

Transportation Solutions Defense and Education Fund

P.O. Box 151439 San Rafael, CA 94915 415-331-1982

March 25, 2021

301843

Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
Washington, DC 20423-0001

ENTERED
Office of Proceedings
March 25, 2021
Part of
Public Record

Re: Docket # AB-1305, North Coast Railroad Authority
Proposed Abandonment and Railbanking

Dear Sir or Madam:

TRANSDEF, the Transportation Solutions Defense and Education Fund, would like to inform you about a serious flaw in the submission of Document # 301732, filed by the North Coast Railroad Authority (NCRA) in the above-referenced proceeding. We assert that NCRA had no legal authority to open the proceeding.

Our organization submitted the attached Demand Letter to NCRA on March 15. We received an indication on March 19th that NCRA "will provide a substantive response shortly." While it was not a "substantive response," we believe the attached Eureka Times-Standard newspaper article is likely to represent NCRA's ultimate response.

On that basis, TRANSDEF urges the Board to be skeptical as to whether NCRA is legally entitled to enter into a Proposed Abandonment and Railbanking. We intend to pursue this issue.

We would be pleased to answer any questions you might have, at the phone number above.

Sincerely,

/s/ DAVID SCHONBRUNN

David Schonbrunn,
President

Attachments

TRANSDEF Demand Letter to NCRA
Eureka Times-Standard Article

LAW OFFICES OF JASON A. BEZIS
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(925) 708-7073
Bezis4Law@gmail.com

March 15, 2021

Richard Marks, Chair
North Coast Railroad Authority
c/o Executive Assistant Hiedy Torres
419 Talmage Road, Suite M
Ukiah, CA 95482

VIA NEXT DAY DELIVERY (GLS – General Logistics Systems)
VIA E-MAIL to: richard.marks@northcoastrailroad.org; ncra.mstogner@sbcglobal.net;
ncra.hiedy@sbcglobal.net; Elizabeth.Coleman@sonoma-county.org

Re: Action by NCRA Board on February 18, 2021 & STB Submission on March 9, 2021

Dear Chair Marks and North Coast Railroad Authority Board of Directors:

This office has been retained by the Transportation Solutions Defense and Education Foundation (TRANSDEF) in response to the action taken by the NCRA Board at its Special Board Meeting on February 18, 2021. According to a communication by NCRA Executive Assistant Hiedy Torres, at that meeting:

The Board unanimously authorized counsel to circulate and file all documents before the Surface Transportation Board as necessary to effectuate rail banking of MP 139.5 near Willits to MP284.1 near Eureka including related branch lines.

Subsequently, on or about March 9, 2021, NCRA submitted to the federal Surface Transportation Board: "Proposed abandonment and railbanking of North Coast Railroad Authority's Line from Willits (MP 139.5) to end of line in Samoa, Korblex, Korbel, and Carlotta, to be docketed as North Coast Railroad Authority-Abandonment Exemption - in Mendocino, Trinity and Humboldt Counties, CA, Surface Transportation Board docket no. AB 1305."

TRANSDEF's contends that the NCRA had no authority under law to take these actions. Because of that, TRANSDEF demands that your Board vote to rescind its February 18, 2021 action, and postpone repeating that vote unless and until the Legislature has

explicitly authorized the NCRA to do so. TRANSDEF also demands that the NCRA withdraw its March 9, 2021 submission to the Surface Transportation Board concerning abandonment and railbanking.

The action taken by the NCRA Board on February 18, 2021 explicitly flies in the face of the Legislature's intent in forming the agency and acquiring the Northwestern Pacific Railroad. Government Code § 93003, in effect until it was amended by SB 1029 in 2018, stated:

The Legislature finds and declares that maintaining railroad service to the north coast area of California will provide economic benefits and, in addition, do all of the following:

- (a) Ensure continuing passenger and freight railroad service to the north coast area.
- (b) Explore opportunities for the improvement of rail service extending from Humboldt County through Mendocino County, and the potential extension of rail service to Del Norte County.
- (c) Enhance tourist access to the north coast area and encourage the establishment of tourist-related facilities.
- (d) Reduce reliance on motor vehicles and encourage the use of rail service as an alternative transportation means.
- (e) Reduce traffic congestion on and deterioration of State Highway Route 101.
- (f) Provide convenient and attractive transportation service for residents of and visitors to the north coast area.

In the aftermath of SB 1029's amendment of that section, NCRA is mandated to operate within the bounds of its authorized powers. None of the powers granted to NCRA in SB 1029's amended Government Code § 93020(a), as currently in force, include the power to request railbanking. This is proven by the fact that SB 69, currently pending in the Legislature, has been introduced to provide explicit authority for railbanking. See proposed Public Resources Code § 5883(a)(1):

Initiate or complete, or initiate and complete, the federal Surface Transportation Board's railbanking process north of ~~the county line separating the Counties of Mendocino and Sonoma at or near mile post 89, dividing line.~~

But, quite obviously, a mere legislative bill does not have the force of law.

TRANSDEF concludes, therefore, that NCRA acted prematurely and without appropriate legal authority. NCRA has not “reasonably interpreted its legislative mandate” and has not “reasonably interpreted the power which the Legislature granted it.” (*Physicians & Surgeons Laboratories, Inc. v. Department of Health Services* (1992) 6 Cal.App.4th 968, 982.) NCRA’s action of February 18, 2021 was *ultra vires*, and must be rescinded.

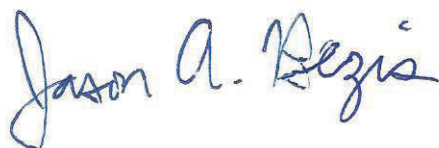
Furthermore, NCRA’s February 18, 2021 action was *ultra vires* because the Legislature has found and declared in the current Government Code § 93003 that “other entities” might “potentially develop[] a trail that could include railbanking.” (Emphasis added.) This is additional evidence that the NCRA, as of the date of the February 18, 2021 Board meeting, did not have the legal authority to authorize railbanking.

TRANSDEF demands that the NCRA cease and desist from further carrying out the February 18, 2021 *ultra vires* Board action until such time as the NCRA Board rescinds that action. TRANSDEF demands that the NCRA withdraw its March 9, 2021 submission to the Surface Transportation Board.

TRANSDEF is aware that the NCRA webpage for its Board of Directors has not been updated. After attempting to contact NCRA personnel without success, TRANSDEF addressed this demand letter to the last known Chair of the Board.

TRANSDEF requests a reply to this demand letter on or before Friday, March 19, 2021. We look forward to the prompt, cost-efficient resolution of this matter.

Sincerely yours,

A handwritten signature in blue ink that reads "Jason A. Bezis". The signature is written in a cursive, flowing style.

JASON A. BEZIS
Law Offices of Jason A. Bezis
Attorney for TRANSDEF

ENVIRONMENT



Yurok Wildlife Department Director Tiana Williams-Clausen releases a condor during a training in Big Sur. CONTRIBUTED BY CHRIS WEST, YUROK WILDLIFE DEPARTMENT

California condors to return to Yurok Country

New rule clears path to open a release facility in historic lands, Redwood National Park

The Times-Standard

After a century of absence, condors are returning to Yurok Country.

The Yurok Tribe, National Park Service and the U.S. Department of Fish and Wildlife announced Tuesday a final rule that will help in the creation of a California condor release facility in Yurok ancestral lands and Redwood National Park.

"For the last 20 years, the Yurok Tribe has been actively engaged in the restoration of the rivers, forests and prairies in our ancestral territory. The reintroduction of the condor is one component of this effort to reconstruct the diverse environmental conditions that once existed in our region," Yurok Chairman Joseph L. James said in a release. "We are extremely proud of the fact that our fu-

ture generations will not know a world without pre-go-neesh."

California condors have a wingspan of nearly 10 feet and are the largest soaring land bird in North America. They are essential members of their ecosystems and play a significant role in the spiritual and cultural beliefs of the Yurok Tribe.

California condors prehistorically ranged from California to Florida and, in modern times, from Western Canada to Northern Mexico. By the mid-20th century, condor populations were in decline. In 1967, the California condor was listed as endangered. In 1982, only 23 condors survived worldwide. Five years later, all the remaining wild condors were placed into a captive breeding program.

"The return of condors to the skies above Redwood National and State Parks is a critical step

toward recovery of this majestic landscape," Steve Metz, superintendent of Redwood National and State Parks, said in a statement. "Working with our friends and partners, the Yurok Tribe and U.S. Fish and Wildlife Service, we will continue the unparalleled success story of condor recovery allowing all Americans to visit the tallest trees in the world while watching one of the largest birds in the world soar overhead."

The final rule exempts most incidental take — which is defined as the hunting, shooting, harming or killing that is unintentional — of condors within the nonessential experimental population.

The rule also prohibits some activities within 650 feet of an occupied nest. Those activities include altering the habitat, such as removing trees and building structures, and being

noisy and visually jarring to the animals, such as using chainsaws, fireworks or explosives.

There are exemptions for those activities in the case of reducing the risk of catastrophic wildfires or responses to wildfires and other emergencies.

"The California condor is a shining example of how a species can be brought back from the brink of extinction through the power of partnerships," said Paul Souza, a regional director with U.S. Fish and Wildlife Service.

The final rule publishes in the Federal Register on March 24, 2021. The document can be found on www.regulations.gov by searching under docket number FWS-R1-ES-2018-0033. More information is available at <https://parkplanning.nps.gov/projectHome.cfm?projectId=66364>.

NORTH COAST

Bay Area group calls NCRA railbanking unlawful

North Coast senator says 'rail will never return' to Humboldt County stretch

By Isabella Vanderheiden
ivanderheiden@times-standard.com

The Transportation Solutions Defense and Education Fund recently announced its opposition to the North Coast Railroad Authority's Feb. 18 decision to railbank a significant section of the railroad between Humboldt and Mendocino Counties for the proposed Great Redwood Trail. TRANSDEF — a Bay Area non-profit transportation advocacy group — asserts that the NCRA board has no legal authority to begin the process of railbanking while the NCRA maintains it is covered by California SB 1029.

In a letter addressed to the NCRA board of directors, TRANSDEF attorney Jason A. Bezis calls for the board to rescind its Feb. 18 decision and to "postpone repeating the vote unless and until the Legislature has explicitly authorized the NCRA to do so."

TRANSDEF also demands that the NCRA withdraw its March 9, 2021, submission to the Surface Transportation Board concerning abandonment and railbanking," Bezis wrote. "...None of the powers granted to NCRA in SB 1029...as currently in force, include the power to request railbanking. This is proven by the fact that SB 69, currently pending in the Legislature, has been introduced to provide explicit authority for railbanking."

In a prepared statement TRANSDEF President David Schonbrunn said SB 69 "proposes ripping out the existing rails between Willits and Samoa" to build the proposed Great Redwood Trail.

NCRA executive director Mitch Stogner argues that TRANSDEF's claims are "just preposterous."

"In 1989, the legislature said, 'You got to preserve this line as it's the lifeblood and you got to try to preserve the entire line for freight service.' When that became infeasible because of the cost to repair the El River Canyon section, (North Coast Sen. Mike McGuire) introduced a bill that said, 'What makes sense here is to turn over the southern half of the line to (Sonoma-Marin Area Rail Transit) and to rail bank the northern half,' Stogner said. "The devil's in the details but SB 1029 clearly gives the NCRA the authority to rail bank through the El River Canyon and around the port of Humboldt Bay."

Essentially, railbanking allows for an out-of-service rail corridor to be used, in this case as a trail, until the corridor is needed for rail service at a future date, according to Rails to Trails Conservancy and the NCRA. Railbanking does not mean the rail line would be removed as TRANSDEF asserted.

"It's based on the concept that you keep a rail line intact, even if it's not in use," Stogner said. "The reason you want to keep that rail line intact is that you don't want reversionary rights to come into play. You don't want private property owners to try to argue that they have rights adjacent to the railroad, you want to keep it an intact line."

Theoretically, if someone came up with enough money to repair the 100-mile stretch of rail line through the El River canyon in 100 years it would still be possible.

NCRA » PAGE 3

HUMBOLDT COUNTY

Supes OK \$1.27M for 35 DHHS workers' extra work hours

By Ruth Schneider

rschneider@times-standard.com

The Humboldt County Board of Supervisors unanimously approved an additional 960 hours of overtime for 35 county employees at a cost of more than \$1.27 million on Tuesday morning as part of the consent calendar.

There was no discussion of the item by supervisors.

The move allows the 35 county employees to each work 960 hours of work — some of which could be overtime pay, if an employee works more than 40 hours in a workweek. In total, the extra hours would cost

\$1,274,541.71.

The employees are tied to the Humboldt County Department of Health and Human Services and include, among others, the former Public Health Officer Dr. Teresa Frankovich as well as Josh Ennis, the deputy health officer.

According to Christine Messinger, a spokesperson for DHHS, the contracted workers have a cap on their hours of 960 hours, which would run out if the employees worked 40-hour weeks for half a year. Doubling that would mean they can work 1,920 hours in a year.

"Extra help staff are used for special projects, covering

24-hour shifts, vacations and leaves of absence and expertise in meeting mandates," a staff report in the agenda stated. "Due to COVID-19, the Department of Health and Human Services has had to add additional staff to assist with the increased workload and to backfill positions due to Emergency Operations Center and Joint Information Center staffing."

The staff report also noted the board could "choose not to extend hours; however, this is not recommended due to staffing levels and the workload." Many of the additional hours are covered by COVID-19 reimbursement funds, revenue from local, state and federal sources, or grants. Some of the extra hours are funded through funds that are part of line items from the DHHS' annual budget such as Public Health Fund 1175 and Social Services Fund 1160.

Additionally, all county employees who work more than 1,000 hours are subject to paying into the California Public Employees' Retirement System. The additional costs are included in the \$1.2 million total approved by the supervisors.

Ruth Schneider can be reached at 707-441-0520.

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NCRA

FROM PAGE 2

ble, Stogner said. Though the NCRA supports McGuire's SB 1029 and SB 69, McGuire told the

Times-Standard, "Rail will never return to this line." "Let's be candid. Even though some will dream of it, the crushing reality of costs and environmental hurdles turns any potential of re-establishing a viable rail line on the North Coast

into a nightmare that will never be achieved," McGuire said, adding that TRANSDEF's arguments were "not founded in reality." TRANSDEF did not respond to the Times-Standard's request for additional comment.

Gun bills

FROM PAGE 1

als for gun control. It is unclear whether any of the bills up for consideration — most of them involving more restrictive background checks — would have made a difference in the Colorado case. A 21-year-old man charged with killing eight people in the Atlanta area last week had purchased a 9 mm handgun hours before the murders, prompting advocates to push for longer waiting periods for purchases.

In brief remarks responding to the shooting, Biden urged Congress to move

quickly to close the loopholes in the background check system and to ban assault weapons and high-capacity magazines — an effort that would be even more difficult to achieve politically. According to a police affidavit, the Colorado shooter had purchased an assault rifle six days earlier. "It should not be a partisan issue," Biden said. "This is an American issue. It will save lives, American lives." Sen. Richard Blumenthal, D-Conn., who has aggressively pushed for expanded gun control since the 2012 shooting at Sandy Hook Elementary School that killed 20 children and six educators, expressed op-

timism about the chances for new laws with Biden in the White House and Democrats controlling the House and the Senate. He called it "the dawn of a new era." Reality is likely more complicated. Senate Democrats do not currently have deep enough support among Republicans to pass new gun control legislation in the 50-50 Senate, as they would need 60 votes to do so. While expanding background checks is generally popular with the American public, even with some conservatives, Congress has been unable to find a successful compromise on guns in decades, making it one of the most intractable issues in American politics.

County

FROM PAGE 1

moved the ICU metric from its COVID-19 dashboard as cases continue to drop across the county.

"We're really in a different place in the pandemic right now, so we don't feel that information is needed any longer," Hoffman said. "Despite the (reduction in cases), we still have seen deaths in the past few weeks from COVID-19, some people in their 50s have died. Our hearts go out to those families, friends and caregivers of all the loved ones who have been lost to COVID-19."

Over the last month, Hoffman reported a significant drop-off in testing across the state but said testing rates are beginning to tick back up locally.

"We're encouraged by that and we want to continue to encourage everyone to keep getting tested. Especially as we open up society more in the coming months, it's really important that we keep tabs on the virus," he said.

Humboldt County has seen a "slight increase" in the number of vaccines being distributed to the county "with the average number now over 5,000 for the last two weeks," Hoffman said.

"This is in line with what the federal government has

been promising and we're expecting that this availability will continue to increase through April and into May," he said, adding that the supply could grow even larger with the addition of the Johnson & Johnson vaccine.

Humboldt County remains in Phase 1B of the vaccination rollout which includes people aged 65 years and older, emergency responders and people who have not been vaccinated under Phase 1A, educators, as well as food and agricultural workers. Hoffman said the county hopes to begin vaccinating people between 16 and 64 years who have qualifying medical conditions in the coming weeks.

"However, it's very important to recognize that due to limited supply of the vaccine, not all of these groups are going to be able to get vaccinated immediately," Hoffman said. "We continue to ask for patience we try to move people through the line as the vaccine supply allows."

Though Humboldt County is still using its on-line vaccine interest form, Hoffman encouraged community members to sign up for the vaccine through the state's interest form at myturn.ca.gov.

First District Supervisor Rex Bohn asked whether or not the county could opt out of the Blue Shield of California

serving as its third-party administrator.

"We do not have a choice in this matter; this is a directive by the state," Hoffman responded. "I think the question I have is what will it look like (since it won't look exactly the same in every county... We're not sure yet. They just seem very open to working with each town to meet the needs of that county."

Second District Supervisor Michelle Bushnell and 4th District Supervisor Virginia Bass inquired about vaccine eligibility and people being vaccinated who are not necessarily next in line.

"I was on my doctor's waitlist, I didn't think it would go anywhere... Let's just say there was a clinic and they had a huge number of (leftover) vaccines," Bass said. "I've been encouraging people to (get on a waitlist) if they haven't already."

"We definitely don't want to put up barriers. If there is vaccine going unused, we do want to try to reach out to the populations that are eligible first but if those attempts are not getting those appointments filled then we should open up eligibility further," Hoffman said. "At the end of the day, the ultimate is that no vaccine goes to waste."

Isabella Vanderheiden can be reached at 707-441-0504.

Shooting

FROM PAGE 1

the nation's gun laws. "Ten lives have been lost, and more families have been shattered by gun violence in the state of Colorado," Biden said at the White House.

Senate Majority Leader Chuck Schumer vowed to bring forward two House-passed bills to require expanded background checks for gun buyers. Biden supports the measures, but they face a tougher route to passage in a closely divided Senate with a slim Democratic majority.

The suspect purchased the assault weapon just six days before the shooting, on March 16, according to the arrest affidavit released Tuesday. It was not immediately known where the gun was purchased.

The shooting came 10 days after a judge blocked a ban on assault rifles passed by the city of Boulder in 2018. That ordinance and another banning large-capacity magazines came after the 2018 mass shooting at Marjory Stoneman Douglas High School in Parkland, Florida, that left 17 people dead.

LOTTERY

MONDAY'S WINNING NUMBERS

Daily 3 Afternoon:

1, 4, 1

Daily 3 Evening:

6, 2, 4

Daily 4: 3, 8, 9, 6

Fantasy 5:

2, 5, 32, 33, 37

DAILY DERBY

1st: 8, Gorgeous George

2nd: 7, Eureka

3rd: 6, Whirl Win

Race Time: 1:48.03

SUPER LOTTO PLUS

Saturday's drawing:

3, 23, 27, 34, 37

Mega number: 13

Today's estimated

jackpot: \$31 million

MEGA MILLIONS

Friday's drawing:

9, 14, 40, 58, 69

Mega Number: 8

Tuesday's estimated

jackpot: \$122 million

POWERBALL

Saturday's drawing:

1, 6, 22, 42, 61

Mega Number: 4

Today's estimated

jackpot: \$220 million

Deaths and Funeral Notices

Shirley Ann Roth



We are saddened to announce that Shirley Ann Roth, 62 years old, passed away at her home in Meridian Idaho on March 2nd, 2021. She was surrounded by family and friends during her final days. She was born on September 6, 1958 in Fortuna, CA.

She was preceded in death by her parents Floyd "Bud" and Pauline Jester; her mother in law, Nell Roth; brother in laws Ron Roth, Rich Ingraham, Bill Roth, Chris Lyons and nephew Keith Roth.

She is survived by her husband of 44 years, Tony Roth; son and daughter in law Shane and Gina Roth; grandchildren Jarren, Jaxon and Everly Roth; father in law William Roth; sisters Kathy English, Diane (Joy) Resendes; sister in laws, Judy Ingraham, Linda Lyons, Mona Cooke; brother in laws, Jim Roth and Larry Roth Sr.; nephews Larry Roth Jr. (Kimberly), Michael Ingraham, Aaron (Lindy) Ingraham; David Roth, Don Roth, Steven Roth and Pam Melvin. Lifelong friends: Karen Wendlandt, Susan and Dave Blevin and both of their families and numerous others she touched during her life.

Shirley retired from Pacific Union Elementary school where she worked in the kitchen for over 20 years. Anywhere you went with her in the community she was known as "the lunch lady" by generations of kids. No matter where you were shopping with her, there were always parents or kids who knew her and thanked her for her kindness. She always had a smile, kind words and a vibrant soul for anyone in

need. Shirley (aka Nana) and Tony moved to Idaho to be near their son, daughter in law and grandkids. She shared a very special, strong bond with her family. The bond she shared with her son was unbreakable, she was always there for Shane no matter the circumstances. Her grandkids were so fortunate to have their Nana as their protector. She was so happy that she had a daughter in law that is such a great wife, mother and best friend to her, it brought her so much peace. She missed her California family, but seeing her grandkids grow up and being a daily part of their lives was what she cherished most. She also had a very special relationship with her nephew Larry Roth Jr. and Shane grew up together, much like brothers, and she was a fierce protector of both boys. She attended every event for both boys, no matter what the sport, rain or shine.

If you knew her, one of the best things about her was her quick wit. She loved to make people laugh as much as she loved to give. She never left anyone in need if it was within her means to help. Shirley spent years taking care of her mother, Pauline, sacrificing so much to be there for those she loved.

There will be a Celebration of Life on March 27th, 2021 from 10:00 AM to 2:00 PM at 1893 Berg Ave, McKinleyville, CA 95519. Please feel free to come by and share a memory, celebrate Shirley's special life and pay your respects to the family. This will be a casual outdoor gathering, with all Covid precautions. Due to Covid there will not be any food provided.

Submit an obituary to obits@times-standard.com

OBITUARIES DESK

Updated hours **9AM - 4PM**

Times Standard
707-441-0515

Recovery payments banked, or on their way to those who qualified in:

HUMBOLDT COUNTY

\$115,413,000⁺*

* Only considers households qualifying for \$1400 payments. Many other payments of smaller amounts will add to the amount above.

Over \$115 Million! This is a welcome relief to many who have been financially impacted by the COVID virus and/or restrictions. The payments are expected to help to buy essentials and pay recurring monthly bills. The basic responsibilities to family and self.

But frankly, the vast majority of the recipients in Humboldt County don't need the payments to offset issues from COVID. These then become entirely discretionary dollars, to do with what they like.

These payments come with a different expectation.

PROOF OF SERVICE

I certify that I have this day served copies of the TRANSDEF Cover Letter, TRANSDEF Demand Letter and Eureka Times-Standard newspaper article, plus this proof of service, upon all parties of record in this proceeding, by email.

Law Offices of Charles H. Montange
426 NW 162nd St.
Seattle, WA 98177
c.montange@frontier.com

Signed on March 25, 2021


David Schonbrunn, President of TRANSDEF