

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION FIVE

MENDOCINO RAILWAY,  
Petitioner,  
v.  
SUPERIOR COURT FOR THE  
COUNTY OF MENDOCINO,  
Respondent;  
CITY OF FORT BRAGG,  
Real Party in Interest.  
A165104  
Mendocino County No. 21CV00850

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**BY THE COURT:\***

Pending further consideration of the petition for writ of mandate on file herein, all further proceedings in *City of Fort Bragg v. Mendocino Railway et al.*, Mendocino County Superior Court case No. 21CV00850, including the deadline set forth in respondent superior court's April 28, 2022 order for the filing of petitioner's answer, are temporarily STAYED until further order of this court.

The court requests briefing pursuant to the following schedule: Petitioner's supplemental petition/brief shall be served and filed on or before May 9, 2022. Any opposition shall be served and filed on or before May 19, 2022. Any reply shall be served on or before May 31, 2022. In their briefs, the parties shall discuss all of the following:

- (1) As a threshold issue, should the California Public Utilities Commission (CPUC) be considered a "real party in interest" in this

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\* Before Simons, Acting P.J., and Needham, J.

writ proceeding? (See *Sonoma County Nuclear Free Zone '86 v. Superior Court* (1987) 189 Cal.App.3d 167, 173.) Assuming the answer to the foregoing question is “yes,” what is the consequence of the petition’s failure to designate the CPUC as a real party in the petition?

(2) While this court has discretion to review a demurrer ruling raising a question of subject matter jurisdiction (*San Diego Gas & Elec. Co. v. Superior Court* (1996) 13 Cal.4th 893, 913), should the court grant writ review under the circumstances of this case, which involves a single cause of action for declaratory relief that appears amenable to expeditious resolution in the superior court, followed by appeal from any judgment adverse to petitioner? Under the circumstances, why should appeal be regarded as an inadequate remedy? (*Omaha Indemnity Co. v. Superior Court* (1989) 209 Cal.App.3d 1266, 1269 [the remedy of appeal “will not be deemed inadequate merely because additional time and effort would be consumed by its being pursued through the ordinary course of the law”].) And, how will petitioner be irreparably harmed by the denial of writ review? (See *Ordway v. Superior Court* (1988) 198 Cal.App.3d 98, 101, fn. 1, disapproved on other grounds, *Knight v. Jewett* (1992) 3 Cal.4th 296, 301-315; *Omaha Indemnity Co.*, *supra*, 209 Cal.App.3d at p. 1274.)

(3) Is the petition substantively meritorious?

In addition to serving all named parties to the proceeding, the Clerk of Division Five is instructed to serve a courtesy copy of this order and a copy of the petition and exhibits on the Executive Director of the California Public Utilities Commission.

Date: 5/4/2022

Simons, J., Acting P.J.