

BEFORE THE SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings
June 28, 2021
Part of
Public Record

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

Request to Lift Abeyance Orders

For the reasons stated below, North Coast Railroad Authority requests this Board to lift the two abeyance orders issued June 9 and 11 respectively in this proceeding.

The abeyance orders were imposed in order to allow the Board to consider whether it has abandonment jurisdiction over the “Annie and Mary” trackage [M.P. 295.57 (Korblex) to MP 301.8 (Korbel)] located at the extreme northerly end of one of the branches of NCRA’s line at issue in this proceeding. While NCRA appreciates the desire of the agency to consider its jurisdiction in connection with the Annie and Mary, NCRA respectfully suggests that this can be done without placing the entire proceeding in abeyance. NCRA has been requested by Humboldt County and City of Eureka to request that the abeyance orders be lifted so the proceeding may be orderly concluded so as to avoid holding up local projects of importance to the County and the City, including a major infrastructure

project that combines new trail within the rail corridor with urgently needed flood control improvements.

Background

On May 14, 2021, North Coast Railroad Authority (“NCRA”) filed a Notice of Exemption (“NOE”) pursuant to 49 C.F.R. 1152.50 for abandonment authority for approximately “175.84 miles of rail line and branches ... between railroad milepost 139.5 at Commercial Street in Willits, to railroad milepost 267.72 near Carlotta, milepost 300.5 near Samoa, and milepost 301.8 near Korbel, inclusive of Eureka at milepost 284.1 and Korblex at milepost 295.57, in Mendocino, Trinity and Humboldt Counties, California. NCRA specifically noted that the NOE “thus encompass[ed] NCRA’s Arcata & Mad River (or “Annie and Mary”) subsidiary, MP 295.57 near Korblex for approximately 6.23 miles to MP 301.8 near Korbel. NCRA explained that it believed this Board had jurisdiction over the Annie and Mary for the reasons expressed in NOE Exhibit B, and that NCRA did not wish “to leave behind a ‘stranded segment.’” NOE p. 1, note 1.

49 C.F.R. 1152.50(d)(3) provides for publication of an NOE in the Federal Register twenty (20) days after filing. Twenty days after May 14, 2021, is June 3, 2021. The Board did not publish Federal Register notice. Instead, the Board published a Decision on June 9, 2021 holding the proceeding in abeyance while the

Board considered whether it had jurisdiction over the Annie and Mary, stating that the NOE expressed “uncertainty” in that regard.¹

Ordinarily the Board’s Office of Environmental Analysis (“OEA”) publishes an Environmental Assessment (“EA”) twenty-five days after the filing of an NOE. OEA duly issued its EA on June 8, 2021. Ordinarily there is a 15-day comment period. Consistent therewith, the EA indicated comments would be due on June 23, 2021. However, on June 11, the Board placed the EA comment period in abeyance because of the June 9 order.

The abeyance periods in the June 9 and June 11 orders appear indefinite.²

¹ NCRA indicated that it believes the Board has jurisdiction over Annie and Mary. NOE at p. 1 n.1 and Exhibit B, p.1. However, NCRA in good faith disclosed to the Board that the Interstate Commerce Commission (ICC) had authorized abandonment of the Annie and Mary prior to the acquisition of the Annie and Mary by Eureka Southern, which is NCRA’s predecessor in interest for the portion of NCRA’s lines germane to this issue. NCRA stated in Exhibit B at p. 5 that it was “prudently laying out the facts ... in the hope of avoiding disputes over agency jurisdiction that might delay the effectiveness of issuance of a railbanking order for any portion of the line that qualifies for an STB Notice of Interim Trail Use.” Unfortunately, NCRA’s effort to be candid has apparently resulted in an indefinite delay.

² In the June 9 Decision, this Board, citing NCRA – Adverse Discontinuance of Lease and Op. Authority – NW. Pac. Ry., AB 1313, noted that NCRA had also sought certain exemptions and waivers in an adverse discontinuance proceeding. That proceeding involves a defunct (no longer existing) lessee with a long-expired lease relating to MP 142.5 north to end of line at Samoa, all of which has been embargoed (and neither possible nor lawful to operate) since 1998. NCRA sought those exemptions and waivers in the customary fashion and in accordance with Board precedent on March 9, 2021. Ordinarily the exemptions and petitions would

This trackage traverses a geologically unstable area (Eel River canyon) and has a history of repeated moderate and severe wash outs, tunnel fires, moving soils and so forth disrupting service and rendering operating costs excessive. Due to such events, all this trackage was placed under a Federal Railroad Administration (“FRA”) embargo in 1998. See 63 Fed. Reg. 67976 (Dec. 9, 1998). The line north of Windsor (considerably south of Willits) has been out of operation since that date. Rehabilitation costs are estimated in the upper hundreds of millions to lower billions. The line continues to deteriorate.

Reasons to Lift the Orders Placing NOE and EA Comment in Abeyance

By letter dated June 24, 2021 (attached), Humboldt County and City of Eureka (Eureka is the principal city and county seat of Humboldt County) asked NCRA to request this Board to lift the orders holding these proceedings in abeyance.

Humboldt County notes that it has a combined trail and flood control project that

be granted by now such that NCRA could proceed with preparation and filing of an adverse discontinuance application. However, in a Decision in AB 1313 served June 7, the Board instead “instituted a proceeding” under 49 U.S.C. 10502(d) to consider the requests. The Board provided no schedule for submissions or indication of what further proceedings were required. NCRA desires the customary exemptions and waivers to be granted so it may prepare and file an adverse discontinuance application to achieve termination of the defunct entity’s common carrier obligations as soon thereafter as regulatory procedures permit. Alternatively, NCRA would welcome the Board using its exemption authority to terminate those obligations in light of the fact that the lessee is defunct, has not operated since 1998, and its lease long ago expired.

would “raise the railroad prism one to two feet to help protect the railroad, Highway 101, and new trail from flooding hazards.” The County explains that “[r]aising the rail prism necessitates removal of rails and ties, and removal of rails and ties is contingent upon NCRA receiving approval for railbanking.” The overall project is estimated to cost \$16.5 million and the County is concerned that it will face rising costs and loss of funding in the event of delay in obtaining railbanking authority. This project is between MP 284.5 and MP 289.6, well south of the Annie and Mary.

The City of Eureka has a \$ 6 million project within and adjacent to the railroad right of way at MP 279.55 to MP 280.55 which also involves the railroad prism and requires rail and tie removal, contingent on railbanking. The City wishes to place this out to bid for construction next year, but railbanking is a condition of receiving required permits to do so.

Both the City and the County acknowledge that STB’s jurisdictional inquiry is not unreasonable, but note that the Annie and Mary is only 6.25 miles at the extreme end of “nearly 175 miles of rail line.” They request NCRA to make an appropriate filing “requesting that the railbanking proceedings for the remainder of the line proceed without delay to ensure that the County of Humboldt’s and City of Eureka’s projects are not unnecessarily impacted or put in jeopardy.” Letter at 2.

The Annie and Mary trackage is located at the extreme north of one of the two branches north of Eureka. If STB has jurisdiction, NCRA requests that the Annie and Mary be railbanked. If STB lacks jurisdiction, then it is eligible only for so-called “private railbanking” and the application of state law. As to the rest of the line, NCRA has already both applied for and consented to railbanking.

In the circumstances, NCRA requests the Board to lift the stay by issuing as soon as possible the Federal Register notice that was otherwise timely on June 3. In that Federal Register notice, the Board also should lift the stay on commenting on the EA by providing for a renewed 15-day comment period dating from the Federal Register notice. The Federal Register notice would otherwise be customary, providing for petitions for reconsideration to be due within 20 days from Federal Register notice and so forth. 49 C.F.R. 1152.50 (d)(3). In this way, the Board could receive timely comment from parties favoring or opposing jurisdiction over the Annie and Mary, if any, via comments or petitions for reconsideration. Then, after opportunity for comment, the Board can reach an informed decision in an orderly fashion.

There is no question that the Board has abandonment (and railbanking) jurisdiction over the 168.71 miles of this line from Willits (MP 139.5 to the end of (a) the Carlotta Branch (MP 267.72 near Carlotta), (b) the Samoa Branch (MP 300.50 near Samoa), and (c) the Korblex Branch at least as far as MP 295.57 near

Korblex. The only question is whether the Board has jurisdiction over Korblex to Korbel (i.e., Annie and Mary). NCRA believes that issuance of the Federal Register notice anticipated by 1152.50(d)(3) inviting comments and petitions for reconsideration within twenty days will provide a record in an orderly fashion for the Board to determine whether it has jurisdiction over Annie and Mary.

NCRA is hopeful that orderly receipt of comments and petitions, if any, in response to the Federal Register notice will provide a basis for timely determination of jurisdiction while giving interested parties an opportunity to comment. At that point, the Board could allow the NOE/NITU to become fully effective for all 175 miles, or, if further time is required to make a determination as to the Annie and Mary, at least fully effective for the first 168.71 miles while retaining jurisdiction over the roughly 6.23 miles encompassed by Annie and Mary. This procedure would not impose a burden, and it would respond to the concerns of Humboldt County and Eureka.

A map showing the line at issue and the location of the Annie and Mary is attached.

Conclusion

For the reasons expressed above, NCRA requests on behalf of itself and in light of the representations by City of Eureka and Humboldt County that the Board lift

the stays imposed by its June 7 and 9 decisions in this proceeding, publish the Federal Register notice as provided in 49 C.F.R. 1152.50(d)(3), and resume the commenting process on the EA.

Certificate of Service

By my signature below, I certify service by deposit with USPS for delivery postage pre-paid first class, or by email attachment, on all parties of record in STB docket AB 1305X as set forth in STB's relevant service list on the date set forth below for filing.

Respectfully submitted,

s/ Charles H. Montange

Charles H. Montange
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Attorney for North Coast Railroad Authority

Date for e-filing: June 28, 2021

Attachment: Letter, City of Eureka and County of Humboldt to Messrs. Stogner and Montange (for NCRA), dated June 24, 2021;
Map.

cc (w/atts). per certificate of service, John Anderson (HRC), Pete Johnson (Timber Heritage), Bruce Silvey (Humboldt Trails), Laura Cohen (RTC), D. Schonbrunn (Transdef), S. Johnson (for HRC), J. Kalt (Humboldt Baykeeper), Beth Burks (HCAOG). Courtesy copies to M. Stogner (NCRA), J. Willor (City of Eureka), and H. Seeman (Humboldt County), Elizabeth Coleman, Esq. (for NCRA)



June 24, 2021

Mitch Stogner, Executive Director
North Coast Railroad Authority
419 Talmage Road, Suite M
Ukiah, CA 95482

Charles H. Montange
Attorney at Law
426 NW 162nd Street
Seattle, WA 98177

Subject: Abeyance Order, Surface Transportation Board Docket No. AB 1305

Dear Mr. Stogner and Mr. Montange:

On May 14, 2021, the North Coast Railroad Authority (NCRA) submitted a filing to the Surface Transportation Board (STB) to initiate the railbanking process for its rail line from Willits to Eureka. Railbanking would allow interim trail use subject to possible future reconstruction and reactivation of the right-of-way for rail service. On June 9, 2021, the STB ordered that the abandonment proceeding filed by NCRA be held in abeyance to allow consideration of STB's jurisdiction over the Arcata and Mad River subsidiary portion of the line. The purpose of this letter is to provide information on the importance of railbanking for two local trail projects and to request that NCRA submit a filing to STB requesting that the abeyance be lifted on that portion of the line not affected by the jurisdictional question in order to ensure that two local projects are not adversely affected.

The County of Humboldt is developing the Humboldt Bay Trail South project which extends for a total length of 4.2 miles with approximately 3.2 miles situated on the NCRA rail corridor. The project extends from near Mile Post (MP) 285.5 to near MP 289.6 (approximately 1.0 miles of trail would be situated on property outside the railroad corridor). NCRA and the California Transportation Commission (CTC) have approved a lease agreement for the project which would complete the trail connection between Eureka and Arcata along Highway 101. In addition to constructing a Class I bikeway, the project will repair shoreline armoring for a length of approximately one mile along Humboldt Bay and raise the railroad prism one to two feet to help protect the railroad, Highway 101, and new trail from flooding hazards. The current construction cost estimate is \$16.5 million and the deadline for allocating these funds is June 30, 2022. Raising the rail prism necessitates removal of the rails and ties, and removal of the rails and ties is contingent upon NCRA receiving approval for railbanking. All applicable federal, state, or local environmental permits have already been obtained, or will be obtained, for this project. However, some of the pending permits require certainty regarding the County's authority to construct the project as designed. Completion of railbanking is needed for assurance that the project can be built as designed and to avoid delays in the permitting and construction phases, which could potentially lead to loss of funding if fiscal deadlines are not met.

The City of Eureka is developing a project within NCRA's railroad right-of-way for a trail (multi-use path) beginning near MP 279.55 at Tooby Road and terminating near MP 280.55 at Pound Road. NCRA

and CTC have approved the lease agreement. This project would extend the existing Hikshari' Trail segment of the Eureka Waterfront Trail southward for one mile. The project design includes using the railroad prism for the majority of the trail length along with the existing railroad bridge over the Elk River Slough. Rails and ties would be removed and the trail would be constructed directly on the rail prism and bridge. Use of the railroad prism and existing railroad bridge is essential to minimize the project's impact on the tidal estuary and adjacent wetlands and ensure consistency with environmental permitting laws and regulations. This project has been in development for several years and is currently in the permitting phase, with bidding planned for Fall 2021 and construction beginning in Spring 2022. The project includes both trail construction and estuary restoration components and has a total estimate cost of over \$6 million. Removal of the rails and ties is contingent upon completion of the railbanking process. Therefore, completion of railbanking is a necessary condition for receiving the coastal development permit and being able to finalize a construction bid package.

STB's decision to take additional time to review its jurisdiction over the Arcata and Mad River subsidiary line is not unreasonable; however, this subsidiary line is only 6.25 miles out of a total of nearly 175 miles of rail line being considered for railbanking. Moreover, it is at the end of one of the northern branches of the line and will not "sever" any portion of the line from the remainder of the line, or from the interstate rail network. We request that NCRA submit the appropriate filing to STB requesting that the railbanking proceedings for the remainder of the line proceed without delay to ensure that the County of Humboldt's and City of Eureka's projects are not unnecessarily impacted or put in jeopardy.

Sincerely,

Jesse Willor

Digitally signed by Jesse Willor
DN: c=US, ou=Public Works, o=City of Eureka,
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Reason: I am the co-author of this document
Location
Date: 2021.06.25 09:06:23

Jesse Willor, P.E.

City Engineer

City of Eureka

707-441-4031

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**Seemann,
Hank**

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Hank Seemann

Public Works Deputy-Director

Humboldt County

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NCRA Main Line

From Willits North to Eureka

Including Branches and A&MR Subsidiary

LOCATION



LEGEND

- County Line
- River or Creek
- Land Contours (50m)
- U.S. Route 101
- State Highway
- Road
- City Boundary
- Railroad
- Park Land
- Reservations
- Milepost Marker

