No. _____

In The
Supreme Court of the United States

MENDOCINO RAILWAY,
Petitioner,

v.

JACK AINSWORTH, IN HIS OFFICIAL CAPACITY AS EXECUTIVE DIRECTOR OF THE CALIFORNIA COASTAL COMMISSION, AND CITY OF FORT BRAGG,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Under *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976), a district court can abstain from a federal case in deference to a parallel state-court action only in "exceptional circumstances" and with "the clearest of justifications." But the lower courts' application of the doctrine has been a story of confusion and unpredictability. The doctrine has even been described as "dangerous, unprincipled, and unfair," and in tension with the separation of powers,[1] because lower courts have too-easily abdicated their "virtually unflagging obligation" to "exercise the jurisdiction given them" based on the weighing of vague and subjective factors that differ across circuits. *Id.* at 817.

The Ninth Circuit's published decision in this case exemplifies the problems with *Colorado River*. The court here dismissed Petitioner's federal-preemption claims based on a later-filed state-court action, after weighing factors that other circuit courts either don't weigh or weigh very differently. Petitioner's claims would have survived in those circuits. The circuit conflict over *Colorado River*, which evidences the doctrine's growing unworkability, cries out for review.

The questions presented are:

1. Whether the Court should abrogate *Colorado River*'s abstention doctrine.

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[1] Linda S. Mullenix, *A Branch Too Far: Pruning the Abstention Doctrine*, 75 Geo. L.J. 99, 103 (1986).

2. Whether the Court alternatively should revisit *Colorado River* to cabin and clarify which factors a district court must weigh, and how to weigh them, while reaffirming the strong presumption favoring the exercise of jurisdiction and the rule that *Colorado River* abstention can occur only in the most exceptional circumstances and with the clearest of justifications.

PARTIES TO THE PROCEEDING

Petitioner Mendocino Railway ("Mendocino") was the plaintiff and appellant below.

Respondents Jack Ainsworth, sued in his official capacity as Executive Director of the California Coastal Commission, and the City of Fort Bragg were the defendants and appellees below.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Sierra Railroad Company owns 100% of Mendocino's stock.

STATEMENT OF RELATED CASES

The proceedings identified below are directly related to the above-captioned case.

Mendocino Railway v. Ainsworth, 113 F.4th 1181 (9th Cir. 2024).

Mendocino Railway v. Ainsworth, 2023 U.S. Dist. LEXIS 91373 *; 2023 WL 3578692 (N.D. Cal. May 12, 2023).

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Mendocino respectfully requests that this Court issue a writ of certiorari to review the decision of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The Ninth Circuit's decision is published at *Mendocino Railway v. Ainsworth*, 113 F.4th 1181 (9th Cir. 2024), and is reproduced as Appendix A beginning at page 1a. The opinion of the United States District Court for the Northern District of California is not published. It is reproduced as Appendix B beginning at page 21a. The Ninth Circuit's order denying rehearing is not published. It is reproduced as Appendix C beginning at page 35a.

JURISDICTION

The Ninth Circuit issued its decision on August 28, 2024, and its order denying rehearing on December 10, 2024. *See* App. A, C. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

INTRODUCTION

District courts have "the virtually unflagging obligation . . . to exercise the jurisdiction given them." *Colorado River Water Conservation District v. United States*, 424 U.S. 800, 817 (1976). So abiding is that obligation that even "the pendency of an action in the state court is no bar to proceedings concerning the same matter in the Federal court having jurisdiction." *Id.* at 817. That's because of the "primacy of the federal judiciary in deciding questions of federal law."

England v. Louisiana State Bd. of Med. Exam'rs, 375 U.S. 411, 415-16 (1964). It comes as no surprise, then, that "[a]bstention from the exercise of federal jurisdiction is the exception, not the rule." *Id.* at 813.

The Court formulated the last of its four abstention doctrines nearly fifty years ago, in *Colorado River*. There, the Court held that a district court may abstain in deference to a parallel state-court action—but only in "exceptional circumstances" as revealed by the weighing of six factors: (1) "the court first assuming jurisdiction over property," (2) "the inconvenience of the federal forum," (3) "the desirability of avoiding piecemeal litigation," (4) "the order in which jurisdiction was obtained by the concurrent jurisdictions," (5) whether "federal law provides the rule of decision on the merits," and (6) "whether the state court proceedings are inadequate to protect the federal litigant's rights." *Id.* at 818 (identifying the first four factors); *Moses H. Cone Memorial Hospital v. Mercury Construction Corp.*, 460 U.S. 1, 26-27 (1983) (identifying the last two factors).

Colorado River concerned parallel federal- and state-court actions to adjudicate various parties' federal water rights in a river system. Congress had enacted a law—the McCarran Amendment—that waived the United States's sovereign immunity to permit its joinder in the state-court case. Concluding that abstention was proper, the Court found that the "most important factor" was the "clear federal policy evinced by that legislation" to "avoid[]piecemeal adjudication of water rights." *Colorado River*, 424 U.S. at 819. Three dissenting Justices vigorously rejected that conclusion and would have ordered the district

court to exercise jurisdiction. *Id.* at 821-26 (Stewart, J., with Blackman & Stevens, JJ., dissenting); *id.* at 826-27 (Stevens, J., dissenting).

Even in *Colorado River* itself, the majority admonished that "[o]nly the clearest of justifications will warrant dismissal," *Colorado River*, 424 U.S. at 819, and that "the balance" must be "heavily weighted in favor of the exercise of jurisdiction." *Moses H. Cone*, 460 U.S. at 16. But in the more-than-forty years since *Moses H. Cone*—the Court's last meaningful elaboration of *Colorado River*—some circuits have strayed far from these bedrock principles, construing and even expanding the original six factors in ways that invariably render the *Colorado River* analysis heavily weighted, not in favor of the exercise of jurisdiction, but in favor of its surrender. *See, e.g.*, App. 10a-11a (Ninth Circuit in this case construing the most important factor—avoiding "piecemeal" litigation—as a mandate to avoid duplicative judicial effort and inconsistent rulings, which are risks that characterize *all* cases in which *Colorado River* is invoked, thereby all-but-ensuring that the rare exception of abstention swallows the rule favoring the exercise of jurisdiction); Owen W. Gallogly, *Note: Colorado River Abstention: A Practical Reassessment*, 106 Va. L. Rev. 199, 224-25 (2020) ("[T]he Seventh Circuit has taken a highly permissive (bordering on favorable) view of the doctrine," "articulating convoluted standards governing the propriety of *Colorado River* abstention that almost universally favor relinquishment of federal jurisdiction."); *but see id.* at 214 ("The Second Circuit has stringently enforced the 'unflagging obligation' to exercise federal jurisdiction.").

As one scholar put it, "the application of *Colorado River* abstention in the lower courts is a story of confusion and unpredictability," with "courts of appeals and their corresponding district courts . . . taking divergent approaches." Gallogly, *supra*, at 206 (cleaned up); *see also* Ariel M. Fox & Ryan W. Goellner, *Dueling Federal and State Actions: The 'Colorado River' Doctrine*, Frost Brown Todd (July 27, 2023), https://bit.ly/3FecIbX ("The *Colorado River* doctrine has varied application across the circuits. Some courts apply the doctrine liberally in an effort to relieve crowded dockets. Others take a narrow approach, searching for the truly 'exceptional circumstances' in which a federal court may decline to exercise its jurisdiction."). Profound divisions exist over which factors to weigh and how to weigh them, evidencing the doctrine's growing unworkability. And the doctrine—especially as developed by some lower courts—is in tension with the separation of powers, as courts exercise near-unbridled discretion to renounce their jurisdiction based on an open-ended list of ill-defined factors. It comes as no surprise that *Colorado River* has been aptly described as "dangerous, unprincipled, and unfair." Linda S. Mullenix, *A Branch Too Far: Pruning the Abstention Doctrine*, 75 Geo. L.J. 99, 103 (1986).

This case exemplifies the deep-seated problems with *Colorado River* that have developed since *Moses H. Cone*. The Ninth Circuit upheld the district court's dismissal of federal-preemption claims that Mendocino, a federally licensed railroad, filed before one of the defendants (the California Coastal Commission) tactically brought a lawsuit in state court in an effort to mirror Mendocino's federal claims.

In a published decision, the Ninth Circuit here departed significantly from other circuits and this Court's repeated statements in *Colorado River* and *Moses H. Cone* affirming the strong presumption against abstention.

For example, the court labelled several factors as "neutral"—neither for nor against abstention—in conflict with circuits that weigh such factors *against* abstention. Further, the court equated "piecemealing" with mere duplicative judicial effort and the risk of contradictory outcomes—characteristics shared by all cases involving parallel proceedings. This is in direct conflict with other circuits that require "evidence of a strong federal policy that all claims should be tried in state courts"—as there was in *Colorado River* itself; of course, in this case, there is no federal policy favoring state-court adjudication of federal-preemption claims. *Ryan v. Johnson*, 115 F.3d 193, 196-97 (3d Cir. 1997). Moreover, the court shockingly downplayed as "not substantial[]" the importance of the fact that federal law provides the rule of decision here, which this Court and other circuits deem "a major consideration" favoring the exercise of jurisdiction. App. 20a (weight given to factor "not substantial[]"); *Moses H. Cone*, 460 U.S. at 26; *Spectra Communs. Group, LLC v. City of Cameron*, 806 F.3d 1113, 1122 (8th Cir. 2015) (same); *Illinois Bell Tel. Co. v. Illinois Commerce Com.*, 740 F.2d 566, 570 (7th Cir. 1984). And the court relied on additional factors, such as so-called "forum shopping," which this Court hasn't announced as being relevant. Indeed, the circuits are all over the map as to what factors to weigh and how to weigh them, with one circuit known for its permissive application of *Colorado River* weighing no fewer than *ten factors*.

Tyler v. City of S. Beloit, 456 F.3d 744, 754 (7th Cir. 2006).

Absent *Colorado River*, Mendocino's choice of a federal forum for its federal-preemption claims would have been honored. But even under the original terms of *Colorado River*, and in those circuits with a more faithful adherence to the default rules favoring the exercise of jurisdiction as expressed in *Colorado River*, the federal courthouse doors would have remained open to Mendocino's claims.

The Court should grant certiorari to consider whether *Colorado River's* unwieldy doctrine should be abrogated—or, at least, its criteria cabined and clarified to ensure that only the clearest and rarest of justifications warrant abstention.

STATEMENT OF THE CASE

A. Mendocino's Status As a Federally Licensed Railroad with Federal Preemption Rights

Mendocino is a Class III common-carrier railroad with facilities, equipment and operations located partly in California's coastal zone, including the City. ER-105 (Mendocino's Complaint ("Federal Complaint"), ¶ 2).[2] Mendocino's specific railroad line at issue—one of several lines that it owns and operates in California—runs 40 miles, from its main station in Fort Bragg to its eastern station in Willits. ER-106, 109-10 (Federal Complaint, ¶¶ 9, 17, 20). The

[2] "ER" refers to the Excerpts of Record that were filed in the Ninth Circuit in this case.

Fort Bragg station is fully developed as a railroad facility, with, among other things, passenger coaches and freight cars, an engine house, and a dry shed for storage of railroad equipment. *Id.* Since acquiring the line in 2004, Mendocino has operated tourist and non-tourist passenger services, as well as freight services, consistent with its common-carrier obligations. *Id.*

The line at issue connects to the Northwestern Pacific Railroad line, which in turn connects to the rest of the national rail system. ER-110 (Federal Complaint, ¶ 22). Thus, though Mendocino is an intrastate railway, it is part of the *interstate* rail network. As such, it is a federal railroad under the Interstate Commerce Commission Termination Act of 1995 ("ICCTA") and within the exclusive jurisdiction of the Surface Transportation Board ("STB"). The STB itself has acknowledged Mendocino's "federal railroad" status under its exclusive jurisdiction when, for example, it oversaw the railroad's 2004 acquisition of the line under 49 C.F.R. section 1150.31. *Id.* ¶ 19 (citing 69 Fed. Reg. 18999 (April 9, 2004)). As explained below, Mendocino's status means that state and local land-use permitting and other pre-clearance requirements imposed on its railroad-related activities are federally preempted.

Under the ICCTA, the STB has exclusive jurisdiction over (1) "transportation by rail carriers" and (2) "the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State." 49 U.S.C. § 10501(b). The ICCTA broadly defines "transportation." It includes "(A) a

locomotive, car, vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, by rail, regardless of ownership or an agreement concerning use; and (B) services related to that movement, including receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, and interchange of passengers and property." *Id.* § 10102(9). Further, the ICCTA defines a "rail carrier" as "a person providing common carrier railroad transportation for compensation." The ICCTA does not define "common carrier," but "courts have assumed that the term should be given the same meaning as it is given in the common law: an entity that holds itself out to the public as offering transportation services to all who are willing to pay its tariff." *Herzog Transit Servs. v. United States RRB*, 624 F.3d 467, 473 (7th Cir. 2010). A railroad offering common-carrier transportation remains a "rail carrier" for purposes of the ICCTA even if the railroad also provides excursion services. *City of Encinitas v. N. San Diego County Transit Dev. Bd.*, 2002 U.S. Dist. LEXIS 28531, 2002 WL 34681621 (S.D. Cal. Jan. 14, 2002). As noted above, Mendocino qualifies as a common-carrier railroad because it provides transportation. ER-110 (Federal Complaint, ¶ 20).

The STB's jurisdiction over Mendocino is "exclusive." 49 U.S.C. § 10501(b) ("[T]he remedies provided [by that statute] with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law." (emphasis added)). Therefore, state and local efforts to impose permitting and other pre-clearance

requirements on any of Mendocino's railroad-related activities are preempted. *Id.* (ICCTA "preempt[s] the remedies provided under Federal or State law"); *City of Auburn v. United States*, 154 F.3d 1025, 1030-31 (9th Cir. 1998) (holding that the ICCTA's preemptive scope is "broad."); *Friends of Eel River v. North Coast R.R.*, 3 Cal. 5th 677, 716 (2017) (holding that "state environmental permitting or preclearance regulation that would have the effect of halting a private railroad project pending environmental compliance would be categorically preempted"); *Padgett v. STB*, 804 F.3d 103, 105 (1st Cir. 2015) (ICCTA preempts state law governing "regulation of rail transportation").

B. State and Local Government Efforts To Impose Permitting and Other Pre-Clearance Requirements on Mendocino's Rail-Related Activities Lead It To File a Federal Lawsuit

1. The City Sues Mendocino Over Its "Public Utility" Status under California Law

Under California law, a common-carrier railroad has the power of eminent domain. Cal. Pub. Util. Code § 611. After Mendocino exercised that authority to acquire some 300 acres of land that the City was vying for, the City filed a lawsuit against the railroad in state court in an apparent effort to strip the railroad of its eminent-domain power. The City's suit pleads a single cause of action for a declaration that Mendocino is not a public utility under state law. ER-111 (Federal Complaint, ¶ 26); ER-31 (City Complaint, Prayer, ¶ 1). Based on that "public utility" cause of action, the City

also seeks an injunction requiring Mendocino to submit entirely to its land-use authority. ER-111 (Federal Complaint, ¶ 26); ER-31 (City Complaint, Prayer, ¶ 2); *Ivanoff v. Bank of America, N.A.*, 9 Cal.App.5th 719, 734 (2017) ("Injunctive relief is a remedy, not a cause of action. A cause of action must exist before a court may grant a request for injunctive relief.").

Significantly, the City's state-court action does not challenge Mendocino's status as an STB-regulated common-carrier. It is *that* status under federal law, not its status as a public utility under state law, that confers on Mendocino its federal preemption rights. 49 U.S.C. § 10501(b); *Friends of Eel River*, 3 Cal. 5th at 716.

2. Mendocino Sues To Confirm Its Federal-Preemption Rights

While the City's state-law claim was pending, Mendocino filed a complaint in federal district court for the Northern District of California on August 9, 2022. That lawsuit was prompted by a series of threats and demands against Mendocino by the California Coastal Commission in particular, which insists that it has plenary permitting and pre-clearance authority over Mendocino's rail-related operations inside and outside the coastal zone. ER-105, 111 (Federal Complaint, ¶¶ 3, 27). The utter uncertainty and disruption that the Commission's threats and demands caused Mendocino, as well as similar acts by the City, compelled the railroad to file its federal complaint in federal court. ER-105-06, 113 (Federal Complaint, ¶¶ 5, 34).

Given its status as an STB-regulated railroad, Mendocino claims that City's "efforts to impose land-use permitting and preclearance requirements" are "in blatant violation of federal preemption principles" under the ICCTA. ER-105 (Federal Complaint, ¶¶ 1-2). The federal action is not premised on Mendocino's "public utility" status, though it continues to defend that status in the City's state-court case. Rather, the federal action concerns only Mendocino's status as a common-carrier railroad within the STB's exclusive jurisdiction under federal law.

Specifically, Mendocino seeks a declaration "that the actions of the Commission and the City to regulate [its] operations, practices and facilities are preempted under 49 U.S.C. § 10501(b) and that [its] activities are subject to the STB's exclusive jurisdiction." ER-105 (Federal Complaint, ¶ 1). Mendocino further seeks a declaration of its "right under the ICCTA to undertake any and all rail-related activities within the coastal zone, including within the City's boundaries without preclearance or approval from the Commission or the City." *Id.* Finally, Mendocino seeks "[a]n injunction prohibiting [the Commission and City] from taking any action that would materially interfere with Mendocino's operation of its railroad as a federally regulated common carrier, including by imposing and enforcing any land-use permitting or other preclearance requirement as the pre-condition of any rail-related development on [its] property or facilities." *Id.* ¶ 2.

Mendocino seeks a complete resolution of the full scope of its federal-preemption rights. In Mendocino's

view, state and local governments have no authority whatsoever—under the Coastal Act, the LCP, or any other law— to impose any permitting or other pre-clearance requirement on Mendocino's railroad-related activities.

It bears repeating that, at the time Mendocino filed its federal-preemption claims in federal court, there was no claim by either the City or the Commission, in any state-court proceeding, that challenged Mendocino's common-carrier status under federal law, let alone its federal-preemption rights.

3. After Mendocino's Federal Action Is Filed, the Commission Intervenes in the State Case with a Claim Partially Challenging Mendocino's Federal-Preemption Rights

The Commission fought Mendocino's choice of forum—federal court—for resolving their dispute over the railroad's federal-preemption rights. So, after Mendocino filed its federal action on August 9, 2022, the Commission successfully moved to intervene in the City's *state-court action* on September 8, 2022. The Commission filed its complaint in the state case on October 27, 2022—more than two-and-a-half months after Mendocino had filed its federal action in federal court.

The Commission's state complaint focuses on Mendocino's alleged violations of the California Coastal Act and the City's Local Coastal Program ("LCP"). By way of background, the Coastal Act is a state statute that generally requires a landowner to

obtain a land-use permit—known as a "Coastal Development Permit" ("CDP")—before undertaking "development" in the coastal zone. Cal. Pub. Res. Code § 30600(a). Development is evaluated against certain environmental and land-use policies contained in Chapter 3 of the Act. *Id.* § 30200(a).

The Commission is charged with administering the Coastal Act and its policies, including a permitting system for any development in the coastal zone. *Id.* § 30600. Local governments in the coastal zone are required to develop their own LCPs to implement the Coastal Act. Once the Commission certifies an LCP, the local government reviews development applications in the first instance, and issues or denies CDPs. *Id.* §§ 30600(d), 30500, 30519. But even where there's an LCP, the Commission retains limited appellate jurisdiction to review local CDP approvals. *Id.* § 30603. In addition, the Commission is authorized to enforce the land-use requirements of an LCP and any applicable provisions of the Coastal Act. *Id.* § 30800, *et seq.* (Chapter 9).

As noted above, the Commission's complaint concerns only its permitting authority under the Coastal Act and the City's LCP. The Commission seeks a declaration that (1) "the Coastal Act and the City's LCP apply to the Railway's actions in the coastal zone of the City that constitute development under the Coastal Act and the City's LCP," and (2) "the application of the Coastal Act and the City's LCP to the Railway's actions in the coastal zone of the City that constitute development under the Coastal Act and the City's LCP are not preempted by any state or federal law, including, but not limited to, Public

Utilities Code sections 701 and 1759, subdivision (a); sections 10102 and 10501, subdivision (b) of Title 49 of the United States Code; and clause 2 of Article VI of the United States Constitution." ER-42 (Commission Complaint, Prayer, ¶¶ 2). Disregarding federal preemption of its authority, the Commission also seeks civil penalties and exemplary damages associated with purported "past and ongoing violations of the Coastal Act." *Id.*, Prayer, ¶¶ 3, 5. Further, the Commission seeks injunctive relief "requiring the Railway to: (a) cease all actions taken by the Railway without a coastal development permit in the coastal zone of the City that constitute development under the Coastal Act and the City's LCP; submit an application to the City and obtain a permit or other authorization under the City's LCP before commencing or resuming any such development; and (c) comply with any other applicable requirements in the Coastal Act and the LCP, including but not limited to mitigation of the unauthorized development." *Id.*, Prayer, ¶ 4.

There is a material difference between Mendocino's federal complaint and the Commission's later-filed state complaint. In its state complaint, the Commission seeks resolution only of the question whether its permitting authority under the Coastal Act and LCP is federally preempted. *Id.* By contrast, Mendocino's federal complaint more broadly seeks resolution of the question whether *any* effort by the Commission to exercise land-use control over Mendocino's railroad activities, whatever the purported legal authority, is federally preempted. ER-113 (Federal Complaint, Prayer, ¶¶ 1-2). One important area of land-use control that the

Commission regularly exercises is its pre-clearance authority over federally-licensed or federally-funded projects *outside* the coastal zone that have alleged impacts to resources *inside* the coastal zone. Such pre-clearance authority rests, not on the Coastal Act or the City's LCP, but on the federal Coastal Zone Management Act ("CZMA"). 16 U.S.C. §§ 1451, *et seq*. That pre-clearance authority is at issue in Mendocino's federal complaint, but not in the Commission's (let alone the City's) state complaint.

To summarize, the chronology of court actions filed by the various parties in this case is as follows:

- October 21, 2021: The City files a state-law claim in state court, challenging Mendocino's "public utility" status under California law. ER-26, 31 (City Complaint, p. 1 & Prayer, ¶ 1).

- August 9, 2022: Mendocino files capacious claims in federal court to comprehensively establish its federal-preemption rights against any action by the Commission or City to impose permitting and other preclearance requirements on Mendocino's railroad-related activities. ER-113 (Federal Complaint, ¶¶ 1-2).

- October 27, 2022: The Commission files a complaint in state court, seeking limited resolution of whether its permitting authority under the Coastal Act and the City's LCP is preempted. ER-42 (Commission Complaint, Prayer, ¶ 2).

C. Mendocino Removes the State Action, But the Federal District Court Remands It, Then Grants the Commission's and City's Motions to Dismiss the Federal Action

After the state court granted the Commission's motion to intervene, Mendocino removed the entire state action to federal court given the limited federal issue raised in the Commission's complaint. On May 11, 2023, the district court granted the Commission's and the City's motions to remand.

The following day, on May 12, the district court also granted the Commission's and the City's motions to dismiss Mendocino's federal action. ER-3 (Dismissal Order). In its motion and reply brief, the Commission urged the court to dismiss based exclusively on *Younger* abstention. For its part, the City also relied almost exclusively on *Younger* abstention. But buried in the City's motion was a half-page argument about *Colorado River*.

The district court seized on the City's brief reference and—to Mendocino's surprise, and likely to the Commission's and City's, as well— dismissed the federal action under *Colorado River*. Having remanded the state action back to state court just the day before, the court was able to create "the predicate existence of concurrent state and federal court proceedings" required by *Colorado River*. ER-4, 6 (Dismissal Order, pp. 2:25-26, 4:19-20). The district court proceeded to dismiss Mendocino's federal action under that doctrine, and the Ninth Circuit affirmed.

The Ninth Circuit held that the first factor—which court first assumed jurisdiction over any property—was "inapplicable" since this action does not involve a specific piece of property. App. 10a. The court also concluded that the second factor—the inconvenience of the federal forum—was "neutral" given that the state court in Fort Bragg (where the state action was filed) and the federal district court in Oakland were only 150 miles apart. *Id.* Therefore, the court did not weigh these factors for or against dismissal. *Id.*

The court interpreted the third factor—avoidance of "piecemeal" litigation—as a mandate to avoid duplicative judicial effort and inconsistent rulings, despite the fact that such risks are present in all *Colorado River* cases. App. 10a-11a. The court found that this factor weighed in favor of dismissal, even though the federal action pursues broader federal-preemption claims than the Commission's state-court complaint.

The court held that the fourth factor—the order in which the forums obtained jurisdiction and how far the state action has progressed—weighed in favor of dismissal. App. 12a-13a. This, despite the fact that the first forum to obtain jurisdiction over a *federal-preemption claim* was the federal court; the Commission's more-limited claim denying Mendocino's federal-preemption rights came over two months later in state court. Further, at the time Mendocino filed its lawsuit, the state-court case had not seen significant progress.

As to the fifth factor, the court concluded that "all agree that the Federal Action is governed by federal statute and federal preemption law as the ICCTA determines whether the Railway falls within the scope of the statute's preemption clause." App. 13a. But inexplicably, the court refused to give "substantial[]" weight to the factor because the state court's concurrent jurisdiction over Mendocino's federal-law claims somehow made that factor "less significant." App. A13a.

With respect to the sixth factor—whether the state court can enforce federal rights—the court concluded it weighed in favor of dismissal because the state court can theoretically adjudicate Mendocino's federal claims. App. 13a.

The court held that the seventh factor—the desire to avoid "forum shopping"—weighed in favor of dismissal. App. 14a-15a. The court speculated that Mendocino's federal action was motivated by unfavorable rulings on its demurrer to and motion to strike the *City's* state-law claim challenging Mendocino's "public utility" status—rulings that did not resolve on the merits any federal-preemption issue. *Id.* At the same time, the court disregarded the Commission's tactical decision to file its state-court complaint only after Mendocino filed its federal action.

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Finally, the court held that the eighth factor—whether the state action will completely dispose of the federal action—weighed in favor of dismissal. The court conceded the "theoretical possibility" that the state action may not completely dispose of the federal

action. App. 18a. Despite this possibility, the court concluded that the federal- and state-court actions were "sufficiently parallel" to justify dismissal of the federal case. App. 19a.

Mendocino filed a petition for panel rehearing and rehearing *en banc*, which the court denied. App. C.

REASONS FOR GRANTING THE WRIT

I. The Decision Below Deepens the Conflict Among the Lower Courts Over *Colorado River* Abstention, Evidencing the Doctrine's Growing Unworkability

The decision below contributes to the deepening confusion and unpredictability among the lower courts concerning how to apply *Colorado River*. In concurrent-jurisdiction cases, whether a plaintiff can exercise his choice of a federal forum for his federal claims no longer depends on the law or facts at issue, but depends primarily on the circuit in which he files those claims. For almost every factor, the Ninth Circuit's *Colorado River* jurisprudence sharply conflicts with those of other circuits and with its "virtually unflagging obligation . . . to exercise the jurisdiction given them." *Colorado River*, 424 U.S. at 817.

1. In dismissing Mendocino's federal action, the Ninth Circuit used "an eight-factor balancing test"—two more than this Court has ever expressly identified. App. 9a (adding "the desire to avoid forum shopping" and "whether the state court proceedings will resolve all issues before the federal court"). There's a clear split among the circuits over which

factors to weigh. Some circuits analyze the six factors identified in *Colorado River* and *Moses H. Cone*. *See, e.g.*, *Am. Family Life Assur. Co. v. Biles*, 714 F.3d 887, 892 (5th Cir. 2013) (weighing "six factors"). Other circuits analyze up to *ten* factors. *United States v. Fairway Corp.*, 483 F.3d 34, 40 (1st Cir. 2007) (weighing eight factors); *Tyler*, 456 F.3d at 754 (Once parallel proceedings are identified, "this circuit has refined the analysis to a consideration of ten factors.").

2. The Ninth Circuit held that the first two factors—which court first assumed jurisdiction of the *res* and the federal forum's inconvenience—were "neutral" and therefore carried no weight for or against federal jurisdiction. App. 10a. Refusal to weigh even "neutral" factors conflicts with the rule in the Second, Fifth, and Seventh Circuits, all of which weigh so-called "neutral" factors as *defeating* abstention. *See, e.g.*, *Huon v. Johnson & Bell, Ltd.*, 657 F.3d 641, 648 (7th Cir. 2011) ("[B]ecause of the presumption against abstention, absent or neutral factors weigh in favor of exercising jurisdiction."); *Woodford v. Cmty. Action Agency of Greene County*, 239 F.3d 517, 522 ("[T]he facial neutrality of a factor is a basis for retaining jurisdiction, not for yielding it."); *Murphy v. Uncle Ben's, Inc.*, 168 F.3d 734, 738 (5th Cir. 1999) ("This case does not involve any res or property over which any court, state or federal, has taken control. The absence of this factor is not, however, a neutral item, of no weight in the scales. Rather, the absence of this first factor weighs against abstention." (cleaned up)); *Nat'l Cas. Co. v. Gonzalez*, 637 Fed. Appx. 812 (5th Cir. 2016) (same). On this issue, the Second, Fifth, and Seventh Circuits are in line with the Supreme Court's instruction that each

factor be given "weight," and that "the balance [be] heavily weighted in favor of the exercise of jurisdiction." *Moses H. Cone*, 460 U.S. at 16.

3. The third factor—"piecemealing" has been characterized as the "paramount" and "most important" factor under *Colorado River*. *Preferred Care of Del., Inc. v. Vanarsdale*, 676 Fed. Appx. 388, 395 (6th Cir. 2017); *Colorado River*, 424 U.S. at 819. The Ninth Circuit in this case oddly interpreted "piecemealing" to mean "duplication of judicial effort" and the risk of "contradictory outcomes"; on the basis of that interpretation, the court found that the factor weighed in favor of abstention. App. 10a-11a. The problem is that the risks of duplicative judicial effort and contradictory outcomes are inherent in *all* parallel actions that are allowed to proceed. Assessing the "piecemealing" factor in terms of those risks, as the Ninth Circuit did here, is a one-way ratchet: It inexorably weighs in favor of abstention, rendering abstention the norm, not the rare exception. In addition to improperly weighting a factor in favor of abstention, the Ninth Circuit's holding conflicts with the decisions of other circuits that more closely follow *Colorado River*.[3]

[3] The Ninth Circuit itself appears to be internally conflicted about this factor. In *Seneca Ins. Co. v. Strange Land, Inc.*, 862 F.3d 835 (9th Cir. 2017), the court explained that a "general preference for avoiding piecemeal litigation is insufficient to warrant abstention" given that "[a]ny case in which *Colorado River* is implicated will inevitably involve the possibility of conflicting results, piecemeal litigation, and some duplication of judicial efforts, which are the unavoidable price of preserving access to federal relief." *Id.* (cleaned up). The court concluded that, for the "piecemealing" factor to weigh in favor of

The Third Circuit's view is that the "piecemealing" factor is met "only when there is evidence of a strong federal policy that all claims should be tried in state courts." *Ryan*, 115 F.3d at 196-97.[4] For the Fourth Circuit, "duplication of judicial resources" is present in all parallel proceedings where *Colorado River* is invoked and therefore cannot justify abstention. *McLaughlin v. United Virginia Bank*, 955 F.2d 930, 934 (4th Cir. 1992). Similarly, the Fifth Circuit follows the rule that "[t]he prevention of duplicative litigation is not a factor to be considered in an abstention determination." *Evanston Ins. Co. v. Jimco, Inc.*, 844 F.2d 1185, 1192 (5th Cir. 1988). If Mendocino's claims had been filed in any of these other circuits, the "piecemealing" factor would have weighed decisively *against* abstention.

4. The court below interpreted the fourth factor—the order in which the state and federal courts obtained jurisdiction—to require a comparison of the timing and relative progress of the state and federal *litigations*, versus the timing and relative progress of the purportedly-parallel federal *claims*. App. 12a.

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abstention, a district court must "identify [a] special concern counseling in favor of federal abstention, such as a 'clear federal policy' of avoiding 'piecemeal adjudication of water rights' expressed via federal legislation 'recogniz[ing] the availability of comprehensive state systems for adjudication of water rights.'" *Id.* at 843 (quoting *Colorado River*, 424 U.S. at 819) (emphasis added)).

[4] At least one circuit agrees with the Ninth Circuit in this case. *See De Cisneros v. Younger*, 871 F.2d 305, 307-08 (2d Cir. 1989) (equating "piecemealing" with the risk of "inconsistent and mutually contradictory determinations"); *see also Jenkinson v. Baptiste-Bruno*, 2016 U.S. Dist. LEXIS 176131, *15 n.5 (S.D.N.Y. Dec. 20, 2016) ("[T]he Third Circuit's narrow (and non-binding) approach does not reflect the law in this [Second] Circuit.").

Thus, the lower court found dispositive the fact that the state action was filed about 10 months before Mendocino's federal action—ignoring the fact (which the court admitted) that the state litigation did not even contain a federal claim by any party until after Mendocino filed its federal action. App. 14a (conceding that "only the City's state-law claims—which do not implicate the Railway's status under federal law—were officially pending at the time the Railway filed the Federal Action"). The lower court's application of the fourth factor conflicts with that of other circuits, which focus on the relative timing and progress of the relevant parallel *claims*. *Chase Brexton Health Servs. v. Md.*, 411 F.3d 457, 466 (4th Cir. 2005); *Preferred Care*, 676 Fed. Appx. at 395-96.

5. The court below inexplicably gave the fifth factor—the fact that federal law provides the rule of decision here—insubstantial weight. App. 13a. This is contrary to the Supreme Court's instruction, followed by other circuit courts, that the "presence of federal-law issues must always be a major consideration weighing against surrender" of federal jurisdiction. *Moses H. Cone*, 460 U.S. at 26; *Spectra*, 806 F.3d at 1122 (same); *Illinois Bell*, 740 F.2d at 570 (the fact that "the federal court suit raises issues of federal law" is "particularly important" in the weighing of the factors).

As the dissenting Justices in *Colorado River* noted, a "federal court is more likely than a state court to be familiar with federal water law and to have had experience in interpreting the relevant federal statutes" and "regulations." *Id.* at 825 (Stewart, J., with Blackmun & Stevens, JJ., dissenting). These

Justices also noted that "if tried in a federal court, these issues of federal law will be reviewable in a federal appellate court, whereas federal judicial review of the state courts' resolution of issues of federal law will be possible only on review by this Court in the exercise of its certiorari jurisdiction." *Mutatis mutandis*, the same observations apply here and favor a federal over state forum for the railroad's federal-preemption claims.[5]

6. The court below weighed a seventh factor—"the desire to avoid forum shopping"—that this Court has never explicitly endorsed.[6] *Am. Int'l Underwriters (Philippines), Inc. v. Cont'l Ins. Co.*, 843 F.2d 1253, 1259 (9th Cir. 1988) (acknowledging that "this factor was not spelled out in *Colorado River*); *see also Fox v. Maulding*, 16 F.3d 1079, 1082 (10th Cir. 1994) (stating that "impermissible forum shopping"

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[5] A search on Lexis indicates that the Ninth Circuit and its district courts have presided over approximately 115 cases concerning federal preemption under the ICCTA. The court of appeals has heard 12 of those cases. Seventeen have been heard by the federal district court for the Northern District of California, where Mendocino's federal action was filed. By contrast, California state courts have heard only ten such cases. Two have been beard by the California Supreme Court, and three by the First District Court of Appeal, where any eventual appeal of a judgment in the City's and Commission's state-court action would be heard.

[6] In a footnote, the Court in *Moses H. Cone* remarked that the lower court's argument that "the vexatious or reactive nature of either the federal or the state litigation may influence the decision whether to defer to a parallel state litigation under *Colorado River*" had "considerable merit." 460 U.S. at 17 n.20. But the Court stopped short of making that consideration a factor in *Colorado River* abstention, noting that "[w]e need not rely on such reasoning here." *Id.*

was not identified as a factor by this Court and has instead been added by "other courts").

Other courts have declined to consider "forum shopping" as a factor, instead adhering to the six criteria set forth in this Court's precedents. *See, e.g.*, *Illinois Bell*, 740 F.2d at 570 (rejecting "forum shopping" argument); *Atkinson v. Grindstone Capital, LLC*, 12 F. Supp. 3d 156, 161 n.5 & n.6. (2014). In *Illinois Bell*, the Seventh Circuit rejected the notion of a *Colorado River* abstention even when "the plaintiff previously ha[s] filed an identical suit in state court in the state where the district court sits." *Illinois Bell*, 740 F.2d at 570. In the court's view, abstention in such a case "would force the plaintiff to choose its forum," and "to force such a choice would fail to recognize fully the unflagging obligation of the district court to exercise its jurisdiction." *Id.* at 570-71.

The district courts' use of purported "forum shopping" to surrender jurisdiction has been subject to scholarly criticism, too. The "forum shopping" factor has been characterized as an "inherently subjective inquiry" that "permits evaluation of the federal plaintiff's motives in filing the federal action," thereby placing "even greater discretion over whether to relinquish jurisdiction in the hands of the district court" since "such a subjective judgment is virtually impossible to review on appeal." Gallogly, *supra*, at 229. Worse, consideration of "forum shopping" "can favor abstention even without impugning the actual motives of litigants." *Id.*

7. As to the eighth and final factor added by the court below, the court held that the state and federal actions are "sufficiently parallel" so as not to preclude

dismissal App. 19a. This, despite the fact that the lower court readily acknowledged the "theoretical possibility" that "the State Action will not fully resolve the Federal Action." App. 18a. The decisions of this Court and other circuit over how to interpret and apply the "parallelism" factor in particular are fraught with conflict and confusion. In the Ninth Circuit alone, there are two distinct lines of cases on the issue. One of them—led by *Ernest Bock, LLC v. Steelman*, 76 F.4th 827, 833, 838 (9th Cir. 2023)—holds that if there is "some possibility" that resolution of the state-court "may" lead to further work in the federal court, there is insufficient parallelism, and dismissal is barred. Another line of cases—now arguably led by the Ninth Circuit's decision at issue here—employs a far more permissive "parallelism" standard. The confusion is exacerbated by the fact that, as *Ernst Bock* observes, "[o]ther circuits"—such as the Third and Seventh Circuits—have adopted disparate approaches." *Id.* at 840-41 (citing *Ingersoll-Rand Fin. Corp. v. Callison*, 844 F.2d 133, 134 (3d Cir. 1988) and *Loughran v. Wells Fargo Bank, N.A.*, 2 F.4th 640 (7th Cir. 2021).

8. Finally, this petition involves an important federal question. The question of when and how courts are to apply *Colorado River* concerns nothing less than a federal claimant's access to federal court to press federal statutory or constitutional rights—with *Colorado River* capable of being used to shut the federal courthouse door to federal claimants of all stripes and claims. Given the entrenched conflict and confusion as to how to analyze and weigh the various *Colorado River* factors, and because the Ninth Circuit's published decision only contributes to that

conflict and confusion, the Court should not hesitate to grant review.

II. *Colorado River* Abstention Is in Strong Tension with the Separation of Powers

A long-standing—and never satisfactorily answered—critique of any judicially-created federal abstention doctrine rests on the separation of powers. Article III and Article I, Section 8, Clause 9, of the Constitution empowered Congress to create, within constitutional limits, the jurisdiction of the federal judiciary. Thus, the federal judiciary's refusal to exercise congressionally-conferred jurisdiction is akin to "judicial usurpation of legislative authority" or "judicial civil disobedience." Martin H. Redish, *Abstention, Separation of Powers, and the Limits of the Judicial Function,* 94 Yale L.J. 71, 75-76 (1984). Congress, not the federal judiciary, creates the lower courts' federal jurisdiction—or restricts it by statute, as Congress did in the 1793 Anti-Injunction Act. As Chief Justice John Marshall wrote in 1821, "We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the constitution." *Cohens v. Virginia*, 19 U.S. 264, 404 (1821) (Marshall, C.J.).

> "[G]iven that judiciary's power to decide all cases properly arising pursuant to Congress's constitutional exercise of its powers, the federal courts abrogate the separation doctrine, in effect destroying their own jurisdiction, . . . whenever they refuse to exercise such jurisdiction by not

> deciding those cases which Congress has determined should be decided."

Harlan S. Abrahams and Brian E. Mattis, *The Duty to Decide vs. The Daedalian Doctrine of Abstention*, 1 U. Puget Sound L. Rev. 1, 6 (1997); *see also* Redish, *Judicial Refusal to Exercise Congressional Grants of Jurisdiction and Separation of Powers: Judge-Made Abstention and the Fashionable Art of "Democracy Bashing*," 40 Case W. Res. 1023, 1031 (1990) (noting "the well-established principle that a judicial refusal to act, in the face of a constitutionally valid legislative directive to the contrary, constitutes the effective exercise of a judicial veto power over legislative action"). "In short, the federal courts have a duty to decide." Abrahams and Mattis, *The Duty to Decide vs. The Daedalian Doctrine of Abstention*, 1 U. Puget Sound L. Rev. at 6 (noting the "growing trend in the federal courts to refuse to exercise their assigned jurisdiction").

Between 1941 and 1976, however, this Court stitched together a crazy-quilt collection of abstention doctrines. *See Railroad Commission of Texas v. Pullman*, 312 U.S. 496 (1941) (delaying the exercise of a federal court's jurisdiction to allow a state court to interpret an ambiguous state statute subjected to a constitutional challenge); *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943) (federal courts should abstain in deference to complex state administrative procedures); *Louisiana Power & Light Co. v. City of Thibodaux*, 360 U.S. 25 (1959) (federal courts should abstain if state law is uncertain and important state interests such as eminent domain are at issue); *Younger v. Harris*, 401 U.S. 37 (1971) (prohibiting

federal injunctions against state criminal court proceedings); *Colorado River*, 424 U.S. 800 (abstention in deference to ongoing, parallel state proceedings). Even these doctrines' staunchest champions have conceded that they increasingly became "methodologically undisciplined." Richard H. Fallon, Jr., *Why Abstention Is Not Illegitimate: An Essay on the Distinction Between 'Legitimate' and "Illegitimate" Statutory Interpretation and Judicial Lawmaking*, Northwestern U. L. Rev. Vol. 107, No. 2, 847, 854 (2013). As a result, these unstable doctrines have morphed and metastasized, with circuit courts diverging in both the doctrines' application as well as their elements, further undermining, not just judicial consistency, but the separation-of-powers doctrine as well.

As noted above, *Colorado River* abstention was the last and most problematic of these doctrines. 424 U.S. 800. Having no constitutional or statutory basis, this amorphous doctrine is in particularly strong tension with the separation of powers. *See Colorado River*, 424 U.S. at 826 (Stevens, J., dissenting) ("I find the holding that the United States may not litigate a federal claim in a federal court having jurisdiction thereof particularly anomalous. I could not join such a disposition unless commanded to do so by an unambiguous statutory mandate or by some other clearly identifiable and applicable rule of law."). In the wake of *Colorado River*, a scholarly debate raged regarding the constitutionality of judicially-created federal abstention itself. *Compare* Redish, *supra* (arguing that federal courts have little discretion to decline jurisdiction conferred by Congress), *with* David L. Shapiro, *Jurisdiction and Discretion*, 60

N.Y.U. L. Rev. 543 (1985) (arguing for greater judicial discretion over jurisdiction). The Court finally looked into the abyss of abstention and pulled back. Justice Antonin Scalia, himself quoting Chief Justice Marshall in *Cohens v. Virginia*, put the brakes on the expansion of federal abstention in *New Orleans Pub. Serv., Inc. v. Council of New Orleans*, 491 U.S. 350, 373 (1989) (quoting *Cohens*, 19 U.S. at 404). Nevertheless, subsequent events have shown that the Court did not pull back from the void quickly or clearly enough—at least as to *Colorado River*.

It has been nearly 50 years since *Colorado River*, and practice has shown that its abstention doctrine was built upon shifting sands. The doctrine's instability has been glaringly reflected in circuit courts' divergent applications of it. *See, e.g.*, Gallogly, *supra*, at 206 ("[T]he application of *Colorado River* abstention in the lower courts is a story of confusion and unpredictability."). Some courts use the doctrine for routine docket-clearing, dressing it up in "imposing phrases such as 'federalism,' 'comity,' 'avoidance of duplicative litigation,' 'judicial efficiency,' 'judicial economy,' and 'wise judicial administration.'" Mullenix, *supra*, at 101. But mere docket control is not a valid argument for federal courts to close their doors to prospective plaintiffs hoping to avail themselves of the jurisdiction that Congress has specifically ordained for the federal courts. The Court "has clearly instructed that *Colorado River* may not be invoked as a means of getting rid of cases that properly belong in federal court." *Hoai v. Sun Ref. & Mktg. Co.*, 866 F.2d 1515, 1520 (D.C. Cir. 1989).

Moreover, many courts have decided that this Court's six-factor test for determining *Colorado River* abstention was gave them insufficient discretion to abdicate jurisdiction. As explained above, some courts now employ seven, eight, and even ten factors—seven, eight, and ten reasons to reject the jurisdiction with which Congress empowered the federal courts. *See, e.g., Bates v. Van Buren Tp.*, 122 F. App'x 803, 807 (6th Cir. 2004); *Seneca Ins. Co., Inc.*, 862 F.3d 835, 841 (9th Cir. 2017); *Freed v. J.P. Morgan Chase Bank, N.A.*, 756 F.3d 1013, 1021 (7th Cir. 2014); Mullenix, *supra* at 143 ("[T]he lower federal courts have added new factors to the abstention calculation. The most frequently mentioned considerations include interests of federalism and comity, avoidance of duplicative, wasteful litigation, and suppression of vexatious lawsuits."). Despite acknowledging the federal judiciary's "virtually unflagging obligation" to exercise the jurisdiction that Congress has conferred, the Court's resolve in *Colorado River* has failed.

It is long past time for the Court to live up to its rhetoric in *Colorado River* and revisit the extent to which federal courts may avoid their duty to decide. This petition presents such an opportunity.

CONCLUSION

"When a Federal court is properly appealed to in a case over which it has by law jurisdiction, it is its duty to take such jurisdiction," such that "[t]he right of a party plaintiff to choose a Federal court where there is a choice cannot be properly denied"—except in the most extraordinary circumstances. *Willcox v. Consolidated Gas Co.*, 212 U.S. 19, 40 (1909). This petition puts that foundational principle to the test.

The Court should review the Ninth Circuit's decision in this case to consider whether to abrogate *Colorado River* abstention altogether. Alternatively, the Court should consider whether to at least cabin and clarify a doctrine that many courts, including the Ninth Circuit, have used to turn the near-irrebuttable presumption against abstention on its head.

The Court should grant this petition.

DATED: March 2025

Respectfully submitted,

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APPENDIX

TABLE OF APPENDICES

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED AUGUST 29, 2024

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 23-15857

MENDOCINO RAILWAY,
A CALIFORNIA CORPORATION,

Plaintiff-Appellant,

v.

JACK AINSWORTH, IN HIS OFFICIAL CAPACITY AS EXECUTIVE DIRECTOR OF THE CALIFORNIA COASTAL COMMISSION; CITY OF FORT BRAGG, A CALIFORNIA MUNICIPAL CORPORATION,

Defendants-Appellees.

May 15, 2024, Argued and Submitted,
San Francisco, California
August 29, 2024, Filed

Appeal from the United States District Court
for the Northern District of California
D.C. No. 4:22-cv-04597-JST
Jon S. Tigar, District Judge, Presiding

Appendix A

Before: Sidney R. Thomas, Consuelo M. Callahan, and Gabriel P. Sanchez, Circuit Judges.

CALLAHAN, Circuit Judge:

Mendocino Railway ("Railway") has resisted efforts by the City of Fort Bragg ("City") and the California Coastal Commission ("Commission") to regulate the use and maintenance of Railway properties in the City. After the City sued the Railway in state court, the Railway responded by suing the City and the Commission in federal court. The Railway appeals the district court's dismissal of its federal case under the *Colorado River* doctrine, which authorizes federal courts to refrain from exercising jurisdiction where there are parallel state court proceedings. *See Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 96 S. Ct. 1236, 47 L. Ed. 2d 483 (1976). We have jurisdiction under 28 U.S.C. § 1291 and we affirm.

I.

A.

The Railway operates a railroad line between Fort Bragg, California and Willits, California, colloquially known as the "Skunk Train."[1] Related to its operation of

1. The railroad line was originally built in 1885, and historically has operated tourist and non-tourist passenger services as well as freight services. The Fort Bragg station is a fully developed rail facility.

the railroad, the Railway owns multiple structures and properties within the City, and since 2019 has acquired a total of approximately 300 acres of land adjacent to the Fort Bragg railway station. The Railway has undertaken a variety of improvements, repairs, and maintenance work related to the further development of this property.

Starting in 2017, the City began discussions with the Railway regarding the repair of dilapidated structures on Railway property and the Railway's purported failure to obtain proper permits for its use of the property. This includes permits under the California Coastal Act of 1976 ("Coastal Act"), Cal. Pub. Res. Code § 30000 *et seq.*, which applies to development in the coastal zone and which the City implements through its local coastal program ("LCP"). The Railway refused to obtain any permits, arguing that as a public utility it was not subject to local regulation.

The Railway was also in discussions with the Commission during this time. The Commission is the state entity that administers the Coastal Act, including overseeing LCPs, issuing permits, and pursuing administrative and civil enforcement actions. Additionally, the Coastal Zone Management Act ("CZMA"), 16 U.S.C. § 1451 *et seq.*, grants the Commission authority to review certain federal agency actions to ensure consistency with the Coastal Act. *See id.* § 1456. The Commission sent letters to the Railway in June and December of 2019 regarding the Commission's permitting jurisdiction, requesting information on the Railway's development activities, and discussing the possible need for a permit

under the Coastal Act or a consistency determination under the CZMA.[2]

B.

In October 2021, the City sued the Railway in Mendocino County Superior Court. *City of Fort Bragg v. Mendocino Railway*, Case No. 21CV00850 (the "State Action"). The City's complaint seeks a declaration that the Railway is not a public utility and therefore is "subject to the City's ordinances, regulations, codes, local jurisdiction, local control and local police power and other City authority." The City also seeks an injunction ordering the Railway to comply with local laws. The Railway demurred, arguing the state court lacked subject matter jurisdiction given the Railway's public utility status and that City regulation was federally preempted by the Interstate Commerce Commission Termination Act of 1995 ("ICCTA") because of the Railway's status as a federally recognized railroad. The state court overruled the demurrer on April 28, 2022, finding the Railway's argument that federal law preempted "all" local laws and regulations to be overly broad, and noting the issue was not appropriate to decide on demurrer given the fact-bound nature of the preemption inquiry.

2. We grant the Railway's requests for judicial notice of the state court docket (Exhibit 1) and the December 2019 letter from the Commission to the Railway (Exhibit 2).

After unsuccessful petitions to the California Court of Appeal and the California Supreme Court,[3] the Railway filed its answer in the State Action on June 24, 2022. The Railway asserted preemption as an affirmative defense, stating that "[t]he declaratory and injunctive relief sought by [the City] are barred by state and federal preemption . . . because Defendant is a [California Public Utilities Commission]-regulated public utility and a railroad within the jurisdiction of the [federal Surface Transportation Board]."

In July 2022, the City requested that the Commission assume responsibility for enforcement of the Coastal Act and the City's LCP against the Railway. The Commission agreed and sent a Notice of Violation to the Railway on August 10, 2022. The notice asserted that the Railway was undertaking unpermitted development which required a coastal development permit and might also require a consistency determination. It outlined the potential civil fines and administrative penalties that could be assessed against the Railway should it fail to obtain the proper permits.

On August 9, 2022 (the day before the Commission sent the notice), the Railway filed the federal action underlying this appeal in the United States District Court for the

3. We grant the Commission's request for judicial notice of the Commission's complaint in intervention (Exhibit A) and the California Supreme Court docket denying the petition for review (Exhibit B), and deny the request as to the City and Commission motions to remand the State Action (Exhibits C and D), and the order granting the remand (Exhibit E).

Northern District of California (the "Federal Action"). The Railway sued the City and Jack Ainsworth in his official capacity as Executive Director of the Commission. The Railway's complaint references a variety of actions it has pursued or will pursue related to maintenance and other work on its railway-related properties. The Railway seeks a declaration that "the actions of the Commission and the City to regulate [the Railway's] operations, practices and facilities are preempted under 49 U.S.C. § 10501(b)"; that the Railway's "activities are subject to the [Surface Transportation Board's] exclusive jurisdiction;" and that the Railway "has the right under the ICCTA to undertake any and all rail-related activities within the coastal zone . . . without preclearance or approval from the Commission or the City." The Railway also seeks an injunction preventing the City and the Commission from interfering with its operations, including by imposing "any land-use permitting or other preclearance requirement." It further states it has not sought, and does not intend to seek, a permit from either the City or the Commission.

Subsequently, back in state court, the Railway moved to disqualify the judge who had overruled the demurrer, and the motion was denied. The Commission moved to intervene in the State Action on October 6, 2022. The Commission's complaint-in-intervention references the Railway's maintenance work "as well as other activities undertaken by the Railway." It notes the Railway's contention that federal law preempts the permitting requirements of the Coastal Act, and asks the state court to declare that the Coastal Act and LCP apply to the Railway's actions and "are not preempted by any state

or federal law." In addition, the Commission's complaint seeks civil penalties and exemplary damages for the Railway's alleged violations of the Coastal Act.

On October 20, 2022, the Railway removed the State Action to the United States District Court for the Northern District of California, invoking federal question jurisdiction on the grounds that the State Action required resolution of federal questions arising under the ICCTA. The City and the Commission moved to remand the action to state court, and on May 11, 2023, the district court granted the motion.[4]

Meanwhile, the Commission and the City filed a joint motion to dismiss the Federal Action based on, *inter alia*, the Colorado River doctrine. On May 12, 2023, the district court granted the joint motion, and the Railway filed a timely notice of appeal.

II.

Federal courts have a "virtually unflagging obligation . . . to exercise the jurisdiction given them." Colorado River, 424 U.S. at 817. In Colorado River, the Supreme Court recognized that, in exceptional circumstances, "considerations of wise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation" can support a stay or dismissal of federal litigation in favor of parallel state

4. Judge Tigar was assigned to both the Federal Action as well as the removed State Action.

proceedings. *Ernest Bock, LLC v. Steelman*, 76 F.4th 827, 836 (9th Cir. 2023) (citing *Colorado River*, 424 U.S. at 813, 817 (internal quotations and citations omitted)).[5] However, a stay of federal proceedings in favor of state proceedings "is the exception, not the rule." *Colorado River*, 424 U.S. at 813. "Generally, as between state and federal courts, the rule is that the pendency of an action in the state court is no bar to proceedings concerning the same matter in the Federal court having jurisdiction." *Id.* at 817. (internal quotation omitted).

Our review of a *Colorado River* dismissal proceeds in two steps. First, we review *de novo* whether the facts of a particular case meet the requirements for a *Colorado River* dismissal. *Seneca Ins. Co., Inc. v. Strange Land, Inc.*, 862 F.3d 835, 840 (9th Cir. 2017). Second, if the requirements are met, we review for abuse of discretion the district court's decision to dismiss the case. *Id.* "The underlying principle guiding this review is a strong presumption against federal abstention." *Id.* at 842.

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5. Generally, a stay rather than a dismissal is appropriate under *Colorado River* as a stay ensures the federal forum will remain available if needed. *See Montanore Mins. Corp. v. Bakie*, 867 F.3d 1160, 1166 (9th Cir. 2017). As recognized by the district court, however, "*Colorado River* itself involved dismissal of a federal action." The district court here determined dismissal was appropriate given "the strength of the factors and the degree to which their balance tips sharply in [the City and Commission's] favor." The Railway does not raise this issue on appeal, so we decline to consider it here. *See R.R. Street & Co. v. Transport Ins. Co.*, 656 F.3d 966, 978 n.8 (9th Cir. 2011) (affirming a *Colorado River* dismissal and declining to address the stay-versus-dismissal issue when it was not raised on appeal).

After determining there are concurrent state and federal court proceedings involving the same matter (as there are here), we use an eight-factor balancing test to determine if a *Colorado River* stay or dismissal is appropriate. We consider:

> (1) which court first assumed jurisdiction over any property at stake; (2) the inconvenience of the federal forum; (3) the desire to avoid piecemeal litigation; (4) the order in which the forums obtained jurisdiction; (5) whether federal law or state law provides the rule of decision on the merits; (6) whether the state court proceedings can adequately protect the rights of the federal litigants; (7) the desire to avoid forum shopping; and (8) whether the state court proceedings will resolve all issues before the federal court.

R.R. Street & Co. v. Transport Ins. Co., 656 F.3d 966, 978-79 (9th Cir. 2011). These factors are not applied as a "mechanical checklist," but rather in "a pragmatic, flexible manner with a view to the realities of the case at hand." *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 16, 21, 103 S. Ct. 927, 74 L. Ed. 2d 765 (1983). "[S]ome factors may weigh for or against the exercise of jurisdiction while others primarily serve as a bar to stay or dismissal." *R.R. Street*, 656 F.3d at 979. "Any doubt as to whether a factor exists should be resolved against a stay" or dismissal. *Travelers Indem. Co. v. Madonna*, 914 F.2d 1364, 1369 (9th Cir. 1990).

Appendix A

A.

We agree with the parties and the district court that the first factor of jurisdiction over property at stake is inapplicable given there is no specific property in dispute. *See R.R. Street*, 656 F.3d at 979. We also agree that the second factor addressing inconvenience of the federal forum is neutral given the state and federal courthouses are less than 200 miles apart. *See Montanore*, 867 F.3d at 1167 (treating a distance of 200 miles as neutral); *Travelers*, 912 F.3d at 1368 (finding 200 miles "not sufficiently great that this factor points toward abstention").[6]

B.

The third factor focuses on piecemeal litigation. "Piecemeal litigation occurs when different tribunals consider the same issue, thereby duplicating efforts and possibly reaching different results." *Am. Int'l Underwriters (Philippines), Inc. v. Cont'l Ins. Co.*, 843 F.2d 1253, 1258 (9th Cir. 1988). The district court found this factor favored dismissal given "the issue of federal preemption under the ICCTA is squarely before the state court" and federal adjudication of the claim would

6. We grant the Railway's request for judicial notice of statements of information for the Railway's business filed with the California Secretary of State (Exhibits 3 and 4). We deny the Railway's request for judicial notice of emails exchanged between the Commission and the Federal Railway Administration (Exhibit 5) as well as emails between the Commission and the Railway (Exhibit 6), and the Commission's request for judicial notice of the Commission's public hearing notice.

"necessarily duplicate the state court's efforts and risk the possibility of . . . different results."

Some of our cases have noted that the mere potential for piecemeal litigation is not sufficient on its own to warrant a stay. *See*, *e.g.*, *Seneca*, 862 F.3d at 842-43 ("A general preference for avoiding piecemeal litigation is insufficient. . . . Instead, there must be exceptional circumstances present that demonstrate that piecemeal litigation would be particularly problematic."); *Travelers*, 914 F.2d at 1369 (finding no exceptional circumstances in an insurance dispute dealing with ordinary contract and tort issues). However, we have also found the potential for piecemeal litigation to favor a stay when concurrent cases would resolve common questions that could result in "waste [of] judicial resources and cause confusion in the continuing disputes between the parties." *See*, *e.g.*, *Ernest Bock*, 76 F.4th at 837 (citing *R.R. Street*, 656 F.3d at 979-80); *Montanore*, 867 F.3d at 1168 (finding this factor favored a stay when the same issue was present in both cases and "crucial in both proceedings," leading to duplication of judicial effort and arguably conflicting results).

We agree with the district court that this factor weighs in favor of dismissal. Although the State Action includes state law claims, both it and the Federal Action squarely raise the ICCTA preemption issue which the respective courts will be required to address. Given the almost guaranteed duplication of judicial effort on the preemption question and the possibility of contradictory outcomes, the potential for piecemeal litigation supports dismissal. *See Ernest Bock*, 76 F.4th at 837.

C.

The district court also found dismissal supported by the fourth factor, the order in which the forums gained jurisdiction, because the State Action was filed first and had progressed further than the Federal Action. This factor considers not only the filing dates of each action, but also "the progress made in each case 'in a pragmatic, flexible manner with a view to the realities of the case at hand.'" *Seneca*, 862 F.3d at 843 (citing *Moses H. Cone*, 460 U.S. at 21). When a state action has been progressing for multiple years with extensive discovery, substantive motions, orders deciding multiple issues, or interlocutory appeals, this factor favors abstention. *See Montanore*, 867 F.3d at 1168; *see also R.R. Street*, 656 F.3d at 980 (finding significant progress weighing in favor of a stay when the state court had interpreted provisions of a contract, conducted discovery, scheduled phased litigation, and issued an order concerning foundational legal matters).

Although the State Action was filed first in time, it preceded the Federal Action by less than a year, which is less time than other cases have found to be significant. *See*, *e.g.*, *Montanore*, 867 F.3d at 1168 (state court litigation had been underway for six years). Additionally, while the State Action has moved beyond the pleadings stage, it does not appear that the state court has resolved any "foundational legal claims" but rather decided the issues were inappropriate for decision on demurrer. At the time the Railway filed the Federal Action, there had not been any discovery, and no trial date had been set. Although we do not give this factor as much weight as the district

court appears to have done, we agree that this factor favors dismissal.

D.

On the fifth factor, all agree that the Federal Action is governed by federal statute and federal preemption law as the ICCTA determines whether the Railway falls within the scope of the statute's preemption clause. *See* 49 U.S.C. §§ 10102, 10501(b). "[T]he presence of federal-law issues must always be a major consideration weighing against surrender." *Moses H. Cone*, 460 U.S. at 26. We agree with the district court that this factor therefore weighs against dismissal but note that where (as here) "state and federal courts have concurrent jurisdiction over a claim, this factor becomes less significant." *Nakash v. Marciano*, 882 F.2d 1411,1416 (9th Cir. 1989).

E.

The sixth factor looks to whether the state court proceeding can adequately protect the rights of the federal litigants. If it cannot, "a district court may not stay or dismiss the federal proceeding." *R.R. Street*, 656 F.3d at 981. We agree with the district court, and the Railway concedes, that the Railway's federal preemption claim can be adjudicated by the state court. This factor thus does not preclude dismissal. *Seneca*, 862 F.3d at 845 (noting that "inadequacy of the state forum . . . may preclude abstention" but an adequate state forum "never compel[s] abstention").

F.

The forum-shopping factor considers "whether either party improperly sought more favorable rules in its choice of forum or pursued suit in a new forum after facing setbacks in the original proceeding." *Seneca*, 862 F.3d at 846. A "chronology of events suggest[ing] that both parties took a somewhat opportunistic approach to [the] litigation" is not sufficient to support a *Colorado River* dismissal. *R.R. Street*, 565 F.3d at 981. However, any indication that a party "sought to manipulate the litigation or behaved vexatiously to wind up in the forum of its choosing" supports a finding of forum shopping. *Seneca*, 862 F.3d at 846.

The district court found this factor to weigh in favor of dismissal given the Railway filed its Federal Action after the state court overruled its demurrer, an unfavorable outcome. At the time the district court considered this motion to dismiss, the Railway had also attempted to disqualify the state court judge and remove the State Action to federal court. Although only the City's state-law claims—which do not implicate the Railway's status under federal law—were officially pending at the time the Railway filed the Federal Action, the Railway had already raised federal preemption as an affirmative defense in the State Action. As noted by the district court, the Federal Action is "premised entirely on the [preemption] argument rejected on demurrer." Furthermore, when the Railway filed the Federal Action, it was aware of the Commission's immediate intention to file a complaint-in-intervention raising the federal preemption issue. In consideration

of these actions by the Railway, we "reasonably infer" that the Railway had become "dissatisfied with the state court and [sought] a new forum." *Montanore*, 867 F.3d at 1169-71 (weighing forum shopping in favor of a *Colorado River* stay when the plaintiff "filed in federal court a few months after it received an unfavorable decision in state court," noting "the federal proceeding was aimed at the same goal" and the plaintiff had sought to have the state judge removed from the case) (internal quotation omitted). The forum shopping factor weighs in favor of dismissal.

G.

Under the parallelism factor, the eighth and final consideration of a *Colorado River* analysis, we evaluate whether the state court proceeding is substantially similar to the federal proceeding. "Exact parallelism . . . is not required. It is enough if the two proceedings are substantially similar." *Nakash*, 882 F.2d at 1416 (quotations and citations omitted). However, "the existence of a substantial doubt as to whether the state proceedings will resolve the federal action precludes a *Colorado River* stay or dismissal." *R.R. Street*, 656 F.3d at 982 (internal quotations omitted).

The district court found the proceedings to be substantially similar given the Railway's ICCTA preemption defense in the State Action was the sole issue in the Federal Action. The district court therefore found it "difficult for the Court to conceptualize [the Federal Action] as anything but a spinoff of the [State Action]." The Railway, however, argues that our recent

decision on this parallelism factor in *Ernest Bock, LLC v. Steelman*—decided after the district court's order—precludes dismissal here.

In *Ernest Bock*, we reversed a *Colorado River* stay after determining the state court proceeding might not fully resolve the issues before the federal court and thus the "proceedings [were] not sufficiently parallel to justify abdication of federal jurisdiction." 76 F.4th at 842. In that case, the original state court action was a contract dispute related to liability under a commercial mortgage with related claims and counterclaims for fraud and breach of the implied covenant of good faith and fair dealing. *Id.* at 833. After the state court found in its favor, the plaintiff filed suit in federal district court to challenge alleged actions by the defendants to shield funds from the $11 million judgment, asserting claims for violation of state and federal fraud and racketeering laws. *Id.* While the federal suit was pending, the state appellate court vacated and remanded the underlying state judgment, thus setting up parallel proceedings where both the state and federal courts would necessarily address the same threshold issue of whether certain contract guarantees were enforceable. *Id.* at 834.

In reversing the district court's grant of a *Colorado River* stay, we found the lack of parallelism dispositive. We focused on a line of cases finding use of *Colorado River* inappropriate when the state proceeding could result in an outcome that would still require additional litigation in the federal case. *See Ernest Bock*, 76 F.4th at 839-40 (citing *Intel Corp. v. Advanced Micro Devices, Inc.*, 12

F.3d 908, 912-13 (9th Cir. 1993) (finding that when one of two possible state court outcomes would require additional federal litigation, a *Colorado River* stay could not issue); and *U.S. v. State Water Res. Control Bd.*, 988 F.3d 1194, 1204 (9th Cir. 2021) ("We have repeatedly emphasized that a *Colorado River* stay is inappropriate when the state court proceedings will not resolve the entire case before the federal court.")). We held that, because the state court could find the contract obligations enforceable, requiring additional action in federal court to address the alleged fraudulent transfer of assets and racketeering claim, there was substantial doubt as to whether the state proceedings would fully resolve the federal action. *Id.* at 841-42 (citing *Moses H. Cone*, 460 U.S. at 28). Therefore, the use of a *Colorado River* stay was precluded.

In this case, the district court relied on the standard articulated in our pre-*Ernest Bock* cases that exact parallelism is not required and actions that are a "spin-off" of state litigation can be found sufficiently similar to warrant a stay. *See Nakash*, 822 F.2d at 1417; *Montanore*, 867 F.3d at 1170. The Railway argues that because the Federal Action contains claims that are broader than those in the State Action—and therefore may possibly require continued federal litigation after a decision by the state court—*Ernest Bock* precludes a dismissal. Specifically, the Railway asserts that the Federal Action addresses not only whether the ICCTA preempts the Commission's authority under the Coastal Act, but also the Commission's federal consistency approval authority under the CZMA. The Railway further suggests that the state court could find the Railway is a public utility under state law without

reaching the issue of federal preemption. According to the Railway, these possible outcomes would lead to continued federal litigation.

The Railway overreads our decision in *Ernest Bock*. In *Ernest Bock*, there was a realistic probability—bordering on certainty—that one of the two anticipated outcomes in state court (i.e., the state court finding the contract guarantees enforceable) would then require additional proceedings in federal court. *See* 76 F.4th at 840 n.17 (noting the state court proceedings could result only in "binary outcomes"). The fraud and racketeering claims in the federal court, while incorporating the same underlying issue of contract validity, were distinct from the state court claims. That is not the case here. Although there is a theoretical possibility the State Action will not fully resolve the Federal Action, there does not appear to be a realistic probability that a federal controversy will remain after the state proceedings are complete. If the state court holds the Commission lacks authority to regulate the Railway's activities on state law grounds due to the Railway's status as a public utility, there would be no remaining threat of regulation for the federal court to address—rendering the federal preemption arguments moot if not addressed by the state court. If the State Action does reach the federal preemption issue, it would resolve the only issue in the Federal Action.

The Railway's argument that the Federal Action is broader than the State Action is unpersuasive. The Railway's federal complaint does not allege any other instances of an existing conflict with the City

or the Commission outside of those being litigated in the State Action. To the extent the Railway asserts it raises generalized claims of preemption of the City's or Commission's regulatory authority that are not mooted or otherwise addressed by the State Action, those claims would be unripe given the fact-specific nature of the preemption analysis under the ICCTA. The Railway's arguments as to the Commission's CZMA federal consistency authority are similarly unpersuasive. The federal complaint does not raise a CZMA claim as it fails to mention the CZMA even once, and the Railway's complaint did not allege any specific action that the Commission asserts falls within its CZMA review authority.

Ernest Bock did not abrogate our prior precedent. *See* 76 F.4th at 840 n.17 (noting the outcome was reconcilable with *Nakash*, where it was unclear the state court proceedings would result in an outcome that would require federal litigation). The "binary outcomes" scenario at issue in *Ernest Bock* is not present here. *Id.* As the district court aptly stated, "it is difficult . . . to conceptualize [the Federal Action] as anything other than a spinoff of the [State Action]." *See Nakash*, 822 F.2d at 1416-17. The state and federal proceedings here are sufficiently parallel such that there is no substantial doubt the State Action will completely resolve the Federal Action. This consideration of whether state court proceedings will resolve the federal issues does not preclude dismissal under *Colorado River*.

III.

"Ultimately, 'the decision whether to dismiss a federal action because of parallel state-court litigation' hinges

on 'a careful balancing of the [relevant] factors . . . with the balance heavily weighted in favor of the exercise of jurisdiction.'" *R.R. Street*, 656 F.3d at 983 (citing *Moses H. Cone*, 460 U.S. at 16). Here, only the consideration that federal law provides the rule of decision weighs against dismissal of the Federal Action, but not substantially so given the state court has concurrent jurisdiction to adjudicate federal preemption issues. Neither an inadequate state court forum nor insufficiently parallel proceedings, which would preclude the use of a *Colorado River* dismissal, are present here. The forum shopping and piecemeal litigation considerations strongly favor dismissal, and the order in which the forums obtained jurisdiction also supports that outcome. The remaining factors are neutral. On balance, therefore, this case meets the requirements for a *Colorado River* dismissal and there was no abuse of discretion by the district court in dismissing the Federal Action.[7]

The dismissal by the district court is **AFFIRMED**.

7. Because we affirm the district court's dismissal under *Colorado River*, we do not address the alternative arguments raised by the City and Commission regarding *Younger* abstention and *Wilton/Brillhart* abstention.

APPENDIX B — OPINION OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, FILED MAY 12, 2023

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

Case No. 22-cv-04597-JST

MENDOCINO RAILWAY,

Plaintiff,

v.

JACK AINSWORTH, *et al.*,

Defendants.

Filed May 12, 2023

JON S. TIGAR, United States District Judge.

ORDER GRANTING MOTIONS TO DISMISS
Re: ECF Nos. 15 & 16

Before the Court are Defendants Jack Ainsworth's and the City of Fort Bragg's motions to dismiss. ECF Nos. 15 & 16. The Court will grant the motions.

I. BACKGROUND

This case is the second in an ongoing controversy between the City of Fort Bragg ("City") and the California

Coastal Commission ("Commission"), on the one hand, and Mendocino Railway, on the other, over whether state and local laws apply to Mendocino Railway. In the first case, *City of Fort Bragg v. Mendocino Railway*, No. 21CV00850 (Cal. Super. Ct.) ("state court action"), the City and the Commission sued Mendocino Railway in the Superior Court of Mendocino County, primarily seeking a declaration that Defendant Mendocino Railway is subject to such laws and regulations. *See* ECF No. 15-1 at 6-11, 69-76.[1] The City also seeks an injunction requiring Mendocino Railway to comply with local law as it applies to dilapidating railroad infrastructure within City boundaries. *Id.* at 6-11. In addition, the Commission seeks a declaration that the Railway is subject to the California Coastal Act of 1976 ("Coastal Act"), Cal. Pub. Res. Code § 30000 *et seq.*, and an injunction requiring Mendocino Railway to comply with the Act's permitting requirements. *Id.* at 69-76.

In the state court action, the City filed its complaint on October 28, 2021. ECF No. 15-1 at 11. Mendocino Railway demurred to the complaint on January 14, 2022, arguing, *inter alia*, that the Interstate Commerce Commission Termination Act ("ICCTA"), 49 U.S.C. § 10101 *et seq.*, preempts the City's claims. ECF No. 15-1 at 28-29. The court overruled the demurrer on April 28, 2022. *Id.* at 32-43. The court rejected Mendocino Railway's federal preemption argument as "overbroad" because

1. The Commission's request that the Court take judicial notice of filings from the state court action, ECF No. 15-1 at 1-2, is granted. *See United States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992).

"not all state and local regulations that affect railroads are preempted" by the ITCCA. *Id.* at 41. Rather "the applicability of preemption" in this context "is necessarily a 'fact bound' question." *Id.* at 43. The court further concluded that because Mendocino Railway "is simply a luxury sightseeing excursion service with no connection to interstate commerce," "its 'railroad activities,' for the purposes of federal preemption, are extremely limited." *Id.* at 42. Mendocino Railway filed its answer to the City's complaint on June 24, 2022, asserting federal preemption as an affirmative defense. *Id.* at 54. On September 8, 2022, the Commission moved to intervene and filed a proposed complaint-in-intervention. *Id.* at 59-84. The complaint notes that Mendocino Railway "contends that state and federal law preempts" the permitting requirements of the Coastal Act, *id.* at 74, and, as part of the Commission's prayer for relief, asks the court to declare that the Coastal Act and the City's local laws "are not preempted by any state or federal law," *id.* at 75.

Mendocino Railway removed the state court action to this Court on October 20, 2022. *See* Notice of Removal, *City of Fort Bragg, et al. v. Mendocino Railway*, No. 22-cv-06317-JST (N.D. Cal. Oct. 20, 2022), ECF No. 1. The notice of removal invokes this Court's federal question jurisdiction on the ground that the resolution of the City's and the Commission's claims requires "a judicial determination of *federal questions* arising under ICCTA." *Id.* at 2 (emphasis in original). The City and Commission moved to remand the action to state court, and this Court granted the motions. *See* Order Granting Motions to Remand, *City of Fort Bragg, et al. v. Mendocino Railway*,

No. 22-cv-06317-JST (N.D. Cal. May 11, 2023), ECF No. 33.

Mendocino Railway filed the instant complaint in this case on August 9, 2022, against the City and Jack Ainsworth in his official capacity as Executive Director of the Commission. ECF No. 1. Mendocino Railway seeks a declaration that the ICCTA preempts state and local law and an injunction prohibiting the City and the Commission from "interfer[ing] with Mendocino Railway's operation." ECF No. 1 at 10. Ainsworth and the City filed motions to dismiss Mendocino Railway's complaint. ECF Nos. 15 & 16. The Court took the motions under submission without a hearing on December 12, 2022.

II. JURISDICTION

The Court has jurisdiction under 28 U.S.C. § 1331.

III. LEGAL STANDARD

To survive a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), a complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Dismissal "is appropriate only where the complaint lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory." *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008). "[A] complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009)

(quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* While this standard is not "akin to a 'probability requirement' . . . it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.* (quoting *Twombly*, 550 U.S. at 556). "Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of entitlement to relief.'" *Id.* (quoting *Twombly*, 550 U.S. at 557). In determining whether a plaintiff has met the plausibility requirement, a court must "accept all factual allegations in the complaint as true and construe the pleadings in the light most favorable" to the plaintiff. *Knievel v. ESPN*, 393 F.3d 1068, 1072 (9th Cir. 2005).

IV. DISCUSSION

The parties dispute, *inter alia*, whether a *Colorado River* stay or dismissal is appropriate in this case. Before staying or dismissing a case under *Colorado River*, the Court must find that there are concurrent state and federal court proceedings involving the same matter. If the Court makes such a finding, it then weighs a "complex [set]" factors to determine whether "exceptional circumstances justify such a stay" or dismissal. *Intel Corp. v. Advanced Micro Devices*, 12 F.3d 908, 912 (9th Cir. 1993). These factors include:

> (1) which court first assumed jurisdiction over any property at stake; (2) the inconvenience of the federal forum; (3) the desire to avoid piecemeal litigation; (4) the order in which the forums obtained jurisdiction; (5) whether federal law or state law provides the rule of decision on the merits; (6) whether the state court proceedings can adequately protect the rights of the federal litigants; (7) the desire to avoid forum shopping; and (8) whether the state court proceedings will resolve all issues before the federal court.

Seneca Ins. Co., Inc. v. Strange Land, Inc., 862 F.3d 835, 841 (9th Cir. 2017) (quoting *R.R. St. & Co. Inc. v. Transp. Ins. Co.*, 656 F.3d 966, 978-79 (9th Cir. 2011)). In balancing these factors, the Court must remain "mindful that '[a]ny doubt as to whether a factor exists should be resolved against a stay.'" *R.R. St.*, 656 F.3d at 979 (quoting *Travelers Indem. Co. v. Madonna*, 914 F.2d 1364, 1369 (9th Cir. 1990)). However, "these factors are not a 'mechanical checklist'; indeed, some may not have any applicability to a case." *Seneca Ins. Co.*, 862 F.3d at 842 (quoting *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 16, 103 S. Ct. 927, 74 L. Ed. 2d 765 (1983)). "Courts generally rely on the state of affairs at the time of the *Colorado River* analysis." *R.R. St.*, 656 F.3d at 982.

The Court finds the predicate existence of concurrent state and federal court proceedings, as discussed above. The first factor is "irrelevant" because "the dispute does not involve a specific piece of property." *R.R. Street*, 656

F.3d at 979. The second factor is neutral because the state proceedings are in the Mendocino County Superior Court in Fort Bragg, California, and the federal proceeding is in the Northern District of California in Oakland, California, which are approximately 150 miles apart. *Montanore Minerals Corp v. Bakie*, 867 F.3d 1160, 1167 (9th Cir. 2017) (treating a distance of 200 miles as neutral); *accord Travelers Indem. Co. v. Madonna*, 912 F.3d 1364, 1368 (9th Cir. 1990) ("Although 200 miles is a fair distance, it is not sufficiently great that this factor points toward abstention. The district court did not err in finding this factor 'unhelpful.'").

The third factor—the desire to avoid piecemeal litigation—is a "substantial factor in the *Colorado River* analysis." *Seneca Ins. Co.*, 862 F.3d at 835. "Piecemeal litigation occurs when different tribunals consider the same issue, thereby duplicating efforts and possibly reaching inconsistent results." *Id.* (quoting *Am. Int'l Underwriters (Philippines), Inc. v. Cont'l Ins. Co.*, 843 F.2d 1253, 1258 (9th Cir. 1988)). "[T]here must be exceptional circumstances present that demonstrate that piecemeal litigation would be particularly problematic." *Id.* Such exceptional circumstances are present here, as the issue of federal preemption under the ICCTA is squarely before the state court. As discussed above, in overruling Mendocino Railway's demurrer, the state court rejected Mendocino Railway's federal preemption argument as overbroad and deferred resolution of the issue to a later juncture. ECF No. 15-1 at 42-43. Federal preemption is the sole issue raised in Mendocino Railway's complaint in this action, and for the Court to adjudicate that claim

would necessarily duplicate the state court's efforts and risk the possibility of this Court and the state court reaching different results. Because "[p]ermitting this suit to continue would undeniably result in piecemeal litigation," the third factors "weighs significantly against jurisdiction." *Nakash v. Marciano*, 882 F.2d 1411, 1415 (9th Cir. 1989); *R.R. St.*, 656 F.3d at 966.

The fourth factor requires the Court to assess "'the order in which the forums gained jurisdiction,'" considering "'the realities of the case at hand' 'in a pragmatic, flexible manner.'" *Montanore Minerals Corp.*, 867 F.3d at 1168 (first quoting *Moses H. Cone*, 460 U.S. at 21; and then quoting *Am. Int'l Underwriters*, 843 F.2d at 1257). The Court "consider[s] not only the order, but also the relative progress of the state and federal proceedings." *Id.* Mendocino Railway filed its complaint in this case on August 9, 2022, which is nearly two years after the state court action commenced on October 28, 2021. Additionally, the state court action is largely past the pleading stage, as the Court overruled Mendocino Railway's demurrer to the City's complaint, Mendocino Railway filed its answer to the complaint on June 24, 2022, and trial was scheduled to begin on June 21, 2023. ECF No. 15-1 at 102. Because the state forum gained jurisdiction first, and because the state court action has progressed further than the federal court action, the fourth factor weighs in favor of dismissal.

The fifth factor requires the Court to "consider 'whether federal law or state law provides the rule of decision on the merits.'" *Seneca Ins. Co.*, 862 F.3d at 844 (quoting *R.R. St.*, 656 F.3d at 978). "The 'presence of

federal-law issues must always be a major consideration weighing against surrender' of jurisdiction, but 'the presence of state-law issues may weigh in favor of that surrender' only 'in some rare circumstances.'" *Id.* (quoting *Cone Mem'l Hosp.*, 460 U.S. at 26). Federal law supplies the rule of decision on the merits of Mendocino Railway's complaint. The text of the ICCTA determines whether Mendocino Railway falls within the statute's ambit so as to trigger the statute's preemptive effect, *see* 49 U.S.C. §§ 10102, 10501(b), and federal preemption law determines the extent to which the ICCTA preempts the state and local laws that substantiate the challenged actions of the City and the Commission, *see BNSF Ry. Co. v. Cal. Dep't of Tax and Fee Admin.*, 904 F.3d 755, 760 (9th Cir. 2018) ("The ICCTA 'preempts all state laws that may reasonably be said to have the effect of managing or governing rail transportation, while permitting the continued application of laws having a more remote or incidental effect on rail transportation. What matters is the degree to which the challenged regulation burdens rail transportation[.]'" (alteration in original) (quoting *Ass'n of Am. R.Rs. v. South Coast Air Quality Mgmt. Dist.*, 622 F.3d 1094, 1097-98 (9th Cir. 2010)). Accordingly, this factor weighs against dismissal.

The sixth factor "looks to whether the state court might be unable to enforce federal rights." *Seneca Ins. Co.*, 862 F.3d at 845. This factor weighs in favor of dismissal "[w]hen it is clear that 'the state court has authority to address the rights and remedies at issue.'" *Montanore Minerals Corp.*, 867 F.3d at 1169 (quoting *R.R. St.*, 656 F.3d at 981). Here, "[t]here is no doubt that California

state courts have the authority" to determine the preemptive effect, if any, of the ICCTA on the City's and the Commission's regulatory authority over Mendocino Railway. *Id.* Not only do state courts have the authority to determine the preemptive effect of federal law, but those determinations are often entitled to preclusive effect as well. *Cf. Readylink Healthcare, Inc. v. State Compensation Ins. Fund*, 754 F.3d 754, 761-62 (9th Cir. 2014). And Mendocino Railway does not "claim that the state court would . . . lack the power to enter any orders to protect its rights." *Montanore Minerals Corp.*, 867 F.3d at 1169. The sixth factor weighs in favor of dismissal.

The seventh factor requires the Court to "consider whether either party sought more favorable rules in its choice of forum of pursued suit in a new forum after facing setbacks in the original proceeding." *Seneca Ins. Co.*, 862 F.3d at 846. Following the state court's overruling of the demurrer in the state court action, Mendocino Railway filed a petition for writ review in the California Court of Appeal, which the Court of Appeal denied. ECF No. 15-1 at 47-48. The California Supreme Court denied Mendocino Railway's petition for review of the Court of Appeal's denial on June 10, 2022. *Id.* at 100. Mendocino Railway then filed the instant complaint on August 9, 2022, asserting a claim premised entirely on the argument rejected on demurrer by the state court. Subsequently, in the state court action, Mendocino Railway moved to disqualify the presiding judge, Judge Clayton L. Brennan, who had overruled Mendocino Railway's demurrer. ECF No. 15-1 at 101-102. After Judge Brennan denied the motion on September 14, 2022, *id.*, the Commission moved to intervene on October

6, 2022, *id.*, and Mendocino Railway removed that action to federal court on October 20, 2022—nearly two years after the action had commenced. Mendocino Railway's notice of removal cited the federal preemption issue in the Commission's complaint as the basis for federal question jurisdiction. But Mendocino Railway was already aware of—and indeed had made—the very same argument in its demurrer to the City's complaint, and that argument now serves as the sole basis for the claims in this case. The only "reasonably infer[ence]" from this litigation conduct, considered as a whole, is that Mendocino Railway "has become dissatisfied with the state court and now seeks a new forum." *Montanore Minerals Corp.*, 867 F.3d at 1160; *Nakash*, 882 F.2d at 1411. Accordingly, this factor weighs in favor of dismissal.

The eighth factor requires the Court to consider "whether the state court proceeding sufficiently parallels the federal proceeding" in order "to ensure 'comprehensive disposition of litigation.'" *R.R. St.*, 656 F.3d 656 F.3d at 982 (quoting *Colo. River*, 424 U.S. at 817). "'[E]xact parallelism'" is not required; rather, "it is sufficient if the proceedings are 'substantially similar.'" *Montanore Minerals Corp.*, 867 F.3d at 1170 (quoting *Nakash*, 882 F.2d at 1416). Courts are to be "particularly reluctant to find that the actions are not parallel when the federal action is but a 'spin-off' of more comprehensive state litigation." *Nakash*, 882 F.2d at 1416. Mendocino Railway has asserted ICCTA preemption as a defense in the state action, so there the state court must resolve that issue in the course of adjudicating the City's and the Commission's claims against Mendocino Railway. Because that issue

is the sole issue in this case, it is difficult for the Court to conceptualize this action as anything but a spinoff of the state court action. Accordingly, the Court concludes that the state court proceeding sufficiently parallels the federal court proceeding. The eighth factor thus weighs in favor of dismissal.

In sum, only the fifth factor weighs against dismissal, and the remaining factors weigh in favor of dismissal. Therefore, "[o]n balance, the *Colorado River* factors strongly counsel in favor of" dismissal. *Montanore Minerals Corp.*, 867 F.3d at 1170.

The Court recognizes that the Ninth Circuit "'generally require[s] a stay rather than dismissal' under *Colorado River*." *Montanore Minerals Corp.*, 867 F.3d at 1171. The general rule ensures "that the federal forum will remain open if for some unexpected reason the state forum. . . . turn[s] out to be inadequate." *Id.* at 886 (quoting *Attwood v. Mendocino Coast Dist. Hosp.*, 886 F.2d 241, 243 (9th Cir. 1989)). That purpose is not served here because the adjudication of the state court action will necessarily resolve the sole issue in this case and the state court proceedings can undoubtedly protect Mendocino Railway's rights.[2] And although the Ninth Circuit has not delineated the circumstances warranting dismissal rather than a stay, its framing of the rule as general necessarily contemplates exceptions. Indeed, *Colorado River* itself involved dismissal of a federal action. *See Colo. River*,

2. Additionally, the state court's decision on the issue would likely be entitled to preclusive effect. *Cf. Readylink Healthcare, Inc. v. State Compensation Ins. Fund*, 754 F.3d at 761-62.

424 U.S. at 821; *accord Arizona v. San Carlos Apache Tribe of Ariz.*, 463 U.S. 545, 103 S. Ct. 3201, 77 L. Ed. 2d 837 (1983); *cf. Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 282, 125 S. Ct. 1517, 161 L. Ed. 2d 454 (2006). Thus, to the extent that there are exceptions to the general rule, the strength of the factors and the degree to which their balance tips sharply in Defendants' favor demonstrate "the clearest of justifications . . . warrant[ing] dismissal."[3] *Colo. River*, 424 U.S. at 819. Accordingly, the Court will dismiss the case.

CONCLUSION

For the foregoing reasons, Defendants' motions are granted, and this case is dismissed. The Clerk shall enter judgment and close the file.

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3. Although the fact that federal law supplies the rule of decision weighs against dismissal, that weight is substantially lessened because "state courts have inherent authority, and are thus presumptively competent, to adjudicate claims arising under the laws of the United States." *Tafflin v. Levitt*, 493 U.S. 455, 458, 110 S. Ct. 792, 107 L. Ed. 2d 887 (1990); *accord Yellowbear v. Atty. Gen. of Wyoming*, 380 F. App'x 740, 741 (10th Cir. 2010) (Gorsuch, J.) (Under our federal system, . . . there is nothing inherently suspect about state courts deciding questions of federal law. . . . Indeed, the *Supremacy Clause* contemplates that state courts *will* decide questions of federal law. . . ."). The balance would differ if, for example, the eighth factor weighed against a stay or dismissal. *Cf. United States v. State Water Res. Control Bd.*, 988 F.3d 1194, 1203 (9th Cir. 2021) (explaining that "doubt" as to "whether the state proceedings will resolve the federal action" is "'a significant countervailing consideration that' can be 'dispositive.'" (quoting *Intel Corp.*, 12 F.3d at 913)).

Appendix B

IT IS SO ORDERED.

Dated: May 12, 2023

/s/ Jon S. Tigar
JON S. TIGAR
United States District Judge

APPENDIX C — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED DECEMBER 10, 2024

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 23-15857

MENDOCINO RAILWAY,
A CALIFORNIA CORPORATION,

Plaintiff-Appellant,

v.

JACK AINSWORTH, IN HIS OFFICIAL CAPACITY AS EXECUTIVE DIRECTOR OF THE CALIFORNIA COASTAL COMMISSION; CITY OF FORT BRAGG, A CALIFORNIA MUNICIPAL CORPORATION,

Defendants-Appellees.

Before: S.R. THOMAS, CALLAHAN, and SANCHEZ, Circuit Judges.

Filed December 10, 2024

Appendix C

ORDER

The panel has voted to deny the petition for panel rehearing. Judge Callahan and Judge Sanchez voted to deny the petition for rehearing en banc and Judge Thomas so recommends. The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *Fed. R. App. P. 40.*

The petition for panel rehearing and the petition for rehearing en banc are denied.