

BEFORE THE SURFACE TRANSPORTATION BOARD

303974

North Coast Railroad Authority –	)	ENTERED
Adverse Discontinuance Application –	) AB 1313	Office of Proceedings
Northwestern Pacific Railway Co.	)	February 22, 2022
		Part of
		Public Record

Comment and Notice

This comment and notice are on behalf of North Coast Railroad Authority (NCRA), an agency of the State of California. As shown below, continued delay in granting the petition for waiver, among other things, has not been justified by the Board, is on its face contrary to federal rail transportation policy, and potentially prejudices an additional proceeding.

Comment

This Board granted Northwestern Pacific Railway (NWPY) lease and operating authority over what came to be the NCRA system (including specifically the line at issue in AB 1313, namely, MP 142.5 at Outlet Station north to end of branches) in Northwestern Pacific Railway Co. – Lease and Operation Exemption – NCRA, et al., F.D. 33998, served Feb. 6, 2001. However, all of NCRA’s relevant trackage was subject to an emergency safety embargo imposed by the Federal Railroad Administration in 1998. This Board has repeatedly determined that NWPY never operated on the line. E.g., Northwestern Pacific Railroad Co. – Change in Operators

Exemption – NCRA, et al., F.D. 35073, served Sept. 7, 2007, slip at 2; id., served Feb. 1, 2008, slip at 1. Thus, in effect, NWPY never consummated its lease authority. Moreover, NWPY’s lease was terminated by agreement on October 31, 2005. NWPY’s regulatory operating rights from MP 142.5 (Outlet Station) south were transferred to Northwestern Pacific Railroad Company by this Board’s decision in Northwestern Pacific RR Co. – Change of Operators Exemption – NCRA, et al., F.D. 35073, served August 24, 2007, corrected in id., served August 30, 2007.¹ NWPY as an entity was dissolved for non-payment of taxes and its principal (and last stated agent) died in 2010.² Since the remnant line of NWPY has been embargoed since 1998, it has no shippers. In the circumstances, NCRA (an agency of the State of California) as owner of the underlying right of way and holder of the residual common carrier obligation has standing to seek an adverse discontinuance of NWPY’s lease authority. Accord, State of South Dakota acting through its Department of Transportation – Adverse Discontinuance of Operating Authority – Napa Platte Regional Railroad Authority, AB 1253, served June 27, 2018, slip at 3.

In order to pursue an adverse abandonment or discontinuance, parties seeking adverse abandonment or discontinuance must file petitions to waive certain regulatory

¹ NWPY’s successor (NWPCo) has subsequently discontinued its operating authority from Outlet Station to the Mendocino-Sonoma County line, and both it and NCRA have transferred their properties and regulatory obligations south of the Mendocino-Sonoma County line to SMART.

² See Petition for Waiver and Exemption filed March 9, 2021 in AB 1313 at p.7

or statutory showings otherwise required. These petitions, when timely sought, appear to be universally and expeditiously granted by this agency. E.g., Metro-North Commuter Railroad Company – Adverse Discontinuance of Trackage Rights – Housatonic Railroad Company, AB 1311, served April 20, 2021 (petition for waiver filed February 8, 2021, and granted April 20, 2021); Landowners – Adverse Abandonment—Indiana Southwestern Railway Co., AB 1065 (Sub-no. 3), served April 7, 2021 (petition filed January 7, 2021, granted April 7, 2021); .Colorado Landowners – Adverse Abandonment – Great Western Railway of Colorado, AB 857 (Sub-no. 2), served Feb. 11, 2022 (petition filed October 15, 2021, granted in a decision served February 11, 2022). In other words, under this Board’s precedent, the Board does not institute “proceedings” under 49 U.S.C. 10502(b) in the event of petitions for waiver and exemption in order to file an adverse application; instead, the Board grants the petitions.

On March 9, 2021, NCRA filed a petition for exemption similar to the many such petitions filed (and expeditiously granted) for so many past applicants for adverse discontinuance or abandonment. (The entire petition may be accessed on the Board’s filings website, at https://dcms-external.s3.amazonaws.com/DCMS_External_PROD/1615411714766/301736.pdf).

Rather than granting NCRA’s petition in accordance with precedent so NCRA could move forward with an adverse discontinuance application, this Board served a Decision

on June 7, 2021, which “instituted” a proceeding pursuant to 49 U.S.C. 10502(b). This decision not only was contrary to past precedent, but also was issued without any explanation by the Board why it was acting contrary to its own precedent. This problem was not remedied by the Board’s subsequent actions. In particular, the Board subsequently failed to suggest any issue which it seeks to resolve in the proceeding which it has instituted. In addition, the Board has failed to request comments in the proceeding, nor has the Board provided a procedural schedule for comments.

It is also troubling that section 10502(b) by its terms provides that any “proceeding” this Board institutes under it must conclude in nine (9) months. Nine months from June 7, 2021 is March 6, 2021. Thus, even if one assumes *arguendo* that it may somehow be appropriate for the Board to purport to institute a proceeding under 49 U.S.C. 10502(b), this Board is about to violate a statutory deadline imposed by the provision this Board invoked. The only way to avoid this violation is to grant NCRA’s year-old petition for waiver by March 6, 2021.

Federal rail transportation policy calls for “the expeditious handling and resolution of all proceedings required or permitted to be brought under [the ICC Termination Act].” 49 U.S.C. 10101(15). Federal rail transportation policy calls for “fair and expeditious regulatory decisions when regulation is required.” 49 U.S.C. 10101(2). Federal rail transportation policy calls for the agency “to reduce regulatory barriers to entry into and exit from the industry.” 49 U.S.C. 10101(7). Federal rail transportation

policy also calls for this agency to “encourage honest and efficient management.” All these elements of federal rail policy are supported by the agency’s customary practice of expeditiously granting petitions for waiver to permit the filing of adverse discontinuance and abandonment applications. They are not served by purporting to act contrary to precedent by instituting proceedings under section 10502(b) without any rationale, followed by taking no action to implement a proceeding.

In its decision in AB 1313 served on June 7 instituting a proceeding, the Board noted that NCRA had filed a “Verified Notice” in AB 1305X [actually, a Notice of Exemption (NOE) under 49 C.F.R. 1152.50, the two-year out of service exemption] for abandonment (actually railbanking) from Milepost 139.5 in Willits north, including all appurtenant branches. NCRA’s NOE was filed on May 14, 2021, two months after NCRA’s petition for exemption in AB 1313.

The Board did not represent that AB 1305X provided any basis to hold up AB 1313. NOE’s such as that filed in AB 1305X are effective 50 days from filing (in the case of AB 1305X, this would have been July 3, 2021), unless stayed to complete environmental review or the OFA process. The Board has placed all AB 1305X proceedings in abeyance while it considers (1) whether the “Annie and Mary” segment from Korblex to Korbel is a line of railroad over which the Board still has abandonment jurisdiction, and (2) whether the segment of (former) trackage from MP 300.5 in Samoa to MP 301.8 south of Samoa is a line of railroad over which the Board acquired

jurisdiction by reason of NWPY's filing for operational authority in 2001, after the line was embargoed and despite no operations. NCRA's petition for waiver in AB 1313 has nothing to do with the first (Annie and Mary) jurisdictional issue. It also has nothing to do with the second (MP 300.5 or MP 301.8) issue. The petition for waiver is a necessary condition to file an adverse abandonment application whatever the endpoint, and NCRA is entitled to an opportunity to file an adverse abandonment application against NWPY whatever the endpoint.

In fact, the Board's failure to grant the petition sought in AB 1313 may be causing unwarranted delays in AB 1305X. If the petition had been timely granted in accordance with this Board's precedent, NCRA would have long ago filed an adverse discontinuance application, and the application under STB precedent would surely have been granted since NWPY never had shippers on the line in question, and is totally defunct. In that event, the jurisdictional issue the Board cited as to the Samoa Branch in AB 1305X (which Branch NCRA has demonstrated in AB 1305X historically has ended at MP 300.5 in all relevant filings by NCRA's predecessors and by NCRA) would be totally moot. It is not appropriate to create or to complicate issues in one proceeding by unexplained and unprecedented delays in another.

Notice

This Board's staff has advised NCRA that renaming a railroad does not require Board authorization, but that the Board wishes to be advised in the event of renaming.

As NCRA has previously advised in AB 1305X (Letter filed Jan. 10, 2021 at p. 6), the California legislature adopted “Senate Bill No. 69,” approved by the Governor of California on September 30, 2021, and duly filed with the California Secretary of State. For a copy of the legislation, see

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB69.

Insofar as relevant here, the State of California is changing the name of NCRA to Great Redwood Trail Agency (“GRTA”) effective March 1, 2022. The new legislation is carefully crafted so as not to interfere with NCRA’s rail obligations under STB regulation. The adoption of Senate Bill 69 is germane here because it amounts to affirmation by the California Legislature and Governor of the determination of the California Transportation Commission that NCRA’s line north of Willits is no longer appropriate, or needed, for rail service and instead should be a railbanked trail. In order to accommodate the determination by the Legislature, Governor, and California Transportation Commission, NCRA respectfully wishes to move forward with an adverse discontinuance application against the defunct NWPY, and to this end, reiterates that the precedent compels this agency promptly to grant NCRA’s petition for waiver and exemption filed in AB 1313 on March 9, 2021. By reason of 49 U.S.C. 10502(b), this Board must do so by March 6, 2022.

Certificate of service. By my signature below, I certify service by email attachment and US Mail, postage pre-paid first class, to all parties on the service list for AB 1313 at their emails or address if record on the date below.

Respectfully submitted,

s/ Charles H. Montange

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