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May 19, 2020

VIA E-MAIL

Mr. Eric Lucan
Chairman
The Sonoma-Marine Area Rail Transit District
5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954

Re: Item 7 – May 20, 2020 Board Meeting Agenda

Dear Mr. Lucan:

I am writing in my capacity as outside counsel for Mendocino Railway (“Mendocino”). You may recall that Mendocino is the successor to the California Western Railroad and is the operator of the “Skunk Train.” Mendocino is a common carrier railroad authorized by the Surface Transportation Board (“STB”) to provide freight rail service on Mendocino’s rail line between Fort Bragg and Willits, California. Mendocino’s line connects with the North Coast Railroad Authority’s (“NCRA”) rail line at Willits. Through that connection, Mendocino Railway connects to the national rail network.

It has come to Mendocino’s attention that item 7 on the agenda for the May 20, 2020 meeting of the Board of Directors for Sonoma-Marine Area Rail Transit District (“SMART”) reflects some discussion or action to be taken relating to the “Expansion of SMART Right-of-Way and Scope of Operations by adding Freight Service Responsibility and Executing Related Agreements.” Having just learned of the agenda item and briefly reviewed the published documents, Mendocino is attempting to fully understand the scope of the previous discussions and of the proposed plan of action.

Mendocino has a strong interest in ensuring that common carrier operations will be maintained on the entire NCRA line. In fact, Mendocino is very interested in acquiring the freight rights currently held by Northwestern Pacific Company (“NWP”) on the NCRA/NWP line or, at the very least, the rights to that portion of the line between Cloverdale and Willits, California which directly connect with its railroad. Working with SMART and local and statewide stakeholders, Mendocino believes that a comprehensive plan can be developed that

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would allow for SMART transit operations, freight operations, and trail use to coexist in the entire corridor up to Willits, not just portions of it. Indeed, Mendocino has previously notified the NCRA that there are shippers located on the Mendocino line that would like to connect with the interstate railroad network via a functional NCRA/NWP line but have been prevented from doing so. Mendocino's most recent notification was via a February 6, 2020 letter to Mitch Stogner, a copy of which is attached hereto.

Mendocino believes that it is uniquely positioned to restore freight traffic on the entire NCRA line, providing the people and businesses of the region – including freight customers in Fort Bragg, Willits, and the communities between Willits and Cloverdale – with a service that has too long been absent. It can do so while ensuring that SMART preserves its ability to perform its passenger operations and the state can develop a trail.

In order to provide an opportunity for discussion and for the SMART Board to hear Mendocino's plans, Mendocino would like to respectfully request that you defer any final votes relating to Item 7 on the agenda. Such a deferral would allow time to discuss this matter with SMART, NCRA, NWP/NWP, and Senator Mike McGuire. Absent a better understanding of how the common carrier rights of Mendocino's customers will be preserved under the proposed plan as outlined in Item 7, Mendocino intends to carefully monitor any proceedings at the STB and may be forced to oppose any regulatory approvals or take other actions at the STB to preserve the common carrier rights of its shippers.

Sincerely,

/s/ William A. Mullins

William A. Mullins
Attorney for Mendocino Railway

cc: Mike Hart, President, Mendocino Railway
Mitch Stogner, Executive Director, North Coast Railroad Authority
Doug Bosco, President & Legal Counsel, Northwestern Pacific Co.
Leticia Rosas-Mendoza, Clerk of the Board



MENDOCINO RAILWAY

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Fort Bragg, California 95437
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February 6, 2020

Mitch Stogner
Executive Director
North Coast Railroad Authority
419 Talmage Road, Suite M
Ukiah, California 95482

Dear Mitch,

I am, as you may recall, Vice President of Mendocino Railway. I am writing to formally request that the North Coast Railroad Authority (“NCRA”) restore rail service on its rail line extending south from Willits, California so that we can provide freight service for our shippers who seek rail transportation services on the national rail network.

As you may also recall, Mendocino Railway is the successor to the California Western Railroad (“CWR”), operator of the “Skunk Train”, and a common carrier railroad authorized by the Surface Transportation Board (“STB”) to provide freight rail service on Mendocino Railway’s rail line between Fort Bragg and Willits, California. *See Mendocino Railway—Acquisition Exemption—Assets of the California Western Railroad*, STB Finance Docket No. 34465 (STB served Apr. 9, 2004). Mendocino Railway’s line connects with the NCRA’s line at Willits. Through that connection, Mendocino Railway connects to the national rail network.

Since 1998, the NCRA’s line has been embargoed as a result of unsafe operating conditions and noncompliance with federal railroad safety laws and regulations. This embargo ended, and has continued to prevent, Mendocino Railway’s access to the national rail network beyond Willits. Shippers located on our line cannot access the national rail network until the NCRA restores service on its line.

In 2004, prior to our purchase of the CWR, the CWR’s bankruptcy trustee filed a claim with the STB against the NCRA alleging that the NCRA had violated its common carrier obligation by failing to reopen the line from Willits south. This lawsuit is addressed in *Michael H. Meyer, Trustee in Bankruptcy for California Western Railroad, Inc. v. North Coast Railroad Authority, d/b/a Northwestern Pacific Railroad*, STB Finance Docket No. 34337 (STB served Jan. 31, 2007). The STB rejected the trustee’s claim on the grounds that there was no evidence of a continuing demand for service on the line. In the absence of evidence that freight shippers were interested in service over the embargoed line, the STB appeared to conclude that the NCRA did not have a common carrier obligation to reopen its line.

Mitch Stogner
Executive Director
North Coast Railroad Authority
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Though the NCRA's line has been closed for over 20 years, stranding Mendocino Railway's line from the national rail network, there is now strong evidence of shipper interest in rail freight transportation using Mendocino Railway's line and the NCRA line. Mendocino Railway accordingly in 2019 applied for a federal grant under the U.S. Department of Transportation's Better Utilizing Investments to Leverage Development ("BUILD") program to improve its line for such service. In connection with its grant application, Mendocino Railway determined that there are several companies located on or near Mendocino Railway's line with a strong interest in freight service in conjunction with a connection to the national rail network at Willits. Many of these companies supported Mendocino Railway's grant application, with local manufacturers, lumber companies, an aggregate company, and a brewery expressing their desire for a rail freight alternative to trucks.

A market for rail freight service on Mendocino Railway's line clearly exists but we need a viable connection to the national rail network at Willits in order to serve that market. We have tried to work with the Northwestern Pacific Railroad Company ("NWPCO"), the current operator of the NCRA's line, to restore service on the NCRA's line, and we recently expressed our willingness to take over operation of the NCRA's line in order to ensure its reopening. But our efforts have not been successful. If the NCRA continues to maintain its embargo of its line from Willits south we believe that the NCRA will be in violation of its common carrier obligations. We therefore urge the NCRA to take immediate steps to restore service on its line so that we can restore interstate freight service to the customers who desire it.

Thank you for your attention.

Sincerely,



Robert Jason Pinoli
Vice President