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Transportation Solutions for the 21st Century

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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)

Dear Ms. Brown:

Mendocino Railway (“MR”) hereby files this reply to Great Redwood Trail Agency’s (“GRTA”) April 19, 2024 reply in which GRTA requested that MR's April 15 Comments (“MR April 15 Comments”) be stricken from the record. For the reasons herein, MR requests the Surface Transportation Board (“STB” or “Board”) find that GRTA has failed to demonstrate that that MR’s April 15 Comments were improper and should be stricken from the record. Indeed, as discussed herein, many of GRTA's comments in it April 19 reply were misleading and improper for which MR should be entitled to correct the record.¹

First, it is undisputed that GRTA is a common carrier by railroad and is not simply a public agency. Indeed, GRTA concedes to this point in both the GRTA Reply and the GRTA

¹ Although a reply to a reply is normally prohibited, here, GRTA has, in effect, filed a motion to strike MR's comments for which MR should be entitled to reply. Furthermore, under 49 C.F.R. § 1104.13(c), the Board and its predecessor, the Interstate Commerce Commission (“ICC”) have accepted replies to replies for reasons such as correcting misrepresentations, clarifying factual points, and responding to new arguments. See Soo Line R.R. Co. – Pet. for Declaratory Order and Preliminary Injunction – Interchange with Canadian Nat’l, FD 36299, slip op. at 1, n.1 (STB served July 19, 2019) (accepting letters replying to replies in the interest of assembling a more complete record); see also, Baylands Development, Inc. – Pet. for Declaratory Order, FD 36660, slip op. at 4, n.9 (STB served Sep. 18, 2023) (same); and App. of the National Passenger R.R. Corp. under 49 USC § 24308(e) – CSX Trans., Inc., and Norfolk Southern Railway Co., FD 36496, slip op. at 2, n.4 (STB served Aug. 6, 2021) (same).

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Adverse Abandonment Application.² GRTA is “the reorganized continuation of the same legal entity NCRA” (referring to the North Coast Railroad Authority.)³ “GRTA now owns and has residual common carrier responsibility for this approximately 175.84 miles of the GRTA Line north of Willits railbanked in STB Docket No. AB-1305X” and owns the portion of the Line “from Willits to NWP milepost 89 . . . and is subject to the jurisdiction of the STB.” GRTA Application at 13. However, GRTA tries to overlook these extremely relevant and undisputed facts. GRTA tries to say that even though it may be a carrier in some instances, that here, because it is acting as a state agency, it should be entitled to a waiver. There is no such distinction in the waiver regulations. If you are carrier, and there is no doubt GRTA itself is a carrier, you are not entitled to a fee waiver. One cannot be a carrier one moment and a public agency the next. As a public agency that is a common carrier, and is the successor to NCRA, it is not entitled to a waiver of the filing fee.

Second, this Board has previously found that NCRA was required to pay a filing fee because it was a carrier. 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). GRTA is the successor to NCRA. GRTA is “the reorganized continuation of the same legal entity NCRA [and] continues to hold the property rights to the GRTA Line under its new name.” GRTA Application at 6. As the successor to NCRA, GRTA should likewise be required to pay a fee. GRTA tries to distinguish the NCRA Abandonment and says that there, NCRA was acting in the capacity of a carrier and the Board rejected the fee waiver because NCRA was “seeking an abandonment of its own line.” Here, GRTA claims it is acting in the public interest but not as a carrier. This strains credibility. GRTA is acting like a carrier. Indeed, the whole purpose of the adverse abandonment is so that GRTA, a carrier, can abandon its line without stranding MR. This is not GRTA acting for some public purpose like needing to build or relocate a highway or any other examples where public projects were being prevented due to the existence of a rail line. The sole purpose is for GRTA to abandon its line. This is not the type of public purpose for which a fee waiver is justified. As a carrier, GRTA should be treated no differently than any other carrier who filed an adverse abandonment application and should pay the fee.⁴

² In its application, GRTA states, without qualification, that “GRTA is a common carrier by railroad.” GRTA Application at 14, (citing N. Coast R.R. Authority – Acquis. and Operation Exemption – Eureka Southern Railroad, STB Docket No. FD 32052 (ICC served Apr. 23, 1992; North Coast Railroad Authority – Purchase Exemption – Southern Pacific Transportation Company, FD 32788 (STB served Mar. 20, 1996); and North Coast Railroad Authority – Lease and Operation Exemption – California Northern Railroad Company, FD 33115 (STB served Sept. 27, 1996)).

³ GRTA Application at 6.

⁴ A review of the adverse abandonment cases filed in the past twenty plus years shows that in every instance where a carrier filed an abandonment application against another carrier, the

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Third, GRTA relies on irrelevant precedent as “well-established law”⁵ to support the notion that the MR filing must be stricken from the record.⁶ MR does not dispute that the Board has held that third parties cannot appeal a fee waiver or reduction decisions. See 49 C.F.R. § 1002.2(e)(3). MR is not appealing a decision on the fee waiver. Indeed, no decision has been made on the fee waiver request at this time. GRTA confirms this when, in its Reply, it asserts that when the Board does make a decision, GRTA reiterates that it is entitled to relief under 49 C.F.R. § 1002.2(e)(1). At no point has or could MR appeal a Board decision on the matter, but at this point, no decision on the waiver has been issued for which MR could appeal. As such, the regulation does not prevent MR from filing comments opposing the waiver. MR merely opposed GRTA’s position and filed comments to be considered *when* the decision is being made. Although a third party may not be able to appeal a decision of the Board with regard to waiver of a filing fee, it is able to provide necessary facts and context to ensure that the Board’s record is accurate and complete so that a proper decision can be made in the first place.

Fourth, it is interesting the GRTA Reply referred to the websites in the MR April 15 Comments as “random.” MR cited the State of California website, which seems relevant, especially since GRTA argues that California legislation “clearly state[s] it is a state government agency.” GRTA Reply at 2. If California legislation “clearly” establishes that, then why does the official State of California website listing of State Agencies fail to include the GRTA.⁷ Further, the second website that is linked in MR’s April 15 Comments, aside from the GRTA website itself, is the American Trails website that list resources by state. As previously noted, it does not list GRTA under “State and Local Trail Agencies for California,” but instead under “Trail

carrier was required to pay a filing fee. GRTA should be treated no differently than these other carriers.

⁵ GRTA cites to Hartwell First United Methodist Church – Adverse Aban. & Discontinuance – The Great Walton R.R., in Hart County, GA, AB 1242 (STB served June 2, 2017) to argue that MR lacks any legal interest. In Hartwell First, GWRC filed a petition for reconsideration after the waiver of the filing fee was already decided. Here, MR’s April 15 Comments are distinguishable from GWRC’s petition for reconsideration because MR filed *before* a decision on the waiver has been made. Further, MR’s opposition to GRTA’s request is focused on the language and scope of 49 C.F.R. § 1002(e)(1) rather than the fee itself and granting GRTA’s request could set bad precedent for future entities to try and loophole the filing fee requirements.

⁶ GRTA has failed to meet the standard under 49 C.F.R. § 1104.8, as nothing within MR’s April 15 Comments is “redundant, irrelevant, immaterial, impertinent or scandalous.” GRTA has offered no concrete support that MR has violated 1104.8 and indeed does not even reference the pertinent regulation in the GRTA Reply requesting the MR April 15 Comments be stricken from the record.

⁷ State Agency Listing | www.ca.gov, <https://www.ca.gov/agenciesall/#g> (accessed April 20, 2024).

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Organizations in California.”⁸ A list of trail resources in California seems relevant to a discussion of a trail organization in California.

For the reasons stated above, MR's April 15 comments were proper and should not be stricken from the record. MR's comments and this reply show that GRTA should not be entitled to a fee waiver, as they are acting outside the scope of a mere public agency. GRTA is a common carrier by railroad in the same manner as it was when it was called the North Coast Railroad Authority. GRTA has failed to differentiate GRTA and NCRA such that GRTA would qualify as a public agency when the Board found NCRA outside the scope of the waiver. As such, MR reiterates its comment to oppose GRTA's request to waive the filing fee for its adverse abandonment application.

Respectfully submitted,

/s/ William A. Mullins

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cc: Parties of Record

⁸ [Resources by State - American Trails](https://www.americantrails.org/state-resources?state=california), <https://www.americantrails.org/state-resources?state=california> (accessed April 20, 2024).