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ENTERED
Office of Proceedings
March 9, 2021
Part of
Public Record

9 March 2021

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW
Washington, D.C. 20024

Re: STB Docket No. AB 1313
North Coast Railroad Authority (an agency of the State of California)
-- Adverse Discontinuance of Lease and Operating Authority --
Northwestern Pacific Railway Co., in Humboldt, Trinity and
Mendocino Counties, CA

Fee tendered, but fee waiver requested

Dear Ms. Brown:

On behalf of North Coast Railroad Authority ("NCRA"), an agency of the State of California, enclosed please find for e-filing a Petition for Waiver and Exemption (Verified) for e-filing in the above-referenced adverse discontinuance proceeding.

NCRA ultimately wishes to pursue this proceeding in an expeditious fashion. In order to ensure that the Petition for Waiver is processed immediately, NCRA (through its counsel's accounts) is therefore tendering electronic payment of the \$2300 filing fee. However, NCRA is also filing herewith a "Request for Filing Fee Waiver" relating to this fee and the fee for the forthcoming adverse abandonment application. NCRA is a state agency, not a carrier or shipper, for purposes of this proceeding and is therefore entitled to fee waiver. Pursuant to this Board's applicable Policy Statement in STB EP No. 542 (Sub-No.6), served Dec. 6, 2000,

FILED
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slip at pp. 4-5, NCRA accordingly requests a refund of the amount tendered for the filing fee.

Thank you for your assistance in these matters.

Very truly,

A handwritten signature in black ink, appearing to read 'Charles H. Montange', written over a horizontal line.

Charles H. Montange

Attorney for North Coast Railroad Authority

cc. Service List

Attachments: Petition for Waiver and Exemption
Request for Filing Fee Waiver

BEFORE THE SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB 1313

North Coast Railroad Authority

(An Agency of the State of California) --

Adverse Discontinuance of Lease and Operating Authority—

Northwestern Pacific Railway Co.,

In Humboldt, Trinity and Mendocino Counties, Ca

PETITION FOR WAIVER AND EXEMPTION

(Verified)

By: Charles H. Montange

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Dated: March 9, 2021

Pursuant to 49 C.F.R. §§ 1117.1, 1152.24(e)(5) and 49 U.S.C. § 10502(a), the North Coast Railroad Authority, an agency of the State of California, hereinafter “NCRA” or “State,” seeks waivers of specific Surface Transportation Board (“STB” or “Board”) regulations, and exemptions from specific statutory provisions, in connection with the third party “adverse” discontinuance application the State intends to file with the Board.

Background

NCRA intends to file a Notice of Exemption for a two-year out-of-service abandonment and railbanking of its lines from MP 139.5 in Willits north to end of line at Samoa, including the Korblex/Korbel and Carlotta branches pursuant to 49 C.F.R. 1152.50 on or about May 15, 2021.¹ (NCRA’s current system is set forth in Figure 1 on page 2 of this Petition.) Northwestern Pacific Railway Company (“NWPY”) obtained operating authority over the bulk of this portion of NCRA’s lines [i.e., MP 142.5, Outlet Station, north to end of line at Fairhaven (MP 302.86) on the Samoa Branch, plus the Korblex/Korbel and Carlotta branches] in 2001.² NWPY ceased service on

¹ STB abandonment docket number AB 1305X has been assigned to that proceeding. NCRA recently circulated an environmental report and historic report for that proceeding to various entities for comment. A copy has been furnished this agency’s Office of Environmental Analysis and is on file as an environmental comment.

² Northwestern Pacific Railway Co., LLC –Lease and Operation Exemption – North Coast Railroad Authority, F.D. 33998, served Feb. 6, 2001.

Route map of North Coast Railroad Authority (2020)

(from NCRA website)

Korbel = MP 301.8

Korblex = MP 295.5

Outlet = MP 142.5

Willits = MP 139.5

Healdsburg = MP 68

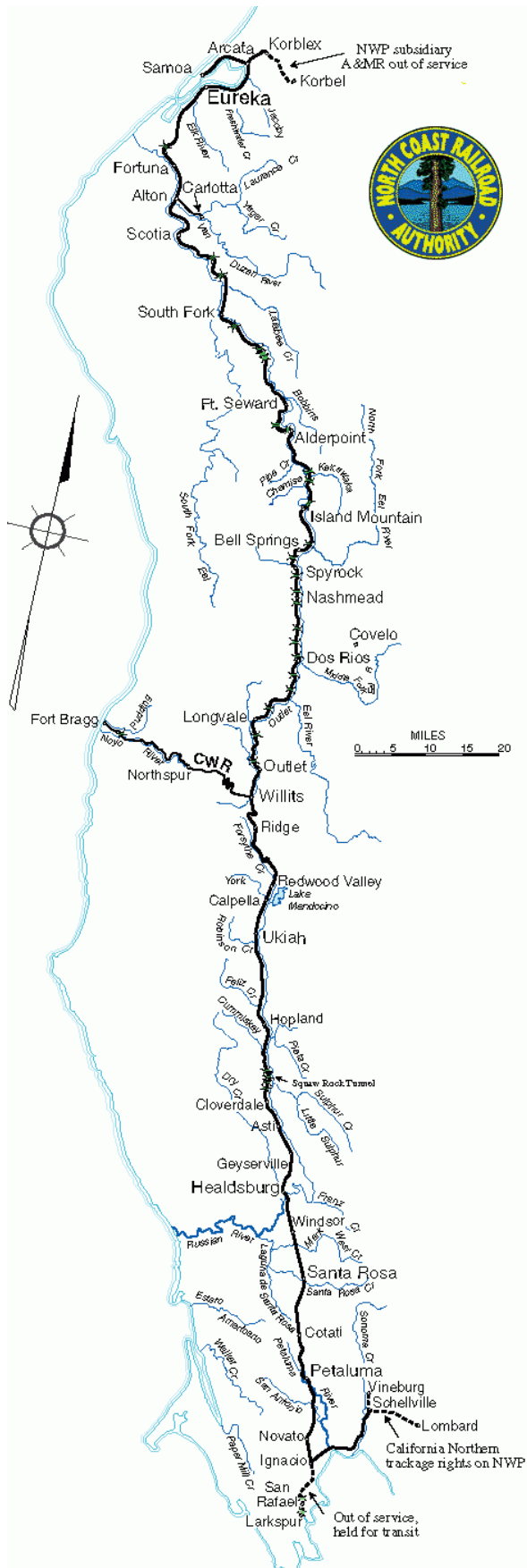
Petaluma = MP 38.5

Novato = MP 30

Ignacio = MP 25.6

Lombard/Napa Junction = MP 63.4
(redesignated MP 49.8 S)

[Mileposts approximate]



the line in 2001, and NWPY long ago ceased to exist. NWPY therefore cannot voluntarily seek termination of its operating authority. Since NCRA plans in the near future to pursue railbanking of its line north of Willits, it is prudent to secure a formal termination of the non-existent company's operating authority. Based on conversations with the Board's Office of Public Assistance, the appropriate method for NCRA to terminate the operating rights for a defunct lessee is via an adverse discontinuance application.

Accordingly, NCRA plans to file with this Board an adverse discontinuance application for NWPY as soon as this Petition for Waiver and Exemption is granted.³

FRA emergency embargo. Due to washouts and flooding events associated with El Nino storms rendering track unsafe, the Federal Railroad Administration ("FRA") in December 1998 imposed an "emergency order" embargoing all rail operations on NCRA's lines from Arcata [actually, Korblex] (MP 295.5) to M.P. 63.4 (a point

³ NCRA through another lessee has maintained rail service in Sonoma and Napa Counties south of Windsor. This Board has recently authorized Sonoma-Marín Area Rail Transit District (SMART) to acquire all NCRA assets and common carrier obligations from the Mendocino/Sonoma County Line (approximately MP 89 near Cloverdale) south. Sonoma-Marín Area Rail Transit District – Acquisition and Operation Exemption – North Coast Railroad Authority, FD 36481, served Feb. 18, 2021. NCRA understands that SMART intends to provide freight rail service directly or through an operator on the non-embargoed portions of the line south of MP 89. Although NCRA plans to railbank its lines north of Willits, NCRA continues to explore options for handling the Willits (MP 139.5) to County Line (approximately MP 89) portions of its line.

between Schellville and Napa Junction). See 63 Fed. Reg. 67976 (Dec. 9, 1998) (emergency order no. 21; notice no.1).⁴ On February 1, 2001, FRA lifted emergency order No. 21 (per notice no. 3, see 66 Fed. Reg. 9625 (Feb. 8, 2001), for approximately 40.8 miles of track owned by Northwestern Pacific Railroad Authority (NWPRA), which was joint powers entity comprised of Golden Gate Bridge, Highway and Transportation District (“Golden Gate”), Marin County, and NCRA, between Lombard/Napa Junction (MP 63.4) and MP 43 (Petaluma). As a result of subsequent reorganizations by the State and this Board’s authorizations, SMART (see note 3) acquired interests in former NWP trackage in Sonoma and Marin Counties, on at least some of which NCRA had operated. In May 2011, FRA lifted emergency order No. 21 on a total of 61.1 miles of track owned by SMART, all of which is south of a point designated MP 62.9 near Windsor, CA. 76 Fed. Reg. 27171 (May 10, 2011) (emergency order no. 21, notice no. 4). Emergency order 21 remains in effect for all NCRA trackage north of MP 62.9, except for approximately 1.5 miles at Willits to accommodate California Western, now Mendocino Railway, in the operation of a tourist excursion train.⁵ There have therefor been no rail operations by any entity in the area covered by NWPY’s lease and operating authority (MP 142.5 to end of branches in the north) since 1998.

⁴ NCRA’s ownership extended only to MP 68 (Healdsburg); the remainder of the embargoed line was owned by Northwestern Pacific Railroad Authority, a joint powers agency. See 63 Fed. Reg. 67976.

⁵ 64 Fed. Reg. 30557 (June 8, 1999) (emergency order no. 21, notice no. 2).

NWPY operations. NCRA originally acquired MP 142.5 north from the bankrupt Eureka Southern Railroad in 1992.⁶ NCRA contracted with Rail-Ways, owned by John Darling, to operate its lines, but due to El Nino and the 1998 embargo, Rail-Ways went into bankruptcy. Mr. Darling organized a new company, NWPY, to operate the line. STB authorized Mr. Darling's new company to lease and to operate all 317.6 miles of NCRA's lines in Northwestern Pacific Railway Co., LLC – Lease and Operation Exemption – North Coast Railroad Authority, Northwestern Pacific Railroad Authority, and Golden Gate Bridge, Highway and Transportation District, F.D. 33998, served Feb. 6, 2001. However, the new company almost immediately ran into problems. Darling announced cessation of service effective Sept. 17, 2001, evidently due to disputes over payment for rehabilitation and maintenance expenses and low operating revenues. In the terse words of FRA, NWPY "ceased operations in September 2001." 76 Fed. Reg. 27171 (May 10, 2011).

NCRA sought proposals for a new lessee and ultimately negotiated a lease and operating agreement for the line with Northwestern Pacific Railroad Company ("NWPCo"). Although the lease agreement effectively encompassed all of NCRA's line,⁷ NWPCo sought, and STB authorized, a change in operators only for NCRA's

⁶ See North Coast Railroad Authority – Acquisition and Operation Exemption – Eureka Southern Railroad, F.D. 32052 (ICC, served April 23, 1992).

⁷ See "Agreement for the Resurrection of Operations upon the Northwestern Pacific Railroad Line and Lease, North Coast Railroad Authority and Northwestern Pacific Railroad Authority, Sept. 6. 2006," Parts V and VI (items I and J).

line from Outlet Station (MP 142.5) south. See [Northwestern Pacific Railroad Company – Change in Operators Exemption – North Coast Railroad Authority, Sonoma-Marin Area Rail Transit District and Northwestern Pacific Railway Co., LLC, F.D. 35073, served August 24, 2007, as corrected served August 30, 2007.](#) That left NWPY's operating authority from MP 142.5 north still extant.

NWPY's lease terminated on October 31, 2005, pursuant to an agreement dated June 23, 2005. NWPY has long been administratively dissolved for failure to pay taxes. Mr. John Darling is the last known CEO and CFO on NWPY, as well as NWPY's last stated agent for service of process listed with the Office of the California Secretary of State. Mr. Darling passed away on June 27, 2010.⁸

In short, although NWPY still appears to have a common carrier operator authority from MP 142.5 north, it has never provided freight service or any other operations on that line due, inter alia, to wash outs leading to the 1998 FRA embargo. NWPY's lease was terminated on October 31, 2005. The company is defunct. Its manager, CEO/CFO, and agent for service of process in California (namely, John Darling) is deceased.

Since 1998, neither NWPY nor any other carrier has provided rail service north of Windsor (MP 62.9), let alone north of MP 142.5 (Outlet Station) where NWPY still has a common carrier lease obligation. Since 2005, NWPY has had no lease. Since 2010 it has had no existence or officer.

⁸ <https://www.legacy.com/obituaries/elgin-courier-news/obituary.aspx?n=john-albert-darling&pid=143894313>.

Because NWPY no longer exists, NCRA cannot request it voluntarily to seek discontinuance authority, which is a shame, for NWPY's operational rights clearly otherwise qualify for discontinuance pursuant to the two-year out-of-service notice of exemption process set forth at 49 C.F.R. 1152.50.

NCRA accordingly is preparing to file an application for adverse discontinuance of NWPY's STB authorities for MP 142.5 (Outlet Station) to end of all branches, as indicated in Attachment 1.

WAIVER and EXEMPTION REQUESTS

The Board's regulations require that discontinuance applications conform to the requirements set forth at 49 C.F.R. Part 1152, Subpart C. However, the Board has routinely "waive[d] inapplicable and unneeded regulations" in adverse discontinuance cases and in adverse abandonment cases, and has routinely "grant[ed] exemptions appropriate from statutory provisions" in these cases.⁹ NCRA's waiver and exemption requests conform to those previously granted by the Board.

A. Waiver Requests

⁹ E.g., Town of N. Judson, Ind. – Adverse Discontinuance of Serv. – in Laporte, Porter & Starke Counties, Ind., AB 1232, slip op. at 2, served July 27, 2015; Lake County, OR – Adverse Disc. – Modoc Railway, et al., AB 1035, served June 15, 2009.

1. System Diagram Map (“SDM”) Rules. NCRA requests the Board waive the following SDM-related rules: 49 C.F.R. 1152.10-14¹⁰ and 49 C.F.R. 1152.22(a)(5).¹¹ These rules are intended to provide the public with advance notice in cases where service over the involved line is being discontinued. The waiver is appropriate because NWPY no longer exists, and NCRA has no access to NWPY’s SDM, if it ever had any. Moreover, the line in question has been embargoed since 1998 and has never been operated by NWPY, so there is no disruption of service and literally no actual service for over twenty years over the involved line that is being discontinued. See Lake County, OR, supra, AB 1035, slip. op. at 3.

2. Line Attributes Rules. NCRA requests waivers of 49 C.F.R. 1152.22(b), (c), (d), and (e). These regulations require an applicant seeking discontinuance authority to include in its application information regarding the condition of the involved rail properties, service performed, attributable revenue and cost data, and rural and community impact. As to 49 C.F.R. 1152.22(b), NCRA as owner has certain independent information on the line’s physical condition, but that information is not relevant where NCRA is attempting to terminate operating authority of a lessee due to breach (termination) of the lease. Lake County, OR, supra, AB 1035, slip op. at 4.

¹⁰ These rules relate to filing, amending, and providing public notice of, a carrier’s SDM, and establish a two-month waiting period between the filing of an amendment to the SDM and the filing of an adverse discontinuance application involving the line subject to the SDM amendment.

¹¹ This rule requires that applications for discontinuance include an attestation referencing the inclusion of the involved rail line on the carrier’s SDM or narrative, the date on which the line was first listed for discontinuance, and a copy of the line description that accompanies the carrier’s SDM.

Indeed, the information sought in section 1152.22(b)-(e) in general is not available to a third party such as NCRA, nor is it relevant for a line that has been subject to an embargo since 1998, and which has never received actual rail service from NWPY. There is no disruption of service where there has been no service.

3. Environmental and Historic Impacts. NCRA requests waivers of the environmental and historic reporting requirements set forth in 49 C.F.R. 1152.20(c), 1105.7, and 1105(8), as well as any additional waivers or exemptions that may be necessary to confirm these reporting requirements are inapplicable in this proceeding. Waiver is appropriate because this line has been embargoed since 1998. As a result, the proposed discontinuance will not result in changes that exceed the thresholds set forth in sections 1105.7 and 1105.8. See North Judson, supra, slip op. at 4 (waiver where thresholds not likely to be exceeded). Moreover, NCRA has no intention of salvaging the line or disrupting any potentially historic structures on the line. See id. (waiver of historic report requirements appropriate).

4. Filing, Notice and Posting Requirements. NCRA requests that the Board partially waive the following filing, notice and posting requirements:

(a) NCRA seeks partial waiver of the filing and notice requirements of 49 C.F.R. 1152.20(a)(1) and (2), and the time-filing requirements of 49 C.F.R. 1152.20(b)(1). Specifically, NCRA requests that this Waiver Petition be treated as serving as NCRA's notice of intent to seek adverse discontinuance of service as required under 49 C.F.R. 1152.20, and that it be permitted to serve its Waiver Petition on the following entities in lieu of those listed in 1152.20(a): California State

Clearinghouse—Office of Planning and Research, California State Transportation Agency (“CalSTA”),¹² and Northwestern Pacific Railroad Company (NWPCo, the current connecting carrier for the line).¹³ The line has been embargoed since 1998 and there are no users. NWPY has been defunct for over a decade. NCRA is a state agency, and since it will be the applicant, there is no need to serve other state agencies or commissions, and service on the California State Clearinghouse and Caltrans should be deemed sufficient. NCRA certifies that there are no duly certified labor organizations who represent employees on the line, which was never operated by NWPY anyway. NCRA submits that service of the Waiver Petition on these entities, combined with three weeks of newspaper publication in the three counties traversed (Mendocino, Trinity and Humboldt) and a Federal Register notice, satisfies procedural due process. The Board has consistently granted similar waiver requests in prior cases.¹⁴

¹² CalSTA was designated by the California Legislature pursuant to SB 1029, Chapter 934, Statutes of 2018, to coordinate with other state agencies to provide information “necessary to determine the most appropriate way to dissolve [NCRA] and dispense with its assets and liabilities.” Given CalSTA’s role, it along with the State Clearinghouse are the appropriate state entities to notify of this adverse discontinuance proceeding.

¹³ NWPCo recently filed a petition for exemption for discontinuance of its operating authority on MP 89 (Mendocino/Sonoma County line) to end of line in the south. Northwestern Pacific Railroad Co. – Disc. of Service – in Marin, Napa and Sonoma Counties, CA, AB 1310X, filed Feb. 22, 2021. However, NWPCo at this time remains the connecting carrier at MP 142.5. NWPCo.’s AB 1310X proceeding is associated with NCRA’s transfer of its interests sought of MP 89 to SMART. See note 1 supra.

¹⁴ E.g., State of South Dakota by and through its Dept. of Transp. – Adverse Disc. – Napa-Platte Regional Railroad Authority, AB 1253, served May 31, 2017, slip op. at 3-4; North Judson, supra, slip at 4-5; Riverview Trenton R.R. – Adverse Ab. – in

(b) NCRA seeks a waiver of the posting requirements in 49 C.F.R. 1152.20(a)(3). These pertain to posting its notice of intent at each agency station and terminal on the line, or through which business for the line is conducted. This line has been embargoed since 1998, and during this time there has been no business conducted on or for the line out of any station or terminal. No stations or terminals for or on the line have been open for over two decades and all are now defunct. In any event, posting requirements are designed for instances in which carriers are seeking voluntary discontinuance, which is not the case here. See South Dakota, supra, AB 1253, slip at 4. In lieu of such posting, NCRA requests permission to substitute posting of a copy of this Waiver Petition on NCRA's website.

(c) NCRA seeks a partial waiver of the notice and also a waiver of the posting requirements in 49 C.F.R. 1152.24(c). In particular, NCRA requests that it be required only to serve its application for adverse discontinuance on California State Clearinghouse – Office of Planning and Research, CalSTA and NWPCo. This request conforms to Board precedent. See, e.g., South Dakota, supra, AB 1253, slip at 4. For the reasons stated in paragraph (b) above, NCRA requests waiver of the posting requirements at stations and terminals. Accord, South Dakota, supra.

(d) NCRA seeks a limited waiver of the newspaper publication rule set forth at 49 C.F.R. 1152.20(a)(4) and 49 C.F.R. 1152.21. Specifically, NCRA requests that it be

Wayne County, Mich., AB 1230, served April 10, 2015, slip at 4 (waiving requirements as to labor organizations and US Railroad Retirement Board were there are no known rail employees).

permitted to utilize the notice of intent set forth in Attachment 2 in its newspaper notices. The Attachment 2 notice uses the form and substance of the notice of intent found at 49 C.F.R. 1152.21 but removes material not necessary for this proceeding. See South Dakota, supra, AB 1253, slip op. at 4-5.

(e) NCRA seeks a limited waiver to modify the draft Federal Register notice form, set forth at 49 C.F.R. 1152.22(i), that an applicant must submit to the Board along with its adverse discontinuance application. Specifically, NCRA requests that it be permitted to employ the draft Federal Register notice form set forth in Attachment 3. The notice in Attachment 3 uses the form and substance of the draft Federal Register notice set forth in section 1152.22(i) but removes material not necessary for this proceeding. Accord, South Dakota, supra, slip op. at 5.

(f) NCRA seeks a waiver of the requirement that the notices it provides pursuant to 49 C.F.R. 1152.21 and 1152.22(i) contain text referring to mandatory imposition of labor protective conditions. “When issuing abandonment or discontinuance authority for rail lines that constitute a carrier’s entire system, the Board does not generally impose protection.” South Dakota, supra, AB 1253, slip op. at 5, citing cases. The line at issue is the entirety of NWPY’s system. Moreover, due to the 1998 embargo, NWPY has never operated the line, lost its lease in 2005, and was defunct by 2010. It no longer exists, much less has any rail employees.

5. Offers of Financial Assistance. NCRA requests a waiver of the regulations set forth at 49 C.F.R. 1152.27. These regulations relate to OFA’s to continue rail service. Here the line has been subject to an embargo since 1998, and has had no rail

operations since that time by NWPY or any other carrier. NWPY's lease terminated in 2005. As the Board has elsewhere explained, "if the Board were to permit a discontinuance of [a current operator's] operations over the [involved] line in ... [an adverse discontinuance] proceeding, an OFA to subsidize [the current operator's] continued operations would in effect nullify the Board's decision." North Judson, supra, AB 1232, slip op. at 5. Accord, South Dakota, supra, AB 1253, slip at 6. Waiver is clearly appropriate in light of the defunct nature of NWPY.¹⁵

B. Exemption Requests

NCRA seeks exemption from the following statutory provisions corresponding to Board regulations cited above: 49 U.S.C. 10903(c)(2) (SDMs); 49 U.S.C. 10903(a)(3)(B) (posting); and 49 U.S.C. 10904 (OFA's).

The Board should grant these related exemptions because full compliance with Subtitle IV of Title 49 is not necessary here to carry out the rail transportation policy ("RTP") set forth in 49 U.S.C. 10101. Instead, granting the requested exemptions would provide NCRA with a reasonable opportunity to demonstrate that there is no overriding public need for NWPY's continued holding of common carrier operating rights over NCRA's line. Accord, South Dakota, supra, AB 1253, slip at 7; North Judson, supra, AB 1232, slip op. at 6. "Exemptions would promote the RTP by eliminating unnecessary procedures and thus expediting the Board's decision in this

¹⁵ Public use requests (49 C.F.R. 1152.28) and trails conditioning is generally unavailable in adverse discontinuance proceedings (16 U.S.C. 1247(d), 49 C.F.R. 1152.29) so it is unnecessary to request waiver of these rules. South Dakota, supra, AB 1253, slip at 6.

case (10101(2)) and foster sound economic conditions in transportation (10101(9)).

Other aspects of the RTP would not be adversely affected. Additionally, application of the statutory provisions from which ...exemption [is sought] is not necessary to protect shippers from an abuse of market power as [NWPY] is not providing [and has never provided] service to any shippers on the line [since the inception of NWPY's authority in 2001]." South Dakota, supra, slip at 7.

For the reasons stated, the requested waivers and exemptions should be granted.

Respectfully submitted,

/s/

Charles H. Montange

Law Offices of Charles H. Montange

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Attorney for North Coast Railroad Authority

Dated: 10 March 2021

Attachment 1: Map showing line for which discontinuance application is to be made

Attachment 2: Requested form of newspaper notice

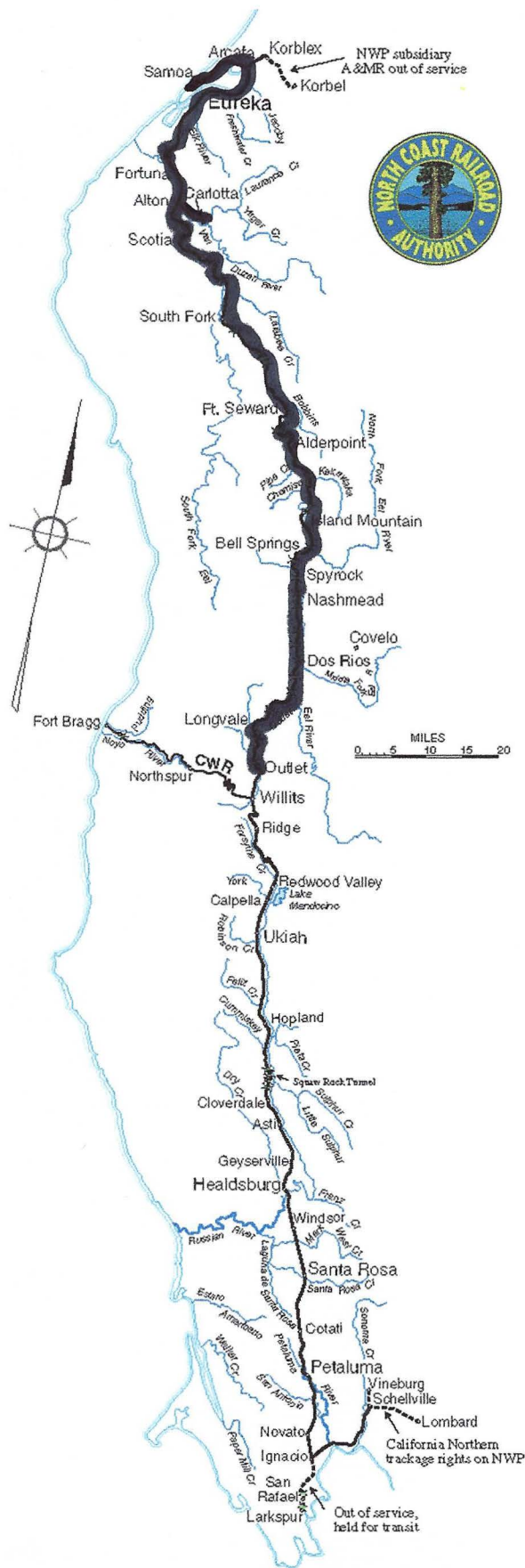
Attachment 3: Requested form for Federal Register notice

Verification

I, Mitch Stogner, Executive Director, North Coast Railroad Authority (NCRA), verify under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Further, I certify that I am qualified and authorized to file this Verification.

Executed on March 9, 2021.


Mitch Stogner
Executive Director, NCRA



Attachment 1: Route map of North Coast Railroad Authority (2020)
(from NCRA website)

FAIRHAVEN (END DISC.) =

MP 302.86

Samoa = 301.5

Korbel = MP 301.8

Korblex = MP 295.5

OUTLET (BEGIN DISC.) =

MP 142.5

Willits = MP 139.5

Healdsburg = MP 68

Petaluma = MP 38.5

Novato = MP 30

Ignacio = MP 25.6

Lombard/Napa Junction = MP 63.4
(redesignated MP 49.8 S)

Attachment 2

Draft Notice of Intent (Newspaper Notice)

STB No. AB 1313 – Notice of Intent to File Application for Adverse Discontinuance of Lease and Operating Authority

North Coast Railroad Authority (“NCRA”), an agency of the State of California, gives notice that on or about ____, 2021, it intends to file an application seeking permission for the adverse discontinuance of the rail service lease and operating authority held by the Northwestern Pacific Railway Co. (“NWPY”) over approximately 174 miles of rail line extending from Milepost 142.5 at Outlet Station to end of line at MP 302.86 near Fairhaven on the Samoa Branch, and including the entireties of the Korblex/Korbel Branch and the Carlotta Branch (hereinafter the “Eureka Line”). The Eureka Line is situated in Mendocino, Trinity and Humboldt Counties, CA, and traverses U.S. Postal Zip Codes 95429, 95595, 95454, 95542, 95560, 95559, 95553, 95571, 95569, 95565, 95562, 95540, 95551, 95537, 95564, 95524, 95521, 95519, 95525, 95521, 95524, 95501, 95503, 95526, 95514, 95511, and 95490. NCRA owns the Eureka Line. The Federal Railroad Administration embargoed the Eureka Line in 1998 and it has had no rail operations since that time. Although NWPY leased the Eureka Line from NCRA in 2001, NWPY has never operated upon it. NWPY terminated all operations in or

about September 2001. NWPY's lease was terminated in 2005, and its operating authorities south of MP 142.5 were subsequently transferred to a new lessee (Northwestern Pacific Railroad Company ("NWPCo.")). NWPY's CEO/CFO and agent died in 2010. NWPY no longer exists.

The Eureka Line may contain federally-granted rights-of-way. Any relevant documentation that might come into NCRA's possession will be made available promptly to those requesting it.

The application, when filed, can be viewed following its filing on the Board's website, www.stb.gov, or a copy may be secured from NCRA's representative whose name and address appears below. Based on rulings made by the Board in its decision served in this proceeding on _____, this proposed discontinuance will not be subject to offers of financial assistance under 49 U.S.C. 10904 (49 C.F.R. 1152.27 of the Board's rules) or imposition of labor protective conditions under 49 U.S.C. 10903(b)(2). Public use conditions under 49 U.S.C. 10905 (49 C.F.R. 1152.28 of the Board's rules) and requests for trail conditions under 16 U.S.C. 1247(d) (49 C.F.R. 1152.29) are not applicable in discontinuance proceedings.

Any interested person, after the application is filed, may file with the Board written comments concerning the proposed adverse discontinuance or protests to it. These filings are due 45 days from the date of filing of the application. Persons who may oppose the discontinuance, but who do not wish to participate fully in the

process by appearing at any oral hearings, or by submitting verified statements of witnesses containing detailed evidence, should file comments. Persons opposing the proposed discontinuance that do wish to participate actively and fully in the process should file a protest. Protests must contain the party's entire case in opposition including the following: (1) the protestant's name, address and business; (2) the protestant's interest in the proceeding, including a description of the protestant's use of the line or, if protestant does not use the line, information concerning the group or public interest it represents; (3) the protestant's specific reasons why it opposes the application including information regarding its reliance on the involved service; and (4) the protestant's rebuttal of material submitted in the application.

Written comments and protests will be considered by the Board in determining what disposition to make of the application. The commenting party or protestant may participate in the proceeding as its interests may appear.

If oral hearing is desired, the requester must make a request for an oral hearing and provide reasons why an oral hearing is necessary. Oral hearing requests must be filed with the Board no later than 10 days after the application is filed.

The parties filing protests to the proposed discontinuance should be prepared to participate actively either in the oral hearing or through submission of their entire case in the form of verified statements and arguments at the time they file a protest.

Parties seeking information concerning the filing of protests should refer to 49 C.F.R. 1152.25.

Written comments and protests should indicate the proceeding designation, STB Docket AB 1313 and must be filed with the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, 395 E Street, SW, Washington, DC 20423-0001 no later than 45 days after the application is filed. Please note that the Board currently requests e-filing, for which instructions are provided below. Interested persons may file a written comment or protest with the Board to become a party to this discontinuance proceeding. A copy of each written comment or protest shall be served on the following representative of NCRA: Charles H. Montange, Law Offices of Charles H. Montange, 426 NW 162nd St., Seattle, WA 98177, (206) 546-1936.

Written comments and protests may generally be sent to the Board either via the Board's e-filing format or in the traditional paper format. However, the Board currently requests all persons filing documents with the Board use the e-filing format. Any person using e-filing should comply with the instructions found on the Board's www.stb.gov website, at the "E-FILING" link. Any person submitting a filing in the traditional paper format should send the original and 10 copies of the filing to the Board with a certificate of service. Except as otherwise set forth in 49 C.F.R. Part 1152, every document filed with the Board must be served on all

parties in this adverse discontinuance proceeding in accordance with 49 C.F.R. 1104.12(a).

The Board's _____ decision waived compliance with its environmental and historic review regulations because the Board found that it was unlikely that the discontinuance would result in any environmental impacts or salvage.

Accordingly, no environmental or historic assessment will be prepared for this proceeding.

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Public Assistance, Governmental Affairs and Compliance at (202) 245-0238 or refer to the full discontinuance regulations at 49 C.F.R. Part 1152. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339. Board decisions and notices are available at the Board's website at www.stb.gov.

Attachment 3

Draft Federal Register Notice

STB Docket No. AB 1313

North Coast Railroad Authority (an agency of the State of California) – Adverse Discontinuance of Lease and Operating Authority – Northwestern Pacific Railway Company in Mendocino, Trinity and Humboldt Counties, CA

On _____, North Coast Railroad Authority (“NCRA”), an agency of the State of California, filed an application under 49 U.S.C. 10903 asking the Surface Transportation Board (“Board”) to authorize the third-party, or “adverse,” discontinuance of lease and operating authority held by Northwestern Pacific Railway Company (“NWPY”) over approximately 174 miles of rail line extending from Milepost 142.5 at Outlet Station to end of line at MP 302.86 near Fairhaven on the Samoa Branch, and including the entireties of the Korblex/Korbel Branch and the Carlotta Branch (hereinafter the “Line”). The Line is situated in Mendocino, Trinity and Humboldt Counties, CA, and traverses U.S. Postal Zip Codes 95429, 95595, 95454, 95542, 95560, 95559, 95553, 95571, 95569, 95565, 95562, 95540, 95551, 95537, 95564, 95524, 95521, 95519, 95525, 95521, 95524, 95501, 95503, 95526, 95514, 95511, and 95490.

According to NCRA, NCRA owns the Line¹; the Line has been subject to a Federal Railroad Administration embargo since 1998²; NCRA leased the Line to NWPY in 2001³; NWPY never provided any rail service on the Line; NWPY ceased rail operations entirely in 2001⁴; NCRA's lease to NWPY for the Line terminated in 2005; NCRA subsequently leased the remainder of its lines south of MP 142.5 to another company (Northwestern Pacific Railroad Company or "NWPCo")⁵; NWPY's CEO/CFO and agent died in 2010; and NWPY no longer exists. NCRA accordingly now seeks Board permission through an adverse discontinuance proceeding to terminate NWPY's regulatory authority to lease and operate the Line.

In a decision served in this proceeding on _____, 2021, the Board granted a petition filed by NCRA for exemptions from several statutory provisions and for waivers of certain Board regulations governing rail line discontinuances. Because

¹ See North Coast Railroad Authority – Acquisition and Operation Exemption – Eureka Southern Railroad, F.D. 32052 (ICC, served April 23, 1992).

² 63 Fed. Reg. 67976 (Dec. 9, 1998), modified 66 Fed. Reg. 9625 (Feb. 8, 2001), further modified 76 Fed. Reg. 27171 (May 10, 2011). After modifications, the embargo remained in effect north of MP 62.9 near Windsor.

³ Northwestern Pacific Railway Co., LLC – Lease and Operation Exemption – North Coast Railroad Authority, et al., F.D. 33998, served Feb. 6, 2001.

⁴ See 76 Fed. Reg. 27171 (May 10, 2011) (FRA statement).

⁵ Northwestern Pacific Railroad Company – Change in Operators Exemption – North Coast Railroad Authority, Sonoma-Marín Area Rail Transit District and Northwestern Pacific Railway Co., LLC, F.D. 35073, served August 24, 2007, as corrected served August 30, 2007.

the Line has been subject to an embargo since 1998, the NWPY lease is terminated, and NWPY is defunct, the Board (as further discussed in its _____ decision) has exempted this proceeding from the offer of financial assistance (“OFA”) requirements at 49 U.S.C. 10904 and waived its OFA regulations at 49 C.F.R. 1152.27. The Board treats requests for public use conditions under 49 U.S.C. 10905 (49 C.F.R. 1152.28) and for trail use conditions under 16 U.S.C. 1247(d) (49 C.F.R. 1152.29) as inapplicable in discontinuance proceedings such as this.

All interested persons should also be aware that the Line constitutes NWPY’s entire rail system. Therefore, as discussed in the Board’s _____ decision, the Board will not impose labor protective conditions in this proceeding if it grants NCRA’s adverse discontinuance application in this proceeding to terminate NWPY’s operating authority over the Line.

NCRA represents that the Line may contain federally granted rights-of-way. Any documentation in NCRA’s possession will be made available promptly to those requesting it.

NCRA’s entire case in chief for adverse discontinuance was filed with the application.

Any interested person may file written comments concerning the proposed adverse discontinuance or protests (including protestant’s entire opposition case)

by [45 days after the application is filed]. Persons who may oppose the proposed adverse discontinuance but who do not wish to participate fully in the process by submitting verified statements of witnesses containing detailed evidence should file comments. Persons opposing the proposed discontinuance that do wish to participate actively and fully in the process should file a protest, observing the filing, service, and content requirements of 49 C.F.R. 1152.25. NCRA's reply, if any, is due by [60 days after the application is filed].

All filings in response to this notice must refer to Docket No. AB 1313 and must be sent to: (1) Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, 395 E Street, SW, Washington, DC 20423-0001 (the Board prefers e-filing, see below) and (2) Charles H. Montange, Law Offices of Charles H. Montange, 426 NW 162nd St., Seattle, WA 98177, (206) 546-1936.

Filings may be submitted either via the Board's e-filing format or in the traditional paper form. However, the Board currently requests all persons filing documents with the Board to use the e-filing format. Any person using e-filing should comply with the instructions found on the Board's www.stb.gov website, at the "E-FILING" link. Any person submitting a filing in the traditional paper format should send the original and 10 copies of the filing to the Board with a certificate of service. Except as otherwise set forth in 49 C.F.R. Part 1152, every

document filed with the Board must be served on all parties in this adverse discontinuance proceeding in accordance with 49 C.F.R. 1104.12(a).

The Board's _____ decision waived compliance with its environmental and historic review regulations because the Board found that it was unlikely that the discontinuance would result in any environmental impacts or salvage.

Accordingly, no environmental or historic assessment will be prepared for this proceeding.

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Public Assistance, Governmental Affairs and Compliance at (202) 245-0238 or refer to the full discontinuance regulations at 49 C.F.R. Part 1152. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339. Board decisions and notices are available at the Board's website at www.stb.gov.

Certificate of Service

The undersigned hereby certifies service of the foregoing Petition for Waiver and Exemption in AB 1313 upon the following parties or entities by email attachment and posting hard copy (CalSTA and NWPCo only) by USPS first class or equivalent on March 9, 2021:

California State Clearinghouse
Office of Planning and Research
P.O. Box 3044

Sacramento, CA 95812-3044

[website indicates suspended paper submissions so sent electronically to:
state.clearinghouse@opr.ca.gov]

California State Transportation Agency

915 Capitol Mall, Suite 350B

Sacramento, CA 95814

Courtesy email attachment copy to Leishara.Ward@dot.ca.gov

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Charles H. Montange

Counsel for North Coast Railroad Authority