

SHUTE, MIHALY  
& WEINBERGER LLP

396 HAYES STREET, SAN FRANCISCO, CA 94102  
T: (415) 552-7272 F: (415) 552-5816  
www.smwlaw.com

AMY J. BRICKER  
Attorney  
Bricker@smwlaw.com

June 9, 2022

304736

**Via E-Filing**

Ms. Cynthia Brown  
Chief, Section of Administration  
Surface Transportation Board  
395 E Street SW  
Washington, DC 20423

ENTERED  
Office of Proceedings  
June 9, 2022  
Part of  
Public Record

Re: Great Redwood Trail Agency (formerly North Coast Railroad Authority) — Abandonment Exemption — in Mendocino, Trinity, and Humboldt Counties, CA -- AB 1305X

Dear Ms. Brown:

Our firm respectfully submits these comments in the above referenced proceeding on behalf of the Sierra Club and Friends of the Eel River (“FOER”). These comments follow up and supplement our comments submitted on June 6, 2022 with respect to the Corrected Draft Environmental Assessment and the late-filed letter of intent to file an offer of financial assistance (“OFA”) by the North Coast Railroad Company (“NCRCo”).

Should the Board allow an OFA process to proceed for any of the three letters of intent that have been submitted, the Interstate Commerce Commission Termination Act (“ICCTA”) states:

abandonment or discontinuance shall be postponed until--

- (A) the carrier and a financially responsible person have reached agreement on a transaction for subsidy or sale of the line; or
- (B) the conditions and amount of compensation are established under subsection (f).

49 U.S.C.A. § 10904.

Ms. Cynthia Brown  
June 9, 2022  
Page 2

Sierra Club and FOER submit two comments with respect to these provisions. First, because the owner of the rail line at issue is a state agency (NCRA/GRTA), the California Supreme Court has held it would need to first conduct review under the California Environmental Quality Act (“CEQA”) before reaching a discretionary determination to voluntarily sell the rail line. *Friends of the Eel River v. North Coast Railroad Authority* (2017) 3 Cal.5th 677, 704 (“FOER”) (“[B]ecause we see no indication in the language of the ICCTA that Congress intended to preempt such self-governance in that field, we will conclude that application of CEQA to NCRA in the present case is not preempted.”). The Board should thus recognize this CEQA review as part of the OFA process and plan accordingly.

Second, to the extent that an offeror were to request the STB to impose conditions for a sale against the will of NCRA/GRTA, we believe such a request would be problematic under the Tenth Amendment and the holding in *FOER*, which follows US Supreme Court precedent. Sierra Club and FOER thus expressly reserve the right to further comment on and/or contest any STB forced sale. Such sale would undoubtedly impinge on the state’s ability to own and manage its own property.

I certify that a copy of this request is being sent to counsel for NCRA as well as the parties identified on the service list for this docket.

Thank you for your consideration of these comments.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Amy J. Bricker

cc: Party Service List for AB 1305X  
Charles Montange, Counsel for NCRA/GRTA