

CHARLES H. MONTANGE
ATTORNEY AT LAW
426 NW 162ND STREET
SEATTLE, WASHINGTON 98177
(206) 546-1936
FAX: (206) 546-3739

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26 July 2021

For E-Filing

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 Mendocino, Trinity and Humboldt Counties,
CA, AB 1305X

Motion for Exemption from OFA Provisions

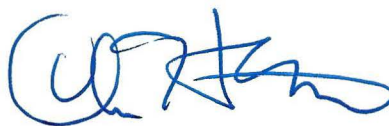
Dear Ms. Brown:

On behalf of North Coast Railroad Authority (“NCRA”), I am filing herewith a motion for an exemption from Offer of Financial Assistance (“OFA”) provisions in the above-referenced proceeding. The proceeding involves a line subject to an FRA embargo since 1998. This motion is precipitated (a) by delays already encountered in the proceeding relating to agency jurisdiction over the Annie and Mary at the north end of NCRA’s line and (b) a Letter dated July 6 from counsel for Mendocino Railway that was filed in this proceeding threatening OFA. For the reasons expressed in the motion attached, an OFA in this proceeding is not credible, violates rail policy, is contrary to precedent, and an exemption must be granted to avert further delay.

The certificate of service is located on the signature page of the motion.

Thank you for your assistance in this matter.

Respectfully submitted,



Charles Montange
for North Coast Rail Authority

Att: Motion for Exemption)

cc (all with attachment): Mitch Stogner (NCRA) (by email)

Elizabeth Coleman, Esq. (for NCRA) (by email)

All parties per certificate of service on p. 21 of motion

BEFORE THE SURFACE TRANSPORTATION BOARD

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

Motion for Exemption from Offer of Financial Assistance
Provisions of 49 U.S.C. 10904 and 49 C.F.R. 1152.27

North Coast Railroad Authority (“NCRA”), a public agency of the State of California, hereby moves for an exemption from Offer of Financial Assistance (“OFA”) provisions of 49 USC 10904 and related regulations in the above captioned proceeding.

Background

This proceeding involves the northern end of NCRA’s line from Willits (MP 139.5) to Samoa (MP 300.5), Korblex/Korbel (MP 295.57/301.8) and the end of the Carlotta Branch at MP 267.72). The line and branches for which abandonment authorization is sought encompass about 175.8 miles. See Map Exhibit A. There has been no rail traffic on this line since the Federal Rail Administration (FRA) imposed an emergency embargo in 1998. There is no overhead traffic. Since 1998, NCRA has managed to restore service from Napa Junction (interconnection

with the interstate rail network) to Windsor, a distance of 62 miles, on a portion of trackage now owned by the Sonoma-Marín Area Rail Transit District (SMART).

Ordinarily, an applicant for abandonment under 49 C.F.R. 1152.50 (two-year out-of-service class exemption) does not seek an exemption from OFA because that causes delays and long out-of-service lines are generally neither needed for freight nor located in areas where they are suitable for light rail.

However, the Board is holding this proceeding in abeyance to determine whether STB has jurisdiction over the Annie & Mary Branch (Korblex to Korbel) at the extreme north end of NCRA's line. At the request of Humboldt County and City of Eureka, NCRA recently requested that the abeyance be lifted. Mendocino Railway responded in opposition stating that it intended to file an OFA for the line at issue from Willits north.¹

Mendocino Railway d/b/a Skunk Railroad owns a rail line from Fort Bragg to Willits. Skunk provides seasonal excursion rail trains out of Willits on a two hour out and back trip to a redwood destination (Crowley), and also an 8 mile out and back from Fort Bragg. It also rents railbikes. It cannot operate through trains of any sort due to a tunnel collapse and inability to repair due to financial constraints.

¹ Letter, W. Mullins (for Mendocino Railway) to C. Brown (STB), July 6, 2021, filed in AB 1305X.

The major rail user in Fort Bragg historically was a Georgia-Pacific lumber mill (said to have been the second largest in the country). It closed in 2002,² about the time Mendocino Railway's predecessor (California Western) went bankrupt. Although Mendocino Railway obtained California Western's freight rail license, it is not clear Mendocino Railway has ever operated freight. Its rail business so far is Skunk's railbike and excursion operations.

In making its opposition, Mendocino Railway stated that NCRA has not made a motion for an exemption from OFA. Since this proceeding is sustaining delay over the Annie and Mary issue, and since Mendocino now threatens even more delay with a frivolous OFA, NCRA hereby moves for an exemption pursuant to 49 U.S.C. 10502(d) from the OFA provisions of 49 U.S.C. 10904. NCRA is clearly entitled to an exemption for the reasons stated below.

I. Law

49 U.S.C. 10502(a) authorizes this Board to grant an exemption from any part of the Board's rail abandonment licensing requirements if application of that provision:

“(1) is not necessary to carry out the transportation policy of [49 U.S.C.] 10101 ...; and

² <https://www.healthymendocino.org/resource/library/index/view?id=123931326432134048>

“(2) either –

(A) the transaction or service is of limited scope; or

(B) the application in whole or in part of the provision is not needed to protect shippers from the abuse of market power.”

This Board has also indicated elsewhere that for an exemption from the OFA process in an abandonment proceeding, there should be a compelling need to use the property for a valid public purpose and no overriding public need for continued rail service. See, e.g., Norfolk and Western Railway Co. – Ab. Exemption – in Cincinnati, AB 290 (Sub-no. 184X), served May 13, 1998, slip at 11.

But the Board has also indicated that an OFA must be for actual rail service rather than a pretense or, at best, wishful thinking. “The OFA process is designed for the purpose of continuing to provide freight rail service and is not to be used to obstruct other legitimate processes of law (whether Federal, state, or local) when continuation of such service is not likely.” Roaring Fork Railroad Holding Authority – Abandonment Exemption – in Garfield, et al. Counties, CO. (“Roaring Fork”), AB 547X, served May 21, 1999, slip op. at p. 4, aff’d Kulmer v. STB, 2356 F.3d 1265 (10th Cir. 2001). “Where ... the line is not currently active, there must be some assurance that shippers are likely to make use of the line if continued service is made available, and that there is sufficient traffic to enable the operator to fulfill its commitment to provide that service.” Roaring Fork, slip at 4.

II. Summary

Under the law as stated above, this proceeding should be exempted from OFA. It is of limited scope and unneeded to protect shippers from abuse of market power. Indeed, there have been no active shippers for 23 years, for the line has been embargoed since 1998. The line runs through the Eel Canyon, an area prone to regular wash-outs and slides. The cost to rehabilitate the line to the point of interconnection with the national rail system exceeds \$2.35 billion. No government agency desires the portion of the line in question in this proceeding for passenger use. Any claim that there are freight shippers sufficient to prompt any state or federal agency to pay for restoration with taxpayer funds is chimerical; California's Transportation Commission recently so affirmed. Given the lack of traffic, the extraordinary cost of rehabilitation, the history of high maintenance costs and unreliability due to wash-outs, slides, tunnel fires, and so on, any plan to rely on private capital is even more chimerical. There is no assurance of any shippers at the costs this line would necessarily impose, and historically the line has not generated sufficient traffic since the 1970's to enable its operator to fulfill its commitment to provide service.

III. Argument

A. An Exemption Is Consistent with Transportation Policy

For the reasons and pursuant to the applicable statutes stated herein, exempting this proceeding from OFA provisions is fully consistent with federal transportation policy.

49 U.S.C. 10101(2) (fair and expeditious regulatory decisions). The rehabilitation costs for the NCRA line north of Willits literally overwhelm any possibility of rail service.³ Even if the line were rehabilitated, it would continue to experience wash outs and slides rendering it unreliable and uneconomic.⁴ An OFA exemption will facilitate a fair and expeditious regulatory decision by eliminating frivolous OFA's.

49 U.S.C. 10101(3) (allowing carriers to earn adequate revenues). For the reasons stated in the discussion of section 10101(2), no carrier can earn adequate revenues on this line because of its high rehabilitation and future maintenance costs, and lack of shippers. All carriers have lost money, gone bankrupt, or sought bail-outs from the State of California since Southern Pacific sold the line in question to Eureka Southern.

³ See D. Anderson V.S., Exhibit B, at pp. 3-4 (rehabilitation of Willits north will cost at least \$1.7 billion; entire line to point of interconnection with the national rail system at Napa Junction will cost at least \$2.35 billion).

⁴ Compare M. Stogner V.S., Exhibit A, p. 1 ("maintenance catastrophe" leading to unreliability problems) & p.4 (line uncompetitive) with D. Anderson V.S., Exhibit B, para 4. The problems with the line are also discussed in Exhibit N (narrative history) to the combined environmental and historic report (ER/HR) in this proceeding.

49 U.S.C. 10101(5) (foster sound economic conditions). Purporting to maintain a line in service without sufficient shippers to pay the costs of the line places a burden on interstate commerce.

49 U.S.C. 10101 (7) (reduce regulatory barriers to exit). Inhibition of frivolous OFA's would be consistent with reducing regulatory barriers to exit.

49 U.S.C. 10101 (8) (encourage fair and efficient management). Same as above.

49 U.S.C. 10101(15) (expeditious handling and resolution of proceedings). Same as above.

B. The Exemption Is of Limited Scope
and an OFA Is Unneeded to Protect Shippers

The exemption sought is of limited scope and the OFA process is unneeded to protect shippers from the abuse of market power. The exemption is limited to a single abandonment proceeding involving a line embargoed by FRA some 23 years ago.

The OFA remedy is unnecessary to protect shippers; the line has been embargoed since 1998, so there are no shippers and have not been any since 1998.⁵

⁵ To the extent Mendocino Railroad (in the absence of shippers) is seeking to protect a possible connection (to the interstate rail network) of its unusable line from Fort Bragg to Willits, it is also pointless because the national rail system connection is south of Willits, not north. Mendocino has no shippers, real or imagined, who "need" service from Willits north. See Stogner Verified Statement, Exhibit B, pp. 5-6.

All potential shippers are obviously relying on trucks or ships. Given the extraordinary cost to rehabilitate and then to maintain this line,⁶ shippers would inevitably continue to use trucks or ships, rendering renewed rail service a pipe dream. Shippers are quickly no longer shippers once they discover they would have to pay not only ordinary tariffs sufficient to pay for operating and maintenance costs, but also a minimum of \$2.35 billion to rehabilitate the line so it can provide any freight rail service at all, plus, on top of that, being on the hook for regular outlays to handle the wash-outs and soil movement that perpetually characterize this line.

The estimated minimum rehabilitation cost for the Willits to Samoa segment of NCRA's line is roughly \$1.7 billion (around \$10,000,000 per mile).⁷ But there are no shippers in Mendocino, Trinity or Humboldt Counties whose business would come close to covering those costs, let alone operating and maintenance costs. Certainly, there are no shippers between Fort Bragg and Samoa/Eureka that are demanding service between those points, or between Samoa/Eureka and Willits.⁸ Given the absence of shippers, let alone sufficient shippers, the rehabilitation is

⁶ See D. Anderson Verified Statement, Exhibit A, pp. 3-4 (minimum rehabilitation \$2,352,200,000 for Napa Junction to Samoa for freight, with \$1,700,000,000 of that amount for Willits to Samoa).

⁷ See D. Anderson Verified Statement, Exhibit A, at p. 5.

⁸ M. Stogner Verified Statement at p. 6.

simply not something that capital markets would support, no matter how enthusiastic the rail buff community for a line down the Eel Canyon.

Notwithstanding the staggering cost of rehabilitating Willits to Samoa alone, the cost of greater relevance is to point of interconnection with the national freight rail system. That point is Napa Junction. The total cost for rehabilitation of all portions of the line (all roughly 270 miles) to the point of interconnection with the national rail network is approximately \$2.35 billion.⁹

Even if the line were rehabilitated, it regularly experiences flood events, and passes through areas with landslides and moving earth that impose high annual maintenance costs regardless of the level of rehabilitation previously provided. Worse, the chronic geotechnical shortcomings of the line render it unreliable to shippers; it simply gets wiped out often and requires too long to fix. See Stogner Verified Statement at 4; Exhibit N at pp. 19-31 to the ER/HR filed in this proceeding; see also Exhibit P to the ER/HR (major slides). Shippers prefer the reliability of trucks. Southern Pacific, then Eureka Southern (which went bankrupt), and then the State of California through NCRA have all found the line too expensive to operate (let alone rehabilitate) in the face of Mother Nature, non-existent rail traffic and the ready and reliable availability of trucks.

⁹ D. Anderson V.S. at p. 4.

The line at issue in this proceeding is all north of Willits. There has never been any demand for service from Fort Bragg to Eureka/Samoa, or from Samoa/Eureka to Fort Bragg. The line was originally constructed to transport timber and timber products from Eureka to the San Francisco Bay Area.¹⁰ It was not constructed to pull freight from Fort Bragg to Eureka, or Eureka to Fort Bragg.

In sum, there is no foreseeable combination of shippers or traffic in the line's service area sufficient to justify rehabilitation and operation of the line, at least north of Willits.¹¹ There is no combination of shippers in the service area of this line and no combination of traffic that can justify a multi-billion-dollar rehabilitation coupled with the high maintenance and unreliability of service that plague the line, regardless of owner. Alternative modes of transportation are cheaper, available, and more reliable.¹²

C. Alternative Public Purposes

The State of California, after decades of committing its own funds and seeking federal money for the myriad and recurring rehabilitation needs of the NCRA line, has determined that it is time to put the corridor to a better public use.

According to the Chief Financial Officer of the California Transportation Commission (Memorandum, S. Keck to CTC, for meeting Dec. 2-3, 2020, at p. 2,

¹⁰ Id.

¹¹ See Verified Statement of M. Stogner, Exhibit B, at pp. 5-6.

¹² See id. at 1, et seq.

attached as Exhibit D), a total of \$124 million in state and federal subsidies were invested in the NCRA corridor to restore freight rail service between 1990 and 2011.

“These funds were used to purchase the entire right-o-way from Lombard to Humboldt Bay; to rehabilitate 62 miles of track (including 56 crossing signals, 50,000 crossties, and 50,000 tons of ballast; emergency levee repairs in Schellville and Humboldt Bay; repair 43 rail bridges and three movable bridges, install quiet zones at Novato; to briefly cover NCRA agency funds and outstanding debt; to settle litigation, and to address environmental contamination left behind by the historic private rail operators. However, the economic, environmental and social challenges NCRA faced proved insurmountable for the resumption of freight rail service in this corridor, which has led to the current effort and assessment for use of NCRA’s right-of-way as a multi-use path.”

Senate Bill 1029 (2018) amended NCRA’s organic statute in essence by directing that the line south of the Mendocino/Sonoma County line be transferred to SMART (a commuter rail entity with a tax base), which hopefully will be able to raise sufficient funds to restore the line to Cloverdale for passenger use and thus

permit ancillary freight rail service.¹³ In recognition of the different posture of the northern portion of the line, SB 1029 provided for, inter alia, an assessment of “railbanking” and trail use.¹⁴

The California Transportation Commission (CTC), insofar as is relevant here, determines State transportation policy for the State of California. At its December 2-3 meeting, the CTC adopted a resolution calling for NCRA “to railbank the rail corridor from Willits to Korblex/Samoa near Humboldt Bay.” (A copy of the minutes reflecting this action is attached to Mr. Stogner’s Verified Statement.) CTC, in accordance with legislative mandates, has thus determined California’s public purpose for the corridor north of Willits to be preservation as a multi-use trail.¹⁵ This approach will preserve the corridor for possible future rail use, and foster the preservation of the environmentally sensitive Eel River Canyon, while promoting outdoor recreational values. California has determined alternative use as indicated above to be compelling compared to the current use, and it would not be appropriate for this Board in the circumstances here to claim that the alternative public use preferred by the State is anything less than compelling.

¹³ NCRA has accordingly transferred its lines and obligations south of the Mendocino/Sonoma County line to SMART. See Sonoma-Marin Area Rail Transit District – Acq. and Op. Exemption – North Coast Railroad Authority, F.D. 36481, served Feb. 18, 2021.

¹⁴ Cal. Gov. Code 12978.9(a)(4) as amended by SB 1029.

¹⁵ M. Stogner V.S. at pp. 4-5.

D. No Public Need for Continued Rail Service

As previously indicated, the line has been under an FRA embargo for 23 years and during this period the only thing that has become clear is that the rehabilitation and recurring maintenance costs for inevitable and recurring wash-outs and soil movement is so prohibitive as to price the line out of the market. There cannot possibly be a freight need for it because it costs too much.

Mendocino Railway currently does business as Skunk Railroad, which offers limited excursion rail services. Skunk up to the present time has evinced interest in expanding its excursion operations south out of Willits, but has disavowed interest in excursions or any other service north.¹⁶ It views Willits north as uneconomic.¹⁷ In any event, excursion rail interest is not sufficient to justify an OFA. And there is evidently insufficient excursion traffic out of Willits to Fort Bragg to allow Skunk to fix its own line, let alone hope to fix the line from Willits to Eureka.¹⁸

E. Minimum Cost Estimates Underscore the Frivolity of an OFA Process Here

For lines not currently active, “there must be some assurance” both “that shippers are likely to use the line if continued service is made available,” and that “there is sufficient traffic to enable the operator to fulfill its commitment to provide

¹⁶ Id. at 6-7.

¹⁷ Id. at 7, quoting Letter, R.J. Pinoli (Mendocino Railway) to State of California-CTC, Nov. 30, 2020, attached as exhibit to Stogner V.S.

¹⁸ Id. at 7 (Skunk apparently lacks funds to repair the collapse of a tunnel on its own line).

that service.” Roaring Fork, *supra*, slip at 4. The Willits to Samoa/Eureka line has not been active since 1998. Given the extraordinary rehabilitation costs, as well as the recurring need for rehabilitation, either the shippers cannot afford the line or the operator will find its commitments impossible to fulfill. NCRA supplies herewith an expert opinion on the minimum cost to rehabilitate the Willits to Eureka segment of the line for the stretch between Willits and logical terminus at Samoa. That estimate (which does not include environmental costs and overheads) is \$1,707,000,000 (roughly \$10 million/mile).¹⁹

This Board’s most recent cost of capital for railroads is 9.34 %. See Cost of Capital – 2019, STB Ex parte 558 (Sub-no. 23), served August 5, 2020. If the rehabilitation costs to run a freight train north out of Willits to Eureka/Samoa are, at a minimum, \$1,707,000,000, and if the railroad cost of capital is 9.34%, then a railroad would need to recover \$159,433,000 annually simply to justify the rehabilitation, on top of actual maintenance and operating expenses.

If a railroad operating the Samoa to Willits portion of the line could collect a \$2000 surcharge per carload for service between Fort Bragg and Eureka or Willits and Eureka without driving off needed traffic, it would need over 79,700 carloadings indefinitely just to cover cost of capital for the rehabilitation of the Willits to Eureka segment. There has never been a demand for any such rail

¹⁹ D. Anderson V.S. at p.5.

service between those points. As to Fort Bragg to Eureka, the Mendocino/Skunk line is non-operational due to tunnel collapse and itself would require substantial rehabilitation as well, for which we understand that Mendocino/Skunk is actively seeking government subsidies.

The \$2000 surcharge at the 79,700-car load level would go up to nearly \$16,000 if only 10,000 carloads were tendered. And this surcharge would not include operational and maintenance costs which will remain high on this line, notwithstanding a comprehensive rehabilitation, due to wash-outs, soil movement, and so on that perpetually recur. There are no shippers willing to supply the requisite carloadings under that level of surcharge, or at any level of surcharge.

Eureka is not an interconnect point with the national rail system. The only interconnection is at Napa Junction. Rehabilitation costs for the entire line to Napa Junction are calculated to be at least \$2,352,200,000.²⁰ As already indicated, CTC is done with approving subsidies for rehabilitation. Completion of rehabilitation all the way to Napa Junction would require the federal government to fund NCRA, and SMART, to rehabilitate (a) Willits to the County line (roughly Cloverdale), (b) Cloverdale to Windsor, and (c) the bridges on the roughly 25-mile-long Brazos division (freight only) at Napa Junction owned by SMART. But, as Mr. Stogner indicates, federal and state funding sources dispense limited funds, and have

²⁰ D. Anderson Verified Statement at p. 4.

“evidently concluded those funds are better spent on lines with actual customers and that manifest safety and operational issues that if addressed would much more meaningfully contribute to meeting national and state transportation needs over a sustained period of time.”²¹ Since CTC indicates that California is done with bail-outs, and the federal government appears to the State (and NCRA) as done as well, one must turn to the capital markets. At STB’s current cost of capital, the combination of railroads involved would need to recover \$219,695,000 annually to render the rehabilitation economic if privately financed. At \$2000 surcharge per carload for rehabilitation only, shippers would need to demand almost 110,000 carloads per year to make this work. This in turn implies a little over six 50-car trains per day, 365 days a year. This in turn implies yet more investment in rail infrastructure to provide for passing tracks and speedier service, and to keep local residents in Marin and Sonoma Counties from rebelling due to noise and crossing congestion. And none of this even begins to add in the substantial operating and extraordinary maintenance expenses that characterize this line.

But there is more. The work would be divided up between the Willits to Eureka carrier, NCRA (Willits to Sonoma County line), SMART (Sonoma County Line to Napa Junction), California Northern (freight traffic on the NCRA line is switch to California Northern at Napa Junction), and finally Union Pacific at

²¹ Stogner V.S. at 8.

Suisen. In short, the carrier in Willits would have to switch (split tariffs) with four other carriers. The market has changed from this line's last heyday during the Vietnam era under Southern Pacific. The line is simply and clearly not economic for freight rail operations. There are no shippers likely to make use of the line at a price that would be sufficient to enable the operator to fulfill its commitment to provide that service. Under Roaring Fork, this proceeding is not appropriate for an OFA. See Roaring Fork, AB 547X, slip op. at 4.

F. Mendocino/Skunk Has Admitted that Rail Operations from
Willits North Are Uneconomic and that Portion of the Line
Should Be Railbanked

Before NCRA filed its Notice of Exemption in this proceeding, NCRA obtained the approval of the CTC. CTC granted the approval only after considering reports and evidence. Mendocino/Skunk submitted a letter to CTC dated November 30, 2020, attached to Mr. Stogner's Verified Statement. The letter contains a number of self-serving statements with which NCRA disagrees, but in pertinent part makes two significant admissions.

First, it states that Mendocino/Skunk "has been on record for many years as to its interest in reopening the [NCRA] line between SMART's interchange and the City of Willits." In other words, Mendocino/Skunk has heretofore communicated interest only in NCRA's line from Willits south to Windsor. This would perhaps allow expansion of Skunk's excursion rail operations in Willits, and perhaps be

less expensive than restoring Skunk's own line into Fort Bragg, although Skunk has apparently never been clear on this.

Second, it states that:

“Mendocino Railway agrees that the portion of the [NCRA] line north of Willits is [in] too great of disrepair to allow for economic railroad operation at this time and should thus be railbanked to preserve such an opportunity for all the future should it again become economic to operate over that portion of the line.”

Letter, R.J. Pinoli, V.P. Mendocino Railway, to State of California – CTC, November 30, 2020 (at unnumbered p. 3). ²²

The letter dated July 6, 2021, from Mendocino Railway's rail counsel, in contrast, expresses an intent to file an OFA for Willits north, in the face of his client's own representation to the State of California that Mendocino agreed that this portion of the line is uneconomic for rail purposes and should be railbanked. Mendocino Railway must be viewed as estopped from taking a position so opposite to what it supplied the CTC, which was entitled to rely on the written statements of stakeholders made in connection with its determination as to whether railbanking was advisable. In other words, should this Board not exempt this

²² The printed inscription on the letter is Mr. Stogner's notation that Mendocino Railway had no objection to what NCRA was actually proposing in terms of an abandonment/railbanking proceeding. See Stogner V.S. at p. 7.

proceeding from OFA and should Mendocino Railway attempt an OFA, NCRA reserves the right to argue it must be thrown out on estoppel grounds as well as all the economic and financial irresponsibility grounds that are applicable and will be raised.

G. Ignorance of the Environment

The environmental obstacles to construction and operation of a railroad in the Eel Canyon have never been analyzed under NEPA or its California equivalent, nor have the environmental costs of construction, and repeated reconstruction after wash-outs and slides. An OFA predicated on continuing this blind use of the Canyon makes no sense. Ignoring the environment has resulted in enough wasted money and bankruptcies. It is time to end that cycle.

The Eel River Canyon is a geologically sensitive area that encompasses a federal and state wild and scenic river. The Canyon (and other parts of the NCRA's line) manifests extreme environmental conditions characterized by regularly occurring slides and wash-outs. See Exhibit P to the ER/HR (major slide areas); Exhibit N to the ER/HR at p. 19 et seq. (narrative discussion). Any OFA of this property, if other than a farce, must necessarily envision what in effect amounts to construction and operation of a new rail line down the Eel, and then regularly addressing the cycle of slides and wash-outs that all prior line owners/operators have unsuccessfully faced. Doing this yet again will be met

first with disbelief and then with intense resistance from all manner of interest groups, and should not be undertaken without compliance with NEPA or the California equivalent. In this sense, Mendocino's effort to employ this agency's OFA regulations amounts to an attempt to evade the federal and state environmental law and despoil the Eel River Canyon. Other reasonable alternatives (including environmental consequences, and construction and operational costs) should be considered should some entity seriously wish to operate a line into Humboldt Bay.

Conclusion

For the reasons expressed above, an exemption from OFA is amply supported and should be granted. There is no realistic way that an OFA on this line could possibly be for the purpose of actually restoring the line for freight rail purposes. The State has a compelling alternative use. There simply are no shippers at the costs rehabilitation of this line would entail. Moreover, taxpayers of the State should not have to incur the additional expense of moving to dismiss a frivolous OFA for Willits north from an excursion rail operator which has told the State that it is interested only in Willits south and agrees that Willits north is uneconomic to operate and should be railbanked.

Respectfully submitted,

s/ Charles H. Montange

Of counsel: Elizabeth Coleman, Esq.
Deputy County Counsel
Office of the County Counsel
Sonoma County
County Administration Center
575 Administration Drive, Room 105A
Santa Rosa, CA 95403
707-565-2421
Fax --2624
Of counsel for North Coast Railroad
Authority

Charles H. Montange
Law Offices of Charles H. Montange
426 NW 162nd St.
Seattle, WA 98177
(206) 546-1936
fax --3739
Rail counsel for North Coast Railroad
Authority

For Filing 26 July 2021

Exhibit A – Map

Exhibit B – Verified Statement of David Anderson

Exhibit C – Verified Statement of Mitch Stogner

Exhibit D – CTC Minutes (in relevant part) for Dec. 2-3, 2020 meeting

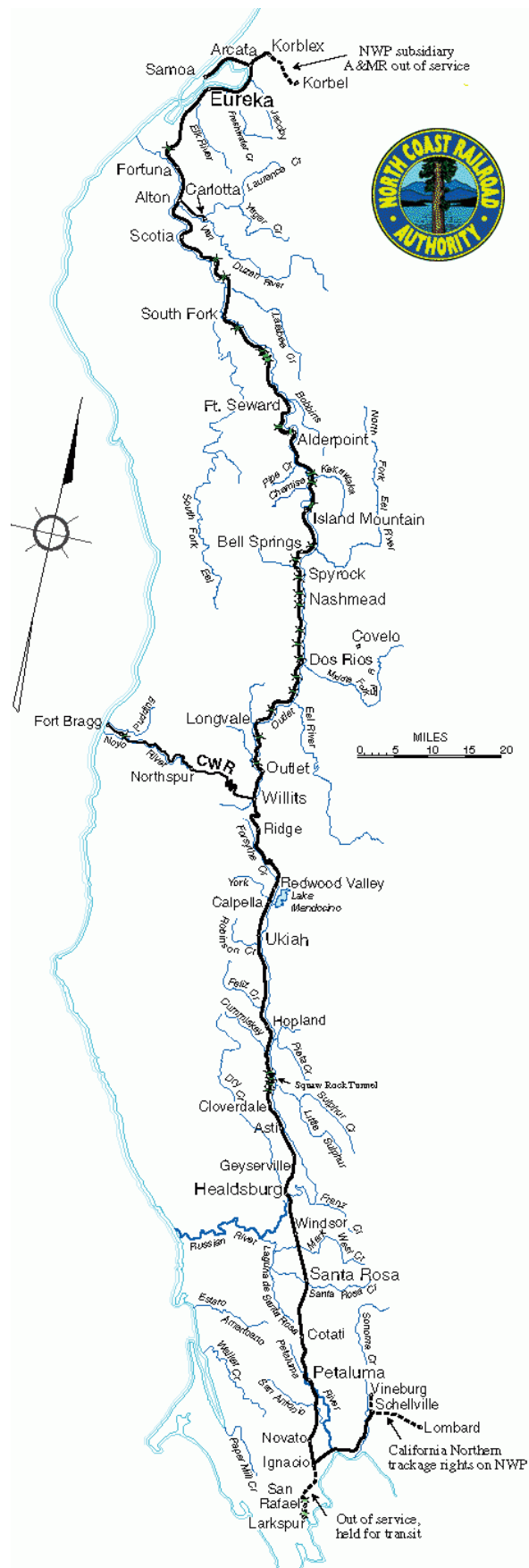
Certificate of Service

I hereby certify service by email attachment or USPS, postage pre-paid first class or equivalent, emailed or addressed as provided on the STB website, to all parties of record on 26 July 2021 including the following: B. Burks (HCACOG), J. Kalt (Humboldt Baykeeper), W. Mullins (Mendocino Railway/Skunk), B. Silvey (HTC), P. Johnston (THA), J. Anderson and S. Johnson (Redwood Cos.), D. Schonbrunn (TSDEF), L. Cohen (RTC).

s/ Charles H. Montange
Charles H. Montange

Exhibit A

Map



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]

Exhibit B

David Anderson, P.E. Verified Statement

BEFORE THE SURFACE TRANSPORTATION BOARD

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

Verified Statement of David Anderson, P.E.

I, David Anderson, state that I am a licensed civil engineer in the State of California and CEO/President of ARE Corp (<https://are-corp.com/>), a company which provides rail civil engineering services, including bridge evaluations and line inspections. I have personally served for the past twenty years as the civil engineering consultant for North Coast Railroad Authority (“NCRA”). I have repeatedly examined the NCRA right-of-way from its northern endpoint (Samoa) to interconnection with the national freight rail network. My resume is attached. I have been requested by NCRA to supply my expert opinion on the cost to rehabilitate NCRA’s line from Willits north to Samoa, and the entire former line (the portion south of the Mendocino/Sonoma County line at approximately Cloverdale is now owned by SMART). Since my prior inspections, north of Willits and in the Eel River Canyon, the line has without doubt deteriorated further. I will render my opinion based on conditions I found in my last inspections of the entire sections in this request. Because the line has deteriorated

since last visual inspections, what has been provided should be viewed as a planning level estimate. An accurate rehabilitation estimate would require additional inspection activities, environmental analysis, and preliminary engineering. This line is in areas of significant earth movement, is prone to flooding, and has tunnels that have a mixture of timber sets and steel sets with timber laggings in disrepair and are subject to tunnel fires and possible collapse. The railroad is prone to continuous deterioration and constant rehabilitation needs.

1. Based on the historic data on file and my past inspections in the past twenty (20) years serving as NCRA's professional civil engineer, the following table summarizes rehabilitation needs for any significant use of the rail line, either to transport freight to the Eureka area from Willits, and from Willits south to interconnection with the national freight rail system. The estimate does not include survey which could add an addition 2 to 3 % to the overall construction cost. I reiterate that a current inspection may reveal additional problems which must be addressed.

Table One: Planning Level Rehabilitation

- Track structure needs to be rebuilt from Samoa to Windsor to support sustainable traffic (240 miles)
- Tunnels
 - 5 tunnels south of Willits; 1 has collapsed and 3 need major repair
 - 25 tunnels north of Willits; 5 need complete rebuild and 20 need extensive rehab
- Public Crossings

- 22 public crossings south of Cloverdale that need replacement or rehab and activation.
 - 67 public crossings north of Cloverdale that need complete signal replacement and surface replacement or rehab.
- Bridges
 - 34 bridges on the south end from American Canyon (The Interchange) to Ignacio Wye in Novato; 3 need replacement and the majority of the remaining 31 have priority repairs needed.¹
 - 92 bridges Windsor to Willits; 25 need replacement and the remaining 67 need priority repairs.
 - 76 bridges north of Willits; 2 require replacement, 74 require priority repairs and there are 2 long bridges that would be new bridges that span the gaps where the track embankment has been removed for fish habitat restoration.
- Geotechnical: including mud slides, debris slides, earth flows, rotational slides, retaining wall failures, and embankment erosion:
 - Windsor to Willits; 22 documented conditions that impact 8,400 feet of track.
 - Willits to South Fork; 105 documented conditions that impact 56,230 feet of track.
 - South Fork to Samoa; 40 documented conditions that impact 5,745 feet of track.
- Culverts
 - There are an estimated 960 culverts a majority of which are CMP pipe, concrete boxes, or concrete arches. Roughly 50% are undersized. Many of the CMP pipe culverts are in poor condition.

2. Based on historic data provided by geotechnical engineers, tunnel engineers, and my prior personal inspections, I have prepared the following cost estimates. These are planning level estimates likely to increase if updated with current information.

Table Two: Cost Estimates

¹ This segment is owned by SMART but exclusively freight.

- Track² not including an adjustment of salvage \$975M
- 30 Tunnels
 - South of Willits \$56M
 - North of Willits \$280M
- Public Crossing
 - 22 South of Cloverdale \$4M
 - 23 Cloverdale to Willits \$7M
 - 44 Willits to Samoa \$16M
- Bridges
 - 34 Brazos Junction Branch (South End) \$40M³
 - 92 Windsor to Willits \$25M
 - 76 Willits to Samoa \$179M
- Geotechnical
 - 22 areas, Windsor to Willits \$20M
 - 105 areas, Willits to South Fork \$80M
 - 40 areas, South Fork to Samoa \$24M
- Culverts
 - 960 Culverts \$5M

Sub Total Planning Level Estimate = \$1,711,000,000

Contingency at 20% = \$342,200,000

Engineering (Geotechnical, Hydrology, Hydraulic, Civil, Rail, Structures) at 15%
= \$ 300,000,000

Total without Environmental = \$2,352,200,000

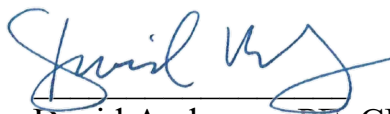
² Includes replacement of rail, ties, ballast, and other track materials above the level of subgrade judged necessary for reliable freight operation.

³ In order to reach the point of interconnection with the freight rail network via SMART, freight traffic must use a freight-only line which I refer to herein as the Brazos Junction Branch. Bridges on that line are in deteriorated condition and require rehabilitation. See note one.

3. Judging from the configuration of the Humboldt Bay as a port, rail service ending in the north would include, as a minimum, service all the way to Samoa at MP 330.5. Based on the information above, rehabilitation from MP 139.5 (Willits) to MP 300.5 (Samoa) encompasses approximately 161 miles, not counting the Korblex/Korbel and Carlotta branches: roughly \$654 million track, tunnels \$280 million, public crossings \$16 million, bridges \$179 million, geotechnical \$104 million, and culverts \$4 million for a total of \$1,237,000,000. Add contingency at 20% and engineering at 15% for a total of \$1,707,000,000.

4. Even if the line were rehabilitated for rail traffic, maintenance costs would remain higher than normal, and reliability low, because of the likelihood that instable geology and flooding events will remove portions of the line from service.

Pursuant to 28 U.S.C. 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

A handwritten signature in blue ink, appearing to read "David Anderson", with a stylized flourish at the end.

David Anderson, PE, CEO/President ARE Corp.

Dated: July 25, 2021

David R. Anderson, PE

Principal Engineer

Education

BS/1968/Civil Engineering/ University of Minnesota

Registrations

1990/ PE/ CA #45458

1979/ PE/ MN #13749

1994/ PE/ NV #10660

1994/ PE/ AZ #27771

2012/ PE/ MO #2012039646

2020/PE/ NE #E-18154

2013/ PE/ MI #6201059840

2017/PE/NH #15202

2017/PE/NY #38809

2014/ PE/ KS #24047

2014/ PE/ AL #34719

2015/ PE/ TX #119428

2016/PE/ OK #29153

2020/PE/ IA #P25989

2020/PE/ WA #20105102

2020/PE/ NC #050589

Professional Affiliations

American Railway Engineering and Maintenance-of-Way Association (AREMA)

American Short Line and Regional Railroad Association (ASLRRA)

American Council of Engineering Companies (ACEC)

David R. Anderson, PE brings over 40 years of experience in all aspects of railroad engineering, construction, and maintenance. He has worked for both public and private railroad clients assisting them with infrastructure management.

Dave's experience working for railroads spans his entire career. His responsibilities have included railroad assessment, design, inspection, construction, and the development of short- and long-term capital plans. He has worked with several Class I railroads and numerous short lines.

RELEVANT EXPERIENCE

North Coast Railroad Authority (NCRA), Lombard to Eureka, CA: Engineer/project manager, responsible for overseeing NCRA's on-call engineer and construction contractors for \$40 million rehabilitation project including 42 bridge structures, 62 miles of track and 57 signals. In addition, address the Authority's engineering issues, and coordinate rehabilitation and operation and maintenance issues with the Operator. Previously, project manager for the on-call engineering team and was responsible for the capital assessment and program management for the entire 316-mile railroad. Two assessments were conducted: the first included the entire line with cursory inspections of 186 bridges to evaluate the feasibility of rehabilitation. The second assessment was conducted on the southern end of the railroad and included detailed inspections of 121 timber, steel, and concrete bridges, as well as roadbed, tunnels, track and highway constant warning devices. Currently providing on-call engineering services in support of Authority initiatives.

Santa Clara Valley Transportation Authority – Berryessa-Freight Rail Relocation, CA. Performed Peer Review of this rail relocation project. Reviewed plans and specifications to provide clarity to the

plans, assure consistency between plans and specs, and review overall constructability. The review included meetings with the VTA and HNTB, walking the length of the project limits, redlining of the plans and specifications, and a report summarizing findings. Interfaced with several agency personnel, consultants, including construction cost estimator, track and roadway design personnel, reviewed drainage reports, bridge designers including staging of shoofly and bridge work, utility locations.

Orange County Transportation Authority, Engineering Plan Check, Orange County, CA. Team leader for this \$300-million project requiring risk analysis, plan review, extensive coordination, and multi-subconsultant oversight. Responsible for quality assurance plans and reviewing other design teams' plans for five grade separation projects in the BNSF/Metrolink Corridor through Placentia, Fullerton and Anaheim. Responsible for providing constructability reviews for the structures, bridges and roadway plans, specifications and estimates as well as adherence to local agency requirements.

Acquisition Assessment, Project Manager, Stonepeak Partners. Managed engineering team that evaluated maintenance facilities, right-of-way, vehicles, track, and structures for a 300-mile railroad to provide an assessment and maintenance/replacement cost estimates for a potential railroad acquisition.



Acquisition Assessment, Project Manager, Jaguar Transportation Group. Part of the engineering team evaluating structures for a potential acquisition of 5 railroads. Performed a field assessment of structures and prepared an analysis of current conditions, proposed repairs and estimated cost.

Acquisition Assessment, Project Manager, RailUSA. Part of the engineering team evaluating structures for a potential acquisition of a 360-mile railroad. Performed a field assessment of structures and prepared an analysis of current conditions, proposed repairs and estimated cost.

Acquisition Assessment, Project Manager, Watco Companies. Assist Engineering staff with the evaluation of two railroad acquisitions. Performed a field assessment of bridges and track and prepared an analysis of current condition and proposed repairs and estimated costs for Watco's management team's consideration.

Expert Witness, Los Angeles County Metropolitan Transportation Authority. As an expert witness for MTA, provide detailed review and recommendations for practical solutions to Blue Line drainage issues.

Genesee Wyoming Railroad Services, Inc. – Bridge Inspection and Consultation Services, AL, GA, FL. Project manager responsible for overseeing the bridge inspection requirements for six railroads in G&W's Southern Region. In addition to the performance of annual inspections, some railroad bridges are due for detailed inspections and/or supplemental, underwater, mechanical/electrical inspections, depending on location and condition, and inspections will be oriented to identifying specific field data in order to complete load ratings.

WATCO Transportation Services – Railroad Bridge Engineering and Inspection Services, AL, AR, ID, IL, IN, KS, LA, MI, MO, MS, MT, NY, OH, OK, OR, TX, WA, WV. As RBE, responsible for overall bridge management working closely with Watco's engineering staff to provide bridge management plan development, conduct required railroad bridge inspections, provide bridge load capacity ratings, perform special and emergency inspections and provide repair recommendations for 28 railroads with more than 100 subdivisions and 2,100 bridges.

Progressive Rail – Bridge Engineer Bridge Inspection, Bridge Rating and Capital Programming, CA, IA, IL, MN, MO, VA, WI – 2009 to Present. Designated Railroad Bridge Engineer, responsible for bridge management including inspection, rating and capital repairs/replacement recommendation for 8 separate railroad properties. Work closely with the owner's representatives to address budget-conscious decisions. and safety measures. Responsible for preparing annual and detailed bridge inspection reports, assessment of new lines being considered for acquisition, maintaining the bridge inventory, preparing load capacity ratings, and an annual recommendation report that serves as a workable repair program.

Exhibit C

Mitch Stogner Verified Statement

- CTC Minutes
- Mendocino Railway Nov. 30, 2020 letter to CTC
- Mendocino Railway Feb. 6, 2020 letter to Stogner (NCRA)

BEFORE THE SURFACE TRANSPORTATION BOARD

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

Verified Statement of Mitch Stogner

I, Mitch Stogner, state that I am, and have been since August 2003, Executive Director of the North Coast Railroad Authority (“NCRA”), which is a public agency of the State of California.

1. NCRA’s line from the San Francisco Bay area to Eureka was originally assembled to transport timber from the Eureka area to Oakland and San Francisco. The line, by then called the Northwestern Pacific Railroad (NWP), was owned by Southern Pacific (SP). The portion north of Willits (basically Outlet Station at MP 142.5) north to Eureka is in a geological zone prone to earth movement (slides, wash-outs, and soil movement) in the Eel River Canyon. It may have been initially cheaper to construct, but it is a maintenance catastrophe due to chronic soil movement, collapsing tunnels, frequent wash-outs and landslides triggered by storm events from its inception. The maintenance issues made the line unreliable to shippers, many of whom converted to reliance on trucks as the highway system

improved. SP/NWP sought to abandon the Northwestern Pacific Railroad from Outlet Station (MP 142.5) north due to declining traffic and heavy maintenance costs. SP/NWP ultimately sold the portion of the line from Outlet Station north to Samoa to Eureka Southern (a shortline formed for the purpose), which promptly went bankrupt for the same reasons that SP sought to abandon the line. The State of California, responding to local political pressure, organized a new agency (NCRA) to acquire and to operate the line, but intended it to be commercially self-sustaining and thus did not provide the new agency with any tax base for subsidizing the rail line. NCRA in fact acquired Eureka Southern's line in 1992 with State bond funds, and in 1996 acquired additional NWP trackage with a mix of federal and state funds, extending the line into Sonoma, Marin and Napa Counties to interconnection with the California Northern at Napa Junction (sometimes called Brazos Junction, sometimes called Lombard), near American Canyon. California Northern in turn interconnects with the interstate rail network (Union Pacific) at Fairfield/Suisun. The entire Sonoma/Marin/Napa segment is now owned by SMART. SMART provides passenger commuter services and has a tax base. The Sonoma/Marin/Napa segment on which SMART operates does not have the same degree of tunnel, wash-out and soil movement issues that beset the line in Mendocino, Trinity and Humboldt Counties, although the portion north of Windsor in Sonoma County has some costly issues.

2. During my entire tenure as Executive Director, the line has been subject to an emergency embargo imposed by the Federal Railroad Administration (FRA) due to poor track conditions. Initially the embargo applied from Arcata (north of Eureka) all the way to MP 63.4 between Schellville and Napa Junction, essentially shutting down the entire line. During the embargo, NCRA nonetheless pushed forward with efforts to find an operator. In 2006, we selected Northwestern Pacific Railroad Co. (NWPCo) to operate the line from Napa Junction to Willits with an option to extend north. We rejected a proposal from what is now Mendocino Railway because, as I recall, they wanted to commence rehabilitation at Willits and work south. This seemed to us consistent with a primary interest in excursion and only a secondary interest in freight. Moreover, starting in Willits and proceeding south meant that freight could not be interchanged with the interstate rail network at Napa Junction until very late in the rehabilitation process.

3. During the embargo period, we also pushed forward with efforts to obtain funding. Capital funding was a major difficulty. Because FEMA by then had come to view wash-outs and slides as normal occurrences on our line, federal emergency funding for repair after storm events was very difficult to impossible to access. During my tenure as Executive Director of NCRA, I am proud to say that we managed, with the help of NWPCo, to secure funding from federal and state sources sufficient to rehabilitate the line for freight from the Napa Valley

interchange up to Windsor, approximately 62 miles. FRA removed the embargo over that segment, and we ran the first train to Windsor in July 2011.

4. Litigation over the applicability of the California Environmental Quality Act, rendered NCRA (a state agency bound to comport with CEQA per the California Supreme Court) unable to move forward beyond Windsor. By 2018, NCRA not only was strapped for cash but also deeply in debt to NWPCo and to various consultants and service providers. Indeed, NCRA was forced in one case to sell off assets to address its budget. There was recognition that frequent environmental problems caused exorbitant rehabilitation and maintenance expenses on the northern portion of the line. These same problems rendered service unreliable due to wash-outs and slides, and this in turn contributed to making the line uncompetitive as one moved north. In addition, there was recognition that over a hundred miles of the main line north of Willits was located in the Eel River Canyon, and, as constructed, was apparently incompatible with the terrain traversed, and conflicted with the Wild and Scenic River designation enjoyed by the Eel. Accordingly, the State Legislature in 2018 enacted SB 1029 with the objective of transferring the southern segment of NCRA's line to SMART for rail use; but also recognizing that the northern portion was no longer viable for through freight rail service. SB 1029 provided for an examination of railbanking/trail use for that section. In accordance with SB 1029, the California

Transportation Commission (CTC) approved plans to apply to the Surface Transportation Board to railbank the segment north of Willits in December of 2020 (minutes attached). The CTC recently corrected a clerical error in that approval to encompass all of NCRA's line from Willits MP 139.5 north. In short, both the State through its legislature and the CTC has determined that the cost to rehabilitate and then to maintain the line north of Willits is simply uneconomic. The State is not prepared to continue to entertain requests for subsidies for rehabilitation of the NCRA's line. How to handle the Willits to Cloverdale segment of the NCRA line is not yet resolved. NCRA expects that pending legislation (SB 69) will provide some guidance on that issue.

5. Mendocino Railway recently filed a deeply puzzling letter with the Surface Transportation Board professing an interest in filing an OFA to acquire NCRA's line from Willits north to end of line. The letter is deeply puzzling for a number of reasons:

Mendocino's current ownership has never provided rail freight services on the Fort Bragg to Willits line.

Moreover, the main freight customer for the Fort Bragg to Willits line is gone. Historically, the chief freight customer of Mendocino's predecessor's (California

Western's) line (Fort Bragg to Willits) was a timber mill, which has ceased operations and whose property is now being redeveloped for mixed uses.

In any event, to the extent the former mill used what is now NCRA's line, its traffic all moved south to Napa Junction, not north to Eureka.

I am unaware of any traffic generated in the Fort Bragg to Willits corridor that ever moved north on what is now NCRA's line to Eureka.

Moreover, I am unaware of any traffic ever on what is now NCRA's line that moved south from Eureka to termination in either Willits or Fort Bragg.

Historically, there is simply no freight rail traffic of any significance between Willits and Eureka, or Fort Bragg and Eureka, and to my knowledge there are no developments during the 18 years for which I have worked for NCRA on which one can even pretend there may be such traffic.

I can recall no potential customer approaching NCRA during my term seeking service for movements between Willits and Eureka or Fort Bragg and Eureka.

In confirmation, when Mendocino Railway in 2020 complained to me that the embargo stranded Mendocino's line, and that Mendocino had prospective shippers interested in rail service south of Willits, Mendocino emphasized that it wanted a "viable" connection to the south. Letter, Pinoli to Stogner, Feb. 6, 2020. Again, the proposed traffic was for an interconnection to the south, not the north.

6. Over the years, I have had numerous discussions with Mendocino Railway/Skunk officers and managers. They have never expressed any serious interest in operating the NCRA line north of Willits. Mendocino/Skunk has a passenger ticket depot on the south side of Commercial Street in Willits for their excursion operations. Excursion operations appear to have been hampered by a tunnel collapse on the Skunk/Mendocino's rail line between Fort Bragg and Willits. Since Mendocino/Skunk cannot afford to repair its own line, the only prudent conclusion is they lack resources to rehabilitate and operate NCRA's lines, for which rehabilitation estimates are over one billion dollars for Willits north, and in the hundreds of millions for Willits south, at least if freight use is intended that interconnects with the national freight rail network.

7. Mendocino/Skunk in its November 30, 2020, letter to the CTC stated that it agreed that NCRA's "line north of Willits is too great of disrepair to allow for economic railroad operation at this time and should thus be railbanked to preserve such an opportunity for all the future should it again become economic to operate over that portion of the line." I attach a copy of that letter (R.J. Pinoli as V.P of Mendocino Railway, to State of California - CTC, Nov. 30, 2020) to this Verified Statement. I annotated my version of the letter to emphasize that Mendocino was thus not in conflict with the planned railbanking at issue in this case. My most recent contact with Mr. Pinoli was by telephone on May 21, 2021. He again

expressed interest only in rail operations south of Willits, not north. Mendocino's letter supports an exemption from OFA since Mendocino admits the condition of the line north of Willits precludes economic railroad operations.

8. The State and federal governments have been unwilling to continue pouring money into a rail line with extraordinary and recurring expenses that has no customers, and extremely limited potential due to its inherent unreliability due to endemic slides and wash-outs. As the Mendocino November 30 letter indicates, the line north of Willits is simply not economic for rail operations. However, Mendocino/Skunk has expressed interest in becoming operator for SMART and NCRA between Napa Junction and Willits. Unfortunately, Mendocino/Skunk has never supplied a proposal to NCRA showing how it would finance rehabilitation, maintenance, and basic operational costs for that or any other segment of the NCRA line. So far as I can tell, Mendocino/Skunk thinks it can lobby state and federal governments for taxpayer subsidies better than NCRA and its predecessors could. But state and federal authorities in charge of dispensing taxpayer funds to subsidize rail rehabilitation administer limited available funds, and evidently have concluded those funds are better spent on lines with actual customers and that manifest safety and operational issues that if addressed would much more meaningfully contribute to meeting national and state transportation needs over a sustained period of time. Certainly the State of California has expressed its

intention with respect to this specific line, by its adoption of SB 1029, the terms of which are inconsistent with the hope that the State would underwrite/subsidize further efforts to rehabilitate the NCRA line for freight purposes

9. Given the inoperable nature of the Eel River Canyon, I surmise that Mendocino/Skunk's previously disclaimed interest in filing an OFA for it is simply an effort to pressure NCRA to anoint Skunk as its lessee for the Willits to Cloverdale segment or otherwise place Skunk in possession. But that segment is south of Willits. It is not before the STB in this proceeding. What is before the STB in this proceeding is north of Willits. Given Mendocino/Skunk's admission that the line north of Willits is uneconomic, it is a misuse of Board procedures to obstruct this proceeding or to threaten an OFA. The only plausible reason for such conduct is a ploy to extract a concession on the line from Willits south that is not before the STB at this time. That is not an appropriate use of STB procedures or of the public resources of either the federal or California state governments. The line south of Willits is embargoed all the way to Windsor. It has been so embargoed since 1998. The future of that line rests on whether rail service is "viable" over it. That issue turns not on whether Skunk/Mendocino or anyone else wants to be a railroad on it, or whether some business says it would like there to be a railroad for it to consider. The issue is whether there is anyone out there with another business that in fact would commit to ship on this railroad if it had to bear the costs of

rehabilitation and maintenance. I know of no such business or combination of businesses. If it is not “viable,” the line is desired by the public for alternative uses, and it is subject to STB’s jurisdiction until authorized for abandonment (or railbanking) in future proceedings. It is not a matter to be resolved by posturing, pressure tactics, or speculative pies in the sky in a proceeding involving the line from Willits north.

Pursuant to 28 U.S.C. 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information and belief.


Mitch Stogner, Executive Director, NCRA

Dated:

Atts: CTC Minutes

Mendocino Nov. 30, 2020 letter to CTC

Mendocino Feb. 6, 2020 letter to Stogner (NCRA)

Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: January 27-28, 2021

From: MITCH WEISS, Executive Director

Reference Number: 1.2, Action

Prepared By: Douglas Remedios
Staff Services Manager

Published Date: January 15, 2021

Subject: Approval of Minutes for the December 2-3, 2020 Commission Meeting

Recommendation:

Staff recommends that the California Transportation Commission (Commission) approve the meeting minutes for the December 2-3, 2020 Commission meeting.

Issue:

California Code of Regulations, Title 21 California Administrative Code section 8012, requires that:

The commission shall keep accurate minutes of all meetings and make them available to the public. The original copy of the minutes is that signed by the executive secretary and is the evidence of taking any action at a meeting. All resolutions adopted at a meeting shall be entered in the text of the minutes by reference.

In compliance with Title 21 California Administrative Code section 8012, the Commission's Operating Procedures dated December 4, 2019 require that as an order of business, at each regular meeting of the Commission, the minutes from the last meeting shall be approved by the Commission.

Attachment:

Attachment A: December 2-3, 2020 meeting minutes

MINUTES

CALIFORNIA TRANSPORTATION COMMISSION

www.catc.ca.gov

December 2-3, 2020

Via Webinar

Wednesday, December 2, 2020

1:00 PM

Commission Meeting

*Via GoToWebinar, Teleconference and
Webcast only, per [Executive Order N-29-20](#)

Thursday, December 3, 2020

9:00 AM

Commission Meeting

*Via GoToWebinar, Teleconference and
Webcast only, per [Executive Order N-29-20](#)

*On March 17, 2020 Governor Newsom issued Executive Order, N-29-20. This order removes the requirement that a location be made available for the public to gather for purposes of observing and commenting at the meeting.

For a more thorough review of this meeting, please visit:

<https://www.youtube.com/channel/UCASI3gyTEuhZffC13RbG4xQ>

GENERAL BUSINESS

Tab	Item Description	Ref#	Presenter	Type*	Agency*
1	Roll Call	1.1	Hilary Norton	I	C
Commissioners		Attendance			
	Chair Hilary Norton	Present			
	Vice Chair Bob Alvarado	Present			
	Commissioner Yvonne Burke	Present			
	Commissioner Jon Davis	Present			
	Commissioner Lee Ann Eager	Present			
	Commissioner Carl Guardino	Present			
	Commissioner Fran Inman	Present			
	Commissioner Christine Kehoe	Present			
	Commissioner Joseph K. Lyou	Present			
	Commissioner Michele Martinez	Present			
	Commissioner Joe Tavaglione	Present			

TOTAL - Present: 11 Absent: 0

CTC Attendees		Attendance			
	Senator Jim Beall, Ex-Officio	Absent			
	Assembly Member Jim Frazier, Ex-Officio	Absent			

Tab	Item Description	Ref#	Presenter	Type*	Agency*
2	Approval of Minutes for October 21-22, 2020	1.2	Hilary Norton	A	C

RIGHT OF WAY MATTERS

Tab	Item Description	Ref#	Presenter	Type*	Agency*
59	First Quarter - Report on Fiscal Year 2020-21 Right of Way Annual Allocation.	3.8	Teri Anderson Kimberly Ellis Erickson	I	D

Commission Deputy Director Teri Anderson presented this informational item.

POLICY MATTERS

Tab	Item Description	Ref#	Presenter	Type*	Agency*
60	North Coast Railroad Authority (NCRA) - Presentation on the Assessment of NCRA Assets and Liabilities - Strategic Plan Update	4.35	Teri Anderson Leishara Ward	I	D

Commission Deputy Director Teri Anderson and Caltrans' SB 1029 Program Manager Leishara Ward presented this informational item.

Speaker:

Jason Liles -Senator Mike McGuire's office

David Keller – Friends of the Eel River

Emily Sinkhorn – Redwood Community Action Committee

Changes to this item were listed on the "Changes to CTC Agenda" handout as follows:

MEETING HANDOUT – Letters to the CTC

Tab	Item Description	Ref#	Presenter	Type*	Agency*
61	North Coast Railroad Authority Request for approval to transfer its freight easement, operations, and right-of-way, south of the Sonoma-Mendocino county line, to Sonoma-Marin Area Rail Transit and to railbank the rail corridor from Willits to Korblex/Samoa near Humboldt Bay. Resolution G-20-81	4.11	Teri Anderson Kyle Gradinger	A	D

Recommendation: Approval

Action Taken: Approved

Motion: Alvarado **Second:** Burke **Recused:** None **Absent:** Burke (departed after making the second), Guardino, and Tavaglione

Vote result: 8-0

Ayes: Alvarado, Davis, Eager, Inman, Kehoe, Lyou, Martinez, and Norton

Nays: None

Abstained: None

Speakers:

Bernard Meyers – Former North Coast Rail Authority Executive

Farhad Mansourian – Sonoma Marin Area Rail Transit

David Shonbrunn – Train riders association of California

Mike Wilson – Humboldt County Supervisor and California Coastal Commissioner

Neil Davis – City of Ukiah

Colin Fisk – Coalition for responsible transportation priorities

Scott Grecian – Friends of the Eel River

Emily Sinkhorn – Redwood Community Action Committee

Steve Madrone – Private Citizen

Karen Underwood – Humboldt Trails Council

Changes to this item were listed on the "Changes to CTC Agenda" handout as follows:

MEETING HANDOUT – Letters to the CTC

MENDOCINO RAILWAY

Foot of Laurel Street
Fort Bragg, California 95437

707 964 6371 TEL
707 964 6428 FAX

November 30, 2020

State of California
Department of Transportation – California Transportation Commission
1120 N Street, MS 52
Sacramento, California 95814

Re: California Transportation Commission Agenda for December 2-3, Ref. Nos. 4.35 and 4.11

Dear Chair Norton & Commissioners,

Mendocino Railway hereby opposes the adoption of Resolution G-20-81 and the approval of any transfer of the North Coast Railroad Authority's freight contract to the Sonoma-Marin Area Rail Transit District ("SMART"), the transfer of all freight rights over the Northwestern Pacific Railroad ("NWP") south of the Sonoma-Mendocino county line to SMART, the transfer of real property from Healdsburg to the Sonoma-Mendocino county line to SMART, and the railbanking of portions of its right-of-way north of Willits (the "Resolution"). Mendocino Railway hereby also states its objections to the 2020 Legislative Report, the *Assessment of the North Coast Railroad Authority and Viability of a Great Redwood Trail* (the "Report").

Background

Mendocino Railway is a Class III common carrier public utility railroad that in 2004 purchased the California Western Railroad/Skunk Train ("CWR"), which railroad traverses the 40-miles of forest between Fort Bragg and Willits, California. One of the reasons Mendocino Railway purchased the CWR was the announcement by the North Coast Railroad Authority ("NCRA") of its intention, and its receipt of the needed funding, to reopen the NWP line to Willits, allowing Mendocino Railway to reestablish a freight connection between Fort Bragg and Willits and the rest of the nation via the CWR's connection to the NWP at Willits.

To that end, Mendocino Railway has since its purchase of the CWR invested millions of dollars in refurbishing the line to accommodate this freight traffic, with a number of customers in both Fort Bragg and Willits expressing interest in shipping via the interstate railroad system when the NWP is reopened to Willits.¹

¹ While the CWR has experienced a tunnel collapse that has temporarily prohibited traffic between Fort Bragg and Willits, Mendocino Railway is actively seeking the funding needed to reopen this tunnel so that the CWR can again carry freight and passengers between Fort Bragg and Willits. This tunnel collapse has not, in any event, impacted the desire of customers on the eastern end of CWR's line connect to the interstate railroad system via the NWP.

MENDOCINO RAILWAY

Foot of Laurel Street
Fort Bragg, California 95437

707 964 6371 TEL
707 964 6428 FAX

In order to assist with the restoration of railroad traffic across the NWP, Mendocino Railway has for many years been engaged in discussions with the NCRA, NWP.Co., SMART, and Senator McGuire and his staff concerning how Mendocino Railway could purchase some or all of the

NWP line, or at least obtain the operating rights to some or all of the line, to justify the investment needed to reopen the line to Willits. Mendocino Railway was well into discussions with NWP.Co. as to exactly that end when SMART began waving government money around in front of NWP.Co., causing NWP.Co. to terminate its discussions with Mendocino Railway and focus on the much larger payments, and significant debt relief, that NWP.Co. believed it could obtain from SMART and its governmental funding.

Objections to the Resolution and the Report

While Mendocino Railway fully supports the notion of rails with trails, a trail system should not be allowed to destroy a potentially viable and much-needed railroad. This Commission's approval of the Resolution will create significant roadblocks to restoring freight service and could altogether prevent the CWR from reconnecting to the interstate railroad system, rendering Mendocino Railway's investments in the CWR worthless. This Commission would, in one fell swoop, not only carry out what would effectively amount to a governmental taking of the value of the CWR, but would gut a good portion of the economic viability of the businesses in Mendocino County that have been desperate for the NWP to be reopened. For these reasons, we object to the proposed Resolution and ask the Commission not to pass that Resolution.

Mendocino Railway also object to the Resolution to the extent that it is based on the Report. As the Task Force tasked with preparing the Report itself acknowledges in the Report, it did not in investigating the options and preparing its Report analyze the cost to rehabilitate the NWP north of SMART's interchange, the possibility of the line being acquired by a private railroad operator, or the possibility of the NCRA's right-of-way being sold to a private railroad operator.

In fact, although SMART, the NCRA, NWP.Co. and Senator McGuire and his staff were all aware of Mendocino Railway's interest in the NWP, no one ever even informed Mendocino Railway of the Task Force's existence, such that the Task Force notes in its Report that "no interested parties reached out during the assessment period", as if the Task Force had no obligation to investigate any potential alternatives to simply giving

SMART its desired rights and as if it was the obligation of any interested parties to somehow intuit the Task Force's existence and charge.²

² Report, page 89, which states, "NCRA could sell its right-of-way to a private rail operator. However, with no strong economic draw on the north coast, the associated environmental liability, and costs to rehabilitate the line, the probability of a private railroad company acquiring NCRA is low. The Task Force did not analyze this scenario and no interested parties reached out during the assessment period."

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Fort Bragg, California 95437

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The Task Force seems merely to have assumed, as a given and without conducting any investigation, that the highest and best use of the NWP would be to transfer the NCRA right-of-way and freight operations easement on the southern portion of the NWP to SMART, railbanking the entirety of the line north of the Sonoma-Mendocino county line, permanently isolating all of the communities north of the Sonoma-Mendocino county line from access to the interstate railroad system. In fact, it appears from the Report that the Task Force's entire goal was not to investigate available options but rather simply to find justification to gift SMART with the portions of the NWP that are usable to SMART and to abandon the rest, damn the costs to the impacted communities or State taxpayers.

Proposed Alternative

Mendocino Railway has previously proposed a plan to Senator McGuire and his staff, to SMART, to the NCRA, and to NWP.Co. that Mendocino Railway believes would meet SMART's needs, the State's desire for a trail, and the need of Mendocino Railway and the residents and businesses of Mendocino County: that Mendocino Railway be allowed to assume ownership of the NWP line between Willits and SMART's interchange, allowing Mendocino Railway to restore railroad traffic across that portion of the line and preserving access to the interstate railroad system to the residents and businesses of Mendocino County. Mendocino Railway agrees that the portion of the NWP north of Willits is too great of disrepair to allow for economic railroad operation at this time and should thus be railbanked to preserve such an opportunity for the future should it again become economic to operate over that portion of the line.

*Yes! all we're doing is
North of Willits at this
time!*

Conclusion

The NWP has been in disrepair for some time. There has not been any need to rush through – or to outright skip – an analysis of the available alternatives for reopening the line to serve the people and businesses along the NWP. This rush, or omission, is all the more disconcerting given that Mendocino Railway has been on record for many years as to its interest in reopening the NWP between SMART's interchange and the City of Willits. We accordingly ask that the Commission not approve the Resolution and that the commission instead direct the parties, including Mendocino Railway, to engage in joint discussions concerning the future of the NWP.

If you have any questions or require further information, please don't hesitate to contact me at 707-964-6371 or via email at RJPinoli@SierraRailroad.com

Respectfully,



Robert Jason Pinoli
Vice President



MENDOCINO RAILWAY

Foot of Laurel Street
Fort Bragg, California 95437
707-964-6371 T
707-634-6428 F

February 6, 2020

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

Dear Mitch,

I am, as you may recall, Vice President of Mendocino Railway. I am writing to formally request that the North Coast Railroad Authority ("NCRA") restore rail service on its rail line extending south from Willits, California so that we can provide freight service for our shippers who seek rail transportation services on the national rail network.

As you may also recall, Mendocino Railway is the successor to the California Western Railroad ("CWR"), operator of the "Skunk Train", and a common carrier railroad authorized by the Surface Transportation Board ("STB") to provide freight rail service on Mendocino Railway's rail line between Fort Bragg and Willits, California. See *Mendocino Railway—Acquisition Exemption—Assets of the California Western Railroad*, STB Finance Docket No. 34465 (STB served Apr. 9, 2004). Mendocino Railway's line connects with the NCRA's line at Willits. Through that connection, Mendocino Railway connects to the national rail network.

Since 1998, the NCRA's line has been embargoed as a result of unsafe operating conditions and noncompliance with federal railroad safety laws and regulations. This embargo ended, and has continued to prevent, Mendocino Railway's access to the national rail network beyond Willits. Shippers located on our line cannot access the national rail network until the NCRA restores service on its line.

In 2004, prior to our purchase of the CWR, the CWR's bankruptcy trustee filed a claim with the STB against the NCRA alleging that the NCRA had violated its common carrier obligation by failing to reopen the line from Willits south. This lawsuit is addressed in *Michael H. Meyer, Trustee in Bankruptcy for California Western Railroad, Inc. v. North Coast Railroad Authority, d/b/a Northwestern Pacific Railroad*, STB Finance Docket No. 34337 (STB served Jan. 31, 2007). The STB rejected the trustee's claim on the grounds that there was no evidence of a continuing demand for service on the line. In the absence of evidence that freight shippers were interested in service over the embargoed line, the STB appeared to conclude that the NCRA did not have a common carrier obligation to reopen its line.

Mitch Stogner
Executive Director
North Coast Railroad Authority
February 6, 2020
Page 2

Though the NCRA's line has been closed for over 20 years, stranding Mendocino Railway's line from the national rail network, there is now strong evidence of shipper interest in rail freight transportation using Mendocino Railway's line and the NCRA line. Mendocino Railway accordingly in 2019 applied for a federal grant under the U.S. Department of Transportation's Better Utilizing Investments to Leverage Development ("BUILD") program to improve its line for such service. In connection with its grant application, Mendocino Railway determined that there are several companies located on or near Mendocino Railway's line with a strong interest in freight service in conjunction with a connection to the national rail network at Willits. Many of these companies supported Mendocino Railway's grant application, with local manufacturers, lumber companies, an aggregate company, and a brewery expressing their desire for a rail freight alternative to trucks.

A market for rail freight service on Mendocino Railway's line clearly exists but we need a viable connection to the national rail network at Willits in order to serve that market. We have tried to work with the Northwestern Pacific Railroad Company ("NWPCO"), the current operator of the NCRA's line, to restore service on the NCRA's line, and we recently expressed our willingness to take over operation of the NCRA's line in order to ensure its reopening. But our efforts have not been successful. If the NCRA continues to maintain its embargo of its line from Willits south we believe that the NCRA will be in violation of its common carrier obligations. We therefore urge the NCRA to take immediate steps to restore service on its line so that we can restore interstate freight service to the customers who desire it.

Thank you for your attention.

Sincerely,



Robert Jason Pinoli
Vice President

Exhibit D

CTC Minutes (in relevant part) for Dec. 2-3, 2020 meeting

MEMORANDUM

To: CHAIR AND COMMISSIONERS
CALIFORNIA TRANSPORTATION COMMISSION

CTC Meeting: December 2-3, 2020

From: STEVEN KECK, Chief Financial Officer

Reference Number: 4.35, Information Item

Prepared By: Kyle Grading, Chief
Division of Rail and Mass Transit

Subject: **PRESENTATION OF THE ASSESSMENT OF THE NORTH COAST RAIL
AUTHORITY ASSETS AND LIABILITIES REPORT (SENATE BILL 1029)**

SUMMARY:

The California Department of Transportation (Department) will be making a presentation on the California State Transportation Agency's (CalSTA) Senate Bill (SB) 1029 Assessment Report to the California Transportation Commission (Commission) at its December 2020 meeting.

BACKGROUND:

In 2018, Senator McGuire sponsored SB 1029 (Chapter 934, Statutes of 2018); the North Coast Railroad Authority Closure and Transition to Trails Act. Among other provisions, the Act directs the California State Transportation Agency (CalSTA), in consultation with the Natural Resources Agency, to "conduct an assessment of the North Coast Railroad Authority to provide information necessary to determine the most appropriate way to dissolve North Coast Railroad Authority (NCRA) and dispense with its assets and liabilities," as well as "a preliminary assessment of the viability of constructing a trail on the entirety of, or a portion of, the property, rights-of-way, or easements owned by NCRA, and recommendations relating to the possible construction of a trail." Finally, the statute requires "an assessment of the options for transferring the southern portion of the rail corridor to the Sonoma-Marín Area Rail Transit District and recommendations on the specific assets and liabilities that could be transferred, including rights or abilities to operate freight rail."

CalSTA has prepared the assessment report which was released in November 2020. The *Assessment of the North Coast Railroad Authority and Viability of a Great Redwood Trail* report and all appendices can be found on the CalSTA website at:
<https://calsta.ca.gov/subject-areas/reports>.

*"Provide a safe, sustainable, integrated and efficient transportation system
to enhance California's economy and livability"*

Commission Involvement in the NCRA Project

To preserve the rail corridor, the California Legislature enacted the North Coast Railroad Authority Act, Government Code sections 93000, et seq. (Statutes of 1989, Chapter 1085). The Act authorized the newly created public entity to provide passenger and freight railroad service in Humboldt, Trinity, Mendocino, Sonoma, and Marin Counties with specific focus on the Eureka Southern Railroad in Humboldt and Mendocino Counties and the option of extending service into Del Norte County. To facilitate this, the Legislature authorized the use of state and federal funds to begin purchasing the line, one segment at a time.

Between 1990 and 2011, a total of \$124 million of state and federal funds were invested in the NCRA corridor to restore freight rail service. (The Commission allocated, and the Department administered \$102 million.) These funds were used to purchase the entire right-of-way from Lombard to Humboldt Bay; to rehabilitate 62 miles of track (including 56 crossing signals, 50,000 crossties, and 50,000 tons of ballast); emergency levee repairs in Schellville and Humboldt Bay; repair 43 rail bridges and three movable bridges; install quiet zones in Novato; to briefly cover NCRA agency funds and outstanding debt; to settle litigation; and to address environmental contamination left behind by the historic private rail operators. However, the economic, environmental, and social challenges NCRA faced proved insurmountable for the resumption of freight rail service in this corridor, which has led to the current effort and assessment for use of NCRA's right-of-way as a multi-use path.

Current investment in the SB 1029 Assessment and associated dissolution activities includes \$17.8 million that is being administered by CalSTA.

Attachment

NCRA Rail Map



Department of Transportation
Planning and Local Assistance

Northwestern Pacific Rail Line

0 9 18 27 Miles

Date: 7/27/2017

Prepared by: J. Price

