

SERVICE DATE – AUGUST 26, 2021

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1305X

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

Digest:¹ Before taking further action on a notice of exemption for abandonment filed by North Coast Railroad Authority, the Board requests comment on two rail segments related to the line at issue. The Board also denies a request to lift the abeyance and stay orders previously imposed in this proceeding.

Decided: August 25, 2021

On May 14, 2021, North Coast Railroad Authority (NCRA) filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments and Discontinuances of Service to abandon 175.84 miles of rail line from milepost 139.5 at Commercial Street in Willits, Cal., to milepost 284.1 near Eureka, Cal., including appurtenant branch lines extending to milepost 267.72 near Carlotta, Cal., milepost 295.57 near Korblex, Cal., milepost 300.5 near Samoa, Cal., and milepost 301.8 near Korbel, Cal., in Mendocino, Trinity, and Humboldt Counties, Cal. (the Line).² By decision served on June 9, 2021, the Board held this proceeding in

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Pol’y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

² In a separate docket, NCRA filed a petition seeking exemptions from certain statutory provisions and waivers of certain regulatory requirements regarding a proposed third-party, or “adverse,” application for discontinuance over a portion of the Line. See N. Coast R.R. Auth.—Adverse Discontinuance of Lease & Operating Auth.—Nw. Pac. Ry., Docket No. AB 1313. There, NCRA states that it intends to ask the Board to terminate the operating rights of Northwestern Pacific Railway Company (NWPY) over the portion extending from milepost 142.5, at Outlet Station, to the end of the line at milepost 302.86, at Fairhaven, on the Samoa Branch, including the entireties of the Korblex/Korbel Branch (also referred to as the Arcata & Mad River subsidiary) and the Carlotta Branch. NCRA Pet. 2, N. Coast R.R., AB 1313. Additionally, Northwestern Pacific Railroad Company filed a verified notice of exemption to discontinue service over an approximately 53.5-mile rail line, including an approximately three-mile segment of the Line between milepost 139.5 and milepost 142.5. See Nw. Pac. R.R.—Discontinuance of Service Exemption—in Mendocino Cnty., Cal., AB 1310 (Sub-No. 1X) (STB served Aug. 2, 2021).

abeyance pending further Board order to permit the consideration of whether the Board retains jurisdiction over the portion of line between Korblex and Korbel (the Arcata & Mad River subsidiary). N. Coast R.R. Auth.—Aban. Exemption—in Mendocino, Trinity, & Humboldt Cntys., Cal., AB 1305X (STB served June 9, 2021).³

On June 28, 2021, NCRA filed a request that the Board lift the “abeyances” served on June 9, 2021, and June 11, 2021. On July 6, 2021, Mendocino Railway filed a reply opposing NCRA’s request to lift the abeyances.⁴ For the reasons discussed below, the Board will deny NCRA’s request to lift the abeyance and stay orders imposed in this proceeding and will direct NCRA to provide further comment on the issue related to the Arcata & Mad River subsidiary, as well as on an issue that the Board has identified related to the Samoa branch.

BACKGROUND

NCRA originally acquired the Line in 1992 from the Eureka Southern Railroad (Eureka Southern). See N. Coast R.R. Auth.—Acquis. & Operation Exemption—Eureka S. R.R., FD 32052 (ICC served Apr. 23, 1992).⁵ NCRA now seeks to abandon the Line in its entirety, noting that not only has no local or overhead traffic moved over the Line within the past two years, but also that, since 1998, the Line has been subject to a safety-related emergency order imposed by the Federal Railroad Administration prohibiting railroad operations on the Line. (Verified Notice 1-2.) NCRA simultaneously filed with its verified notice a request for issuance of a notice of interim trail use or abandonment (NITU) to establish interim trail use/rail banking on the Line under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d). (See Trails Use Request, May 14, 2021.) NCRA states that it intends to preserve the Line for possible future rail reactivation and for use as part of the Great Redwood Trail. (Verified Notice 2.)

NCRA’s proposed abandonment encompasses the Arcata & Mad River subsidiary, which NCRA asserts extends from milepost 295.57 near Korblex to milepost 301.8 near Korbel, a distance of approximately 6.23 miles. (*Id.* at 1 n.1.) NCRA, however, acknowledges uncertainty about whether that subsidiary is an active line of railroad, and therefore has raised a question about the Board’s jurisdiction over that portion of line. (*Id.* at 1 n.1; *id.* Ex. B, Arcata & Mad River Jurisdictional Issue.) NCRA states that the Board’s predecessor, the Interstate Commerce Commission (ICC), authorized abandonment of the Arcata & Mad River subsidiary in 1985. (Verified Notice, Ex. B, Arcata & Mad River Jurisdictional Issue 1); see also Arcata & Mad

³ Consistent with the Board’s June 9, 2021 decision, the Board’s Office of Environmental Analysis served a decision on June 11, 2021, noting that the Draft Environmental Assessment comment period would be stayed until further Board order. N. Coast R.R. Auth.—Aban. Exemption—in Mendocino, Trinity, & Humboldt Cntys., Cal., AB 1305X (STB served June 11, 2021).

⁴ On July 26, 2021, U.S. Representative Jared Huffman filed a letter supporting NCRA’s request that the Board lift the abeyances imposed in this proceeding.

⁵ It does not appear that the Arcata & Mad River subsidiary was included in the acquisition and operation authority sought and granted in 1992 in North Coast Railroad Authority, Docket No. FD 32052.

River R.R.—Aban. Exemption—in Humboldt Cnty. Cal., AB 241X (ICC served Apr. 23, 1985). NCRA argues that, at that time, Eureka Southern expressed interest in, and subsequently purchased, the subsidiary from the Simpson Timber Company. (Verified Notice, Ex. B, Arcata & Mad River Jurisdictional Issue 1.) NCRA states that, thereafter, it purchased Eureka Southern out of bankruptcy in 1992 and that both entities operated the subsidiary for freight rail purposes until 1994. (Id. Ex. B, Arcata & Mad River Jurisdictional Issue 1-2.) Accordingly, NCRA argues that evidence concerning the Arcata & Mad River subsidiary is consistent with a determination that the Simpson Timber Company never consummated its abandonment authority, but rather transferred its interests in the Line to Eureka Southern for continued rail operations, which continued under NCRA. (Id. Ex. B, Arcata & Mad River Jurisdictional Issue 4.) Thus, NCRA argues that the Board continues to have jurisdiction over this rail segment. (Id. Ex. B, Arcata & Mad River Jurisdictional Issue 4-5.) Nevertheless, NCRA asserts that, should the Board “view its jurisdiction as lapsed,” NCRA will seek “private” railbanking. (Id. at 5 (citing S. Pac. Trans. Co.—Exemption—Aban. of Serv. in San Mateo Cnty., Cal., AB 12 (Sub-No. 118X) (ICC served Mar. 8, 1991)).)

The Board notes that there appears to be a discrepancy regarding the endpoint of the Line on the Samoa branch. Here, NCRA indicates that it received acquisition and operation authority (and now seeks abandonment authority) on the Samoa branch extending to milepost 300.5. (See NCRA Verified Notice 1, 3); see also N. Coast R.R. Auth., FD 32052, slip op. at 1. However, in North Coast Railroad Authority—Adverse Discontinuance of Lease & Operating Authority—Northwestern Pacific Railway, Docket No. AB 1313, in which NCRA intends to file a petition for “adverse” discontinuance of NWPY’s operating authority on the Line, NCRA’s petition notes that the endpoint of the Samoa branch is milepost 302.86. NCRA Pet. 2, N. Coast R.R., AB 1313. As discussed below, this discrepancy raises the question of whether abandonment of the Line would isolate a segment of track from the interstate rail network, leaving a “stranded segment” between milepost 300.5 and milepost 302.86.

Lastly, in its request to lift the abeyances in this proceeding, NCRA states that Humboldt County and the City of Eureka have requested that the abeyance orders be lifted to avoid the delay of major infrastructure projects of importance to those local jurisdictions. (NCRA Motion 1, June 28, 2021.) NCRA suggests, among other things, that the Board could continue its consideration of its jurisdiction over the roughly 6.23 miles encompassed by the Arcata & Mad River subsidiary, while allowing the notice of exemption and NITU process to take effect for the remainder of the 168.71 miles of rail line. (Id. at 7.)

As noted above, Mendocino Railway filed a reply opposing NCRA’s request to lift the abeyances in this proceeding. Mendocino Railway argues that NCRA is seeking to circumvent the offer of financial assistance (OFA) process under 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27(c)(2), noting NCRA’s statement that it “reserves the right to seek dismissal of any OFA which it[] regards as inappropriate.” (Mendocino Ry. Reply 2 (quoting NCRA Verified Notice, Cover Letter 2, May 14, 2021).) Mendocino Railway notes, however, that despite such an assertion, NCRA did not seek waiver from the OFA process and did not elaborate on why an OFA may be inappropriate. (Mendocino Ry. Reply 3.) As such, Mendocino Railway argues that no waiver of the OFA process should be granted. (Id.) Mendocino Railway also states that it

anticipates bringing an OFA for all, or a portion, of the rail line proposed for abandonment.⁶ (Id.)

DISCUSSION AND CONCLUSIONS

Jurisdictional Issue: Arcata & Mad River Subsidiary

When a rail carrier that has received authority to abandon a rail line exercises, or “consummates,” that authority, the line is removed from the interstate rail network, and the Board’s jurisdiction over the line terminates. See Hayfield N. R.R. v. Chi. & N.W. Transp. Co., 467 U.S. 622, 633-34 (1984) (consummation of abandonment terminates the agency’s jurisdiction); Baros v. Tex. Mexican Ry., 400 F.3d 228, 234 (5th Cir. 2005) (“Once a rail carrier abandons a line, the line is no longer part of the national transportation system, and the [Board’s] jurisdiction terminates.”).⁷ Invocation of the Trails Act, however, keeps a rail line that has been authorized for abandonment within the Board’s jurisdiction and within the interstate rail network by allowing it to be rail banked and used as an interim trail. See 16 U.S.C. § 1247(d) (providing that rail banked lines “shall not be treated, for purposes of any law or rule of law, as an abandonment of the use of such rights-of-way for railroad purposes”). However, where an abandonment has been consummated, the Board no longer has jurisdiction over a line and cannot consider requests for interim trail use/rail banking under the Trails Act. See, e.g., Iowa Traction Ry.—Discontinuance of Serv. Exemption—in Cerro Gordo Cnty., Iowa, AB 1269 (Sub-No. 1X), slip op. at 3 (STB served Apr. 6, 2020) (finding no jurisdiction to authorize interim trail use/rail banking over an abandoned line); Ill. Cent. Gulf R.R., 5 I.C.C.2d at 1062-63 (same).

Before the Board can act on NCRA’s request for abandonment authority, it must determine whether the Board has jurisdiction over the Arcata & Mad River subsidiary. As noted above, on April 9, 1985, the ICC authorized the Arcata & Mad River Railroad (A&MR) to abandon the Arcata & Mad River subsidiary, which was described as a 7.5-mile line of rail, in Docket No. AB 241X. See Arcata & Mad River R.R., AB 241X, slip op. at 1. NCRA asserts, however, that Eureka Southern subsequently purchased the Arcata & Mad River subsidiary from the Simpson Timber Company, and that NCRA, in turn, acquired the subsidiary when it

⁶ On July 26, 2021, NCRA filed a motion for exemption from the OFA provisions in this proceeding. Mendocino Railway and North Coast Railroad Company, L.L.C. filed replies on August 16, 2021. The Board will address the merits of NCRA’s request in a subsequent decision.

⁷ Prior to a 1996 rule change, in order to determine if a rail carrier had consummated an abandonment, the agency employed a case-by-case evaluation of the facts and circumstances to ascertain whether a rail carrier showed a clear intention to remove the line from the interstate rail network, or if instead the record indicated an intent to preserve the right-of-way for future reactivation of rail service. See, e.g., Ill. Cent. Gulf R.R.—Aban.—in Dewitt & Piatt Cntys., Ill., 5 I.C.C.2d 1054, 1061 (1988) (citing Black v. ICC, 762 F.2d 106, 112-13 (D.C. Cir. 1985)). Since 1996, Board regulations have required that a rail carrier file a notice of consummation with the Board. 49 C.F.R. § 1152.29(e)(2). This consummation notice is now the only definitive, legally recognizable way for a rail carrier to consummate an abandonment. Honey Creek R.R.—Pet. for Declaratory Order, FD 34869 et al., slip op. at 4-5 (STB served June 4, 2008).

purchased Eureka Southern out of bankruptcy. (Verified Notice, Ex. B, Arcata & Mad River Jurisdictional Issue 1.) Thus, NCRA argues that this evidence, coupled with the fact that both it and Eureka Southern operated the subsidiary for freight purposes until 1994, is consistent with a determination that the abandonment was never consummated. (*Id.* Ex. B, Arcata & Mad River Jurisdictional Issue 1-2, 4.)

However, the Board has located a document in its own records that would suggest that abandonment of the Arcata & Mad River subsidiary was consummated. In Arcata & Mad River Railroad, Docket No. AB 241X, in which A&MR received authority to abandon the Arcata & Mad River subsidiary, counsel for A&MR notified the ICC in a letter dated June 6, 1985, that the “applicant railroad has been abandoned.” A&MR Letter 1, June 6, 1985, Arcata & Mad River R.R., AB 241X. The letter further noted that “[i]nstructions have been issued to the tariff publishing agents to cancel the [A&MR’s] participation and to the Association of American Railroads to withdraw the carrier from the interchange and other agreements to which it had been a party.” *Id.* Finally, the letter pointed out that, pursuant to the public use condition imposed by the ICC, “no disposition of the right-of-way . . . will be made before October 23, 1985, unless . . . in the meantime properties were sold to an operating railroad.” *Id.*

This letter from A&MR’s counsel demonstrates A&MR’s clear intention to consummate the abandonment of the Arcata & Mad River subsidiary upon expiration of the public use condition in October 1985.⁸ Although NCRA states that Eureka Southern purchased the Arcata & Mad River subsidiary (and that NCRA, thereafter, purchased Eureka Southern out of bankruptcy), there is no evidence in the current record that sale of the Arcata & Mad River subsidiary to Eureka Southern was ever finalized. Nor has the Board located any records indicating that Eureka Southern, or NCRA, filed for acquisition authority with the ICC for the Arcata & Mad River subsidiary. The Board seeks comment on the June 6, 1985 letter, which is attached to this decision as an Appendix—specifically, why this letter does not constitute conclusive evidence of A&MR’s clear intention to consummate the abandonment of the Arcata & Mad River subsidiary upon the expiration of the public use condition, thereby removing that branch from the interstate rail network and the Board’s jurisdiction. Additionally, the Board requests that the parties submit any documentation showing whether and, if so, when the sale of the Arcata & Mad River subsidiary to Eureka Southern was finalized.

Ownership Issue: Samoa Branch

As described above, there appears to be a discrepancy regarding the endpoint of the Line on the Samoa branch. Therefore, it is unclear who owns the portion of line on the Samoa branch between milepost 300.5 and milepost 302.86 and whether it is part of the interstate rail network. It is well settled that the Board will not allow track to which a common carrier obligation is attached to become isolated from the rail system as a result of the abandonment of an adjoining segment. See Cent. Or. & Pac. R.R.—Aban. & Discontinuance of Serv.—in Coos, Douglas, &

⁸ An outstanding public use condition constitutes a regulatory barrier to consummation. See Providence & Worcester R.R.—Aban. Exemption—in Providence Cnty., R.I., AB 254 (Sub-No. 8X), slip op. at 1-2 (STB served Apr. 28, 2006).

Lane Cntys., Or., AB 515 (Sub-No. 2), slip op. at 12 (STB served Oct. 31, 2008). Thus, the Board requests comment on the status of the rail segment between milepost 300.5 and milepost 302.86, including whether NCRA owns that portion of line, whether it is part of the interstate rail network, and any other relevant information.⁹

Request to Lift the Abeyance Orders:

Finally, the Board will deny NCRA's request that the Board lift the abeyance and stay orders imposed on June 9, 2021, and June 11, 2021. The Board will deny this request in order to receive comment on the issues identified above and avoid potentially authorizing abandonment over a portion of line not within the interstate rail network and therefore outside of the Board's jurisdiction (the Arcata & Mad River subsidiary) or potentially stranding an active segment of rail line or failing to fulfill the Board's environmental and historic review responsibilities (the Samoa branch).¹⁰ Therefore, the Board invites the filing of comments (and any relevant supporting evidence) concerning the issues and information discussed above by September 15, 2021, and replies are due by October 5, 2021.

⁹ In North Coast Railroad Authority, Docket No. AB 1313, NCRA asserts that environmental and historic review is unnecessary because NCRA has no intention of salvaging the Line or disrupting any potentially historic structures on the Line. NCRA Pet. 10, N. Coast R.R., AB 1313. NCRA also notes in its adverse discontinuance petition that it circulated an environmental and historic report in this proceeding for its rail lines extending from milepost 139.5 in Willits to the end of the Line at Samoa, including the Korblex/Korbel and Carlotta branches. NCRA Pet. 2 n.1, N. Coast R.R., AB 1313. Because environmental review would occur during any subsequent abandonment proceeding, the Board does not typically require such a review for discontinuance proceedings. See 49 C.F.R. §§ 1105.6(c)(5), 1105.8(b); see also Mission Mountain R.R.—Discontinuance of Serv. Exemption—in Flathead Cnty., Mont., AB 1009 (Sub-No. 2X), slip op. at 1 (STB served Apr. 21, 2020). However, in cases where a discontinuance would leave no underlying rail carrier subject to the Board's jurisdiction on the line, the Board will typically conduct an environmental and historic review. See e.g., Cincinnati, New Orleans & Tex. Pac. Ry.—Discontinuance of Serv. Exemption—in Scott Cnty., Tenn., AB 290 (Sub-No. 354X), slip op. at 2 (STB served June 12, 2015). In addition to addressing the issue with the stranded segment between milepost 300.5 and milepost 302.86, the Board must ascertain the owner of that segment to ensure that the Board is fulfilling its environmental and historic review responsibilities.

¹⁰ Further, having the Board continue to consider its jurisdiction over the Arcata & Mad River subsidiary, while otherwise allowing the notice of exemption to take effect for the remainder of the Line, as NCRA has suggested, would not resolve the potential stranding and environmental issues on the Samoa branch. Moreover, authorizing abandonment of the Line, other than the Arcata & Mad River subsidiary, could potentially strand the Arcata & Mad River subsidiary itself to the extent it has not already been abandoned.

It is ordered:

1. Comments on the issues discussed and information contained in this decision are due by September 15, 2021, and replies are due by October 5, 2021.
2. NCRA's request to lift the abeyance and stay orders served on June 9, 2021, and June 11, 2021, is denied.
3. This decision is effective on its service date.

By the Board, Board Members Begeman, Fuchs, Oberman, Primus, and Schultz.

Appendix

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June 6, 1986

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*NOT ADMITTED IN THE DISTRICT OF COLUMBIA
PRACTICE LIMITED TO FEDERAL MATTERS

Hon. James H. Bayne
Secretary
Room 1312
Interstate Commerce Commission
Washington, D.C. 20423

Dear Secretary Bayne:

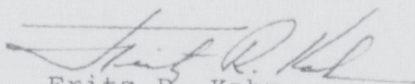
With reference to the decisions of the Interstate Commerce Commission in Docket No. AB-241X Arcata and Mad River Rail Road Company--Abandonment Exemption--In Humboldt County, CA, served April 23 and June 4, 1985, please be advised that the applicant railroad has been abandoned.

Instructions have been issued to the tariff publishing agents to cancel the AMR's participation and to the Association of American Railroads to withdraw the carrier from the interchange and other agreements to which it had been party.

Pursuant to the public use condition imposed by the Commission, no disposition of the right-of-way within Blue Lake, California will be made before October 23, 1985, unless, of course, in the meantime the properties were sold to an operating railroad.

If you have any question concerning the foregoing advice or if I otherwise can be of assistance, please let me know.

Sincerely yours,


Fritz R. Kahn

cc: Joseph Breed, Esq.
Counsel for all parties

