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ELECTRONICALLY FILED
6/15/2023 10:04 AM
Superior Court of California
County of Mendocino

By: 
John Lozano
Deputy Clerk

6 Attorneys for Defendant John Meyer

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

10 MENDOCINO RAILWAY,) Unlimited
11 Plaintiff,) Case No. SCUJ-CVED 20-74939
12 vs.) DEFENDANT JOHN MEYER'S
13 JOHN MEYER; REDWOOD EMPIRE) MEMORANDUM OF POINTS AND
14 TITLE COMPANY OF MENDOCINO) AUTHORITIES IN OPPOSITION TO
15 COUNTY; SHEPPARD) MENDOCINO RAILWAY'S MOTION
INVESTMENTS; MARYELLEN) TO REOPEN BENCH TRIAL
16 SHEPPARD; MENDOCINO COUNTY)
TREASURER-TAX COLLECTOR; all)
17 other persons unknown claiming an)
interest in the property; and DOES 1)
through 100, inclusive)
18 Defendants.) Date: June 30, 2023
Time: 9:30 AM
Dept: E

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20 Mendocino Railway's ("MR") motion to reopen the trial should be denied because
21 MR's "new evidence" does not justify reopening the case, and reopening the case will not
22 be in the furtherance of justice.

23 A party who seeks to introduce further evidence must make a motion to reopen the
24 case for further evidence. The motion must be supported by a showing of good cause and
25 due diligence. (*Ensher, Alexander & Barsroom v. Ensher* (1964) 225 cal. App. 318, 326;
26 7 Witkin California Procedure (6th Ed.) Trial § 163.) A request to reopen for further
27 evidence is addressed to the discretion of the trial court whose determination is binding
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1 on appeal in the absence of palpable abuse. (*McLear-Gary v. Scott* (2018) 25 Cal. App.
2 5th 145, 150; 7 Witkin California Procedure (6th Ed.) Trial § 163.) A motion to reopen
3 may be brought after the close of evidence and before argument. (*Cappa v. Oscar C.*
4 *Holmes* (1972) 25 Cal. App. 3d 978, 985; *McLear-Gary v. Scott* (2018) 25 Cal. App. 5th
5 150, 151; 7 Witkin California Procedure (6th Ed.) Trial § 163.) On a motion to reopen for
6 further evidence, the evidence must be relevant, noncumulative, and likely to produce a
7 different result. (*Baker v. Palo Alto* (1961) 190 Cal. App. 2d 744, 756; 7 Witkin
8 California Procedure (6th Ed.) Trial § 164.)

9 MR seeks to reopen the case because the Railroad Retirement Board (“RRB”)
10 considers MR a “common carrier” as of January 1, 2022, based upon whatever
11 information MR decided to provide it. Notwithstanding, the Railroad Retirement Board’s
12 Employer Status Determination Dated May 2, 2023 (“May 2nd Determination”) has little
13 probative value in this eminent domain action. The May 2nd Determination, which serves
14 as the basis for MR’s motion to reopen is not going to change the outcome of the case,
15 and it does not justify the court reopening the case after its decision has been issued and
16 the judgment signed by the court.

17 The court’s decision to rule in favor of defendant John Meyer (“Meyer”) was
18 based on California law and significant evidence. The evidence supporting the court’s
19 decision is ample and the RRB’s determination of whether or not MR should pay its
20 employees retirement as of January 1, 2022, cannot be substituted for the court’s
21 evaluation of the evidence and the court’s decision in this action. The following
22 represents a general overview of some of the evidence in this action.

23 **A. MR Was Neither A Railroad, Common Carrier, Or Public Utility Under**
24 **California Law When It Filed This Action In 2020.**

25 After the close of testimony Meyer obtained a copy of the “Employer Status
26 Determination For Sierra Entertainment and Mendocino Railway” issued by the Railroad
27 Retirement Board, dated September 28, 2006 (“Retirement Board Decision”) (Exhibit
28 AA.)

1 The Retirement Board Decision contradicted and impeached the trial testimony of
2 Robert Pinoli regarding MR's alleged status as a common carrier, its alleged
3 transportation of freight, its alleged transportation of passengers, and its alleged
4 connection to the interstate railroad system. (Exhibit AA.)

5 The Retirement Board Decision states the following:

6 ● "Information regarding these companies [Sierra Entertainment and Mendocino
7 Railway] was provided by Thomas Lawrence III, Weiner Brodsky Sidman Kider PC,
8 outside counsel for Sierra Railroad Company." (Exhibit AA, p. 1, paragraph 3.)

9 ● "Since Mendocino Railway's only access to the railroad system is over this line,
10 that access is currently unusable. Mendocino's ability to perform common carrier
11 services is thus limited to the movement of goods between points on its own line, a
12 service it does not perform." (Exhibit AA, p. 1, paragraph 4.)

13 ● "Since Mendocino reportedly does not and cannot now operate interstate
14 commerce, the Board finds that it is not currently an employer under the Acts. If
15 Mendocino commences operations, the Board will revisit this decision." (Exhibit AA, p.
16 4, paragraph 1.)

17 The finding that MR was not a common carrier was confirmed by MR's attorney in
18 a letter dated April 27, 2022, written to the Railroad Retirement Board, in which MR
19 stated that "MR believes that it has become a 'carrier' under the Act effective January 1,
20 2022" ("Retirement Board Letter"). (Exhibit BB.)

21 Additionally, after this case was re-opened, MR's President, Robert Pinoli,
22 confirmed the Railroad Retirement Board's findings when he testified as follows:

23 "Q. Would it be correct to state that Mendocino Railway has not performed
24 common carrier services between the timeframe of 2004 when it purchased
25 the railroad, the California Western Railroad, and January 1st, 2022?

26 A. That is correct." (11-3-22, p. 15, lines 6-11.)

27 Pinoli subsequently reconfirmed this point when he testified at the end of the trial
28 to the following:

1 “Q. All right. So based upon your statement, effectively Mendocino Railway
2 does not believe it became a common carrier until January 1, 2022; is that
3 correct?

4 A. When it took over the operations from Sierra Northern Railway?

5 Q. That’s correct.

6 A. Yes.

7 Q. Yes?

8 A. Yeah.” (11-10-22, p. 52, lines 17-25.)

9 Pinoli also testified that no revenue was generated from the transport of freight or
10 passengers in 2020, specifically stating the following:

11 “Q. So it is your understanding that in 2020, 90 percent of - - approximately 90
12 percent of the revenue that Mendocino Railway received was due to excursion
13 services.

14 A. Approximately.” (11-3-22, p. 75, line 26 - p. 76, line -2.)

15 Q. Okay. So in the remaining ten percent that wasn’t due to excursions, where did
16 that revenue come from?

17 A. Leases and easements.” (11-3-22, p. 76, lines 11-14.)

18 This testimony cannot be clearer on the material issues. This testimony effectively
19 establishes that in 2020¹ all of MR’s revenue was received from excursion services,
20 leases, and easements. Therefore, this testimony proves that in 2020, MR did not receive
21 any revenue from common carrier services, such as the transportation of freight and/or
22 passengers.

23 Public Utilities Code § 610 et seq., which regulates eminent domain actions for
24 “railroad corporations” and “common carriers” only applies to a corporation or utility that
25 is a “public utility.” (Public Utilities Code § 610.)

26 MR is not a “public utility” under Public Utilities Code § 229, which by definition
27 includes “every common carrier.” A “common carrier” means “every person or

28 ¹This action was filed by MR in 2020.

1 corporation providing transportation for compensation,” including “every railroad
2 corporation.” (Public Utilities Code § 211.)

3 “A *railroad corporation* may condemn any property necessary for the construction
4 and maintenance of its railroad.” (Public Utilities Code § 611, italics added.) “A
5 ‘railroad corporation’ includes every corporation or person owning, controlling,
6 operating, or managing any *railroad* for compensation within this State.” (Public Utilities
7 Code § 230, italics added.) A “‘*railroad*’ includes every commercial, interurban, and
8 other railway, . . . owned, controlled, operated, or managed for public use in the
9 *transportation of persons or property*.” (Public Util. Code § 229, italics added.)

10 The evidence establishes that MR does not operate a “railroad” because its trains
11 do not transport persons or property. (11-10-22, p. 49, line 18 - p. 50, lines 2; p. 52, lines
12 17-23.) Since MR does not provide “transportation,” it is not a “railroad corporation,”
13 “common carrier” or a “public utility.” (11-10-22, p.52, lines 17-23; p. 49, line 18 - p. 50
14 line 2; p. 52, lines 17-23; Exhibit AA; Exhibit BB.) That being the case, MR does not
15 have the statutory power of eminent domain in California.

16 **B. MR’s Excursion Service Is Not A Public Use, And MR Is Prohibited From**
17 **Taking Property By Eminent Domain To Use For Its Private Excursion**
18 **Service.**

19 “The Constitution does not contemplate that the exercise of the power of eminent
20 domain shall secure to private activities the means to carry on a private business whose
21 primary objective and purpose is private gain and not public need.” (*Council of San*
22 *Benito County Governments v. Hollister Inn, Inc.* (2012) 209 Cal. App. 4th 473, 494,
23 quoting *City & County of San Francisco v. Ross* (1955) 44 Cal. 2d 52.)

24 In *City of St. Helena v. Public Util. Comm’n.* (2004) 119 Cal. App. 4th 793, 798,
25 the court evaluated “whether the [C]PUC has jurisdiction to regulate the Wine Train as a
26 public utility,” and it found the Wine Train did “not provide ‘transportation’” and that it is
27 “not subject to regulation as a public utility because it does not qualify as a common
28 carrier.”

1 Similarly, the evidence in this case established that MR provides an excursion
2 service and it does not provide transportation of passenger or freight. Since MR does not
3 provide transportation, it is not a railroad, common carrier, or public utility, therefore it
4 does not have the power of eminent domain under California law.

5 In *City & County of San Francisco v. Ross* (1955) 44 Cal 2d 52, 54 (“*Ross*”), the
6 City of San Francisco sought to acquire by eminent domain a site that would subsequently
7 be leased to private individuals who would build a parking structure in accordance with
8 the city’s specifications and operate parking and other facilities. The city intended to
9 allow a portion of the ground floor frontage of the proposed building to be leased and
10 occupied by retail stores. The total floor space to be occupied by such retail commercial
11 activity was estimated by the city to be no more than four percent (4%) of building. (*Id.*,
12 at 58-59.)

13 In *Ross* it was argued that “there is a clear taking of private property for private
14 purposes and [it is] so interwoven with an otherwise questionable exercise of eminent
15 domain as to characterize the whole taking as one without authority.” (*Id.*, at 59.)

16 MR’s use of Meyer’s property for its private excursion service precludes it from
17 acquiring Meyer’s property by eminent domain. Under the holding in *Ross*, MR cannot
18 exercise the power of eminent domain as a means to carry on its private business
19 activities whose primary objective and purpose is private gain from excursion services,
20 and not public need.

21 Pinoli testified that MR did not perform common carrier services between 2004
22 and 2022. (11-3-22, p. 15, lines 6-11.) Pinoli also testified that in 2020 approximately
23 90% of MR’s revenue in 2020 was from excursion services and the remaining 10% of
24 revenue that wasn’t from excursions was obtained from leases and easements. (11-3-22,
25 p. 75, line 26 - p. 76, line -2; p. 76, lines 11 - 14.) MR’s receipt of 90% of its revenues
26 from private excursion services is 22.5 times more than the 4% of private services
27 deemed unacceptable in *Ross*. As such, MR’s private excursion services preclude it from
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1 taking Meyer’s property by eminent domain.

2 **C. MR Doesn’t Have A Right To Take, Due To Its Failure To Formulate A**
3 **Plan And Properly Evaluate The Project.**

4 “[A]n adequate project description is essential to the three findings of necessity
5 that are required to be made in all condemnation cases. Only by ascertaining what the
6 project is can the governing body make those findings.” (*City of Stockton v. Marina*
7 *Towers LLC* (2009) 171 Cal. App. 4th 93, 113; *Cincinatti v. Vester* (1930) 281 U.S. 439,
8 448.) “[A] public agency has no right to condemn in the absence of evidence to support
9 the findings or necessity, and such evidence cannot exist without a sufficient project
10 description.” (*City of Stockton v. Marina Towers, supra*, at 115; *Redevelopment Agency v.*
11 *Norm’s Slauson* (1985) 173 Cal. App. 3d 1121, 1129.)

12 MR cannot prove that “the project is planned or located in the manner that will be
13 most compatible with the greatest public good and the least private injury,” as required by
14 Code of Civil Procedure § 1240.030(b). There was no specific description or plans for
15 the “Project” when the eminent domain process began, and no plan was ever provided to
16 Meyer. (8-25-22, p. 277, line, 27-p. 280, line 8.) The only conceptual drawing in place
17 for the Meyer Property as of the date of filing of the complaint depicted a *station/store,*
18 *campground,* and *long-term RV rental park.* (8-25-22, p. 235, line, 13- p. 236, line 4;
19 Exhibit 33-49.)

20 MR’s evaluation of the location for its site was based upon whether or not it was
21 conducive to camping, RV vehicle parking, and use for its excursion service, which are
22 private uses. (Exhibit 33-75; Exhibit 33-76; 8-25-22, p. 228, line 5- p. 232, line 17.)
23 Such private uses are not compatible with properly evaluating whether alternate locations
24 are better, that is, compatible with the greatest public good and the least private injury.

25 **D. The Court’s Decision Properly Denied MR’s Attempt To Take Meyer’s**
26 **Property By Eminent Domain.**

27 MR and Pinoli repeatedly lied regarding the material issues throughout this
28 litigation and then they got caught lying. Meyer and the court have no idea what MR told

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the RRB regarding its operation, nor does the court know how the RRB reached its decision. Most likely the RRB is open to having a railroad be subject to its jurisdiction and open to a railroad agreeing to contribute to its employees retirement, but an RRB's determination does not usurp this court's evaluation of the issues as they relate to taking property by eminent domain under the laws of California.


The RRB's May 2nd Determination found that MR is a common carrier as of January 1, 2022, however this decision is of little probative value and it does not in any way negate the substantial evidence presented in this action. The court properly determined that the California Constitution and California statutes do not grant MR the right to acquire the Meyer property by eminent domain.

E. Conclusion.

The court's decision is amply supported by the evidence and California law. The reopening of the case will not result in the furtherance of justice, and it will not change the outcome of the trial. The court should deny the motion to reopen the case and reconfirm the final judgment.

DATED: June 15, 2023.

MANNON, KING, JOHNSON & WIPF, LLP



Stephen F. Johnson, Attorney for Defendant
John Meyer

PROOF OF SERVICE

Mendocino County Superior Court Case No.: SCUK-CVED-20-74939

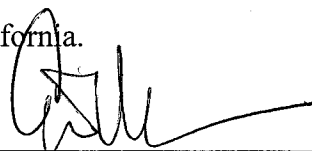
I declare that I am over the age of 18 years, employed in the County of Mendocino, and not a party to the within action; my business address is P.O. Box 419, 200 N. School Street, Room 304, Ukiah, CA 95482.

On June 15, 2023, I served the **DEFENDANT JOHN MEYER'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MENDOCINO RAILWAY'S OBJECTION TO [PROPOSED] JUDGMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MENDOCINO RAILWAY'S MOTION TO REOPEN BENCH TRIAL; MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MENDOCINO RAILWAY'S MOTION TO SET ASIDE AND VACATE PREMATURE JUDGMENT** on the interested parties in this action by placing the original true copies thereof, as follows:

SEE ATTACHED SERVICE LIST

<input checked="" type="checkbox"/>	By E-SERVICE. Pursuant to California Rules of Court Rule 2.251(c), adopted effective July 1, 2013, I am e-Serving the above-listed document(s) to the electronic service address(es) on the attached Service List and e-Filing the document(s) using one of the court's approved electronic service providers. A true and correct copy of the e-Service transmittal will be attached to the above-listed document(s) and produced if requested by any interested party.
<input type="checkbox"/>	By MAIL. I am readily familiar with this law firm's practice for collection and processing of documents for mailing with the U. S. Postal Service. The above-listed document(s) will be deposited with the U. S. Postal Service on the same day shown on this affidavit, to the addressee(s) on the attached Service List in the ordinary course of business. I am the person who sealed and placed for collection and mailing the above-listed document(s) on this date at Ukiah, California, following ordinary business practices.
<input checked="" type="checkbox"/>	By E-MAIL. I e-mailed above-listed document(s) to the e-mail address(es) of the addressee(s) on the attached Service List. A true and correct copy of the e-mail transmittal will be attached to the above-listed document(s) and produced if requested by any interested party.
<input type="checkbox"/>	By OVERNIGHT DELIVERY. The above-listed document(s) will be deposited with an Overnight Delivery Service on the same day shown on this affidavit, in the ordinary course of business. I am the person who sealed and placed for collection and overnight delivery the above-listed document(s) on this date at Ukiah, California, to the addressee(s) on the attached Service List following ordinary business practices. A true and correct copy of the overnight delivery service transmittal will be attached to the above-listed document(s) and produced if requested by any interested party.
<input type="checkbox"/>	By PERSONAL SERVICE. I caused to have hand delivered, the above-listed document(s) to the parties indicated on the service list.
<input checked="" type="checkbox"/>	(STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 15, 2023, at Ukiah, California.



Erika Brewer, Legal Assistant

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SERVICE LIST

Mendocino County Superior Court Case No.: SCUJ-CVED-20-74939

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