

SERVICE DATE – SEPTEMBER 23, 2022

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1313

GREAT REDWOOD TRAIL AGENCY
—ADVERSE DISCONTINUANCE OF LEASE & OPERATING AUTHORITY—
NORTHWESTERN PACIFIC RAILWAY CO.,
IN HUMBOLDT, TRINITY AND MENDOCINO COUNTIES, CAL.

Digest:¹ This decision grants an application filed by the Great Redwood Trail Agency requesting third-party, or “adverse,” discontinuance of the operating authority of Northwestern Pacific Railway Company over a rail line in Mendocino, Trinity, and Humboldt Counties, Cal.

Decided: September 22, 2022

On June 7, 2022, the Great Redwood Trail Agency (GRTA), previously known as North Coast Railroad Authority,² an agency of the State of California, filed an application under 49 U.S.C. § 10903 requesting that the Board authorize third-party, or “adverse,” discontinuance of the operating authority³ held by Northwestern Pacific Railway Company (NWPY) over a GRTA rail line extending from milepost 142.5, at Outlet Station, to the end of the line at milepost 300.5,⁴ on the Samoa Branch, including the Korblex Branch and the Carlotta Branch, in

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Pol’y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

² GRTA notes that the name change was effective March 1, 2022. (Appl. 2 n.1.) The proceeding has been recaptioned accordingly, and the Board, in this decision, will refer to the applicant only as GRTA.

³ An adverse discontinuance application seeks a Board finding that the public convenience and necessity requires or permits the discontinuance of service by a carrier over a rail line, when that application is filed by someone other than that carrier. Such filings are also known as third-party applications and are termed “adverse” because they are often, though not always, opposed by the carrier holding the authority to operate. See South Dakota—Adverse Discontinuance of Operating Auth.—Napa-Platte Reg’l R.R. Auth., AB 1253, slip op. at 1 n.2 (STB served June 27, 2018).

⁴ GRTA previously stated that it intended to seek discontinuance of NWPY’s operating authority to milepost 302.86. (Pet. for Waiver & Exemption 2.) However, the Board has since found that that the track extending between milepost 300.5 and milepost 302.86 is ancillary track

Mendocino, Trinity, and Humboldt Counties, Cal.⁵ (the Line).⁶ Notice of the application was served and published in the Federal Register on June 27, 2022 (87 Fed. Reg. 38,252). On July 15, 2022, Humboldt Trails Council submitted a filing in support of GRTA's adverse discontinuance application. For the reasons set forth below, the Board will grant GRTA's application.

BACKGROUND

According to GRTA, it originally acquired the Line in 1992 from the Eureka Southern Railroad. (Appl. 3 n.4); see also N. Coast R.R. Auth.—Acquis. & Operation Exemption—Eureka S. R.R., FD 32052 (ICC served Apr. 23, 1992). GRTA states that thereafter it contracted with Rail-Ways, Inc., owned by John Darling, to operate the Line.⁷ (Pet. for Waiver & Exemption 6.) According to GRTA, Rail-Ways went into bankruptcy in 2001, and Mr. Darling organized a new company, NWPY, to operate the Line. (*Id.*); see also Nw. Pac. Ry.—Lease & Operation Exemption—N. Coast R.R. Auth., FD 33998 (STB served Feb. 6, 2001).⁸ GRTA

that was never subject to the agency's licensing authority. See N. Coast R.R. Auth.—Aban. Exemption—in Mendocino, Trinity, & Humboldt Cntys., Cal., AB 1305X, slip op. at 6-7 (STB served May 17, 2022).

⁵ In North Coast Railroad Authority—Abandonment Exemption—in Mendocino, Trinity, & Humboldt Counties, Cal., Docket No. AB 1305X, under the Board's notice of exemption process, see 49 C.F.R. part 1152 subpart F—Exempt Abandonments, GRTA received authority to abandon approximately 169.61 miles of rail line 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. That notice of exemption noted, however, that GRTA may not consummate the abandonment until all operating authority on the Line has been terminated. See N. Coast R.R. Auth.—Aban. Exemption—in Mendocino, Trinity, & Humboldt Cntys., Cal., AB 1305X, slip op. at 4 n.6 (STB served May 20, 2022).

⁶ In a decision served on March 4, 2022, GRTA was granted exemptions from several statutory provisions as well as waivers of certain Board regulations that the Board concluded were inapplicable and unneeded in connection with GRTA's anticipated adverse discontinuance application. See Great Redwood Trail Agency—Adverse Discontinuance of Lease & Operating Auth.—Nw. Pac. Ry., in Humboldt, Trinity & Mendocino Cntys., Cal. (Mar. 2022 Decision), AB 1313 (STB served Mar. 4, 2022).

⁷ GRTA states that, in 1998, due to washouts and other flooding damage on the Line caused by various weather events, an emergency order was imposed by the Federal Railroad Administration (FRA) prohibiting railroad operations on the Line. (Pet. for Waiver & Exemption 4-5.)

⁸ In Northwestern Pacific Railway—Lease & Operation Exemption—North Coast Railroad Authority, Docket No. FD 33998, NWPY also obtained authority to operate over four distinct rail segments extending south from milepost NWP 142.5 near Outlet Station to milepost SP 63.4 at Lombard Station, Napa County, a total distance of approximately 142.2 miles. NWPY's operating rights on the four segments, however, were transferred to Northwestern

asserts further that Mr. Darling announced a cessation of NWPY's rail services, effective September 17, 2001, due to, among other things, apparent disputes over payment for rehabilitation and maintenance expenses. (Appl. 4-5; see also Pet. for Waiver & Exemption 6.) GRTA states that NWPY's lease terminated on October 31, 2005, pursuant to an agreement dated June 23, 2005, and Mr. Darling, the last known Chief Executive Officer and last stated agent for service of process listed with the California Secretary of State, was deceased as of June 27, 2010. (Appl. 7; see also Pet. for Waiver & Exemption 7.) Thus, GRTA asserts that NWPY cannot voluntarily seek termination of its operating authority. (Pet. for Waiver & Exemption 8.)

In addition to the foregoing, GRTA states that the California Legislature and the California Transportation Commission have determined that GRTA should pursue authorization for interim trail use/rail banking on the Line under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d). (Appl. 2 n.1.) Thus, GRTA asserts that the discontinuance of NWPY's operating rights on the Line would foster GRTA's intention, in an associated docket, to preserve the Line for possible future rail reactivation and for use as part of California's trail system. (Id.)

DISCUSSION AND CONCLUSIONS

The Board may consider an adverse application to discontinue service so long as the applicant establishes that it has a proper interest in the proceeding. See Bos. & Me. Corp.—Adverse Discontinuance—New Eng. S. R.R., AB 32 (Sub-No. 100), slip op. at 3 (STB served Apr. 30, 2010). The statutory standard governing discontinuance of operations is whether the present or future public convenience and necessity require or permit the proposed discontinuance. See 49 U.S.C. § 10903(d). In applying the public convenience and necessity standard, the Board balances the competing benefits and burdens of discontinuance on all interested parties, including the railroads involved, the shippers on the line, the communities involved, and interstate commerce generally. City of Peoria—Adverse Discontinuance—Pioneer Indus. Ry., AB 878, slip op. at 7 (STB served Aug. 10, 2005); Waterloo Ry.—Adverse Aban.—Lines of Bangor & Aroostook R.R. in Aroostook Cnty., Me., AB 124 (Sub-No. 2) et al., slip op. at 4 (STB served May 3, 2004). The Board must also consider whether the discontinuance would have a serious, adverse impact on rural and community development. § 10903(d).

The circumstances here warrant granting GRTA's adverse discontinuance application. First, GRTA, as the owner of the Line, has a proper interest in the proceeding. See, e.g., Lake

Pacific Railroad Company (NWPCo) in 2007. See Nw. Pac. R.R.—Change in Operators Exemption—N. Coast R.R. Auth., FD 35073 (STB served Aug. 30, 2007). The Board notes that, in a separate docket, NWPCo received authority to discontinue service over an approximately 53.5-mile rail line between milepost NWP 142.5, near Outlet Station, and milepost NWP 89, near the Sonoma-Mendocino County border, in Mendocino County, Cal. See Nw. Pac. R.R.—Discontinuance of Serv. Exemption—in Marin, Napa, & Sonoma Cntys., Cal., AB 1310 (Sub-No. 1X) (STB served Aug. 31, 2021). NWPCo also discontinued operations over a connecting rail segment between milepost NWP 89 and milepost SP 63.4. See Nw. Pac. R.R.—Discontinuance of Serv. Exemption—in Marin, Napa, & Sonoma Cntys., Cal., AB 1310X (STB served June 11, 2021).

Cnty., Or.—Adverse Discontinuance of Rail Serv.—Modoc Ry. & Land Co., AB 1035 (STB served Nov. 17, 2009) (granting an adverse discontinuance application filed by the line’s owner); see also S. Pac. Transp. Co.—Discontinuance of Serv.—in S.F. Cnty., Cal., FD 31486, slip op. at 2 (ICC decided Sept. 7, 1989) (noting that, as owner of the line, the petitioner “has the requisite interest to seek abandonment or discontinuance authority”). Second, there has been no assertion, and the record includes no evidence, that granting the application would burden any interested party or interstate commerce generally or that granting the application would have a serious, adverse impact on rural and community development. The record demonstrates that NWPY has never provided freight rail service or any other operations on the Line due to, among other things, the 1998 FRA embargo, (see Appl. 4-5), and no party has filed in opposition to the application or attempted to refute GRTA’s claims. Third, discontinuance of NWPY’s operating authority on the Line would foster GRTA’s intention, in an associated docket, to preserve the Line, under the Trails Act, for possible reactivation of rail service in the future and for interim use as part of the State of California’s trail system in the meantime. Accordingly, the Board finds that the public convenience and necessity supports granting GRTA’s application for adverse discontinuance of operations by NWPY over the Line.

In approving an abandonment or discontinuance application, the Board must ensure that the interests of affected railroad employees will be adequately protected. See 49 U.S.C. § 10903(b)(2). However, when issuing abandonment or discontinuance authority for railroad lines that constitute a rail carrier’s entire system, the Board generally does not impose labor protection, unless the evidence indicates the existence of (1) a corporate affiliate that will continue substantially similar rail operations or (2) a corporate parent that will realize substantial financial benefits over and above relief from the burden of deficit operations by its subsidiary railroad. Mo. & Valley Park R.R.—Discontinuance of Serv. Exemption—in St. Louis Cnty., Mo., AB 1057X, slip op. at 2 (STB served June 15, 2010).

Here, GRTA is seeking discontinuance authority for NWPY’s last remaining operating rights, and therefore, its entire system, as its operating authority over the four line segments between milepost NWP 142.5 near Outlet Station and milepost SP 63.4 at Lombard Station, Napa County, were transferred to NWPCo in 2007. Accordingly, because neither of the two exceptions discussed above applies, the Board will not impose employee protection conditions.⁹

In the March 2022 Decision, slip op. at 6, the Board exempted this transaction from the offer of financial assistance (OFA) statute at 49 U.S.C. § 10904 and waived the corresponding OFA regulations at 49 C.F.R. § 1152.27; therefore, OFAs will not be entertained. The Board also waived the environmental and historic reporting requirements set forth at 49 C.F.R. §§ 1152.20(c), 1105.7, and 1105.8. Mar. 2022 Decision, slip op. at 6-7. Accordingly, no environmental or historic assessments were prepared in this proceeding.

For the reasons discussed above, the Board finds that GRTA has a proper interest in this proceeding; the present or future public convenience and necessity require or permit the discontinuance of operations by NWPY over the Line; and discontinuance of operations by

⁹ The Board further notes that, according to the record, NWPY appears to be a defunct entity with no rail employees on the Line. (See Pet. for Waiver & Exemption 13.)

NWPY will not result in a serious, adverse impact on rural and community development. Accordingly, the Board will grant GRTA's application for adverse discontinuance.

It is ordered:

1. GRTA's application for the adverse discontinuance of operations by NWPY is granted.
2. This decision is effective on October 23, 2022.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.