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ENTERED
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September 15, 2021
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15 September 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

Comments in response to Board Decision served August 26,
2021, requesting comment on two rail segments

Dear Ms. Brown:

On behalf of North Coast Railroad Authority ("NCRA"), I provide herewith for filing in this proceeding Comments in response to the Board Decision referenced above.

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

Thank you for your assistance in this matter.

Respectfully submitted,



Charles H. Montange
for North Coast Rail Authority

Att: Comments

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

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

All parties per certificate of service on Comments signature page

BEFORE THE SURFACE TRANSPORTATION BOARD

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

Comment on behalf of North Coast Railroad Authority
in Response to STB’s
Information Requests Concerning Jurisdiction

These comments, responsive to the Surface Transportation Board’s (“STB’s” or “Board’s”) decision served August 26, 2021, are made on behalf of North Coast Railroad Authority (“NCRA”), an agency of the State of California. The Board requested comments on two jurisdictional matters relating to two different branch lines on the north end of NCRA’s rail line at issue in this proceeding: (1) the terminus of the Samoa Branch, and (2) whether the Arata and Mad River “subsidiary” of NCRA is a regulated branch (or part of a branch) or a non-jurisdictional spur off the Korblex Branch.

I. Samoa Endpoint

NCRA used MP 300.5 at Samoa as the endpoint of the Samoa Branch for purposes of its Notice of Exemption (“NOE”) in this proceeding. Northwestern Pacific Railroad Company (“NWP,” a subsidiary of Southern Pacific) and Eureka

Southern Railroad (“ESR”) – NCRA’s predecessors in interest -- consistently used MP 300.5 as the endpoint of the Samoa Branch. NWP and ESR treated all other sidings, spurs, drills, leads and other trackage emanating from the Samoa Branch (including those continuing south out of Samoa on the Samoa Peninsula) as not subject to federal railroad licensing jurisdiction, pursuant to Revised Interstate Commerce Act, 49 U.S.C. 10907 (repealed), now recodified as ICC Termination Act, 49 U.S.C. 10906. NCRA has used the same endpoint as NWP and ESR for its filings. There has been no new construction, or new operation, or new burst of rail shipments or shippers before, during, or after NCRA’s acquisition of the Samoa Branch to support any change to the MP 300.5 endpoint.

Treatment by NWP. NCRA attaches hereto as Exhibit A excerpts from NWP’s Application for abandonment authority dated September 1, 1983 in ICC Docket AB 14 (Sub-no. 4). That Application at p. 4 states that the Samoa Branch extended from MP 284.17 at or near Arcata to MP 300.5 at or near Samoa. NCRA attaches hereto as Exhibit B a report assembled by Joshua Buck. Attached to Mr. Buck’s report as Buck Exhibit F is a track chart showing that NWP treated the Samoa Branch as ending at MP 300.5, and all other trackage emanating therefrom as spurs, drills, and so forth.

Treatment by NWP, Eureka Southern and ICC. The Interstate Commerce Commission (“ICC”) authorized Eureka Southern Railroad Company and

Northwestern Pacific Acquiring Corporation (collectively “Eureka Southern”¹) to acquire “the Eel River line” from Northwestern Pacific Railroad Company (“NWP”), a subsidiary of Southern Pacific Transportation Company (“SP”), at Northwestern Pacific Acquiring Corporation and Eureka Southern Railroad, Exemption from 49 U.S.C. 10901 and 11301, F.D. 30555, 1984 ICC Lexis 186, dated Oct. 18, 1984 (ICC version served Oct. 25, 1984). The ICC decision authorizing the acquisition described the “Eel River line” as “between milepost 142.5, near Outlet, and milepost 284.1, near Eureka, CA. The transaction also involves three short branch lines.” ICC in its 1984 decision did not describe the branch lines by milepost numbers, nor did ICC specify branch mileposts in subsequent decisions in F.D. 30555 (subsequent decisions involved mainly labor protection issues).

However, the original Petition for Exemption filed by Eureka Southern dated August 26, 1984, in F.D. 35555, at p. 5 does contain a description of the Samoa Branch by milepost number. That description is presumably incorporated by ICC as the basis for ICC’s 1984 decision authorizing the ES acquisition. Eureka Southern’s August 26, 1984 Petition defined the “Samoa Branch” as follows:

¹ Northwestern Pacific Acquiring Corporation and Eureka Southern Railroad were affiliated entities under common ownership of Brian Whipple. See Northwestern Pacific Acquiring Corporation and Eureka Southern Railroad, Exemption from 49 U.S.C. 10901 and 11301, F.D. 30555, 1984 ICC Lexis 186, dated Oct. 18, 1984, but ICC version served Oct. 25, 1984, slip at p.1.

“from milepost 292.84 near Arcata to the end of that branch at milepost 300.50 near Samoa.” A copy excerpts containing the quote from the Petition in F.D. 30555 is attached as Exhibit C.² This description is the same as NWP used in its contemporaneous abandonment application. It follows that ICC intended to authorize Eureka Southern to acquire the Samoa Branch with an endpoint of MP 300.5. It also follows that any other trackage associated with the Samoa Branch adjacent to -- or coming out of -- the stem track from Arcata up to, at, or beyond MP 300.5 was regarded, and was intended to be treated, as ancillary track (spur, industrial lead, team, sidings, etc.) not subject to ICC acquisition, transfer or abandonment jurisdiction under the Revised Interstate Commerce Act 49 U.S.C. 10907(b) (repealed), recodified at ICC Termination Act, 49 U.S.C. 10906.

Treatment by ESR, NCRA and ICC. The Eel River line is geologically unstable resulting in frequent and recurring service suspensions and extraordinarily high maintenance expenses. Unsurprisingly, shortly after acquiring the Eel River line, the Eureka Southern filed for bankruptcy. California organized NCRA to endeavor to keep the line going. The United States Bankruptcy Court for the Northern District of California authorized NCRA to acquire the assets of the Eureka Southern in In re Eureka Southern Railroad Company, et al., No. 1-86-

² NCRA wishes to thank STB’s Office of Public Assistance for supplying us a copy of the Petition and indeed, over and beyond the call of duty, apparently the entire ICC file in F.D. 30555.

01976 & 01977, filed Nov. 12, 1991 (exhibit D). The ICC authorized the transfer from Eureka Southern to NCRA in North Coast Railroad Authority – Acquisition and Operation Exemption – Eureka Southern Railroad, F.D. 32052, decided April 20, 1992 (1992 L.W, 80295 (ICC)). In that decision, ICC defined the Samoa Branch to include the trackage between “milepost 294.84, near Arcata, and milepost 300.5, near Samoa.” NCRA, like Eureka Southern, as well as ICC at the time, thus treated any other trackage associated with the Samoa Branch, including trackage adjacent to -- or coming out of -- the stem track up to, at or beyond MP 300.5 as ancillary track (spur, industrial lead, team, sidings, etc.) not subject to ICC acquisition, transfer or abandonment jurisdiction under the Revised Interstate Commerce Act, 49 U.S.C. 10907(b) (repealed), recodified at ICC Termination Act 49 U.S.C. 10906.

Additional history. NCRA requested its history consultant Joshua Buck to prepare a supplemental report on the use of the trackage associated with the Samoa Branch focusing on Samoa and trackage south of Samoa on the Samoa Peninsula. Mr. Buck’s report and assembled materials are attached as Exhibit B. Insofar as relevant here, Mr. Buck found no new shipper or change of circumstances (other than decline of traffic) on any of the trackage south of Samoa that linked to the Samoa Branch during the time period following acquisition by either ESR or NCRA. Mr. Buck indicates that his research shows that ESR served two shippers

on the Samoa Branch: Louisiana Pacific and Sierra Pacific. Louisiana Pacific was served via leads and trackage somewhat south of Samoa. Sierra Pacific was served by trackage and leads off the Samoa Branch between Samoa and Arcata. Mr. Buck conducted a field inspection, finding the most southerly trackage (much of which is covered with sand) terminates in an employee parking lot for Fox Farms in the Fairhaven area. Mr. Buck indicates that this is adjacent to the site of the old Mutual Plywood Mill which had its own railroad equipment, but whose successors in interest went out of business in 1981.

On this basis, NCRA properly treated this Board's licensing jurisdiction over the Samoa Branch as limited to the Branch as described in the ESR Petition filed in the 1992 decision in F.D. 30555, and as implicitly authorized by ICC in ICC's 1984 decision F.D. 32052, and as described in NWP's 1983 abandonment application. When NCRA acquired the "Eel River" line and its branches in 1992, there was no entry into new territory and no burst of rail traffic on or south of the historically defined Samoa Branch on the Samoa Peninsula. Instead, in 1998, the entire NCRA system was embargoed by the Federal Railroad Administration. The only change since the embargo is that all former shippers have now ceased operations on the Peninsula. See Buck Report.

Unused Fox Farm spur. Based on a field inspection, Mr. Buck reports that fragments of trackage still exist, including a lead extending south of Samoa as far

as a parking lot apparently used by Fox Farm Soil and Fertilizer at or near Fairhaven. The spur has evidently not been used since 1981. Mr. Buck's report includes a picture of the end of that stub. He explains that much of the trackage is covered with sand. As indicated, NWP, ES, and NCRA treated the trackage as spur track not subject to STB licensing jurisdiction in all regulatory filings to date, and the plywood plant that used it ceased operations in 1981. In any event, this unused spur is the furthest south of any trackage still existing on the Samoa Peninsula according to Mr. Buck's inspection.

Conclusion. The trackage south of Samoa is all spur. Generally, ICC and STB authority was required for extensions of branch lines into new territory, not for incidental trackage. Nicholson v. ICC, 711 F.2d 364, 368 (D.C. Cir. 1983), cert. denied, 464 U.S. 1056 (1984). Spurs and leads to serve particular customers are generally not extensions but incidental trackage to lines and branches. Id. at 367-68. See also Chicago, M., St. P & P.R. Co. v. Chicago & E.I. R. Co., 198 F.2d 8 (7th Cir. 1952). Any trackage beyond MP 300.5 in the direction of Fairhaven was never entry into new territory, but simply service to another part of the Samoa Peninsula south of MP 300.5 at Samoa. STB lacks licensing jurisdiction over spurs and leads beyond MP 300.5 per 49 U.S.C. 10906.

NWPY 2001 filing. The Board in its August 26 Decision appears concerned that the terminus of the Samoa Branch is not MP 300.5 (at Samoa) but

instead Fairhaven at MP 302.86. The Board also wonders whether this requires a new Environmental Report or Historic Report. So far as the August 26 Decision indicates, STB's concern appears to arise because NCRA's defunct former lessee (Northwestern Pacific Railway Company or "NWPY") applied for and obtained authority in Northwestern Pacific Railway Company – Lease and Operating Exemption, F.D. 33998, served Feb. 6, 2001, to lease and operate all of NCRA's lines, but defined the endpoint of the Samoa Branch as MP 302.86 (Fairhaven) rather than MP 300.5 (Samoa).

NCRA is currently petitioning the STB for exemptions from certain showings required in applications for discontinuance so that NCRA can file an adverse discontinuance proceeding to terminate the defunct former lessees' rail license from MP 142.5 (Outlet Station) to end of the Eel River line and all branches in the north. See North Coast Railroad Authority – Adverse Discontinuance – Northwestern Pacific Railway Company, AB 1313, served June 7, 2021 (instituting a proceeding).³ STB is evidently concerned that because the agency authorized

³ After NWPY's lease was terminated, NCRA sought proposals for a new lessee and ultimately negotiated a lease and operating agreement for the line with Northwestern Pacific Railroad Company ("NWPCo"). Although the new lease agreement effectively encompassed all of NCRA's line [see "Agreement for the Resurrection of Operations upon the Northwestern Pacific Railroad Line and Lease, North Coast Railroad Authority and Northwestern Pacific Railroad Authority, Sept. 6, 2006," Parts V and VI (items I and J)], NWPCo sought, and STB authorized, a change in operators only for NCRA's line from Outlet Station (MP 142.5) south. See Northwestern Pacific Railroad Company – Change in

the defunct NWPY to operate all the way to MP 302.86 in F.D. 33988, current or former trackage between MP 300.5 to 302.86 now constitutes a “line” or “branch” and would be a “stranded segment” were it to authorize NCRA to abandon to the end of the Samoa Branch at MP 300.5.

STB authority is discretionary, not mandatory. NWPY did not provide any service on NCRA’s lines, and especially not on the Samoa Branch or any spur or lead off that Branch. NWPY’s authority was granted in F.D. 33998, served Feb. 6, 2001. However, the Federal Railroad Administration (“FRA”) had previously embargoed the entire NCRA line, including the Eel River line, in 1998. 63 Fed. Reg. 67976 (Dec. 9, 1998) (embargo of all of NCRA’s line from Arcata to near Schellville, which is interconnection with the interstate freight rail network). Insofar as relevant here, that embargo has never been lifted. Thus, NWPY not only

Operators Exemption – North Coast Railroad Authority, Sonoma-Marín Area Rail Transit District and Northwestern Pacific Railway Co., LLC, F.D. 35073, served August 24, 2007, as corrected served August 30, 2007. This, however, left NWPY as an STB licensee on NCRA’s line north of MP 142.5.

NWPCo and NCRA made significant progress to restore service in the southern portion of NCRA’s lines for which NWPCo was the operator, managing to secure removal of the FRA embargo as far north as Windsor, MP 62.9, in Sonoma County. However, rail service remains embargoed north of that point. 76 Fed. Reg. 27171 (May 10, 2011). NWPCo has subsequently sought and received discontinuance authority or transfer authority for its common carrier obligations from Outlet Station, MP 142.5 south. (SMART has received Board authority to acquire all NCRA’s interests from roughly Cloverdale at the Mendocino/Sonoma County line south.)

never provided, but could not lawfully provide, any service on the Samoa Branch.

In addition, after receiving lease authority, NWPY almost immediately announced cessation of all service effective Sept. 17, 2001, evidently due to disputes over payment for rehabilitation and maintenance expenses and low operating revenues.⁴

NWPY's lease with NCRA subsequently terminated on October 31, 2005, pursuant to an agreement dated June 23, 2005. NWPY has long been administratively dissolved for failure to pay taxes. Mr. John Darling was the last known CEO and CFO on NWPY, as well as NWPY's last stated agent for service of process listed with the Office of the California Secretary of State. Mr. Darling passed away on June 27, 2010.⁵ NWPY is no more, and Mr. Darling is not available to provide further explanations.

Because there was no service on the trackage in question, and certainly no action that would change the status of the trackage from its prior status as spur or other ancillary trackage, it appears that NWPY's use of MP 302.86 as terminus of the Samoa Branch was false or misleading if it was intended as an effort to convert a spur into a branch or a line. It was certainly inadvertent. In the circumstances, the Board should proceed with authorizing the adverse discontinuance of all remaining

⁴ In the terse words of FRA, NWPY "ceased operations in September 2001." 76 Fed. Reg. 27171 (May 10, 2011).

⁵ <https://www.legacy.com/obituaries/elgin-courier-news/obituary.aspx?n=john-albert-darling&pid=143894313>.

regulatory rights of defunct NWPY (i.e., lease and operation rights on MP 142.5 to MP 300.5 or points south on the Samoa Peninsula) that it obtained in F.D. 33998, and not treat NWPY's designations as creating a stranded segment in AB 1305X, which treats the Samoa Branch ending at its historic endpoing, MP 300.5.

If the Board wishes to act formally to further rectify the record in F.D. 33998, the Board could reopen that proceeding to revoke the exemption granted to NWPY in F.D. 33998 for any trackage beyond MP 300.5, thus clarifying that anything beyond MP 300.5 was spur or other ancillary track. The endpoint suggested by NWPY (MP 302.98) confuses defunct spurs with an actual branch line. It is misleading. In the circumstances, revocation of the F.D. 33998, at least between MP 300.5 and 302.98, is necessary to carry out the transportation policy of 49 U.S.C. 10101. See 49 U.S.C. 10502(d).

NCRA at this point is not certain as to the location of the trackage referred to by NWPY past MP 300.5, and the Board has not specified the location of the alleged branch.⁶ NWPY is defunct, its manager is deceased, and most trackage past MP 300.5 is no longer visible, so picking out locations will be difficult, if achievable at all. If the location of the spur to which NWPY referred were

⁶ The only trackage that extended to the Fairhaven area found by Mr. Buck reached only to a parking lot associated with Fox Farms. That trackage served a plywood mill that had its own rail equipment. The plywood mill, which may have owned the spur, ceased operations in 1981.

determined, then NCRA and STB in theory could determine if the parcels underlying that trackage were owned by NCRA's railroad predecessors in interest as opposed to lumber, plywood and pulp companies which previously operated mills in the area. If the parcels were in railroad ownership, then maybe this Board could assert jurisdiction in 2001. If the parcels were owned by third parties, the Board presumably could not assert licensing jurisdiction. However, even if the property were owned by NCRA's predecessors in interest, then NCRA and the Board have to determine if the parcels were acquired by NCRA's predecessors by fee or easement. If the parcels were acquired as easements, then NCRA and the Board would have to determine if adjoining landowners may have already taken the position, or would now take the position, that the easements extinguished when the property was in unused spur status from roughly 1981 onward. The Board would not have jurisdiction to reassert jurisdiction in 2001 over abandoned rail "lines" held in whole or in part in easement form if the easements had already extinguished, pursuant to the reasoning in Black Hills Transportation, Inc. d/b/a Deadwood, Black Hills & Western Railroad – Modified Rail Certificate, F.D. 34925, served Jan. 27, 2010.

ER/HR. STB seemed to raise the issue whether another ER/HR must be filed from MP 300.5 to MP 302.86. If the Board rules that MP 300.5 to MP 302.86 is part of the Samoa Branch, then no new ER/HR is required. ER/HR's in general are

directed at lines, but also cover associated spur and ancillary track. That was the case in AB 1305X. In any event, Mr. Buck's report (Exhibit B hereto) provides more detail on the spur and ancillary track serving shippers, jetty construction and shipwrecks that previously existed on the Samoa Peninsula. Since this Board suspended the environmental process, this information is available for public comment and no one is prejudiced.

II. Arcata and Mad River Railroad

In NCRA's Notice of Exemption ("NOE") in AB 1305X, NCRA included the Arcata and Mad River Railroad ("AMR" or "Annie and Mary") trackage, indicating in its NOE and Exhibit B to the Combined Environmental and Historic Report ("ER/HR") thereto that this line had been authorized for abandonment in Arcata and Mad River Railroad -- Ab. Exemption -- in Humboldt County, CA, ICC AB 241X, served April 23, 1985; that Eureka Southern while in bankruptcy had acquired the line for rail purposes⁷; that NCRA had also so acquired the line from Eureka Southern out of bankruptcy⁸; but that that NCRA could not find evidence of consummation of abandonment authority; and instead that NCRA was aware of evidence of rail use by two timber companies until 1994. In addition,

⁷ NCRA attaches as Exhibit E a copy of the deed recorded December 14, 1988, from AMR to the Eureka Southern bankruptcy trustee of the AMR right of way

⁸ A copy of NCRA's 1992 deed from Eureka Southern specifically referencing ("parcel five") the AMR trackage is attached as Exhibit F.

NCRA noted that NCRA's Board had adopted a resolution in 2008 to the effect that NCRA regarded the AMR trackage as subject to STB jurisdiction (ER/HR exhibit B-1) for railbanking purposes. In order to avoid a stranded segment issue, NCRA accordingly sought STB abandonment authorization for the Annie and Mary trackage but noted that a jurisdictional issue existed. In particular, the evidence is consistent with sale of the property to Eureka Southern and later NCRA as a "spur" not subject to further STB licensing jurisdiction, or with sale as a line for which Eureka Southern and NCRA should have obtained acquisition authorization. The proper construction of the situation depends on whether the 1985 ICC abandonment authorization obtained by AMR was consummated.

STB attached an appendix to its decision in AB 1305X, served August 26, 2021, on which it also requested comment. The appendix consists of a letter to ICC dated June 6, 1986, which on its face references ICC AB 241X and purports to be from AMR's then-counsel (Fritz Kahn). In the letter, Mr. Kahn on behalf of AMR states that AMR had consummated abandonment authority, cancelled tariffs, and withdrawn from interchange agreements.

Board's current regulations indicate that consummation letters such as the one furnished by Mr. Kahn are "conclusive" as to termination of STB jurisdiction over a line unless there are legal or regulatory barriers to consummation, provided the consummation letters are received within one year of the effectiveness of the

abandonment authorization. If there are no barriers but the consummation letter is not received within one year, then abandonment authority in general lapses. See 49 C.F.R. 1152.29(e)(2).

The Board's April 1985 decision in AB 241X imposed a 180-day public use condition for the Blue Lake segment of the AMR line running from the effective date of May 24, 1985. The Board declined to stay the effective date (decision served June 4, 1985). The public use condition thus began on May 24, 1985, and expired on its terms on or about November 20, 1985. The public use condition thus was not a barrier to Mr. Kahn's subsequent consummation letter. However, Mr. Kahn's letter is dated June 6, 1986, and is not recorded as received by ICC until June 10, 1986. This is more than a year from the effective date of abandonment authority. Under STB's current regulations, it would appear that NCRA appropriately seeks an abandonment authorization for the AMR line because the prior authority had not been timely consummated and had therefore lapsed.

But the governing rules are those extant in 1985-86, and those rules were different. As STB explained in Ex Parte 537, served Dec. 24, 1996, slip at 9 n.10:

“Until 1984, the ICC required a railroad to send the agency a letter confirming that it had consummated an abandonment within 1 year after the

abandonment was authorized. Since then, some carriers have continued to send in such letters. Moreover, the courts have considered these letters in determining whether the line is still part of the interstate rail network, and thus available for interim trail use under 16 U.S.C. 1247(d), or public use under 49 U.S.C. 10905.”

Thus, at the time Mr. Kahn sent his letter, there was no requirement concerning consummation letters, but a court (and presumably ICC) would consider it along with other factors and circumstances to determine whether a consummation had occurred.

It follows that even if the current rule making the letter conclusive (so long as it is timely) is not applicable, and even if the letter was not timely under any rule when such letters were required to be filed, the letter does suggest an intention by AMR to consummate its abandonment authority. Even more important, it represents that numerous actions indicative of abandonment consummation had already been taken.⁹ Moreover, Mr. Kahn’s representation that AMR had consummated abandonment authority would be consistent with Eureka Southern treating the line as a prospective spur track (non-jurisdictional) that was outside ICC jurisdiction, which would explain no effort on the part of Eureka Southern to

⁹ NCRA assumes for purposes of these comments that Mr. Kahn’s representations are accurate.

seek ICC authority for acquisition. It would also explain NCRA's similar failure to seek ICC authority for acquisition. Indeed, the failures to seek authority themselves become arguable evidence that the ICC abandonment authorization was regarded as consummated in 1985 or 1986.¹⁰

Based on the representations in Mr. Kahn's letter and the failure of NCRA and its predecessor in interest to obtain acquisition authority, NCRA is now prepared to concede that AMR and its owner (Simpson Timber) consummated abandonment authority. Since consummation letters were not mandatory in 1985-86, the fact that this one was filed after a year had lapsed does not negate its representations. It follows that the NCRA board when it adopted its 2008 resolution was not fully informed, and that the AMR trackage was acquired by Eureka Southern and later NCRA as a spur off the Korblex Branch over which STB does not have jurisdiction under 49 U.S.C. 10906 [or Revised Interstate Commerce Act 49 U.S.C. 10907 (repealed)]. Nonetheless, NCRA's ER/HR covers the Annie and Mary trackage as it does other ancillary (spur, side tracks, etc.) track on all branches and main stem trackage.

¹⁰ Consummation of abandonment for federal regulatory purposes is a precondition for state law abandonment for lines and branches, but is not the same as state law abandonment.

In short, unless other parties provide evidence that this Board has abandonment jurisdiction over the Annie and Mary, NCRA will not object if the Board determines that the Annie and Mary trackage is covered by 49 U.S.C. 10906 (i.e., not subject to Board jurisdiction) on the basis of (a) the consummation letter, (b) representations therein from AMR’s counsel (Mr. Kahn), and (c) the consistency of said letter with subsequent failures to seek acquisition authority.

The AMR line is one of the oldest rail lines in California, and NCRA is well aware that local trail advocates wish the line to be “railbanked” and operated as a trail. NCRA intends to railbank it if permitted by STB. If STB concludes it lacks jurisdiction, then NCRA intends to pursue some form of “private railbanking” [i.e., application of 16 U.S.C. 1247(d) not intermediated by STB]. See Board decision in AB 1305X, served August 26, 2021, slip op. at p. 3, citing S. Pac. Trans. Co.—Exemption—Aban. of Serv. in San Mateo Cnty., Cal., AB 12 (Sub-No. 118X) (ICC served Mar. 8, 1991).

To date, no party has supplied any evidence on the jurisdictional matters raised by STB. NCRA reserves the right to amend its position in response to germane responsive evidence in comments by other parties, or in response to further relevant evidence which NCRA’s own continuing research brings to light.

Respectfully submitted,

s/ *Charles H. Montange*

Of counsel: Elizabeth Coleman, Esq.
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Attachments:

Exhibit A: Excerpts from NWP Application to Abandon, dated Sept. 1, 1983
Exhibit B: "Trackage beyond Samoa: Report by Joshua Buck (Sept. 2021)"
Exhibit C: ESR Application
Exhibit D: Bankruptcy Court authorization of Sale of ESR to NCRA
Exhibit E: Deed, AMR to ESR trustee (Dec. 14, 1988)
Exhibit F: Deed, ESR (trustee) to NCRA (1992)

Certificate of Service

The undersigned hereby certifies service by email attachment (where email addresses are available) or by USPS of the foregoing pleading and associated attachments on September 15, 2021, on all party representatives listed on STB's service list in AB 1305X.

s/ *Charles H. Montange*

Exhibit A

882-4850

BEFORE THE
INTERSTATE COMMERCE COMMISSION

NORTHWESTERN PACIFIC RAILROAD COMPANY)

Applicant)

IN THE MATTER OF THE APPLICATION OF)
NORTHWESTERN PACIFIC RAILROAD COMPANY)
FOR A CERTIFICATE OF PUBLIC CONVENIENCE)
AND NECESSITY AUTHORIZING THE ABANDONMENT)
OF A LINE OF RAILROAD AND ITS BRANCHES)
FROM MILEPOST 142.5 AT OR NEAR OUTLET,)
CALIFORNIA, TO MILEPOST 284.1 AT OR NEAR)
EUREKA, CALIFORNIA, A TOTAL OF 165.36)
MILES OF TRACKAGE IN MENDOCINO, TRINITY)
AND HUMBOLDT COUNTIES, CALIFORNIA)

DOCKET NO.

AB-14

(Sub-No. 4)

APPLICATION

Volume 1

WILLIAM R. DENTON
DOUGLAS E. STEPHENSON
MICHAEL A. SMITH
GARY A. LAAKSO
841 Southern Pacific Building
One Market Plaza
San Francisco, California 94105

Attorneys for Applicant
Northwestern Pacific Railroad
Company

Dated: September 1, 1983

t 292.84
or near

following:

- (3) the Samoa Branch, extending from milepost 292.84 at or near Arcata, to milepost 300.50 at or near Samoa.

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5. Detailed map of the subject line on a sheet not larger than 8 x 10-1/2 inches, drawn to scale, and with the scale shown thereon. The map must show, in clear relief, the exact location of the rail line to be abandoned or over which service is to be discontinued and its relation to other rail lines in the area, highways, water routes, and population centers.

Attached hereto as Exhibit 1 is a map showing the Eel River Line and its relation to other rail lines, highways, water routes, and population centers in the area.

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6. Reference to inclusion of the rail line to be abandoned or over which service is to be discontinued on the carrier's system diagram map, in compliance with §§1152.10-1152.13, and the date upon which such line was first listed on the system diagram map in category 1 in accordance with §1152.10(b)(1). A copy of the line description which accompanies the system diagram map shall also be submitted.

The Eel River Line has appeared on the NWP System Diagram Map since April 28, 1983, in Category 1 in accordance with 49 C.F.R. §1152.10(b)(1), described as follows:

NORTHWESTERN PACIFIC RAILROAD COMPANY
AMENDED DESCRIPTION OF LINES

Pursuant to the regulations of the Interstate Commerce Commission (49 C.F.R. 1152.21), is an amended description of the Northwestern Pacific lines as shown on the amended diagram map:

1. (a) Designation of Line: Main Line
- (b) State in which located: California
- (c) Counties in which located: Humboldt, Trinity, Mendocino, Sonoma and Marin
- (d) Milepost Locations: 40.60 at or near Schellville to 284.17 at or near Eureka
- (e) Agency or terminal stations on the Line: Eureka (Milepost 284.1), Willits (Milepost 139.5), Ukiah (Milepost 114.0), Cloverdale (Milepost 85.2), Healdsburg (Milepost 68.0), Santa Rosa (Milepost 53.8), Petaluma (Milepost 38.5)

2. (a) Designation of Line: Carlotta Branch
(b) State in which located: California
(c) Counties in which located: Humboldt
(d) Milepost Locations: 262.74 at or near Alton to 267.72 at or near Carlotta
(e) Agency or terminal stations on the Line: Carlotta (Milepost 267.7)
3. (a) Designation of Line: Korblex
(b) State in which located: California
(c) Counties in which located: Humboldt
(d) Milepost Locations: 284.17 at or near Eureka to 295.57 at or near Korblex
(e) Agency or terminal stations on the Line: Arcata (Milepost 292.5) and Korblex (Milepost 295.2)
4. (a) Designation of Line: Samoa
(b) State in which located: California
(c) Counties in which located: Humboldt
(d) Milepost Locations: 292.84 at or near Arcata to 300.50 at or near Samoa
(e) Agency or terminal stations on the Line: Samoa (Milepost 300.50)

.

7. Detailed statement of reasons for filing application.

NWP is seeking to abandon the Eel River Line in order to stem substantial operating losses resulting from its continued operation.

The Eel River Line is located in California's Eel River Canyon, a geologically unstable area, which results in extraordinarily high maintenance of way costs. Maintenance of way costs for that portion of NWP in 1982 consumed 48 cents of each revenue dollar generated on the Eel River Line. This maintenance burden effectively precludes profitable operation of the entire NWP.

The entire NWP sustained a loss of \$10.7 million in 1982 and has not operated profitably since 1974. In effect, SPT's shippers and shareholders have been subsidizing NWP's shippers for the past decade. In that time period, SPT has

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Exhibit B

Trackage beyond Samoa
Report by Joshua Buck (Sept. 2021)

North Coast Railroad Authority (NCRA) requested that I provide historical information relating to trackage beyond Samoa, CA, that may have been associated with the Samoa Branch. I have previously assisted NCRA by preparing a Narrative History (“NH”) that appears in NCRA’s ER/HR in this proceeding (AB 1305X). The portion dealing with the Samoa Branch is at NH pp. 14-15, explaining that the genesis of the Samoa Branch was in the 1896 Eureka and Klamath River Railroad serving a mill at Samoa, later acquired by Andrew Hammond with the railroad folded into Oregon and Eureka Railroad and extended north. Rivals Atchison Topeka & Santa Fe (ATSF) and Southern Pacific (SP) by 1906 joined forces to form the Northwestern Pacific Railroad (“NWP”),¹ and the line into Samoa became part of NWP. Hammond retained rights to ship on the Samoa Branch and endeavored (successfully by 1924) to buy out all inholdings in and around Samoa to create a company town.²

Humboldt Bay has a historically rather notorious treacherous entrance. To improve the entrance, Hammond Lumber Company (HLC), which evidently supported the option of maritime export of timber, surveyed and constructed a spur line running south from the NWP line in Samoa to support the movement of materials for rehabilitation of jetties in the Fairhaven area. The North Jetty rehabilitation project commenced in 1915 but was delayed until 1920 by World War I and not completed until 1925.³ A rail link (labeled U.S. Engineers R.R.) between the jetty and the “Hammond Lumber” spur into Fairhaven (then called Rolph) is illustrated on the old map annexed hereto as Exhibit G. This trackage was removed at an unknown time.

Mariners have allegedly called the harbour entrance to Humboldt Bay the “graveyard of the Pacific” due to currents, storm events, swells and fog.⁴ This assessment is supported by the number of maritime disasters which have taken place at or near the entrance to Humboldt Bay.⁵ For example, the U.S.S. Milwaukee (a cruiser) ran aground opposite Samoa in the Pacific, attempting to free the H-3 submarine. A rail spur was constructed by HLC, which featured a rail trestle built by Mercer Fraser of Eureka into the

¹ “Decide on Plans for Eureka Line: Harriman and Ripley to Join Hands in Building the New Road into Humboldt County,” *San Francisco Chronicle*, 07 February 1906, https://www.newspapers.com/image/?clipping_id=80532599.

² Evelyn McCormick, *Little Grains of Sand: The North Peninsula*, Humboldt Printing 1989.

³ *Id.* 31.

⁴ https://en.wikipedia.org/wiki/Samoa,_California

⁵ Wallace Martin, *Sail & Steam on the Northern California Coast: 1850-1900*, National Maritime Museum Association (San Francisco, CA), 1983, 338.

ocean (parts of which are still visible at low tide) to assist in the salvage of pieces of the Milwaukee.⁶

The Mutual Plywood Company (MPC) constructed a new plywood mill, opening in 1949, in Fairhaven.⁷ MPC featured its own railroad connecting to NWP at Samoa and two locomotives, including a Heisler steam locomotive converted to diesel. MPC sold to U.S. Plywood in 1958 and was bought up by Simpson Timber company in 1967.⁸ The mill closed in 1981.⁹

Meanwhile, Hammond Lumber Company was sold to Georgia Pacific (GP) in 1956, but the saw, pulp, and plywood mills at Samoa passed to Louisiana Pacific in 1972.¹⁰

R.H. Emerson & Son purchased extensive timber interests in 1965 and used NWP for rail transportation. They later entered into a partnership that formed Sierra Pacific Industries.¹¹

Although there were other shippers at one point or another served by sidings or leads off the NWP line, they did not continue rail service. The Island Mountain tunnel fire of 1978 resulted in turmoil not only for SP but for several of the shippers served by the NWP.¹²

According to my research, Louisiana Pacific (located just south of Samoa) and Sierra Pacific (located north of Samoa) were the last shippers on the NWP's Samoa Branch post-1979. NWP last application for abandonment authority was filed September 1, 1983 (ICC, AB 12 (Sub-no.4). The application process was terminated when SP sold NWP to Brian Whipple's Eureka Southern organization in 1984. Eureka Southern (which went into bankruptcy shortly after commencing operations) provided service to both Louisiana Pacific and Sierra Pacific (see advertisement attached as Exhibit D). Eureka Southern was sold by its bankruptcy trustee to NCRA in 1992. NCRA then provided service to these two customers. Exhibit E (photo of service to Sierra Pacific). However, in 1997, the Louisiana Pacific listed their properties for sale.

⁶ Raymond, Hillman. *Shipwrecked at Samoa, California: The Loss of the Navy Cruiser U.S.S. Milwaukee*, Pride of the River Publications (Eureka, CA), 1994 39-40.

⁷ "Large Plywood Plant to be Constructed in Eureka," Blue Lake Advocate, 13 September 1947 <https://cdnc.ucr.edu/?a=d&d=BLA19470913.2.17>.

⁸ "Two Mills, Timber: Simpson Announces \$17.5 Million Deal, *Albany Democrat-Herald*, 10 October 1967, <https://www.newspapers.com/image/442044594>.

⁹ "Construction Drop Brings Lumber Layoffs on Coast," *The Sacramento Bee*, 16 July 1981, <https://www.newspapers.com/image/621365913>.

¹⁰ Russel Tedder, *Forest Rails: Georgia-Pacific's Railroads*, White River Productions (Bucklin, MO), 2016, 87-88.

¹¹ "A.A. 'Red' Emmerson", <https://www.worldforestry.org/wp-content/uploads/2016/03/EMMERSON-RED.pdf>.

¹² NWP Abandonment Application in AB 12 (sub no. 4).

NCRA was unable to raise funds sufficient for rehabilitation after the catastrophic El Nino Pacific Storm Event of February 1998,¹³ and FRA placed all of NCRA's lines under an embargo in that year. The Sierra Pacific Mill closed in 2016¹⁴ and has remained shuttered, effectively ending all businesses that the Samoa Branch once served.

The NWP Abandonment Application (Sept. 1, 1983) lists the Samoa Branch as ending at MP 300.5. I attach a Southern Pacific track chart (Exhibit F) showing the end of Branch at Samoa, MP 300.5, although spurs and sidetracks are shown continuing out past Fairhaven. I have also located Southern Pacific SPIN charts for the Samoa Branch (Exhibits O and P), showing some of the numerous drills and sidings. The SPIN charts note that the Branch ends in Samoa but show the Louisiana Pacific mill site served by several tracks and sidings just beyond Samoa. The SPIN chart also appears to show an old "Crown Simpson" site at Fairhaven and various sidetracks. At the request of NCRA, I visually inspected the areas shortly after Labor Day, 2021. In most cases, the track is gone. There is one spur that remains from Samoa terminating in the Fox Farm soil manufacturing plant parking lot, adjoining the site of the old MPC mill (out of business since 1981), and I believe that may be approximately MP 302.86. In all events, it is the point remaining in any spur most distant from Samoa. Much of the track is covered with sand (the Samoa Peninsula is low-lying, sandy, and at risk for tsunamis). I found two sidings partially paved over in what is now the Green Diamond property and another located on the Humboldt County Harbor District's property.

I attached some pictures (Exhibits H to N) from my field inspection. Please note that all milepost designations are my estimates; I could find no official milepost markers on the Samoa Branch.

¹³ M.W. Jones, "El Nino-spawned Storms Slam California" *Trains Magazine*, May 1998, 21.

¹⁴ Ryan Burns, "Sierra Pacific Announces Permanent Closure of Arcata Sawmill; More Than 100 Jobs Lost," *Lost Coast Outpost*, 25 January 2016, <https://lostcoastoutpost.com/2016/jan/25/sierra-pacific>.



Exhibit A: The shops, facilities, and dock used for storing the equipment necessary to move jetty rock from the southeast corner of Fairhaven to the southwest where the North Jetty construction site was located. All the facilities and the rail have since been removed from this location. Josh Buck Collection.

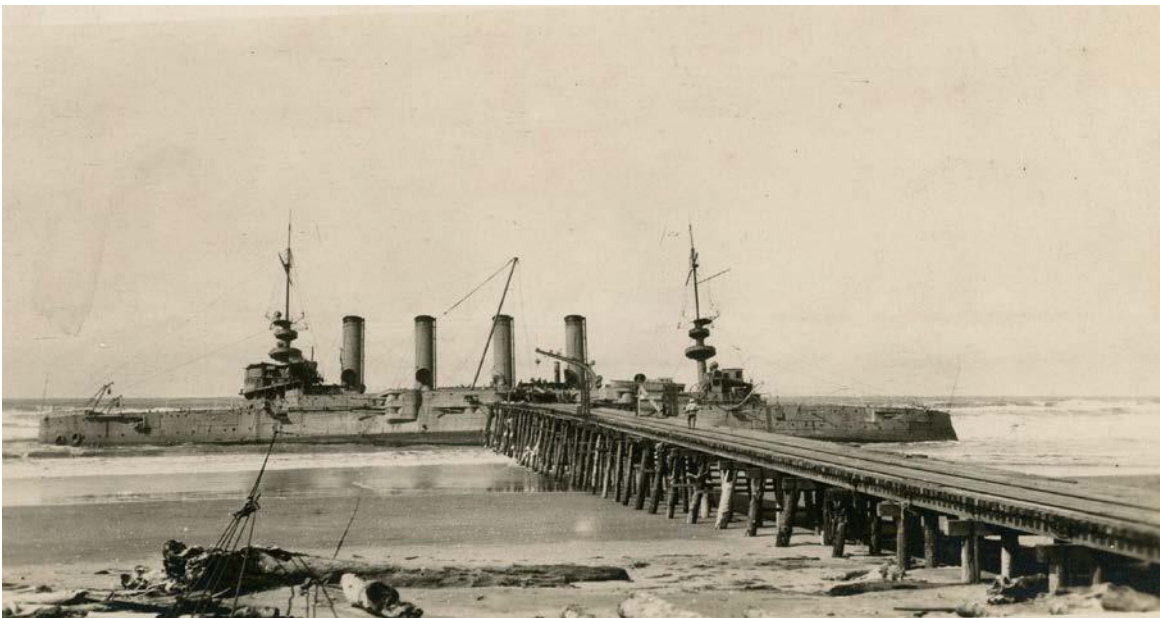


Exhibit B: Mercer Fraser of Eureka was tasked with constructing this wooden trestle which allowed access to the stranded U.S.S. Milwaukee. Humboldt State University Special Collections Photo.



Exhibit C: Construction of the North Jetty, the railroad was extended beyond the termination point of the Samoa Branch to bring supplies to the North Jetty. Humboldt State University Special Collections Photo.

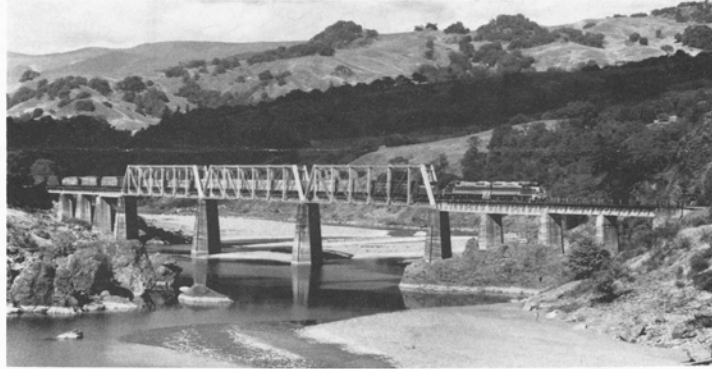
For Information Purposes Only

NEXT TIME BUY LUMBER FROM A MILL ON THE . . .

Eureka Southern Railroad Company, Inc.

P. O. Box N, Eureka, California 95502

(707) 444-8055



LOWEST LUMBER FLAT CAR RATES ON THE WEST COAST
TO ALL LOS ANGELES/SAN DIEGO AREA LOCATIONS

COMPETITIVE BOX CAR RATES

MILLS SERVED

ARCATA REDWOOD
BEAVER LUMBER OF ARCATA
BRACUT INTERNATIONAL
BRITT LUMBER
CARLOTTA LUMBER
COMBS LUMBER
DURANT
EEL RIVER SAWMILLS
HUMBOLDT REDWOOD
LOUISIANA-PACIFIC CORP.
L-P FLAKEBOARD
PACIFIC LUMBER CO.
SCHMIDBAUER LUMBER, INC.
SIERRA PACIFIC INDUSTRIES
SIMPSON TIMBER
AND VARIOUS TRANSFER FACILITIES

PRODUCTS

REDWOOD LUMBER
DOUGLAS FIR LUMBER
TIMBERS
PARTICLEBOARD
MINE TIMBERS
SHINGLES
MILL WORK
PLYWOOD
LOGS
HOG FUEL
WOOD CHIPS
SOIL CONDITIONERS
CORD WOOD
SAW DUST



PLEASE INSERT BETWEEN PAGES 4 & 5 OF THIS PUBLICATION

Exhibit D: An advertisement that illustrated how many mills the Eureka Southern Railroad served. The two prominent mills, in this case, being Sierra Pacific Industries in Samoa and Louisiana-Pacific Corp. Josh Buck Collection.



Exhibit E: A photo taken during the 1990s of the mainline Samoa Branch during the North Coast Railroad Authority's use of the line. Note that the Sierra Pacific Mill is on the right. Dan Hauser Photo.

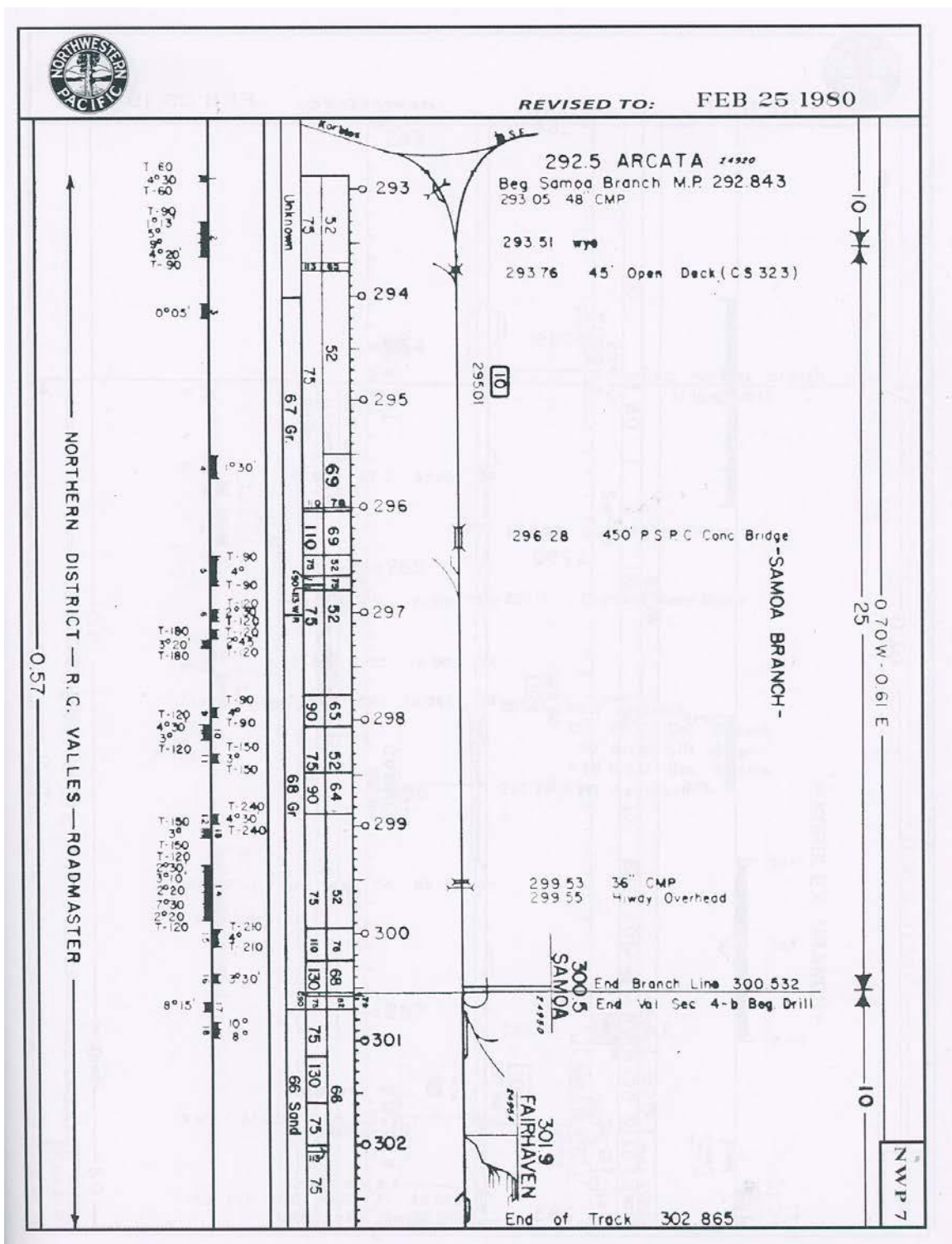




Exhibit H: The approach of this siding (approximately MP 300.5) has been paved over; however, this is the point it becomes visible.



Exhibit I: This is the end of the (approximately MP 300.5) siding.



Exhibit J: A photo of the mainline is included to illustrate the current right-of-way conditions for most of the branch past the Samoa Cookhouse, which is between Samoa and Arcata.



Exhibit K: The mainline NWP (left) and two sidings (right). The far-right extends into Green Diamond Property to one of the Humboldt County Harbor District's properties.



Exhibit L: This is the end-of-track point at approximately milepost 302.86 (?) within the employee parking lot of Fox Farms in Fairhaven, CA.



Exhibit M: The level grade crossing is located on Bay Street in Fairhaven, specifically, approximately milepost 302.0.



Exhibit N: The state of the remaining rail track on approach to the level grade crossing at approximately milepost 302.0 near Fairhaven, CA.

SPIN Charts for the Samoa Branch (Zone 12)

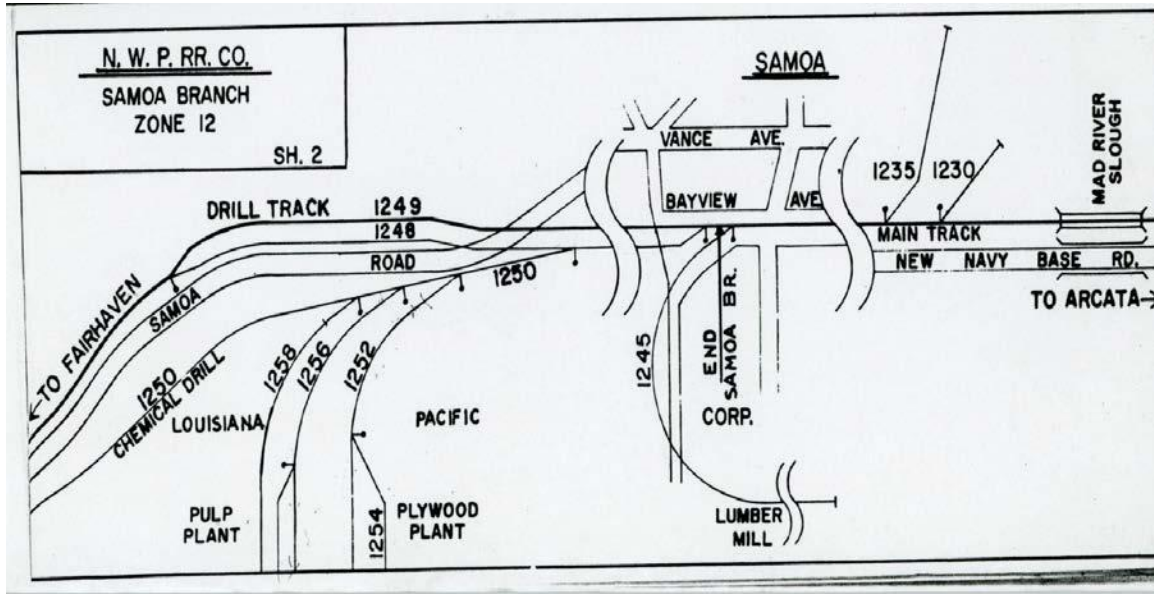


Exhibit O

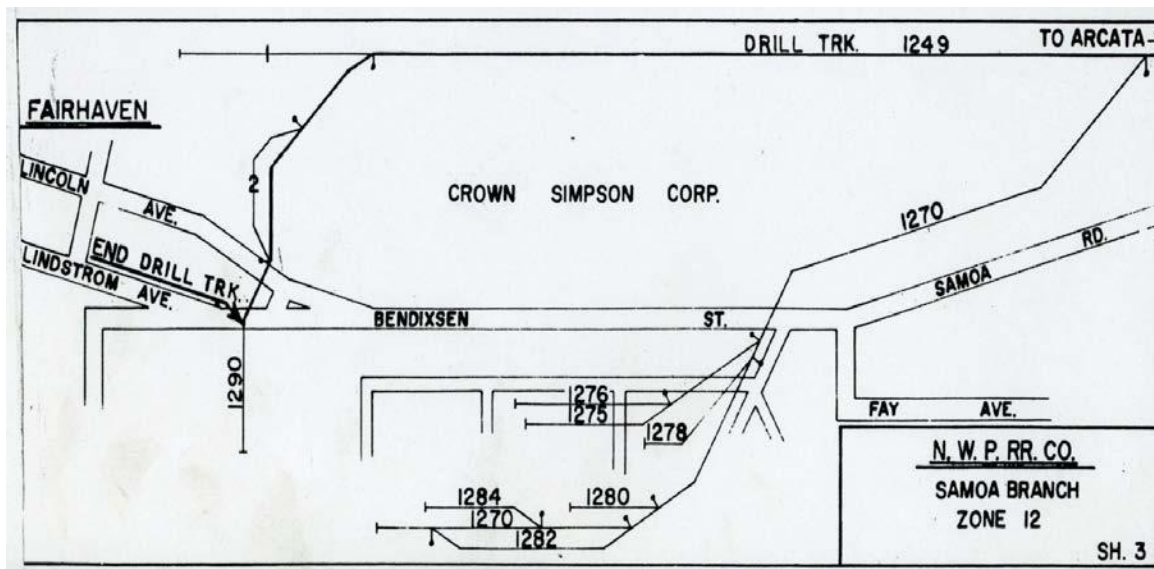


Exhibit P

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“50 New Jobs: Simpson Will Open Plywood at Fairhaven.” *The Times-Standard*. 23 October 1967. <https://www.newspapers.com/image/47087038>.

Exhibit C

1400 CENTRE SQUARE WEST
1500 MARKET STREET
PHILADELPHIA, PA 19102
(215) 564-1400

24 QUARRY STREET, 8TH
FLOOR, NEWARK, NEW JERSEY
07102-1001

75 WESTFIELD SQUARE
LONDON, W1A 3E, ENGLAND
(01) 499 1111

DECHERT PRICE & RHOADS

1730 PENNSYLVANIA AVENUE, N.W.

WASHINGTON, D.C. 20006

(202) 713-1200

411 WASHINGTON AVENUE
NEW YORK, N.Y. 10018
(212) 368-4000

400 NORTH 10th STREET
HAMBURG, TX 77055
(713) 231-1847

August 28, 1984

The Honorable James P. Bayne
Secretary
Interstate Commerce Commission
12th & Constitution Avenue, N.W.
Washington, D.C. 20523

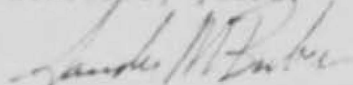
Re: Eureka Southern Railroad Company, Inc. and
Northwestern Pacific Acquiring Corporation

Dear Secretary Bayne:

Enclosed are an original and nine copies of a Petition for Exemption relating to the acquisition by Northwestern Pacific Acquiring Corporation of a portion of the Northwestern Pacific Railroad Company known as the Eel River Line, and the operation of the line by the Eureka Southern Railroad Company, Inc. Also enclosed is the \$550 filing fee. Petitioners request that this Petition be handled on an expedited basis, as is more fully set out in the Petition.

Please date stamp the enclosed copies of this letter and the Petition and return them to the person delivering this filing.

Sincerely yours,



Sander M. Bieber

EMB:jmc

Enclosures



BEFORE THE INTERSTATE COMMERCE COMMISSION

FINANCE DOCKET NO. 32555

4-242F011
AUG 28 1984
550.42

NORTHWESTERN PACIFIC ACQUIRING CORPORATION ("ACQUIRING")
AND EUREKA SOUTHERN RAILROAD COMPANY ("EUREKA") -
PETITION UNDER 49 U.S.C. § 10505 FOR
EXEMPTION FROM PROVISIONS OF 49 U.S.C. SUBTITLE IV
WITH RESPECT TO ACQUIRING AND
49 U.S.C. §§ 10901 AND 11301
WITH RESPECT TO EUREKA

EXPEDITED HANDLING REQUESTED

FILED

SANDER M. BIEBER
Dechert Price & Rhoads
1730 Pennsylvania Ave., N.W.
Suite 1100
Washington, D.C. 20006

Attorney for Petitioners
Northwestern Pacific Acquiring
Corporation and Eureka Southern
Railroad Company, Inc.

August 28, 1984



NORTHWESTERN PACIFIC ACQUIRING CORPORATION ("ACQUIRING")
AND EUREKA SOUTHERN RAILROAD COMPANY ("EUREKA") -
PETITION UNDER 49 U.S.C. § 10505 FOR
EXEMPTION FROM PROVISIONS OF 49 U.S.C. SUBTITLE IV
WITH RESPECT TO ACQUIRING AND
49 U.S.C. §§ 10901 AND 11301
WITH RESPECT TO EUREKA

Northwestern Pacific Acquiring Corporation ("Acquiring") and Eureka Southern Railroad Company, Inc. ("Eureka") hereby petition the Interstate Commerce Commission pursuant to 49 U.S.C. § 10505 for an exemption from the provisions of 49 U.S.C. Subtitle IV with respect to Acquiring, and 49 U.S.C. §§ 10901 and 11301 with respect to Eureka, to permit petitioners to acquire and operate a line of railroad of approximately 165 miles in Mendocino, Trinity and Humboldt Counties in California from Northwestern Pacific Railroad Company ("NWP"), and to issue securities to organize Acquiring and Eureka and to finance the purchase and operation of the rail properties.

Acquiring and Eureka intend to enter into a series of interconnected transactions (collectively referred to as the "Transaction") which will enable them to acquire the rail properties and other interests necessary to commence common carrier rail operations. The Transaction consists of the following elements:

1. The sale by NWP of real estate and rail operating properties to Acquiring.
2. The lease by Acquiring of real estate and some of the rail operating properties to Eureka.

3. The sale by Acquiring of the majority of the rail operating property to GATX Leasing Corporation ("GATX") in a financing lease transaction.

4. The lease by GATX of all rail operating properties acquired from Acquiring to Eureka.

5. The grant by NWP to Eureka of interchange operating rights over the NWP at and near Willits, California.

6. The issuance of securities by Acquiring and Eureka.

7. The grant by Acquiring to NWP of two repurchase options in favor of the State of California relating to the real estate and certain track support structures.

Petitioners respectfully request expedited handling of this petition so that Eureka may begin rail operations promptly. This request is consistent with Ex Parte No. 400, Modification of Procedure for Handling Exemptions Filed Under 49 U.S.C. § 10505 (45 Fed. Reg. 85180 (December 24, 1980) and 46 Fed. Reg. 7505 (January 23, 1981)). As this petition clearly indicates, the proposed Transaction does not have the potential of a significant adverse effect on competitors, shippers, employees or the environment but, to the contrary, it will have a significant positive effect on each of these four constituent interests. A failure to handle this petition expeditiously and to grant the exemption requested

effective immediately will have a significant adverse, and possibly fatal, impact upon consummation of the Transaction. Eureka must commence operations immediately in order to benefit from the summer and fall shipping season and to establish a revenue and financial base. Any delay which forecloses Eureka from providing rail service during the 1984 shipping season and utilizing the financing it now has may frustrate the Transaction.

I. Parties to the Transaction

Petitioner Acquiring is a California corporation which currently does not own or operate any rail properties. Petitioner Eureka is also a California corporation which does not currently own or operate any rail properties. Acquiring and Eureka are affiliated corporations under common control. Following the Transaction, Eureka will be a rail common carrier subject to the jurisdiction of the Commission.

NWP is a California corporation and a rail common carrier subject to the jurisdiction of the Commission. NWP is a wholly-owned subsidiary of Southern Pacific Transportation Company ("SPT") which is also a rail common carrier subject to the Commission's jurisdiction. NWP owns and operates approximately 300 miles of railroad, all in the State of California, including the lines to be sold to Acquiring pursuant to the Transaction which is the subject of this petition.

II. Description of Property Subject to the Transaction

Acquiring proposes to purchase from NWP a line of railroad in northern California known as the Eel River Line. This line begins at milepost 142.5 near Outlet and terminates at milepost 284.1 near Eureka. The line includes three branch lines: (1) the Carlotta Branch, from milepost 262.74 near Alton to milepost 267.72 near Carlotta; (2) the Korblex Branch from milepost 284.1 near Eureka to milepost 295.57 near Korblex; and (3) the Samoa Branch from milepost 292.84 near Arcata to the end of that branch at milepost 300.50 near Samoa.

The Agreement for Purchase of a Railroad Line (the "Purchase Agreement") between petitioners and NWP, a copy of which is attached hereto as Exhibit A, provides for the conveyance of all real property, subject to certain cutouts, and certain personal property located on the Eel River Line as of the closing date.

III. Background of the Proposed Transaction

The Eel River Line was built in the early 1900's and runs through a primarily rural section of northern California. The line principally serves forest product shippers in the California north coast region. In 1982, 96% of the traffic on the Eel River Line originated on line, and only 4% terminated there. Of the originated loads, 92% were of lumber or other forest products.

NWP filed a petition seeking authority to abandon the Eel River Line with the Commission on September 1, 1983. Northwestern Pacific Railroad Company - Abandonment - In Mendocino, Trinity and Humboldt Counties, California, Docket No. AB-14 (Sub-No. 4). Hearings on the abandonment application occurred in December 1983 before an administrative law judge. On February 7, 1984, the ALJ served his initial decision in which he concluded that NWP had met the criteria for abandonment in 49 U.S.C. § 10901. The ALJ, however, denied the application for an abandonment certificate pending development of additional evidence on the record regarding the environmental impact of abandonment.

While the abandonment proceedings before the Commission were pending, the State of California and its Public Utilities Commission instituted suit against NWP and SPT in the United States District Court for the Northern District of California seeking to prevent NWP from abandoning the line and to require NWP to restore the line and reinstitute service on it. California v. Northwestern Pacific Railroad Co., No. C-84-0153 (TEH) (N.D. Cal.). On January 27, 1984, the district court issued a mandatory injunction requiring NWP to clear and repair the Eel River Line within 30 days and to resume service on the line. NWP has complied with this mandatory injunction, spending over \$2,000,000 to restore the line and to reinstitute service. At the same time, NWP has appealed the district court's order to the

United States Court of Appeals for the Ninth Circuit. That appeal is currently pending. California v. Northwestern Pacific Railroad Co., No. 84-1600 (9th Cir.).

Acquiring and Eureka have held discussions and negotiations with SPT and NWP for the acquisition of the Eel River Line, which negotiations intensified following the February 7, 1984 initial decision in the abandonment proceeding. On August __, 1984, NWP entered the Purchase Agreement with Acquiring and Eureka providing for the sale of the Eel River Line to Acquiring and the operation of the line under lease by Eureka. In order to expedite the Transaction and to remove unnecessary regulatory burdens, Acquiring is seeking an exemption for the Transaction from the requirements of 49 U.S.C. subtitle IV and Eureka is seeking an exemption for the Transaction from the requirements of 49 U.S.C. §§ 10901 and 11301.

IV. Description of the Transaction for Which Exemption is Sought

Pursuant to the Purchase Agreement, Acquiring will purchase the Eel River Line, including the real and personal property described above.* The purchase will be financed

* Unless the exemption is granted, this Transaction may be terminated. Consummation of the Purchase Agreement is contingent upon, among other things, obtaining requisite regulatory approvals. The Purchase Agreement also provides that the Transaction may be terminated if, among other things, this Commission determines that any party would be liable for any labor protection or environmental obligations with respect to the Eel River Line as a condition of the exemption.

as follows: Acquiring will pay NWP \$3,323,500 in cash at closing. This amount will be obtained by Acquiring entering into a financing lease transaction with GATX pursuant to which GATX will acquire specified rail and ties from Acquiring for \$3,323,500. GATX will, in turn, lease these assets directly to Eureka and SPT will guarantee GATX's investment under certain terms and conditions. At closing, Acquiring will also tender to NWP a promissory note in the amount of \$1,622,550 which will be secured by a mortgage on the real property to be conveyed. Acquiring will also execute a conditional note in favor of NWP in an amount between zero dollars and \$4,450,500 to be determined by negotiation and/or arbitration. This supplemental component of the purchase price will relate to a determination of the value of certain non-real assets being acquired by Acquiring. Interest payments under the conditional note are subject to Eureka attaining certain levels of income after fixed charges, and principal payments are subject to Eureka paying a dividend or attaining a certain level of retained earnings. These payment terms are set forth in the Escrow and Financing Agreement which is a part of the Purchase Agreement, attached hereto.

Upon closing of the Transaction, Eureka will assume all of the obligations of the NWP and SPT with respect to the Eel River Line including the common carrier obligation and any obligation to maintain the Eel River

Line. Acquiring will lease the line to Eureka which will then be responsible for performing rail operations and maintenance. Eureka has also undertaken to hire former NWP employees in preference to others to the maximum extent practical.

Along with the Purchase Agreement, Acquiring, Eureka and NWP have entered an Interchange and Terminal Access Agreement for interchange of traffic at Willits, California and a Rate and Divisions Agreement. As a part of the Interchange and Terminal Access Agreement, which is a part of the Purchase Agreement attached hereto, NWP is granting Eureka rights to operate from milepost 142.50, the terminal point of the Eel River Line, to Willits, milepost 137.90, to permit Eureka to interchange with the NWP and California Western Railroad.

In addition, Acquiring and Eureka have entered into an Equipment Supply Agreement with NWP and SPT to insure access to a dependable supply of empty cars for loading by shippers on the Eel River Line. Acquiring has also granted NWP for five years from closing two repurchase options in favor of the State of California to repurchase most of the real estate and certain track support structures conveyed to Acquiring. These options are part of the Purchase Agreement, attached hereto. If the real estate option is exercised, Acquiring would be reimbursed a sum equal to the payments made by Acquiring under the terms of

the promissory note, and Acquiring would reserve an easement for railroad purposes allowing unrestricted rail operations. If the track support structure option is exercised, Acquiring would be paid \$5,000 and Acquiring would reserve an easement for railroad purposes allowing unrestricted rail operations.

Acquiring and Eureka issued common stock to their founder and promoter and are issuing additional securities to secure funds necessary to consummate the Transaction and commence rail operations. No public offering of the common stock or debt instruments is currently contemplated.

Thus, the net effect of the Transaction will be to save the Eel River line from abandonment by transferring it to parties who will continue to maintain the line and to provide service over it. This continued maintenance will prevent the potential adverse environmental impacts of abandonment, and the continued operation will insure that rail services are available to the shipping public.

V. Reasons for Granting the Requested Exemption

The Commission's exemption authority is found in 49 U.S.C. § 10505 which provides in pertinent part:

(a) In a matter related to a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under this subchapter, the Commission shall exempt a person, class of persons, or a transaction or service when the Commission finds that the application of a provision of this subtitle --

Exhibit D

RECORDED AT REQUEST OF

North Coast Railroad

BOOK 1979 PAGE 655

92 APR -2 PM 4:59

OFFICIAL RECORDS
MENDOCINO COUNTY CALIF.
MARSHA A. YOUNG
RECORDER*no fee
bp*NORTH COAST RAILROAD AUTHORITY
c/o 937 Sixth St.
Eureka, CA 95501

FILED

NOV 12 1991

IN THE UNITED STATES BANKRUPTCY COURT PAUL C. KARNEY, JR., Clerk
FOR THE NORTHERN DISTRICT OF CALIFORNIA U.S. BANKRUPTCY COURT-SANTA ROSA

In re

EUREKA SOUTHERN RAILROAD
COMPANY,

No. 1-86-01976

Debtor.

In re

NORTHWESTERN PACIFIC
ACQUIRING CORPORATION,

No. 1-86-01977

Debtor.

ORDER REGARDING PURCHASER OF RAILROAD

By separate memorandum, the court has decided to confirm the Trustee's plan of reorganization. Pursuant to the plan, the court is to decide which of two competing buyers should be allowed to purchase the railroad. The court now makes that difficult decision.

There could scarcely be more of a contrast between the competing parties. One, the North Coast Rail Authority, is a public entity created by the State of California for the acquisition of railroads deemed necessary to the economic well-being of the state. The other, ESR Acquisition Corporation, is a private venture seeking to operate the railroad for profit.

The visions of the parties for the future of the railroad are very different. The NCRA sees its role mainly as maintaining the line, with perhaps a modest expansion of service. ESRAC, on the other hand, has a grand view of the future of the railroad as the keystone in an integrated transportation system which it sees as eventually transforming the Port of Eureka into a major international transportation hub, perhaps even revitalizing the

NOV 12 1991

1 depressed economies of the North Coast counties.

2 Although all of the interested parties have agreed on the
3 plan, they are split as to which party they wish to see acquire the
4 railroad. The Trustee, who has operated the railroad these last
5 five years and brought it successfully to reorganization, urges the
6 court to accept the ESRAC proposal. The interested counties, as
7 well as the State of California, wish to see the NCRA acquire the
8 railroad. Since the amount of both offers is substantially the
9 same, about \$5 million, there is no clear path for the court to
10 follow in reaching a decision.

11 Interestingly, a very recent case does give the court some
12 guidance. In In re Dakota Rail, Inc., -- F.2d -- (8th Cir.1991),
13 the bankruptcy court had to decide between two competing plans for
14 the acquisition of a railroad in bankruptcy. One plan was proposed
15 by a group of private investors, the other by a public entity
16 formed to aid the regional railroad. In that case, the bankruptcy
17 court chose the private investors because their plan had the
18 support of local shippers, their proposed management was more
19 qualified, and their plan had the greater chance for success. The
20 fact that the railroad would be removed from the public dole also
21 influenced the court's decision.

22 In this case, the "safe" option is certainly the NCRA. The
23 court is sure of its motives, and it is sufficiently funded to
24 allow it to operate and maintain the railroad in its present
25 configuration for some time to come. The downside of NCRA
26 acquisition is that, as a public agency, it is for all practical
purposes incapable of acting decisively. Even its own counsel
admits that getting it to do anything is a lengthy and time-

1 consuming process.

2 The risky choice is ESRAC. Its principals, notwithstanding in
3 camera disclosure, are essentially an unknown quantity who might
4 well have a hidden agenda inimical to the best interests of the
5 public. Its proposed management team is not built around railroad
6 people, but rather computer and shipping people. Even if its
7 intentions are good, there is a substantial risk that it could
8 totally fail in its efforts, perhaps resulting in the demise of the
9 railroad.

10 There is no doubt which of the options the undersigned would
11 select if the choice were a personal one, and not made on behalf of
12 the public. Despite all the risks, the vision of the private offer
13 is compelling. Instead of settling for the status quo, the
14 undersigned would grab for the possibility of a new day and
15 economic revitalization for the North Coast, so long depressed by
16 the problems of local industries. Even knowing that failure is
17 much more likely than success, the chance is worth taking. This
18 country was built by private enterprise taking chances, and failing
19 more often than not. Those who play it safe may never know
20 disaster, but they will never achieve anything more than survival.

21 However, the court is mindful that it acts as a public trustee
22 in making its decision and must accordingly proceed conservatively.
23 The court is not free to impose the entrepreneurial spirit on an
24 unwilling populous which desires only continued rail service.

25 Unlike the court in Dakota Rail, this court cannot make a
26 clear finding that the private offer is in the best interests of
the public. While the desire for anonymity is understandable, it
makes it impossible for the court to be sure that the principals of
the private enterprise are qualified and that their interests are

1 consistent with those of the public. Moreover, ESRAC's complete
2 lack of local support raises the possibility that local officials
3 and shippers would thwart its efforts. Had there been any local
4 support at all for ESRAC, the court would have been much more
5 inclined to give its proposal priority. Unfortunately, there is no
6 time to allow local support to be garnered; a decision must be made
7 today.

8 Accordingly, the court will select the NCRA as the purchaser.
9 However, the court is absolutely unwilling to allow bureaucratic
10 red tape to drag these proceedings on forever; if the NCRA cannot
11 act quickly and decisively to acquire the railroad, there is no
12 hope of it operating the railroad effectively. Accordingly, NCRA
13 may acquire the railroad only on the following terms:

14 1. The sale price and all of the terms of sale shall be those
15 contained in the ESRAC proposal and no others, except as modified
16 by this order.

17 2. NCRA may have until December 19, 1991, to complete its
18 environmental assessment and withdraw its offer if it so desires.

19 3. NCRA must deliver an unconditional commitment letter to
20 the trustee, accepting the sale on the terms contained in this
21 order, on or before December 20, 1991.

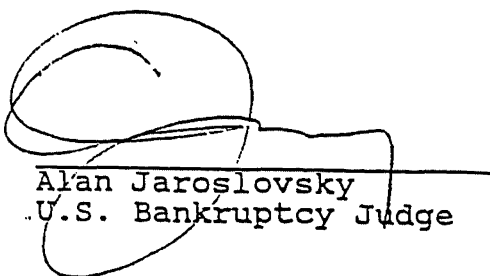
22 4. NCRA must tender the purchase price to the Trustee no
23 later than April 1, 1992.

24 The court believes that the time limits it has set are
25 entirely reasonable, and gives the NCRA more than enough time to
26 acquire the railroad. If the NCRA proceeds to meet the time
limits, the court will not revisit the decision it makes now.
However, if the NCRA misses a deadline or makes any requests to

1 extend any of the deadlines, the effect will be to reopen the issue
2 of who the purchaser should be. In lieu of extending the deadline,
3 the court may make ESRAC the primary purchaser if it is still
4 interested and if it has obtained significant local support.

5 SO ORDERED.

6 Dated: November 10, 1991

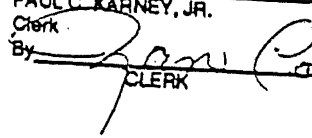
7 
8 Alan Jaroslovsky
9 U.S. Bankruptcy Judge

10
11 I HEREBY CERTIFY THAT THE
12 FOREGOING IS A TRUE AND CORRECT
13 COPY OF THE ORIGINAL ON FILE
14 IN MY OFFICE.

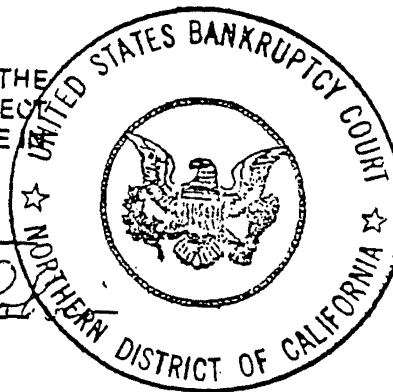
15 Dated: MAR 27 1992

16 PAUL C. KARNEY, JR.

17 Clerk

18 By 

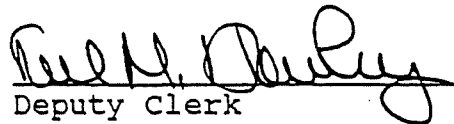
19 CLERK



CERTIFICATE OF MAILING

The undersigned deputy clerk of the United States Bankruptcy Court for the Northern District of California hereby certifies that a copy of the attached document was mailed to all parties listed below as required by the Bankruptcy Code and Rules of Bankruptcy Procedure.

Dated: November 12, 1991


Deputy Clerk

Philip M. Arnot
Attorney at Law
307 N Street
Eureka, CA 95501

H. Peter Klein
Mendocino County Counsel
105 West Clay Street
Ukiah, CA 95482

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Ruth Rockefeller
North Coast Railroad
Authority
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Eureka, CA 95501

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Ukiah, CA 95482

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ANDERSON, INC.
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Eureka, CA 95502

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San Francisco, CA 94102

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Arthur R. Grothe
Office of District Attorney
County of Mendocino
125 E. Commercial Street
Willits, CA 95490

James P. Lough
County Counsel
Humboldt County Courthouse
Eureka, CA 95501

Michael H. Ahrens
BRONSON, BRONSON & MCKINNON
505 Montgomery Street
San Francisco, CA 94111-2514

Exhibit E

RECORDING REQUESTED BY

Philip M. Arnot, Inc.

-25883

Philip M. Arnot, Inc.

1895

1149

MAIL TAX STATEMENT TO

Name
Street
Address
City
State
Zip

Eureka Southern Railroad Co
130 A Street
Eureka, CA 95501

DEC 14 4 26 PM '88

STEPHEN A. STRAWN

Cheryl Nickerson

7.00

WHEN RECORDED MAIL TO

Name
Street
Address
City
State
Zip

Eureka Southern Railroad Co
130 A Street
Eureka, CA 95501

TAX COLLECTED BY

RECORDERS USE ONLY

ORDER NO.

ESCROW NO.

QUITCLAIM DEED

MONUMENT SURVEY FUND

\$10.00

DOCUMENTARY TRANSFER TAX \$ 5.50

XX COMPUTED ON FULL VALUE OF PROPERTY CONVEYED, OR
COMPUTED ON FULL VALUE LESS LIENS & ENCUMBRANCES
REMAINING THEREON AT TIME OF SALE.

Unincorporated Area City of
Tax Parcel No.

THE ARCATA AND MAD RIVER RAIL ROAD COMPANY, does

FOR A VALUABLE CONSIDERATION, HEREBY REMISE RELEASE AND FOREVER QUITCLAIM to

JERRY E. GREGG, as Trustee in Bankruptcy for THE ESTATE OF
EUREKA SOUTHERN RAILROAD COMPANY, INC.

the real property in the County of Humboldt, State of California, described as:

All lands now presently owned by The Arcata and Mad River Rail Road
Company, excepting therefrom those lands more particularly described
on Schedule A attached hereto.

Also retaining unto the Grantor, its subsidiaries or affiliates, all
recorded easements and/or rights-of-way for ingress and egress to
properties retained by Grantor or now owned by its subsidiaries or
affiliates more particularly described but not limited to that certain
Purchase Agreement between The Arcata and Mad River Rail Road Company
and Jerry E. Gregg, as Trustee in Bankruptcy for the Estate of Eureka
Southern Railroad Company, Inc., dated 16 September 1988.

It is the intent of this Quit Claim Deed to convey only the lands within
the varying widths of the railroad Right-of-Way.

Dated: September 20, 1988THE ARCATA AND MAD RIVER RAIL ROAD
COMPANY

C.O.S.

FILED

NOT FILED

(Individual Acknowledgment)

WASHINGTON
STATE OF CALIFORNIACounty of KING

Wm. G. Reed, Jr.
Its Chairman

Joseph R. Reed
Its Assistant Secretary

On this 20th day of September, in the year 19 88, before me, the undersigned, a Notary Public in and for
said County and State, personally appeared Wm. G. Reed, Jr. and Joseph R. Reed

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person s whose name s are
subscribed to this instrument and acknowledged that they executed it.

WITNESS my hand and official seal.

Sharon D. Brainin
Notary Public in and for said County and State.

SCHEDULE A

The Arcata and Mad River Rail Road grants to the Eureka Southern Railroad all right, title and interest in all lands now presently owned, excepting therefrom:

Parcel 1

Any and all lands lying southeasterly of the west line of the SE 1/4 of Section 29 in T6N-R2E, H.B.M.

Parcel 2

Parcel 1 as shown on parcel map #1275 of Book 11 of Parcel Maps, page 64.

Parcel 3

That portion of Sections 14 and 23, in T6N-R1E. H.B.M. described in the deed from Vacilar Zaruba to the Arcata and Mad River Rail Road, recorded September 30, 1892, at Book 43 of Deeds, page 562.

Parcel 4

That portion of the SW 1/4 SW 1/4 of Section 13, T6N-R1E, H.B.M. described in the deed from the State of California to the Arcata and Mad River Rail Road recorded July 2, 1970 at Book 1048 Official Records, page 329.

Parcel 5

That portion of the S 1/2 of Section 13, T6N-R1E, H.B.M. described in the deed from the Estate of Barbara A. Wolf to the Arcata and Mad River Rail Road recorded August 9, 1967 at Book 931 Official Records, page 55; the Guardian's Deed (of Barbara A. Wolf) to the Arcata and Mad River Rail Road recorded August 9, 1967 at Book 931 Official Records, page 58 and the deed from the Leonard A. Wolf to the Arcata and Mad River Rail Road recorded August 9, 1967, at Book 931 Official Records, page 60.

Parcel 6

Beginning at a point on the south side of Railroad Avenue directly opposite and 60 feet distant from the southeast corner of Block 3 of Blue Lake according to the Map thereof on file in the office of the County Recorder of Humboldt County in Book 1 of Maps, page 60;

thence northwesterly along the south side of said Railroad Avenue a distance of 619 feet 5 inches;

thence southwesterly at right angles, 25 feet 5 inches to the Northeasterly line of the land conveyed to Arcata and Mad River Rail Road Company by deed recorded May 31, 1883, in Book 8 of Deeds, page 693;

thence southeasterly along said northeasterly line about 619 feet to the northwesterly line of G Street shown on said map of Blue Lake;

thence northeasterly along said line about 12 feet to the point of beginning

excluding therefrom, "Parcel 1" as shown on Parcel Map #2132 described in Book 18 of Parcel Maps, page 138 Humboldt County Records.

description prepared by
Michael J. Jones
LS 5160

Exhibit F

NORTH COAST RAILROAD AUTHORITY

AND WHEN RECORDED MAIL TO

RECORDED - OFFICIAL RECORDS
HUMBOLDT COUNTY, CALIFORNIA
CAROLYN CRNICH, RECORDER
Recorded by NORTH COAST RAILROAD AUTH

Name [Davis, McClendon, Poovey & Anderson, Inc.
Street Address [937 Sixth Street
Eureka, CA 95501
City State Zip [Attn: John M. Anderson #91-164]

SP Clerk: VS Total: EXEMPT
Apr 2, 1992 at 12:23

MAIL TAX STATEMENTS TO

Name [Davis, McClendon, Poovey & Anderson, Inc.
Street Address [937 Sixth Street
Eureka, CA 95501
City State Zip []

DOCUMENTARY TRANSFER TAX \$
____ COMPUTED ON FULL VALUE OF PROPERTY CONVEYED.
____ OR COMPUTED ON FULL VALUE LESS LIENS AND
____ ENCUMBRANCES REMAINING AT TIME OF SALE.

Signature of Declarant or Agent determining tax. Firm Name

QUITCLAIM DEED

(Escrow No.61887-RC.....)

By this instrument dated March 26, 1992....., for a valuable consideration,
Jerry E. Gregg, as Trustee in Bankruptcy for the Estate of Northwestern Pacific
Acquiring Corporation, a California corporation

do...es.. hereby remise, release and forever quitclaim to

North Coast Railroad Authority, an entity created pursuant to California Government
Code 93000 thru 93025

the following described Real Property in the State of California, County of Humboldt

City of

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF FOR DESCRIPTION

This deed is made pursuant to and Order Authorizing Sale of Real Property ~~Free and~~
~~Clear of Liens~~ issued out of Case No. 1-86-01977, United States Bankruptcy Court
for the Northern District of California.

Attest Date APR 2 1992
This instrument is a correct copy of the
original on file in this office.
Carolyn Crnich, Humboldt Co. Recorder
by Vicki Salas Deputy Recorder

Jerry E. Gregg
Jerry E. Gregg, Trustee

STATE OF CALIFORNIA

COUNTY OF HUMBOLDT

SS.

On 3/31, 1992, before me, the undersigned, a Notary Public in and for
said County and State, personally appeared Jerry E. Gregg, Trustee
known to me to be the
person..... whose name is..... subscribed to the within instrument, and acknowledged to me thathe..... executed the same.



Notary's Signature

Type or Print Notary's Name

Charlotte Dodson

MAIL TAX STATEMENTS AS DIRECTED ABOVE

EXHIBIT "A"

PARCEL ONE:

All property lying within the County of Mendocino which is described in deed dated October 25, 1984 executed by Northwestern Pacific Railroad Company, a California corporation to Northwestern Pacific Acquiring Corporation, a California corporation by deed recorded November 5, 1984 in Book 1481 of Official Records at Page 186, Mendocino County Records.

INCLUDING ALL tracks and track structures.

PARCEL TWO:

All property lying within the County of Trinity which is described in the deed dated October 25, 1984 executed by Northwestern Pacific Railroad Company, a California corporation to Northwestern Pacific Acquiring Corporation, a California corporation recorded November 2, 1984 in Book 246 of Official Records at Page 930, Trinity County Records and as re-recorded November 13, 1984 in Book 247 of Official Records at Page 161, Trinity County Records.

INCLUDING ALL tracks and track structures.

PARCEL THREE:

All property lying within the County of Humboldt which is described in the deed dated October 25, 1984 executed by Northwestern Pacific Railroad Company, a California corporation to Northwestern Pacific Acquiring Corporation, a California corporation by deed recorded November 5, 1984 in Book 1751 of Official Records at Page 636, Humboldt County Records.

INCLUDING ALL tracks and track structures.

PARCEL FOUR:

An easement for railroad and transportation purposes upon, over, across and along real property located within the County of Humboldt as described in the Easement dated October 25, 1984 executed by Northwestern Pacific Railroad Company, a California corporation to Northwestern Pacific Acquiring Corporation, a California corporation recorded November 5, 1984 in Book 1751 of Official Records at Page 85, Humboldt County Records.

PARCEL FIVE:

All property lying within the County of Humboldt which is described in the deed dated September 20, 1988 executed by The Arcata and Mad River Railroad Company, a corporation to Jerry E. Gregg, as Trustee in Bankruptcy for The Estate of Eureka Southern Railroad Company, Inc., recorded December 14, 1988 in Book 1895 of Official Records at Page 1149, Humboldt County Records.

EXCEPTING FROM Parcels 3, 4 and 5, as they may apply, all that portion as set forth in the Quitclaim Deed recorded May 17, 1990 as Document No. 1990-11535-11, Humboldt County Records.

ALSO EXCEPTING FROM Parcels 3, 4 and 5, as they may apply, all that portion as set forth in the Quitclaim Deed recorded May 17, 1990 as Document No. 1990-11536-7, Humboldt County Records.

CONTINUED

STEWART TITLE
GUARANTY COMPANY

exhibit (continued)

ALSO EXCEPTING FROM Parcels 3, 4 and 5, as they may apply, all that portion as set forth in the Easement Deed recorded June 5, 1990 as Document No. 1990-13106-3, Humboldt County Records.

ALSO EXCEPTING FROM Parcels 3, 4 and 5, as they may apply, all that portion as set forth in the Deed of Timber Interests recorded January 31, 1991 as Document No. 1991-2322-2, Humboldt County Records.

ALSO EXCEPTING FROM Parcels 3, 4 and 5, as they may apply, all that portion as set forth in the Memorandum of Agreement recorded January 31, 1991 as Document No. 1991-2323-5, Humboldt County Records.

ALSO EXCEPTING FROM Parcels 3, 4 and 5, as they may apply, all that portion as set forth in the Memorandum of Agreement recorded January 31, 1991 as Document No. 1991-2324-2, Humboldt County Records.

ALSO EXCEPTING FROM Parcels 3, 4 and 5, as they may apply, all that portion as set forth in the Quitclaim Deed recorded May 3, 1991 as Document No. 1991-9402-3, Humboldt County Records.

ALSO EXCEPTING FROM Parcels 3, 4 and 5, as they may apply, all that portion as set forth in the Quitclaim Deed recorded May 8, 1991 as Document No. 1991-9853-2, Humboldt County Records.

ALSO EXCEPTING FROM Parcels 3, 4 and 5, as they may apply, all that portion as set forth in the Quitclaim Deed recorded July 19, 1991 as Document No. 1991-16207-2, Humboldt County Records.

ALSO EXCEPTING FROM Parcels 3, 4 and 5, as they may apply, all that portion as set forth in the Quitclaim Deed recorded September 23, 1991 as Document No. 1991-21875-4, Humboldt County Records.

1992-9029-3

99C-1

STEWART TITLE
GUARANTY COMPANY

3