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May 1, 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:

On April 27, 2023, Counsel for the Great Redwood Trail Agency (“GRTA”) submitted a decision of the Superior Court of California that was issued in Mendocino Railway v. John Meyer et al., Case No. SCUK-CVED-2020-74939 (“Meyer Decision”). The Meyer Decision, which is not even a final decision under California law,¹ involves the effort by Mendocino Railway (“MR”) to exercise eminent domain rights under California law to acquire property needed for the development of a transload yard. MR seeks to develop the transload yard precisely for the purpose of providing freight service and to conduct its common carrier obligations.

It is not clear what point, if any, GRTA was trying to make by submitting the preliminary Meyer Decision in this proceeding. If the point is that MR did not itself perform any of the common carrier services it provided on its line from 2004 until 2022, this is technically true: MR did not itself perform such services during that period because those services were performed by MR’s agent and affiliate: Sierra Northern Railway (“SNR”), a common carrier and MR’s sister

¹ Under California law, the Meyer Decision is not the actual official decision. The court must still issue a “Statement of Decision.” Alternatively, if the decision is considered the proposed official “Statement of Decision,” then MR has a right to object to that proposed “Statement of Decision.” On April 27, 2023, MR did exactly that, filing its “Request For Statement Of Decision Or, In The Alternative, Plaintiff’s Objections To Proposed Statement Of Decision.” The Court will then enter its judgement. See Exhibit 1.

May 1, 2023

Page 2

company, both being wholly owned by Sierra Railroad Company. Both Judge Nadel and GRTA misunderstand this arrangement. During this period, MR still held the common carrier obligation, merely performing that obligation through its agent SNR. However, beginning January 1, 2022, MR terminated that operating arrangement and not only began holding itself out as the performer of the common carrier services over its line, but itself performing those services.

Since the collapse of its tunnel, MR has invested approximately \$2 million on work needed to reopen its tunnel. These efforts have been protracted because of the need to stabilize the hillside through which the tunnel runs, in compliance with applicable environmental regulations. MR has also actively sought loans and grants to conduct a full 100-year refurbishment of its tunnel. To hit the ground running when its tunnel is repaired, MR has begun a marketing campaign to develop traffic between Ft. Bragg and Willits. MR also sought to acquire land for the development of a transload facility, an action that led to the Meyer Decision. Indeed, due to MR's having begun to perform active common carrier services, MR on April 27, 2022, informed the Railroad Retirement Board ("RRB") that it had begun doing so and requested the RRB to reconsider its previous decision finding MR to not be a "covered employer" under the Railroad Retirement Act.²

If the point of GRTA's letter was to bolster the idea that the adverse abandonment should eventually be granted by implying that MR is not performing common carrier service and has no desire to do so, then the Meyer Decision and the above MR actions have precisely the opposite effect. The Meyer Decision notes that MR held itself out to provide freight service, that SNR performed this service on MR's behalf prior to 2022 (when MR took over those operations from SNR), and that MR seeks to develop a transload facility to "fully operate its freight rail services." Meyer Decision, pp. 2 and 4. The Meyer Decision is thus *prima facie* evidence that MR is actively seeking to develop a railroad transload service for the precise purpose of not just providing and performing common carrier service to shippers, but for the purpose of expanding its provision of those services. The fact that MR, as a common carrier, did not itself *perform* these common carrier service prior to 2022, doing so through its sister company and agent, SNR, says nothing about MR's current and future efforts to hold itself out as performing common carrier services and to develop rail transload services. Nor does it say anything about MR's own provision of common carrier services since January 1, 2022. And of course, the primary focus of any adverse abandonment proceeding is whether rail service is needed by the shippers for existing and future service.³

² See Exhibit 2. Counsel for MR has been informed that the RRB has voted to hold that MR is now a covered employer and a decision is to be issued shortly.

³ New York Cross Harbor R.R. v. Surface Transp. Bd., 374 F.3d 1177, 2004 U.S. App. LEXIS 14304 (D.C. Cir., July 13, 2004). When and if this proceeding reaches the merits stage, MR looks forward to disproving any assertion that the public convenience and necessity require the removal of MR's common carrier obligation.

May 1, 2023

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Finally, GRTA only presents a partial record. As noted *supra*, n. 1, MR has filed its objections to the preliminary findings noted in the decision. The Meyer Decision fundamentally misapplies both the facts and the law. MR fully intends to seek a new trial, and if necessary, plans to appeal. Indeed, precedent is clear that while eminent domain remains the purview of the state courts, the application of that law cannot interfere with a railroad's ability to perform and undertake its common carrier obligations.⁴ The Meyer Decision erroneously fails to recognize MR as a common carrier in contradiction to both the STB decision licensing MR to be a common carrier⁵ and in contrast to the recent RRB vote. To the extent that decision prevents MR from providing and performing its common carrier duties and developing a transload service, it is preempted. The actions of a local court should not stand in the way of the STB's exclusive jurisdiction over MR's right and obligation to provide common carrier service. Nor should it stand in the way of MR's effort to develop a transload facility for the benefit of its local community.

Sincerely,

/s/ William A. Mullins

William A. Mullins
Attorney for Mendocino Railway

cc: Parties of Record

⁴ Dakota, Minnesota, and Eastern Railroad Corp. v. South Dakota, 236 F. Supp. 2d 989 (D.S.D. 2002), affirmed in part and modified in part, 362 F.3d 512 (8th Cir. 2002).

⁵ Mendocino Railway--Acquisition Exemption--Assets of The California Western Railroad, FD 34465 (STB served Apr. 9, 2004).

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

AB-1305 (Sub-No. 1)

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

EXHIBIT 1

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Attorneys for Plaintiff MENDOCINO RAILWAY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MENDOCINO**

MENDOCINO RAILWAY,

Plaintiff,

v.

JOHN MEYER; REDWOOD EMPIRE
TITLE COMPANY OF MENDOCINO
COUNTY; SHEPPARD INVESTMENTS;
MARYELLEN SHEPPARD;
MENDOCINO COUNTY TREASURER-
TAX COLLECTOR; All other persons
unknown claiming an interest in the
property; and DOES 1 through 100,
inclusive,

Defendants.

Case No. SCUK-CVED-2020-74939

[APN 038-180-53]

(Assigned to Hon. Jeanine B. Nadel)

**PLAINTIFF MENDOCINO
RAILWAY'S REQUEST FOR
STATEMENT OF DECISION OR, IN
THE ALTERNATIVE, PLAINTIFF'S
OBJECTIONS TO PROPOSED
STATEMENT OF DECISION**

Cal. Code Civ. Proc. §632 and §634

Cal. Rules of Court, Rule 3.1590

1 It is unclear whether the “Decision After Trial” issued by the Court on April 19,
2 2023 constitutes the Court’s tentative decision or the Court’s proposed Statement of
3 Decision. The Decision After Trial does not explain the factual and legal bases for each
4 of the principal controverted issues at trial.

5 If the Decision After Trial constitutes the Court’s tentative decision, then
6 pursuant to Cal. Code Civ. Proc. §632 and Cal. Rules of Court, Rule 3.1590(d), Plaintiff
7 Mendocino Railway hereby requests that the Court issue a Statement of Decision
8 explaining the factual and legal basis for its decision as to each of the principal
9 controverted issues at trial as set forth below in Part I. Alternatively, if the Decision
10 After Trial constitutes a proposed Statement of Decision, Mendocino Railway objects on
11 the grounds set forth in more detail in Part II. Cal. Code Civ. Proc. §634; Cal. Rules of
12 Court, Rule 3.1590(g).

13 **I. MENDOCINO RAILWAY’S REQUEST FOR STATEMENT OF DECISION**

14 If the Decision After Trial constitutes the Court’s tentative decision, Mendocino
15 Railway hereby requests the Court issue a Statement of Decision. Cal. Code Civ. Proc.
16 §632 and Cal. Rules of Court, Rule 3.1590(d). The principal controverted issues at trial
17 to be addressed in the Court’s Statement of Decision include:

- 18 1. Whether Mendocino Railway is a common carrier public utility railroad
19 pursuant to Cal. Pub. Util. Code §§211, 216, 229 and 230, *et seq.* (such that
20 Plaintiff is entitled to exercise eminent domain to acquire private property
21 for its railroad per Cal. Pub. Util. Code §611), consistent with the United
22 States Surface Transportation Board’s (“STB’s”) determination that
23 Mendocino Railway is a common carrier railroad pursuant to its April 2, 2004
24 Notice of Acquisition Exemption (STB Finance Docket No. 34465), and, more
25 specifically:

- 26 a. Whether, since acquiring assets of the California Western
27 Railroad (“CWR”) in 2004, Mendocino Railway has been a
28 California railroad corporation because it owns, controls,

operates, and/or manages a railroad (i.e., the CWR);

- b. Whether Mendocino Railway has dedicated its railroad and property to providing, or holding itself out to provide, common carrier freight and non-excursion passenger transportation services to the public or any portion thereof for compensation (e.g., by publishing freight rail and passenger rail tariffs, providing and offering common carrier rail transportation services for compensation independently and in conjunction with Sierra Northern Railway and other related entities);
- c. Whether Mendocino Railway (including its predecessors who owned and operated the same line) historically provided freight transportation for compensation to or for the public or any portion thereof for compensation, and whether Mendocino Railway continues to provide such service to the present day and intends to do so in the future
- d. Whether Mendocino Railway (including its predecessors) historically provided non-excursion passenger transportation for compensation to or for the public or any portion thereof, and whether Mendocino Railway continues to provide such service to the present day and intends to do so in the future.
- e. Whether the STB has licensed Mendocino Railway to be a common carrier railroad subject to the exclusive jurisdiction of the STB under 49 U.S.C. §10501, et. seq. and whose common carrier obligation cannot be extinguished without STB authority;
- f. Whether the California Public Utilities Commission recognizes Mendocino Railway as a California public utility, and has regulated and inspected the railroad as such up through the present.

1 2. Whether Plaintiff Mendocino Railway established by a preponderance of the
2 evidence that:

3 a. Mendocino Railway's rail project ("Project") is adequately defined and
4 described in the Complaint per Cal. Code Civ. Proc. §1250.310. (As
5 described in the Complaint and reflected in Plaintiff Mendocino
6 Railway's preliminary conceptual site plan, the Project for which
7 Mendocino Railway seeks to acquire Mr. Meyer's property consists of
8 construction and maintenance of rail facilities related to Mendocino
9 Railway's ongoing and future freight and passenger rail operations and
10 all uses necessary and convenient thereto, including a passenger depot,
11 maintenance and repair shops (for maintenance of way and
12 maintenance of equipment), storage tracks, laydown yard and transload
13 facilities, and related improvements);

14 b. The public interest and necessity require Mendocino Railway's Project,
15 such that the Project identified and described in the Complaint is
16 necessary for the construction and maintenance of its railroad for its
17 ongoing and future rail operations per Cal. Pub. Util. Code §611 and Cal.
18 Code Civ. Proc. §1240.010, §1240.030(a) and Cal. Code Civ. Proc.
19 §1240.220) because:

20 i. Mendocino Railway lacks adequate maintenance, repair, and
21 freight facilities at the Willits end of the line sufficient to serve
22 its ongoing and future common carrier rail operations;

23 ii. These physical constraints impair and limit Mendocino
24 Railway's ability to fully and efficiently operate, maintain, and
25 repair its railroad, locomotives, equipment, and rail cars at the
26 Willits end of its line, both now and in the future; and,

27 iii. Various local businesses have requested, and expressed interest
28 in obtaining, freight rail service from Mendocino Railway

between Willits and Fort Bragg, including among others North Coast Brewing Company, Geo Aggregates, Redwood Coast Fuels (and other natural gas companies), and Lyme Timber (and other timber companies).

c. Mendocino Railway's Project is planned and located in the manner consistent with the greatest public good and least private injury (i.e., there are no other alternative potential sites for the Project that would achieve equal or greater public good; or, if the Court finds that such an alternative site exists, such alternative site would not achieve lesser private injury, per Cal. Code Civ. Proc. §1240.030(b)); and

d. Mr. Meyer's property is necessary for Mendocino Railway's Project (i.e., acquisition of Mr. Meyer's property is suitable and desirable for the construction and use of Mendocino Railway's Project per Cal. Code Civ. Proc. §1240.030(c)).

II. MENDOCINO RAILWAY'S OBJECTIONS TO PROPOSED STATEMENT OF DECISION

Alternatively, if the Court's April 19, 2023 Decision After Trial constitutes the Court's *proposed* Statement of Decision, such Decision After Trial omitted and/or is ambiguous as to each of the principal controverted issues identified and described above and also appears to include misstatements of the law and facts. Accordingly, Plaintiff Mendocino Railway hereby objects to said proposed Statement of Decision and requests that (i) the Court explain the factual and legal basis for the Court's decision as to each of the principal controverted issues at trial identified and described in the foregoing Section I, and (ii) resolve the following apparent misstatements of law and facts. Cal. Code Civ. Proc. §634; Cal. Rules of Court, Rule 3.1590(g).

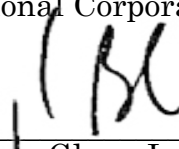
Mendocino Railway objects to the Decision After Trial on the grounds it contains the following misstatements of the law and facts:

- 1 a. The Decision fails to recognize that Mendocino Railway is (i) a common
2 carrier railroad licensed by the STB when it approved Mendocino Railway's
3 acquisition of certain of the assets of the former California Western Railroad
4 ("CWR") per the STB's April 2, 2004 Notice of Acquisition Exemption (STB
5 Finance Docket No. 34465; Trial Exhibit 21),
6
7 b. The Decision fails to recognize that Mendocino Railway is subject to the
8 exclusive jurisdiction of the STB, under 49 U.S.C. §10501, *et. seq.*, which
9 protects the railroad's right to develop transload facilities in furtherance of
10 interstate commerce;
11
12 c. The Decision fails to recognize that, when the STB licensed Mendocino
13 Railway as a common carrier railroad, it acknowledged that Sierra Northern
14 Railroad, as Mendocino Railway's agent, would be performing common
15 carrier railroad transportation services on Mendocino Railway's behalf
16 (Trial Exhibits 20 & 21).
17
18 d. The Decision fails to recognize that the STB's exclusive jurisdiction in
19 conferring "common carrier railroad" status on Mendocino Railway when
20 Mendocino Railway acquired the assets of the CWR automatically rendered
21 Mendocino Railway a public utility railroad pursuant to Cal. Pub. Util.
22 Code §§211, 216, 229 and 230, *et seq.* (such that Plaintiff is entitled to
23 exercise eminent domain to acquire private property for its railroad per Cal.
24 Pub. Util. Code §611); and,
25
26 e. The Decision fails to recognize that Mendocino Railway's "common carrier
27 railroad" status is subject to the exclusive jurisdiction of the STB and
28 therefore preempts any state or local law, including California eminent
domain law, to the extent that law is construed or applied to prevent
Mendocino Railway from undertaking its common carrier duties and rights,
including the right to condemn private property for railroad use.

1 Mendocino Railway hereby requests a hearing on its objections pursuant to Cal.
2 Rules of Court, Rule 3.1590(k).

3
4 Dated: April 27, 2023

CALIFORNIA EMINENT DOMAIN LAW GROUP,
a Professional Corporation

5
6 By  _____
7 Glenn L. Block
8 Attorneys for Plaintiff MENDOCINO RAILWAY
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PROOF OF SERVICE

Mendocino Railway v. John Meyer, et al.
Mendocino Superior Court Case No.: SCUK-CVED-20-74939

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 3429 Ocean View Boulevard, Suite L, Glendale, CA 91208. On April 27, 2023, I served the within document(s):

PLAINTIFF MENDOCINO RAILWAY'S REQUEST FOR STATEMENT OF DECISION; ALTERNATIVELY, PLAINTIFF'S OBJECTION TO PROPOSED STATEMENT OF DECISION

- ☒ **ELECTRONIC MAIL:** By transmitting via e-mail the document listed above to the e-mail address set forth below.
- ☐ **BY MAIL:** By placing a true copy of the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Glendale, California addressed as set forth in the attached service list
- ☐ **OVERNIGHT DELIVERY:** By overnight delivery, I placed such document(s) listed above in a sealed envelope, for deposit in the designated box or other facility regularly maintained by United Parcel Service for overnight delivery and caused such envelope to be delivered to the office of the addressee via overnight delivery pursuant to C.C.P. §1013(c), with delivery fees fully prepaid or provided for.
- ☐ **PERSONAL SERVICE:** By personally delivering the document(s) listed above to the person(s) listed below at the address indicated.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 27, 2023, in Glendale, California.


Debi Carbon

SERVICE LIST

Mendocino Railway v. John Meyer, et al.
Mendocino Superior Court Case No.: SCUK-CVED-20-74939

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

AB-1305 (Sub-No. 1)

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

EXHIBIT 2

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April 27, 2022

VIA CERTIFIED MAIL AND E-MAIL

Shirley C. Moore, Coverage Specialist
Railroad Retirement Board
844 North Rush Street
Chicago, IL 60611-2092
E-mail: Shirley.Moore@rrb.gov

Re: Mendocino Railway

Dear Ms. Moore:

Mendocino Railway is writing to request that the Railroad Retirement Board (“RRB”) revisit a prior coverage decision based on a change in circumstances. Specifically, on September 28, 2006, the RRB issued B.C.D. 06-42.1, a determination of the RRB concerning the status of Sierra Entertainment and Mendocino Railway, as employers under the Railroad Retirement Act (45 U.S.C. § 231 et seq.) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.) (collectively, “the Act”). See Sierra Entertainment, Mendocino Railway, Railroad Retirement Board, B.C.D. 06-42.1 (Served September 28, 2006). In that decision, the RRB found that neither Sierra Entertainment, which provided tourist or excursion services for entertainment purposes nor Mendocino Railway, which was at the time of the decision a federally licensed common carrier but not actively providing rail services over its rail line, was a “carrier” for purposes of the Railroad Retirement Act (45 U.S.C. § 231 et seq.) Specifically, concerning Mendocino Railway, the RRB stated “[s]ince Mendocino reportedly does not and cannot now operate in interstate commerce, RRB finds that it is not currently an employer under the Acts. If Mendocino commences operations, RRB will revisit this decision.” Id. At 4.¹

¹ Although Mendocino was a licensed common carrier subject to the exclusive jurisdiction of the Surface Transportation Board (“STB”), it could not physically operate in interstate commerce due to the condition of portions of the Line’s infrastructure at the time. Nonetheless, Mendocino was at the time, and remains, a common carrier subject to the exclusive jurisdiction of the STB. See 49 U.S.C. §10501.

Related to B.C.D. 06-42.1, in 2004, Mendocino Railway acquired the assets of the former California Western Railroad (“CWR”), a Class III carrier in Mendocino Railway – Acquisition Exemption – Assets of the California Western Railroad, FD 34465 (STB served April 9, 2004). Given that freight service had not been provided over the rail line for some time and given the anticipated *de minis* amount of freight anticipated at the time of the acquisition, Mendocino Railway explained that it intended to operate and fulfill CWR’s common carrier obligation with the help of Mendocino’s affiliated entity, now known as Sierra Northern Railway (a Class III rail carrier). Between 2010 and continuing through 2019, Mendocino Railway fulfilled its common carrier obligations through an operating arrangement with its affiliate.

While Mendocino's service, provided via Sierra Northern Railway was minimal, to begin with, service frequency increased in 2020/2021 as Mendocino began planning to rehabilitate its rail line and market/solicit new business opportunities. Due to these opportunities and other changes,² effective January 1, 2022, Mendocino Railway took over direct operating responsibility from Sierra Northern Railway for freight service over its rail line. Based on these changes in circumstances, and in light of the RRB’s B.C.D. 06-42.1 decision, Mendocino Railway believes that it has become a “carrier” under the Act effective January 1, 2022. As such, Mendocino Railway is filing this request for reconsideration of the prior coverage decision. For the RRB’s convenience, Mendocino Railway encloses as Exhibit A pertinent information that the RRB typically requires in making its coverage decisions.

If there are any questions about this matter, please contact me directly, either by telephone: at 202-663-7831 or by e-mail: czorbaugh@bakerandmiller.com. If I am unavailable, you may contact William Mullins at 202-663-7823, or by email: wmullins@bakerandmiller.com.

Sincerely,



Crystal M. Zorbaugh
Attorney for Mendocino Railway

² Mendocino Railway also anticipates starting a rehabilitation project on its rail line during the second half of the year which could allow it to interchange interstate traffic with other STB regulated carriers.

Mendocino Railway – Exhibit A

1. The correct corporate name and address of any trade name used.

Mendocino Railway
1222 Research Park Drive
Davis, CA 95618

Mendocino Railway was previously the subject of a RRB Investigation in B.C.D. 06-42.1.

2. The name of the President and CEO of Mendocino Railway.

Robert J. Pinoli is the President of Mendocino Railway. There is no CEO.

3. The name of Mendocino Railway's owner(s) specifying their respective ownership interest.

Mendocino Railway is a wholly-owned subsidiary of Sierra Railroad Company ("SRC")

4. The length of track and terminal points.

The Mendocino Railway line extends from Milepost 0 (at Fort Bragg, California) to Milepost 40 (at Willits, California) (the "Line").

5. The number of employees and the date from which employees were first compensated.

Mendocino Railway assumed freight maintenance and operations authority for the Line from its affiliate, Sierra Northern Railway ("SNR"), on January 1, 2022. Mendocino Railway has a total of 108 employees; at most 25 of these employees (engineers, conductors, mechanical staff, maintenance of way, and administration) will be directly involved in freight rail maintenance, management, and operation. The remainder of the Mendocino Railway employees supports its tourism operations.

The first day Mendocino Railway employees would have been compensated subject to the railroad retirement system would have been January 6, 2022.

6. The name of the railroad(s) with which Mendocino Railway will interchange.

Mendocino Railway connects to North Coast Railroad Authority ("NCRA") at Willits, California. The NCRA line is currently inactive but remains subject to the STB's jurisdiction. Mendocino Railway is taking over direct responsibility for fulfilling its common carrier obligation and for conducting transload services from its affiliate SNR over Mendocino Railway's 40-mile line from Fort Bragg, CA to Willits, CA.

7. Provide a copy of the Surface Transportation Board Finance Docket permitting Mendocino Railway to operate.

In 2004, Mendocino Railway acquired the assets of the former California Western Railroad ("CWR"), a Class III carrier in Mendocino Railway – Acquisition Exemption – Assets of the California Western Railroad, FD 34465 (STB served April 9, 2004). The STB's April 9, 2004 decision is attached as Exhibit B.

8. Provide a detailed explanation of Mendocino Railway's entire operations to include its annual expected volume of freight traffic.

From 2016 to 2019, SNR fulfilled Mendocino's common carrier obligation by providing service to shippers/receivers located along the Line on average three times a year. That number increased in 2020/2021 and Mendocino began planning to rehabilitate the Line and market/solicit new business opportunities. Given the pending developments, Mendocino Railway is filing this coverage redetermination and in furtherance of that goal, Mendocino Railway is planning to start a rehabilitation project on its Line during the second half of the year.

9. Furnish the Employer Identification Number (EIN) assigned to Mendocino Railway by the Internal Revenue Service.

Mendocino Railway's EIN is 73-1700581.

10. If Mendocino Railway acquired the line from another railroad, please answer the following questions:

a. By what means did Mendocino Railway acquire the rail line, e.g. purchase, lease, other transfer, merger?

In 2004, Mendocino Railway acquired the assets of the former California Western Railroad ("CWR"), a Class III carrier in Mendocino Railway – Acquisition Exemption – Assets of the California Western Railroad, FD 34465 (STB served April 9, 2004).

b. Was there a written document that formed the basis for Mendocino Railway's acquisition of the rail line, (e.g. a lease, contract, purchase agreement, merger agreement)? If yes, please furnish a signed and dated copy.

The acquisition occurred 18 years ago. RRB should have a copy from its prior coverage determination. See B.C.D. 06-42-1. If RRB needs replacement documents, Mendocino Railway can provide them again.

c. Was Surface Transportation Board approval sought for the acquisition of the rail line? If yes, and if a decision separate from that furnished in response to question 7 was issued, please furnish a copy.

Not applicable.

- d. **Did Mendocino Railway hire any of the employees of the former operator of the rail line? If yes, how many employees?**

Not applicable as the prior operator had declared bankruptcy and had no operations or employees at the time of Mendocino Railway's acquisition of the Line.

- e. **What was the first day the employees performed or will perform compensated service for Mendocino Railway?**

Mendocino Railway assumed freight maintenance and operations authority for its rail line from its affiliate, SNR, on January 1, 2022.

- f. **Did Mendocino Railway acquire any rail equipment from the former operator of the rail line? If yes, please provide a detailed description of the equipment.**

Mendocino Railway acquired all of the former operator's rail equipment via a bill of sale that did not contain a detailed description. Mendocino Railway is not aware of the existence of any detailed description given the parameters of the bankruptcy sale and purchase process.

11. Provide the amount of business that Mendocino Railway does with each carrier identified as follows.

- a. **Name of rail carrier(s),**
- b. **Percentage of the total time spent doing business with each rail carrier named,**
- c. **percentage of revenue Mendocino Railway received from rail carrier(s), and**
- d. **a detailed description of service provided for rail carrier(s).**

Not applicable.

12. Please provide a complete list of all affiliated companies. Include the names of any parent corporation, brother/sister companies, and subsidiaries with the percentage of control for any subsidiary company. If possible, provide a copy of the most recent annual report.

Mendocino Railway and SNR are both wholly-owned subsidiaries of Sierra Railroad Company ("SRC"). SRC was founded in 1897 to connect California's Central Valley to

the Gold Country foothills of the Sierra Nevada. All three businesses are California C-corporations.

Mendocino Railway and SNR are “sister” companies to Sierra Energy, which is a partially-owned subsidiary of SRC. Sierra Energy is not involved in the operations of its related entities.

34584

SERVICE DATE - APRIL 9, 2004

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34465]

Mendocino Railway–Acquisition Exemption–Assets of The California Western Railroad

Mendocino Railway (Mendocino), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire, through California Western Railroad's (CWR) trustee in bankruptcy and with the approval of the Bankruptcy Court for the Northern District of California, the rail assets of CWR.¹ The assets consist of all rail lines owned by CWR between milepost 0 and milepost 40. Mendocino states that, on February 11, 2004, the sale of CWR's assets was authorized by order of the Bankruptcy Court and that CWR's trustee was authorized to sell the railroad assets of CWR to SRC.

Mendocino intends initially to operate CWR with the help of Mendocino's affiliated entities: Sierra Northern Railway (a Class III rail carrier), Midland Railroad Enterprises Corporation (a railroad construction and track maintenance company), and Sierra Entertainment (a tourism, entertainment, and passenger operations company). Mendocino states that it is negotiating an agreement with Hawthorne Timber Company, LLC (Hawthorne) for the transfer to Mendocino of Hawthorne's fee interest in the real property underlying

¹ Mendocino is a California corporation formed for the purpose of acquiring and operating CWR. It is a wholly owned subsidiary of Sierra Railroad Company (SRC),

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CWR's tracks. Mendocino anticipates completing the acquisition by mid March 2004 and to begin operations on or about May 1, 2004.

Mendocino certifies that its projected revenues as a result of this transaction do not exceed \$5 million per year and do not exceed those that would qualify it as a Class III rail carrier.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34465, must be filed with the Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on Torgny Nilsson, General Counsel, 341 Industrial Way, Woodland, CA 95776.

Board decisions and notices are available on the Board's website at "WWW.STB.DOT.GOV."

Decided: April 2, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary