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July 30, 2021

302805

**Via E-Filing**

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

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Office of Proceedings  
July 30, 2021  
Part of  
Public Record

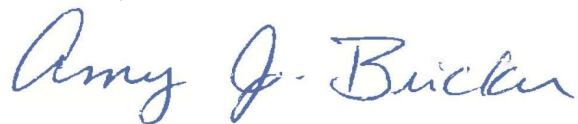
Re: North Coast Railroad Authority — Abandonment Exemption — in  
Mendocino, Trinity, and Humboldt Counties, CA -- AB 1305X

Dear Ms. Brown:

Our firm represents Friends of the Eel River (FOER) in the above referenced proceeding and respectfully submits the attached comment letter from FOER's Conservation Director Scott Greacen in support of North Coast Railroad Authority's (NCRA's) Notice of Exemption for Abandonment/Railbanking, Notice of Interim Trail Use (NITU), and motion for exemption from the STB's Offer of Financial Assistance (OFA). As noted in the attached, FOER would like to be placed on the service list as a party in this proceeding. Please note my e-mail address is [bricker@smwlaw.com](mailto:bricker@smwlaw.com) and Scott Greacen's e-mail address is [scott@eelriver.org](mailto:scott@eelriver.org) and we consent to e-mail service of pleadings.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Amy J. Bricker

Attachment

cc: Charles Montage, Counsel for NCRA  
Party Service List for AB 1305X



# FRIENDS OF THE EEL RIVER

*Working for the recovery of our Wild & Scenic River, its fisheries and communities.*

Thursday, July 29, 2021

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

RE: North Coast Railroad Authority (NCRA) — Abandonment Exemption — in Mendocino, Trinity, and Humboldt Counties, CA AB 1305X

Comments on NCRA's Abandonment Exemption, Notice of Interim Trail Use (NITU), and Motion for Exemption from OFA Provisions

Dear Ms. Brown,

On behalf of the board, staff, and supporters of Friends of the Eel River (FOER), I write in support of the North Coast Railroad Authority's (NCRA) Notice of Exemption for Abandonment/Railbanking ("Abandonment Exemption"), Notice of Interim Trail Use (NITU), and motion for exemption from the STB's Offer of Financial Assistance (OFA) provisions in the above-referenced proceeding (AB 1305X). FOER previously commented on NCRA's Combined Environmental and History Report for this matter (see FOER comment letter dated March 30, 2021), and incorporates those comments herein by reference.

As well, please add FOER to the service list as a party in this proceeding. Please note my e-mail address is [scott@eelriver.org](mailto:scott@eelriver.org) and FOER's attorney's e-mail address is [bricker@smwlaw.com](mailto:bricker@smwlaw.com) and we consent to e-mail service of pleadings. A copy of this request is being sent to counsel for NCRA as well as the parties identified on the service list for this docket.

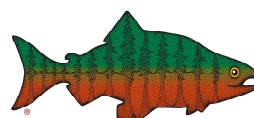
The NCRA has presented the key arguments for its Abandonment Exemption, NITU, and an exemption from the OFA provisions in this matter. We write to confirm the central facts adduced by the agency and to present additional evidence we believe would support NCRA's requests.

## **Background**

As the NCRA has noted, there has been no rail traffic on the approximately 175 miles for which railbanking is being sought since the Federal Railroad Administration (FRA) closed the line in 1998 following flood damage in the Eel River Canyon. But the old Northwestern Pacific rail line ceased to be economically feasible long before that time.

Because the line through the unstable Eel River Canyon was so frequently subject to blockages and damage, the line had the highest maintenance costs per mile in the U.S. before Southern

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Pacific sought to abandon the line in 1983. Storm damage in the Eel River Canyon bankrupted the successor to the Southern Pacific on the northern end of the line within a few years. The NCRA was formed by the California legislature in 1989 to prevent abandonment of the entire line from Humboldt Bay to the San Francisco Bay Area. Yet, after spending more than \$124 million in state and federal funds over two decades, the NCRA managed to restore rail service on only 62 miles of relatively flat, stable land from the San Francisco Bay Area to Windsor, CA.

FOER and Californians for Alternatives to Toxics (CATS) challenged the NCRA's refusal to conduct an adequate analysis of the potential environmental impacts of its plan to reopen the rail line through the Eel River Canyon. The California Supreme Court unanimously confirmed the state's power to require its agencies conduct analysis under the California Environmental Quality Act (CEQA). *Friends of Eel River v. N. Coast R.R. Auth.* 3 Cal. 5th 677 (2017). The U.S. Supreme Court denied review.

In the wake of that decision, the California legislature and California Transportation Commission acted first, to transfer the southern portion of the NCRA line to the SMART rail system, which will continue to operate freight rail service from Windsor south, and second, to change the mission of the NCRA to secure railbanking of the northern portion of the NCRA line from Willits to Humboldt Bay for public use.

It is important the STB appreciate this context for NCRA's Abandonment Exemption and NITU, as well as for its reasonable motion for an exemption from the OFA provisions, and for Mendocino Railway's absurd suggestion that it can hope to offer a feasible OFA to reopen the NCRA line at issue.

### **The Environmental Impacts of Rail Construction and Operation in the Eel River Canyon Would Be Significant**

Friends of the Eel River is gravely concerned that, as the NCRA suggests, "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." (motion, p. 20)

The NCRA line north of Willits quickly enters the Outlet Creek drainage, then begins to follow the mainstem Eel River. Construction of the rail line through the Eel River Canyon, from the Outlet Creek Canyon north to the mainstem Eel River as far downstream as the notorious Scotia Bluffs, often entailed carving a railbed out of very steep and sometimes quite unstable slopes above the river. (The underlying geology of much of the Eel River Canyon is Franciscan mélange, an unconsolidated, rapidly uplifting ancient seabed that, in combination with the torrential rainfall enjoyed by the coastal mountains of northwestern California, makes for one of the most erosive, and landslide-prone, landscapes in the world.)

Rail crews building, and later clearing, the line simply pushed vast amounts of material down into the Eel River. This material substantially harmed the Eel River and its fisheries, filling deep holes that were refugia for salmon, steelhead, lamprey, and sturgeon, impairing the clean spawning gravels salmon and steelhead require, burying juvenile lamprey in the riverbed, among other impacts.

Today, the Chinook and coho salmon and steelhead of the Eel River are all listed as Threatened under the federal Endangered Species Act (ESA).<sup>1</sup> Lamprey and sturgeon have been the subject of listing petitions under the ESA and are the focus of active conservation efforts. As well, Northern California summer steelhead, including Eel River runs, were listed as Endangered by the California Fish and Game Commission under the California Endangered Species Act (CESA) in June 2021. The scale of material disposal that was once routine on the Northwestern Pacific line simply to keep the line open would constitute clear Clean Water Act violations today. It would certainly entail take of listed salmon and steelhead. In addition, the fire dangers associated with dozens of very large trains a day may be an unreasonable additional liability in a landscape already at very high risk of high intensity fire.

As the NCRA noted, there has still never been an adequate environmental analysis of the potential impacts of rail construction and operation on the Eel River, its public trust values including fisheries and clean water, and other environmental concerns including fire and climate impacts, under either NEPA or the California Environmental Quality Act (CEQA). FOER will certainly vigorously exercise our hard-won ability to see thorough analysis and mitigation of any project in the Eel River Canyon under CEQA, including the trail proposed for the line the NCRA proposes to railbank.

### **The Economics of Rail Operations Appear Prohibitive at This Point**

As the NCRA points out in its motion, the economics of analyzing and rebuilding, let alone operating, the rail line between Eureka and Willits are simply and obviously prohibitive at this point. There is no economic argument at all for a rail connection from Humboldt Bay to Ft. Bragg. Connection to the national system would be necessary to operate any freight rail system, necessitating the additional capital expenses of reopening the line from Windsor to Willits.

Mendocino Railway uses the phrase “all or a portion of” at several points. The suggestion that it could offer a viable OFA for “a portion of” the line NCRA seeks to railbank is nonsensical. Mendocino Railway’s excursion rail business does not carry the costs of maintaining the line it already owns.

In addition, as the NCRA explains in its motion, an OFA must demonstrate an economic need. A 2013 study prepared for the Humboldt Bay Harbor District showed that the volume of shipments necessary to cover the costs of rebuilding the line would easily rank Humboldt Bay among the largest volume ports on the Pacific coast of North America.<sup>2</sup> There is no economic demand for such additional volume.

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<sup>1</sup> See, e.g., 70 FR 37159, 79 FR 20802 (Central Coastal Chinook Salmon and Southern Oregon/Northern California Coast Coho Salmon); 71 FR 833, 79 FR 2082 (Northern California Steelhead).

<sup>2</sup> Humboldt Bay Harbor, Recreation and Conservation District, **Humboldt Bay Alternative Rail Corridor Concept Level Construction Cost and Revenue Analysis**, August 22, 2013, BST Associates and Burrell Rail Group.

## **The Action Mendocino Railway Seeks Would Harm Humboldt County Citizens**

Mendocino Railway suggests that “abeyance is not fundamentally unfair to any party” concerned with this railbanking process. As well, Mendocino Railway suggests that “if an OFA is brought for all or a portion of a rail line there, (sic) will be no trails, and both public entities could avoid any costs at all.”

Mendocino Railway appears not to understand the situation on the ground in Humboldt County, perhaps the most salient portion of the rail line for which it claims to wish to offer an OFA. Humboldt County’s communities have, after decades of work, completed many miles of biking and walking trails on and around the defunct rail corridor around Humboldt Bay.

Critical projects to connect existing trail segments depend on the NCRA’s planned railbanking moving forward. Most significantly, the connection of the trail along Humboldt Bay to Eureka will finally provide non-motorists a safer route than the existing narrow sidewalk of the Highway 101 bridge over Freshwater Slough into Eureka. This is not simply a matter of the public monies committed after years of planning, which Mendocino Railway blithely dismisses as costs to be avoided. Further delay in this project may reasonably be expected to increase the risk of fatalities to pedestrians and cyclists on the 101 bridge into Eureka alone.

Mendocino Railway writes *of this very project* that “allowing work on the new Humboldt Bay Trail South to proceed prematurely could prohibit continued rail operations” in a place trains literally haven’t been able to reach for decades. At high tide, there is open water under the tracks at the north end of the project, where even the ties have fallen away. In truth, if an OFA is brought for the NCRA line the consequences could be quite detrimental, even catastrophic, for Humboldt County citizens. Existing and planned trails would be entirely upended. Public costs would soar. Without a safe connection to Eureka, the Humboldt Bay trail will not serve one of its central purposes of providing a safe non-motorized connection between Arcata and Eureka.

Mendocino Railway’s unwarranted dismissal of potential harms to Humboldt County and the Eel River should signal that the OFA it claims to plan to offer for the NCRA line north of Willits would not be grounded in reality.

## **Mendocino Railway Is Already in Over Its Head**

Local press reports confirm that the Skunk Train has unsuccessfully applied for at least two federal transportation grants in the amount of \$8.5 and \$17 million to fund repairs to the collapsed tunnel on its rail line.<sup>3</sup> The tunnel remains blocked today. Thus, the Skunk Train operates the portions of the line on either side of the tunnel for excursions and railbikes, but cannot operate even from Willits to Ft. Bragg. Local press reports also show that Mendocino Railway acquired the portion of the old Georgia-Pacific mill site outside the coastal town of Ft. Bragg that is the terminus of its rail line. What, if any, price was actually paid for the

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<sup>3</sup> See **Council OKs help on Skunk Train grant**, Chris Calder, Ft Bragg Advocate-News, June 27, 2019 at <https://www.advocate-news.com/2019/06/27/council-oks-help-on-skunk-train-grant/>

contaminated site has yet to be publicly disclosed.<sup>4</sup> It is reasonable to assume that if Mendocino Railway had been able to secure grant funding or possessed the capital resources to clear its single tunnel and complete the scheduled hazardous materials cleanup on its Ft. Bragg property it would already have done so.<sup>5</sup>

The disconnect between Mendocino Railway's inability to raise tens of millions of dollars for these projects and its pretense to offer an OFA for the Eel River line is glaring. As the NCRA explains in its motion for exemption, any plausible OFA for the line at issue would have to demonstrate the ability to mobilize literally billions of dollars. ("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." NCRA motion, p. 9)

In sum, Mendocino Railway appears to be promising an OFA it clearly cannot deliver.

## **Conclusion**

For the forgoing reasons, FOER strongly supports the NCRA's Abandonment Exemption, NITU, and motion for an exemption from the OFA provisions for the above-referenced proceeding. Under the unique circumstances presented by the landscape, history, and environmental conditions of the rail line from Humboldt Bay to Willits that NCRA seeks to railbank, no feasible OFA could be presented at this time. In this context, Mendocino Railway's transparently risible claim to be preparing an OFA can only represent an effort to stall or derail the railbanking process for purposes other than those for which the OFA process is provided.

Thank you for the opportunity to comment and for your careful consideration of these important questions.

Sincerely,

/s/

Scott Greacen  
Conservation Director

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<sup>4</sup> See **Skunk Train execs say mill site purchase finalized**, Chris Calder, Mendocino Beacon, June 16, 2019, noting "He did not give a dollar amount for the purchase." at <https://www.mendocinobeacon.com/2019/06/16/skunk-train-execs-say-mill-site-purchase-finalized/>

<sup>5</sup> For information on the toxic substances contaminating the site, see the California Department of Toxic Substance Control page for the site at [https://www.envirostor.dtsc.ca.gov/public/profile\\_report?global\\_id=80001451](https://www.envirostor.dtsc.ca.gov/public/profile_report?global_id=80001451)

We note with interest the site history, including this final entry: "California Western Railroad completed a Resource Conservation and Recovery Act (RCRA) Facility Investigation (RFI) of the maintenance facility in Fort Bragg in 2013. Based on the results of the RFI, additional work is needed to investigate lead, arsenic and petroleum and groundwater. *As of September 2018, this investigation has not been completed because of limited financial resources of California Western Railroad.* DTSC expects the investigation to begin in 2019. JP 09/07/2018" (emphasis added)