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9 MENDOCINO RAILWAY

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
EUREKA**

CALIFORNIA COASTAL COMMISSION; CITY
OF FORT BRAGG,

Plaintiffs

v.

MENDOCINO RAILWAY,

Defendant.

Case No.: 1:22-cv-06317

NOTICE OF REMOVAL

1 **TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN**
2 **DISTRICT OF CALIFORNIA:**

3 Defendant MENDOCINO RAILWAY files this Notice of Removal under 28 U.S.C. sections 1331,
4 1367, 1441 and 1446, and Federal Rule of Civil Procedure 81(c), based on federal question jurisdiction.

5 **Statement of Facts Justifying Removal**

6 1. Defendant Mendocino Railway hereby removes *City of Fort Bragg, et al. v. Mendocino*
7 *Railway*, which was pending in the Mendocino County Superior Court (Case No. 21CV00850).

8 2. The removed action was filed on October 28, 2021 by Plaintiff City of Fort Bragg. The
9 City pleads a single cause of action for declaratory relief on the question whether Defendant Mendocino
10 Railway is a “public utility” under California law. Based on that cause of action, the City seeks to compel
11 the railroad to submit to its plenary land-use authority. *See* Attachment 1 (City summons and complaint).

12 3. On September 8, 2022, Plaintiff California Coastal Commission moved to intervene as a
13 plaintiff in the removed action (when said action was pending in the Superior Court). Defendant
14 Mendocino Railway opposed the Coastal Commission’s intervention. However, by order dated October
15 20, 2022, the Superior Court granted the Coastal Commission’s motion, making the Commission a party
16 to the removed action effective October 20. *See* Attachment 2 (Order granting intervention).

17 4. In its complaint (Attachment 3), The Coastal Commission pleads two causes of action:

18 a. The first and primary cause of action is for a declaration that, *inter alia*, Mendocino
19 Railway is not a federally regulated railroad subject to the federal Surface
20 Transportation Board’s (“STB’s”) exclusive jurisdiction under the Interstate
21 Commerce Commission Termination Act (“ICCTA”). That cause of action
22 requires—at the Commission’s request—a judicial determination of ***federal***
23 ***questions*** arising under ICCTA, 49 U.S.C. §§ 1051, *et seq.*, and the Supremacy
24 Clause of the United States Constitution, Art. VI, ¶ 2. (Like the City, the
25 Commission also seeks a declaration that Mendocino Railway is not a “public
26 utility” under California law).

27 b. In its second cause of action, which turns entirely on the merits of the first, the
28 Coastal Commission alleges that Defendant Mendocino Railway’s much-needed

1 improvements to certain rail facilities located on railroad property were undertaken
2 without the Coastal Commission’s approval, and that the railroad should be made
3 to stop its rail work, undo its work or apply for land-use permits, and pay the
4 Commission money for having failed to do so. Again, this second cause of action
5 presupposes resolution, in the Commission’s favor, of the federal questions raised
6 in its first cause of action. The federal questions in the first cause of action
7 predominate.

8 5. This removed action is closely related to a federal action pending in this Court before Judge
9 John S. Tigar (Oakland Division). *Mendocino Railway v. Jack Ainsworth, et al.* (Case No. 4:22-CV-
10 04597-JST. In that action, Mendocino Railway is the plaintiff, and Jack Ainsworth (in his official
11 capacity as the Commission’s Executive Director) and the City of Fort Bragg are the defendants. Filed on
12 August 9, 2022, Mendocino Railway’s federal action seeks a declaration and injunction to the effect that,
13 as a federally regulated railroad subject to the exclusive jurisdiction of the STB under ICCTA and the
14 Supremacy Clause, the Commission’s and City’s efforts to subject the railroad to state and local land-use
15 permitting and oversight of its rail-related activities are federally preempted. Mendocino Railway will
16 promptly file an administrative motion regarding related cases, as per the Local Rules.

17 6. Copies of all relevant pleadings and orders served on Mendocino Railway in the removed
18 action are appended to this Notice of Removal as required by 28 U.S.C. section 1446(a)—including
19 Attachment 4, which is the state-court docket for the removed action.

20 7. As the Coastal Commission’s complaint in the appended record demonstrates, the removed
21 action clearly presents a federal question on the face of its complaint. Accordingly, the entire action is
22 removable to federal court under 28 U.S.C. section 1441(c).

23 8. Any nonfederal claims lie within the Court’s supplemental jurisdiction under 28 U.S.C.
24 section 1367 because they are so related to the federal claim that they form part of the same case or
25 controversy under Article III of the U.S. Constitution.

26 9. Removal is proper in this division because the Eureka Division of this Court embraces the
27 place where the removed action is pending (Mendocino County).

28 10. Removal is timely under 28 U.S.C. section 1446(b). The Notice of Removal was filed

1 within 30 days after receipt by Mendocino Railway of the Superior Court’s October 20, 2022, granting
2 leave to the Coastal Commission to join the removed action as a plaintiff. From that order, Mendocino
3 Railway first ascertained that the state case was removable.

4 11. Mendocino Railway is the sole defendant in the removed case. As the party filing this
5 Notice of Removal, Mendocino Railway consents to removal under 28 U.S.C. section 1446(b).

6
7 DATED: October 20, 2022

FISHERBROYLES LLP

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9 s/ Paul Beard II

10 Attorneys for Defendant MENDOCINO RAILWAY
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