

**SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423**

FINAL ENVIRONMENTAL ASSESSMENT

Docket No. AB 1305X

North Coast Railroad Authority—Abandonment Exemption—in Mendocino, Trinity, and Humboldt Counties, Cal.

ABANDONMENT TYPE

The time for comments on the Draft Environmental Assessment (Draft EA) has expired in this:
(X) Notice of Exemption () Petition for Exemption () Regulated Abandonment

() **NO NEW COMMENTS WERE RECEIVED**

(X) **NEW COMMENTS WERE RECEIVED**

In this proceeding, North Coast Railroad Authority (NCRA)¹ filed a notice of exemption with the Surface Transportation Board (Board) under 49 C.F.R. § 1152.50 seeking exemption from the prior approval requirements of 49 U.S.C. § 10903 in connection with the abandonment of a line of railroad in Mendocino, Trinity, and Humboldt counties, California. The rail line proposed for abandonment extends 169.61 miles between milepost 139.5 near Willits and milepost 284.1 near Eureka, including three branch lines extending to milepost 267.72 near Carlotta, milepost 295.57 near Korblex, and milepost 300.5 near Samoa (collectively, the Line). The branch lines are the Carlotta Branch, which extends approximately 4.98 miles from milepost 262.74 near Alton to milepost 267.72 near Carlotta; the Korblex Branch, which extends approximately 11.47 miles from milepost 284.1 near Eureka to milepost 295.57 near Korblex; and the Samoa Branch, which extends 7.66 miles from milepost 292.84 near Arcata to milepost 300.50 near Samoa.

The Board's Office of Environmental Analysis (OEA) issued a Draft EA in this proceeding on June 8, 2021. On June 9, 2021, however, the Board issued a decision holding the proceeding in abeyance and, on June 11, 2021, OEA issued a decision staying the Draft EA comment period. By decision served on May 17, 2022, the Board lifted the abeyance and stay orders and rescinded the Draft EA. On May 23, 2022, OEA issued a Corrected Draft EA assessing the potential environmental impacts of the proposed abandonment. In the Corrected

¹ OEA understands that NCRA has changed its name to Great Redwood Trail Agency (GRTA). For consistency with previous environmental documentation issued in this proceeding, this Final EA refers to NCRA as the railroad seeking abandonment authority. As used in this Final EA, NCRA should be understood to also refer to GRTA.

Draft EA, OEA recommended eight environmental conditions and concluded that the proposed action would not significantly impact the quality of the human environment.

Comments on the Draft EA

Following the issuance of the Draft EA and prior to issuing the Corrected Draft EA, OEA received comments from local agencies, organizations, and members of the public. Many commenters, including the Friends of the Eel River (FOER), the City of Petaluma, the Humboldt Trails Council, Northcoast Environmental Center, 350 Humboldt, Friends of the Annie & Mary Rail Trail, and the Coalition for Responsible Transportation Priorities (CRTP), expressed support for conversion of the Line into a trail or trails through the interim trail use/railbanking process under the National Trail System Act (Trails Act), 16 U.S.C. § 1247(d). Other commenters, including Humboldt Redwood Company, Humboldt Sawmill Company, Mendocino Redwood Company, and Mendocino Forest Products, expressed concern that interim trail use could result in adverse public safety impacts. As discussed in the Corrected Draft EA, NCRA has stated that NCRA's purpose in seeking abandonment authority is to allow for the conversion of the Line into a trail or trails through interim trail use. Pursuant to the Trails Act and the Board's implementing regulations at 49 C.F.R. § 1152.29, NCRA and the Timber Heritage Association have both filed requests for a Notice of Interim Trail Use (NITU).

Although NCRA is seeking authority to abandon the Line, some commenters expressed concern that rail service on the Line could be resumed. Commenters state that such a resumption of rail service could result in adverse environmental impacts, including impacts associated with the transport and use of coal, which commenters suggest could be transported on the Line. OEA notes that, unless NCRA fully abandons the Line by filing a notice of consummation with the Board after receiving authority to abandon the Line, rail service could potentially resume because the Line is still an active line of railroad that is part of the interstate rail network, even though it may need certain rehabilitation. Moreover, if the Line is converted into a trail or trails through interim trail use, then the Line would not be abandoned for railroad purposes. Thus, the right-of-way would remain under the Board's jurisdiction as part of the interstate rail system and would be subject to potential reactivation of rail service for the duration of the interim trail use. See 16 U.S.C. § 1247(d). Rail service could also be resumed by railroads other than NCRA through the Offer of Financial Assistance (OFA) process, which allows for railroads to acquire rail lines proposed for abandonment. See 49 U.S.C. § 10904. In this proceeding, North Coast Railroad Company, L.L.C., Seeker Enterprises LLC (Seeker), and Mendocino Railway have all submitted notices expressing their intent to file OFAs. The Board issued a decision on June 10, 2022, rejecting the notices of intent to file an OFA submitted by North Coast Railroad Company, L.L.C. and Seeker.

OEA notes that the Board's role in both the interim trail use process and the OFA process is ministerial, meaning that the Board does not have discretion to deny either interim trail use or OFAs provided that the parties involved in those processes satisfy the applicable statutory requirements. See 16 U.S.C. § 1247(d) (stating the Board "shall not" permit a rail line abandonment or treat a rail line as abandoned if certain statutory requirements are met); 49 U.S.C. § 10904 (stating that, if a financially responsible person files an OFA, the abandonment "shall be postponed" until the parties reach an agreement or, if the parties cannot reach an

agreement, the Board sets the conditions and compensation). Pursuant to the Board's regulations at 49 C.F.R. § 1105.5(c), environmental laws are not triggered when the Board's role is ministerial. As a result, the Board's regulations specifically exclude interim trail use [49 C.F.R. § 1105.5(c)(2)] and OFAs [49 C.F.R. § 1105.5(c)(3)] from environmental review. Therefore, as discussed in the Corrected Draft EA, the only federal action that is subject to the National Environmental Policy Act (NEPA) and the only federal undertaking that is subject to historic review under Section 106 of the National Historic Preservation Act in this proceeding is the proposed abandonment of the Line. The Corrected Draft EA and this Final EA, including OEA's recommended mitigation conditions, appropriately address the potential environmental and historic impacts of the proposed abandonment, rather than on potential impacts that could be associated with interim trail use or a resumption in rail service by either NCRA or a new operator through an OFA, none of which is subject to environmental or historic review.

Following issuance of the Corrected Draft EA, OEA received additional environmental comments from NCRA, Seeker, the CRTP, and the Sherwood Valley Band of Pomo Indians of California (Sherwood Valley Tribe or Tribe), the Sierra Club, and FOER.²

In their comments, NCRA, CRTP, Sierra Club, and FOER disagree with OEA that potential resumption of rail service on the Line would not be a federal action subject to environmental review under NEPA. Those commenters state that resumption of rail service, including through the OFA process, would result in adverse impacts on air quality, climate change, water quality, habitat, and safety, among other environmental effects. CRTP, Sierra Club, and FOER further state that, because they believe that resumption of rail service on the Line, which would include rehabilitation of the Line, could have significant environmental impacts, OEA should prepare an Environmental Impact Statement (EIS) in this proceeding. As discussed above, because the Board's role in the OFA process is ministerial, OFAs are not federal actions subject to NEPA or federal undertakings subject to Section 106. Similarly, any potential resumption of rail service, including any potential rehabilitation of the Line to allow for resumed rail service, by NCRA or any offeror in the OFA process, would not be a federal action subject to NEPA or a federal undertaking subject to Section 106 because it would not involve approval or authorization from the Board.³ Therefore, the environmental review in this proceeding has appropriately evaluated the potential environmental impacts of the proposed

² Although NCRA, Sierra Club, and FOER submitted comments on the Corrected Draft EA as formal filings to the Board rather than as environmental comments to OEA, OEA has treated their submissions as environmental comments and is providing responses in this Final EA.

³ As the Board has recently reiterated, “[c]arriers do not need Board authority to repair, replace, rehabilitate, or rebuild their existing lines, and therefore can make improvements, operate additional trains and add infrastructure to such lines without environmental review even if the line has long been inactive and is in disrepair.” Application of the Nat’l Passenger R.R. Corp. Under 49 U.S.C. § 24308(e)—CSX Transp., Inc. and Norfolk S. Ry., FD 36496, slip op. at 10 (STB served Aug. 6, 2021); see Oakland Global Rail Enter.—Pet. for Declaratory Order, FD 36168, slip op. at 6 (STB served Mar. 15, 2019); Mo. Cent. R.R.—Acquis. & Operation Exemption—Lines of Union Pac. R.R., FD 33508, slip op. at 8 (STB served Sept. 14, 1999), aff’d sub nom., Lee’s Summit v. STB, 231 F.3d 39, 42 n.3 (D.C. Cir. 2000).

abandonment only, including abandonment-related salvage activities. Because OEA has determined that the proposed abandonment would not significantly affect the quality of the environment, the EIS process is unnecessary here. Accordingly, no changes to the Corrected Draft EA are warranted in response to the comments from NCRA, CRTP, Sierra Club, and FOER.

Seeker submitted comments requesting that the Board not only impose the conditions recommended in the Corrected Draft EA on any decision granting abandonment authority, but also on any decision allowing interim trail use. As discussed above, however, the Board's role in the interim trail use process is ministerial and interim trail use is not a federal action subject to NEPA or a federal undertaking subject to Section 106. Therefore, no changes to the mitigation measures recommended in the Corrected Draft EA are warranted in response to this comment from Seeker.

Seeker also requests that OEA further modify Condition 6, which would bar NCRA from salvaging the Line (including by removing tracks and ties) until NCRA has consulted with the California Coastal Commission and obtained state coastal management consistency certification, if necessary. Seeker states that, if the Board were to remove Condition 6 before the OFA process has been completed, NCRA could remove tracks and ties that the OFA offerors seek to preserve. Therefore, Seeker requests that Condition 6 also bar NCRA from filing a consummation notice or initiating abandonment-related salvage activities until the Board's decisions on the OFAs in the proceeding are legally final. OEA notes that the purpose of Condition 6 is to ensure that the proposed abandonment would be consistent with the Coastal Zone Management Act (16 U.S.C. § 1451 et seq.) and the Board's environmental regulations at 49 C.F.R. § 1105.9, not to preserve tracks and ties for use by OFA offerors. Therefore, no changes to the Corrected Draft EA are warranted in response to Seeker's comments.

The Sherwood Valley Tribe submitted comments stating that the Line crosses the Tribe's traditional territory surrounding and including the town of Willits, California. The Sherwood Valley Tribe states that the Little Lake Valley is a very culturally rich area with many documented cultural sites along the Line. The Tribe requests continued consultation regarding interim trail use on the Line. Because interim trail use is not a federal action subject to NEPA or a federal undertaking subject to Section 106, OEA would not have a role in conducting any Section 106 consultation or tribal consultation as part of the interim trail use process. However, if NCRA were to change its plans and seek to fully abandon the Line, OEA would complete the Section 106 process before NCRA could consummate abandonment authority or conduct any abandonment-related salvage activities. To help ensure that the Sherwood Valley Tribe would be included in any future Section 106 consultation related to the proposed abandonment, OEA is recommending a modification to Condition 1 recommended in the Corrected Draft EA, as set forth below.

Modifications to the Draft EA

Upon careful consideration of the comments received and OEA's further independent review, OEA believes that Condition 1 in the Correct Draft EA should be modified to include the Sherwood Valley Tribe among the Section 106 consulting parties listed by name. As revised,

Condition 1 reads:

North Coast Railroad Authority (NCRA) shall retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or listed in the National Register of Historic Places until the Section 106 process of the National Historic Preservation Act, 54 U.S.C. § 306108, has been completed. NCRA shall report back to the Office of Environmental Analysis regarding any consultations with the California Office of Historic Preservation, the Round Valley Indian Tribes of the Round Valley Reservation, the Sherwood Valley Band of Pomo Indians of California, and the public. NCRA may not file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed this condition.

Conclusions

The comment period has ended for the Corrected Draft EA. Accordingly, OEA recommends that the conditions recommended in the Corrected Draft EA, as modified by the recommendations in this document, should be imposed upon any decision granting abandonment authority.⁴ The conditions are:

1. North Coast Railroad Authority (NCRA) shall retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or listed in the National Register of Historic Places until the Section 106 process of the National Historic Preservation Act, 54 U.S.C. § 306108, has been completed. NCRA shall report back to the Office of Environmental Analysis regarding any consultations with the California Office of Historic Preservation, the Round Valley Indian Tribes of the Round Valley Reservation, the Sherwood Valley Band of Pomo Indians of California, and the public. NCRA may not file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed this condition.
2. North Coast Railroad Authority (NCRA) shall consult with the Board's Office of Environmental Analysis, the U.S. Fish and Wildlife Service, and the National Oceanic and Atmospheric Administration's National Marine Fisheries Service to address potential impacts on threatened and endangered species, pursuant to Section 7 of the Endangered Species Act (16 U.S.C. § 1536). NCRA may not initiate any salvage activities related to abandonment (including removal of tracks and ties) until the Section 7 consultation

⁴ If an interim trail use agreement under 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29 is reached for the Line (or a portion thereof), compliance with these conditions is not required with respect to any portion of the Line covered by the interim trail use agreement for the duration of the agreement.

process is complete and the Board has removed this condition.

3. North Coast Railroad Authority shall consult with the U.S. Fish and Wildlife Service, the Bureau of Land Management, the California Department of Fish and Wildlife, the Bureau of Indian Affairs, and the Round Valley Indian Tribes of the Round Valley Reservation and shall implement those agencies' reasonable requirements for any abandonment-related salvage activities on land managed by those agencies.
4. North Coast Railroad Authority shall consult with the U.S. Army Corps of Engineers (Corps), the U.S. Environmental Protection Agency (USEPA), and the California State Water Resources Control Board (SWRCB) regarding those agencies' requirements and, if applicable, shall comply with the reasonable requirements of the Corps, USEPA, and SWRCB prior to commencement of any abandonment-related salvage activities.
5. North Coast Railroad Authority shall consult with the U.S. Environmental Protection Agency and the California Environmental Protection Agency's Department of Toxic Substances Control to ensure that any concerns regarding hazardous waste sites and potential contamination of the right-of-way are addressed prior to commencement of any abandonment-related salvage activities.
6. Pursuant to the Coastal Zone Management Act (16 U.S.C. § 1451 et seq.) and the Board's environmental regulations at 49 C.F.R. § 1105.9, North Coast Railroad Authority (NCRA) shall consult with the California Coastal Commission and obtain state coastal management consistency certification, if necessary. NCRA may not file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until it reports the results of these consultations in writing to the Board's Office of Environmental Analysis and the Board has removed this condition.
7. North Coast Railroad Authority shall consult with the Natural Resources Conservation Service (NRCS) regarding potential impacts on prime farmland and shall implement the reasonable recommendations of NRCS to minimize impacts from any abandonment-related salvage activities on agricultural land.
8. North Coast Railroad Authority shall consult with the California Department of Transportation (Caltrans) regarding Caltrans requirements for any abandonment-related salvage activities.

If the above conditions are imposed, OEA believes that the proposed action will not significantly affect the quality of the human environment.

By the Board, Danielle Gosselin, Director, Office of Environmental Analysis.