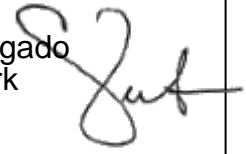


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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF MENDOCINO**

16 MENDOCINO RAILWAY,

17 Plaintiff,

18 v.

19 JOHN MEYER; REDWOOD EMPIRE
20 TITLE COMPANY OF MENDOCINO
21 COUNTY; SHEPPARD INVESTMENTS;
22 MARYELLEN SHEPPARD;
23 MENDOCINO COUNTY TREASURER-
24 TAX COLLECTOR; All other persons
25 unknown claiming an interest in the
26 property; and DOES 1 through 100,
27 inclusive,

28 Defendants.

Case No. SCUK-CVED-2020-74939

[APN 038-180-53]

(Assigned to Hon. Jeanine B. Nadel)

**PLAINTIFF MENDOCINO
RAILWAY'S REQUEST FOR
STATEMENT OF DECISION OR, IN
THE ALTERNATIVE, PLAINTIFF'S
OBJECTIONS TO PROPOSED
STATEMENT OF DECISION**

Cal. Code Civ. Proc. §632 and §634

Cal. Rules of Court, Rule 3.1590

1 It is unclear whether the “Decision After Trial” issued by the Court on April 19,
2 2023 constitutes the Court’s tentative decision or the Court’s proposed Statement of
3 Decision. The Decision After Trial does not explain the factual and legal bases for each
4 of the principal controverted issues at trial.

5 If the Decision After Trial constitutes the Court’s tentative decision, then
6 pursuant to Cal. Code Civ. Proc. §632 and Cal. Rules of Court, Rule 3.1590(d), Plaintiff
7 Mendocino Railway hereby requests that the Court issue a Statement of Decision
8 explaining the factual and legal basis for its decision as to each of the principal
9 controverted issues at trial as set forth below in Part I. Alternatively, if the Decision
10 After Trial constitutes a proposed Statement of Decision, Mendocino Railway objects on
11 the grounds set forth in more detail in Part II. Cal. Code Civ. Proc. §634; Cal. Rules of
12 Court, Rule 3.1590(g).

13 **I. MENDOCINO RAILWAY’S REQUEST FOR STATEMENT OF DECISION**

14 If the Decision After Trial constitutes the Court’s tentative decision, Mendocino
15 Railway hereby requests the Court issue a Statement of Decision. Cal. Code Civ. Proc.
16 §632 and Cal. Rules of Court, Rule 3.1590(d). The principal controverted issues at trial
17 to be addressed in the Court’s Statement of Decision include:

- 18 1. Whether Mendocino Railway is a common carrier public utility railroad
19 pursuant to Cal. Pub. Util. Code §§211, 216, 229 and 230, et seq. (such that
20 Plaintiff is entitled to exercise eminent domain to acquire private property
21 for its railroad per Cal. Pub. Util. Code §611), consistent with the United
22 States Surface Transportation Board’s (“STB’s”) determination that
23 Mendocino Railway is a common carrier railroad pursuant to its April 2, 2004
24 Notice of Acquisition Exemption (STB Finance Docket No. 34465), and, more
25 specifically:

- 26 a. Whether, since acquiring assets of the California Western
27 Railroad (“CWR”) in 2004, Mendocino Railway has been a
28 California railroad corporation because it owns, controls,

operates, and/or manages a railroad (i.e., the CWR);

- b. Whether Mendocino Railway has dedicated its railroad and property to providing, or holding itself out to provide, common carrier freight and non-excursion passenger transportation services to the public or any portion thereof for compensation (e.g., by publishing freight rail and passenger rail tariffs, providing and offering common carrier rail transportation services for compensation independently and in conjunction with Sierra Northern Railway and other related entities);
- c. Whether Mendocino Railway (including its predecessors who owned and operated the same line) historically provided freight transportation for compensation to or for the public or any portion thereof for compensation, and whether Mendocino Railway continues to provide such service to the present day and intends to do so in the future
- d. Whether Mendocino Railway (including its predecessors) historically provided non-excursion passenger transportation for compensation to or for the public or any portion thereof, and whether Mendocino Railway continues to provide such service to the present day and intends to do so in the future.
- e. Whether the STB has licensed Mendocino Railway to be a common carrier railroad subject to the exclusive jurisdiction of the STB under 49 U.S.C. §10501, et. seq. and whose common carrier obligation cannot be extinguished without STB authority;
- f. Whether the California Public Utilities Commission recognizes Mendocino Railway as a California public utility, and has regulated and inspected the railroad as such up through the present.

1 2. Whether Plaintiff Mendocino Railway established by a preponderance of the
2 evidence that:

3 a. Mendocino Railway’s rail project (“Project”) is adequately defined and
4 described in the Complaint per Cal. Code Civ. Proc. §1250.310. (As
5 described in the Complaint and reflected in Plaintiff Mendocino
6 Railway’s preliminary conceptual site plan, the Project for which
7 Mendocino Railway seeks to acquire Mr. Meyer’s property consists of
8 construction and maintenance of rail facilities related to Mendocino
9 Railway’s ongoing and future freight and passenger rail operations and
10 all uses necessary and convenient thereto, including a passenger depot,
11 maintenance and repair shops (for maintenance of way and
12 maintenance of equipment), storage tracks, laydown yard and transload
13 facilities, and related improvements);

14 b. The public interest and necessity require Mendocino Railway’s Project,
15 such that the Project identified and described in the Complaint is
16 necessary for the construction and maintenance of its railroad for its
17 ongoing and future rail operations per Cal. Pub. Util. Code §611 and Cal.
18 Code Civ. Proc. §1240.010, §1240.030(a) and Cal. Code Civ. Proc.
19 §1240.220) because:

20 i. Mendocino Railway lacks adequate maintenance, repair, and
21 freight facilities at the Willits end of the line sufficient to serve
22 its ongoing and future common carrier rail operations;

23 ii. These physical constraints impair and limit Mendocino
24 Railway’s ability to fully and efficiently operate, maintain, and
25 repair its railroad, locomotives, equipment, and rail cars at the
26 Willits end of its line, both now and in the future; and,

27 iii. Various local businesses have requested, and expressed interest
28 in obtaining, freight rail service from Mendocino Railway

1 between Willits and Fort Bragg, including among others North
2 Coast Brewing Company, Geo Aggregates, Redwood Coast Fuels
3 (and other natural gas companies), and Lyme Timber (and other
4 timber companies).

5 c. Mendocino Railway's Project is planned and located in the manner
6 consistent with the greatest public good and least private injury (i.e.,
7 there are no other alternative potential sites for the Project that would
8 achieve equal or greater public good; or, if the Court finds that such an
9 alternative site exists, such alternative site would not achieve lesser
10 private injury, per Cal. Code Civ. Proc. §1240.030(b)); and

11 d. Mr. Meyer's property is necessary for Mendocino Railway's Project (i.e.,
12 acquisition of Mr. Meyer's property is suitable and desirable for the
13 construction and use of Mendocino Railway's Project per Cal. Code Civ.
14 Proc. §1240.030(c)).

15 **II. MENDOCINO RAILWAYS' OBJECTIONS TO PROPOSED STATEMENT**
16 **OF DECISION**

17 Alternatively, if the Court's April 19, 2023 Decision After Trial constitutes the
18 Court's *proposed* Statement of Decision, such Decision After Trial omitted and/or is
19 ambiguous as to each of the principal controverted issues identified and described above
20 and also appears to include misstatements of the law and facts. Accordingly, Plaintiff
21 Mendocino Railway hereby objects to said proposed Statement of Decision and requests
22 that (i) the Court explain the factual and legal basis for the Court's decision as to each of
23 the principal controverted issues at trial identified and described in the foregoing Section
24 I, and (ii) resolve the following apparent misstatements of law and facts. Cal. Code Civ.
25 Proc. §634; Cal. Rules of Court, Rule 3.1590(g).

26 Mendocino Railway objects to the Decision After Trial on the grounds it contains
27 the following misstatements of the law and facts:
28

- 1 a. The Decision fails to recognize that Mendocino Railway is (i) a common
2 carrier railroad licensed by the STB when it approved Mendocino Railway's
3 acquisition of certain of the assets of the former California Western Railroad
4 ("CWR") per the STB's April 2, 2004 Notice of Acquisition Exemption (STB
5 Finance Docket No. 34465; Trial Exhibit 21),
- 6 b. The Decision fails to recognize that Mendocino Railway is subject to the
7 exclusive jurisdiction of the STB, under 49 U.S.C. §10501, *et. seq.*, which
8 protects the railroad's right to develop transload facilities in furtherance of
9 interstate commerce;
- 10 c. The Decision fails to recognize that, when the STB licensed Mendocino
11 Railway as a common carrier railroad, it acknowledged that Sierra Northern
12 Railroad, as Mendocino Railway's agent, would be performing common
13 carrier railroad transportation services on Mendocino Railway's behalf
14 (Trial Exhibits 20 & 21).
- 15 d. The Decision fails to recognize that the STB's exclusive jurisdiction in
16 conferring "common carrier railroad" status on Mendocino Railway when
17 Mendocino Railway acquired the assets of the CWR automatically rendered
18 Mendocino Railway a public utility railroad pursuant to Cal. Pub. Util.
19 Code §§211, 216, 229 and 230, *et seq.* (such that Plaintiff is entitled to
20 exercise eminent domain to acquire private property for its railroad per Cal.
21 Pub. Util. Code §611); and,
- 22 e. The Decision fails to recognize that Mendocino Railway's "common carrier
23 railroad" status is subject to the exclusive jurisdiction of the STB and
24 therefore preempts any state or local law, including California eminent
25 domain law, to the extent that law is construed or applied to prevent
26 Mendocino Railway from undertaking its common carrier duties and rights,
27 including the right to condemn private property for railroad use.
- 28

1 Mendocino Railway hereby requests a hearing on its objections pursuant to Cal.
2 Rules of Court, Rule 3.1590(k).

3
4 Dated: April 27, 2023

CALIFORNIA EMINENT DOMAIN LAW GROUP,
a Professional Corporation

5
6
7 By  _____
8 Glenn L. Block
9 Attorneys for Plaintiff MENDOCINO RAILWAY

PROOF OF SERVICE

Mendocino Railway v. John Meyer, et al.
Mendocino Superior Court Case No.: SCUK-CVED-20-74939

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 3429 Ocean View Boulevard, Suite L, Glendale, CA 91208. On April 27, 2023, I served the within document(s):

PLAINTIFF MENDOCINO RAILWAYS'S REQUEST FOR STATEMENT OF DECISION; ALTERNATIVELY, PLAINTIFF'S OBJECTION TO PROPOSED STATEMENT OF DECISION

ELECTRONIC MAIL: By transmitting via e-mail the document listed above to the e-mail address set forth below.

BY MAIL: By placing a true copy of the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Glendale, California addressed as set forth in the attached service list

OVERNIGHT DELIVERY: By overnight delivery, I placed such document(s) listed above in a sealed envelope, for deposit in the designated box or other facility regularly maintained by United Parcel Service for overnight delivery and caused such envelope to be delivered to the office of the addressee via overnight delivery pursuant to C.C.P. §1013(c), with delivery fees fully prepaid or provided for.

PERSONAL SERVICE: By personally delivering the document(s) listed above to the person(s) listed below at the address indicated.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 27, 2023, in Glendale, California.


Debi Carbon

SERVICE LIST

Mendocino Railway v. John Meyer, et al.
Mendocino Superior Court Case No.: SCUK-CVED-20-74939

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