

1-11-2022

I-2

**Hayes, Kathy**

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**From:** Uri Driscoll <humboldthorse@yahoo.com>  
**Sent:** Monday, January 10, 2022 1:00 PM  
**To:** Bass, Virginia; Bohn, Rex; Bushnell, Michelle; Madrone, Steve  
**Cc:** Damico, Tracy; Hayes, Kathy; Holloway, Catherine@Coastal; Melissa@Coastal Kraemer  
**Subject:** Fwd: NCRA

Hi Virginia,

I wanted to pass this communication on to you and the BOS to include in the discussion tomorrow regarding the Bay trail proposal. I would also like this forwarded communication to be included in the administrative record for this proposed project and for inclusion in all Bay trail south proposal applications.

This should help clarify some of the Offer of Financial Assistance issues as it relates to the NCRA's abandonment / rail bank application before the STB. As noted below the process does not have a specific timeline. Of course there are still things to be determined but it is important to know where this process is at considering the costs and liabilities to the County.

Thank you

Uri

Begin forwarded message:

**From:** "Meyer, Gabriel" <[Gabriel.Meyer@stb.gov](mailto:Gabriel.Meyer@stb.gov)>  
**Subject:** RE: NCRA  
**Date:** January 10, 2022 at 12:08:38 PM PST  
**To:** Uri Driscoll <[humboldthorse@yahoo.com](mailto:humboldthorse@yahoo.com)>

Please see my answers [below](#).

Gabriel S. Meyer  
Surface Transportation Board | Attorney-Advisor  
Office of Public Assistance, Governmental Affairs & Compliance  
Rail Customer & Public Assistance program  
1-866-254-1792  
(202) 245-0245 (Board Mainline)  
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-----Original Message-----

From: Uri Driscoll <[humboldthorse@yahoo.com](mailto:humboldthorse@yahoo.com)>

Sent: Friday, January 7, 2022 8:55 PM

To: Meyer, Gabriel <[Gabriel.Meyer@stb.gov](mailto:Gabriel.Meyer@stb.gov)>

Subject: Re: NCRA

Hi Gabe,

Yes I realize the Annie Mary is what is holding this process in abeyance right now. What I am trying to understand is what is the allotted time to allow those interested in filing an OFA to file their intent to file an OFA? Is that typically 30 days? **No. An "expression of intent" to file an OFA must be submitted to both the carrier and the Board no later than 10 days following publication in the Federal Register. See 49 C.F.R. § 1152.27(c)(2)(i).**

Once the intent is filed there would be another time frame to actually file the OFA documents themselves if I understand correctly. Is that typically 30 or 60 days? **OFA's must be submitted no later than 30 days following the Federal Register publication.**

I realize the STB would then assess those documents and could take an indeterminate amount of time to reach a decision.

Once the STB makes a determination to either accept one of the OFAs or reject them is there a typical time period allowed for an appeal? **Generally, parties have 10 days to appeal. Appeals of initial decisions determining whether OFAs satisfy the standards of 49 U.S.C. § 10904(d) for purposes of partial revocation and institution of negotiations will be acted upon by the entire Board pursuant to 49 C.F.R. § 1011.2(a)(7).** If so could an appeal be filed by either a rail operator whose petition was denied or trail advocates whose rail banking was denied? **Either could file an appeal, but the Board determines whether or not to grant the appeal. Also, note that an OFA takes precedence over trail use/railbanking.**

We know that the time period for accepting intent to file OFAs has not opened and will not until the abeyance is lifted. Has there been any STB precedent set that would deny the OFA process particularly if formal notification has already been made by two different companies of their interest in submitting OFAs? In other words would there be any established reason for the STB to directly rule in favor of rail banking without completing the OFA process? **I am not aware of any reason. Again, OFAs take precedence over railbanking requests.**

**Please note any guidance or deadlines established by the Board in any future decisions in the matter.**

I appreciate your efforts to clarify this

Uri

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> Hi Uri--

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> I'm sorry for my delayed reply. The main determinant of any possible schedule right now is the Board's review of the status of the Arcata & Mad River subsidiary.

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> Once a decision is made regarding whether or not it is subject to our jurisdiction, I would guess that the timeline of the abandonment would be similar to other notice of exemption matters. Generally

speaking, abandonment authority can become effective in as little as 30 days following the STB's publication of a notice in a matter (which also appears in the Federal Register). The publication should also provide a deadline for OFAs and railbanking requests. That said, the best advice I can give is wait and see what the Board says when notice is published.

>

> Please let me know if you have any other questions.

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> Gabe

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> Gabriel S. Meyer

> Surface Transportation Board | Attorney-Advisor Office of Public

> Assistance, Governmental Affairs & Compliance Rail Customer & Public

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> -----Original Message-----

> From: Uri Driscoll <[humboldthorse@yahoo.com](mailto:humboldthorse@yahoo.com)>

> Sent: Monday, January 3, 2022 11:31 AM

> To: Meyer, Gabriel <[Gabriel.Meyer@stb.gov](mailto:Gabriel.Meyer@stb.gov)>

> Subject: NCRA

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> Good Morning Gabe,

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> Happy New Year to you!

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> I was wondering if you could provide or direct me to information regarding the timeline for an abandonment/rail bank process such as the NCRA's.

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> It would seem that once the STB determines the jurisdiction of the Annie Mary line they would then open the OFA process since there have been two operators that have expressed an intent to file an OFA.

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> They would have a month I believe to file an intent to file and 60 days or so to file the actual the OFA.

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> So between the OFA intent and the OFA itself and then the review and determination by the Board and any appeals that may be filed we could be talking about September (best case) before anything is actually determined if I am looking at this correctly.

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> Am I seeing this right or am I missing something?

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> Of course I won't hold you to any timetable just trying to get an idea.

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> Thank you

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> Uri