

BEFORE THE SURFACE TRANSPORTATION BOARD

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

Supplemental
NCRA/GRTA Comments
on Corrected Draft 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 on June 6 filed comments on the Corrected Draft Environmental Assessment (“EA”) served May 23, 2022, in this proceeding expressing disagreement (and alarm) at a statement in the EA suggesting that STB never looks at environmental impacts flowing from transfer of rail property. NCRA/GRTA pointed out this statement was contrary to STB regulations.

Because of confusion subsequently expressed by Mendocino Railway (“MR”),¹ NCRA/GRTA is supplementing its comments on the Corrected Draft Environmental Assessment served May 23, 2022, to clarify the record.

MR argues that “STB does not require NEPA review for line sales or transfers”² claiming these are “categorically excluded” under 49 C.F.R. 1105.6(c).³ They manifestly are not. Section 1105.6(c) on its face purports to exclude from NEPA analysis only actions that “do[] not result in significant changes in carrier operations.” The regulation indicates that exceeding the thresholds amounts to do [a significant change in carrier operations. The thresholds are set forth in section 1105.7(e)(4) & (5). If one examines the thresholds, they apparently will be exceeded as a direct result of an OFA transfer.

To take an easy example, per section 1105.7(e)(4) & (5), a threshold is exceeded if the transfer authorized by the Board will result in an increase in railyard activity (measured in carload activity) by 100% or an increase in rail traffic of at least 100% (measured in gross tons annually). As applied to MR, all traffic in the segment of line (MP 139.5 to MP 152.5) which MR intends to OFA⁴

¹ See MR’s environmental comments filed at the end of its “Reply in Opposition” dated and e-served on NCRA/GRTA on June 8.

² Id. at 10.

³ Id. at 11.

⁴ When MR opposed NCRA’s motion for an exemption from OFA, MR posited a customer (Wylatti) at Dos Rios (MP 166.50) or other unknown customers at Nashmead (MP 175.50). The supposed customer at 152.50 is new and

will necessarily either (i) employ the Willits yard for transload or (ii) traverse the Willits yard in order to reach MR's trackage to Fort Bragg. MR's trackage is located on the south side of Willits, roughly one-half mile or more south of MP 139.5, start of the abandonment. Any traffic from MP 152.5 headed to Fort Bragg will involve transload at, or use of, the Willits yard which is on both sides of MP 139.5. It is impossible to imagine any viable freight use of MP 139.5 to MP 152.5 that, measured in gross tons annually, will not result in an increase in rail traffic at the Willits yard of at least 100%, whether transloaded at Willits or shipped through Willits to Fort Bragg. As to North Coast Railroad Company's (NCRCo) proposed late-filed invocation of OFA procedures,⁵ the situation is at least as bad. NCRCo has yet to declare its proposed shipper(s), but newspapers allege it is attempting to foster interest in shipping coal from interconnect with national rail system at American Canyon in Contra Costa County, all the way across Marin County and Sonoma County to Willits and then onward to Humboldt Bay. This scheme would necessarily result in yard traffic increases greater than 100% at a variety of yards, as well as violations of other relevant thresholds.

unidentified. According to NCRAA/GRTA staff, no customer has been in touch with NCRA/GRTA for rail service, let alone expressing a willingness to pay for the costs of providing it.

⁵ As the Board knows, NCRA/GRTA object to the NCRCo notice of intent to file an OFA as breaching this Board's deadline for filing and for failure to show financial responsibility.

It may be true, as MR claims, that this Board does not collect information to determine if a line sale or transfer will result in the thresholds being exceeded and that this Board otherwise makes no attempt to look. But failure to look amounts to ignoring its own regulations, nor does it result in compliance with National Environmental Policy Act (NEPA) and other applicable environmental laws. NEPA calls for a “hard look” at the consequences of agency actions. Failure to look is in the nature of breach of STB’s legal duty to comply with NEPA.

It is not the job of NCRA/GRTA to collect relevant information from would-be transferees (in this case, rail bike proponent Seeker,⁶ excursion operator MR dba Skunk,⁷ or the mysterious NCRCO).⁸ None of these entities had expressed any interest in freight operations of the line in question to NCRA/GRTA prior to the filing of AB 1306X, and indeed MR affirmatively disavowed interest. None has shared any plans for actual shippers or the provision of service. STB will have to get that information from them or hire consultants to do so.

⁶ As NCRA/GRTA has indicated, Seeker’s attempt to invoke the OFA process is clearly for rail bike excursions and thus improper.

⁷ See MR’s relevant website, skunktrain.com, devoted to the alleged “World-Famous Skunk Train.”

⁸ Based on newspaper investigations, NCRCO is kiting a scheme to use the line for export of vast quantities of coal to Asia. In this event, the 1105.7(e) thresholds would be necessarily vastly exceeded and STB’s failure to comply with NEPA would be, according to comments of record with STB to date, an environmental nightmare.

Sadly, STB in its Corrected Draft EA in essence indicated it was turning a blind eye toward the thresholds, even though they are applicable. Any use of STB's eminent domain authority against a California agency (e.g., NCRA/GRTA) in those circumstances would be patently unlawful, amounting not just to failure to take a "hard look" but any look at all. NEPA compliance is designed to inform the agency decision-making process and the public. If STB timely inquired into the threshold issue, it would assist the agency's decision-making on whether an OFA actually served a viable rail need and was not some speculator's pipedream or some other abuse of regulatory processes. NEPA compliance would also assist the agency in determining if the OFA proponent had actual financial responsibility sufficient to purchase and to operate what historically appears to be either the most impossible line to keep in operational condition in the United States, or among the most impossible.

This Board has recognized that it must exercise substantial judgment in the course of the OFA process in order to prevent rampant abuse.⁹ This has resulted in the Board revising its OFA regulations to require OFA proponents inter alia to show factors such as continuing rail need, non-interference with current or planned transit services, and the operational feasibility of rail service.¹⁰ It cannot be said

⁹ See generally Offers of Financial Assistance, Ex Parte 729, served June 29, 2017 and served Sept. 30, 2016.

¹⁰ 49 C.F.R. 1152.27(c)(iv)(E).

that the agency is acting in a purely ministerial capacity when it orders transfer of rail lines from one public or private party to another entity in an OFA proceeding. Indeed, the agency must act with some discretion in order to ensure that public purposes are realistically being served, or it would be violating the Fifth Amendment requirement that the federal government only exercise eminent domain power for public purposes.¹¹ NCRA/GRTA reserves all rights.

The failure of the Corrected Draft EA to comport with NEPA as it relates to OFA proceedings does not render it invalid for purposes of supporting a Notice of Exempt Abandonment. It does render it insufficient to support an eminent domain

¹¹ This disposes of the argument by Mr. Schonbrunn as president of TRANSDEF (see “Transdef” Reply dated June 8, 2022 in this proceeding) that STB properly excludes OFA processes from NEPA compliance. Nothing in 49 U.S.C. 10904 immunizes OFA eminent domain proceedings from NEPA compliance. Any STB regulation to the contrary is arbitrary, capricious, in excess of agency authority or discretion, and otherwise unlawful.

Mr. Schonbrunn also claims that eminent domaining a line is distinct from actually reconstructing (and presumably operating) it. This distinction seems literally unconstitutional. The OFA process is not just to take property but to take it for continued rail service. Otherwise, the “take” serves no public purpose and instead would result in rampant abuse, including holding the line for ransom, thwarting some public party’s public purpose, or abusing adjoining landowners to extort money from them. This is particularly a concern with lines such as this which have not been used for almost a quarter century due to (a) geologic instability rendering them unsuitable for any actual rail use and (b) an FRA safety embargo in response. Many other aspects of Mr. Schonbrunn’s Reply are bogus or based on false assumptions but do not seem relevant at this time. Failure to comment further should not be construed to mean agreement.

proceeding, in the event this agency fails to reject the various tendered notices of intent to file an OFA.

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 9, 2022.

Respectfully submitted,

s/Charles H. Montange

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