PAUL J. BEARD II (State Bar No. 210563)
FISHERBROYLES LLP
4470 W. Sunset Blvd., Suite 93165
Los Angeles, CA 90027
Telephone: (818) 216-3988
Facsimile: (213) 402-5034
E-mail: paul.beard@fisherbroyles.com

Attorneys for Plaintiffs
MENDOCINO RAILWAY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

MENDOCINO RAILWAY, a California corporation,

Plaintiff

v.

JACK AINSWORTH, in his official capacity as Executive Director of the California Coastal Commission; CITY OF FORT BRAGG, a California municipal corporation; and DOES 1 through 20, inclusive,

Defendants.

Case No.: 4:22-cv-04597-JST

Assigned for all purposes to: Hon. John S. Tigar, Ctrm. 6

PLAINTIFF'S OPPOSITION TO DEFENDANT CITY OF FORT BRAGG'S MOTION TO DISMISS

Hearing Date:	Dec. 22, 2022
Hearing Time:	2:00 p.m.
Dept.:	Courtroom 6
Judge:	Hon. Jon S. Tigar

Complaint Filed: August 9, 2022

I. INTRODUCTION

Defendant City of Fort Bragg ("City") moves to dismiss Plaintiff Mendocino Railway's action. None of the City's arguments for dismissal has merit.

First, the City claims the Court lacks subject matter jurisdiction, because Mendocino Railway pleads a claim for declaratory relief that it views as an anticipatory defense to a threatened or imminent state-court action. But the City misconstrues the case law. Supreme Court precedents have made clear that a federal declaratory and injunctive relief action arguing that federal law preempts state regulation is well within the federal court's subject matter jurisdiction. That is precisely the claim that Mendocino Railway makes here: It seeks declaratory and injunctive relief to the effect that it is a railroad within the exclusive jurisdiction of the federal Surface Transportation Board ("STB"), such that the City's land-use regulation of its railroad activities are federally preempted. Complaint, Prayer, ¶¶ 1-2.

Second, the City makes a variety of abstention arguments, none of which hold water. The main problem with the City's abstention arguments is that they all rely on the existence of a parallel state-court action. But on October 20, 2022, Mendocino Railway removed the state-court action, wherein federal questions predominate. For that reason, and others described below, the City's abstention arguments fail.

The Court should deny the City's motion to dismiss.

II. ARGUMENT

A. The Court Has Subject Matter Jurisdiction

The City claims that the Court lacks subject matter jurisdiction over Mendocino Railway's action. City Mot. at 13-15. The thrust of its argument is that its declaratory-judgment claim is nothing more than an anticipatory defense to City's action in Mendocino County Superior Court. *Id.* at 15. The City contends that that federal-question jurisdiction cannot be created through "artful pleading that anticipates a defense based on federal law." *Id.* at 15 (cleaned up). The City is wrong.

Mendocino Railway brings an action for declaratory and injunctive relief from land-use regulation of its ***rail-related***[1] operations by the Coastal Commission and the City, on the ground that

[1] The City claims that Mendocino Railway wants to avoid "all" local regulatory efforts, including over non-rail-related activities. City Mot. at 17. That is false. As its Prayer makes clear, Mendocino

federal preemption—through ICCTA—bars such regulation. Complaint, Prayer, ¶¶ 1-2.

It is hornbook law that a plaintiff may seek declaratory and injunctive relief from state and local regulation on the ground that federal law preempts such regulation. *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 96 n.14 (1983). That kind of action arises under federal law, conferring subject matter jurisdiction on a federal district court. 28 U.S.C. § 1331. In *Shaw*, the United States Supreme Court explained, in no uncertain terms:

> It is beyond dispute that federal courts have jurisdiction over suits to enjoin state officials from interfering with federal rights. A plaintiff who seeks injunctive relief from state regulation, on the ground that such regulation is pre-empted by a federal statute which, by virtue of the Supremacy Clause of the Constitution, must prevail, thus presents a federal question which the federal courts have jurisdiction under 28 U. S. C. § 1331 to resolve. This Court, of course, frequently has resolved pre-emption disputes in a similar jurisdictional posture.

Shaw, 463 U.S. at 96 n.14; *see also Ray v. Atlantic Richfield Co.*, 435 U.S. 151 (1978) (resolving preemption dispute in similar jurisdictional posture); *Jones v. Rath Packing Co.*, 430 U.S. 519 (1977) (same); *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132 (1963) (same); *Hines v. Davidowitz*, 312 U.S. 52 (1941) (same).

The decisions cited by the City are distinguishable, as they all concern attempts to stave off or block ***impending*** or ***threatened*** state court actions, rather than merely arguing that federal law preempts state law. For example, in *Stillaguamish Tribe of Indians v. Washington*, 913 F.3d 1116 (9th Cir. 2010), plaintiff filed a federal action "to head off a ***threatened*** lawsuit." *Id.* at 1118 (emphasis added). The plaintiff was "asserting a defense to a threatened lawsuit, not contending that federal law preempts state law." *Id.* at 1119. The Court held that kind of action did not confer subject matter jurisdiction: "When a declaratory judgment action seeks in essence to assert a defense to an ***impending*** or ***threatened*** state court action, courts apply the well-pleaded complaint rule to the impending or threatened action, rather than the complaint seeking declaratory relief" *Id*. at 1119 (emphasis added); *see also Public Service Com. v. Wycoff Co.,* 344 U.S. 237, 248 (1952) ("Federal courts will not seize litigations from state courts merely because one, normally a defendant, goes to federal court to begin his federal-law defense ***before*** the state court begins the case under state law." (emphasis added)); *Chi. Tribune Co. v. Bd. of Trs. Of the*

Railway argues that the Commission's and City's land-use authority over "rail-related activities" and "development" only are federally preempted. Complaint, Prayer, ¶¶ 1-2.

Univ. of Il., 680 F.3d 1001, 1003 (7th Cir. 2012) ("The Tribune is the natural plaintiff and cannot use 28 U.S.C. §2201, the declaratory-judgment statute, to have a federal court blot out a ***potential*** federal defense to its own ***potential*** state-law suit." (emphasis added)).

Mendocino Railway is just like the plaintiff in *Shaw*, claiming that federal law preempts state and local regulation of its rail operations. When it filed this action, Mendocino Railway was not trying to "head off" any "impending or threatened state court action." *Stillaguamish*, 913 F.3d at 1118. Indeed, Mendocino Railway filed this action *after* the City filed its action in Mendocino County Superior Court. The state action has since been removed to federal court effective October 20, 2022, and likely will be consolidated with this case. Fed. R. Civ. Proc. 42.

In sum, the Court has subject matter jurisdiction over this case. Mendocino Railway seeks a declaratory and injunction to the effect that the Commission's and City's land-use regulation is federally preempted. Courts have long held that such disputes arise under federal law are justiciable.

B. Abstention Is Improper

The City argues the Court should abstain from this case. City Mot. at 16-22. But the City fails to establish ***any*** basis for abstention, either under *Younger v. Harris*, 401 U.S. 37 (1971) or under *Colorado River Water Cons. Dist. v. U.S.*, 424 U.S. 800 (1976).

First, no relevant state proceeding exists. Mendocino Railway removed the City's state-court action. Without an ongoing state proceeding, *Younger* abstention is precluded. *Kirkbride v. Cont'l Cas. Co.*, 933 F.2d 729, 734 (9th Cir. 1991) ("Removal under 28 U.S.C. § 1441 simply does not leave behind a pending state proceeding that would permit *Younger* abstention."); *Oregon Bureau of Labor & Indus. v. US West Communs., Inc.*, 2000 U.S. Dist. LEXIS 16300, *8 ("Here, there is no state proceeding ongoing because of the removal.").

Second, the "important state interest" prong does not favor removal. The City cites state-court "orders" and "judgments," as well as its interest in its land-use laws. City Mot. at 18. But when the central and threshold issues are ***federal***, the federal proceeding does not implicate an important state interest sufficient to justify *Younger* abstention. *See, e.g.*, *Sycuan Band of Mission Indians v. Roache*, 54 F.3d 535 (9th Cir. 1995) (finding *Younger* abstention inappropriate where threshold issue was whether state had jurisdiction to prosecute Indians pursuant to state gaming laws); *Fort Belknap Indian Cmty. v.*

Mazurek, 43 F.3d 428, 432 (9th Cir. 1994) (refraining from abstention and holding that whether Montana has jurisdiction to prosecute Indians in state court for violations of state liquor laws is issue of federal law); *Winnebago Tribe v. Stovall*, 341 F.3d 1202 (10th Cir. 2003) (same). Here, the central and threshold issues are federal—namely, whether federal law preempts the Commission's and City's assertion of land-use permit authority over Mendocino Railway. Further, the removed action is based on allegations that assume the City and Commission can apply its laws to the railroad." *Winnebago*, 341 F.3d at 1205. On these facts, federal interests predominate.

Third, the City argues that a "state nuisance proceeding" may warrant *Younger* preemption. City Mot. at 18. But the City has not filed a nuisance action. The City seeks a declaration that Mendocino Railway is not a "public utility," as well as injunction requiring it to submit to its land-use authority. While the City's complaint claims that the railroad unlawfully refused an official's inspection and failed to apply for two permits, none of those allegations rise to the level of a nuisance, and—again—the City does not *claim* a nuisance.

Fourth, relying on a federal Railroad Retirement Board decision from over 15 years ago, the City attempts to disprove that Mendocino Railway "is a Class III railroad subject to the STB's jurisdiction," as pled in its Complaint, ¶ 9. City Mot. at 18-19. Setting aside the fact that this argument has no bearing on the abstention analysis, the City grossly—and deliberately—misinterprets the content and import of the decision. The decision actually *confirms* that, in 2006 when the decision was issued, "Mendocino" was able "to perform common carrier service," limited (at the time) "to the movement of goods between points on its own line." City RJN, Exh. D, at 2. The decision goes on to note that Mendocino Railway did not at the time "perform" that service. *Id.* But the City misreads that clause. It was not that the *line* owned and operated by Mendocino Railway did not transport freight; it *did*. Rather, the freight service was being performed, not by Mendocino Railway, but by another entity—Sierra Northern Railway.

The City also deliberately conflates Mendocino Railway with the entity who performed the tourist excursion service on the line—Sierra Entertainment. The decision notes that *Sierra Entertainment*, not Mendocino Railway, runs a "tourist or excursion railroad operated solely for recreational and amusement purposes. City RJN, Exh. D, at 2. The decision also notes *Sierra Entertainment* "would not be subject to [STB] jurisdiction." *Id.* Sierra Entertainment was not (and is

not) Mendocino Railway. Further, the decision's statement that Mendocino Railway "reportedly does not and cannot now operate in interstate commerce" does not mean it is not a common carrier subject to the exclusive jurisdiction of the STB. The STB not only has jurisdiction over ***interstate*** rail carriers, but also over ***intrastate*** rail carriers that are "part of the interstate rail network." 49 U.S.C. § 10501(a)(1)-(2). Importantly, the mere nonuse or nonoperation of a rail line does not remove that line from the interstate rail network. *See, e.g.*, *Joseph R. Fox—Petition for Declaratory Order*, FD 35161 (STB served May 18, 2009) (holding that, absent evidence of an "intent to take [a] track segment out of the national rail system," mere nonoperation of a track—including "removing the switch," which "can be easily replaced"—did not "sever [the line] from the national rail network"). Thus, even assuming that in 2006, Mendocino Railway's freight and other operations were limited, the City offers no evidence—and no authority—for the outlandish claim that Mendocino Railway was (and is) anything other than a common carrier railroad within the STB's jurisdiction. Finally, even if the decision could be interpreted as the City argues, the Railroad Retirement Board lacks the authority to somehow remove common carrier railroads from the STB's jurisdiction. The City does not provide any legal authority to the contrary.

Fifth, the City's remaining arguments at pages 20-21 all presuppose an ongoing state proceeding. The City claims Mendocino Railway will have an opportunity to raise its preemption arguments in state court, which is in its early stages, and that the state action involves no constitutional issues. The City urges the Court not to interfere with the state proceeding. Because the state proceeding has been removed, and no state court action exists, the City's arguments are moot.

Sixth, the City argues that the Court should defer to the Mendocino Superior Court case under *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800 (1976). When applied, *Colorado River* generally requires a stay rather than dismissal. *R.R. St. & Co. Inc. v. Transp. Ins. Co.*, 656 F.3d 966, 978 n.8 (9th Cir. 2011). Because of "the virtually unflagging obligation of the federal courts to exercise the jurisdiction given [to] them," *id.* at 817, "[o]nly the clearest of justifications will warrant" a stay. *Colorado River*, 424 U.S. at 819. The basic premise of Colorado River deference is that there be a "parallel suit" in state court. *R. R. St.*, 656 F.3d at 982.

The courts consider eight factors in deciding whether a *Colorado River* stay is appropriate where there is a parallel state case: "(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. St.*, 656 F.3d at 978-79. Most factor weigh *against* a stay.

Indeed, a stay makes no sense here. Like *Younger*, *Colorado River* is premised on there being a pending state-court action. There is not, given that the Mendocino County Superior Court case has been removed to federal court. Relatedly, there's no concern about "piecemeal litigation," as the removed action and this action are likely to be consolidated.

Even if the City's original action were still pending in state court, at least one other factor would strongly counsel against *Colorado River* deference. Federal law provides the rule of decision on the merits in the City's original action, as well as this action. While the City's declaratory relief claim (regarding Mendocino Railway's status as a "public utility") concerns California law, its *injunctive relief* claim (requiring the railroad to submit to its land-use authority) is ultimately informed by federal law. As Mendocino Railway argues, it is a railroad subject to the exclusive jurisdiction of the STB, which status federally preempted all state and local land-use authority over rail-related activities.

C. <u>This Case Is Appropriate for Declaratory Relief</u>

Contrary to the City's assertion, there is no basis for this Court to abstain from exercising the proper jurisdiction that it has in this action. The City's argument that simply because a state court action exists is grounds for this Court to decline to exercise its legitimate jurisdiction ignores important distinctions between the cases it relies on and the facts of the instant action.

"[F]ederal courts have a strict duty to exercise the jurisdiction that is conferred upon them by Congress." *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 716 (1996). "Abstention from the exercise of federal jurisdiction is the exception, not the rule." *Colo. River*, 424 U.S. at 813. "'The doctrine of abstention, under which a District Court may decline to exercise or postpone the exercise of its jurisdiction, is an extraordinary and narrow exception to the duty of a District Court to adjudicate a controversy properly before it.'" *Id.* "'[I]t was never a doctrine of equity that a federal court should exercise its judicial discretion to dismiss a suit merely because a State court could entertain it.'" *Id.* at

813-14. Federal courts may abstain from exercising jurisdiction in "'exceptional circumstances, where denying a federal forum would clearly serve an important countervailing interest.'" *Quackenbush*, 517 U.S. at 716.

Abstention is potentially appropriate in cases 1) "'presenting a federal constitutional issue which might be mooted or presented in a different posture by a state court determination of pertinent state law'"; 2) "where there have been presented difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case then at bar"; or 3) "where, absent bad faith, harassment, or patently invalid state statute, federal jurisdiction has been invoked for the purpose of restraining state criminal proceedings, . . . state nuisance proceedings antecedent to a criminal prosecution, which are directed at obtaining the closure of places exhibiting obscene films . . . or collection of state taxes." Id. at 814-16 (emphasis added).

Courts examine the following factors in determining whether abstention is appropriate: 1) avoidance of needless determination of state law issues; 2) discouraging forum shopping; and 3) avoidance of duplicative litigation. *Brillhart v. Excess Ins. Co. of America*, 316 U.S. 491 (2013). Courts also consider:

> "[W]hether the declaratory action will settle all aspects of the controversy; whether the declaratory action will serve a useful purpose in clarifying the legal relations at issue; whether the declaratory action is being sought merely for the purposes of procedural fencing or to obtain a 'res judicata' advantage; or whether the use of a declaratory action will result in entanglement between the federal and state court systems. In addition, the district court might also consider the convenience of the parties, and the availability and relative convenience of other remedies."

Government Employees Ins. Co. v. Dizol, 133 F.3d 1220, 1225 (9th Cir. 1998)

The City cites *Dizol*, for the proposition that "when there is a pending state court action involving the same issues and parties," the federal court must abstain. (City's Brief, p.23). The City's reliance on that case is misplaced.

First, and as explained above, there is no pending state court action. Thus abstention is precluded.

Second, there was no pending state court action in Dizol involving the same parties and the same issues. *Dizol*, 133 F.3d at 1225-26. Rather, *Dizol* was an insurance coverage action resulting from an automobile accident where the underinsured motorist benefits insurer filed a declaratory judgment action in federal court seeking a declaration that Dizol's family was not entitled to any benefits under the policy.

Id. at 1222. The issue to be decided by the Court was whether or not a district court was required to explain the basis for exercising discretionary jurisdiction under the Declaratory Judgment Act, not whether it should have abstained from exercising jurisdiction because a state court action was pending. *Id.* at 1221. But even the *Dizol* Court recognized that "[t]he pendency of a state court action does not, of itself, require a district court to refuse federal declaratory relief. *Id.* at 1225.

The City's reliance on *Wilton v. Seven Falls Co.*, 515 U.S. 277 (1995) is equally misplaced. *Wilton* concerned an insurance company that filed a declaratory judgment action in federal court based on diversity jurisdiction seeking a declaration that the insurance policy at issue provided no coverage as soon as it learned that the insured was going to file an action in state court seeking a declaration that the insurance policy did provide coverage. *Id.* at 280. The insured did in fact commence such a suit in state court after the insurance company filed the federal action. *Id.* Removal was rendered impossible as parties destroying diversity were added to the state court suit. *Id.* The federal court granted a stay of the federal court action on the basis that a parallel state court action was pending addressing the same state law issues and to discourage forum shopping by the insurance company. *Id*. The Supreme Court affirmed holding that in the context of a declaratory judgment action no showing of exceptional circumstances was necessary as the federal courts have broad discretion under the Declaratory Judgment Act to abstain from exercising jurisdiction. *Id.* at 286-87. The *Wilton* Court, however, recognized that it did "not attempt to . . . delineate the outer boundaries of that discretion in other cases, for example, cases raising issues of federal law. . . ." *Id.* at 290.

Thus, the City ignores a critically important factor in determining whether abstention is appropriate where a parallel state court proceeding exists: whether the questions involved in the proceedings are one of state law. It is where a federal court is asked to enter a declaratory judgment on a question of state law where a concurrent state court proceeding is present addressing the same state law question, that the federal court should exercise its discretion and abstain. That is simply not the case here.

The declaratory judgment action in this Court seeks a determination with respect to federal preemption, which is purely a question of federal law. In addition, determination of the preemption issue in this declaratory judgment action would resolve all issues between the parties. As the City itself

recognizes, the state court has not made a substantive determination of the preemption issues; thus, even if the case were still pending in state court, there would be no danger of a duplicative judgment.

Finally, the City's argument that declaratory and injunctive relief is unavailable for past conduct should be disregarded. Mendocino Railway does not seek a declaratory judgment regarding past conduct of the City. Rather, as is clear from the Complaint, Mendocino Railway seeks a declaratory judgment that it is exempted from regulation by the City due to federal preemption principles.

This Court has jurisdiction over this matter and should not abstain from exercising it.

III. CONCLUSION

For all the foregoing reasons, the Court should deny the City's motion to dismiss.

DATED: October 20, 2022 **FISHERBROYLES LLP**

s/ Paul Beard II

Attorneys for Plaintiff MENDOCINO RAILWAY