

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

ENTERED
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July 6, 2022
Part of
Public Record

North Coast Railroad Authority/Great Redwood Trail Agency
("NCRA/GRTA") Reply to Leave to File submitted by Seeker Enterprise, LLC

The leave to file submitted by Seeker Enterprises, LLC, on June 30 in this proceeding must be denied pursuant to 49 C.F.R. 1150.13(c) (no replies to replies). The "leave to file" seeks leave to file a "supplement" to its out-of-time public use condition request. Yet Seeker nowhere in the supplement even pretends to address the deficiencies in Seeker's earlier belated request for public use conditions. As NCRA/GRTA explained in our Reply dated June 28, that request must be rejected as out-of-time and otherwise in violation of 49 U.S.C. 10905 and 49 C.F.R. 1150.27.

Background

Great Redwood Trail Agency ("GRTA"), formerly named North Coast Railroad Authority ("NCRA") and hereinafter referred to as "NCRA/GRTA," is an agency of the State of California, and pursuant to 49 C.F.R. 1152.50, 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). This Board granted the authority on May 20, 2022, but has postponed effectiveness pending completion of an “offer of financial assistance” (“OFA”) proceeding pursuant to 49 U.S.C. 10904 initiated by Mendocino Railway for MP 139.5 (Willits) to MP 152.5 (roughly Ferndale). NCRA/GRTA also requested issuance of a Notice of Interim Trail Use, and consented to negotiate an interim trail use agreement, noting that as a state agency it intended to “railbank” the corridor with itself. The Board has effectively deferred action on that request. Decisions served May 20 and June 10, 2022.

In the meantime, Seeker Enterprises (a proposed for-profit rail bike operator which unsuccessfully sought to invoke the OFA process) belatedly sought “public use conditions,” which are governed by 49 U.S.C. 10905.¹ NCRA/GRTA timely replied that the conditions sought by Seeker must be rejected as out-of-time, as beyond the authority of this Board under 49 U.S.C. 10905, and as failing to address the showings required in STB’s implementing regulations at 49 C.F.R. 1150.28.²

Seeker’s Motion for Leave Lacks Justification

On June 30, Seeker filed a motion for leave to file a “supplement” to its public use condition request that is clearly a reply to NCRA/GRTA’s reply. But this

¹ Under this Board’s relevant decision, public use conditions must be filed by June 9. 87 Fed. Reg. 31056 (May 20, 2022). Seeker did not file any request for public use conditions until June 22.

² NCRA/GRTA Reply to Seeker Enterprise in AB 1305X, filed June 28, 2022.

Board’s procedural regulations provide that replies to replies are not permitted. 49 C.F.R. 1104.13(c).

The sole grounds offered by Seeker is that its supplement is “in the interest of having a complete record.” This Board sometimes allows replies to replies to “complete” the record. But Seeker’s reply to reply simply makes more irrelevant claims and statements. It does not address the fundamental tardiness of Seeker’s request for public use conditions in the first instance. It does not explain how the two conditions it proposes (a requirement to negotiate with Seeker apparently indefinitely and a requirement that Seeker concur in flangeway design) are within the power of the Board to grant. And it does not correct any of the deficiencies in Seeker’s compliance with 49 C.F.R. 1150.28 that NCRA/GRTA previously identified.

The supplement instead admits that Seeker has no contract with NCRA/GRTA for rail bike use, intimates that what Seeker proposes may be inconsistent with what others propose, and in effect laments that GRTA has not further discussed or made commitments to a for-profit rail bike proponent (Mr. Driscoll d/b/a Seeker) during the pendency of AB 1305X.³ Seeker indicates it therefore feels this Board

³ Seeker not only wishes to pack “the [agency] record” with irrelevancies, but also skewed irrelevancies. For example, Seeker bases its latest quibble on an email (apparently Mr. Driscoll to Ms. Coleman, May 23, 2022), to which Seeker (Driscoll) claims Coleman (GRTA’s California counsel) failed to respond. Driscoll’s email states a wish to “refresh [his] rail bike proposal while GRTA still

should force GRTA to negotiate with it and to concede Seeker power over certain design issues (flangeway safety for bicycles) on trestles in the event an effective railbanking authorization is issued. But Seeker's frustration with delay pending an effective STB order does not empower STB to afford the relief Seeker seeks, nor does it justify the relief even if it were in the agency's power, which it is not.

Until STB issues an effective final railbanking decision, and until GRTA has reviewed that decision and any applicable conditions, it is premature (a potential waste of resources) for GRTA to resume negotiations with a for-profit rail bike proponent whose plans may conflict with STB's decisions, or -- by Seeker's own implicit admission -- with the equal or even more legitimate interests of others. For example, the County's projects and proposals (also in limbo pending

has ownership of the track.” It is not clear this email required a response; Driscoll can “refresh” without GRTA's leave (but has not). This, however, begs the real question: GRTA cannot engage in meaningful discussions/commitments about non-freight rail uses pending completion of AB 1305X. Completion of the proceeding (i.e., effectiveness of the Notice of Interim Trail Use sought by GRTA) is currently in suspense due to the initiation of OFA (federal eminent domain) processes on May 31 (a few days after Seeker's email) by Seeker and Mendocino Railroad (“MR”) against various different segments of GRTA's line shut down since 1998 for safety reasons by the Federal Railroad Administration, and otherwise non-starters for legitimate use in the national rail system. Although this agency rejected Seeker's attempted initiation due to Seeker's failure to show “preliminary financial responsibility” (GRTA also noted that OFA processes are not available for rail bikes), STB so far has allowed MR's contrived eminent domain efforts to proceed. See Decision in AB 1305X served June 10, 2022, at 2.

completion of STB’s regulatory processes) include use of portions of the right of way to prevent flooding of vital Highway 101.

If the Board nonetheless grants Seeker leave to file its purported “supplement” to its earlier out-of-time request, then NCRA/GRTA will reply on the merits (or rather complete lack of any merit) to the various out-of-time materials and “supplement[s]” which Seeker is submitting.⁴

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

Respectfully submitted,

s/Charles H. Montange

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⁴ Failure to respond to any assertions in Seeker’s reply to reply should not be construed as an admission of anything except their irrelevancy.