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Ms. Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Re: STB Docket 1305X
Great Redwood Trail Agency, formerly named North Coast
Railroad Authority (an agency of the State of California) –
Abandonment Exemption – in Mendocino, et al. Counties, CA

Dear Ms. Brown:

By letter dated 11 October 2022, Mendocino Railway (“MR”) “responded” to the motion for protective order filed by the Great Redwood Trail Agency (“GRTA”), formerly named North Coast Railroad Authority (“NCRA”).

1. In light of MR’s statements and concessions, a protective order must be served no later than Friday, October 14

Ignoring MR’s hyperbole and irrelevancies, MR states that it intended to seek a protective order anyway, for it contemplated filing material for which it intended to

seek confidential treatment in support of its intended “offer of financial assistance” (“OFA”).¹

MR acknowledges that any OFA which it files must be filed by Saturday, October 15.² The OFA must simultaneously be served on GRTA. GRTA expects and requests service of all material by email attachment on the undersigned, at c.montange@frontier.com. Since MR in effect is indicating it intends to withhold information from public disclosure (and thus from GRTA absent a protective order), it is therefore imperative that this Board issue a protective order no later than Friday, October 14, so that GRTA may review the material submitted by MR immediately upon filing and simultaneous service.

2. Form of protective order submitted by GRTA.

MR purports to object to the form of protective order supplied by GRTA, but its objection is in the form of an unsupported accusation that GRTA “has been improperly collaborating with other entities that support the establishment of a trail, without any rail as well, over the corridor proposed for abandonment.” Zorbaugh letter for MR at p. 4 of 5. MR presents no support for that assertion, and of course there is none for it is neither correct nor relevant. Contrary to MR’s rhetoric, GRTA is discharging the will of the people of the State of California as manifest in recent state legislation and actions by the California Transportation Commission. GRTA welcomes the support of communities, environmental and social organizations, businesses, and other government agencies. There is nothing improper about that.

MR then claims that GRTA is “attempt[ing] to use a protective order to facilitate GRTA exchanging documents with parties and non-parties,” citing the definition of “party.” Zorbaugh letter at p. 4 of 5. That apparently is MR’s sole objection. There is nothing in that definition that prejudices MR or any party or non-party to this proceeding. While GRTA’s proposed protective order is clearly designed to allow MR to produce information to GRTA in a fashion that efficiently protects legitimate confidential and highly confidential information, there is nothing wrong with “facilitating” such production. That is what protective orders are all about. Otherwise, MR’s purported fear of facilitation is a total non

¹ GRTA is pleased that its motion for a protective order thus timely highlighted the need for a protective order.

² MR does not contest the adequacy of GRTA’s 271-page filing and service of 49 CFR 1152.27(a) information on September 15, 2022.

sequitur. The protective order submitted by GRTA was drawn from Consolidated Rail Corporation – Abandonment Exemption – in Hudson County, NJ, AB 167 (Sub-no. 1189X), served Sept. 24, 2014. It was designed specially to protect confidential information submitted or discovered from any party or non-party in the proceeding. It does not permit GRTA or any party to exchange the information other than as provided in the protective order.

3. GRTA strongly objects to the form of protective order sought by MR.

GRTA strenuously objects to several features in MR's proposed protective order. We focus on two concerns below.

First, the MR proposal fails to include a clause permitting (on notice) a party to disclose confidential (or highly confidential) information if the party is required by law or order of a governmental or judicial body to disclose the information. GRTA's protective order includes an appropriate clause. See GRTA proposed protective order at para 8. There must be a mechanism for parties to comply with lawfully required disclosure of information in their possession. GRTA's order is thus superior to MR's proposal.

Second, MR's proposal is drafted to permit a party to designate for protection information that is publicly available or that has been obtained outside of the proceeding (i.e., not from discovery in the proceeding or from a submission in the proceeding) from a person with a right to disclose it publicly. That is clearly inappropriate. If information is available from public sources or from outside the proceeding, it cannot be suppressed in the proceeding as proposed by MR. This is a matter of weighty concern to GRTA, for GRTA has compiled overwhelming information indicating that any OFA filed in this proceeding is a farce from publicly available sources or otherwise outside the proceeding. GRTA's use of that information should not be impeded in public filings. GRTA's proposed protective order allows the use of publicly available information or information from outside the proceeding notwithstanding separate production of such information "inside" the proceeding with a confidential or highly confidential designation. See GRTA proposed protective order at para 9. Again, GRTA's formulation is clearly superior to MR's proposed suppression of publicly available information.

Rather than belabor the point with further objections, suffice it to say that the proposed protective order submitted by GRTA adequately and fairly addresses the

situation at hand and that submitted by MR is inadequate and unfair. MR's objections are chimerical.

4. Appropriateness of discovery against MR.

The Zorbaugh letter, with now customary hyperbole, asserts that GRTA is not entitled to any discovery, insinuating on the one hand that none is available and on the other that GRTA has shown no entitlement to it. Zorbaugh letter at 3 of 5. MR goes on to claim (Zorbaugh letter, *supra*, at note 6) that there is only one case allowing discovery against a would-be OFA applicant. That of course is not true. In Consolidated Rail Corporation, *supra*, AB 167 (sub no. 1189X), the Board not only allowed discovery against a would-be OFA applicant and an intervening real estate speculator, but after extensive proceedings before an Administrative Law Judge barred the would-be OFA applicant from the proceeding for failure adequately to respond. This result was subsequently upheld on judicial review. Riffin v. STB, 2018 US App. Lexis 644 (D.C. Cir. No. 17-1161), Jan 10, 2018, pet. rehearing en banc denied Riffin v. STB, 2018 U S App Lexis 8928 (D.C. Cir. No. 17-1161), April 9, 2018.

MR in the Zorbaugh letter announced an objection to all discovery. Since MR to date has not provided any evidence at all indicating its OFA is legitimate, this blanket objection is alarming. However, as the letter acknowledges, GRTA's discovery request has a return date that has not yet expired (Zorbaugh Letter at p. 1 of 5, note 2). Moreover, GRTA's discovery request only applies if MR in fact makes an OFA. In short, a response is not due yet and may not be due ever if MR makes no OFA. In addition, MR in the Zorbaugh letter suggests that it will timely make available information responsive to at least a portion of the tendered discovery, and otherwise views much of the discovery to be irrelevant. Because MR by its discussion of relevancy seems to suggest that it will not rely on any representations concerning its severed trackage from Fort Bragg to Willits, and that it will provide at least some information, and because no response is yet due, a motion to compel is premature. GRTA reserves the right to file a motion to compel upon review of information actually supplied, if any, on or by October 15 (due date of the OFA and the discovery response), should MR in fact make a timely OFA.

MR claims that GRTA's discovery requests "do not contain even one sentence demonstrating relevance of, or need for, the information sought" Zorbaugh Letter at 3 of 5. Discovery requests per se never contain such information because it is never required. If a party refuses to respond to discovery, then the

propounding party responds to objections via a motion to compel. That is the practice at STB and in federal courts. MR's rhetoric is thus irrelevant. It is also profoundly misleading. GRTA's ample evidence (including verified expert reports) already submitted demonstrates that any OFA filed by MR is economically baseless and in any event contrived and unlawful. GRTA's Certification of Filing and Service of 49 CFR 1152.27 Information, filed in this proceeding on September 15, encompasses more than 270 pages (far more than a "single sentence" attesting to the economic infeasibility of any OFA, and to MR's tourist rail nature. MR acknowledges receipt of this information on the stated date (see Zorbaugh letter p. 1 of 5 at footnote 2). Indeed, in that filing GRTA invited MR maturely to withdraw its notice of intent to OFA. Since GRTA in that document alone filed a veritable boatload of sentences (including many under verifications by witnesses, including expert witnesses) that indicate any MR OFA is illegitimate, and since MR has yet to file a shred of evidence in support of an OFA, let alone a shred of evidence indicating its legitimacy, seeking discovery is manifestly appropriate in the abstract. GRTA also again reiterates the good-faith request in GRTA's September 15 Certification that MR withdraw its notice of intent to file an OFA.

5. Future proceedings.

GRTA, based on a lengthy and expensive review of the line north of Willits, has determined that there is no economically feasible freight rail opportunity on the segment in which MR has expressed interest which can sustain a legitimate OFA. Much of this information was made available to STB and to MR in the 1152.27(a) information filed and served on September 15. GRTA is prepared to file additional information, should MR nonetheless proceed, further demonstrating the OFA makes no sense for any legitimate purpose, rendering its real "service" not to be rail in nature but instead a pointless obstruction of the State's proposed Great Redwood Trail. MR has motivation: for example, it has long urged NCRA/GRTA to contract with MR to operate the NCRA/GRTA line south of Willits (the relevant segment south of Willits has been inoperable due to an FRA embargo since 1998). MR may see value in holding the segment immediately north of Willits hostage, if it can get away with it, to force itself on the State south of Willits. The customary remedy for illicit OFA's is a motion to dismiss such an OFA once filed. Dismissals for such reasons are upheld in judicial review proceedings. See, e.g., Redmond-Issaquah R.R. Preservation Association v. STB, 223 F.3d 1057, 1063-64 (9th Cir. 2000). In addition, MR is and always has been a tourist train operation (according to its website, it does business as the "world famous" Skunk Train). It lacks money to repair a collapsed tunnel on its line between Fort Bragg and Willits, but it operates a short tourist train excursion up to the collapsed tunnel, and rail

bikes on each side of the tunnel. See photos attached. MR may be seeking to expand its tourist operation at Willits or plan a real estate play in the railyard there. In all events, the agency's precedent repeatedly affirms that the OFA process is not available for tourist rail or trail purposes. See Certification, supra, filed Sept. 15, 2022, at p. 5 note 3.

Since GRTA has already demonstrated that freight rail operations are economically ludicrous, it follows that any MR "OFA" is a non-starter whatever its purpose. GRTA intends to present additional compelling evidence on these matters in a motion to dismiss, decisively corroborating that MR's OFA is baseless, if MR makes an OFA.

By my signature below, I certify service on the October 12, 2022, upon all parties currently listed in the Board's docket list for this docket by email attachment.

Thank you for your assistance in this matter.

Respectfully submitted,

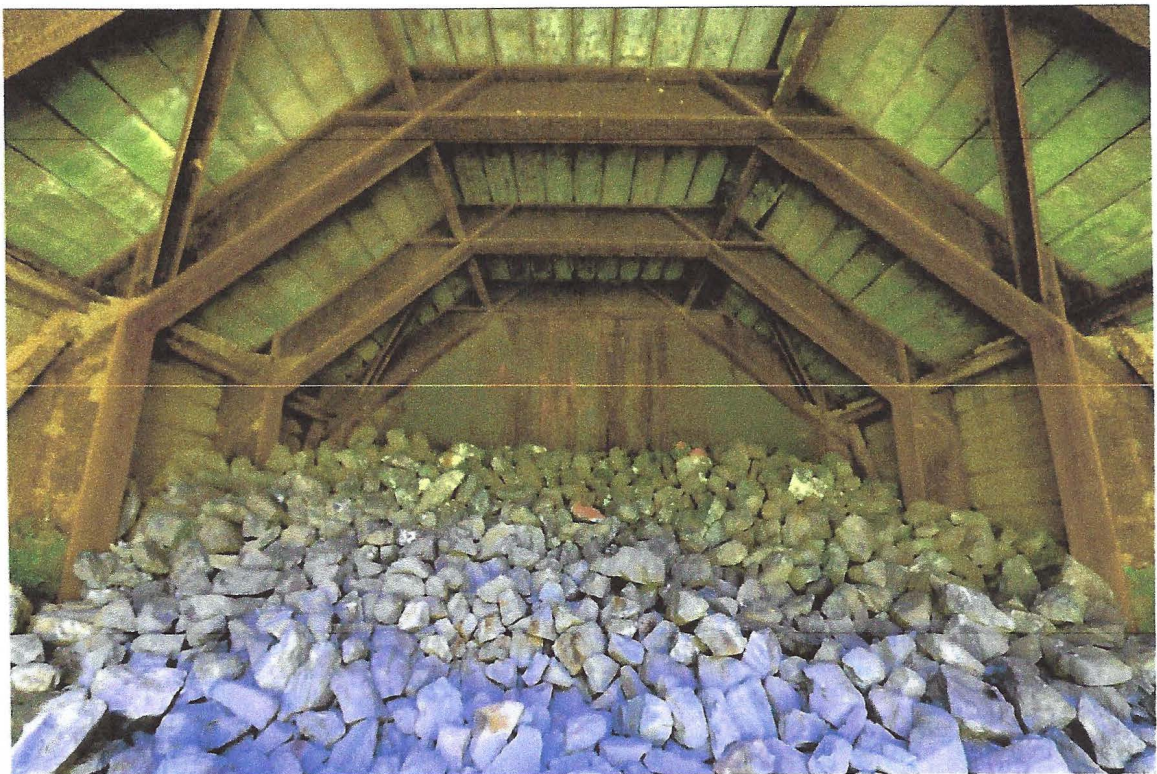
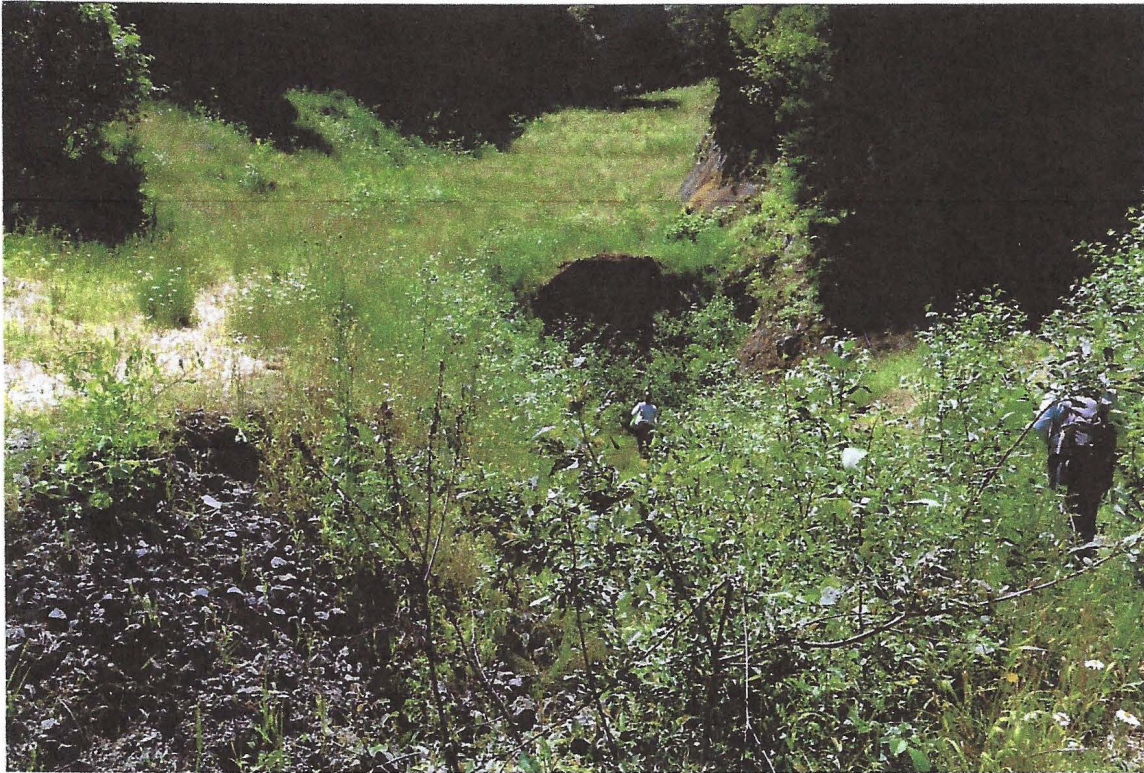
s/Charles H. Montange

Charles H. Montange
For GRTA/NCRA

Att: two pages of photos

cc. All parties (with att.)

Mendocino Railway d/b/a Skunk Train: two shots showing collapsed tunnel at terminus of MR/Skunk tourist train/rail bike operations a few miles east of Fort Bragg



Mendocino Railway d/b/a Skunk Train: two shots relating to rail bike business

Top: some of MR/Skunk's rail bikes at west end of collapsed tunnel

Bottom: near entry to trail to start of MR/Skunk rail bike experience on east end of collapsed tunnel

