

SURFACE TRANSPORTATION BOARD
WASHINGTON, DC

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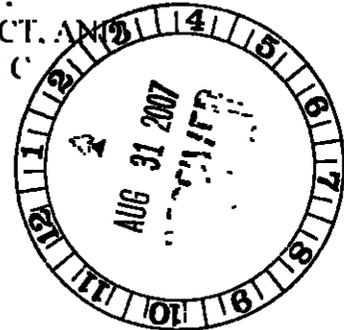
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Finance Docket No. 35073

NORTHWESTERN PACIFIC RAILROAD COMPANY
—CHANGE IN EXEMPTION
NORTHCOST RAILROAD AUTHORITY,
SONOMA-MARIN AREA RAIL TRAFFIC DISTRICT, AND
NORTHWESTERN PACIFIC RAILWAY, LLC

ENTERED
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AUG 31 2007
Part of
Public Record

PETITION TO STAY
OF
MENDOCINO RAILWAY



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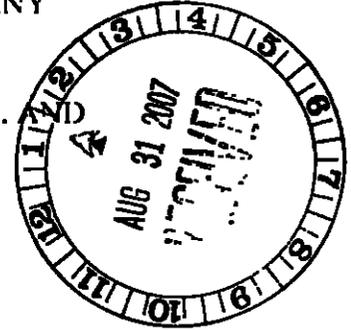
MENDOCINO RAILWAY

Dated August 31, 2007

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WASHINGTON, DC

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NORTHCOAST RAILROAD AUTHORITY,
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PETITION TO STAY
OF
MENDOCINO RAILWAY

Petitioner, Mendocino Railway of Woodland, California 95776 ("Mendocino") pursuant to 49 C.F.R. 1150.32, asks that an administrative stay be entered to postpone the effective date of the proposed transaction until the matters of concern to Mendocino have been resolved,¹ and in support thereof Mendocino states, as follows:

1 Mendocino² is a common carrier railroad subject to the jurisdiction of this Board, pursuant to the authorization granted in STB Finance Docket No. 34465.

Mendocino Railway—Acquisition Exemption—Assets of The California Western Railroad, served April 9, 2004.

¹ See, STB Finance Docket No. 35002, Savage Bingham & Garfield Railroad Company—Acquisition and Operation Exemption—Union Pacific Railroad Company, served March 28, 2007; STB Finance Docket No. 34918, Keokuk Junction Railway Company d/b/a Peoria & Western Railway—Lease and Operation Exemption—BNSF Railway Company Between Vermont and Farmington, IL, served August 10, 2006; STB Finance Docket No. 34645, The Burlington Northern and Santa Fe Railway Company—Acquisition and Operation Exemption—State of South Dakota, served December 29, 2004.

² Mendocino is a California corporation and a wholly owned subsidiary of Sierra Railroad Company, a noncarrier holding company.

2 The Verified Notice of Exemption of the Northwestern Pacific Railroad Company (“NWPCO”), filed August 9, 2007,³ and its Exhibit 4, the Caption Summary, are misleading if not altogether false. At page 3 of its Notice, NWPCO states, “The rail properties that NWPCO will lease and operate pursuant to this notice (and over which NWPCO will replace [the Northwestern Pacific Railway Co., LLC] NWPY) include the following (1) the Willits Segment extending from NWP milepost 142.5 near Outlet Station to NWP milepost 68.22 near Healdsburg, CA, a distance of approximately 74.3 miles . . .” Page 1 of the Caption Summary is even more explicit in stating, “With respect to the line segments described above [including the Willits Segment] NWPCO will replace Northwestern Pacific Railway Co., LLC (“NWPY”), which has been operating over those lines pursuant to 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, STB Finance Docket No. 33998 (STB served Feb. 6, 2001).”

3 At the time that the NWPY leased the Willits Segment and at no time since then has NWPY been the operator of the Willits Segment. Operations on the Willits Segment, among other rail lines of the North Coast Railroad Authority (“NCRA”), doing business as the Northwestern Pacific Railroad (“NWP”), were ordered shut down by the Federal Railroad Administration, by its Emergency Order No. 21, Notice No. 1, issued November 25, 1998, a copy of which is attached as Exhibit 1. The rail lines not having been restored to serviceable condition in the meantime, the FRA’s order remains in effect, and no operations have been conducted on the Willits Segment by the NWPY as

³ The Notice was published at 72 Fed. Reg. 48729-30, August 24, 2007.

the lessee of the line. Nor will NWPCO, as NWPY's successor, be able to render service on the Willits Segment in the foreseeable future, because the necessary repairs of the rail line which led to its shut down are a long way from being effected. Neither the Verified Notice of Exemption nor the Caption Summary, however, refers to FRA Emergency Order No. 21, Notice No. 1, and the shut down of the Willits Segment which it ordered.

4. The Notice also is misleading if not false in its assertion, at page 6, that "[n]o environmental documentation is required because there will be no operational changes that would exceed the thresholds established in 49 CFR 1105.7(c)(4) or (5) . . ." The threshold of 49 C.F.R. 11205.7(c)(5)(A) is "[a]n increase in rail traffic of at least 100 percent (measured in gross ton miles annually) . . ." If NWPCO were to succeed in being able to resume operations on the Willits Segment, that would be an increase in rail traffic of at least 100 percent, because currently no traffic whatever moves on the Willits Segment. It has been shut down by FRA Emergency Order No. 21, Notice No. 1, for more than nine years' time.

5. Mendocino is focusing attention on the Willits Segment, because the Willits Segment affords the only connection between the Mendocino and the Nation's railroad system.

6. Mendocino's predecessor, the California Western Railroad, Inc. ("CWR") regularly interchanged traffic at Willits, CA, with the NWP, which, in turn, afforded access to the Union Pacific Railroad Company.

7. By a Trackage Rights Agreement, dated March 11, 1999, a copy of which is attached as Exhibit 2, the NCRA conveyed its Willits Depot to the CWR and granted it trackage rights to operate on NCRA's track to reach the northerly boundary of NCRA's

railroad yard in Willits and the use of NCRA's tracks numbers 11 and 12, to be used as interchange tracks, and tracks numbers 20-25 to be used for the turning of CWR's equipment. NCRA agreed to maintain, repair and renew its tracks and related signaling. The agreement by its terms was binding upon the successors and assigns of CWR and NCRA. No STB approval was required for the Trackage Rights Agreement, because the track in question was switching, yard and other excepted track, within the meaning of 49 U.S.C. 10501(b)(2) and 10906.

8. On May 20, 1999, NWP requested the FRA to modify its emergency order in effect to allow the implementation of the Trackage Rights Agreement. FRA agreed to modify its emergency order to permit CWR's trains to renew operations over NWP's track to Willits Depot and turn its trains at the Willits Yard. The FRA granted the relief which NWP sought by its Emergency Order No. 21, Notice No. 2, dated May 28, 1999, a copy of which is attached as Exhibit 3.

9. NWPCO's Notice fails to make any mention of Mendocino's right to operate over approximately 1.5 miles of the NCRA's tracks which NWPCO seeks the Board's authority to take over from NWPY. Any approval by the Board of the proposed transaction needs to be conditioned to continue to allow Mendocino to operate over the NCRA's track between the junction with the Mendocino and the Willits Depot, as well as NCRA's Tracks 20, 24, 25, 26 and 27 in the Willits Yard.

10. Mendocino since beginning its operation on or about May 1, 2004, has been operating on the NCRA's track between the junction with the Mendocino and the Willits Depot, as well as Tracks 20, 24, 25, 26 and 27 in the Willits Yard. NCRA and NWPY, however, have refused and failed to maintain those tracks or the related signaling.

claiming lack of funds to do so. In order to safely operate its trains, Mendocino at its expense refurbished the tracks, including weed control, and the related signaling. It has sought reimbursement from NCRA but has been unsuccessful in obtaining any reimbursement. Now NWPY is planning to walk away from the property and NCRA is planning to put NWPCO in its place, leaving Mendocino holding the bag. Any approval by the Board of the proposed transaction needs to be conditioned upon NCRA's and/or NWPCO's being obligated to maintain the the NCRA's track between the junction with the Mendocino and the Willits Depot, as well as Tracks 20, 24, 25, 26 and 27 in the Willits Yard, and the related signaling and to reimburse Mendocino for the expenses it incurred because of NCRA's and NWPY's failure to do so, detailed in attached Exhibit 4.

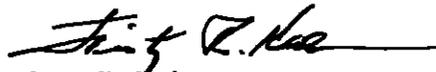
WHEREFORE, Mendocino Railway, pursuant to 49 C.F.R. 1150.32(c), asks that the Verified Notice of Exemption of the Northwestern Pacific Railroad Company be declared null and void *ab initio* because it contains false or misleading information or, in the alternative, that, pursuant to 49 U.S.C. 10901(c), the Board's approval of the proposed transaction be conditioned to allow Mendocino Railway to continue to operate on the North Coast Railroad Authority's track between the junction with the Mendocino Railway and the Willits Depot, as well as Tracks 20, 24, 25, 26 and 27 in the Willits Yard, and to require the North Coast Railroad Authority and/or the Northwestern Pacific Railroad Company to maintain the tracks and related signaling so that the Mendocino Railway safely can operate its trains on the tracks and to reimburse Mendocino \$6,405,490 for the expenses it incurred maintaining the tracks and signaling because of the failure of the North Coast Railroad Authority or the Northwestern Pacific Railway Co., LLC, to have done so.

Respectfully submitted.

MINDOCINO RAILWAY

By its attorneys.

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Dated: August 31, 2007

CERTIFICATE OF SERVICE

I certify that I this day served a copy of the foregoing Petition upon Northwestern Pacific Railroad Company by facsimile transmitting and mailing by prepaid first class mail copies to its counsel, Robert A. Wimbish, Esq., and Douglas H. Boseo, Esq.

Dated at Washington, DC, this 31st day of August 2007

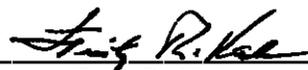

Fritz R. Kahn

Exhibit 1

Improvements; Extend Runway 2/20; Acquire Snow removal Equipment; Update storm water protection plan; PFC Administration.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs. FAR Part 135 Air Taxi.

Any person may inspect the application in person at the FAA office listed above under FOR FURTHER INFORMATION CONTACT.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Rochester.

Issued in Des Plaines, Illinois, on December 2, 1998.

Benito De Leon,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region
[FR Doc 98-32733 Filed 12-8-98, 8 45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Emergency Order No. 21, Notice No. 1]

Northwestern Pacific Railroad; Emergency Order to Prevent Operation of Trains on Northwestern Pacific Railroad's Trackage From Arcata, California, to Mile Post 63.4 Between Schellville and Napa Junction, California

The Federal Railroad Administration (FRA) of the United States Department of Transportation (DOT) has determined that public safety compels issuance of this Emergency Order requiring the Northwestern Pacific Railroad (NWP) of Eureka, California, to discontinue operation by anyone of trains on the NWP rail line from mile post 295.5 at Arcata, California to mile post 63.4 between Schellville, California and Napa Junction, California until the NWP inspects and properly repairs its track and grade crossing signals, and it trains its employees how to properly maintain the safety of its track and grade crossing signals.

Authority

Authority to enforce Federal railroad safety laws has been delegated by the Secretary of Transportation to the Federal Railroad Administrator. 49 CFR 1.49. Railroads are subject to FRA's safety jurisdiction under the Federal railroad safety laws, 49 U.S.C. 20102, 20103. FRA is authorized to issue emergency orders where an unsafe condition or practice "causes an

emergency situation involving a hazard of death or personal injury" 49 U.S.C. 20104. These orders may impose such "restrictions and prohibitions . . . that may be necessary to abate the situation." (*Ibid*)

Background

The NWP operates on a 286-mile line between mile post 295.5 near Arcata, California and mile post 63.4 between Schellville, California and Napa Junction, California. The North Coast Railroad Authority, a California public agency formed pursuant to California Government Code Section 93000 *et seq.*, owns and operates that portion of the NWP between Healdsburg, mile post 68, and Arcata. Another portion over which the NWP operates and for which it is responsible for maintenance, Healdsburg to mile post 63.4 near Napa Junction, is owned by the Northwestern Pacific Railroad Authority, a joint powers agency representing the Golden Gate Bridge, Highway and Transportation District, the County of Marin, and the North Coast Railroad Authority. Operations are currently being conducted under contract by Railways, Inc.

The majority of NWP's operations involve the transportation of freight, however, in the past, the railroad also has conducted passenger operations between Willits and Healdsburg. The NWP connects to the California Northern Railroad, another freight railroad, at Schellville. It also connects to the California Western Railroad, which operates both freight and passenger trains, at Willits. The California Western operates over about one mile of NWP trackage in order to interchange freight operations with the NWP at Willits and to reach its passenger terminal in Willits.

The NWP traditionally hauls mostly timber and wood products, but it also hauls some hazardous materials, especially over the portion of the line south of Willits. Maximum authorized train speed on the line is 30 m.p.h., although train speed over that portion of the line affected by Emergency Order No. 14 is restricted to 10 m.p.h.

The NWP is subject to the jurisdiction of FRA. Portions of its operations currently are subject to Emergency Order No. 14 issued on June 7, 1990, when the line of railroad was known as the Eureka Southern Railroad. Emergency Order No. 14 remains in effect from mile post 145.5 near Willits to Ft. Seward, mile post 216.6. It prohibits transportation of passengers until the track complies with class 1 track standards and prohibits transportation of hazardous materials

until the track complies with class 1 track standards or is designated by the railroad as excepted track. Concurrent with this emergency order, FRA is amending Emergency Order No. 14 to prohibit the transportation of hazardous materials until the track complies with class 1 track standards.

Northern Portion, Willits to Arcata

In 1990, FRA became concerned about the track conditions on the NWP, then known as the Eureka Southern Railroad, between Willits and Eureka. At the time, the railroad hauled over the line passengers and liquified petroleum gas, a regulated hazardous material. FRA found that the track between Willits and Eureka did not meet class 1 track standards and posed an immediate threat of death or injury to persons. FRA issued Emergency Order No. 14 under which the Eureka Southern Railroad was prohibited from hauling passengers until the track met class 1 track standards and from hauling hazardous materials until the track either met class 1 standards or was designated by the railroad as excepted. The excepted track provision, found at 49 CFR 213.4, limits the hauling of hazardous materials to five cars per train and places other restrictions on the designated track.

On October 1, 1990, because of improved conditions, FRA lifted Emergency Order No. 14 between mile posts 142.5 and 145.5, near Willits, and between mile posts 216.6 and 284.1, Fort Seward to Eureka. Since 1990, the NWP has complied with the terms of the emergency order for the remainder of the affected area by discontinuing hauling passengers and hazardous materials between Fort Seward and Willits.

The northern portion of the NWP has been subject to flooding for the past several years. Due to flooding which occurred within the last year, the NWP has discontinued operations on the northern portion from Nashmead (mile post 175.5) to Arcata. The railroad continues to operate on the northern portion between Willits and Nashmead. The NWP has applied to the Federal Emergency Management Agency (FEMA) for funding for repair of flood damage that occurred in 1995, 1997 and 1998. As a result of the application, FEMA, with FRA's assistance, recently conducted a survey of track conditions between Willits and Eureka. FEMA has agreed to provide \$1 million to NWP for repair of flood damage.

Southern Portion, Willits to Mile Post 63.4

In 1997, FRA, in partnership with the California Public Utilities Commission

(CPUC), reviewed NWP's compliance with Federal safety statutes and regulations on the portion of the line south of Willits. The review revealed widespread noncompliance similar to noncompliance that FRA and the CPUC previously had discovered on this line in the past several years. In conducting numerous inspections of the NWP in the previous years, FRA and CPUC inspectors identified hundreds of defective track conditions, many of which became the basis for recommendations for civil penalty assessments against the railroad. The railroad frequently failed to make corrections even after defective conditions were identified by FRA or the CPUC.

The review conducted by FRA and CPUC also revealed that the NWP was not performing required periodic tests of its locomotive air brake equipment, and that all of the railroad's locomotives exhibited defective conditions which posed a hazard to the personal safety of NWP personnel operating the equipment. FRA and the CPUC concluded that the NWP was in need of a system-wide program to train its employees to recognize safety violations and to perform necessary repairs promptly and correctly.

On June 11, 1997, representatives of FRA and the CPUC met with NWP's executive director, Dan Hauser, and its general manager, Jack Tremain, as well as two members of the railroad's Board of Directors. The group agreed to and signed a Safety Compliance Agreement under which the NWP would perform specified repairs and employee training by determined deadlines. However, one year after the agreement was executed, the NWP had performed only three of the 11 action items identified by the Compliance Agreement. On June 28, 1998, the Federal Railroad Administrator issued a Compliance Order based mostly upon the terms of the prior Agreement. In summary, the Compliance Order, which remains in effect, directs the NWP to:

1. Cease passenger operations between Willits and Schellville until the track is repaired to class 1 track standards;

2. Limit hauling of hazardous materials between Willits and Schellville to two cars per train, and prohibit hauling of any hazardous materials over trackage that is within 100 feet of a bridge or public road and which does not meet class 1 track standards;

3. Develop and furnish to FRA and the CPUC a track maintenance plan and program.

4. Establish a program of employee training on the Federal Track Standards;

5. Certify abilities of each individual conducting track inspections;

6. Establish a program of employee training regarding inspections of locomotive power and equipment;

7. Certify abilities of each individual conducting inspections of locomotive power and equipment;

8. Certify inspection reports of locomotive power and equipment inspections;

9. Certify that proper repairs have been made of all defects found as a result of locomotive power and equipment inspections;

10. Perform testing on passenger and freight cars relative to single car tests and repair tests.

FRA reviewed NWP's compliance with the Compliance Order in September and October, 1998, and found that the railroad is not following many of the Order's directives. Track inspections conducted by FRA and the CPUC discovered that the trackage within 100 feet of bridges and public road between Willits and mile post 63.4, over which hazardous material are hauled, does not meet class 1 track standards. The railroad has failed to develop a track maintenance program, and it dropped its training of track inspection personnel after only two classes of a 24-class training program. Furthermore, the NWP has an inadequate number of employees who are qualified to inspect track.

Recent Safety Surveys

In light of the NWP's failure to comply with the Compliance Order after several months, FRA and the CPUC surveyed operations on the southern portion of the railroad in September and October, 1998, to assess its overall safety. In October and November, 1998, FRA inspectors accompanied inspectors from the FEMA on surveys of track damage caused by past flooding on the northern portion. In both portions, the inspectors found numerous defects that pose an immediate hazard of death or injury to persons.

Grade Crossing Signals

FRA's regulations addressing grade crossing signal system safety, found at 49 CFR part 234, require railroads to repair, "without undue delay," any essential component of a grade crossing signal that fails to perform its intended function, and until the repair is made, the railroad is to provide alternative measures of safeguarding the crossing. See 49 CFR 234.207. These temporary measures, delineated in 49 CFR 234.105, provide for manual flagging by railroad

personnel whenever a train must occupy a grade crossing where the signals are not properly functioning. Properly functioning grade crossing signals, and temporary flagging in the event of a signal failure, are absolutely essential to the safety of the grade crossing. Trains traveling through a grade crossing, even at very slow speeds, are not able to stop suddenly to avoid a car in the crossing. Therefore, motorists attempting to cross a grade crossing must be adequately warned about a train's approach so that a potentially deadly accident can be averted.

In recent inspections of grade crossings on the NWP and from information provided by the railroad itself, FRA and CPUC inspectors found that 32 of the railroad's 127 grade crossing signals are not operational. While the railroad has instructed train crews to stop and flag each crossing where the signal is out of service, FRA and CPUC inspectors found one instance when a train crew did not perform this safety duty. Furthermore, many of the grade crossing signals have been out of service for several months, in violation of the Federal regulations' requirement to repair the signals "without undue delay."

Many of the grade crossings where the signals are out of service are situated in towns along the NWP line. In Petaluma, one grade crossing serves 22,000 vehicles per day, while another serves 13,000 every day. The NWP operates four to six train movements through these crossings each day, Monday through Friday. At other crossings where the grade crossing signals are out of service, the daily vehicle count ranges from 200 to 6,000. Vehicles in these counts include trucks carrying hazardous materials, including flammable substances.

FRA and CPUC inspectors also found that NWP employees generally lack the supervision, knowledge, test equipment, and supplies necessary to adequately maintain the grade crossing signals. The railroad's two signal maintainers have no signal standards or instructions, nor are they knowledgeable about all necessary signal maintenance. They do not have proper test equipment, such as meters, meggers, relay testers, and shunts. Tests required by FRA's grade crossing safety regulations are past due at all 127 grade crossings, including relay, insulation resistance, and warning tests. In addition, the NWP lacks sufficient parts and materials to adequately maintain the warning system. Numerous NWP circuit plans are out-dated, illegible, or simply non-existent. They need to be corrected.

redrawn, and in some cases, redesigned, yet the railroad lacks procedures to correct or redraw circuit plans.

Track Safety

FRA's track safety regulations, found at 49 CFR part 213, prescribe minimum safety requirements for railroad track. There are six classes of track defining maximum speed and minimum maintenance requirements. By designating track as a certain class, a railroad commits to maintaining that track to the standards established by the track safety regulations for that class. Much of the NWP's trackage from Willits to Schellville is designated as class 2 track. However, the numerous track defects found by FRA and the CPUC, as well as the NWP's apparent lack of commitment to properly repair the track, indicate that much of the track does not meet even the standards for class 1, the lowest class of track.

FRA and the CPUC conducted track inspections on the southern portion of the NWP between September 28 and October 15, 1998. A total of six inspections covered the line from mile post 63.4 between Schellville and Napa Junction to Willits at mile post 139.5. Inspectors identified 298 defective conditions in 148 miles of track. The majority of the defects (254) were defective crosstie conditions, including defective joint ties and ties not effectively distributed to support 39 feet of track. In many places, the ties were broken, split, or impaired to the extent that they allowed the ballast to work through. They could not hold spikes and they were allowing the tie plates or the base of the rail to move laterally more than a half inch.

These defects pose particularly serious threats to safety. Effective ballast and crossties provide the lateral and vertical support of the rail to prevent trains from derailing. Without this support, the track gage, the distance between the inside faces of the rail heads, may become too wide or too tight. Gage that is either wider or narrower than allowed by FRA regulation greatly increases the possibility of derailment due to car or locomotive wheels dropping off the rails.

The FRA and CPUC track inspectors also found 12 areas where water carrying facilities associated with the track were inadequate to perform proper drainage. Two of these drainage facilities are associated with railroad bridges. At one location, a wooden box culvert has collapsed. Under the regulations (49 CFR § 213.33) each drainage facility associated with a track

structure must be kept free of obstruction to accommodate expected water flow for the area it serves. If drainage surrounding the track is not adequate, the condition can lead to wash-outs which will disturb the lateral and vertical support of the rail causing wide or tight gage and possible derailments. Adequate drainage is especially important for the NWP during the winter months when rainfall typically is greater.

Finally, the track safety regulations require that vegetation immediately adjacent to the track bed must be controlled so that it does not pose a fire hazard, obstruct visibility of signs and signals, interfere with railroad employees' trackage duties, prevent proper functioning of signals, or prevent employees from inspecting moving equipment. See 49 CFR 213.37. FRA and CPUC inspectors report that in many areas along the NWP trackage they inspected, the vegetation obstructs any view of the track structure. Some vegetation creates a fire hazard to timber bridges, trestles, and wooden box culverts. Other vegetation obstructs the visibility of signs and signals along the right-of-way and at grade crossings. While vegetation naturally occurs and re-occurs along any railroad track, it cannot be allowed to flourish to the extent that it inhibits the safe operation of the railroad. Vegetation that has been allowed to grow to the point where signals cannot operate properly or cannot be seen, or where it prevents railroad personnel from inspecting the track, or where it becomes conducive to setting fire to bridges and other wooden track structures, poses an imminent threat to the safety to railroad employees and to the traveling public.

Between November 4 and November 13, 1998, FRA and FEMA inspectors surveyed 262 separate locations on the northern portion of the railroad that the NWP identified as storm damaged. The inspectors found numerous locations where proper drainage is not possible because the drainage facilities are plugged or in disrepair or because ditches are plugged, overgrown or inadequate. The area between Willits and Arcata is noted for its constant earth movement, mud flows, sinks and heaves. Most of the repairs that have been made by the NWP to alleviate the flooding problems have been temporary in nature. At some locations, the railroad inserted new culverts to drain water from ponded areas but failed to install the culverts at the correct depth or angle. In numerous locations, the NWP has used plastic and rubber pipe, rather than metal pipe, which is quickly crushed by the weight of work trains. It

is not likely that the drainage facilities in place will be adequate to withstand the next rainy season this winter.

Because of inadequate drainage and poor subgrade, the railroad has difficulty maintaining proper surface and alignment of track. The FRA and FEMA inspectors found numerous locations where the track surface, alignment, and crossties were unacceptable for class 1 track standards. In addition, overgrown vegetation at many locations brushes rolling stock and prevents railroad personnel from inspecting the track. In some locations, the vegetation poses a fire hazard to track carrying structures.

Finding and Order

The results of the surveys by FRA, CPUC, and FEMA inspectors of tracks and signals along the NWP line have led FRA to conclude that continued use of this rail line poses an imminent and unacceptable threat to public safety. Furthermore, a past pattern of failure by the NWP to comply with Federal railroad safety laws and regulations persuades FRA that reliance upon the cooperation of the NWP to make the necessary repairs to the track and to the signals on any part of its rail line is inadequate to protect public safety. I find that the unsafe conditions discussed above create an emergency situation involving a hazard of death or injury to persons. Accordingly, pursuant to the authority of 49 U.S.C. § 20104, delegated to me by the Secretary of Transportation (49 CFR § 1.49), it is ordered that the Northwestern Pacific Railroad shall discontinue, and shall not permit, the operation of trains over its trackage between mile post 295.5 near Arcata and mile post 63.4 between Schellville and Napa Junction while this Emergency Order remains in effect. This Emergency Order is not meant to prohibit the operation of work trains operated for the specific and sole purpose of effecting repairs on the railroad. Maximum speed of such train movements shall be 10 m p h.

Relief

The NWP may obtain full relief from this Emergency Order by performing the following requirements.

(1) Properly repair and inspect all grade crossing signals and certify to the Federal Railroad Administrator that all necessary repairs and inspections have been performed and that all required tests are up-to-date.

(2) Adopt a set of grade crossing signal standards and instructions acceptable by FRA. The standards and instructions should be submitted in writing to the Regional Administrator.

for Region 7 who will notify the NWP within 14 days of the submission whether or not the standards and instructions are approved. If they are not approved, the Regional Administrator will describe what additional measures must be taken to secure approval.

(3) Update, correct and/or redraw circuit plans for each grade crossing signal system to meet compliance with 49 CFR §§ 234.201 and 234.203. A list of locations of the updated, corrected or redrawn circuit plans should be submitted to the Regional Administrator for Region 7.

(4) Provide proper and adequate test equipment for signal maintainers

(5) Repair all track not subject to Emergency Order No. 14 to class 1 track standards as detailed in 49 CFR Part 213. [Note: Emergency Order No. 14 already requires the Northwestern Pacific Railroad to repair all track subject to that order to class 1 track standards or designate the track as excepted track in accordance with 49 CFR 213.4. By separate notice, Emergency Order No. 14 is being amended to require repair to class 1 track standards for the hauling of passengers and all hazardous materials. Otherwise, the railroad may designate the track still subject to that order as excepted.]

(6) Clear all vegetation from drainage facilities and away from signs and signals and track bed so that the track meets the requirements of 49 CFR 213.37.

(7) Furnish FRA with a 12-month track maintenance plan that includes, at a minimum the number and location (mile by mile) of crossties to be installed, location and extent of rail surfacing, location and nature of drainage facility maintenance, location and nature of vegetation control, extent of rail replacement, schedule for accomplishing programs, and criteria used to determine the location and extent of tie renewal and replacement (e.g., traffic density, track inspection data, and accident history).

(8) Establish a program of employee training on the Federal Track Standards to ensure that employees performing inspection, maintenance, and restoration work are qualified in accordance with 49 CFR 213.7. The training program shall ensure that track inspectors, track foremen, and first level track supervisors can assure compliance with the requirements of 49 CFR part 213. FRA is to be furnished a copy of the training program.

(9) Certify in writing that each individual conducting track inspections has sufficient knowledge, skills, and

ability to successfully conduct the types of inspections which will be performed by that individual. Records of that certification are to be maintained by the railroad.

(10) Obtain approval from the Federal Railroad Administrator that all of the requirements of this Emergency Order have been met and properly performed. To obtain relief, NWP should inform in writing the Federal Railroad Administrator, with a copy to the Regional Administrator of FRA's Region 7, that it believes all of the requirements of this Emergency Order have been met. Within 30 days of the notification, FRA will conduct inspections of the line, and within seven days of the inspections, will inform the railroad in writing whether this Emergency Order is lifted. If FRA does not lift the order, the written response will specifically describe what additional measures need to be taken to meet all of the requirements of this Emergency Order.

Partial Relief

In order for FRA to consider granting partial relief from this Emergency Order, the NWP must first meet all of the system-wide requirements, i.e., requirements 2, 4, 7, 8, and 9. The NWP may then obtain partial relief for any portion of the line for which all of the requirements of this Emergency Order are met. NWP should inform in writing the Federal Railroad Administrator, with a copy to the Regional Administrator of FRA's Region 7, that it believes all of the requirements of this Emergency Order have been met for a specified section of the railroad's line. Within 30 days of the notification, FRA will conduct inspections of that specified portion of the line, and within seven days of the inspections, will inform the railroad in writing whether this Emergency Order is lifted for that specified portion. If FRA does not lift the order for the specified portion, the written response will specifically describe what additional measures need to be taken to meet all of the requirements of this Emergency Order.

Penalties

Any violation of this order shall subject the person committing the violation to a civil penalty of up to \$22,000. 49 U.S.C. 21301. FRA may, through the Attorney General, also seek injunctive relief to enforce this order. 49 U.S.C. 20112

Effective Date and Notice to Affected Persons

This Emergency Order shall take effect at 6 01 p.m. (PST) on November 27, 1998, and apply to all operations of

trains on or after that time. Notice of this Emergency Order will be provided by publishing it in the Federal Register. Copies of this Emergency Order will be sent by mail or facsimile prior to publication to: Northwestern Pacific Railroad Authority through the North Coast Railroad Authority Board of Directors, the Golden Gate Bridge, Highway and Transportation District, and Marin County. A copy will also be sent to Rail-Ways, Inc.

Review

Opportunity for formal review of this Emergency Order will be provided in accordance with 49 U.S.C. 20104(b) and section 554 of Title 5 of the United States Code. Administrative procedures governing such review are found at 49 CFR part 211. See 49 CFR 211.47, 211.71, 211.73, 211.75, and 211.77.

Issued in Washington, D.C. on November 25, 1998.

Jolene M. Molitoris,
Administrator

[FR Doc. 98-32649 Filed 12-8-98, 8 45 am]
BILLING CODE 4910-08-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Emergency Order No. 14, Notice No. 5]

Northwestern Pacific Railroad; Amendment to Prohibit the Transportation of Hazardous Materials between Willits, California and Ft. Seward, California

The Federal Railroad Administration (FRA) of the United States Department of Transportation (DOT) has determined that public safety compels issuance of this amendment to Emergency Order No. 14 prohibiting the Northwestern Pacific Railroad (NWP) of Eureka, California, from transporting, or permitting anyone to transport, hazardous materials over any track from mile post 145.5 near Willits, California to mile post 216.6 near Ft. Seward, California.

Background

FRA issued Emergency Order No. 14 on June 7, 1990, when the railroad was known as the Eureka Southern Railroad. The Emergency Order prohibits transportation of passengers until the track complies with class 1 track standards and prohibits transportation of hazardous materials until the track complies with class 1 track standards or is designated by the railroad as excepted track. The Emergency Order originally covered the rail line from Willits to

Exhibit 2

TRACKAGE RIGHTS AGREEMENT

THIS AGREEMENT, made and entered into the 11th day of March, 1999, by and among the California Western Railroad, Inc., a California corporation (CWR), John M. Mayfield, Jr. and Sandra M. Mayfield, Trustees of the John M. Mayfield, Jr. and Sandra M. Mayfield Declaration of Trust dated December 23, 1991, (Mayfield), Robert J. Rodriguez, (Rodriguez), and the North Coast Railroad Authority, D.B.A. the Northwestern Pacific Railroad, (NCRA).

WHEREAS, California Western Railroad is acquiring from the North Coast Railroad Authority the Willits Depot, and

WHEREAS, the acquisition is being accomplished by Mayfield and Rodriguez, Shareholders and members of CWR's Board of Directors acquiring the depot property on behalf of CWR, and

WHEREAS, as a condition of the acquisition, a trackage rights agreement must be completed by California Western Railroad and North Coast Railroad Authority, it is now agreed by the parties hereto.

SECTION 1 - JOINT TRACKAGE - DEFINED

1.1 The term joint trackage is used here and shall refer to those certain tracks as shown on Exhibit A attached hereto as follows:

- 1) The Northwestern Pacific Railroad main line from point 1 to the northerly boundary of the Northwestern Pacific railroad yard,**
- 2) Track Number 20, and**
- 3) Tracks Number 11, 12, 20, 21, 22, 23, 24 and 25.**

1.2 Tracks shown on Exhibit A numbered 709, 710 and 711 are the tracks of the California Western Railroad. Track 20, to the extent it lies upon real estate owned by Mayfield, is the trackage of California Western Railroad. All other tracks shown on Exhibit A are trackage of NCRA as part of its Northwestern Pacific Railroad.

SECTION 2

2.1 Subject to the terms and conditions herein contained, CWR and Mayfield grant to NCRA the non-exclusive right for use of the joint trackage consisting of Track Number 20, to the extent it lies on real estate owned by CWR and/or John Mayfield, Jr., (lands of CWR), for passenger train loading and unloading from the elevated concrete loading platform adjacent to and forming the easterly boundary of the CWR parking lot as shown on Exhibit B attached hereto.

2.2 Subject to the terms and conditions herein contained, NCRA grants to CWR the non-exclusive right to use of the joint trackage for operation of its freight trains, passenger trains, locomotives and cars in its account over 1) the NCRA main line beginning at Point 1 to access Track 20, 2) Track 20 to the extent that it lies on the real property owned by NCRA, 3) Tracks 11, 12, 21, 22, 23, 24 and 25, and 4) the NCRA main line to access Tracks 11, 12, 21, 22, 23, 24, and 25. The CWR use of Tracks 21, 22, 23, 24 and 25 shall be limited to the turning of equipment. Tracks 11 and 12 shall be used solely for interchange of cars with NCRA. The NCRA main line north of Point 2 shall be used solely for 1) turning of equipment, 2) "running around equipment," and 3) the access to other tracks for interchange of cars.

2.3 Except as specifically described hereinabove, nothing contained in this agreement shall be interpreted, construed or deemed to convey or grant any rights whatsoever to the CWR or Mayfield to use the Joint Tracks to perform any railroad services of any kind for any third party.

2.4 Except as otherwise expressly provided herein, CWR accepts the joint tracks in "as is, where is" condition and without any representation or warranty either express or implied as to any matter whatsoever, including without limitation the design or condition of the joint tracks, their merchantability or their fitness or suitability for any particular purpose, the quality of the material or workmanship of the easement premises or conformity of the easement premises to its intended use. Except as otherwise expressly provided herein, CWR also agrees to use the joint tracks subject to the interests set forth hereinafter, none of which interests individually or in the aggregate would materially interfere either with the ability or CWR to conduct rail passenger or freight service.

SECTION 3 - CONSTRUCTION, MAINTENANCE AND OPERATION OF TRACKS

3.1 In the event any track, track changes and related signals, safety devices, telephones, telephone boxes, other facilities and appurtenances, hereinafter referred to collectively as "Facilities", are required to permit the entrance to or exit from the Joint Trackage by the trains, engines and cars of the parties hereto, that part of the Facilities as shall lie on the right-of-way of CWR or property owned by Mayfield, shall be constructed, installed, changed, maintained, operated, repaired and renewed by CWR at its sole cost and expense. The balance of any such Facilities shall be constructed, installed, changed, maintained, operated, repaired and renewed by NCRA at its sole cost and expense.

3.2 The term "cost and expense," as used herein, shall include, but shall not be limited to, any taxes or assessments, general or special, levied against either party hereto by any governmental agency because of the existence of any Facilities.

3.3 The normal position of any switch shall be for continuous movement by the trains of NCRA over the Joint Trackage. Employees of CWR, when entering and leaving the Joint Trackage, upon receiving proper authority from NCRA's dispatcher or other authorized person,

shall unlock and open said switch and after movement of CWR's train through said switch has been completed, the switch shall be relined to its normal position and securely locked by said employees of CWR.

3.4 Notwithstanding any agreement for payment, the ownership of any Facilities for the purpose of maintenance and operation under the terms and conditions of this agreement shall be vested in the party constructing, installing or changing same. During the term of this agreement any part of said Facilities may be removed by the party so constructing or installing same, with consent of the other party.

SECTION 4 - CONSTRUCTION, REPAIRS, MAINTENANCE, ADDITIONS AND BETTERMENTS, OPERATIONS, CONTROL OF THE JOINT TRackage

4.1 The construction, maintenance, repair and renewal of the Joint Trackage shall be under the exclusive direction and control of the party owning said track. Any party may make any additions and betterments to the Joint Trackage which are reasonably necessary or appropriate for the safe, efficient and economical use of the Joint Trackage by the parties.

4.2 The management and operation of the Joint Trackage shall be under the exclusive direction and control of the party owning same; however, subject to the operations controls established herein, CWR shall have the right to operate on and over the Joint Trackage to turn its equipment and interchange cars.

4.3 If the use of the Joint Trackage shall at any time be interrupted or traffic thereon or thereover be delayed for any cause, the owner of the joint trackage in question shall, with reasonable diligence, restore the line for the passage of trains of the parties hereto.

4.4 Each party shall be responsible for furnishing, at its own cost and expense, all labor, fuel and train supplies necessary for the operation of its own trains over the Joint Trackage.

4.5 The operation by NCRA on or along the Joint Trackage owned by CWR shall at all times be in accordance with the rules, instructions and restrictions of CWR, but such rules, instructions, and restrictions shall be reasonable and fair between all parties using the Joint Trackage and shall not unjustly discriminate against any of them. CWR shall accommodate NCRA trains with reasonable diligence and dispatch in a manner consistent with schedules established from time to time during the term of this agreement as may be mutually agreed to by the transportation officers of CWR and NCRA.

4.6 All rules, regulations and orders, and interpretations and applications thereof, governing the movement of trains over the Joint Trackage shall be reasonable, fair and just

between CWR and NCRA and shall not discriminate against either of them, according equal priority to like classes of CWR and NCRA trains.

4.7 With respect to operation of trains, locomotives and cars on over the Joint Trackage, each party shall comply with all applicable laws, rules, regulations and orders promulgated by any governmental body or agency having jurisdiction, and if any failure on the part of any party to so comply shall result in a fine, penalty, cost or charge being imposed or assessed on or against another party, such other party shall give prompt notice to the failing party and the failing party shall promptly reimburse and indemnify the other party for such fines, penalty, cost or charge, and all reasonable expense and reasonable attorneys' fees incurred in connection therewith, and shall upon request of the other party defend such action free of cost, charge and expense to the other party.

4.8 If any employee of NCRA shall neglect, refuse or fail to abide by CWR's rules, instructions or restrictions governing the operation on or along the Joint Trackage, CWR shall, in writing, so notify NCRA. CWR shall have the right to require NCRA to withhold any NCRA employee from service on the Joint Trackage pending the result of formal investigation, if in CWR's reasonable judgement such employee shall have neglected, refused or failed to abide by CWR's rules, instructions or restrictions governing the operation on or along the Joint Trackage. Upon such notice presented in writing, CWR and NCRA shall promptly hold a joint investigation in which all parties concerned shall participate and bear the expense for its officers, witnesses and employees. Notice of such investigation shall be given by NCRA to NCRA employees, officers, and such investigation shall be conducted in accordance with the terms and conditions of schedule agreements between NCRA and its employees. If, in the reasonable judgement of CWR the conduct and result of such investigation warrants, such employee shall, upon written request by CWR be restricted by NCRA from operating on the Joint Trackage, and NCRA shall release and indemnify CWR from and against any and all claims and expenses because of such restrictions.

4.9 Should any locomotive, car or caboose in the train of either party be derailed or damaged while being run or operated upon or over the Joint Trackage, the party operating said equipment shall pick up and remove same, unless otherwise agreed to, and the cost and expense thereof shall be borne by the operating party.

4.10 Notwithstanding any provision contained herein to the contrary, CWR shall have the right, but not the obligation, at CWR's sole cost and expense to make such repairs and perform such maintenance as CWR in its sole discretion may consider to be necessary on the joint trackage owned by NCRA. Any such repairs shall be done in a workmanlike manner and to any specifications required of repairs made on Class 1 trackage.

4.11 NCRA shall keep Tracks 11, 20, 24 and 25 clear of obstructions, locomotives, cabooses, and cars, to allow CWR to turn its equipment used for passenger and perform freight

interchange service in the manner and at the times as may be reasonably required by CWR to maintain its scheduled service.

4.12 The operation by CWR on or along the Joint Trackage owned by NCRA shall at all times be in accordance with the rules, instructions and restrictions of NCRA, but such rules, instructions, and restrictions shall be reasonable and fair between all parties using the Joint Trackage and shall not unjustly discriminate against any of them. NCRA shall accommodate CWR trains with reasonable diligence and dispatch in a manner consistent with schedules established from time to time during the term of this agreement as may be mutually agreed to by the transportation officers of CWR and NCRA.

4.13 If any employee of CWR shall neglect, refuse or fail to abide by NCRA's rules, instructions or restrictions governing the operation on or along the Joint Trackage, NCRA shall, in writing, so notify CWR. NCRA shall have the right to require CWR to withhold any CWR employee from service on the Joint Trackage pending the result of formal investigation, if in NCRA's reasonable judgement such employee shall have neglected, refused or failed to abide by NCRA's rules, instructions or restrictions governing the operation on or along the Joint Trackage. Upon such notice presented in writing, CWR and NCRA shall promptly hold a joint investigation in which all parties concerned shall participate and bear the expense for its officers, witnesses and employees. Notice of such investigation shall be given by CWR to CWR employees, officers, and such investigation shall be conducted in accordance with the terms and conditions of schedule agreements between CWR and its employees. If, in the reasonable judgement of NCRA the conduct and result of such investigation warrants, such employee shall, upon written request by NCRA be restricted by CWR from operating on the Joint Trackage, and CWR shall release and indemnify NCRA from and against any and all claims and expenses because of such restrictions.

SECTION 5 - SWITCH KEYS, RULE BOOKS, TIMETABLES

5.1 Each party shall furnish the other party with all necessary switch keys and rule books and the party receiving such switch keys and rule books shall pay the cost and expense thereof.

5.2 Each party shall furnish the other party with all necessary timetables governing the operation of trains over and along the Joint Trackage and the party receiving such timetables shall pay to the party providing such timetables the cost of timetables so furnished. In the event either party makes changes in the operations of its trains that requires the other party to issue revised timetables, the party initiating such operating changes will pay the expenses incurred by the other party to issue revised timetables.

SECTION 6 - PUBLIC AUTHORITY AND PERMISSION

6.1 In the event it is necessary to secure from the Surface Transportation Board authority or exemption from such authority to enable the lawful accomplishment of the objects and purposes hereof and the lawful performance of the terms, provisions and conditions hereof, CWR shall be responsible for obtaining of such authority or exemption, shall forthwith apply to the Surface Transportation Board therefor, and shall diligently prosecute the application to final determination. NCRA, at expense of CWR, shall assist and support such application and will furnish such information and execute, deliver and file such instrument or instruments in writings as may be necessary and appropriate to obtain such approval.

SECTION 7 - EFFECTIVE DATE - TERM

7.1 This agreement shall take effect on the date hereof.

7.2 No termination of this agreement shall serve to relieve either party hereto of any obligations incurred hereunder on or prior to the date of such termination.

7.3 This agreement shall remain in effect until terminated by the parties hereto

SECTION 8 - NOTICES - HOW GIVEN

8.1 Any notices to be served hereunder shall be served, in writing, upon any executive officer of the party upon whom such notice is to be served.

SECTION 9 - SECTION HEADINGS

9.1 Section headings are inserted for convenience only and shall not affect any construction or interpretation of this agreement.

SECTION 10 - AGREEMENT TO BE CONSTRUED LIBERALLY - NOT FOR BENEFIT OF THIRD PARTIES

10.1 This agreement shall be construed liberally so as to each party hereto all the rights, privileges and benefits herein provided or manifestly intended. This agreement, and each and every provision hereof, is for the exclusive benefit of the parties hereto and not for the benefit of any third party.

SECTION 11 - SUCCESSORS AND ASSIGNS

11.1 This agreement shall inure to the benefit of and shall be binding upon the successors and assigns of CWR and NCRA, but no assignment, sales, conveyance, mortgage, lease, sublease or transfer of any interest or right given either party in the Joint Trackage or this agreement to any person or entity separate and apart from the assignment, sale, conveyance,

mortgage, lease, sublease or transfer of all or substantially all of its railroad or operating properties shall be valid or binding without the prior written consent of the other party.

SECTION 12 - GOVERNING LAW

12.1 This agreement shall be governed by the laws of the State of California.

SECTION 13 - ENCUMBRANCE RUNNING WITH THE LAND

13.1 This trackage rights agreement shall be an encumbrance on the lands of CWR and NCRA, the legal descriptions of which are attached hereto as Exhibits C and D, respectively.

SECTION 14 - INDEMNIFICATION AND INSURANCE

14.1 (a) It is the express intent of each party that the other party shall protect, defend, hold harmless, and indemnify said each party from and against any and all demand, liability, damage, expense, cost, claim or suit, including reasonable attorney's fees (collectively "Liability") incurred by or assessed against either party, its agents, employees, affiliated companies and its successors and assigns on account of injuries, death or property loss or damage arising from either party's use, operation or maintenance of the Joint Trackage or (ii) failure by either party to perform any of its covenants under this agreement.

(b) It is the express intent of each party that each party shall protect, defend, hold harmless and indemnify the other party from and against any and all demand, liability, damage, expense, cost, claim or suit including reasonable attorney's fees (collectively, "Liability"), incurred by or assessed against any party, their agents, employees, affiliated companies and successors and assigns on account of injuries, death, property loss or damage (i) occurring prior to the Effective Date as defined in paragraph 7.1 and occurrences following CWR's vacation of the Premises, (ii) operations, construction or maintenance relating to passenger service during the term of this agreement (except to the extent that such injuries, death, property loss or damage is caused by CWR, its agents, employees, affiliated companies, successors or assigns), and/or (iii) failure by CWR to perform any of its covenants under this agreement.

(c) The foregoing notwithstanding, except in the instance of tortious interference with the CWR's quiet enjoyment of the Joint Tracks by the NCRA, neither party shall have any claim against the other party for interruption of or delay to such party's business or for loss of profit or income, CWR shall have no cause of action against NCRA for the condition of the Joint Tracks.

(d) Each Party hereto covenants and agrees that its obligations under this indemnity will be fulfilled whether or not such Liability arises during the time that this agreement is in effect or thereafter. The covenants of indemnity contained in this agreement shall continue in full force and effect notwithstanding the full payment of all sums due under this

agreement, or the satisfaction, discharge or termination of this agreement in any matter whatsoever.

14.2 (a) CWR shall, at its sole cost and expense, procure the following kinds of insurance for the term of this agreement effective on the Effective Date as defined in Paragraph 7.1 and promptly pay when due all premiums for that insurance. Upon the failure of CWR to maintain insurance as provided herein, NCRA shall have the right, after giving CWR ten (10) days prior written notice, to obtain insurance and CWR shall promptly reimburse NCRA for that expense. The following minimum insurance coverage shall be kept in force during the term of this agreement.

- 1) Comprehensive Freight Railroad Liability insurance including contractual liability providing bodily injury, including death, personal injury and property damage coverage with a combined single limit of at least Two Million Dollars (\$2,000,000) for each incident and a general aggregate limit of at least Five Million Dollars (\$5,000,000). This insurance shall contain Broad Form Liability covering the indemnity provisions contained in this agreement, severability of interests and name NCRA, Rail-Ways, Inc. and Northwestern Pacific Railway Co., LLC as additional insured with respect to liabilities arising out of CWR's obligation to NCRA in this agreement. If coverage is purchased on a "claims made" basis it shall provide for at least a three (3) year extended reporting or discovery period, which shall be invoiced should insurance covering the time period of this agreement be canceled unless replaced with a policy containing the same retroactive date as the policy being replaced.

- 2) Comprehensive Passenger Railroad Liability Insurance including contractual liability providing bodily injury, including death, personal injury and property damage coverage with a combined single limit of at least Five Million Dollars (\$5,000,000) for each incident and a general aggregate limit of at least Five Million Dollars (\$5,000,000). This insurance shall contain Broad Form Liability covering the indemnity provisions contained in this agreement, severability of interests and name NCRA, Rail-Ways, Inc. and the Northwestern Pacific Railway Co., LLC as additional insured with respect to liabilities arising out of CWR's obligations to NCRA and in this agreement. If coverage is purchased on a "claims made" basis, it shall provide for at least a three (3) year extended reporting or discovery period, which shall be invoked should insurance covering the time period of this agreement be cancelled unless replaced with a policy containing the same retroactive date as the policy being replaced.

Upon request of NCRA, CWR shall provide evidence of Federal Employer's Liability Act exposure with a waiver of subrogation endorsement.

14.3 NCRA or its operating agent, Rail-Ways, Inc., shall at its sole cost and expense procure the following kinds of insurance for the term of this Lease Agreement, such insurance to be effective on the later of either (i) the Effective Date as defined in paragraph 7.1 hereof and promptly pay when due all premiums for that insurance. Upon the failure of NCRA or its operating agent to maintain insurance as provided herein, CWR shall have the right after giving NCRA ten (10) days prior written notice, to obtain insurance and NCRA shall promptly reimburse CWR for that expense. The following minimum insurance coverage shall be kept in force during the term of this agreement.

1) Comprehensive Freight Railroad Liability insurance, including contractual liability providing bodily injury, including death, personal injury and property damage coverage with a combine single limit of at least Twenty-five Million Dollars (\$25,000,000) for each incident and a general aggregate limit of at least Twenty-five Million Dollars (\$25,000,000). This insurance shall contain Broad Form Liability covering the indemnity provisions contained in this agreement, severability of interests and name CWR as an additional insured with respect to liabilities arising out of NCRA's obligations to CWR in this agreement. If coverage is purchased on a "claims made" basis, it shall provide for at least a three (3) year extended reporting or discovery period, which shall be invoked should insurance covering the time period of this agreement be cancelled unless replaced with a policy containing the same retroactive date as the policy being replaced.

2) If NCRA commences passenger service, it shall obtain Comprehensive Passenger Railroad Liability Insurance including contractual liability providing bodily injury, including death, personal injury and property damage coverage with a combined single limit of at least Twenty Million Dollars (\$20,000,000) for each incident and a general aggregate limit of at least Twenty-five Million Dollars (\$25,000,000). This insurance shall contain Broad Form Liability covering the indemnity provisions contained in this agreement, severability of interests and name CWR, Mayfield and Rodriguez as additional insured with respect to liabilities arising out of NCRA's obligations to CWR and in this agreement. If coverage is purchased on a "claims made" basis, it shall provide for at least a three (3) year extended reporting or discovery period, which shall be invoked should insurance covering the time period of this agreement be cancelled unless replaced with a policy containing the same retroactive date as the policy being replaced.

Upon request of CWR, NCRA will provide evidence of employer's liability coverage with a minimum limit of Two Million Dollars (\$2,000,000) for each accident, including coverage for any Federal Employer's Liability Act exposure with a waiver of subrogation endorsement.

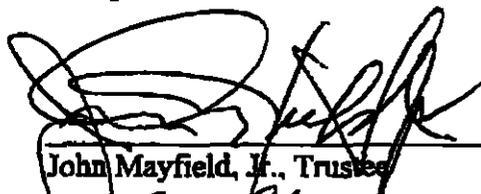
14.4 Each party hereto shall furnish to the other party certificates of insurance evidencing the required coverage and endorsement(s) and, upon written request of a party, shall provide certified duplicate copies of any policy. The insurance company(ies) issuing such policy(ies) shall notify the parties in writing of any material alteration including any change in the retroactive date in any "claims made" policies or substantial reduction of aggregation limits, if such limits apply, or cancellation thereof at least thirty (30) days prior thereto.

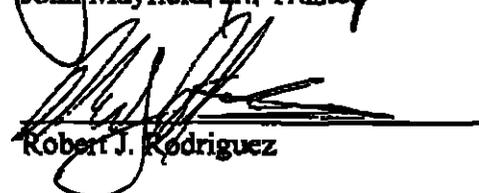
14.5 The insurance policy(ies) shall be written by a reputable insurance company or companies acceptable to Lessor or with current Best's Insurance Guide Rating of B and Class VII or better. Such insurance company shall be authorized to transact business in the State of California.

14.6 Insurance coverage provided in the amounts set forth herein shall not relieve CWR or NCRA from liability hereunder in excess of such coverage, nor shall it preclude CWR or NCRA from taking such other action as is available to it under any other provision of this agreement or otherwise in law or equity.

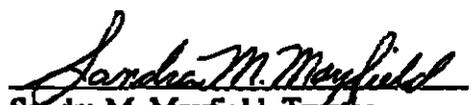
14.7 The limits of liability required under paragraph 14.2 shall be reviewed every five (5) years during the term or any extended term hereof to ensure that such limits are in accordance with industry standards. Notwithstanding the foregoing, in the event of substantial change in the cost or availability of insurance required under this section NCRA and CWR agree to review and renegotiate the insurance requirements of this section 14 in good faith.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate as of the date first hereinabove written.



John Mayfield, Jr., Trustee


Robert J. Rodriguez

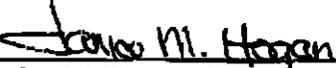


Sandra M. Mayfield, Trustee

CALIFORNIA WESTERN RAILROAD, INC.

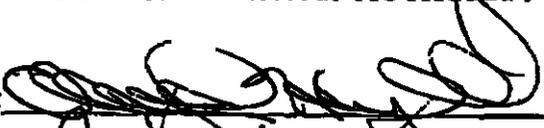
By: 

Gary Milliman, President

By: 

Janice M. Hogan, Secretary

NORTH COAST RAILROAD AUTHORITY

By: 

Clint J. Allen 3/15/99

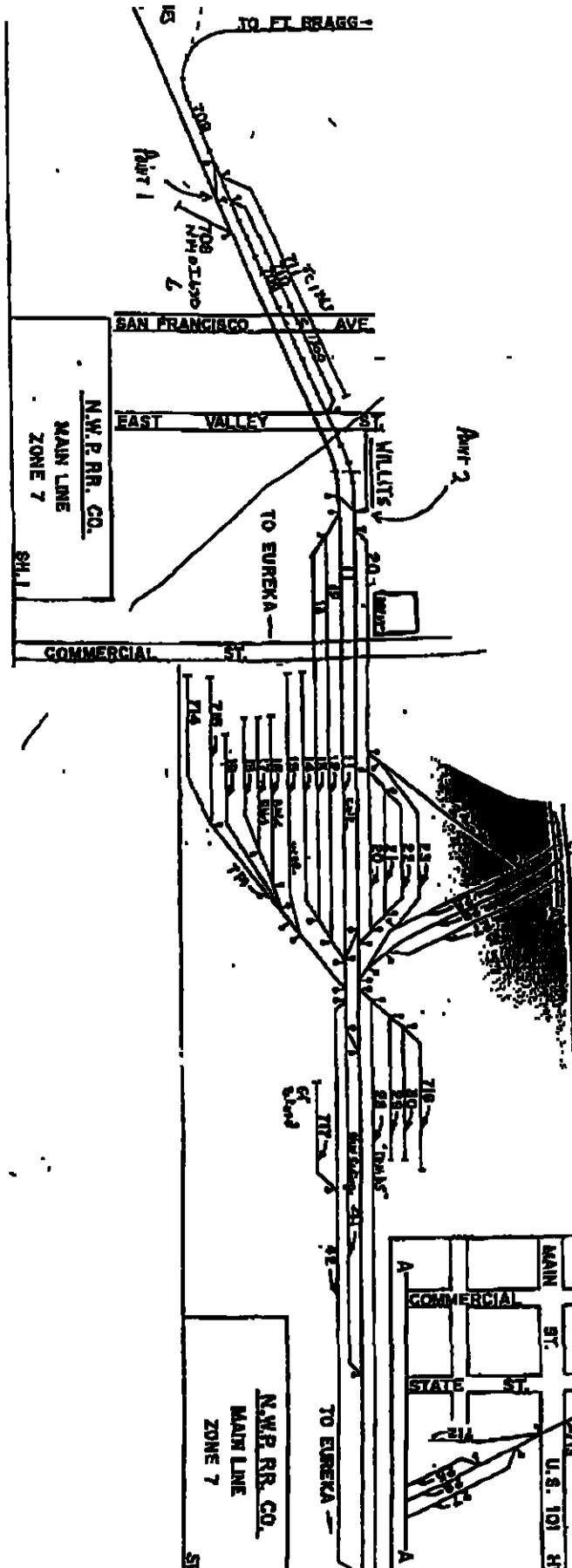
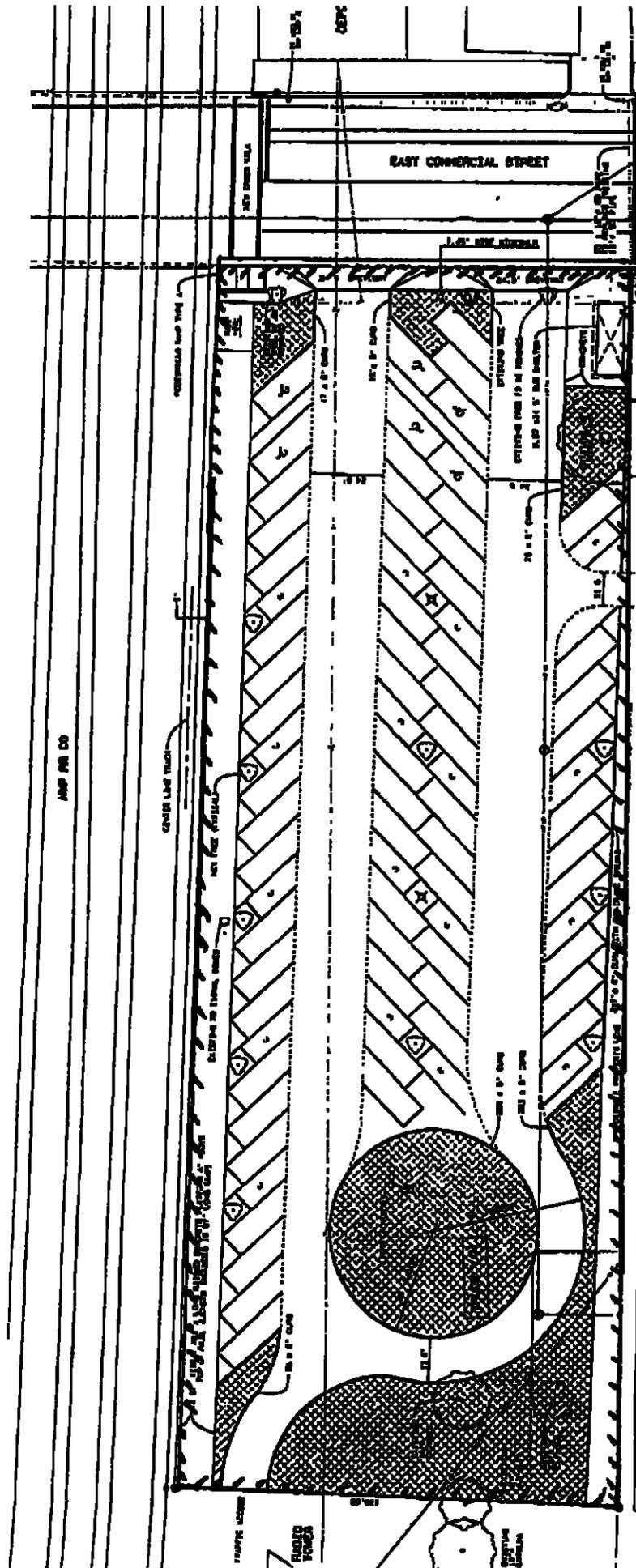


Exhibit "A"



CALIFORNIA WESTERN RAILROAD/CITY OF HILLIITS
 PARKING AND INTERMODAL FACILITY
 PRELIMINARY PLAN

T. M. HERMAN & ASSOCIATES SURVEYING, ENGINEERING & PLANNING SERVICES P. O. BOX 38 - 483 SOUTH MAIN STREET HILLIITS, CALIFORNIA 94490 (707) 459-4548 FAX (707) 459-1884	DESIGNER	BY	JMR	DATE	12/3/98
	BY	OB	DATE	12/3/98	

LEGAL DESCRIPTION

The land referred to herein is situated in the State of California, County of Mendocino, City of Willits and is described as follows:

Being a portion of that certain parcel of land as described in the Deed from Northwestern Redwood Company to Northwestern Pacific Railroad Company recorded May 2, 1910 in Book 118 of Deeds, Page 45, Mendocino County Records more particularly described as follows:

Commencing at the Southeasterly corner of Block 3 of the Northwestern Addition to the Town of Willits as shown on a map filed in Map Case 2, Drawer 46, Page 22, Mendocino County Records; thence along the Easterly extension of the Southerly line of said Block 3 North 89° 23' 15" East 12.00 feet (Deed: North 88° 30' East) to the POINT OF BEGINNING of this description; thence along the boundary as described in said Deed and continuing along said extension North 89° 23' 15" East, 121.22 feet thence continuing along the boundary as described in said Deed and along the Easterly line of that certain Parcel Map filed in Map Case 2, Drawer 60, Page 90, Mendocino County Records South 0° 33' 28" West, 524.87 feet; thence continuing along the boundary as described in said Deed and along the Easterly line of that certain Parcel Map filed in Map Case 2, Drawer 33, Page 47, Mendocino County Records South 0° 33' 28" West, 181.53 feet; thence leaving said Easterly line and continuing along the boundary as described in said Deed North 19° 40' 28" East, 50.00 feet; thence North 68° 45' 28" East, 3.51 feet more or less to a point lying 9 feet Easterly of and at a right angle to the Southerly extension of the tangent bearing of the center line of Track #9 as shown on the Station Map of Willits V-2/S30b, Northwestern Pacific Railroad Company; thence leaving said boundary and along a line 9 feet Easterly of and parallel with said center line of Track #9 and its extension thereof North 0° 58' 14" East, 874.45 feet more or less to the Easterly extension of the Northerly line of Commercial Street as shown on said Plat of the Northwestern Addition to the Town of Willits; thence along said Northerly line South 89° 23' 15" West, 151.57 feet, more or less to a point on the boundary of said Deed, said point being 12 feet Easterly of and at a right angle to the Northerly extension of the East line of said Block 3; thence along said boundary being 12 feet Easterly of and parallel with said Northerly extension South 0° 36' 45" East, 216.00 feet more or less to the Point of beginning and the end of this description.

Excepting therefrom:

All oil, gas, and other minerals of whatever kind or character whether now known or hereafter discovered, in and under the Property at a depth of five hundred (500) feet or more; provided that Seller shall not have a right of surface entry on or from the Property or the right to remove or impair the lateral or subjacent support of the property as reserved in the deed from Southern Pacific Transportation Company, to North Coast Railroad Authority recorded April 30, 1996 in Book 2328 of Official Records at page 251, Mendocino County Records.

Exhibit "C"

Exhibit "D"

The land referred to herein is situated in the State of California, County of Mendocino, City of Willits and is described as follows:

All that certain real property known as the "Willits Yard", more particularly described as follows:

All that portion as described in the deed to Northwestern Pacific Railroad Company, a corporation, recorded May 2, 1910 in Book 118 of Deeds at Page 45, Mendocino County Records, described as follows:

The following parcel of land in the Town of Willits, County of Mendocino, State of California:

Beginning at a point, North 38° 30' East, Twelve (12) feet from the Southeasterly corner of Block 3 as shown on the map of the Northwestern Addition to the Town of Willits; running thence North 88° 30' East One Hundred Twenty-five and two-tenths (125.2) feet; thence South 0° 09' West Seven hundred six and four-tenths (706.4) feet; thence North 19° 16' East fifty (50) feet; Thence North 68° 21' East Thirty-Four and nine tenths (34.9) feet; thence North 0° 05' East Eight hundred sixty-five and two-tenths (865.2) feet to the Northerly line of Commercial Street (as shown on said map), if extended; thence North 88° 33' East five and two-tenths (5.2) feet; thence North 0° 05' East One thousand one hundred seven and six tenths (1.107.6) feet; thence North 89° 55' West Three hundred twenty-four and five-tenths (324.5) feet; thence Westerly parallel to and distant Fifty (50) feet Northwesterly from the track of the Northwestern Pacific Railroad running to the roundhouse Three Hundred and twenty-three and nine-tenths (323.9) feet; thence South 64° 51' West Five Hundred ninety-one and two-tenths (591.2) feet to the Easterly line of Main Street as shown on said map of the Northwestern Addition to the Town of Willits; thence South 1° 30' East one hundred nine and two-tenths (100.2) feet; thence North 64° 51' East five hundred and thirty -two (532) feet; thence Easterly parallel to and distant Fifty (50) feet Southerly from the center line of the Northwestern Pacific Railroad Four hundred thirty-four and four-tenths (434.4) feet; thence South 1° 30' East Nine hundred thirty-nine and seven-tenths (939.7) feet to the place of beginning.

All that portion as described in the deed to The Northwestern Pacific Railroad Company, a corporation, recorded July 22, 1912 in Book 131 of Deeds at Page 271, Mendocino County Records.

All that portion as described in the deed to Northwestern Pacific Railroad Company, a California corporation, recorded October 16, 1907 in Book 86 of Deeds at Page 305, Mendocino County Records.

EXCEPTING THEREFROM, THE FOLLOWING:

Being a portion of that certain parcel of land as described in the

Deed from Northwestern Redwood Company to Northwestern Pacific Railroad Company recorded May 2, 1910 in Book 118 of Deeds, Page 45, Mendocino County Records more particularly described as follows:

Commencing at the Southeasterly corner of Block 3 of the Northwestern Addition to the Town of Willits as shown on a map filed in Map Case 2, Drawer 46, Page 22, Mendocino County Records; thence along the Easterly extension of the Southerly line of said Block 3 North $89^{\circ} 23' 15''$ East 12.00 feet (Deed: North $88^{\circ} 30'$ East) to the POINT OF BEGINNING of this description; thence along the boundary as described in said Deed and continuing along said extension North $89^{\circ} 23' 15''$ East, 121.22 feet thence continuing along the boundary as described in said Deed and along the Easterly line of that certain Parcel Map filed in Map Case 2, Drawer 60, Page 90, Mendocino County Records South $0^{\circ} 33' 28''$ West, 524.87 feet; thence continuing along the boundary as described in said Deed and along the Easterly line of that certain Parcel Map filed in Map Case 2, Drawer 33, Page 47, Mendocino County Records South $0^{\circ} 33' 28''$ West, 181.53 feet; thence leaving said Easterly line and continuing along the boundary as described in said Deed North $19^{\circ} 40' 28''$ East, 50.00 feet; thence North $68^{\circ} 45' 28''$ East, 3.51 feet more or less to a point lying 9 feet Easterly of and at a right angle to the Southerly extension of the tangent bearing of the center line of Track #20 as shown on the Map of Main Line Zone 7 of the Northwestern Pacific Railroad Company; thence leaving said boundary and along a line 9 feet Easterly of and parallel with said center line of Track #20 and its extension thereof North $0^{\circ} 58' 14''$ East, 874.45 feet more or less to the Easterly extension of the Northerly line of Commercial Street as shown on said Plat of the Northwestern Addition to the Town of Willits; thence along said Northerly line South $89^{\circ} 23' 15''$ West, 151.57 feet, more or less to a point on the boundary of said Deed, said point being 12 feet Easterly of and at a right angle to the Northerly extension of the East line of said Block 3; thence along said boundary being 12 feet Easterly of and parallel with said Northerly extension South $0^{\circ} 36' 45''$ East, 216.00 feet more or less to the Point of beginning and the end of this description.

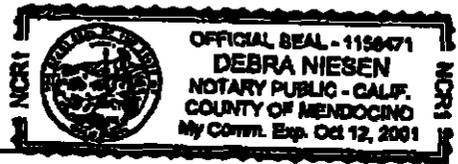


STATE OF CALIFORNIA
 COUNTY OF Mendocino ss.

On March 12, 1999, before me, Debra Niesen
 personally appeared John Mayfield, Jr., Robert J. Rodriguez,
Sandra M. Mayfield, personally known to me
 (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are
 subscribed to the within instrument and acknowledged to me that he/she/they executed the same
 in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
 person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Debra Niesen



(This area for official notarial seal)

Title of Document _____
Date of Document _____ No. of Pages _____
Other signatures not acknowledged _____

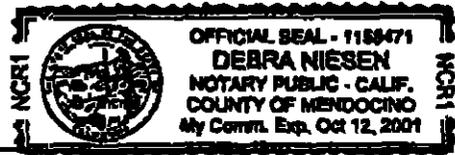


STATE OF CALIFORNIA
 COUNTY OF Mendocino ss.

On March 15, 1999, before me, Debra Niesen,
 personally appeared Allan J. Hemphill & Christopher J. Neary, personally known to me
 (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are
 subscribed to the within instrument and acknowledged to me that he/she/they executed the same
 in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
 person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Debra Niesen



(This area for official notarial seal)

Title of Document	_____
Date of Document	_____ No. of Pages _____
Other signatures not acknowledged	_____

Exhibit 3

[Federal Register: June 8, 1999 (Volume 64, Number 109)]
[Notices]
[Page 30557-30558]
From the Federal Register Online via GPO Access [wais.access.gpo.gov]
[DOCID:fr08jn99-135]

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration
[FRA Emergency Order No 21, Notice No. 2]

Northwestern Pacific Railroad; Notice of Partial Relief from
Emergency Order No. 21

AGENCY: Federal Railroad Administration, Department of Transportation.

ACTION: Notice of Partial Relief.

SUMMARY: This notice provides partial relief for the Northwestern Pacific Railroad from the limitations of Federal Railroad Administration Emergency Order No. 21. The relief allows the Northwestern Pacific Railroad to re-open to rail traffic approximately 1.5 miles of its line near Willits, California, including trackage between the junction with the California Western Railroad and the Willits Depot, as well as Tracks 20, 24, 25, 26, 27, 709, and 711 in Willits Yard. The purpose of the partial relief is to allow the California Western Railroad to renew its operations over NWP tracks to Willits Depot and turn its trains at Willits. The remainder of the NWP line, from Arcata, California, to mile post 63.4 between Schellville and Napa Junction, California, remains closed pending further relief from the emergency order.

Authority

Authority to enforce Federal railroad safety laws has been delegated by the Secretary of Transportation to the Federal Railroad Administrator. 49 CFR 1.49. Railroads are subject to FRA's safety jurisdiction under the Federal railroad safety laws, 49 U.S.C. 20102, 20103. FRA is authorized to issue emergency orders where an unsafe condition or practice "causes an emergency situation involving a hazard of death or personal injury." 49 U.S.C. 20104. These orders may impose such "restrictions and prohibitions . . . that may be necessary to abate the situation." (Ibid.) Likewise, FRA is authorized to grant relief from an emergency order when the agency deems that the unsafe condition or practice which gave rise to the emergency order no longer exists.

Background

The NWP operates on a 286-mile line between mile post 295.5 near Arcata, California and mile post 63.4 between Schellville, California and Napa Junction, California. The North Coast Railroad Authority, a California public agency formed pursuant to California Government Code Section 93000 et seq., owns and operates that portion of the NWP between Healdsburg, mile post 68, and Arcata. Another portion over which the NWP operates and for which it is responsible for maintenance, Healdsburg to mile post 63 4 near Napa Junction, is owned by the

Northwestern Pacific Railroad Authority, a joint powers agency representing the Golden Gate Bridge, Highway and Transportation District, the County of Marin, and the North Coast Railroad Authority. Railways, Inc. is the operating agent for the North Coast Railroad Authority, doing business as the NWP.

The NWP connects to the California Western Railroad, among other railroads, which operates both freight and passenger trains, to Willits. Prior to the issuance of Emergency Order No. 21, the California Western operated over about one mile of NWP trackage in order to interchange freight operations with the NWP at Willits and to reach its passenger terminal in Willits.

The NWP is subject to the jurisdiction of FRA. In 1997, FRA, in partnership with the California Public Utilities Commission (CPUC), reviewed NWP's compliance with Federal safety statutes and regulations. The review revealed widespread noncompliance, including hundreds of track defects and a general failure to perform periodic tests of locomotive air brake equipment. On June 11, 1997, FRA, CPUC, and the NWP signed a safety compliance agreement which detailed 11 action items for the NWP to perform. On June 28, 1998, upon finding that the NWP had failed to comply with most of the agreement, the Federal Railroad Administrator issued Compliance Order 98-1 directing NWP to perform the corrections listed in the compliance agreement. When FRA later found that the NWP failed to comply with the directives in the compliance order, and the defects on the rail line posed an imminent and unacceptable threat to public safety, the Federal Railroad Administrator issued Emergency Order No. 21 on November 25, 1998. The emergency order closed all railroad operations except the operation of work trains for the specific and sole purpose

[[Page 30558]]

of effecting repairs on the railroad. The closure included the trackage near Willits over which the California Western Railroad operated.

Emergency Order No. 21 detailed requirements the NWP must meet in order to gain full relief from the order. The railroad must:

(1) Properly repair and inspect all grade crossing signals and certify to the Federal Railroad Administrator that all necessary repairs and inspections have been performed and that all required tests are up-to-date.

(2) Adopt a set of grade crossing signal standards and instructions acceptable by FRA.

(3) Update, correct and/or redraw circuit plans for each grade crossing signal system to meet compliance with 49 CFR 234.201 and 234.203. A list of locations of the updated, corrected or redrawn circuit plans should be submitted to FRA.

(4) Provide proper and adequate test equipment for signal maintainers.

(5) Repair all track not subject to Emergency Order No. 14 to class 1 track standards as detailed in 49 CFR part 213.

Note: Emergency Order No. 14 requires the Northwestern Pacific Railroad to repair certain segments of track to class 1 track standards for the hauling of passengers and all hazardous materials. Otherwise, the railroad may designate the track still subject to that order as excepted.

(6) Clear all vegetation from drainage facilities and away from signs and signals and track bed so that the track meets the requirements of 49 CFR 213.37;

(7) Furnish FRA with a 12-month track maintenance plan.

(8) Establish a program of employee training on the Federal Track Standards to ensure that employees performing inspection, maintenance, and restoration work are qualified in accordance with 49 CFR 213.7.

(9) Certify in writing that each individual conducting track

inspections has sufficient knowledge, skills, and ability to successfully conduct the types of inspections which will be performed by that individual. Records of that certification are to be maintained by the railroad.

(10) Obtain approval from the Federal Railroad Administrator that all of the requirements of this Emergency Order have been met and properly performed.

The emergency order also allows for partial relief for designated portions of the NWP's line. The NWP is required to first meet all of the system-wide requirements, as listed in items 2, 4, 7, 8, and 9. The NWP may then obtain partial relief for any portion of its line for which all of the requirements of the emergency order are met.

On May 20, 1999, in accordance with the terms of the emergency order, the NWP formally requested that FRA grant it partial relief from the emergency order for the 1.5 miles of track in Willits, California, over which the California Western Railroad needs to operate to Willits Depot and turn its train. At this time, the NWP has been found to meet all of the systemic requirements of Emergency Order No. 21, namely:

<bullet> The NWP adopted a set of grade crossing signal standards and instructions that is acceptable to FRA;

<bullet> The NWP has entered into a contract with MEC Rail Systems, a signal maintenance company, for the testing and maintenance of NWP signals. In response to the agreement, MEC Rail Systems purchased proper and adequate test equipment for signal maintainers for use on the NWP;

<bullet> The NWP has furnished to FRA a 12-month track maintenance plan that includes all of the necessary information required by Emergency Order No. 21;

<bullet> The NWP has established a program of employee training on the Federal Track Safety Standards. Railways, Inc. has adopted for use on the NWP the Railway Educational Bureau's Track Foreman's Training Program. Individual testing of roadmaster and office engineer candidates has begun;

<bullet> The NWP has certified that the sole employee responsible for track inspections, a chief engineer for Rail-Ways, Inc., has sufficient knowledge, skills and ability to successfully conduct track inspections. Any employees who become responsible for track inspections subsequent to the granting of this partial relief will be certified by the NWP as well.

NWP's compliance at this time with the systemic requirements of the emergency order makes the railroad eligible to request partial relief for the designated segment of track in Willits. However, FRA will monitor the railroad's continuing compliance with these systemic requirements.

On May 25, 1999, FRA inspected the track for which the NWP has requested relief from the emergency order. FRA found the track to meet Class 1 track standards in accordance with 49 CFR part 213. On May 27, 1999, FRA inspected the grade crossing signal systems on the track for which NWP has requested relief from the emergency order and found that all necessary repairs, inspections and tests had been performed.

Relief

In light of the foregoing, I grant NWP partial relief from Emergency Order No. 21. NWP trackage between its junction with the California Western Railroad and the Willits Depot, as well as Tracks 20, 24, 25, 26, 27, 709, and 711 in Willits Yard may open immediately to rail traffic. The issuance of this Notice does not preclude imposition of another emergency order governing the segment of track should conditions of the track or rail operations deteriorate to the extent that I believe they pose an imminent and unacceptable threat to public safety.

Issued in Washington on May 28, 1999.

S. Mark Lindsey,
Acting Administrator.
[FR Doc. 99-14454 Filed 6-7-99; 8:45 am]
BILLING CODE 4910-06-P

Exhibit 4

