

File With:
City Clerk's Office
City of Fort Bragg
416 N. Franklin Street
Fort Bragg, CA 95437

**CLAIM FOR MONEY OR
DAMAGES AGAINST THE
CITY OF FORT BRAGG**

RESERVE FOR FILING STAMP

CLAIM NO. _____

RECEIVED

JAN 22 2024

City of Fort Bragg
City Clerk

A claim must be presented, as prescribed by the Government Code of the State of California, by the claimant or a person acting on his/her behalf and shall show the following:

If additional space is needed to provide your information, please attach sheets, identifying the paragraph(s) being answered.

1. Name and Post Office address of the Claimant:

Name of Claimant:	MENDOCINO RAILWAY (MRY)	SIERRA NORTHERN RAILWAY (SNR)
Post Office Address:	100 W Laurel St. Fort Bragg, CA 95437	1745 Enterprise Blvd. West Sacramento, CA 95691

2. Post Office address to which the person presenting the claim desires notices to be sent:

Name of Addressee:	MRY: Robert Jason Pinoli, President	Telephone:	707-964-6371
Post Office Address:	same as above		

For SNR: Kennan H. Beard III, same address as above, 530-666-9646

3. The date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted.

Date of Occurrence:	Time of Occurrence:
Location:	
Circumstances giving rise to this claim:	

SEE ATTACHMENT

4. General description of the indebtedness, obligation, injury, damage or loss incurred so far as it may be known at the time of the presentation of the claim.

SEE ATTACHMENT

5. The name or names of the public employee or employees causing the injury, damage, or loss, if known.

SEE ATTACHMENT

6. **If amount claimed totals less than \$10,000:** The amount claimed if it totals less than ten thousand dollars (\$10,000) as of the date of presentation of the claim, including the estimated amount of any prospective injury, damage, or loss, insofar as it may be known at the time of the presentation of the claim, together with the basis of computation of the amount claimed.

Amount Claimed and basis for computation:

If amount claimed exceeds \$10,000: If the amount claimed exceeds ten thousand dollars (\$10,000), no dollar amount shall be included in the claim. However, it shall indicate whether the claim would be a limited civil case. A limited civil case is one where the recovery sought, exclusive of attorney fees, interest and court costs does not exceed \$25,000. An unlimited civil case is one in which the recovery sought is more than \$25,000. (See CCP § 86.) Claims over \$50,000 shall be presented to the City Council within 45 days of receipt (FBMC 3.04.030).

Limited Civil Case Unlimited Civil Case Claimed Amount Exceeds \$50,000

7. **You are required to provide the information requested above in order to comply with Government Code §910.**

Claimant(s) Date(s) of Birth:

N/A

8. Name, address and telephone number of any witnesses to the occurrence or transaction which gave rise to the claim asserted:

SEE ATTACHMENT

9. If the claim involves medical treatment for a claimed injury, please provide the name, address and telephone number of any doctors or hospitals providing treatment:

N/A

If applicable, please attach any medical bills or reports or similar documents supporting your claim.

10. If the claim relates to an automobile accident:

Claimant(s) Auto Ins. Co.:

Telephone:

Address:

Insurance Policy No.:

Insurance Broker/Agent:

Telephone:

Address:

Claimant's Veh. Lic. No.:

Vehicle Make/Year:

Claimant's Drivers Lic. No.:

Expiration:

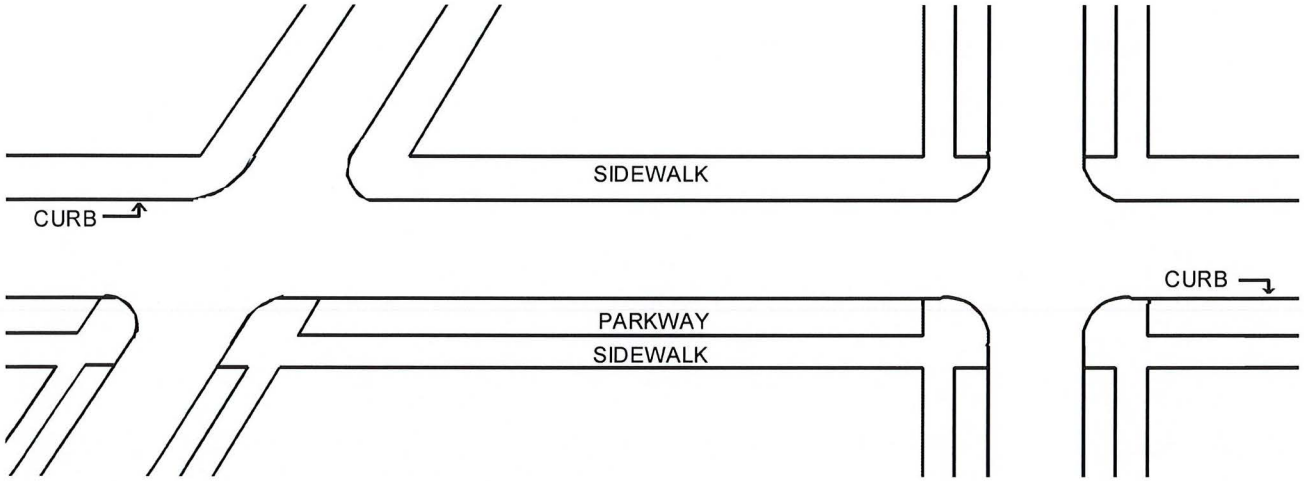
If applicable, please attach any repair bills, estimates or similar documents supporting your claim.

READ CAREFULLY

For all accident claims, place on following diagram name of streets, including North, East, South, and West; indicate place of accident by "X" and by showing house numbers or distances to street corners. If City/Agency Vehicle was involved, designate by letter "A" location of City/Agency Vehicle when you first saw it, and by "B" location of yourself or your vehicle when you first saw

City/Agency Vehicle; location of City/Agency vehicle at time of accident by "A-1" and location of yourself or your vehicle at the time of the accident by "B-1" and the point of impact by "X."

NOTE: If diagrams below do not fit the situation, attach hereto a proper diagram signed by claimant.



Warning: Presentation of a false claim is a felony (Penal Code §72). Pursuant to CCP §1038, the City/Agency may seek to recover all costs of defense in the event an action is filed which is later determined not to have been brought in good faith and with reasonable cause.

Signature:

Date:

22 - January - 2024

Attachment to Claim for Money Damages Against City of Fort Bragg

3. "The date, place and other circumstances of the occurrence or transaction which give rise to the claim asserted."

The Federal Railroad Administration ("FRA") administers the RRIF Express Pilot Program ("RRIF Express"), which is designed to make loans to common carrier railroads, such as Mendocino Railway ("MRY") and Sierra Northern Railway ("SNR"). As these loans are available only to common carrier railroads, for railroad-related infrastructure improvements that benefit the public interest, the loans are made on favorable terms when compared to market loans.

In September 2019, MRY and SNR began the process of applying for a joint \$31,379,805 RRIF Express loan to allow MRY to repair its collapsed Tunnel No. 1 and to make other repairs and improvements to MRY's California Western Railroad line and infrastructure, and to allow SNR to make improvements to its railroad lines and infrastructure. They incurred substantial fees and costs as part of that application process, including the requirement that they reimburse the FRA for certain of its fees and costs incurred as part of the process.

MRY and SNR officially initiated their loan application with the FRA on May 16, 2020. The RRIF Express program was designed to be an expedited low-cost program, and MRY and SNR believed they would be able to complete their loan application, and receive their loan, by late 2021. However, in or about October 2021, the City embarked on a relentless campaign to attack MRY and to cast doubt on MRY's status as a federally recognized common carrier railroad and California public utility. As part of its campaign against MRY, the City enlisted other governmental and nongovernmental persons and entities to attack MRY on the same grounds. The attacks by the City and its co-conspirators included repeatedly telling the FRA, the United States Department of Transportation ("DOT"), and the Build America Bureau ("BAB"), that MRY was not a common-carrier railroad and California public utility, accusing MRY of planning to use the proceeds of any RRIF Express loan for wrongful or harmful purposes, and generally opposing the issuance of a RRIF Express loan to MRY. These efforts caused delays in MRY's and SNR's joint RRIF Express application process, greatly increasing the fees and costs both railroads had to pay as part of the process because the railroads not only had to pay their own fees and costs as part of the application process, but had to pay a substantial portion of the government's own costs.

In substantial part because of the efforts of the City and its co-conspirators, MRY and SNR were unable to close their RRIF Express loan until January 11, 2024. The loan carries a

4.21% interest rate, which is dramatically higher than the interest rate MRY and SNR would have paid had they been able to close their RRIF Express loan on the originally anticipated schedule, without any delays due to attacks by the City and its co-conspirators. The added interest cost to the railroads, caused by the City and its co-conspirators, is expected to exceed \$22 Million dollars.

Not only did the interference by the City and its co-conspirators lead to a higher interest rate to be paid by MRY and SNR, it also dramatically increased the fees and costs MRY and SNR incurred in applying for their RRIF Express loan. The interference by the City and its co-conspirators also delayed the ability of MRY and SNR to make urgently needed repairs to their railroad infrastructure, preventing them from expanding their railroad operations and serving additional customers, which also prevented the railroads from increasing their revenue. The public campaign of attacks by the City and its co-conspirators also negatively impacted MRY and SNR in other ways, including creating problems for the railroads' efforts to expand their railroad operations into Ventura County and to obtain other forms of investment while MRY and SNR progressed through a RRIF Express loan process that was significantly delayed because of the attacks by the City and its co-conspirators.

Even now, after MRY and SNR have received their RRIF Express loan, the City's co-conspirators, such as the California Coastal Commission and the Great Redwood Trails Agency, continue to contact the FRA in an effort to convince the FRA to either further delay, or to revoke, MRY's and SNR's RRIF Express loan.

It is clear from various articles and other public statements made by the City and its representatives that its attacks on MRY, and the attacks by the City's co-conspirators, were conducted in bad faith, driven by a desire to retaliate against MRY because of its use of its power of eminent domain to purchase the southern portion of the former Georgia-Pacific mill site.

The City's November 22, 2023, letter to the Honorable Carlos Monje, Under Secretary of the DOT, a letter signed by every member of the City's City Council, evidences the City's retaliatory efforts as to MRY. In its letter, the City stated: "The City of Fort Bragg (City) does not support Mendocino Railway's application and does not believe that its application is forthright or that granting the loan is in the best interest of our town." The City's letter goes on to state that "the Fort Bragg City Council does not support Mendocino Railway's current RRIF loan application as it perpetuates the falsehood that the railway is a common carrier public utility, which allows it to strategically claim exemption from local and state regulations and use powers such as eminent domain to diversify its holdings well beyond railroad operations."

At the time the City sent its letter to the DOT asserting that Mendocino Railway was not a common carrier railroad or public utility, and not rightly entitled to use the power of eminent domain, the City, the members of its City Council, and the City's staff and independent contractors (including the City Attorney) knew that MRY was a common carrier and California public utility railroad entitled to use the power of eminent domain. They had for years confirmed that status. Not only had the City Attorney issued an opinion to that effect, but even the City's Complaint filed in bad faith against MRY in Superior Court admitted that MRY was in fact a common carrier railroad and California public utility. See Complaint, para. 3 ("Defendant Mendocino Railway is currently listed as a class III railroad by the California Public Utilities Commission ("CPUC"), and as such is subject to CPUC jurisdiction and has all legal rights of a public utility.").

The City's letter to the DOT also asserted that MRY planned to use its power of eminent domain, and RRIF Express loan funding, to reach Noyo Harbor with shipments of coal to China, claims that the City either knew, or should have known, to be false and claims that the City never sought to confirm, or even discuss, with MRY before making them to both the public and to the DOT.

At or about the time of its letter to the DOT, the City provided persons and entities, including the California Coastal Commission, the Humboldt Trails Council, the Friends of the Eel River, Sonoma County, the North Coast Railroad Authority, various state and federal politicians, and others, with copies of its still-unserved lawsuit against MRY and requested that these persons and entities assist the City in its attacks on MRY, including asking them to send letters to the DOT to oppose the RRIF Express loan application filed by MRY and SNR, which they did. These persons and entities complied with the City's request, making public attacks on MRY and contacting various government agencies, politicians, and interest groups to ask them to harm MRY.

The City's attacks, and those of its co-conspirators, led directly to Senator McGuire (California) labeling MRY as part of a fabled "Toxic Coal Train" project that dogged MRY for more than a year and contributed to the delays in MRY's and SNR's RRIF loan application. The efforts by the City and its co-conspirators also led Senator McGuire, other politicians, Sonoma County, and the Great Redwood Trail Agency, to attack MRY's status as a common carrier railroad and California public utility before the United States Surface Transportation Board and elsewhere, which continues to cause MRY ongoing harm.

Throughout its attacks on MRY, the City knew or reasonably should have known that there was never any substance to the claims that the City and its co-conspirators were

making against MRY. But the City and its co-conspirators nevertheless persisted in their attacks, giving their claims false both public and governmental legitimacy which caused, and continues to cause, significant damage to MRY and SNR.

The City thereafter continued to wrongfully retaliate against MRY, and to unlawfully interfere in MRY's and SNR's RRIF Express loan application, via, among other things, phone calls and meetings with the FRA, sending additional letters to the FRA (including a May 23, 2022, letter from the City to Faris Mohammed, an Attorney Advisor to the FRA), and continuing to generate outrage on the part of the community and the City's co-conspirators at MRY, all of which the City did, and continues to do, by making representations about MRY and MRY's plans that the City, its staff, its City Council, its City Attorney, and its independent contractors knew or should have known to be false when made.

As a result of the City's efforts to unlawfully retaliate against MRY and to interfere in MRY's and SNR's efforts to obtain their RRIF Express loan, MRY and SNR have, to date, spent more than \$800,000 in fees and costs, and more than four years' time, in an effort to obtain what was described by the FRA as an "expedited, low-cost" loan. Though MRY and SNR managed to obtain their RRIF Express loan, the City-induced delays caused the loan to close at a time of extraordinarily high interest rates, such that MRY and SNR will have to pay more than \$22 million in extra interest for the loan, compared to what they would have had to pay had their loan actually closed in an expedited manner without interference from City and its co-conspirators (whom the City drafted). MRY and SNR have also, by virtue of not receiving their requested RRIF Express loan, been prevented from proceeding with planned repairs and improvements to their railroad lines, which MRY and SNR believe to have resulted in the loss of more than \$12 million in revenue and goodwill, not to mention their inability to serve additional railroad customers.

On or about November 28, 2023, MRY learned that the City's November 22, 2021 letter to the DOT opposing MRY's RIFF Express application, and the contemporaneous letters to the same effect that the City caused to be sent to the DOT by the City's drafted co-conspirators such as the California Coastal Commission, the Humboldt Trails Council, the Friends of the Eel River, and the Office of the County Council of Sonoma County (on behalf of the North Coast Railroad Authority), among others, negatively impacted MRY's and SNR's applications for \$15 and \$30 million in grant funding, respectively, from the 2023 Consolidated Rail Infrastructure and Safety Improvements Program ("CRISI") such that their CRISI grant applications were denied.

In addition, at least two City Council Members—Mayor Bernie Norvell and Vice-Mayor Jessica Morsell-Haye—carried out the above on the City's behalf while personally having,

and being aware of, ethical conflicts that prevented them from legally participating in any decisions or actions relating to the former mill site or MRY's plans for the mill site, much less acting, as Ms. Morsell-Haye did, as the Chair of the Mill Site *Ad Hoc* Committee despite the City Attorney's recommendation that she recuse herself from that position and have no involvement in decisions relating to the mill site.

The City has also for many years discharged, and continues to this day to discharge, the City's municipal storm water into the former Georgia-Pacific Mill Site ("Former Mill Site"), which is now owned by SNR. In 2023, SNR's predecessor in ownership, MRY, provided the City with a copy of documents sent to the Department of Toxic Substances Control ("DTSC"), proving the substantial contribution of the City to the Former Mill Site's contamination and requesting the City be added to the Order, as defined below, requiring actions in response to the contamination. See: Site Investigation and Remediation Order (Order; Docket No. HSA-RAO 06-07-150) issued by the Department of Toxic Substances Control (DTSC) for the former Georgia-Pacific Wood Products Facility (Site) located at 90 West Redwood Avenue, Fort Bragg, Mendocino County, California, effective on 21 February 2007 (the "Order"). The DTSC issued the First Amendment to the Site Investigation and Remediation Order (Order First Amendment) on June 9, 2022.

Through the process of the site investigation, completed under the Order and oversight by DTSC, Pond 8 sediments located on the Former Mill Site have been investigated and found to contain pollutants (Arcadis 2013, Kennedy Jenks 2019, 2020). Pond 8 is located in Operable Unit E (OU-E) and provides treatment for stormwater that enters the pond via sheet flow and via the Maple and Alder Creek outfalls, located in the eastern section of the pond; pollutants are generally removed by settling as water moves from the east end of the pond to the spillway at the west end of the pond. As part of the investigation, stormwater evaluations have been completed to assess pollutant sources and removal efficiency for Pond 8 sediments. A remedial action has been proposed for Pond 8 sediments in the Final OU-E Feasibility Study (Kennedy Jenks 2019), approved by DTSC (DTSC 2019), and in the Draft OU-E Remedial Action Plan (RAP; Kennedy Jenks 2020). DTSC has initiated internal review of the Draft OU-E RAP, but additional review is pending completion of the draft Environmental Impact Report (EIR) by the City (DTSC 2020).

Stormwater evaluations found that a significant majority of the pollutants (80% to 95%) entering Pond 8 via stormwater were contributed by drainage areas outside the Site. Approximately 54.5% of the Pond 8 drainage basin is in two urban watershed catchments located within the City of Fort Bragg that drain to Pond 8 (also known as the Mill Pond) through the culverted Maple and Alder Creeks. Stormwater runoff from these offsite City

catchments was analyzed for dioxins and furans, a key community concern, which were found at concentrations that exceeded the Water Quality Objective (WQO) by one to two orders of magnitude. Further, dioxin and furan concentrations in offsite stormwater entering Pond 8 from City catchments were higher than the maximum concentrations of dioxins and furans in Pond 8 sediment, located near the stormwater outfalls in the eastern section of Pond 8. Additional information about the completed stormwater evaluations, including sampling results and hydrology maps, have been provided to the DTSC and the City.

At this time, the City has not been listed as a Respondent to the Order. However, as demonstrated through the completed stormwater evaluations, City stormwater is an established, ongoing source of dioxins and furans to sediment in Pond 8, and the City thus under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) has joint and several liability for site investigation and remediation activities within Pond 8. As such, the City is liable to MRY and SNR under CERCLA's cost recovery provisions for up to the full amount of the costs of responding to the Pond 8 contamination caused by the City. Under the current preferred alternative of reinforcing the Pond 8 dam, these costs are likely to amount to at least \$8 million. Under alternative remedies, which include removal of the Pond 8 dam and pond sediment, these costs are likely to amount to at least \$50 million.

4. "General description of the indebtedness, obligation, injury, damage or loss incurred so far as it may be known at the time of the presentation of the claim."

SEE ABOVE.

5. "The name or names of the public employee or employees causing the injury, damage, or loss, if known."

Every City Council Member, including Ms. Morsell-Hayem, as well as the City's staff and independent contractors, including its Public Works management, all City Attorneys, City Managers, Sarah McCormick, David Spaur, and Tabatha Miller.

8. Name, address, and telephone number of any witnesses to the occurrence or transaction which gave rise to the claim asserted:

The persons identified in item 5 above. Robert Pinoli, Chris Hart, Mike Hart, Crystal Zorbaugh, Mike Buck, and William Mullins (all to be contacted via MRY/SNR counsel, Paul Beard). The Department of Toxic Substances Control staff assigned to the Former

Mill Site. Kennedy/Jenks. Georgia-Pacific employees David Massengill and Traylor
Champion. Regional Government Services.