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Attorneys for Defendant  
MENDOCINO RAILWAY

**FILED**

09/05/2023

KIM TURNER, CLERK OF THE COURT  
SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF MENDOCINO

Mabery, Susan

DEPUTY CLERK

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF MENDOCINO**

CITY OF FORT BRAGG, a California  
municipal corporation

Plaintiff,

v.

MENDOCINO RAILWAY and DOES 1-10,  
inclusive,

Defendants.

Case No.: 21CV00850

[Assigned to the Hon. Clayton Brennan]

**NOTICE OF MOTION AND MOTION  
FOR STAY OF PROCEEDINGS;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT THEREOF;  
DECLARATION OF PAUL BEARD II**

**[Filed Concurrently with Request for  
Judicial Notice]**

Hearing Date: October 19, 2023  
Hearing Time: ~~9:00 a.m.~~ 2:00 p.m.

Complaint Filed: October 28, 2021  
Trial Date: None Set

1 **NOTICE OF MOTION AND MOTION**

2 **PLEASE TAKE NOTICE** that on October 19, 2023, at 2:00 p.m., or as soon thereafter as the  
3 matter may be heard, in the Ten Mile Branch of the Mendocino County Superior Court, located at 700  
4 South Franklin Street, Fort Bragg, CA 95437, Defendant MENDOCINO RAILWAY will, and hereby  
5 does, move for a stay of this action pending resolution of the appeal in *Mendocino Railway v. Meyer*  
6 (Case No. A168497, 1st DCA).

7 This motion is based on this Notice of Motion and Motion, the accompanying Memorandum of  
8 Points and Authorities, the accompanying Declaration of Paul Beard II, the Request for Judicial  
9 Notice, the pleadings and files in this case, and any other materials or argument that may be presented  
10 prior to or at the hearing of this matter. Pursuant to Local Rules, the parties met and conferred  
11 regarding Plaintiff's proposed stay and were unable to resolve their differences.

12 DATED: September 5, 2023

/s/ Paul Beard II

13 \_\_\_\_\_  
Attorneys for Defendant MENDOCINO RAILWAY

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 A stay of this lawsuit is appropriate because the primary issues here are pending before other  
4 courts. First, Plaintiff City of Fort Bragg in this case challenges Defendant Mendocino Railway’s  
5 “public utility” status. That issue currently is before the California Court of Appeal in *Mendocino*  
6 *Railway v. Meyer* (No. A168497, 1st DCA) (“*Meyer Appeal*”). Second, Plaintiff California Coastal  
7 Commission in this case seeks declaratory, injunctive, and monetary relief against the Railway on the  
8 mistaken premise that the Commission’s permitting authority under the Coastal Act and the City’s Local  
9 Coastal Program (“LCP”) is not federally preempted. But federal preemption of the Commission’s  
10 permitting and other pre-clearance requirements—under the Act, the LCP, or any other law—is before a  
11 federal court in *Mendocino Railway v. Ainsworth* (No. 22-cv-06317-JST, N.D. Cal.) (“*Ainsworth*  
12 *Action*), through an original action filed in August 2022 by Mendocino Railway against the Commission  
13 and City.

14 This Court has the inherent power under Code of Civil Procedure section 128(a)(8) to stay this  
15 case, especially to conserve judicial and party resources, and to avoid unseemly conflicts with the  
16 decisions of other courts. Among other things, the Court of Appeal in *Meyer* will establish the proper  
17 interpretation and application of statutory and decisional law to the “public utility” issue—which will  
18 inform, if not bind, this Court’s analysis of the same. Further, the Court of Appeal’s analysis can be  
19 expected to shape the nature and scope of discovery and dispositive motions on the “public utility”  
20 issue. As for the *Ainsworth Action*, the Ninth Circuit is considering whether Mendocino Railway’s  
21 federal claims can proceed to the merits; if so, the federal district court will decide Mendocino  
22 Railway’s “federal preemption” rights. On the other hand, this case is at an early stage, where the parties  
23 haven’t commenced discovery, no dispositive motions have been filed, and no trial date has been set.  
24 And the City and Commission will not suffer any prejudice from a stay, especially as they have not  
25 identified and cannot cite any exigent circumstances requiring immediate resolution of their claims.

26 The court should stay this case until (a) the Court of Appeal in *Meyer* issues a remittitur to the  
27 trial court, or (b) the federal district court in *Ainsworth* enters a final, non-appealable judgment,  
28 whichever occurs later.

## II. FACTUAL BACKGROUND

### A. This Case Challenges Mendocino Railway’s “Public Utility” Status, And Raises the Question of Federal Preemption of the Commission’s Permitting Authority Under the Coastal Act and LCP

In October 2021, the City filed this action against Mendocino Railway. The City’s complaint alleges a single cause of action for “a declaration that the Mendocino Railway is not subject to regulation as a public utility because it does not qualify as a common carrier providing ‘transportation.’”<sup>1</sup> (Complaint of City of Fort Bragg (“City Complaint”), p. 1:19-22 & Prayer, ¶ 1.) A “common carrier” is defined as “every person and corporation providing transportation for compensation to or for the public or any portion thereof.” (Pub. Util. Code § 211.) Based on its theory that the railroad is not a public utility, the City seeks an injunction to compel Mendocino Railway to submit fully to its authority. (City Complaint, ¶ 12 & Prayer, ¶ 2.)

Since even before the City filed its suit, the Railway was facing continuous threats and demands by the Coastal Commission concerning rail-related repairs and other activities that the Railway was lawfully performing at its property. (Request for Judicial Notice, Exh. 1 (Mendocino Railway’s Complaint) (“Federal Complaint”), ¶¶ 3, 10, 27.) The Commission demanded the Railway submit to its land-use permitting authority or face an enforcement action. (*Id.*, ¶ 3.) When the parties reached an impasse over the Railway’s status as a federal railroad exempt from land-use permitting and other pre-clearance requirements, the Railway filed a federal lawsuit in federal court against the Commission, as well as the City, for declaratory and injunctive relief to establish the Railway’s “federal railroad” status and enjoin the agencies from taking “any action”—whether pursuant to the Coastal Act, the LCP, or any other authority—“that would materially interfere with [its] operation of its railroad.” (*Id.*, Prayer, ¶ 2.) The Railway’s federal suit was filed on August 9, 2022. (*Id.*, p. 1.)

It was only *after* the Railway filed its “federal preemption” suit that the Commission sought to intervene in this case, asserting claims that partially mirror the Railway’s claims in the *Ainsworth*

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<sup>1</sup> To be crystal clear, Mendocino Railway has *never* disputed that its *non*-railroad-related activities are subject to City and Coastal Commission regulation. Mendocino Railway only seeks to defend—quite reasonably—its *railroad*-related activities from land-use permitting and other pre-clearance requirements.

1 Action. The Commission does not directly challenge the Railway’s “public utility” or “federal railroad”  
2 status. Instead, it seeks declaratory, injunctive, and monetary relief to the effect that its permitting  
3 authority under the Coastal Act and City’s LCP is not preempted under state or federal law. (Complaint  
4 in Intervention of California Coastal Commission (“Commission Complaint”), Prayer, ¶¶ 1-5.)

5 The Commission’s claims are premised on the enforcement of a subset of laws—the Coastal Act  
6 and LCP—that give it land-use authority over development in the coastal zone. The claims do not, for  
7 example, reach the Commission’s pre-clearance authority under the Coastal Zone Management Act, 16  
8 U.S.C. § 1451, *et seq.*<sup>2</sup> Thus, whereas in the *Ainsworth* Action, Mendocino Railway seeks relief to  
9 comprehensively enjoin “any action” by the Commission “imposing and enforcing any land-use  
10 permitting *or other preclearance requirement* as the pre-condition of any rail-related development on  
11 Mendocino Railway’s property or facilities” (Federal Complaint, ¶¶ 1-2 (emphasis added)—whatever  
12 the Commission’s claimed authority for doing so—the Commission’s claims here are premised only on  
13 the enforceability of its permitting authority under the Coastal Act and LCP. (Commission Complaint,  
14 Prayer, ¶¶ 1-2.) As a consequence, resolution of the *Ainsworth* Action will completely resolve the  
15 Commission’s claims, but the reverse is not true: Resolution of the Commission’s claims in this case,  
16 which are premised on a subset of laws implicated by the railroad’s “federal preemption” claims in  
17 federal court—will not completely dispose of the *Ainsworth* Action.

18 Following this Court’s denial of Mendocino Railway’s demurrer to and motion to strike the  
19 City’s Complaint, the Railway filed an answer to the said complaint in June 2022. In August 2023,  
20 Mendocino Railway answered the Commission’s complaint. Beyond that, there has been no discovery,  
21 no dispositive motions filed, and no trial date set. (Declaration of Paul Beard (Beard Decl.), ¶ 4.)

22 Meanwhile, once the Court allowed the Commission to intervene in this case with its “federal  
23 preemption” argument, Mendocino Railway removed the entire case to federal court on the basis that the  
24 Commission’s complaint infused the case with a federal question lying within the federal court’s subject  
25 matter jurisdiction. The federal district court remanded the case back to this Court on May 11, 2023. The  
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27 <sup>2</sup> For example, under the CZMA, the Commission can seek to review, comment on, and potentially  
28 delay or kill a Mendocino Railway project that requires federal licensing or funding. 16 U.S.C. §  
1456(c).

1 next day, on May 12, the district court dismissed the *Ainsworth* Action in light of the pendency of the  
2 just-remanded state action, pursuant to *Colorado River Water Conservation Dist. v. United States*, 424  
3 U.S. 800, 817 (1976). (RJN, Exh. 2 (Order Granting Motions to Dismiss).)

4 The *Colorado River* doctrine “supports a stay of federal litigation in favor of parallel state  
5 proceedings” in only “exceptional circumstances,” when the balancing of eight considerations compels  
6 it. *Ernest Bock, LLC v. Steelman*, 2023 U.S. App. LEXIS 20045 (9th Cir. 2023) (quoting *Colo. River*,  
7 424 U.S. at 813, 817). “Only the clearest of justifications will warrant dismissal.” *Colo. River*, 424 U.S.  
8 at 819. Perhaps the most important factor is whether the proceedings are sufficiently parallel such that  
9 there is no “substantial doubt that the state court action will provide a complete and prompt resolution of  
10 the issues.” *Ernest Bock*, 2023 U.S. App. LEXIS 20045, at \*22-23 (emphasis added). “[T]he existence  
11 of a substantial doubt as to whether the state proceedings will resolve the federal action precludes the  
12 granting of a stay” (let alone dismissal), and “[s]uch doubt is a significant countervailing consideration  
13 that can be dispositive.” *United States v. State Water Res. Control Bd.*, 988 F.3d 1194, 1203 (9th Cir.  
14 2021).

15 Mendocino Railway appealed the district court’s dismissal to the Ninth Circuit, where it is now  
16 pending. (Beard Decl., ¶ 6.) The Railway argues that the factors weigh decisively *against* a *Colorado*  
17 *River* stay or dismissal. The dispositive consideration is that substantial doubt exists as to whether  
18 resolution of this case will completely dispose of the *Ainsworth* Action. That’s because City’s “public  
19 utility” claim cannot dispose of the Railway’s “federal preemption” claims. And, even if this Court were  
20 to hold that the Commission’s permitting authority under the Coastal Act and City’s LCP is federally  
21 preempted, the federal court still would need to resolve whether other sources of authority that the  
22 Commission may invoke to pre-clear and thereby materially interfere with Mendocino Railway’s rail-  
23 related activities are also federally preempted.

24 **B. The Meyer Appeal Will Resolve the “Public Utility” Issue**

25 In December 2020, Mendocino Railway filed an eminent-domain action against property owner  
26 John Meyer. It seeks to condemn Mr. Meyer’s property in Willits, California, for the construction and  
27 maintenance of its rail facilities. (RJN, Exh. 3 (Decision in *Mendocino Railway v. Meyer* (*Meyer*  
28 Decision)), p. 1.) Mendocino Railway bases its condemnation power on its status as a common-carrier

1 public utility. (*Id.*, p. 3; *see also* Pub. Res. Code § 611 (railroad corporation may condemn any property  
2 necessary for construction and maintenance of its railroad).) As noted above, a “common carrier” is  
3 defined as “every person and corporation providing transportation for compensation to or for the public  
4 or any portion thereof,” including “[e]very railroad corporation.” (Pub. Util. Code § 211.)

5 One of Mr. Meyer’s defenses was that Mendocino Railway is not a public utility. Mendocino  
6 Railway presented testimony and documentary evidence, such as freight tariffs, establishing that it not  
7 only offers freight and passenger transportation, but *has also actually* transported, and does actually  
8 transport, freight and passengers. (RJN, Exh. 4 (Mendocino Railway’s Closing Brief, summarizing said  
9 evidence).) The trial court nevertheless issued a decision finding that Mendocino Railway is not a  
10 common carrier—and therefore not a public utility that can condemn property—because it purportedly  
11 does not engage in the transportation of persons or freight. (*Meyer* Decision, pp. 3-5.) In the trial court’s  
12 view, Mendocino Railway provides *only* an excursion service and therefore is not a public utility. (*Id.*)

13 Mendocino Railway appealed the trial court’s decision to the Court of Appeal on July 11, 2023.  
14 (Beard Decl., ¶ 7.) The key issue in the *Meyer* Appeal, as in this case, is Mendocino Railway’s status as  
15 a common-carrier public utility.

### 16 III. ARGUMENT

#### 17 A. The Court Has Broad Discretion To Stay This Case

18 Under Code of Civil Procedure section 128(a)(8), trial courts “generally have the inherent power  
19 to stay proceedings in the interests of justice and to promote judicial efficiency.” (*Freiberg v. City of*  
20 *Mission Viejo* (1995) 33 Cal.App.4th 1484, 1489.) “As the court in *Landis v. North American Co.* (1936)  
21 299 U.S. 248, 254 explained, ‘the power to stay proceedings is incidental to the power inherent in every  
22 court to control the disposition of the causes on its docket with economy of time and effort for itself, for  
23 counsel, and for litigants.’” (*OTO, L.L.C. v. Kho* (2019) 8 Cal.5th 111, 141.) The existence of a parallel  
24 state or federal court proceeding involving the same parties and issues will justify a stay. “It is black  
25 letter law that, when a federal action has been filed covering the same subject matter as is involved in a  
26 California action, the California court has the discretion but not the obligation to stay the state court  
27 action.” (*Caiifa Prof. Law Corp. v. State Farm Fire & Cas. Co.*, 15 Cal.App.4th 800, 804 (1993).)

28 “In exercising its discretion the court should consider the importance of . . . avoiding unseemly

1 conflicts with the courts of other jurisdictions,” and “whether the rights of the parties can best be  
2 determined by the court of the other jurisdiction because of the nature of the subject matter, the  
3 availability of witnesses, or the stage to which the proceedings in the other court have already  
4 advanced.” (*Farmland Irrigation Co. v. Dopplmaier* (1957) 48 Cal.2d 208, 215.)

5 These factors compel a stay of this case pending decisions in *Meyer* Appeal and *Ainsworth*  
6 Action so as to promote judicial efficiency, conserve resources, and avoid inconsistent court decisions.

7 **B. The Court of Appeal in *Meyer* Will Decide Mendocino Railway’s “Public Utility” Status**

8 Both the *Meyer* appeal and this case involve legal questions surrounding what it means to be a  
9 “common carrier” and therefore a “public utility” railroad. Pub. Util Code § 216 (defining “public  
10 utility” to include “every common carrier”); *id.* § 211 (““Common carrier’ means every person and  
11 corporation providing transportation for compensation to or for the public or any portion thereof . . .”).  
12 In this case, Mendocino Railway’s status as public utility is directly challenged by the City. This Court  
13 will need to resolve the “public utility” dispute, which is identical to the “public utility” dispute in  
14 *Meyer*. The Court of Appeal’s decision in *Meyer* will provide the legal framework for determining  
15 whether a railroad is a public utility. Significantly, the trial court’s decision in *Meyer* turned on a  
16 number of legal questions surrounding what it means to “provid[e] transportation” as a “common  
17 carrier” public utility—all of which the Court of Appeal will need to resolve. (*Meyer* Decision, p. 4  
18 (quoting Pub. Util. Code § 211)). Legal questions to be resolved by the Court of Appeal include:

- 19 • Whether a railroad provides transportation for “common carrier” purposes as long as it offers  
20 and makes available its passenger and freight services to the general public—irrespective of  
21 how often, or even whether, the members of the general public avail themselves of those  
22 services at any given point in time.
- 23 • Whether a railroad’s delegation of the performance of its common-carrier services to an  
24 agent (e.g., affiliated companies and their employees) negates the railroad’s “common  
25 carrier” status. (*Meyer* Decision, p. 4).
- 26 • Whether the relative volume of freight or passenger service that a railroad provides at any  
27 given point in time is relevant to a its “common carrier” status.
- 28 • The legal import, and applicability to Mendocino Railway, of certain CPUC determinations



1 relating to the prior—unrelated—operator of the California Western Railroad, as well as a  
2 CPUC staff attorney’s letter misinterpreting those decisions and making false assumptions  
3 concerning Mendocino Railway’s historic and present operations. (*Meyer* Decision, pp. 2-3.)

4 These legal questions—and others—will be resolved by the Court of Appeal in *Meyer* and are  
5 unquestionably at issue in this case. If, as is probable,<sup>3</sup> the Court of Appeal publishes its decision, the  
6 legal framework for analyzing the “public utility” issue will bind this Court. If this case proceeds  
7 without regard to the pending *Meyer* appeal, there is a risk of conflicting legal analyses and  
8 determinations on the “public utility” issue. That is a good enough reason to stay this case, especially  
9 where litigation of Mendocino Railway’s “public utility” status has advanced as far as the Court of  
10 Appeal in *Meyer*.

11 It is irrelevant that, in *Meyer*, the “public utility” issue happens to arise in the context of an  
12 eminent-domain action. Whether a railroad is a public utility does not turn on the particular right or  
13 privilege the railroad seeks to exercise, whether it be eminent domain authority or the right to make  
14 railroad improvements free of state and local land-use permitting requirements as mandated by federal  
15 preemption. A railroad’s “public utility” status is the *predicate* to exercising those rights and privileges.  
16 Indeed, in its analysis of the “public utility” issue, the trial court in *Meyer* cited to statutes and case law  
17 that didn’t involve eminent domain at all. (*Meyer* Decision, pp. 3-5 (citing Public Utilities Code  
18 definitions that are outside Article 7 (concerning public utilities’ eminent-domain power), as well as two  
19 Court of Appeal decisions—*City of St. Helena v Public Utilities Com.* (2004) 119 Cal.App.4th 793 and  
20 *Golden Gate Scenic S.S. Lines, Inc. v Public Utilities Com.* (1962) 57 Cal.2d 373—that analyzed  
21 different entities’ “public utility” status in cases involving whether they should be regulated as such, not  
22 whether they could exercise the power of eminent domain). Thus, the fact that *Meyer* is an eminent-  
23 domain case, while this case is not, is irrelevant to the potential effects of the *Meyer* appeal on this  
24 proceeding.

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26 <sup>3</sup> Mendocino Railway is aware of no published decisions that directly speaks to most of the legal  
27 questions that the Court of Appeal in *Meyer* will have to address, making publication of the decision  
28 all the more likely. *See* Cal. R. Ct., Rule 8.1105(c) (criteria for publication). The primary decision  
relied on by the defendant and the trial court in *Meyer*— *City of St. Helena v Public Utilities Com.*  
(2004) 119 Cal. App. 4th 793—simply held that excursions (by themselves) do not constitute a form of  
transportation performed by public utilities.

1 The decision in *Meyer* will not only inform or even bind this Court’s analysis, but it will also  
2 define the nature and scope of the parties’ discovery and dispositive motions. For example, the Court of  
3 Appeal could decide that the CPUC determinations—interpreted correctly—only **confirm** Mendocino  
4 Railway’s “public utility” status, and that the CPUC staff attorney’s letter misinterpreting those earlier  
5 determinations either has no legal effect or is wrong as a matter of law. That could obviate the need to  
6 pursue discovery against third-party witnesses, such as the CPUC. Or, if the Court of Appeal concludes  
7 that all that matters in a “public utility” analysis is that the railroad make freight and passenger service  
8 available to the public—irrespective of volume—then that would help define the scope of discovery  
9 regarding Mendocino Railway’s historic and present operations.

10 **C. The Federal Court in *Ainsworth* Is Likely To Decide the Nature and Scope of Mendocino**  
11 **Railway’s “Federal Preemption” Rights**

12 As noted above, the Court in this case also will need to resolve the basic premise of the  
13 Commission’s claims—namely, whether the Commission’s permitting authority under the Coastal Act  
14 and the City’s LCP is federally preempted as to Mendocino Railway. If it is, then the Court will issue a  
15 declaration to that effect, and the Commission’s claims for injunctive and monetary relief will be denied.

16 However, if the Ninth Circuit requires the district court to reinstate the *Ainsworth* Action, the  
17 district court will have to decide a broader “federal preemption” question—i.e., whether “any action”  
18 taken by the Commission (and City)—under the Coastal Act, LCP, or any other legal pretense—is  
19 federally preempted as applied to Mendocino Railway. (Federal Complaint, Prayer, ¶¶ 1-2.) That is a  
20 more expansive claim than the Commission’s. Although the *Ainsworth* Action is before the Ninth  
21 Circuit on an order of dismissal, the Ninth Circuit will scrutinize the dismissal under a non-deferential  
22 standard of review, thereby increasing the odds of a reversal and the action’s reinstatement. (*Seneca Ins.*  
23 *Co. v. Strange Land, Inc.*, 862 F.3d 835, 840 (9th Cir. 2017) (“Whether the facts of a particular case  
24 conform to the requirements for a *Colorado River* stay or dismissal is a question of law which we review  
25 *de novo.*”); *R.R. Street & Co. Inc. v. Transp. Ins. Co.*, 656 F.3d 966, 973 (9th Cir. 2011) (holding that, if  
26 the *Colorado River* requirements have been met,” the Ninth Circuit “review[s] for abuse of discretion  
27 the district court’s decision to stay or dismiss the action,” but “this standard is stricter than the flexible  
28 abuse of discretion standard used in other areas of law because discretion must be exercised within the





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8. I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

DATED: September 5, 2023

/s/ Paul Beard II

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Attorneys for Defendant MENDOCINO RAILWAY