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March 15, 2021

Richard Marks, Chair
North Coast Railroad Authority
c/o Executive Assistant Hiedy Torres
419 Talmage Road, Suite M
Ukiah, CA 95482

VIA NEXT DAY DELIVERY (GLS – General Logistics Systems)
VIA E-MAIL to: richard.marks@northcoastrailroad.org; ncra.mstogner@sbcglobal.net;
ncra.hiedy@sbcglobal.net; Elizabeth.Coleman@sonoma-county.org

Re: Action by NCRA Board on February 18, 2021 & STB Submission on March 9, 2021

Dear Chair Marks and North Coast Railroad Authority Board of Directors:

This office has been retained by the Transportation Solutions Defense and Education Foundation (TRANSDEF) in response to the action taken by the NCRA Board at its Special Board Meeting on February 18, 2021. According to a communication by NCRA Executive Assistant Hiedy Torres, at that meeting:

The Board unanimously authorized counsel to circulate and file all documents before the Surface Transportation Board as necessary to effectuate rail banking of MP 139.5 near Willits to MP284.1 near Eureka including related branch lines.

Subsequently, on or about March 9, 2021, NCRA submitted to the federal Surface Transportation Board: “Proposed abandonment and railbanking of North Coast Railroad Authority's Line from Willits (MP 139.5) to end of line in Samoa, Korblex, Korbek, and Carlotta, to be docketed as North Coast Railroad Authority-Abandonment Exemption - in Mendocino, Trinity and Humboldt Counties, CA, Surface Transportation Board docket no. AB 1305.”

TRANSDEF's contends that the NCRA had no authority under law to take these actions. Because of that, TRANSDEF demands that your Board vote to rescind its February 18, 2021 action, and postpone repeating that vote unless and until the Legislature has

explicitly authorized the NCRA to do so. TRANSDEF also demands that the NCRA withdraw its March 9, 2021 submission to the Surface Transportation Board concerning abandonment and railbanking.

The action taken by the NCRA Board on February 18, 2021 explicitly flies in the face of the Legislature's intent in forming the agency and acquiring the Northwestern Pacific Railroad. Government Code § 93003, in effect until it was amended by SB 1029 in 2018, stated:

The Legislature finds and declares that maintaining railroad service to the north coast area of California will provide economic benefits and, in addition, do all of the following:

- (a) Ensure continuing passenger and freight railroad service to the north coast area.
- (b) Explore opportunities for the improvement of rail service extending from Humboldt County through Mendocino County, and the potential extension of rail service to Del Norte County.
- (c) Enhance tourist access to the north coast area and encourage the establishment of tourist-related facilities.
- (d) Reduce reliance on motor vehicles and encourage the use of rail service as an alternative transportation means.
- (e) Reduce traffic congestion on and deterioration of State Highway Route 101.
- (f) Provide convenient and attractive transportation service for residents of and visitors to the north coast area.

In the aftermath of SB 1029's amendment of that section, NCRA is mandated to operate within the bounds of its authorized powers. None of the powers granted to NCRA in SB 1029's amended Government Code § 93020(a), as currently in force, include the power to request railbanking. This is proven by the fact that SB 69, currently pending in the Legislature, has been introduced to provide explicit authority for railbanking. See proposed Public Resources Code § 5883(a)(1):

Initiate or complete, or initiate and complete, the federal Surface Transportation Board's railbanking process north of ~~the county line separating the Counties of Mendocino and Sonoma at or near mile post 89.~~ *dividing line.*

But, quite obviously, a mere legislative bill does not have the force of law.

TRANSDEF concludes, therefore, that NCRA acted prematurely and without appropriate legal authority. NCRA has not “reasonably interpreted its legislative mandate” and has not “reasonably interpreted the power which the Legislature granted it.” (*Physicians & Surgeons Laboratories, Inc. v. Department of Health Services* (1992) 6 Cal.App.4th 968, 982.) NCRA’s action of February 18, 2021 was *ultra vires*, and must be rescinded.

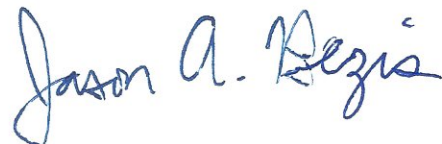
Furthermore, NCRA’s February 18, 2021 action was *ultra vires* because the Legislature has found and declared in the current Government Code § 93003 that “other entities” might “potentially develop[] a trail that could include railbanking.” (Emphasis added.) This is additional evidence that the NCRA, as of the date of the February 18, 2021 Board meeting, did not have the legal authority to authorize railbanking.

TRANSDEF demands that the NCRA cease and desist from further carrying out the February 18, 2021 *ultra vires* Board action until such time as the NCRA Board rescinds that action. TRANSDEF demands that the NCRA withdraw its March 9, 2021 submission to the Surface Transportation Board.

TRANSDEF is aware that the NCRA webpage for its Board of Directors has not been updated. After attempting to contact NCRA personnel without success, TRANSDEF addressed this demand letter to the last known Chair of the Board.

TRANSDEF requests a reply to this demand letter on or before Friday, March 19, 2021. We look forward to the prompt, cost-efficient resolution of this matter.

Sincerely yours,

A handwritten signature in blue ink that reads "Jason A. Bezis". The signature is written in a cursive, flowing style.

JASON A. BEZIS
Law Offices of Jason A. Bezis
Attorney for TRANSDEF