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

11 MENDOCINO RAILWAY,

12 Plaintiff,

13 v.

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

18 Defendants.

Case No. SCUK-CVED-2020-74939

[APN 038-180-53]

(Assigned to Hon. Jeanine B. Nadel)

**PLAINTIFF MENDOCINO RAILWAY'S
CLOSING TRIAL BRIEF**

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1 I. INTRODUCTION

2 This is an eminent domain action by which Plaintiff Mendocino Railway (“Mendocino
3 Railway”) seeks to acquire Defendant John Meyer’s (“Meyer”) property at 1401 West Highway 20,
4 Willits, CA (“Subject Property”) for construction and maintenance of rail facilities related to
5 Mendocino Railway’s ongoing and future freight and passenger rail operations and all uses
6 necessary and convenient thereto (“Project”). As a public utility railroad, Mendocino Railway is
7 authorized to exercise eminent domain to acquire private property for railroad purposes. Meyer is the
8 owner of the Subject Property.

9 Mr. Meyer objects to Mendocino Railway’s acquisition of the Subject Property, asserting that
10 Mendocino Railway is not a common carrier public utility and thus not entitled to exercise eminent
11 domain.¹ But the trial testimony of Mendocino Railway’s President, Robert Pinoli, and documentary
12 evidence establish – by a preponderance of the evidence – that Mendocino Railway is a common-
13 carrier public utility.

14 Since acquiring the railroad in 2004, Mendocino Railway has provided—and performed—
15 non-excursion passenger and freight rail transportation services to the public for compensation.
16 Having continuously offered and made available non-excursion passenger and freight rail
17 transportation services to the public, and dedicated its property to the public transport of people and
18 property, Mendocino Railway is a common carrier and, thus, a public utility. This is true irrespective
19 of the volume of rail transportation services it performs, and notwithstanding its other
20 excursion/tourist service (roundtrip excursions). Nothing in the case law or in any decades-old
21 decisions of the California Public Utilities Commission alters Mendocino Railway’s “common
22 carrier public utility” status.

23 As a public utility railroad, Mendocino Railway has the authority to exercise eminent domain
24 to acquire Mr. Meyer’s property for the Project. And, as established at trial, Mendocino Railway
25 meets each of the elements for doing so: (a) the public interest and necessity require the Project; (b)

26 _____
27 ¹ Mr. Meyer also contended that Mendocino Railway sought to acquire the Subject Property for a
28 campground, RV camping area, and pool. The evidence introduced at trial clearly established that
Mendocino Railway’s Project is for rail purposes only, and not a campground, RV camping area or
pool. TR2, 99:24-102:17, 163:15-165:23; TR3, 239:24-240:7, 276:6-277:12, 290:7-22; Exhibit No. 4.

1 the Project is planned and located in the manner most compatible with the greatest public good and
2 least private injury; and (c) the Subject Property is necessary for the Project.

3 Per Cal. Code Civ. Proc. §1260.120(b), the Court should enter an Order determining that
4 Mendocino Railway has established its right to acquire Mr. Meyer’s property by eminent domain for
5 railroad purposes.

6 **II. FOUNDATIONAL FACTS ESTABLISHED AT TRIAL**

7 Mendocino Railway owns and operates the California Western Railroad (“CWR”),² which runs
8 40 miles from its main station in Fort Bragg to its eastern depot in Willits (“Willits Depot”). Exh. 1;
9 Transcript Day 1 (“TR1”), 60:18—61:6; TR2, 111:26—112:3. Mendocino Railway’s Fort Bragg
10 station is fully developed as a rail facility, with, among other things, spur and siding tracks, a depot
11 building, locomotives, passenger and freight cars, a roundhouse (or engine) house, and a speeder shed
12 for storage of railroad equipment, all of which is used for freight, passenger, and excursion rail
13 transportation operations. TR1, 80:19-81:10, 85:5-18, 86:12-23, 162:25—163:2; Exh. 5 (Mendocino
14 Railway’s equipment assets). While not as well-developed as the Fort Bragg station, the Willits Depo
15 has as a train station, with, among other things, tracks, an open-air maintenance area, and storage for
16 rail cars, railroad tools and maintenance of way equipment. TR2, 124:24—125:7. Since acquiring the
17 railroad in 2004 and up through the present, Mendocino Railway continuously provided and performed
18 roundtrip excursion services for tourists, non-excursion passenger services (e.g., for residents and
19 commuters), and freight rail transportation services out of both its Fort Bragg station and Willits depot.
20 TR1, 122:25—123:4 (excursion); TR1, 145:9-18, TR2, 11:23-28. (passenger & freight).

21 As indicated above, Mendocino Railway has owned and operated the CWR since 2004, when
22 Mendocino Railway purchased the railroad assets of the former owner, California Western Railroad,
23 Inc. (“CWRR”), out of bankruptcy. TR1, 150:8-19; Exhs. 20 and 21. In confirming Mendocino
24 Railway as the purchaser of the CWR assets, the Bankruptcy Court stated, “It [Mendocino Railway]
25 recognizes that the railroad is still a valuable instrument of commerce and that a combination of
26 shipping and excursion service is the best way to return the railroad to profitability and keep it
27

28 ² The CWR is also known by way of its nickname: The Skunk Train. TR2, 112:16-21.

1 operating.” Ex. 20, page 16. The CWR was built in 1885 to haul felled redwood trees from the
2 surrounding forest to a lumber mill on the coast in Fort Bragg. TR1, 62:17-21, 190:14-22.

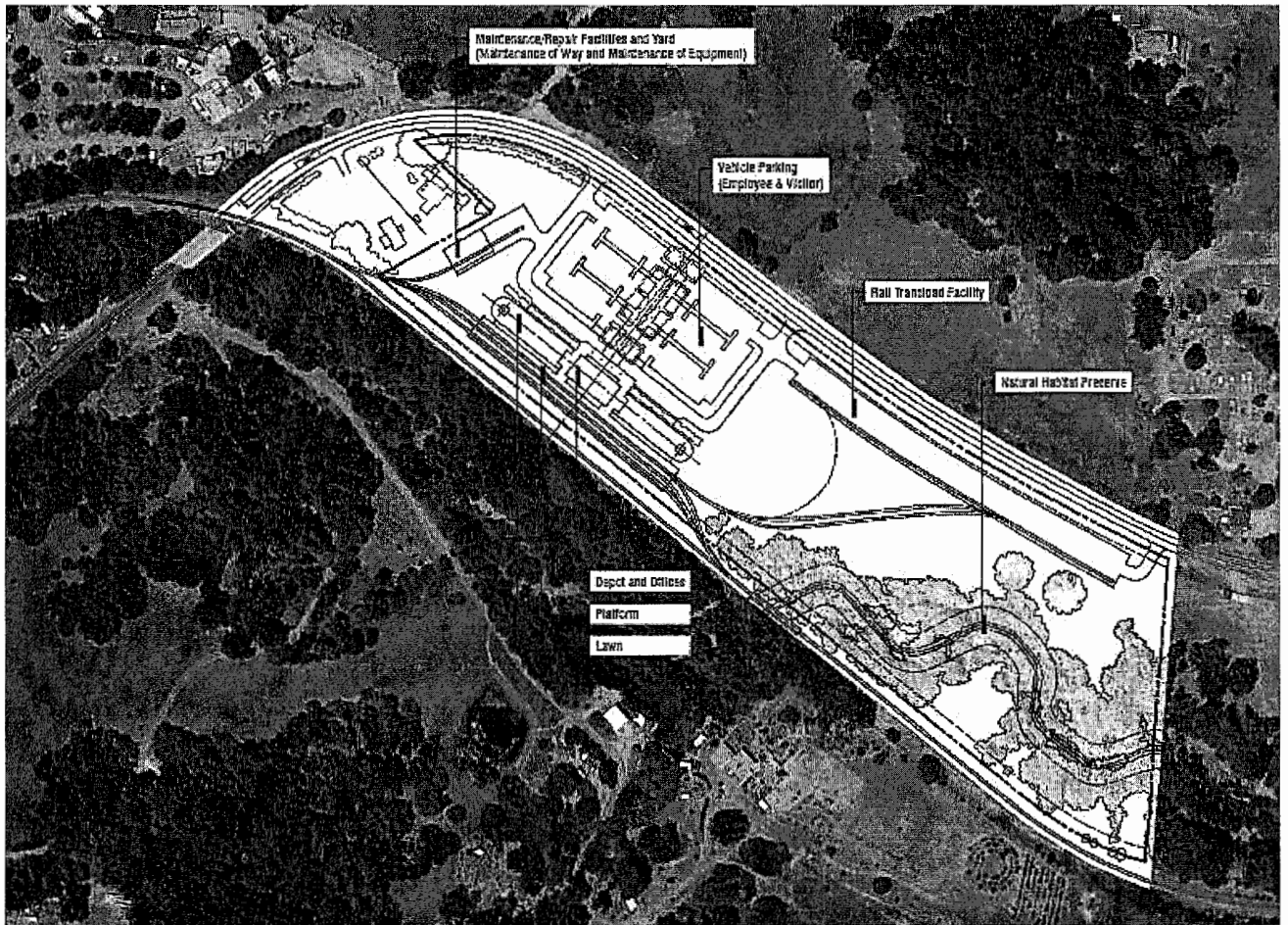
3 Thereafter, in addition to hauling timber and finished products to and from the lumber mill, CWR
4 continuously to the present provides excursion, commuter-passenger, and freight rail transportation
5 services along its 40-mile railway between Fort Bragg and Willits. (TR1, 62:19—63:22, 112:12-17,
6 125:7-12).

7 Presently, Mendocino Railway lacks adequate maintenance, repair and freight rail facilities
8 sufficient to serve its ongoing and future operations at the Willits end of its line. While it owns a
9 passenger depot, including offices, at 299 E. Commercial Street in Willits, Mendocino Railway does
10 not have adequate maintenance or repair facilities, yard space, equipment storage space, or dedicated
11 areas for freight operations. Instead, Mendocino Railway’s maintenance and repair activities take
12 place at impermanent facilities and outdoors on the tracks at the Willits end of the line. TR2, 21:10-
13 22:21, 23:13-24:23, 25:27-27:8, 27:26-28:11, 28:23-30:5.

14 These physical constraints impair and limit Mendocino Railway’s ability to fully and
15 efficiently operate, maintain and repair its locomotives, equipment, and rail cars at the Willits end of
16 its line. Mendocino Railway also lacks the space and facilities at the Willits end of its line needed to
17 fully operate its freight rail services (lacking laydown and storage yards, transload facilities, and rail
18 car storage capacity), and to grow and expand its passenger and freight rail operations. Various local
19 businesses have expressed interest in obtaining freight rail service from Mendocino Railway
20 between Willits and Fort Bragg. These potential customers include, among others, North Coast
21 Brewing Company, GeoAggregates, Redwood Coast Fuels (and other natural gas companies), Lyme
22 Timber (and other timber companies). TR5, 79:6-80:23, 81:3-17, 83:25-84:3, 85:3-85:16, 86:15-
23 86:24, 87:22-88, TR6, 6:4-11:23, 42:16-43:13, 46:9-22; Trial Exhibit 30 – Industry Support letters.

24 The project (“Project”) for which Mendocino Railway seeks to acquire Mr. Meyer’s property
25 consists of construction of rail facilities related to Plaintiff’s ongoing and future freight and
26 passenger rail operations and all uses necessary and convenient thereto. TR2, 21:10-24:16; See also
27 Mendocino Railway’s Complaint in Eminent Domain, filed December 22, 2020. These rail facilities
28 will include a passenger depot, maintenance and repair shops (for maintenance of way and

1 maintenance of equipment), storage tracks, laydown yard and transload facilities, and related
2 improvements. Id. Below is Mendocino Railway’s preliminary conceptual site plan generally
3 depicting the Project rail facilities and improvements Mendocino Railway will construct on the
4 Subject Property:



20 TR2, 60:25-61:3, 61:21-3. Trial Exhibit No. 4.

21 **III. LEGAL STANDARD**

22 Mendocino Railway is entitled to acquire Mr. Meyer’s property by eminent domain to
23 construct rail facilities for operation of its railroad. Article 1, Section 19 of the California
24 Constitution and Cal. Code Civ. Proc. §1240.010 specify that private property can be taken by
25 eminent domain for public use. Cal. Pub. Util. Code §611 likewise specifies that “[a] railroad
26 corporation may condemn any property necessary for the construction and maintenance of its
27 railroad.”

1 Mendocino Railway's Project is necessary for its ongoing and future passenger and freight
2 rail operations. Mendocino Railway is also a California railroad corporation and a Class III common
3 carrier railroad under the California Public Utilities Commission. Cal. Pub. Util. Code §§211, 216,
4 229, 230, *et seq.* and is subject to the jurisdiction of the Surface Transportation Board ("STB") under
5 49 U.S.C. §10501, *et seq.* Where the Legislature provides for a use by statute, such use, "is deemed
6 to be declaration by the Legislature that such use, purpose, object or function is a public use." Cal.
7 Code Civ. Proc. §1240.010. Thus, Mendocino Railway is authorized under California law to exercise
8 eminent domain to acquire property for railroad purposes.

9 There are three statutory prerequisites to Mendocino Railway's exercise of eminent domain
10 to acquire Mr. Meyer's property set forth in Cal. Code Civ. Proc. §1240.030. They are that:

- 11 (a) The public interest and necessity require the project.
- 12 (b) The project is planned or located in the manner that will be
13 most compatible with the greatest public good and the least
14 private injury.
- 15 (c) The property sought to be acquired is necessary for the
16 project.

17 Cal. Code Civ. Proc. §1240.030.

18 Mendocino Railway bears the burden of proving, by a preponderance of the evidence, that
19 each of these three elements is met.³ *San Bernardino County Flood Control Dist. v. Grabowski*
20 (1988) 205 Cal.App.3d 885, 898. However, "[g]enerally, statutory requirements of necessity as a
21 condition of the exercise of the power of eminent domain are liberally construed by the courts so as
22 not to limit unnecessarily the power of the condemning agency." *Kenneth Mebane Ranches v.*
23 *Superior Court* (1992) 10 Cal.App.4th 276, 285.

24 The testimony and documentary evidence at trial establishes by a preponderance of the
25 evidence that (1) Mendocino Railway is a common carrier public utility railroad entitled to exercise
26

27 _____
28 ³ Only governmental entities are required to comply with the procedures for adoption of a Resolution
of Necessity. Cal. Code Civ. Proc. §§1240.040, 1245.220, *et seq.*

1 eminent domain, and (2) each of the required elements per section 1240.030 for taking Mr. Meyer's
2 property have been met.

3 IV. ARGUMENT

4 A. As a Common Carrier Public Utility Railroad, Mendocino Railway Has the Right to 5 Take Property by Eminent Domain for Railroad Purposes

6 1. A Railroad Corporation That Provides Transportation to the Public for 7 Compensation Is a Common Carrier Public Utility with Condemnation 8 Authority

9 a. The Law on Common-Carrier Public Utilities; Volume of Transportation 10 Services is Not Relevant to Mendocino Railway's Public Utility Status

11 Any public utility railroad corporation may condemn any property necessary for the
12 construction and maintenance of its railroad." Cal. Pub. Util. Code § 610-11.⁴ A "railroad
13 corporation" includes any person or corporation, "owning, controlling, operating, or managing any
14 railroad for compensation within this State." Id. § 230. And, a "railroad" includes every railway,
15 "together with all tracks ... rights of way ... stations, depots ... yards, grounds ... structures, and
16 equipment, and all other real estate, fixtures, and personal property of every kind used in connection
17 therewith, owned, controlled, operated, or managed for public use in the transportation of persons or
18 property." Id. § 229. The California Public Utilities Code broadly defines "transportation of persons"
19 and "transportation of property" to include "every service in connection with or incidental to" the
20 person or property transported. Id. §§ 208 and 209.

21 A "public utility" is any purveyor of a service or commodity "where the service is performed
22 for, or the commodity is delivered to, the public or any portion thereof." Id. § 216(a)(1). A "common
23 carrier" is one type of public utility. Id. "Common carrier means every person and corporation
24 providing transportation for compensation to or for the public or any portion thereof . . ." Id. § 211.
25 A common carrier includes "[e]very railroad corporation." Id. § 211(a).

26 _____
27 ⁴ The use of eminent domain by railroads has been held proper over the years for a variety of
28 railroad related purposes including, without limitation, spur tracks (Southern Pac. Co. v. Los Angeles Mill Co. (1918) 177 Cal. 395, 398-399); wharves for transfer of freight between railroad cars necessary for the railroad's future business (Vallejo & N.R.R. v. Reed orchard Co. (1915) 169 Cal. 545, 564); land adjacent to station grounds for a freight house (Central Pacific Ry. V. Feldman (1907) 152 Cal. 303, 305); a workshop (Southern Pac. R.R. v. Raymond (1878) 53 Cal. 223, 224; and power transmission lines to railway facilities (City of Los Angeles v. Los Angeles Pac. Co. (1916) 31 Cal.App. 100, 118).

1 The evidence presented at trial clearly establishes Mendocino Railway’s common carrier
2 public utility status under the foregoing provisions of the Public Utilities Code (“PUC”), and thus its
3 authority to exercise eminent domain to acquire the Subject Property for the Project.
4 Notwithstanding the plain meaning and obvious statutory interpretation of these provisions, Mr.
5 Meyer disputes Mendocino Railway’s common carrier public utility status and appears to
6 misinterpret the “common carrier” definition. Mr. Meyer’s misinterpretation may stem from two
7 terms from section 211’s “common carrier” definition that are left undefined in the PUC. These
8 undefined terms are “providing” and “transportation.”⁵ Both terms must be given their ordinary
9 meaning by reference to court decisions and dictionaries. “When a term goes undefined in a statute,
10 [courts] give the term its ordinary meaning.” *De Vries v. Regents of University of California* (2016)
11 6 Cal.App.5th 574, 590-91 (quoting *Taniguchi v. Kan Pacific Saipan, Ltd.* (2012) 566 U.S. 560,
12 566). Further, “[i]n divining a term’s ‘ordinary meaning,’ courts regularly turn to general and legal
13 dictionaries.” *De Vries*, 6 Cal.App.5th at 591.

14 Courts have defined “transportation” in the public utilities context to mean “the taking up of
15 persons or property at some point and putting them down at another.” *City of St. Helena v. Public*
16 *Utilities Com.* (2004) 119 Cal.App.4th 793, 802 (quoting *Golden Gate Scenic S.S. Lines, Inc. v.*
17 *Public Utilities Com.* (1962) 57 Cal.2d 373, 380). “Round-trip excursions” do not qualify as
18 “transportation” under section 211. *City of St. Helena*, 119 Cal.App.4th at 803 (holding that a wine
19 train offered only round-trip excursions and therefore was not a public utility).

20 As for the term “providing,” the American Heritage Dictionary’s first definition of “provide”
21 is “to make available.”⁶ Merriam-Webster’s first definition of “provide” is “to make (something)
22 available” or “supply.” Merriam-Webster’s Collegiate Dictionary 1001 (11th ed. 2012). Similarly,
23 the Collins English Dictionary reports that the most common usage of the term conveys the idea of
24 “mak[ing] available.”⁷ In other words, to provide a service is to *offer* it by making the service

25
26 ⁵ Cal. Pub. Util. Code §§ 208 and 209 define the scope of “transportation of persons” and
27 “transportation of property,” but do not define “transportation” as such.

28 ⁶ Available at <https://www.ahdictionary.com/word/search.html?q=provide>

⁷ Available at <https://www.collinsdictionary.com/us/dictionary/english/provide>

1 available. However, “providing” a service does not necessarily entail *acceptance* of the service.
2 Applying the ordinary meaning of “provide” to section 211, persons or corporations “provid[e]
3 transportation” if they offer and make the service available to the public or a portion thereof. But, for
4 said persons or corporations to be deemed common carriers, section 211 does not require the
5 frequent, regular, or even sporadic acceptance of their offer of transportation by members of the
6 public.

7 The ordinary meaning of “provide” is supported by case law recognizing that the *dedication*
8 of property for public use is what renders the provider a public utility (of which a common carrier is
9 one kind). “[A]lthough not expressly contained in article XII, section 3, the state Constitution also
10 requires a *dedication* to public use to transform private businesses into a public utility.” *Independent*
11 *Energy Producers Assn., Inc. v. State Bd. of Equal.* (2004) 125 Cal.App.4th 425, 442; emphasis
12 added. “The test for determining whether dedication has occurred is whether or not a person has *held*
13 *himself out*, expressly or impliedly, as engaged in the business of supplying a service or commodity
14 to the public as a class, not necessarily to all of the public, but to any limited portion of it, such
15 portion, for example, as could be served by his system, contradistinguished from his holding himself
16 out as serving or ready to serve only particular individuals, either as an accommodation or for other
17 reasons peculiar and particular to them.” *Id.* at 442-43; emphasis added (quoting *Van Hoosear v.*
18 *Railroad Commission* (1920) 184 Cal. 553, 554). “The essential feature of a public use is that it is
19 not confined to privileged individuals, but is open to the indefinite public. It is this indefiniteness or
20 unrestricted quality that gives it its public character.” *Story v. Richardson* (1921) 186 Cal. 162, 167.

21 For these reasons, the *volume* of service actually accepted by the public or a portion thereof
22 is not relevant to whether the provider is a common carrier or any other kind of public utility. As the
23 Supreme Court held, “a utility that has dedicated its property to public use is a public utility even
24 though it may serve only one or a few customers.” *Richfield Oil Corp. v. Public Utilities Com.*
25 (1960) 54 Cal.2d 419, 431. Indeed, a public utility remains a public utility “no matter how the
26 number of consumers” for its services may “dwindle[], even if it dwindle[s] to none at all.” *Van*
27 *Hoosear v. Railroad Com. of California*, 184 Cal. 553, 557 (1920).

28

1 **b. Mendocino Railway Is a Railroad Corporation and Common-Carrier**
2 **Public Utility**

3 Mendocino Railway easily meets the definition of a common-carrier public utility. It is a
4 common carrier because, as detailed below, it is a railroad corporation owning railway tracks,
5 facilities, and property that historically has made available, and continues to make available,
6 passenger- and freight-transportation services for compensation to members of the public on the
7 CWR. *Id.* §§ 211 (definition of “common carrier”), 230 (definition of “railroad corporation”), 229
8 (definition of “railroad”); Exh. 18 (Mendocino Railway’s corporate registration as a railroad). On
9 these points, there can be no serious dispute.

10 As the testimony and documentary evidence at trial established, the CWR has been
11 transporting non-excursion passengers since Mendocino Railway acquired the railroad in 2004. TR1,
12 155:3 – 157:10; Ex. 20; See also: TR5, 16:22-26; TR1, 100:7-14; TR5, 16:11-21; Exh. 5, pp. 5-1
13 through 5-5, & TR1, 145:6-18 (rail equipment used in providing freight and passenger services). The
14 same is true of freight services for compensation. Such freight services continued even after the 2013
15 collapse of Tunnel No. 1. TR1, 100:4-14; Exh. 5, pp. 5-1 through 5-5, & TR1, 145:6-18 (rail
16 equipment used in providing freight and passenger services).

17 Evidencing its dedication of the CWR to continued public use, as its predecessor owners had
18 done since the turn of last century, Mendocino Railway published tariffs for its non-excursion
19 passenger and freight services, setting out “the rates that a common carrier or public utility charges
20 the public who want[s] to get items, people, or goods or services, from one point to another.” TR1,
21 106:17—107:3; Exh. 7 & TR1, 121:21—122:9 (commuter-passenger tariff in effect as of Jan. 1,
22 2022); Exh. 9 & TR1, 108:7-25, 109:7-110:1 (commuter-passenger tariff in effect 1993-2014, when
23 tariff was amended); Exh. 10 & TR1, 111:4-10 (commuter-passenger tariff in effect 2014-2017);
24 Exh. 6 & TR1, 119:18-19 (updated freight tariff in effect as of Jan. 1, 202); Exh. 8 & TR1, 113:9-14
25 (freight tariff that went into effect in 2008). Freight and passenger tariffs have been in effect since at
26 least Mendocino Railway acquired the CWR in 2004. TR1, 107:23-25, 117:16-23. Mendocino
27 Railway does not discriminate between who can accept its freight and passenger services; any
28 member of the public can avail themselves of Mendocino Railway’s transportation offerings on the
CWR. TR1, 107:12-19.

1 Mendocino Railway intends to continue to offer passenger and freight rail services on the
2 CWR pursuant to its current tariffs. TR1, 120:5-8, 122:10-13. Indeed, given its plans to *expand* its
3 freight and non-excursion passenger transportation offerings, Mendocino Railway will purchase
4 “additional equipment” for “significant infrastructure improvements along the line,” including work
5 on Tunnel No. 1, and “upgrad[ing] over 30,000 railroad ties and 20,000 sticks of rail.” TR1,
6 145:21—146:11. These improvements, together with the Project, will enable Mendocino Railway to
7 continue to provide, and expand, its non-excursion passenger and freight rail services. TR1, 147:16-
8 18.

9 Some examples since the time of the filing of this case (late 2020) to the present,
10 “Mendocino Railway’s freight operations [have] consisted of carrying goods and/or services in to
11 residents who live along the line” between Fort Bragg and Willits, including “equipment that would
12 be used at various camps or . . . residences.” TR1, 103:2-6. Mendocino Railway “coordinate[s] with
13 other public utilities such as AT&T or Pacific Gas & Electric Company,” and “suppl[ies] them with
14 transportation to transport people and equipment to work on their infrastructure that may be adjacent
15 to or on the railroad’s property.” TR1, 103:7-15. The transportation provided by Mendocino Railway
16 is for compensation. TR1, 106:12-16.

17 Further, from 2020 to 2021, Mendocino Railway engaged in the transportation of aggregate
18 and steel structures for two streambed restoration projects” on the CWR at the request of a member
19 of the public, “Trout Unlimited, whose primary focus is to restore streambeds and to make the
20 habitat better for native species.” TR1, 103:16-22; 105:22-23. While Mendocino Railway was
21 providing transportation to Trout Unlimited, its “freight train was made a priority, and the railroad’s
22 excursion schedule was halted to yield to the freight operations of the railroad.” TR4, 55:14-16.
23 Again, this demonstrates Mendocino Railway unfettered dedication of its railroad to public use. The
24 transportation that Mendocino Railway performed for Trout Unlimited was for compensation. TR1,
25 106:8-11. And, the public continues to avail itself of Mendocino Railway’s non-excursion passenger
26 and freight rail transportation services. The Boys & Girls Clubs of San Francisco need passenger
27 transportation by Mendocino Railway to Camp Mendocino for its Summer 2023 campers and
28 counselors. Ex. 39. And, on November 5, 2022 Diesel Motive Company, Inc. entered into an

1 Industry Track Storage Agreement with Mendocino Railway for storage of its freight rail cars on the
2 CWR (interchanged at the NWP/NCRA line in Willits). Ex. 40.

3 While the 2013 Tunnel No. 1 closure has affected some of CWR's common-carrier services,
4 it has not eliminated the offering and performance of such services. Instead, the closure has meant
5 only that "a through freight car or locomotive or passenger car cannot go through the *entire* line at
6 present" (i.e., between Fort Bragg and Willits). TR1, 86:24—87:1 (emphasis added); see also TR1,
7 100:16-18 (noting that because of the collapse, "a passenger car, a freight car, at present cannot
8 travel freely between the towns of Fort Bragg and Willits"). Even since the Tunnel No. 1 closure,
9 and as Mendocino Railway diligently has worked to reopen the tunnel and fully restore all services
10 across the entire 40-mile line (TR1, 92:6-100:3), Mendocino Railway has provided and performed
11 common-carrier services on the CWR line on either side of Tunnel No. 1. The collapse "hasn't
12 stopped the railroad from getting people to their remote residences or summer camps," or "from
13 transporting goods or services to property owners along the route." TR1, 100:9-14, 110:4-112:17
14 (describing current freight services west from Willits station, and passenger services east from Fort
15 Bragg station).

16 As further evidence of its common-carrier status, Mendocino Railway has long been and
17 continues to be regulated and inspected by the California Public Utilities Commission ("CPUC").
18 See, e.g., Exh. 13 (sample CPUC inspection report) & TR1, 169:17-25 (testifying to regular rail
19 inspections by CPUC since 1996 to the present).

20 The federal government similarly recognizes Mendocino Railway's public-utility status. In
21 2004, in its Notice of Exemption, the Surface Transportation Board ("STB") recognized that
22 Mendocino Railway was a common carrier when it acquired the CWR. TR5, 17:20-23; Exhs. 20-
23 21 (Notice of Exemption).

24 In sum, Mendocino Railway is a railroad corporation that, since its acquisition of CWR, has
25 made available and performed transportation services for compensation to the public or a portion
26 thereof. As a public utility, Mendocino Railway has the power to condemn property necessary for
27 the construction and maintenance of its railroad. Cal. Pub. Util. Code § 610-11.

1 2. **Mr. Meyer Offers Clearly Meritless Objections to Mendocino Railway’s**
2 **Common Carrier Public Utility Status**

3 a. **City of St. Helena v. PUC Does Not Affect Mendocino Railway’s**
4 **“Common Carrier Public Utility” Status**

5 At trial, Mr. Meyer repeatedly referenced *City of St. Helena v. Public Utilities Com.* (2004)
6 119 Cal.App.4th 793, as a case that purportedly precludes Mendocino Railway from being a common
7 carrier public utility, because Mendocino Railway provides roundtrip excursion services. However, as
8 the Court itself acknowledged at trial (TR4, 42:14—43:13), *City of St. Helena* is distinguishable from
9 the facts here.

10 In *City of St. Helena*, the Court of Appeal considered whether the Napa Valley Wine Train was
11 a public utility. At bottom, the question was whether the Wine Train “provid[ed] transportation” to
12 the public or a portion thereof, such that it could be deemed a common carrier. *Id.* at 802-04.
13 Ultimately, the Court held it did not, and concluded the Wine Train was not a common carrier public
14 utility.

15 The Court’s conclusion is not surprising given the nature of the Wine Train’s operations. As
16 the Court explained, “[p]resently, the Wine Train does not pick up passengers at one location and put
17 them down at another location.” *Id.* at 803. Nor was there any evidence of the Wine Train providing
18 any freight services. “Rather, the Wine Train provides a round-trip excursion from Napa.” *Id.* The
19 Court held that round round-trip excursions do not qualify as “transportation” under section 211 of the
20 PUC. *Id.*

21 The Court flatly rejected the argument that the Wine Train should be considered a public utility
22 because it might *in the future* be capable of providing transportation in the form of non-excursion
23 passenger services. *Id.* at 803. As the Court concluded, “[t]he fact that the Wine Train could provide
24 transportation in the future does not entitle it to public utility status now.” *Id.* “[R]ather, the most that
25 can be said is that the Wine Train has the *capacity* to provide transportation” and thus become a public
26 utility in the *future*. *Id.* (emphasis added).

27 In stark contrast, the testimony and documentary evidence presented at trial proves, beyond a
28 preponderance of the evidence, that Mendocino Railway has always provided and performed, and
 continues to provide and perform, non-excursion passenger and freight services to the public for

1 compensation. The *City of St. Helena* decision mentions the fact that the Skunk Train’s “excursion
2 service between Fort Bragg and Willits” does not qualify it as a “public utility.” *Id.* at 804. Mendocino
3 Railway does not dispute that its excursion service (known as the “Skunk Train”) is not a public utility
4 activity or function. But, unlike the Wine Train, Mendocino Railway does not *only* operate excursions
5 on the CWR; the “Skunk Train” is not Mendocino Railway’s only operation on the CWR. Mendocino
6 Railway and its predecessors have long operated—and Mendocino Railway continues to operate—
7 *non-excursion* passenger and freight rail transportation services. Thus, nothing about the *City of St.*
8 *Helena* case alters the fact that Mendocino Railway has been, and remains, a common carrier public
9 utility.

10 **Neither the Volume Nor Relative Proportion of Common Carrier**
11 **Passenger and Freight Rail Transportation Services Mendocino Railway**
12 **Provides and Performs Alters Its “Common Carrier Public Utility”**
13 **Status**

14 At trial, Mr. Meyer tried to cast doubt on Mendocino Railway’s status as a common carrier
15 public utility by eliciting testimony on the volume of strictly non-excursion passenger and freight rail
16 transportation services it performed through the years, especially since the Tunnel No. 1 collapse in
17 2013. In Mr. Meyer’s view, the fact that a significantly greater proportion of Mendocino Railway’s
18 services consists of excursions, versus non-excursion passenger and freight rail transportation,
19 somehow annuls the railroad’s status as a public utility. But the volume of transportation performed
20 is not relevant to whether an entity is a common carrier under section 211.

21 As noted above, the defining feature of any public utility, including a common carrier like
22 Mendocino Railway, is that it is physically able to—and does—dedicate its property to public use,
23 regardless of the number of members of the public it actually serves. The Supreme Court made that
24 much clear when it declared that “a utility that has dedicated its property to public use is a public utility
25 even though it may serve only one or a few customers.” *Richfield Oil*, 54 Cal.2d at 431. Thus, it doesn’t
26 matter what percentage of Mendocino Railway’s services consists of non-excursion passenger and
27 freight rail transportation; as long as it dedicates its railroad to public use—as it clearly has at least
28 since Mendocino Railway acquired it in 2004—it remains a common-carrier railroad.

 Indeed, a public utility remains a public utility “no matter how the number of consumers” for

1 its services may “dwindle[], *even if it dwindles to none at all.*” *Van Hoosear*, 184 Cal. at 557
2 (emphasis added). Thus, if infrastructure issues or a sudden evaporation of demand were to cause
3 Mendocino Railway to lose non-excursion passenger and freight customers, it would *not* alter
4 Mendocino Railway’s “public utility” status. That is because Mendocino Railway would still be
5 “providing”—e.g., offering, making available, and dedicating its railroad property for—non-excursion
6 passenger and freight rail transportation services to the public for compensation, as reflected in its
7 historical operations and published tariffs. Were it otherwise, *any* disruption of a common carrier’s
8 operations based on forces outside of its control—fire, earthquake, vandalism, etc.—would cause it to
9 lose its common-carrier, public-utility status. That is not the law. *Richfield Oil*, 54 Cal.2d at 431; *Van*
10 *Hoosear*, 184 Cal. at 557.

11 Again, the definition of “common carrier” does not require that a certain number of customers
12 (or even *any* customers) accept Mendocino Railway’s offerings so that the railroad actually performs
13 those services in any particular volume or at any given time. Rather, it is sufficient for “common
14 carrier” status that Mendocino Railway offer and make the services available to the public or a portion
15 thereof, thereby dedicating its railroad property to public use. *Independent Energy Producers Assn.*,
16 125 Cal.App.4th at 442-43 (“The test for determining whether dedication has occurred is whether or
17 not a person has *held himself out*, expressly or impliedly, as engaged in the business of supplying a
18 service or commodity to the public as a class, not necessarily to all of the public, but to any limited
19 portion of it, such portion, for example, as could be served by his system, contradistinguished from
20 his holding himself out as serving or ready to serve only particular individuals, either as an
21 accommodation or for other reasons peculiar and particular to them.” (emphasis added)).

22 Further, the PUC’s definitions of “public utility” and “common carrier” explicitly state that, to
23 be a common carrier public utility, a railroad need only provide its transportation services to “*any*
24 *portion*” of the public, not necessarily to the public at large. Cal. Pub. Util. Code §§ 211, 216(a)(1) &
25 216(b). Those statutes do *not* state or imply that transportation services must make up the bulk or even
26 a substantial portion of the railroad’s business. *Id.* Providing transportation services to “any” member
27 of the public—as Mendocino Railway continuously has done for as long as it has owned and operated
28 CWR—is sufficient.

1
2 Unsurprisingly, there is no decision of the CPUC or any court that says that an entity must
3 perform a certain volume of transportation in order to maintain its “common carrier” status. *City of St.*
4 *Helena* certainly says no such thing. That case stands only for the proposition that performing
5 excursion services *alone* will not qualify an entity for “common carrier public utility” status. Of
6 course, Mendocino Railway performs more than just excursion services. It has offered *and* performed
7 non-excursion passenger and freight services since it acquired the CWR in 2004. And its Project
8 represents a clear, investment-backed effort to *expand* its longstanding performance of non-excursion
9 passenger and freight rail transportation to the public.

10 Finally, the fact that Mendocino Railway has *also* provided excursion services—or even
11 predominantly excursion services—does not defeat its “common carrier” status.

12 First, there is no language whatsoever in the PUC that provides or suggests that the
13 transportation services provided to the public for compensation must constitute the bulk, much less a
14 certain percentage, of the railroad’s business. It simply isn’t there. Under basic rules of statutory
15 construction, statutes must be read according to their plain language, and it is not for the court to add
16 exceptions or other language which does not appear on the face of the statute. *People v. Crabtree*
17 (2009) 169 Cal.App.4th 1293, 1329 (“[C]ourts are loath to add language missing from a statute. The
18 unwillingness of courts to add language is especially strong when statutory language was readily
19 available to the Legislature if it had wished to express an intention different from the statute’s plain
20 meaning.”). If the Legislature intended that a railroad’s operations consist of a certain ratio of
21 common carrier functions to non-common carrier functions in order to be deemed a public utility, it
22 could have done so. It didn’t.

23 Second, not only does no such language or exception appear on the face of any PUC
24 provision, but the language the Legislature *did* use suggests the exact opposite of what Mr. Meyer
25 has argued in this case. The PUC is clear that once a railroad provides passenger or freight rail
26 transportation services to “any portion” of the public, for “any compensation or payment
27 whatsoever,” the railroad is classified as a public utility, subject to the regulatory authority of the
28 CPUC. Cal. Pub. Util. Code §§ 211, 216. This applies expressly to “*every*” person and corporation

1 providing transportation for compensation to or for the public or any portion thereof. Cal. Pub. Util.
2 Code §211. “Every” person or corporation means just that—*every* such person or corporation, not
3 just some. Likewise, “any” portion of the public means just that—*any*, not necessarily all. And “any
4 compensation . . . whatsoever” means just that – *any* compensation *whatsoever*, not necessarily a
5 majority or even a substantial portion of the railroad’s revenues. This language does not in any way,
6 shape or form mean or suggest that some railroads who otherwise satisfy the statutory prerequisites
7 to be deemed a public utility are somehow excluded from public utility status because some or most
8 of the railroad’s other business consists of tourist services. Nor does this statutory language suggest
9 that the compensation received for transportation services must make up the bulk or even a
10 substantial percentage of the railroad’s revenues. Instead, the language is clear: “*every*” railroad that
11 provides transportation services to “*any*” member of the public for “*any compensation whatsoever*”
12 is deemed a common carrier public utility. The evidence and testimony presented at trial establishes
13 that Mendocino Railway clearly satisfies all of these elements and is a common carrier public utility
14 railroad.

15 c. **The Three Prior 1998 CPUC Decisions Only Bolster Mendocino**
16 **Railway’s “Public Utility” Status**

17 At trial, Mr. Meyer made much of a decision of the CPUC, dated January 21, 1998, which
18 Mr. Meyer claimed somehow shows that Mendocino Railway is not a common-carrier railroad.
19 Plaintiff Mendocino Railway’s Request for Judicial Notice, Exhibit 1, filed August 19, 2022
20 (hereinafter, “RJN, Exh. 1”). But there are three reasons why the 1/21/98 CPUC decision does not
21 impact Mendocino Railway’s “common carrier public utility” status.

22 First, the 1/21/98 CPUC decision concerns another owner and operator of the CWR—
23 California Western Railroad, Inc. (“CWRR”)—and is based on facts at that time. The 1/21/98 CPUC
24 decision does not concern Mendocino Railway or how it has operated the railroad since 2004. To
25 opine in 2023 that Mendocino Railway is not a common carrier public utility on the basis of a
26 decision rendered a quarter century ago, relating to a different owner/operator of the CWR, is both
27 factually and legally unsound.

28 Second, even if the 1/21/98 CPUC decision as to a different company with different

1 operations a quarter century ago were somehow relevant to *Mendocino Railway's* operations today,
2 the decision does not repudiate Mendocino Railway's status as a common carrier public utility. To
3 the contrary, the CPUC acknowledged in that decision that the CWRR provided more than just
4 excursions on the CWR, stating that "CWRR transports passengers and freight between Fort Bragg
5 and Willits." RJN, Exh. 1. The Commission repeatedly recognized the existence of CWRR's
6 "passenger and freight operations" on the CWR in addition to the railroad's excursion service. *Id.*
7 Indeed, in addition to seeking deregulation of its excursion service, CWRR's application also sought
8 the Commission's approval to "reduce its commuter service," evidencing that CWRR provided
9 *transportation* as defined in section 211 of the PUC. *Id.*

10 At most, the 1/21/98 CPUC decision states that CWRR's excursion operation was "not a
11 public utility *function*" (emphasis added). RJN, Exh. 1. A railroad may operate a service that is not a
12 public utility function; but as long as it carries out other public-utility functions—such as
13 transporting non-excursion passengers and freight—the railroad retains its public utility status. That
14 is why, in its 1/21/98 CPUC decision, the Commission directed that "[t]his proceeding shall remain
15 open to consider CWRR's request to reduce its commuter service"—a service that undisputedly is a
16 public utility function. *Id.* What authority would the Commission have had to continue to regulate
17 the frequency of a railroad's commuter service if the railroad was no longer a public utility?

18 Third, while Mr. Meyer's argument relies exclusively on the Commission's 1/21/98 decision,
19 his argument completely ignores two *later* CPUC decisions regarding CWRR in May and August
20 1998. These later CPUC decisions clearly reaffirmed CWRR's public-utility status.

21 The first is the Commission's May 21, 1998, decision concerning CWRR's motion to
22 withdraw its request to reduce commuter service on the CWR. RJN, Exh. 2. The 5/21/98 CPUC
23 decision reiterates that CWRR "transports passengers and freight between Fort Bragg and Willits,"
24 and "serves a few communities" in between. Cal. Pub. Util Code § 211 (defining "common carrier"
25 as any person or corporation "providing transportation for compensation to or for the public or any
26 portion thereof"), § 216 (defining a "public utility" as a "common carrier," which includes "[e]very
27 railroad corporation"). The 5/21/98 CPUC decision makes clear that CWRR's "passenger service" is
28 "[i]n addition" to the excursion service." RJN, Exh. 2. The decision also notes that the

1 Commission's Rail Safety and Carriers Division fought (successfully) to retain "jurisdiction over
2 CWRR's passenger service." RJN, Exh. 2. The Commission ultimately granted CWRR's motion to
3 withdraw its request to reduce commuter service, because "[g]ranting . . . CWRR's motion" was "in
4 the best interest of passengers which use CWRR's service." Id. The 5/21/98 CPUC decision thus
5 clearly reaffirms CWRR's commuter passenger rail transportation service—an indisputable public
6 utility function.

7 The other CPUC decision is dated August 6, 1998. RJN, Exh. 3. It concerns CWRR's
8 application for Commission approval of certain stock transactions. As the decision notes, "[b]efore a
9 *public utility* may issue stocks and stock certificates, it must obtain an order from this Commission
10 authorizing the issue . . . PUC Code Section 818" (emphasis added). Id. CWRR made the application
11 as a public utility, and the Commission accepted and adjudicated the application based on CWRR's
12 status as a public utility. In its "findings of fact," the Commission specifically found that CWRR "is
13 a common carrier railroad engaged in interstate commerce," and "operates railroad passenger and
14 freight services between Fort Bragg and Willits, California." Id. In its "conclusions of law," the
15 Commission held: "[CWRR] is a public utility within the meaning of Section 216(a) of the PU
16 Code." Id. In footnote 7 of the 8/6/98 CPUC decision, the Commission also held that "[CWRR] is a
17 common carrier, see PU Code Section 211, and is therefore a public utility under California law.
18 PUC Code 216(a)." Id. The Commission's acknowledgement of CWRR's continued status as a
19 public utility in the 8/6/98 CPUC decision could not be clearer.

20 Notwithstanding Mr. Meyer's mischaracterization of the earlier 1/21/98 CPUC decision, at
21 least three times in its *subsequent* 8/6/98 CPUC decision, the Commission made unequivocal its
22 view that CWRR was still a public utility insofar as it provided non-excursion passenger and freight
23 rail transportation.

24 In sum, no CPUC decision exists that even remotely declares CWRR—much less Mendocino
25 Railway, a different company that conducts different operations over the same line a quarter century
26 later—to be anything other than a common carrier public utility railroad. However, to the extent that
27 the prior 1998 CPUC decisions regarding CWRR may be applicable to Mendocino Railway, they
28 only serve to further substantiate Mendocino Railway's common-carrier, public-utility status.

1 d. **The 2022 CPUC Staff Letter Does Not Change Mendocino Railway’s**
2 **“Common Carrier Public Utility” Status**

3 At trial, Mr. Meyer introduced an August 12, 2022, letter from a staff attorney with the
4 CPUC opining that Mendocino Railway is not a public utility. Exh. I. But the staff attorney
5 inexplicably relied exclusively on the 1/21/98 CPUC decision of the CPUC, without any reference to
6 the CPUC’s subsequent decisions that reaffirmed the “public utility” status of CWR’s prior owner.
7 Thus, the letter is dead-wrong for the reasons described in the preceding subsection. In any event, an
8 agency attorney has no power to alter or otherwise declare upon an entity’s status as a public utility.

9 **B. The Testimony and Documentary Evidence Presented at Trial Establish, by a**
10 **Preponderance of the Evidence, Mendocino Railway Satisfies All Applicable**
11 **Requirements to Acquire the Subject Property by Eminent Domain for the Project**

12 1. **Description of Mendocino Railway’s Project**

13 Mendocino Railway lacks maintenance, repair, and freight facilities sufficient to serve its
14 ongoing and future operations at the Willits end of the line. TR3, 246:27-247:20, 280:21-283:7,
15 283:26-284:26; TR5, 33:11-35:16, 53:3-54:9, 79:6-80:23, 81:3-17, 83:25-84:3, 85:3-85:16, 86:15-
16 86:24, 87:22-88:7; TR6, 6:4-11:23, 42:16-43:13, 46:9-22; and Trial Exhibit 30 – Industry Support
17 letters.) While it owns a passenger depot, including offices, at 299 E. Commercial Street in Willits,
18 Mendocino Railway does not have adequate maintenance or repair facilities or yard space,
19 equipment storage space, or dedicated areas for freight operations. TR1, 60:18—61:6; TR2,
20 111:26—112:3; TR5, 53:3-54:9; TR2, 21:10-22:21, 23:13-24:23, 25:27-27:8, 27:26-28:11, 28:23-
21 30:5.. Instead, Mendocino Railway’s maintenance and repair activities take place at impermanent
22 facilities and outdoors on the tracks at the Willits end of the line TR2, 21:10-22:21, 23:13-24:23,
23 25:27-27:8, 27:26-28:11, 28:23-30:5.

24 These physical constraints impair and limit Mendocino Railway’s ability to fully and
25 efficiently operate, maintain, and repair its locomotives, equipment, and rail cars at the Willits end of
26 its line. TR2, 21:10-22:21, 23:13-24:23, 25:27-27:8, 27:26-28:11, 28:23-30:5. Mendocino Railway
27 also lacks space and facilities at the Willits end of the line necessary to fully operate its freight rail
28 services (lacking laydown and storage yards, transload facilities, and rail car storage capacity), and
to grow and expand its passenger and freight rail operations. *Id.* Various local businesses have
expressed interest in obtaining freight rail service from Mendocino Railway between Willits and

1 Fort Bragg. TR6, 6:4-11:23, 42:16-43:13, 46:9-22; and Trial Exhibit No. 30 – Industry Support
2 letters.) These potential customers include, among others, North Coast Brewing Company,
3 GeoAggregates, Redwood Coast Fuels (and other natural gas companies), and Lyme Timber (and
4 other timber companies). Id.

5 The project for which Mendocino Railway seeks to acquire Mr. Meyer’s property consists of
6 construction and maintenance of rail facilities related to Mendocino Railway’s ongoing and future
7 freight and passenger rail operations and all uses necessary and convenient thereto. TR2, 21:10-
8 23:12. These rail facilities will include a passenger depot, maintenance and repair shops (for
9 maintenance of way and maintenance of equipment), storage tracks, laydown yard and transload
10 facilities, and related improvements.

11 Mendocino Railway’s preliminary conceptual site plan, generally depicting the Project and
12 the rail facilities and improvements Mendocino Railway intends to construct on the Subject
13 Property, is set forth on Page 5, above. TR2, 60:25-61:3, 61:21-3. Trial Exhibit No. 4.

14 **2. The Testimony and Documentary Evidence Presented at Trial Establish by a**
15 **Preponderance of the Evidence that Mendocino Railway Satisfies Each of the**
16 **Cal. Code Civ. Proc. §1240.030 Requirements to Acquire the Subject Property**
by Eminent Domain

17 **a. The Public Interest and Necessity Require Mendocino Railway’s Project**
18 **to Construct Rail Facilities for its Ongoing and Future Freight and Non-**
Excursion Passenger Rail Services

19 The first of the three eminent domain required elements is that, “[t]he public interest and
20 necessity require the project.” Cal. Code Civ. Proc. §1240.030(a). As a common carrier public utility
21 railroad, Mendocino Railway is authorized to acquire property for its railroad. Cal. Pub. Util. Code
22 §611. “Where the Legislature provides by statute that a use, purpose, object, or function is one for
23 which the power of eminent domain may be exercised, such action is deemed to be a declaration by
24 the Legislature that such use, purpose, object, or function is a public use.” Cal. Code Civ. Proc.
25 §1240.010. Thus, the Project is a public use.

26 Moreover, “[t]he necessity specified by the statute ... does not mean an imperative or
27 indispensable or absolute necessity but only that the taking provided for be reasonably necessary for
28 the accomplishment of the end in view under the particular circumstances.” *Kenneth Mebane*

1 *Ranches v. Superior Court* (1992) 10 Cal.App.4th 276, 285; internal citations omitted. And,
2 “[p]ublic interest and necessity’ include all aspects of the public good including but not limited to
3 social, economic, environmental, and esthetic considerations.” *Shell Cal. Pipeline Co. v. City of*
4 *Compton* (1995) 35 Cal.App.4th 1116, 1125.

5 The evidence at trial established the public benefits of the Project. Mendocino Railway needs
6 to expand its freight and passenger rail facilities at the Willits end of its railroad, including repair and
7 maintenance facilities, to accommodate its ongoing and growing future freight and non-excursion
8 passenger operations. TR3, 246:27-247:20, 280:21-283:7, 283:26-284:26; TR5, 33:11-35:16, 53:3-
9 54:9, 79:6-80:23, 81:3-17, 83:25-84:3, 85:3-85:16, 86:15-86:24, 87:22-88:7; TR6, 6:4-11:23, 42:16-
10 43:13, 46:9-22; and Trial Exhibit 30 – Industry Support letters.) Presently, Mendocino Railway lacks
11 dedicated maintenance, repair, and freight facilities sufficient to properly operate its ongoing and
12 future operations. TR1, 80:16-84:25; TR2, 13:20-16:12, 22:4-24:22, 26:3-7; TR4, 16:4-17:2. Among
13 other reasons, the lack of such facilities restricts and limits Mendocino Railway’s ability to
14 efficiently repair and maintain its equipment. *Id.* The lack of such facilities is also among the reasons
15 limiting and restricting Mendocino Railway’s ability to provide more extensive freight rail service to
16 customers. *Id.*

17 As the railroad’s president testified at trial, for many years, Mendocino Railway has received
18 inquiries from a variety of shippers and other customers interested in shipping freight between
19 Willits and Fort Bragg. TR5, 79:6-80:23, 81:3-17, 83:25-84:3, 85:3-85:16, 86:15-86:24, 87:22-88,
20 TR6, 6:4-11:23, 42:16-43:13, 46:9-22; Trial Exhibit 30 – Industry Support letters.) Mendocino
21 Railway’s Project will facilitate expanded freight rail shipping because, among other reasons, the
22 transload facilities and other improvements to be constructed will provide the space and operational
23 capacity required to accommodate these activities. TR3, 280:21-283:7, 283:26-284:26. The Project’s
24 facilities and improvements will also facilitate Mendocino Railway’s restoration of passenger rail
25 service between its end points in Willits and Fort Bragg (in addition to the ongoing passenger rail
26 services along the line). TR3, 122:6-13, 145:21-148:1

1 **b. Mendocino Railway’s Project is Planned and Located in the Manner**
2 **Most Compatible with the Greatest Public Good and Least Private**
3 **Injury.**

4 The next of the three eminent domain required elements is that, “[t]he project is planned or
5 located in the manner that will be most compatible with the greatest public good and the least private
6 injury.” Cal. Code Civ. Proc. §1240.030(b). This element requires a comparison between two or
7 more sites. “Proper location is based on two factors: public good and private injury. *Accordingly, the*
8 *condemnor’s choice is correct or proper unless another site would involve an equal or greater*
9 *public good and a lesser private injury.* A lesser public good can never be counter-balanced by a
10 lesser private injury to equal a more proper location. Nor can equal public good and equal private
11 injury combine to make the condemnor’s choice an improper location.” Legislative Committee
12 Comment to Cal. Code Civ. Proc. §1240.030; internal citations omitted; emphasis added.

13 As the evidence at trial established, Mendocino Railway undertook an extensive search,
14 investigation, and analysis of several potentially suitable locations for the Project. TR3, 230:19-
15 232:17, 280:21-283:7, 283:26-284:26. In its search, Mendocino Railway considered various factors
16 and site characteristics required for its Project, including, without limitation, size, shape, location,
17 topography. Generally, the site needs to be relatively level, large enough to accommodate the
18 construction of rail facilities suitable for ongoing and future operations (including a Wye track), and
19 located along Mendocino Railway’s existing rail line. TR2, 73:17-74:12 TR3, 230:19-232:17,
20 280:21-283:7, 283:26-284:26. Mendocino Railway identified several potentially suitable locations
21 and conducted further investigations and analysis of each to evaluate whether each site was actually
22 suitable. Id. Mendocino Railway’s analysis also included an evaluation of the private impacts of
23 acquisition such as displacement of residential or commercial occupants and other potential impacts.

24 Id.

25 Among other potential locations considered for the Project, Mendocino Railway initially
26 entered into an agreement to acquire a property available for sale – the former REMCO site. TR2,
27 15:17-17:13, TR2, 62:17-63:15; TR3, 246:27-247:20. While the REMCO site did not meet all of
28 Mendocino Railway’s requirements for the Project, it was sufficiently suitable for construction of
many of the Project improvements. Id. The primary deficiency was that the REMCO site did not

1 have sufficient area to accommodate the full extent of freight rail operations, including a transload
2 facility – thus, a second property would also need to be acquired to accommodate the
3 freight/transload operations. TR2, 59:13-60:13. The REMCO property owner ultimately cancelled
4 the agreement with Mendocino Railway and sold the property to another buyer before Mendocino
5 Railway could locate such a second property. TR2, 62:17-63:15.

6 Thereafter, Mendocino Railway proceeded to investigate and analyze other properties
7 including the Subject Property, that might accommodate the entire Project. TR2, 55:21-56:26, 75:25-
8 83:3. After considering several potential sites, Mendocino Railway determined that the Subject
9 Property was the only site that met *all* key site requirements for the Project. TR3, 257:5-13. The
10 Subject Property is a relatively level parcel of approximately 20 acres located along Mendocino
11 Railway’s main rail line near Willits, with good accessibility to a highway. TR2, 54:16-55:5.
12 Moreover, the Subject Property is undeveloped and the property owner, Mr. Meyer, initially
13 indicated a willingness to sell. TR3, 241:24-242:11.

14 These facts, adduced at trial, establish that the Project is planned and located in the manner
15 most compatible with the greatest public good and least private injury.

16 **c. The Subject Property is Necessary for Mendocino Railway’s Rail Project.**

17 The third of the three required eminent domain elements is that, “The property sought to be
18 acquired is necessary for the project.” Cal. Code Civ. Proc. §1240.030(b). “This aspect of necessity
19 includes the suitability and usefulness of the property for the public use. See *City of Hawthorne v.*
20 *Peebles* (1959) 166 Cal.App. 2d 758, 763 (‘necessity does not signify the impossibility of
21 constructing the improvement ... without taking the land in question, but merely requires that the
22 land be reasonably suitable and useful for the improvement.’).” Legislative Committee Comment to
23 Cal. Code Civ. Proc. §1240.030.

24 As discussed in the preceding section, the trial testimony established that there are several
25 key factors required for construction of the Project – including that the property be approximately 20
26 acres in size, relatively level, located along Mendocino Railway’s rail line, near the City of Willits,
27 and adjacent to highways. As the president of the railroad testified, the Subject Property is the only
28 property identified by Mendocino Railway as having these features and being suitable for the

1 Project. TR3, 280:21-283:7, 283:26-284:26.

2 **V. CONCLUSION**

3 Mendocino Railway established that it is a common-carrier public utility entitled to exercise
4 eminent domain to acquire Mr. Meyer's property. Since its acquisition of the railroad in 2004,
5 Mendocino Railway provided and performed non-excursion passenger and freight rail transportation
6 services to the public for compensation. While the volume of such rail transportation services may
7 have varied over the last 19 years due to circumstances outside of its control, Mendocino Railway's
8 dedication of the railroad (including it's railway, facilities, equipment, property, etc.) to public use
9 has not. Moreover, the volume of such transportation services is immaterial to Mendocino Railway's
10 common-carrier public utility status.

11 Moreover, Mendocino Railway established each of the elements required to exercise eminent
12 domain to acquire Mr. Meyer's property for Mendocino Railway's freight and non-excursion
13 passenger rail Project: (a) the public interest and necessity require the Project; (b) the Project is
14 planned and located in the manner most compatible with the greatest public good and least private
15 injury; and (c) the Subject Property is necessary for the Project.

16 Accordingly, the Court should enter an Order determining that Mendocino Railway has
17 established its right to acquire Mr. Meyer's property by eminent domain for railroad purposes.

18 Dated: January 23, 2023

CALIFORNIA EMINENT DOMAIN LAW GROUP,
a Professional Corporation

19
20
21 By  _____
22 Glenn L. Block
23 Attorneys for Plaintiff MENDOCINO RAILWAY
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27
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PROOF OF SERVICE

Mendocino Railway v. John Meyer, et al.
Mendocino Superior Court Case No.: SCUJ-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 January 23, 2023, I served the within document(s):


PLAINTIFF MENDOCINO RAILWAY'S CLOSING TRIAL BRIEF

- 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 January 23, 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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