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Ms. Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Re: North Coast Railroad Authority – Abandonment
Exemption – in Humboldt, Trinity and Mendocino
Counties, CA, AB 1305X

Dear Ms. Brown:

This letter is on behalf of North Coast Railroad Authority (“NCRA”) in response to three filings by or on behalf of Humboldt Redwood Company, LLC (“HRC”) and sometimes affiliated entities like Humboldt Sawmill Company, Mendocino Redwood Company, and Mendocino Forest Products (collectively “HRC et al.”).

1. In Letter, J. Anderson (identified as HRC’s Director, Forest Policy) to Ms. C. Brown (STB) dated May 24, 2021, HRC et al. states that it is opposed to a trail system and claims a reversionary interest in NCRA’s rail corridor.

2. In an “environmental comment” in the form of Letter, J. Anderson (HRC et al.) to C. Brown (STB), dated June 7, 2021, HRC et al. claim that the rail line traverses their facilities, further claim that their business uses have essentially displaced NCRA’s rail use, and additionally claim that a trail would be incompatible with their business uses. HRC et al. attach photos (a) purporting to show a Humboldt Sawmill Company property at Scotia with rails removed and

logs piled on the former roadbed, and (b) a series of photos evidently dealing with operations of Mendocino Forest Products at Ukiah or Calpella, CA.¹

NCRA's response to May 24 and June 7 HRC submissions. The May 24 letter and the June 7 environmental comment do not raise any issue relevant to this Board's jurisdiction in AB 1305X. HRC et al. do not oppose NCRA's 49 C.F.R. 1152.50 "notice of exemption" ("NOE"). HRC et al. do not state opposition to abandonment. HRC et al. obviously do state opposition to a trail use on the right of way. But this opposition is irrelevant. NCRA has both sought and consented to the issuance of a "Notice of Interim Trail Use" (NITU) in this proceeding. STB has long taken the position that it must grant a NITU (authorize interim trail use/railbanking) where a railroad consents to negotiate a trails use agreement, which NCRA has done. Thus, issuance of a NITU (authorizing interim trail use/railbanking) is mandatory here. The objections of HRC et al. to date are not relevant to this proceeding.

3. In Letter, S. Johnson (attorney for HRC) to Mitch Stogner (Executive Director, NCRA), copied to Ms. C. Brown (STB), dated June 17, 2021, HRC as successor to The Pacific Lumber Company (PALCO) and Britt Lumber Company, Inc., claims that it holds an option to purchase certain portions of NCRA's corridor in Humboldt County as a result of a transaction by NCRA's predecessor Eureka Southern and PALCO. HRC states that it is giving notice that it intends to exercise that option "upon approval by the Surface Transportation Board of [NCRA's] application to abandon the rail line...." HRC's June 17 letter functions as a notice to NCRA under a purported contract, but it makes no claim or argument germane to any matter before this Board.

NCRA's response to HRC June 17 letter insofar as it is addressed to STB. No response is required, for HRC makes no argument germane to any issue before the Board.

¹ The Mendocino Forest Products operations to which Mr. Johnson's photos allude are located (according to Mr. Johnson's photos) at Calpella and Ukiah. These are 20 and 26 miles south of Willits respectively. AB 1305X does not involve that portion of NCRA's line. AB 1305X involves NCRA's line from MP 139.5 (Willits) north to the end of the line branches north and west of Eureka in Humboldt County. Mendocino Forest Products does not identify any facility which it owns adjacent to the trackage at issue in this proceeding.

NCRA's summary response to HRC June 17 letter insofar as addressed to NCRA as a notice. Although the issue is not relevant in AB 1305X, NCRA will respond briefly to HRC's notification of an intent to exercise its alleged option as follows: even assuming arguendo that the option contract on which HRC relies is otherwise valid and enforceable, the option has expired. The option contract on which HRC asserts a claim on its face states that it "may be exercised ... no later than 180 days from the date [Eureka Southern or its successors] fail to operate and maintain a railroad operation on said 'right-of-way.'" [quotation is from Agreement, p. 3, paragraph 4, as attached by HRC to its June 17 letter.]

NCRA's entire line in Mendocino, Trinity and Humboldt County has been subject to an embargo imposed by the Federal Railroad Administration (FRA) since December 9, 1998. The embargo was published in the Federal Register, which is notice to the world. See 63 Fed. Reg. 67976 (Dec. 9, 1998). NCRA has not operated or maintained a railroad operation on said right-of-way since December 9, 1998. 180 days from December 9, 1998, expired on June 7, 1999. HRC's purported option thus expired on its face no later than June 7, 1999.

HRC seems to be attempting unlawfully to evade the fact that its option (assuming arguendo its validity otherwise) long ago expired by taking the implicit position that the option trigger (embodied in the words "fail to operate and maintain a railroad operation") has nothing to do with rail operations but instead means obtaining an STB "approval" for abandonment.² But even if HRC's reading were correct, HRC still loses: NCRA has sought, consented to, and expects STB will authorize interim trail use/railbanking in the form of a Notice of Interim Trail Use (NITU). NITU's are issued pursuant to 16 U.S.C. 1247(d). Section 1247(d) provides, inter alia, that interim trail use/railbanking "shall not be treated, for purposes of any law or rule of law, as an abandonment of the use of such rights-of-way for railroad purposes." It also provides that if a State or

² STB abandonment authorizations, assuming they become effective, are permissive, not mandatory, and do not in and of themselves either require or signal an end of rail operations or maintenance of rail operations. Moreover, a railroad receiving such an authorization has a year (which may be extended on application to the agency) to "consummate" an abandonment authorization. NCRA reserves the right to assert these and all other objections and defenses (including specifically other objections and defenses not stated herein), without waiver of anything, should HRC file litigation now or hereafter against NCRA in any tribunal, and NCRA further reserves its right to seek attorneys' fees and other expenses in the event of frivolous claims.

political subdivision is prepared to assume management, tort and tax liabilities for railbanking and interim trail use (as NCRA is), then STB “shall not permit abandonment or discontinuance inconsistent or disruptive of said use.” It follows that the option cannot be triggered by the NITU sought by NCRA because interim trail use and railbanking must be regarded not as an abandonment but as continued use of the railroad right-of-way “for railroad purposes.” Moreover, under 49 C.F.R. 1152.29, STB will retain jurisdiction over the railbanked rail corridor thus keeping it intact for future possible rail reactivation. During this period, reversionary-type claims are federally preempted.

Under Preseault v. ICC, 484 U.S. 1 (1990), 16 U.S.C. 1247(d) is constitutional, and if HRC et al. feel that they can show that they have a property interest that was “taken,” they can sue the United States under the Tucker Act for “just compensation.” In all events, HRC et al. have no claim against NCRA. NCRA expects to take the position that any claim against NCRA in state or federal court by HRC (or other party or parties) arising out of this proceeding is frivolous within the meaning of Fed. Rule Civ. Pro. 11 and Cal. Code Civ. Proc. §128.7, and NCRA reserves the right to seek sanctions (attorneys’ fees and expenses) against the plaintiff and its attorneys.

Conclusion. The various letters from HRC et al. do not raise any claim or objection germane to this proceeding, or concerning which STB may grant relief.

Certificate of Service. By my signature below, I certify service by posting a copy of this letter on the date of e-filing, either by email attachment to applicable email addresses or by USPS, postage pre-paid, first class (or equivalent) addressed to all individuals described as “parties” on the agency’s docket appearing on the agency’s website. See also cc. list below.

Thank you for your assistance in this matter.

Respectfully submitted,

s/ *Charles H. Montange*

Charles Montange
for North Coast Railroad Authority

Of counsel for NCRA (including esp. CA legal issues):

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cc: Stephen F. Johnson, Esq. (attorney for HRC)

all other parties per STB service list (John Anderson, Pete Johnston, Bruce Silvey, Laura Cohen, D. Schonbrunn, J. Kalt, & Beth Burks)