

To: Board of Directors, North Coast Railroad Authority
From: Elizabeth Coleman, General Counsel
Re: Agenda Item E.5 - Overview of Railbanking Procedure, Steps In Preparation for Potential Railbanking Request
Date: June 12, 2019

1. Purpose of Railbanking, Status of Applicable Legislation.

Railbanking is governed by the Surface Transportation Board (STB), a federal agency, and the successor in interest to the Interstate Commerce Commission. The STB makes determinations on railbanking in the context of proceeding to abandon a railroad right-of-way. As a general matter, rail carriers apply to the STB for permission to abandon the operation of a rail line, which can only be done with STB authorization. During the abandonment process, third parties, including non-profit trail entities or state or local governmental agencies file requests to have the right-of-way railbanked instead of completely abandoned. Railbanking allows the use of the right of way for purposes such as trails, while protecting the long-term availability of the right of way for future rail uses by stopping short of completely abandoning that interest.

This outline is intended to give the Board of Directors a basic understanding of the likely process of railbanking in order to facilitate discussion of that possible disposition of the right-of-way, particularly north of Willits. This item is informational only, and further discussion by the Board of Directors will likely be necessary if any future action items are required.

At present, the State of California is in the process of performing a study of the NCRA line pursuant to Government Code section 13978.9, adopted via 2018 Senate Bill 1029. The statute requires, among other things, that the state perform the following:

“(4) A preliminary assessment of the viability of constructing a trail on the entirety of, or a portion of, the property, rights-of-way, or easements owned by the North Coast Railroad Authority, and recommendations relating to the possible construction of a trail, including both of the following:

(A) Options for railbanking and the governance structure or ownership structure for a new or successor entity that is necessary to railbank property, rights-of-way, and easements along the rail corridor.

(B) A preliminary assessment of which portions of the terrain along the rail corridor may be suitable for a trail.” (emphasis added)

Based upon the forgoing, it is likely that the State will need to complete its study before NCRA can formally move forward with railbanking, should that option be pursued. Nonetheless, NCRA has the opportunity to take preliminary steps to facilitate the eventual railbanking process, and may be able to inform the State’s assessment process to maximize the utility of the ultimate report for the railbanking process generally.

2. Railbanking Filings.

A. Commencement of Abandonment Proceedings. In order to formally request that the line be railbanked, abandonment first must be requested. There are two basic processes for request of abandonment. A “notice of intent to abandon” may be filed in most circumstances, but has significant procedural and noticing requirements adding to the complexity, time, and expense of the process. (See 49 CFR 1152.20 et seq.) Under certain circumstances, an abandonment can be deemed an “exempt abandonment”, significantly limiting the scope and noticing related to the application to abandon. (See 49 CFR 1152.50) If the carrier certifies that no local traffic has moved over the line under consideration for abandonment/railbanking for at least two years, and certain other conditions are met, the carrier can file a “notice of exempt abandonment” instead of the full notice of intent to abandon. (See 49 CFR 1152.50 (b).) It is likely that NCRA will be able to proceed under the truncated process if all parties with interest in the line are in accord on the approach.

B. Required Factual Studies. Prior to submission of the request for abandonment, federal law requires that an environmental report and a historical report be prepared. These documents must be prepared and circulated before the formal request to the STB, giving the relevant agencies and individuals time to review the results.

Both the required studies can be completed in advance of the formal railbanking process, and provide a likely opportunity to get a head start on the process, should the Board be so inclined. Additionally, there may be an opportunity to work with the State to maximize the utility of the State assessment as it relates to the studies. To the extent the State has been charged with analyzing related matters, its work may be relied upon in the eventual reports to be submitted to the STB.

Historical Study. The historical study must address several topics, particularly aimed at determining any historical value of items along the line that may be subject to historical preservation laws. To this end, the report must include a topographic map of the line, showing structures over 50 years old, a written description of the right of way, photographs of structures, and additional information about them. The report must also include a narrative history of the carrier operations in the area, and the likely changes to those activities. (See 49 CFR 1105.8)

Environmental Study. The environmental study requirement is relatively limited in scope. The action before the STB is the abandonment and railbanking of the existing line, not the possible eventual trail uses of the project. Thus, the scope of environmental review relates to the change in use (any increased traffic related to taking the line out of operation), and the process of salvage itself associated with abandonment. It must address issues of land use consistency, noise, safety, and similar issues, but because of the somewhat limited nature of the action being analyzed, the environmental study may not be as extensive as would be expected for a major project. (See 49 CFR 1105.7)

C. Notice of Interim Trail Use. After the notice of exempt abandonment or notice of intent to abandon have been filed, generally the entity wishing to contract with the carrier to facilitate railbanking files a request with the STB to allow a certain amount of time to negotiate an appropriate agreement. (See 49 CFR 1152.28) It is anticipated that prior to any filing, the likely future arrangement with respect to railbanking will have been negotiated in advance. Once the notice of abandonment is filed and the

carrier agrees to negotiate an agreement, and upon the STB's satisfaction that all required terms have been addressed with respect to the ongoing status of the right of way, a Notice of Interim Trail Use or Abandonment is issued by the STB.

3. Concurrent Issues.

A. Landowner Response. It is anticipated that adjacent landowners along the line in the areas to be considered for railbanking, as well as fee owners of properties across which NCRA holds an easement or other interest less than full ownership, may object to railbanking. NCRA has recently received one demand letter requesting a quitclaim deed on the basis of "abandonment" of the right of way by non-use. While abandonment is under the purview of the STB, under the process noted above, it is likely that this type of request, or protests of the railbanking process, may result from pursuing this approach. In general, attempts to prevent or set aside railbanking determinations on the basis of the rights of underlying landowners have not been successful. Nonetheless, they may make claims and requests for compensation.

B. Documentation Concerns. It has been noted that the written records related to some of the right of way held by NCRA refers to Northwest Pacific Railway Co., LLC, rather than Northwest Pacific Railroad Co., the current operator for active use of the southern portion of NCRA's jurisdiction. Prior to undertaking railbanking activities, NCRA would likely need to clarify the documentation. This step, which would be a necessary precursor to moving forward with railbanking, could be undertaken prior to the completion of the State's analysis of railbanking, because it is an independent matter, although significant to the eventual possibility of railbanking.

4. Summary of Next Steps.

The preliminary steps of performing historical and environmental review, cleaning up existing documentation, and coordinating with the State of California in its pending analysis of NCRA's operations and future can be undertaken currently, and would position NCRA to move forward with formal steps to railbank once such steps are authorized and appropriate under the controlling statutes. Staff and counsel will return to the Board in the event that any action items by the Board are needed to move forward.