

Exhibit D

Exhibit D

*"A body of men holding themselves accountable to nobody ought not be trusted by anybody."
--Thomas Paine*

Fort Bragg v. Mendocino Railway | Mendocino Railway | Eminent Domain Cases | CCC | DTSC | CPUC | STB

NOYO HEADLANDS DOCUMENT RESOURCE

This is a publicly accessible repository of documents related to the Mendocino Railroad takeover of the historic Fort Bragg sawmill site, intended to facilitate research and deepen the understanding of the issues involved. All documents here are in the public domain or are posted with the expressed written consent of the authors. The individuals posting and maintaining this resource take no responsibility for how these documents are used or distributed beyond this site.

City of Fort Bragg v. Mendocino Railway, Case Number 21CV00850

Preliminary Correspondence Between City of Fort Bragg, and Mendocino Railway and its parent corporation, Sierra Railroad

Letter to Torgny Nilsson, Sierra Railroad General Counsel from Michael Gogna, attorney for City of Fort Bragg, Feb. 13, 2008 regarding Skunk Train's refusal to obtain a Fort Bragg Business License, based on their alleged federal preemption as a railroad.

Letter from Torgny Nilsson to City of Fort Bragg Planner Sarah McCormick, Sept. 26, 2019 alleging that work on Drying Shed No. 4 is "exempt from local permitting requirements," based on their alleged federal preemption as a railroad.

Letter from Torgny Nilsson to Sarah McCormick, Dec. 3, 2019 regarding a Stop Work order posted on the Skunk Train rail bike shed, declaring, based on their alleged federal preemption as a railroad, "we are removing the City's Order to Stop Work and intend to proceed with our work."

Mendocino County Environmental Health NOTICE OF VIOLATION, Dec. 6, 2021 regarding refusal to allow a Mendocino Environmental Health Specialist access to determine where an oil spill came from.

SUMMONS AND VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF The City of Fort Bragg's initial filing on October 28, 2021, including the City's reasoning and arguments.

Legal filings by Mendocino Railway

DEFENDANT MENDOCINO RAILWAY'S NOTICE OF DEMURRER AND DEMURRER TO PLAINTIFF CITY OF FORT BRAGG'S COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, filed January 14, 2022

DEFENDANT MENDOCINO RAILWAY'S NOTICE OF MOTION AND MOTION TO STRIKE PLAINTIFF CITY OF FORT BRAGG'S COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, filed January 14, 2022.

DECLARATION OF MIKE HART IN SUPPORT OF DEFENDANT'S DEMURRER AND MOTION TO STRIKE, filed January 14, 2022

DECLARATION OF PAUL BEARD II IN SUPPORT OF DEFENDANT'S DEMURRER AND MOTION TO STRIKE, filed January 14, 2022. Of note, this filing contains five Exhibits, including the California Public Utilities Commission finding on January 18, 1998 that Skunk Train predecessor California Western Railroad "In providing excursion passenger service CWRR does not function as a public utility."

DEFENDANT MENDOCINO RAILWAYS MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEMURRER TO PLAINTIFF CITY OF FORT BRAGG'S COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, filed January 14, 2022

NOTICE OF LODGING OF ATTORNEY GENERAL OPINIONS CITED IN SUPPORT OF OPPOSITION TO DEMURRER, filed February 22, 2022

Legal Filings by The City of Fort Bragg

OBJECTION TO REQUEST FOR JUDICIAL NOTICE; EVIDENTIARY OBJECTIONS TO DECLARATIONS OF PAUL BEARD AND MIKE HEART IN SUPPORT OF DEMURRER AND MOTION TO STRIKE, filed February 9, 2022

CITY'S OPPOSITION TO DEMURRER TO VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, filed February 9, 2022

CITY OF FORT BRAGG'S OPPOSITION TO MOTION TO STRIKE COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, filed February 9, 2022

NOTICE OF LODGING OF FEDERAL AGENCY OPINIONS CITED IN SUPPORT OF OPPOSITION TO DEMURRER, filed February 9, 2022. Of note, this filing contains four U.S. Surface Transportation Board decisions relevant to when or when isn't a rail carrier exempt from state or local jurisdiction due to federal preemption.

Reply Filings by Mendocino Railway

REPLY BRIEF IN SUPPORT OF DEFENDANT MENDOCINO RAILWAY'S DEMURRER, filed February 16, 2022

REPLY BRIEF IN SUPPORT OF DEFENDANT MENDOCINO RAILWAY'S MOTION TO STRIKE, filed February 16, 2022

REPLY IN SUPPORT OF DEFENDANT'S REQUEST FOR JUDICIAL NOTICE, filed February 16, 2022

VERIFIED ANSWER OF DEFENDANT MENDOCINO RAILWAY, June 24, 2022. Mendocino Railway's point by point response to the City of Fort Bragg's original COMPLAINT

Amicus Curiae Filings by Mendocino County

APPLICATION TO FILE AMICUS CURIAE BRIEF; AMICUS CURIAE BRIEF, filed February 22, 2022

REQUEST FOR JUDICIAL NOTICE, filed February 22, 2022. Contains copies of Complaint, Notice of Violation and correspondence regarding oil spill on Skunk Train tracks in Fort Bragg, December of 2021.

Minutes and Findings of the Superior Court of Mendocino County, Hon. Clayton Brennan, presiding

Minutes of February 24 Motions Hearing

Minutes of April 7 Case Management Conference Next Case Management Conference set for May 19.

RULING ON DEMURER TO THE COMPLAINT, April 28, 2022. "For the reasons set forth above Mendocino Railways Demurrer is overruled."

RULING ON MOTION TO STRIKE, April 28, 2022. "...the motion to strike is denied."

First Appellate District Court of Appeal

Court of Appeal STAY Order, May 4, 2022 on City of Fort Bragg vs. Mendocino Railway case, pending appeal of Judge Brennan's April 28 rulings. The Court requests briefings from the parties on three questions, including "...should the California Public Utilities Commission (CPUC) be considered a 'real party in interest'..."

Mendocino Railway's SUPPLEMENTAL OPENING BRIEF IN SUPPORT OF PETITION, May 9, 2012

Fort Bragg CITY'S SUPPLEMENTAL BRIEF IN OPPOSITION TO PEITION FOR WRIT OF MANDATE, May 19, 2022

Mendocino Railway's SUPPLEMENTAL REPLY BRIEF IN SUPPORT OF PETITION, May 31, 2022

Court of Appeals Decision, June 9, 2022. "The court determines that the circumstances of this case warrant a denial of extraordinary writ review."

Mendocino Railway's Motion to Combine City of Fort Bragg v. Mendocino Railway with eminent domain case Mendocino Railway v. John Meyer et. al.

Mendocino Railway's NOTICE OF RELATED CASE, June 22, 2022.

OPPOSITION OF CITY OF FORT BRAGG TO NOTICE OF RELATED CASE, June 27, 2022. City of Fort Bragg's brief and arguments against combining City of Fort Bragg v. Mendocino Railway with Mendocino Railway v. John Meyer.

OPPOSITION OF CALIFORNIA COASTAL COMMISSION TO MENDOCINO RAILWAY'S NOTICE OF RELATED CASE September 16, 2022

DEFENDANT MENDOCINO RAILWAY'S REPLY IN SUPPORT OF ITS NOTICE OF RELATED CASES; DECLARATION OF PAUL BEARD II IN SUPPORT OF REPLY BRIEF

CITY OF FORT BRAGG'S OBJECTION TO MENDOCINO RAILWAY'S REPLY IN SUPPORT OF ITS NOTICE OF RELATED CASES; DECLARATION OF PAUL BEARD II IN SUPPORT OF REPLY BRIEF, filed September 26, 2022.

CALIFORNIA COASTAL COMMISSION'S NOTICE OF MOTION FOR LEAVE OF COURT TO INTERVENE, filed September 8, 2022. Includes:

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CALIFORNIA COASTAL COMMISSION'S MOTION TO INTERVENE

[PROPOSED] COMPLAINT IN INTEERVENTION

DECLARATION OF JOSH LEVINE IN SUPPORT OF CALIFORNIA COASTAL COMMISSION'S MOTION TO INTERVENE

V-1-22-00070 Mendocino Railway Roundhouse, August 10, 2022. Notice of Violation: "Unpermitted development, that includes, but is not limited to, the replacement of the "Roundhouse", the replacement of a structure located off of Wes Alder Street with an added concrete patio, the replacement of a storage shed allegedly used to store rail bikes, a lot line adjustment, and restricting public parking."

DEFENDANT MENDOCINO RAILWAY'S OPPOSITION TO THE CALIFORNIA COASTAL COMMISSION'S MOTION TO INTERVENE, filed September 22, 2022

CITY'S NON-OPPOSITION TO CALIFORNIA COASTAL COMMISSION'S MOTION TO INTERVENE, filed September 26, 2022

CALIFORNIA COASTAL COMMISSION'S REPLY IN SUPPORT OF ITS MOTION TO INTERVENE, filed October 13, 2022

MINUTE ORDER GRANTING CALIFORNIA COASTAL COMMISSION'S MOTION FOR LEAVE OF COURT TO INTERVENE, filed October 20, 2022.

NOTICE OF ENTRY OF ORDER, filed October 27, 2022.

OBJECTION TO JUDGE PRESIDING OVER TRIAL AND ALL OTHER PROCEEDINGS CONCERNING THIS ACTION [C.C.P § 170.3]; DECLARATION OF PAUL BEARD II IN SUPPORT OF OBJECTION September 13, 2022

ANSWER OF JUDGE CLAYTON L. BRENNAN TO MENDOCINO RAILWAY'S STATEMENT OF DISQUALIFICATION C.C.P. § 170.3 September 14, 2022

OPPOSITION TO REQUEST FOR JUDICIAL DISQUALIFICATION, filed September 27, 2022. Filed by the City of Fort Bragg.

ORDER ON MOTION TO DISQUALIFY JUDGE BRENNAN, filed September 29, 2022. Judge Gregory Elvine-Kreis of the Superior Court, County of Humboldt denied the motion.

NOTICE OF REMOVAL TO FEDERAL COURT, filed October 20, 2022. Mendocino Railway files in Federal District Court in Eureka to have City of Fort Bragg v. Mendocino Railway removed to the jurisdiction of the Federal Court.

COMPLAINT IN INTERVENTION , filed October 27, 2022. The California Coastal Commission's formal filing of a legal complaint in intervention in the Fort Bragg v. Mendocino Railway case.

NOTICE OF REMOVAL, to transfer the Fort Bragg v. Mendocino Railway Superior Court case to Federal District Court, filed Mendocino Railway on October 20, 2022.

NOTICE OF REMOVAL, filed October 20, 2022.

NOTICE OF ENTRY OF ORDER , filed November 7, 2022. California Coastal Commission's filing from Mendocino County Superior Court case.

CALIFORNIA COASTAL COMMISSION'S COMPLAINT IN INTERVENTION, filed November 7, 2022. California Coastal Commission's filing from Mendocino County Superior Court case.

CALIFORNIA COASTAL COMMISSION'S NOTICE OF MOTION AND MOTION TO REMAND ACTION TO STATE COURT, filed November 21, 2022

CALIFORNIA COASTAL COMMISSION'S REQUEST FOR JUDICIAL NOTICE, filed November 21, 2022

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CALIFORNIA COASTAL COMMISSION'S MOTION TO REMAND ACTION TO STATE COURT, filed November 21, 2022

CITY'S MOTION TO REMAND ACTION TO STATE COURT, filed November 21, 2022

DECLARATION OF KRISTA MACNEVIN JEE IN SUPPORT OF MOTION TO REMAND, filed November 21, 2022

[PROPOSED] ORDER GRANTING CITY'S MOTION TO REMAND CASE TO STATE COURT, filed November 21, 2022

DEFENDANT MENDOCINO RAILWAY'S CONSOLIDATED OPPOSITION TO PLAINTIFF'S MOTIONS TO REMAND, filed December 5, 2022.

DECLARATION OF ROBERT PINOLI IN SUPPORT OF DEFENDANT MENDOCINO RAILWAY'S CONSOLIDATED OPPOSITION TO PLAINTIFF'S MOTIONS TO REMAND, filed December 5, 2022.

REPLY TO DEFENANT MENDOCINO RAILWAY'S CONSOLIDATED OPPOSITION TO PLAINTIFF'S MOTIONS TO REMAND, filed December 12, 2022

INTERVENOR CALIFORNIA COASTAL COMMISSION'S REPLY TO DEFENDANT'S CONSOLIDATED OPPOSITION TO MOTIONS TO REMAND ACTION TO STATE COURT, filed December 12, 2022

ADMINISTRATIVE MOTION TO EXTEND TIME AND PAGE LIMIT FOR FILING OF EVIDENTIARY OBJECTIONS TO DECLARATION OF ROBERT PINOLI IN SUPPORT OF OPPOSITION TO MOTION TO REMAND, AND ACCOMPANYING DECLARATION OF KRISTA MACNEVIN JEE IN SUPPORT THEREOF, filed December 28, 2022

DECLARATION OF KRISTA MACNEVIN JEE IN SUPPORT OF ADMINISTRATIVE MOTION TO EXTEND TIME AND PAGE LIMIT FOR FILING OF EVIDENTIARY OBJECTIONS TO DECLARATION OF ROBERT PINOLI IN SUPPORT OF OPPOSITION TO MOTION TO REMAND, AND ACCOMPANYING DECLARATION OF KRISTA MACNEVIN JEE IN SUPPORT THEREOF, filed December 28, 2022

[PROPOSED] ORDER GRANTING CITY'S ADMINISTRATIVE MOTION TO EXTEND TIME AND PAGE LIMIT FOR FILING OF EVIDENTIARY OBJECTIONS TO DECLARATION OF ROBERT PINOLI IN SUPPORT OF OPPOSITION TO MOTION TO REMAND, AND ACCOMPANYING DECLARATION OF KRISTA MACNEVIN JEE IN SUPPORT THEREOF, filed December 28, 2022

DEFENDANT MENDOCINO RAILWAY'S OPPOSITION TO PLAINTIFF CITY OF FORT BRAGG'S ADMINISTRATIVE MOTION TO EXTEND TIME AND PAGE LIMITS FOR EVIDENTIARY OBJECTIONS, filed January 3, 2023

DECLARATION OF PAUL BEARD IN SUPPORT OF DEFENDANT MENDOCINO RAILWAY'S OPPOSITION TO PLAINTIFF CITY OF FORT BRAGG'S ADMINISTRATIVE MOTION TO EXTEND TIME AND PAGE LIMITS FOR EVIDENTIARY OBJECTIONS, filed January 3, 2023

ORDER DENYING MOTION FOR EXTENSION OF TIME TO FILE EVIDENTIARY OBJECTIONS TO AND EXTEND PAGE LIMIT OF EVIDENTIARY OBJECTIONS, filed January 9, 2023

NEW 05/12 ORDER GRANTING MOTIONS TO REMAND, filed May 11, 2023

Mendocino Railway vs. California Coastal Commission and the City of Fort Bragg, filed August 9, 2022 in Federal District Court for Northern California in Eureka, California.

Case CIVIL COVER SHEET filed August 9, 2022, claiming, "Defendant state and local actors unlawfully claim permit authority over federally regulated railroad."

COMPLAINT FOR DECLARATORY JUDGMENT, filed August 9, 2022

DEFENDANT JACK AINSWORTH'S NOTICE OF MOTION, MOTION TO DISMISS, AND MEMORANDUM OF POINTS AND AUTHORITIES, filed September 22, 2022. Response of Defendant California Coastal Commission

REQUEST FOR JUDICIAL NOTICE, filed September 22, 2022.

[PROPOSED] ORDER, filed September 22, 2022.

CITY OF FORT BRAGG'S NOTICE OF MOTION AND MOTION TO DISMISS PLAINTIFF MENDOCINO RAILWAY'S COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF, filed September 22, 2022.

REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF CITY OF FORT BRAGG'S MOTION TO DISMISS COMPLAINT, filed filed September 22, 2022.

DECLARATION OF KRISTA MACNEVIN JEE IN SUPPORT OF DEFENDANT CITY'S MOTION TO DISMISS.

PLAINTIFF'S OPPOSITION TO DEFENDANT JACK AINSWORTH'S MOTION TO DISMISS, filed October 20, 2022.

PLAINTIFF'S OPPOSITION TO DEFENDANT CITY OF FORT BRAGG'S MOTION TO DISMISS, filed October 20, 2022.

PLAINTIFF'S REQUEST FOR JUDICIAL NOTICE IN OPPOSITION TO MOTIONS TO DISMISS, filed October 21, 2022.

DEFENDANT JACK AINSWORTH'S REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS, filed November 3, 2022

DEFENDANT CITY OF FORT BRAGG'S REPLY TO OPPOSITION TO MOTION TO DISMISS, filed November 4, 2022

REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF CITY OF FORT BRAGG'S REPLY TO OPPOSITION TO MOTION TO DISMISS, filed November 4, 2022

PLAINTIFF'S ADMINISTRATIVE MOTION FOR CONSIDERATION WHETHER TWO PENDING CASES SHOULD BE RELATED (L.R. 3-12), filed October 31, 2022. Mendocino Railway's motion to combine the Fort Bragg v. Mendocino Railway case, "Removed" to Federal Court by Mendocino Railway, with this case.

DECLARATION OF PAUL BEARD II IN SUPPORT OF ADMINISTRATIVE MOTION RE: RELATED CASES, filed October 31, 2022.

PLAINTIFF'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF ADMINISTRATIVE MOTION RE: RELATED CASES, filed October 31, 2022.

City of Fort Bragg vs. Mendocino Railway VERIFIED COMPLAINT FOR INJUNCTIVE RELIEF, filed October 31, 2022.

City of Fort Bragg vs. Mendocino Railway: California Coastal Commission COMPLAINT IN INTERVENTION, filed October 31, 2022.

City of Fort Bragg vs. Mendocino Railway: NOTICE OF REMOVAL, filed October 31, 2022.

U.S. District Court, California Northern District (Eureka) CIVIL DOCKET FOR CASE #: 1:22-CV-06317-RMI, filed October 31, 2022.

NEW 05/12 ORDER GRANTING MOTIONS TO DISMISS. filed May 12, 2023.

Mendocino Railway, Mike Hart and Chris Hart

The Hart Brothers

Mike Hart (Sierra Energy) on Why He Buys Railroads (2016)

Corporate Filings with California Secretary of State

Mendocino Railway Articles of Incorporation

Mendocino Railway Corporate Statement, January 29, 2021

Mendocino Railway Corporate Statement, January 25, 2022, filed a year early. Robert Pinoli out as CEO. Mike Hart in.

Mendocino Railway Corporate Statement, February 23, 2022, filed a month after the last filing. Mike Hart out as CEO. Robert Pinole back in.

Mendocino Railway Corporate Statement, February 28, 2022, appears to be a duplicate of the February 23 filing.

Sierra Railroad (parent corporation of Mendocino Railway) Corporate Statement May 19, 2019

Sierra Railroad (parent corporation of Mendocino Railway) Corporate Statement May 28, 2021

Sierra Northern Railway Corporate Statement Sierra Northern Railway's website says they operate the Skunk Train, but this appears to be obsolete.

Mendocino Railway Eminent Domain Cases

NEW 5/12 Summary of Current status of Eminent Domain cases, as of May 12, 2023

Mendocino Railway vs. Meyer, John (SCUK-CVED-2020-74939)

1401 West Highway 20, Willits, California, filed December 22, 2020. This Case has a Mediation scheduled for May and jury trial scheduled for July.

COMPLAINT IN EMINENT DOMAIN filed by Mendocino Railway December 22, 2020 (Scanned document supplied by Mendocino Superior Court)

DEFENDANT JOHN MEYER'S ANSWER TO COMPLAINT IN EMINENT DOMAIN, filed February 18, 2021.

ANSWER OF DEFENDANTS SHEPPARD INVESTMENTS AND MARYELLEN SHEPPARD, filed August 9, 2021

PLAINTIFF'S MOTION TO BIFURCATE AND SET BENCH TRIAL DATE ON DEFENDANT'S RIGHT TO TAKE OBJECTIONS, May 13, 2022.

Mendocino Railway's Motion to separate the issue of whether Mendocino Railway has a right to take using eminent domain, prior to a jury trial on the value of the land. Defendant John Meyer did not oppose. Motion was granted.

PLAINTIFF MENDOCINO RAILWAY'S MANDATORY SETTLEMENT CONFERENCE STATEMENT, May 4, 2022. Mendocino Railway's appraisal of the John Meyer property.

PLAINTIFF MENDOCINO RAILWAY'S DESIGNATION OF EXPERT WITNESSES, April 12, 2022

DEFENDANT JOHN MEYER'S FIRST AMENDED ANSWER TO COMPLAINT IN EMINENT DOMAIN, May 27, 2022

Mendocino Railway's Motion to Combine City of Fort Bragg v. Mendocino Railway with eminent domain case Mendocino Railway v. John Meyer et. al.

Mendocino Railway's NOTICE OF RELATED CASE, June 22, 2022.

OPPOSITION OF CITY OF FORT BRAGG TO NOTICE OF RELATED CASE, June 27, 2022. City of Fort Bragg's brief and arguments against combining City of Fort Bragg v. Mendocino Railway with Mendocino Railway v. John Meyer.

OPPOSITION OF CALIFORNIA COASTAL COMMISSION TO MENDOCINO RAILWAY'S NOTICE OF RELATED CASE September 16, 2022

DEFENDANT MENDOCINO RAILWAY'S REPLY IN SUPPORT OF ITS NOTICE OF RELATED CASES; DECLARATION OF PAUL BEARD II IN SUPPORT OF REPLY BRIEF

CITY OF FORT BRAGG'S OBJECTION TO MENDOCINO RAILWAY'S REPLY IN SUPPORT OF ITS NOTICE OF RELATED CASES; DECLARATION OF PAUL BEARD II IN SUPPORT OF REPLY BRIEF, filed September 26, 2022.

MINUTES OF HEARING ON NOTICE OF RELATED CASES, dated September 30, 2022. MR attorney Beard "states...They are not seeking consolidation of the two cases. They are just requesting their case be moved to Ukiah jurisdiction department." The Court denied the motion.

NOTICE OF MOTION TO QUASH SUBPOENA BY WITNESSES FRED HARRIS AND CALIFORNIA PUBLIC UTILITIES COMMISSION, MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATION OF FRED HARRIS IN SUPPORT THEREOF, August 4, 2022. The actual CIVIL SUBPOENA (DUCES TECUM) is attached as EXHIBIT A.

PLAINTIFF MENDOCINO RAILWAY'S OPPOSITION TO MOTION TO QUASH SUBPOENA BY WITNESS FRED HARRIS AND CALIFORNIA PUBLIC UTILITIES COMMISSION; DECLARATION OF GLENN L. BLOCK IN SUPPORT THEREOF, filed August 9, 2022.

DEFENDANT JOHN MEYER'S TRIAL BRIEF, filed August 19, 2022.

JOINT WITNESS LIST RIGHT TO TAKE TRIAL, filed August 19, 2022.

DEFENDANT JOHN MEYER'S MOTION IN LIMINE TO EXCLUDE TESTIMONY AND EVIDENCE FROM KENNAN H. BEARD III, filed August 19, 2022.

PLAINTIFF MENDOCINO RAILWAY'S TRIAL BRIEF RE: LEGAL ISSUE BENCH TRIAL ON DEFENDANT MEYER'S RIGHT TO TAKE OBJECTIONS, filed August 19, 2022.

Minutes of the Bench Trial before Judge Jeanine Nadel on the question of whether Mendocino Railway qualifies to exercise the taking power of eminent domain.

Trial Minutes August 23, 2022

Transcript of COURT TRIAL — DAY 1, August 23, 2022

Trial Minutes August 24, 2022

Transcript of COURT TRIAL — DAY 2, August 24, 2022

Trial Minutes August 25, 2022

Transcript of COURT TRIAL — DAY 3, August 25, 2022

Transcript of COURT TRIAL — DAY 4, August 29, 2022

Transcript of COURT TRIAL — DAY 5, November 3, 2022

Transcript of COURT TRIAL — DAY 6, November 10, 2022

DEFENDANT JOHN MEYER'S NOTICE OF MOTION TO REOPEN CASE, filed September 12, 2022

EX PARTE STIPULATION OF DEFENDANT JOHN MEYER AND PLAINTIFF MENDOCINO RAILWAY TO RESET CLOSING BRIEFING SCHEDULE, filed September 16, 2022. Moves deadline for Closing Briefs to October 7, 2022

PLAINTIFF MENDOCINO RAILWAY'S OPPOSITION TO DEFENDANT'S MOTION TO REOPEN CASE; DECLARATION OF GLENN L. BLOCK IN SUPPORT THEREOF filed September 21, 2022. Contains a large tranche of miscellaneous trial related documents, deposition questions, etc.

DEFENDANT JOHN MEYER'S REPLY BRIEF TO OPPOSITION TO REOPEN CASE, filed September 27, 2022. Cites Mendocino Railway's failure to produce the Railroad Retirement Board decision in Discovery "because the decision tends to prove...that Mendocino Railway does not have the power of eminent domain..."

SUPPLEMENTAL DECLARATION OF STEPHEN F. JOHNSON IN SUPPORT OF DEFENDANT JOHN MEYER'S MOTION TO REOPEN CASE, filed September 27, 2022.

Tentative Ruling: "Defendant's Motion to reopen the case is granted." Filed October 7, 2022

DEFENDANT JOHN MEYER'S TRIAL EXHIBITS WITH ATTACHMENTS, filed November 4, 2022.

PLAINTIFF MENDOCINO RAILWAY'S CLOSING TRIAL BRIEF, filed January 23, 2023. Searchable.

DEFENDANT JOHN MEYER'S CLOSING TRIAL BRIEF, filed January 23, 2023. Searchable.

NEW 03/13 DEFENDANT JOHN MEYER'S CLOSING REPLY BRIEF, filed February 07, 2023. Searchable.

NEW 03/13 PLAINTIFF MENDOCINO RAILWAY'S REPLY TO DEFENDANT MEYER'S CLOSING TRIAL BRIEF>, filed February 08, 2023. Searchable.

NEW 04/19 Decision After Trial, filed April 19, 2023. "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."

NEW 04/29 PLAINTIFF MENDOCINO RAILWAY'S REQUEST FOR STATEMENT OF DECISION OR, IN THE ALTERNATIVE, PLAINTIFF'S OBJECTIONS TO PROPOSED STATEMENT OF DECISION Filed April 27, 2023

NEW 05/07 DEFENDANT JOHN MEYER'S REPLY TO PLAINTIFF MENDOCINO RAILWAY'S REQUEST FOR A STATEMENT FOR DECISION> Filed May 1, 2023

NEW 05/22 Minute order Re Objections and Request for Statement of Decision, filed May 16, 2023 "The court finds that all issues raised by Plaintiff have been addressed by the court in its decision and the decision after trial will constitute the Statement of Decision."

NEW 06/05 JUDGMENT AFTER TRIAL BY COURT, filed June 2, 2023

NEW 06/09 PLAINTIFF MENDOCINO RAILWAY'S NOTICE OF MOTION AND MOTION TO REOPEN BENCH TRIAL TO CONSIDER NEW FACTS ARISING PRIOR TO JUDGMENT; DECLARATION OF GLENN L. BLOCK, filed June 5, 2023

NEW 06/09 PLAINTIFF MENDOCINO RAILWAY'S OBJECTION TO DEFENDANT MEYER'S [PROPOSED] JUDGMENT, filed June 5, 2023

NEW 06/09 PLAINTIFF MENDOCINO RAILWAY'S NOTICE OF MOTION AND MOTION TO SET ASIDE AND VACATE PREMATURE JUDGMENT SIGNED BEFORE TIME TO FILE OBJECTIONS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF, filed June 5, 2023

Mendocino Railway vs. Shea, Lorena Ruth (SCUK-CVED-74846), filed November 18, 2020

Property located at 476 Alger Street in Fort Bragg

PLAINTIFF'S MOTION FOR PREJUDGMENT POSSESSION (CCP § 1255.410); MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF ROBERT JASON PINOLI IN SUPPORT, filed January 29, 2021

JUDGMENT AND FINAL ORDER OF CONDEMNATION, filed June 7, 2021

Parcel Map showing 476 Alger Street.

Memo from Joanna Gonzalez, City of Fort Bragg Community Development Department to Chantell O'Neal, City Planner, re: 476 Alger Street., dated 10/20/2020

Mendocino Railway offer to purchase 476 Alger Street for \$155,000 with threat of eminent domain if the owner refuses, dated November 6, 2020

Mendocino Railway vs. Georgia-Pacific LLC, et al. (21VC00595)

The southern 209 acres of the Georgia-Pacific mill site and 70 acres along Pudding Creek

COMPLAINT IN EMINENT DOMAIN, filed August 11, 2021

STIPULATION RE: SETTLEMENT, JUDGMENT AND FINAL ORDER OF CONDEMNATION, filed November 17, 2021

California Coastal Commission Filings and Correspondence

California Coastal Act, 2022 Revision

County of Mendocino Coastal Zone, Map 13, Fort Bragg, August 17, 1983

Appeal documents for the demolition of Dry Shed #4, approved by the City of Fort Bragg on March 26, 2018, and appealed to the Coastal Commission April 2, 2019.

Letter from the Coastal Commission to Anthony LaRocca, Counsel for Mendocino Railway, June 11, 2019 asserting Coastal Commission jurisdiction over any expansion of the rail facilities on the Georgia-Pacific Mill Site.

Mendocino Railway request for Coastal Consistency Determination, includes Federal Railroad Administration Categorical Exclusion Worksheet and Coastal Consistency Determination, submitted February 28, 2022. (36mb file)

City of Fort Bragg's letter to the Coastal Commission opposing Mendocino Railway's RRIF application, March 14, 2022, on the grounds that it "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, which comprises approximately a third of the land within city limits."

Mendocino Railway Consistency Determination withdrawn April 11, 2022 by Federal Railway Authority.

V-1-22-00070 Mendocino Railway Roundhouse, August 10, 2022. Notice of Violation: "Unpermitted development, that includes, but is not limited to, the replacement of the "Roundhouse", the replacement of a structure located off of Wes Alder Street with an added concrete patio, the replacement of a storage shed allegedly used to store rail bikes, a lot line adjustment, and restricting public parking."

California Public Utilities Commission Decisions

1998 Cal.PUC LEXIS 189 January 21, 1998 California Western Railroad, predecessor to Mendocino Railway granted relief from regulation of excursion passenger fares, the CPUC finding, "that sightseeing is not a public utility function" and "In providing excursion passenger service, CWRR does not function as a public utility."

1998 Cal.PUC LEXIS 384 May 21, 1998 CWRR withdraws the above petition except for the relief of regulation of excursion fares on the basis of occasional passenger traffic between Willits, Northspur and Fort Bragg

Letter from PUC to Mendocino Railway, December 7, 2018, stating "Mendocino Railway is regarded as a Class III railroad by the California Public Utilities Commission (CPUC)."

Public Utilities Commission Response to Mendocino Railway's Request, August 12, 2022. In response to a letter from Michael Hart, requesting that the CPUC state "that Mendocino Railway is a regulated public utility railroad," the CPUC writes, "**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**" (Bold in the original document)

RE: Mendocino Railway's Status as a Public Utility, August 15, 2022. Mendocino Railway's response to the CPUC's August 12, 2022 letter, stating, "We respectfully request that your office reconsider the conclusion set forth in the August 12, 2022, letter concerning MRY's status as a public utility."

Federal Railroad Authority and the Surface Transportation Board

Railroad Rehabilitation & Improvement Financing Loan (RRIF) application

Attempts to obtain a copy of the actual application have been unsuccessful. However, the following are in the public domain:

45 U.S. Code 17: Railroad Revitalization & Regulatory Reform The section of Federal law that enables and regulates the terms of RRIF loans.

NCRA letter to U.S. Department of Transportation, November 3, 2021, opposing Mendocino Railway's RRIF loan request on both legal and substantive grounds.

California Coastal Commission letter to the U.S. Department of Transportation, November 5, 2021, asserting jurisdiction over the loan financed activities under the Federal Coastal Zone Management Act.

Letter from the City of Fort Bragg, November 22, 2021, opposing the loan with extensive discussion of the City's position.

Friends of the Eel River Letter Opposing RRIF Application, November 17, 2021

Mendocino Railway Cease and Desist letter to the City of Fort Bragg, sent December 12, 2021.

Federal Railroad Law and Federal Preemption of State and Local Jurisdiction

Michael Conneran. "I Hear That Train A'comin': Municipal Legal Issues Involving Railroads". April 30, 2021. History of federal railroad law. Includes an analysis of eminent domain and federal preemption, when it applies and when it does not.

"I Hear That Train a Comin..." PPT PowerPoint Slide Deck for Conneran's presentation above. Slide 24 begins a discussion of federal preemption.

The Federal Laws Applicable to Railroads 2017 Section of the Albemarle Community Land Use Handbook detailing the statute and case law around federal preemption of state and local regulations.

The City of Fort Bragg's NOTICE OF LODGING OF FEDERAL AGENCY OPINIONS CITED IN SUPPORT OF OPPOSITION TO DEMURRER contains four Surface Transportation Board decisions relevant to federal preemption of local regulations:

Bureau of Riverdale (4 S.T.B. 380; 1999 S.T.B 531)

City of Auburn and Kent, WA (2 S.T.B. 330; 1997 STB Lexis 143)

Maumee & Western Railroad and RMW Ventures (2004 STB Lexis 140)

Norfolk Southern Railway Co. (2016 STB Lexis 61)

Federal Register Notice that Mendocino Railway acquired California Western Railroad, April 9, 2004

Railroad Retirement Board finding, September 28, 2006, that Mendocino Railway "does not and cannot now operate in interstate commerce...it is not currently an employer under the [Railroad Retirement and unemployment] acts."

MEYER for CWR v. NCRA, January 30, 2007, denying CWR's complaint for damages because NCRA failed to maintain the rail segment between Willits and Schellville/Napa Junction, resulting in FRA emergency order shutting down the line.

Letter from Baker & Miller PLLC, Mendocino Railway Attorney, to SMART District, May 19, 2020, expressing interest in "acquiring the freight rights currently held by Northwestern Pacific Company ("NWP") on the NCRA/NWP line or, at the very least, the rights to that portion of the line between Cloverdale and Willits"

Great Redwood Trail Feasibility, Governance and Railbanking Report, July 2020

S.T.B Docket AB 1313. Federal Register 86:111 June 11, 2021 Federal Register notice of North Coast Rail Authority application to terminate operating rights over the rail line from Outlet Station to Fairhaven.

S.T.B Docket AB 1310. Federal Register 86:145 August 2, 2021 Federal Register Notice of Northwestern Pacific Railroad Company petition to discontinue service between Outlet Station and the Mendocino/Sonoma County line.

Mendocino Railway letter opposing California Coastal Commission's Motion in support of NCRA abandonment, filed January 4, 2022.

Mendocino Railway letter correcting alleged "misleading statements" in a prior letter from NCRA, filed January 20, 2022

Great Redwood Trail Agency's Certification of Filing and Service of Information Required Pursuant to 49 CFR 1152.27(2), September 15, 2022. GRTA's reply to Mendocino Railway's application to re-open rail line from Willits to Longvale. (18mb file)

Railroad Rehabilitation Assessment Willits MP 139.5 to Longvale MP152.5, September 12, 2022. Estimates the rehabilitation cost for that 13 mile segment at \$22.5 Million.

MENDOCINO RAILWAY'S OFFER OF FINANCIAL ASSISTANCE, filed October 17, 2022.

SURFACE TRANSPORTATION BOARD DECISION Docket No. AB 1305X GREAT REDWOOD TRAIL AGENCY –ABANDONMENT EXEMPTION– ..., filed October 21, 2022. "It is ordered: 1) MR's OFA is rejected..."

NEW 05/12 PETITION FOR PARTIAL WAIVER OF ABANDONMENT REGULATIONS AND FOR EXEMPTION FROM STATUTORY REQUIREMENTS, filed February 28, 2022

Department of Toxic Substances Control (DTSC)

California Western Railway/Mendocino Railway Property – Skunk Train Facility

CORRECTIVE ACTION CONSENT AGREEMENT, June 5, 2005, concerning the clean up of "ash, ash residues, unburned embers generated from burning of chemically treated ties, soils containing ash residues, used oil, paint, and leaking old batteries" on the Skunk Train facility grounds.

California Environmental Quality Act Notice of Exemption, April 9, 2021, permitting Mendocino Railway to store treated rail tie waste on site

Letter to Mendocino Railway dated November 4, 2021 regarding cleanup postponed in 2013 "because of financial hardship" and ordering them to submit a work plan within 60 days.

DTSC reply to Mendocino Railway's request for additional time to submit RFI Workplan Addendum, January 25, 2022, stepping up DTSC supervision with Monthly Project Manager meetings.

Mendocino Railway RFI Workplan Addendum, May 9, 2022. "The objective of this RFI Workplan Addendum is to address data gaps identified in the 2013 RFI Report and support a final RFI Report and subsequent Corrective Measure Study."

RCRA Facility Investigation Work Plan Addendum, California Western Facility, dated 13 September 2022, prepared for Mendocino Railway by Kennedy Jenks.

DTSC Letter of approval for RCRA Facility Investigation Work Plan Addendum, California Western Facility, dated October 5, 2022.

ESTIMATED OVERSIGHT COSTS – FISCAL YEAR 2022/2023, CALIFORNIA WESTERN RAILROAD (SKUNK TRAIN), 100 W LAUREL STREET, FORT BRAGG, CALIFORNIA (SITE CODE 520041), dated October 3, 2022. Includes detailed accounting of costs and Gantt chart style timeline.

Georgia Pacific/Koch Industries Mill Site

When the Berm Blows by William Lemos, PhD. Life long Mendocino County resident and retired educator Bill Lemos details the dangers posed by the failing berms surrounding Pond 8, a toxic soup of dioxin, lead, PCBs, etc. (30mb File)

SITE INVESTIGATION AND REMEDIATION ORDER, issued February 16, 2007, ordering Georgia Pacific to investigate and remediate the toxic contamination of the former Georgia Pacific mill site.

Land Use Covenants – permanent restrictions on how sections of the former Mill site may be used or developed in the future due to toxic soil and/or ground water contamination.

Operable Unit A, Coastal Trail and Parkland Zone

Operable Unit C, the North section of the Mill Site

Operable Unit D, the location of the sawmill sorter and planer #2

Operable Unit D, a wedge of land at the south end of the Mill Site

DTSC Former Georgia-Pacific Mill Site Update: Next Steps at Operable Units C, D, and E - January 2012

Kennedy/Jenks Feasibility Study Operable Unit E - May 19, 2017, with many maps of toxic sampling (30mb file)

DTSC Community Update: Former Georgia Pacific Mill Site Updates on Cleanup Progress and Feasibility Study - May 2018

Final Feasibility Study Operable Unit E September 12, 2019. Prepared by Kennedy/Jenks Consultants, lists considerations, criteria and alternative actions for addressing and remediating Ponds 1-8.

DRAFT Remedial Action Plan Operable Unit E October 14, 2020. The current plan under consideration by the City of Fort Bragg, this will not be finalized until a CEQA process and an EIR are accepted by the City of Fort Bragg, plus the required Public Comment period for the DTSC.

FIRST AMENDMENT TO SITE INVESTIGATION AND REMEDIATION ORDER, GEORGIA-PACIFIC WOOD PRODUCTS FACILITY, June 9, 2022.

Mendocino Railway Permit Application for work to address the California Division of Safety of Dams (DSOD) requirements for the Mill Pond Dam and Pond 8, June 24, 2022. Filed with the City of Fort Bragg July 12, 2022

Supplemental Site Investigation Work Plan, Former AST AOI and MES/Pilot Study AOI, dated August 11, 2022. Kennedy-Jenks plan for investigating in-ground contamination in the area of the Above Ground Storage Tanks (AST) and the Machine Equipment Shop (MES), adjacent to the Skunk Train facility.

DTSC approval for AST/MES study with additional requirement, dated October 6, 2022

Mendocino Railway acknowledgment and inclusion of additional requirement dated November 21, 2022

ESTIMATED OVERSIGHT COSTS – FISCAL YEAR 2022/2023, GEORGIA-PACIFIC SITE, 90 WEST REDWOOD AVENUE, FORT BRAGG, CALIFORNIA (SITE CODE:202276), dated September 29, 2022. Includes detailed accounting of costs and Gantt chart style timeline.

Re: GEORGIA-PACIFIC, FORT BRAGG MILL SITE, FORT BRAGG, CALIFORNIA (SITE CODE 202276), dated December 21, 2022. Letter to City of Fort Bragg recommending the City, as lead agency for the EIR for OU-E, consider "the alternatives found in Section 7: Development and Evaluation of Remedial Alternatives of the OU-E FS."

GEORGIA-PACIFIC CORPORATION SITE, 90 WEST REDWOOD AVENUE, FORT BRAGG, CALIFORNIA,, OPERABLE UNIT E FEASIBILITY STUDY ADDENDUM 9SITE CODE 202276), dated December 27, 2022. Letter to Mendocino Railway, stating, "The Department of Toxic Substances Control (DTSC) has determined that the Operable Unit E Feasibility Study (OU-E FS) for the Georgia-Pacific Mill Site requires additional alternatives analysis in a Feasibility Study Addendum (FS Addendum)."

City of Fort Bragg Request for Proposals: Environmental Impact Report Mill Pond Remediation Project, released October, 2022.

PROPOSAL: ENVIRONMENTAL IMPACT REPORT – MILL POND REMEDIATION PROJECT, dated December 16, 2022.

Environmental Engineering firm Dudek's proposal to carry out Mendocino Railway's Remedial Action Plan for the OU-E mill ponds.

NEW 05/22 DTSC Site Visit Report - Operable Units (OUs) C & D (Former Georgia-Pacific Mill Site, Fort Bragg, CA), February 13-14, 2023

NEW 05/22 CHANGE OF DTSC PROJECT MANAGER FOR THE FORMER GEORGIA-PACIFIC CORPORATION SITE, dated May 16, 2023.

NEW 06/05 GEORGIA PACIFIC MILL SITE OU-E MITIGATION MONITORING Year 5 Report, dated January, 2023

Contact Site Owner

Exhibit E

Exhibit E

| 6/20/2023 | Hours | Rate | Total |
|----------------------|--------------|------|---------------------|
| 9/15/2020 -5/31/2023 | 678.6 | | \$228,297.50 |
| 6/1/2023-6/20/2023 | 81.5 | | 37,900.00 |
| TOTAL | 760.1 | | \$266,197.50 |

Lodestar Enhancement 1.5 x \$266,197.50 =

\$399,296.25

| | | | |
|---------------|-----------------------|--|-------------|
| Disbursements | 9/15/2020 - 5/31/2023 | | \$11,761.28 |
| Disbursements | 6/1/2023-6/20/2023 | | \$118.96 |

Total Lodestar Fee With Enhancement & Disbursements

\$411,057.53