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October 11, 2005

214882

BY HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

RE: STB Finance Docket No. 34337
Michael H. Meyer, Trustee In Bankruptcy For California Western Railroad, Inc.
v. North Coast Railroad Authority

Dear Secretary Williams:

North Coast Railroad Authority ("NCRA"), hereby submits an original and eleven copies of North Coast Railroad Authority's Reply to Petition to Reopen. As can be seen from the Certificate of Service, a copy of said filing has been served by courier on Petitioner's counsel, the only other party of record.

Please acknowledge the receipt and docketing of the enclosed filing by receipt stamping the eleventh copy thereof enclosed for that purpose and returning same to the person making this filing, for return to me. If there are any questions concerning this filing, please contact me.

ENTERED
Office of Proceedings

Sincerely,

OCT 11 2005

Part of
Public Record

William A. Mullins

cc: Parties of Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34337



**MICHAEL H. MEYER, TRUSTEE IN BANKRUPTCY FOR
CALIFORNIA WESTERN RAILROAD, INC.**

v.

NORTH COAST RAILROAD AUTHORITY

**NORTH COAST RAILROAD AUTHORITY'S
REPLY TO PETITION TO REOPEN**

**ENTERED
Office of Proceedings**

OCT 11 2005

**Part of
Public Record**

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**Attorneys for North Coast Railroad
Authority**

October 11, 2005

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34337

**MICHAEL H. MEYER, TRUSTEE IN BANKRUPTCY FOR
CALIFORNIA WESTERN RAILROAD, INC.**

v.

NORTH COAST RAILROAD AUTHORITY

**NORTH COAST RAILROAD AUTHORITY'S
REPLY TO PETITION TO REOPEN**

Defendant North Coast Railroad Authority ("NCRA") hereby replies to the petition of Michael H. Meyer ("Meyer" or "the Trustee"), bankruptcy trustee for California Western Railroad, Inc. ("CWR"), to reopen this proceeding. The petition should be denied.¹

Summary

The petition effectively seeks to contradict prior representations to the Board made by Meyer's counsel to the effect that CWR never requested service and to instead substitute newly raised evidence that now purports to show that CWR did in fact request service. As stated in NCRA's accompanying motion to strike, Meyer's substitute evidence should not be considered because it is not "new" evidence, having been previously available but not having been

¹ As a preliminary matter, NCRA believes the Board may not presently have jurisdiction to act on Meyer's petition to reopen. Meyer petitioned the U.S. Court of Appeals for the Ninth Circuit on or about September 20, 2005 to review the Board's July 27 order in this case. *See* STB Notice of institution of court action served herein on September 27, 2005. While it is not entirely clear, precedent seems to indicate that either the appeal needs to be dismissed in order to allow the Board to proceed on the petition to reopen, in which case a new appeal may later be filed, or if the appeal proceeds, the Board is without jurisdiction to reopen the proceeding as the decision is now within the exclusive jurisdiction of the Ninth Circuit. *See generally United Transportation Union v. Interstate Commerce Commission*, 871 F.2d 1114 (D.C. Cir. 1989) (agency and the court cannot consider the same case simultaneously).

submitted by Meyer. If the Board proceeds without considering this newly raised evidence, which is the legally correct procedure to follow, it is clear that the Board did not commit material error in relying upon representations made by Meyer and his counsel that CWR never requested service. Nonetheless, even if the Board chooses not to strike Meyer's substitute evidence and considers the Milliman and Hayfield verified statements, the Board should still deny the petition for reopening for the numerous other reasons cited in NCRA's original Motion to Dismiss² and because the Milliman and Hayfield statements are simply inaccurate, as the accompanying verified statement of John Darling, which rebuts the contentions put forth by Meyer's substitute evidence, clearly shows. Accordingly, the petition to reopen should be denied.

Procedural Background

On December 1, 2004, Meyer submitted a complaint to the Surface Transportation Board ("STB") seeking \$270,000 plus additional damages from NCRA for the alleged failure of NCRA to meet its common carrier obligation to interchange with CWR. NCRA answered the complaint on December 22, 2004, and moved to dismiss the complaint on January 28, 2005.

In its motion to dismiss, NCRA asserted that the complaint did not present reasonable grounds for investigation because, "Meyer does not allege that CWR requested specific service, as required to trigger a common carrier service obligation under Section 11101." (Emphasis added.) NCRA Motion to Dismiss at 2. NCRA later reiterated this point, stating, "[T]he

² Other reasons cited by NCRA for dismissal of the complaint included: (1) the fact that the statute of limitations for filing a complaint had passed; (2) that NCRA, as a state agency, had immunity from suit under the Eleventh Amendment; (3) that NCRA was the wrong party against which to file a complaint because it was not the carrier with the common carrier obligation over the line; (4) that a Federal Railroad Administration order barred operation of the line thereby making any failure to perform railroad operations reasonably excused; and (5) that no common carrier obligation was due CWR because CWR was not a shipper. While the Board's July 27 decision did not address any of these reasons, finding that the failure to request service was a sufficient ground in and of itself to dismiss the complaint, if the Board proceeds again on the merits of the complaint, NCRA hereby renews these independent grounds for dismissal.

complaint fails to allege that CWR made the specific request for service necessary to invoke that obligation. . . . [A]ny inquiry about a railroad's duty to provide service under its common carrier obligations can only arise *after* it has received details of a specific shipment. Meyer has failed to allege any such request *by CWR*." (Emphases added.) NCRA Motion to Dismiss at 14-15.

In reply to NCRA's Motion to Dismiss, Meyer reasserted that he sought damages principally for CWR's inability to handle traffic of Georgia Pacific's mill at Fort Bragg, CA, which he blamed on CWR's inability to interchange traffic with NCRA. Meyer's Reply later stated that NCRA denied any common carrier obligation "in the absence of a request by Complainant for service. Complainant . . . has been on notice that Respondent . . . has not been able to interchange traffic at Willits . . . since November 25, 1998 . . . [F]or the Complainant to have asked the Respondent to start hauling shipments originating on the CWR . . . would have made no sense whatsoever." Meyer's Reply at 9 - 10.

By decision served July 27, 2005, the Board denied Meyer's complaint. In so doing, the Board stated in part as follows:

We find no merit to the trustee's complaint. In order to be found to have violated the common carrier obligation at 49 U.S.C. 11101(a), a carrier must have failed to provide service upon reasonable request. . . . Here, the trustee concedes that, in the 6½ years since the line went out of service in 1998, neither CWR nor Georgia Pacific, the only shipper on the line, ever requested that service be provided. . . .

Furthermore, the record shows that there was minimal traffic on the line and that the repairs that would have been required to bring the line into compliance with FRA safety regulations would have been extensive. . . .

The Supreme Court has found that "[it] is well settled that a carrier cannot legitimately be required to expend money to rehabilitate a line where it will lose money on the operation."

Slip op. at 4 (citations omitted).

Meyer now petitions to reopen that decision, largely on the basis of alleged new evidence contained in the Milliman and Mayfield statements. In doing so, he and his counsel seek to

characterize the representations that service had not been requested as meaning only that Meyer, personally, never requested service, not that CWR never requested service. Meyer now claims that prior to CWR's bankruptcy, service was requested of NCRA. In support of the latter assertion, he submits statements of two former CWR employees, Messrs. Milliman and Mayfield.

Argument

Under 49 C.F.R. §1115.4, a petition to reopen an administratively final action must be based on material error, new evidence or substantially changed circumstances. Meyer's petition alleges material error and submits so-called "new" evidence in the form of the Milliman and Mayfield statements to establish the alleged error. As previously stated, the Milliman and Mayfield statements should be stricken. Nonetheless, even if considered in their entirety, this new evidence does not establish that the Board committed material error.

As an initial matter, Section 11701 of Title 49 provides that the Board may dismiss a complaint that "it determines does not state reasonable grounds for investigation and action." Thus, it is Meyer's burden to show reasonable grounds for the Board to hear his complaint.³ Meyer's complaint simply failed to present reasonable grounds for investigation because Meyer never presented any evidence that CWR was entitled to common carrier service or had even requested common carrier service, facts which must be established to even allege a violation of 49 U.S.C. § 11101. *CSX Transportation, Inc.—Abandonment—Between Bloomington and Montezuma, in Parke County, IN*, Docket No. AB-55 (Sub-No. 486), et al., slip op. at 10 (STB served Sept. 13, 2002) (must show that carrier failed to provide service on reasonable request);

³ Inasmuch as Meyer filed his complaint at the last possible minute and all pertinent statutes of limitation have now lapsed, it makes little difference whether the Board's decision terms the treatment of Meyer's complaint as dismissal or denial of the complaint. Either way, Meyer has no viable claim to assert.

Lamoille Valley Railroad Company—Abandonment And Discontinuance Of Trackage Rights Exemption—In Caledonia, Washington, Orleans, Lamoille, And Franklin Counties, VT, STB Docket No. AB-444 (Sub-No. 1X) (served Jan. 24, 2005), slip op. at 3 (expressions of possible future interest in rail service are not requests for service). It was thus proper for the Board to dismiss the complaint.

Meyer as much as admits this defect in his complaint by now submitting verified statements by two former CWR employees that purport to show that CWR did in fact request service. Though not “new evidence” for the purposes of 49 C.F.R. §1115.4, these statements are new in the sense that they affirmatively assert that requests for service were made, something that Meyer has not previously alleged. If Meyer’s complaint or his opposition to NCRA’s motion to dismiss had contained such allegations, part, though not all,⁴ of the complainant’s initial burden might have been fulfilled.

What Meyer persistently refuses to acknowledge is that he presented utterly no evidence or assertions that there *were* any requests, let alone any *reasonable* requests, for service. Meyer’s petition points to nothing in the complaint or in his reply to NCRA’s dismissal motion that asserts that a reasonable request for service was made. For Meyer to assert that the Board erred because NCRA allegedly did not prove that there were no reasonable requests for service is an improper attempt by Meyer to reverse the burden of going forward. Under Sections 11701 and 11101, it was not up to NCRA to show that the complaint should not go forward; rather, it was up to Meyer to show that it should. He did not do so. *See Texas Municipal Power Agency v. The Burlington Northern And Santa Fe Railway Company*, STB Docket No. 42056 (served

⁴ The new statements still fail to show that any service request that is alleged was a “reasonable” request under precedents cited by the Board. *See also* Verified Statement of John Darling, Exhibit 1 hereto.

March 24, 2003) slip op. at 13 (complainant has the ultimate burden of persuasion); *Minnesota Power, Inc. v. Duluth, Missabe And Iron Range Railway Company* , STB Docket No. 42038 (served March 6, 2000), slip op. at 7 (complainant has the burden of proof)

Meyer assails NCRA's motion to dismiss as unverified, submitted without testimony or exhibits, as "at best, . . . the arguments of counsel," and therefore assertedly not an adequate basis for the Board's action. Again, however, it was Meyer who had the initial burden of presenting facts sufficient to warrant the Board moving forward on a complaint, not NCRA's counsel's burden to disprove such assertions. Meyer failed to meet his burden. It is simply ironic that Meyer now assails NCRA's Motion to Dismiss for failure to present any evidence and to rely upon representations of counsel when Meyer and his counsel did precisely the same thing in their Complaint and in their reply to the Motion to Dismiss. They presented no evidence whatsoever that CWR or Georgia Pacific ever requested service and its counsel made assertions that it would have been futile to request service given that NCRA's line was out of service. Now that the Board relied upon Meyer and his counsel's representations to dismiss the complaint, they cry foul. Such arguments have no basis in fact or law and should be rejected.

Instead, it was entirely proper for the Board, in dismissing the complaint, to rely upon the representations made by CWR's counsel that CWR had never requested service and for the Board to rely upon NCRA's counsel's representations made in the Motion to Dismiss. Board regulations state that "A pleading . . . signed [by a practitioner representing a party] need not be verified or accompanied by an affidavit unless required elsewhere in these rules." 49 C.F.R. §1104.4 (2004). Indeed, for years the Board and its predecessor have reached factual conclusions based on statements by counsel in pleadings and at hearings. *See, e.g., Union Pacific Corporation, et al. -- Control And Merger -- Southern Pacific Rail Corporation, et al., [Houston/Gulf Coast Oversight]*, STB Finance Docket No. 32760 (Sub-No. 26) (served Dec. 21,

1998), slip op. at 3, n. 2 and at 18, n. 29. *See also Union Pacific Railroad Company—Abandonment Exemption – In Rio Grande and Mineral Counties, CO*, STB Docket No. AB-33 (Sub-No. 132X) (served June 22, 2004), slip op. at 2 (lack of verification goes only to weight, not to admissibility). Thus, the Board had a right to rely on the representations in the pleadings before it in order to determine whether Meyer had set out reasonable grounds for investigation.

Rather than admitting the shortcomings of the complaint as filed and presented by Meyer's counsel, Meyer and his counsel now accuse the Board of acting without "*any*" evidence - without "a shred of evidence of record" - in concluding that service had not been requested of NCRA. According to Meyer, "[t]he record was totally devoid of *any* evidence," to support the Board's findings that CWR has never requested service. Meyer's petition to reopen at 2. Meyer is wrong that there was no evidence to support the Board's conclusions. There was Meyer's own representation that "for the Complainant to have asked the Respondent to start hauling shipments originating on the CWR . . . would have made no sense whatsoever." Meyer's Reply at 9 - 10. While Meyer attempts to confine the impact of his prior admissions that service requests were not made, those attempts are unconvincing.

Meyer now insists that his statements meant that only he, not CWR, had not requested service from NCRA, but that is revisionist history. If the representations in Meyer's reply to NCRA's motion to dismiss meant what he now claims, it is difficult to imagine why Meyer made them, because they were essentially irrelevant to the subject of his complaint. Meyer's complaint focused on the allegation that due to NCRA's line being put out of service by FRA, CWR lost hundreds of thousands of dollars in revenue because it could not interchange Georgia Pacific lumber traffic with NCRA.⁵ Meyer's opposition to dismissal of his complaint also

⁵ While Meyer also vaguely alleged that CWR might have lost other business opportunities as a result of the inability to interchange with NCRA, he did not allege any request to NCRA to serve

focused on the fact that he had the right to seek damages relating to Georgia Pacific traffic that would have moved on or after December 3, 2000. Meyer's Reply to Motion to Dismiss, at 4. Why, then, would Meyer respond to NCRA's motion to dismiss that complaint by alleging that he, personally, never requested service from NCRA when he, personally, only became involved with CWR *after* Georgia Pacific shut down its mill and *after* CWR filed bankruptcy in 2002? If Meyer wanted to show reasonable grounds for his complaint, why reply to a motion dismiss the complaint by addressing only things that happened *after* the circumstances complained of had occurred? And why did Meyer assert that he was aware that FRA blocked further NCRA service in November 1998 in the same paragraph that he now alleges referred only to his own actions as CWR's trustee after December 1, 2002?

Moreover, Meyer's actions in this matter are only in his capacity as a representative of CWR. The complaint asserts no claims that are personal to Meyer. Why then should the Board assume that representations in Meyer's opposition to the motion to dismiss would pertain to him personally and not to CWR?

The obvious answer to these questions is that the Board accepted the reasonable import of the representations in Meyer's reply. There was no reason for the Board to parse Meyer's language in the fashion that Meyer now offers in the petition to reopen. There was no reason for the Board to assume that Meyer would reply to NCRA's motion to dismiss with irrelevant declarations about what he personally did at a time period that was irrelevant to the substance of his complaint. In short, Meyer's pleadings did support the Board's conclusions that Meyer had

such supposed traffic. Neither did he make any allegation or attempt to show that handling such traffic would have been even a break-even proposition for NCRA or its operator.

not shown that a reasonable request for service had been made and it was not material error for the Board to so find.

Notwithstanding the fact that the Board did not commit material error in relying upon representations made by Meyer and his counsel when it dismissed the complaint and that the alleged new evidence, *i.e.* the statements of Milliman and Mayfield, should be stricken from the record, if the Board were to allow the Milliman and Mayfield statements into the record, they still would not support reversal of the Board's decision. Attached hereto as Exhibit 1 is the verified statement of John Darling, Manager of the Northwestern Pacific Railway Co. ("NWPY"). Mr. Darling states that NWPY was the authorized operator of the NCRA line beginning in January 1998 and lasting until 2005. As such, he is intimately familiar with the operations of the line during the period for which Meyer claims damages.⁶

Mr. Darling flat out rejects Mr. Mayfield's assertions that he was in constant communication with Mr. Darling about the need to restore freight service. According to Mr. Darling, "at no time did John Mayfield make any written or oral demand to me or to my knowledge any other officer of NWPY to restore freight service." Exhibit 1 at 3, ¶ 2. In fact Mr. Darling confirms that by the time of the November 1998 shutdown by the FRA, "every car from the California Western Railroad which had been interchanged to the Northwestern Pacific Railroad was transported to the point of interchange" with the Union Pacific. Exhibit 1 at 2, ¶ 4. Mr. Darling also discusses that from that time forward, most of CWR's concerns involved not the transportation of freight from the Georgia Pacific mill, but rather, the movement of CWR's tourist excursion train, although NWPY was able, at considerable time and effort, to move some stranded empty freight cars that belonged to UP from CWR's line to UP.

⁶ In his opposition to NCRA's motion to dismiss, Meyer concedes that the statute of limitations has expired as to all claims prior to December 2000.

Reading Mr. Darling's statement in conjunction with the Milliman and Mayfield statements, it is clear that CWR was fully aware of the extensive rehabilitation costs to restore service over the line, but there was never any offer by CWR to help restore the line or pay for any rehabilitation costs. CWR knew the line was out of service due to FRA safety concerns and knew that until such time as the line could be restored to a safe operating condition, it was entirely reasonable for NWPY to not provide service over the line, and thus neither CWR nor Georgia Pacific⁷ ever requested service. Because there was a lack of a specific request for service and because even if there had been, NWPY was reasonably excused from providing such service, *Bolen-Brunson-Bell Lumber Company, Inc. v. CSX Transportation, Inc.*, STB Finance Docket No. 34236 (served May 15, 2003), slip op. at 4 (a reasonable embargo temporarily excuses a carrier from a duty to provide service),⁸ Meyer's claims should be rejected.

CONCLUSION

The bottom line on this case is that Meyer demands that NCRA pay him because NCRA does not have enough money to repair NCRA's line. He makes this demand in his capacity as the trustee of an out-of-business railroad which he told the Board had not requested service from NCRA. Meyer cannot sensibly complain that the Board committed material error by believing

⁷ As to Georgia Pacific, the only potential aggrieved shipper, the lack of rail service had nothing to do with the failure of the mill. See Exhibit 2, a copy of a June 2002 local news story about the closing of the GP mill in which the manager of the mill states that the mill lost money in all but one year since 1995, and that the shutdown was due to the high cost of logs, increased logging regulation and lack of demand for the product. Nothing was said about the failure to provide rail service.

⁸ See also *Lamoille Valley Railroad Company—Abandonment And Discontinuance Of Trackage Rights Exemption—In Caledonia, Washington, Orleans, Lamoille, And Franklin Counties, VT*, STB Docket No. AB-444 (Sub-No. 1X) (served Jan. 24, 2005), slip op. at 3 (without a request for service, there is no ground for finding an embargo improper).

his representations. It is too late for Meyer to change his representations to the Board after the Board has ruled against him.

Ultimately, even if this complaint were to proceed, the conclusion would be that a reasonable request for service was not made. As the Board's decision points out, "The Supreme Court has found that '[it] is well settled that a carrier cannot legitimately be required to expend money to rehabilitate a line where it will lose money on the operation.'" Meyer has offered no evidence or even mere assertions that the traffic he alleges CWR would have moved would have enabled NCRA or the line's operator to have obtained the funds necessary to repair the line and operate it profitably. Reopening this matter would thus only lead to extended but ultimately useless litigation. The Board should deny Meyer's petition to reopen.

Respectfully submitted,

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Attorneys for North Coast Railroad Authority

CERTIFICATE OF SERVICE

I hereby certify that on October 11, 2005, I have caused the foregoing North Coast
Railroad Authority's Reply to Petition to Reopen to be served by hand delivery on:

Fritz R. Kahn
Fritz R. Kahn, P.C.
1920 N Street, NW (8th fl.)
Washington, DC 20036-1601

A handwritten signature in black ink, appearing to read 'William A. Mullins', written over a horizontal line.

William A. Mullins
Attorney for North Coast Railroad Authority

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34337

**MICHAEL H. MEYER, TRUSTEE IN BANKRUPTCY FOR
CALIFORNIA WESTERN RAILROAD, INC.**

v.

NORTH COAST RAILROAD AUTHORITY

**NORTH COAST RAILROAD AUTHORITY'S
REPLY TO PETITION TO REOPEN**

EXHIBIT 1

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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EXHIBIT 1

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

STB Finance Docket No. 34337

MICHAEL H. MEYER, TRUSTEE IN BANKRUPTCY FOR
CALIFORNIA WESTERN RAILROAD, INC.

v.

NORTH COAST RAILROAD AUTHORITY

VERIFIED STATEMENT
OF
JOHN DARLING

My name is John Darling and I reside in Willits, California.

I was the manager of Northwestern Pacific Railway Company LTD ("NWPY"), when in January 1998 it successfully responded to a request for proposal from Northwestern Pacific Railroad Authority for an operator to lease and operate the Northwestern Pacific Rail Line. I continued as manager of NWPY until 2005 and accordingly I am aware of the events transpiring between January 1998 and 2005.

In February 1998 the Northwestern Pacific Rail Line was damaged by flooding along the course of its entire line which was recognized and a presidentially declared disaster by President Clinton issued in February 1998. Because the owner of the line,

North Coast Railroad Authority, was a public agency it was entitled to public assistance from the Federal Emergency Management Authority ("FEMA").

FEMA authorized repair work which was managed NWPY's affiliate Rail-Ways Inc as contractor directly to North Coast Railroad Authority.

In May 1998 as a result of an emergency appropriation by the State of California the railroad was restored to service and NWPY commenced service along the course of the NWPY from Willits to Schellville as contract operator for NCRA.

In November 1998 the Federal Railroad Administration (FRA) issued Emergency Order 21 closing the rail line largely due to the 92 signaled crossings located between Willits and the point of interchange.

By the time of shut-down following service of the Emergency Order every car from the California Western Railroad which had been interchanged to the Northwestern Pacific Railroad was transported to the point of interchange.

In the spring of 1999 I received an urgent request from Gary D. Milliman who was known me to be the Chief Operating Officer of the California Western Railroad, to repair the tracks over a course of approximately 2 miles from the interchange point between the California Western and NWPY to Willits Yard to accommodate California Western's summer 1999 excursion service. At the request of California Western Railroad NWPY repaired the track on an emergency basis and repaired the track to accommodate such excursion service at NWPY's sole expense utilizing its ground forces, equipment and capital. In June, 1999 an invoice was issued to California Western in the amount of \$150,000 for the repairs which California Western disclaimed liability for asserting that it was the responsibility of NCRA rather than California Western.

At no time did John Mayfield or Gary Milliman offer capital, personnel, or equipment for the repair of the signals necessary to restore service to Schellville.

A no time did John Mayfield make any written or oral demand to me or to my knowledge any other officer of NWPY to restore freight service. In fact I never had a personal discussion with John Mayfield until some point after October 22, 2001.

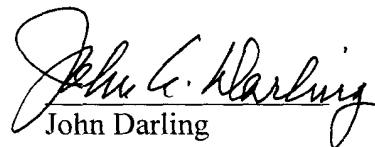
After the FRA Order I was able to negotiate with the Federal Railroad Administration Authority to move stranded empty rail cars stranded at Willits, California to the point of interchange. This effort was time consuming and heavily laden with conditions among which were that all movements would be during daylight hours with a speed limit of five miles per hour and the requirement that each of the approximate 100 public and private crossings be flagged by personnel requiring the train to stop at each crossing and to flag each train moving across each of the crossings.

In 2001 NWPY entered into an agreement to lease and operate the NWPY line. In accord NWPY at its own cost and at its own limited capital repaired the rail line to FRA standards to mile post 43.0 providing limited service over the Northwestern Pacific Rail line. During this time NCRA was attempting to access the public assistance funds from FEMA which was mired down in disputes between FEMA and NCRA, which disputes were not resolved until the year 2005. As a result NCRA did not have sufficient funds to repair the remaining crossings and NWPY did not have the funds to do so as well. I am informed to believe that NCRA within the last 60 days has just purchased at a cost of approximately \$1 million signal sets for each of the 92 signaled crossings, not having access the public assistance dollars until the last 60 days from the 1998 disaster.

VERIFICATION

I, John Darling, former manager of NWPY, declare under penalty of perjury, under the laws of the United States of America, that I have read the foregoing Verified Statement and that its assertions are true and correct to the best of my knowledge, information and belief. I further declare that I am qualified and authorized to submit this verification on behalf of NWPY. I know that willful misstatement or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to five years and fines up to \$10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$2,000 or imprisonment up to five years for each offense.

Dated at Willits, California, this 10th day of October, 2005


John Darling

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**NORTH COAST RAILROAD AUTHORITY'S
REPLY TO PETITION TO REOPEN**

EXHIBIT 2

Fort Bragg Focus

town, surrounds & direction

www.GoFortBragg.com *Forum for Local Talk--submit today*

***Summer

© The Press Democrat.

ARTICLE IFORT BRAGG AT A CROSSROADS

1. Town's growing tourist trade may offset loss of timber industry

June 23, 2002

By BOB NORBERG
THE PRESS DEMOCRAT

FORT BRAGG

The closing of the Georgia-Pacific mill will mean the loss of 125 well-paying jobs and the city's working-class image, but hopes are high it will be offset by the Mendocino Coast's growing stature as a tourist destination.

"Tourism has to pick up the slack because that is all that is left," said Roger Fenderson, controller at Rossi's Building Supplies in this coastal town. "You don't have lumber, you don't have fishing. Without tourism, this would be a ghost town real quick."

Once employing 2,200 workers in around-the-clock shifts cutting lumber and fabricating plywood, the company now has only 125 workers out of Fort Bragg's 3,100. After losing money for six of the past seven years, GP said June 7 it would permanently close the mill.

In contrast, the Mendocino County tourism industry including Fort Bragg employs some 7,000 workers.

"Tourism has really grown. We have become a destination, and that impacts our economy a great deal," said Bruce Graves, a longtime Fort Bragg resident and owner of the Napa Auto Parts store.

The challenge now for Fort Bragg will be to generate the same economic vitality from the new tourism economy as it once did from the mill.

"Tourism jobs don't pay like industrial jobs. The mill, mill workers and mill workers' families spend money everywhere," Graves said.

And there is the impact on the city's self-identity: Any illusion that blue-collar Fort Bragg is now anything but a tourist town has vanished, but it doesn't want to become another tony coastal town

with two-night-minimums and upscale tourists.

"This is just more of a real town," said Barbara Olsen, a 19-year resident and clerk at the Mendocino Vintage Emporium. "The town of Mendocino is so high-end. It's beautiful, but it's not like a real town, it's like a set."

The historic GP mill was founded on the bluff in 1881 as the Union Lumber Co., taking up 460 acres that is essentially the city of Fort Bragg's entire coastline.

In 1885 it built the Skunk Train, now owned by the California Western, inland along the Noyo River to bring logs to the mill for cutting and shipping on flat-bottomed schooners. It was later extended to Willits to join the nationwide rail network.

Union Pacific was sold in the mid-1960s to Louisiana-Pacific and in 1973 to Georgia-Pacific, when its production and employment were at their peak.

In the past seven years, however, the high cost of logs, increased logging regulations and a lack of demand has caused the mill to lose \$30 million, said general manager Ron Holen.

Holen, who has been at the mill for five years, said GP made every effort to keep the mill open, spending \$6 million in 1998 to modernize the plant.

At that time there were 330 employees and a payroll of \$11 million, Holen said.

"The mill is closing because it has not made a profit but for one year in the last seven," Holen said. "The cost of raw materials is so high that by the time you pay for the logs and and for production, there is not enough profit left."

Holen said layoffs will probably begin in late August, when the last of the logs are shipped in for milling. Production will probably end in November and the mill will be closed by January.

The company's 125 workers receive \$6.4 million in wages and \$805,000 in health care benefits. If the loss of those wages is not a blow to the overall local economy, it will at least make a dent.

"What will be missed is the payroll," said Carla Howell, executive director of the Mendocino Coast Chamber of Commerce. "They were making a good living and had benefits, many of the things that are not offered in small businesses."

The jobs paid two to three times the wages generated by the tourist industry, which provides 20 percent of all jobs countywide.

Mill jobs pay an average wage of \$36,760, compared to \$13,240 a year for hotels and lodging services, and \$11,000 for restaurants, which also don't offer benefits, according to the state Economic Development Department.

Still, even as lumber and fishing decline, the Mendocino Coast has become much more alluring to visitors -- 130,000 contacted the county visitors bureau last year alone -- and it has created a whole new industry.

According to the U.S. Census, there were 3,500 jobs related to the tourist industry, with a payroll

of \$40 million in Mendocino County in 2000.

The county's bed tax levied on hotels, motels and bed-and-breakfast inns, 90 percent of which are located on the coast, also shows the increase in tourism. The county collected \$2.5 million in 1995, \$3.2 million in 1998 and \$3.8 million last year.

According to a study on travel impacts for the state Technology, Trade and Commerce Agency, tourists last year spent \$325.7 million in Mendocino County.

Fort Bragg merchants say only half of their business is from tourists and the rest is from local residents, so they aren't sure exactly what to expect with the mill closure and the loss of those local wages.

"Anything like this in a community this size will have an impact," said Tom Honer, owner of the Harvest Market. "You lose jobs for families. I have seen people moving away and they take their families. It ripples through the whole community."

Georgia-Pacific also spent \$700,000 a year with local businesses such as Rossi's Building Supplies, Napa Auto Parts, Acme Auto Parts, Harvest Market and Motion Industries.

Those purchases will be missed, even if only a little bit.

"We don't like to lose anything, but it will not have a huge impact," said Fenderson at Rossi's Building Supply. "They have the employees who also shop here. Any time a large business closes, it is not just the business that they do, but also the families they support can't spend money on things."

Georgia-Pacific is a major contributor to the business of Motion Industries of Ukiah, which supplies industrial machine parts.

"We are diversified enough, but you cannot just go out and pick up a quarter-of-a-million-dollar or a half-million-dollar account overnight," said manager David Johnson. "It will put us in a bind."

Georgia-Pacific is also one of the largest taxpayers in Mendocino County. It pays \$360,000 a year in county taxes for its Fort Bragg mill property.

Of that, \$18,900 goes to the city of Fort Bragg, \$54,000 to a city improvement district, \$54,000 to the fire district and \$72,000 to the hospital district.

City Manager Connie Jackson said the tax revenue the city receives is not significant. Even so, its loss may be enough to delay any new sewer and road projects within the downtown redevelopment district.

"This was a surprise for everybody, although the mill was closed a lot," Jackson said. "We are in a pretty early stage of understanding what the impact will be."

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