TRAC
Train Riders Association of California

1025 Ninth Street Suite 223
Sacramento CA 95814-3516

(916) 557-1667
www.calrailnews.org
president@calrailnews.org

February 14, 2021

Senator Mike McGuire
State Capitol
Sacramento, CA 95814

Re: SB 69 **OPPOSE**

Dear Senator McGuire:

The Train Riders Association of California ("TRAC") is a statewide rail advocacy organization that has worked since 1984 to improve passenger rail service in California. We strongly object to this bill's proposal to railbank rights-of-way that are commercially viable, and tear out the tracks to build a trail.

A Summary of our reasons for opposition:

1. Climate change means California needs more railroads, not less.
2. Shippers want rail service on tracks proposed for railbanking.
3. The cost of building the trail far exceeds any reasonable level of benefit/person. That said, we don't object to a rail with trail.
4. The Report to the Legislature ordered by SB 1029 (the *Assessment*) is an advocacy document for trails. It is not an adequate basis for legislation, as it fails to comprehensively address the policy issues of the rail corridor. (See the attached analysis of the flaws of the *Assessment* for details.)
    a. It failed to consider the future transportation needs of Mendocino and Humboldt Counties.
    b. It did not disclose the legal complexities and risks of railbanking.
    c. It did not disclose the legal complexities and risks of common carrier freight rights.
    d. It did not consider an innovative public-private partnership to deliver passenger and freight service at a lower cost than public agencies.

SB 69 seeks to bring the sad history of the North Coast Railroad Authority to a close. Governor Deukmajian's veto of working capital at its founding meant that the NCRA never had a chance to succeed. It didn't have the resources needed to operate. We know of private sector rail operators that would provide service on the existing rails (with minor improvements to crossties, for example) that are proposed for removal.

The timing of this bill could not be worse. The ever-increasing impacts of climate change require that the State reduce GHG emissions from transportation (which produces half of all GHG emissions when fuel production is included). Rail, as a vastly more carbon-efficient mode of hauling people and freight than private automobiles, needs to be a much more significant part of the transportation mix. SB 69 goes in exactly the wrong direction.

We have no objection to trails being built alongside the tracks. The Humboldt County Eureka-to-Scotia Trail Corridor Assessment, completed with the collaboration of NCRA, shows exactly how to do that. Your staff flatly rejected our request to modify SB 1029, the predecessor to SB 69, to leave the rails in place in Humboldt, north of the Eel River Canyon. It appeared to us then that your office had an anti-rail agenda.

<u>Comments on the text of the proposed legislation</u>
Common carrier status carries with it a responsibility to serve shippers, which creates a liability. While the entire purpose of SB 1029 and SB 69 is ostensibly to reduce the State's liability for NCRA, the bill contains hidden bombshells, similar in kind if not in scale to the Legislature's catastrophic adoption of electricity deregulation. We refer specifically to the language in § 93030(a) and § 93031(a) "common carrier obligations held by the authority, or an associated freight operator" and in § 5880(b)(2), which similarly calls for the agency to own "the common carrier license." We strongly oppose these provisions.

TRAC specifically objects to the proposed § 5883(a)(1), which directs the agency to railbank the corridor north of Cloverdale. We also object to the proposed § 5883(b)(2), because it seems to give priority to the trail: "Contract with an operator to operate excursion rail service except that the service shall not interfere with or harm the northern portion of the Great Redwood Trail." Because rail design is inherently more constrained than trail design, the entire phrase starting with "except" should be struck.

We object to the mangling of definitions in § 105003(b) in which freight service is brought under the definition of "rail transit." That is unnecessarily convoluted, and has the potential of creating future mischief. It would be better to add a new power to provide freight service. Note how § 105032(b) distinguishes between rail transit and freight facilities.

<u>The Trail makes no sense financially</u>
It makes no sense to spend a billion dollars on infrastructure that would benefit so few people. Table 3.1.4-1 (p. 3-6 of the Appendix to the Feasibility, Governance, and Railbanking Report) captures the projected daily users per mile of trail. Note that the most expensive part of the trail, the Eel River Canyon, would see one user per day per mile. Even the most popular segment would see only 53 users per mile.

The *Assessment* offers no evaluation of the comparative cost of restoring the railroad. Attachment 2 to this letter is a letter from the former Chief Engineer of the NCRA. His estimates of the cost to rehabilitate existing rails are surprisingly similar to the 2020 base cost to build trails. (p. 5-2 of the Feasibility, Governance, and Railbanking Report.) (Trains are not that expensive, if run by the private sector.) However, trains would used by far more residents of the North Coast, and would therefore provide far more benefit.

Note, however, that TRAC is not proposing public funding for rail restoration. We believe a deal could be made with a private sector firm to invest its own funds in restoring the tracks in Mendocino County to Class 3 service. That would enable freight service between Windsor and Willits, and with a modest subsidy, passenger service could be provided as well.

The much lower-cost approach of private sector railroads, as expressed in the Chief Engineer's letter, means that projects that are infeasible now because of cost become feasible. SMART's billion-dollar estimate of the cost of passenger rail in the SR 37 Corridor becomes a much more manageable $200 million, if done by the private sector. We believe public-private partnerships are possible in Humboldt County, north of the Eel River Canyon, and in the SR 37 Corridor. (We acknowledge that the Eel River Canyon itself is too expensive and geologically unstable to be viable for restoration to rail service at this time.) These possibilities cannot be realized if common carrier status is transferred to SMART.

Thank you for considering these comments.

Sincerely yours,

/s/ DAVID SCHONBRUNN

David Schonbrunn, President

Attachments:

Detailed Analysis of the Flaws in the *Assessment*
Letter from former NCRA Chief Engineer

CC: Assemblymember Levine
Assemblymember Wood
Senate Transportation Committee
Assembly Transportation Committee
F. Mansourian, SMART
Board of Directors, SMART

Detailed Analysis of the Flaws in the *Assessment*

We start by asserting that the *Assessment of the North Coast Railroad Authority and Viability of a Great Redwood Trail*, Report to the Legislature, the foundation for this legislation, is profoundly inadequate and flawed. The State would endanger itself by relying on it. Page references are to the *Assessment*.

1. The concept for the Great Redwood Trail was never evaluated in the context of the State's mandate for the NCRA:

> The Act was intended to ensure continuation of railroad service on the Northwestern Pacific (NWP) rail line, and envisioned the railroad playing a major role in the transportation infrastructure serving the North Coast. In creating the NCRA to restore and preserve rail service, the Legislature recognized that California's North Coast region suffers from restricted access and limited transport options.

Even though a trail cannot meet these goals, no analysis has ever been done as to the costs and benefits of abandoning these state goals. Now, in the age of Climate Change, the need for low-carbon transportation has become a major policy driver. However, the option of using the rail corridor to once again provide either passenger or freight rail service, or both, was **never** considered. The following assertion is made without the slightest bit of evidence:

> Absent a large economic draw on the north coast, such as a resurgence in the redwood forest products industry or development of the Humboldt Port, it does not make economic sense to invest further public funds into preserving and rehabilitating a freight railroad currently. (pp. 35-36.)

That statement is a frozen-in-amber piece of 1980's thinking, which emphasizes public funding. The possibility of transferring the right-of-way to a private entity in exchange for a trail easement, with private investment rehabilitating the tracks, was never considered. No study was done of potential shippers for rail freight--especially in Mendocino County, despite a coalition of shippers there who desire rail freight service having submitted comments on SMART's proposed assumption of freight rights. Given the impacts of existing truck traffic on Highway 101, freight rail could provide significant local benefits.

The scope of work for the *Assessment* was clearly kept narrow, with the only option being a trail. "The Task Force did not analyze this scenario [New Railroad Buys Out NCRA] and no interested parties reached out during the assessment period." (p. 89.) TRAC is informed that nearby railroads were not contacted by the Task Force, so there was no outreach. This is not how legitimate policy is developed.

2. The discussion of the legalities of railbanking (pp. 34-37) is superficial and potentially dangerous. Most glaring is its failure to analyze the significance of *Marvin M. Brandt Revocable Trust vs. United States*, a U.S. Supreme Court case that overturned all

certainties in the railbanking process. As a result, the following naïve statement could lure the State into a liability and litigation quagmire: "Railbanking therefore ends the abandonment process and avoids the activation of reversionary clauses." (p. 35.) Should railbanking go horribly wrong, however, the *Assessment* frankly admits, "Parcels held by easement would likely revert to the underlying property owner, creating breaks in the corridor." (p. 36.)

3. Section 2.2.1 of the Appendix (p. 2-4), Corridor Ownership is wholly inadequate. Never once is the word "easement" mentioned, despite the fact that it is the single most important constraint on the feasibility of railbanking. The following central assertion would be self-contradictory in the absence of easements: "More than 150 grantees hold property rights to over 30,000 acres of land **within the right-of-way** (ROW) through agreements, leases, deeds, resolutions or ordinances, licenses, and quitclaims." (p. 2-4, emphasis added.)

4. The "Freight Rights in the Southern Section" section (p. 71) is deeply flawed and misleading. Most importantly, it is entirely silent on the responsibilities, costs and liabilities that inure to the holder of freight rights. An Assembly Transportation Committee staffer informed us that there wouldn't be any costs, because SMART wouldn't be running freight once the rights were transferred. That view, which seems to underly the *Assessment*, is deeply uninformed as to the legalities involved.

The section conflates the ownership of the ROW with the ownership of freight rights, thereby confusing and misleading the reader.

> If the State does not take advantage of this unique opportunity, future capital costs to extend and increase passenger service in the context of a different freight operator may be prohibitive, putting expansion of passenger service on the existing corridor at risk. (p. 71.)

Because SMART already owns the ROW, both the contention above and below are nonsensical.

> The acquisition of freight rights in the SMART corridor would secure a significant interregional transportation corridor and close a critical gap in the statewide rail network, as identified in the 2018 California State Rail Plan and the SMART Feasibility Study. The acquisition will foster a rail connection between the Solano and Sacramento regions to the North Bay Area and provide resiliency and redundancy along the congested and flood-prone SR 37 corridor. (p. 72.)

How can freight rights close a gap where the ROW is already owned by the public? The only gap that exists is a gap in passenger service. A private sector operator, working with a public subsidy, could provide passenger service on the SR 37 corridor at a much lower cost than SMART, which produced a billion-dollar capital estimate for CalSTA. A particularly fallacious set of arguments [with TRAC's comments in brackets] was offered here:

> A public transit agency owning both the passenger and freight rights consolidates control of the corridor. [True, but of limited relevance.] Split ownership of rights on the corridor not only increases operational costs for the public transit provider [Nonsense] but can also cause delays and otherwise degrade performance. [Not if there is an effective Operating Agreement.] Because SMART does not own the freight easement, it cannot ensure that it receives a financial benefit from the freight operations on its track to offset increased maintenance costs. [Untrue. Track charges are part of an Operating Agreement. The public operator also has none of the liabilities and costs.] This arrangement limits the ability of the passenger operator to efficiently operate a service that is convenient and attractive to passengers. [Nonsense.] (pp. 72-73.)

Discussions of access fees and improvement costs imposed by a host railroad (p. 73) are entirely irrelevant to a publicly owned ROW. These appear to be desperate attempts to justify something quite illogical. The following are further desperate attempts at justification:

> By transferring all rights and ownership to SMART, SMART can better manage the railroad to prioritize on-time-performance and adapt schedules to meet changing market demands. (p. 73.)
>
> It is anticipated that exclusive ownership of the railroad tracks and rights will provide necessary redundancy resiliency and emergency support for future climate change impacts, such as flooding and fire, or other emergency freight or passenger transportation needs. (p 74.)

TRAC believes that a private operator could provide passenger service to Cloverdale and on up to Willits at a dramatically lower capital and operating cost than SMART, which employs a gold-plated public sector design standard. Negotiations with private sector entities on an appropriate subsidy to provide that service should therefore occur prior to there being a transfer of the ROW ownership.

Michael R. Strider, P.E.
2410 Hidden Valley Drive
Santa Rosa, CA 95404
707-318-2633

David Schonbrunn
President
Train Riders Association of California

Dear Mr. Schonbrunn,

Pursuant to your inquiry related to rehabilitation costs for the historic Northwestern Pacific Railroad (owned by the North Coast Rail Authority), the typical industry costs to rehabilitate the now-dormant NWP line per mile would be the following:

- Maintainable FRA safety class 1 for maximum passenger speeds of 15 mph, and 10 mph for freight is in the range of $600k to $800k per mile where track roadbed is still intact. This cost does not include the repair of washouts, slides and other repair related to roadbed and drainage. This cost also does not include the repair of tunnels, bridges and other related structures.
- Maintainable FRA safety class 2 for maximum passenger speeds of 30 mph, and 25 mph for freight is in the range of $1.0m to $1.2m per mile with the same repair factors as above.
- Maintainable FRA safety class 3 for maximum passenger speeds of 59 mph, and 40 mph for freight is in the range of $1.2m to $1.4m per mile with also the same factors as above.

The cost of repair of washouts, slides and drainage related items, regardless of the type of track upgrade, varies with location and severity. Unfortunately, the Eel River canyon in some parts is riddled with very unstable soil containing prehistoric mass slides.

Tunnel repair is in the range of $10,000 to $15,000 a track foot in a worst-case scenario. Bridge repair could be as high depending on the specific bridge. There are three major truss equipped bridges spanning the Eel River and one spanning the Mad River. Some of the remaining bridges are made from wood.

I am a former Chief Engineer with the North Coast Rail Authority with over 50 years of railroad industry experience and over 30 years as a registered Professional Engineer.

Michael R. Strider. P.E.