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June 17, 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

ENTERED
Office of Proceedings
June 17, 2024
Part of
Public Record

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

Dear Ms. Brown:

On behalf of Mendocino Railway (“MRY”), please find enclosed a Motion to Strike certain passages from the Great Redwood Trail Agency (“GRTA”) Application for Adverse Abandonment, filed in the above-referenced proceeding on April 12, 2024. Concurrent with this Motion to Strike, MRY is submitting MRY’s Protest and Comments to the GRTA Application for Adverse Abandonment.

Copies of the Motion to Strike are being served on all parties of record in accordance with the Board’s regulations. Should there be any questions concerning this e-filing, please contact me by telephone (202-663-7823) or by email at wmullins@mullinslawgroup.net. If I am unavailable, you may contact John V. Edwards at (202) 663-7853 or by e-mail at jedwards@mullinslawgroup.net.

Respectfully submitted,

/s/ **William A. Mullins**

William A. Mullins
Counsel for Mendocino Railway

Enclosures

cc: Parties of Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. AB-1305 (Sub-No. 1)

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

MOTION TO STRIKE

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June 17, 2024

On April 12, 2024, the Great Redwood Trail Agency (“GRTA/NCRA”)¹ filed with the U.S. Surface Transportation Board (“STB” or “Board”) an Application for Adverse Abandonment (“Adverse Application”) pursuant to 49 U.S.C. Section 10903(d) and 49 C.F.R. Section 1152.22. GRTA/NCRA seeks adverse abandonment of a line of railroad owned by Mendocino Railway (sometimes referred to as “MRY” or “MR”) that extends between Milepost 0 at Fort Bragg and Milepost 40 at Willits, CA, lying in Mendocino County, CA (the “Mendocino Line” or the “MR Line”). The Mendocino Line connects with a portion of a line currently owned by GRTA/NCRA (the “Middle Segment”) and, through that GRTA/NCRA Middle Segment and otherwise (transload and trail), to the rest of the interstate freight rail system. GRTA/NCRA desires the Mendocino Line to be abandoned to facilitate an abandonment of the GRTA/NCRA Middle Segment so that, together with an already railbanked northern segment (the “Northern Segment”), GRTA/NCRA can create a 307-mile rail-to-trail project (the “Great Redwood Trail” or “GRT”) without the possibility of freight service ever returning. Successfully forcing an abandonment of the Mendocino Line, (incorrectly) according to GRTA/NCRA, is a necessary prerequisite for GRTA/NCRA to abandon the Middle Segment. MRY opposes the Adverse Application of GRTA/NCRA to force an adverse abandonment of MRY’s active rail line.

In the course of its Adverse Application, however, GRTA/NCRA makes several unnecessary and pejorative statements concerning MRY, essentially arguing that it is in the public interest to remove the Board’s jurisdiction from the Mendocino Line so that MRY will, in turn, no longer be a rail carrier, all in the interest of the greater public good. If the Board does not remove its

¹ The Great Redwood Trail Authority is “the reorganized continuation of the same legal entity NCRA” (referring to the North Coast Railroad Authority (“NCRA”)), Adverse Application at 6. Many of the decisions and actions discussed in the adverse abandonment application are attributable to the period of time when the Great Redwood Trail Authority was called the North Coast Railroad Authority, and as such MRY will refer to it as “GRTA/NCRA”, given that the decisions and actions are attributable to the organization no matter what it is or was then called.

jurisdiction over the Mendocino Line, according to GRTA/NCRA, MRY will retain its status as a short line common carrier under the Board’s jurisdiction, and the Board will be responsible for the inevitable horrible result: “the short line industry will be overrun by scofflaws and ne’er-do-wells seeking to take advantage of their federal preemption powers at every turn.”²

MRY details a number of very pejorative statements, together with materials cited as giving evidence to those statements, none of which are relevant to the actual legal issues to be decided upon by the Board in this proceeding. The statements and materials supporting those statements found in the GRTA/NCRA Application for Adverse Abandonment do not address any cognizable legal standard to be applied by the Board in this proceeding, and are otherwise inappropriate for a pleading submitted for the Board to consider in this particular proceeding. As a result, MRY moves to strike the offensive material.

INTRODUCTION AND BACKGROUND

A. Prior Related STB Actions

On March 9, 2021, GRTA/NCRA, under its then moniker of the North Coast Railroad Authority, filed with the STB environmental materials and other background information that would normally be a precursor to an abandonment proceeding pursuant to 49 C.F.R. 1152.50 (two-year out-of-service abandonment exemption), materials which specifically identified the GRTA/NCRA Northern Segment between Willits, CA (MP 139.5) and Eureka (approximately MP 284.1), together with a number of branches off the GRTA/NCRA Northern Segment. The materials specifically stated the intent of GRTA/NCRA to place the line into a railbank pursuant to 16 U.S.C. 1247(d)

² Adverse Application at 49.

“for interim rail use subject to rail reactivation”.³ On May 14, 2021, GRTA/NCRA filed a Notice of Exemption for Abandonment and Railbanking, together with a statement of willingness to assume financial responsibility pursuant to 49 C.F.R. 1152.29 and 16 U.S.C. 1247(d) seeking the issuance of a Notice of Interim Trail Use (“NITU”) for the GRTA/NCRA Northern Segment. Mendocino Railway filed an Offer of Financial Assistance (“OFA”) with regard to a portion of the GRTA/NCRA Northern Segment, which OFA was rejected by a decision that the STB served on October 20, 2022. Less than a week later, GRTA/NCRA, under its new GRTA name, announced that it had executed an interim trail use agreement, essentially with itself, and filed a notice with the Board that it had consummated the intended interim trail use/railbanking authority, notwithstanding its enunciated intent to move “away from railroad operations” over this now railbanked line.⁴ That action effectively retained the Board’s jurisdiction over the GRTA/NCRA Northern Segment, with the Board’s jurisdiction acting as a shield against the effects of state law and protecting the various rail easements over that segment from expiring, thus retaining the continuity of the planned trail.

B. The Current Action and the Relevance of the Prior Action to the Current Proceeding

Just four months after informing the Board that it had entered into an interim trail use/rail banking agreement (with GRTA/NCRA on both sides of that agreement) effectively safeguarding

³ Environmental Materials (Document 30360) submitted March 9, 2021, in North Coast Railroad Authority – Abandonment Exemption – in Mendocino, Trinity and Humboldt Counties, CA, STB Docket No. AB 1305, (“GRTA/NCRA Northern Segment Abandonment”) at 1.

⁴ See, “GRTA Reply Letter in Opposition to MR Letter Opposing GRTA’s Request for Waiver of the Filing Fee,” dated April 19, 2024 and filed in the instant proceeding, STB Docket No. AB-1305 (Sub-No. 1), at page 2, note 2 (noting that “NCRA became GRTA in part to implement a “new use policy for this [GRTA/NCRA Northern Segment] railroad policy *away from railroad operations and towards tourism and ecotourism*”) (emphasis added). Essentially, GRTA/NCRA is informing the Board that its claims in the Northern Segment proceeding that it was railbanking the line for potential future freight use was solely for the purpose of maintaining the segment within the jurisdiction of the STB to protect it, not for future freight service, but in order to keep STB freight common carrier jurisdiction as a shield to protect the GRTA/NCRA Northern Segment against the effects of state law.

its Northern Segment, GRTA/NCRA initiated the instant adverse abandonment proceedings with regard to the Mendocino Line. Notwithstanding and contrary to its claims in the GRTA/NCRA Northern Segment proceeding that it desired to railbank the Northern Segment for potential future rail use,⁵ the GRTA/NCRA motivations for initiating the Mendocino Line adverse abandonment proceedings are plainly stated, summed up by the STB as follows:

[GRTA/NCRA] states that, although there is no realistic prospect for rail traffic on the Middle Portion [the GRTA/NCRA Middle Segment to which the Mendocino Railway Line is connected], it cannot currently seek abandonment authority because abandoning the Middle Portion would ‘strand,’ or disconnect from the interstate rail network, a rail line owned by MR (the MR Line). (Pet. 7 (citing R.J. Corman R.R. Prop. – Aban. Exemption – in Scott, Campbell, & Anderson Cntys., Tenn., AB 1296X, slip op. at 3 (STB served Nov. 17, 2022)) (‘It is well settled that so long as there is a common carrier obligation attached to a particular segment of track, the Board will not allow that segment to become isolated from the rail system as a result of the abandonment of the adjoining segment.’)).⁶

GRTA/NCRA clearly states its eventual endgame. By removing the Mendocino Line from the interstate freight rail network, GRTA/NCRA believes that it would then be free to seek abandonment of the Middle Segment. Because GRTA/NCRA is on both sides of the interim trail use/railbanking condition on the Northern Segment, abandonment of the Middle Segment enable

⁵ Statement of Willingness, Consent to Negotiate, and Request for Expedited issuance of a Notice of Interim Trail Use (Document No. 302344), filed May 14, 2021, in the GRTA/NCRA North Coast Abandonment at 2.

⁶ Great Redwood Trail Agency – Adverse Abandonment – Mendocino Railway in Mendocino County, CAL., AB 1305 (Sub-No. 1) (STB served August 21, 2023) (“Adverse Abandonment Exemption Decision”), slip op. at 2. See also, Great Redwood Trail Agency – Adverse Abandonment – Mendocino Railway in Mendocino County, CAL., AB 1305 (Sub-No. 1) (STB served May 2, 2024) (“Adverse Abandonment Notice Decision”), slip op. at 2 (“GRTA explains that it is seeking adverse abandonment [of the Mendocino Line] to support the transformation of a connecting 307-mile rail line (the GRTA Line) into a trail. According to the application, under California law, GRTA must seek abandonment of the GRTA Line and seek railbanking thereon. Without the abandonment of the [Mendocino] Line, GRTA states that it would be prohibited from seeking abandonment of a portion of the GRTA Line because such action would leave the Line stranded from the interstate rail network.”).

GRTA/NCRA to further a Great Redwood Trail (both the Middle Segment and the Northern Segment) with no potential for freight rail involvement over either, now or in the future.⁷

SUMMARY OF ARGUMENT

This proceeding is an adverse abandonment proceeding. The primary proponent party (GRTA/NCRA) is seeking abandonment of the Mendocino Line against the desires of MRY, the Mendocino Line's owner and operator. The primary question in an adverse abandonment is whether the public convenience and necessity ("PN&C") requires or permits the proposed abandonment. To determine this, the Board performs a balance of interest test to determine whether there is a Congressional and federal interest in the continuation of freight rail (in this case, there is) and, if there is, whether any valid other interest outweighs that interest (in this case, no other valid interest does). The venom that GRTA/NCRA spews forth in its Adverse Abandonment Application is both inappropriate in tone, and not relevant in substance, and therefore should be stricken from the record.

There clearly are appropriate legal and factual arguments that can and should be made on both sides of the adverse abandonment issue. And GRTA/NCRA makes those legal and factual arguments (although, as is shown in MRY's Protest and Comments to the GRTA Application for Adverse Abandonment ("MRY Protest"), those legal and factual arguments do not meet the standards required for the grant of adverse abandonment). GRTA/NCRA essentially argues that

⁷ GRTA/NCRA is careful not to fully effectuate an abandonment on its Northern Segment. To do so create a problem because that would terminate the Board's jurisdiction over that Northern Segment. The Board has heard a lot in this proceeding about the Board's jurisdiction being used as a "shield" and how bad that is, but with regard to the GRTA/NCRA Northern Segment, GRTA/NCRA is using the Board's jurisdiction over that Northern Segment as a shield against the effects of state law on that Northern Segment, preventing sections of the Northern Segments from reverting back to the ownership of others. Because GRTA/NCRA is on both sides of the interim trail use/rail banking agreement, GRTA/NCRA is able to use the ensure that the STB's shield against the imposition of state law will never be removed as to the Northern Segment, while at the same time ensuring that freight rail service is never restored.

adverse abandonment is appropriate as to the Mendocino Line because, using the balance of interests test, the balance tips in favor of the Board granting its adverse abandonment application to permit GRTA/NCRA to more easily effectuate an abandonment its own Middle Segment. In its Response, MRY clearly demonstrates that, again using the balance of interests test, the balance tips the other way.

But GRTA/NCRA does not stick to the legal standards cognizable by the Board. It and its consultants and affiants go on to characterize MRY as a nefarious bad actor that will lie, cheat and steal to get what it wants, and that as a bad actor MRY is not fit to be covered by the legal protections normally associated with being a rail carrier subject to the jurisdiction of the Board. Even if MRY was nefarious bad actor (it is not) that lies, cheats and steals to get what it wants (it does not), that is not a legally cognizable reason for removing a rail line from the jurisdiction of the Board.

Pursuant to its regulations, the Board may strike any irrelevant material.⁸ It may strike any impertinent or scandalous material.⁹ The Board must do so here. It is not sufficient for the Board to simply permit the material submitted to be “ignored” or otherwise not to be considered by the Board. GRTA/NCRA has already demonstrated the extent to which other state and federal tribunals’ decisions and actions are used by itself and others in an inappropriate manner. The Board should not permit the STB’s processes and procedures to be hijacked in this manner. By introducing (mis)characterizations of MRY into this proceeding, notwithstanding the fact that these mischaracterizations are irrelevant to the proceeding before it, GRTA/NCRA may believe that MRY will be forced to defend itself against these otherwise not relevant attacks, shifting the

⁸ 49 CFR 1104.8.

⁹ Id.

argument from the legal and factual issues that must form the basis of the Board’s analysis and decisions.

MRY does not agree to be drawn into relitigating before the Board several state law proceedings (some of which are still active) selectively advanced by GRTA/NCRA and its consultants and affiants. To do so would involve an extraordinary effort to ensure that MRY is able to not only protect itself before the Board, but more so in order to prevent the parties in those state law proceedings (none of which parties is GRTA/NCRA, although there are interesting back-ground associations among the parties therewith¹⁰) from misusing the STB’s actions in this proceeding to unfairly advancing their undisclosed actions in other tribunals.

¹⁰ For example, Caryl Hart is on the Board of Directors and formerly the chair of GRTA/NCRA. See <https://thegreatredwoodtrail.org/board-of-directors/> (currently on the Board of Directors) and <https://thegreatredwoodtrail.org/wp-content/uploads/2024/01/Final-Minutes-November-9-2023.pdf> (formerly chair of the Board in 2023). Caryl Hart also currently is the chair of the Board of Directors of the California Coastal Commission. See <https://www.coastal.ca.gov/roster.html>. The California Coastal Commission is an active participant in one of the proceedings that has been raised by GRTA/NCRA as somehow relevant to the adverse abandonment proceedings. See Exhibit N to the Adverse Application (attaching a Minute Order Granting California Coastal Commission’s Motion for Leave of Court to Intervene, in Case No. 21CV00850, City of Fort Bragg vs Mendocino Railways). That independent proceeding appears repeatedly in the GRTA/NCRA adverse abandonment application (see, e.g., Exhibit L, Ruling on Demurrer to the Complaint, filed April 28, 2022; Exhibit M, Mendocino Railway v. Superior Court for the County of Mendocino, Case No. A165104, filed June 9, 2022; Exhibit O, Order Granting Motions to Dismiss, Case No. 22-cv-04597-JST, Mendocino Railway, v. Jack Ainsworth, et al. (including the City of Fort Bragg and the California Coastal Commission), filed May 12, 2023; Exhibit 10, Verified Complaint for Declaratory and Injunctive Relief, case No. 21CV00850, City of Fort Bragg v. Mendocino Railway, filed October 28, 2021; and Exhibit 11, Ruling on Demurrer to the Complaint, filed on April 28, 2022;), without GRTA/NCRA bringing the relationship membership (GRTA/NCRA and California Coastal Commission) to the attention of the Board. The California Coastal Commission, with Caryl Hart’s active involvement, supported the GRTA/NCRA Motion for exemption from Offers of Financial Assistance in the abandonment proceeding involving the GRTA Northern Segment. See “Reply of California Coastal Commission in Support of North Coast Railroad Authority’s Request for Exemption from Offers of Financial Assistance”, submitted December 15, 2021, in North Coast Railroad Authority – Abandonment Exemption – in Mendocino, Trinity, and Humboldt Counties, CA, STB Docket No. 1305X (arguing that there is no continuing need for freight rail service over the GRTA/NCRA Northern Segment because GRTA/NCRA has had the line under embargo for decades, and for that reason MRY’s interest in re-establishing freight rail service is not relevant).

The materials sought to be stricken have been submitted in support of the argument that MRY is a bad actor insofar as it is using its status as a rail carrier, operating a line of rail, in each case subject to the jurisdiction of the Board, as a “shield” against the application of state law. Depending upon the state law action, that shield is as to MRY as a rail carrier subject to the jurisdiction of the Board, or as to the Mendocino Line as a line of railroad.

It is this material that is the subject of this Motion to Strike. MRY is not a bad actor, but many of the arguments made by GRTA/NCRA, in the main Adverse Application and in its supporting exhibits and other materials, along these lines are: (1) inappropriate, (2) not a reason for supporting an abandonment under the circumstances, and, (3) even if they were, GRTA/NCRA is not the proper party to raise them.

First, and notwithstanding GRTA/NCRA’s claim to the contrary, the question of whether the Board’s jurisdiction is a shield to the application of state law most certainly is *not* the primary issue for the Board to decide in a PN&C test, nor is it even an integral part of the test itself. Certainly the Board is often presented with cases where the Board’s jurisdiction is a shield against the application of state law to a particular rail carrier or a particular line of railroad, but *neither* is the case here.

Second, GRTA/NCRA states that it wants to get rid of the Board’s jurisdiction over the Mendocino Line not to clear the way for application of state law to the Mendocino Line but instead to clear the way for GRTA/NCRA to effectuate an abandonment over its own GRTA/NCRA Middle Segment line. And GRTA/NCRA is doing so not to remove the Board’s jurisdiction as a shield against the application of state law as to that GRTA/NCRA Middle Segment, but instead to enable GRTA/NCRA merely to remove significant sections of the Middle Segment’s track structure and ensure that rail service will never return. In effect, GRTA/NCRA explicitly is evoking the Board’s jurisdiction over the Mendocino Line is a shield to the application of *federal* law (not *state* law) over the GRTA/NCRA Middle Section (not the Mendocino Line), and GRTA/NCRA wants to

get rid of that shield. Adverse abandonment of the Mendocino Line is but a step in that process. The GRTA/NCRA adverse abandonment application has *nothing* to do with the *application of state law* to the Mendocino Line.

Finally, if the question before the Board really was whether to remove its jurisdiction over a line of rail in order to permit a particular case to proceed under state law, it is the party to the state law proceeding that should be raising the matter with the Board, not GRTA/NCRA.¹¹

Argument and evidence before the Board “must substantively address issues and arguments” that have relevance to the proceedings before the Board and at that time in the procedural process.¹² The submitted argument and evidence should not be framed as a mere pretext for submitting material that otherwise would not be appropriate.¹³

For all of the reasons cited above, the materials identified in Appendix A hereto should be stricken from the record and should not be considered by the Board in making its decision with regard to the adverse abandonment application filed by GRTA/NCRA.

ARGUMENT

The legal standard governing Board decisions in adverse abandonment proceedings is fairly clear. There is an overriding Congressional (indeed, federal) interest in protecting current and the potential for future freight rail service. That interest must be overcome in order to permit

¹¹ See, Grand Trunk Western Incorporated – Adverse Discontinuance of Trackage Rights Application – a Line of Norfolk and Western Railway Company in Cincinnati, Hamilton County, OH, AB-31 (Sub-No. 30) (STB served February 12, 1998), slip op. at 2, note 3 (noting that it was not clear as to what party was the real party of interest in the proceeding, and so asking two different parties to participate in the adverse discontinuance proceeding).

¹² Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al., FD 36500, Decision No. 24, (STB served September 13, 2022), slip op. at 3 (addressing responses to other parties’ comments).

¹³ Id. (responses to comments should not refer to those comments merely as a pretext for submitting new evidence or arguments).

abandonment. That interest can be overcome, and an adverse abandonment granted, *if and only if* the present or future public convenience and necessity require or permit the proposed abandonment. In applying this standard in an adverse abandonment context, that test is applied by the Board, first, considering whether there is a present or future public need for rail service over the line and, second, whether that need is outweighed by other interests. The Board will 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. The Board will preserve and promote continued rail service where the carrier has expressed a desire to continue operations and has taken reasonable steps to acquire traffic. The burden is on the non-carrier petitioner when the carrier opposes the abandonment, as is the case here. Generally, the Board does not permit track to which the common carrier obligation is attached to become isolated from the interstate rail network as a result of the abandonment of an adjoining segment, but the nature of that attachment varies from case to case. Finally, although the Board will not allow its jurisdiction to be used to shield the carrier from the legitimate processes of state law, that factor is not relevant to this proceeding. In its response to the adverse application by GRTA/NCRA, MRY demonstrates that abandonment is not justified here.

As GRTA/NCRA states, “[t]he standard governing abandonment, including adverse abandonment, ‘is whether the present or future [public convenience and necessity] require or permit the proposed abandonment.’”¹⁴ MRY does not disagree with that fairly broad statement, but believes that a more fulsome authority to cite for the standard involving adverse abandonment would be a

¹⁴ Adverse Application at 34 (citing The Western Stock Show Ass’n – Abandonment Exemption – In Denver, CO., AB-452 (Sub-No. IX), 1 S.T.B. 113 (served July 3, 1996)).

case from 2012 that discusses in more detail the applicable legal standard in the context of an actual adverse abandonment proceeding:¹⁵

Legal standard. Under 49 U.S.C. § 10903(d), the standard that applies to any application for authority to abandon a line of railroad is whether the present or future public convenience and necessity (PC&N) require or permit the proposed abandonment. 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. As part of our PC&N analysis, we must consider whether the proposed abandonment would have a serious, adverse impact on rural and community development. 49 U.S.C. § 10903(d). We also consider the environmental impacts of the proposed abandonment, and, pursuant to 49 U.S.C. § 10903(b)(2), we must ensure that affected rail employees will be adequately protected.

The Board has exclusive and plenary jurisdiction over rail abandonments to protect the public from an unnecessary discontinuance, cessation, interruption, or obstruction of available rail service. Accordingly, we typically preserve and promote continued rail service where a carrier has expressed a desire to continue operations and has taken reasonable steps to acquire traffic. On the other hand, we do not allow our jurisdiction to be used to shield a line from the legitimate processes of state law where no overriding federal interest exists. If we grant an adverse abandonment, our decision removes the shield of our jurisdiction, enabling the applicant to pursue other legal remedies to force the carrier off a line and sell or dispose of railroad property that would otherwise be protected as part of the national rail transportation system.

The applicant (in this case, GRTA/NCRA) has the burden of proof in the balancing test.¹⁶

That burden of proof is “to show that the carrier has no likelihood of success in preserving the line

¹⁵ Stewartstown Railroad Company – Adverse Abandonment – in York County, PA, AB-1071, Decision and Certificate of Interim Trail Use or Abandonment, STB served November 16, 2012, slip op. at 4 (footnotes omitted), subsequently dismissed and vacated, Stewartstown Railroad Company – Adverse Abandonment – in York County, PA, AB-1071, served November 14, 2013. See also, Denver & Rio Grande Railway Historical Foundation – Adverse Abandonment – in Mineral County, CO, AB-1014 (STB served May 23, 2008), (“DRGR Historical Foundation”), slip op. at 5 (“Under 49 U.S.C. 10903(d), the standard governing any application for authority to abandon a line of rail is whether the present or future public convenience and necessity (PC&N) require or permit the proposed abandonment. In applying this standard in an adverse abandonment context, we must 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.”).

¹⁶ Seminole Gulf, slip op. at 5.

for rail service.”¹⁷ This is a “heavy burden” to meet.¹⁸ In this case in the MRY Protest, MRY demonstrates that GRTA/NCRA clearly has not met that heavy burden.

In addition to the standard set forth above, it is important to note that there is an undisputable overriding Congressional (national) interest in protecting current and the potential for future freight rail service, and to preserve that whenever possible. As GRTA/NCRA once put it:¹⁹

One freight car removes 4 big rigs from Highway 101. One gallon of diesel can move 1 ton of freight over 400 miles. Trains are good for the environment, good energy policy, and good for the economy. A public/private partnership, in which the public sector invests in a rail corridor the public owns, and the private sector operates the trains and maintains the line, is a model that works throughout the United States. This Public/Private rail partnership has been touted by the Obama Administration in Washington, DC as one of the most cost-effective and efficient methods of promoting environmentally friendly goods movements throughout the United States. Rail transportation is experiencing an exciting renaissance, and the NWP rail corridor is an ideal candidate for public investment in a priceless public asset.

The STB has reiterated the importance of this overriding federal interest as recently as in the first step of this multistep Great Redwood Trail process when it cited “the strong congressional intent to preserve rail service whenever possible” as the primary reason for ensuring that an OFA takes priority over a trail use proposal.²⁰ The Board has recognized this important Congressional intent by noting that the Board has “exclusive and plenary jurisdiction over abandonments, including adverse

¹⁷ DRGR Historical Foundation, slip op. at 13.

¹⁸ Norfolk Southern Railway Company – Adverse Abandonment – St. Joseph County, IN, AB-290 (Sub-No. 286), STB served August 27, 2008, slip op. at 4, petition for reopening granted, Norfolk Southern Railway Company – Adverse Abandonment – St. Joseph County, IND, AB 290 (Sub-No. 286), served April 17, 2012 (granting the petition for adverse abandonment).

¹⁹ Responses to Frequently Asked Questions Regarding NCRA and NWP Co., December 7, 2010 Update, https://northcoastrailroad.org/Acrobat/Frequently_Asked_Questions.pdf, accessed on May 1, 2024 at 5.

²⁰ North Coast Railroad Authority – Abandonment Exemption – in Mendocino, Trinity, and Humboldt Counties, CAL., AB 1305X (STB served May 17, 2022), slip op. at 8.

abandonments, in order to protect the public from an unnecessary discontinuance, cessation, interruption, or obstruction of available rail service.”²¹

Finally, and important for this proceeding in particular, is the fact that when a carrier opposes an application for adverse abandonment of its freight common carrier obligation over its rail line, not only is there is no “character test,” the Board *will* preserve and promote continued rail service when that carrier has taken steps to acquire traffic, steps that are reasonable in the totality of circumstances it faces.

But GRTA/NCRA does not rest on legally cognizable arguments. Adverse abandonment is appropriate as to the Mendocino Line though (according to GRTA/NCRA), because MRY, the owner of that rail line, is apparently one of the “scofflaws and ne’er-do-wells” that “seek[] to take advantage of their federal preemption powers at every turn”.²² According to GRTA/NCRA, the alleged fact that MRY is a bad actor supports the argument that the question of whether removal of the Board’s jurisdictional shield over a rail line is pre-requisite or an integral part of any and all PN&C evaluations.

GRTA/NCRA claims that this character test arises out of the fact that the “‘primary question’ in any and all adverse abandonment cases is whether ‘removal of [the Board’s] jurisdiction as a shield against state law is in the public interest.’”²³ GRTA/NCRA is wrong.

As an initial matter, Mendocino Railway takes issue with the pejorative approach of GRTA/NCRA. This is not an approach that should be an acceptable approach with regard to legal arguments before the U.S. Surface Transportation Board. Second, GRTA/NCRA is wrong about the

²¹ Seminole Gulf Railway, L.P. North Coast Railroad Authority – Abandonment Exemption – in Mendocino, Trinity, and Humboldt Counties, CAL., AB 1305X (STB served May 17, 2022), slip op. at 8.

²² Adverse Application at 49.

²³ Adverse Application at 2.

inclusion of a character test standard as being appropriate to be applied in this or any other adverse abandonment case. There is not now, nor has there ever been, a character test for being or remaining a rail carrier subject to the Board.

GRTA/NCRA makes much of certain actions allegedly performed by MRY with regard to the City of Fort Bragg, a former Georgia Pacific mill site, and others. GRTA/NCRA essentially argues that Mendocino Railway is a “bad actor” with regard to certain matters unrelated to the standards for granting abandonment, arguing that the Board should use its independent Federal regulatory jurisdiction to prevent a bad actor from ever being able to do bad things again.²⁴ In other words, GRTA/NCRA seeks to introduce, for the first time in the history of the STB, and the ICC before it, a character test for being a rail carrier. This is not only wrong, it is ridiculous, and even if it was not, the characterization that GRTA/NCRA claims as to MRY simply does not fit reality.

First, the standards and cases cited by GRTA/NCRA in support of its argument that there should be some sort of character test are not applicable. GRTA/NCRA claims that the “‘primary question’ in an adverse abandonment case is whether ‘removal of [the Board’s] jurisdiction as a shield against state law is in the public interest.’”²⁵ That is not the primary question in adverse abandonment proceedings. Instead, “[u]nder 49 U.S.C. § 10903(d), the standard that applies to any application for authority to abandon a line of railroad is whether the present or future public convenience and necessity (PC&N) require or permit the proposed abandonment. In applying this standard in an adverse abandonment context, [the Board will] consider whether there is a present or

²⁴ See, Adverse Application at 49 (concluding that the Board should grant adverse abandonment of the Mendocino Line because if it failed to do so “the short line industry would be overrun by scofflaws and ne’er-do-wells seeking to take advantage of their federal preemption powers at every turn”).

²⁵ Adverse Application at 2.

future public need for rail service over the line and whether that need is outweighed by other interests.”²⁶

GRTA/NCRA first cites in support of its alternative standard a case in which CSXT, which owned the rail line in question, sought to retake the property that it had leased to Grand Trunk Western, a retaking that Grand Trunk Western opposed.²⁷ The case came to the STB as a result of an associated state-law court case that could not be decided by the court due to the presence of STB jurisdiction over the rail line. CSXT, the primary proponent party to the state law court proceeding and the real party in interest, was the party that brought an adverse abandonment proceeding to the STB. In that proceeding, the Board first applied a PC&N test as to whether to grant an adverse abandonment over Grand Trunk Western’s objections. That PC&N test did not involve the moral qualities of the Grand Trunk Western or its actions. That PC&N test did not involve the question of whether Federal jurisdiction was being used as a shield. Instead, that PC&N test involved an analysis of whether there was an overriding federal interest to protect. Applying PN&C test, the Board found no overriding federal interest to protect. It was *that* prerequisite finding that permitted the Board to make the statement that “[t]hus, *in this adverse abandonment proceeding*, the primary question is whether removal of our jurisdiction as a shield against state law is in the public interest.”²⁸ When GRTA/NCRA claimed, in this Mendocino Line adverse abandonment proceeding, that the primary question in *all* adverse abandonment cases is whether removal of the Board’s jurisdiction as a shield against state law is in the public interest,²⁹ GRTA/NCRA has mischaracterized the analysis the Board conducted in the CSX/Grand Trunk Western case. In doing

²⁶ Stewartstown Railroad Company, slip op. at 4 (footnotes omitted).

²⁷ CSX Corp. & CSX Transp., Inc. – Adverse Abandonment Application – Canadian Nat’l Ry. Co., & Grand Trunk W. R.R. Inc., STB Docket No. AB-31 (Sub-No. 38) (STB served Feb. 1, 2002).

²⁸ Id., slip op. at 6 (emphasis added).

²⁹ Adverse Application at 2.

so, GRTA/NCRA seems to seek either to (1) introduce a character test that the Board did not enunciate or (2) elevate the question to being a prerequisite or an integral part of the PN&C test. There is no character test to being a rail carrier subject to the jurisdiction of the Board and the question of whether the Board's jurisdiction is acting as a shield to the application of state law in a particular case does not make it a prerequisite or integral part of each and every application of the PN&C test.

The second case that GRTA/NCRA cites for the proposition that the “primary question’ in an adverse abandonment case is whether ‘removal of [the Board’s] jurisdiction as a shield against state law is in the public interest’” is Modern Handicraft.³⁰ But again that case, adjudicated by the ICC before the more modern precedent, simply does not stand for the introduction of a character test in the ownership or operation of a rail line, and it does not stand for the proposition that the question of involvement of Federal jurisdiction in a state law proceeding is either a prerequisite for or an integral part of the PN&C test. Instead, it speaks significantly as to the development of a “adverse abandonment” under the STB as opposed to an “abandonment” under the ICC. In the Modern Handicraft case, the ICC specifically noted that, under precedent governing at that time, “the grant of an abandonment application is permissive and the railroad can choose not to surrender its common carrier status and obligation....”³¹ The ICC specifically determined that “the present and future public convenience and necessity permits abandonment by Freight Operation of its entire line of railroad in Kansas City, MO,” and thus granted the abandonment application.³² Because the actual exercise of abandonment authority in that proceeding was not certain, the ICC was forced to take one further step, and so instructed the primary parties to that proceeding (the parties of interest

³⁰ Modern Handicraft, Inc. – Abandonment in Jackson Cty., MO, 363 I.C.C. 969 (1981).

³¹ Id., at 8.

³² Id., at 11.

in the state law proceeding who subsequently brought the case to the ICC) that “[s]hould an issue involving this property arise before any Missouri court, [the ICC] jurisdiction should not be seen as an impediment to the disposition of the property.”³³

GRTA/NCRA cites the decision in Stewartstown R.R. Company,³⁴ but that case simply does not stand for the proposition that *the* primary question in an adverse abandonment proceeding is whether removal of the Board’s jurisdiction as a shield against state law is in the public interest. Instead, the Board, “[a]fter weighing the various competing interests” and applying the PN&C test in a proceeding brought to the Board by the parties of interest in the state law proceeding, the Board determined that “the present or future public convenience and necessity both require and permit the proposed abandonment,” and that therefore “it is appropriate to remove the Board’s jurisdiction so that the Estate can pursue all legal remedies to obtain the money that it is owed.”³⁵

The cases cited by GRTA/NCRA are each (1) brought by parties of interest in the associated state law proceeding, and (2) deal specifically with the application of state law to a regulated carrier or its regulated line and the question of whether the preemptive effect of the Board’s jurisdiction should form a shield to the application of state law in those particular state law proceedings.³⁶ That

³³ Id., at 9.

³⁴ Stewartstown Railroad Company – Adverse Abandonment – in York County, PA, AB-1071, Decision and Certificate of Interim Trail Use or Abandonment (STB served November 16, 2012), slip op. at 4 (footnotes omitted), subsequently dismissed and vacated, Stewartstown Railroad Company – Adverse Abandonment – in York County, PA, AB-1071 (STB served November 14, 2013), cited by GRTA/NCRA in its Application at 47.

³⁵ Stewartstown R.R. Company, slip op. at 3. See also, New York City Economic Development Corporation – Adverse Abandonment – New York Cross Harbor Railroad, in Brooklyn, NY, AB-596, STB served May 12, 2003), slip op. at 6 (noting that a decision granting an adverse abandonment is a prerequisite to the removal of the Board’s jurisdiction, which can enable the legitimate processes of state law to act, but only if there is no overriding Federal interest).

³⁶ See, e.g., Eastside Community Rail, LLC – Acquisition and Operation Exemption – GNP RLY Inc., FD 35730, et al., STB served April 24, 2023, slip op. at 4 (“the Board has consistently held that disputes concerning state contract and property law should be decided by appropriate courts with expertise in those matters, not by the Board”).

is not the case here, where (1) GRTA/NCRA is not a party of interest in any of the state law proceedings cited and (2) where GRTA/NCRA specifically states its motive in other terms – specifically representing to the Board that it believes that, under *federal* law, STB jurisdiction over the Mendocino Line would prevent GRTA/NCRA from being able to abandon its own rail line, and so is seeking abandonment of the Mendocino Line to prevent that application of *federal* law.

For some reason, GRTA/NCRA adds into its citation reference to a case involving a line in Minnesota for the same proposition – that the “primary question” in adverse abandonment proceedings is whether the removal of the Board’s jurisdiction as a shield against state law is in the public interest.³⁷ In that case there was no need for a weighing of interests inherent in the PN&C test because nobody opposed the proposed abandonment.³⁸ GRTA/NCRA cites the case as one that reinforces a specific legal standard to be applied in this proceeding, but in reality that particular STB decision GRTA/NCRA cites simply reiterates a legal standard even though not all of the elements of that legal standard were relevant to that proceeding.

Whether STB jurisdiction can pose a “shield” against the application of certain state law is without question. It can. MRY will not succumb to the urge to cite a litany of dozens of cases for each (rather than just a single case for each) of declaratory order³⁹ or adverse abandonment proceedings,⁴⁰ because the STB are familiar with them. Suffice it to say that at times STB

³⁷ Adverse Application at 2, note 2 (citing Minnesota Commercial Railway Co. – Adverse Discontinuance – in Ramsey County, MN, AB-882, et al., served July 16, 2008, slip op. at 3.

³⁸ Id., slip op. at 4.

³⁹ See, e.g., New York City Economic Development Corporation on Behalf of the City of New York – Petition for Declaratory Order, FD 36467 (STB served June 11, 2021) slip op. at 3 (declining to determine whether the tracks at issue were abandoned due to the Board’s determination that the tracks in question were excepted tracks).

⁴⁰ See, e.g., Norfolk Southern Railway Company—Adverse Abandonment—St. Joseph County, IN, AB-290 (Sub-No. 286), slip op. at 5 (STB served Feb. 14, 2008), *aff’d*, *City of South Bend v. STB*, 566 F.3d 1166, 1169-70 (D.C. Cir. 2009) (adverse abandonment application denied in part on

jurisdiction serves as a shield against the application of state law, and often appropriately so. And the simple fact is that STB jurisdiction being a shield against the application of a certain state law in a particular state law proceeding sometimes gives rise to an adverse abandonment proceeding, inevitably and necessarily by the party of interest in the state law proceeding.⁴¹ Sometimes the Board's jurisdiction is appropriate to be used as a shield against application of state law as to either a rail common carrier or to a line of railroad subject to the jurisdiction of the Board. But that is a preemption issue that can be adjudicated in an adverse abandonment proceeding or in a declaratory judgment action, in each case to be determined in a different type of proceeding (not an adverse abandonment proceeding), again brought by the *party in interest* and involving the underlying facts and circumstances reviewed in light of the preemption issue posed.

While the Board's jurisdiction may form the impetus for the submission of an adverse abandonment proceeding as an outgrowth of a specific court matter, it is not either the "primary" question to be applied by the Board in *all* adverse abandonment proceedings, nor is it part of the PN&C test that is applied by the Board. It most certainly it is not the character test to be used to prevent "the short line industry [from being] overrun by scofflaws and ne'er-do-wells seeking to take advantage of the federal preemption powers at every turn."⁴² Finally, it has no role in applying a PN&C test in determining whether GRTA/NCRA can remove STB jurisdiction over the Mendocino Line, because GRTA/NCRA has informed the Board that it is bringing this action so that GRTA/NCRA can remove an obstacle to GRTA/NCRA's own abandonment over the rail line

grounds that, despite city's desire to condemn rail lines for use as storm sewer, line had potential to be rehabilitated and rail operations restored within a reasonable amount of time).

⁴¹ Sometimes, though, the impetus for an adverse abandonment application is something else, as is it clearly is in this Mendocino Line adverse abandonment proceeding, and as is enunciated by GRTA/NCRA itself.

⁴² Adverse Application at 49.

that GRTA/NCRA owns and operates,⁴³ not so that GRTA/NCRA can remove an obstacle to the application of state law that otherwise would be impossible in the absence of the “shield” of STB jurisdiction.

Argument and evidence before the Board “must substantively address issues and arguments” that has relevance to the proceedings before the Board and at that time in the procedural process.⁴⁴ The submitted argument and evidence should not be framed as a mere pretext for submitting material that otherwise would not be appropriate.⁴⁵ The Board may strike any redundant, irrelevant, impertinent, or scandalous material.⁴⁶ The Board will strike material that is not relevant to the legal standards that it is charged to apply.

As is demonstrated above, GRTA/NCRA advances certain arguments and the evidence submitted in support of those arguments, listed in Appendix A hereto, that are not only not relevant to the proceeding and the legal standards to be applied, but unnecessarily pejorative and inappropriate for proceedings before the Board.⁴⁷

⁴³ See, e.g., the Environmental and Historic Report submitted and appearing as Exhibit 3 to the Application at 19-20 (“GRTA’s adverse abandonment application seeks elimination of MR’s federal interest in the MR Line so that it can proceed to railbank the remainder of its own GRTA Line from mile post 139.5 in Willits to the terminus of its control near Cloverdale, California, to comply with its legislative mandate.” But see, id. at 20 (“It also seeks to stop MR from using its common carrier status as a tool to take land through eminent domain and to avoid state and local regulation under the guise of seeking to operate interstate freight rail service on a line that has not connected to the interstate rail network since 1998.”))

⁴⁴ Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al., FD 36500, Decision No. 24, served September 13, 2022, slip op. at 3 (addressing responses to other parties’ comments).

⁴⁵ Id. (responses to comments should not refer to those comments merely as a pretext for submitting new evidence or arguments).

⁴⁶ 49 CFR 1104.8.

⁴⁷ GRTA/NCRA repeatedly tries to tie the issues in this case to the moniker the “Skunk Train.” While it may seem somewhat unusual for a passenger train to lay claim to that name, in this case it reflects a long and storied history. “The nickname ‘Skunk’ originated in 1925, when motorcars were introduced (today sometimes referred to as railbuses or railcruisers). These single unit, self-propelled motorcars had gasoline-powered engines for power and pot-bellied stoves burning crude

These items are included to bolster the argument that MRY is a bad actor with regard to certain matters unrelated to the standards for granting abandonment. GRTA/NCRA was not a party of interest to any of the state law proceedings involved, but notwithstanding that fact, GRTA/NCRA is advancing the proposition that granting the abandonment will put an end to MRY's ability ever in the future to engage in such actions and that this purpose is somehow appropriate for the Board to consider in its PN&C analysis. It is not. It would be inappropriate for the STB to grant an adverse abandonment based upon these allegations. MRY moves to have these allegation paragraphs stricken from the GRTA/NCRA Adverse Abandonment Application.

To permit the material identified in Appendix A to remain on the record of this proceeding would additionally impermissibly shift the burden of proof in this proceeding to MRY. GRTA/NCRA has introduced several selective filings and decisions from state law proceedings not before the Board and otherwise not in the record. GRTA/NCRA is not a party to those state law proceedings. Permitting the admission of the material cited as proof of the underlying facts would not comport with the Board's process and procedures.

Simply letting the material remain on the record but somehow disregarding it as "improper" or otherwise would not suffice. Because it was on the record in the STB proceeding, that fact (and any characterization thereof) could be used by the other parties to those state law proceedings to then use that in their proceedings. In order to protect itself, MRY would be obligated to nevertheless describe and set forth the underlying facts, procedures, and state law provisions pursuant to which the actions were/are being taken. It would require MRY to not only set forth the same from its own

oil to keep the passengers warm. The combination of fumes created a very pungent odor, and the old timers living along the line said these motorcars were like skunks, 'You could smell them before you could see them.' Although the smell is now much reduced, we still like to think of ourselves as that little Skunk running through the redwoods." <https://www.skunktrain.com/about/>, accessed on May 1, 2024. If GRTA/NCRA desires to refer to both the MRY freight and passenger operations by the name "Skunk Train", MRY will not object, but notes for the record that MRY views the name in light of the long and storied history of services provided over the line.

perspective, but also the perspective of the parties that stand on the other side of the proceedings (the real parties of interest in the state law proceedings). In essence, not striking the material would effectively deprive MRY of its procedural due process rights both in these proceedings and the state law proceedings that are referenced.

MRY, in the firm belief that the Board will determine that there is no character test as part of the PC&N test, and that the material submitted in support of the same and in support of a claim that there is some state law shield question that is part of this particular adverse abandonment proceeding, declines to succumb to the invitation of GRTA/NCRA to litigate the question of whether it – Mendocino Railway – is a bad actor with regard to state law proceedings and cases that are not the subject of GRTA/NCRA’s adverse abandonment case. Argument and evidence before the Board must substantively address issues and arguments that have relevance to the proceedings before the Board, and the material sought to be stricken does not.

CONCLUSION

As shown above, there is no appropriate purpose for labeling MRY as a “scofflaw” and “nar-do-well” that engages in “fabrications” and other “nefarious” actions, making MRY a bad actor, and asserting that the Board has the right, pursuant to its legislative mandate and governing Congressional enactments, to remove a line of railroad from the national rail system in order to affect the legal status of its owner and operator.

APPENDIX A

MRY hereby moves to strike the following material from the GRTA/NCRA Adverse

Abandonment Application:

- The carry-over paragraph beginning on page 3 of the Adverse Application (implying a character test by referring to “MR’s own recent conduct” as being “further evidence as to why it is in the public interest for the Board to remove the shield of its jurisdiction” from the Mendocino Line, and further arguing that MRY’s actions are an “abuse of the STB’s preemption powers” and that MRY’s “nefarious” actions have “wreaked havoc ... by misusing its powers as a railroad”).
- The statement on page 16 of the Adverse Application that reads as follows:
“Moreover, as noted herein, MR, as a rail carrier subject to the Board’s jurisdiction, is improperly interfering with local and state land use and safety policies, as well as creating environmental concerns on the MR Line.”
- The statement on page 40 of the Adverse Application that reads as follows: “Second, removal of the MR Line from the shield of federal rail protection will put an end to ongoing tactics by MR of improperly using its status as a common carrier to avoid state and local regulation and to acquire land improperly through eminent domain.”
- The entire argument beginning on page 42 of the Adverse Application entitled:
“Abandonment of the MR Line will put an end to ongoing tactics by MR of using its status as a common carrier to void state and local regulation,” and concluding with the statement on page 49 that should the Board not grant adverse abandonment will

permit “the short line rail industry [to] be overrun by scofflaws and ne’er-do-wells seeking to take advantage of their federal preemption powers at every turn.”⁴⁸

- Footnote 31 on page 27 of the Adverse Application (asserting that Federal jurisdiction over the Mendocino Line should be removed to permit non-railroads to maintain rail culverts).
- The paragraph appearing on page 19 accompanying footnote 14 of the Environmental and Historic Report submitted and appearing as Exhibit 3 to the Adverse Application to the effect that Mendocino Railways is misusing its common carrier status.
- The sentence appearing at the top in the carry over paragraph on page 20 of the Environmental and Historic Report claiming that one of the reasons GRTA/NCRA has filed an adverse abandonment application is to prevent MRY from being a bad actor.
- Exhibit F to the Adverse Application (Cleanup and Abatement and 13267 Order No. R1-2016-0036).
- The final sentence on page 3 and the entirety of page 4 of the Feasibility & Market Analysis of Rail Freight Service in the Fort Bragg, Willits & Cloverdale Corridor, dated March 6, 2023, appearing as Exhibit H to the Adverse Application (as well as the same appears in Appendix A to the Verified Statement of Marie Jones)

⁴⁸ Moreover, the pejorative nature of the arguments of GRTA/NCRA in support of removing the Mendocino Line from the jurisdiction of the Board as that reflected in this section (for example, that “[a]bandonment will diminish the risk of further environmental harm on the MR Line,” Adverse Application at 45) is in direct contradiction to many statements made in the Environmental and Historic Report submitted and appearing as Exhibit 3 to the Adverse Application. See, e.g., at page 10 (“Abandonment would not result in ... any other effect on public health or safety”), and page 11 (“[t]he abandonment therefore will not result in water quality impacts and will be consistent with applicable water quality standards”).

(irrelevant material ascribing nefarious intentions as to a number of actions of MRY, including in seeking federal funds for the purpose of repair of Tunnel No. 1, in a verified statement purportedly of a disinterested expert to explore the potential market analysis for freight rail options on the Mendocino Line).

- The final sentence on page 8 characterizing MRY as having lied on federal grant applications, as well as the statement on page 10 characterizing some submissions on federal grant applications as “fabrications”.
- The second paragraph on page 13 of the aforementioned Feasibility & Market Analysis of Freight Rail Service in the Fort Bragg, Willits & Cloverdale Corridor (as well as it appears as Appendix A to the Verified Statement of Marie Jones) (claiming, in a point completely irrelevant to the asserted purpose of performing a market analysis, that “[o]ne could speculate” as to the bad intents of MRY’s publication of freight rail tariffs, and commenting on the author’s belief as to why MRY may have not received a grant in past competitive BUILD grant applications).
- The final sentence in the first paragraph of the Conclusion to the aforementioned Feasibility & Market Analysis, appearing on page 24 thereof, together with the rest of page 24 and page 25 (as well as the same appears as Appendix A to the Verified Statement of Marie Jones) (ascribing further nefarious motivations to activities of MRY, not relevant to a market analysis but charging MRY with regard to issues involving the City of Fort Bragg, with misleading federal officials with regard to federal grant funding, self-dealing and other supposed bad actions).
- Exhibit K to the Adverse Application (consisting of a Stipulation re: Settlement, Judgment and Final Order of Condemnation in the case Mendocino Railway v. Georgia-Pacific LLC, et al., Case No. 21CV00595, Superior Court of the State of

California for the County of Mendocino, filed November 17, 2021) (stipulation and permitting an MRY state law condemnation action to proceed).

- Exhibit L to the Application (consisting of a Ruling on Demurrer to the Complaint of the City of Fort Bragg v. Mendocino Railways, et al., Case No. 21CV00850, Superior Court of California, County of Mendocino, Ten Mile Branch, filed April 28, 2022 (determining, for the purposes of the motion to dismiss under state law, that MRY’s arguments with regard to the limited nature of the subject matter jurisdiction of California Public Utilities Code and “how the operation of federal preemption that might arise pursuant to 49 U.S.C. [Section] 10501(b) on the facts of this case” may be “overly broad”).
- Exhibit M to the Adverse Application (consisting of decision in Mendocino Railway v. Superior Court for the County of Mendocino, et al., Case No. 21CV00850, Court of Appeal of the State of California, First Appellate District, Division Five, filed June 9, 2022 (dismissing a writ of review)).
- Exhibit N to the Adverse Application (consisting of a Minute Order Granting California Coastal Commission’s Motion for Leave of Court to Intervene, Case No. 21CV00850, City of Fort Bragg v. Mendocino Railway, et al., Superior Court of California County of Mendocino, Ten Mile Branch, entered October 20, 2022 (granting an unopposed motion to intervene in a state law proceeding)).
- Exhibit O to the Adverse Application (consisting of an Order Granting Motions to Dismiss, entered May 12, 2023, in the case of Mendocino Railway v. Jack Ainsworth, et al., Case No. 22-ev-04597-JST, United States District Court for the Northern District of California (dismissing an action brought by Mendocino Railway

on the grounds that the action dismissed involved the same issue as that being heard by another tribunal)).

- Exhibit 6 to the Adverse Application (consisting of a Decision after Trial, entered April 19, 2023, in the case of Mendocino Railway v. John Meyer, et al., Case No. SCU-K-CVED-2020-74939, Superior Court of California for the County of Mendocino (determining that MRY was not a public utility for the purposes of California state Public Utilities Code Section 610)).
- Exhibit 7 to the Adverse Application (consisting of a Judgment after Trial by Court, entered June 2, 2023, in the case of Mendocino Railway v. John Meyer, et al., Case No. SCU-K-CVED 20-74939, Superior Court for the County of Mendocino (entering the decision rendered and appearing in Exhibit 6 to the Adverse Application described immediately above)).
- Exhibit 10 to the Adverse Application (consisting of a Verified Complaint for Declaratory and Injunctive Relief, filed October 28, 2021, in the case of City of Fort Bragg v. Mendocino Railway, et al., Case No. 21CV00850, Superior Court of the State of California, County of Mendocino (concerning MRY's status as a public utility pursuant to California Code of Civil Procedure section 1060)).
- Exhibit 11 to the Adverse Application (identical to Exhibit L, described above).
- Exhibit 12 to the Adverse Application (identical to Exhibit K, described above).
 - The statement in Paragraph 13 of the Verified Statement of Elaine Hogan, attached to the Adverse Application, that reads as follows: "Second, removal of the MR Line from the shield of federal rail protection will put an end to ongoing tactics by MR of improperly using its status as a common carrier to avoid state and local regulation and to acquire land improperly through eminent domain."