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October 20, 2022

VIA E-FILING

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

Re: North Coast Railroad Authority – Abandonment Exemption – In
Mendocino, Trinity, and Humboldt Counties, Cal., AB-1305X.

Dear Ms. Brown:

Last night, the Great Redwood Trail Agency (formerly the North Coast Railroad Authority) (collectively “GRTA/NCRA”) filed another substantially large evidentiary filing in yet another attempt to prejudice Mendocino Railway (“MR”). Counsel for GRTA/NCRA knows full well that the Director, consistent with precedent, has made it clear that replies (whether in the form of comments or motions) to OFAs are not allowed. Yet, Counsel for GRTA/NCRA continues to ignore the Director’s order. The Director’s order and precedent makes sense because an offeror, like MR cannot substantively respond to the numerous allegations, verified statements, studies, and exhibits in the short periods between the time these filings are made and the time the Director decides to accept or reject an OFA. As with the previous filings, the recent “comments” filed by Counsel last night should be stricken from the record.¹

¹ A substantial portion of the filing and its exhibits are directed at disputing MR’s NLV and rehabilitation estimates. If MR’s offer is accepted as bona fide, and it should be, these are issues relevant to negotiation and/or the setting of the terms and conditions of the OFA sale in the event the parties cannot reach agreement and one of the parties requests the Board to set the terms and conditions. If this proceeding reaches that stage, MR intends to address the substantive arguments and evidence raised by the various filings from GRTA/NCRA and the California Coastal Commission (“CCC”), represented by Mr. Justin Lee, Deputy Attorney General, and by the Friends of the Eel River (“Friends” and, collectively with CCC, “CCC/Friends”).

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The filing is illuminating as well. The filing notes (at pg. 3, emphasis added) that Ms. “Elizabeth Coleman (a licensed California attorney with expertise in land title evaluations) . . . reviewed all the deeds in the right of way and instructed the appraiser to treat as fee only those she identified as fee.” This is a remarkable admission. MR has requested copies of any deeds since sending its May 31, 2022 letter pursuant to 49 CFR §1152.27(a). MR has asked for deeds now a total of three times. At no time has GRTA/NCRA given any deeds to MR, notwithstanding that we now know that GRTA/NCRA has been in possession of such deeds. It is fundamentally unfair and prejudicial for GRTA/NCRA to withhold giving those deeds to MR but then attempt to rely on those deeds in its evidence. Striking the pleading cures the defect and prejudice, but in addition, counsel for GRTA/NCRA should be at the very least admonished, if not sanctioned, for his refusal to provide the deeds as initially requested. The Director or the Board should also order that such deeds, and any other information in GRATA/NCRA’s possession responsive to the May 31st letter be immediately provided to MR.

In the end, MR has made a bona fide OFA offer, which is all that MR is required to do at this stage. There is a shipper willing and able to ship as soon as the line is rehabilitated and in accordance with the terms of MR’s tariff. MR has the funds to purchase the line under MR’s good faith NLV estimate and to operate it for the required two years. MR also has funds for rehabilitating the line and is seeking additional funds through the RRIF loan process (which is near completion) for use on its other line, which will free up funds for use on this line. This is all that is required for MR’s OFA to be accepted. All the other issues noted in the various pleadings filed by GRTA/NCRA and CCC/Friends can and will be dealt with during the terms and conditions phase of the proceeding (if such a process is needed). Accordingly, MR respectfully request that the various GRTA/NCRA and CCC/Friends filings be stricken, that the Director accepts MR’s OFA, and that GRTA/NCRA provide the information requested in the May 31, 2022 letter.

If there are any questions concerning this e-filing, please contact me by telephone at (202) 663-7823 or by e-mail at wmullins@bakerandmiller.com. If I am unavailable, you may contact Crystal Zorbaugh at czorbaugh@bakerandmiller.com or (202) 663-7831.

Sincerely,

/s/ William A. Mullins

Attorney for Mendocino Railway

cc: Parties of Record