

SERVICE DATE – AUGUST 21, 2023
SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1305 (Sub-No. 1)

GREAT REDWOOD TRAIL AGENCY—ADVERSE ABANDONMENT—
MENDOCINO RAILWAY IN MENDOCINO COUNTY, CAL.

Digest:¹ This decision grants exemptions from certain statutory provisions and waives certain regulatory requirements that normally apply when filing an application for abandonment authority. The Board finds that in this proceeding those provisions and requirements are either unnecessary or would be difficult or impossible for the Great Redwood Trail Agency to comply with should it file an application for adverse abandonment.

Decided: August 18, 2023

In a petition filed on February 28, 2023, the Great Redwood Trail Agency (GRTA), an agency of the State of California, seeks exemptions from certain statutory provisions and waivers of certain regulatory requirements regarding the anticipated filing of a third-party, or “adverse,” application for abandonment of an approximately 40-mile rail line owned by Mendocino Railway (MR). As discussed below, the Board will grant GRTA’s petition in part.

BACKGROUND

GRTA, an agency of the State of California (State), asserts that it has been directed by the State, through the Great Redwood Trail Agency Act (GRTA Act), CAL. GOV’T CODE §§ 93000-93030 (2022), to engage the Board’s railbanking processes under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and establish interim trail use on GRTA’s rail lines. (Pet. 2-3.; see also CAL. GOV’T CODE § 93022.) According to GRTA, the GRTA Act seeks to establish a long-distance recreational trail, to be known as the Great Redwood Trail, over a 316-mile historic rail line known as the North Western Pacific railroad corridor (GRTA Line). (Pet. 2.)

The northern portion of the GRTA Line, between Eureka, Cal. and Willits, Cal., has already been authorized for abandonment and rail banked under the Trails Act. See generally Great Redwood Trail Agency—Aban. Exemption—in Mendocino, Trinity, & Humboldt Cntys., Cal., Docket No. AB 1305X. GRTA brought this proceeding as a predicate to its effort to seek abandonment authority for, and establish interim trail use/railbanking over, the middle portion of the GRTA Line between the Sonoma County/Mendocino County border and Willits, Cal., which

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Pol’y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

GRTA owns (the Middle Portion).² GRTA states that, although there is no realistic prospect for rail traffic on the Middle Portion in the foreseeable future, it cannot currently seek abandonment authority because abandoning the Middle Portion would “strand,” or disconnect from the interstate rail network, a rail line owned by MR (the MR Line). (Pet. 7 (citing R.J. Corman R.R. Prop.—Aban. Exemption—in Scott, Campbell, & Anderson Cntys., Tenn., AB 1296X, slip op. at 3 (STB served Nov. 17, 2022) (“It is well settled that so long as there is a common carrier obligation attached to a particular segment of track, the Board will not allow that segment to become isolated from the rail system as a result of the abandonment of the adjoining segment.”)).) The MR Line extends between milepost 0, at Fort Bragg, Cal., and milepost 40, at Willits, where it connects with the Middle Portion and, through it, the rest of the interstate rail network. (Pet. 7.)

To move forward with its mandate to railbank the GRTA Line, GRTA intends to file in this subdocket an application for third-party, or “adverse,” abandonment of the MR Line to remove it from the interstate rail network so that GRTA can subsequently seek abandonment and railbanking authority for the Middle Portion of the GRTA Line. In anticipation of that adverse abandonment application, GRTA has filed the present petition seeking to be relieved from certain requirements of the abandonment application process that it argues are either inapplicable or unneeded under the circumstances.

MR filed a reply to GRTA’s petition on March 20, 2023, responding to specific requests for exemptions and waivers and arguing, among other things, that GRTA’s petition includes numerous inaccurate statements. Also on March 20, 2023, the North Coast Rails With Trails Coalition and the Transportation Solutions Defense and Education Fund (TRANSDEF) filed separate replies opposing GRTA’s petition. Both parties state that they oppose the petition and the anticipated adverse abandonment application because they generally support the concept of rails-with-trails—i.e., rails and trails coexisting—over trails converted from rails. (N. Coast Rails With Trails Coalition Reply 1; TRANSDEF Reply 1.) The parties also express that they anticipate a successful offer of financial assistance (OFA)³ on the Middle Portion of the GRTA Line once GRTA files for abandonment authority on that segment. (N. Coast Rails With Trails Coalition Reply 2; TRANSDEF Reply 2.) According to the parties, a successful OFA on the Middle Portion would promote freight rail traffic in the region and would be consistent with the Board’s rail transportation policy. (N. Coast Rails With Trails Coalition Reply 2; TRANSDEF Reply 2.) Lastly, TRANSDEF asks the Board to hold this proceeding in abeyance pending a determination on the future of the Middle Portion of GRTA’s Line—i.e., whether the Middle Portion will be abandoned and converted to a trail or acquired by another entity and restored for

² According to GRTA, the southern portion of the GRTA Line between the Sonoma County/Mendocino County border and Lombard, Cal., has been acquired by the Sonoma-Marín Area Rail Transit District, a Class III rail carrier, which will be responsible for rail-with-trail development there. (Pet. 5 & n.9 (citing Sonoma-Marín Area Rail Transit Dist.—Acquis. & Operation Exemption—N. Coast R.R., FD 36481 (STB served Feb. 18, 2021)).)

³ Pursuant to 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27, a financially responsible party may submit an OFA to (1) temporarily subsidize continued rail service over a line on which a rail carrier seeks to abandon or discontinue service or (2) purchase and continue rail service on a line that a carrier seeks to abandon.

rail use. (TRANSDEF Reply 1.) GRTA filed a reply in opposition to TRANSDEF's request to hold this proceeding in abeyance, arguing that (1) under Board precedent it cannot seek abandonment of the Middle Portion until the MR Line is removed from the interstate rail network and (2) this adverse abandonment proceeding will not impact the rights of individuals seeking to participate in a future abandonment proceeding for the Middle Portion of the GRTA Line—e.g., file comments, OFAs, or trail use requests. (GRTA Reply 1-2, Mar. 24, 2024.)

Additional pleadings were submitted by parties discussing, among other things, MR's status as a rail carrier and its provision of freight rail service, or lack thereof, on the MR Line. (See, e.g., MR Comment 1-2, May 1, 2023; Humboldt Trails Council Comment 1; see also GRTA Mot. to Suppl. 1-2.) In the interest of compiling a more complete record, the Board will accept all supplemental filings submitted to date. See City of Alexandria, Va.—Pet. for Declaratory Ord., FD 35157, slip op. at 2 (STB served Nov. 6, 2008) (allowing reply to reply "[i]n the interest of compiling a full record").

DISCUSSION AND CONCLUSIONS

Preliminary Issues. As noted above, several parties have responded to GRTA's petition for waivers and exemptions. This decision will address, to the extent necessary, MR's allegations of inaccuracies within the petition. However, it is unnecessary to address many of the arguments raised by MR in the first section of its reply and the responses from North Coast Rails With Trails Coalition and TRANSDEF—including TRANSDEF's arguments that support its request to hold the proceeding in abeyance—as those comments largely address the merits of a not-yet-filed adverse abandonment application. Because the petition before the Board addresses only requests for waivers and exemptions in anticipation of the filing of an adverse abandonment application, the arguments concerning the merits of the proposed application are premature. Should GRTA seek to move forward with an adverse abandonment application for the MR Line in the future, opposing parties will have an opportunity, pursuant to a procedural schedule published by the Board, at that time to comment on the merits of the application.

Petition for Waivers & Exemptions. An application to abandon a rail line is governed by 49 U.S.C. § 10903 and the Board's regulations regarding abandonment applications found at 49 C.F.R. part 1152 subparts B and C. In appropriate circumstances, however, such as the anticipated filing of an adverse abandonment application, the Board has waived inapplicable and unneeded regulations and granted exemptions from statutory provisions upon request. See, e.g., Alloy Prop. Co.—Adverse Aban.—Chi. Term. R.R. in Chi., Ill., AB 1258, slip op. at 2 (STB served Aug. 16, 2017); Hartwell First United Methodist Church—Adverse Aban. & Discontinuance—Hartwell R.R., in Hart Cnty., Ga., AB 1242, slip op. at 2-3 (STB served Aug. 30, 2016).

System Diagram Map. GRTA requests waiver of 49 C.F.R. § 1152.22(a)(5), which requires reference to the inclusion of the rail line subject to the abandonment request on the rail carrier's system diagram map (SDM) or narrative, the date on which the line was first listed there for abandonment or discontinuance, and a copy of the line description that accompanies the carrier's map. GRTA also requests waivers of 49 C.F.R. §§ 1152.10-14 and 49 C.F.R. § 1152.24(e)(1), which govern the filing and amending (and providing notice to the public) of a

carrier's SDM and establish a two-month waiting period between the filing of SDM amendments and a corresponding abandonment application. Additionally, GRTA seeks an exemption from the corresponding SDM requirements at 49 U.S.C. § 10903(c)(2)(A) and (B). In support, GRTA asserts that waiver of the SDM requirements is customary in adverse abandonment proceedings because the third-party applicant generally does not have access to an SDM. (Pet. 10-11.)

MR objects to these waiver requests. According to MR, while GRTA does not have direct access to the SDM, MR states that GRTA should be required to obtain additional information about the system diagram through the discovery process and submit that information to the Board. (MR Reply 9, Mar. 20, 2023.)

The Board will grant GRTA's requests to waive 49 C.F.R. § 1152.22(a)(5), 49 C.F.R. §§ 1152.10-14 and the relevant portions of 49 C.F.R. § 1152.24(e)(1). Waiver of the SDM requirements is customary in adverse proceedings because the applicant generally does not have access to the subject carrier's SDM. See Port of Benton, Wash.—Adverse Discontinuance of Rail Serv.—Tri-City R.R., AB 1270, slip op. at 4 (STB served Oct. 31, 2018). And, as explained in the exemption analysis below, the Board will exempt GRTA from the related requirements of 49 U.S.C. § 10903(c)(2).

Notice of Intent. GRTA asks for waiver of the requirements of 49 C.F.R. § 1152.21 to permit it to deviate from the prescribed form of notice as set forth in the regulations. GRTA proposes to use the alternative language contained in Appendix 4 of its petition. According to GRTA, its modified notice of intent is in substantial compliance with the regulation. (Pet. 12.)

MR, however, partially objects to the content of GRTA's modified notice of intent. Specifically, MR objects to omission of a statement noting that a copy of the application will be made available for public inspection at each agency station or terminal on the MR Line. (MR Reply 13, Mar. 20, 2023.) MR argues that such an omission leaves out the opportunity for public inspection of the application by a community that will be harmed by the adverse abandonment. (*Id.*) It further asserts that the notice mischaracterizes MR by stating that, due to MR's abuse of its status as a rail carrier, there are significant environmental health and safety concerns associated with the current use of the MR Line. (*Id.* at 12.)

The Board has approved form changes in adverse abandonment cases when the substitute notice is in substantial compliance with the requirements of 49 C.F.R. § 1152.21. See Alloy Prop. Co., AB 1258, slip op. at 4; see also Paulsboro Ref. Co.—Adverse Aban.—in Gloucester Cnty., N.J., AB 1095 (Sub-No. 1), slip op. at 3 (STB served July 26, 2012). GRTA's amended notice of intent is in substantial compliance with the requirements of 49 C.F.R. § 1152.21, and the proposed changes are reasonable in the context of GRTA's forthcoming application.

However, to address the concerns raised by MR, the Board will require GRTA to revise the following language contained in its draft notice from, "In addition, there are significant environmental health and safety concerns associated with the current use of the property because of MR's abuse of its status as a rail carrier," to state "[i]n addition, applicant claims there are significant environmental health and safety concerns associated with the current use of the property because of an alleged abuse of MR's status as a rail carrier." The Board has required

similar adjustments to substitute notices in other proceedings. See Paulsboro Ref. Co., AB 1095 (Sub-No. 1), slip op. at 3. Further, the Board will require appropriate additions or modifications to the notice based on our denial of certain waivers and exemptions that are discussed later in this decision. Accordingly, the waiver request will be granted, subject to these modifications.

Service of Notice on Significant Users. GRTA states that there are no current shippers on the MR Line and therefore seeks waiver of the requirement under 49 C.F.R. § 1152.20(a)(2)(i) to serve notice upon all significant users of the MR Line. (Pet. 11.) It also seeks exemption from the corresponding notice requirements at 49 U.S.C. § 10903(a)(3)(D). (Pet. 11.) MR opposes this request, arguing that there are present and potential users of rail service on the MR Line. (MR Reply 10, Mar. 20, 2023.)

The Board will deny GRTA's request for waiver and exemption on the condition that MR provides additional information to GRTA. Although MR argues that current and potential users of the MR Line exist, MR does not identify them. MR must provide the identity of current users of the MR Line to GRTA by October 5, 2023, so that GRTA may serve notice on them. MR also must contemporaneously certify to the Board that it has done so. Should MR fail to make the required disclosures, the waiver and exemption request will be deemed granted. See, e.g., Alloy Prop. Co., AB 1258, slip op. at 2-3.

Service of Notice on Amtrak. GRTA asks for waiver of 49 C.F.R. § 1152.20(a)(2)(x), which requires that the notice of intent be served on the National Railroad Passenger Corporation (Amtrak) "if Amtrak operates over the involved line." GRTA states that Amtrak does not operate over the MR Line. (Pet. 11.) MR opposes this request, arguing that Amtrak operates bus service in the area to connect passengers to Amtrak trains. (MR Reply 10-11, Mar. 20, 2023.) The Board will grant this request because Amtrak does not operate on the MR Line. See Paulsboro Ref. Co., AB 1095 (Sub-No. 1), slip op. at 3.

Service of Notice on Labor Organizations. GRTA requests a waiver of 49 C.F.R. § 1152.20(a)(2)(xii), which requires service of the notice of intent on the headquarters of all duly certified labor organizations that represent employees on the affected line. (Pet. 11.) MR states that its employees are not represented by labor organizations and, accordingly, does not object to this request. (MR Reply 11, Mar. 20, 2023.) The Board will grant this waiver request.

Posting of Notice at Agency Stations or Terminals. GRTA requests an exemption from 49 U.S.C. § 10903(a)(3)(B) and waiver of 49 C.F.R. § 1152.20(a)(3), which require that a copy of the notice of intent be posted at each agency station and terminal on the line to be abandoned or, if there are no agency stations on the line, at any agency station through which business for the line is received or forwarded. GRTA states that it does not believe that there are any agency stations or terminals on the MR Line and, accordingly, that posting should not be required. (Pet. 11.) MR objects to this request, arguing that there are agency stations on the MR Line and that the notice requirement is particularly important to notify businesses and the community of GRTA's attempt to force the abandonment of MR's line. (MR Reply 11, Mar. 20, 2023.)

The Board will grant GRTA's request for waiver of the posting requirements of 49 C.F.R. § 1152.20(a)(3). This request is appropriate, as the posting requirements were designed for carriers proposing to voluntarily discontinue or abandon service over their own lines. See Bos. & Me. Corp.—Adverse Discontinuance of Operating Auth.—Milford-Bennington R.R., AB 1256, slip op. at 5 (STB served June 23, 2017) (noting that “the posting requirements were designed for carriers proposing to voluntarily discontinue service over their own lines”); see also Lackawaxen-Honesdale Shippers Ass'n—Adverse Discontinuance of Operating Auth.—in Wayne & Pike Cntys., Pa., AB 1110, slip op. at 4 (STB served Jan. 23, 2014) (posting requirements unnecessary as third-party applicant not legally in possession of the line). As discussed below, the Board will likewise grant the exemption from § 10903(a)(3)(B).

Line Attributes. GRTA seeks waiver of 49 C.F.R. § 1152.22(b)-(d), and (e)(2)-(3), which require a detailed description of the present physical condition of the line, a description of service provided on the line, revenue and cost data, and rural and community impact. (Pet. 12.) GRTA asserts that such information is not typically available to adverse abandonment applicants or has otherwise not been required of them. (*Id.*) In its reply, MR specifically objects to waiver of 49 C.F.R. § 1152.22(b) (condition of the MR Line) and 49 C.F.R. § 1152.22(e)(3) (description of alternative sources of transportation), asserting that these regulations are pertinent to the initial arguments made by GRTA. (MR Reply 14, Mar. 20, 2023.) Further, MR generally objects to GRTA's request for waiver of 49 C.F.R. §§ 1152.22(b)-(d) and (e)(2)-(3). (MR Reply 15, Mar. 20, 2023.) According to MR, GRTA as the abandonment applicant should not be permitted to shift the burden to MR to produce the information required to defend an adverse abandonment proceeding. (*Id.*) MR states that GRTA, at a minimum, should be required to undertake discovery on the condition of the MR Line, its costs and revenues, and its service history. (*Id.*)

It is clear from GRTA's petition that GRTA has certain information available to it (e.g., information regarding the physical condition of the MR Line). (Pet. 9.) This information is particularly relevant here, where GRTA is seeking adverse abandonment due to, among other things, MR's alleged inability to rehabilitate the MR Line to a serviceable condition. (*Id.* at 9-10.) Thus, because it seems that GRTA will likely use the condition of the MR Line to support its adverse abandonment application, the Board will deny the request to waive 49 C.F.R. § 1152.22(b). See CSX Transp.—Adverse Aban.—in Shelby Cnty., Tenn. AB 1010, slip op. at 5 (STB served Oct. 10, 2007) (denying waiver of 49 C.F.R. § 1152.22(b) because petitioner intended to use the condition of the line to support its application). However, GRTA may exclude information that is solely in the control of MR or is not necessary to support GRTA's claims regarding the condition of the MR Line.

The Board will also deny GRTA's requests for waiver of 49 C.F.R. § 1152.22(c), service performed on the line, and (d), revenue and cost data. Although GRTA argues that such information is not available to adverse abandonment applicants, MR appears to allege that it is currently providing freight service on the MR Line. (See MR Reply 9 (“MR currently operates, and in the future fully intends to continue to operate, both passenger and freight service on the [MR] Line.”).) Accordingly, the Board finds that this information is relevant to whether the public convenience and necessity require or permit abandonment of the MR Line. GRTA's request for waiver of 49 C.F.R. § 1152.22(e)(2)-(3), rural and community impact, will be denied as well. Under 49 U.S.C. § 10903(d), the Board is required to consider adverse impacts on rural

and community development, which may arise in both adverse and traditional abandonments. Here, the parties appear to disagree as to whether there will be an adverse impact if MR is not on the MR Line, and the Board will need to examine this question should GRTA file an adverse abandonment application. Therefore, the Board will require MR to provide GRTA with service data, revenue and cost data, and shipper and traffic data in its possession that will aid GRTA in satisfying the requirements of 49 C.F.R. § 1152.22(c), (d), and (e)(2) by October 5, 2023. See Paulsboro Ref. Co., AB 1095 (Sub-No. 1), slip op. at 5 (directing carrier to provide adverse abandonment applicant with shipper and traffic data to aid in satisfying the requirement of 49 C.F.R. § 1152.22(e)(2)). MR also must contemporaneously certify to the Board that it has done so. Should MR fail to provide the required information, the waivers will be deemed granted. See, e.g., Alloy Prop. Co., AB 1258, slip op. at 2-3.

Regarding 49 C.F.R. § 1152.22(e)(3), alternate transportation sources in the area, GRTA should have access to this information, and such information may be especially pertinent here as MR appears to allege that it is currently providing freight service.

Federal Register Notice. GRTA seeks a limited waiver to modify the draft Federal Register notice form, set forth at 49 C.F.R. § 1152.22(i), that an applicant must submit to the Board along with its adverse abandonment application. (Pet. 12.) Specifically, GRTA requests that it be permitted to utilize the draft Federal Register notice form set forth in Appendix 5 of its petition. (Id.) GRTA argues that the substitute notice uses alternative wording that is reasonably acceptable in adverse abandonment proceedings. (Id.) MR agrees that GRTA's draft notice is largely in compliance with 49 C.F.R. § 1152.22(i). MR, however, opposes the wording of the draft notice because it omits language pertaining to SDMs. (MR Reply 16, Mar. 20, 2023.) As noted above, the Board will grant GRTA's request for waiver of the SDM requirements and therefore will not require the notice to address SDMs. As such, the Board finds that the substitute notice is in substantial compliance with the requirements of 49 C.F.R. § 1152.22(i). The Board will therefore grant GRTA's request, except that the notice must also reflect the modifications to GRTA's proposed notice of intent as discussed above.

Offers of Financial Assistance. GRTA seeks an exemption from the Board's offer of financial assistance (OFA) requirements under 49 U.S.C. § 10904 and a waiver of the corresponding procedures for OFAs at 49 C.F.R. § 1152.27. (Pet. 13.) The Board will grant this unopposed waiver request and, as explained below, the corresponding exemption request. The effect of granting an adverse abandonment is that the Board's primary jurisdiction is withdrawn, thus permitting state, local, or other Federal law to apply where there is no overriding Federal interest in interstate commerce. Hartwell First United Methodist Church, AB 1242, slip op. at 5. If the Board ultimately finds that the public convenience and necessity require or permit withdrawal of its regulatory authority in this adverse abandonment proceeding, it would be fundamentally inconsistent to provide for further Board regulation under the OFA provisions of 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27. See Alloy Prop. Co., AB 1258, slip op. at 5; Hartwell First United Methodist Church, AB 1242, slip op. at 5.

Exemption Criteria. As indicated, GRTA seeks exemption from the following statutory provisions corresponding to Board regulations discussed above: 49 U.S.C. § 10903(c)(2) (SDMs); 49 U.S.C. § 10903(a)(3)(B) (posting); and 49 U.S.C. § 10904 (OFAs). The Board will

grant these exemptions because full compliance with these provisions is not necessary here to carry out the rail transportation policy (RTP) of 49 U.S.C. § 10101. Rather, these exemptions would provide GRTA with a reasonable opportunity to make its case that there is no overriding present or future need for service on the MR Line. Further, the exemptions would promote the RTP by eliminating unnecessary procedures and thus would expedite regulatory decisions (§ 10101(2)) and foster sound economic conditions in transportation (§ 10101(9)). Other aspects of the RTP would not be adversely affected. Additionally, application of the statutory provisions from which the Board is granting exemptions is not necessary to protect shippers from an abuse of market power.

It is ordered:

1. All replies that have already been filed are accepted into the record.
2. TRANSDEF's request to hold this proceeding in abeyance is denied.
3. The petition for waivers and exemptions is granted to the extent discussed above.
4. MR shall provide the above-described information to GRTA by October 5, 2023, and contemporaneously certify that it has done so.
5. This decision is effective on its service date.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.