

EXPEDITED CONSIDERATION REQUESTED

242170

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Proceedings
December 1, 2016
Part of
Public Record

DOCKET NO. FD 36077

**NORTH COAST RAILROAD AUTHORITY and
NORTHWESTERN PACIFIC RAILROAD COMPANY
PETITION FOR DECLARATORY ORDER**

**NORTH COAST RAILROAD AUTHORITY and NORTHWESTERN
PACIFIC RAILROAD COMPANY - OPPOSITION TO THE CITY OF
AMERICAN CANYON AND AMERICAN CANYON FIRE PROTECTION
DISTRICT'S MOTION FOR EXTENSION OF THE PROCEDURAL SCHEDULE**

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The application by the City of American Canyon and the American Canyon Fire Department requests additional time to conduct discovery into whether or not the Railroad is compliance with Federal Railroad Administration regulations relating to the Railroad's compliance with the Federal Hazardous Material Transportation Act, 49 U.S.C. §§ 5101-5128.

The Office of Chief Counsel of the Federal Railroad Administration confirmed on November 2, 2016 that "the FRA has inspected the operation and found all aspects to be in compliance with the hazardous materials transportation regulations that are promulgated by the Pipeline and Hazardous Materials Safety Administration (PHMSA) and enforced by the FRA." (See Stogner Decl. filed November 23, 2016, Ex. B, E-Mail from Roberta Stewart, attorney FRA Office of Chief Counsel.)

American Canyon decries the lack of detail as to how the Railroad is complying with FRA regulations. It is submitted that such detail is immaterial to this proceeding. There is evidence in the record that the Railroad is in compliance with FRA regulations. Neither American Canyon nor SMART have any legitimate interest in regulating the Railroad's compliance with the Federal Hazardous Material Transportation Act because any such effort is preempted under a different scheme of preemption, 49 U.S.C. §5125 (a) (b) preempting local regulation or review.

The Board in its Decision on November 3, 2016 properly referred these issues to the Federal Railroad Administration, because the STB does not have statutory jurisdiction to review such things as safety plans and security plans for hazardous materials.

The Board's jurisdiction is separate from that of the FRA and extends to "transportation." The Railroad's activities which are currently blocked by SMART includes activities which are held out by the rail carrier as part of its business (as is the case here where the Railroad solicited and received contracts with two different shippers); controlled by the railroad (as is the case here where the Railroad receives the railcars and transports them over rails to its Schellville Yard, which the Railroad maintains) and the Railroad maintains its exclusive freight easement and contractual control over the Schellville Yard) and the Railroad maintains liability for its services by conducting the subject activities as a service to the shippers. See Padgett v. Surface Transportation Board 804 F.3d 103, 107-108 (1st Cir.. 2015)

Both SMART and American Canyon are offended that the Railroad has not submitted to their improper efforts to regulate the Schellville Yard services provided by the Railroad,. The reason that the Railroad has sought relief from the Surface Transportation Board is that SMART is blocking the Railroad from providing transportation (carriage of the cars and temporary

storage as a service) If SMART or American Canyon attempted to prohibit activities under the jurisdiction of the FRA then in that event the Railroad would seek relief from the FRA.

There is no need to extend time for American Canyon to seek discovery as to the means by which the Railroad complied with FRA regulations.

Dated: December 1, 2016

/s/ Douglas Bosco

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NORTH COAST RAILROAD AUTHORITY and
NORTHWESTERN PACIFIC RAILROAD COMPANY

v.

SONOMA-MARIN AREA RAIL TRANSIT DISTRICT

CERTIFICATE OF SERVICE

I, Cyndi Mason, declare:

I am a citizen of the United State and resident of Mendocino County, California, I am over the age of eighteen and not a party to the within entitled action; my business address is 110 S Main Street, Suite C, Willits, California 95490.

On December 1, 2016, I served

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on the parties in said action by placing a copy of the above-described documents in sealed envelopes, with postage thereon fully prepared for First-Class Mail, addressed to the parties as set forth below, for collection and mailing at Willits, California, following ordinary business practices. I am readily familiar with the practice of Neary & O'Brien for processing of correspondence, said practice being that in the ordinary course of business, correspondence is deposited in the United States Postal Service on the same day as it is placed for processing.

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I declare under penalty of perjury that the foregoing is true and correct. Executed on December 1, 2016, at Willits, California.

/s/ Cyndi Mason
CYNDI MASON