

SERVICE DATE – JUNE 24, 2022

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1305X

GREAT REDWOOD TRAIL AGENCY
—ABANDONMENT EXEMPTION—
IN MENDOCINO, TRINITY, AND HUMBOLDT COUNTIES, CAL.

Decided: June 24, 2022

On May 14, 2021, the Great Redwood Trail Agency (GRTA), previously known as North Coast Railroad Authority (NCRA),¹ filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon 175.84 miles of rail line from milepost 139.5 at Commercial Street in Willits to milepost 284.1 near Eureka, including appurtenant branch lines extending to milepost 267.72 near Carlotta, milepost 295.57 near Korblex, milepost 300.5 near Samoa, and milepost 301.8 near Korbel, in Mendocino, Trinity and Humboldt Counties, Cal.

After the proceeding was held in abeyance to permit the Board to resolve certain jurisdictional issues,² the Board lifted the abeyance on May 17, 2022, and on May 20, 2022, notice of the exemption was served and published in the Federal Register (87 Fed. Reg. 31,056). The Board's notice indicated that the exemption would become effective on June 19, 2022, unless stayed by the Board or unless a formal expression of intent to file an offer of financial assistance (OFA) was filed by May 31, 2022.

¹ NCRA's name was changed to Great Redwood Trail Agency, effective March 1, 2022. (GRTA Letter 6, Jan. 10, 2022.) The proceeding has been recaptioned accordingly.

² GRTA's verified notice described the line sought to be abandoned as including the Arcata & Mad River subsidiary, between milepost 295.57, near Korblex, and milepost 301.8, near Korbel, a distance of approximately 6.23 miles. (Verified Notice 1 n.1.) By decision served on May 17, 2022, the Board determined that abandonment of the Arcata & Mad River subsidiary had previously been consummated, removing that segment from the Board's jurisdiction. N. Coast R.R. Auth.—Aban. Exemption—in Mendocino, Trinity, & Humboldt Cntys., Cal., AB 1305X, slip op. at 3-5 (STB served May 17, 2022). Therefore, the line GRTA sought to abandon was defined to consist of 169.61 miles extending between milepost 139.5 near Willits and milepost 284.1 near Eureka, including appurtenant branch lines extending to milepost 267.72 near Carlotta, milepost 295.57 near Korblex, and milepost 300.5 near Samoa (the Line).

On May 31, 2022, Mendocino Railway (MR) filed a notice of intent to file an OFA to purchase a 13-mile portion of the Line extending from milepost 139.5 to milepost 152.5.³ The filing of the notice of intent automatically stayed the effective date of the exemption until June 29, 2022, pursuant to 49 C.F.R. § 1152.27(c)(2)(i).

On June 14, 2022, MR timely petitioned to toll the OFA filing deadline, stating that GRTA had not yet provided the OFA-related information MR had requested under 49 C.F.R. § 1152.27(a), and that such information was not contained in the notice of exemption. (MR Pet. to Toll 1.) GRTA filed a response on June 15, 2022, noting, among other things, that it does not object to MR's request to toll the OFA filing deadline. (GRTA Reply 3, June 15, 2022.) GRTA also requests that the Board enter a procedural schedule allowing GRTA no less than 20 days to respond to any OFA and move to dismiss. (*Id.* at 5.) On June 22, 2022, MR replied in opposition to GRTA's request that the Board enter a procedural schedule.⁴

The Board considers requests to toll the period for filing an OFA when a railroad has failed to provide a potential offeror with the information necessary to the development of an OFA and that information is not contained in the notice of exemption. *See* 49 C.F.R. § 1152.27(c)(2)(ii)(C). Here, because the information necessary to formulate the OFA has not yet been provided to a potential offeror, MR's petition will be granted. Accordingly, MR's OFA will be due August 18, 2022, or 30 days after GRTA notifies the Board in writing that it has provided MR with the requested information and documentation, whichever is later, and the effective date of the exemption is further postponed until August 28, 2022, or 40 days after MR's receipt of the required information, whichever is later.

GRTA's request to establish a 20-day period to respond to any OFA submitted by MR will be denied, as the Board's regulations, which reflect Congress's enactment of strict time limits for the OFA process, do not provide for replies to the filing of an OFA. *See* 49 C.F.R. § 1152.27(c)(1); *see also* Lassen Valley Ry.—Aban. Exemption—in Washoe Cnty., Nev. & Lassen Cnty., Cal., AB 1074X, slip op. at 1 (STB served Sept. 7, 2011) (noting that Congress directed the Board to follow the strict time limits established in the OFA statute).⁵

It is ordered:

1. MR's June 22, 2022 reply is accepted into the record.

³ Seeker Enterprises LLC and North Coast Railroad Company, L.L.C., also filed notices of intent to file OFAs. By decision served on June 10, 2022, those notices of intent were rejected. That decision noted that MR appeared to have made the required showing of preliminary financial responsibility under 49 C.F.R. § 1152.27(c)(2)(i).

⁴ While the Board's regulations do not generally permit replies to replies, 49 C.F.R. § 1104.13(c), MR's reply will be accepted in the interest of a more complete record.

⁵ Environmental conditions, requests for public use conditions, and requests for issuance of notices of interim trail use and rail banking under the National Trails System Act, 16 U.S.C. § 1247(d), if any, will be addressed in a future decision.

2. MR's petition to toll the OFA deadline is granted.

3. The due date for MR to file its OFA is tolled until August 18, 2022, or 30 days after GRTA notifies the Board in writing that it has provided MR with the requested information, whichever is later.

4. The effective date of the exemption is further postponed until August 28, 2022, or 40 days after MR's receipt of the required information, whichever is later.

5. The decision is effective on its service date.

By the Board, Mai T. Dinh, Director, Office of Proceedings.