

BEFORE THE SURFACE TRANSPORTATION BOARD

302226

North Coast Railroad Authority –	)	ENTERED
Adverse Discontinuance Application –	) AB 1313	Office of Proceedings
Northwestern Pacific Railway Co.	)	April 30, 2021
		Part of
		Public Record

Comment and Reply

This comment, on behalf of North Coast Railroad Authority (NCRA), is in response to the "Notice of Intent to Participate" filed by Timber Heritage Association (THA) in this proceeding on April 22, 2021. THA purported to oppose certain relief it claims NCRA is seeking, presumably in NCRA's "Petition for Waiver," which is the only document NCRA has so far filed in AB 1313. This constitutes NCRA's reply to THA's contentions insofar as those contentions relate to the Petition for Waiver.

1. THA is in the nature of a section 501(c)(3) rail hobbyist (rail "speeder" and similar light weight equipment) organization.¹ THA states that it favors "rail with trail," but opposes "railbanking."

Neither "rail with trail" nor "railbanking" are at issue in this docket (AB 1313). AB 1313 instead involves an effort by NCRA to terminate the operating authority of

¹ THA represents that it has "museum and tourist excursion" activities between MP 300.5 and MP 297.9, and MP 284.1 and 289.2. THA unnumbered p. 2. Due to the 1998 FRA embargo, THA cannot operate rail passenger or excursion trains on NCRA's line. THA does operate "speeders" from time to time. "Speeders" as used herein are light weight contraptions similar to those THA elsewhere asserts were used to transport loggers to and from forestry work. To NCRA's knowledge, THA does not operate a museum on NCRA's line.

a defunct lessee [Northwestern Pacific Railway Co. (“NWPY”)] whose lease long ago expired.

THA also claims it is the “formal caretaker” of “Samoa Shops rail complex” at MP 300.5 and says that “Samoa Shops” is one of three places in California “large enough to build locomotives.”² Samoa Shops is the old site of the Hammond Lumber Company mill.³ It is not connected to NCRA’s line and was never served by NWPY. It does not now receive rail service. Nothing in AB 1313 will impact Samoa Shops.⁴ THA thus fails to articulate any interest involved in AB 1313.

² NCRA believes the referenced “Samoa Shops” is owned by a third party.

³ Mr. Buck (history consultant for NCRA) informs NCRA that there is no rail connection between NCRA’s line and Samoa Shops. In more detail, he states that “[a]s of 1934, Hammond Lumber Company owned the Humboldt Northern Railroad, which up until that point shared a crossing with the NWP on the Samoa Peninsula but otherwise had its own trackage to the mill in Samoa. Hammond Lumber Company entered into an agreement with Southern Pacific (parent company of NWP) to lease and utilize the NWP’s trackage on approach to Samoa from the point at which that old crossing was north of Samoa. Trains from Crannel owned by Hammond Lumber Company began pulling loads to Samoa via NWP trackage from that point on. Hammond Lumber Company was absorbed by Georgia Pacific when purchased on May 24, 1956, for \$80 million. The final train to run from Crannell to Samoa over NWP trackage was on February 17, 1961, at which point Georgia Pacific opted to use trucks for hauling loads to Samoa. Therefore, there was no need for trackage off the NWP into the Georgia Pacific Mill (former Hammond Lumber) and the tracks were removed, not including the NWP trackage that those trains ran on which still exists to this day as part of the NCRA’s Samoa Branch.” Email, J. Buck to C. Montange (for NCRA), April 22, 2021.

⁴ See THA unnumbered p. 4 (assertions about locomotive manufacture which NCRA views as irrelevant). Samoa Shops appears to include an old roundhouse (presumably from the days of Humboldt Northern Railroad). AB 1313 is not relevant to Samoa Shops and granting the relief NCRA seeks in AB 1313 will have no impact on service to Samoa Shops now or in the future.

NCRA accordingly reserves its right to contest THA's standing in the event of judicial review.

2. THA claims that NCRA seeks to "relieve itself" of historic analysis in this proceeding by "asserting it is not attempting to salvage the property." As indicated in NCRA's Petition for Waiver at p. 10, NCRA has no intention/plan to salvage any potentially historic structures on the line. Board precedent indicates in such circumstances that waiver of historic report requirements is appropriate in a lease and operating authority discontinuance proceeding, which in this case also involves a defunct operator whose lease long ago expired on a line embargoed since 1998.

In all events, historic impacts will be considered to the extent appropriate in any actual abandonment licensure of the line. NCRA, as THA presumably is aware, actually retained a member (Josh Buck) of THA's Board of Directors⁵ to assist in preparing an historic report for the line over which defunct NWPY has operating rights. That report has been available on the STB website as an environmental comment (El 30360) in STB docket AB 1305X since March 8, 2021.

3. THA states that it opposes waiver of the "offer of financial assistance" (OFA) remedy in AB 1313. NCRA's Petition for Waiver sought waiver of OFA on the basis of STB precedent applicable in lease discontinuance proceedings indicating that waiver of OFA is customary if an adverse discontinuance is allowed. See NCRA Petition at 13-14. This Board recently reaffirmed that "[a]n OFA ...would be

⁵ Mr. Buck is listed as a director of THA on THA's letterhead in THA's filing dated April 22, 2021 with STB in AB 1313.

irreconcilable with a Board decision granting adverse discontinuance.” Metro-North Commuter Rail Company – Adverse Discontinuance of Trackage Rights – Housatonic Railroad Company, AB 1311, served April 20, 2021.

In this case, NWPY was a lessee on NCRA’s line. Any OFA would presumably be to subsidize continued operation by NWPY. One cannot subsidize a defunct railroad to continue its operation because it is defunct. It no longer exists. It is functionally dead. If the OFA were somehow to purchase NWPY or at least its lease, then NWPY is still defunct and cannot be resurrected. In any event, NWPY’s lease has expired. Since the lease no longer exists, defunct NWPY no longer has any state-law property interest in the line.

An OFA amounts to a forced transfer of STB operating rights and the property interests necessary for those rights to be discharged to another entity. This Board recently revoked an acquisition/operating license and a lease/operating license on the ground that the parties obtaining the licenses did not have state-law property rights to the line over which they purportedly obtained STB rights to acquire, lease and/or operate. Eastside Community Rail – Acquisition and Operation Exemption -- GNP RLY, Inc., FD 35692, served Dec. 22, 2020, and Ballard Terminal Railroad Company LLC – Lease Exemption – Eastside Community Rail, LLC, F.D. 35730, served Dec. 22, 2020. But NWPY is defunct and lacks any state law property right upon which NWPY’s rail license ostensibly transferred under 49 U.S.C. 10904 to THA (or anyone else) could operate. Thus, any OFA is totally inappropriate in this proceeding.

4. THA argues that since NCRA has no plans to salvage, the value of NCRA's rails is zero. THA's "valuation" argument is irrelevant in this proceeding for the reasons set forth above, but it is so perplexing as to merit special comment. The fact that NCRA has no plans to salvage flows in part from the fact that NCRA is a state agency and therefore is expected to comply with the California Environmental Quality Act in connection with its actions on the line. NCRA has not even begun to formulate a plan for future use or salvage of the line, which it would necessarily do pursuant to a CEQA process, which NCRA has also not even begun. The fact that NCRA has no plans to salvage hardly means that the rail, or the line generally, has no value for OFA purposes. Nothing in anything NCRA has said, or intends to say, should be construed as conceding that any portion of the rail corridor it owns has no net liquidation value for purposes of 49 U.S.C. 10904.

5. NCRA's line was embargoed in 1998, and it remains embargoed north of Windsor in Sonoma County. Efforts by NCRA to obtain funding for any rehabilitation sufficient to lift the 1998 FRA embargo have otherwise been unsuccessful to date for any portion of the line north of Windsor.⁶ The line north of Windsor has instead continued to deteriorate. As a corollary, no one has yet been able to identify funds sufficient to rehabilitate the NCRA line around Humboldt Bay

⁶ The portion on NCRA's lines from Windsor to the Sonoma/Mendocino County line were recently transferred to SMART (pursuant to STB's authorization in F.D. 36481). SMART has a tax base, and expects to pursue rail rehabilitation as far as Cloverdale for commuter rail purposes, which will allow FRA to lift its embargo on freight to that point as well.

for any actual rail use that requires compliance with FRA regulations, including any freight or passenger excursion uses. If THA wants to foster its hobby/speeder operations much less restore the track to support actual rail excursion operations, THA should consider working with local Humboldt County and State authorities to identify funding for compliance with FRA's relevant track and safety regulations. Threatening spurious OFA's in AB 1313 will not produce funds for rehabilitation of this embargoed and deteriorating rail line.

6. In conclusion, the NWPY proceeding in which THA has filed involves a defunct entity whose lease long ago expired. The relief NCRA seeks in its Petition for Waiver in AB 1313 is consistent with STB precedent. Nothing presented by THA provides any basis for denying the relief NCRA seeks in its Petition.

By my signature below, I certify service by posting a copy of this Reply in US Mail, postage pre-paid first class, addressed to THA to the attention of Pete Johnson, PO 6339, Eureka, CA 95502 on the date below.

Respectfully submitted,

/s/

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