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April 19, 2024

**VIA-E-FILING**

Ms. Cynthia T. Brown  
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), GRTA Reply Letter in Opposition to MR Letter Opposing GRTA's Request for Waiver of the Filing Fee*

Dear Ms. Brown:

The Great Redwood Trail Agency ("GRTA") respectfully submits its reply in opposition to Mendocino Railway's ("MR") unusual letter opposing GRTA's request for waiver of the filing fee in the above-captioned proceeding. In its adverse abandonment application filing on April 12, 2024, GRTA requested a waiver of the filing fee pursuant to 49 C.F.R. § 1002.2(e)(1). MR oddly has asked the Board to deny that request. MR argues that GRTA is outside the scope of the public agencies that fall within the automatic fee waivers regulation.

The Surface Transportation Board ("STB") has held that third parties lack any legal interest in, and therefore cannot challenge or appeal, the grant or denial of a fee waiver or reduction request. *Hartwell First United Methodist Church—Adverse Aban. & Discontinuance—Great Walton R.R.*,

AB 1242 (STB served June 2, 2017) (“As the courts have recognized, there is no private right of action to enforce the Independent Offices Appropriations Act, 31 U.S.C. § 9701, which regulates fees collected by government agencies.”) *See also Filing Fee Waiver Requests*, EP 758, slip op. at 3 (STB served Dec. 23, 2020). Consequently, as this is well-established law, the MR filing should be stricken from the record.

Even assuming a third party could bring such a challenge, the Board has ruled it will waive filing fees for “a federal government agency or a state or local entity,” which GRTA clearly is. 49 C.F.R. § 1002.2(e)(1). However, MR appears to take the position that GRTA is not a state government entity as required in this Surface Transportation Board (“STB”) regulation based on its citation to several random web pages. What MR does not mention is the State of California legislation that created GRTA universally refers to GRTA as a state agency. *See* Cal. Gov. Code §§ 93004; 93020; 93024; 93026. Section 93004 provides “‘Agency’ means the *Great Redwood Trail Agency*.” (Emphasis supplied). Section 93020 provides the “agency” with various powers and “shall cooperate with, and provide information upon request to, the Transportation Agency, Natural Resources Agency, or other state or local agencies or contractors working at the direction of the Transportation Agency or Natural Resources Agency.” Section 93024 provides “[t]he agency shall have and may exercise all rights and powers, expressed or implied, necessary to carry out the purposes and intent of this title, including” numerous listed powers.” Section 93026 provides “[t]he agency shall be subject to the Ralph M. Brown Act (Chapter 9 (commencing with [Section 54950](#)) of Part 1 of Division 2 of Title 5) and the California Public Records Act (Division 10 (commencing with [Section 7920.000](#)) of Title 1). The Ralph M. Brown Act provides that “public agencies in this State exist to aid in the conduct of the people’s business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.” Cal. Gov. Code § 54950. In other words, all of the language in the California statutes relating to GRTA clearly state it is a state government agency. As a result, MR’s position on this point must fail.

Because GRTA is clearly a public agency entitled to a waiver, MR then attempts to argue that the STB should not grant such relief where the public agency is “acting in the capacity of a carrier or shipper or that owns or proposes to own a carrier<sup>1</sup> and is before the agency in its proprietary role.” *See* 49 C.F.R. § 1002.2(e)(1). MR claims the STB has already made this decision, on May 14, 2021, in its Notice of Exemption for Abandonment/Railbanking (“Notice”), North Coast Railroad Authority (“NCRA”).<sup>2</sup> In that proceeding, the STB found that NCRA was acting in the capacity as a carrier that owns a rail carrier and rejected the fee waiver request. *See North Coast Railroad Authority – Abandonment Exemption – in Mendocino, Trinity and Humboldt Counties, CA*, AB 1305X, 2 (STB Filed and Fee Received May 14, 2021). However, here, unlike in AB 1305X, GRTA is not a railroad that is seeking an abandonment of its own line. It is acting as a public agency seeking to have another railroad’s line abandoned to promote the public interest

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<sup>1</sup> GRTA does own a railroad and does not dispute that point.

<sup>2</sup> By statute, NCRA became GRTA as California decided to move to a new use policy for this railroad property away from railroad operations and towards tourism and ecotourism. Cal. Gov. Code § 93010.

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in California to move away from rail operations to tourism in this area where freight rail service has collapsed over the years for various reasons as explained in great detail in GRTA's application herein. These factors corroborate the fact that GRTA is intended to fall under the automatic filing fee waiver provision for public agencies and is not acting in its capacity as a carrier in this proceeding. Accordingly, GRTA is entitled to relief under 49 C.F.R. § 1002.2(e)(1).

Respectfully submitted,

/s/ Daniel R. Elliott

Daniel R. Elliott  
Counsel for Great Redwood Trail Agency

cc: Parties of Record