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July 6, 2021

302687

VIA E-FILING

Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

ENTERED
Office of Proceedings
July 6, 2021
Part of
Public Record

Re: North Coast Railroad Authority – Abandonment Exemption – In Mendocino, Trinity, and Humboldt Counties, Cal., AB-1305X.

Dear Ms. Brown:

I am writing on behalf of Mendocino Railway (“MR”) in response to a June 28, 2021 filing (Filing No. 302617) in AB-1305X¹ in which North Coast Railroad Authority (“NCRA”) requested that the Board lift two abeyance orders issued June 9 and 11 for a pending abandonment in Mendocino, Trinity and Humboldt Counties, CA in AB-1305X (“NCRA Request”).² The AB-1305X and the AB-1313 proceedings relate to the abandonment and

¹ In a related proceeding, NCRA is seeking an exemption from certain statutory provisions and waivers of certain regulatory requirements regarding the filing of a third-party, or “adverse,” application for discontinuance. Specifically, NCRA has indicated it plans to terminate the operating rights of Northwestern Pacific Railway Company (“NWP”) over an NCRA rail line extending from milepost 142.5, at Outlet Station, to the end of the line at milepost 302.86, at Fairhaven, on the Samoa Branch, including the Korblex/Korbel Branch and the Carlotta Branch in Mendocino, Trinity, and Humboldt Counties, Cal. See N. Coast R.R. Authority – Adverse Discontinuance Application – Nw. Pac. Ry. Co., AB-1313, at 2, 11 (Filed March 9, 2021). The Board instituted a proceeding on June 7, 2021.

² Concurrently with its Notice of Exemption (Filing ID 302339), which was filed on May 14, 2021 (“Abandonment NOE”), NCRA filed a Statement of Willingness to Enter into a Notice of Interim Trails Use (“NITU”) (See Filing 302344) to railbank the rail line in its own name, despite statement of willingness of intent to file for trails not typically being due until ten days

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discontinuance of rail service on a rail line, which begins generally from just north of Willits, CA (specifically, MP 139.5 at Willits for the abandonment and MP 142.5 at Outlet for the adverse discontinuance application) and continues to the north ending at Korblex/Korbel and Samoa, California as depicted on the maps included as Exhibit A.³

As explained herein, despite NCRA's attempts to rush the Board's review, abeyance is entirely appropriate and necessary because (1) the Board cannot authorize an abandonment notice of exemption or issue a NITU without fully examining and determining the jurisdictional status of the rail line for which abandonment authority is sought;⁴ (2) NCRA appears to be trying to circumvent the OFA process without having sought a waiver and intending to deny interested parties in an opportunity to participate in the proceeding; and (3) it is necessary to understand the jurisdictional metes and bounds of any rail line for which an OFA may be brought, and as it stands now, the record is not clear on what right-of-way would be included in any potential OFA. Until such time as these issues are resolved, MR respectfully requests that the Board deny NCRA's request to lift the abeyance orders.

The Board routinely imposes stays in abandonment proceedings that raise controversial issues or where there is regulatory uncertainty, such as the case here.⁵ Besides the jurisdictional issue noted, there are several outstanding questions regarding the OFA process and its use in this proceeding. For example, NCRA has already filed a NITU (which itself already deviates from the normal process) but also appears to believe the OFA process is not applicable. In the Abandonment NOE, NCRA states that:

section 1152.50 abandonments are generally subject to appropriate offers of financial assistance, [but NCRA] does not believe any appropriate OFA can be made in this proceeding for a variety of reasons. NCRA accordingly reserves the right to seek dismissal of any OFA which its regards as inappropriate.

after the Board publishes the Notice of Exemption and despite NITU agreements being moot if an appropriate offer of financial ("OFA") assistance is filed.

³ Exhibit A are maps of the involved rail line that was included in the petition filed in AB-1313.

⁴ See Norfolk S. Ry. Co. – Abandonment Exemption – In the City of Fort Wayne, Ind., AB-290 (Sub-No. 403X) (STB served Oct. 23, 2019) (explaining that the Board's class exemption procedures provide an expedited means of obtaining Board authority for certain classes of transactions involving routine matters and when a notice raises factual and legal issues that require a more detailed examination a notice is inappropriate).

⁵ See Atlas Land and Building Corp. and Atlas Materials Recycling Corp. — Petition for Declaratory Order — Industry Spry Track In Pittsburgh, PA, FD 36380 (STB served Aug. 17, 2020); See also CSX Trans., Inc., — Abandonment Exemption — In Polk and McMinn Counties, TN, AB-55 (Sub-No. 588X) (STB served Apr. 23, 2002).

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Despite NCRA's opinion and the language above, NCRA did not seek a waiver from the OFA processes and did not elaborate on its "variety of reasons" why an OFA is inappropriate. As such, no waiver of the OFA process should be granted.

NCRA did correctly recognize in its newspaper notice that in abandonment exemption proceedings appropriate OFAs may be filed. Since NCRA filed for abandonment, numerous entities have filed comments expressing concern about the abandonment in AB-1305X.⁶ NCRA replied to those comments on June 28, 2021, and in doing so is taking the petition that the Board must grant a "NITU (authorize interim trail use/railbanking) where a railroad consents to negotiate trails use agreement, which NCRA has done. Thus, issuance of a NITU (authorizing interim trail use/railbanking) is mandatory here." This, however, is simply not true: NITUS are not mandatory in all situations.

Board precedence is clear: OFAs take precedence over trail use. If an OFA is [timely] filed, trail use negotiations will have to await the completion of the OFA process. See CSX Corp. and CSX Transp., Inc., Norfolk S. Corp. and Norfolk S. Ry. Co. – Control and Operating Leases/ Agreements – Conrail Inc. and Consolidated Rail Corp., 3 S.T.B. 196, slip op. at 265 (STB served July 23, 1998). See also Consol. Rail Corp. – Abandonment Exemption – In Bergen and Passaic Counties, NJ, 1996 S.T.B. Lexis 192, at *8 (STB served June 7, 1996). If an OFA results in the continuation of rail service, the trail use condition will have no effect.

Upon resolution of the Board's concerns and publication of the notice, MR anticipates bringing an OFA for all or a portion of the rail line proposed for abandonment in AB-1305X. To do so, clarity of the rail line's regulatory status is necessary, and it is imperative that the line remain intact. The Board has broad discretion in determining whether to hold a proceeding in abeyance and they always consider "whether abeyance would promote efficiency and whether it would be fundamentally unfair to any party." Norfolk S. Ry. Co. – Petition to Set Trackage Rights Compensation – Norfolk & Portsmouth Belt Line R.R. Co., FD 36223 (STB served Dec. 18, 2019) (quoting N. Am. Freight Car Ass'n v. Union Pac. R.R., NOR 42144 et al., slip op. at 3 (STB served Mar. 31, 2017)). Here, abeyance is not fundamentally unfair to any party. While the NCRA Request indicates that Humboldt County and the City of Eureka are concerned about rising costs and that the City of Eureka wishes to solicit bids for certain projects that are contingent on railbanking, if an OFA is brought for all or a portion of the rail line there, will be no trails, and both public entities could avoid any costs at all. For this reason, keeping the abeyance in place is not unfair to Humboldt County and the City of Eureka. On the contrary, allowing work on the new Humboldt Bay Trail South to proceed prematurely could prohibit continued rail operations, frustrate the purposes of an OFA, and/or sever the right-of-way that is

⁶ The Transportation Solutions Defense and Education Fund expressed concerns about NCRA's authority as a public entity to railbank the rail line in AB-1313 and or take actions resulting in ceasing rail operations. Additionally, Humboldt and Mendocino Redwood Companies have expressed concerns about the impact of trails on the operation of its industrial sites and the nature of the real estate interests held by NCRA. Certain entities also filed in support of trails.

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currently intact. Such actions could completely foreclose continued rail service to the detriment of MR and potential shippers located along the rail line.

Consistent with Board precedent, continued rail operations must be given preferential treatment over establishing trails. Resolving the issues necessitating the abeyance will reduce the number of disputes between parties and conserve the Board's limited resources. As such, MR respectfully requests that the Board deny NCRA's request to lift the abeyance orders. If you have any questions, please contact me by phone at (202) 663-7823, or by email at WMullins@bakerandmiller.com.

Sincerely,

/s/ William A. Mullins

William A. Mullins

cc: Parties of Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

AB-1305X

**NORTH COAST RAILROAD AUTHORITY – ABANDONMENT EXEMPTION – IN
MENDOCINO, TRINITY AND HUMBOLDT COUNTIES, CAL.**

Exhibit A – Maps

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

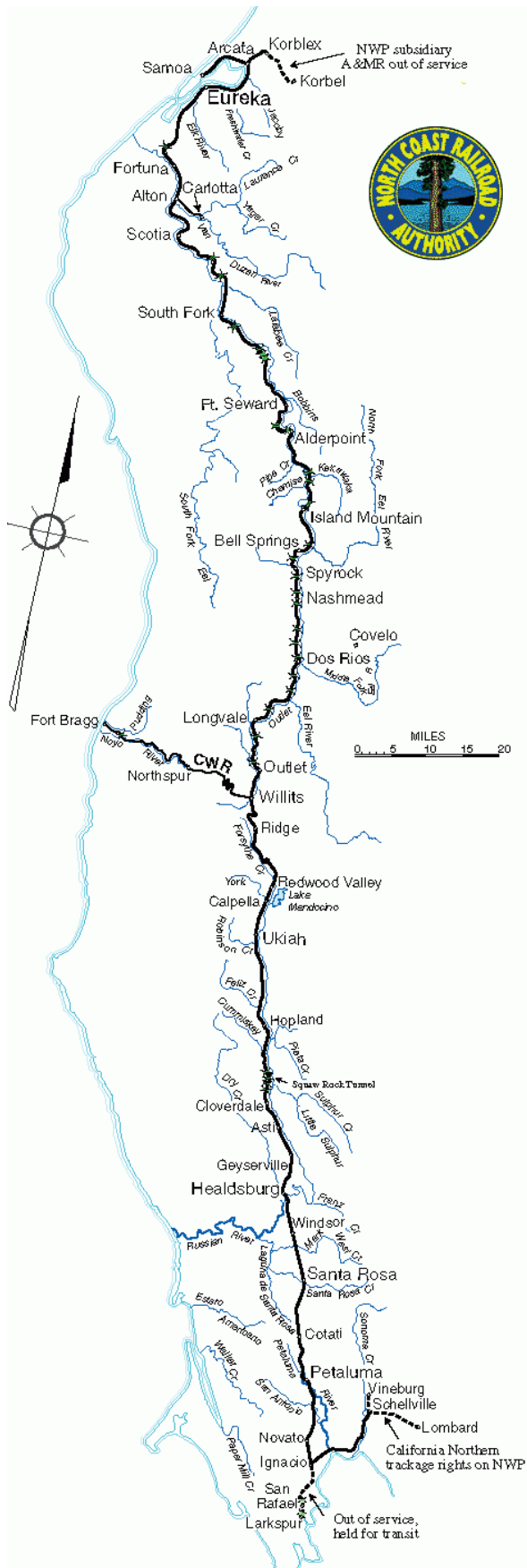
Petaluma = MP 38.5

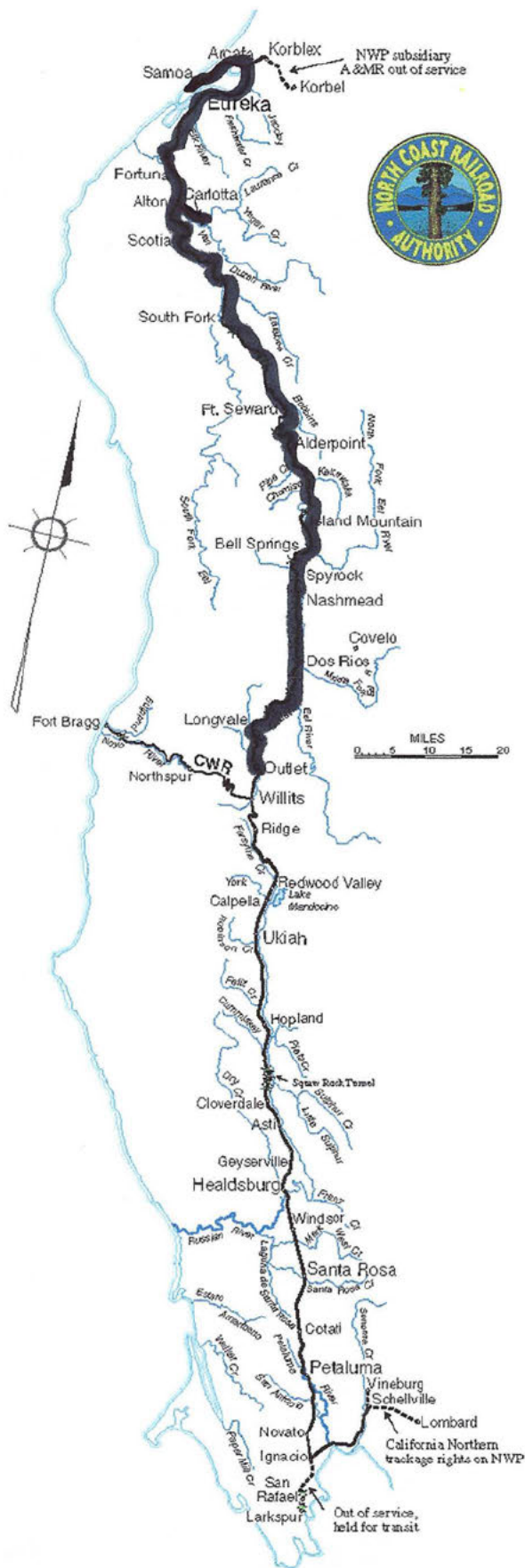
Novato = MP 30

Ignacio = MP 25.6

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

[Mileposts approximate]





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)