

BEFORE THE SURFACE TRANSPORTATION BOARD

304888

North Coast Railroad Authority -)
Abandonment Exemption -) AB 1305X
in Humboldt, Trinity and Mendocino)
Counties, CA)

ENTERED
Office of Proceedings
June 30, 2022
Part of
Public Record

SEEKER ENTERPRISES REQUEST TO SUPPLEMENT THE RECORD

Seeker Enterprises requests leave to file these clarifying comments on NCRA/GRTA's Reply to Seeker Enterprises Request for Public Use/Rail Banking Conditions ("Reply"), in the interest of having a complete record.

1. "Seeker Enterprises apparently wishes to run a for-profit rail bike excursion service on portions of NCRA/GRTA lines...." (Reply at 4.)

GRTA's counsel is apparently unaware that, for its entire history, NCRA contracted with for-profit private operators.

2. "...[NCRA] has urged this Board to issue a Notice of Interim Trail Use for the entire property authorized for abandonment as soon as possible." (Reply at 5.)

NCRA willingly entered the abandonment process, knowing that it opens the opportunity for other interests to obtain rights to the rail right-of-way. It is now complaining about the features of the very process it itself chose.

3. "...an order directing NCRA/GRTA and its *alleged* lessee (Humboldt County) to obtain approval of Seeker to any "flangeway filler" needed to make trestles usable to cyclists." (Reply at 5, emphasis added.)

Currently the County of Humboldt and NCRA/GRTA have a lease agreement that requires that for the current trail design to be approved and trail construction to commence, the Board must grant abandonment to NCRA. NCRA/GRTA offers no explanation as to why the status of the lessee is "alleged."

The flangeway fillers identified in the current trail design in question do not support all proposed users of the trestle. However, the company who manufactures flangeway fillers has a product that fills the same purpose yet would support use of the trestle in question by rail bikes as well as pedestrians/cyclists. That information had been forwarded to the Humboldt County Public Works Dept and is known to the NCRA/GRTA. Seeker's requested condition was not controversial. It was procedural.

4. "... NCRA's board heard a presentation on Mr. Driscoll's proposed rail bike business in 2019, but the parties failed to enter into a contract (NCRA's California counsel states that Mr. Driscoll's proposed rail bike agreement did not meet baseline requirements for Board approval)." (Reply at 8.)

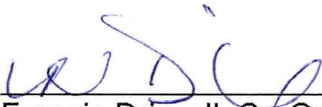
Besides being inadmissible hearsay, this is the very first time the term "baseline requirements" has surfaced. Exhibit 3 to Seeker's Request demonstrates that the contract had been very close to completion. It would have been ready for signing once the vegetation management language was clarified. It was because we anticipated finalizing the contract that Seeker made its investment in rail bikes.

5. "...Mr. Driscoll was informed in early 2020 that NCRA staff would not be recommending that the Board enter into an agreement promoting Mr. Driscoll's rail bike business, and that he should revisit negotiations with GRTA.... Mr. Driscoll's (now d/b/a Seeker) chief response to date has not been negotiation but instead an unsuccessful notice of intent to file an OFA." (Reply at 8-9.)

At the second GRTA board meeting after its name change, Mr. Driscoll spoke to GRTA's Directors of his desire to revive negotiations for rail bike operations with the new agency. Since then, GRTA's legal counsel has still not replied to his follow-up email. Given the looming OFA process deadline, Seeker submitted its Notice of Intent to the STB on May 31, 2022 to protect its rights.

I certify that all statements herein are true and correct, and that all parties to this proceeding have been served this Request for Conditions.

Dated: June 30, 2022



Francis Driscoll, Co-Owner
Seeker Enterprises LLC