

# MULLINS LAW GROUP PLLC

*Transportation Solutions for the 21<sup>st</sup> Century*

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## **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 – MRY in Mendocino County, California, AB-1305 (Sub-No. 1)

Dear Ms. Brown:

On July 23, 2024, GRTA/NCRA<sup>1</sup> filed a Motion to Compel Discovery of the joint application of Sierra Northern Railway (“SNR”) and Mendocino Railway (“MRY”)<sup>2</sup> for a \$31.4 million federal loan pursuant to the Railroad Rehabilitation and Improvement Financing (“RRIF”) program. The Board should deny that motion.

A significant amount of detail with regard to what is being sought in this docket and the status of the overall proceeding has already been written, and MRY will not repeat that here. At this stage, there is only one authorized pleading yet to be filed in this proceeding, which is GRTA/NCRA's rebuttal to MRY's Protest and Reply and is supposed to be filed on August 1.<sup>3</sup> As set forth in MRY's

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<sup>1</sup> To the extent abbreviations are used in this pleading, but not otherwise defined, MRY adopts the abbreviation definitions previously used in this proceeding.

<sup>2</sup> GRTA/NCRA, in its Motion to Compel Discovery mistakenly identifies this application as one filed solely by MRY, Motion to Compel Discovery at 2, Document No. 308487, even though MRY clearly identified the application as being filed as a joint application of the two parties – SNR and MRY. Rebuttal to the GRTA/NCRA Reply to Mendocino Railway's Motion to Quash the Discovery Requests of Great Redwood Trail Agency, Document No. 308442 at 5-6 (“MRY Rebuttal”).

<sup>3</sup> As an initial matter, GRTA/NCRA claims that the deadline for its reply is August 2, 2024. GRTA/NCRA is mistaken as to the current procedural schedule. GRTA/NCRA's “replies are due on or before August 1, 2024.” Great Redwood Trail Agency – Adverse Abandonment – Mendocino

Rebuttal, discovery is not appropriate at this stage of the proceeding. The existence of and relevance of the RRIF loan application has been known and discussed over the past number of years in pleadings before this Board (in this and in the companion GRTA/NCRA Northern Segment Abandonment Proceeding) and not once has GRTA/NCRA ever requested a copy of that application. Not having requested the document prior to its case-in-chief, it only now seeks the document for its rebuttal so that it can raise new arguments with respect to the loan and to do so when it knows full well that MRY would have no opportunity under the procedural schedule to respond to these new arguments or any new analysis that GRTA/NCRA would introduce based upon its analysis of the document. Rebuttal is to be based upon the evidence that has already been introduced and argued in the record. Not new information and new argument based upon information that has never previously been introduced into the record.<sup>4</sup>

GRTA/NCRA does not raise anything new in its Motion to Compel Discovery that was not already raised by GRTA/NCRA or MRY in their previous filings. Indeed, GRTA/NCRA has certainly not provided any argument or case precedent to justify the extraordinary remedy of granting discovery at this late stage of the proceeding. What appears to be really going on is not that GRTA/NCRA truly needs a copy of the RRIF Application to support its adverse abandonment application (if they had, they would have asked for it months before filing its case-in-chief), but, rather, is attempting to use this "discovery dispute" as another attempt to seek more time and information to present even more argument and more evidence -- and to do so knowing full well that MRY would not have an opportunity to reply to such new evidence and argument. GRTA/NCRA did not file its Motion to Compel Discovery until the very last minute. It did so knowing full well that there was not enough time for MRY to reply,<sup>5</sup> the Board to rule, and even if ruled upon and granted, there would not be time for MRY to produce it and for GRTA/NCRA to review and analyze it in time for the August 1 deadline. This last-minute action by GRTA/NCRA makes it clear that regardless of how the Board manages the motion, GRTA/NCRA will inevitably file yet another motion -- this time to extend the procedural schedule yet again -- because failure to extend the time will "interfere with GRTA's Reply filing deadline of August 2, 2024." This abuse of the Board's procedures and process should not be condoned.

GRTA/NCRA claims that "MR could have easily produced this single document,"<sup>6</sup> choosing to completely ignore the fact that it was a joint application between MRY and its affiliate, Sierra Northern Railway, and further completely ignoring the significant discussion in the MRY Rebuttal that, "even if discovery of the document were permitted at this stage, which it is not, it is not entirely clear that MRY would be permitted to share the RRIF Express Loan Application in this proceeding,"

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Railway in Mendocino County, CAL., Docket No. AB 1305 (Sub-No. 1), served June 25, 2024, slip op. at 2.

<sup>4</sup> Salt Lake City Corporation – Adverse Abandonment – in Salt Lake City, UT, Docket No. AB-33 (Sub-No. 183) (STB served Jan. 11, 2002).

<sup>5</sup> Under 49 CFR 1104.13 MRY had 20 days to reply to the Motion to Compel. MRY has no desire to delay this proceeding any further and is filing this reply in order to provide the Board an opportunity to deny the motion prior to August 1.

<sup>6</sup> GRTA/NCRA Motion to Compel Discovery at 5.

describing the several impediments to the production of the document. The application GRTA/NCRA seeks consists of over 635 pages. GRTA/NCRA and its consultants, particularly Marie Jones Consulting, are no doubt aware, from past involvement in Federal grant and loan activities, of the magnitude of the request. Not only that, should MRY be ordered to produce the joint application, that document would have to undergo a protective order review by both SNR and MRY, and it would require a discussion with USDOT as to whether USDOT would object to it being produced. Another complicating factor is there is a significant overlap among parties to this proceeding, many of the state law proceedings, and the consultants representing all of them.<sup>7</sup> Again, the fact that this Motion to Compel Discovery comes at the last minute, accompanied by an allusion to a fast-approaching Reply deadline, no doubt forecasts an almost inevitable follow-up GRTA/NCRA motion for extension of time.

Finally, GRTA/NCRA makes the unsupported assertion that “no STB rule precludes the Board from ordering the production of this single requested document at this juncture in the proceedings,”<sup>8</sup> notwithstanding the significant legal analysis demonstrating just the opposite and presented in MRY’s Rebuttal. As mentioned therein, “[t]he only point of such discovery at this stage would be to provide GRTA/NCRA with a chance to offer new argument and new analysis that it failed to offer in its ‘entire case’” in chief.<sup>9</sup> Further, and as discussed, there are additional questions with regard to a Board decision potentially ordering the confidential information of a non-party and that was filed as confidential document under the rules and procedures of the USDOT.

It is disconcerting that GRTA/NCRA has known for years about the joint RRIF application and its relevance to this entire proceeding (one brought by it, on its own timing), but never requested to see it until just recently and then let a significant amount of time to accrue before filing its “expedited” motion to compel discovery. If it was so crucial to its case, GRTA/NCRA should have requested it months ago. They did not. And it should not now be allowed to see it now and then use that as a pretense to request even further delay. MRY urges the Board to deny the motion for the reasons set forth herein and in MRY’s Rebuttal.

If there are any questions concerning this e-filing, please contact me by telephone at (202) 663-7823 or by e-mail at [wmullins@mullinslawgroup.net](mailto: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](mailto:jedwards@mullinslawgroup.net).

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<sup>7</sup> MRY Motion to Strike at 7, and at note 10 (including the significant overlap with regard to the Boards of Directors involving the California Coastal Commission and GRTA/NCRA). This fact raises further questions as to whether a delay in this STB proceeding furthers collateral attacks by those other interrelated parties in other proceedings. Given the the overlap of the parties in the various state proceeding and the impact of the RRIF application's potential role in those proceedings, it will be unrealistic to assume that notwithstanding the best efforts of those executing the protective order undertaking, that there would not be significant cross-contamination of the information gained in this proceeding through granting the discovery so as to further discovery and argument in those other proceedings.

<sup>8</sup> GRTA/NCRA’s Motion to Compel Discovery at 4.

<sup>9</sup> MRY’s Rebuttal at 13.

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Sincerely,

/s/ William A. Mullins

Attorney for MRY

cc: Parties of Record