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July 13, 2021
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July 13, 2021

VIA E-FILING

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW
Washington, DC 20024

Re: Northwestern Pacific Railroad Company
STB Docket No. AB 1310 (Sub No. 1X)
-Discontinuance of Service Exemption-
In Mendocino, CA

Dear Ms. Brown:

Enclosed for filing in the above referenced docket is a Notice of Exemption for the Northwestern Pacific Railroad Company ("NWPCO") to discontinue a line of railroad. The filing fee has been paid via pay.gov.

This Notice of Exemption discontinues the entirety of NWPCO's common carrier operations and therefore the labor protections of *Oregon Short Line Railroad Co.-- Abandonment -- Goshen*, 360 I.C.C. 91 (1979) are not applicable.

If there are any questions related to this filing, please contact me.

Sincerely,



Justin J. Marks
Counsel to Northwestern Pacific
Railroad Company

JJM:

FEE RECEIVED
July 13, 2021
SURFACE
TRANSPORTATION BOARD

FILED
July 13, 2021
SURFACE
TRANSPORTATION BOARD

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. AB-1310 (Sub No. 1X)

**NORTHWESTERN PACIFIC RAILROAD COMPANY
- DISCONTINUANCE OF SERVICE EXEMPTION -
IN MENDOCINO COUNTY, CA**

NOTICE OF EXEMPTION

(color images included)

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*Counsel for Northwestern Pacific Railroad
Company*

Dated: July 13, 2021

Before the

SURFACE TRANSPORTATION BOARD

STB Docket No. AB-1310 (Sub No. 1X)

**NORTHWESTERN PACIFIC RAILROAD COMPANY
- DISCONTINUANCE OF SERVICE EXEMPTION -
IN MENDOCINO COUNTY, CA**

NOTICE OF EXEMPTION DISCONTINUANCE

Northwestern Pacific Railroad Company (“NWPCO”), a Class III railroad common carrier, hereby invokes the Board’s class exemption procedures at 49 C.F.R. part 1152 subpart F seeking exemption authority to discontinue its freight operating rights over a 53.5-mile rail line extending between approximately NWP milepost 142.5 near Outlet Station and approximately milepost NWP 89 near the Sonoma-Mendocino County Border in Mendocino County, CA. (the “Subject Line”).

NWPCO holds common carrier authority to operate over the Subject Line pursuant to a Lease with the North Coast Railroad Authority (“NCRA”), a California governmental entity.¹ NCRA owns the Subject Line and holds the residual common carrier obligation.² NCRA has filed with the Board to abandon a segment of rail line that encompasses the Subject Line.³

¹ *Northwestern Pacific Railroad Company—Change in Operators Exemption—North Coast Railroad Authority, Sonoma-Marin Area Rail Transit District and Northwestern Pacific Railway Co., LLC*, Finance Docket No. 35073 (STB served Aug. 30, 2017).

² *North Coast Railroad Authority – Purchase Exemption – Southern Pac. Transp. Co.*, STB Finance Docket No. 32788 (served Mar. 20, 1996).

³ NCRA is currently seeking abandonment authority over three miles of the Subject Line (from milepost 139.5 to 142.5) in STB Docket No. AB 1305X as part of NCRA’s total abandonment of 175.84 miles of rail line in Mendocino, Trinity, and Humboldt Counties, CA. In a decision served June 9, 2021, the Board placed the NCRA proceeding in abeyance. *North Coast Railroad Authority – Abandonment Exemption – In Mendocino, Trinity, and Humboldt Counties, CAL.*

NWPCO has never offered service on the Subject Line because it has been under Federal Railroad Administration Emergency (“FRA”) Order 21 (“EO 21”) prohibiting railroad operations since 1998.

This Notice of Exempt Discontinuance is being filed pursuant to the requirements of 49 C.F.R. part 1152 subpart F. In accordance with such requirements, Applicant hereby states as follows:

1. The exact name of Applicant is Northwestern Pacific Railroad Company.
2. Applicant is a common carrier by railroad subject to 49 U.S.C. Subtitle IV, chapter 105.⁴
3. NWPCo is invoking the Board’s class exemption procedures in order to discontinue service over the Subject Line that it has never used for freight service and has been under FRA Order 21 prohibiting operations since 1998 - before NWPCo obtained common carrier authority over the Subject Line. The Subject Line extends between approximately NWP milepost 142.5 near Outlet Station to approximately milepost NWP 89 near the Sonoma-Mendocino County Border. The Subject Line passes through Mendocino County, CA.
4. A map of the Subject Line is attached hereto as Exhibit A.
5. The representative of NWPCo to whom correspondence should be sent is:

STB Docket No. AB 1305X (served June 9, 2021).

⁴ *Northwestern Pacific Railroad Company—Change in Operators Exemption—North Coast Railroad Authority, Sonoma-Marin Area Rail Transit District and Northwestern Pacific Railway Co., LLC*, Finance Docket No. 35073 (STB served Aug. 30, 2017).

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6. The Subject Line to be discontinued traverses through United States ZIP Codes 95490, 95470, 95482, 95449, and 95425.

7. The notice of exemption presented herein pertains to NWPCo's proposal to discontinue common carrier freight operations over the Subject Line and not abandonment authority. Accordingly, trail use / rail banking and other public use conditions are not appropriate.⁵

8. Applicant proposes to consummate the discontinuance on or after the effective date of the Board's decision.

9. NWPCo certifies that:

(a) It has not handled local traffic over the Subject Line in at least two years.

In addition, because the Subject Line is under FRA Emergency Order 21, NWPCo has not handled any overhead traffic over the Subject Line, and there is no potential overhead traffic that would need to be transported via other rail routes.

(b) No formal complaint by a user of rail service on the Subject Line, or a state or local government entity acting on behalf of such user, regarding NWPCO's cessation of service over the Subject Line, either is pending with the Board or any U.S. District Court or has been

⁵ See *Norfolk Southern Railway Company – Discontinuance of Service Exemption – In St. Joseph and LaPorte Counties, IN*, STB Docket No. AB-290 (Sub-No. 307X) (served June 18, 2008); *Everett Railroad Company – Discontinuance of Service Exemption – In Blair County, PA*, STB Docket No. AB-721X (served November 16, 2007); *Columbus and Greenville Railway Company – Discontinuance of Service Exemption – In Greenwood, MS*, STB Docket No. AB-297 (Sub-No. 103X) (served July 2, 2007).

decided in favor of the complainant within the two-year period.

10. The standard employee protective conditions as set forth in *Oregon Short Line Railroad Co.-- Abandonment -- Goshen*, 360 I.C.C. 91 (1979) are not applicable because the Subject Line comprises the entirety of NWPCo's remaining common carrier operating authority⁶ and therefore the Board's entire system exception applies to this discontinuance. It is Board policy not to impose labor protection conditions involving entire-system discontinuances involving lines not owned by the discontinuing carrier, unless evidence indicates the existence of: (1) a corporate affiliate that will continue substantially similar rail operations; or (2) a corporate parent that will realize substantial financial benefits. *See Mo. & Valley Park R.R. – Discontinuance of Service Exemption – in St. Louis County, Mo.*, AB 1057X, slip op. at 1-2 (served June 15, 2010). Here, NWPCo does not own the Subject Line; it is owned by NCRA. The Subject Line is the last segment of line on which NWPCo has Board authority to operate as a common carrier. NWPCo does not have a corporate affiliate that has similar rail operations, and there is no corporate parent that will benefit from the proposed discontinuance. Therefore, the entire-system discontinuance exception to employee protective conditions is applicable.

11. Because NWPCo seeks only discontinuance and not abandonment authority (and because the Subject Line is owned by NCRA and not by NWPCo), NWPCo will not be disposing of or altering the Subject Line or any structures that are 50 years old or older. An environmental and historic report is not required for a discontinuance proceeding.⁷

⁶ NWPCo previously discontinued its operations over the connecting line between milepost NWP 89 and milepost SP 63.4. *Northwestern Pacific Railroad Co., - Discontinuance of Service Exemption In Marin, NAPA, and Sonoma Counties, CAL.*, STB Docket No. AB 1310X (served June 11, 2021).

⁷ *See supra* note 6 and 49 C.F.R. §1105.6(c) and §1105.8(b).

12. NWPCo certifies that it has complied with the legal (newspaper) notice requirements of 49 C.F.R. §1105.12. Notice of the proposed discontinuance was published on June 27, 2021 in the *Santa Rosa Press Democrat*. A copy of the proof of publication is attached as Exhibit B.

13. NWPCo has complied with the advance notice requirements of 49 C.F.R. §1152.50(d)(1). A copy of the notice dated June 24, 2021, sent to the required governmental agencies is attached hereto as Exhibit C.

For the reasons set forth above, the Board should determine that the proposed discontinuance of service qualifies for the use of the Board's class exemption procedures at 49 C.F.R. part 1152 subpart F, and it should issue the appropriate notice.

Respectfully submitted,



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Two Commerce Square
2001 Market St.
Suite 2620
Philadelphia, PA 19103
(215) 640-8523
ehocky@clarkhill.com

Dated: July 13, 2021

*Counsel for Northwestern Pacific Railroad
Company*

VERIFICATION

I hereby verify on behalf of Northwestern Pacific Railroad Company, under penalty of perjury, that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verification.

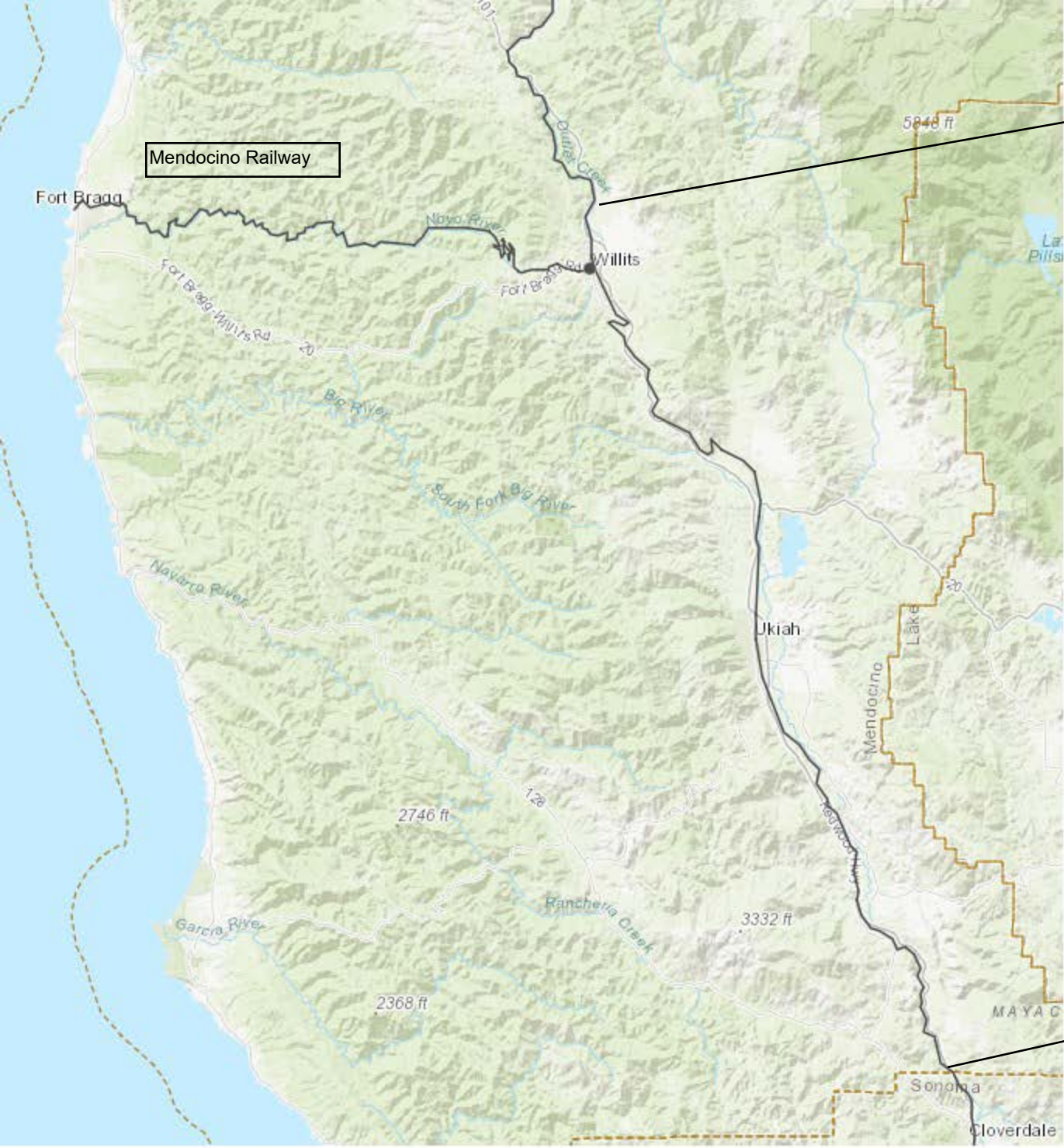
Executed on July 12, 2021



Douglas Bosco, President

EXHIBIT A

MAP



Mendocino Railway

Approximately
NWP Milepost
142.5

Approximately
NWP Milepost 89

EXHIBIT B

NEWSPAPER NOTICE

PROOF OF PUBLICATION

(2015.5 C.C.P.)

STATE OF CALIFORNIA

County of Sonoma

I am a citizen of the United States and a resident of the county aforesaid: I am over the age of eighteen years, and not a party to or interested in the above entitled matter. I am the principal clerk of the printer of The Press Democrat, a newspaper of general circulation, printed and published DAILY IN THE City of Santa Rosa, County of Sonoma; and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of Sonoma, State of California, under the date of November 29, 1951, Case number 34831, that the notice, of which the annexed is a printed copy (set in type not smaller than nonpareil), has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates to wit:

The Press Democrat - Legal Notices

6/27 - 6/27/2021

I certify (or declare) under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Dated at Santa Rosa, California, on

Jun 28, 2021



SIGNATURE

This space for County clerk's Filing Stamp

Proof of Publication of

NOTICE OF INTENT TO DISCONTINUE RAIL SERVICE

Northwestern Pacific Railroad Company (NWPCO) issues this notice that on or about July 5, 2021, it intends to file with the Surface Transportation Board (STB), Washington, DC 20423, a notice of exemption pursuant to the provisions of 49 CFR Part 1152 Subpart F - *Exempt Abandonments and Discontinuances of Service and Trackage Rights* permitting NWPCO to discontinue service over approximately 53.5 miles of the line of railroad between approximately NWP milepost 142.5 near Outlet Station to approximately NWP milepost 89 near the Sonoma-Mendocino County Border (the Line). The Line traverses through United States ZIP Codes 95490, 95470, 95482, 95449, and 95425. The NWPCO proceeding will be docketed as STB Docket No. AB-1310 (Sub No. 1X).

Because the proposed action entails the discontinuance of service over the Line, rather than abandonment, no environmental or historic documentation is required under 49 CFR 1105.6 and 1105.8. Appropriate offers of financial assistance to subsidize rail service can be filed with the STB. Trail use / rail banking and public use condition requests are not appropriate in discontinuance proceedings.

An original and 10 copies of any pleading that raises matters other than environmental issues (such as offers of financial assistance to subsidize rail service) must be filed directly with the STB's Section of Administration, Office of Proceedings either via e-filing or addressed to 395 E Street, S.W., Washington, DC 20423-0001 [see 49 CFR 1104.1(a) and 1104.3(a)], and one copy must be served on applicant's representative [see 49 CFR 1104.12(a)]. Questions regarding offers of financial assistance may be directed to the STB's Office of Public Assistance, Governmental Affairs and Compliance at 202-245-0238. Copies of any comments or requests for conditions should be served on IORY's representative: Justin J. Marks, Clark Hill PLC, 1001 Pennsylvania Ave. N.W. Suite 1300 South, Washington, DC 20004; 202-772-0916.

92770 - Pub June 27, 2021

1 ti.

EXHIBIT C

10 DAY NOTICES

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Clark Hill
1001 Pennsylvania Avenue N.W.
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Washington, DC 20004
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June 24, 2021

All Persons on the Attached Service List

Re: Northwestern Pacific Railroad Company
STB Docket No. AB 1310 (Sub No. 1X)
-Discontinuance of Service Exemption-
In Mendocino, CA

To Whom it May Concern:

This letter is being sent to you pursuant to the requirements of 49 C.F.R. § 1152.50(d), to advise you that Northwestern Pacific Railroad Company ("NWPCO") intends to seek authorization from the Surface Transportation Board ("STB") to discontinue rail service over the line of railroad described below, by filing a verified notice of exemption pursuant to the provisions of 49 C.F.R. Part 1152 Subpart F. NWPCO expects to file the notice of exemption with the STB on or about July 5, 2021, under STB Docket No. AB 1310 (Sub No. 1X).

NWPCO will invoke the STB's exemption procedures to discontinue service of the line of railroad between approximately NWP milepost 142.5 near Outlet Station to approximately NWP milepost 89 near the Sonoma-Mendocino County Border. A distance of approximately 53.5 miles (the "Subject Line"). A map of the Subject Line is attached.

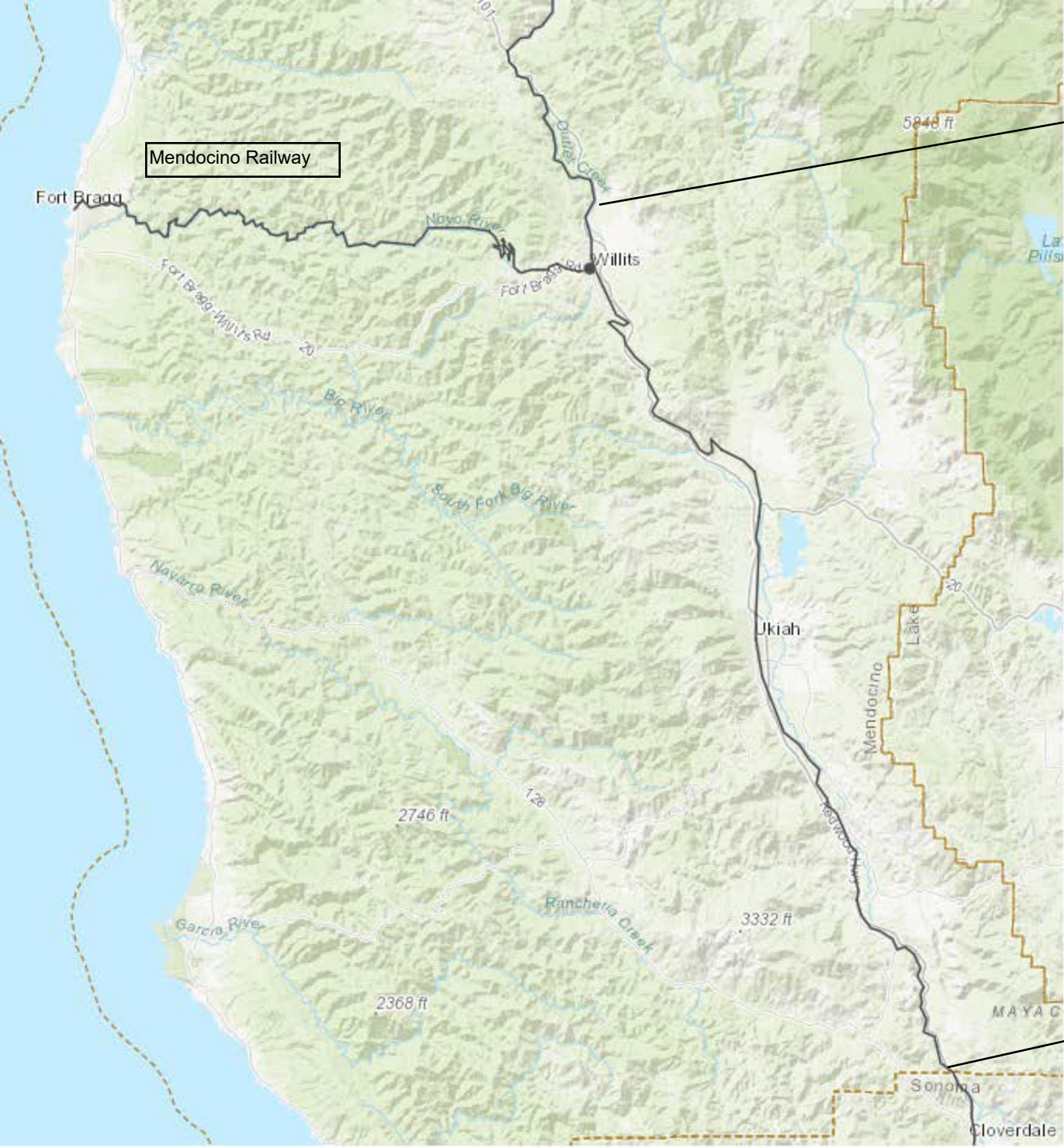
Because this proceeding would involve the discontinuance of common carrier service and not abandonment of the Subject Line, NWPCo understands that the question of whether the Subject Line contains federally granted rights-of-way is inapplicable. Any pertinent documentation in the railroads' possession will be made available promptly to those requesting it.

NWPCo has no current plans to salvage the track along the Subject Line as a result of the discontinuance.

Sincerely,



Justin J. Marks
Counsel to Northwestern Pacific Railroad
Company



Mendocino Railway

Approximately
NWP Milepost
142.5

Approximately
NWP Milepost 89

U.S. Department of the Interior -
National Park Service
RTCA Program
1849 C Street, NW
Washington, DC 20240

Office of Chief of Forest Service
U.S. Department of Agriculture
1400 Independence Ave., SW
Washington, DC 20250-1111

United States Department of the Army
Military Surface Deployment and Distribution
Command
Transportation Engineering Agency
ATTN: SDTE-SA (Railroads for National
Defense)
1 Soldier Way, Building 1900W
Scott AFB, IL 62225

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing Notice for Exempt Discontinuance was served on the persons shown on the attached list by email and/or first-class mail, postage prepaid.

U.S. Department of the Interior -
National Park Service
RTCA Program
1849 C Street, NW
Washington, DC 20240

United States Department of the Army
Military Surface Deployment and Distribution
Command
Transportation Engineering Agency
ATTN: SDTE-SA (Railroads for National
Defense)
1 Soldier Way, Building 1900W
Scott AFB, IL 62225

Office of Chief of Forest Service
U.S. Department of Agriculture
1400 Independence Ave., SW
Washington, DC 20250-1111

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102



Justin J. Marks

Dated: July 13, 2021