

BEFORE THE
SURFACE TRANSPORTATION BOARD

AB-1305 (Sub-No. 1)

GREAT REDWOOD TRAIL AGENCY
- ADVERSE ABANDONMENT -
MENDOCINO RAILWAY IN MENDOCINO COUNTY, CAENTERED
Office of Proceedings
June 25, 2024
Part of
Public Record**REPLY TO MENDOCINO RAILWAY'S MOTION TO QUASH
THE DISCOVERY REQUESTS OF GREAT REDWOOD TRAIL AGENCY**

Great Redwood Trail Agency ("GRTA") through counsel respectfully requests that the Surface Transportation Board (the "STB" or the "Board") disregard and reject the implicit request to quash GRTA's discovery requests implicit in the Reply of Mendocino Railway ("MR") in Mendocino County, CA to GRTA's Request for Extension of Time.

I. BACKGROUND

GRTA filed an Application for Adverse Abandonment (the "Application") on April 12, 2024. On June 17, 2024, MR filed its 715-page Reply to the Application and a substantial Motion to Strike significant portions of the Application. On June 18, 2024, GRTA filed a Request for Extension of Time to file its Reply to the numerous protests and comments filed in response to the Application by thirty (30) days. *See* Doc. No. 308407. MR filed a Reply, which contains an argument suggesting that GRTA's discovery requests, served on MR on June 17, 2024, not be permitted. *See* Doc. No. 308414 (hereinafter "MR Reply"). Although MR filed its pleading as a Reply to the Request for Extension of Time, GRTA submits this Reply to respond to MR's request to quash discovery, *i.e.*, request for production of documents.¹ On June 24, 2024, GRTA asked MR to agree to the extension of thirty (30) days if GRTA withdrew all of its discovery requests

¹ GRTA does not believe that MR has properly requested to quash GRTA's discovery request, but responds accordingly in an abundance of caution.

except for the request for a copy of MR's Railroad Rehabilitation and Improvement Financing ("RRIF") loan application. MR rejected this request in favor of the Board ruling on GRTA's request for extension of time.

II. ARGUMENT

The Board should disregard MR's argument that GRTA's discovery requests are inappropriate at this time and, relatedly, that GRTA's requested extension of time is therefore too long. GRTA has submitted valid requests for the production of documents under 49 C.F.R. §§ 1114.21(a)(1), 1114.30. "Parties may obtain discovery under this subpart regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding other than an informal proceeding." 49 C.F.R. § 1114.21(a)(1). MR argues that 15 days to respond to discovery requests compared with 14 days for the filing of a reply to protests and comments under 49 C.F.R. § 1114.26 precludes the service of discovery requests between the filing of an adverse abandonment application and service of the applicant's reply. MR Reply at 5. However, MR cites no STB rule which categorically precludes GRTA's service of discovery requests the same day that MR filed its protest. MR also suggests that it does not have to respond to GRTA's discovery requests or that GRTA must seek leave of the Board to serve discovery requests. *See* MR Reply at 6. MR thus attempts to bolster its argument in opposition to GRTA's request for an extension of time based only on the requested discovery. However, MR has not explicitly asked the Board to quash GRTA's served discovery requests. GRTA's discovery requests were served pursuant to the Board's rules. MR's suggestion that it will not respond to discovery – and relatedly that the discovery requests do not support the requested extension of time² – would only force the Board

² MR further seemingly concedes GRTA's request for additional time is reasonable because MR was willing to agree to an extension of time if GRTA withdrew its discovery requests. MR Reply at 6.

to address this issue later in the proceedings as a Motion to Compel filed by GRTA after MR's deadline to respond to the request for documents has passed.

Out of an abundance of caution and in case the Board addresses MR's arguments relating GRTA's discovery requests as a request to quash, GRTA submits that such a request to quash by MR should be denied. MR relies on language from *Salt Lake City Corporation – Adverse Abandonment – in Salt Lake City, UT*, Docket No. AB-33 (Sub-No. 183), Doc. No. 32490 (STB Served Jan. 11, 2022) (hereinafter "*Salt Lake*"). However, GRTA's requested discovery is distinguishable from that discussion in *Salt Lake*. GRTA seeks information to rebut MR's heavy reliance on the acquisition of the RRIF loan in its protest to the Application, not the "new information" to support an adverse abandonment application sought by the applicant in *Salt Lake* ("...any further filing by [Salt Lake City Corporation] may only be in response to [Union Pacific Railroad Company's] protest...Moreover, discovery is not necessary ... to respond to the protest"). MR's suggestion that GRTA already received all the discovery it is entitled to because the Board ordered MR produce documents mischaracterizes the Board's Order as a discovery request by GRTA. MR Reply at 4-5. This conflates information ordered to be disclosed by the Board with information requested in discovery by GRTA. Further, MR's argument that GRTA's service of discovery requests to MR prior to MR's filing of its protest necessarily means the requested discovery can have no purpose to rebut the protest is illogical. See MR Reply at 6. That GRTA accurately anticipated MR's reliance on the RRIF loan does not render requests for that information unrelated to MR's protest.

Further distinguishing GRTA's request from *Salt Lake*, GRTA's requested extension is based on the length of MR's protest and the number of additional protests and the fact that MR decided to move to strike portions of the Application in addition to filing its protest. In *Salt Lake*,

the applicant sought the requested extension based solely on the need for additional discovery. *See Salt Lake*, doc. No. 204366 (STB served Jan. 10, 2002). MR's attempt to downplay the length of its protest should also be ignored by the Board. *See* MR Reply at 9. If MR did not consider portions of its protest relevant to the proceeding it should not have filed them. Having filed a 70-page protest with over 600 pages of attachments supporting its argument, MR cannot now balk at GRTA's request for an appropriate amount of time to review and respond to this volume of information – in addition to the other filed comments. Further, a 70-page protest is a lengthy filing without taking into consideration the additional information filed and relied on by MR. MR also tries to negate the comparison of GRTA's request for extension of time to MR's own request for 20 days by suggesting that it was GRTA's "action in delaying providing the requested discovery information." MR Reply at 10. However, MR has no basis to suggest that GRTA intentionally delayed responding to MR's requests. Rather, GRTA cooperated in responding to MR's discovery requests, which sought significant information. MR now refuses to reciprocate, going so far as to unreasonably criticize a routine personal scheduling request. In fact, GRTA inhouse counsel, who has been extremely involved in this proceeding, is getting married and unavailable between June 28th and July 7th.³

MR noted that it was willing to consent to an extension of one week if GRTA withdrew its discovery. MR Reply at 6, 10. MR's primary aim in opposing GRTA's request for extension of time seems to be opposing discovery. Because GRTA's discovery request has been reduced to one document, MR's argument has been rendered without any basis at this point. Therefore, the Board should grant GRTA's extension request and reject MR's apparent motion to quash.

³ GRTA's Request for Extension of Time inaccurately stated July 3rd instead of July 7th.

Respectfully submitted,

/s/ Daniel R. Elliott_____

Daniel R. Elliott

GKG Law, P.C.

1055 Thomas Jefferson St., NW

Suite 620

Washington, DC 20007

(202) 342-5248

delliott@gkglaw.com

Attorney for Great Redwood Trail Agency

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Certificate of Service

I hereby certify that on this 25th day of June 2024, I caused the foregoing Motion to be served by First Class Mail or more expedient method on the following:

Crystal Zorbaugh
2401 Pennsylvania Avenue NW
Washington , DC 20037

Catherine Julie Golden
P.O. Box 340
Hopland, CA 95449

Danelle Storm Rosati
87 Selby lane
Atherton, CA 94062

David Schonbrunn
P.O. Box 151439
San Rafael, CA 94915

William A. Mullins
2401 Pennsylvania Ave NW
Washington, DC 20037

Bruce Silvey
Humboldt Trails Council
PO Box 7164
Eureka, CA 95502

Michael Pechner
914 Marietta Court
Fairfield, CA 94534

Sean Radomski
Pacific Legal Foundation
3100 Clarendon Blvd., Suite 1000
Arlington, VA 22201

Sarah G Yurasko
American Short Line and Regional
Railroad Association
50 F Street NW, Suite 500
Washington, DC 20001

Donald G. Norton
California Short Line Railroad
Association
28364 S. Western Avenue #67
Rancho Palos Verdes, CA 90275

/s/ Daniel R Elliott

Daniel R. Elliott