATION FOR LEAVE TO FILE COMMENTS AS AMICUS CURIAE**

The American Short Line and Regional Railroad Association (“ASLRRA”) respectfully moves for leave to file the accompanying comments as *amicus curiae* in support of Mendocino Railway in the captioned proceeding. As is further outlined in its comments below, ASLRRA notes that it is a national trade association representing short line and regional railroads throughout North America. The short comments ASLRRA seeks to submit will not disrupt or delay or unduly broaden the issues presented in this proceeding. Instead, these comments hopefully will provide the Board with some additional thoughts arising from the broad base of Class II and Class III railroads that ASLRRA represents. Mendocino Railway advised ASLRRA that it does not oppose the filing of these comments.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36868

MENDOCINO RAILWAY – PETITION FOR DECLARATORY ORDER

**AMICUS CURIAE COMMENTS OF
THE AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION**

The American Short Line and Regional Rail Association (“ASLRRA”) is a national trade association that has appeared before the Surface Transportation Board (“STB” or “Board”) in many matters of importance to our members. We represent the interests of more than 500 short line and regional railroad (“short line”) members in legislative and regulatory matters. It is in the interest of our members, and in the interest of the United States rail transportation network generally, to ensure that freight policies and procedures promote a stronger, safer, and more efficient national transportation system.

It is in this light that we respectfully request to submit this amicus filing today, in full support of the request made by Mendocino Railway (“Mendocino”). Although Mendocino has requested expedited action in this case, and ASLRRA understands that the Board needs time to resolve these issues, Mendocino does not have a lot of time. For this reason, ASLRRA further asks that the STB request that the involved California courts hold the two ongoing proceedings in abeyance pending the Board's ruling on Mendocino's status as a carrier.

These comments explain the reasons for ASLRRA’s interest in this particular proceeding, the origin of the problem giving rise to the problem, and potential approaches, outside of this

proceeding, for addressing the problem so that such requests for declaratory orders do not need to be filed in the future.¹

THE INTEREST OF ASLRRA IN THIS PROCEEDING

Short lines are vital to the health of the rail transportation network. They operate nearly 50,000 miles of track in the United States, or nearly 30% of the national freight rail network, touching at origin or destination one out of every five cars moving on that network. In particular, short lines are the ones that serve shippers or receivers who otherwise would be cut off from the national railroad network. As such, they play an important role in the continuing health and diversity of the country's economic vitality.

Short line carriers need to dedicate their limited time and money resources to enhancing their infrastructure, expanding service, and making necessary safety and other improvements. But often these carriers find these same limited resources dedicated to defending their status in courts of law and before municipal or state agencies, often in situations in which the carrier/non-carrier status would otherwise be a necessary determinant with regard to an issue.²

Here, Mendocino, a member of ASLRRA, faces such a challenge. ASLRRA is concerned that an adverse decision against Mendocino in any one of its pending court cases could have downstream implications, not only for Mendocino but for other similarly situated carriers.³

¹ Several ASLRRA practitioners raised the need to establish a process for confirming rail carrier status with Vice Chairwoman Schultz at the licensing sessions held by the Board in May 2025. Further, ASLRRA plans to raise the issue with the Board again later this month when it meets with the STB Policy Review Team on Thursday, July 17th,

² There is no question that in some, but not all, cases further analysis might be required. For example, preemption is determined on an “as applied” basis in many cases, but one would not even get to that stage unless and until there has been a determination that a “carrier” that would be entitled to the protections of preemption in the first place.

³ In its Petition, Mendocino identifies three ongoing proceedings, specifically Mendocino Railway v. Jack Ainsworth, et al. (9th Cir. CA., Case No. 4:22-cv-04597-JST) (pending a petition to the U.S. Supreme Court for a *writ of certiorari*), City of Fort Bragg v. Mendocino Railway

Adding to the confusion that can be experienced by persons and entities not familiar with the Board's statutory and regulatory framework is the potential for court precedent that, no matter how incorrect, could be used to further muddy the issue for others to follow.

ASLRRA SUPPORT FOR THE PETITION

ASLRRA fully supports the petition for an expeditious issuance of the declaratory order sought by Mendocino. Its request is very narrowly drawn and appropriate for expedited treatment by the Board. Mendocino seeks a declaratory order that certifies Mendocino is a Class III common carrier subject to the jurisdiction of the Surface Transportation Board, entitled to any protections of applicable federal preemption. In its request for a declaratory order, Mendocino is not looking to the Board to make any determinations that require evidentiary submissions, briefing, or argument. It is simply looking for the Board to reinforce through the issuance of a declaratory order what should be a recognized fact: That Mendocino is a common carrier subject to the Board's jurisdiction.

THE FOUNDATION OF, AND POTENTIAL FUTURE SOLUTIONS TO, THE PROBLEM TO BE ADDRESSED

Under 49 U.S.C. § 10501(b), the Board has exclusive jurisdiction over transportation by rail carriers, including the construction, acquisition, operation, abandonment, or discontinuation of specified tracks and facilities. It is for the Board to make the determination of whether a person is a rail carrier subject to its jurisdiction.

(Superior Court for the State of California, Mendocino County, Case No. 21CV00850), and Mendocino Railway v. John Meyer (Court of Appeal for the State of California, First Appellate District, Division One, Case Nos. A168497 & A168959) (on appeal from the Superior Court of California, County of Mendocino (Case No. SCUKCVED202074939). To protect the interests not only of Mendocino, but of other ASLRRA members, ASLRRA seeks STB action in the latter two, which are pending before California state courts, further described below.

Similar to Mendocino, though, other ASLRRA members have expressed concern that outside of the STB and its practitioners, courts and other legal and business entities do not understand the licensing process for common carriers.⁴ Non-carrier companies often enter the rail transportation system, and become common carriers subject to STB jurisdiction, through the acquisition of either a part or of the entirety of a rail line segment that is currently within the jurisdiction of the Board or otherwise would be the entirety of the line of railroad to be operated by that soon-to-be carrier. A prerequisite of that is often achieved through a notice of exemption pursuant to 49 CFR 1150.31⁵ or an exemption proceeding pursuant to 49 CFR 1121. The process for entrance to being a regulated carrier is very different from the process for exit of the same, insofar as a potential *exit* from the jurisdiction of the Board (should the abandonment be the only line of rail for the affected rail carrier) is noted by a notice of consummation of

⁴ The underlying issue arises from the fact that the effective date of a notice of exemption is permissive, and thus not determinative of whether or when a non-carrier becomes a common carrier. Indeed, the effective date of the notice of exemption only allows the non-carrier to effectuate the transaction contemplated by the notice, and it is the effectuation of that transaction that converts the non-carrier into a carrier. See, Ohio River Partners LLC – Acquisition and Operation Exemption – Hannibal Development, LLC., FD 35984, slip op. at 3 (STB served April 1, 2016). See also, Jackson County Port Authority A/K/A Port of Pascagoula – Petition for Declaratory Order, FD 35994 (STB served July 28, 2016) (despite having received ICC and STB authority to acquire rail lines via two separate notices of exemption, nevertheless it did not become a common carrier railroad subject to the Board’s jurisdiction because it did not consummate either of the proposed transactions).

⁵ The class exemption procedures found in 49 CFR 1150.31 dates from 1985. The exemption details the process for the noncarrier acquisitions and operations of rail lines pursuant to 49 U.S.C. 10901 “where the noncarrier would be a class III carrier after completion of the transaction.” Class Exemption for the Acquisition and Operation of Rail Lines under 49 U.S.C. 10901, Ex Parte No. 392 (Sub-No. 1), slip op. at 1 (ICC served December 19, 1985), 1985 ICC Lexis 29, 1 I.C.C.2d 810, *1, aff’d sub nom., Ill. Commerce Comm’n v. ICC, 817 F.2d 145 (D.C. Cir. 1987).

abandonment,⁶ there is no similar approach to the *entrance* to the jurisdiction of the Board for a non-carrier.

Because there is no established process, other than through a declaratory order proceeding, for new carriers to provide state and local agencies, or courts of law, prima facie evidence or obtain proof from the STB of the rail carrier's status and obligation to provide common carrier service, these smaller carriers with limited resources are often forced to incur and dedicate significant amounts of time and sums of money to fight off legal proceedings predicated on third parties and local and state government challenging the carrier's status as a STB-regulated common carrier.

While ASLRRA understands that Mendocino has filed for a declaratory order to obtain confirmation of its status as a carrier, such proceedings are inefficient, time-consuming, and expensive, especially for a small business. By the time the short line gets a decision, it may have already been forced out of business. The Board should implement a standard process to address these situations, whether that process consists of (1) the publication of a list of common carriers, (2) permitting the general counsel to issue a judicially noticeable opinion letters officially on behalf of the Board affirming a common carrier's status upon a rail carrier seeking such a letter and providing the supporting documentation, or (3) permitting the submission of a consummation notice requirement in an acquisition proceeding, much as is permitted in the abandonment proceeding.⁷

⁶ See 49 C.F.R. 1152.29(e)(2).

⁷ Abandonment authority granted by the Board, either directly or through a notice of exemption proceeding, is permissive, just as is the acquisition authority granted through an acquisition and operation notice of exemption proceeding. The abandonment is not considered effective until and unless a notice of consummation is filed with the Board.

In any event, it is often vital for the proper administration of the law to make the determination of whether a non-carrier has become a carrier. Under 49 U.S.C. § 10501(b), the Board has exclusive jurisdiction over transportation by rail carriers, and the construction, acquisition, operation, abandonment, or discontinuation of specified tracks and facilities. The issue of whether a state or Federal court can adjudicate a matter often depends upon whether the targeted party is a non-carrier or carrier subject to the jurisdiction of the Board.⁸

REQUEST FOR BOARD ACTION

ASLRRA understands that the Board needs time to resolve these issues, both in the instant case and in others that may be faced around the country. Mendocino has petitioned the Board for an expedited declaratory order. Even expedited, though, that will take time. For Mendocino, as well as other railroads facing many of the same challenges at state and local agencies and courts, there are ongoing discussions, pressures, and a need for action, all taking time and resources away from short lines simply trying to make good on their common carrier obligation. For these reasons, ASLRRA respectfully requests that the STB request that the involved California courts hold the two ongoing proceedings, identified in Footnote [2] above, in abeyance pending the Board's ruling on Mendocino's status as a carrier. This action would provide not only Mendocino but others as well at least one resource in which to hold off some of the pressures until, first, the Board can adjudicate Mendocino's request for a declaratory order and, second, perhaps take steps towards a more comprehensive approach to this issue.

⁸ See, e.g., Allied Ind. Dev. Corp. – Petition for Declaratory Order, FD 35477, slip op. at 2 (STB served Sept. 17, 2015) (describing a related proceeding as to whether the rail carrier had obtained authorization to operate over the tracks involved in the main proceeding).

CONCLUSION

The issue facing Mendocino Railway is real and immediate. ASLRRA fully supports not only the request of Mendocino for a declaratory order clarifying that it is a common carrier subject to the jurisdiction of the Board, and entitled to the protections thereof, but also the request of Mendocino that such action be taken expeditiously. In the meantime, ASLRRA respectfully requests that the Board communicate with the California courts with respect to the two pending Mendocino Railway proceedings a statement that the issue is pending before the STB and requesting the two respective courts to hold their proceedings in abeyance until such time as the STB has the ability to act upon Mendocino's petition.

Respectfully submitted,

A handwritten signature in cursive script that reads "Sarah Yurasko".

Sarah Yurasko
General Counsel
American Short Line and Regional Railroad Association
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July 7, 2025

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to File Leave as Amicus Curiae and Amicus Curiae Comments was served on the following person by electronic mail this date:

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A handwritten signature in cursive script that reads "Sarah Yurasko".

Sarah Yurasko

July 7, 2025