

BEFORE THE
SURFACE TRANSPORTATION BOARD

AB-1305 (SUB-NO. 1)

GREAT REDWOOD TRAIL AGENCY
- ADVERSE ABANDONMENT -
MENDOCINO RAILWAY IN MENDOCINO COUNTY, CA

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APPLICANT'S REBUTTAL

Great Redwood Trail Agency (“GRTA”) hereby respectfully submits this rebuttal to the protests and comments filed in response to its adverse application (the “Application”) for the abandonment of the line of the Mendocino Railway (“MR”) that extends between Milepost 0 at Fort Bragg and Milepost 40 at Willits, a total distance of approximately 40 miles in Mendocino County, California (“MR Line”). Specifically, this rebuttal addresses the protest filed by MR (the “MR Protest”) and the opposition comments filed by Pacific Legal Foundation (“PLF”), California Short Line Railroad Association (“CSLRA”), and Transportation Solutions Defense and Education Fund (“TRANSDEF”). GRTA respectfully requests that the Board grant the Application because the abandonment of the MR Line is clearly in the public interest as there has been no interstate freight rail traffic on it in decades and is no viable connection to the interstate rail network

INTRODUCTION

As noted in the Application, 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.”¹ To decide this question, the Board weighs any need for rail transportation against the

¹ 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), at 6 (STB served Feb. 1, 2002) (“Grand Trunk”); see also Minn. Commercial Ry. Co. Adverse Discontinuance – In Ramsey Cty., MN, STB Docket No. AB-882, at 3 (STB served Jul. 16, 2008) (“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.”); Modern Handcraft, Inc. – Abandonment in Jackson Cty., MO, 363 I.C.C. 969, 972 (1981) (“We will

cited reasons for abandoning rail service and determines whether the public interest justifies continued Board jurisdiction to “shield” the railroad line from the ordinary operation of state property law.²

Rarely has the Board been presented with a case where the balance of interests is more lopsided. On one side of the balance, there is absolutely no need for interstate rail transportation on the MR Line which has been cut off from the interstate rail network for over two and a half decades and has absolutely no realistic path for this access to be restored. The Railroad Rehabilitation & Improvement Financing (“RRIF”) Loan of which MR is a joint recipient may allow MR to refurbish aspects of its line, but it will have no impact on the fact that the MR Line is not connected to the interstate rail network. The RRIF Loan is not intended, and cannot be used, to rehabilitate or return to service the 50-plus miles of the non-operational GRTA Line standing between the MR Line and the functional national rail system. On the other side of the balance, the public interest strongly favors abandonment. GRTA set forth both sides of the public interest test in the Application, clearly demonstrating why the Board should grant this request.

In the MR Protest, MR sets forth several arguments in opposition to the Application, claiming that granting the Application would: (1) be contrary to Congressional policy; (2) run counter to the Board’s precedents denying adverse abandonment applications when shippers use the line or there is potential for future use of the line; (3) undermine the U.S. Department of Transportation’s recent action in granting a loan for the specific purpose of rehabilitating the MR

not allow our jurisdiction to be used to shield a carrier from the legitimate processes of State law where there is no overriding Federal interest in interstate commerce.”).

² *Paulsboro Ref. Co. LLC – Adverse Abandonment – in Gloucester Cty., N.J.*, STB Docket No. AB-1095 (Sub-No. 1) (STB served Dec. 2, 2014); *Grand Trunk* at 6 (“Where no overriding federal interest exists, we will not allow our jurisdiction to be used to shield a carrier from the legitimate processes of state law.”); see also *City of Chicago, IL – Adverse Abandonment – Chicago Terminal R.R. in Chicago, IL*, STB Docket No. AB-1036, at 3 (STB served Jun. 16, 2010) (“*City of Chicago*”).

Line to support the continued availability of freight; and (4) have the potential to adversely affect existing services provided over the line. In addition, MR argues that granting the Application would not be necessary for GRTA to abandon the Middle Segment of the GRTA Line.

Separately, PLF argues that the STB lacks statutory authority to consider an application for adverse abandonment. The PLF further urges that the Board's structure is unconstitutional, and GRTA's application should be denied on that basis. CSLRA offers no arguments of its own and merely provides a three-page letter agreeing with MR's position. TRANSDEF also reiterates MR's arguments.

In this rebuttal, GRTA will address each of these claims by MR, which will serve to refute the comments of TRANSDEF and CSLAR, and GRTA will address the claims of PLF. GRTA will demonstrate the obvious flaws in the positions taken by MR, TRANSDEF, CSLAR, and PLF. In particular, MR essentially admits that it has had no freight on the MR Line for the past two decades, a fact which GRTA has noted throughout this proceeding. None of the commenters attempting to support MR's position are able to demonstrate the feasibility of restoring freight service to the MR Line. *See* TRANSDEF Comment at 5 ("As long as MR is able to demonstrate it will provide rail transportation [of freight], the Board should deny" GRTA's application). GRTA would agree with TRANSDEF's statement that proving real-world, **interstate** freight would prevent adverse abandonment but submits that MR has failed to demonstrate the existence or prospect of interstate rail freight transportation, thus demonstrating that there is no federal interest in keeping this completely intrastate rail operation under the jurisdiction of the STB.

ARGUMENT

I. MENDOCINO RAILROAD’S PROTEST LACKS MERIT.

A. GRTA Does Not Oppose the Assertion by MR that the “Stranded Segment” Principle Should Not Apply under these Circumstances, to the Extent MR is Bound by Such Assertion in GRTA’s Upcoming Abandonment/Railbanking Filings.

GRTA has a statutory mandate to seek abandonment and railbanking of the remaining portion of its line not presently railbanked. See Cal. Gov Code § 93022(a)(1). As discussed at length in the Application, the critical reason that GRTA brought this proceeding to the Board is to enable it to do so along the long-unused portion of the GRTA Line between Mile Post 139.5 and the Sonoma-Mendocino County line at approximately Mile Post 89 (the “Middle Segment”). Based on STB precedent, including the abandonment recently filed by GRTA to abandon the northern portion of the GRTA Line, the STB has not allowed a segment of common carrier track to be “stranded” due to abandonment of an adjacent section of track. *R.J. Corman R.R. Property, LLC – Aban. Exemption – in Scott, Campbell, and Anderson Counties, Tenn.*, STB Docket No. AB-1296X, slip op. at 3 (STB served Nov. 17, 2022) (citation omitted) (“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.”); *North Coast Railroad Authority, -Abandonment Exemption - In Mendocino, Trinity, and Humboldt Counties, Cal.*, AB-1305X, at 3 (STB served Aug. 26, 2021).

GRTA’s need to seek adverse abandonment against the MR Line rests entirely on the stranded segment doctrine, because to the extent the Board would allow railbanking to proceed on the Middle Segment without removing the MR Line from STB jurisdiction, GRTA can move forward to fulfill its statutory mandate without reference to MR’s continued status as a common carrier.

In response to this STB precedent, MR makes the argument that it would be an “island railroad”³ upon abandonment of the Middle Segment of the GRTA Line with the ability to connect to interstate commerce through other modes of transportation like truck. Therefore, it would not be a “stranded” segment. In support of this approach and distinguishing this matter from much of the decisional law related to stranded segments⁴, GRTA would note that it is mandated by its enabling legislation to railbank the Middle Segment, and cannot consummate the abandonment by law, which would be contrary to the legislative intent of the Great Redwood Trail Act in any event. By railbanking the Middle Segment, GRTA will be preserving the right to reactivate rail service if need be. This California legal requirement to maintain the GRTA Line as a rail-banked trail is a clear distinguishing factor from prior “stranded segment” decisions, as it legally requires this rail-banked status to be kept in place.

Although GRTA bases its need for an adverse abandonment filing against the MR Line upon its understanding of the stranded segment doctrine, to the extent the Board finds persuasive MR’s argument that the MR Line could properly be maintained as part of the national rail system notwithstanding the railbanking of the Middle Segment, GRTA makes the following conditional statement of non-opposition.

If the Board determines that adverse abandonment of the MR Line is not required because it could “survive” as a part of the STB-governed national rail system notwithstanding the railbanking of GRTA’s Middle Segment, GRTA would not oppose such a ruling. To the extent

³ MR uses Alaska Railroad as an example of an “island railroad.” MR Protest at 58.

⁴ See *The Elk River Railroad, Inc. - Abandonment Exemption - in Kanawha & Clay Counties, W. Va.*, AB-1314X, at 3 (STB served Mar. 25, 2022) (“Even if the railroad agrees to negotiate, and a Trails Act condition is imposed, either party can terminate the negotiations at any time, in which case the Trails Act condition is removed and the railroad can consummate the abandonment of the line, assuming there are no other barriers to consummation. See, e.g., *BNSF Ry.—Aban. Exemption—in Cook Cnty., Ill.*, AB 6 (Sub-No. 493X), slip op. at 1 (STB served July 28, 2021).”).

STB so decides, MR should be judicially estopped from asserting in response to GRTA's intended abandonment and railbanking application on the Middle Segment that a railbanking order cannot issue in light of the stranded segment doctrine.⁵ Accordingly, upon MR's binding concurrence that it would be judicially estopped from opposing GRTA's railbanking request on the basis of the stranded segment doctrine, or upon order from this Board to that effect, GRTA would agree to hold its adverse abandonment application in abeyance, to be withdrawn with prejudice upon the grant of its railbanking application for the Middle Segment.⁶

Should the Board find persuasive MR's argument that the stranded segment doctrine does not require GRTA to obtain adverse abandonment of the MR Line as a necessary precursor to its own abandonment and railbanking of the Middle Segment, and to the extent MR is bound by this ruling such that it cannot later attempt to defeat GRTA's impending railbanking efforts based on the stranded segment principle, GRTA would stipulate to the non-application of the stranded

⁵ Judicial estoppel is an equitable doctrine that precludes a party from gaining an advantage by asserting one position, and then later seeking an advantage by taking a clearly inconsistent position. Judicial estoppel is invoked "not only to prevent a party from gaining an advantage by taking inconsistent positions, but also because of general considerations of the orderly administration of justice and regard for the dignity of judicial proceedings, and to protect against a litigant playing fast and loose with the courts." *Hamilton v. State Farm Fire & Cas. Co.*, 270 F. 3d 778, 782 (9th Cir. 2001). Judicial estoppel is not limited to the same litigation but is also appropriate to bar litigants from making incompatible statements in two different cases. *Id.* at 783. Generally, judicial estoppel applies when (1) the party's current position is clearly inconsistent with its earlier position, (2) the party was successful in persuading a court to accept its earlier position, and (3) the party would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped. *New Hampshire v. Maine*, 532 U.S. 742, 750-751 (2001).

⁶ GRTA will begin the abandonment and railbanking process with respect to the Middle Segment at the Board by December 13, 2024.

GRTA would be amenable to conditions within a railbanking order requiring that in the event of change to existing law that mandates GRTA to maintain railbanked status, it would notify the Board and parties to this and the abandonment proceeding prior to abandonment, to allow an opportunity for responsive action by MR, as appropriate.

segment doctrine to the matter, and proceed to railbanking of its long-disused and damaged rail segment as it is mandated to do by the State of California.

B. MR's Protest Based on the Two Interconnected Arguments That an Abandonment Would Be Contrary to Congressional Policy in Favor of Freight Rail and Would Run Counter to the Board's Precedents Denying Adverse Abandonments When Shippers Use the Line or There Is Potential for Future Use of the Line Are Not Relevant under the Undisputed Facts at Hand.

MR essentially bases its entire protest on the Congressional, and even California, policy that favors freight rail service to move commodities in interstate commerce. MR attempts to bolster this argument by claiming that adverse abandonments are not granted by the Board when shippers use the line or will use it for interstate freight rail service. However, the obvious flaw in both of these arguments is that MR does not move freight in interstate commerce and has demonstrated no future need for such service on the MR Line. In fact, the MR Line has no access to the interstate rail system, thereby rendering this future freight rail position to be impossible.

i. MR Has Failed Completely to Demonstrate Past, Present, and Future Use of the MR Line for Interstate Rail Freight Service.

In its Application, GRTA clearly demonstrates that each and every example of freight service on the MR Line provided in response to the Board order in the waiver decision is intrastate in nature. Application at 26-30 (refuting MR's assertion that isolated projects for the Mendocino Land Trust, Trout Unlimited, Super Wheeler Co., LLC, Granite Construction, AT&T, and Camp Noyo and Camp Little stinker campgrounds are examples of MR's provision of freight or passenger service in interstate commerce). MR does not rebut these points made by GRTA about the type of service involved as there really is nothing to rebut. MR even concedes that these intrastate moves are not continuing service but are merely spot moves that various local groups have requested on rare occasions in the past. MR Protest at 26-28. In fact, several of the moves

are local passenger moves involving remote points on the MR Line that have nothing to do with interstate commerce.

GRTA does not disagree with the policy favoring freight rail, on which basis MR opposes GRTA's Application. However, MR's conclusion that a policy favoring freight rail requires the Board to reject GRTA's Application does not follow.⁷ The obvious flaw in MR's argument is there is no interstate freight rail service on the MR Line and no potential for freight service in the future as the history of the freight lines in this area have clearly demonstrated with the glut of bankrupt railroads and abandoned lines. Second Verified Statement of Marie Jones ("Jones VS II") at 3 (highlighting the FRA embargo, closure of Northwest Pacific Railroad in 1998, embargo of the Willits-Cloverdale connection, closure of the Cloverdale-Santa Rosa rail line, which prevent any connection between the MR Line and the interstate rail system). The Second Verified Statement of Marie Jones is attached as Exhibit 1.

MR has provided no examples of interstate freight service since it owned the railroad as discussed in detail in the Application.⁸ Each example provided by MR is intrastate in nature or

⁷ In fact, GRTA is supportive of these rail policies. Its predecessor agency, the North Coast Railroad Authority ("NCRA"), was a product of this policy in California. However, as described below, the NCRA was unsuccessful in maintaining rail service in this area due to circumstances beyond its control even with substantial public funding. As a result, California decided to pivot to rail to trail in the best interests of this area.

⁸ MR made the same argument that it was engaged in interstate commerce in the *John Meyer* eminent domain case which the court flatly rejected in its April 19, 2023 decision after a full trial. In this case, MR sought to acquire through eminent domain a 20-acre parcel owned by John Meyer. MR claimed that it wanted the property to construct and maintain a rail facility related to its rail operations. MR also claimed that it was entitled to avail itself of the eminent domain statute because it is a railroad corporation, a common carrier, and through its activities, it qualifies as a public utility. The court ruled as follows:

[MR President and CEO] Pinoli clearly testified that 90% of the railroad revenue comes from the excursion train activities. The other 10% of its revenue comes from leases and revenue. When questioned, Pinoli finally clarified that MR did not actually perform common carrier services between the time it purchased the assets of California Western Railroad in 2004 through 2022 when it took over operations from Sierra Northern

involves maintenance of the MR Line. Application at 26-30. Moreover, MR provides only two flawed examples of the need for rail service in the future on the MR Line. It points to a letter from a local aggregate company that says it would be interested in rail service if the collapsed tunnel is fixed. MR Protest at 28 n. 78 (citing the Verified Statement of Pinoli (“Pinoli VS”)). Mr. Pinoli claims that “Grist Creek Aggregates” committed to shipping freight once the line was restored. Attachment 15 to Pinoli VS (Grist Creek Aggregates Letter). However, this is merely a letter of support and not an actual commitment to move freight in the future. *See id.* It certainly cannot be viewed as a contract to do so. Further, in the Grist Creek Letter, Grist Creek Aggregates raises the issue of availability and terms for transload facilities in both Fort Bragg and Willits which would be “crucial” for efficient loading and unloading Grist Creek shipments. *Id.* However, there are no transload facilities in Mendocino County, in which both towns sit. Jones VS II at 2.

MR’s other flawed example of a need for freight service is a hypothetical transload facility that it claims it intends to build and will be used in interstate commerce in connection with MR rail service. MR Protest at 29. MR provides no other specifics like a business plan, loan information, clients, local permits for construction, or anything for that matter. *Id.* (citing nothing

Railway. Those services were allegedly performed by the affiliate companies. No evidence was submitted to support this allegation. MR did not offer evidence in the form of contracts with the affiliated entities, operating agreements, ledgers, receipts, payments etc. The court can infer that such agreements would be appropriate to address at least compensation for services, liability, and indemnification, if in fact, the services were provided. MR is the Plaintiff in this action and has the burden of proof to establish its legal status as a public utility. There is no dispute that the only evidence of railroad income during the relevant time was and is earned from the excursion services only. MR concedes that the excursion service does not fall under the category of “transportation” and does not qualify MR as a public utility.

Decision after Trial, Mendocino Railway v. Meyer et al., SCUK-CVED-2020-74939, at 4-5 (Apr. 19, 2023), attached to Application as Exhibit 6; *see also Judgment after Trial* (June 2, 2023), attached to Application as Exhibit 7. Despite MR’s claims of moving freight by rail on the MR Line, the court found no evidence whatsoever of such activity. As a result, MR’s attempt to take Mr. Meyer’s land was flatly denied.

for the proposition that MR “is in the midst of creating a raw log and lumber transload”). It merely states without any support that it plans to build this facility. This illusory project certainly provides no real basis for the need for rail service. Otherwise, every railroad in MR’s position before the Board would simply claim it was going to build such a transload operation in order to defeat an adverse abandonment or support an offer of financial assistance request. The Board has rejected these types of unsupported attempts to demonstrate a need for rail service in the past. *See R.J. Corman R.R. Property, LLC – Aban. Exemption – in Scott, Campbell, and Anderson Counties, Tenn.*, STB Docket No. AB-1296X, slip op. at 3 (STB served Sept. 23, 2020).

Finally, MR’s receipt of its Railroad Rehabilitation and Improvement Financing Loan (“RRIF Loan”) does not alter MR’s prospects for providing interstate freight service on the MR Line. As discussed below, there is simply no need or demand for rail freight in Mendocino County. *See infra* Section I.B.iii. Although under the RRIF Loan that MR and Sierra Northern Railway have received jointly, \$21.5 million has been allocated for MR to refurbish the MR Line, it still does not create any prospect for connecting the MR Line to an interstate rail line. *See* MR Protest at 15 n.37. In the MR Protest, MR misleadingly asserts that prior to the collapse of Tunnel No. 1, MR “carried out full freight service on the line” and that the RRIF Loan will allow it to restore full freight service to the entire line. *See id.* As previously discussed, MR’s examples of “freight” are nonexistent or flawed.

[REDACTED]

[REDACTED] In its
RRIF Loan application, MR claimed:

MR connects the coastal town of Fort Bragg, CA with Willits, CA, which is 40 miles inland. The railroad includes numerous stations, two major tunnels, and 30 bridges as it winds its way through the Noyo Canyon. For the people along the Line, the railroad is the primary means of access.

Further, MR is an important means of transportation to the remote City of Fort Bragg and the Mendocino Coast. Pinoli VS, Attachment 20 (“Project Description from RRIF Loan Application”). Although MR has emphasized the lucrative nature of the Skunk Train, it has failed to justify its claim that it provides a “primary means of access” for residents in the City of Fort Bragg and the Mendocino Coast.

[REDACTED]

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[REDACTED]

[REDACTED]

ii. **The False Claim that GRTA is at Fault for MR Not Being Able to Perform any Freight Service on the MR Line Is Unfounded as There Has Been No Need or Economic Justification for Freight Service on the GRTA Line over the Last Two Decades.**

Because MR could not deliver on its claims about past freight rail service or the need for freight rail service on the MR Line, it decided to blame GRTA for its own failure because the GRTA Line has been embargoed and inoperable since 1998.¹¹ It even goes so far as to assert that GRTA has illegally kept its railroad in poor condition, which is incorrect as the facts below demonstrate. MR Protest at 38-39.

In support of its Protest, MR submitted an *Assessment of the North Coast Railroad Authority and the Viability of a Great Redwood Trail, Report to the Legislature*, which was Attachment 6 to Pinoli VS (hereinafter the “Assessment”), wherein the SB 1029 Task Force described in great detail the history of the NCRA and the reasons that rail service has failed in this part of California.

The Northwestern Pacific line or the GRTA Line was built in the late 1800s to haul redwood lumber and passengers between Humboldt County and the San Francisco Bay Area. Assessment at 14. It was in regular operation by a series of private owner-operators until the 1980s

¹¹ This attempt to blame GRTA for an inoperable line is somewhat ironic because MR’s Line has been generally unusable for a large portion of the time that MR has owned the railroad due to the collapsed tunnel and its failure to rehabilitate it.

when the timber industry began to decline. *Id.* In 1983, Eureka Southern Railroad, a private enterprise, which owned the northern section (Willits to Humboldt Bay) sought authority to abandon the rail line under 49 U.S.C. § 10903 from the Interstate Commerce Commission (“ICC”). *Northwestern Pacific Railroad Company--Abandonment--in Mendocino, Trinity and Humboldt Counties, Ca.*, I.C.C. Docket No. AB-14 (Sub-No. 4), slip op. (Feb. 3, 1984). The ICC denied the request in 1984, and Eureka Southern Railroad filed Chapter 11 Bankruptcy on December 15, 1986. *Id.*; see Assessment at 14. The railroad, and liquidation of its assets, then fell under the jurisdiction of the US Bankruptcy Court. *In re Eureka Southern R.R., Inc.*, 72 B.R. 813 (N.D. Cal. 1987).

To preserve the rail corridor, the California Legislature enacted the North Coast Railroad Authority Act (“NCRA Act”), Government Code sections 93000, et seq. (Statutes of 1989, Chapter 1085). Assessment at 14. The NCRA Act authorized the newly created public entity to provide passenger and freight railroad service in Humboldt, Trinity, Mendocino, Sonoma, and Marin Counties with specific focus on the Eureka Southern Railroad in Humboldt and Mendocino Counties and the option of extending service into Del Norte County. *Id.* at 14-15. To facilitate this plan, the Legislature authorized the use of state and federal funds to begin purchasing the GRTA Line, one segment at a time. *Id.* at 15. The first purchase, which took place in 1992, included a portion of rail and all assets owned by Eureka Southern Railroad under the purview of the bankruptcy trustee. *Id.* This section of rail, which extended from Willits north to Korbel and around Humboldt Bay, used state Proposition 116 funds (1990) exclusively for the right-of-way purchase and made NCRA the sole owner of freight and passenger rights. *Id.* Three additional right-of-way purchases were brokered in 1995 and 1996 on the southern portion of the GRTA Line with ownership shared between NCRA and a Joint Powers Authority, North Western Pacific Railroad

Authority (“NWPRA”), which would eventually transfer all its holdings to Sonoma-Marín Area Rail Transit (“SMART”). *Id.* The “Willits,” the “Healdsburg,” and the “Lombard” Segments extended public ownership of the railroad from Willits, Mendocino County, south to Novato, Marin County, and from Ignacio, Marin County, east to Lombard near the Napa River in Napa County and national rail interchange.¹² *Id.*

After purchasing the Eureka Southern Railroad in 1992, NCRA operated freight service and a short-lived passenger rail service before severe storm damage and deferred maintenance compelled the Federal Railroad Administration (“FRA”) to close the entire NCRA railroad from Arcata to Schellville for public safety reasons in 1998. *Id.* Not only were there landslides and collapsed tunnels, but there were also railcars in the Eel River. *Id.* The railroad remained closed until 2011 when the FRA Emergency Order was lifted for Windsor south to Ignacio and east to Lombard, for freight service only. FRA Emergency Order No. 21, Notice No. 4, 76 Fed. Reg. 27,171 (May 10, 2011); Emergency Order No. 21, Notice No. 3, 66 FR 9,625 (Feb. 8, 2001).

After 23 years with no operable railroad north of Windsor, Senator Mike McGuire introduced Senate Bill 1029 (“SB 1029”), the NCRA Closure and Transition to Trails Act. Assessment at 15. SB 1029 was signed into law (Chapter 934, Statutes of 2018) by former Governor Edmund G. Brown Jr. on September 29, 2018. *Id.*

¹² See *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); *North Coast Railroad Authority – Lease and Operation Exemption – California Northern Railroad Company*, FD 33115 (STB served Sept. 27, 1996); but see *Great Redwood Trail Agency – Abandonment Exemption – in Mendocino, Trinity, and Humboldt Counties, Cal.*, AB-1305X (STB served Oct. 21, 2022) (On October 26, 2022, GRTA gave notice that GRTA consummated the interim trail/use railbanking authority as authorized by the Board of a 175.84-mile portion of GRTA Line); *Sonoma-Marín Area Rail Transit District—Acquisition and Operation Exemption— North Coast Railroad Authority*, FD 36481 (STB served Feb. 18, 2021)(GRTA sold 87.65 mile portion of GRTA Line).

Prior to this legislation being enacted, between 1990 and 2011, a total of \$124 million of state and federal funds were invested in the NCRA corridor to restore freight rail service. *Id.* at 17. These funds were used to purchase the entire right-of-way from Lombard to Humboldt Bay; to rehabilitate 62 miles of track (including 56 crossing signals, 50,000 crossties, and 50,000 tons of ballast); emergency levee repairs in Schellville and Humboldt Bay; repair 43 rail bridges and three movable bridges; install quiet zones in Novato; to briefly cover NCRA agency funds and outstanding debt; to settle litigation; and to address environmental contamination left behind by the historic private rail operators. *Id.* at 17-18. **However, the economic, environmental, and social challenges NCRA faced proved insurmountable for the resumption of freight rail service in this corridor, which has led to the current effort for use of NCRA's right-of-way as a multi-use path.** *Id.* at 18.

NCRA did not have sustainable funding to support its operating expenses. *Id.* at 50. The decline of the timber industry reduced demand for railroad operations and ultimately led to the railroad's bankruptcy under private ownership prior to NCRA, *id.*, like it did on the MR Line. Without a thriving industry behind it to drive demand, the complexity of the corridor meant that without a sustainable funding source, NCRA could not maintain railroad operations. *Id.*

Based on the experience of NCRA and its predecessors, the costs of preserving the historic NWP rail line north of Healdsburg as a freight railroad outweighed the benefits. *Id.* at 35. Absent a large economic draw on the north coast, such as a resurgence in the redwood forest products industry or development of the Humboldt Port, it did not make economic sense to invest further public funds into preserving and rehabilitating a freight railroad. *Id.* at 35-36. On the other hand, railbanking provides a unique opportunity to use the historic GRTA Line as a public-use, active transportation route, while it continues to be preserved as a rail line for future railroad use under

the Rails to Trails Act. *Id.* at 36. If at some point in the future a large economic draw is developed, a railroad company would have the ability to restore the corridor to rail use by petitioning the STB. *Id.*

If the trail were fully developed, it is projected to spur economic activity in the region and generate roughly \$24 million in local revenue annually. *Id.* at 61. Public health benefits include reduced vehicle trips and vehicle miles traveled; a reduction of 1,580.43 metric tons of carbon dioxide emissions; and an increase of 1,384,915 walking and biking trips annually.¹³ *Id.*

Currently, trains are not running in the corridor or emitting greenhouse gases on the northern segment of NCRA's rail line.¹⁴ *Id.* at 86. Therefore, conversion of the rail to a trail will have a negligible impact on air emissions. *Id.* However, the trail would have public health benefits. *Id.* As an easy-access multi-use commuter and recreational trail, this active transportation corridor is estimated to attract approximately 1.4 million annual trail users, or 3,800 daily users. *Id.*

In other words, California stepped in to save the collapsing rail industry in this area with the hope of improving the overall economy. Declining industry revenue, deferred maintenance, and catastrophic storm damage shut down rail operations north of Windsor, Sonoma County,

¹³ MR attempts to cast doubt on the viability of the GRTA trail project claiming it is unfunded in the amount of \$900 million in 2025 dollars. MR Protest at 65-66. While this point is not relevant to MR's lack of freight on its railroad, GRTA points out that it is a statutorily formed organization that has been engaged in making this trail project come to fruition since the California legislature created it. While MR correctly notes that the cost of rebuilding the entire 200+ mile trail would be high, the benefits outlined in the Report will be captured incrementally as high priority segments are completed. Moreover, in order to capture all potential cost of the trail, the Report assumes every mile of the trail will need to be rebuilt, which is not the case, particularly in light of recent changes to California law allowing GRTA to open segments without construction and without further environmental review. See 2024 AB 2091. Further, GRTA is already working with several nonprofit and public entity partners who are anticipated to take on much of the trail planning construction burden.

¹⁴ See *Great Redwood Trail Agency – Abandonment Exemption – in Mendocino, Trinity, and Humboldt Counties, Cal.*, AB-1305X (STB served Oct. 21, 2022) (On October 26, 2022, GRTA gave notice that GRTA consummated the interim trail/use railbanking authority as authorized by the Board of a 175.84-mile portion of GRTA Line).

California in 1998. *Id.* at 1. Operations south of Windsor resumed in 2011, and NCRA continued to strive to resume rail service in the north, only to fall deeper into debt each year. *Id.*

As previously stated, due to this collapsed railroad operation, Senator Mike McGuire introduced the North Coast Railroad Authority Closure and Transition to Trails Act (SB 1029, Chapter 934 Statutes of 2018), which was signed into law by former Governor Edmund G. Brown Jr. in September 2018. *Id.* The Act directed the California State Transportation Agency (“CalSTA”), in consultation with the Natural Resources Agency, to “conduct an assessment of the North Coast Railroad Authority to provide information necessary to determine the most appropriate way to dissolve North Coast Railroad Authority and dispense with its assets and liabilities,” as well as “a preliminary assessment of the viability of constructing a trail on the entirety of, or a portion of, the property, rights-of-way, or easements owned by North Coast Railroad Authority, and recommendations relating to the possible construction of a trail.” *Id.* Finally, the statute required “an assessment of the options for transferring the southern portion of the rail corridor to the SMART District and recommendations on the specific assets and liabilities that could be transferred, including rights or abilities to operate freight rail.” *Id.*

CalSTA convened a multi-agency SB 1029 Task Force (“Task Force”) comprised of representatives from the California Department of Transportation (“Caltrans”), the Natural Resources Agency, the Department of Parks and Recreation, the Department of Finance, and the Department of General Services (“DGS”). The Task Force agencies conducted independent studies in their respective areas of expertise. *Id.*

In reviewing the option to maintain the status quo with respect to NCRA and the rail corridor, the Task Force found that current conditions are not conducive to NCRA meeting its existing mandate to rehabilitate the railroad north of Windsor and its regular annual revenue cannot

support agency operations combined with its current debt load. *Id.* at 10. The Task Force found that liquidation of NCRA’s assets is not likely to cover current outstanding debts, deferred maintenance, and continuing property management responsibilities, and NCRA may be forced into bankruptcy or immediate dissolution. *Id.* Also, environmental liabilities may persist. *Id.* In other words, the ongoing attempt to support rail service in the area was on a path to bankruptcy like other similar privately held railroads in the past in this part of California, including the predecessor to MR.¹⁵ Assessment at 88.

The Task Force concluded that NCRA’s right-of-way includes significant and costly challenges. The agency’s debts threatened its financial viability, and all options for resolution were expensive. Assessment at 11. The Legislature stepped in to protect the failing railroad in 1989 when it created NCRA and funded its right-of-way acquisitions. *Id.* The California Transportation Commission (“CTC”) supported NCRA when it allocated transportation funds for rail rehabilitation. *Id.* If NCRA had been left to disband on its own, it is likely that NCRA’s assets and liabilities would have ultimately fallen to the DGS, which handles abandoned property. *Id.* Railbanking the corridor would allow for interim trail use, preserve the corridor for future railroad use, and create an attractive tourist destination as well as a scenic non-motorized commuter route. *Id.*

¹⁵ If NCRA was not dissolved, sold, or converted to a trail, it is reasonable to assume that NCRA could have been forced into bankruptcy with a calculated net value of (-) \$7.2 million, a lack of revenue generating power, a growing list of potential litigants, and a shifting political environment. It is highly unlikely that NCRA would have continued to survive on its own. Assessment at 88. A Chapter 9 bankruptcy filing could have allowed NCRA to retain its assets. *Id.* However, it would have needed to establish itself as a “municipality” as defined in federal Bankruptcy Code 11 U.S.C. § 101(40). *Id.* Alternatively, a Chapter 11 filing for corporations may have required an organizational restructuring and liquidation of assets, in which case, the rail corridor, and the State’s investment (\$102 million over the last 30 years), could have been lost through liquidation by the trustee. *Id.*

In summary, the decision to not operate or rehabilitate the railroad was not made by NCRA. It was made by the circumstances in this region of California, including the declining lumber industry, natural disasters, and unstable geological conditions. California realized based on irrefutable historic events that rail service in this area was not feasible and required a change in direction which is GRTA.

MR's complete lack of freight over the past twenty years was not the fault of NCRA or GRTA as MR suggests. It was due to the same regional issues that led to the demise of NCRA - the decline of the regional lumber industry and unstable geological conditions (causing its tunnel to collapse twice). Moreover, the only real shipper on the MR Line was Georgia Pacific which decided to close its facility in Fort Bragg in 2002, thereby ending any chance for this railroad to operate profitably as a freight line. Instead, like GRTA, MR changed direction to excursion train service and other tourist-related activities.

iii. MR's Efforts to Rebut GRTA's Report by Marie Jones on the Need for Freight Rail Service on the MR Line and the Active Portions of the GRTA Line Is Rife with Errors.

Not willing to rest on these unfounded arguments to oppose the abandonment, MR also attempts unsuccessfully to attack the report issued by Marie Jones on behalf of GRTA. *See Feasibility & Market Analysis of Rail Freight Service in the Fort Bragg, Willits & Cloverdale Corridor*, Marie Jones Consulting (March 6, 2024) (the "Report"), attached to the Application in Verified Statement 3 as Appendix A. As the name suggests, the Report analyzed the need for rail service on the MR Line as well as the Willits to Cloverdale portion of the GRTA Line. MR used Matt Gedney to prepare a response to this Report. *See* Verified Statement of Matt Gedney ("Gedney VS"), attached to MR Protest as Appendix C. This attempt to refute the Report, like MR's other arguments, is well off target as the Second Verified Statement of Marie Jones ("Jones VS II"), attached hereto as Exhibit 1, clearly demonstrates.

First of all, with respect to his qualifications to analyze the freight rail situation here, Mr. Gedney has only worked in the railroad business development side of things which certainly does not give him the ability to make an economic analysis on rail feasibility here. In fact, he acknowledges that he has primarily worked in land use planning, environmental review, and property acquisition. He does not have any market analysis and economic development expertise or experience at all. He also lacks expert knowledge about the economy of the northern coast of California, specifically Mendocino and Sonoma Counties, California, where this rail operation is situated. Consequently, his critique lacks important and obvious facts about the local area that make his principal arguments incorrect

As a result, Mr. Gedney missed these key facts in drawing his conclusions:

- The rail line from Willits to Cloverdale (which is 51 miles long) remains essentially unusable for economic and physical reasons as discussed in greater detail above and below, thereby making Mr. Gedney's argument for transloading baseless and unrealistic. Jones VS II at 1.
- Mendocino County has a very small economy that has been stagnant for a long time; therefore, it is not a thriving market ripe for new rail development or even freight service generally. *Id.*
- There are very few manufacturers in Mendocino County. Furthermore, Mendocino County produces five commodities (fish, wine grapes, wine, logs and aggregate), none of which are likely to become MR freight customers for various reasons (e.g., perishability, very short-haul distance with either very dispersed locations of origination and very dispersed destinations for sales, respectively). *Id.* at 1-2.

- Sonoma County SMART, the nearest rail line earned just \$4.9 million in revenue from rail freight in 2023. Yet Sonoma County has a \$33 billion economy compared with Mendocino County's \$4 billion economy. Mendocino Railway simply cannot earn the required \$14 million in yearly freight shipments to break even, as this would require MR to earn three times SMART's shipping revenue in an economy that is 12% of the size of Sonoma County's economy. Furthermore, Sonoma County SMART shipped 1,490 cars of rail freight and Mendocino Railway's freight projections of 3,000 rail carloads is simply not realistic (as illustrated in my report and further detailed herein). *Id.* at 2.
- All of the potential freight items that Mr. Gedney listed in his verified statement indicate a profound lack of understanding of both the local economy and climate. For example, rock salt is not used in the winter in Mendocino County because it is a Mediterranean climate with little to no snow. Likewise, bulk propane is not the primary source of winter heat fuel; wood, electricity, oil, and propane are all used for heat. Additionally, there are no transload facilities in Mendocino and Sonoma Counties. Finally, Mendocino's largest agricultural products (wine grapes, fish, and timber) are not good candidates for rail freight. *Id.*
- The inclusion of gross profits from Mendocino Railway's tourist passenger service does not appreciably change the financial feasibility of re-establishing the rail line from Willits to Cloverdale to enable a connection to the interstate freight network. This second verified statement of Marie Jones shows that even with all the gross profits from the tourist passenger services that would be generated, there would still be a significant financial drain to MR. *Id.*

1. This southern portion of the GRTA Line is a short 51-mile-long isolated line, unconnected to the interstate railroad network, and a shipper would require three transload operations to utilize it.

As noted, this rail line from Cloverdale to Willits is only 51-miles long, and it is not able to be used at this time to connect MR to the interstate rail network due to its condition and the FRA embargo. *Jones VS II* at 2-3. Consequently, a shipper would require three transload operations to utilize this short rail line at present. *Id.* at 2-3. It simply makes no economic sense when Highway 10 provides efficient and easy access to the few shippers that might consider using MR freight services. *Id.* at 2-3.

Moreover, Mr. Gedney argues incorrectly that including potential rail freight from Humboldt County and the “four other Counties north and east of Mendocino” via transload operations is a viable option to expand potential freight customers for MR. *Id.* at 3. However, none of these areas are connected to these rail lines, and the GRTA Line has not been connected to the interstate rail system due to the FRA embargo. *Id.* As the facts below demonstrate, a rail operation from MR that connects to the interstate rail network is unfeasible.

- Northwest Pacific rail line that used to connect Eureka to Willits closed 26 years ago, in 1998. *Id.* at 3.
- Likewise, the connection from Willits to Cloverdale is embargoed. *Id.*
- The rail line from Cloverdale to Santa Rosa is currently closed to all rail traffic and is in poor condition and not included in MR’s acquisition or rehabilitation costs. *Id.*
- The line from Santa Rosa to Larkspur is managed by Sonoma-Marín Area Rail Transit (SMART), which is primarily a passenger rail line for Marin and Sonoma Counties. The 45-mile system includes stations in the Sonoma County Airport area, Santa Rosa, Rohnert Park, Cotati, Petaluma, Novato, San Rafael, and Larkspur. Fare revenues for fiscal year

2023 were \$1.8 million, while operating expenses, excluding depreciation and amortization expense, were \$42.7 million in fiscal year 2023. Most of SMART's operating costs are covered by a special sales tax, which totaled \$49.6 million in 2023 to support passenger rail service. *Id.*

- In July 2021, SMART officially became the freight common carrier for the rail line. Total revenues for all freight service were \$4.9 million for fiscal year 2022, however 48% of this revenue is for railcar storage for other rail companies from the bay area. Operating expenses were \$3.9 million for fiscal year 2022.¹⁶ The line currently hauls only feedstock for the dairy industry in Petaluma and grain for Sonoma County-based breweries. All cars arrive full, from the Midwest, and leave Sonoma County empty as there are currently no freight customers going from Sonoma County to the interstate rail line. *Id.* at 3-4.
- SMART currently does not have a transload facility and would only consider installing one if there was sufficient demand for transloading. Presently, there is no demand for a transload facility. *Id.* at 4.
- SMART currently provides freight service on this line from Novato (MP B25.6) to Petaluma. SMART has secured funding and will complete the freight line extension to Windsor by May 2026 and to Healdsburg in 2030. SMART is not able to extend the line to Cloverdale because Cloverdale is not in the Metropolitan Transportation Commission's *Plan Bay Area*, making it ineligible for state funding. It is unknown when or if this connection will be made. *Id.* at 4.

¹⁶ [Sonoma-Marín Area Rail Transit District Annual Comprehensive Financial Report](https://www.sonomamarintrain.org/sites/default/files/Financial%20Documents/ACFR%20SMART%20FY%202023%20Final%202023.12.01.pdf), June 30, 2023 <https://www.sonomamarintrain.org/sites/default/files/Financial%20Documents/ACFR%20SMART%20FY%202023%20Final%202023.12.01.pdf>

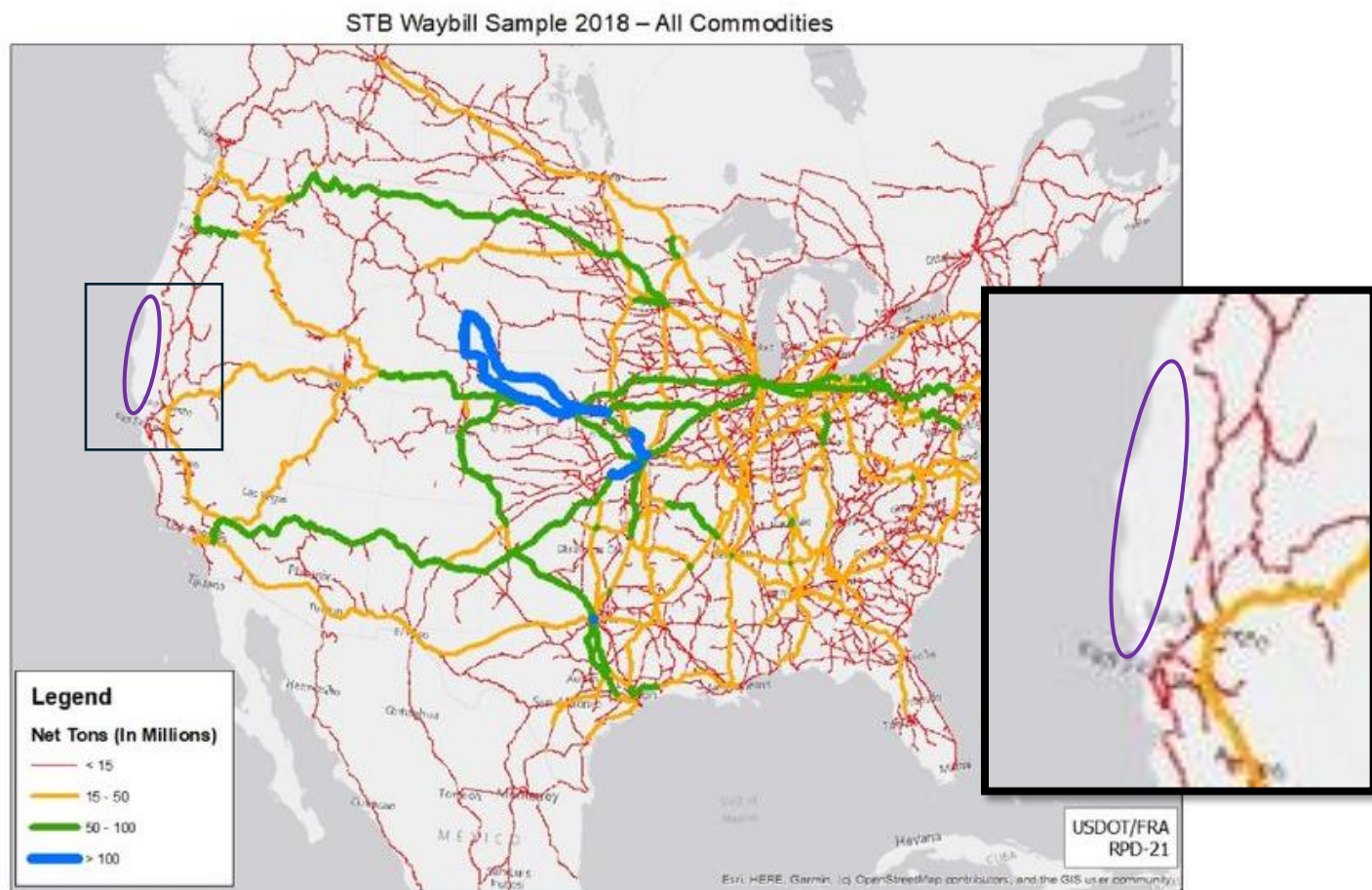
- “SMART’s only link to the national rail network is through connecting railroad California Northern (initials CFNR). Track utilized by CFNR in this area is leased from Union Pacific with the lease containing specific commercial and operating restrictions that impact freight activities of both CFNR and SMART. One such restriction is that commercial activities for long-haul freight on both lines are to be handled by Union Pacific, with UP responsible for establishing pricing, customer communication, contracts/agreements, supplying of cars, etc. This means, for example, that prices for long-haul shipments originating or terminating on SMART’s trackage are to be set by UP. UP considers SMART and CFNR to be “Handling Carriers”, meaning that they essentially act as contractors to move carloads to and from customers on UP’s behalf. In other words, UP fully controls the routing, pricing, and marketing of SMART’s current and prospective long-haul traffic, making SMART’s customers essentially “captive customers” of the Union Pacific.¹⁷ With UP having commercial control over its freight traffic, SMART is unable to influence key issues like pricing of shipments.” Union Pacific would also limit Mendocino Railway’s ability to set pricing for long haul freight through this lease restriction.

Therefore, the segment of rail from Fort Bragg to Cloverdale lacks connectivity to the interstate rail system as there is no service between Cloverdale and Windsor, and train connectivity between Cloverdale and Healdsburg is not likely until 2035 or beyond. *Id.* at 5. Yet, on numerous occasions in his verified statement, Mr. Gedney operates on the assumption that this connectivity exists. *Id.* He maintains that transload sites would be an effective way to add freight traffic to this line. *Id.* In Mr. Gedney’s opinion, it apparently would make sense for a shipper to send freight by truck from Eureka to Willits (a distance of 126 miles), transload onto the currently embargoed line from Willits to Cloverdale (a distance of 51 miles), then transload again onto a truck in Cloverdale,

¹⁷ Project Finance Advisory Ltd. Executive Summary of SMART’s Freight Rail Operations, Maintenance, Capital Costs, and Business Opportunities Analysis, 2021 <https://www.sonomamarintrain.org/sites/default/files/Documents/Rail%20Operations%20Executive%20Summary%20FINAL%207-29-21.pdf>

which would drive to Antioch where the load might be transloaded yet again to rail and thereby connect to the interstate rail system. *Id.* Few Humboldt County shippers would consider this approach when they can ship by truck straight to Antioch (the closest transload site) in five hours. *Id.* In MR's hypothetical situation, two short-haul truck moves (to make use of the rail line from Willits to Cloverdale) are always going to be proportionally more expensive than one short-haul truck move straight to Antioch. *Id.*

The waybill map below illustrates that there is no significant freight rail connectivity along the Highway 101 corridor between Eureka and the interstate system (see the purple circle). *Id.*



2. MR Asserts the Report Should Take a Closer Look at Local Commodities but Fails to Make a Case for Any of Them to Be Moved by Rail.

MR's assertion that the Report fails to look carefully at local commodities is faulty. Jones VS II at 7. The Report provides a thorough analysis of all potential local commodities, and there is simply no interest in rail service for these items based on a variety of reasons, as detailed below:

- a. **Perishable Commodities.** As noted in the Report, Mendocino County produces significant wine grape crops, and fresh fish has long been an important but declining part of the economy. Fish and wine grapes are all highly perishable, and transport time and temperature are critical for successful shipping. The proposed rail line with its limited service (long transport time, short distance and multiple transloads) would not allow for guaranteed delivery times for these highly perishable commodities. Additionally, virtually all wine grapes are grown in highly dispersed locations from which they are trucked to local vineyards, leaving only the finished product for final shipping. Per multiple conversations with business owners, neither wineries nor breweries are interested in shipping a finished product by rail due to the need for refrigeration and the potential damage to the product from rail line vibrations and long transport times in hot conditions. *Id.* at 7.
- b. **Raw Material Commodities.** Logs, Finished Lumber and Aggregate. The Report discusses both the timber and aggregate market in depth (see Pages 28 and 29). As noted, and analyzed in the Report, these commodities are not good candidates for rail freight. *Id.*

3. In the Gedney VS, he provides several points that form the basis of his market study, all of which fail in light of the local economy.

Mr. Gedney raises the following questions in support of his analysis about the need for rail business on the MR Line:

- 1. Are there any planned California DOT projects in the region that would require non-local construction materials? Id.*
- 2. How is bulk propane delivered to the area for sales and distribution for home heating? Id.*
- 3. How is bulk road salt supplied for winter weather? Id.*
- 4. What are the nearest transload centers, available capacity, and what commodities are handled? Id. at 8.*
- 5. Are there agricultural commodities produced or consumed in the region in meaningful quantities, including such commodities as animal feed or fertilizer? Id.*
- 6. Which timber harvesters do or could transport product to out-of-state mills? Id.*

However, Mr. Gedney's questions are largely irrelevant to Mendocino County and illustrate his lack of understanding about the local economy, timber industry, local climate, and terrain of Mendocino County, all of which play a significant role in addressing his list of questions, as follows:

- 1. DOT Projects.** Planned DOT projects were analyzed and considered in the Report. See Appendix C (Page 24 of Report). As noted in the Report, these projects will be served by local suppliers of aggregate and concrete as neither of these materials ship well via rail. Aggregate is always shipped the least possible distance as transportation costs are the primary driver of supply. All of the proposed and planned DOT projects are located

on the coast with access to local suppliers. Additionally, most of these projects are located in south Mendocino County, far from the western terminus of the MR Line. *Id.*

2. **Bulk Propane for Home Heating.** Bulk propane is delivered by truck throughout Mendocino County. However, as the County has a Mediterranean climate and significant wood supply, propane is not a primary heat source in the County. A much larger proportion of homes are heated with some combination of wood heat, electrical heat, and oil heat. *Id.*
3. **Road Salt.** As Mendocino County has a Mediterranean climate with low elevations, it only snows in the coastal mountain area (3,000- to 5,000-foot elevations) once or twice a year, at most. Locally obtained grit is used instead of road salt, which is typically needed in small quantities only once or twice a year at the very top of Highway 20 and Highway 101 out of Willits. There is no demand for road salt in Mendocino County because road salt is not used in the County. *Id.* at 8-9.
4. **Nearest Transload Centers Capacity and Commodities.** Per RSI International, the nearest transload centers are in Oakland, California and Antioch, California, which are respectively 103 miles and 106 miles south of Cloverdale, which is the proposed end of the line for Mendocino Railway. Per RSI, neither transload center handles any of these commodities: asphalt, chemicals, food, lumber, minerals, petroleum, plastic, and steel.¹⁸ Indeed, these transload centers primarily handle finished goods shipped from Asia by container for sale in the United States. These transload centers would not reorganize their heavily used facilities (in ports located in dense urban areas with high land costs

¹⁸See RSI Logistics interactive Transload Map <https://www.rsilogistics.com/rsi-transloading-thank-you/?submissionGuid=3e0ddb09-dc90-4c1b-b740-25435ade237c>

and no opportunity for expansion) to handle the odd timber or finished lumber transload from Mendocino County. As previously discussed, SMART does not have any transload facilities in Sonoma County. Additionally, utilization of Mendocino Railway's rail and the SMART rail to connect to the interstate rail system would require the following moves and operational delays: a car heading to Mendocino from the Interstate railway system would be handled by a UP train from Roseville to Suisun-Fairfield where it would be left on a track for CFNR to pick up. When CFNR arrives, they would take the car in their train to Napa Junction (American Canyon). From there, the car would be moved west to a track in Lombard by a second CFNR crew where it would be left for SMART to pick up. A SMART train would then take the car west to Schellville where a connection would be made to another SMART train that runs over SMART passenger trackage to Windsor. There it would be transloaded to a truck for a journey to Cloverdale where it would assumably be transloaded again to a Mendocino Railway train and then transloaded again to a truck to its destination. All told, during this 176+ mile journey a typical inbound car would be handled by eight different crews working for four different railroad companies and two trucking companies. Currently a rail car going from Roseville to Petaluma takes as little as 24 hours or up to four days, depending upon which days of the week are involved and how connections are made. The additional transloads and truck connections to connect to Mendocino Railway would significantly increase this transit time, scheduling uncertainty, and handling costs. *Id.* at 9-10.

5. **Agricultural Commodities.** As previously mentioned, and analyzed in the Report, the only agricultural commodities produced in quantity in Mendocino County are timber and wine grapes, which are not good candidates for rail freight. *Id.* at 10.
6. **Timber Harvesters with Out-of-State Timber Shipping Needs.** There is no market to transport logs out of state for milling because Mendocino County has six large productive lumber mills, including Agwood Mill & Lumber Inc., Cerro Pacific Lumber Inc., Mendocino Redwood Company (2 mills), Redwood Empire Mill, and Willits Redwood Co. Indeed, most major timberland owners operate their own mills as follows:
 - a. The Mendocino Forest Products Mill is the primary mill for Mendocino Redwood Company (224,874 acres) and Redwood Timberland Timber Co. LLC (120,629 acres), which are all affiliated companies.
 - b. The Redwood Empire Mill in Cloverdale primarily mills timber from Gualala Redwood Timber LLC (13,689 acres), which is an affiliated company.
 - c. Green Diamond Chip Facility in Humboldt Bay processes timber from the affiliated Green Diamond Resource Company, which holds 17,182 acres in Mendocino County. *Id.*

Finally, the remaining large timber holdings are owned by non-profit or public agencies that engage in more limited sustainable logging and in a competitive RFP process with local sawmills bidding for timber harvest plans. *Id.* at 10-11. These agencies include Jackson Demonstration State Forest (52,102 acres), the Conservation Fund (52,945 acres), and the Intertribal Sinkyone Wilderness (4,514 acres). *Id.* at 10-11. The remaining large timberland property owners are the State of California and U.S. government, which hold 16,361 acres and

21,301 acres, respectively. *Id.* at 11. These lands are held for the following uses: Tribal Lands, Lake Mendocino, Pinoleville Rancheria, Point Arena Stornetta BLM Park, Sanhedrin Wilderness, Yuki Wilderness, Round Valley Indian Reservation, Round Valley Reservation Trust lands, Elkridge Wilderness, Southern Fork Eel River Wilderness, and Sinkyone Wilderness. *Id.* None of these lands are logged. *Id.*

In conclusion, there is no market for interstate rail or truck transport of raw timber from Mendocino County to an out-of-state mill, even if such transport were possible, which it is not. *Id.*

4. Mr. Gedney Wrongly Objected to the Report’s Use of a Four-Pronged Approach to Identify Market Support for Potential Rail Freight along the Fort Bragg to Covelo Rail Corridor.

The Report, prepared by Marie Jones, included extensive outreach to a wide variety of potential shippers (breweries, wineries, timber operators, aggregate miners, latex), and found virtually no evidence of market demand for rail freight (see appendix A to the First Verified Statement of Marie Jones, filed with the Application). Jones VS II at 11. Mr. Gedney erroneously contends that “[t]he sample size for determining rail freight demand is too small when only a few local manufacturers are contacted.” *Id.* However, Ms. Jones contacted all the manufacturers in Mendocino County who had gross sales of over \$5 million. *Id.* The fact that there are few manufacturers with gross sales of over \$5 million is a function of the paucity of manufacturers in Mendocino County, not a function of poor research. *Id.*

Additionally, GRTA reviewed the three grant applications that MR submitted over the years, to confirm if the stated freight volumes are realistic. *Id.* In every case (save one), when GRTA contacted the listed shippers, they indicated that they were not interested in rail freight for a variety of reasons identified in the Report. *Id.* The only shipper who was interested (flobeds) indicated that it would ship three carloads of latex per year, not the 14 carloads listed in the grant

application. As a result, MR's own freight numbers are unable to be substantiated (see Pages 26 and 27 of the Report). *Id.*

As there is only evidence of market demand for three carloads of freight per year, GRTA used two additional approaches to estimate potential freight demand, both of which are likely to overestimate freight demand. *Id.* at 12. As previously discussed in the Report, both approaches -- proportional railcars per capita and railcars GDP -- overestimate demand for freight service, especially as the major commodities of Mendocino County do not lend themselves to rail freight. *Id.* Mendocino County's major commodities include fish, wine grapes, finished wine, beer, timber, aggregate and solid waste. *Id.*

5. Furthermore, Mr. Gedney Makes the Point that the Report Should Examine the Performance of the Entire Business of MR, Not Just the Freight Side, and Should Consider Passenger Fare Income to Partially Fund Freight Services.

On its face, Mr. Gedney's argument that the Report should examine the entire business of Mendocino Railway and consider passenger fare income to fund freight services seems like a fair criticism. Jones VS II at 12. A business could choose to add a new line of business for which they know they will lose money and use profits from another business area to offset the losses. *Id.* However, in making this argument Mr. Gedney has conceded that MR would lose money on its freight business. *Id.* MR estimated its 2023 tourist passenger revenue at \$3,504,060 for 63,000 riders of the Pudding Creek Express (six-mile tourist rail ride) in a prior BUILD grant application.¹⁹ *Id.* Additionally, in that same grant application, MR estimated that restored service to Northspur would result in tourist passenger revenues of \$4,349,700 for a net increase of

¹⁹ City of Fort Bragg California's BUILD 2020 Grant Application to Rebuild Mendocino Railway's Tunnel, Rehabilitate and Improve Safety Over Its Rural Rail Line, and Reinvigorate the Economy. Benefit Cost Analysis.

\$845,640 in gross revenue. *Id.* Additional operations and maintenance costs will be incurred by the additional longer rail service, which would absorb some portion of the additional tourist passenger revenues. *Id.* According to RSI Logistics, railroad operating expenses should typically be 80 percent or less of total revenues. *Id.* As MR does not publish its operating costs, using this metric nets \$3,479,760 in operating expenses for the tourist passenger services and would result in \$869,940 in gross profit. *Id.* Some of the gross profit could be reinvested in the freight operations, however, the Report generously assumed that all the gross profit would be reinvested in the freight line. *Id.* at 12-13. It should be noted that commuter passenger service is not an option for MR, as the estimated rail time is six hours from Fort Bragg to Willits, while a car or bus can travel that same route in 50 minutes. *Id.* Likewise, the rail time from Cloverdale to Willits is estimated at four hours, while a car or bus can travel the same distance in 55 minutes (see Page 1 of the Report). *Id.*

Finally, MR notes that it earns \$46,296 per year from site rental to AT&T Wireless. *Id.* Thus, \$916,236 of gross profit from the tourist passenger service could potentially be invested in freight operations. *Id.*

Table 1, below illustrates the effect of transferring this gross profit from MR tourist passenger service to its proposed freight operations. *Id.* As illustrated, the transfer of \$916,000 in gross profit has a negligible impact on the actual feasibility of the project, as the cost per ton would remain prohibitively expensive at \$854/ton. *Id.* A truck making the same delivery from Fort Bragg to Cloverdale would cost \$38/ton. *Id.*

Rail Transport Cost Per Ton including Capitalization, Operating and Loan Costs (Cloverdale to Willits to Fort Bragg)						
	Rehabilitation Cost (1 & 2)	Cap Rate	Annual Capitalization	Annual Rail Car Demand (3)	Annual Cost/ Rail Car	Cost Per Ton
Total Acquisition and Rehabilitation Costs						
Cloverdale to Willits Acquisition	unknown	10.58%	unknown	303	unknown	Unknown
Cloverdale to Willits Rail Line Rehabilitation Cost (1)	\$ 56,561,000	10.58%	\$ 5,984,154	303	\$ 19,774	\$ 247
Willits to Fort Bragg rail line rehabilitation costs of \$9,482,000 (\$ 30,098,200 (2) minus the \$21,500,000 of the RRIF loan to Mendocino Railway dedicated to this project).	\$ 9,482,000	10.58%	\$ 1,003,196	118	\$ 8,527	\$ 107
Total Rehabilitation Costs	\$ 66,043,000		\$ 6,987,349		\$ 28,301	\$ 354
Annual Operating & Maintenance Costs			Annual Cost			
Cloverdale to Willits (1 & 2)			\$ 5,097,457	303	\$ 16,844	\$ 211
Willits to Fort Bragg (2)			\$ 2,442,934	118	\$ 20,765	\$ 260
RRIF Loan \$21,500,000 @4.29% for 35 years to Finance Willits to Fort Bragg rail line rehabilitation costs.	\$ 21,500,000		\$ 1,197,674	118	\$ 10,150	\$ 127
Gross profit transferred from Mendocino Railway from tourist train & cell tower site rental.			\$ (916,236)	118	\$ (7,765)	\$ (97)
Total Annual Operating Costs			\$ 7,821,829		\$ 47,758	\$ 597
Total Annual Operating Costs and Annual Capitalization Cloverdale to Willits (rows 2 & 5)			\$ 11,081,611	303	\$ 36,618	\$ 458
Total Annual Operating Costs Willits to Fort Bragg (Rows 3, 6, 7 & 8)			\$ 3,727,568	118	\$ 31,677	\$ 396
Total Annual Operating Costs and Annual Capitalization			\$ 14,809,178		\$ 76,060	\$ 854
Source: 1) Dave Anderson, <i>Railroad Rehabilitation Assessment Cloverdale MP 85.6 to Willits MP 139.5</i> , American Rail Engineers, 2023, Page 33						
2) D&A Enterprises LLC, <i>Operations Assessment Report Fort Bragg to Willits and Willits to Cloverdale</i> , Dec 27, 2023, Page 5						
3) MJC, 2023; US Census; US DOT; https://data.bts.gov/stories/s/Transportation-as-an-Economic-Indicator-Seasonally/j32x-7fku/						

Likewise, the break-even analysis did not meaningfully change, as a total of 4,754 rail cars would be needed on the tracks from Willits to Cloverdale to break even (see table below). There is clearly nowhere near this level of demand for this project. *Id.* at 14.

Required Annual Railcar Volume for Competitive Freight Cost

Cloverdale to Willits	Amount	Willits to Fort Bragg	Amount
Annualized Capitalization of Cloverdale to Willits Rail Line Rehabilitation. (1)	\$ 5,984,154	Willits to Fort Bragg rail line rehabilitation costs of \$9,482,000 (\$ 30,098,200 (2) minus the \$21,500.000 of the RRIF loan to Mendocino Railway dedicated to this project).	\$ 1,003,196
Annual Operating Costs (1)	\$ 5,097,457	RRIF Loan \$21,500,000 @4.29% for 35 years to Finance Willits to Fort Bragg rail line rehabilitation costs.	\$ 1,197,674
Total	\$ 11,081,611	Annual Operating Costs (2)	\$2,442,934
		Gross profit transferred from Mendocino Railway from tourist train & cell tower site rental.	\$ (916,236)
		Total	\$3,640,608
Competitive Trucking Rate/Rail Car from Cloverdale to Willits (Table 4 of report).	\$ 2,331	Competitive Trucking Rate/Rail Car from Willits to Fort Bragg (Table 4 of report).	\$ 3,068
Required Annual Rail Cars to Break Even	4,754	Required Annual Rail Cars to Break Even	1,187
Source: 1) Dave Anderson, <u>Railroad Rehabilitation Assessment Cloverdale MP 85.6 to Willits MP 139.5</u> , American Rail Engineers, 2023, Page 33			
2) D&A Enterprises LLC, <u>Operations Assessment Report Fort Bragg to Willits and Willits to Cloverdale</u> , Dec 27, 2023, Page 5			
3) MJC, 2023; US Census; US DOT; https://data.bts.gov/stories/s/Transportation-as-an-Economic-Indicator-Seasonally/j32x-7fku/			

Id.

6. Mr. Gedney Completely Misreads GRTA's Analysis of Trucking Rates.

Mr. Gedney noted the statement from Marie Jones First Verified Statement that “[t]rucking is a true commodity transportation service with very little difference in rate *between operators in a given market area*.” Jones VS II at 15. Mr. Gedney then quotes national trucking rates to show that they differ in different markets. *Id.* However, the point clearly made by GRTA was about trucking rates *in a given market area* (Willits to Santa Rosa) and the data in the Report supports this statement as do basic economics. *See id.* Therefore, this retort by Mr. Gedney is unfounded and does not follow GRTA’s actual statement. *See id.*

7. Mr. Gedney Incorrectly Takes Issue with Marie Jones' Statements about the Rail Industry's Market Share and Trends Relative to the Trucking Industry.

In response to Marie Jones' statements in her first Verified Statement about the rail industry, Mr. Gedney provides data from the Association of American Railroads, whereas the data GRTA provided and analyzed came from the U.S Department of Transportation, Bureau of Transportation Statistics, and the Federal Highway Administration. Jones VS II at 15-16. Ms. Jones' analysis included data by carload, ton, ton-mile traveled, and value of shipments. For all these metrics, truck freight consistently outperforms rail freight based on this data. *Id.* at 16.

Therefore, the evidence is overwhelming. MR has moved no freight on the MR Line since its ownership, and there is no possibility of freight in the future. Moreover, Mendocino County and a large part of the surrounding area have not been conducive to freight rail service for well over two decades as the past rail bankruptcies and abandonments clearly demonstrate. The local lumber industry has declined substantially, and the area's geological footprint results in collapsed tunnels, landslides, and bridge and track washouts. Quite simply, rail is not a reasonable option for freight transportation in this area as the MR Line and surrounding railroad operations demonstrate.

iv. Abandonment of the MR Line Would Not Adversely Affect Existing Services Provided over the MR Line.

MR argues that granting the abandonment would somehow adversely affect its existing services. However, it is more likely that an abandonment would have the opposite impact on this tourist railroad. Presently, MR uses its railroad as a tourist excursion service. Apparently, this intrastate operation has been relatively successful. The granting of this abandonment would have no impact on the continuation of this rail service as MR would be permitted to continue the Skunk Train as well as the rest of its referenced intrastate railroad services (listed in response to the

Board's order in the waiver decision to provide information on its freight service). In fact, nothing on the MR Line would be impacted because it is all intrastate in nature.

Moreover, this abandonment would allow GRTA to abandon its rail line and proceed with its construction of the new trail which would connect to the MR Line in some fashion. As noted, the trail would attract millions of visitors to the area and create substantial income for the tourist industry in this beautiful region. This new income and tourist influx will only benefit MR's tourist excursion trains, especially in Willits through which the trail will pass. Again, this is simply MR crying wolf about an impact which will not occur like its non-existent interstate freight service.

v. MR Also Claims an Abandonment Would Undermine the U.S. Department of Transportation's Loan for the Purpose of Rehabilitating the MR Line.

MR's claim that the abandonment would undermine the U.S. Department of Transportation's RRIF Loan to rehabilitate the MR Line for freight operations is equally unavailing like its other claims about freight on the MR Line. In short, this abandonment cannot undermine freight service that does not exist and will not exist.

Throughout this proceeding, MR has claimed it provides freight service on the MR Line. The Board asked MR to provide evidence of such service which MR failed to do. MR also attempted to concoct various examples of the need for freight service on the MR Line which are unfounded at best as discussed herein. In fact, even with all these opportunities to provide some basis for its claims about freight service, MR has provided nothing but evidence of intrastate services.

This failure to demonstrate any need for freight service on this railroad is in line with all the evidence about rail service in this area. Most of the short line railroads in this region have gone into bankruptcy because of the downturn in the lumber industry and the difficult railroading terrain.

As a result, the area along with the State of California has moved to the tourism industry which holds high hopes in this territory teeming with natural beauty.

MR has followed this tourism path by creating a popular excursion train service that GRTA fully supports as noted in the Application. This tourist train and its related tourist services will only grow once the MR Line is rehabilitated and connected to the Great Redwood Trail in Willits.

However, MR does not seem to want to let go of its status as a rail carrier subject to the jurisdiction of the STB. MR takes this position despite the complete lack of need for freight rail service in the area.

All the evidence leads one to surmise that there is only one reason for MR to hold on to this beneficial federal rail carrier status. That reason is it entitles MR to state eminent domain and federal preemption powers which can be quite valuable in the real estate business as the CEO of its parent company has exclaimed publicly.²⁰ As noted in the Application, MR has been engaged in an inordinate amount of litigation for an extremely small railroad involving its status as a rail carrier.²¹ Therefore, it is quite clear that what MR is really protecting here is the shield from state interests and not its right to provide freight service.

²⁰ See Video Interview of Mike Hart (“I started buying railroads back in the nineties. I like them because they’re a great way of acquiring real estate.”), available at <https://savenoyohedlands.com/mrcorp/Hart%20on%20Eminent%20Domain.mp4>.

²¹ See Complaint, *City of Fort Bragg v. Mendocino Railway*, Case No. 21CV00850, (filed in Superior Court of California, County of Mendocino, Oct. 28, 2021) (attached to Application as Exhibit 10); *City of Fort Bragg v. Mendocino Railway*, Case No. 21CV00850, Ruling on Demurrer (Superior Court of California, County of Mendocino, Apr. 28, 2022) (attached to Application as Exhibit 11); Exh. A, Order of Condemnation, ¶ 2 attached to Application as Exhibit 12; *Meyer Decision*, SCUK-CVED-2020-74939, attached to Application as Exhibit 6; *Mendocino Railway vs. Shea, Lorena Ruth*, Case No. SCUK-CVED-74846, (filed in Superior Court of California, County of Mendocino, November 18, 2020).

II. THE PACIFIC LEGAL FOUNDATION’S OPPOSITION COMMENT ASKS THE BOARD TO IGNORE CURRENT LAW AND ABDICATE ITS OWN AUTHORITY.

The Board has statutory authority to consider and grant applications for adverse abandonment. 49 U.S.C. § 10903. The Board has exercised adverse abandonment authority since 1981. *City of South Bend v. STB*, 566 F.3d 1166, 1172 (D.C. Cir. 2009) (Kavanaugh, J., concurring). Courts have repeatedly affirmed the Board’s consideration of adverse abandonment applications. *See id.* (affirming Board decision to deny application for adverse abandonment); *New York Cross Harbor R.R. v. Surface Transp. Bd.*, 374 F.3d 1177 (D.C. Cir. 2004) (reversing Board grant of application of adverse abandonment because it acted arbitrarily and capriciously); *Consolidated Rail Corp. v. I.C.C.*, 29 F.3d 706, 709 (D.C. Cir. 1994) (denying petition to reverse I.C.C.’s issuance of abandonment certificate based on adverse abandonment application). While the PLF’s Comment (the “Comment”) focuses on the presence of the phrase “rail carrier” in the statutory language to justify its position that Section 10903 precludes non-rail carriers from bringing adverse abandonment claims, “abandonment” in Section 10903 has been construed both by the Board and courts to include adverse abandonment. *Howard v. Surface Transp. Bd.*, 389 F.3d 259, 266 (1st Cir. 2004). To contradict the clear weight of statutory authority affirmed by federal court opinions, the PLF offers only its own view that the “plain language” of Section 10903 allows only a rail carrier to abandon its own railroad lines. Comment at 3.

The PLF quotes, out of context, then-Judge Kavanaugh’s concurring opinion in *City of South Bend*, to support its position. Comment at 4 (“In fact, the absence of any such [adverse abandonment] language is what led then-Judge Kavanaugh ... to opine that the statute ‘seems to indicate that abandonment can occur only when the railroad files for it.’”). However, Judge Kavanaugh’s concurrence merely suggests that the 1995 ICC Termination Act may have “inadvertently” created uncertainty about whether the Act intended to eliminate adverse

abandonment, which authority had been previously exercised. *City of South Bend, supra*. Notwithstanding this criticism of the drafting of the Act, then-Judge Kavanaugh hardly took the position that the Board lacks such authority. Instead, he joined the majority in affirming the denial of an adverse abandonment application but criticized the Board's denial, which he seemingly would have rejected if not for the "arbitrary and capricious" standard. *See id.* ("Measured against the relevant adverse abandonment precedents, the Board's authority to continue denying South Bend's plea is nearly at an end. In my judgment, if sale of this inactive line does not occur by the end of 2010, the 'reasonable period of time' allotted by the Board will likely have expired."). Then-Judge Kavanaugh's opining that the Board should almost certainly have granted the adverse abandonment application undermines PLF's reliance on the concurrence as a basis for the Board abandoning its own statutory authority.

The Board may quickly dispense with the PLF's second and alternative argument that the Board is unconstitutional because (1) the Board's partisan balancing requirement violates the Appointments clause; and (2) removal of Board members only for inefficiency, neglect of duty, or malfeasance in office is unconstitutional. Comment at 7-14. Interestingly, the PLF takes the position that the Board must only reach this second issue if it does not first determine that the Board is without statutory authority to consider applications for adverse abandonment. Comment at 7. The PLF cites no authority for this order of addressing issues, but it is interesting that the PLF asks a Board it deems unconstitutional to issue such an order. Regardless, the PLF cites no binding authority holding that the Board is unconstitutional for any of the reasons raised by the PLF. Thus, the PLF provides no basis for the Board to question its own constitutionality.

CONCLUSION

For the foregoing reasons, GRTA respectfully requests that the Board authorize the adverse abandonment of the MR Line pursuant to 49 U.S.C. § 10903.

Dated: November 29, 2024

Respectfully Submitted,

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EXHIBIT 1

BEFORE THE
SURFACE TRANSPORTATION BOARD

AB-1305 (Sub-No. 1)

GREAT REDWOOD TRAIL AGENCY
- ADVERSE ABANDONMENT -
MENDOCINO RAILWAY IN MENDOCINO COUNTY, CA

APPENDIX A

VERIFIED STATEMENT OF MARIE JONES

This verified statement responds to the verified statement of Matt Gedney dated June 17, 2024. While Gedney has worked in railroad business development for 20 years, he acknowledges that it has primarily been in land use planning, environmental review and property acquisition. He does not have market analysis and economic development expertise or experience. He also lacks expert knowledge about the economy of the North Coast, specifically Mendocino and Sonoma Counties, California, where this rail operation is proposed. Consequently, his critique of my analysis misses important and obvious facts about the local area that make his principal arguments irrelevant. Mr. Gedney missed these key facts:

1. The rail line from Willits to Cloverdale (which is 51 miles long) remains essentially stranded. Below, I discuss in more detail the southern connection to this line and future plans for its eventual development which do not include plans to Cloverdale. His argument for transloading is therefore baseless.
2. Mendocino County has a very small economy that has been stagnant for a long time, therefore Mendocino County is not a thriving market ripe for new rail development or even freight service generally.
3. There are very few manufacturers in Mendocino County. Furthermore, Mendocino County produces five commodities (fish, wine grapes, wine, logs and aggregate), none of which are likely to become rail freight customers for various

reasons (e.g., perishability, very short-haul distance with either very dispersed locations of origination or very dispersed destinations for sales, respectively).

4. Sonoma County SMART, the nearest rail line earned just \$4.9 million in revenue from rail freight in 2023. Yet Sonoma County has a \$33 billion economy compared with Mendocino County's \$4 billion economy. Mendocino Railway simply cannot earn the required \$14 million in yearly freight shipments to break even, as this would require MR to earn three times SMART's shipping revenue in an economy that is 12% of the size of Sonoma County's economy. Furthermore, Sonoma County SMART shipped 1,490 cars of rail freight and Mendocino Railway's freight projections of 3,000 rail carloads is simply not realistic (as illustrated in my report and further detailed herein).
 5. All of the potential freight items that Mr. Gedney listed in his verified statement indicate a profound lack of understanding of both the local economy and climate. For example, rock salt is not used in the winter in Mendocino County because we have a Mediterranean climate with little to no snow. Likewise, bulk propane is not the primary source of winter heat fuel; wood, electricity, oil and propane are all used for heat. Additionally, there are no transload facilities in Mendocino or Sonoma Counties. Finally, as analyzed in my report and later in this verified statement, Mendocino's large ag products (wine grapes, fish and timber) are not good candidates for rail freight.
 6. The inclusion of gross profits from Mendocino Railway's tourist passenger service does not appreciably change the financial feasibility of re-establishing the rail line from Willits to Cloverdale. This verified statement shows that even with all gross profits from the tourist passenger services that this "project" (if it is ever built and operated) would generate, it would represent a significant financial drain to Mendocino Railway.
- 1. Mr. Gedney does not appear to understand that this rail line is a short 51-mile-long isolated discontinuous line. As it is not connected to the interstate railroad and, a shipper would require three transload operations to utilize this short 51 mile length of rail line. So, it simply makes no economic sense when**

Highway 101 provides efficient and easy access to the few shippers that might consider using Mendocino Railway freight services.

Mr. Gedney appears to believe that including potential rail freight from Humboldt County and the “four other Counties north and east of Mendocino” via transload operations is a viable option to expand potential freight customers for Mendocino Railway. However, none of these areas are connected to this rail line, and the GRTA rail line has not been connected to the interstate rail system due to the FRA embargo. Note the facts below:

- Northwest Pacific rail line that used to connect Eureka to Willits closed 26 years ago, in 1998.
- Likewise, the connection from Willits to Cloverdale is embargoed.
- The rail line from Cloverdale to Santa Rosa is currently closed to all rail traffic and is in poor condition and not included in Mendocino Railway’s acquisition or rehabilitation costs.
- The line from Santa Rosa to Larkspur is managed by Sonoma-Marín Area Rail Transit (SMART), which is primarily a passenger rail for Marin and Sonoma Counties. The 45-mile system includes stations in the Sonoma County Airport area, Santa Rosa, Rohnert Park, Cotati, Petaluma, Novato, San Rafael, and Larkspur. Fare revenues for fiscal year 2023 were \$1.8 million, while operating expenses, excluding depreciation and amortization expense, were \$42.7 million in fiscal year 2023. Most of SMART’s operating costs are covered by a special sales tax, which totaled \$49.6 million in 2023 to support passenger rail service.
- In July 2021, SMART officially became the freight common carrier for the rail line. Total revenues for all freight service were \$4.9 million for fiscal year 2022, however 48% of this revenue is for railcar storage for other rail companies from the bay area. Operating expenses were \$3.9 million for fiscal year 2022.¹ Per my conversation with Matt Stevens of SMART, the line currently hauls only feedstock for the dairy industry in Petaluma and grain for Sonoma County-based breweries.

¹ Sonoma-Marín Area Rail Transit District Annual Comprehensive Financial Report, June 30, 2023
<https://www.sonomamarintrain.org/sites/default/files/Financial%20Documents/ACFR%20SMART%20FY%202023%20Final%202023.12.01.pdf>

All cars arrive full, from the Midwest, and leave Sonoma County empty as there are currently no freight customers going from Sonoma County to the interstate rail line.

- SMART currently does not have a transload facility and would only consider installing one if there was sufficient demand for transloading. According to Matt Stevens of SMART, there is no demand for a transload facility.
- SMART currently provides freight service on this line from Novato (MP B25.6) to Petaluma. SMART has secured funding and will complete the freight line extension to Windsor by May 2026 and to Healdsburg in 2030. SMART is not able to extend the line to Cloverdale because Cloverdale is not in MTC's *Plan Bay Area*, making it ineligible for state funding. It is unknown when or if this connection will be made.
- "SMART's only link to the national rail network is through connecting railroad California Northern (initials CFNR). Track utilized by CFNR in this area is leased from Union Pacific with the lease containing specific commercial and operating restrictions that impact freight activities of both CFNR and SMART. One such restriction is that commercial activities for long-haul freight on both lines are to be handled by Union Pacific, with UP responsible for establishing pricing, customer communication, contracts/agreements, supplying of cars, etc. This means, for example, that prices for long-haul shipments originating or terminating on SMART's trackage are to be set by UP. UP considers SMART and CFNR to be "Handling Carriers", meaning that they essentially act as contractors to move carloads to and from customers on UP's behalf. In other words, UP fully controls the routing, pricing, and marketing of SMART's current and prospective long-haul traffic, making SMART's customers essentially "captive customers" of the Union Pacific.² With UP having commercial control over its freight traffic, SMART is

² Project Finance Advisory Ltd. Executive Summary of SMART's Freight Rail Operations, Maintenance, Capital Costs, and Business Opportunities Analysis, 2021
<https://www.sonomamarintrain.org/sites/default/files/Documents/Rail%20Operations%20Executive%20Summary%20FINAL%207-29-21.pdf>

unable to influence key issues like pricing of shipments.” Union Pacific would also limit Mendocino Railway’s ability to set pricing for long haul freight through this lease restriction.

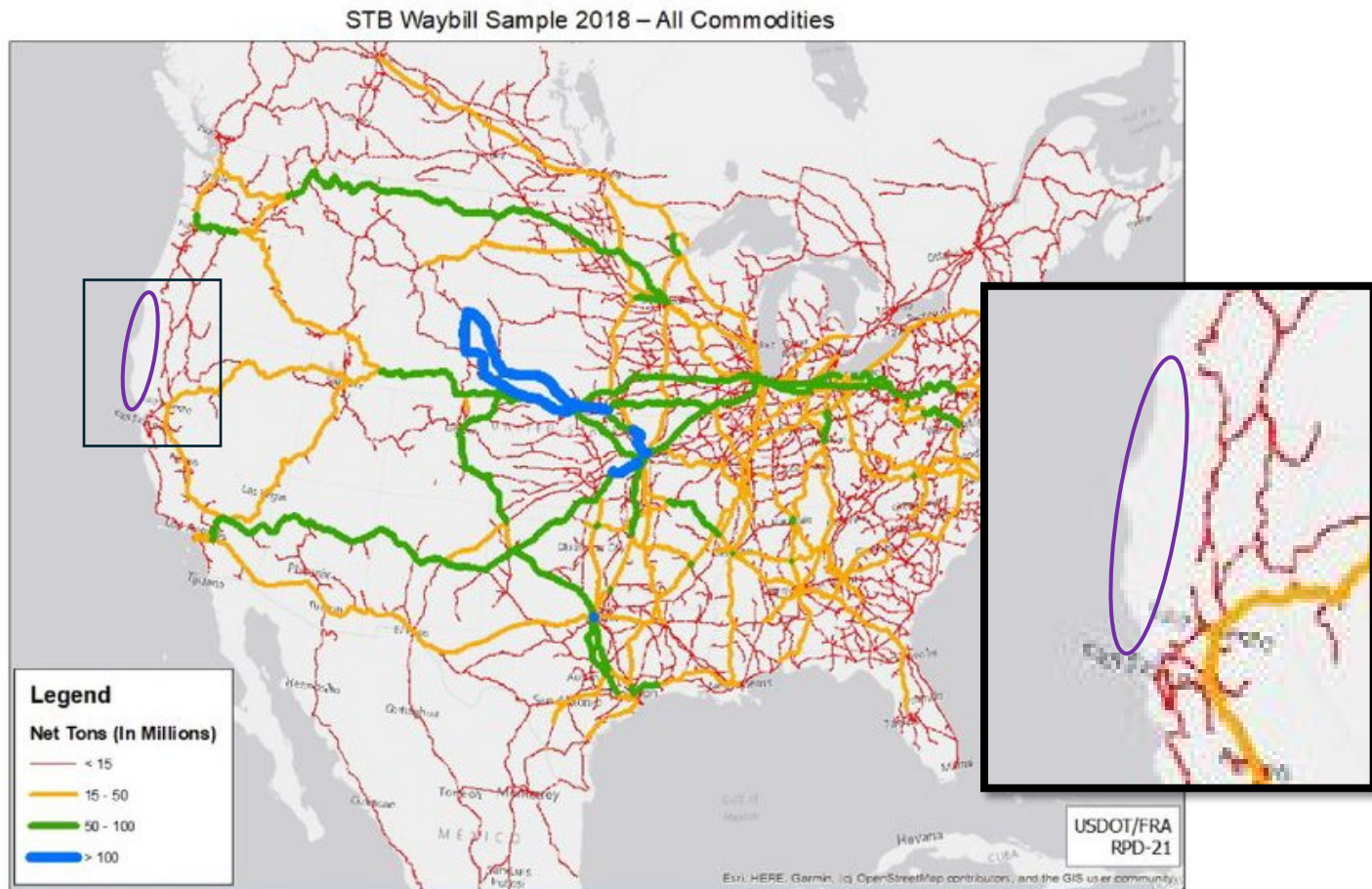
Therefore, the segment of rail from Fort Bragg to Cloverdale lacks connectivity to the interstate rail system as there is no service between Cloverdale and Windsor, and train connectivity between Cloverdale and Healdsburg is not likely until 2035 or beyond. Yet, on numerous occasions in his verified statement, Mr. Gedney operates on the assumption that this connectivity exists. He maintains that transload sites would be an effective way to add freight traffic to this line. In Mr. Gedney’s opinion, it apparently would make sense for a shipper to send freight by truck from Eureka to Willits (a distance of 126 miles), transload onto the currently embargoed line from Willits to Cloverdale (a distance of 51 miles), then transload again onto a truck in Cloverdale, which would drive to Antioch where the load might be transloaded yet again to rail and thereby connect to the interstate rail system. Few Humboldt County shippers would consider this approach when they can ship by truck straight to Antioch (the closest transload site) in five hours. Mr. Gedney does not appear to understand the trucking industry, wherein two short-haul truck moves (to make use of the rail line from Willits to Cloverdale) are always going to be proportionally more expensive than one short-haul truck move straight to Antioch.

The waybill map (next page) illustrates that there is no significant freight rail connectivity along the highway 101 corridor between Eureka and the interstate system (see the purple circle).

Furthermore, SMART’s own analysis of freight potential along their existing operational rail line (which has connectivity to the interstate system) concludes that there is little opportunity to increase limited freight service:

“For most products moving to or from a customer located in SMART’s service area, it is advantageous to ship via either truck-direct, or to simply use trucks to shuttle to/from one of the Bay Area facilities that provide access to long-haul rail or ocean shipping. Trucks often represent significant competition for railroads, but they are especially effective when they can readily work in combination with long-haul rail or ocean shipping as is the

case near the Bay Area. With trucks able to provide prompt, low-cost, pickup and delivery services throughout SMART's service area, there is little or no incentive for most shippers to use the freight rail services available along SMART's lines. Proximity to Bay Area facilities and intense truck competition are key reasons why SMART has been unable to increase the quantity of cars it handles in recent years despite ongoing efforts."³



The Waybill is a stratified sample of carload waybills for all U.S. rail traffic submitted by those rail carriers terminating 4,500 or more revenue carloads annually. Image created by Federal Railroad Administration, Office of Railroad Policy and Development (Office of Policy), based on Surface Transportation Board's 2018 Carload Waybill Sample.

³ Project Finance Advisory Ltd. *Analysis of SMART's Freight Market For Sonoma-Marin Area Rail Transit District (SMART)*, December 9, 2021
<https://www.sonomamarintrain.org/sites/default/files/Documents/Final%20Report%20Freight%20Market%20Analysis%20120921.pdf>

2. Mr. Gedney believes my analysis should take a closer look at local commodities, which could be shipped by rail.

I completed a thorough analysis of all potential local commodities, and there is simply no interest in rail service for a variety of reasons, as detailed below:

- a. **Perishable Commodities.** As noted in my report, Mendocino County produces significant wine grape crops, and fresh fish has long been an important but declining part of the economy. Fish and wine grapes are all highly perishable and transport time and temperature are critical for successful shipping. The proposed rail line with its limited service (long transport time, short distance and multiple transloads) wouldn't allow for guaranteed delivery times for these highly perishable commodities. Additionally, virtually all wine grapes are grown in highly dispersed locations from which they are trucked to local vineyards, leaving only the finished product for final shipping. Per my multiple conversations with business owners, neither wineries nor breweries are interested in shipping a finished product by rail due to the need for refrigeration and the potential damage to the product from rail line vibrations and long transport times in hot conditions.
- b. **Raw Material Commodities.** Logs, Finished Lumber and Aggregate. My report discusses both the timber and aggregate market in depth (see Pages 28 and 29). As noted, and analyzed in my report, these commodities are not good candidates for rail freight.

3. On Page 6 of Mr. Gedney's verified statement, he offers the following minimum analysis for a good market study:

1. *Are there any planned California DOT projects in the region that would require non-local construction materials?*
2. *How is bulk propane delivered to the area for sales and distribution for home heating?*
3. *How is bulk road salt supplied for winter weather?*

4. *What are the nearest transload centers, available capacity, and what commodities are handled?*
5. *Are there agricultural commodities produced or consumed in the region in meaningful quantities, including such commodities as animal feed or fertilizer?*
6. *Which timber harvesters do or could transport product to out-of-state mills?*

Mr. Gedney's questions are largely irrelevant to Mendocino County and illustrate his lack of understanding about the local economy, timber industry, local climate and terrain of Mendocino County, all of which play a role in addressing his list of questions, as follows:

1. **DOT Projects.** Planned DOT projects were analyzed and considered in my analysis. See Appendix C (Page 24 of my report). As noted in the report, these projects will be served by local suppliers of aggregate and concrete as neither of these materials ship well via rail. Aggregate is always shipped the least possible distance as transportation costs are the primary driver of supply. All of the proposed and planned DOT projects are located on the coast with access to local suppliers. Additionally, most of these projects are located in south Mendocino County, far from the western terminus of the Mendocino Railway line.
2. **Bulk Propane for Home Heating.** Bulk propane is delivered by truck throughout Mendocino County. However, as the County has a Mediterranean climate and significant wood supply, propane is not a primary heat source in the County. A much larger proportion of homes are heated with some combination of wood heat, electrical heat and oil heat.
3. **Road Salt.** As Mendocino County has a Mediterranean climate with low elevations, it only snows in the coastal mountain (3,000- to 5,000-foot elevations) once or twice a year, at most. Locally obtained grit is used instead of road salt, which is typically needed in small quantities only once or twice a year at the very top of Highway 20 and Highway 101 out of Willits. There is no

demand for road salt in Mendocino County because road salt is not used in the County.

4. **Nearest Transload Centers Capacity and Commodities.** Per RSI

International, the nearest transload centers are in Oakland, California and Antioch, California, which are respectively 103 miles and 106 miles south of Cloverdale, which is the proposed end of the line for Mendocino Railway. Per RSI, neither transload center handles any of these commodities: asphalt, chemicals, food, lumber, minerals, petroleum, plastic and steel).⁴ Indeed, these transload centers primarily handle finished goods shipped from Asia by container for sale in the United States. These transload centers would not reorganize their heavily used facilities (in ports located in dense urban areas with high land costs and no opportunity for expansion) to handle the odd timber or finished lumber transload from Mendocino County. As previously discussed, SMART does not have any transload facilities in Sonoma County. Additionally, utilization of Mendocino Railway's rail and the SMART rail to connect to the interstate rail system would require the following moves and operational delays: a car heading to Mendocino from the Interstate railway system would be handled by a UP train from Roseville to Suisun-Fairfield where it would be left on a track for CFNR to pick up. When CFNR arrives, they would take the car in their train to Napa Junction (American Canyon). From there, the car would be moved west to a track in Lombard by a second CFNR crew where it would be left for SMART to pick up. A SMART train would then take the car west to Schellville where a connection would be made to another SMART train that runs over SMART passenger trackage to Windsor. There it would be transloaded to a truck for a journey to Cloverdale where it would assumably be transloaded again to a Mendocino Railway train and then transloaded again to a truck to its destination. All told, during this 176+ mile journey a typical inbound car would be handled by eight different crews working for four different railroad companies and two trucking companies.

⁴See RSI Logistics interactive Transload Map <https://www.rsilogistics.com/rsi-transloading-thank-you/?submissionGuid=3e0ddb09-dc90-4c1b-b740-25435ade237c>

Currently a rail car going from Roseville to Petaluma takes as little as 24 hours or up to four days, depending upon which days of the week are involved and how connections are made. The additional transloads and truck connections to connect to Mendocino Railway would significantly increase this transit time, scheduling uncertainty, and handling costs.⁵

5. **Agricultural Commodities.** As previously mentioned, and analyzed in my report, the only agricultural commodities produced in quantity in Mendocino County are timber and wine grapes, which are not good candidates for rail freight.
6. **Timber Harvesters with Out-of-State Timber shipping needs.** There is no market to transport logs out of state for milling because Mendocino County has six large productive lumber mills, including Agwood Mill & Lumber Inc., Cerro Pacific Lumber Inc., Mendocino Redwood Company (2 mills), Redwood Empire Mill and Willits Redwood Co. Indeed, most major timberland owners operate their own mills as follows:
 - a. The Mendocino Forest Products Mill is the primary mill for Mendocino Redwood Company (224,874 acres) and Redwood Timberland Timber Co. LLC (120,629 acres), which are all affiliated companies.
 - b. The Redwood Empire Mill in Cloverdale primarily mills timber from Gualala Redwood Timber LLC (13,689 acres), which is an affiliated company.
 - c. Green Diamond Chip Facility in Humboldt Bay processes timber from the affiliated Green Diamond Resource Company, which holds 17,182 acres in Mendocino County.

Finally, the remaining large timber holdings are owned by non-profit or public agencies that engage in more limited sustainable logging and in a competitive RFP process with local sawmills bidding for timber harvest plans. These agencies include Jackson

⁵ Project Finance Advisory Ltd. Analysis of SMART's Freight Market For Sonoma-Marín Area Rail Transit District (SMART), December 9, 2021
<https://www.sonomamarintrain.org/sites/default/files/Documents/Final%20Report%20Freight%20Market%20Analysis%20120921.pdf>

Demonstration State Forest (52,102 acres), the Conservation Fund (52,945 acres), and the Intertribal Sinkyone Wilderness (4,514 acres). The remaining large timberland property owners are the State of California and U.S. government, which hold 16,361 acres and 21,301 acres, respectively. These lands are held for the following uses: Tribal Lands, Lake Mendocino, Pinoleville Rancheria, Point Arena Stornetta BLM Park, Sanhedrin Wilderness, Yuki Wilderness, Round Valley Indian Reservation, Round Valley Reservation Trust lands, Elkridge Wilderness, Southern Fork Eel River Wilderness, and Sinkyone Wilderness. None of these lands are logged.

In conclusion, there is no market for interstate rail or truck transport of raw timber from Mendocino County to an out-of-state mill, even if such transport were possible, which it is not.

4. Mr. Gedney objected to my use of a four-pronged approach to identify market support for potential rail freight along the Fort Bragg to Covelo rail corridor.

I completed extensive outreach to a wide variety of potential shippers (breweries, wineries, timber operators, aggregate miners, latex), and found virtually no evidence of market demand for rail freight (see appendix A of the report). Mr. Gedney erroneously contends that “The sample size for determining rail freight demand is too small when only a few local manufacturers are contacted.” I contacted all the manufacturers in Mendocino County who had gross sales of over \$5 million. The fact that there are few manufacturers with gross sales of over \$5 million is a function of the paucity of manufacturers in Mendocino County, not a function of poor research.

Additionally, I reviewed the three grant applications that Mendocino Railway submitted on its behalf over the years, to confirm if the stated freight volumes are realistic. In every case (save one), when I contacted the listed shippers, they indicated that they were not interested in rail freight for a variety of reasons identified in my report. The only shipper who was interested (flobeds) indicated that they would ship three carloads of latex per year, not the 14 carloads listed in the grant application. Mendocino Railway’s own freight numbers are unable to be substantiated (see Pages 26 and 27 of my report).

As there is only evidence of market demand for three carloads of freight per year, I used two additional approaches to estimate potential freight demand, both of which likely overestimate freight demand. As I mentioned in my report, both approaches -- proportional railcars/capita and railcars GDP -- overestimate demand for freight service, especially as the major commodities of Mendocino County don't lend themselves to rail freight for the reasons already listed in this verified statement and my report. They include fish, wine grapes, finished wine, beer, timber, aggregate and solid waste.

5. Alternative Revenue Sources. Mr. Gedney makes the point that the feasibility analysis should examine the performance of the entire business of Mendocino Railway, not just the freight side, and should consider passenger fare income to partially fund freight services.

On its face, this argument seems like a fair criticism. A business could choose to add a new line of business for which they know they will lose money and use profits from another business area to offset the loss.

Regardless, Mr. Gedney conceded my point that Mendocino Railway would lose money on its freight business.

Mendocino Railway estimated its 2023 tourist passenger revenue at \$3,504,060 for 63,000 riders of the Pudding Creek Express (six-mile tourist rail ride) for a BUILD grant application.⁶ Additionally, in that same grant application, Mendocino Railway estimated that restored service to Northspur would result in tourist passenger revenues of \$4,349,700 for a net increase of \$845,640 in gross revenue. Additional operations and maintenance costs will be incurred by the additional longer rail service, which would absorb some portion of the additional tourist passenger revenues. According to RSI Logistics, railroad operating expenses should typically be 80 percent or less of total revenues. As Mendocino Railway does not publish its operating costs, using this metric nets \$3,479,760 in operating expenses for the tourist passenger services and would result in \$869,940 in gross profit. Some of the gross profit could be reinvested in the

⁶ City of Fort Bragg California's BUILD 2020 Grant Application to Rebuild Mendocino Railway's ("MR") Tunnel, Rehabilitate and Improve Safety Over Its Rural Rail Line, and Reinvigorate the Economy. Benefit Cost Analysis.

freight operations, however, my analysis generously assumed that all of the gross profit would be reinvested in the freight line. It should be noted that commuter passenger service is not an option for Mendocino Railway, as the estimated rail time is six hours from Fort Bragg to Willits, while a car or bus can travel that same route in 50 minutes. Likewise, the rail time from Cloverdale to Willits is estimated at four hours, while a car or bus can travel the same distance in 55 minutes (see Page 1 of my report).

Finally, Mendocino Railway notes that it earns \$46,296 per year from site rental to AT&T Wireless. Thus \$916,236 of gross profit from the tourist passenger service could potentially be invested in freight operations.

Table 1, below, illustrates the effect of transferring this gross profit from Mendocino Railway tourist passenger service to its proposed freight operations. **As illustrated, the transfer of \$916,000 in gross profit has a negligible impact on the actual feasibility of the project, as the cost per ton would remain prohibitively expensive at \$854/ton. A truck making the same delivery from Fort Bragg to Cloverdale would cost \$38/ton.**

Rail Transport Cost Per Ton including Capitalization, Operating and Loan Costs (Cloverdale to Willits to Fort Bragg)						
	Rehabilitation Cost (1 & 2)	Cap Rate	Annual Capitalization	Annual Rail Car Demand (3)	Annual Cost/ Rail Car	Cost Per Ton
Total Acquisition and Rehabilitation Costs						
Cloverdale to Willits Acquisition	unknown	10.58%	unknown	303	unknown	Unknown
Cloverdale to Willits Rail Line Rehabilitation Cost (1)	\$ 56,561,000	10.58%	\$ 5,984,154	303	\$ 19,774	\$ 247
Willits to Fort Bragg rail line rehabilitation costs of \$9,482,000 (\$ 30,098,200 (2) minus the \$21,500.000 of the RRIF loan to Mendocino Railway dedicated to this project).	\$ 9,482,000	10.58%	\$ 1,003,196	118	\$ 8,527	\$ 107
Total Rehabilitation Costs	\$ 66,043,000		\$ 6,987,349		\$ 28,301	\$ 354
Annual Operating & Maintenance Costs			Annual Cost			
Cloverdale to Willits (1 & 2)			\$ 5,097,457	303	\$ 16,844	\$ 211
Willits to Fort Bragg (2)			\$ 2,442,934	118	\$ 20,765	\$ 260
RRIF Loan \$21,500,000 @4.29% for 35 years to Finance Willits to Fort Bragg rail line rehabilitation costs.	\$ 21,500,000		\$ 1,197,674	118	\$ 10,150	\$ 127
Gross profit transferred from Mendocino Railway from tourist train & cell tower site rental.			\$ (916,236)	118	\$ (7,765)	\$ (97)
Total Annual Operating Costs			\$ 7,821,829		\$ 47,758	\$ 597
Total Annual Operating Costs and Annual Capitalization Cloverdale to Willits (rows 2 & 5)			\$ 11,081,611	303	\$ 36,618	\$ 458
Total Annual Operating Costs Willits to Fort Bragg (Rows 3, 6, 7 & 8)			\$ 3,727,568	118	\$ 31,677	\$ 396
Total Annual Operating Costs and Annual Capitalization			\$ 14,809,178		\$ 76,060	\$ 854
Source: 1) Dave Anderson, <i>Railroad Rehabilitation Assessment Cloverdale MP 85.6 to Willits MP 139.5</i> , American Rail Engineers, 2023, Page 33						
2) D&A Enterprises LLC, <i>Operations Assessment Report Fort Bragg to Willits and Willits to Cloverdale</i> , Dec 27, 2023, Page 5						
3) MJC, 2023; US Census; US DOT; https://data.bts.gov/stories/s/Transportation-as-an-Economic-Indicator-Seasonally/j32x-7fku/						

Likewise, the break-even analysis did not meaningfully change, as a total of 4,754 rail cars would be needed on the tracks from Willits to Cloverdale to break even (see table below). There is clearly nowhere near this level of demand for this project.

Required Annual Railcar Volume for Competitive Freight Cost			
Cloverdale to Willits	Amount	Willits to Fort Bragg	Amount
Annualized Capitalization of Cloverdale to Willits Rail Line Rehabilitation. (1)	\$ 5,984,154	Willits to Fort Bragg rail line rehabilitation costs of \$9,482,000 (\$ 30,098,200 (2) minus the \$21,500,000 of the RRIF loan to Mendocino Railway dedicated to this project).	\$ 1,003,196
Annual Operating Costs (1)	\$ 5,097,457	RRIF Loan \$21,500,000 @4.29% for 35 years to Finance Willits to Fort Bragg rail line rehabilitation costs.	\$ 1,197,674
Total	\$ 11,081,611	Annual Operating Costs (2)	\$2,442,934
		Gross profit transferred from Mendocino Railway from tourist train & cell tower site rental.	\$ (916,236)
		Total	\$3,640,608
Competitive Trucking Rate/Rail Car from Cloverdale to Willits (Table 4 of report).	\$ 2,331	Competitive Trucking Rate/Rail Car from Willits to Fort Bragg (Table 4 of report).	\$ 3,068
Required Annual Rail Cars to Break Even	4,754	Required Annual Rail Cars to Break Even	1,187
Source: 1) Dave Anderson, <u>Railroad Rehabilitation Assessment Cloverdale MP 85.6 to Willits MP 139.5</u> , American Rail Engineers, 2023, Page 33			
2) D&A Enterprises LLC, <u>Operations Assessment Report Fort Bragg to Willits and Willits to Cloverdale</u> , Dec 27, 2023, Page 5			
3) MJC, 2023; US Census; US DOT; https://data.bts.gov/stories/s/Transportation-as-an-Economic-Indicator-Seasonally/j32x-7fku/			

6. Mr. Gedney misunderstands or intentionally misrepresented my analysis of trucking rates, stating that I made “incorrect claims about the trucking market.”

He then quoted my statement as follows: “Trucking is a true commodity transportation service with very little difference in rate *between operators in a given market area*.” Mr. Gedney then irrelevantly quoted national trucking rates to show that they differ in different markets. My point was about trucking rates *in a given market area* (Willits to Santa Rosa) and the data in my report supports my argument as does common economic sense. This critique by Mr. Gedney is wrong, or purposely misleading.

7. Mr. Gedney appears dissatisfied with my characterization of the rail industry’s market share, and trends relative to the trucking industry.

Mr. Gedney provides data from a trade group (Association of American Railroads), whereas the data I provided and analyzed came from the U.S Department of Transportation, Bureau of Transportation Statistics, and the Federal Highway

Administration. My analysis included data by carload, ton, ton-mile traveled, and value of shipments. For all of these metrics, truck freight consistently outperforms rail freight.

Verification

Pursuant to 28 U.S.C. 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information and belief. Further, I certify that I am qualified and authorized to file this Verified Statement.



Marie Jones, Principal
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Dated: November 29, 2024

EXHIBIT 2

HIGHLY
CONFIDENTIAL
MATERIAL
REMOVED

EXHIBIT 3

HIGHLY
CONFIDENTIAL
MATERIAL
REMOVED