

BEFORE THE SURFACE TRANSPORTATION BOARD

304699

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

ENTERED
Office of Proceedings
June 6, 2022
Part of
Public Record

Objection and Motion to Reject Mendocino Railway
Notice of Intent to File an Offer of Financial Assistance

Great Redwood Trail Agency (“GRTA”), formerly named North Coast Railroad Authority (“NCRA”) and hereinafter referred to “NCRA/GRTA,” is an agency of the State of California, and seeks abandonment authority for the line of railroad extending from MP 139.5 (Willits) to end of line at, inter alia, MP 300.5 (Samoa).

Mendocino Railway (“Mendocino”) has filed a “Notice of Intent to File an Offer of Financial Assistance, hereinafter “Notice of Intent,” to acquire an approximately 13-mile-long portion of NCRA/GRTA’s rail line between MP 139.5 (at Commercial Street in Willits) to MP 152.5 (in the Eel River canyon).

NCRA/GRTA objects for the reasons stated below, and to the extent necessary, moves for prompt rejection of Mendocino’s Notice of Intent.

Mendocino’s operations are, and have always been, confined to excursion rail and rail bikes. Mendocino has held STB authority to own and operate an

approximately 40-mile-long rail line from Fort Bragg to Willits since 2004.¹ At the time of Mendocino's acquisition of the bankrupt California Western Railroad's (CWR) assets, there had been no freight shipments on the line since November 25, 1998, the date on which the Federal Railroad Administration issued an emergency order barring any shipments on NCRA's (now GRTA's and Sonoma-Marín Area Rail Transit's) lines between Arcata and Schellville/Napa Junction. As this Board has stated, "[t]he emergency order had the effect of severing CWR from the national rail system."²

Prior to CWR's de facto severance from the national rail system, CWR's primary shipper on the line was a lumber mill operated by Georgia Pacific. Georgia Pacific, whom the Board subsequently has found was the sole freight shipper on the line, closed its mill on August 8, 2002.³ CWR filed for bankruptcy shortly thereafter.⁴ In its "notice of exemption" to acquire the assets of CWR, Mendocino represented to this Board that it was crucial to reopen the line "in time

¹ See Mendocino Railway – Acquisition Exemption – Assets of The California Western Railroad, F.D. 34465, served April 9, 2004 (authorizing Mendocino "to acquire, through California Western Railroad's (CWR) trustee in bankruptcy and with the approval of the Bankruptcy Court ..., the rail assets of CWR").

² See Michael H. Meyer, Trustee in Bankruptcy for CWR v. NCRA, F.D. 34337, served July 27, 2005, slip op. at p. 2.

³ See Michael H. Meyer, Trustee in Bankruptcy for CWR v. NCRA, F.D. 34337, served Jan. 31, 2007, slip op. at 2.

⁴ See id.

for the May 1, 2004 beginning of the tourist season in Mendocino County” because “CWR has ... relied almost solely on tourism to support its continued operation.”⁵

The NCRA/GRTA line remains subject to the FRA emergency order barring rail service from Windsor in Sonoma County north through Willits all the way to the end of the line and branches in and around Humboldt Bay. Mendocino thus has not moved any freight rail traffic in interstate commerce due to the de facto severance from the national rail system. Mendocino has, however, provided rail excursion (tourist) and rail bike operations under the name “Skunk Railroad” over its line. However, due to multiple instances of collapse of “Tunnel One” on Mendocino’s line, any through service between Fort Bragg and Willits has been severed.⁶ Mendocino/Skunk instead currently provides limited excursion/rail bike experiences for tourists at its Fort Bragg endpoint and also limited excursion services out of Willits. In short, after 18 years of ownership, Mendocino currently

⁵ Verified Notice by Mendocino Railway in FD 34465, p. 1, available on STB website under filings.

⁶ See https://en.wikipedia.org/wiki/California_Western_Railroad (discussion of repeated collapse of “Tunnel One” and unsuccessful efforts to date by Mendocino/Skunk to raise funds sufficient to repair the facility following the collapse due to the 2015-16 El Nino event, forcing Mendocino to rely more extensively on railbikes). The article notes that the only good news for Mendocino is that some of its excursion equipment was positioned in Willits before the 2016 collapse so it could continue to offer some excursion service at that endpoint. According to Wikipedia, the tunnel problem flows from a moving hillside, which sounds like the “mud glacier” characterizing portions of the NCRA/GRTA line.

relies essentially “solely on tourism” to support such rail operations as it currently maintains.⁷ The website for Skunk/Mendocino/Cal Western is found at www.skunktrain.com, and currently (as of June 5, 2022) features “railbikes by moonlight.” The site offers tickets for its rail excursion experiences primarily out of Fort Bragg but with some out of Willits.

Mendocino represents to the Board that its OFA is for an “expansion” into new markets”⁸ evidently located at MP 152.5 on NCRA’s line. Mendocino does not even represent that the new market involves a shipper, and certainly does not identify any, much less any with business sufficient to pay for the rehabilitation of facilities and operational costs necessary to support the expansion. Certainly the “expansion” is in the nature of multiplying something by zero, in that Mendocino is currently non-operating (and has been since 2016) due to, inter alia, the severance of Mendocino’s own line above Fort Bragg at Tunnel One, discussed above. The OFA cannot be to interchange traffic with NCRA/GRTA in Willits for shipment south because the FRA emergency order would preclude any such service, just as it currently precludes service on the line segment north of Willits that Mendocino says it seeks to OFA. As this Board has recognized, the

⁷ See *id.* (discussion of freight issues, stating Mendocino/Skunk relies solely on passenger excursion).

⁸ Letter, W. Mullins to C. Brown, filed May 31, 2022 in AB 1305X.

emergency “order had the effect of severing CWR from the national rail system.”⁹

It has the same effect for CWR’s successor Mendocino. In addition, it means that an OFA that is allegedly for expansion into a new freight market is instead just a land grab because the FRA emergency order barring service for safety reason in effect eliminates expansion opportunities.

In the circumstances, the OFA, if it serves any purpose, is to expand Mendocino’s tourist operations by allowing (if the line were rehabilitated) an additional passenger excursion operation by Skunk into the headwaters of the Eel River (namely Willits to MP 152.5). But this Board’s precedent has long precluded use of the OFA remedy and procedures for any such excursion rail purposes. E.g., The Atchison, Topeka and Santa Fe Railway Co. – Abandonment Exemption – in Atchison County KS, AB 52 (Sub-no. 79X), served April 13, 1995, 1995 ICC Lexis 76, and cases cited (OFA procedures not available for excursion rail proposals). In any event, an OFA for a piece of non-operating line that is de facto severed from the national rail system to add it to another non-operating line that is de facto severed from the national rail system is an illegitimate use of the OFA process. It amounts to abusing the OFA process to assemble an intrastate private non-operating railroad with no relation to interstate commerce but rather de

⁹ Michael H. Meyer, Trustee in Bankruptcy for CWR v. NCRA, F.D. 34337, served July 27, 2005, slip op. at p. 2.

facto confined to tourist excursion/railbike operations. Mendocino's Notice of Intent must accordingly be rejected.

As to Mendocino's showings with respect to preliminary financial responsibility, NCRA/GRTA points out that Mendocino has evidently lacked sufficient resources to repair its own tracks to connect Fort Bragg to Willits since a tunnel collapse in 2016. See note 6. Thus, even if Mendocino nominally meets the Board's de minimis regulatory requirement for preliminary financial responsibility based on the calculations it tenders, Mendocino's own inability to repair its current line demonstrates its lack of financial responsibility to add more trackage to a system for which it already lacks resources to keep in operation to support any form of through service, whether freight or tourist excursion.¹⁰

¹⁰ In addition to repairing its own line, Mendocino will need to rehabilitate the 13 miles it currently seeks to OFA. This compounds Mendocino's actual financial barrier to operating the 13-mile segment it seeks. A June 3, 2022, article in the Press Democrat indicates that Mendocino acknowledges that rehabilitation for operation of the 13-mile segment its NOI targets will cost about \$10 million. See <https://www.pressdemocrat.com/article/news/north-coast-rail-dispute-intensifies-with-competing-bids-from-skunk-train-a/> (penultimate paragraph).

Nothing herein should be construed to mean that NCRA/GRTA in any way concedes that Mendocino has met, or ever could meet, the requirements for an OFA specified in, inter alia, 49 C.F.R. 1152.27(c)(1)(iv), including but not limited to actual financial responsibility, rail need, community support, and so on. NCRA/GRTA of course reserves all rights in this connection.

The price quote for scrap used by Mendocino also appears “low.” See Exhibit A.

Certificate of Service. I hereby certify service by email attachment on June 6 to all parties of record in AB 1305X per the STB website service list as of June 5, 2022, and in particular upon Mendocino’s representative (William Mullins at wnullins@bakerandmiller.com).

Respectfully submitted,

s/ Charles H. Montange

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For filing: June 6, 2022

Exhibit A

Quote in Last 30 Days on Scrap/Reroll Prices Delivered

Reroll & Scrap Rail Prices

Frontier-Yahoo/Inbox
Montey Sneed <monteysneed@+++++++ >
To:C. Montange
Sat, Jun 4 at 5:53 PM
Chuck
Per your request.
Reroll and scrap rail are being priced the same.
Per Dave Buff of Chicago Heights Steel the price delivered to the mill as of May 21st .is \$625 per gross ton.
Thanks,
Montey Sneed