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ENTERED
Office of Proceedings
March 20, 2023
Part of
Public Record

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March 20, 2023

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: Great Redwood Trail Agency – Adverse Abandonment – Mendocino Railway in Mendocino County, California, AB-1305 (Sub-No. 1)

Dear Ms. Brown:

Enclosed is Mendocino Railway's Reply to Great Redwood Trail Agency's Petition for Partial Waiver of Abandonment Regulations and for Exemption from Statutory Requirements. 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 M. Zorbaugh, by telephone at (202) 663-7831 or by e-mail at czorbaugh@bakerandmiller.com.

Sincerely,

/s/ William A. Mullins

William A. Mullins
Attorney for Mendocino Railway

Enclosure

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

AB-1305 (Sub-No. 1)

**GREAT REDWOOD TRAIL AGENCY
– ADVERSE ABANDONMENT –
MENDOCINO RAILWAY IN MENDOCINO COUNTY, CALIFORNIA**

**REPLY TO GRTA’S PETITION FOR PARTIAL WAIVER OF ABANDONMENT
REGULATIONS AND FOR EXEMPTION FROM STATUTORY REQUIREMENTS**

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March 20, 2023

Attorneys for Mendocino Railway

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

AB-1305 (Sub-No. 1)

**GREAT REDWOOD TRAIL AGENCY
– ADVERSE ABANDONMENT –
MENDOCINO RAILWAY IN MENDOCINO COUNTY, CALIFORNIA**

**REPLY TO GRTA’S PETITION FOR PARTIAL WAIVER OF ABANDONMENT
REGULATIONS AND FOR EXEMPTION FROM STATUTORY REQUIREMENTS**

On February 28, 2023, the Great Redwood Trail Agency (“GRTA”) filed a “Petition for Partial Waiver of Abandonment Regulations and for Exemption from Statutory Requirements (the “Petition” or “GRTA Petition”) as a prelude to filing an application for adverse abandonment to abandon 40 miles of railroad (the “Line”) that Mendocino Railway (“MR”) owns and operates. The Line extends from Fort Bragg, California to Willits, California. MR¹ is a privately-owned Class III railroad that has provided freight and passenger services to rural Mendocino County for almost 140 years. Since taking over ownership of the company in 2004,² MR has provided both freight and passenger services over the Line, working aggressively in order to restore full freight service to the Line and better serve the needs of shippers and create economic development in the local economically challenged communities. Given the Line’s importance to the region, and MR’s great investment in the Line, MR will strenuously oppose GRTA’s adverse abandonment application.

¹ MR is owned by Sierra Railroad Company (“SRC”), who also owns the Sierra Northern Railway (“SNR”), another small common carrier Class III railroad subject to the STB’s jurisdiction.

² Mendocino Railway–Acquisition Exemption–Assets of The California Western Railroad, FD 34465 (STB served April 9, 2004).

In this reply, MR first addresses and corrects numerous inaccurate and unsubstantiated statements made by GRTA in the Petition. Second, MR objects in part to certain waivers and exemptions sought by GRTA. Finally, MR sets out its views as to why GRTA's reliance on Colorado Landowners – Adverse Abandonment – Great Western Railway of Colorado, LLC in Weld County, Colorado (“Colorado Landowners”), AB-857 (Sub-No. 2) (STB served Feb. 11, 2022) as the legal basis and guidance for its Petition is misplaced.

I. GRTA HAS MADE NUMEROUS INCORRECT ASSERTIONS AND STATEMENTS

The Petition is replete with the mischaracterizations and hyperbole that appear to constitute the *modus operandi* of GRTA and its supporters. The following headings are direct quotes from GRTA's Petition. MR's corrections and clarifications to the record follow each heading.

1. “64 Fed. Reg. 30557 (June 8, 1999) (emergency order no. 21, notice no. 2) (this modification permitted CWR, now MR, to operate its passenger excursion trains into the Willits Depot provided certain conditions were met.)”³

Contrary to GRTA's statement above, the Federal Railroad Administration's (“FRA”) notice makes no mention of CWR's rail service – CWR is MR's unrelated predecessor—as being limited to passenger excursion trains. As published, the FRA's notice reads that “this modification permitted CWR, now MR, to operate *its freight and passenger train* into the Willits Depot provided certain conditions were met.” See Northwestern Pacific Railroad; Notice of Partial Relief from Federal Emergency Order No. 21, 64 Fed. Reg. 30557 (June 8, 1999) (stating that the “NWP connects to the California Western Railroad, among other railroads, which operates both freight and passenger trains, to Willits.”). In fact, the stated purpose of the relief

³ See GRTA Petition at 4-5.

granted in the FRA's Emergency Order No. 21, Notice No. 2, was "to allow the California Western Railroad to renew its freight operations over NWP tracks to Willits Depot and turn its trains at Willits." This fact cannot have been lost on GRTA. GRTA's selective quotation and incorrect summary of the actual *Federal Register* notices appears to be an effort by GRTA to mislead the Board by ignoring CWR's – and now MR's – ability to provide, and actual provision of, freight service.

2. "MR has abused its status as a rail carrier subject to STB jurisdiction in several ways. It has used the status to justify exercising eminent domain power to acquire property for purported freight rail uses, even though it has never shipped any freight on the Line. It has asserted its status as a freight carrier in order to evade applicable state law, asserting that state and local government entities cannot regulate its commercial developments on the basis of the status. MR's misuse of federal law to serve its non-rail commercial interests is in contravention to the public interests of the people of the state of California."⁴

None of the above inflammatory and unverified comments reflect the actual truth of the matter. MR has shipped freight and is developing a transload yard for the precise purpose of shipping even more freight. The use of a common carrier's assertion of preemption, which is Congressionally and Judicially recognized, is not an attempt to "evade state law" for non-rail purposes but is being asserted to prevent numerous local and state entities, who do not desire to see additional freight service as a public need, from frustrating the development of a much needed transload facility that, when functional, will eliminate numerous trucks from the roads. As discussed below in Nos. 3 and 4 of the Corrected Background section of this Reply, *infra*, MR has provided freight rail service on the Line and has made significant efforts in recent years to secure federal funding to restore full freight rail service to the Line. Moreover, the activities which GRTA asserts constitute an abuse of MR's status as a rail carrier, including the redevelopment of the former-served GP Lumber Mill site, which was not done through eminent

⁴ See GRTA Petition at 8.

domain but rather with the support of the business community precisely because of the promise for future economic rail development,⁵ and the most recent efforts to develop transload facilities, are actually in furtherance of its freight operations and for the benefit of the rural areas of Fort Bragg and greater Mendocino County. Furthermore, MR has never asserted that any state or local government entities are prohibited from regulating any commercial, non-railroad related, developments it might engage in. Accordingly, contrary to GRTA's statement, MR is not using its status as a freight carrier to evade state law or to justify exercising eminent domain power but rather MR is making an effort to provide common carrier freight service to all interested shippers.

3. "Tunnel No. 1 at Milepost 3.5 has been collapsed for over 7 years and would cost approximately \$5,000,000 to reopen for rail service."⁶

It is true that Tunnel No. 1 at Milepost 3.5 has been collapsed since 2015, but GRTA's statement does not reflect the actual costs or MR's efforts to rehabilitate and reopen Tunnel No. 1 for rail service in order restore full freight rail service to the Line. While potentially implied, the later part of the sentence should read "reopen the tunnel for expanded rail service" as there has been continued freight service on the Line even with the tunnel closed.

MR also contests the cost of \$5,000,000 as the actual cost is over \$8 million. Moreover, MR asserts that the above statement also omits any of MR's efforts to restore full freight service to the Line. First, since the collapse of Tunnel No. 1 in 2015, MR has dedicated over \$2 million

⁵ See Mendocino Railway vs. Ainsworth, Case No. 1:22-cv-04597, Complaint for Declaratory Judgment, ¶ 21 (N.D. Cal. 2022) ("Approximately 77 acres of the land adjacent to the main rail station in Fort Bragg were previously used for more than a century to conduct and support freight and passenger operations. After 15 years of discussions, in 2019, Mendocino Railway acquired those 77 acres from Georgia-Pacific LLC ("GP") in order to further Mendocino Railway's efforts to fully restore freight and passenger services.")

⁶ See GRTA Petition at 9.

to undertake stabilization measures to prevent another tunnel collapse once Tunnel No. 1 is fully rehabilitated. Second, on multiple fronts, MR has sought federal funding for the \$8,102,640.00 to reopen Tunnel No. 1, including as part of its December 2022 Consolidated Rail Infrastructure and Safety Improvements (“CRISI”) grant application.

The GRTA also seems to try to create the impression that MR has somehow been less than diligent in seeking to reopen its Tunnel No. 1. But since the collapse of the tunnel in 2015, which was caused by contractor negligence, MR has worked diligently and spent millions to stabilize the hillside above Tunnel #1 while properly protecting any runoff from reaching the nearby stream. Now that MR has stabilized and rebuilt the hillside above it is ready to put service back through Tunnel #1.

The comment that MR's efforts to reopen its tunnel have been dependent on various governmental approvals is not true. MR has spent considerable amounts of its own money to repair the tunnel . MR has also pursued government funding and continues to pursue other funding sources. If MR obtains adequate funds, MR is committed to conducted the work in a manner that will not harm the adjacent river environment or its inhabitants. MR has at all times been diligently proceeding with its efforts to repair its Tunnel No. 1.

4. “The Line is strictly an excursion line and has been nothing more for the entire time of ownership by MR. There has been no freight rail service on the Line in over twenty years.”⁷

This statement is misrepresentative of the facts and appears to again to be intended to mislead the Board to leave the impression that MR is just a tourist train operation, which it is not. Prior to the collapse of Tunnel No. 1, MR had full freight service on the Line and served several shippers. Following the collapse of Tunnel No. 1 in 2015, the line was severed and MR became

⁷ See GRTA Petition at 9-10.

incapable of providing freight service over the entirety of the Line. However, from 2004 to 2021, SNR, as MR's agent, fulfilled MR's common carrier obligation by performing service to shippers/receivers located along portions of the Line on average at least three times a year. Recently, MR took back direct operating responsibility from SNR for performing freight service over the Line. GRTA's quoted statement above is simply false and again appears to be intended to mislead this Board into thinking that MR is merely a tourist train operation and has no interest in providing freight service. Nothing could be further from the truth.

When and if GRTA files an adverse abandonment application, MR intends to fully oppose it. Indeed, GRTA's assertion that "[t]he Line is strictly an excursion line and has been nothing more for the entire time of ownership by MR" is wholly inaccurate and does not accurately reflect either past usage or future planned usage of the Line. As a public entity, GRTA should be held to a higher standard than making unsubstantiated statements which are not true and were not, and could not be, backed by any evidence in GRTA's Petition.

II. SOME OF THE WAIVER REQUESTS SHOULD BE DENIED

"Under 49 U.S.C. § 10903(d), the standard governing any application to abandon or discontinue service over a line of railroad, including an adverse abandonment or discontinuance, is whether the present or future public convenience and necessity [("PC&N")] require or permit the abandonment. In implementing this standard, [the Board] must balance the competing benefits and burdens of abandonment or discontinuance on all interested parties, including the railroad, the shippers on the line, the communities involved, and interstate commerce generally." See Seminole Gulf Railway, L.P. – Adverse Abandonment – In Lee County, Florida, AB-400 (Sub-No. 4), slip op. at 4 (STB served November 18, 2004) ("Seminole Gulf Railway"); see also Stewartstown Railroad Company – Adverse Abandonment – In York County, PA, AB 1071

(STB served November 14, 2012) (“In applying this standard in an adverse abandonment context, we consider whether there is a present or future public need for rail service over the line and whether that need is outweighed by other interests.”). While this will be more fully addressed in MR’s opposition to any adverse abandonment application filed by GRTA, there is a present and future public need for rail service over MR’s Line and MR has taken, and continues to take, steps to fully rehabilitate the Line to address that public need.

As will be fully examined and discussed if and when GRTA actually files an adverse abandonment petition, the Board will have to make a determination as to whether the public convenience and necessity favor abandonment of MR’s Line and establishment of a trail. MR will show that it has conducted freight service and will conduct freight service in the future. As precedent shows, freight service should be maintained whenever possible. See Seminole Gulf Railway (adverse abandonment application denied because railroad was actively seeking new business for the line); see also Yakima Interurban Lines Association – Adverse Abandonment – In Yakima County, WA, AB 600, (STB served November 19, 2004) (adverse abandonment denied even though the line had been out of service for years and was in serious disrepair because there was potential for future rail service); Seminole Gulf Railway, slip op. at 5; citing Salt Lake City Corporation— Adverse Abandonment— in Salt Lake City, AB-33 (Sub-No. 183), slip op. at 6 (STB served March 8, 2002) (noting that the Board has a statutory duty to preserve and promote continued rail service where the railroad expresses a desire to continue operations and has taken reasonable steps to acquire traffic).

At the appropriate time, MR will thoroughly oppose any abandonment application brought by GRTA. MR not only has conducted freight service in the past, but is actively planning for, marketing, and constructing, along with its sister railroad, SNR, several transload

facilities. MR currently operates, and in the future fully intends to continue to operate, both passenger and freight service on the Line. In the meantime, MR respectfully requests the Board's full consideration of MR's objections to GRTA's request for waivers or exemptions from certain regulations or statutory requirements as the Board should ensure that any application and notice fully and adequately advise the Board and all interested parties before it considers the drastic and highly unusual relief requested by GRTA, especially as GRTA's requested relief is based almost entirely on unsupportable misrepresentations.

MR opposes the specific regulations or statutory requirements from which GRTA seeks a waiver or exemption as follows:

1. System Diagram Map

GRTA requests a waiver from the requirement that it submit MR's System Diagram Map ("SDM"). GRTA relies on a case in which the Board determined that "[w]aiver of SDM requirements is customary in adverse abandonment proceedings because the noncarrier applicant generally does not have access to an SDM." See GRTA Petition at 10; citing Colorado Landowners, slip op. at 3, and decisions there cited. While GRTA does not have direct access to an SDM, it should be required to obtain additional information on the system diagram through the discovery process⁸ and to submit that information to the Board. Only in this way will the Board be privy to sufficient information to determine whether the adverse abandonment sought by GRTA is justified. As such, MR objects to this request so that the record is complete.

⁸ Discovery has been allowed in adverse abandonment cases. See Alloy Property Company, LLC—Adverse Abandonment—Chicago Terminal Railroad in Chicago, IL, AB 1258 (STB served October 25, 2017) (discovery dispute assigned to administrative law judge); see also Stewartstown Railroad Company—Adverse Abandonment—In York County, Pa., AB 1071 (adverse abandonment applicant agreed to an extension of SRC's deadline for responding to discovery until June 15, provided that the Estate's request for waiver is granted).

2. Notice to Significant Users

GRTA requests a waiver of 49 C.F.R. 1152.20(a)(2)(i) that requires that notice of intent to abandon be sent to significant users of the Line on the ground that no shippers are using the Line. As described in No. 4 of the Corrected Background section of this Reply, *supra*, SNR fulfilled MR's common carrier obligation from 2016 to 2022 by providing service to shippers/receivers along the Line. Effective January 1, 2022, MR took over freight operations from SNR due to increases in service frequency as a result of MR's plans to rehabilitate its rail to meet existing demand and attract new business opportunities. GRTA cites to Colorado Landowners, slip op. at 3, as the legal basis of its request; however, in that decision, the Board granted the waiver because "the record indicates that no shippers are using the line." Here, however, MR could demonstrate more fully through discovery that there are current shippers on the Line and other shippers eagerly awaiting the full rehabilitation of the Line that require notice. As the adverse abandonment will significantly affect these shippers and the community and businesses in Mendocino County, GRTA should at the very least utilize the discovery process to locate and provide notice to significant users of the Line. Such discovery would also presumably bring transparency and clarity to the many inaccurate statements made by GRTA and its counsel. Accordingly, MR objects to this request as there are present and potential users of freight rail service on the Line.

3. Notice to Amtrak

National Railroad Passenger Corporation ("Amtrak") operates bus service in the area that connects people via bus to its trains. Amtrak has a pickup and drop off at Willits Depot.

Accordingly, MR object to GRTA's requested waiver of the requirements of 49 C.F.R. § 1152.20(a)(2)(x), which requires that a notice of intent be served on Amtrak.

4. Notice to Labor Organizations

As none of MR's employees are represented by labor organizations, MR does not object to GRTA's requested waiver of the requirements of 49 C.F.R. 1152.20(a)(2)(xii), which requires that notice of intent be served on the headquarters of all duly qualified labor organizations that represent employees of the affected rail line.

5. Posting Notice at Agency Stations or Terminals

GRTA is seeking a waiver from 49 C.F.R. 1152.20(a)(3), which requires posting of the notice of intent at each agency station or terminal on the line to be abandoned, on the ground that there are no agency stations on the Line at which the notice of intent could be posted. But as there are three stations on the Line—Willits Depot, Northspur Station, and Fort Bragg Station—there is no basis for GRTA's requests. GRTA's reliance on Colorado Landowners, slip op. at 4-5, and the decisions cited therein⁹ is also misplaced, here, as in those cases the waiver requests were not opposed and/or there were no agency stations or terminals on the lines sought to be abandoned. MR objects to GRTA's waiver request on the grounds that there are agency stations on the Line and that the notice requirement is particularly important as a means to notify businesses and the community of GRTA's attempt to force the abandonment of the MR Line.

6. Content of the Notice of Intent

⁹ See Landowners—Adverse Abandonment—Indiana Southwestern Railway Co. In Posey & Vanderburgh Counties, Ind., AB 1065 (Sub-No. 3), slip op. at 4 (STB served April 7, 2021); Alloy Property Company, LLC—Adverse Abandonment—Chicago Terminal Railroad in Chicago, IL, AB 1258, slip op. at 3 (STB served August 16, 2017).

While changes to the required Notice of Intent are permitted to be consistent with the waivers ultimately granted or denied, Applicants should otherwise be required to follow the prescribed text as closely as possible. See East St. Louis Junction Railroad Company – Adverse Abandonment – In St. Clair County, IL, AB 838, slip op. at 5 n. 11 (STB served June 30, 2003). With respect to the proposed form of notice itself, MR makes the following comments:

First, MR objects to the content of GRTA’s notice of intent insofar as it mischaracterizes MR instead of “explain[ing] briefly and clearly why the proposed action is being undertaken by the applicant.” See 49 C.F.R. § 1152.21. Specifically, GRTA mischaracterizes MR by stating that there are no stations on the Line and by claiming that the Line has not been used for Board-regulated rail transportation for over 20 years and that there is no reasonable prospect for such use in the foreseeable future.¹⁰

GRTA also falsely portrays MR when it states outright that MR has abused its status as a rail carrier, and that that abuse is associated with significant environmental health and safety concerns. Simply put, GRTA takes the notice of intent as an opportunity to publicly attack MR instead of focusing on the central reason that GRTA is seeking an adverse abandonment as stated in its petition: “GRTA cannot seek abandonment of this remaining portion of the GRTA Line and railbank it in accordance with [Great Redwood Trail Agency] Act based on STB precedent if it is attached to the MR in Willits; otherwise, it would leave the Line stranded from the interstate network.”¹¹ Even that reason is not, however, GRTA’s true reason for seeking abandonment, the true reason appears to be to forever cut California’s North Coast off from our nation’s railroad

¹⁰ MR intends to demonstrate that, while de minimus, the Line has been recently used for Board-regulated rail transportation, and that MR is aggressively working to restore full freight service to the Line.

¹¹ See GRTA Petition at p. 7.

network so that a network of trails and commuter trains can be developed regardless of shippers' needs to move freight. This the Board should not allow.

Second, the first full paragraph on page 4 of the Draft Notice of Intent,¹² does not follow the prescribed text in 49 C.F.R. § 1152.21 as closely as possible and is likely based on previously prescribed language. MR objects to this language in the first full paragraph on page 4 as it does not conform to current regulations.

Third, GRTA omits the second to last paragraph requiring a copy of the application to be made available for public inspection on or after the date of the application filing at each agency station or terminal on the line proposed to be abandoned and further requiring that the Applicant "shall furnish a copy of the application to any interested person proposing to file a protest or comment, upon request."¹³ MR objects to this omission as it leaves out the opportunity for public inspection of the application by a community that will be harmed by the adverse abandonment. Accordingly, MR partially objects to the content of GRTA's modified Notice of Intent and requests that the Board deny GRTA's waiver request insofar as the modified Notice of Intent deviates from the prescribed language and is not in substantial compliance with the regulation.

7. Line Attributes

GRTA seeks waiver of 49 C.F.R. 1152.22(b)-(d) and e(2)-(3), which requires information on the condition of the Line, service provided, revenue and cost data, and rural and community impact. In support of its waiver, GRTA cites to Colorado Landowners, slip op. at 5, and asserts that "that information is not typically available to adverse abandonment applicants or has

¹² Id. at Appendix 4 at p. 4.

¹³ See 49 C.F.R. § 1152.21.

otherwise not been required of them.” While GRTA relies extensively on Colorado Landowners... and the decisions there cited”¹⁴ as the legal basis for its reasoning for these waiver requests, there is also Board precedent that has denied requests for waiver of 49 C.F.R. 1152.22 (b) and e(3). Accordingly, MR objects to waiver of those two regulations as they are pertinent to the initial arguments made by GRTA in support of abandoning the Line and are necessary requirements toward establishing a complete record.

In CSX Transportation, Inc.—Adverse Abandonment—In Shelby County, AB 1010, slip op. at 5 (STB served October 10, 2007), waiver of 49 C.F.R. § 1152.22(b) was denied because the applicant “intend[ed] to use the condition of the Line to support its application.” See also Paulsboro Refining Company LLC—Adverse Abandonment—In Gloucester County, N.J., AB 1095 (Sub-No. 1) (denying the waiver request, as only in St. Joseph¹⁵ did the Board grant a 1152.22 (b) waiver request, and that case involved an applicant with a more distant relationship to the tracks that were proposed for adverse abandonment than exist here). Here, GRTA’s rail line is intertwined with the Line proposed for adverse abandonment, and GRTA has already made arguments that the condition of the Line, specifically Tunnel No. 1 and the costs to reopen it for rail service, supports its false assertion that “there has been no freight rail service on the Line in over twenty years.”¹⁶ As such, if GRTA is going to use the condition of the Line to support its adverse abandonment application, then it should have to submit evidence of the physical condition of the property, as required under § 1152.22(b).

¹⁴ See GRTA Petition at 10-13.

¹⁵ Norfolk Southern Railway—Adverse Abandonment—St. Joseph County, Indiana, AB 290 (Sub-No. 286) (STB served October 26, 2006) (“St. Joseph”).

¹⁶ Id. at 10.

Waiver of 49 C.F.R. § 1152.22(e)(3)¹⁷ has also been previously denied by the Board as adverse impacts on rural and community development, which may arise in adverse abandonments, are a significant factor to be considered by the Board. See East St. Louis Junction Railroad Company—Adverse Abandonment—In St. Clair County, IL, AB-838, slip op. at 6 (STB served June 30, 2003) (denying waiver of § 1152.22(e) as “such information may be particularly relevant where the abandonment could result in the...disruption of rail service”). GRTA should be required to discuss the alternate sources of freight transportation services and the highway network in the proximate area as it is pertinent to the Board’s consideration of the forced abandonment. MR expects that the full restoration of the Line will help drive economic growth in the region by promoting regional connectivity and by reducing truck congestion on roads and highways. Thus, the abandonment of the Line will undoubtedly have negative impacts on rural and community development and the Board should direct GRTA to comply with the requirements of 1152.22(e)(3).

MR also generally objects to GRTA’s request for waiver of 49 C.F.R. 1152.22(b)-(d) and e(2)-(3) as GRTA, the abandonment applicant, should not be permitted to shift the burden to MR to produce the information required to defend an adverse abandonment proceeding. At a minimum, GRTA should be required to undertake discovery on the condition of the Line, its costs and revenues and service history so that the Board can be furnished with information sufficient to determine whether the railroad can be returned to operating condition and ultimately whether abandonment of the Line is in the PC&N.

¹⁷ 49 C.F.R. 1152.2(e)(3) requires a “[g]eneral description of the alternate sources of transportation service (rail, motor, air) available, and the highway network in the proximate area.”

8. Federal Register Notice

GRTA sets forth a draft Federal Register Notice (“Fed. Reg. Notice”) in Appendix 5 of its Petition. While MR finds that GRTA’s draft Fed. Reg. Notice is largely in compliance with 49 C.F.R. § 1152.22(i), MR opposes the wording of the draft Fed. Reg. Notice because it omits the language pertaining to SDMs.¹⁸ As MR has contested the waiver pertaining to the SDM requirement, MR objects to GRTA’s proposed wording in its draft Fed. Reg. Notice, and therefore the waiver of § 1152.22(i).

9. Offers of Financial Assistance

GRTA seeks a waiver of the OFA regulations at 49 C.F.R. § 1152.27 on the grounds that “if the Board were to find that PC&N requires or permits adverse abandonment of the Line, it would be fundamentally inconsistent with the rationale underlying adverse abandonment to grant an OFA.” See GRTA Petition at 13. MR finds GRTA’s request in line with Board precedent¹⁹ and does not object to the waiver of OFA regulations as MR neither seeks to abandon its Line nor subject the Line to the OFA process, which MR agrees would be fundamentally inconsistent with the rationale underlying the adverse abandonment process. That said, while MR does not object to this request, it vehemently wants to protect the rights of its current and potential rail

¹⁸ While GRTA’s draft Fed. Reg. Notice also omits the language pertaining to Offers of Financial Assistance (“OFA”), MR does not object to the waiver of OFA regulations as noted in Section II (9) of this reply.

¹⁹ See Palmer Ranch Holdings, Ltd.—Adverse Abandonment—Seminole Gulf Railway, in Sarasota County, Florida, AB 400 (Sub-No. 4), slip op. at 7 (STB served September 21, 2011) (“If the Board ultimately finds that the public convenience and necessity require or permit withdrawal of its regulatory authority in this adverse abandonment proceeding, it would be fundamentally inconsistent with the rationale underlying the adverse abandonment sought here to provide for further Board regulation under the OFA provisions of § 10904.”).

customers to receive service and will strongly oppose any adverse abandonment application filed by GRTA.

10. Exemptions

GRTA seeks exemption from the provisions of 49 U.S.C. § 10903(c)(2)(A) and (B) (SDMs); 49 U.S.C. § 10903(a)(3)(D) (Notice to Shippers); 49 U.S.C. § 10903(a)(3)(B) (Posting); and 49 U.S.C. § 10904 (OFAs) on the grounds that “application of those provisions are not necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. § 10101 and those provisions are not necessary to protect shippers from abuse of market power because the record indicates that no shippers are on the Line.” MR objects to waiver of the above provisions, except for § 10904 (OFAs),²⁰ as application of those provisions are necessary to carry out the RTP of § 10101, namely that the Board has a statutory duty to preserve and promote continued rail service under § 10101(4). See City of South Bend v. Surface Transportation Board, 566 F.3d 1166, 386 U.S. App. D.C. 120, 2009 U.S. App. LEXIS 11503 (D.C. Circuit 2009) (affirming the STB’s denial of a petition for adverse abandonment as the Board acted reasonably in furtherance of its statutory duty to preserve and promote continued rail service under 49 U.S.C. 10101(4)). MR also contests GRTA’s statement that “the record indicates that no shippers are on the Line” as there are current and potential shippers that will be negatively impacted by the adverse abandonment.²¹ Accordingly, for the Board to have a complete record and for all interested parties to have notice of GRTA’s intent to file an adverse abandonment application, MR requests

²⁰ As described in Section II(9), *supra*, MR does not object to the waiver of the OFA regulations at 49 C.F.R. § 1152.27 and similarly does not object to exemption from OFA provisions at 49 U.S.C. § 10904 for the same reasons.

²¹ See Section II(2), *supra*.

the Board deny GRTA's request for exemption from the above provisions concerning SDMs, Notice to Shippers, and Posting.

CONCLUSION

MR opposes GRTA's Partial Waiver of Abandonment Regulations and for Exemption from Statutory Requirements and requests that certain specific waivers and provisions be denied for the reasons identified in this Reply.

Respectfully Submitted,

/s/ ***William A. Mullins***

William A. Mullins

Attorney for Mendocino Railway

VERIFICATION

I, Robert J. Pinoli, President of Mendocino Railway, declare under penalty of perjury that I have read the foregoing reply petition and state that it is true and correct to the best of my knowledge. Further, I certify that I am qualified and authorized to verify this reply petition.

Executed on 20-March-2023

A handwritten signature in blue ink, appearing to be 'R. Pinoli', with a large loop at the end.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of Mendocino Railway's Reply to Great Redwood Trail Agency's Petition for Partial Waiver of Abandonment Regulations and for Exemption from Statutory Requirements, served February 28, 2023, in the above-captioned proceeding was served by first-class mail, postage prepaid, or by a more expeditious manner, this 20th day of March 2023, on all Parties of Record.

/s/ **William A. Mullins**

William A. Mullins

Attorney for Mendocino Railway