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Superior Court of California  
County of Mendocino

By:   
John Lozano  
Deputy Clerk

6 Attorneys for Defendant John Meyer

7  
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF MENDOCINO**

10 MENDOCINO RAILWAY,  
11 Plaintiff,

12 vs.

13 JOHN MEYER; REDWOOD EMPIRE  
TITLE COMPANY OF MENDOCINO  
14 COUNTY; SHEPPARD  
INVESTMENTS; MARYELLEN  
15 SHEPPARD; MENDOCINO COUNTY  
TREASURER-TAX COLLECTOR; all  
16 other persons unknown claiming an  
interest in the property; and DOES 1  
17 through 100, inclusive

18 Defendants.

) Unlimited

) Case No. SCUJ-CVED 20-74939

) DEFENDANT JOHN MEYER'S REPLY  
TO PLAINTIFF MENDOCINO  
RAILWAY'S REQUEST FOR A  
STATEMENT FOR DECISION

19  
20 **A. Only The Principal Controverted Issues Must Be Addressed In A**  
21 **Statement Of Decision.**

22 The individual findings that Mendocino Railway request to be addressed by the  
23 court are largely outside the scope of the findings that are required under a statement of  
24 decision. The issues raised by Mendocino Railway in its request for a statement of  
25 decision appear to be more like interrogatories served on the court, rather than a request  
26 that the court make findings on the principal controverted issues in the case.

27 A statement of decision must explain the factual and legal bases for the court's  
28

1 decision on the principal controverted issues listed in the request. (Code of Civil  
2 Procedure § 632.) A “trial court rendering a statement of decision under Code of Civil  
3 Procedure § 632 is required to state only ultimate rather than evidentiary facts because  
4 finding of ultimate facts necessarily include findings on all intermediate facts necessary to  
5 sustain them.” (*In re Cheryl E.* (1984) 161 Cal. App. 3d 587, 599.) “A failure to find on  
6 an immaterial issue is not error nor is a judge required to make a finding outside the  
7 pleadings.” (*Id.*)

8 The court is not required to discuss each question listed in a party’s request or to  
9 make an express finding on every factual matter controverted at trial. The court’s  
10 statement of decision is adequate if it “sufficiently disposes of all the basic issues in the  
11 case.” (*Baur v. Baur* (1996) 46 Cal. App. 4<sup>th</sup> 1106, 1118.) The trial court has the  
12 discretion to decide which issues are “the principal controverted issues” and need not  
13 discuss other issues unnecessary to the decision. (*Vukovich v. Radulovich* (1991) 235  
14 Cal. App. 3d 281, 294.)

15 **B. The Principal Controverted Issues.**

16 The principal controverted issues in this action that should be addressed in the  
17 statement of decision include the following:

18 1. Is Mendocino Railway authorized by statute to exercise the power of eminent  
19 domain to acquire property for the alleged use as required by Code Civil Procedure §  
20 1240.020?

21 a. A railroad corporation may condemn any property necessary for the  
22 construction and maintenance of its railroad under Public Utilities Code §611.

23 i. Is Mendocino Railway a “railroad corporation” under Public  
24 Utilities Code § 230 that operates a “railroad” “for public use in the transportation of  
25 persons or property as defined in Public Utilities Code § 229?

26 ii. Is Mendocino Railway a “common carrier” under Public Utilities  
27 Code § 211?

1                   iii. Is the John Meyer's Property necessary for the construction and  
2 maintenance of its railroad?

3                   2. Is Mendocino Railway's use of the power of eminent domain to acquire the  
4 Meyer Property solely for a public use as required by Code Civil Procedure § 1240.010?

5                   3. Did Mendocino Railway establish as a condition precedent to the exercise of  
6 power of eminent domain that the proposed project met the following requirement of  
7 Code Civil Procedure § 1240.030:

8                   a. The public interest and necessity require the project.

9                   b. The project is planned or located in the manner that will be most  
10 compatible with the greatest public good and the least private injury.

11                   c. The property sought to be acquired is necessary for the project.

12                   4. Did Mendocino Railway provide an adequate description of the project so that  
13 it could make the findings required by Code Civil Procedure § 1240.030?

14                   5. Is Mendocino Railway authorized by statute to exercise the power of eminent  
15 domain for the purpose stated in the complaint?

16                   6. Is the stated purpose a public use?

17                   7. Did Mendocino Railway intend to devote the property to the stated purpose?

18                   8. Does public interest and necessity require the proposed project?

19                   9. Is the proposed project planned or located in the manner that will be the most  
20 compatible with the greatest public good and the least private injury?

21                   10. Is taking all 20 acres of the Meyer Property necessary for the proposed  
22 project?

23                   11. Is the case dismissed, thereby requiring the court award litigation expenses to  
24 Meyer pursuant to Code Civil Procedure § 1268.610?

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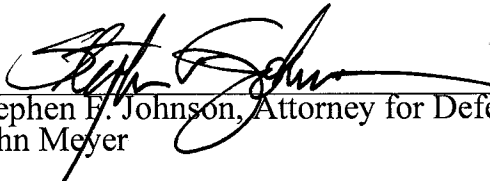
1 **C. Mendocino's Objections To The Proposed Statement of Decision Do Not**  
2 **Relate To The Principal Controverted Issues And Such Issues Do Not**  
3 **Need To Be Addressed In The Statement of Decision.**

4 Mendocino Railway has raised objections to the proposed Statement of Decision  
5 that all relate to the Federal Surface Transportation Board (STB), its jurisdiction, and its  
6 alleged licensing of Mendocino Railway as a common carrier railroad.

7 The court should disregard Mendocino Railway's objections because the issues  
8 that it raised are not principal controverted issue and are irrelevant. Mendocino Railway  
9 filed this action seeking to take property by eminent domain pursuant to the California  
10 Constitution and California statutory law. Neither the application of the eminent domain  
11 laws of California in this case, nor the court's decision, relate in any way to the STB, the  
12 STB's jurisdiction, or the STB's licensing of Mendocino Railway.

13 DATED: May 1, 2023.

MANNON, KING, JOHNSON & WIPF, LLP

14   
15 Stephen F. Johnson, Attorney for Defendant  
16 John Meyer

**PROOF OF SERVICE**

Mendocino County Superior Court Case No.: SCU-K-CVED-20-74939

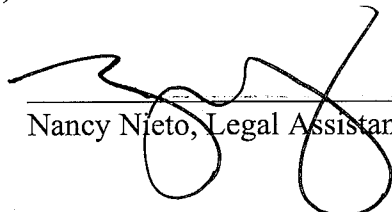
I declare that I am over the age of 18 years, employed in the County of Mendocino, and not a party to the within action; my business address is P.O. Box 419, 200 N. School Street, Room 304, Ukiah, CA 95482.

On May 1, 2023, I served the **DEFENDANT JOHN MEYER'S REPLY TO PLAINTIFF MENDOCINO RAILWAY'S REQUEST FOR A STATEMENT OF DECISION** on the interested parties in this action by placing  the original  true copies thereof, as follows:

**SEE ATTACHED SERVICE LIST**

<input type="checkbox"/>	By E-SERVICE. Pursuant to California Rules of Court Rule 2.251(c), adopted effective July 1, 2013, I am e-Serving the above-listed document(s) to the electronic service address(es) on the attached Service List and e-Filing the document(s) using one of the court's approved electronic service providers. A true and correct copy of the e-Service transmittal will be attached to the above-listed document(s) and produced if requested by any interested party.
<input checked="" type="checkbox"/>	By MAIL. I am readily familiar with this law firm's practice for collection and processing of documents for mailing with the U. S. Postal Service. The above-listed document(s) will be deposited with the U. S. Postal Service on the same day shown on this affidavit, to the addressee(s) on the attached Service List in the ordinary course of business. I am the person who sealed and placed for collection and mailing the above-listed document(s) on this date at Ukiah, California, following ordinary business practices.
<input checked="" type="checkbox"/>	By E-MAIL. I e-mailed above-listed document(s) to the e-mail address(es) of the addressee(s) on the attached Service List. A true and correct copy of the e-mail transmittal will be attached to the above-listed document(s) and produced if requested by any interested party.
<input type="checkbox"/>	By OVERNIGHT DELIVERY. The above-listed document(s) will be deposited with an Overnight Delivery Service on the same day shown on this affidavit, in the ordinary course of business. I am the person who sealed and placed for collection and overnight delivery the above-listed document(s) on this date at Ukiah, California, to the addressee(s) on the attached Service List following ordinary business practices. A true and correct copy of the overnight delivery service transmittal will be attached to the above-listed document(s) and produced if requested by any interested party.
<input type="checkbox"/>	By PERSONAL SERVICE. I caused to have hand delivered, the above-listed document(s) to the parties indicated on the service list.
<input checked="" type="checkbox"/>	(STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 1, 2023, at Ukiah, California.



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Nancy Nieto, Legal Assistant

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**SERVICE LIST**

Mendocino County Superior Court Case No.: SCUK-CVED-20-74939

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