

BEFORE THE SURFACE TRANSPORTATION BOARD

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

NCRA/GRTA Comments on Corrected Environmental Assessment

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). NCRA/GRTA comments as follows on the Corrected Draft Environmental Assessment (“EA”) served by this Board’s OEA on May 23, 2022.

By decision served May 17, 2022, the Board in this proceeding inter alia determined the end point of the Samoa Branch, determined it lacked jurisdiction over the so-called Annie and Mary line (Korblex to Korbel), denied NCRA/GRTA’s motion for an OFA exemption, rescinded the Draft EA served June 8, 2022, lifted the abeyance on environmental commenting, and directed OEA to issue a corrected draft EA by May 25. On May 20, the Board issued another decision granting NCRA/GRTA abandonment authority for the line, subject to possible OFA’s, and provided that notices of intent to file an OFA must be filed by

May 31, 2022. On May 23, OEA issued a corrected draft EA. On May 31, two timely notices of intent to file an OFA (“NOI”) were filed for three different segments of the line. On June 1, North Coast Railroad Company (NCRCo), described as a “mysterious Wyoming-based firm believed to be pushing a controversial coal-by-rail export proposal along the Northern California coast”,¹ late-filed a NOI for the entire NCRA/GRTA line (plus the Annie and Mary over which STB lacks jurisdiction). This renders the comments that follow on STB’s Corrected Draft EA necessary.

Violation of NEPA if the Board orders an OFA transfer without the benefit of an EA if the transfer may result in environmental effects exceeding certain thresholds

STB’s OEA notes at p. 3 that it had received comments expressing concern that freight rail service could resume on the line and that such a resumption could have environmental impacts. The thrust of the comments is certainly true.

NCRA/GRTA has already submitted evidence that due to the degraded nature of the line due to the environment it traverses, rehabilitation of the line would essentially require construction of a new facility at a cost in excess of two billion

¹ <https://www.pressdemocrat.com/article/news/north-coast-rail-dispute-intensifies-with-competing-bids-from-skunk-train-a/>

dollars based on line conditions extant years ago.² The magnitude of the rehabilitation required and the scope of the environmental impact of reconstruction (and operation) is expected to be greater if current conditions are analyzed and priced out.³ Moreover, the environmental impacts would extend far beyond reconstruction and operation of MP 139.5 (Willits) to the Humboldt Bay. That line does not connect directly to the national rail system. Any use of that line in truly interstate commerce would entail rehabilitation and operation of freight rail lines south of Willits all the way to and over properties used by Sonoma-Marín Area Rail Transit (SMART) for important commuter rail services in Sonoma and Marin Counties. Literally, actual operation of MP 139.5 north implies a vast expansion of rail traffic south of Willits, and could result in traffic congestion, disrupt SMART's commuter rail operations, and foster degradation of California's wine industry in the event multiple unit trains begin running coal to Humboldt Bay for export to India and China. It will also subvert any efforts to curtail global warming and to preserve existing ecosystems.

Yet the only response by OEA in the Corrected Draft EA (at p. 3) is the following:

“OEA notes that railroads have the right to route or reroute traffic on their rail lines without seeking Board authority and have the obligation to provide rail service to

² See Exhibit B (David Anderson P.E. Verified Statement) attached to NCRA Motion for Exemption in AB 1305X, filed July 26, 2021.

³ Id.

shippers upon reasonable request. Therefore, unlike the proposed abandonment, a potential change in rail service on the Line would not be a federal action subject to environmental review under NEPA or a federal undertaking subject to historic review under Section 106 of NHPA. Accordingly, OEA's environmental and historic review in this proceeding, as in all abandonment proceedings, is limited to the analysis of the potential diversion of rail traffic to other transportation modes and impacts from any salvage activities resulting from the proposed abandonment."

While OEA's claim might be true if no STB action were involved, it is not true when the railroad transfers its property to another entity. This always requires an STB authorization of some sort, and that in fact does trigger environmental laws if certain thresholds are exceeded. See, e.g., 49 C.F.R. Part 1105.6(b)(4) (EA required for an acquisition that may result in certain thresholds being exceeded). See also 1105.7(e)(4)&(5) (states thresholds). To reiterate, for all transfers of rail property under STB auspices, STB's regulations require an EA if certain thresholds are exceeded. STB OEA's response to commenters thus appears misleading as an explanation for why the agency fails to engage in any environmental analysis of environmental impact possible rail transfers in the abandonment context.

The most prevalent rail transfer in the abandonment context is pursuant to the OFA mechanism. In the OFA process, STB determines whether to exercise its limited power of eminent domain to require involuntary transfer of rail property owned by private or public parties to another entity. To NCRA/GRTA's knowledge, the agency does not analyze whether environmental thresholds are

exceeded such that an EA should be prepared under NEPA. There seems to be no rationale for this omission, other than 49 C.F.R. 1105.5(c)(3). That regulation on its face exempts STB-ordered OFA transfers from “environmental laws.” The only reason for the exemption that the regulation offers is that STB’s exercise of its eminent domain power is allegedly purely “ministerial” (see 49 C.F.R. 1105.5(c)). In point of fact, STB’s exercise of eminent domain to compel transfer of rail property is no more “ministerial” than any of its other transfer authorizations. The acquiring railroad applies for Board authority to acquire a line or segment thereof by eminent domain, the Board evaluates the application, and grants the authority based on its analysis. But the Board’s OFA regulations at 49 C.F.R. 1152.27 contain ample ground for the Board to exercise discretion in whether to grant an OFA (the Board is required to consider rail need, community impact, and so forth). Exercise of its discretion would be better informed if an EA were prepared concerning the environmental effects of compelling a transfer, at least if the agency’s thresholds might be exceeded as a result of the transfer.

For all these reasons, an EA should be prepared before an acquiring party may actually “purchase” rail property from an unwilling seller (or even a willing seller) under the OFA statute should the thresholds in 49 C.F.R. 1105.7(e)(4) &(5) be exceeded. The agency should consider compelling an OFA transfer that may result

in those standards being exceeded only if the agency is first informed by an EA of the relevant environmental impacts flowing from the transfer.

Since “mysterious” NCRCO is reportedly pushing for a coal export railroad in Humboldt Bay (see note 1), the agency should assume, in the circumstances here, that at least as to the NCRCO OFA, the 1105.7(e)(4)&(5) thresholds will be exceeded. The 1105.7(e)(5) threshold, for example, is an increase of rail traffic of 100% or eight trains per day. Any coal operation big enough to justify rehabilitation of the line down the Eel River would necessarily not only increase freight rail traffic on the SMART system by 100% but also easily entail eight or more trains per day. The proponent of an OFA that implicates the section 1105.7(e)(4)& (5) thresholds should be required to comply with the environmental reporting requirement set forth in 49 C.F.R. 1105.7 in order to inform the interested public and to provide information for the agency’s required EA.

In the circumstances here, the agency will violate NEPA and other environmental laws if it requires a transfer of the line from the California agency now owning it (namely NCRA/GRTA) to some entity that may exceed the 1105.7(e)(4)&(5) thresholds without the benefit of an EA.

In this proceeding, an OFA application is tantamount to an application for new construction

This line has been subject to an FRA emergency order barring use since 1998 because of safety hazards. It has a difficult history of operation since the day of its inception (as set forth in NCRA/GRTA's environmental and historic reporting to OEA). It is constructed across several major wash-out zones (mud glacier issues) in a river canyon. See note 2. Its extraordinary rehabilitation needs necessitate treating any OFA for the line as amounting to new construction. That requires NEPA compliance by the agency and by the proponent of the agency action (OFA) that leads to the rehabilitation impacts. NCRA/GRTA reserves all rights on this issue.

Certificate of Service. I hereby certify service of the foregoing by email attachment on June 6 on all parties of record in AB 1305X per the STB website service list as of June 5, 2022.

Respectfully submitted,

s/Charles H. Montange

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