

Exhibit C

Exhibit C

BEFORE THE  
SURFACE TRANSPORTATION BOARD

AB-1305 (Sub-No. 1)

GREAT REDWOOD TRAIL AGENCY  
- ADVERSE ABANDONMENT -  
MENDOCINO RAILWAY IN MENDOCINO COUNTY, CA

**SUPPLEMENTAL RECENT STATE COURT DECISION**

Great Redwood Trail Agency (“GRTA”) respectfully submits a recent Superior Court of California decision involving Mendocino Railway (“MR”) that is relevant to the matters at issue in this proceeding. The decision, *Mendocino Railway v. John Meyer et al*, Case No. SCUJ-CVED-2020-74939 (Apr. 19, 2023), is attached hereto.

As is usual procedure in an adverse abandonment proceeding, on February 28, 2023, GRTA requested that the Surface Transportation Board:

- (1) exempt it from requirements of certain statutory provisions whose application is not required to carry out the National Rail Policy, nor to protect shippers from abuse of market power; and
- (2) waive certain Board regulations whose application is not required in a proceeding in which a party is seeking adverse abandonment of a rail line.

MR replied on March 20. In its reply, MR made numerous statements regarding its provision of freight service on the rail line at issue. GRTA believes this decision will be helpful in clarifying some of the facts that are at issue in this proceeding.

In its reply, MR states that “[p]rior to the collapse of Tunnel No. 1, MR had full freight service on the Line and served several shippers.” MR Reply at 6. This state court decision finds otherwise. The court held that “[w]hen given the opportunity by the court, MR was unable to provide any documentary evidence of MR’s claim for the freight or passenger services it allegedly provided either through MR or its affiliates. The court therefore gives little weight to Pinoli’s [President and CEO of MR] testimony regarding the abundant array of services provided.” *Mendocino Railway* at 5. In fact, Pinoli testified that “90% of the railroad revenue comes from the excursion train activities. The other 10% of its revenue comes from leases and revenue. When questioned, Pinoli finally clarified that MR did not actually perform common carrier services between the time it purchased the assets of California Western Railroad in 2004 through 2022 when it took over operations from Sierra Northern Railway.” *Id.*

As a result, GRTA provides this decision in the interest of a complete and accurate record in this proceeding.

Respectfully submitted,

/s/ Daniel R. Elliott

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Attorney for Great Redwood Trail Agency

Dated: April 27, 2023

**Certificate of Service**

I certify that I have, on this 27th day of April 2023, served by the most expeditious manner copies of the foregoing document on all parties of record in this proceeding.

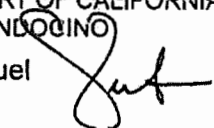
/s/ Daniel R Elliott  
Daniel R. Elliott

**FILED**

04/19/2023

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

Delgado, Samuel  
DEPUTY CLERK



**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MENDOCINO**

**MENDOCINO RAILWAY**

**Plaintiff,**

**v**

**JOHN MEYER; MARYELLEN SHEPPARD;  
REDWOOD EMPIRE TITLE COMPANY OF  
MENDOCINO COUNTY; SHEPPARD  
INVESTMENTS; MENDOCINO COUNTY  
TREASURER-TAX COLLECTOR; all other  
persons unknown claiming and interest in the  
property; and DOES 1 through 100 inclusive.**

**Defendants.**

**Case Nos.: SCUK-CVED-2020-74939**

Decision After Trial

Trial Dates: 8/23,24,24,29 and 11/10/22

This matter came on regularly for trial on August 23, 2022, and after a short delay concluded on 11/10/22. Plaintiff Mendocino Railway ("MR") was present through its President Robert Pinoli ("Pinoli") and represented by Glenn L. Block. Stephen Johnson appeared on behalf of John Meyer ("Meyer") who was also present. No other Defendant was required to appear. After trial, the parties were granted the opportunity to submit written closing briefs and reply briefs. The matter was submitted on February 8, 2022. In this case, Plaintiff seeks to acquire through eminent domain a 20-acre parcel owned by Meyer. The property is located west of the town of Willits and abuts Highway 20. It is known as 1401 West Highway 20 and Mendocino County Assessor Parcel Number 038-180-53. ("Property"). It is alleged by MR that it wants the property to construct and maintain a rail facility related to its ongoing and future freight and passenger rail operations.

**Relevant Facts**

Robert Pinoli, the President, and Chief Executive Officer of MR was the only witness who testified at trial. He testified that MR is a privately held corporation that owns and operates a railroad line commonly known as the "California Western Railroad" ("CWR") which is also most known as the "Skunk Train." In 2002, CWR filed a petition in Bankruptcy Court under Subchapter IV (Railroad Reorganization) of Chapter 11 of the Bankruptcy Code. Sierra Railroad Company (SRC), a holding company without carrier status was the successful bidder for the assets of CWR. SRC then formed Mendocino Railway, also a non-carrier, as a holding company to acquire the assets of CWR. The Articles of Incorporation for MR do not reflect the intent to operate as a

railroad. Rather, the Articles simply state that *"The purpose of the corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California..."*:

According to Pinoli, MR was a holding company and a "non-carrier" intending to initially operate CWR with the help of its affiliated entities, Sierra Northern Railway (a class III carrier) (SNR), Midland Railroad Enterprises Corporation (a railroad construction and track maintenance company) (MREC) and Sierra Entertainment (a tourism entertainment and passenger operations company) (SE), all subsidiaries of SRC. MR certified that its projected revenues would not exceed revenue regulations that would render a designation other than a Class III rail carrier. A class III carrier is one that is a small or mid-sized railroad company that operates over a relatively short distance. (See Surface Transportation Board Notice of Exemption. (EX21). There was no designation of MR's status by the STB offered by MR. MR acquired CWR in 2004 when it purchased its assets through bankruptcy and operated it as a non-carrier.

The railroad line is approximately 40 miles in length and runs from its main station in the City of Fort Bragg to its eastern depot in the City of Willits. According to Pinoli the Fort Bragg Station is developed as a rail facility, with spur and siding tracks, a depot building, locomotives, passenger and freight cars, an engine house and storage facilities for its equipment. Presently, MR contends that it does not have adequate maintenance, repair and freight rail facilities to serve its ongoing operations at the Willits end of the line. MR contends that the acquisition of the Meyer property which is on the rail line will allow MR to fully operate its freight rail services with storage yards, maintenance, and repair shops, transload facilities, rail car storage capacity and a passenger depot.

In 2015, there was a landslide in "Tunnel No.1" that has prevented the trains from running the full length of the line since that date. No transportation between Fort Bragg and Willits has occurred since the tunnel was closed. It will take considerable funds to repair the tunnel so that it can function and there is no specified time frame for its completion.

MR concedes that currently its main function is the operation of a popular excursion train known as the Skunk Train for sightseeing purposes on the line through the redwoods. At present, the Skunk Train can leave the Willits station and travel west approximately 7.5 miles before turning around and traveling back to Willits. From Ft. Bragg, due to the tunnel collapse, the train can only travel east for 3.5 miles before it turns around and returns to Ft. Bragg. MR also operates motorized train bikes, and trail walks along the tracks. The excursion service generates ninety percent of MR's income. The other ten percent of MR's income is from leases and easement revenue.

In 1998, the California Public Utilities Commission made findings regarding MR's predecessor, CWRR regarding its status as a public entity. <sup>1</sup> The CPUC found that "[I]n providing its excursion service, CWRR is not functioning as a public utility, ...we conclude that CWRR's excursion service should not be regulated by

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<sup>1</sup> The court takes judicial notice of the decision pursuant to Evidence Code Section 451(a)

the CPUC." (1988 Ca. PUC LEXIS 189 (1998). The CPUC through its counsel in 2022, concluded that MR is subject to inspections of railroad property as part of the Commission's obligation to ensure the safe operation of all railroads in California. (Pub. Util. Code §309.7) MR is designated as a Class III Commission regulated railroad. The Class III designation relates to the safety regulations and does not mean that it advances MR's status to public entity. MR does not dispute the 1998 findings and agrees that the term "transportation" for purposes of the public utility analysis excludes excursion services. Instead, according to Pinoli, MR is a public utility because it is a common carrier.

## **Analysis**

### **1. Public Utility Status**

Article 1, Section 19 of the California Constitution and CCP§1240.010 specify that private property can be taken by eminent domain for public use. The power of eminent domain by a public entity or utility is balanced with its constitutional obligation to pay "just compensation" to the owner of the property interest being acquired. This power is clearly defined and limited to certain circumstances by statute. The appropriate entity's right to take property must meet both constitutional and statutory limitations, to ensure the property owner of his or her right to be justly compensated for such taking. "The power of eminent domain may be exercised to acquire property for a particular use only by a person authorized by statute to exercise the power of eminent domain to acquire such property for that use." (CCP§1240.020.)

MR claims that it is entitled to avail itself of the eminent domain statute because it is a railroad corporation, a common carrier and through its activities it qualifies as a public utility.

Eminent Domain proceedings in the utility sector are permitted so long as the utility is a corporation or person that is a public entity. Public Utilities Code §610. A railroad corporation may condemn any property necessary for the construction and maintenance of its railroad. Public Utility Code §611. A railroad corporation includes every corporation or person owning, controlling, operating, or managing any railroad for compensation with this state. (See §230). PUC §229 provides that a "railroad" includes every commercial, interurban, and other railway.... owned, controlled, operated, or managed for public use in the transportation of persons or property." By definition a "common carrier" means every person and corporation providing transportation for compensation to or for the public or any portion thereof, including every railroad corporation providing transportation for compensation. (See §211). The central issue in this case is whether MR can be deemed a public utility for purposes of this eminent domain proceeding.

As stated above, MR operates a popular excursion train for sightseeing purposes on the line through the redwoods. MR also operates motorized train bikes and trail walks along its tract. Courts have defined and the parties do not dispute that "transportation" in the public utility context means "the taking up of persons or property at some point and putting them down at another." *City of St. Helena v Public Utilities Com. (2004) 119 Cal. App. 4<sup>th</sup> 793,902 (Quoting Golden Gate Scenic S.S. Lines, Inc. v Public Utilities Com. (1962) 57 Cal. 2d*

373). Round trip excursions do not qualify as “transportation” under Section 211 of the Public Utilities Code. (*City of St. Helena, supra*). As stated above, MR does not dispute the 1998 findings of the CPUC and agrees that the term “transportation” for purposes of the public utility analysis excludes excursion services.

Counsel for MR argues that “transportation” is not the only qualifier, but that the court should also interpret the term “provide” as it is stated Public Utilities Code §211. MR contends that to “provide” a service is to offer it by making the service available. In other words, MR should not be penalized simply because it is not transporting freight or passengers, it is the availability of the services that matters. MR argues that the “volume of service actually accepted by the public or a portion thereof is not relevant to whether the provider is a common carrier or any other kind of public utility.” Addressing the participation of the affiliate entities, MR alleges a further distinction between providing the service and performance of the service. MR argues that even though it was not a common carrier it made the service available and its affiliate entities which may have been recognized as common carriers performed the service until at least 2022 when MR took over the operations of SNR. Assuming the court accepts this distinction, the testimony demonstrates otherwise.

A common carrier is a private or public utility that transports goods or people from one place to another for a fee. Unlike a private carrier, a public utility carrier makes no distinction in its customers as it is available to anyone willing to pay its fee. Pinoli testified that in addition to the excursion service, MR operates commuter passenger and freight services between Ft. Bragg and Willits and has been doing so since it purchased CWR in 2004. This testimony was later amended by Pinoli to reflect it was the affiliate entities SNR, MREC and Sierra Entertainment that performed the services through its own employees. Except for the excursion services, freight and passenger were minimal. This clarification came after Meyer discovered a Decision of the Railroad Retirement Act (45 U.S.C. §231 et seq.) and the Railroad Unemployment Insurance Act (45 U.S.C. §351 et seq.). MR had requested the Board to re-consider whether it, along with Sierra Entertainment, would be required to pay into the respective funds when they were not employers as defined under the act. (CWRR had been terminated as an employer effective September 30, 2003.) MR was merely a holding company and had no employees and Sierra Entertainment only provided excursion services. The Board found that MR was not a carrier performing freight and passenger services between the time of its acquisition in 2004 when it took over operations from Sierra Northern Railway in 2022 and to date. The Board further advised that their opinion could change upon proof of MR’s carrier status. Pinoli agreed with this finding.

Pinoli clearly testified that 90% of the railroad revenue comes from the excursion train activities. The other 10% of its revenue comes from leases and revenue. When questioned, Pinoli finally clarified that MR did not actually perform common carrier services between the time it purchased the assets of California Western Railroad in 2004 through 2022 when it took over operations from Sierra Northern Railway. Those services were allegedly performed by the affiliate companies. No evidence was submitted to support this allegation. MR did not offer evidence in the form of contracts with the affiliated entities, operating agreements, ledgers, receipts, payments etc. The court can infer that such agreements would be appropriate to address at least compensation for services, liability, and indemnification, if in fact, the services were provided. MR is the



Plaintiff in this action and has the burden of proof to establish its legal status as a public utility. There is no dispute that the only evidence of railroad income during the relevant time was and is earned from the excursion services only. MR concedes that the excursion service does not fall under the category of "transportation" and does not qualify MR as a public utility.

Despite agreeing with the findings made by the Retirement Board, Pinoli testified that MR as the successor to CWR is doing today what CWR has been doing for 137 years of existence. Pinoli testified that besides hauling approximately 100 loads of aggregate and steel for two environmental restoration projects along the line, it hauls a very limited amount of freight at present.<sup>2</sup> He offered into evidence various letters from local businesses that have expressed an interest in obtaining freight services once they become available. Pinoli also acknowledged that any freight service from Ft. Bragg to Willits cannot happen until "Tunnel No. 1" is repaired. There was no specified time frame for completion of the repairs. In addition, it was not clear as to whether MR had the available funds to complete the necessary repairs anytime soon. The letters were purposely solicited by MR in connection with a grant application to obtain funds from the federal government to improve its line for freight services. The letters are no more than letters of a possible interest in services should they become available. The court gives little weight to the letters of support.

Pinoli also testified that over the years passenger service was provided to residents of the various cabins along the route between Fort Bragg and Willits. Despite the court's comments that Pinoli appeared to be a credible and knowledgeable witness, the best evidence would have been written documentation in the form of ticket receipts, ledgers evidencing income, contracts with Mendocino Transit Authority, and contracts for freight transportation. When given the opportunity by the court, MR was unable to provide any documentary evidence of MR's claim for the freight or passenger services it allegedly provided either through MR or its affiliates. The court therefore gives little weight to Pinoli's testimony regarding the abundant array of services provided. (CACI 203.) The court ultimately was not persuaded by Pinoli's testimony alone.

Pinoli testified that when MR assumed control of SNR services in 2022, it planned to expand freight and passenger services with equipment and new business opportunities. While the efforts were noted, the intention to provide services in the future is not sufficient to establish the railway as a public utility. (See *City of St. Helena v. Public Utilities Commission* (2004) 119 Cal. App. 4<sup>th</sup> 793) Through its enhanced efforts MR may be able to obtain public utility status in the future but court is not convinced that such status is appropriate at this time based on the evidence provided by MR at trial.

## 2. Eminent Domain

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<sup>2</sup> No documents, including but not limited to contracts, invoices, receipts were produced regarding this alleged "freight transportation" with Trout Unlimited. The oral testimony reflected a contract with Trout Unlimited and all funding was from state or federal funds. The work appeared to this court to be a combined project to benefit the environment including the rail line.

Assuming for purposes of this opinion that MR has public utility status, it still needs to meet the statutory requirements of the eminent domain law. As stated above, a railroad company is entitled to condemn property that is necessary for the construction and maintenance of its railroad. (See Public Util. Code §611). “The power of eminent domain may be exercised to acquire property for a proposed project only if all of the following are established: (a) the public interest and necessity require the project.; (b) the project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury; (c) the property sought to be acquired is necessary for the project.” CCP§1240.30. The power to take property under eminent domain is not unlimited. Such power “[M]ay be exercised to acquire property only for public use.” (CCP §1240.010; *City of Oakland v. Oakland Raiders* (1982) 32 Cal. 3d 60,69.) “The statutory authorization to utilize the power of eminent domain for a given ‘use, purpose, object, or function’ constitutes a legislative declaration that the exercise is a ‘public use.’” (*City of Oakland*.)

Acquisition of the 20-acre site would enhance the operations of MR’s excursion service that admittedly does not fall within the definition of transportation. MR cannot exercise the power of eminent domain to carry on its private business activities. In *City & County of San Francisco v. Ross* (1955) 44 Cal 2d 52,54, the City sought to acquire by eminent domain a site that would subsequently be leased to private individuals who were planning to build and operate a parking structure and other facilities including private commercial retail. The court stated, “[w]hile it might be argued in the present case that the percentage area to be used for other commercial activity is small enough to be merely an incident to the parking activity and not in itself enough to invalidate the whole plan, nevertheless it aids in characterizing the whole operation as a private one for private gain.” “The Constitution does not contemplate that the exercise of the power of eminent domain shall secure to private activities the means to carry on a private business whose primary objective and purpose is private gain and not public need.” (*Council of San Benito County Governments v. Hollister Inn, Inc.* (2012) 209 Cal. App. 4<sup>th</sup> 473,494 (citations omitted).) As stated previously, the income generated from the Skunk Train excursion service is 90% of MR’s revenue. The court can easily find that MR’s primary objective is to obtain the property to serve the excursion service. No explanation was offered to distinguish the private operations from the “proposed” freight and passenger enhancements.


Notwithstanding the above, MR’s proposed use of the property conflicts with the statutory requirements of public use and least private injury. At trial, approximately seven months of internal MR emails were admitted into evidence. Pinoli conceded the emails revealed that the original conception of the MR project reflected a train station, campground, and RV park. He also testified that his boss was known to brainstorm ideas and concepts for the acquisition and use of property acquired by MR, but those ideas were not always fully vetted. The only conceptual drawing for the Meyer property prepared by MR at the time it filed its complaint however, depicted a station/store, campground, and long-term RV rental park. It wasn’t until June 2022, approximately 18 months after the eminent domain action was filed that a preliminary site plan was prepared. The site plan offered at trial is one that generally depicts maintenance/repair facilities, a yard, vehicle parking, a rail transloading facility, dept offices, a platform and a natural habitat preserve. The site plan is considerably different from the original conceptual drawing.

Pinoli admitted that the use of the property for a private campground was not consistent with the operation of a railroad and could not be the basis for eminent domain. Instead, he said that the current purpose is to develop the necessary maintenance and depot facilities on the Willits side of the line and to create a transload facility. The transload facility would not be operational or even necessary until "Tunnel No. 1" was usable. In addition to the original drawing utilized at the time the case was filed, the site drawing was the only evidence offered to address the use of the property. There was no evidence of an actual plan for development or funding for the project. "[A]n adequate project description is essential to the three findings of necessity that are required to be made in all condemnation cases. Only by ascertaining what the project is can the governing body make those findings." (*City of Stockton v. Marina Towers LLC (2009) 171 Cal. App. 4th 93, 113.*) While the plan in the City of Stockton case was severely lacking in detail, which arguably differs from the instant case, the principle that a property owner is entitled to know what is being planned for the land remains the same. The court questions the credibility of the late hour evidence of a site drawing presented in the instant case. Particularly so, when a transload facility was added with MR's knowledge that freight transportation could not happen until "Tunnel No. 1" was available. No evidence was presented to establish whether or when the tunnel would be available for use.

The credibility of the testimony is also questionable when the initial plan prepared at the time the complaint was filed included a campground. Following the initial plan, in preparation for trial, MR develops a new site plan that eliminates the initial concept. This was done presumably to satisfy the requirements of the statute. Also lacking is an analysis from MR as to the impact the maintenance and transload facility would have on the residents (including Meyer) living directly adjacent to the proposed 20 acre site. The court finds that Pinoli's testimony that there would be no real impact on the residents is simply insufficient. Without such information the court is unable to determine if the project would impose a greater injury to the residents. The court finds that MR did not meet its burden to establish that the current site plan supports a project that is planned or located in the matter that will be most compatible with the greatest public good and least private injury which is required by statute and case law. (*See CCP §1240.030 and SFPP v. Burlington Northern & Santa Fe Ry. Co. (2004) 121 Cal. App. 4th 452.*)

The court concludes that MR has failed to meet its burden of establishing that its attempt to acquire Meyer's property through eminent domain is supported by constitutional and statutory powers. The court finds in favor of Meyer.

Dated: 4/19/2023

  
\_\_\_\_\_  
Hon. Jeanine B. Nadel  
Judge of the Superior Court

**Superior Court of California, County of Mendocino  
PROOF OF SERVICE**

Case: **SCUK-CVED-2020-74939**      **MENDOCINO RAILWAY VS. MEYER, JOHN**

Document Served:      **Decision After Trial**

I declare that I am employed by the Superior Court of California, in and for the County of Mendocino; I am over the age of eighteen years and not a party to the within action. My business address is:

- Mendocino County Courthouse, 100 North State Street, Ukiah, CA 95482
- Ten Mile Branch, 700 South Franklin Street, Fort Bragg, CA 95437

I am familiar with the Superior Court of Mendocino County's practice whereby each document is placed in the Attorneys' boxes, located in Room 107 of the Mendocino County Courthouse or at the Ten Mile Branch, transmitted by fax or e-mail, and/or placed in an envelope that is sealed with appropriate postage is placed thereon and placed in the appropriate mail receptacle which is deposited in a U.S. mailbox at or before the close of the business day.

On the date of the declaration, I served copies of the attached document(s) on the below listed party(s) by placing or transmitting a true copy thereof to the party(s) in the manner indicated below.

Party Served	Ukiah US Mail	Ten Mile US Mail	Ukiah Attorney Box	Ten Mile Attorney Box	Inter Office Mail	Fax	E-mail
Gleen Block Christopher G. Washington Paul Beard II glb@caledlaw.com cgw@caledlaw.com paul.beard@sigherbroyles.com	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Stephen Johnson steve@mkjlex.com	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Mayellen Sheppard sheppard@mcn.org	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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Krista MacNevin Jee kmj@jones-mayer.com	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct and that this declaration was executed at:

Ukiah, California

Fort Bragg, California

Date: 04/19/2023

KIM TURNER, Clerk of the Court

By: Samuel Delgado, Deputy Clerk



# BAKER & MILLER PLLC

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May 1, 2023

## VIA E-FILING

Cynthia T. Brown  
Chief of the Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, SW  
Washington DC 20423-0001

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

Dear Ms. Brown:

On April 27, 2023, Counsel for the Great Redwood Trail Agency (“GRTA”) submitted a decision of the Superior Court of California that was issued in Mendocino Railway v. John Meyer et al., Case No. SCUK-CVED-2020-74939 (“Meyer Decision”). The Meyer Decision, which is not even a final decision under California law,<sup>1</sup> involves the effort by Mendocino Railway (“MR”) to exercise eminent domain rights under California law to acquire property needed for the development of a transload yard. MR seeks to develop the transload yard precisely for the purpose of providing freight service and to conduct its common carrier obligations.

It is not clear what point, if any, GRTA was trying to make by submitting the preliminary Meyer Decision in this proceeding. If the point is that MR did not itself perform any of the common carrier services it provided on its line from 2004 until 2022, this is technically true: MR did not itself perform such services during that period because those services were performed by MR’s agent and affiliate: Sierra Northern Railway (“SNR”), a common carrier and MR’s sister

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<sup>1</sup> Under California law, the Meyer Decision is not the actual official decision. The court must still issue a “Statement of Decision.” Alternatively, if the decision is considered the proposed official “Statement of Decision,” then MR has a right to object to that proposed “Statement of Decision.” On April 27, 2023, MR did exactly that, filing its “Request For Statement Of Decision Or, In The Alternative, Plaintiff’s Objections To Proposed Statement Of Decision.” The Court will then enter its judgement. See Exhibit 1.

## BAKER & MILLER PLLC

May 1, 2023

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company, both being wholly owned by Sierra Railroad Company. Both Judge Nadel and GRTA misunderstand this arrangement. During this period, MR still held the common carrier obligation, merely performing that obligation through its agent SNR. However, beginning January 1, 2022, MR terminated that operating arrangement and not only began holding itself out as the performer of the common carrier services over its line, but itself performing those services.

Since the collapse of its tunnel, MR has invested approximately \$2 million on work needed to reopen its tunnel. These efforts have been protracted because of the need to stabilize the hillside through which the tunnel runs, in compliance with applicable environmental regulations. MR has also actively sought loans and grants to conduct a full 100-year refurbishment of its tunnel. To hit the ground running when its tunnel is repaired, MR has begun a marketing campaign to develop traffic between Ft. Bragg and Willits. MR also sought to acquire land for the development of a transload facility, an action that led to the Meyer Decision. Indeed, due to MR's having begun to perform active common carrier services, MR on April 27, 2022, informed the Railroad Retirement Board ("RRB") that it had begun doing so and requested the RRB to reconsider its previous decision finding MR to not be a "covered employer" under the Railroad Retirement Act.<sup>2</sup>

If the point of GRTA's letter was to bolster the idea that the adverse abandonment should eventually be granted by implying that MR is not performing common carrier service and has no desire to do so, then the Meyer Decision and the above MR actions have precisely the opposite effect. The Meyer Decision notes that MR held itself out to provide freight service, that SNR performed this service on MR's behalf prior to 2022 (when MR took over those operations from SNR), and that MR seeks to develop a transload facility to "fully operate its freight rail services." Meyer Decision, pp. 2 and 4. The Meyer Decision is thus *prima facie* evidence that MR is actively seeking to develop a railroad transload service for the precise purpose of not just providing and performing common carrier service to shippers, but for the purpose of expanding its provision of those services. The fact that MR, as a common carrier, did not itself *perform* these common carrier service prior to 2022, doing so through its sister company and agent, SNR, says nothing about MR's current and future efforts to hold itself out as performing common carrier services and to develop rail transload services. Nor does it say anything about MR's own provision of common carrier services since January 1, 2022. And of course, the primary focus of any adverse abandonment proceeding is whether rail service is needed by the shippers for existing and future service.<sup>3</sup>

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<sup>2</sup> See Exhibit 2. Counsel for MR has been informed that the RRB has voted to hold that MR is now a covered employer and a decision is to be issued shortly.

<sup>3</sup> New York Cross Harbor R.R. v. Surface Transp. Bd., 374 F.3d 1177, 2004 U.S. App. LEXIS 14304 (D.C. Cir., July 13, 2004). When and if this proceeding reaches the merits stage, MR looks forward to disproving any assertion that the public convenience and necessity require the removal of MR's common carrier obligation.

**BAKER & MILLER PLLC**

May 1, 2023

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Finally, GRTA only presents a partial record. As noted *supra*, n. 1, MR has filed its objections to the preliminary findings noted in the decision. The Meyer Decision fundamentally misapplies both the facts and the law. MR fully intends to seek a new trial, and if necessary, plans to appeal. Indeed, precedent is clear that while eminent domain remains the purview of the state courts, the application of that law cannot interfere with a railroad's ability to perform and undertake its common carrier obligations.<sup>4</sup> The Meyer Decision erroneously fails to recognize MR as a common carrier in contradiction to both the STB decision licensing MR to be a common carrier<sup>5</sup> and in contrast to the recent RRB vote. To the extent that decision prevents MR from providing and performing its common carrier duties and developing a transload service, it is preempted. The actions of a local court should not stand in the way of the STB's exclusive jurisdiction over MR's right and obligation to provide common carrier service. Nor should it stand in the way of MR's effort to develop a transload facility for the benefit of its local community.

Sincerely,

*/s/ William A. Mullins*

William A. Mullins  
Attorney for Mendocino Railway

cc: Parties of Record

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<sup>4</sup> Dakota, Minnesota, and Eastern Railroad Corp. v. South Dakota, 236 F. Supp. 2d 989 (D.S.D. 2002), affirmed in part and modified in part, 362 F.3d 512 (8th Cir. 2002).

<sup>5</sup> Mendocino Railway--Acquisition Exemption--Assets of The California Western Railroad, FD 34465 (STB served Apr. 9, 2004).

**BAKER & MILLER PLLC**

May 1, 2023

Page 4

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**AB-1305 (Sub-No. 1)**

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**GREAT REDWOOD TRAIL AGENCY  
– ADVERSE ABANDONMENT –  
MENDOCINO RAILWAY IN MENDOCINO COUNTY, CALIFORNIA**

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**EXHIBIT 1**

---



1 Glenn L. Block (SB#208017)  
2 Christopher G. Washington (SB#307804)  
3 CALIFORNIA EMINENT DOMAIN LAW GROUP, APC  
4 3429 Ocean View Blvd., Suite L  
5 Glendale, CA 91208  
6 Telephone: (818) 957-0477  
7 Facsimile: (818) 957-3477

8 Paul J. Beard II (SB#210563)  
9 FISHERBROYLES, LLP  
10 4470 W. Sunset Blvd., Suite 93165  
11 Los Angeles, CA 90027  
12 Telephone: 818-216-3988

13 Attorneys for Plaintiff MENDOCINO RAILWAY

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

12 MENDOCINO RAILWAY,  
13  
14 Plaintiff,

15 v.

16 JOHN MEYER; REDWOOD EMPIRE  
17 TITLE COMPANY OF MENDOCINO  
18 COUNTY; SHEPPARD INVESTMENTS;  
19 MARYELLEN SHEPPARD;  
20 MENDOCINO COUNTY TREASURER-  
21 TAX COLLECTOR; All other persons  
22 unknown claiming an interest in the  
23 property; and DOES 1 through 100,  
24 inclusive,

25 Defendants.

Case No. SCUK-CVED-2020-74939

[APN 038-180-53]

(Assigned to Hon. Jeanine B. Nadel)

**PLAINTIFF MENDOCINO  
RAILWAY'S REQUEST FOR  
STATEMENT OF DECISION OR, IN  
THE ALTERNATIVE, PLAINTIFF'S  
OBJECTIONS TO PROPOSED  
STATEMENT OF DECISION**

Cal. Code Civ. Proc. §632 and §634

Cal. Rules of Court, Rule 3.1590

1 It is unclear whether the "Decision After Trial" issued by the Court on April 19,  
2 2023 constitutes the Court's tentative decision or the Court's proposed Statement of  
3 Decision. The Decision After Trial does not explain the factual and legal bases for each  
4 of the principal controverted issues at trial.

5 If the Decision After Trial constitutes the Court's tentative decision, then  
6 pursuant to Cal. Code Civ. Proc. §632 and Cal. Rules of Court, Rule 3.1590(d), Plaintiff  
7 Mendocino Railway hereby requests that the Court issue a Statement of Decision  
8 explaining the factual and legal basis for its decision as to each of the principal  
9 controverted issues at trial as set forth below in Part I. Alternatively, if the Decision  
10 After Trial constitutes a proposed Statement of Decision, Mendocino Railway objects on  
11 the grounds set forth in more detail in Part II. Cal. Code Civ. Proc. §634; Cal. Rules of  
12 Court, Rule 3.1590(g).

13 **I. MENDOCINO RAILWAYS REQUEST FOR STATEMENT OF DECISION**

14 If the Decision After Trial constitutes the Court's tentative decision, Mendocino  
15 Railway hereby requests the Court issue a Statement of Decision. Cal. Code Civ. Proc.  
16 §632 and Cal. Rules of Court, Rule 3.1590(d). The principal controverted issues at trial  
17 to be addressed in the Court's Statement of Decision include:

18 1. Whether Mendocino Railway is a common carrier public utility railroad  
19 pursuant to Cal. Pub. Util. Code §§211, 216, 229 and 230, et seq. (such that  
20 Plaintiff is entitled to exercise eminent domain to acquire private property  
21 for its railroad per Cal. Pub. Util. Code §611), consistent with the United  
22 States Surface Transportation Board's ("STB's") determination that  
23 Mendocino Railway is a common carrier railroad pursuant to its April 2, 2004  
24 Notice of Acquisition Exemption (STB Finance Docket No. 34465), and, more  
25 specifically:

26 a. Whether, since acquiring assets of the California Western  
27 Railroad ("CWR") in 2004, Mendocino Railway has been a  
28 California railroad corporation because it owns, controls,

operates, and/or manages a railroad (i.e., the CWR);

- b. Whether Mendocino Railway has dedicated its railroad and property to providing, or holding itself out to provide, common carrier freight and non-excursion passenger transportation services to the public or any portion thereof for compensation (e.g., by publishing freight rail and passenger rail tariffs, providing and offering common carrier rail transportation services for compensation independently and in conjunction with Sierra Northern Railway and other related entities);
- c. Whether Mendocino Railway (including its predecessors who owned and operated the same line) historically provided freight transportation for compensation to or for the public or any portion thereof for compensation, and whether Mendocino Railway continues to provide such service to the present day and intends to do so in the future
- d. Whether Mendocino Railway (including its predecessors) historically provided non-excursion passenger transportation for compensation to or for the public or any portion thereof, and whether Mendocino Railway continues to provide such service to the present day and intends to do so in the future.
- e. Whether the STB has licensed Mendocino Railway to be a common carrier railroad subject to the exclusive jurisdiction of the STB under 49 U.S.C. §10501, et. seq. and whose common carrier obligation cannot be extinguished without STB authority;
- f. Whether the California Public Utilities Commission recognizes Mendocino Railway as a California public utility, and has regulated and inspected the railroad as such up through the present.

1           2. Whether Plaintiff Mendocino Railway established by a preponderance of the  
2 evidence that:

3           a. Mendocino Railway's rail project ("Project") is adequately defined and  
4 described in the Complaint per Cal. Code Civ. Proc. §1250.310. (As  
5 described in the Complaint and reflected in Plaintiff Mendocino  
6 Railway's preliminary conceptual site plan, the Project for which  
7 Mendocino Railway seeks to acquire Mr. Meyer's property consists of  
8 construction and maintenance of rail facilities related to Mendocino  
9 Railway's ongoing and future freight and passenger rail operations and  
10 all uses necessary and convenient thereto, including a passenger depot,  
11 maintenance and repair shops (for maintenance of way and  
12 maintenance of equipment), storage tracks, laydown yard and transload  
13 facilities, and related improvements);

14           b. The public interest and necessity require Mendocino Railway's Project,  
15 such that the Project identified and described in the Complaint is  
16 necessary for the construction and maintenance of its railroad for its  
17 ongoing and future rail operations per Cal. Pub. Util. Code §611 and Cal.  
18 Code Civ. Proc. §1240.010, §1240.030(a) and Cal. Code Civ. Proc.  
19 §1240.220 because:

20           i. Mendocino Railway lacks adequate maintenance, repair, and  
21 freight facilities at the Willits end of the line sufficient to serve  
22 its ongoing and future common carrier rail operations;

23           ii. These physical constraints impair and limit Mendocino  
24 Railway's ability to fully and efficiently operate, maintain, and  
25 repair its railroad, locomotives, equipment, and rail cars at the  
26 Willits end of its line, both now and in the future; and,

27           iii. Various local businesses have requested, and expressed interest  
28 in obtaining, freight rail service from Mendocino Railway

1 between Willits and Fort Bragg, including among others North  
2 Coast Brewing Company, Geo Aggregates, Redwood Coast Fuels  
3 (and other natural gas companies), and Lyme Timber (and other  
4 timber companies).

5 c. Mendocino Railway's Project is planned and located in the manner  
6 consistent with the greatest public good and least private injury (i.e.,  
7 there are no other alternative potential sites for the Project that would  
8 achieve equal or greater public good; or, if the Court finds that such an  
9 alternative site exists, such alternative site would not achieve lesser  
10 private injury, per Cal. Code Civ. Proc. §1240.030(b)); and

11 d. Mr. Meyer's property is necessary for Mendocino Railway's Project (i.e.,  
12 acquisition of Mr. Meyer's property is suitable and desirable for the  
13 construction and use of Mendocino Railway's Project per Cal. Code Civ.  
14 Proc. §1240.030(c)).

15 **II. MENDOCINO RAILWAY'S OBJECTIONS TO PROPOSED STATEMENT**  
16 **OF DECISION**

17 Alternatively, if the Court's April 19, 2023 Decision After Trial constitutes the  
18 Court's *proposed* Statement of Decision, such Decision After Trial omitted and/or is  
19 ambiguous as to each of the principal controverted issues identified and described above  
20 and also appears to include misstatements of the law and facts. Accordingly, Plaintiff  
21 Mendocino Railway hereby objects to said proposed Statement of Decision and requests  
22 that (i) the Court explain the factual and legal basis for the Court's decision as to each of  
23 the principal controverted issues at trial identified and described in the foregoing Section  
24 I, and (ii) resolve the following apparent misstatements of law and facts. Cal. Code Civ.  
25 Proc. §634; Cal. Rules of Court, Rule 3.1590(g).

26 Mendocino Railway objects to the Decision After Trial on the grounds it contains  
27 the following misstatements of the law and facts:  
28

- 1 a. The Decision fails to recognize that Mendocino Railway is (i) a common  
2 carrier railroad licensed by the STB when it approved Mendocino Railway's  
3 acquisition of certain of the assets of the former California Western Railroad  
4 ("CWR") per the STB's April 2, 2004 Notice of Acquisition Exemption (STB  
5 Finance Docket No. 34465; Trial Exhibit 21),
- 6 b. The Decision fails to recognize that Mendocino Railway is subject to the  
7 exclusive jurisdiction of the STB, under 49 U.S.C. §10501, *et. seq.*, which  
8 protects the railroad's right to develop transload facilities in furtherance of  
9 interstate commerce;
- 10 c. The Decision fails to recognize that, when the STB licensed Mendocino  
11 Railway as a common carrier railroad, it acknowledged that Sierra Northern  
12 Railroad, as Mendocino Railway's agent, would be performing common  
13 carrier railroad transportation services on Mendocino Railway's behalf  
14 (Trial Exhibits 20 & 21).
- 15 d. The Decision fails to recognize that the STB's exclusive jurisdiction in  
16 conferring "common carrier railroad" status on Mendocino Railway when  
17 Mendocino Railway acquired the assets of the CWR automatically rendered  
18 Mendocino Railway a public utility railroad pursuant to Cal. Pub. Util.  
19 Code §§211, 216, 229 and 230, et seq. (such that Plaintiff is entitled to  
20 exercise eminent domain to acquire private property for its railroad per Cal.  
21 Pub. Util. Code §611); and,
- 22 e. The Decision fails to recognize that Mendocino Railway's "common carrier  
23 railroad" status is subject to the exclusive jurisdiction of the STB and  
24 therefore preempts any state or local law, including California eminent  
25 domain law, to the extent that law is construed or applied to prevent  
26 Mendocino Railway from undertaking its common carrier duties and rights,  
27 including the right to condemn private property for railroad use.
- 28

1 Mendocino Railway hereby requests a hearing on its objections pursuant to Cal.  
2 Rules of Court, Rule 3.1590(k).

3  
4 Dated: April 27, 2023

CALIFORNIA EMINENT DOMAIN LAW GROUP,  
a Professional Corporation

5  
6 By  \_\_\_\_\_  
7 Glenn L. Block  
8 Attorneys for Plaintiff MENDOCINO RAILWAY

**PROOF OF SERVICE**

Mendocino Railway v. John Meyer, et al.  
Mendocino Superior Court Case No.: SCUK-CVED-20-74939

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 3429 Ocean View Boulevard, Suite L, Glendale, CA 91208. On April 27, 2023, I served the within document(s):

**PLAINTIFF MENDOCINO RAILWAY'S REQUEST FOR STATEMENT OF DECISION; ALTERNATIVELY, PLAINTIFF'S OBJECTION TO PROPOSED STATEMENT OF DECISION**

- ELECTRONIC MAIL:** By transmitting via e-mail the document listed above to the e-mail address set forth below.
- BY MAIL:** By placing a true copy of the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Glendale, California addressed as set forth in the attached service list
- OVERNIGHT DELIVERY:** By overnight delivery, I placed such document(s) listed above in a sealed envelope, for deposit in the designated box or other facility regularly maintained by United Parcel Service for overnight delivery and caused such envelope to be delivered to the office of the addressee via overnight delivery pursuant to C.C.P. §1013(c), with delivery fees fully prepaid or provided for.
- PERSONAL SERVICE:** By personally delivering the document(s) listed above to the person(s) listed below at the address indicated.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on April 27, 2023, in Glendale, California.

  
Debi Carbon



**SERVICE LIST**

Mendocino Railway v. John Meyer, et al.  
Mendocino Superior Court Case No.: SCUK-CVED-20-74939

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Attorneys for Defendant Mendocino  
County Treasurer-Tax Collector

**BAKER & MILLER PLLC**

May 1, 2023

Page 5

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**AB-1305 (Sub-No. 1)**

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**GREAT REDWOOD TRAIL AGENCY  
- ADVERSE ABANDONMENT -  
MENDOCINO RAILWAY IN MENDOCINO COUNTY, CALIFORNIA**

---

**EXHIBIT 2**

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# BAKER & MILLER PLLC

ATTORNEYS and COUNSELLORS

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WASHINGTON, DC 20037

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Crystal M. Zorbaugh

(202) 663-7831 (Direct Dial)

E-Mail: [czorbaugh@bakerandmiller.com](mailto:czorbaugh@bakerandmiller.com)

April 27, 2022

## VIA CERTIFIED MAIL AND E-MAIL

Shirley C. Moore, Coverage Specialist  
Railroad Retirement Board  
844 North Rush Street  
Chicago, IL 60611-2092  
E-mail: [Shirley.Moore@rrb.gov](mailto:Shirley.Moore@rrb.gov)

Re: Mendocino Railway

Dear Ms. Moore:

Mendocino Railway is writing to request that the Railroad Retirement Board (“RRB”) revisit a prior coverage decision based on a change in circumstances. Specifically, on September 28, 2006, the RRB issued B.C.D. 06-42.1, a determination of the RRB concerning the status of Sierra Entertainment and Mendocino Railway, as employers under the Railroad Retirement Act (45 U.S.C. § 231 et seq.) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.) (collectively, “the Act”). See Sierra Entertainment, Mendocino Railway, Railroad Retirement Board, B.C.D. 06-42.1 (Served September 28, 2006). In that decision, the RRB found that neither Sierra Entertainment, which provided tourist or excursion services for entertainment purposes nor Mendocino Railway, which was at the time of the decision a federally licensed common carrier but not actively providing rail services over its rail line, was a “carrier” for purposes of the Railroad Retirement Act (45 U.S.C. § 231 et seq.) Specifically, concerning Mendocino Railway, the RRB stated “[s]ince Mendocino reportedly does not and cannot now operate in interstate commerce, RRB finds that it is not currently an employer under the Acts. If Mendocino commences operations, RRB will revisit this decision.” Id. At 4.<sup>1</sup>

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<sup>1</sup> Although Mendocino was a licensed common carrier subject to the exclusive jurisdiction of the Surface Transportation Board (“STB”), it could not physically operate in interstate commerce due to the condition of portions of the Line’s infrastructure at the time. Nonetheless, Mendocino was at the time, and remains, a common carrier subject to the exclusive jurisdiction of the STB. See 49 U.S.C. §10501.

Related to B.C.D. 06-42.1, in 2004, Mendocino Railway acquired the assets of the former California Western Railroad (“CWR”), a Class III carrier in Mendocino Railway – Acquisition Exemption – Assets of the California Western Railroad, FD 34465 (STB served April 9, 2004). Given that freight service had not been provided over the rail line for some time and given the anticipated *de minis* amount of freight anticipated at the time of the acquisition, Mendocino Railway explained that it intended to operate and fulfill CWR’s common carrier obligation with the help of Mendocino’s affiliated entity, now known as Sierra Northern Railway (a Class III rail carrier). Between 2010 and continuing through 2019, Mendocino Railway fulfilled its common carrier obligations through an operating arrangement with its affiliate.

While Mendocino's service, provided via Sierra Northern Railway was minimal, to begin with, service frequency increased in 2020/2021 as Mendocino began planning to rehabilitate its rail line and market/solicit new business opportunities. Due to these opportunities and other changes,<sup>2</sup> effective January 1, 2022, Mendocino Railway took over direct operating responsibility from Sierra Northern Railway for freight service over its rail line. Based on these changes in circumstances, and in light of the RRB’s B.C.D. 06-42.1 decision, Mendocino Railway believes that it has become a “carrier” under the Act effective January 1, 2022. As such, Mendocino Railway is filing this request for reconsideration of the prior coverage decision. For the RRB’s convenience, Mendocino Railway encloses as Exhibit A pertinent information that the RRB typically requires in making its coverage decisions.

If there are any questions about this matter, please contact me directly, either by telephone: at 202-663-7831 or by e-mail: [czorbaugh@bakerandmiller.com](mailto:czorbaugh@bakerandmiller.com). If I am unavailable, you may contact William Mullins at 202-663-7823, or by email: [wmullins@bakerandmiller.com](mailto:wmullins@bakerandmiller.com).

Sincerely,



Crystal M. Zorbaugh  
Attorney for Mendocino Railway

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<sup>2</sup> Mendocino Railway also anticipates starting a rehabilitation project on its rail line during the second half of the year which could allow it to interchange interstate traffic with other STB regulated carriers.

## **Mendocino Railway – Exhibit A**

**1. The correct corporate name and address of any trade name used.**

Mendocino Railway  
1222 Research Park Drive  
Davis, CA 95618

Mendocino Railway was previously the subject of a RRB Investigation in B.C.D. 06-42.1.

**2. The name of the President and CEO of Mendocino Railway.**

Robert J. Pinoli is the President of Mendocino Railway. There is no CEO.

**3. The name of Mendocino Railway's owner(s) specifying their respective ownership interest.**

Mendocino Railway is a wholly-owned subsidiary of Sierra Railroad Company ("SRC")

**4. The length of track and terminal points.**

The Mendocino Railway line extends from Milepost 0 (at Fort Bragg, California) to Milepost 40 (at Willits, California) (the "Line").

**5. The number of employees and the date from which employees were first compensated.**

Mendocino Railway assumed freight maintenance and operations authority for the Line from its affiliate, Sierra Northern Railway ("SNR"), on January 1, 2022. Mendocino Railway has a total of 108 employees; at most 25 of these employees (engineers, conductors, mechanical staff, maintenance of way, and administration) will be directly involved in freight rail maintenance, management, and operation. The remainder of the Mendocino Railway employees supports its tourism operations.

The first day Mendocino Railway employees would have been compensated subject to the railroad retirement system would have been January 6, 2022.

**6. The name of the railroad(s) with which Mendocino Railway will interchange.**

Mendocino Railway connects to North Coast Railroad Authority ("NCRA") at Willits, California. The NCRA line is currently inactive but remains subject to the STB's jurisdiction. Mendocino Railway is taking over direct responsibility for fulfilling its common carrier obligation and for conducting transload services from its affiliate SNR over Mendocino Railway's 40-mile line from Fort Bragg, CA to Willits, CA.

**7. Provide a copy of the Surface Transportation Board Finance Docket permitting Mendocino Railway to operate.**

In 2004, Mendocino Railway acquired the assets of the former California Western Railroad (“CWR”), a Class III carrier in Mendocino Railway – Acquisition Exemption – Assets of the California Western Railroad, FD 34465 (STB served April 9, 2004). The STB’s April 9, 2004 decision is attached as Exhibit B.

**8. Provide a detailed explanation of Mendocino Railway's entire operations to include its annual expected volume of freight traffic.**

From 2016 to 2019, SNR fulfilled Mendocino's common carrier obligation by providing service to shippers/receivers located along the Line on average three times a year. That number increased in 2020/2021 and Mendocino began planning to rehabilitate the Line and market/solicit new business opportunities. Given the pending developments, Mendocino Railway is filing this coverage redetermination and in furtherance of that goal, Mendocino Railway is planning to start a rehabilitation project on its Line during the second half of the year.

**9. Furnish the Employer Identification Number (EIN) assigned to Mendocino Railway by the Internal Revenue Service.**

Mendocino Railway’s EIN is 73-1700581.

**10. If Mendocino Railway acquired the line from another railroad, please answer the following questions:**

**a. By what means did Mendocino Railway acquire the rail line, e.g. purchase, lease, other transfer, merger?**

In 2004, Mendocino Railway acquired the assets of the former California Western Railroad (“CWR”), a Class III carrier in Mendocino Railway – Acquisition Exemption – Assets of the California Western Railroad, FD 34465 (STB served April 9, 2004).

**b. Was there a written document that formed the basis for Mendocino Railway's acquisition of the rail line, (e.g. a lease, contract, purchase agreement, merger agreement)? If yes, please furnish a signed and dated copy.**

The acquisition occurred 18 years ago. RRB should have a copy from its prior coverage determination. See B.C.D. 06-42-1. If RRB needs replacement documents, Mendocino Railway can provide them again.

**c. Was Surface Transportation Board approval sought for the acquisition of the rail line? If yes, and if a decision separate from that furnished in response to question 7 was issued, please furnish a copy.**

Not applicable.

- d. **Did Mendocino Railway hire any of the employees of the former operator of the rail line? If yes, how many employees?**

Not applicable as the prior operator had declared bankruptcy and had no operations or employees at the time of Mendocino Railway's acquisition of the Line.

- e. **What was the first day the employees performed or will perform compensated service for Mendocino Railway?**

Mendocino Railway assumed freight maintenance and operations authority for its rail line from its affiliate, SNR, on January 1, 2022.

- f. **Did Mendocino Railway acquire any rail equipment from the former operator of the rail line? If yes, please provide a detailed description of the equipment.**

Mendocino Railway acquired all of the former operator's rail equipment via a bill of sale that did not contain a detailed description. Mendocino Railway is not aware of the existence of any detailed description given the parameters of the bankruptcy sale and purchase process.

**11. Provide the amount of business that Mendocino Railway does with each carrier identified as follows.**

- a. **Name of rail carrier(s),**  
b. **Percentage of the total time spent doing business with each rail carrier named,**  
c. **percentage of revenue Mendocino Railway received from rail carrier(s), and**  
d. **a detailed description of service provided for rail carrier(s).**

Not applicable.

**12. Please provide a complete list of all affiliated companies. Include the names of any parent corporation, brother/sister companies, and subsidiaries with the percentage of control for any subsidiary company. If possible, provide a copy of the most recent annual report.**

Mendocino Railway and SNR are both wholly-owned subsidiaries of Sierra Railroad Company ("SRC"). SRC was founded in 1897 to connect California's Central Valley to

the Gold Country foothills of the Sierra Nevada. All three businesses are California C-corporations.

Mendocino Railway and SNR are “sister” companies to Sierra Energy, which is a partially-owned subsidiary of SRC. Sierra Energy is not involved in the operations of its related entities.



34584

SERVICE DATE - APRIL 9, 2004

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34465]

Mendocino Railway—Acquisition Exemption—Assets of The California Western Railroad

Mendocino Railway (Mendocino), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire, through California Western Railroad's (CWR) trustee in bankruptcy and with the approval of the Bankruptcy Court for the Northern District of California, the rail assets of CWR.<sup>1</sup> The assets consist of all rail lines owned by CWR between milepost 0 and milepost 40. Mendocino states that, on February 11, 2004, the sale of CWR's assets was authorized by order of the Bankruptcy Court and that CWR's trustee was authorized to sell the railroad assets of CWR to SRC.

Mendocino intends initially to operate CWR with the help of Mendocino's affiliated entities: Sierra Northern Railway (a Class III rail carrier), Midland Railroad Enterprises Corporation (a railroad construction and track maintenance company), and Sierra Entertainment (a tourism, entertainment, and passenger operations company). Mendocino states that it is negotiating an agreement with Hawthorne Timber Company, LLC (Hawthorne) for the transfer to Mendocino of Hawthorne's fee interest in the real property underlying

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<sup>1</sup> Mendocino is a California corporation formed for the purpose of acquiring and operating CWR. It is a wholly owned subsidiary of Sierra Railroad Company (SRC),

STB Finance Docket No. 34465

CWR's tracks. Mendocino anticipates completing the acquisition by mid March 2004 and to begin operations on or about May 1, 2004.

Mendocino certifies that its projected revenues as a result of this transaction do not exceed \$5 million per year and do not exceed those that would qualify it as a Class III rail carrier.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34465, must be filed with the Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on Torgny Nilsson, General Counsel, 341 Industrial Way, Woodland, CA 95776.

Board decisions and notices are available on the Board's website at "WWW.STB.DOT.GOV."

Decided: April 2, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary

# BAKER & MILLER PLLC

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FACSIMILE: (202) 663-7849

William A. Mullins

Direct Dial: (202) 663-7823  
wmullins@bakerandmiller.com

May 25, 2023

306661

**VIA E-FILING**

Cynthia T. Brown  
Chief of the Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, SW  
Washington DC 20423-0001

ENTERED  
Office of Proceedings  
May 25, 2023  
Part of  
Public Record

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

Dear Ms. Brown:

Mendocino Railway (“MR”) writes in response to May 24, 2023 letter filed by Humboldt Trails Council (“HTC”) (“HTC Letter”). In its letter, HTC submitted two recent United States District Court decisions involving only the proper forum for evaluating efforts by the California Coastal Commission (“Commission”) and the City of Ft. Bragg (the “City”) to unlawfully interfere with MR’s rail activities in Fort Bragg. MR does not intend to litigate those cases here. MR would like to note, however, that the statement by the Superior Court in *City of Fort Bragg v. Mendocino Railway*, Case Number 22-cv-06317-JST, that because MR “is simply a luxury sightseeing excursion service with no connection to interstate commerce,” “its ‘railroad activities,’ for the purposes of federal preemption, are extremely limited,” *id.* at 42, is contrary to the facts—as MR also provides, and holds itself out to provide, common carrier freight services—and contrary to 49 U.S.C. §10501. Such a statement could set a dangerous precedent.

There is no “sliding scale” of preemption based upon how little or how much freight service is being conducted by an STB licensed common carrier at any one time. One either is, or is not, subject to the jurisdiction of the STB. No state court should have the right to avoid a proper preemption analysis under Section 10501 by simply declaring that, in its view, the carrier does not conduct “interstate commerce” and therefore is not entitled to assert preemption under

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Section 10501.<sup>1</sup> Otherwise, state and local courts throughout the nation will be able to get around preemption by simply declaring that the STB licensed carrier, in their view, does not conduct *enough* “interstate commerce” to qualify under 49 U.S.C. §10501, thereby removing that carrier from being able to assert its preemption rights or its eminent domain rights as a STB licensed railroad. And the court could do so notwithstanding that the carrier is licensed by the STB, has previously conducted freight rail service, currently holds itself out to provide common carrier service, is connected to other lines that are part of the interstate rail service (even if those lines are STB regulated track and have no active freight service at the time), and the carrier intends, and is taking actions, to develop and conduct a transload service (an activity clearly within interstate commerce)—all factors present with respect to MR.<sup>2</sup> State courts should not have the ability to determine, based upon how much “interstate commerce” a carrier conducts, whether that carrier is or isn’t a “railroad” properly licensed by the STB so as to allow that carrier to assert any rights that carrier has under Section 10501

As relevant to this proceeding, it is simply incorrect that the reason “MR wants to continue their STB status is to avoid costly regulations and utilize eminent domain proceedings to get the land they are interested in developing.” HTC Letter at 3. While MR does operate passenger excursion service, MR also operates, and holds itself out to operate, as a common carrier licensed by the STB. Yes, MR is attempting to use its eminent domain powers, but for the purpose of developing a freight transload yard that would utilize both rail and trucks. There are hundreds of trucks a day that travel between Fort Bragg and Willits over a very curvy, narrow, and dangerous road. MR desires to transfer that truck traffic to rail for movement to Willits and beyond. HTC and allied landowners in the area simply do not want a rail yard so that they can replace much-needed railroad tracks with a hiking trail.

Indeed, HTC makes its motives quite clear:

However, if they are allowed to maintain their STB status, it will make it impossible for the Great Redwood Trail Agency (GRTA) to rail-bank their corridor between Willits and Cloverdale. Without the rail-banking, the Great Redwood Trail between SF Bay and Humboldt Bay will be delayed many years or never completed. The economic impact to Humboldt County would be substantial.

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<sup>1</sup> A proper preemption analysis goes to the specific activity and conduct that the City or the Commission is trying to regulate. Application of Section 10501 is not limited by how much “interstate commerce” a carrier happens to be conducting at any one time.

<sup>2</sup> Assuming it is not now procedurally improper, and it may be at this stage, MR intends to request the state court in a separate case—*Mendocino Railway v. Meyer*—to refer the question of the jurisdictional status of MR and the scope of the applicability of Section 10501 to MR’s planned transload activities.

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HTC Letter at 3. But under ICCTA, trails use has never been held to trump freight use, and the Board should not allow it to do so here.<sup>3</sup>

Furthermore, there is nothing preventing HTC and GRTA from developing their trail along the railroad line between Willits and Cloverdale, without any need to permanently remove that line. There are many places in the United States where trails are located along the right-of-way of active rail lines.<sup>4</sup> The presence of MR is simply being used as excuse for GRTA's failure to develop a trail along the right-of-way of a carrier and a line that it currently owns and controls.

MR intends to vigorously oppose any adverse abandonment application. MR is confident that the facts will more than support the denial of any such application.

Sincerely,

*/s/ William A. Mullins*

William A. Mullins  
Attorney for Mendocino Railway

cc: Parties of Record

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<sup>3</sup> See, e.g., Central of Georgia Railway Company--Abandonment Exemption--In Atkinson, Berrien and Coffee Counties, GA, AB-290 (Sub-No. 170X) (STB served Apr. 10, 1996) (OFA to continue freight rail service under 49 U.S.C. 10904 takes precedence over both interim trail use/rail banking and the public use procedures. Furthermore, the STB cannot require "rail-banking" and interim trail use arrangements under the Trails Act. See National Wildlife Federation v. ICC, 850 F.2d 694, 698-702 (D.C. Cir. 1988); Washington State Dept. of Game v. ICC, 829 F.2d 877, 879-881 (9th Cir. 1988); Connecticut Trust Connecticut Trust for Historic Preservation v. ICC, 841 F.2d 479 (2d Cir. 1988); See also Preseault v. ICC, 110 S.Ct. 914, 924 n.8 (1990) (noting that Section 1247(d) has been construed "as not providing federal power to condemn railroad rights-of-way for interim trail use"). Yet that is basically what HTC and GRTA are attempting to do here.

<sup>4</sup> As of 2021, there are more than 399 rails-with-trails in the United States, with the length located along active railroad corridors totaling more than 1025 miles.  
<https://www.railstotrails.org/build-trails/trail-building-toolbox/basics/rail-with-trail/#:~:text=As%20of%202021%2C%20there%20are,are%20being%20built%20each%20year.>