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Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423-0001

Re: Great Redwood Trail Agency – Abandonment Exemption—
In Mendocino, Trinity and Humboldt Counties, CA, AB 1305X

Dear Ms. Brown:

Great Redwood Trail Agency (GRTA), an agency of the State of California formerly known as the North Coast Railroad Authority (NCRA), hereby replies to the letter dated and filed August 18 by Mendocino Railway (“MR”)¹ concerning information it has requested pursuant to 49 C.F.R. 1152.27(a) for purposes of making a possible “offer of financial assistance” (“OFA”) for the segment of GRTA’s rail line from MP 139.5 (Willits) to MP 152.5 (Longvale).² MR complains that GRTA has not supplied the information MR has requested “promptly.”³

¹ Letter, Mullins (for MR) to C. Brown, August 18, 2022.

² Letter, Mullins (for MR) to Montange (for GRTA), May 31, 2022. Mr. Mullins’s letter requested information well beyond that required to be supplied under section 1152.27(a). To the extent the letter requests items that are beyond the scope of 1152.27(a), GRTA is not obligated to compile or to supply that information.

³ In an email exchange on June 29, GRTA indicated to Mr. Mullins that it was ordering an appraisal, and he seemed to concur that he would await it. He did

GRTA's need for time to respond to MR's request is reasonable under the circumstances and creates no prejudice to the interest of MR.

First, there was no way for GRTA to anticipate Mendocino Railway would express OFA interest in this segment. Mendocino Railway not only had expressed no interest in anything north of Willits to any relevant California transportation authority before AB 1305 was filed, but also expressly disclaimed any such interest to the California Transportation Commission when the Commission was considering whether to approve the proposed railbanking on the former NCRA line.

Second, the segment makes no logical or economically valid connection. The information requested by MR concerns a segment of the line which has been wholly dormant for more than 20 years. There has been no shipper on the line segment for which Mendocino Railway professes interest due to an embargo imposed by the Federal Railroad Administration in 1998, which continues to this day. No shipper has requested service on this segment. The community at Longvale, the terminus of the segment for which MR has expressed interest, no longer exists.

Third, because of the manifest geological issues besetting the line north of Willits rendering the line inoperable, GRTA had no reasonable expectation that OFA information would be necessary to compile on the line (or some arbitrary portion thereof) until this Board accepted a notice of intent to OFA pertaining to the segment at issue here. The segment which MR has put at issue largely parallels Outlet Creek and suffers from much the same geological problems as does the Eel River portion of the line: rock and earth slides, tunnel collapse, and a litany of other problems. Thus, not only is there no realistic shipper to whom service could be provided, but no possibility of service over this line to or from

appear spuriously to demand that GRTA supply partial responses to his May 31 letter. But the Mullins May 31 letter sought information that was beyond the scope of the regulation, and to which a piecemeal response would be confusing and pointless (in part because it is interrelated and in part because the carrier must indicate that all 1152.27(a) information has been supplied to trigger the 30-day window for submitting OFA's) and is not required by 49 C.F.R. 1152.27(a).

Willits, due to expensive and extensive rehabilitation needs. Since MR's line from Willits to Fort Bragg has long been disabled by its own tunnel collapse, it is not even plausible to augment the segment's utility by connecting it to MR's line to Fort Bragg, because there is no one in Fort Bragg that could be provided imminent service even if the Willits to Longvale segment was currently or even soon-to-be operable, which it most certainly is not.⁴ Since the segment has been federally embargoed and unused for over twenty years, compilation of the information, even if limited to that set forth in 1152.27(a), requires contracting with outside consultants, and it not only time-consuming but also quite expensive.

Based upon the foregoing, it is manifestly unreasonable to expect that GRTA should have prepared the information now sought by MR in advance of an OFA for what amounts to an inoperable, dormant, and economically infeasible segment of rail that is cut off from the national rail system by an embargo. For the same reasons, the time it is (reasonably) taking GRTA to assemble such information does not and cannot prejudice MR, which would be in no position to carry freight, even if such demand existed, for months or years, even if it filed an OFA and this Board ordered the segment's transfer.

Insofar as is relevant here 49 CFR 1152.27(a) provides that the following information must be provided to the "applicant" and concurrently to the Board:

"(1)(i) [not relevant];

"(ii) In a class exemption proceeding, ... the minimum purchase price ...;

"(2) Its most recent reports on the physical condition of the involved line; and

"(3) ... In an exemption proceeding, the data to be provided must at a minimum include the carrier's estimate of the net liquidation value of the line, with supporting data reflecting available real estate appraisals, assessments of the quality and quantity of track materials in a line, and removal cost estimates (including the cost of transporting removed materials to point of sale or point of storage for relay use) ..."

Information responsive to (1)(ii). GRTA cannot supply a minimum purchase price until it receives a completed appraisal for the segment at issue. GRTA's

civil engineering firm (ARE) ordered an appraisal (originally for the entire line), which its sub-contractor was asked to reduce to MP 152.5 to MP 139.5 and to ensure exclusion of any parcels to which STB is expected to assign zero value. GRTA's engineering firm advises that this appraisal is not yet available but is expected shortly. Elizabeth Coleman (California counsel for GRTA) has also sought an appraisal, but that has been delayed due to covid. When one or the other is available, GRTA will be able to calculate a minimum purchase price and supply it concurrently to Mendocino Railway and STB.

Information responsive to (2). The most recent report on the physical condition of the line inclusive of the segment at issue was supplied to MR and to this Board in the Verified Statement of David Anderson attached as Exhibit B to NCRA's Motion for Exemption from OFA, filed in AB 1305X on July 26, 2021, incorporated by reference herein. GRTA's civil engineering firm has advised GRTA that the next most recent report was from approximately 2002, but is outdated due to the number of inherent geological hazards and the morphology of Outlet Creek, adjacent to much of this line segment, which has significantly changed the integrity of the line since that time.⁵ GRTA's civil engineering firm has retained a subcontractor to prepare a geotechnical report which discusses the physical setting and the physical condition of the line segment at issue in this proceeding. GRTA's civil engineering firm indicates that this report is in draft stage and under review. GRTA's civil engineering firm expects it will be completed for submission to STB and Mendocino Railway along with the items specified in (3) below at the earliest possible date. GRTA's civil engineering firm indicates that the segment from MP 139.5 to 152.5 contains a collapsed tunnel, suffers from rock and earth slides, vegetation growth between rails, insufficient/inadequate drainage, erosion along Outlet Creek, and poor ballast and tie conditions. This portion of the line is and has long been inoperable. GRTA's

⁵ The federal government imposed an emergency embargo on the line barring its use for safety reasons in 1998, shortly after NCRA acquired the portion south of Outlet Station (MP 142.5), due to tunnel failure, flood damage, mud slides and so forth. Using all available federal and state funds, the line was repaired as far as Windsor in Sonoma County, but federal and state financial subsidies were inadequate/not made available to repair the line north of Windsor. That portion has been federally embargoed for almost 24 years. The area traversed is geologically unstable and suffers storm events, erosion, and other conditions which have worsened the inoperability of the line during the interval.

civil engineering firm indicates the line will need extensive and expensive rehabilitation to be operable even at Class I status.

Information responsive to (3). The carrier's estimate for NLV is based on the appraisal and the NLV for the trackage. GRTA's engineering firm has not yet received the appraisal it has ordered on behalf of GRTA, nor has Ms. Coleman received the appraisal she has ordered on behalf of GRTA. GRTA's engineering firm indicates it will supply a current NLV for the rail steel pursuant to 49 C.F.R. 1152.27(a)(3) when an appraisal is available. In short, GRTA intends to supply both NLV steel and an appraisal to Mendocino Railway and this Board as soon as they are available to GRTA. GRTA has also instructed its engineering firm to supply the supporting material specified in 49 C.F.R. 1152.27(a)(3) but that is not available until the NLV's in question are available.

GRTA's engineering firm expects the above work to be completed within the next two weeks. It will then be filed and served.

Other matters.

1. Environmental. Mendocino Railway per Mr. Mullins's May 31 letter requested extensive environmental information. This request is beyond the scope of 1152.27(a)(3). NCRA operated the Yard area only briefly before the 1998 embargo. The shipper data and almost all environmental contamination thus necessarily falls under the management of the Yard by NCRA's predecessor in interest (Southern Pacific), of which GRTA has only second-hand and incomplete knowledge. Moreover, insofar as relevant here, Union Pacific (UP), as successor to Southern Pacific, was and is responsible for remediation of the Willits Yard, and is accordingly the primary point of information for environmental conditions. Nonetheless, GRTA has made reasonable inquiry into the matter. UP's engineering firm advises GRTA that remediation is essentially complete and that UP expects to obtain the sign-off of pertinent California regulatory officials in the near future.

2. Demand to cure. In response to the Mullins May 31 letter, GRTA's engineering firm also conducted a visual inspection of the Yard. GRTA's engineering firm identified three conditions in the Yard attributable to Mendocino Railway that are of concern. All three conditions involve use of the Yard by Mendocino Railway that is well beyond any use of the Yard permitted by the existing trackage agreement between NCRA and Mendocino Railway's predecessor (California Western). These uses involve (1) accumulation, storage

and disposal in the Yard of a large pile of debris rail ties (most apparently containing creosote) in direct contact with soil and without protection from rain near Willits Creek; (2) accumulation and storage of new creosoted ties in direct contact with soil and without protection from rain in the “wye” area of the Yard; and (3) accumulation and storage of a stockpile of gravel/ballast in the area of the “wye.” Mendocino Railway is hereby advised that all three of these “uses” amount to instances of, inter alia, trespass in that all are beyond the scope of the track agreement and are not otherwise authorized by GRTA. In addition, GRTA’s civil engineering firm indicates that all three “uses” violate the “Operations Manual” that governs NCRA/GRTA use of the Yard. GRTA’s civil engineering firm also indicates that the storage of the new creosoted ties and the storage/disposal of the debris ties amount to mishandling of hazardous material and potentially have resulted or may result in soil and groundwater contamination. Mendocino Railway is advised that it should and must remove its stockpile of new creosoted ties and its pile of debris and scrap ties from the Yard and properly store and/or dispose of them in accordance with California environmental laws and regulations. This work should be completed within 20 days of the filing of this letter. Mendocino Railway is liable for all environmental contamination resulting from Mendocino Railway’s use of the Yard for storage or disposal of hazardous or potentially hazardous materials. The unpermitted stockpile of ballast should also be removed from the Yard within 20 days of the filing of this letter. GRTA has provided additional notice to MR, by U.S. Mail, return receipt requested, posted on August 24, 2022. GRTA reserves all rights and remedies.

3. Inspection. Mr. Mullins’s May 29 letter requested inspection. This is outside the scope of 49 C.F.R. 1152.27(a). However, Mendocino Railway can direct requests for inspection to Elizabeth Coleman, contact information below. In order to inspect, Mendocino Railway will be expected to identify the inspecting parties, their qualifications, and the date of proposed inspection, and, prior to inspection, each inspecting party will be required to execute a right of entry prepared by GRTA inter alia indemnifying GRTA for personal injury and property damage.

I am pleased to address any questions you may have in response to this letter.

By my signature below, I certify service by email attachment on the date above on all parties listed for this docket on the STB website.

Respectfully submitted,

s/Charles H. Montange

Charles H. Montange
Rail counsel for NCRA/GRTA

Of counsel: Elizabeth Coleman, Esq
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I, David Anderson, state, under penalty of perjury, that I am qualified to make this verification, that I am the President of ARE, a civil engineering firm that has performed civil engineering and related services for North Coast Railroad Authority (NCRA) since its inception, that I have read the foregoing letter, and that the references to (1) track conditions and (2) information supplied by ARE to GRTA are true and correct to the best of my knowledge and belief.


David Anderson

Dated: August 24, 2022