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December 21, 2004

**BY HAND DELIVERY**

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

ENTERED  
Office of Proceedings

DEC 22 2004

Part of  
Public Record

RE: 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 Answer And Affirmative Defenses To California Western Railroad's Complaint. As can be seen from the Certificate of Service, a copy of said filing has been served by courier on Complainant's counsel.

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.

Sincerely,



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  
ANSWER AND AFFIRMATIVE DEFENSES TO  
CALIFORNIA WESTERN RAILROAD'S COMPLAINT



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December 21, 2004

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**FINANCE DOCKET NO. 34337**

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

v.

**NORTH COAST RAILROAD AUTHORITY**

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**NORTH COAST RAILROAD AUTHORITY'S  
ANSWER AND AFFIRMATIVE DEFENSES TO  
CALIFORNIA WESTERN RAILROAD'S COMPLAINT**

Defendant North Coast Railroad Authority ("NCRA") responds<sup>1</sup> to complainant Michael H. Meyer, Trustee in Bankruptcy for California Western Railroad, Inc.'s ("Complainant's") Complaint, dated May 22, 2003 ("Complaint") as follows:

Except as expressly stated below, NCRA answers and responds only to those allegations that are directed toward it. To the extent that a response to allegations directed toward an entity other than NCRA is required, NCRA states that it is without sufficient knowledge or information to form a belief concerning the truth of the allegations in the Complaint directed toward such

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<sup>1</sup> NCRA objects to the need to respond in this proceeding at this time inasmuch as the Complaint has never been properly served. Complainant mailed the Complaint to NCRA's offices in May 2003. Despite NCRA's General Counsel having identified himself to Complainant's counsel, Complainant's November 22, 2004, fee waiver request was sent to a former NCRA Executive Director. Neither was the Complaint served on NCRA following the Board's grant of the fee waiver petition, nor was notice of the Board's action served on NCRA. Only through fortunate circumstance did NCRA become aware that the Board had docketed a complaint against it. NCRA files this response out of an abundance of caution to protect its rights. NCRA believes that its time to respond to the Complaint is not yet running because the Complaint has not been properly served.

entity or entities, and therefore, denies them. NCRA responds to the Complaint's numbered allegations as follows:

### **RESPONSES TO THE COMPLAINT**

1. NCRA lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 1, and therefore denies them.

2. NCRA lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 2, and therefore denies them.<sup>2</sup>

3. NCRA denies that it is doing business as Northwestern Pacific Railroad. NCRA admits that its address is 419 Talmage Road, Suite M, Ukiah, CA 95482, and further admits that it was subject to the Board's jurisdiction for the limited purpose of the Notice of Exemption in STB Finance Docket No. 33115, North Coast Railroad Authority—Lease and Operation Exemption—California Northern Railroad Company, Northwestern Pacific Railroad Authority and Golden Gate Bridge, Highway and Transportation District, served September 27, 1996. NCRA expressly denies that it is currently subject to the Board's jurisdiction for Complainant's allegations contained within the Complaint, particularly insofar as Complainant's assertion that NCRA is presently authorized to operate an approximately 318-mile line of railroad, between Fairhaven and Lombard Station, CA ("the Line").<sup>3</sup> NCRA hereby generally denies any allegation by Complainant which equates NCRA with "NWP" or which, by equating NCRA with

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<sup>2</sup> NCRA lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Footnote 1, and therefore denies them.

<sup>3</sup> NCRA denies any allegations contained in Footnote 2 that are inconsistent with the Notice of Exemption in STB Finance Docket No. 33998, Northwestern Pacific Railway Co., LLC—Lease and Operation Exemption—North Coast Railroad Authority, Northwestern Pacific Railroad Authority and Golden Gate Bridge, Highway and Transportation District, served February 6, 2001 ("February 6, 2001 Notice"), which speaks for itself.

NWP, asserts that NCRA is the authorized operator of the Line with a responsibility for operating same.

4. NCRA admits that Complainant's track directly connects with the track owned by NCRA, which track is referred to as the Northwestern Pacific Railroad. Otherwise, NCRA lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 4, and therefore, denies them.

5. NCRA denies the allegations in Paragraph 5, but admits that at various times the Federal Railroad Administration ("FRA") inspected the rail line and noted specific violations of FRA's rules and requirements.

6. NCRA lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 6, and therefore denies them.

7. NCRA lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 7, and therefore denies them. NCRA admits that the FRA issued a Compliance Order on June 28, 1998, but denies any allegations contained in Paragraph 7 concerning said order inasmuch as the Compliance Order speaks for itself.

8. NCRA admits that representatives of FRA and California Public Utilities Commission ("CPUC") surveyed the line from Willits to the south and found numerous defects, but denies Complainant's other allegations contained in the first sentence of Paragraph 8 because NCRA lacks sufficient knowledge or information to form a belief as to the truth of those allegations. NCRA further denies any allegations contained in Paragraph 8 that are inconsistent with the Emergency Order No. 21, Notice No. 1 as published at 63 Fed. Reg. 67976 (Dec. 9, 1998), which speaks for itself.

9. NCRA denies any allegations contained in Paragraph 9 that are inconsistent with the Emergency Order No. 21 as currently in effect.<sup>4</sup>

10. NCRA denies that traffic on the line has not been embargoed, and admits that NCRA has not applied to the Surface Transportation Board to discontinue operations over or to abandon the line. NWPY otherwise denies any allegations in Paragraph 10.

11. NCRA denies the allegations in Paragraph 11.

12. NCRA denies the allegations in Paragraph 12.

13. NCRA denies the allegations in Paragraph 13.

14. NCRA specifically denies the allegations of Paragraph 14 relating to “violations of the statutory obligations,” and lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 14, and therefore denies them.

15. NCRA lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 15, and therefore denies them.<sup>5</sup>

16. NCRA lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 16, and therefore denies them.

17. NCRA denies the allegations in Paragraph 17.

To the extent a response is required to Complainant’s request for relief following Paragraph 17, NCRA denies each and every allegation therein.

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<sup>4</sup> Except to the extent that the allegations in Footnote 3 are expressly consistent with the language of Emergency Order No. 21, Notice No. 3, as published at 66 Fed. Reg. 9265-8267 (Feb. 8, 2001), NCRA denies the allegations of Footnote 3.

<sup>5</sup> NCRA admits that a Petition for Partial Revocation was filed with the STB, but denies that the Petition enables the STB to entertain this Complaint.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

Complainant's claims are barred, in whole or in part, for failure to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

Complainant's claims are barred, in whole or in part, by Complainant's lack of standing.

**THIRD AFFIRMATIVE DEFENSE**

Complainant's claims are barred, in whole or in part, by applicable statutes of limitation.

**FOURTH AFFIRMATIVE DEFENSE**

Complainant's claims are barred, in whole or in part, by the equitable doctrine of laches.

**FIFTH AFFIRMATIVE DEFENSE**

Complainant has failed to state its claims with specificity.

**SIXTH AFFIRMATIVE DEFENSE**

Complainant's claims are barred to the extent that its claimed injuries and damages were not proximately caused by acts or omissions of NCRA.

**SEVENTH AFFIRMATIVE DEFENSE**

Complainant's right to recover damages, if any, is barred or limited by its failure to mitigate its damages.

**EIGHTH AFFIRMATIVE DEFENSE**

Complainant's claims are barred because Complainant suffered no statutory injury caused by any actions of or omissions by NCRA.

NINTH AFFIRMATIVE DEFENSE

Complainant's claims are barred because the STB lacks jurisdiction over NCRA in relation to this Complaint.

TENTH AFFIRMATIVE DEFENSE

Complainant's claims are barred because of force majeure.

ELEVENTH AFFIRMATIVE DEFENSE

Complainant's claims are barred because of superceding orders by the FRA regarding NCRA.

TWELFTH AFFIRMATIVE DEFENSE

Complainant's claims are barred due to the 11<sup>th</sup> Amendment of the United States Constitution.

THIRTEENTH AFFIRMATIVE DEFENSE

Complainant's claims are barred because on September 25, 2000, California Western Railroad, Inc. issued NCRA a general release of any liabilities that operates to bar the claims asserted in the Complaint.

FOURTEENTH AFFIRMATIVE DEFENSE

NCRA reserves the right to assert other defenses as the case proceeds.

**PRAYER FOR RELIEF**

WHEREFORE, Respondent NCRA requests that the STB dismiss this Complaint with prejudice, and provide NCRA with such other and further relief as the STB deems proper.

Respectfully submitted,

Christopher J. Neary  
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Attorneys for North Coast Railroad Authority

**CERTIFICATE OF SERVICE**

I hereby certify that on December 21, 2004, I have caused the foregoing North Coast  
Railroad Authority's Answer And Affirmative Defenses To California Western Railroad's  
Complaint to be served by hand delivery on:

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



William A. Mullins  
Attorney for North Coast Railroad Authority