

Exhibit B

Exhibit B

The Press Democrat

Skunk Train owner asks judge to consider ‘new facts’ in Willits eminent domain case

Mendocino Railway seeks to overturn judgment in favor of landowner by reopening trial to admit new document.

June 8, 2023

By: MARY CALLAHAN

The owner of the Skunk Train excursion line has asked a judge to reopen its case against a Willits landowner who beat back the railway's attempt to acquire the property through eminent domain.

The company, Mendocino Railway, says Mendocino County Superior Court Judge Jeanine Nadel should set aside her June 1 judgment in favor of landowner John Meyer on the grounds that it was filed prematurely.

It also wants Nadel to reopen the trial for admission of new evidence that the railway says bolsters claims it is a public utility with the right to condemn property.

[Mendocino Railway Mtn to Reopen Trial \(1\).pdf](#)

The evidence, a May 2 letter from the U.S. Railroad Retirement Board, specifically confirms the railway's status as a common carrier railroad regulated by the federal Surface Transportation Board.

It makes no mention of "public utility," but updates a 2006 decision entered at trial saying the railway's disrupted track and lack of access to interstate transport limited its ability to perform common carrier services.

Mendocino Railway did not receive the letter until after Nadel issued her initial decision in April.

Though it had been received by the time a formal, proposed judgment was filed May 24, the railway claims Nadel signed her final judgment June 1, before the expiration of a 10-day objection window during which it might have brought the retirement board letter to her attention.

"We did not know until Monday afternoon that she had issued the final judgment," the railway's lead attorney on the case, Glenn Block, said Wednesday. "She should not have done that. We're permitted 10 days to object to the judgment, and so she signed it before that 10 days had run."

Mendocino Railway Motion to Vacate and Set Aside Premature Judgment.pdf

The new motions come amid ongoing legal disputes between Mendocino Railway and Meyer in one case, and involving the city of Fort Bragg and the California Coastal Commission in another.

They are related insofar as each turns on the railway's claims that its status as a federally regulated public utility and common carrier railroad entitle it to rights not afforded most entities, including the right of eminent domain and the right to construct and maintain rail-related projects without getting clearance from local and state governments.

Mendocino Railway has owned the popular Skunk Train since 2004, when it bought the California Western Railroad on which it runs out of bankruptcy.

For most of the past decade, a collapsed tunnel a few miles outside Fort Bragg has prevented trains from running the entire 40-mile length between the coast and Willits inland. Instead, the trains run out and back from each end of the line.

Mendocino Railway says the recent retirement board letter confirmed that limited freight operations handled by its sister company, Sierra Northern Railroad, fulfilled its obligations as a common carrier until January 2022, when Mendocino Railway assumed control of them.

"That's just how it was structured," Block said. "Sierra Northern Railway performed those freight operations on the line as an affiliate. That was part of the original plan when the (Surface Transportation Board) licensed Mendocino Railway in 2004."

The railways have asked Nadel to set a hearing on June 30 to consider vacating her current judgment and reopening the case, noting she agreed to reopen the trial last fall when Meyer and his lawyer first produced the 2006 retirement board letter.

But whether the new evidence could change the judge's mind on the matter is uncertain. Nadel disputed the railway's right to eminent domain in large part because of 2022 letter from the California Public Utilities Commission saying the railroad was not a public utility.

CPUCHartLetter.pdf

Nadel also noted the absence of freight and passenger service beyond the nonqualifying excursion runs. She also said that the railroad's initial plans for the Meyer property were meant to benefit the private business of the company, not the public good.

Meyer said he was worried about the new motions because it means more proceedings and lawyers fees, as well as delays before the matter is finalized.

Though Nadel's final judgment entitled him to recover an estimated \$250,000 in legal expenses incurred over what so-far is 2½ years of litigation, the case now "could drag on for who knows how long," Meyer said.

“I don’t see that this is going to be able to change anything personally, but I guess we’ll see,” he said.

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PUBLIC UTILITIES COMMISSION

Public Advocates Office
505 VAN NESS AVENUE
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August 12, 2022

Via Electronic Mail Only

Michael Hart, CEO
Sierra Railroad Company
1222 Research Park Drive
Davis, CA 95618
E-mail: mike@sierraenergy.com

Re: Public Utilities Commission's Response to Mendocino Railway's Request

Dear Mr. Hart,

This letter is in response to your July 26, 2022 e-mail to the California Public Utilities Commission's (Commission) General Counsel, Christine Hammond.

In your July 26, 2022 e-mail, you request a letter from the Commission stating that Mendocino Railway is a regulated public utility railroad. Your request is similar to one received from Robert Jason Pinoli, General Manager of Mendocino Railway on October 31, 2018.

On December 7, 2018, the Commission responded in writing to Mr. Pinoli, stating that Mendocino Railway is a Class III railroad. Based on Mendocino Railway's representations to the Commission, the Commission considers Mendocino Railway's rail operations largely un-changed since that time.

This letter confirms that Mendocino Railway is a Commission-regulated railroad. The Commission's website lists Mendocino Railway's status as a Class III Commission-regulated railroad.¹ While Mendocino Railway is a Commission-regulated railroad, it is not a public utility within the meaning of the California Constitution, the California Public Utilities Code, and the Commission's orders.

¹ Regulated California Railroads, available at: <https://www.cpuc.ca.gov/industries-and-topics/rail-safety/railroad-operations-and-safety/regulated-california-railroads>

Michael Hart
Sierra Railroad Company
August 12, 2022
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The status of Mendocino Railway has previously been determined by the Commission. In 1997, the California Western Railroad (CWRR) - which was the company operating the excursion service commonly known as the "Skunk Train" at the time - applied to the Commission for status to reduce its commuter passenger services. In the course of this proceeding, the Commission determined that CWRR did not constitute a public utility to the extent it provides excursion rail service, which constituted 90% of its overall business. (D.98-01-050 (January 21, 1998) 1998 Cal. PUC LEXIS 189 ["In providing excursion passenger service, CWRR does not function as a public utility."].)

The Commission found that, while CWRR was not a public utility, it was still subject to Commission regulation regarding the safety of CWRR's rail operations. D.98-01-050, Conclusion of Law 3. CWRR agreed with these findings and did not challenge the Commission's determination that it was not a public utility.

It is my understanding that Mendocino Railway later purchased the CWRR in a bankruptcy proceeding and has continued to provide excursion train service on the Skunk Train. The Commission is not aware of any changes to the excursion services provided by Mendocino Railway that would cause a change to its 1998 determination that Mendocino Railway is a regulated railroad but not a public utility. As such, the 1998 determination is still the applicable law with regard to Mendocino Railway's status.

While some California railroads do constitute public utilities, "railroads" and "public utilities" are not synonymous under the Public Utilities Code. The Public Utilities Code gives the Commission authority to regulate the safety of rail operations in California, regardless of a railroads status as a public utility. (See, *e.g.*, Pub. Util. Code, § 309.7 [The Commission "shall be responsible for inspection, surveillance, and investigation of the rights-of-way, facilities, equipment, and operations of railroads and public mass transit guideways, and for enforcing state and federal laws, regulations, orders, and directives relating to transportation of persons or commodities, or both, of any nature or description by rail"]; Pub. Util. Code, § 765.5 ("provid[ing] that the commission takes all appropriate action necessary to ensure the safe operation of railroads in this state."].)

The Commission also works in partnership with the Federal Railroad Administration as federally certified inspectors to ensure the implementation of railroad safety laws and regulations. (49 C.F.R. § 212.1, et seq.) The Commission also recognizes the regulatory authority of the Surface Transportation Board pursuant to 49 United States Code section 10501, et seq.

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The Commission's jurisdiction is limited to safety oversight over Mendocino Railway's rail operations, to ensure that Mendocino Railway is operating its rail vehicles safely and in compliance with the law. The Commission does not regulate other aspects of Mendocino Railway's operations, such as fare prices or schedules, and the Commission's authority would not pre-empt, for example, generally applicable land-use or environmental rules or regulations as such rules or regulations relate to non-railroad operations.

In addition, your July 26, 2022, e-mail recounts your difficulty with having Commission staff state that Mendocino Railway is a public utility, and also states that at a recent conference that included other California short-line railroads, "[o]ne of the government officials present simply suggested that we throw the next CPUC inspector off the property saying we are not regulated and not subject to his authority."

As explained above, Mendocino Railway is a Commission-regulated railroad, but not a public utility within the meaning of the California Constitution, the California Public Utilities Code, and the Commission's orders. As a Commission-regulated railroad, the Commission is authorized to access railroad property for inspections, as part of the Commission's obligation to ensure the safe operation of all railroads in California. (Pub. Util. Code, § 309.7.)

It is essential that Mendocino Railway have a complete understanding of its obligations as a Commission-regulated railroad, which includes allowing Commission inspectors access to its property. If Mendocino Railway were to throw Commission inspectors off of its property as your e-mail suggests, or otherwise impede or prevent Commission inspectors from accessing Mendocino Railway's property, this would constitute a blatant violation of the Public Utilities Code, punishable by fines or other penalties. Further, obstructing a public officer from carrying out their duties is a crime, as is threatening a public employee to refrain from carrying out the performance of their duties. (Pen. Code §§ 71; 148, subd. (a)(1).)

Ensuring the safety and integrity of Commission inspectors is of paramount importance. Any act of obstructing or attempting to remove Commission inspectors from railroad property will be prosecuted to the fullest extent of the law.

Michael Hart
Sierra Railroad Company
August 12, 2022
Page 4

We hope this letter answers your inquiry as the Commission continues to exercise its regulatory mission to ensure safe operations of Sierra Railroad and its related entities.

Sincerely,



Jonathan C. Koltz
Assistant General Counsel
Legal Division, Public Utilities Commission

cc: Christine Hammond, General Counsel, Public Utilities Commission
(christine.hammond@cpuc.ca.gov)

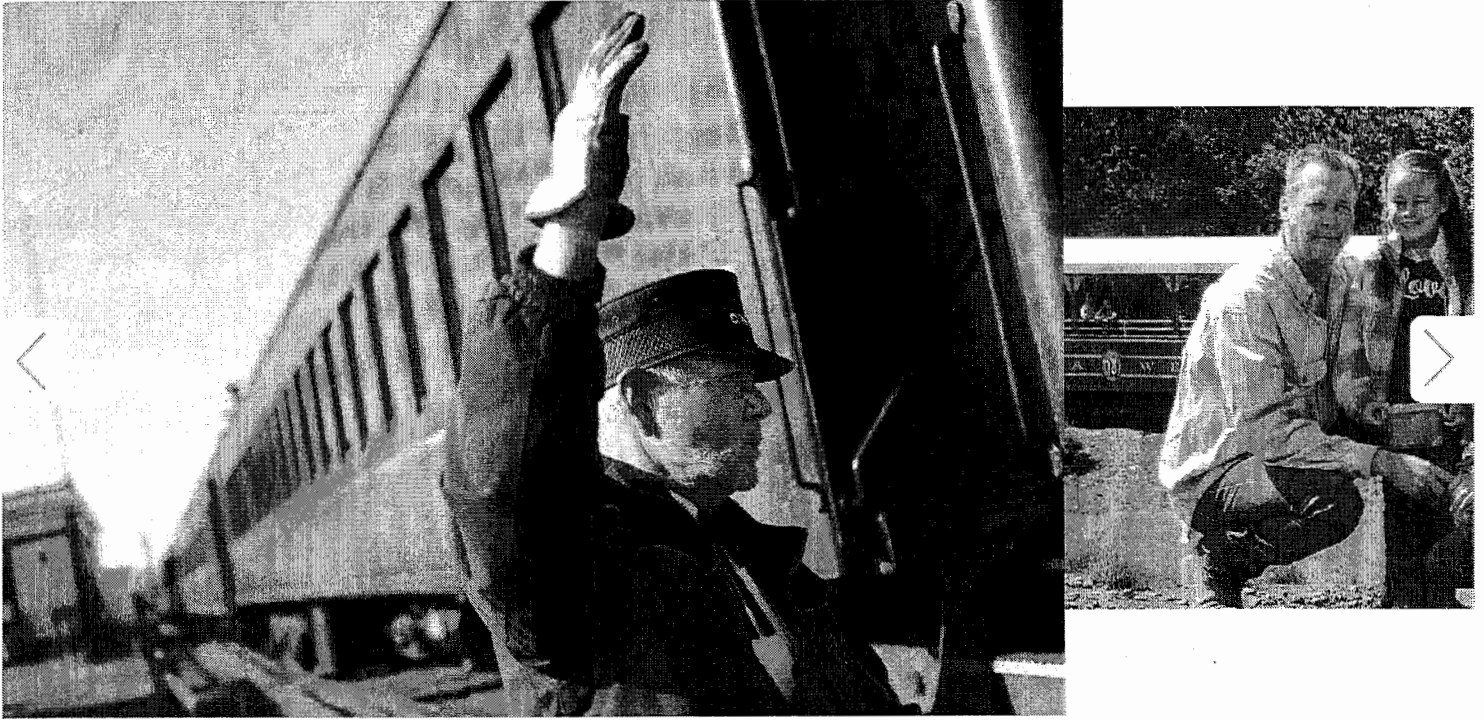
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Skunk Train owner asks judge to consider 'new facts' in Willits eminent domain case

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SLIDE 1 OF 2

Skunk Train conductor Dennis Balassi directs the steam engine as it backs up to connect with the passenger cars at the depot on Thursday, Sept. 1, 2011, in Ft. Bragg, California. (BETH SCHLANKER/ The Press Democrat)

MARY CALLAHAN
THE PRESS DEMOCRAT
June 8, 2023

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[CPUCHartLetter.pdf](#)

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By Angelino's Coffee

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Legal setbacks dog Skunk Train owner Mendocino Railway

Skunk Train president challenges recent legal decisions in state and federal court, suggesting appeals are likely.

| 5



SLIDE 1 OF 14

The Skunk Train rolls in to the Willits train depot Thursday, July 2, 2015. (Kent Porter / The Press Democrat file)

MARY CALLAHAN

THE PRESS DEMOCRAT

June 6, 2023

A Mendocino County man who fought off efforts by the owners of the Skunk Train to acquire his land near Willits through eminent domain will be able to recover his attorneys fees and court costs.

Mendocino County Superior Court Judge Jeanine B. Nadel signed a final judgment Thursday declaring John Meyer the prevailing party in the case, making the Mendocino Railway responsible for his costs. Meyer has estimated his attorney's fees from the 3-year case were "in the neighborhood of \$250,000."

Nadel said Mendocino Railway had failed to prove its claim that it was entitled to condemn Meyer's 20-acre Highway 20 parcel by virtue of its status as a "common carrier railroad," conferred by the federal Surface Transportation Board.

[SCUK-CVED-2020-74939 - JUDGMENT AFTER TRIAL BY COURT.pdf](#)

She also has denied the railway's request for a hearing to air objections over the decision, initially issued April 19. The railway argued in court documents that the decision failed to "explain the factual and legal bases for each of the principal controverted issues at trial" and included "misstatements of the law and facts."

[SCUK-CVED-2020-74939 - PLAINTIFFS REQUEST FOR STATEMENT OF DECISION OR IN THE ALTERNATIVE PLAINTIFFS OBJECTIONS.pdf](#)

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Nadel's refusal to reconsider her position is the latest in a series of setbacks for the railroad, operator of the popular Fort Bragg-based Skunk Train excursion train, rail bikes and a new weekend watering hole in the redwoods along Pudding Creek.

A U.S. District Court judge three weeks earlier rejected the railway's move to have a federal court handle cross complaints filed by city of Fort Bragg and the California Coastal Commission

against the railway, and vice versa.

Instead, U.S. District Court Judge Jon S. Tigar returned the dispute over land-use regulation to a Superior Court judge the railway earlier sought to disqualify in a separate action.

Torgny Nilsson, general counsel the Mendocino Railway, called Tigar's May 11 ruling "a surprise," but said it was basically procedural in nature.

"We obviously thought the federal court was the appropriate forum (for the case,)" Nilsson said. "It doesn't" resolve anything except the court said it should go back to the state court."

But Coastal Commission Vice Chair Caryl Hart, a Sonoma County resident and former county official, said the federal court decision and a second, companion ruling issued one day later, "very clearly" reflect the judge's position that the questions raised by an "excursion railroad" don't rise to the federal level.

"They're just doing everything they can to get away from the (local) judge, unsuccessfully," Hart said. The federal judge "basically ... says they're forum shopping."

In an interview Monday, Mendocino Railway President Robert Pinoli suggested appeals were likely in all cases, saying, "I think we're going to continue to pursue all of our options, both in federal and local court."

He reiterated his belief that the state court could not resolve questions about the railway's standing as a federally regulated public utility. The matter is key to the railway's claims it has power of preemption over state and local permitting where rail-related development was concerned.

"A state court can't make a determination on a federal matter," Pinoli said.

He also said Nadel's ruling on eminent domain "is not based on fact," and said, "for us not to appeal, that would be silly."

The Skunk Train, whose roots go back 138 years, to the time when trains hauled lumber and logging crews, has long been a popular attraction, drawing tourists to Fort Bragg with the city's support.

But conflict erupted during the fall of 2021, when the railroad acquired 210 acres of the vacant Georgia-Pacific mill site also sought by the city. The railway additionally bought 62 acres running inland along Pudding Creek on the north end of the property, bringing its holdings to about 375 acres in total. (Ownership of the acreage purchased in 2021 was recently transferred to Mendocino Railway's sister company, Sierra Northern Railroad, in order to offset that company's tax liability, Pinoli said.)

Questions arose quickly about the degree to which the railway would be willing to abide by state and local permitting requirements as it developed the land, though Pinoli says the railways always construed its preemption rights narrowly, applying only to rail-related work.

Commercial and residential development, including plans for 300 homes, would all be subject to permitting by the city and the Coastal Commission, the powerful state agency that oversees development along the entire coast, with a defined Coastal Zone.

"I'm not sure how the railroad has been portrayed as running from the regulations," Pinoli said. "We're not running from the regulations. We're following the law."

But government officials were alarmed about a proposed extension of the railroad on the west side of the mill site, near the bluff, which Pinoli said would not be subject to local or state approvals.

The railway also refused demands by the city and Coastal Commission to obtain permits for some early work on the site it said was railroad related, prompting the commission to file a notice of violation subjecting the railway to substantial fines.

The city, joined by the commission a year later, filed suit in Mendocino County Superior Court in October 2021 seeking to refute the railway's claims that the federal Interstate Commerce Commission Termination Act preempts certain state and local oversight.

They argue the railway is merely an excursion train without the federal preemption rights it claims. The commission specifically sought a declaration that the railway is subject to California Coastal Act it enforces.

Mendocino Railway tried to get the case thrown out soon after it was filed, in a move rejected by Mendocino County Superior Court Judge Clayton L. Brennan back in April 2022. Brennan said the

railway's claim of preemption was "overbroad," because it was "simply a luxury sightseeing excursion service with no connection to interstate commerce."

[FB v. MR - Order Granting Motion to Remand.pdf](#)

The railway tried to appeal the decision to the state Court of Appeal and then the state Supreme Court. When those efforts were unsuccessful, it filed a petition to disqualify Judge Brennan on grounds he had land-use matters pending before the Coastal Commission.

In thwarting the company's efforts to have a federal court settle its disputes, U.S. District Court Judge Tigar, of the Northern District of California, said the facts of the case did not warrant airing in a federal court.

In a companion ruling issued May 12, Tigar dismissed a lawsuit filed by the railway against Coastal Commission Executive Director Jack Ainsworth seeking affirmation of its right to perform rail-related work on coastal land without submitting to state or local permitting procedures.

Tigar said the record of Mendocino Railway's court filings indicated it was only seeking a federal court hearing because it "has become dissatisfied with the state court and now seeks a new forum."

[MR v. JA - Order Granting Motions to Dismiss.pdf](#)

"(I) t is difficult for the Court to conceptualize this action as anything but a spinoff of the state court action," Tigar said.

You can reach Staff Writer Mary Callahan (she/her) at 707-521-5249 or mary.callahan@pressdemocrat.com. On Twitter @MaryCallahanB.

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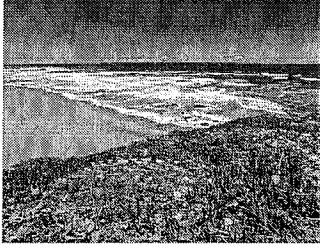
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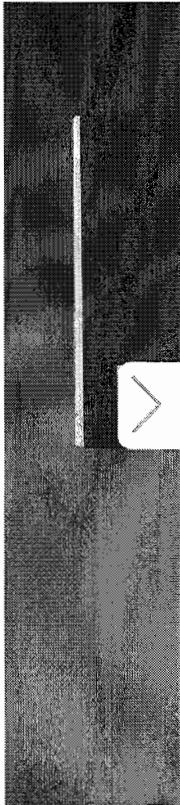
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Judge rejects Skunk Train owner's claim it is a public utility with right of eminent domain

A judge rejected Mendocino Railway's claim it is a public utility with power to condemn land through eminent domain. | 20



SLIDE 1 OF 4

People board the Skunk Train Wednesday, Aug. 4, 2021, in Willits, California. The excursion train has been running from Willits through redwood forests and river canyons to Fort Bragg since 1885, when it was built to transport timber. (Haven Daley/Associated Press, 2021)

MARY CALLAHAN
THE PRESS DEMOCRAT
April 28, 2023

A Mendocino County man who spurned the owners of the Skunk Train when they tried to force him to sell them his land has prevailed in a grueling three-year legal brawl that left him saddled with debt.

At issue was whether Mendocino Railway, operator of the popular excursion train, is a public utility with the right to take property through eminent domain and whether, in its effort to [buy 20 acres from a man named John Meyer](#), it attempted to do so in order to serve the public good or its own private interests.

In deciding the case in Meyer's favor, Mendocino County Superior Court Presiding Judge Jeanine Nadel delivered a punishing blow to Mendocino Railway, chipping away at its claims to hold power above and beyond most private companies and potentially undermining its position in several unsettled cases.

The closely watched court case has potential implications for other controversies in which the company is embroiled.

For Meyer, whose victory has put him on the receiving end of congratulations, it remains difficult to feel the fight is over after a grueling, three-year legal brawl that left him in substantial debt.

The plans for his 21 acres on the outskirts of Willits have been on hold for three years, and his partners have moved on. Construction costs, meanwhile, have risen so dramatically that development costs have doubled, he said.

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I hope they can figure something out to keep the Skunk train going and even get it connected back to be able to go to Willits and Fort Brag. It be be a shame if it couldn't continue.

REPLY 1 REPLY 1

"It's been a nightmare," said Meyer, 50.

"It's been worse than limbo," he said. "I guess limbo is between Heaven and Hell. I'd be closer to the Hell side."

Though he expects a final judgment will include reimbursement of attorneys' fees — now "in the neighborhood of \$250,000" — he doesn't know when that might come or how an appeal might affect it. In the meantime, the fact that action is still pending against his land blocks him from borrowing money for development. He's behind on his mortgage, as well.

"I have literally put everything I own on it," Meyer said. "I'm still in a horrible position."

Judge questions CEO's credibility

In her ruling, the judge directly questioned the credibility of Mendocino Railway President and Chief Executive Officer Robert Pinoli, the only witness. She noted that initial plans for the property included a train station, as well as a campground and long-term RV rental park that did not satisfy the three-part test for use of eminent domain, which allows its exercise only in the public interest and when the land is required for a given project "compatible with the greatest public good with the least private injury."

Mendocino Railway has become entangled in several high-stakes issues in recent years, including the future of the [Great Redwood Trail](#) planned for former North Coast Railroad tracks from Cloverdale to Humboldt Bay.

The railway also is [in litigation with Fort Bragg and the California Coastal Commission](#) over its rejection of their attempts at land-use regulation, pursuing relief along two tracks in U.S. District Court, in hopes of securing a declaration it does in fact hold public utility status.

The railway claims it stands apart from most business interests — exempt from many common land-use permit requirements and able to acquire land through eminent domain — despite statements from the California Public Utilities Commission as recently as August saying that the commission's regulation of the Skunk Train for safety reasons doesn't make it a public utility.

[CPUCHartLetter.pdf](#)

The railway also over the past five years has acquired about 375 acres of mostly undeveloped coastal property in Fort Bragg with the potential to transform the seaside town, once anchored by a defunct Georgia-Pacific lumber mill, which sprawled across the same site.

Much of the mill site was purchased under the threat of eminent domain, an authority Nadel's ruling has now brought into question. In it, she cited insufficient evidence to demonstrate the railway was a "public utility" with the power to condemn land — "the central issue in this case," according to her April 19 ruling.

[DECISION AFTER TRIAL.pdf](#)

West Sonoma County resident Caryl Hart, chair of the Great Redwood Trail Agency Board of Directors and vice chair of the California Coastal Commission, has followed the Meyer case, given multiple points of common interest. She also has a law degree.

The ruling against Mendocino Railway "is very damaging," Hart said.

Nadel still has to deliver a final judgment in the case. Mendocino Railway also may appeal the ruling.

Pinoli, the president and CEO, said the railway was "in the process of determining our next steps."

Nadel's decision, he said, "seems to not take evidence and facts into account."

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6/15/23, 9:37 AM

Judge rejects Skunk Train owner's claim it is a public utility with right of eminent domain

The Great Redwood Trail is now embarking on the next stage of rail banking from Willits south to Cloverdale, which would sever Mendocino Railway's link with any interstate rail lines, Caryl Hart said.

"They've been trying very hard to do everything they possibly can, in every case, in every angle, and so far they have not succeeded. And this is very latest round," she said.

Pinoli said the Trail effort "really is a shot to put the California Western Railroad/Skunk Train out of business," depriving residents of a cleaner alternative to moving all freight by truck.

State Senate Majority Leader Mike McGuire, D-Healdsburg, a champion of the Great Redwood Trail, said Nadel's ruling "was as clear as a bright spring day here on the North Coast: The Skunk Train is not a freight train. The Skunk Train is not a public utility. They are a beloved North Coast excursion train that whisks locals and visitors alike through the gorgeous redwoods on the Mendocino Coast."

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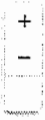
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6/15/23, 9:37 AM

Judge rejects Skunk Train owner's claim it is a public utility with right of eminent domain

Meyer, who lives in Branscomb with his wife and 5-year-old daughter, had purchased the 20 acres at issue in 2014 with plans to rebuild a soil business he had operated a few years earlier.

He said he has a contract with Caltrans through which he accepts earth recovered from landslides at the Highway 20 property a mile or so west of town, where he screens and separates the materials with equipment bought for the purpose so it can be resold as fill for construction sites.



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He also planned to build two rental homes and in early 2020 was negotiating to buy an adjoining acre so he could get a lot line adjustment and build four houses total, plus a few workshop buildings.

Then what he thought was a piece of junk mail arrived in June 2020.

It turned out to be a letter from Pinoli inquiring about his interest in selling the property, bordered by the curving highway and the railroad to the south.

Meyer did not reject the proposal outright. There was some initial back and forth about prices and plans, and maybe a trade. He also says he offered to sell the railway several acres — enough to offload people and goods and put parking — but that offer was rejected.

Meyer already had invested about \$350,000 in the two properties. He had plans for the site, and well and septic permits, plus the equipment and profit potential for the soil business. He also very quickly realized he needed to retain a land-use attorney at some heavy initial cost.

But Mendocino Railway was only prepared to pay \$450,000 or \$500,000 for the 20 acres, Meyer said, and he wanted more than twice that because of what he had invested and had planned. And he didn't really want to sell.

But he said he would have settled closer to what the railway offered, but Mike Hart, head of Sierra Railroad Company, Mendocino Railway's parent company, said he could get the property appraised at \$350,000, which would force Meyer to accept that price.

Railway's growing footprint

At the time, the railway had been exploring ways to grow its footprint and expand its business potential. In 2019, it acquired 77 acres of the old mill site around its Fort Bragg depot site, as well as 15 acres once intended for a new Harvest Market store.

The next year it acquired a residential property on the opposite side of town through eminent domain for "maintenance and safety of rail operations," paying \$155,000 to an elderly woman through her daughter, according to the condemnation order.

A year after that, in 2021, Mendocino Railway sued Georgia-Pacific under eminent domain, demanding it relinquish the remaining 210 acres from the mill site and another 62 acres along Pudding Creek to the north. The case was settled before trial, with Georgia-Pacific agreeing to accept \$1.23 million for the land, which came along with substantial liability for toxic remediation. Nadel was also the judge in that case.

The mill site acquisition was an infuriating surprise for city officials, who thought they had been close to a deal for the land themselves after working most of 20 years to chart a path for the city's future based on a new, "blue economy" around aquaculture, ocean resources and climate resilience.

The mill site settlement stated the property was "necessary for construction and maintenance of rail facilities related to Mendocino Railway's ongoing and future freight and passenger rail operations ... a public use."

Right away, questions were raised about the railway's need for so much land — about a fifth of the city's real estate — after it had been operating on just four acres.

There also were worries about ambitious plans for development near the coast, in the jurisdiction of the California Coastal Commission, and whether the railroad planned to abide by city and state permitting standards in fulfilling its vision for housing, commercial and tourism-serving uses like hotels, restaurants, a gazebo and viewing area on the coast.

Pinoli had already rejected city efforts to enforce permit requirements on improvements on the northern part of the mill site and said plans to run the Skunk Train line out to Glass Beach and along the coast would not be subject to environmental review, despite the extra layer of oversight required by the California Coastal Commission.

After several warnings, the commission's enforcement arm filed a notice of violation against the railway last summer related to some mill site work that could cost the railway up to \$11,500 a day in civil penalties. Collection is on hold pending resolution of three court cases involving the commission and the railway, Enforcement Director Lisa Haage said.

Mendocino Railway has been trying to have all the cases heard in federal court, and there's been a delay while a federal judge decides.

But Alex Helperin, chief deputy counsel for the Coastal Commission, said he thinks "we will prevail on this."

"I think this court (and Judge Nadel) has vindicated what we've been saying all along," Helperin said. "This entity, or whatever you want to call it, is not actually functioning as a common carrier and is not eligible for the kinds of exemptions it is claiming."

Excursions into the woods

A still-unresolved tunnel collapse three miles outside Fort Bragg prevents running trains between the coast and Willits, 40 miles to the east, but the railway has been running excursions into the woods from both ends, as well as rail bike trips.

It also has been looking for opportunities to haul freight, which would aid efforts to acquire grant funds for tunnel repair and bolster its standing as something more than an excursion train. Pinoli testified in the Meyer case that 90% of its revenue comes from excursions.

Last year, though discussions were dominated by a mysterious proposal to take over the north-south railroad line from Willits to Eureka for coal transport out of Humboldt Bay, Mendocino Railway also pitched a proposal to rehabilitate 13 miles of rail line from Willits to Outlet Creek so it could haul gravel.

The move would have interfered with the Great Redwood Trail Agency's plans to "bank" the rail, or take it out of commission, and convert it to a 320-mile multiuse hiking, biking and equestrian trail running from San Francisco Bay to Arcata in Humboldt County.

The federal Surface Transportation Board rejected the bid, saying the railway couldn't demonstrate sufficient funds or plans to raise revenue for millions of dollars in repairs needed in an area likely subject to future landslides and continued storm damage.



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MENDOCINO COUNTY SUPERIOR COURT RULING DECIDES THE SKUNK TRAIN IS NOT A PUBLIC UTILITY

Categories: Featured ** News ** Utilities



MendoFever Staff April 30, 2022

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The following is a press release issued by the City of Fort Bragg:



The Skunk Train crossing the Noyo River [Picture taken by Drew Jacksich]

On Thursday, April 28, citing an abundance of case law and legal precedent, Judge Clayton L. Brennan of the Mendocino County Superior Court ruled against Skunk Train operator Mendocino Railway's motion to dismiss a lawsuit filed by the City of Fort Bragg (City) concerning the City's ability to exercise authority over land use within city boundaries. In ruling for the City, the Court found that excursion service railroads like the Skunk Train "are not operating as public utilities and should not be regulated by the [California Public Utilities Commissions] as such."

- Ruling on Demurrer to the Complaint
- Ruling on Motion to Strike

This early decision of the court is an important step in dispelling the falsehood that the Skunk Train is a public utility and therefore not subject to local regulatory oversight. The City is committed to ensuring that development on the former Georgia Pacific Mill Site meets the needs and character of the community, that

environmental hazards are appropriately remediated, and that current and future public infrastructure requirements are addressed with water supply, sewer facilities and roads.

Since acquiring 272 acres of coastal land, which comprises approximately a third of the land within city limits, Mendocino Railway has not acted in good faith with regard to development within the City of Fort Bragg. Rather than seeking a Coastal Development Permit application and committing to abide by the same rules as all other developers, Mendocino Railway has instead claimed to operate as a common carrier public utility. If unchallenged, this common carrier determination would allow Mendocino Railway to strategically claim exemption from local and state regulations and bypass the community's ability to participate in planning reuse of the site.

As such, late last year the City filed a lawsuit in Mendocino County Superior Court disputing Mendocino Railway's claim. In response, Mendocino Railway promptly submitted a legal pleading, known as a Demurrer, requesting dismissal of the case. The basis of this request rested on the false assumption that by virtue of Mendocino Railway's status as a federally regulated railroad and public utility, the Mendocino County Superior Court lacks jurisdiction, or is preempted from even considering the City's lawsuit.

However, citing extensive legal precedent, as well as a previous California Public Utilities Commission determination that Mendocino Railway "is not engaged in interstate transportation-related activities but rather simply provides a sightseeing excursion loop service," the Court ruled that Mendocino Railway's preemption argument is overly broad.

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The City now looks forward to this case progressing toward a resolution that results in a declaration from the Court that Mendocino Railway is not exempt from local land-use authority.

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THE GREAT REDWOOD TRAIL FILES ‘ADVERSE ABANDONMENT’ CLAIM AGAINST THE SKUNK TRAIN

Categories: Featured · News



MendoFever Staff March 2, 2023

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The following is a press release issued by the Great Redwood Trail Agency:



A portion of the Northwest Pacific Railroad in Mendocino County captured by an unknown photograph in the 1920s [Image from the Sonoma County Library]

Today the Great Redwood Trail Agency (GRTA) took the next step in building out the world-class Great Redwood Trail in an application filed with the federal Surface Transportation Board.

“The State of California was very clear in its mandate that we are to build the trail from Cloverdale to Humboldt Bay, and this is the next step in that process,” said GRTA Interim Executive Director Karyn Gear.

In order to convert the broken-down railway to a trail, the GRTA is working through the process to railbank the line with the federal government. This officially preserves the corridor for all time and allows for the public trail to be built along the right of way. Due to a multitude of serious safety concerns, GRTA’s dilapidated rail line was closed by the federal government 25 years ago, and has not seen a freight train since.

Last year the GRTA filed to railbank 176 miles of the rail line from Willits to Humboldt Bay, and the Surface Transportation Board (STB) approved the application after soundly rejecting attempts by the Skunk tourist

train and others to take over critical portions of the public right-of-way.

Today, the GRTA began the process of railbanking the second segment of its line from Willits to Cloverdale, so it can begin trail planning for that 50-mile portion which will run adjacent to scenic vineyard lands, through local communities and along portions of the Russian River.

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These filings will allow the STB to make a determination on the status of the Skunk train, which has operated exclusively as a tourist excursion operation and not a freight line. Without ongoing freight operations, STB jurisdiction should terminate, along with the connection to the interstate rail system. This is a process that must be completed before the GRTA railbanking process can move forward. This "adverse abandonment" application seeks a finding that because the Skunk line does not conduct freight operations, and has been unable to run trains from Ft Bragg to Willits at all due to tunnel collapses on the line, their connection to the long embargoed and shuttered GRTA line is not required, paving the way for the full repurposing of the line to complete the Great Redwood Trail all the way from Humboldt Bay to Sonoma County.

"The Skunk does a great job on their tourist train rides and rail-biking operation, and neither this filing nor railbanking the entire GRTA corridor will in any way prevent those activities from continuing. We hope that they will concur that railbanking is in the best interest of their company and the North Coast," said GRTA Chair Caryl Hart. "The STB's rulings to date have paved the way for the establishment of the Great Redwood Trail, and we are asking for its approval now so we can continue to plan and build out this incredible trail system."

The GRTA has already begun their master planning process for the trail and is holding public forums this spring to discuss all aspects of the trail. Information and meeting schedules can be viewed here:
<https://greatredwoodtrailplan.org/>

Several segments of the Great Redwood Trail are already built and open to the public in cities like Eureka, Arcata, and Ukiah and are underway in Willits, along Humboldt Bay, and more. Outdoor recreation is booming in California and trails create broad economic opportunities and environmental benefits for their surrounding communities.

The Great Redwood Trail was created by the state of California, through the efforts of Senate Majority Leader Mike McGuire, who represents the North Coast.

A copy of the STB application is attached.



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February 28, 2023

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

**Re: Docket No. AB-1305 (Sub-No. 1) Great Redwood Trail Agency – Adverse
Abandonment – Mendocino Railway in Mendocino County, California**

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding is the Petition for Partial Waiver of Abandonment Regulations and for Exemption from Statutory Requirements, dated February 28, 2023. The Great Redwood Trail Agency is a state agency established by the Great Redwood Trail Agency Act, Government Code § 93000 et seq., to develop and manage the Great Redwood Trail and discharge the duties of a rail common carrier before the Board. The fee for the Petition should be waived pursuant to 49 C.F.R. § 1002.2(e)(1). However, in the interest of time, the Great Redwood Trail Agency has paid the filing fee and will await the decision on the fee waiver.

Should any questions arise regarding this filing, please feel free to contact me. Thank you for your assistance on this matter.

Respectfully submitted,

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JUDGMENT EXPECTED NEXT MONTH IN SKUNK TRAIN'S ATTEMPT TO ACQUIRE PRIVATE PROPERTY WEST OF WILLITS THROUGH EMINENT DOMAIN

Categories: Fort Bragg -- News -- Willits



Sarah Reith September 6, 2022

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The Skunk Train cross the Noyo River in 2009 [Photo from Drew Jackisch published on WikiCommons]

Court proceedings in an eminent domain case between Mendocino Railway and a Willits-area property owner wrapped up last week, with Judge Jeanine Nadel planning to accept final briefs and issue a judgment next month.

Mendocino Railway, also known as the Skunk Train, is suing John Meyer to acquire a 20-acre undeveloped parcel he owns on Highway 20, just a few miles west of the Willits city center. The railway says it's authorized to take the property because its use of it would serve the most public benefit, by taking trucks off the road and transporting goods and passengers. The company's stated plan for the property is to grow the business by building an indoor maintenance shed and expanding its freight operations by transloading, which is exchanging freight between trucks and train cars.

But the defense argued that high-level company officials spent months corresponding about how to use Meyer's property as a campground, only creating a document outlining the current plan in late June of this year.

Robert Pinoli, the President and CEO of Mendocino Railway, testified for three and a half days under questioning from his own attorney, Glenn Block, and Meyer's attorney, Steve Johnson. He said the railway considered seven properties along Highway 20, including Meyer's, but that the others were all unsuitable for a variety of reasons.

Johnson relied heavily on an email thread between Pinoli and Mike Hart, the CEO of Sierra Railroad Company, which owns Mendocino Railway, about buying a property outside of Willits. The topics of freight and maintenance never came up, he said, citing several passages that extolled the sightseeing virtues of various parcels, and considered the benefits of running a campground. Pinoli replied that Hart is an "energetic entrepreneur" who was exploring an idea that Pinoli never planned to pursue. Mendocino Railway does not currently haul freight on a regular basis, but several companies have expressed a willingness to make use of the service if it is ever available.

The only train line that intersects with the Mendocino Railway is the North Coast Rail Authority, or NCRA line. This year, the debt-ridden NCRA was replaced by the Great Redwood Trail Agency, which has ambitious plans to build a hiking trail from the Mendocino-Sonoma County line to the Humboldt Bay. But NCRA still owns part of the track that Mendocino Railway uses at its depot in Willits, on East Commercial Street. If that line is officially abandoned, the Skunk Train will no longer be able to use the Willits depot.

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The Surface Transportation Board, the federal agency that regulates railroad lines, does not allow trains to use the NCRA track north of Willits for safety reasons. Pinoli insisted that with the appropriate repairs, it would be legal to use the tracks south of Willits, but the last time Mendocino Railway interchanged a freight train with another train was the day before Thanksgiving of 1998. Pinoli told Johnson that he does not know the last time a freight train left Mendocino County.

NCRA has filed a request with the Surface Transportation Board to abandon the line north of Willits, including the section in the depot, which is a key part of the infrastructure for Skunk Train maintenance and parking. The Surface Transportation Board has not yet acted on that request, but Pinoli told Nadel that if the federal agency rules that the line can be abandoned, Mendocino Railway would no longer be able to use its facility in Willits.

Trains are currently unable to travel between Willits and Fort Bragg, due to a tunnel collapse in 2015. The railway is trying to re-engineer the hillside and rebuild the tunnel, which is estimated to cost \$5.5 million. Pinoli recounted that the tunnel has been unusable multiple times: once in 1976, when an overly tall car went through and the sensor malfunctioned; another time twenty years later when a landslide affected the west portal; and again in 2005 due to hillside slumpage on the east portal. Pinoli noted that it took just a few months to get trains running again when a rock came through the tunnel ceiling in the spring of 2013. He blames contractor negligence for the 2015 incident that led to the current years-long closure.

At about 40 miles long, Mendocino Railway is a short-line railroad, which Pinoli argued is a vital element in the nation's infrastructure. While the Skunk Train mostly serves sightseeing and recreational opportunities with its short excursions and rail bikes, it is unusual among the narrow-gauge railroads built during the heyday of logging because its track is standard gauge. Pinoli believes this means it could connect to the national rail system and haul standard-sized freight cars.

As an example, he testified that in 2020, the railway hauled 120 cars full of steel and aggregate for a streambed restoration project with Trout Unlimited. He estimated it would have taken four times as many trucks to haul the material. During that project, he said "a mini version" of transloading was accomplished, when freight was transferred between trucks and train cars. No special facility was required for the transfer.

Pinoli also said the railway transported law enforcement during a manhunt, and that it regularly carries workers for other utilities like AT&E and PG&E. The train does not specialize in providing the legal definition of transportation, which is picking people up at one location and taking them to another, rather than offering a round-trip ride. But Pinoli said the train does offer commuter fares that are only available to people who live along the line, as well as their guests. And when the tunnel was open, he said the train had an agreement with the Mendocino Transportation Authority to offer commuter service to people traveling between Willits and Fort Bragg. Hikers occasionally ride out to a junction and walk back into town.

Pinoli argues vigorously that the Skunk Train is a public utility, which greatly improves its assertions of serving the public good. But last month, the California Public Utilities Commission wrote a letter to Hart, saying, "While Mendocino Railway is a Commission-regulated railroad, it is not a public utility within the meaning of the California Constitution, the California Public Utilities Code, and the Commission's orders." The letter goes on to say that in 1997, the Commission determined that California Western Railroad, the company operating the Skunk's excursion service at the time, "did not constitute a public utility to the extent it provides excursion rail service, which constituted 90% of its overall business." The CPUC regulates the safety of all rail operations in California, but the Commission's letter states that "Mendocino Railway is a regulated railroad but not a public utility...While some California railroads do constitute public utilities, "railroads" and "public utilities" are not synonymous under the Public Utilities Code."

Mendocino Railway shot back, arguing that the decision "is based on facts that have not existed for almost a quarter century," including that Mendocino Railway is no longer affiliated with California Western Railroad. The company's attorney also argued that as a railroad corporation, Mendocino Railway meets the definition of a common carrier, which qualifies it as a public utility.

Judge Nadel will accept final briefs in the Meyer case on October 7, with a focus on the issues of excursion versus transportation and freight, and plans for transloading.

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