

23-15857

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MENDOCINO RAILWAY, a California corporation,

Plaintiff-Appellant,

v.

**JACK AINSWORTH, in his official capacity as
Executive Director of the California Coastal
Commission, and CITY OF FORT BRAGG, a
California municipal corporation,**

Defendants-Appellees.

On Appeal from the United States District Court
for the Northern District of California

No. 22-CV-04597-JST
The Honorable Jon S. Tigar

**APPELLEE JACK AINSWORTH'S
ANSWERING BRIEF**

ROB BONTA
Attorney General of California
DANIEL A. OLIVAS
Senior Assistant Attorney
General
DAVID G. ALDERSON
Supervising Deputy Attorney
General

PATRICK TUCK
Deputy Attorney General
State Bar No. 305718
1515 Clay Street, 20th Floor
P.O. Box 70550
Oakland, CA 94612-0550
Telephone: (510) 879-1006
Fax: (510) 622-2270
Email: Patrick.Tuck@doj.ca.gov
*Attorneys for Defendant and Appellee
Jack Ainsworth*

TABLE OF CONTENTS

	Page
INTRODUCTION	1
STATEMENT OF JURISDICTION	2
I. The Appeal is Timely.....	2
II. The Federal Court Has Jurisdiction.	2
STATEMENT OF ISSUES.....	3
STATEMENT REGARDING ADDENDUM.....	4
STATEMENT OF THE CASE	4
I. Statement of Facts.....	4
II. Procedural History	7
A. Mendocino County Action.....	7
B. The Federal Action	11
SUMMARY OF ARGUMENT	11
STANDARD OF REVIEW	13
ARGUMENT.....	14
I. The District Court Properly Dismissed This Action Pursuant to The <i>Colorado River</i> Doctrine.	14
A. The District Court Correctly Identified and Applied the Relevant <i>Colorado River</i> Factors.....	16
1. First Factor – Jurisdiction Over Property at Stake	16
2. Second Factor – Inconvenience of the Federal Forum.....	16
3. Third Factor – Avoiding Piecemeal Litigation	18
4. Fourth Factor – Order of Forums Gaining Jurisdiction	21
5. Fifth Factor – Whether Federal or State Law Provides the Rule of Decision.....	22

TABLE OF CONTENTS
(continued)

	Page
6. Sixth Factor – State Court Proceedings Protecting Rights of Federal Litigants.....	22
7. Seventh Factor – Avoiding Forum Shopping	24
8. Eighth Factor - The State Proceedings Will Resolve All Issues Before the Federal Court.....	27
a. The Record Does Not Reflect a Justiciable Dispute Under the Coastal Zone Management Act.....	29
b. The State Court is Well Equipped to Rule on State Preemption, Federal Preemption, or Both.....	33
B. The District Court Did Not Abuse Its Discretion in Dismissing the Railway’s Federal Complaint Pursuant to <i>Colorado River</i>	34
II. The <i>Younger</i> Abstention Doctrine Justifies Dismissal.....	34
A. The Mendocino County Action is Ongoing.....	36
B. The Mendocino County Action is a Civil Enforcement Proceeding within the Scope of <i>Younger</i>	37
C. The Mendocino County Action Implicates an Important State Interest.....	41
D. The Mendocino County Action Allows Litigants to Raise Federal Challenges.....	41
E. This Action, if Reinstated, Will Have the Practical Effect of Enjoining the Mendocino County Action.	43
F. No Exception to <i>Younger</i> Applies.....	44
CONCLUSION	45
STATEMENT OF RELATED CASES.....	46
CERTIFICATE OF COMPLIANCE.....	47
STATUTORY ADDENDUM.....	48

TABLE OF AUTHORITIES

	Page
 CASES	
<i>Applied Underwriters, Inc. v. Lara</i> 37 F.4th 579 (9th Cir. 2022).....	39
<i>Atel Fin. Corp. v. Quaker Coal Co.</i> 321 F.3d 924 (9th Cir. 2003).....	14
<i>Attwood v. Mendocino Coast Dist. Hosp.</i> 886 F.2d 241 (9th Cir. 1989).....	3
<i>Bristol-Myers Squibb Co. v. Connors</i> 979 F.3d 732 (9th Cir. 2020).....	40
<i>CEEED v. California Coastal Zone Conservation Com.</i> 43 Cal. App. 3d 306 (Ct. App. 1974)	38
<i>Citizens for Free Speech, LLC v. County of Alameda</i> 953 F.3d 655 (9th Cir. 2020).....	37, 39, 43, 44
<i>City & Cnty. of San Francisco v. Sainez</i> 77 Cal. App. 4th 1302 (2000).....	40
<i>City of Fort Bragg v. Mendocino Railway</i> Case No. 21CV00850	<i>passim</i>
<i>Colorado River Water Conservation Dist. v. United States</i> 424 U.S. 800 (1976).....	<i>passim</i>
<i>Ernest Bock, LLC v. Steelman</i> 76 F.4th 827 (9th Cir. 2023).....	15
<i>Fireman’s Fund Ins. Co. v. Garamendi</i> 790 F. Supp. 938 (N.D. Cal. 1992).....	26

TABLE OF AUTHORITIES
(continued)

	Page
<i>Friends of the Eel River v. N. Coast R.R. Auth.</i> 3 Cal. 5th 677 (2017)	23, 42
<i>Gilbertson v. Albright</i> 381 F.3d 965 (9th Cir. 2004).....	35, 44
<i>Hale v. Morgan</i> 22 Cal. 3d 388 (1978)	40
<i>Herrera v. City of Palmdale</i> 918 F.3d 1037 (9th Cir. 2019).....	37, 39
<i>Huffman v. Pursue, Ltd.</i> 420 U.S. 592 (1975).....	37, 39
<i>Humanitarian Law Project v. U.S. Treasury Dep't</i> 578 F.3d 1133 (9th Cir. 2009).....	40
<i>In re Alva</i> 33 Cal. 4th 254 (2004)	40
<i>Kizer v. Cnty. of San Mateo</i> 53 Cal. 3d 139 (1991), (Mar. 28, 1991).....	40
<i>Landgraf v. USI Film Products</i> 511 U.S. 244 (1994).....	40
<i>Lent v. California Coastal Com.</i> 62 Cal. App. 5th 812 (2021).....	40
<i>Montanore Mins. Corp. v. Bakie</i> 867 F.3d 1160 (9th Cir. 2017).....	<i>passim</i>
<i>Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.</i> 460 U.S. 1 (1983).....	3, 18, 22

TABLE OF AUTHORITIES
(continued)

	Page
<i>Nakash v. Marciano</i> 882 F.2d 1411 (9th Cir. 1989).....	18, 26, 34
<i>Ojavan Invs., Inc. v. California Coastal Com.</i> 54 Cal. App. 4th 373 (1997).....	40
<i>Outdoor Media Grp, Inc. v. City of Beaumont</i> 506 F.3d 895 (9th Cir. 2007).....	13
<i>Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles</i> 55 Cal. 4th 783 (2012)	5
<i>People v. Burlington N. Santa Fe R.R.</i> 209 Cal. App. 4th 1513 (2012).....	23, 42
<i>People v. Toomey</i> 157 Cal. App. 3d 1 (Ct. App. 1984)	40
<i>R.R. Street & Co. Inc. v. Transp. Ins. Co.</i> 656 F.3d 966 (9th Cir. 2011).....	15, 22, 27
<i>ReadyLink Healthcare, Inc. v. State Comp. Ins. Fund</i> 754 F.3d 754 (9th Cir. 2014).....	35, 36, 43
<i>San Remo Hotel v. City & Cnty. of San Francisco</i> 145 F.3d 1095 (9th Cir. 1998)	41
<i>Seneca Ins. Co., Inc. v. Strange Land, Inc.</i> 862 F.3d 835 (9th Cir. 2017).....	24
<i>Smith v. Cent. Ariz. Water Conservation Dist.</i> 418 F.3d 1028 (9th Cir. 2005).....	13
<i>Sprint Communications, Inc. v. Jacobs</i> 571 U.S. 69 (2013).....	39

TABLE OF AUTHORITIES
(continued)

	Page
<i>Town of Atherton v. California High-Speed Rail Auth.</i> 228 Cal. App. 4th 314 (2014).....	42
<i>Travelers Indem. Co. v. Madonna</i> 914 F.2d 1364 (9th Cir. 1990).....	17, 20
<i>Wickland Oil Terminals v. Asarco, Inc.</i> 792 F.2d 887 (9th Cir. 1986).....	30, 31
<i>Wiener v. Cnty. of San Diego</i> 23 F.3d 263 (9th Cir. 1994).....	36
<i>Younger v. Harris</i> 401 U.S. 37 (1971).....	<i>passim</i>

STATUTES

United States Code, Title 16	
§ 1291	3
§ 1456(c)(3)	31
§ 1456(d)	31
United States Code, Title 28	
§ 1331	2
United States Code, Title 49	
§ 10501(b)	28
California Public Resources Code	
§ 30001	6
§ 30002	6
§ 30003	6
§ 30004	6
§ 30106	6
§ 30500	6
§ 30519	6
§ 30600	6
California Coastal Act.....	<i>passim</i>

TABLE OF AUTHORITIES
(continued)

	Page
Coastal Zone Management Act (CZMA)	<i>passim</i>
Interstate Commerce Commission Termination Act (ICCTA)	<i>passim</i>
CONSTITUTIONAL PROVISIONS	
11th Amendment	3
COURT RULES	
Ninth Circuit Rule	
28-2.7	4, 48
Federal Rule of Civil Procedure	
12(b)(6).....	13

INTRODUCTION

Plaintiff-Appellant Mendocino Railway (“Railway”) is developing property in the City of Fort Bragg, California, and in the California coastal zone, in violation of local land use laws and the California Coastal Act. The Railway’s violations threaten the safety of local residents and jeopardize coastal resources.

In 2021, Defendant-Appellee City of Fort Bragg (“City”) filed suit against the Railway in state court to enforce violations of local land use laws and the state building code. Subsequently, the California Coastal Commission (“Commission”) intervened, seeking to enforce the Coastal Act against the Railway’s past and ongoing violations. In the state court, the City and the Commission seek declaratory and injunctive relief against the Railway, and penalties for its violations.

The Railway contends that the enforcement claims by the City and Commission are preempted by state and federal law governing public utilities and federal railroads, respectively. After the Railway demurred to the City’s lawsuit on these bases and was overruled, the Railway filed an answer in state court in which it again raised a federal preemption defense. It then filed the instant declaratory judgment action in the district court against the City and the Commission’s then-Executive Director Jack Ainsworth. In

this action, the Railway seeks adjudication of the very same federal preemption argument that the state court rejected in overruling the demurrer.

The district court saw through the Railway's blatant attempt at forum shopping and dismissed its federal complaint under the *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800 (1976) doctrine. The district court's decision to dismiss the Railway's complaint was proper and should be affirmed.

The *Younger v. Harris*, 401 U.S. 37 (1971) abstention doctrine similarly discourages forum shopping and supports dismissal of the Railway's complaint. Mr. Ainsworth and the City both argued for abstention and dismissal of the Railway's complaint under *Younger*, but the district court did not reach that argument.

STATEMENT OF JURISDICTION

I. THE APPEAL IS TIMELY.

The district court entered its order granting the City's and Mr. Ainsworth's motions to dismiss on May 12, 2023. ER-011. The Railway filed its notice of appeal on June 8, 2023. ER-118. This appeal is timely.

II. THE FEDERAL COURT HAS JURISDICTION.

The district court found that it had original jurisdiction over the single cause of action in the Railway's Federal Complaint pursuant to 28 U.S.C. §

1331. This Court has appellate jurisdiction under 28 U.S.C. § 1291. *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 8-10 (1983) (*Colorado River* stay order is appealable as a final order under 28 U.S.C. § 1291); *see also Attwood v. Mendocino Coast Dist. Hosp.*, 886 F.2d 241, 243 (9th Cir. 1989) (“For purposes of appellate jurisdiction, a stay under *Colorado River* is as much a final, appealable order as a dismissal under that doctrine.”).

Notwithstanding Mr. Ainsworth’s consent to jurisdiction for purposes of this appeal and the underlying motion to dismiss, all rights to raise an 11th Amendment immunity argument in the future are reserved and not waived by Mr. Ainsworth, his successor, the California Coastal Commission, and the State of California.

STATEMENT OF ISSUES

This appeal presents the following issues for review:

1. Did the district court abuse its discretion in dismissing this action under *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800 (1976)?
2. Should this action be dismissed pursuant to the abstention principles of *Younger v. Harris*, 401 U.S. 37 (1971)?

STATEMENT REGARDING ADDENDUM

All pertinent statutory provisions that are not included in Appellant's Opening Brief are set forth in the addendum to this brief. Ninth Circuit Rule 28-2.7.

STATEMENT OF THE CASE

I. STATEMENT OF FACTS

In 2004, Plaintiff-Appellant Mendocino Railway ("Railway") purchased a tourist excursion train located in Mendocino County, California, and its related assets. ER-109-110. This excursion train is popularly known as the "Skunk Train" and originally ran 40 miles from Fort Bragg to Willits, California, and back. ER-109; ER-028. Since at least 2016, however, when a tunnel collapse prevented any trains from running the full length of the line, the Railway has been running short, closed-loop sightseeing trips from Fort Bragg to Glen Blair Junction and back, and from Willits to Northspur Junction and back. ER-028.

The Railway owns property and multiple structures within the city limits of Fort Bragg. ER-110. These structures, and the Railway's property in Fort Bragg, also lie within the California coastal zone. ER-033; *see also* Jack Ainsworth's Motion for Judicial Notice ("Ainsworth MJN"), filed

herewith, Exhibit A, at 3, ¶ 4.¹ Beginning in 2017, a dispute arose between Defendant-Appellee City of Fort Bragg (“City”) and the Railway regarding the Railway’s use of its property within the City and its failure to obtain necessary permits for use of that property, with the Railway claiming that it is not subject to local regulation as a state-regulated public utility. ER-029-030.

In October 2021, the City filed a complaint in California state court seeking a declaration that the Railway is not exempt from the City’s laws and authority and an injunction ordering the Railway to comply with its laws and authority. ER-031. Included in the City’s laws is its local coastal program (LCP), under which the City implements the California Coastal Act (“Coastal Act”) regarding development occurring within the City and the coastal zone. See Ainsworth MJN, Exh. A, at 2-3, ¶¶ 3-4.

The Coastal Act is a comprehensive statutory scheme governing land use planning for the entire coastal zone of California. See *Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles*, 55 Cal. 4th 783, 793-94

¹ Because all of the Railway’s references to the Commission’s Complaint in Intervention are actually citing to a *proposed* complaint, Mr. Ainsworth respectfully requests that this court take judicial notice of the Complaint in Intervention that was filed in the district court and served in the remanded Mendocino County Action. Ainsworth MJN, Exh. A.

(2012). The Coastal Act’s policies include preserving marine and land resources, providing public coastal access and recreation opportunities, protecting the coastal-related economic environment, and assuring orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the State. Cal. Pub. Res. Code §§ 30001-30004. The Coastal Act generally requires that anyone wishing to undertake any development in the coastal zone obtain a coastal development permit before performing any such development. *Id.* § 30600(a). The Coastal Act defines “development” broadly to include, among other things, “the placement or erection of any solid material or structure,” “change in the density or intensity of use of land,” “any other division of land,” and “construction, reconstruction, demolition, or alteration of the size of any structure.” *Id.* § 30106.

While the California Coastal Commission (“Commission”) is the statewide entity charged with administering the Coastal Act and its policies, particularly with respect to development within the coastal zone, local governments, such as the City, implement the Coastal Act via their LCPs. ER-033, Ainsworth MJN, Exh. A, at 2-3, ¶ 3; *see also* Cal. Pub. Res. Code §§ 30600, 30500, 30519. Because of the overlap in local regulation of activities in the coastal zone pursuant to the City’s LCP and the

Commission's enforcement of the Coastal Act, in July 2022, the City requested that the Commission assume responsibility for enforcement of the LCP and the Coastal Act against the Railway. Ainsworth MJN, Exh. A, at 3-4, ¶ 5. Consequently, the Commission sent a Notice of Violation letter to the Railway on August 10, 2022. SER-005-009. The next day, the Railway served its Federal Complaint at issue here on Mr. Ainsworth.²

II. PROCEDURAL HISTORY

A. Mendocino County Action

On October 28, 2021, the City filed and served a Verified Complaint for Declaratory and Injunctive Relief ("City's Complaint") in Mendocino County Superior Court titled *City of Fort Bragg v. Mendocino Railway*, Case No. 21CV00850 ("Mendocino County Action"), naming Appellant Mendocino Railway as the sole Defendant. ER-026-031. The City primarily sought a declaration that the Railway is subject to state and local laws and an

² The Railway sued Mr. Ainsworth in his official capacity as the Executive Director of the California Coastal Commission. Mr. Ainsworth retired before this appeal was filed, and, in February 2023, Dr. Kate Huckelbridge replaced him as Executive Director. Because the case title and Opening Brief still refer to Mr. Ainsworth, this Answering Brief reflects his name throughout. It should be noted that the Railway's Opening Brief only refers to Mr. Ainsworth in the case caption, and otherwise refers solely to the "Commission" throughout its brief.

injunction requiring the Railway to comply with the City's laws and authority, as applicable. ER-031, Prayer, ¶¶ 1-2.

On January 14, 2022, the Railway filed a demurrer to the City's Complaint, arguing, *inter alia*, that "state and local regulatory and permitting requirements are broadly preempted" by the federal Surface Transportation Board's (STB) purported exclusive jurisdiction over the Railway. ER-074; *see also* Mendocino Railway's Motion for Judicial Notice ("Railway MJN"), Exhibit 1, at 7. The Mendocino County Superior Court overruled the Railway's demurrer, reasoning that "Mendocino Railway's preemption argument is overbroad" and noting that, particularly with regard to the Railway's federal preemption argument, "[n]ot all state and local regulations that affect railroads are preempted." ER-081-082. The Superior Court specifically concluded that "Mendocino Railway[] is not involved in any interstate rail operations" and "is simply a luxury sightseeing excursion service with no connection to interstate commerce." *Id.* Finally, the Superior Court held that "the applicability of preemption is necessarily a 'fact-bound' question, not suitable to resolution by demurrer." ER-083.

The Railway filed a petition for writ of mandamus in the California Court of Appeal seeking review of the trial court's demurrer ruling; the Court of Appeal denied that petition and the California Supreme Court

denied the Railway's subsequent petition for review. SER-011-012; Ainsworth MJN, Exh. B. Following those appellate denials, the Railway, on June 24, 2022, filed an answer to the City's Complaint. ER-087-092. In its answer, the Railway admitted that the Railway had refused the City's entry onto its rail property "on the grounds of state and federal preemption law" and stated that the Railway's position that its status as "a railroad within the jurisdiction of the federal Surface Transportation Board ('STB') broadly preempt environmental pre-clearance review and land-use permitting of [the Railway]'s rail activities." ER-089-090, ¶¶ 12, 15. Similarly, the Railway's "Fourth Affirmative Defense" in its answer states that "[t]he declaratory and injunctive relief sought by [the City] are barred by state and federal preemption, as embodied in statutory and constitutional law, because [the Railway] is a CPUC-regulated public utility and a railroad within the jurisdiction of the STB." ER-091.

On June 27, 2022, in its opposition to a Notice of Related Case filed by the Railway, the City noted that the Commission was considering seeking to intervene in the Mendocino County Action. SER-018-019. This was more than a month before the Railway filed its Federal Complaint in the instant case. *See* ER-114.

After the Railway refused to comply with the Commission's Notice of Violation, the Commission filed and served a motion to intervene and a proposed complaint in intervention in the Mendocino County Action on September 8, 2022. ER-032. On October 20, 2022, the state court granted the motion, due to the Commission's strong interest in the City's case against the Railway, and particularly the Railway's use of its property in the coastal zone. ER-035; *see also* Railway MJN, Exh. 1, at 15.

Just a few hours after the state court granted the Commission's motion to intervene, but before the Commission even had an opportunity to file and serve its Complaint in Intervention, the Railway removed the Mendocino County Action to federal court. ER-019-022; Railway MJN, Exh. 1, at 15. One month later, the City and the Commission filed motions to remand the Mendocino County Action back to state court, primarily arguing untimely removal, lack of federal question jurisdiction, and *Younger* abstention. *See* Ainsworth MJN, Exhs. C, D. On May 11, 2023, Judge Tigar, the same district court judge assigned to the case at bar, granted the City's and the Commission's motions for remand on the basis of a lack of federal question jurisdiction. Ainsworth MJN, Exh. E.

Soon after the district court remanded the Mendocino County Action back to state court, the Railway filed a motion for stay of the state court

proceedings on the basis of this appeal and another appeal to which neither the City nor the Commission, (nor Mr. Ainsworth), are parties. *See* Railway MJN, Exhibit 1, at 18. The Superior Court denied the motion on November 2, 2023.

B. The Federal Action

The day after the Commission sent its August 10, 2022 Notice of Violation to the Railway, alleging that it was engaging in unpermitted development in violation of the Coastal Act, the Railway served Mr. Ainsworth with its Federal Complaint in this case. SER-023. The City and Mr. Ainsworth subsequently filed motions to dismiss the Railway's Federal Complaint on September 22, 2022, based on *Younger* abstention and *Colorado River* doctrine grounds. ER-115; District Court Docket #15, 16.

The day after it granted the City's and the Commission's motions for remand in the Mendocino County Action, the district court also granted the City's and Mr. Ainsworth's motions to dismiss the Railway's Federal Complaint, pursuant to the *Colorado River* doctrine. ER-011. This appeal followed.

SUMMARY OF ARGUMENT

The district court properly found that this matter presents exceptional circumstances meriting dismissal of the Railway's Federal Complaint under

Colorado River Water Conservation Dist. v. United States, 424 U.S. 800 (1976). A dismissal under *Colorado River* rests “on considerations of wise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation.” *Id.* at 817 (internal quotations omitted). Here, the district court sensibly applied *Colorado River* and dismissed the Railway’s Federal Complaint in deference to the Mendocino County Action, because allowing concurrent state and federal litigation on the same issues would result in piecemeal litigation and the danger of inconsistent judgments. The district court found that the Mendocino County Action will resolve the sole federal preemption issue raised in this action, as well as a state public utility preemption question not raised in this action. ER-110.

Dismissal is also justified based on the abstention doctrine under *Younger v. Harris*, 401 U.S. 37 (1971). If this matter is reinstated in the federal court, it will significantly interfere with the ongoing and important civil enforcement action proceeding in the state court. Mr. Ainsworth and the City argued *Younger* abstention in detail in their motions to dismiss, but the district court did not address this argument.

STANDARD OF REVIEW

The Railway appeals the district court's order granting Mr. Ainsworth's and the City's motions to dismiss the Railway's Federal Complaint. The basis for the district court's order is that the *Colorado River* doctrine's factors strongly counsel in favor of dismissal. ER-110.

A district court's decision to decline jurisdiction under *Colorado River* is reviewed in two parts. First, this Court reviews *de novo* the question of law regarding "[w]hether the facts of a particular case conform to the requirements for a *Colorado River* stay or dismissal." *Smith v. Cent. Ariz. Water Conservation Dist.*, 418 F.3d 1028, 1032 (9th Cir. 2005). If this Court "conclude[s] that the *Colorado River* requirements have been met, [the Court] then review[s]' the district court's decision for abuse of discretion." *Montanore Mins. Corp. v. Bakie*, 867 F.3d 1160, 1165 (9th Cir. 2017).

The district court analyzed both Mr. Ainsworth's and the City's motions to dismiss under Federal Rule of Civil Procedure 12(b)(6). ER-005. In ruling on such a motion, this Court "may 'generally consider only allegations contained in the pleadings, exhibits attached to the complaint, and documents and matters properly subject to judicial notice.'" *Outdoor Media Grp, Inc. v. City of Beaumont*, 506 F.3d 895, 899 (9th Cir. 2007).

With regard to the alternative *Younger* abstention argument not relied upon by the district court, this Court may affirm on any ground that has support in the record, whether or not the district court decision relied on the same grounds or reasoning adopted by the appellate court. *See Atel Fin. Corp. v. Quaker Coal Co.*, 321 F.3d 924, 925-26 (9th Cir. 2003).

ARGUMENT

I. THE DISTRICT COURT PROPERLY DISMISSED THIS ACTION PURSUANT TO THE *COLORADO RIVER* DOCTRINE.

In *Colorado River*, the Supreme Court recognized there may be times where “reasons of wise judicial administration” give rise to “circumstances permitting the dismissal of a federal suit due to the presence of a concurrent state proceeding.” 424 U.S. 800, 818 (1976). Just as in *Colorado River*, such “exceptional circumstances” warranting dismissal are present here. *Id.* at 813, 818.

The Ninth Circuit recognizes eight factors for assessing the appropriateness of a *Colorado River* dismissal:

- (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. Inc. v. Transp. Ins. Co., 656 F.3d 966, 978–79 (9th Cir. 2011).

“The factors are not a ‘mechanical checklist.’” *Ernest Bock, LLC v. Steelman*, 76 F.4th 827, 836 (9th Cir. 2023), *petition for cert. filed*, U.S. Supreme Court Docket No. 23-308 (September 22, 2023). The Ninth Circuit “appl[ies] the factors ‘in a pragmatic, flexible manner with a view to the realities of the case at hand.’” *Id.* at 836-37. “The weight to be given to any one factor may vary greatly from case to case” and “[s]ome factors may not apply in some cases,’ but in other cases, ‘a single factor may decide whether a stay is permissible.’” *Id.* at 837.

Here, application of the *Colorado River* factors weigh in favor of dismissal of this case.

A. The District Court Correctly Identified and Applied the Relevant *Colorado River* Factors.

1. First Factor – Jurisdiction Over Property at Stake

Mr. Ainsworth agrees with the district court and the Railway that this first factor is irrelevant to this analysis, as this dispute “does not involve a specific piece of property.” ER-006 (quoting *R.R. Street & Co. Inc.*, 656 F.3d at 979); *see also* Opening Brief at 31. Mr. Ainsworth does note, however, that all of the Railway’s property relevant to the dispute in this matter is located within the City of Fort Bragg and within the coastal zone. Ainsworth MJN, Exh. A, at 5-6, ¶¶ 12-14.

2. Second Factor – Inconvenience of the Federal Forum

As the district court noted, the state proceedings are in Mendocino County Superior Court in Fort Bragg, California, and the federal proceedings were in Oakland, California, approximately 150 miles apart as the crow flies. ER-006. The driving distance between the forums is approximately 170 miles. The district court found this factor to be “neutral,” but in reality it favors dismissal of the Federal Complaint. *Id.*

While the district court noted that prior cases have found a slightly longer distance between the state and federal forums as “unhelpful” in evaluating this factor, here the entire dispute centers around the Railway’s

use of its property in the City of Fort Bragg, and relevant witnesses and evidence will be located within the City limits. ER-027, 029; *see also* Ainsworth MJN, Exh. A., at 5-6, ¶¶ 12-14. The two cases cited by the district court finding that slightly longer distances did not tip the scales in evaluating this factor are distinguishable because they did not involve a similar inconvenient situation. In *Travelers Indem. Co. v. Madonna*, 914 F.2d 1364 (9th Cir. 1990), appellant Travelers was a Connecticut company that would have to fly to the federal courthouse in Los Angeles while appellee Madonna and his businesses were located in San Luis Obispo, approximately 200 miles from Los Angeles, so the federal forum was somewhat inconvenient to both parties, but to differing degrees. *Id.* at 1368. Ultimately, the Ninth Circuit determined that the district court did not err in finding this factor “unhelpful.” *Id.* And in *Montanore Mins. Corp.*, the Ninth Circuit relied on that same holding from *Travelers*, and the fact that the appellants had conceded in the district court that “neither forum has a significant advantage as to convenience,” to determine that 200 miles between the forums was only “neutral” as to this second factor. *Montanore*, 867 F.3d at 1167.

Here, this factor should weigh in favor of dismissal because there is no balancing of the inconvenience of the federal forum between the specific

parties as there was in *Travelers*, and Mr. Ainsworth never conceded that the federal forum would be convenient, as the appellants had done in *Montanore*. The relevant properties, witnesses, and evidence are located in the City of Fort Bragg, and the inconvenience of driving 170 miles to and from Oakland (typically a three- to four-hour drive) to try this case in federal court weighs in favor of dismissal of the Federal Complaint.

3. Third Factor – Avoiding Piecemeal Litigation

As to the third *Colorado River* factor, the district court properly found that the desire to avoid piecemeal litigation is a “substantial factor in the *Colorado River* analysis.” ER-007 (quoting *Seneca Ins. Co., Inc. v. Strange Land, Inc.*, 862 F.3d 835, 842 (9th Cir. 2017)). The Supreme Court noted in *Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1 (1983) (“*Cone*”) that, in *Colorado River*, “[b]y far the most important factor in [the Court’s] decision to approve the dismissal there was the ‘clear federal policy . . . [of] avoidance of piecemeal adjudication’” *Cone*, 460 U.S. at 16 (quoting *Colorado River*, 424 U.S. at 819). The Ninth Circuit echoed the importance of this third factor in *Nakash v. Marciano*, 882 F.2d 1411 (9th Cir. 1989), when it emphasized that “[p]ermitting this suit to continue would undeniably result in piecemeal litigation.” *Id.* at 1415. Here, too, as the

district court concluded, this critical third factor weighs significantly in favor of dismissal. ER-007.

The issue of federal preemption is a key component of the Mendocino County Action but is the only issue before the federal court. ER-007. In the Mendocino County Action, the Railway first raised a federal preemption claim in its demurrer to the City's Complaint in January 2022, and reiterated that defense in its answer in June 2022. ER-074, 090-091. The Railway then filed its separate Federal Complaint in the district court in August 2022, seeking a declaratory judgment that the City's and the Commission's regulation of its activities are federally preempted, as well as an injunction preventing the City and Mr. Ainsworth (not the Commission) from taking any action that would materially interfere with the Railway's operations. ER-113.

Thus, the Railway's federal preemption claim is before both the state and federal court, absent this Court affirming dismissal of the Federal Complaint. On the other hand, the Mendocino County Action includes several state law claims, as well as the Railway's state law preemption defense, which are not before the federal court. ER-029-031, 089, 091. The Railway's decision to file a separate, second action in federal court instead of litigating its preemption claims in the Mendocino County Action has

“resulted in piecemeal litigation of its singular goal” for a comprehensive adjudication of its state and federal preemption claims. *Montanore*, 867 F.3d at 1167. In *Montanore*, the Ninth Circuit determined that a key question regarding the validity of mining claims was crucial to both the state and federal proceedings, and although this was not “precisely the same issue” to be ruled on by the different tribunals, the possibility of conflicting results was substantial enough that the third *Colorado River* factor weighed in favor of a stay. *Id.* at 1168.

Similar to *Montanore*, the Railway’s decision to file in federal court “did not promote ‘conservation of judicial resources and comprehensive disposition of litigation.’” *Montanore*, 867 F.3d at 1167 (quoting *Colorado River*, 424 U.S. at 817). But that decision would have the federal court “adjudicate rights that [are] implicated in a vastly more comprehensive state action.” *Id.* Specifically, the “special concern about piecemeal litigation” here is “a substantial danger of inconsistent judgments” as to the federal preemption issue, which is before both the state and federal courts. *Travelers Indem. Co.*, 914 F.2d at 1369.

4. Fourth Factor – Order of Forums Gaining Jurisdiction

The next *Colorado River* factor considers the order in which the state and federal forums gained jurisdiction. *See Montanore*, 867 F.3d at 1168. As the district court discussed, this factor “consider[s] not only the order, but also the relative progress of the state and federal proceedings.” *Id.*; ER-007. The district court correctly concluded that this factor weighs in favor of dismissal. ER-007.

The City filed its Complaint in the Mendocino County Action in October 2021, almost a year before the Railway filed its Federal Complaint in August 2022. ER-004. The Railway nonetheless contends it first asserted a “federal preemption” claim in its Federal Complaint. Opening Brief at 34. This contention is false—or at the very least, highly misleading. After the City filed its Complaint in the Mendocino County Action in October 2021, the Railway filed a demurrer in January 2022 where it asserted that “state and local regulatory and permitting requirements are broadly preempted” by the federal Surface Transportation Board’s exclusive jurisdiction over the Railway. ER-074. Judge Brennan of the Mendocino County Superior Court addressed the Railway’s federal preemption claim as one of the key considerations in overruling the demurrer, stating that “[n]ot all state and

local regulations that affect railroads are preempted.” ER-082. Then, in June 2022, the Railway filed an answer to the City’s complaint, and in the answer it again asserted that federal preemption bars relief in the Mendocino County Action. ER-090-091, ¶ 15, Fourth Affirmative Defense. The Railway cannot credibly maintain that the state court did not take jurisdiction over the same federal preemption claim that the Railway asserts in its Federal Complaint months before that Federal Complaint was filed.

With regard to the relative progress of the two actions, the Mendocino County Action is beyond the pleading stage, unlike the federal proceeding. See Statement of the Case, Section II, Procedural History, above.

5. Fifth Factor – Whether Federal or State Law Provides the Rule of Decision

The fifth *Colorado River* factor considers “whether federal law or state law provides the rule of decision on the merits.” *R.R. Street*, 656 F.3d at 978. With regard to the Railway’s Federal Complaint, Mr. Ainsworth concurs with the district court’s finding that “[f]ederal law supplies the rule of decision on the merits.” ER-008. The Mendocino County Action involves both state law and federal law claims and each will provide the rule of decision in that case, but as to the Federal Complaint, only federal law provides the rule, and thus, this factor weighs against dismissal. However,

just as the Supreme Court discussed in both *Colorado River* and *Cone*, this factor has less significance in situations, such as here, where the state court can adjudicate the federal law issues just as aptly as the federal court. *See Colorado River*, 424 U.S. at 819; *see also Cone*, 460 U.S. at 25.

6. Sixth Factor – State Court Proceedings Protecting Rights of Federal Litigants

The sixth factor “concerns ‘whether the state court might be unable to enforce federal rights.’” *Montanore*, 867 F.3d at 1169. As the district court found, and the Railway now concedes, California state courts have the authority to adjudicate the Railway’s federal preemption claim. ER-008; Opening Brief at 36. California courts have, in fact, recently considered and decided preemption questions involving the Interstate Commerce Commission Termination Act (ICCTA), nearly identical to those asserted by the Railway, and which involved complex state and local regulation and federal preemption issues. *See Friends of the Eel River v. N. Coast R.R. Auth.*, 3 Cal. 5th 677, 706, 740 (2017) (holding that application of the California Environmental Quality Act to a railroad is not inconsistent nor preempted by the ICCTA); *see also People v. Burlington N. Santa Fe R.R.*, 209 Cal. App. 4th 1513, 1531 (2012) (state agency order regulating train stopping at rail crossings was preempted by the ICCTA).

In contrast to the Railway’s argument that “[i]t does not appear this Court has directly addressed whether the sixth factor can ever weigh in favor of a stay or dismissal,” the Ninth Circuit in *Montanore* held that “[w]hen it is clear ‘that the state court has authority to address the rights and remedies at issue’ this factor may weigh in favor of a stay.” Opening Brief at 37; *Montanore*, 867 F.3d at 1169 (quoting *R.R. Street*, 656 F.3d at 981).

Because the state court in the Mendocino County Action can and will address the Railway’s federal preemption claim, the district court was correct in finding that this sixth factor weighs in favor of dismissal.

7. Seventh Factor – Avoiding Forum Shopping

The seventh *Colorado River* factor, the desire to avoid forum shopping, weighs strongly in favor of dismissal. “When evaluating forum shopping under *Colorado River*, we consider 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 Ins. Co., Inc.*, 862 F.3d at 846.

Here, as the district court discussed, the Railway waited almost a year after it was served with the City’s complaint in the Mendocino County Action to file its Federal Complaint. ER-009. It was only after the Railway’s demurrer was overruled, and its petitions to the California Court of Appeal

and California Supreme Court were denied, that it chose to file this separate, second action in federal court. SER-011-012; Ainsworth MJN, Exh. B; *see also* ER-004-005, 114. In the Railway's demurrer, and its subsequent answer to the City's Complaint, the Railway asserted a federal preemption defense nearly identical to the claim it brought here in its Federal Complaint. ER-004; *see also* ER-074, ER-090-091.

The Railway does not argue that it could not have brought a cross-complaint seeking the same relief in the Mendocino County Action, but rather just states "there was no cross-claim raising 'federal preemption'." Opening Brief at 39. This was because the Railway decided to forum shop its federal preemption argument in the district court after its demurrer was overruled in the Mendocino County Action. The Railway's argument that there is no evidence it filed its Federal Complaint to avoid adverse rulings in the state court, *see id.* at 39-40, overlooks the Railway's pattern and practice throughout this litigation. Beyond its demurrer and petitions to the California appellate courts, the Railway has taken all of the following actions in an attempt to prevent the Mendocino County Action from proceeding in the state court: (1) unsuccessfully moved to disqualify Superior Court Judge Brennan, who had overruled its demurrer; (2) filed a notice of related case and unsuccessfully requested transfer of the Mendocino County Action from

Judge Brennan's court to another judge's in the Superior Court; (3) improperly removed the Mendocino County Action to federal court; and (4) after it was remanded, filed a motion for stay of the Mendocino County Action on the basis of this appeal. Railway MJN, Exh. 1, at 12-18.

“[T]he multiple and over-lapping assertions of these challenges in state court” caused the district court here to question the Railway's tactics, and it properly found that the seventh factor and the desire to avoid forum shopping weighs in favor of dismissal. *Fireman's Fund Ins. Co. v. Garamendi*, 790 F. Supp. 938, 964 (N.D. Cal. 1992); ER-009.

The Railway's attempt to accuse the Commission of forum shopping is meritless. The City advised the state court and the Railway that the Commission was considering intervening in the Mendocino County Action on June 27, 2022, more than a month before the Railway filed and served its Federal Complaint. SER-018-019. And the Railway served its Federal Complaint on Mr. Ainsworth a day after the Commission sent it a Notice of Violation, setting forth many of the Coastal Act violations that the Commission would eventually assert in its Complaint in Intervention. SER-005-009, SER-023.

The Railway's unwillingness to acknowledge that it asserted federal preemption claims and defenses multiple times in the Mendocino County

Action before the Commission intervened is telling. As the district court concluded, the “only ‘reasonabl[e] 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.’” ER-009 (quoting *Montanore*, 867 F.3d at 1169 and *Nakash*, 882 F.2d at 1417). “This factor weighs strongly in favor of abstention.” *Nakash*, 882 F.2d at 1417.

8. Eighth Factor – The State Proceedings Will Resolve All Issues Before the Federal Court

The eighth and final *Colorado River* factor looks at “whether the state court proceeding sufficiently parallels the federal proceeding.” *R.R. Street*, 656 F.3d at 982. The Court “do[es] not require ‘exact parallelism’ under this factor; it is sufficient if the proceedings are ‘substantially similar.’” *Montanore*, 867 F.3d at 1170 (quoting *Nakash*, 882 F.2d at 1416).

This factor is more than met here, because both the state and federal proceedings involve the same federal preemption issue. In the Mendocino County Action, as the district court explained, the Railway asserted a federal preemption defense under the ICCTA on multiple occasions, and the state court will resolve that issue. ER-009-010. Specifically, the Railway argued in its demurrer to the City’s Complaint that “[t]he STB’s exclusive jurisdiction over [the Railway] means that state and local regulatory and

permitting requirements are broadly preempted.” ER-074; *see also* ER-004. The state court acknowledged the Railway’s federal preemption argument but overruled it, explaining “[n]ot all state and local regulations that affect railroads are preempted” and “the applicability of preemption is necessarily a ‘fact-bound’ question, not suitable to resolution by demurrer.” ER-082-083.

In its answer to the City’s Complaint, the Railway again alleged that its status as “a railroad within the jurisdiction of the federal [STB] broadly preempt environmental preclearance review and land-use permitting of [the Railway’s] rail activities by [the City], under both state and federal preemption.” ER-090, at ¶ 15. In its “Fourth Affirmative Defense,” the Railway reasserted that the relief sought by the City is “barred by state and federal preemption.” ER-091.

The Railway again asserts this very same federal preemption argument in its Federal Complaint. There, the Railway alleges a single cause of action “[f]or [d]eclaratory [j]udgment” which “seeks a declaration that the actions of the Commission and the City to regulate Mendocino Railway’s operations, practices and facilities are preempted under 49 U.S.C. § 10501(b) and that Mendocino Railway[’]s activities are subject to the STB’s exclusive jurisdiction.” ER-112, at ¶ 32.

The district court correctly reasoned that, because ICCTA preemption “is the sole issue in this case, it is difficult . . . to conceptualize this action as anything but a spinoff of the state court action.” ER-010. At a minimum, there is no question that the preemption issues in the federal and state actions are “substantially similar,” if not identical. *Montanore*, 867 F.3d at 1170.

The Railway argues that the eighth *Colorado River* factor weighs against dismissal because it believes that it is “doubtful that resolution of the State Action would completely resolve this Federal Action.” Opening Brief at 26. Neither of the two arguments the Railway advances in support of this theory is persuasive, as demonstrated below in the remainder of this discussion regarding the eighth *Colorado River* factor.

a. The Record Does Not Reflect a Justiciable Dispute Under the Coastal Zone Management Act.

For the first time on appeal, the Railway raises the federal Coastal Zone Management Act (CZMA) as potential basis of dispute between the Railway and the Commission. Opening Brief at 27. It does so in an apparent attempt to distinguish the relief sought by the Commission in the Mendocino County Action from that which the Railway seeks against Mr. Ainsworth in this matter. *Id.*

The Federal Complaint does not support such a distinction. It makes no allegations regarding the CZMA. *See* ER-104-113. In its Opening Brief, the Railway tries to read a CZMA issue into the Federal Complaint’s references to “preclearance.” Opening Brief at 28-29. Yet the Railway used that term when it demurred to the City’s state law complaint in the Mendocino County Action in early 2022, and when it answered the City’s Complaint, both well before the Commission intervened in that case, and the Railway never once suggested the term included CZMA requirements. ER-081 (Railway’s “preclearance” demurrer reference quoted by the Superior Court); ER-090, at ¶ 15. Further, in the Federal Complaint, the Railway describes the Commission as “a state agency that *preclears* land-use projects in the coastal zone pursuant to *state law*” and only discusses enforcement of the Coastal Act. ER-105, at ¶ 3 (emphasis added); *see also* ER-106-107, at ¶ 10; ER-112, at ¶ 33 (referring to “preclearance” in terms of coastal development permits under the Coastal Act and the City’s LCP); ER-111, at ¶ 23 (stating that the Railway will not obtain a coastal development permit because such “preclearance” is preempted). The Railway’s prayer for relief is a mirror of the Commission’s and City’s claims in the Mendocino County Action as well, which are exclusively based on the Railway’s violations of the Coastal

Act and the City's local laws and regulations. ER-113, at ¶¶ 1-2; ER-069, at ¶¶ 1-2; Ainsworth MJN, Exh. A, at 7, ¶¶ 1-2.

Even if the Federal Complaint could be construed to seek declaratory relief regarding Mr. Ainsworth's CZMA, the district court cannot grant such relief. That is because there is no actual controversy between the parties regarding the application of the CZMA to the Railway's activities. *See Wickland Oil Terminals v. Asarco, Inc.*, 792 F.2d 887, 893 (9th Cir. 1986) ("Jurisdiction to award declaratory relief exists only in 'a case of actual controversy.'" (quoting 28 U.S.C. § 2201)). "[T]he essential facts establishing the right to declaratory relief" concerning Mr. Ainsworth's CZMA authority have not occurred (and likely never will), and thus, this purported issue is not ripe for consideration by the federal courts. *Wickland Oil Terminals*, 792 F.2d at 893.

To wit, the Railway's discussion of the CZMA in its Opening Brief is general and does not identify any specific controversy between the parties under the CZMA. Opening Brief at 27-29. The Railway does not allege, and has not provided any evidence, that it has applied for a federal permit or license that would trigger CZMA review pursuant to 16 U.S.C. § 1456(c)(3). Nor does it allege, and it has not provided any evidence, that any federal or state government has sought assistance for a project involving the Railway

that might trigger CZMA review pursuant to 16 U.S.C. § 1456(d). Similarly, the Railway does not allege that it intends to apply for a federal permit or seek federal assistance for a specific project at some future, unknown date, which might trigger CZMA review.

The Railway's CZMA argument finds no support in the letter it improperly moves the Court to take judicial notice of.³ Railway MJN, Exhibit 2. That letter, sent nearly four years ago, simply states the Commission's general position that it does not believe regulation of the Railway under the Coastal Act or the CZMA is preempted by the ICCTA, and requests evidence from the Railway to the contrary. Railway MJN, Exh. 2, at 20-21. There is no indication that CZMA review was ever triggered for any specific project related to that letter. The Railway's vague hypothetical scenarios regarding the CZMA cannot serve as a basis for a justiciable claim, much less a finding that the two parallel state and federal actions are not "substantially similar." *Montanore*, 867 F.3d at 1170.

³ Mr. Ainsworth has filed an opposition to the Railway's Motion for Judicial Notice regarding Exhibit 2 concurrently with this brief.

b. The State Court is Well Equipped to Rule on State Preemption, Federal Preemption, or Both.

The Railway argues that the state court in the Mendocino County Action could find that it is a public utility under state law, which it argues would preempt the City's and Commission's authority to regulate its activities. Opening Brief at 29-30. In that situation, the Railway argues, the state court might not reach its federal preemption defense, and such a hypothetical result could leave the federal court with something further to do. *Id.*

This argument has a fatal flaw. If the Railway is successful in its argument that **either** state-level public utility or federal STB jurisdiction preempts the City's and the Commission's regulation of its activities as it hopes, there would be no reason for the Railway to seek further adjudication of the alternate preemption theory, or that any court would be compelled to reach that issue. Conversely, if the state court were to find that state law does not preempt such state and local regulation, that court would then have to move onto its consideration of the Railway's federal preemption defense, or vice versa. The Railway does not provide any salient example of a situation where the state court would not either rule on both the state and federal preemption claims in the Mendocino County Action, or the Railway

would succeed on one of those preemption claims yet still need to, or even have a basis to, litigate the alternative preemption claim in federal court. In the latter scenario, consideration of the alternate preemption theory would be moot.

B. The District Court Did Not Abuse Its Discretion in Dismissing the Railway’s Federal Complaint Pursuant to *Colorado River*.

In conclusion, factors 2, 3, 4, 6, 7, and 8 of the *Colorado River* analysis all weigh in favor of dismissal. The first factor is irrelevant, and only the fifth factor weighs against dismissal. On balance, the *Colorado River* factors thus strongly weigh in favor of dismissal. ER-010.

Because the evidence supports the district court’s analysis and finding that the *Colorado River* factors apply and weigh in favor of dismissal, the district court did not abuse its discretion in dismissing the Railway’s forum-shopping Federal Complaint. *See Nakash*, 882 F.2d at 1417 (finding that the district court did not abuse its discretion in “abstaining” pursuant to *Colorado River* and to discourage forum shopping).

II. THE *YOUNGER* ABSTENTION DOCTRINE JUSTIFIES DISMISSAL.

In addition to the *Colorado River* doctrine, the well-established abstention doctrine under *Younger v. Harris*, 401 U.S. 37 and its progeny also supports dismissal of the Railway’s Federal Complaint. The district

court did not reach this alternative argument, which the City and Mr. Ainsworth raised in their motions to dismiss. Opening Brief at 3, 41.

In civil cases, the Ninth Circuit has articulated four elements to determine if *Younger* abstention is appropriate, namely “when the state proceedings: (1) are ongoing, (2) are quasi-criminal enforcement actions or involve a state's interest in enforcing the orders and judgments of its courts, (3) implicate an important state interest, and (4) allow litigants to raise federal challenges.” *ReadyLink Healthcare, Inc. v. State Comp. Ins. Fund*, 754 F.3d 754, 759 (9th Cir. 2014). “If these ‘threshold elements’ are met, [the court] then consider[s] whether the federal action would have the practical effect of enjoining the state proceedings and whether an exception to *Younger* applies.” *Id.* “The critical date for purposes of deciding whether abstention principles apply is the date the federal action is filed.” *Gilbertson v. Albright*, 381 F.3d 965, 969 n. 4 (9th Cir. 2004).

All four core *Younger* elements were met here as of the time of filing of the Railway’s Federal Complaint. Additionally, if reinstated, the federal action will likely enjoin the state proceedings, and finally, no exception to *Younger* applies.

A. The Mendocino County Action is Ongoing.

As to the first element, the City filed and served its Complaint in the Mendocino County Action more than two years ago, on October 28, 2021, and that case remains ongoing, after remand. ER-026. The Railway filed its Federal Complaint on August 9, 2022. ER-114. As such, the state proceeding was ongoing when the Railway filed its Federal Complaint. As the Ninth Circuit has repeatedly held, “the critical question is not whether the state proceedings are still ‘ongoing’ but whether ‘the state proceedings were underway before initiation of the federal proceedings.’” *Wiener v. Cnty. of San Diego*, 23 F.3d 263, 266 (9th Cir. 1994); cf. *ReadyLink Healthcare Inc.*, 754 F.3d at 759.

The Railway does not dispute that the Mendocino County Action is sufficiently ongoing and was ongoing when it filed its Federal Complaint. Rather, it argues that that state court action is not sufficiently “parallel” to this federal action. Opening Brief at 43. The Railway again would have this Court overlook that it alleged a federal preemption defense in both its demurrer and answer in the state court action. And, in its Federal Complaint, the Railway specifically acknowledges the relation between its Federal Complaint and the City’s earlier lawsuit, stating “[t]he City has gone so far as to file a state-court action to compel [the] Railway to apply for permits”

and “[a]s a federally regulated railroad with preemption rights, [the] Railway has refused to submit to the City’s permit jurisdiction.” ER-105, at ¶ 4. The Federal Complaint seeks a declaration that Mr. Ainsworth’s and City’s regulatory actions are preempted under federal law, and related injunctive relief. ER-113, at ¶¶ 1-2. These claims are directly parallel to the preemption defenses the Railway has asserted on multiple occasions against the City and the Commission in the Mendocino County Action.

Because the Mendocino County Action is a parallel proceeding to the instant matter, and has been ongoing since 2021, well before the Railway filed its Federal Complaint, the first *Younger* requirement is met.

B. The Mendocino County Action is a Civil Enforcement Proceeding within the Scope of *Younger*.

The Mendocino County Action fulfills *Younger*’s “quasi-criminal” element because it is a nuisance enforcement proceeding. It is well-established that such civil enforcement proceedings satisfy this *Younger* element. *See, e.g., Huffman v. Pursue, Ltd.*, 420 U.S. 592, 604 (1975) (element met where state civil action sought to enforce state nuisance law against theater manager for displaying obscene movies); *Citizens for Free Speech, LLC v. County of Alameda*, 953 F.3d 655, 657 (9th Cir. 2020) (element met where County’s administrative nuisance abatement proceeding

sought to enforce zoning code violations against billboard owner); *Herrera v. City of Palmdale*, 918 F.3d 1037, 1045 (9th Cir. 2019) (element met where City's nuisance enforcement lawsuit sought to enforce building code violations against property owners).

Like these cases, the Mendocino County Action is a nuisance enforcement proceeding that seeks injunctive relief, civil penalties, and exemplary damages. For instance, the City's Complaint describes the multiple occasions when the Railway refused to comply with its local laws and regulations. ER-029-030, at ¶¶ 12, 13, & 15. These events prompted the City to file suit, seeking an injunction commanding the Railway to comply with the City's local laws and regulations. ER-029-031, at ¶¶ 12, 15, 16, & Prayer, at ¶¶ 1-2.

Similarly, the Commission issued a Notice of Violation to the Railway for violating the Coastal Act and ordering the Railway to cease all unpermitted development. SER-005-009. After the Railway continued its illegal activities, the Commission intervened in the Mendocino County Action. *See* ER-035. In its Complaint in Intervention, the Commission seeks injunctive relief, civil penalties, and exemplary damages to sanction the Railway and deter further violations of the Coastal Act. Ainsworth MJN, Exh. A, at 8, ¶¶ 3-5.

There is no doubt that the Commission’s enforcement of Coastal Act violations amounts to enforcement of a nuisance. *See CEEED v. California Coastal Zone Conservation Com.*, 43 Cal. App. 3d 306, 318–19 (Ct. App. 1974) (“[c]ontemporary environmental legislation represents an exercise by government of this traditional power to regulate activities in the nature of nuisances. . . . Current legislation for environmental and ecological protection constitutes but a sensitizing of and refinement of nuisance law.”)

Accordingly, because the Mendocino County Action is a nuisance enforcement proceeding, it falls within the scope of *Younger*. *See, e.g., Huffman*, 420 U.S. at 604; *Sprint Communications, Inc. v. Jacobs*, 571 U.S. 69, 79-80 (2013) (re-affirming that the *Huffman* category of civil enforcement cases qualify for *Younger* abstention); *see also Citizens for Free Speech, LLC*, 953 F.3d at 657; *Herrera*, 918 F.3d at 1045.

The Railway’s heavy reliance on *Applied Underwriters, Inc. v. Lara*, 37 F.4th 579 (9th Cir. 2022) is misplaced. There, the Ninth Circuit refused to extend *Younger* to include insurance conservatorship proceedings, and, critical to the court’s analysis, the government in that case did not seek monetary penalties or sanctions. *Id.* at 589. In contrast, the Mendocino County Action is a nuisance enforcement proceeding – a well-recognized category of civil enforcement cases subject to *Younger* abstention – and the

government entities seek injunctive relief, civil penalties, and exemplary damages.

The Railway appears to ask this court to examine the City’s and Commission’s motivations for bringing the Mendocino County Action. Opening Brief at 44-47. However, no such inquiry is necessary or appropriate. *See Bristol-Myers Squibb Co. v. Connors*, 979 F.3d 732, 737 (9th Cir. 2020) (“[w]hat matters for *Younger* abstention is whether the state proceeding falls within the general class of quasi-criminal enforcement actions—not whether the proceeding satisfies specific factual criteria”).

None of the additional cases cited by the Railway, ostensibly as examples of non-qualifying civil enforcement proceedings, (*see* Opening Brief at 46-51), involved *Younger* abstention.⁴ They involved different issues and contexts and are consequently irrelevant. The Railway also cannot escape the Commission’s request for exemplary damages. *See Bristol-Myers Squibb Co.*, 979 F.3d at 738 (*Younger* abstention warranted where “the State

⁴ The inapposite cases cited by the Railway (Opening Brief at 46-51) are: *Humanitarian Law Project v. U.S. Treasury Dep’t*, 578 F.3d 1133 (9th Cir. 2009); *Ojavan Invs., Inc. v. California Coastal Com.*, 54 Cal. App. 4th 373 (1997); *Kizer v. Cnty. of San Mateo*, 53 Cal. 3d 139 (1991), *as modified* (Mar. 28, 1991); *City & Cnty. of San Francisco v. Sainez*, 77 Cal. App. 4th 1302, 1315 (2000); *Hale v. Morgan*, 22 Cal. 3d 388 (1978); *Lent v. California Coastal Com.*, 62 Cal. App. 5th 812 (2021); *People v. Toomey*, 157 Cal. App. 3d 1 (Ct. App. 1984); and *In re Alva*, 33 Cal. 4th 254 (2004).

seeks civil penalties and punitive damages”). “The very labels given ‘punitive’ or ‘exemplary’ damages, as well as the rationales that support them, demonstrate that they share key characteristics of criminal sanctions.” *Landgraf v. USI Film Products*, 511 U.S. 244, 281 (1994).

C. The Mendocino County Action Implicates an Important State Interest.

The third *Younger* requirement is also met, as the state proceeding implicates an important state interest. The Railway claims it may undertake whatever activities and alterations to its property in the coastal zone it would like, particularly if it believes those activities are “rail-related,” without any oversight or regulation by the Commission or the City. ER-112, ¶¶ 30, 32-33; *see also* ER-111, ¶ 23. A ruling allowing such unrestricted and unpermitted activities by the Railway threatens vulnerable coastal resources and would significantly hinder the Commission’s ability to protect the coast, in contravention of the Coastal Act, as well as the City’s LCP and applicable land use ordinances. *See San Remo Hotel v. City & Cnty. of San Francisco*, 145 F.3d 1095, 1104 (9th Cir. 1998) (“We have held that strong, local, *i.e.*, municipal, interests in land-use regulation qualify as important ‘state’ interests for purposes of *Younger* abstention.”). Therefore, the Mendocino County Action involves and implicates important state interests,

satisfying the third *Younger* requirement. The Railway does not argue otherwise.

D. The Mendocino County Action Allows Litigants to Raise Federal Challenges.

As to the fourth and final threshold *Younger* requirement, the Railway has already asserted federal preemption challenges to the City's Complaint and the Commission's Complaint in Intervention in state court. This demonstrates that the litigants have raised and will continue to be able to raise, federal challenges in the state proceeding. Moreover, and pertinent to this case, on multiple occasions in the past decade parties were allowed to raise federal preemption claims in California state court cases, and those claims were considered and ruled on by the state trial and appellate courts. *See, e.g., Town of Atherton v. California High-Speed Rail Auth.*, 228 Cal. App. 4th 314, 327-34 (2014); *Friends of the Eel River v. N. Coast R.R. Auth.*, 3 Cal. 5th 677, 704-11, 740 (2017); *People v. Burlington N. Santa Fe R.R.*, 209 Cal. App. 4th 1513, 1528-31 (2012). There is no reason to believe such would not be the case in the ongoing Mendocino County Action. Again, the Railway does not argue to the contrary. Therefore, the fourth *Younger* requirement is met.

E. This Action, if Reinstated, Will Have the Practical Effect of Enjoining the Mendocino County Action.

As discussed above, the four threshold *Younger* factors are satisfied here. As to the question of “whether the federal action would have the practical effect of enjoining the state proceedings,” the answer is yes. *ReadyLink Healthcare*, 754 F.3d at 759. The Railway’s federal preemption claim is pending before the Mendocino County court and would be the primary claim before the district court, if the dismissal is not affirmed. The concern over wasting judicial resources with regard to identical claims by the Railway in two separate courts may cause the state court to stay the Mendocino County Action in whole or in part until the district court decides the federal preemption issue, thus effectively enjoining the state action. *See Citizens for Free Speech, LLC*, 953 F.3d at 657 (delay in abatement proceeding caused by federal action would have “the practical effect of enjoining it.”).⁵

⁵ In fact, in anticipation of a potential reinstatement of this action in the district court, the Railway recently filed a motion for stay of the Mendocino County Action. *See* Railway MJN, Exh. 1, at 17-18. After two years of unnecessary delays caused by the Railway, the Commission and City have filed oppositions to that stay motion. The Superior Court denied the motion on November 2, 2023.

Further, the City and the Commission will lack certainty about the federal preemption issue and whether they may proceed with their enforcement actions against the Railway while that issue is pending before the district court. Therefore, the federal action would enjoin the ultimate goals of the City’s Complaint and the Commission’s Complaint in Intervention, regardless of the outcome of the Mendocino County Action.

F. No Exception to *Younger* Applies.

Finally, no exception to the *Younger* abstention principles apply to the Mendocino County Action. The Ninth Circuit discussed potential exceptions to *Younger* abstention in *Gilbertson v. Albright*, 381 F.3d 965 (9th Cir. 2004). In *Gilbertson*, the court explained that some examples of exceptions to *Younger* include where the state proceeding is “motivated by a desire to harass or is conducted in bad faith” or where there are flagrant violations of express constitutional prohibitions by the state or local actor. *Id.* at 983 (quoting *Huffman*, 420 U.S. at 611); *see also Citizens for Free Speech, LLC*, 953 F.3d at 657–58.

Here, there is no evidence that the City or the Commission is acting in bad faith or trying to harass the Railway in seeking a determination regarding their regulatory authority and the Railway’s asserted preemption arguments, and no violations of constitutional prohibitions are implicated.

The Railway has refused to comply with local and state laws and is now subject to enforcement for those violations. That was the impetus for the City's lawsuit and the Commission's intervention in the Mendocino County Action, and thus, no exception to *Younger* applies.

CONCLUSION

The judgment of the district court should be affirmed.

Dated: November 6, 2023

Respectfully submitted,

ROB BONTA
Attorney General of California
DANIEL A. OLIVAS
Senior Assistant Attorney General
DAVID G. ALDERSON
Supervising Deputy Attorney General

/s/ Patrick Tuck

PATRICK TUCK
Deputy Attorney General
*Attorneys for Defendant and Appellee
Jack Ainsworth*

OK2023303116
37650355.docx

4:22-cv-04597-JST

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

<p>MENDOCINO RAILWAY, Plaintiff-Appellant,</p> <p>v.</p> <p>JACK AINSWORTH, CITY OF FORT BRAGG, Defendants-Appellees.</p>

STATEMENT OF RELATED CASES

To the best of our knowledge, there are no related cases pending in this Court.

Dated: November 6, 2023

Respectfully submitted,

ROB BONTA
Attorney General of California
DANIEL A. OLIVAS
Senior Assistant Attorney General
DAVID G. ALDERSON
Supervising Deputy Attorney General

/s/ Patrick Tuck

PATRICK TUCK
Deputy Attorney General
*Attorneys for Defendant and Appellee Jack
Ainsworth*

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 8. Certificate of Compliance for Briefs

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form08instructions.pdf>

9th Cir. Case Number(s)

I am the attorney or self-represented party.

This brief contains words, including words

manually counted in any visual images, and excluding the items exempted by FRAP 32(f). The brief's type size and typeface comply with FRAP 32(a)(5) and (6).

I certify that this brief (*select only one*):

- complies with the word limit of Cir. R. 32-1.
- is a **cross-appeal** brief and complies with the word limit of Cir. R. 28.1-1.
- is an **amicus** brief and complies with the word limit of FRAP 29(a)(5), Cir. R. 29-2(c)(2), or Cir. R. 29-2(c)(3).
- is for a **death penalty** case and complies with the word limit of Cir. R. 32-4.
- complies with the longer length limit permitted by Cir. R. 32-2(b) because (*select only one*):
 - it is a joint brief submitted by separately represented parties.
 - a party or parties are filing a single brief in response to multiple briefs.
 - a party or parties are filing a single brief in response to a longer joint brief.
- complies with the length limit designated by court order dated
- is accompanied by a motion to file a longer brief pursuant to Cir. R. 32-2(a).

Signature

Date

(use "s/[typed name]" to sign electronically-filed documents)

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov

STATUTORY ADDENDUM

Pursuant to Ninth Circuit Rule 28-2.7, Defendant-Appellee Jack Ainsworth submits the following addendum for those statutes not otherwise provided in the previous briefs filed in this matter.

STATUTORY ADDENDUM TABLE OF CONTENTS

Cal. Pub. Res. Code § 30001	49
Cal. Pub. Res. Code § 30001.2.....	49
Cal. Pub. Res. Code § 30001.5	50
Cal. Pub. Res. Code § 30002	51
Cal. Pub. Res. Code § 30003.....	52
Cal. Pub. Res. Code § 30004.....	52
Cal. Pub. Res. Code § 30600.....	53
Cal. Pub. Res. Code § 30106.....	55
Cal. Pub. Res. Code § 30500.....	56
Cal. Pub. Res. Code § 30519.....	57
Cal. Pub. Res. Code § 30805.....	58
Cal. Pub. Res. Code § 30820.....	58
Cal. Pub. Res. Code § 30822.....	60
United States Code, Title 16	
§ 1456(c)	60
§ 1456(d)	65

CAL. PUB. RES. CODE § 30001

The Legislature hereby finds and declares:

(a) That the California coastal zone is a distinct and valuable natural resource of vital and enduring interest to all the people and exists as a delicately balanced ecosystem.

(b) That the permanent protection of the state's natural and scenic resources is a paramount concern to present and future residents of the state and nation.

(c) That to promote the public safety, health, and welfare, and to protect public and private property, wildlife, marine fisheries, and other ocean resources, and the natural environment, it is necessary to protect the ecological balance of the coastal zone and prevent its deterioration and destruction.

(d) That existing developed uses, and future developments that are carefully planned and developed consistent with the policies of this division, are essential to the economic and social well-being of the people of this state and especially to working persons employed within the coastal zone.

CAL. PUB. RES. CODE § 30001.2

The Legislature further finds and declares that, notwithstanding the fact electrical generating facilities, refineries, and coastal-dependent developments, including ports and commercial fishing facilities, offshore petroleum and gas development, and liquefied natural gas facilities, may have significant adverse

effects on coastal resources or coastal access, it may be necessary to locate such developments in the coastal zone in order to ensure that inland as well as coastal resources are preserved and that orderly economic development proceeds within the state.

CAL. PUB. RES. CODE § 30001.5

The Legislature further finds and declares that the basic goals of the state for the coastal zone are to:

(a) Protect, maintain, and, where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources.

(b) Ensure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state.

(c) Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of private property owners.

(d) Ensure priority for coastal-dependent and coastal-related development over other development on the coast.

(e) Encourage state and local initiatives and cooperation in preparing procedures to implement coordinated planning and development for mutually beneficial uses, including educational uses, in the coastal zone.

(f) Anticipate, assess, plan for, and, to the extent feasible, avoid, minimize, and mitigate the adverse environmental and economic effects of sea level rise within the coastal zone.

CAL. PUB. RES. CODE § 30002

The Legislature further finds and declares that:

(a) The California Coastal Zone Conservation Commission, pursuant to the California Coastal Zone Conservation Act of 1972 (commencing with Section 27000), has made a detailed study of the coastal zone; that there has been extensive participation by other governmental agencies, private interests, and the general public in the study; and that, based on the study, the commission has prepared a plan for the orderly, long-range conservation, use, and management of the natural, scenic, cultural, recreational, and manmade resources of the coastal zone.

(b) Such plan contains a series of recommendations which require implementation by the Legislature and that some of those recommendations are appropriate for immediate implementation as provided for in this division while others require additional review.

CAL. PUB. RES. CODE § 30003

All public agencies and all federal agencies, to the extent possible under federal law or regulations or the United States Constitution, shall comply with the provisions of this division.

CAL. PUB. RES. CODE § 30004

The Legislature further finds and declares that:

(a) To achieve maximum responsiveness to local conditions, accountability, and public accessibility, it is necessary to rely heavily on local government and local land use planning procedures and enforcement.

(b) To ensure conformity with the provisions of this division, and to provide maximum state involvement in federal activities allowable under federal law or regulations or the United States Constitution which affect California's coastal resources, to protect regional, state, and national interests in assuring the maintenance of the long-term productivity and economic vitality of coastal resources necessary for the well-being of the people of the state, and to avoid long-term costs to the public and a diminished quality of life resulting from the misuse of coastal resources, to coordinate and integrate the activities of the many agencies whose activities impact the coastal zone, and to supplement their activities in matters not properly within the jurisdiction of any existing agency, it is necessary

to provide for continued state coastal planning and management through a state coastal commission.

CAL. PUB. RES. CODE § 30600

(a) Except as provided in subdivision (e), and in addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency, any person, as defined in Section 21066, wishing to perform or undertake any development in the coastal zone, other than a facility subject to Section 25500, shall obtain a coastal development permit.

(b) (1) Prior to certification of its local coastal program, a local government may, with respect to any development within its area of jurisdiction in the coastal zone and consistent with the provisions of Sections 30604, 30620, and 30620.5, establish procedures for the filing, processing, review, modification, approval, or denial of a coastal development permit. Those procedures may be incorporated and made a part of the procedures relating to any other appropriate land use development permit issued by the local government.

(2) A coastal development permit from a local government shall not be required by this subdivision for any development on tidelands, submerged lands, or on public trust lands, whether filled or unfilled, or for any development by a public agency for which a local government permit is not otherwise required.

(c) If prior to certification of its local coastal program, a local government does not exercise the option provided in subdivision (b), or a development is not subject to the requirements of subdivision (b), a coastal development permit shall be obtained from the commission or from a local government as provided in subdivision (d).

(d) After certification of its local coastal program or pursuant to the provisions of Section 30600.5, a coastal development permit shall be obtained from the local government as provided for in Section 30519 or Section 30600.5.

(e) This section does not apply to any of the following projects, except that notification by the agency or public utility performing any of the following projects shall be made to the commission within 14 days from the date of the commencement of the project:

(1) Immediate emergency work necessary to protect life or property or immediate emergency repairs to public service facilities necessary to maintain service as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code.

(2) Emergency projects undertaken, carried out, or approved by a public agency to maintain, repair, or restore an existing highway, as defined in Section 360 of the Vehicle Code, except for a highway designated as an official state

scenic highway pursuant to Section 262 of the Streets and Highways Code, within the existing right-of-way of the highway, damaged as a result of fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, within one year of the damage. This paragraph does not exempt from this section any project undertaken, carried out, or approved by a public agency to expand or widen a highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide.

CAL. PUB. RES. CODE § 30106

“Development” means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp

harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511).

As used in this section, “structure” includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.

CAL. PUB. RES. CODE § 30500

(a) Each local government lying, in whole or in part, within the coastal zone shall prepare a local coastal program for that portion of the coastal zone within its jurisdiction. However, any local government may request, in writing, the commission to prepare a local coastal program, or a portion thereof, for the local government. Each local coastal program prepared pursuant to this chapter shall contain a specific public access component to assure that maximum public access to the coast and public recreation areas is provided.

(b) Amendments to a local general plan for the purpose of developing a certified local coastal program shall not constitute an amendment of a general plan for purposes of Section 65358 of the Government Code.

(c) The precise content of each local coastal program shall be determined by the local government, consistent with Section 30501, in full consultation with the commission and with full public participation.

CAL. PUB. RES. CODE § 30519

(a) Except for appeals to the commission, as provided in Section 30603, after a local coastal program, or any portion thereof, has been certified and all implementing actions within the area affected have become effective, the development review authority provided for in Chapter 7 (commencing with Section 30600) shall no longer be exercised by the commission over any new development proposed within the area to which the certified local coastal program, or any portion thereof, applies and shall at that time be delegated to the local government that is implementing the local coastal program or any portion thereof.

(b) Subdivision (a) shall not apply to any development proposed or undertaken on any tidelands, submerged lands, or on public trust lands, whether filled or unfilled, lying within the coastal zone, nor shall it apply to any development proposed or undertaken within ports covered by Chapter 8 (commencing with Section 30700) or within any state university or college within the coastal zone; however, this section shall apply to any development proposed or undertaken by a port or harbor district or authority on lands or waters granted by the Legislature to a local government whose certified local coastal program includes the specific development plans for such district or authority.

(c) The commission may, from time to time, recommend to the appropriate local government local coastal program amendments to accommodate uses of

greater than local importance, which uses are not permitted by the applicable certified local coastal program. These uses may be listed generally or the commission may recommend specific uses of greater than local importance for consideration by the appropriate local government.

CAL. PUB. RES. CODE § 30805

Any person may maintain an action for the recovery of civil penalties provided for in Section 30820 or 30821.6.

CAL. PUB. RES. CODE § 30820

(a) Any person who violates any provision of this division may be civilly liable in accordance with this subdivision as follows:

(1) Civil liability may be imposed by the superior court in accordance with this article on any person who performs or undertakes development that is in violation of this division or that is inconsistent with any coastal development permit previously issued by the commission, a local government that is implementing a certified local coastal program, or a port governing body that is implementing a certified port master plan, in an amount that shall not exceed thirty thousand dollars (\$30,000) and shall not be less than five hundred dollars (\$500).

(2) Civil liability may be imposed for any violation of this division other than that specified in paragraph (1) in an amount that shall not exceed thirty thousand dollars (\$30,000).

(b) Any person who performs or undertakes development that is in violation of this division or that is inconsistent with any coastal development permit previously issued by the commission, a local government that is implementing a certified local coastal program, or a port governing body that is implementing a certified port master plan, when the person intentionally and knowingly performs or undertakes the development in violation of this division or inconsistent with any previously issued coastal development permit, may, in addition to any other penalties, be civilly liable in accordance with this subdivision. Civil liability may be imposed by the superior court in accordance with this article for a violation as specified in this subdivision in an amount which shall not be less than one thousand dollars (\$1,000), nor more than fifteen thousand dollars (\$15,000), per day for each day in which the violation persists.

(c) In determining the amount of civil liability, the following factors shall be considered:

- (1) The nature, circumstance, extent, and gravity of the violation.
- (2) Whether the violation is susceptible to restoration or other remedial measures.
- (3) The sensitivity of the resource affected by the violation.
- (4) The cost to the state of bringing the action.

(5) With respect to the violator, any voluntary restoration or remedial measures undertaken, any prior history of violations, the degree of culpability, economic profits, if any, resulting from, or expected to result as a consequence of, the violation, and such other matters as justice may require.

CAL. PUB. RES. CODE § 30822

Where a person has intentionally and knowingly violated any provision of this division or any order issued pursuant to this division, the commission may maintain an action, in addition to Section 30803 or 30805, for exemplary damages and may recover an award, the size of which is left to the discretion of the court. In exercising its discretion, the court shall consider the amount of liability necessary to deter further violations.

16 U.S.C. § 1456(C)

(c) Consistency of Federal activities with State management programs;
Presidential exemption; certification

(1)(A) Each Federal agency activity within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State management programs. A Federal agency activity shall be subject to this paragraph unless it is subject to paragraph (2) or (3).

(B) After any final judgment, decree, or order of any Federal court that is appealable under section 1291 or 1292 of Title 28, or under any other applicable provision of Federal law, that a specific Federal agency activity is not in compliance with subparagraph (A), and certification by the Secretary that mediation under subsection (h) is not likely to result in such compliance, the President may, upon written request from the Secretary, exempt from compliance those elements of the Federal agency activity that are found by the Federal court to be inconsistent with an approved State program, if the President determines that the activity is in the paramount interest of the United States. No such exemption shall be granted on the basis of a lack of appropriations unless the President has specifically requested such appropriations as part of the budgetary process, and the Congress has failed to make available the requested appropriations.

(C) Each Federal agency carrying out an activity subject to paragraph (1) shall provide a consistency determination to the relevant State agency designated under section 1455(d)(6) of this title at the earliest practicable time, but in no case later than 90 days before final approval of the Federal activity unless both the Federal agency and the State agency agree to a different schedule.

(2) Any Federal agency which shall undertake any development project in the coastal zone of a state shall insure that the project is, to the maximum extent

practicable, consistent with the enforceable policies of approved state management programs.

(3)(A) After final approval by the Secretary of a state's management program, any applicant for a required Federal license or permit to conduct an activity, in or outside of the coastal zone, affecting any land or water use or natural resource of the coastal zone of that state shall provide in the application to the licensing or permitting agency a certification that the proposed activity complies with the enforceable policies of the state's approved program and that such activity will be conducted in a manner consistent with the program. At the same time, the applicant shall furnish to the state or its designated agency a copy of the certification, with all necessary information and data. Each coastal state shall establish procedures for public notice in the case of all such certifications and, to the extent it deems appropriate, procedures for public hearings in connection therewith. At the earliest practicable time, the state or its designated agency shall notify the Federal agency concerned that the state concurs with or objects to the applicant's certification. If the state or its designated agency fails to furnish the required notification within six months after receipt of its copy of the applicant's certification, the state's concurrence with the certification shall be conclusively presumed. No license or permit shall be granted by the Federal agency until the state or its designated agency has concurred with the applicant's certification or until, by the state's failure

to act, the concurrence is conclusively presumed, unless the Secretary, on his own initiative or upon appeal by the applicant, finds, after providing a reasonable opportunity for detailed comments from the Federal agency involved and from the state, that the activity is consistent with the objectives of this chapter or is otherwise necessary in the interest of national security.

(B) After the management program of any coastal state has been approved by the Secretary under section 1455 of this title, any person who submits to the Secretary of the Interior any plan for the exploration or development of, or production from, any area which has been leased under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) and regulations under such Act shall, with respect to any exploration, development, or production described in such plan and affecting any land or water use or natural resource of the coastal zone of such state, attach to such plan a certification that each activity which is described in detail in such plan complies with the enforceable policies of such state's approved management program and will be carried out in a manner consistent with such program. No Federal official or agency shall grant such person any license or permit for any activity described in detail in such plan until such state or its designated agency receives a copy of such certification and plan, together with any other necessary data and information, and until--

(i) such state or its designated agency, in accordance with the procedures required to be established by such state pursuant to subparagraph (A), concurs with such person's certification and notifies the Secretary and the Secretary of the Interior of such concurrence;

(ii) concurrence by such state with such certification is conclusively presumed as provided for in subparagraph (A), except if such state fails to concur with or object to such certification within three months after receipt of its copy of such certification and supporting information, such state shall provide the Secretary, the appropriate federal agency, and such person with a written statement describing the status of review and the basis for further delay in issuing a final decision, and if such statement is not so provided, concurrence by such state with such certification shall be conclusively presumed; or

(iii) the Secretary finds, pursuant to subparagraph (A), that each activity which is described in detail in such plan is consistent with the objectives of this chapter or is otherwise necessary in the interest of national security.

If a state concurs or is conclusively presumed to concur, or if the Secretary makes such a finding, the provisions of subparagraph (A) are not applicable with respect to such person, such state, and any Federal license or permit which is required to conduct any activity affecting land uses or water uses in the coastal zone of such state which is described in detail in the plan to which such

concurrence or finding applies. If such state objects to such certification and if the Secretary fails to make a finding under clause (iii) with respect to such certification, or if such person fails substantially to comply with such plan as submitted, such person shall submit an amendment to such plan, or a new plan, to the Secretary of the Interior. With respect to any amendment or new plan submitted to the Secretary of the Interior pursuant to the preceding sentence, the applicable time period for purposes of concurrence by conclusive presumption under subparagraph (A) is 3 months.

16 U.S.C. § 1456(D)

(d) Application of local governments for Federal assistance; relationship of activities with approved management programs

State and local governments submitting applications for Federal assistance under other Federal programs, in or outside of the coastal zone, affecting any land or water use of natural resource of the coastal zone shall indicate the views of the appropriate state or local agency as to the relationship of such activities to the approved management program for the coastal zone. Such applications shall be submitted and coordinated in accordance with the provisions of section 6506 of Title 31. Federal agencies shall not approve proposed projects that are inconsistent with the enforceable policies of a coastal state's management program, except upon

a finding by the Secretary that such project is consistent with the purposes of this chapter or necessary in the interest of national security.

CERTIFICATE OF SERVICE

Case Name: **Mendocino Railway v. Jack** No. **23-15857**
Ainsworth, et al.

I hereby certify that on November 6, 2023, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

APPELLEE JACK AINSWORTH'S ANSWERING BRIEF

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on November 6, 2023, at Sacramento, California.

Bryn Barton
Declarant

/s/ Bryn Barton
Signature

OK2023303116
37650370.docx