

Transportation Solutions Defense and Education Fund

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ENTERED
Office of Proceedings
December 20, 2021
Part of
Public Record
December 20, 2021

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
Surreply to State of California Late Reply to Motion for Exemption from Offers of
Financial Assistance

Dear Ms. Brown:

TRANSDEF, the Transportation Solutions Defense and Education Fund, was the first party to join this proceeding. We request leave to offer these brief comments in response to the late filing by the California Department of Justice, representing the California Coastal Commission. The Commission offered no excuse for its lateness.

The proceedings cited by the Commission (Reply at 5-6) are inapposite: they involved railroads without interested shippers and without investors willing to restore service. Neither circumstance is applicable to NCRA's ROW. It is sophistry to conflate *continued* need with *current* demand. Offerors will need to demonstrate continued need, which includes the desire for a restoration of service. See *infra* for evidence in the record.

TRANSDEF sent letters to the City of Eureka and Humboldt County suggesting that, in order to maintain their project timelines, they would be wise to prepare alternative trail designs for their paths that coexist with the railroad. Both of these projects had begun as rails with trails. See Exhibits 1 and 2. Contrary to the Commission's assertion, these trails do not "depend on the successful rail-banking of the Line." Reply at 8.

The extensive recitation of environmental values, laws and regulations by the Coastal Commission (pages 7-18 of the Reply) are all irrelevant to this proceeding. The ICCTA's preemption clause, 49 U. S. C. § 10501 subd. (b), states that the remedies under the ICCTA are exclusive and preempt remedies provided under federal or state law with respect to regulation of rail transportation. *City of Auburn* states that even an environmental statute may trespass on the exclusive jurisdiction of the STB:

[G]iven the broad language of § 10501 (b)(2), (granting the STB exclusive jurisdiction over construction, acquisition, operation, abandonment, or discontinuance of rail lines) the distinction between "economic" and "environmental" regulation begins to blur. For if local authorities have the ability to impose "environmental" permitting regulations on the railroad, such power will in fact amount to "economic regulation" if the carrier is prevented from constructing, acquiring, operating, abandoning, or discontinuing a line. *City of Auburn v. United States Government* 154 F. 3d 1025, 1031 (9th Cir. 1998).

The Coastal Commission has no expertise upon which to conclude with absolute certainty that "no offeror (including Mendocino Railroad Company and NCRCo) will ever be able to satisfy the Board's requirements for making such offers." (Reply at 18, emphasis added.) Following our discussion of preemption *supra*, it is highly ironic that the Coastal Commission seeks to preempt even the consideration of an Offer of Financial Assistance. The Coastal Commission has presented no evidence of the non-existence of commercial need in the present, only the absence of any current service.

On the other hand, our sister organization, the Train Riders Association of California, provided evidence of commercial need in Exhibits 5d, 5e, 8 and 9 to its March 31, 2021 filing in the associated Docket #AB-1310X. This evidence demolishes the Commission's assertion that "no offeror will be able to provide any evidence of support from shippers or receives [sic] on the Line, nor will they be able to provide any evidence of any immediate and significant commercial need." (Reply at 19.) The assertion that "[t]hat is because no shippers or receivers currently use and rely on the Line and none have done so for more than 20 years" (*Id.*) is irrelevant to the shippers' need for rail service.

The Coastal Commission has no rail experience of its own, and has relied instead on the client-serving statements of consultants working for Humboldt County and NCRA. (Reply at 20 n.73 and 74.) It would be a violation of due process if the Board relied on that tainted evidence without allowing Offerors to present their own experts' opinions of feasibility and cost in support of their Offers.

In conclusion, it is preposterous for the Coastal Commission to arrogate to itself the role of judging that "no offeror would be able to submit a Board-compliant Offer of Financial Assistance." (Reply at 20.) TRANSDEF respectfully urges the Board to dismiss the Commission's arguments and deny NCRA's requested exemption.

Sincerely,

/s/ DAVID SCHONBRUNN

David Schonbrunn,
President

Exhibit 1

LAW OFFICES OF JASON A. BEZIS
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Lafayette, CA 94549-3509
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jason@bezislaw.com

April 21, 2021
By email to:
tmattson@co.
humboldt.ca.us

Tom Mattson, Director
Public Works Department
County of Humboldt
1106 2nd Street
Eureka, CA 95501

Re: Humboldt Bay Trail South

This office represents the Transportation Solutions Defense and Education Fund, TRANSDEF, in the matter of the proposed railbanking of North Coast Railroad Authority (NCRA) rail assets in Humboldt County. Perhaps you have seen the coverage in the *Times-Standard*:

<https://www.times-standard.com/2021/03/23/bay-area-group-calls-ncra-railbanking-unlawful/>
<https://www.times-standard.com/2021/04/05/north-coast-railroad-authority-transdef-at-odds-over-railbanking-for-trail/>

TRANSDEF has been following the Humboldt Bay Trail project for some time now, and is pleased at how it has proceeded as a rail with trail. TRANSDEF is very supportive of the intention of the Humboldt Bay Trail South project to complete the trail between Eureka and Arcata. My client is a strong supporter of rails with trails, but vigorously opposes the removal of rails.

TRANSDEF supports the project's plan to lift and repair the railbed to provide more protection from storms. However, it is alarmed by the South Trail Project's 60% completion drawings, which would not replace the rails once the railbed is reconstructed. Those concerns were confirmed by the staff report for the March 24 California Transportation Commission meeting:

The Humboldt Bay Trail South and the concurrent Eureka Elk River Estuary Tidal Enhancement and Waterfront Trail Extension project are both part of the Great Redwood Trail, California Coastal Trail, and Humboldt Bay Trail. They are also the first trail projects on NCRA's right-of-way to propose removal of rails and ties. (p. 2.)

I write today to suggest that your design team complete its work on the original design. As you are undoubtedly aware, the alternative design is only feasible if the rails are removed. That would be illegal unless and until NCRA succeeds in getting authorization for the railbanking of its assets.

If that authorization is denied by the federal Surface Transportation Board (STB), the County would be in the uncomfortable position of not being able to proceed with its project. Because TRANSDEF is actively opposing railbanking at the STB, I am extending you the courtesy of suggesting you have your team produce two complete construction packages, so that you are prepared for any eventuality. We have sent a similar letter to Mayor Seaman.

Sincerely yours,

A handwritten signature in cursive script that reads "Jason A. Bezis".

JASON A BEZIS

cc: Hank Seeman, DPW
Mitch Stogner, NCRA
Pete Johnston, THA

Exhib

LAW OFFICES OF JASON A. BEZIS
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April 21, 2021
By email to:
sseaman@ci.
eureka.ca.gov

Mayor Susan Seaman
City of Eureka
531 K Street
Eureka, CA 95501

Re: Waterfront Trail Extension Project

Dear Mayor Seaman:

This office represents the Transportation Solutions Defense and Education Fund, TRANSDEF, in the matter of the proposed railbanking of North Coast Railroad Authority (NCRA) rail assets in Humboldt County. Perhaps you have seen the coverage in the *Times-Standard*:

<https://www.times-standard.com/2021/03/23/bay-area-group-calls-ncra-railbanking-unlawful/>
<https://www.times-standard.com/2021/04/05/north-coast-railroad-authority-transdef-at-odds-over-railbanking-for-trail/>

My client is a strong supporter of rails with trails, and vigorously opposes the removal of rails. TRANSDEF became aware of Eureka's Elk River Estuary Tidal Enhancement and Waterfront Trail Extension Project as a result of the staff report for the March 24 California Transportation Commission meeting:

Original designs specified the trail atop a tidal ridge, parallel to the railroad prism on the east. Proposed changes to the original design eliminate the tidal ridge, removes the rail and ties, and places the trail on top of the railroad prism. (p. 3.)

I write today to suggest that your design team complete its work on the original design. As you are undoubtedly aware, the alternative design is only feasible if the rails are removed. That would be illegal unless and until NCRA succeeds in getting authorization for the railbanking of its assets.

If that authorization is denied by the federal Surface Transportation Board (STB), the City of Eureka would be in the uncomfortable position of not being able to proceed with its project. Because TRANSDEF is actively opposing railbanking at the STB, I am extending you the courtesy of suggesting you have your team produce two complete construction packages, so that you are prepared for any eventuality. We have sent a similar letter to the County Department of Public Works.

Sincerely yours,

A handwritten signature in cursive script that reads "Jason A. Bezis". The signature is written in dark ink and is positioned above the printed name.

JASON A. BEZIS

cc: Mitch Stogner, NCRA
Pete Johnston, THA

PROOF OF SERVICE

I certify that I have this day served copies of the TRANSDEF Letter and this Proof of Service, by email upon all parties of record in this proceeding as well as those non-parties that provided an email address, using the Service List available on the STB website. The list I mailed to is below.

Signed on December 21, 2021



David Schonbrunn, President of TRANSDEF

Party or Non-Party	Filed For	Email Address
	North Coast Railroad Authority	c.montange@frontier.com
	North Coast Railroad Company, L.L.C.	rwimbish@fletcher-sippel.com
	Mendocino Railway	wmullins@bakerandmiller.com
	Humboldt and Mendocino Redwood Cos.	jandersen@mendoco.com
	Humboldt Redwood Company, LLC	steve@mkjlex.com
	California Coastal Commission	justin.lee@doj.ca.gov
	Sonoma County Transportation Authority	suzanne.smith@scta.ca.gov
	Humboldt County Assoc. of Governments	beth.burks@hcaog.net
	Friends of the Eel River	foer@eelriver.org; bricker@smwlaw.com
	Humboldt Trails Council	besmft@gmail.com
	League of Women Voters of Humboldt County, League of Women Voters of Mendocino County, and the League of Women Voters of Sonoma County; Deborah Mc Kay	debstermckay49@gmail.com
	Rails-to-Trails Conservancy	laura@railstotrails.org
	Timber Heritage Association	petej@sonic.net
Non-Party	California Department of Transportation	jesse.robertson@dot.ca.gov
Non-Party	City of Arcata	kdiemer@cityofarcata.org; eservices@cityofarcata.org
Non-Party	City of Eureka	bgervin@ci.eureka.ca.gov
Non-Party	Honorable Jared Huffman	John.Driscoll@mail.house.gov
Non-Party	Honorable Mike McGuire	jason.liles@sen.ca.gov
Non-Party	Friends of the Annie & Mary Rail Trail	friendsofannieandmary@gmail.com
Non-Party	Humboldt Baykeeper	jkalt@humboldtbykeeper.org
Non-Party	San Francisco Baykeeper	ben@baykeeper.org
Non-Party	Sonoma County Bicycle Coalition	info@bikesonoma.org