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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MENDOCINO

MENDOCINO RAILWAY,

Plaintiff,

vs.

No. 21CV00595

GEORGIA-PACIFIC LLC; NORTH
AMERICAN TIMBER CORP.; HAWTHORNE
TIMBER COMPANY, LLC; MENDOCINO
COUNTY TREASURER-TAX COLLECTOR;
All other persons unknown
claiming an interest in the
property; and DOES 1 through 100,
inclusive,

Defendants.

_____ /

COURT TRIAL - DAY 1

Held at Mendocino County Courthouse, Department E,
Ukiah, California, on Tuesday, August 23, 2022,
before the Honorable Jeanine B. Nadel, Judge
Reported by Trisha R. Hathaway-Link, CSR No. 10866

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Pinoli, Robert

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1 (Other proceedings had but not transcribed.)

2 (Discussion held off the record.)

3 THE COURT: Mr. Block, do you want to call your
4 first witness?

5 MR. BLOCK: Yes, Your Honor. I'd like to call
6 Robert Jason Pinoli.

7 THE COURT: Please raise your right hand and
8 face the clerk.

9 - - -

10 JASON PINOLI

11 Having been first duly sworn, testified as follows:

12 - - -

13 THE WITNESS: I do.

14 THE CLERK: Thank you. You may be seated.

15 THE WITNESS: Thank you.

16 THE COURT: There should be some fresh water
17 from my cooler for you.

18 THE WITNESS: Thank you so much.

19 MR. BLOCK: Your Honor, is it okay if I grab
20 the stand?

21 THE COURT: Oh, absolutely.

22 THE CLERK: Sir, please state your full name
23 for the record.

24 THE WITNESS: Robert Jason Pinoli.

25 THE CLERK: Thank you.

1 THE WITNESS: P-I-N-O-L-I.

2 THE CLERK: Thank you.

3 - - -

4 DIRECT EXAMINATION

5 Q (BY MR. BLOCK) Good morning, Mr. Pinoli. How
6 are you?

7 A Good morning. I'm well, thanks. And yourself?

8 Q I'm doing good, thanks.

9 So are you presently employed?

10 A I am.

11 Q Where are you employed?

12 A Mendocino Railway.

13 Q In what capacity?

14 A I serve as the president and CEO of the
15 company.

16 Q How long have you been the president and CEO of
17 Mendocino Railway?

18 A For a little over two years, coming up on three
19 years.

20 Q Were you employed two years ago or more than
21 two years ago?

22 A I was.

23 Q Where were you employed?

24 A At Mendocino Railway.

25 Q And in what capacity?

1 A As the vice president.

2 Q And how long were you vice president?

3 A I served in that position for approximately 10
4 to 15 years.

5 Q Would that take us back to about 2004?

6 A Yes.

7 Q And were you employed prior to 2004?

8 A I was.

9 Q In what capacity?

10 A I worked for the Sierra Railroad Company from
11 2002 to 2004; I served as the director of
12 marketing/general manager for one of the operations of
13 the Sierra.

14 Q Which operation was that?

15 A The Sierra Dinner Train.

16 Q Where is that located?

17 A In Oakdale, California.

18 Q And were you employed prior to that, 2004?

19 A Yes.

20 Q I'm sorry, prior to 2002?

21 A Yes.

22 Q I saw the confusion on your face. Sorry I
23 misspoke.

24 Where were you employed prior to 2002?

25 A With the California Western Railroad.

1 Q What is the California Western Railroad?

2 A California Western Railroad is a short line
3 railroad that runs between Fort Bragg and Willits,
4 California. It's 40 miles in length and has been in
5 existence since it was founded in 1885.

6 Q Okay. And is the California Western Railroad
7 what's presently known as Mendocino Railway?

8 A That is one of the operations of Mendocino
9 Railway.

10 Q Can you explain what you mean?

11 A Sure. So Mendocino Railway owns and operates
12 many different railroads throughout the State of
13 California. One of the operations is the California
14 Western Railroad and/or the Skunk Train.

15 Q And what are the operations of Mendocino
16 Railway with respect to the California Western Railroad?

17 A I'm sorry?

18 Q Let me take a step back. I'd like to show you
19 a document that's been marked as Exhibit 1.

20 You have a binder in front of you.

21 A Uh-huh, yes.

22 (Plaintiff's Exhibit 1 was identified.)

23 Q (BY MR. BLOCK) So that's generally a map of
24 portions of Mendocino County; is that correct?

25 A That is correct.

1 Q And it says -- there's a label that says
2 Mendocino Railway there.

3 A That is correct.

4 Q What is -- what does that label identify?

5 A It's referring to the route of the railroad
6 that runs between Fort Bragg and Willits.

7 Q And that's what's known as the California
8 Western Railroad?

9 A That is correct.

10 Q Okay. How -- it's a little bit confusing. We
11 talk about the California -- when you talk about the
12 California Western Railway -- Railroad and Mendocino
13 Railway, are they synonymous?

14 A Mendocino Railway owns the California Western
15 Railroad which is also known -- to add another layer of
16 complexity -- as the Skunk Train.

17 Q Okay. But it is -- it is the rail line --

18 A That's correct.

19 Q -- that runs between Willits and Fort Bragg?

20 A That is correct.

21 Q And it's approximately 40 miles long?

22 A That is correct.

23 Q And when -- when was it created?

24 A In 1885.

25 Q What was the original purpose for creation of

1 the railroad?

2 A The railroad was created as a -- a logical
3 vehicle to extract timber from the forest trees, bring
4 them back to the sawmill for milling in Fort Bragg.

5 Shortly after the railroad was created it
6 became very evident that the only way to get people to
7 and from the remote canyon was to transport them, and so
8 while its initial purpose was created to move logs, it
9 quickly became inducted into the passenger business
10 shortly thereafter.

11 Q And so that was passenger service between Fort
12 Bragg and Willits and points in between?

13 A That is correct.

14 Q Okay. And -- and that's passenger rail
15 service; correct?

16 A That is correct.

17 Q And it also moved freight?

18 A That is correct.

19 Q And the -- the freight was what, what
20 commodities?

21 A To my knowledge, based on history, logs,
22 lumber, petroleum, aggregates, and then boxcars with a
23 variety of products.

24 Q And the -- that movement of freight was done
25 for the public?

1 A It was.

2 Q It was available to any -- any member of the
3 public could utilize California Western Railroad's
4 freight and passenger services?

5 A Absolutely.

6 MR. JOHNSON: Your Honor, I'd object as leading
7 questions.

8 THE COURT: Okay. Don't lead the witness.

9 This is a bench trial so, I mean, I can weed
10 through that so --

11 MR. BLOCK: I appreciate that. I'm just trying
12 to move things along, but if I do, please I'll restate
13 any questions.

14 Q (BY MR. BLOCK) Back to your employment history
15 and your involvement with California Western Railroad.
16 You said that you were employed with CWR, California
17 Western Railroad, prior to 2002?

18 A That is correct.

19 Q When did you start working with California
20 Western Railroad?

21 A In 1993.

22 Q And what was your job in 1993?

23 A It was a summertime high school job, I served
24 my first summer washing the sides of railcars and
25 emptying septic holding tanks and evolved from there to

1 ticket agent, passenger service attendant, brakeman,
2 fireman, conductor, and engineer.

3 Q Did you work at California Western Railroad
4 continuously from 1993 to 2002?

5 A Yes.

6 Q And in 2002 what was your -- when you left
7 California Western Railroad and moved to Sierra Railroad
8 Company, what was your position at California Western
9 Railroad?

10 A I was one of the directors. I served as a
11 member of the executive committee and was the director
12 of marketing.

13 Q Did you have an ownership interest in
14 California Western Railroad?

15 A I did.

16 Q Do you currently have an ownership interest in
17 Mendocino Railway?

18 A I have an ownership interest in Mendocino
19 Railway's parent company, Sierra Railroad Company.

20 THE COURT: What was the name of the company?

21 THE WITNESS: Sierra, S-I-E-R-R-A. Sierra
22 Railroad Company.

23 THE COURT: Sierra.

24 Q (BY MR. BLOCK) Did you live in Mendocino
25 County between 1993 and 2002?

1 A Yes.

2 Q And between 2000 -- well, did you live in
3 Mendocino County when you worked with Sierra Railroad
4 Company?

5 A On again and off again. I had a home in the
6 Oakdale area as well.

7 Q Okay. And since you went back to Mendocino
8 Railway in 2000 -- in or about 2004, have you lived in
9 Mendocino County?

10 A On again and off again, yes. I moved back to
11 Mendocino County full-time, or permanently, if you will,
12 in 2008.

13 Q And where do you live?

14 A I live in Anderson Valley, specifically
15 Boonville.

16 Q Are you a member of any industry trade groups?

17 A Yes.

18 Q What trade groups?

19 A Locally, the local chambers of commerce, the
20 Fort Bragg/Mendocino Coast Chamber of Commerce, the
21 Willits Chamber of Commence; on a state level, the Visit
22 California; on a national -- the California Short Line
23 Railroad Association; and then on a national level, the
24 American Association of Short Line Railroads.

25 Q And with respect to the American Association of

1 Short Line Railroads, how are you involved with that
2 group?

3 A Participate as a general member, so attend
4 their conferences, engage with them on legislative
5 matters on behalf of the entire rail industry across the
6 country, freight rail industry. I generally attend a --
7 a -- Railroad Days on the Hill in Washington DC. That's
8 an event that I've attended since about 2015.

9 Q And what about the California Short Line
10 Railroad Association, what is that organization?

11 A That's an organization that represents short
12 line railroads in the State of California and works with
13 the railroads on a variety of -- of matters, whether it
14 be emissions reduction, freight issues, some passenger
15 issues.

16 Q What -- how are you involved with that
17 organization, California Short Line Railroad
18 Association?

19 A As a general member and participating in their
20 meetings and various breakout workshops that they have
21 during the course of their annual meetings or -- or
22 biannual meeting.

23 Q Are you an officer or board member of either
24 the American Association of Short Line Railroads or the
25 California Short Line Railroad Association?

1 A I am not.

2 Q Have you ever been?

3 A I have not been.

4 Q How does the -- either the national or the
5 California Short Line Rail Association, how does your
6 involvement with those trade groups assist in your role
7 as president and CEO of Mendocino Railway?

8 A The -- the purpose of the -- the primary
9 purpose of those organizations is really to increase the
10 productivity of the movement of goods and services
11 across the country. And as Mendocino Railway becomes,
12 you know, involved with transporting freight, continuing
13 to transport freight, on its line here in Mendocino
14 County, it's something that we're very much so engaged
15 with. We participate in ways to -- to effectively move
16 goods and services about the country and to offer the --
17 the efficient movement of goods and services,
18 particularly here in Mendocino County for potential
19 customers.

20 Q So let's look back at Exhibit 1 and -- so
21 the -- the marking -- the dashed line would -- with the
22 label "Mendocino Railway," those -- that is the rail
23 tracks; correct? That's the alignment of the rail
24 tracks?

25 A Yes.

1 Q And is that called a railroad or a railway;
2 what -- how should we best refer to -- to that?

3 A A railroad is an appropriate and fine term.

4 Q Okay. So the -- the railroad -- and we're
5 talking about the linear extension -- is about 40 miles,
6 and what physically does that railroad consist of along
7 that 40-mile length?

8 A Sure. So it -- the alignment consists of, of
9 course, all of the infrastructure to actually move
10 trains, locomotives, railcars; it is -- it is 40 miles
11 between Fort Bragg and Willits; it includes ties, rail,
12 and what we refer to as OTM, other track material.

13 OTM are the -- the -- is the hardware, if you
14 will, that affixes the rail to the ties and keeps
15 everything in the appropriate place.

16 Q Okay. And so if we look at what's been marked
17 as Exhibit 3 I believe -- yes, Exhibit 3, which we have
18 a depiction of, a larger depiction here on the wall, in
19 the first photo here on the left what -- we see the
20 tracks, the ties?

21 (Plaintiff's Exhibit 3 was identified.)

22 THE WITNESS: Ballast.

23 Q (BY MR. BLOCK) What is a ballast?

24 A Ballast is rock.

25 Q Okay. And then there's something that

1 secures -- you can see little pieces --

2 A Yeah.

3 Q What are those called?

4 A The -- the ties are the pieces of wood that run
5 perpendicular to the rails; they are underneath
6 supporting the rail. The rail sits on top of that, and
7 between the rail and the ties is something known as a
8 tie plate, and that tie plate is what keeps the rail
9 true. It's held by what's called a spike, and a spike
10 is nothing more than an odd-shaped nail that holds the
11 tie plate in place and it has a very odd-shaped head to
12 the top of it and that rests up against the rail so the
13 rail -- the -- the base or the foot of the rail, which
14 sits in the tie plate, is held by that spike, and then
15 the ballast is placed on top and then is compacted
16 and -- and dressed, if you will, so that the sides are
17 brought in and that you can lift, in elevation, your
18 track to get it level.

19 Q Why is it important to have the tracks secure,
20 level -- and level?

21 A Well, without that lord knows where the train
22 would end up, but it is -- it's safety and it's to
23 keep -- it's to keep the gauge, the distance between the
24 two rails, true to standard gauge and to keep the
25 equipment that's running over those rails on the rails.

1 Q Okay. How wide is the railroad between -- the
2 width of the right-of-way between Willits and Fort
3 Bragg?

4 A In many instances it's 50 feet on either side
5 of centerline. There are some instances where it may
6 change, and the railroad owns wider swaths through those
7 areas specifically.

8 There's also instances along the corridor where
9 historic sidings had been and the railroad's alignment
10 shifts from 50-50 in many cases to something like 70-30
11 or 80-20.

12 Q What is -- what does that mean siding?

13 A A siding is a track that is adjacent to the
14 railroad that has an entrance, so ingress and an egress,
15 from the mainline.

16 Q What other facilities or equipment might be
17 secured to the railroad between Willits and Fort Bragg?

18 A What other facility --

19 Q When you want to move a car from the railroad
20 onto the siding, you need some infrastructure?

21 A Absolutely. So you need switches, and switches
22 allow for the changing of the track -- and I'm trying to
23 use the simplest terms versus the technical terms, but
24 it allows for the, you know -- you know, for the
25 movement to be realigned or moved from one spot to the

1 next.

2 It's a mechanical device that -- that is thrown
3 or moved by the ground crew, generally the conductor,
4 and that would allow for the tracks to actually move to
5 switch points, to move so the traffic approaching can be
6 diverted.

7 Q So the trains don't run into each other?

8 A That as well.

9 Q And so we have switches, the railroad
10 intersects with roads throughout the 40-mile length;
11 correct?

12 A Numerous times.

13 Q And -- and those are called crossings?

14 A That is correct.

15 Q And is there facilities associated with those
16 crossings?

17 A Absolutely, there are. The crossings that are
18 gated and illuminated for protection.

19 Q What does that mean, gated?

20 A So gated is when you pull up to a railroad
21 crossing and there are the red and white arms that are
22 generally in the upright position when a train is not
23 occupying the crossing.

24 When the train is approaching or occupying the
25 crossing, the gates drop in anticipation of the train

1 occupying that crossing to serve as a warning device to
2 the passing public.

3 Illumination are the flashing red lights, so
4 the flashing red lights that are on either side of the
5 crossing, overhead above the crossing and often times on
6 the gates of the crossing that have been lowered.

7 In order to have those facilities or those
8 safety devices deployed, it requires that of a signal
9 house and that is a -- generally speaking, a stainless
10 steel box where all of the circuitry and computers are
11 kept.

12 Q Okay. Does the railroad run at-grade -- well,
13 what does "at-grade" mean?

14 A Does the railroad --

15 Q I --

16 A Railroad runs at-grade with respect to the
17 crossings, meaning that they are -- they are both level
18 and that the roadway crosses over the railroad tracks or
19 the railroad tracks cross over the roadway.

20 There are no instances of where there is --
21 would be a grade separation where it's something like a
22 bridge that was put down because of navigable waterway.

23 Q Are there any bridges along the railroad?

24 A Thirty-two.

25 Q Total of 32 bridges along the 40-mile railroad?

1 A That is correct.

2 Q Are there any tunnels?

3 A There are two.

4 Q I won't ask you to point out where all the
5 bridges are -- we'd be here awhile -- but could you
6 point out -- maybe mark on the version of Exhibit 2
7 that's in front of you where the tunnels are
8 approximately.

9 (Plaintiff's Exhibit 2 was identified.)

10 MR. BLOCK: If you can.

11 THE WITNESS: (Witness complies.)

12 So I marked it as -- I circled it, the
13 approximate, and marked T-1 and T-2, Tunnel 1 and Tunnel
14 2.

15 MR. BLOCK: Okay. I'm going to show this to
16 Mr. Johnson and then --

17 THE COURT: Okay.

18 MR. BLOCK: -- show it to the Court.

19 THE WITNESS: I can mark more than one copy if
20 you'd like.

21 MR. BLOCK: I think we're okay.

22 THE COURT: Let me see it real quick. I think
23 I know where they are -- yeah.

24 MR. BLOCK: Thank you.

25 Q (BY MR. BLOCK) So you marked Tunnel No. 1 near

1 the city of Fort Bragg and Tunnel No. 2 is near the city
2 of Willits?

3 A That is correct.

4 Q Okay.

5 THE COURT: One second.

6 (Discussion held off the record.)

7 (Ms. Shepherd joins via Zoom.)

8 THE COURT: Keep your microphones on -- turn
9 your microphone on so she can hear you. You can move
10 that around.

11 Q (BY MR. BLOCK) So you've marked Tunnel No. 1,
12 Tunnel No. 2, 32 bridges, you've talked about some of
13 the infrastructure along the railroad; are there any
14 significant pieces of infrastructure, facilities, or
15 equipment associated with the railroad that we haven't
16 talked about that are -- you don't need to identify
17 every single piece, but any -- anything significant or
18 substantial that we haven't discussed?

19 A There's the equipment maintenance facility
20 which is located in Fort Bragg. Historically, it's been
21 known as the Roundhouse Engine or Engine House. The --
22 the depot buildings that flank either end are important
23 because they do provide infrastructure and management
24 administrative support to the ongoing rail operations.

25 Q Okay. And then of course the facilities that

1 are depicted in Exhibit 3?

2 A That is correct.

3 Q Okay. Let's -- let's start with the city of
4 Fort Bragg. The -- the west end of the railroad, what
5 facilities are located there? You mentioned the
6 maintenance facility called the Roundhouse and a depot;
7 can you describe those facilities and any other
8 facilities that are located in Fort Bragg?

9 A In -- in addition to the Roundhouse, there are
10 a variety of outbuildings that support the
11 maintenance-of-way crews that work remotely in Fort
12 Bragg. There's the depot building, there are a variety
13 of tracks, there is a wye track in Fort Bragg as well as
14 the wye track in Willits and -- and yard tracks for
15 storage of railcars and equipment.

16 Q Can you -- I talked about a little bit in my
17 opening, but I think it's better that maybe someone
18 who's more suited to describe what a wye is and why it's
19 necessary --

20 A Sure.

21 Q -- why the wye is necessary. Go ahead.

22 A A WYE track is a series of switches and a track
23 configuration that allows for a locomotive or railcars
24 to be turned around.

25 In the instance of our railroad, having a wye

1 track and the ability to turn the locomotives so that
2 they run short nose versus long nose is important
3 because of impaired visibility, the degree of curvature
4 that's along the mainline; it's much easier for the crew
5 to operate the locomotive short nose from a visibility
6 standpoint.

7 From a locomotive functioning standpoint, there
8 is no difference if you run short nose or long nose.
9 Forward and reverse in a locomotive is not like that of
10 an automobile so it knows no geared boundaries, if you
11 will.

12 The -- the wye is a series of three switches,
13 and if you were to hold your hand up in a "V" pattern,
14 if you will, and then put a half circle in between the
15 opening, you have what makes a wye. Switch one on the
16 left, switch two on the right, and switch three down at
17 the bottom. That allows for a piece of equipment to
18 effectively move through there and turn itself around.

19 Q You said it's -- it's important for visibility
20 of the -- the train operators -- it's not necessary for
21 functioning, but it assists in the visibility; why is
22 that important for the operation of locomotives along
23 Mendocino Railroad that they operate short nose?

24 A It's -- it's a preference primarily, but it's
25 based on safety. You -- with the amount -- there are

1 381 curves that make up the 40 miles of railroad. The
2 tightest on the mainline is 26 1/2 degrees, that could
3 be considered a turn by many, not a curve, and as a
4 result of that, it's not uncommon to have rock slides,
5 trees down, or other debris that could be blocking the
6 track. And from a visibility standpoint it's a lot
7 easier when you have the shortest amount of locomotive
8 in front of you so that you can see and so that your
9 clearances are not impaired.

10 Q You say it's -- it's a preference, but has --
11 historically has the Mendocino Railway or the California
12 Western Railroad been operated consistently short nose?

13 A Yes. And in fact the fleet of GP-9 locomotives
14 that the railroad has that were built in 1955 had --
15 historically had high noses on them and the railroad cut
16 those noses down to be short nosed to allow for greater
17 visibility out the front cab.

18 Q Okay. Thank you for -- for explaining that.

19 You've identified two wyes on the railroad, one
20 in Willits and one in Fort Bragg. Are there any other
21 wyes along the railroad?

22 A Northspur.

23 Q What is Northspur?

24 A Northspur is the midpoint of the railroad.
25 It's the about midpoint of the railroad; it's located at

1 milepost 21.3.

2 Q And it's a 40-mile railroad, so it's about a
3 mile off center?

4 A That's correct.

5 Q Can you mark please on Exhibit 2 where
6 Northspur is located?

7 A (Witness complies.)

8 I'll mark about where Northspur's at and I've
9 circled it and then put the initials "NSP."

10 MR. BLOCK: Mr. Johnson.

11 (Brief pause; reviewing document.)

12 THE COURT: Thank you.

13 MR. BLOCK: You're welcome.

14 THE COURT: I have to give my staff their
15 morning break.

16 MR. BLOCK: Of course.

17 THE COURT: So we'll take a break until 11:15.

18 MR. BLOCK: Sounds good.

19 THE COURT: All right.

20 (Recess taken.)

21 THE COURT: Let's go back on the record.

22 MR. BLOCK: Thank you, Your Honor.

23 Just a quick question, how does the Court
24 prefer to deal with exhibits; should we offer them into
25 evidence as we're moving along, would you rather we wait

1 till the end?

2 THE COURT: Just as long as we don't get lost.
3 Usually I like them being offered as you move along,
4 just so that we can -- she can start keeping track.

5 MR. BLOCK: I think that's --

6 THE COURT: Because she keeps a list for you,
7 then she'll print it out each day, and you'll know
8 what's being offered.

9 MR. BLOCK: So we just do it at the end of the
10 day?

11 THE COURT: We can do that.

12 MR. BLOCK: I mean, I'm happy --

13 THE COURT: We can do that as long as you
14 remember which ones you're going on offer.

15 MR. BLOCK: Why don't we do it as we're going
16 along.

17 THE COURT: Okay.

18 MR. BLOCK: So I'd like to offer Exhibit 1 and
19 Exhibit 3 into evidence.

20 THE COURT: Okay. Any objection?

21 MR. JOHNSON: No objection.

22 THE COURT: Exhibits 1 and 3 will be received.

23 (Plaintiff's Exhibits 1 & 3 received in evidence.)

24 Q (BY MR. BLOCK) All right. We were -- we were
25 talking about different facilities, we were talking

1 about the wye at Northspur and how the wye operates.

2 Let's go back to the -- the facilities located
3 in Fort Bragg and equipment maintenance facility,
4 Roundhouse. Can you just briefly summarize physically
5 what that is, approximate size, how it's utilized in
6 operations?

7 A The Roundhouse or the Engine House is
8 approximately 60 feet by 80 feet, maybe a little larger;
9 it has three tracks that run into the building from the
10 south side, two tracks from the north side. It has
11 three pits in the building and the pits allow for
12 mechanical inspections to take place underneath a piece
13 of rail equipment.

14 The -- it is the facility where freight
15 railcars, passenger railcars and locomotives would be
16 maintained and/or repaired. It has all of the necessary
17 tools, welders, torches, overhead crane, to support in
18 lifting heavy machinery.

19 Q Do you have a similar facility -- does
20 Mendocino Railway have a similar facility anywhere else
21 along the railroad?

22 A No.

23 Q You don't have one of those facilities in
24 Willits?

25 A The facility that we have in Willits is -- as

1 depicted in the three photos here, is very, very
2 rudimentary. It is just -- it is a facility that is
3 certainly nothing like the facility in Fort Bragg. It
4 has been -- it's disjointed for one, it's not cohesive,
5 and anytime we need to do heavy lifting, we contract
6 with an outside entity to crane in materials.

7 Q Is that what's depicted in the middle of the
8 three photos?

9 A Yeah. In the middle photos -- here in the
10 middle photo that is portrait in orientation is a crane
11 from an outside contractor lifting off a set of wheels
12 for a railcar.

13 A set of wheels in this configuration is known
14 as a truck assembly and it contains two axles in this
15 case.

16 Q Okay. And how does the lack of an equipment
17 maintenance facility like the Roundhouse in Willits
18 affect Mendocino Railway's operations?

19 A Well, in the instance of when we would -- if
20 you were changing out a truck or wheel -- set of wheels
21 on a railcar, it adds significant cost and time.

22 In the facility in Fort Bragg, one of the
23 features is a slide table which allows for a railcar to
24 come in, be jacked up, the truck separated and slid out
25 on the slide table, a new set of truck -- a new truck --

1 or new set of wheels would be put onto that slide table
2 and then rolled into place. In essence, you could make
3 a repair to a railcar in very short order.

4 Here, it is often times the better part of a
5 day, but in most cases multiple days to do a similar --
6 a similar operation.

7 Q Why -- why would Mendocino Railway need to
8 change the trucks or the wheel assembly?

9 A Often times wheel wear and it's a lot easier to
10 get a truck out than it is to jack up, take the wheel
11 out, and a lot less fussing, if you will. Could be --
12 there could be something wrong with the truck assembly,
13 there could be something wrong with the brake rigging
14 that's attached to the truck assembly, there could be a
15 whole variety of factors.

16 It is not an uncommon task to -- to change
17 wheels. Wheels are no different than the tires on our
18 vehicles in that they do wear out. Sometimes they get a
19 crack or a fracture and, you know, you need to make that
20 repair.

21 Q And the same process that you would go through
22 to change a truck assembly, is that similar to other
23 repair operations that are -- or maintenance operations
24 that are required for rail equipment?

25 A It -- it -- yes. But there's -- there's a

1 laundry list of items that must be done in order to have
2 or to maintain or operate a railroad.

3 Servicing your locomotives, that is something
4 that -- you know, locomotive servicing happens on a
5 daily basis. It's required under federal law every 92
6 days.

7 Railcars undergo a similar set of inspection
8 parameters. There's inspections that are done by the
9 operating crews on a daily basis. Repairs are made
10 based off of that inspection, if any, and that applies
11 to both freight and passenger equipment.

12 Q And so how is it different -- say just the
13 inspections, the regular inspections on a railcar, how
14 is it different -- how is it done differently by
15 Mendocino Railway in Fort Bragg versus Willits?

16 A In Fort Bragg the one facility where everything
17 can be moved into is far more streamlined. We can bring
18 our maintenance-of-way equipment, so the equipment that
19 we use to maintain the infrastructure along the
20 railroad's corridor, that can all come into one
21 facility.

22 In Willits, in the first picture, the picture
23 on the far left, that is some of the maintenance-of-way
24 equipment; there's a tie crane, a brush cutter, some of
25 the rail mounted -- rail wheel mounted vans that our

1 work crews use to move between -- or over the line.
2 That is all repaired in the field which is out in the
3 hot sun or pouring down rain or snow. It's not under
4 cover, it's adjacent to what is in the third picture,
5 the -- the container building that is used to house all
6 of our tools.

7 So it's -- it's temporary, if you will, in
8 nature.

9 Q And -- and you said these activities and this
10 equipment is required for both freight and passenger
11 equipment?

12 A Yes.

13 Q You mentioned a depot building in Fort Bragg,
14 what does that consist of?

15 A The depot building in Fort Bragg consists of a
16 passenger ticketing area, retail area, restrooms for the
17 public; it also houses the administrative functions --
18 some of the administrative functions of the railroad,
19 back office functions; the general manager and assistant
20 general manager have an office, and other clerical
21 staff.

22 Q So you described the Roundhouse as being
23 utilized for both freight and passenger operations; is
24 that the case also for the depot building?

25 A Yeah. It's -- yes, the -- the backhouse

1 administrative functions do serve the entire railroad.

2 There is no delineation, if you will, between
3 what the railroad does from a freight standpoint or a
4 passenger standpoint. The requirements -- the safety
5 requirements, the law for maintaining the railroad
6 are -- are one and the same.

7 It also houses our telecommunications equipment
8 for the radio system that the railroad relies on.

9 Q The entire railroad?

10 A The entire -- yes.

11 Q All operations?

12 A That's correct.

13 Q You mentioned the wye and the tracks that are
14 located in Fort Bragg; is that similarly utilized for
15 both freight and passenger operations?

16 A Yes.

17 Q And yard tracks you mentioned -- well,
18 summarize how the yard tracks are utilized in Fort
19 Bragg?

20 A The yard tracks are used to store passenger
21 equipment, freight equipment, maintenance-of-way
22 equipment, equipment -- locomotives. It also allows for
23 the ability to swap cars in and out or set cars out that
24 may need to be repaired. It's -- it -- it really is the
25 equivalent of a parking garage with a variety of stalls,

1 if you will, that allows for cars to be placed in -- in
2 various areas.

3 Q And that's for cars, equipment, locomotives
4 that are utilized by Mendocino Railway in its freight
5 and passenger operations?

6 A That is correct.

7 Q Okay. Has -- has the use or the operations in
8 Fort Bragg with respect to the -- the freight and
9 passenger operations as you've described it, has that
10 changed significantly in, say, the 18 years since 2004?

11 A Primarily because of the closure at Tunnel No.
12 1 it has changed in that a through freight car or
13 locomotive or passenger car cannot go through the entire
14 line at present. So in -- in that respect there has
15 been a significant change.

16 Q Okay. And I'm sorry if I wasn't clear in my
17 question, I'm asking about the -- the use and the
18 operations related to just the Fort Bragg facilities,
19 the depot, the Roundhouse, the tracks, the wye, the yard
20 area yard tracks, has -- has that use and operation
21 changed over the 18 years between 20 -- or 2004 and
22 today?

23 A For the most part it has not.

24 Q Okay. And is it also similar to the historic
25 use since you've been involved with California Western

1 Railroad or Mendocino Railway since '93 or so?

2 A It is similar.

3 Q It is similar?

4 A Yes.

5 Q Okay. Thank you. Can you describe -- or
6 summarize how the maintenance-of-way operations take
7 place along the railroad?

8 A Sure. So the -- the railroad historically has
9 had a road master and that road master is the supervisor
10 of track maintenance and structure maintenance.

11 There are two supporting crews, a Fort
12 Bragg-based crew and a Willits-based crew. They often
13 times work together, but historically they have been on
14 either respect -- both of the respective sides of the
15 line so that they can respond to any issues or incidents
16 that may take place in a timelier fashion.

17 The crews work a standard week; they work --
18 actually, they work 4/10s from a -- for an efficiency
19 standpoint and they're tasked with maintaining the
20 railroad from -- including all of the yard tracks as
21 well as the mainline.

22 It goes beyond maintaining the components that
23 we had talked about earlier, ties, OTM, rail, crossings.
24 It -- it includes vegetation management and keeping
25 vegetation cut back so that when you look at a piece of

1 railroad track that you're seeing mostly railroad track
2 and not, you know, a majority of vegetation; right?

3 Some -- they -- they also maintain all of the
4 components -- supporting components, so switches,
5 crossing gates, signal components, and making sure that
6 in instances where you may not have a signalized
7 crossing, that the proper stop-gap measures are there to
8 warn the public as well.

9 Q And those maintenance-of-way operations
10 performed by either or both Fort Bragg and Willits based
11 crews, are those related to freight or passenger
12 operations or both?

13 A Both.

14 Q And has that historically been the case?

15 A Yes.

16 Q And it's presently the case?

17 A That is correct.

18 Q Has it changed significantly or at all since
19 2004?

20 A No. Their standard of maintenance has not
21 changed.

22 Q Let's talk about tunnels, two tunnels, one --
23 one at the west end of the line in Fort Bragg, one at
24 the east end of the line near Willits. Are both of
25 those tunnels presently operational?

1 A Tunnel No. 1 is not operational or passable, if
2 you will, and Tunnel No. 2 is.

3 Q Okay. When did Tunnel 1 become nonoperational?

4 A In its most recent time of not being
5 operational, it was in 2013 when a cave-in occurred.
6 That was fixed by an outside contractor and service
7 resumed within a few short months as the modernization
8 work was continuing.

9 So work was continuing on the tunnel, in the
10 tunnel, under traffic, meaning that trains were able to
11 pass through the tunnel during the time of
12 modernization.

13 Q Okay. And have there been other periods of
14 time other than in 2013 when Tunnel No. 1 was not
15 operational?

16 A Yes.

17 Q When?

18 A 1976 when -- was one and then 2015.

19 Q Let's start with 1976; what happened?

20 A The -- the --

21 Q How do you know about the 1976 situation?

22 A Photos and from having conversations with
23 colleagues at the time who worked for the railroad back
24 in that era who were tasked with the rebuild effort.

25 Q And are there historical records which describe

1 what happened in 1976?

2 A There are photos, yes.

3 Q And you've reviewed all those?

4 A I have.

5 Q Okay. What happened in 1976?

6 A The railroad brought a boxcar that was in
7 excess height. It was interchanged to the railroad in
8 Willits; it was not a standard boxcar, it was an
9 excess-height boxcar and should not have made it onto
10 the -- the California Western manifest.

11 It was set out and picked up by the California
12 Western crew and the high car detector did not alert the
13 crew to that car. The car's height was taller than that
14 of the ceiling of the tunnel and the car was taken
15 through Tunnel No. 2, which doesn't have a height
16 restriction, because if it'll fit through Tunnel No. 1,
17 it'll fit through Tunnel No. 2.

18 So it came into Tunnel No. 1 and immediately
19 the train came to an abrupt stop about midway through,
20 and there was a cave-in as a result of taking a car in
21 excess height through there.

22 Q How long did it take to fix the cave-in and
23 make the tunnel operational again?

24 A It was my understanding that it was a few short
25 months, pretty similar to the time it took to fix the

1 cave-in in 2013.

2 Q And then what happened in 2015?

3 A In 2015 -- there have been two other instances
4 when the -- the tunnel or traffic through that tunnel
5 has been impaired. 2005, the east portal, a landslide
6 came down and covered a portion of the east portal and
7 an extension to the tunnel was added.

8 In 1996/1997, New Year's Eve/New Year's Day, we
9 had a significant amount of rainfall and the west portal
10 had a similar situation where a landslide came down and
11 blocked the west entrance. That was cleared and an
12 extension to the west portal -- west entrance of the
13 tunnel was completed.

14 In 2015 the modernization work had continued
15 from 2013, all the meanwhile the railroad was
16 functioning. The 2015 issue wasn't a cave-in in the
17 tunnel per se. It was a contractor. The contractor who
18 was working on the modernization efforts, for reasons
19 unknown to us, removed more sets than they should have,
20 and a set in a tunnel is the equivalent of a door frame.

21 A door frame -- a standard door frame like the
22 doors coming in and out of this courtroom have three
23 pieces, two upright and one that runs perpendicular
24 across the top. In Tunnel No. 1 its sets are five
25 pieces, two upright, two at a 45-degree angle, and one

1 across the top known as the crown.

2 That design allows for sets to be removed only
3 after new sets are put in place to relieve pressure.
4 The process is called sistering-in a set, and the
5 contractor removed more sets than they should have
6 without properly sistering-in, and when they did that it
7 triggered a landslide on the west face of the tunnel.

8 So the issue with Tunnel No. 1 in 2015 quickly
9 became that it wasn't that it suffered another cave-in,
10 is that it triggered a landslide that moved incompetent
11 material on top of the tunnel, filtered down towards the
12 entrance of the tunnel, and ultimately towards Pudding
13 Creek.

14 So our efforts from 2015 forward have been to
15 rebuild and re-engineer that hillside, not in a sloped
16 fashion as to have this happen again, but in a terraced
17 fashion, and in a terraced fashion so that when it comes
18 down and makes a step down, that the back of the step
19 actually leans back into the hillside that it just came
20 down from so that when water hits the face, it hits that
21 back, drains into the back of the hillside, and then
22 down the right and left side of the hill.

23 Q And this is at the east entrance?

24 A The west entrance.

25 Q Okay. West entrance.

1 And after the landslide in 2015 when -- once
2 that happened, how long until Mendocino Railway started
3 the restoration -- the -- the hillside restoration
4 activities?

5 A It was within a few days. We -- we reached out
6 to geo-technical consultants and it was within a few
7 days.

8 Q Has Mendocino Railway completed that hillside
9 restoration terracing that you described?

10 A It has.

11 Q When did it complete it?

12 A The construction work took about a year from
13 design to implementation and it wasn't a year following
14 2015. It was, you know, the design work -- I'm not
15 including into that construction phase -- then there was
16 also the need to continue to monitor the hillside for a
17 period of about two, maybe three, winters.

18 When the hillside was put back up in an
19 engineered fashion, we reached 93-plus percent
20 compaction standards over the entire hillside. And so
21 most anything will make it in its first winter with
22 those compaction standards coming right out of the
23 construction window.

24 We finished just at the onset of the winter
25 rains and so what we needed to do was wait and really

1 see if there were going to be heavy rains in subsequent
2 years and if we were going to see any movement.

3 We had -- we have two instruments installed on
4 the top of the hillside, an inclinometer and a
5 piezometer, and those instruments measure groundwater
6 and movement. And so measuring the depth of the
7 groundwater is extremely important to see if there's any
8 change in groundwater levels and then also to see if
9 there's been any movement in the hillside.

10 And so after a period of about two and a half
11 to three years, when no movement had been detect -- no
12 substantial movement had been detected and no drastic
13 change in groundwater levels had been noted, then we
14 began -- and I should say, simultaneously began working
15 on the process of reopening the tunnel.

16 Q What year was that, beginning the process of
17 reopening?

18 A 2018 officially.

19 Q And what does that process of reopening -- what
20 has that entailed since 2018?

21 A Well, it -- as a railroad, one of the
22 opportunities that exists are to get either grants or
23 infrastructure loans to maintain and better the rail
24 infrastructure. These are grants that are administered
25 by the federal government through the Department of

1 Transportation.

2 In the instance of 2018, '19, and '20 the
3 railroad made application to the DOT for a BUILD grant,
4 B-U-I-L-D, BUILD grant. It is the -- it's what became
5 or what came out of the former TIGER grant. It's
6 multimodal in that it is highly competitive, it can be
7 used for other items besides rails -- so it could be
8 used for maritime, it could be used for highway, it
9 could be used for ports of entry via land. It's not
10 specific to railroads.

11 And then in 2020, simultaneously while working
12 with the Department of Transportation on the grant
13 front, Mendocino initiated -- actually, in March of --
14 early March -- conversations and the application process
15 for a RRIF loan, R-R-I-F, RRIF loan, which is specific
16 to the railroads and allows for railroads to make
17 application to make infrastructure improvements for the
18 betterment of the national rail system.

19 Q Okay. Let me take a step back for a minute.

20 The tunnel restoration work in 2013, how much
21 money did Mendocino Railway invest in -- in that
22 activity?

23 A In 2013, right around a million dollars.

24 Q Okay.

25 A It was about three-quarters of a million

1 dollars to open -- reopen the tunnel and have service
2 restored, and the balance of that year probably another
3 quarter of a million dollars in our continued
4 modernization efforts.

5 Q And how much has Mendocino Railway invested in
6 the hillside restoration and other restorative
7 activities with respect to Tunnel No. 1 since 2015?

8 A In excess of \$2 million.

9 Q And how much is it going to cost to reopen,
10 modernize Tunnel No. 1 sufficient to restore operations
11 through the tunnel?

12 A The efforts to refurbish will be about five and
13 a half million.

14 Q And if Mendocino Railway had -- well, are the
15 grant applications still open or are those closed?

16 A The grant applications have closed.

17 Q Okay. Had Mendocino Railway obtained a grant
18 in 2018, '19, or '20, how much would it have invested of
19 this five-and-a-half-million-dollar cost?

20 MR. JOHNSON: Your Honor, I'm going to object
21 under 352 if this is really relevant to what we're
22 dealing with today, this case.

23 THE COURT: I'm going to allow it.

24 THE WITNESS: The railroad was committed in
25 each of the three grant applications to 51 percent or

1 more of the total ask.

2 Q (BY MR. BLOCK) So it depends on how much of --
3 they received of the grant? If they received the full
4 49 percent, they would have -- the railroad would have
5 committed -- I'm sorry, 51 percent if the grant had
6 provided it and 33 percent, then the railroad would have
7 had to commit the other 67 percent; is that right?

8 A The -- the way the BUILD grants are structured,
9 and similar grants offered by the DOT, is not -- it's
10 not an -- a negotiation, meaning we'll give you 33
11 percent if you can come up with 66 and, you know,
12 three-quarters percent.

13 It is how -- because of its competitive nature,
14 the more funds that a -- an operation can contribute to
15 it, the better likelihood of success. And you can
16 cobble variety of grants or other sources to create your
17 51 percent, but 51 percent is what the railroad was
18 committed, and they don't fund projects in part.
19 Projects are funded in whole.

20 Q Okay. And with respect to the RRIF loan,
21 Mendocino Railway would be committing the full five and
22 a half million dollars, it's just part of it would be
23 repayment of the loan; is that correct?

24 A The entire part would be -- Mendocino would be
25 on the hook for.

1 Q Is the RRIF loan application pending?

2 A It is.

3 Q When do you expect to -- to hear on that?

4 A We hope to have funding secured by midpart of
5 December.

6 Q And we'll come back to it, but did Mendocino
7 Railway make the -- the grant applications in 2018,
8 2019, and 2020?

9 A In the instance of a BUILD grant application,
10 which Mendocino Railway makes the application to a
11 certain point, but then it has to be carried forward by
12 a public agency, a municipality -- more appropriately
13 said, a municipality; a county, a city government, a
14 state government, a local or regional transportation
15 authority. They make the application on behalf of, and
16 in the instance of 2018, '19, and '20, the City of Fort
17 Bragg was the applicant on behalf of Mendocino Railway.

18 Q Why was Fort Bragg the applicant on those grant
19 applications as opposed to Mendocino County or Mendocino
20 County Transit Authority or City of Willits or any other
21 municipality?

22 A Staff. It really comes down to the staffing
23 and the availability of staff to actually lead the
24 charge and get a -- a grant filed through the system.

25 The City of Willits simply does not have or did

1 not have at the time the appropriate staff to submit;
2 the County of Mendocino, to my knowledge, hasn't had an
3 economic development coordinator since Tony Shaw left in
4 2004, and they -- lacks in that department; and MTA is
5 not the appropriate entity. Mendocino counsel -- or
6 excuse me, MCOG, Mendocino Counsel of Governments, who
7 is our regional transportation authority, could be, but
8 they too at the time did not have the appropriate
9 staffing levels.

10 The City of Fort Bragg willingly and
11 volunteered to -- to do the grant applications.

12 Q How has the -- the inoperability of Tunnel No.
13 1 affected Mendocino Railway's passenger and freight
14 operations?

15 A It has affected it tremendously from the
16 standpoint that through freight has been interrupted,
17 through passenger has been interrupted. It hasn't
18 stopped the railroad from getting people to their remote
19 residences or summer camps, hasn't stopped them from
20 doing that. It hasn't stopped the railroad from
21 transporting goods or services to property owners along
22 the route.

23 Q What do you mean by interrupted?

24 A It's interrupted in that a -- a passenger car,
25 a freight car, at present cannot travel freely between

1 the towns of Fort Bragg and Willits.

2 MR. BLOCK: Okay. Your Honor, we're right
3 about noon, this is a good time to --

4 THE COURT: We can stop.

5 Okay. We'll resume at 1:30, and I'm not having
6 anything between then so you can leave everything on
7 your desk.

8 MR. BLOCK: Thank you.

9 (Lunch recess taken.)

10 THE COURT: Let's go ahead and put that on the
11 record then.

12 So we're back on the record and apparently
13 there's been some issue with respect to the members of
14 the public wanting to view this trial via Zoom. There
15 is a way for the public to log in, which I am surprised
16 we're still doing, but nonetheless there is a way for
17 them to log in; however, parties have concerns that the
18 proceedings would be disseminated in some way that --
19 that doesn't comply with the Rules of Court and the Code
20 of Civil Procedure with respect to members of the press
21 recording proceedings.

22 And, Counsel, did you want to state your
23 objection.

24 MR. BLOCK: Yes, Your Honor.

25 We do object to the proceedings being displayed

1 either audio or visual or both as it does not comply
2 with the Code of Civil Procedure or Rules of Court. The
3 public is certainly invited to observe the proceedings
4 in the courtroom, but for various reasons it's
5 inappropriate for the proceedings to be displayed or set
6 out otherwise through Zoom.

7 It does raise risks of recording -- improper
8 recording or publication either by members of the public
9 or by the press, and so on those grounds, among others,
10 we object.

11 THE COURT: And I should also note that there
12 are new rules in place that require counsel or any party
13 to the action to -- who wants to appear via Zoom, they
14 are required to make a request to the Court in order to
15 make that appearance, but we'll go ahead and put the
16 microphones on and folks can listen in if they want.

17 And let's go ahead and proceed.

18 MR. BLOCK: Thank you, Your Honor.

19 THE COURT: Thank you.

20 Q (BY MR. BLOCK) Mr. Pinoli, when we -- we left
21 before lunch you -- you testified to how the collapse of
22 Tunnel 1 has disrupted Mendocino Railway's operations
23 both as it relates to freight and passenger rail
24 service; right?

25 A That is correct.

1 Q Okay. Presently can you describe Mendocino
2 Railway's freight operations as they exist -- well,
3 let's -- let's say over the period of time from the
4 filing of this complaint, which I believe was September
5 or October of 2020 --

6 THE COURT: December 22nd of 2020.

7 Q (BY MR. BLOCK) So December 22nd, 2020, at that
8 time, what did Mendocino Railway's freight operations
9 consist of?

10 A Mendocino Railway's freight operations
11 consisted of carrying goods and/or services in to
12 residents who live along the line. More specifically,
13 equipment that would be used at various camps or -- or
14 residences.

15 The -- we do coordinate with other public
16 utilities such as AT&T or Pacific Gas & Electric
17 Company, and we do supply them with transportation to
18 transport people and equipment to work on their
19 infrastructure that may be adjacent to or on the
20 railroad's property -- not for railroad purposes,
21 meaning that infrastructure doesn't benefit the
22 railroad, it actually benefits somebody who's residing
23 along the 40-mile route.

24 Additionally, starting in 2020, Mendocino
25 Railway engaged in the transportation of aggregates and

1 steel structures for two streambed restoration projects.
2 Those two streambed restoration projects came through
3 and at the request of Trout Unlimited, whose primary
4 focus is to restore streambeds and to make the habitat
5 better for native species.

6 Those projects required that a significant
7 amount of material, aggregate, be transported in as well
8 as steel bridge structure that was used upstream from
9 the railroad on a different up -- piece of property not
10 related to the railroad, so neighboring property owner,
11 so that they could reconstruct a bridge that crossed the
12 creek so that they could have access to get their
13 vehicles over.

14 Q Now, with respect to this streambed restoration
15 project, if Mendocino Railway was not providing freight
16 rail services, how would that project have received
17 aggregate or steel structures to perform that -- those
18 activities?

19 A In one spot, at present, solely by helicopter.
20 The nearest road was probably about three-quarters of a
21 mile away, a logging road, and so that would have meant
22 that a new road would have to have been cut if they were
23 going to do streambed restoration in that area.

24 In the case of the second location, that is --
25 was easier -- or is easier to access by road, albeit a

1 dirt road and about 40 minutes -- 45 minutes off of
2 Highway 20 down a dirt road. That road would have
3 prohibited the steel structure for the bridge to be
4 brought in any other way than by rail or helicopter.
5 Size was a consideration.

6 Q And if these materials were to be brought in by
7 truck if -- either using the existing dirt road that
8 you -- you mentioned or to cut a new road in, how many
9 truck loads would be the equivalent of the railcar loads
10 that -- that you guys moved?

11 A Well, the bridge structure came in on one flat
12 car; the aggregate came in on somewhere between a
13 hundred and 120 carloads -- railcar loads of aggregate.

14 The side dump railcar that was used is a car
15 that is pretty flexible in that it will allow you to
16 dump or teeter the load from the right side or the left
17 side, depending upon where you want the aggregate. That
18 car has a capacity of a hundred tons. So that's a
19 hundred tons of material max.

20 Keep in mind, that truck weight and size limits
21 are limited to 80,000 pounds, so that's not only the
22 commodity, but the vehicle that's actually transporting
23 the commodity. So from an efficiency standpoint, it's
24 about four to one and with a hundred to 120 cars, that's
25 anywheres from four to -- well, shy of be 480, at the

1 max, truck loads.

2 Q Over what period of time was Mendocino Railway
3 moving the aggregate and the steel structure from
4 Willits into the site -- the restoration site or sites?

5 A We -- we began the process in the late spring,
6 early summer of '20 and concluded in '21.

7 There was some additional work that needed to
8 be done to button up the project that didn't get
9 finished after the rainy season and -- or before the
10 rainy season. The work didn't get done so it had to be
11 buttoned up after the rainy season.

12 Q And these freight rail services that -- that
13 you described generally since -- or about December of
14 2020, was Mendocino Railway compensated for providing
15 those freight rail services?

16 A In the instance of the work that we did for the
17 streambed restoration, yes. There was a contract, we --
18 with Trout Unlimited and we did provide those services
19 under the contract and were compensated.

20 In the other freight movements -- or the times
21 that we go in and transport goods and services for AT&T
22 or Pacific Gas & Electric or other utilities that may be
23 working on their behalf, we are compensated for those as
24 well.

25 Q Okay. And what is a tariff as it relates to

1 rail operations?

2 A There are two types of tariffs, a passenger and
3 freight, but they generally set out the rates that a
4 common carrier or public utility charges the public who
5 want to get items, people, or goods or services, from
6 one point to another.

7 Q Is it -- is a tariff essentially the railroad
8 offering -- is that the way that a railroad offers its
9 services to the public?

10 A It's a way for the railroad to make its
11 services available for the public, yes.

12 Q And with respect to Mendocino Railway's
13 tariffs -- Mendocino Railway has tariffs; is that
14 correct?

15 A It does.

16 Q And I'm talking in the broadest sense, not any
17 particular time, but Mendocino Railway operates with
18 tariffs?

19 A It does.

20 Q And does it discriminate between who can avail
21 itself, individuals, entities, public agencies, of its
22 passenger or freight services?

23 A No.

24 Q It's available to any member of the public?

25 A It is.

1 Q Or the entire public?

2 A It is.

3 Q And that relates to both freight and passenger
4 tariffs?

5 A That is correct.

6 Q As of December 22nd, 2020, did Mendocino
7 Railway have passenger or freight tariffs in effect?

8 A Yes.

9 Q Can you please take a look at Exhibit 9.

10 A Okay.

11 Q What is Exhibit 9?

12 A Exhibit 9 is a tariff for passenger -- it's the
13 local passenger tariff, Number 3Q.

14 (Plaintiff's Exhibit 9 was identified.)

15 Q (BY MR. BLOCK) What -- what -- what is this --
16 well, what's the date of Exhibit 9?

17 A It was issued on the 27th of March '93 and made
18 effective 1 April '93.

19 Q And how does this Exhibit 9 relate to Mendocino
20 Railway's freight operations -- I'm sorry, rail
21 operations?

22 A This -- this tariff is for passenger traffic
23 specifically, so it regulates or sets out passenger
24 movement.

25 Q Over what period of time was this tariff in

1 Exhibit 9 in effect?

2 A I believe until about 2014 when there were
3 subsequent amendments made to it. I believe that to be
4 correct.

5 Q Okay. So from 1993 to 2014 Exhibit 9 reflected
6 the rates that Mendocino Railway would charge for
7 passenger use of its railroad?

8 A That is correct.

9 Q Okay. And what -- what was the geographic
10 limits of these passenger operations?

11 A Between -- I believe what you're asking me is
12 the geographic limits, meaning that it didn't span
13 beyond the railroad's property which was 40 miles
14 between Fort Bragg and Willits.

15 Q Okay. Let's -- let's look at page -- page 5 of
16 the exhibit. The exhibit page number is in the lower
17 left-hand corner?

18 A Exhibit 9-5.

19 Q Yes. And it says Section B -- can you tell us
20 what we're looking at here? How this works?

21 A So that's a Section B -- this is the one-way
22 adult and child fare with a 30-day limit between the
23 stations across the top and then the stations down the
24 left margin.

25 So if you were a passenger that was traveling,

1 let's say, between Fort Bragg and Redwood Lodge, you
2 would have been charged 5.25 for a one-way ticket if you
3 were an adult or three -- or, excuse me, 2.50 if you
4 were a child.

5 Q And so between April of 1993 and 2014, did
6 Mendocino Railway charge passengers for passenger rail
7 service under the tariff that's reflected in Exhibit 9?

8 A Yes. Those passengers were using the commute
9 services.

10 Q What does that mean, "commute services"?

11 A Passengers who regularly go to and from the
12 properties that are located along the route.

13 Q And Exhibit 9-5, Section B is one-way fares,
14 but this also includes roundtrip fares; correct?

15 A That is correct.

16 Q And where is that reflected in Exhibit 9?

17 A Section C, which is Exhibit 9-7, and that is
18 roundtrip adult and children's fares, 30-day limit.
19 Using the same example as I did before, the roundtrip
20 fare between Fort Bragg and Redwood Lodge would be 10.50
21 per an adult an \$5 per child.

22 Q What does the 30-day limit mean?

23 A Meaning that if they purchased the commute
24 ticket, that the ticket expired within 30 days from the
25 day of purchase.

1 Q Okay. So they could go roundtrip in the same
2 day?

3 A Yes.

4 Q Or they could go one-way on one day and come
5 the other day up to 30 days later?

6 A That is correct.

7 MR. BLOCK: I'd like to offer Exhibit 9 into
8 evidence.

9 MR. JOHNSON: No objection.

10 THE COURT: Okay. Exhibit 9 will be received.
11 (Plaintiff's Exhibit 9 received in evidence.)

12 Q (BY MR. BLOCK) I'd like you to take a look at
13 Exhibit 10, and you can flip through all the pages and
14 when you're done if you could tell us what Exhibit 10
15 is.

16 A Exhibit 10 -- I flipped through all the pages.
17 Exhibit 10 are updates to the commute fares for
18 2014, 2016, and '17.

19 (Plaintiff's Exhibit 10 was identified.)

20 Q (BY MR. BLOCK) This is a different format than
21 the tariff?

22 A Yes.

23 Q Why?

24 A Easier for the ticket agents.

25 Q Does Exhibit 10 -- is that -- these commute

1 fares, is that synonymous with a tariff or the
2 equivalent of a tariff?

3 A Yes.

4 Q Any -- any reason why the commuter fares would
5 not have the same force and effect as it relates to
6 passenger operations of Mendocino Railway between the
7 passenger tariff reflected in Exhibit 9 and the commute
8 fare documents for 2014, '16, and '17 in Exhibit 10?

9 A I'm sorry, is your question is there any
10 difference?

11 Q Correct.

12 A There is. The only difference would be the
13 fares as they changed throughout the years; otherwise,
14 there's no difference in -- in the ticket and what the
15 ticket is used for.

16 Q It has the -- the same effect?

17 A It has -- yeah. A passenger could get on the
18 train and travel to we'll use Redwood Lodge as the
19 example, and it has the same effect.

20 Q Okay. And did Mendocino Railway provide
21 passenger rail services to any member of the public
22 pursuant to the commute fares reflected in Exhibit 10
23 during the periods of 2014 to 2017?

24 A Absolutely. It's something that the railroad
25 has done since its inception.

1 MR. BLOCK: I'd like to offer Exhibit 10 into
2 evidence.

3 THE COURT: Any objection?

4 MR. JOHNSON: No, your Honor.

5 THE COURT: Exhibit 10 will be received.

6 (Plaintiff's Exhibit 10 received in evidence.)

7 Q (BY MR. BLOCK) Does Mendocino Railway have
8 similar tariffs for freight operations?

9 A Mendocino Railway does have a tariff for the
10 freight operations.

11 Q I'd like you to take a look at Exhibit 8. If
12 you could flip through it and then tell us what Exhibit
13 8 is.

14 It looks like Exhibit -- at least my copy of
15 Exhibit 8 has some extraneous documents as well.

16 Does yours have pages past page 8?

17 So we're looking at pages -- Exhibit 8-1
18 through Exhibit 8-8.

19 A Okay.

20 Q And what is that document?

21 A That is the freight tariff that is -- went into
22 effect in January 2008 for Mendocino Railway.

23 (Plaintiff's Exhibit 8 was identified.)

24 MR. BLOCK: And just for housekeeping purposes,
25 Your Honor, I'd like to remove pages 8-9 through 8-42 as

1 they're duplicative of other exhibits.

2 THE COURT: Okay.

3 Q (BY MR. BLOCK) So this looks a little
4 different than -- than the passenger tariff, so can you
5 kind of walk us through page by page starting on page
6 8-2 with this freight tariff, what it is?

7 A Sure. Page 8-2 are the rules and other
8 governing provisions, general rules and regulations,
9 that talk about the movement of freight cars and/or
10 commodities over the railroad. It talks about the
11 supplement and reissues, the references to tariffs, the
12 method of canceling an item, and the payment of charges.

13 Q Okay. And then page 8-3?

14 A 8-3 is -- Section 1 is -- relates to switching.
15 So Switching Carloads Delivered By Connections in Error
16 at All Stations and then the next section, item 1050, is
17 Cars Delivered in Interchange to Connecting Carriers.

18 So when a car gets switched in or out or
19 there's a request to switch in or out, that's -- this
20 page applies --

21 Q Okay.

22 A -- as the state fee.

23 Q And what does "switching" mean; can you explain
24 what's going on?

25 A Sure. So it would be taking a car; for

1 instance, if -- if you had an industry and they had a
2 string of cars, let's say four or five cars, and they
3 needed to get car no. 3 out ahead of car one, two, and
4 four, that switching would mean that you would go into
5 that facility, you would grab ahold of the first three
6 cars, bring them out of that sidetrack, set that third
7 car off to another sidetrack, and then stick cars one
8 and two back on top of car no. 4.

9 That's what switching means. That's one
10 example of moving cars from one location to another.

11 Q And so as of January 1st, 2008, that switching
12 service was offered by Mendocino Railway?

13 A That is correct.

14 Q To anyone in the public?

15 A That's correct.

16 Q Along its railroad -- its 40-mile long
17 railroad?

18 A That is correct.

19 Q Prior to January 1st, 2008, did Mendocino
20 Railway provide switching services to members of the
21 public?

22 A If there were requests, yes, we would have.

23 Q Okay. Was there a tariff in effect prior to
24 January 1st, 2008, setting forth those services?

25 A I don't recall.

1 Q But the services were provided by Mendocino
2 Railway to the public?

3 A That is correct.

4 Q Prior to 2008?

5 A Yes.

6 Q Okay. And so that's one of the freight rail
7 services that Mendocino Railway offered, switching?

8 A Yes.

9 Q And the other pages of Exhibit 8 reflect other
10 services provided?

11 A So Exhibit 8.4, item 1100, Car Switches For
12 Consignor, Consignee, or Private Car Owners, meaning
13 that we would switch a car for -- that wasn't a
14 commodity as a part of the national system coming in or
15 out -- that we would switch a private car for industry,
16 and that is something that we have done as well.

17 Q And when you say "for industry," that -- that's
18 a railroad term, quote/unquote, "industry"?

19 A It is.

20 Q What does that mean?

21 A It could be a lumber mill, it could be a
22 brewery, it could be an aggregate facility, it could be
23 anything that's receiving a car -- a carload of whatever
24 that commodity may be.

25 Q In other words, providing freight rail services

1 to commercial entities or others?

2 A That is correct.

3 Q So the next page, 8-5, also talks about
4 switching; what else is reflected in this tariff?

5 A "8-6" is again Car Switches and "8-7" is Line
6 Haul Charges, so that would be a railcar that moves
7 between the named stations in item 2000 and its
8 location.

9 So in item 2000, below the line where it says
10 between, it says Willits, California, and Northspur,
11 California, on the Willits Subdivision. The Commodity:
12 All other, and the Car Charge was \$900 per car.

13 Q So explain what that means?

14 A That could have been a carload of logs.
15 Logging operations are something that happened here in
16 Mendocino County, and so it could have been a carload of
17 logs, it could have been a carload of aggregate, it
18 could have been whatever the customer required to have
19 transported.

20 Q And as of January 1st, 2008, Mendocino Railway
21 offered those line haul freight rail services to the
22 public pursuant to the tariff reflected in Exhibit 8?

23 A That's correct.

24 Q Prior to January 1st, 2008, did Mendocino
25 Railway provide similar services to the public?

1 A Yes.

2 Q Even though it wasn't reflected in the tariff?

3 A I don't have a copy of the tariff in front of
4 me so it -- there was -- without question there would
5 have been a tariff, but, yes, the -- the services would
6 have been provided pursuant to a tariff.

7 Q Okay. Did you do a search for freight rail
8 service tariffs in effect prior to January 1st, 2008?

9 A Myself personally, no.

10 Q Did you have someone at Mendocino Railway do
11 that search?

12 A I do believe we did ask for that search to be
13 done and it's a document that was so old there would
14 have been no reason to have kept it.

15 Q Okay. Subsequent to January 1st, 2008, did
16 Mendocino Railway provide freight rail services pursuant
17 to the tariff reflected in Exhibit 8?

18 A Would you repeat the question --

19 Q I'm --

20 A -- please.

21 Q Yes. I'm sorry for -- for inartfully stating
22 the question.

23 Over what period of time did Mendocino Railway
24 provide freight rail services pursuant to the tariff
25 reflected in Exhibit 8 after January 1st, 2008?

1 A The entire time.

2 Q Okay. Was there a tariff put into effect after
3 the tariff -- freight rail tariff set forth in Exhibit
4 8?

5 A Yes.

6 MR. BLOCK: Okay. I'd like to offer Exhibit 8
7 into evidence.

8 THE COURT: Okay. And, Christy, let's -- any
9 objection first?

10 MR. JOHNSON: (Shakes head.)

11 THE COURT: All right. Let's make sure the
12 exhibit list reflects Exhibit 8 consisting of nine
13 pages -- or eight pages.

14 THE CLERK: Okay.

15 THE COURT: The first eight pages.

16 THE CLERK: Pages 9 through 42 removed?

17 THE COURT: Yes.

18 THE CLERK: Yeah.

19 THE COURT: Thank you.

20 (Plaintiff's Exhibit 8, pages 1-8 received in evidence.)

21 MR. BLOCK: Thank you.

22 Q (BY MR. BLOCK) I'd like you to take a look at
23 Exhibit 6.

24 A (Witness complies.)

25 Q And what is Exhibit 6?

1 A Exhibit 6 is an updated freight tariff that was
2 issued January 1, 2022.

3 (Plaintiff's Exhibit 6 was identified.)

4 Q (BY MR. BLOCK) Why did Mendocino Railway
5 update its freight tariff effective January 1st, 2022?

6 A To reflect an increase in costs associated with
7 moving goods and services up and down the corridor.

8 Q And so does Exhibit 6 accurately reflect the
9 freight rail services offered to the public -- or
10 provided to the public by Mendocino Railway from January
11 1st, 2022, to today's date?

12 A Yes.

13 Q Does Mendocino Railway intend to continue to
14 provide freight rail services pursuant to the tariff
15 reflected in Exhibit 6 going forward?

16 A It does.

17 Q At this time do you have -- does Mendocino
18 Railway have any intention to revise or change the
19 tariff?

20 A At this time, no.

21 Q And when might Mendocino Railway change the
22 tariff?

23 A Well, one of the considerations would be
24 operating costs, and, you know, depending upon those key
25 factors that drive our business, that would be a time to

1 consider an increase in the tariff.

2 Q At this time is there any discussion or
3 intention of Mendocino Railway to cease providing
4 freight rail services along its railroad between Willits
5 and Fort Bragg?

6 A Absolutely not.

7 MR. BLOCK: I'd like to move Exhibit 6 into
8 evidence.

9 THE COURT: Any objection?

10 MR. JOHNSON: No, your Honor.

11 THE COURT: Exhibit 6 will be received.

12 (Plaintiff's Exhibit 6 received in evidence.)

13 MR. BLOCK: I'd like you to take a look at
14 Exhibit 7.

15 THE WITNESS: I have nothing in my binder
16 under -- oh, wait. It's a blank. I'm sorry, it's
17 blank. The first page is blank.

18 Q (BY MR. BLOCK) Oh, does the blank page have a
19 number on it?

20 A It does not.

21 Q Okay. I think you can just remove it.

22 A Okay.

23 Q Does anybody else have a blank page?

24 THE COURT: No.

25 MR. BLOCK: Yeah. Me neither.

1 So you can just remove -- rip the blank page
2 out.

3 THE WITNESS: (Witness complies.)

4 Q (BY MR. BLOCK) Okay. Can you tell us what
5 Exhibit 7 is?

6 A Exhibit 7 is the passenger tariff, Number 3R,
7 that went into effect -- that was issued 27 December
8 '21, went into effect on January '22.

9 (Plaintiff's Exhibit 7 was identified.)

10 Q (BY MR. BLOCK) And so is Exhibit 7 an update
11 of the passenger commute fares and tariff from the prior
12 ones that we've -- we've seen?

13 A It is.

14 Q And does -- or did Mendocino Railway provide
15 passenger rail services pursuant to the tariff reflected
16 in Exhibit 7 subsequent to January 1st, 2022?

17 A Yes.

18 Q Does Mendocino Railway have any intention to
19 cease offering passenger rail services pursuant to the
20 tariff reflected in Exhibit 7?

21 A It does not.

22 Q Do you have any intention to change the -- the
23 tariff -- Mendocino Railway have any intention to change
24 the passenger tariff reflected in Exhibit 7 at this
25 time?

1 A At this time, no.

2 Q In addition to the -- the passenger and freight
3 services reflected in the tariffs in the exhibits that
4 we've gone through, Exhibits 6, 7, 8, 9, and 10, does
5 Mendocino Railway provide other rail services?

6 A I'm sorry, would you repeat the question,
7 please?

8 Q Sure. In addition to the passenger and freight
9 services that are reflected in the tariffs that we
10 looked at and what's reflected in there, are there other
11 rail services that Mendocino Railway provides?

12 A Excursion services.

13 Q What does that mean, "excursion services"?

14 A Non-commute services.

15 Q And why do you make that distinction -- it's
16 passengers; correct?

17 A Yes.

18 Q So why do you make the distinction between
19 commute passenger service and excursion passenger
20 service?

21 A There's a different fare. The commute
22 passengers ride at an -- at a reduced fare, if you will,
23 and the excursion passengers pay a tourist rate.

24 Q Did Mendocino Railway provide excursion
25 passenger services -- rail services in 1993 when you

1 started working with -- with the railroad?

2 A It did.

3 Q Did Mendocino Railway provide tourist excursion
4 services prior to your time at Mendocino Railway -- or
5 the Skunk Train?

6 A It did.

7 Q How do you know?

8 A History.

9 Q What do you mean by history?

10 A Reading of books, articles. The railroad was
11 founded, as I mentioned earlier today, in 1885. It was
12 founded as a logging railroad and quickly became a
13 logical vehicle to not only move freight but to move
14 passengers, and as a result of that -- or as early on as
15 the turn of last century, folks were coming up via
16 stagecoach, getting on the train, and going out to
17 resorts that existed along the route.

18 Jack London used to write at a place called
19 Alpine. Alpine is at the 18 milepost along the
20 railroad's corridor. He stayed at the hotel several
21 times.

22 Q And so Mendocino -- I guess it was California
23 Western Railroad at that time?

24 A It -- California Western Railroad was the name
25 that the railroad was incorporated under in 1885. It

1 became California Western Railroad and Navigation
2 Company because it actually had and operated steam ship
3 service in the Pacific, and then in 1925 that's when the
4 railroad gained its nickname the Skunk.

5 If we called the railroad California Western
6 Railroad, it would be just another railroad, but the
7 name -- the nickname that was given to the railroad in
8 1925 was as a result of the railroad bringing on single
9 unit, self-propelled railcars to deal with a decline at
10 the time in passenger ridership. Didn't require as much
11 equipment or -- or crew to operate, and so as a result
12 of that, these little buses that gained the nickname
13 Skunk, that's also when the railroad acquired its
14 nickname.

15 Q And so the railroad provided passenger rail
16 services, including excursion services, going back to as
17 far as --

18 A The early 1900s.

19 Q Early 1900s, continuing to today?

20 A That is correct.

21 Q And does Mendocino Railway separate its
22 passenger -- its commute passenger and excursion
23 passenger services?

24 A Separate in the terms of like moving -- having
25 people in different cars?

1 Q Different cars, different locomotives.

2 A No, absolutely not.

3 Q They're integrated?

4 A They are integrated.

5 Q The freight services, are those integrated with
6 the passenger service?

7 A There has historically been a mix, meaning that
8 it's not uncommon for the railroad to have offered mixed
9 runs. So if you had three or four freight cars that
10 were going to a destination and you also had a passenger
11 train going by or to that same destination, having a
12 mixed run means that you run combination freight and
13 passenger together.

14 Generally speaking, freight trains operate at a
15 different time than passenger but...

16 Q But for the issues with Tunnel No. 1 starting
17 in 2013, would Mendocino Railway's passenger and freight
18 operations be different in 2020 than they were pre-2013?

19 A They would be different in that there would be
20 more volume traveling, more -- more customers coming
21 online.

22 Q Why? Why do you say that?

23 A The cost of transportation has gone up
24 exponentially and that is what drives other businesses
25 to switch to rail. The efficiencies of four or more to

1 one truck is huge. Not only is there a significant
2 environmental benefit, but there's a benefit to -- to
3 the -- to the commodity generator, meaning that if it
4 were lumber, if it were fuel, oil, if it were -- if it
5 were beer, if it were aggregate, there -- there are cost
6 savings that they can bring into their organization and
7 have greater benefit.

8 Q Have you or Mendocino Railway had conversations
9 with municipalities about providing transportation
10 services for municipal purposes along the railroad?

11 A We have.

12 Q Can you describe those discussions?

13 A Yes. Two immediately come to mind; one has
14 been the discussion of transportation of municipal solid
15 waste from Fort Bragg which is generally taken to solid
16 waste of Willits, which is on the California Western --
17 or Mendocino Railway's mainline.

18 Those pods right now leave Fort Bragg and head
19 to Willits where the garbage is processed at a facility
20 in Willits.

21 Putting those onto railcars has huge
22 efficiencies. It takes an inordinate amount of trucks
23 off the road on a daily basis.

24 The other has surfaced twice in the last seven
25 years, once in 2015 and once last year, and that's when

1 the City of Fort Bragg reached out to Mendocino Railway
2 to see about transporting water to deal with the effects
3 of the drought. 2015, the City of Fort Bragg was on the
4 verge of running out of water, and had it not been for
5 the early rains to bring the flows up in the Noyo River,
6 the city was all but out of water.

7 They didn't have a system in place to treat
8 brackish water at their intake station on the Noyo
9 River. The intake station on the Noyo River is adjacent
10 to the railroad's corridor near the milepost 4, and the
11 water is under title control and title influence, so
12 it's not uncommon to find brackish water even far beyond
13 that, up to Bridge 486, and from that point on the water
14 really isn't brackish at all.

15 So because they didn't have a -- a Desal
16 facility installed on their -- at their water treatment
17 plant, getting brackish water out of the Noyo would have
18 created significant problems to their intake and their
19 whole operation.

20 At the time, the City of Willits had just put
21 in a deep well, many hundred feet down, and it was a
22 very high-producing well, about 4 to 500 gallons per
23 minute. The water at the time hadn't been -- while it
24 was usable, it wasn't -- hadn't gone through all of the
25 regulatory hurdles to be used for safe drinking water

1 consumption without having gone through a treatment
2 process.

3 And so even though in 2015 the tunnel was
4 closed, the goal of the railroad was to transport water
5 from Willits to the intake station at about the four --
6 four and a half milepost and get the water out of the
7 tank cars there before returning to Willits.

8 And so that is a service that we -- we had
9 studied at length. We had a lead on the tank cars that
10 were used in food grade transportation, so we weren't,
11 you know, looking to use a car that had transported oil
12 or something like that before. It was all food grade
13 cars, and we were going to bring those cars into
14 Willits, California, and began hauling.

15 We revisited this in 2021. The city had a
16 Desal intake pump coming online, meaning that they could
17 then treat brackish water.

18 And I guess I should also say that since 2015
19 and 2021, the city did put a reservoir in that --
20 somewheres in the neighborhood of 50 acre feet out --
21 just outskirts of the town and as a result of them
22 putting that reservoir in, they were able to build
23 additional capacity.

24 But last year, again multiple years in our area
25 here without having received adequate rainfall, the

1 flows in the Noyo diminished. Other areas in Mendocino
2 County rely on the City of Fort Bragg for water. So the
3 village of Mendocino, which has very shallow wells,
4 often times goes dry in a drought year, and as a result
5 of that, they turn to the City of Fort Bragg and
6 purchase water and transport water down to the various
7 tanks and residents in the village.

8 So faced with another water crisis, we -- we
9 actually preempted the -- the discussion and sent out a
10 note to then city manager in early '21 saying, there's a
11 drought, does the City of Fort Bragg have an interest in
12 shipping water? If that is going to be something that
13 you folks would -- are considering, we need to know now
14 so that we can make arrangements to get the railcars in,
15 the tank cars, and we'll begin a national search for
16 these tank cars.

17 We engaged in a national search, located some
18 tank cars, and began the process. The issue -- and the
19 difference between 2015 and 2021 is that the City of
20 Willits decided that it wasn't going to or didn't want
21 to sell its water to the City of Fort Bragg because they
22 too are affected by the drought. And while they had
23 plenty of reserves, at the time they didn't want to
24 enter into an agreement that they couldn't fulfill.

25 And so in transporting the water, the

1 efficiency there was far greater than four to one. The
2 cost savings -- and the City of Fort Bragg ended up
3 getting its water from the City of Ukiah, so -- but the
4 cost efficiency savings was about eight to one, meaning
5 that we would transport at a seven to -- seven to eight
6 cents per gallon, and their trucking cost, as I recall,
7 came in 50-ish cents per gallon.

8 Q Okay. Just following through with this water
9 issue in 2021, if Mendocino Railway was to provide water
10 services -- water from Ukiah to Fort Bragg -- there's no
11 rail connection between Willits and Ukiah, is there?

12 A There is a rail connection and it's the North
13 Coast Rail Authority which is -- I believe has been
14 renamed to the Great Redwood Trail Alliance.

15 Q So the water would move by rail from Ukiah to
16 Willits and then from Willits to Fort Bragg?

17 A Conceivably, if the -- if the tracks were in
18 the condition that would allow for that, yes, it could
19 have.

20 And the water doesn't have to go into Fort
21 Bragg proper. The water stops short of Fort Bragg
22 because of the pumping station being east of Tunnel No.
23 1.

24 Q So this -- providing these rail services,
25 moving water from Willits -- or near Willits in -- to be

1 used by the city of Fort Bragg, would not require the
2 reopening or operation of Tunnel No. 1?

3 A It would not.

4 Q Okay. So go ahead, so how does the water make
5 its way from Ukiah to east of Tunnel 1?

6 A Well, Ukiah to east -- well, in this case they
7 elected to move it by truck.

8 Q I understand. Conceptually, had -- had
9 Mendocino -- or had Ukiah or the City of Fort Bragg
10 wanted to take advantage of this eight to one cost
11 savings for transportation, how would it have been
12 conducted?

13 A It would have been a -- a massive rebuild and
14 some work on the NCRA track between Willits and Ukiah.

15 Most of the track is intact and most of it that
16 is intact needs -- it needs surfacing, it needs some
17 ties, but the rail -- you know, the rail -- in this type
18 of a climate, rail deterioration is not something that
19 you need to worry about. It's tie conditions that
20 deteriorate rapidly, and that's just because of the --
21 the amount of water that we receive here.

22 So, you know, half of the year, on a good
23 rainfall year, the ties are submerged in water, if you
24 will. The ground is saturated, so they're absorbing
25 that water. And then in the summertime when they're

1 shedding, like in -- like a log or anything else because
2 of the heat, that's what puts stresses and begins the
3 deterioration process on railroad ties.

4 So railroad ties, some OTM, and certainly
5 vegetation management. There is an issue of a washout
6 just north of Redwood Valley that would have had to have
7 been addressed, and the upgrading and the re -- the
8 re-energizing, if you will, of the crossings.

9 But water could have effectively moved via rail
10 from Ukiah to the intake station in Fort Bragg in --
11 with that -- in order to meet the fall crunch, which is
12 when water is at its most critical just before the rains
13 start; that would have been enough time, from the spring
14 through summer, to put those tracks back in freight
15 service.

16 Q Would that transportation of water have
17 required some work on the NCRA line, but would it have
18 required any infrastructure work on Mendocino Railway's
19 railroad to accommodate that traffic?

20 A No.

21 MR. BLOCK: It looks like I missed Exhibit 7.
22 I'd like to offer Exhibit 7 into evidence.

23 MR. JOHNSON: I don't -- no objection.

24 THE COURT: No objection?

25 Exhibit 7 will be received.

1 (Plaintiff's Exhibit 7 received in evidence.)

2 Q (BY MR. BLOCK) I'd like you to take a look at
3 Exhibit 5, please.

4 A Okay.

5 Q What is Exhibit 5?

6 A Exhibit 5 is a roster of locomotives, passenger
7 cars, freight MOW cars, MOW equipment, and miscellaneous
8 vehicles.

9 And just for clarification, MOW stands for
10 maintenance of way.

11 (Plaintiff's Exhibit 5 was identified.)

12 THE COURT: Maintenance of what?

13 THE WITNESS: Maintenance of way, W-A-Y.

14 Q (BY MR. BLOCK) Does Exhibit 5 accurately
15 reflect the equipment assets of Mendocino Railway as of
16 December 22nd, 2020?

17 A Yes.

18 Q Does it accurately reflect the assets of
19 Mendocino Railway as of today?

20 A It does.

21 Q So let's go page by page starting with Exhibit
22 5.1, entitled "Locomotives." Tell us what we -- we see
23 here on page 5-1.

24 A The left column is the number assigned to the
25 locomotive. So I wouldn't call it an equivalent of a

1 license plate, but it's what distinguishes the pieces of
2 equipment from the other; it's their name, the type of
3 equipment, what it is, so whether it's a motorcar, steam
4 locomotive, or just a general locomotive; the builder;
5 the location of where it's at; and then any notes
6 associated in the far right column with that piece of
7 equipment.

8 Q Okay. So let's go to the bottom, there are
9 four items; CWR-67, 68, 69, and 70 and under "Location"
10 it says "not yet delivered."

11 A Right.

12 Q What does that mean?

13 A Well, that's -- those -- it's exciting. Those
14 are four locomotives that are Genset, so they are
15 modern-day locomotives. They were built between 2007
16 and 2008. We acquired those from the Union Pacific
17 Railroad. Their operating crews in some cases never
18 operated some of these locomotives. They didn't like
19 them and as a result of not liking them, these were all
20 bound for the scrap yard and so we stepped in to
21 purchase them.

22 They are -- when I say they're Genset
23 locomotives, they still operate in a similar fashion to
24 one of the locomotives -- or three of the locomotives
25 listed above 64, 5, and 6. Those are EMDGP-9s and those

1 locomotives are not -- it's not straight diesel like a
2 diesel vehicle, in that the diesel engine creates power
3 which goes to a traction motor which creates electricity
4 and that traction motor is what makes the wheels turn,
5 if you will. So its -- its setup is different than that
6 of a diesel pickup truck or a diesel truck running up
7 and down the highway.

8 The tier -- the locomotive 67, 8, 9, and 70,
9 those are Genset locomotives, and instead of being one
10 engine that's constantly running -- mind you, 64, 5, and
11 6 are 16-cylinder, 1750-horsepower locomotives.

12 Instead of one locomotive just constantly
13 running or sitting idle, these locomotives are very
14 similar to that of like a hybrid vehicle, in that when
15 you pull up to a stop sign -- or even just a straight
16 gas vehicle, some have the automatic start/stop feature,
17 and these locomotives are very similar to that in that
18 if you're not pulling, if you're just idling, you're not
19 using all three of the engines in the engine
20 compartment. You're only using the engine power as you
21 need power.

22 So if you're climbing a grade and you have a
23 heavy load and you grab a notch on the throttle -- which
24 is the equivalent of pushing the accelerator in an
25 automobile. If you grab a notch on the throttle, the

1 engines -- the secondary and tertiary engine will come
2 online as needed.

3 When you've crested that hill or you no longer
4 need full power, the tertiary engine may shut down, the
5 secondary engine may shut down and you'll just be using
6 one engine. And so far more efficient, a fuel savings
7 of about 40 percent, and those are locomotives that are
8 set to come to this railroad to assist in the operations
9 of this railroad.

10 Q What operations, freight or passenger?

11 A Both.

12 Q When are they expected to be received?

13 A I would love to get them here soon. They would
14 be very welcomed. I'm -- I'm hopeful within the next
15 year.

16 Q What's holding up the delivery?

17 A Well, it's not very easy to manufacture a
18 locomotive when you can't move it on rails and so we
19 will have -- we are working to -- to disassemble the
20 engine, the three engines, from the engine compartment
21 and put those on a separate truck, and then using a
22 special heavy haul system moving those locomotives into
23 Willits.

24 Q And they would be put on the rails in Willits
25 and they could either stay in Willits or move to Fort

1 Bragg?

2 A That is correct.

3 Q Why -- why did Mendocino Railway buy these four
4 locomotives, 67, 68, and 69 and 70?

5 A Fuel consumption, less emissions. You know,
6 railroads in America create less than 2 percent of the
7 total greenhouse gasses that are being generated, and so
8 part of our mission through the state association that
9 we talked about earlier today, CSLRA, and the national
10 association, ASLRRA, our goal as an industry is to
11 continue to work in emission reduction. These
12 locomotives are Tier 4 standards.

13 Q Is the intention to put these four locomotives
14 into service immediately upon delivery to Mendocino
15 Railway?

16 A Yes.

17 Q What are motorcars M-100 and M-300 on Exhibit 5
18 point -- 5-1?

19 A Motorcars are sometimes referred to as rail
20 buses. These are the single unit self-propelled
21 railcars that I spoke of earlier.

22 The Skunk acquired its nickname because of cars
23 very similar to this. The M-100 was built in 1925 by
24 the Edwards Rail Car Company and the M-300 was built in
25 1935 by the American Car and Foundry Company, both --

1 you know, only 10 years apart, but distinctly different
2 in their looks. They're smaller, they're self-contained
3 units, meaning that the engine, the passenger
4 compartment, and the small cargo compartment are all in
5 one car. They move independently, they don't need a
6 locomotive. Again, it's all controlled from one unit.
7 Very similar to that of a trolley car, but in 1925 the
8 railroad acquired its first as a result of diminished
9 passenger traffic.

10 Q And are those motorcars, M-100 and M-300,
11 available for use and operation today?

12 A They are.

13 Q Were they available for operations as of
14 December 22nd, 2020?

15 A They were.

16 Q Were they available in 2013 when the tunnel
17 collapsed?

18 A Yes.

19 Q And what about the steam locomotive, CWR-45,
20 tell us about that.

21 A So that was the 45th steam locomotive that the
22 railroads had in its 137-year history. It was purchased
23 in 1964 and went into official service in 1965.

24 It went into service in 1965 because the
25 railroad had momentum for -- people being transported on

1 the railroad was increasing, and so the railroad in 1965
2 purchased the steam locomotive to come back and it
3 was -- when it came back into service, it was sort of
4 the return of the Super Skunk is what they referred to
5 it as.

6 It started with an article in 1959 that was
7 done and published in "National Geographic" as a
8 friendly train called Skunk. And that 1959 "National
9 Geographic" article is what really propelled the
10 excursion side of the railroad's business in that era.
11 And as a result of that, there was a demand for
12 people -- people wanted to see a sense -- or return of
13 the heritage locomotives that were starting to be phased
14 out.

15 Diesel electric or straight diesel locomotives
16 in that era were very popular and so the railroad
17 purchased the steam locomotive. Coincidentally, it
18 often used that steam locomotive for freight traffic.
19 It and Engine 46, many, many pictures in the history
20 books over the years of those locomotives actually
21 pulling freight trains instead of diesel.

22 Q Is CWR-45 the steam locomotive in operation
23 today?

24 A It is a steam locomotive that is in operation
25 today; however, it is undergoing its 15-year mandated

1 federal boiler overhaul that's required by the FRA, the
2 Federal Railroad Administration. The steam locomotive
3 that's in operation right now is a locomotive that is on
4 loan, known as the Number 2.

5 Q Is that used in passenger rail services?

6 A It is an -- it's only visiting the railroad for
7 a short period of time.

8 Q Where did it get loaned from?

9 A It -- it is a locomotive that previously --
10 well, it was built for the Portland Cement Company in
11 the Santa Cruz Bay and it was a highway marker for 30
12 years. It was a giant billboard that sat on the side of
13 a highway for a chicken kitchen located outside of
14 Stockton, California, and that locomotive -- when they
15 closed down that restaurant, that locomotive was
16 available. The owner of -- the present owner decided to
17 buy it and restore it, and so it -- it's housed mostly
18 in Placerville, California, but it recently came to us
19 via Carson City, Nevada.

20 Q Does Mendocino Railway presently own sufficient
21 locomotives to conduct full freight and passenger rail
22 services along its railroad?

23 A There are days when it's tight.

24 Q What do you mean?

25 A There are days when it's tight because of the

1 current situation with Tunnel No. 1. There are days
2 where we could use multiple locomotives.

3 In fact, when we were doing the -- the two
4 large streambed restoration projects, there were days
5 where we had to cancel -- actually many days where we
6 cancelled the railroad's excursion services so that
7 freight services could take priority, meaning we had to
8 get the rock out to both of those locations timely in
9 order to meet the schedule -- very tight window to get
10 this construction done, primarily because no equipment
11 could be in the waterways during the heavy flow season.

12 In one location we had to pump water -- or
13 water had to be pumped -- we didn't have to pump. Water
14 had to be pumped from the upstream side to the
15 downstream side as to not divert the flow or impede the
16 flow or backup the flow of water, and so very narrow
17 window. The first heavy rainfall that come would
18 totally put an end to that, and so, no, the railroad
19 doesn't have sufficient equipment and didn't on -- on
20 most days during the course of that project.

21 Keep in mind that we transported -- it was in
22 excess of a hundred -- hundred, 120 carloads of
23 aggregate and we -- there was no opportunity to run
24 passenger operations because the freight traffic needed
25 to take priority because of the tight schedule.

1 Q Now, when you have these four new locomotives,
2 will that --

3 A That will --

4 Q -- suffice?

5 A That will improve things tremendously.

6 Q We're not going to go piece by piece through
7 the next pages, but can you just briefly summarize
8 Exhibit 5-2, Railroad Passenger Cars?

9 A Those are the various cars that the railroad
10 has in its fleet. Some of them -- two of them are out
11 of service, one is -- is scrapped and one is just out of
12 service sitting on a track at present. But they are
13 cars available to the railroad for -- for the
14 transportation of passengers.

15 Q And that's both commute and excursion
16 passengers?

17 A That's correct.

18 Q All right. Exhibit 5-3?

19 A So those -- that's a list of the freight and
20 MOW cars that the railroad has; tank car, rock car,
21 couple of flat cars, and then a side dump car.

22 Q And so with -- with the inoperability of Tunnel
23 No. 1, the -- the railroad maintenance-of-way cars in
24 Fort Bragg can only serve west of Tunnel No. 1; correct?

25 A That's not correct. It's not correct because

1 in fact the side dump car which is -- location is listed
2 as Willits, it is presently in Willits.

3 It was not presently in Willits prior to the
4 work that was being done on the streambed restoration
5 projects. The car was partially dismantled and
6 transported from Fort Bragg to Willits over the highway
7 in order to meet the requested demand for service.

8 Q So if there's demand for -- for freight
9 services where the particular car is on the wrong side
10 of the tunnel, you can bring it to the right side of the
11 tunnel through the road -- by road?

12 A In most cases, yes.

13 Q And continue to provide freight services and
14 maintenance-of-way services on each side of the line?

15 A That is correct.

16 Q It's inefficient and costly, but it can be
17 done?

18 A Extremely. And yes.

19 Q What is Exhibit 5-4?

20 A "5-4" is a list of the maintenance-of-way
21 equipment, so it would be things like backhoes, ballast
22 regulators, a bridge car burro crane, braille vans,
23 forklifts, all of the various smaller pieces of
24 equipment that are used to maintain a railroad.

25 Q It looks like most of the equipment is in Fort

1 Bragg and only a few pieces are in Willits; why is that?

2 A At the time the list was created most of the
3 pieces were in Fort Bragg, but I bet if we were to look
4 at this today as to where the equipment is at, it's
5 probably split 50-50.

6 The equipment is smaller in nature and we do
7 have a small trailer that in most cases can transport
8 the equipment back and forth. Even though it's rail
9 mounted, it still has the ability to get on a trailer
10 and move.

11 Q Okay. And Exhibit 5-5?

12 A "5-5" is just small list of vehicles that the
13 railroad has.

14 Q And the -- the equipment assets listed in
15 Exhibit 5 -- pages 5-1 through 5-5, that reflects the
16 equipment that Mendocino Railway utilizes in providing
17 freight and passenger services along its railroad;
18 correct?

19 A That is correct.

20 Q And that was true as of December 22nd, 2022?

21 A That is correct.

22 Q And was it also substantively the case as of
23 2013?

24 A Yes.

25 Q And through today?

1 A That is correct.

2 Q What about prior to 2013?

3 A Yes.

4 Q And do you anticipate any substantive changes
5 in the assets or the equipment that Mendocino Railway
6 utilizes in providing freight and passenger rail
7 services on its railroad?

8 A Yes.

9 Q What changes?

10 A There will be additional equipment purchased,
11 and we've already begun the process of selecting
12 equipment as it relates to significant infrastructure
13 improvements along the line.

14 Q Why is that; can you explain what the plans
15 are?

16 A Yeah. So the -- there's a plan in place to --
17 in addition to the work that's being done on Tunnel No.
18 1, but to upgrade the railroad by changing out 30,000 --
19 over 30,000 railroad ties and 2,000 sticks of rail.

20 In the late -- or in the mid-1990s the State of
21 California had a grant program that they wanted to get
22 rid of creosote-treated ties and as a result of that,
23 they thought they had a good answer to creosote and they
24 came out with these ties that they marketed as green
25 ties because they were green in color.

1 Although the ties are treated copper, chromium,
2 and arsenic, CCA ties, and the ties did not last -- and
3 this was a project that the State actually funded to --
4 to -- to get rid of the ties and replace them with
5 something that they felt was far more environmentally
6 friendly.

7 The ties -- generally a -- a hard mixed species
8 wood railroad tie that's been N-plated has a life
9 expectancy of about 35 to 40 years. In fact, on a
10 depreciation schedule you look to depreciate the life of
11 the tie over that life expectancy, and when you go and
12 install ties, you're doing so knowing that you're making
13 a 35 to -- plus year investment.

14 There are a whole bunch of factors that
15 contribute to tie wear -- ties wear faster than the
16 other -- but replacing -- we have been replacing these
17 green ties that the railroad is ladened with over the
18 years, and these all are considered hazardous material
19 and are all disposed of in an appropriate fashion. They
20 have to go to a proper landfill where they take treated
21 wood waste, and this equipment will allow us to make
22 those significant upgrades, changing out over 30,000
23 ties and 2,000 sticks of rail.

24 Q And will that work enable Mendocino Railway to
25 continue to provide passenger and freight rail services?

1 A It will.

2 Q Over a 35-plus-year life expectancy?

3 A Yeah. So the goal is to take the railroad and
4 upgrade it to an operating class standard higher than
5 the class standard that you currently operate. That's
6 just good business practice and good sort of railroading
7 practice, meaning that if you operate at a Class I
8 speed, that you maintain your railroad to that of a
9 Class II condition.

10 Q Okay. We're getting a little bit into the
11 weeds and we'll do that for just a moment, but first I'd
12 like to offer Exhibit 5 into evidence?

13 THE COURT: Any objection?

14 MR. JOHNSON: No, your Honor.

15 THE COURT: Exhibit 5 will be received.

16 (Plaintiff's Exhibit 5 received in evidence.)

17 Q (BY MR. BLOCK) There is a -- a classification
18 of Mendocino Railway as a Class III common carrier
19 railroad; is that right?

20 A That's correct.

21 Q Okay. And now you just talked about some other
22 class standard, so can you as briefly as possible and as
23 simply as possible explain the distinction and how it --
24 how it applies to Mendocino Railway's ongoing and future
25 freight and passenger rail services?

1 A So the distinction of a railroad is based on
2 its size generally, and a Class I railroad would be
3 something like the Union Pacific or the Burlington
4 Northern Santa Fe in the West; CSX, Norfolk Southern.
5 Those are east coast railroads, much larger, and those
6 are considered Class I.

7 Class II is a step below that, railroads that
8 may run for 5 or 600 miles or a conglomerate of many
9 railroads, and an example would be like a Genessee &
10 Wyoming; that would be a Class II.

11 Class III common carrier railroads are
12 operations like that of Mendocino Railway, California
13 Western Railroad, the Sierra Northern Railway.

14 Q Other short lines?

15 A Other short lines.

16 Now, when you're talking about track
17 maintenance standards, accepted track is the bare
18 minimum; Class I is above that; Class II, all the way up
19 to Class VI, which is considered track suitable for
20 high-speed rail.

21 Q And Mendocino Railway's railroad, the CWR, is
22 what classification standard as of today?

23 A Class I and Class II.

24 Q So portions are Class I, portions are Class II?

25 A That is correct.

1 Q Okay. And do I understand you correctly that
2 the goal is to bring everything up to Class II, so
3 elevating Class I to Class II?

4 A That is correct. And in some cases, some short
5 segments of the railroad would even consider -- be
6 considered Class III, but, yes, it is to bring
7 everything up to a Class II standard.

8 Q And at a Class II standard does that enable
9 Mendocino Railway to continue to provide ongoing freight
10 and passenger rail services?

11 A It does.

12 Q And does it enable Mendocino Railway to provide
13 expanded passenger and freight rail services in the
14 future?

15 A It does.

16 Q Now, when we were discussing kind of the
17 history and the background of Mendocino Railway, we kind
18 of skipped over 2004. What happened in 2004?

19 A 2004 is when the bankruptcy court confirmed
20 Mendocino Railway as the purchaser of the assets of the
21 CWRR, Inc., California Western Railroad, Incorporated,
22 which had gone through bankruptcy. And in 2004 it's
23 when the Surface Transportation Board, the STB, affirmed
24 the purchase of Mendocino Railway as a Class III common
25 carrier.

1 Q And that is the purchase of the California
2 Western Railroad, CWR, assets?

3 A That's correct.

4 Q Were -- were you involved in Mendocino
5 Railway's 2004 purchase of the CWR assets?

6 A I was.

7 Q How were you involved?

8 A I was the vice president of the company and a
9 part of the team that made the decision to move forward
10 and implement the changes we wanted to have happen.

11 Q And when you say vice president of the company,
12 are you referring to vice president of Mendocino Railway
13 or something else?

14 A Vice president of Mendocino Railway.

15 Q Were you employed by Sierra Railroad Company at
16 that time?

17 A I was.

18 Q And in what capacity?

19 A As its vice president.

20 Q Okay. Vice president of both Mendocino
21 Railway --

22 A Yes.

23 Q -- and Sierra Railroad Company?

24 A That's correct.

25 Q Briefly can you describe the relationship

1 between Sierra Railroad Company, Mendocino Railway, and
2 Sierra Northern Railway?

3 A Mendocino Railway and Sierra Northern Railway
4 are separate California corporations. They are
5 wholly-owned subsidiaries of the Sierra Railroad
6 Company. Sierra Railroad Company is the parent company.

7 Q I'd like you to take a look at Exhibit 18.

8 A Okay.

9 Q What is Exhibit 18?

10 A It's a record of electronic filing with the
11 California Secretary of State. It's the corporation's
12 statement of information.

13 (Plaintiff's Exhibit 18 was identified.)

14 Q (BY MR. BLOCK) For what company?

15 A For Mendocino Railway.

16 Q Is that your name under three, CEO officer?

17 A Yes.

18 Q And is it your understanding that this is
19 Mendocino Railway's registration with the Secretary of
20 State -- corporate registration with the Secretary of
21 State?

22 A Yes.

23 Q Is it your understanding that Exhibit 18 is a
24 true and accurate reflection of Mendocino Railway's
25 corporate registration with the Secretary of State as of

1 February 28th, 2022?

2 A That is -- yes.

3 Q Under number 6 on page 18-2 --

4 A Yes.

5 Q -- Type of Business, what does it say?

6 A Railroad.

7 Q What does that mean?

8 A Means that we are a railroad that's a
9 corporation in the state of California. That was the
10 designation we picked that most appropriately fit what
11 business we are.

12 Q Are you the person that picked that designation
13 for this registration?

14 A Yes.

15 Q Why did you pick it?

16 A Well, because if I didn't pick it, it wouldn't
17 be truthful.

18 MR. BLOCK: All right. I'd like to move
19 Exhibit 18 into evidence.

20 MR. JOHNSON: Well, no objection.

21 THE COURT: Exhibit 18 will be received.

22 (Plaintiff's Exhibit 18 received in evidence.)

23 Q (BY MR. BLOCK) Please take a look at Exhibit
24 19, and are you familiar with this document?

25 A I am.

1 Q What is Exhibit 19?

2 A The Articles of Incorporation of Mendocino
3 Railway.

4 (Plaintiff's Exhibit 19 was identified.)

5 Q (BY MR. BLOCK) How are you familiar with
6 Exhibit 19?

7 A I sat on the board of directors at the time
8 that the articles were drafted.

9 Q Is Exhibit 19-1 a truthful and accurate
10 reflection of Mendocino Railway's Articles of
11 Incorporation filed with the Secretary of State January
12 26th, 2004?

13 A Yes.

14 MR. BLOCK: I'd like to move Exhibit 19 into
15 evidence.

16 THE COURT: Any objection?

17 MR. JOHNSON: No, your Honor.

18 THE COURT: Exhibit 19 will be received.

19 (Plaintiff's Exhibit 19 received in evidence.)

20 Q (BY MR. BLOCK) Please take a look at Exhibit
21 20; it's about -- I believe it's 21 pages. Take a
22 minute to look through it, please, and let me know when
23 you're -- you have reviewed it.

24 (Brief pause; reviewing document.)

25 THE WITNESS: I have reviewed it.

1 Q (BY MR. BLOCK) Okay. What is Exhibit 20?

2 A Exhibit 20 is a letter from David Magaw to then
3 vice president of the Sierra Railroad Company and
4 president -- then president of Mendocino Railway to the
5 secretary of the Surface Transportation Board filing the
6 Notice of Exemption of Mendocino Railway along with the
7 decision by the US Bankruptcy Court judge awarding the
8 assets of Mendocino -- excuse me, of CWR to Mendocino
9 Railway.

10 (Plaintiff's Exhibit 20 was identified.)

11 Q (BY MR. BLOCK) Does Exhibit 20 fairly and
12 accurately reflect Mendocino Railway's acquisition of
13 the assets of CWR as a result of California Western
14 Railroad, Inc.'s, CWRR, Inc.'s, bankruptcy in 2004?

15 A Yes.

16 Q How are you familiar with Exhibit 20?

17 A I again sat on the Board of Directors for
18 Mendocino Railway at the time. I was involved in the
19 purchase of the assets and worked through the entire
20 proceeding.

21 Q On page 20-3 in the introductory paragraph it
22 talks about Mendocino Railway's intentions for initial
23 operations of the CWR. Do you see that about midway
24 through the introductory paragraph?

25 A Yes.

1 Q And can you summarize what -- what that
2 paragraph describes?

3 A That Mendocino Railway is going to be the --
4 the land holder, that Sierra Northern, its sister, also
5 a Class III common carrier, is going to be involved, and
6 that Midland Railroad Enterprises, which was a then --
7 another subsidiary of Sierra Railroad Company, was going
8 to be the construction and maintenance company of
9 record. And then Sierra Entertainment, which was a
10 former separate company of Sierra Railroad Company, that
11 it was going to operate the passenger excursion side of
12 the business.

13 Q Did Sierra Railroad -- I'm sorry, Sierra
14 Northern Railway operate portions of the CWR subsequent
15 to the 2004 purchase by Mendocino Railway?

16 A It did.

17 Q How did it participate in the operations of the
18 CWR?

19 A Freight movements.

20 Q And did Sierra Entertainment operate passenger
21 rail operations subsequent to this notice of exemption?

22 A It did.

23 Q What did it do?

24 A It operated the passenger excursion side of the
25 business.

1 Q And did Sierra Entertainment's operation of the
2 passenger and excursion rail services cease?

3 A In 2000 -- in late 2008, yes, the operations
4 were transferred to Mendocino Railway.

5 Q And did Sierra Northern Railway cease
6 operations along the CWR?

7 A It has.

8 Q When?

9 A In 2021.

10 Q Why?

11 A Mendocino Railway made application to the
12 United States Railroad Retirement Board to take over the
13 obligations that Sierra was doing. Sierra Northern was
14 simply just too busy at the time to focus on this being
15 a remote location and for the crux of its operations and
16 so as a result of that Mendocino took over.

17 Q What year was that?

18 A 2021.

19 MR. BLOCK: Okay. Your Honor, I see it's about
20 3:00 o'clock --

21 THE COURT: We're going to take a break.

22 MR. BLOCK: Yep.

23 THE COURT: You ready?

24 All right. So let's return at 3:20.

25 (Recess taken.)

1 THE COURT: Let's go back on the record.

2 MR. BLOCK: Thank you, Your Honor.

3 Q (BY MR. BLOCK) Mr. Pinoli, can you turn to
4 Exhibit 12, please.

5 A I'm there.

6 Q Was is Exhibit 12?

7 A Exhibit 12 is a letter from David Stewart, the
8 utility engineer, Safety Enforcement Division of
9 Railroad Crossing Engineering Section of the California
10 Public Utilities Commission addressed to me December 7,
11 2018.

12 (Plaintiff's Exhibit 12 was identified.)

13 Q (BY MR. BLOCK) Thank you. I apologize. I
14 moved a step ahead.

15 Let's take a step back. We were -- we were
16 looking at Exhibit 20, the Notice of Exemption for
17 Mendocino Railway's acquisition of CWR.

18 Is there -- there's a reference on page 2 under
19 Statement of Agreement Reached, the second paragraph,
20 refers to Mendocino Railway attempting to reach an
21 agreement with Hawthorne Timber Company to transfer the
22 fee interest in the real property underlying --
23 underlying the railroad; do you see that?

24 A Oh, "20-4"? Page 2 of the document, but
25 "20-4"?

1 Q Correct. Under "C."

2 A Yes.

3 Q The second paragraph.

4 A Yes.

5 Q Did Mendocino Railway acquire the fee interest
6 in the railroad from Hawthorne Timber Company?

7 A It did.

8 Q When?

9 A In 2004.

10 Q On page 20-16 under Roman numeral III, Sierra,
11 there's a three-paragraph description of Sierra's plans
12 by the bankruptcy judge; do you see that?

13 A Yes.

14 Q Do those three paragraphs accurately reflect
15 Mendocino Railway's intentions with respect to
16 operations after its acquisition of the CWR?

17 THE COURT: I'm sorry, Counsel, what paragraph?

18 MR. BLOCK: It's Roman numeral III, Sierra, and
19 there are three paragraphs there. We're on page 20-16.

20 THE COURT: Oh.

21 MR. BLOCK: Sorry.

22 THE COURT: Thank you.

23 THE WITNESS: Yes.

24 Q (BY MR. BLOCK) And did Mendocino Railway
25 proceed with those operations as reflected in those

1 three paragraphs?

2 A We have.

3 Q Anything else that Sierra has done -- I'm
4 sorry, that Mendocino Railway has done beyond what's
5 reflected in those three paragraphs?

6 A I think it's -- the wording is general and
7 generic enough and all encompassing to -- so, no,
8 nothing beyond the all-encompassing language that's
9 there.

10 Q And that continued from 2004 to today?

11 A Yes.

12 Q And is it Mendocino Railway's intentions of
13 continuing those operations into the foreseeable future?

14 A Yes.

15 MR. BLOCK: I would like to offer Exhibit 20
16 into evidence.

17 THE COURT: Any objection?

18 MR. JOHNSON: I just want to clarify,
19 Exhibit -- so the -- the references to the bankruptcy
20 documents are part of the original document; is that --

21 MR. BLOCK: Notice of Exemption, correct.

22 It's --

23 MR. JOHNSON: It's a complete document?

24 MR. BLOCK: Correct.

25 Q (BY MR. BLOCK) Well, Mr. Pinoli, is Exhibit 20

1 a complete document reflecting the Notice of Exemption
2 filed March 12th, 2004?

3 A Yes.

4 MR. JOHNSON: Your Honor, I don't have an
5 objection.

6 THE COURT: Okay. Exhibit 20 will be received.

7 (Plaintiff's Exhibit 20 received in evidence.)

8 Q (BY MR. BLOCK) And, Mr. Pinoli, can you take a
9 look at Exhibit 21.

10 A Okay.

11 Q What is Exhibit 21?

12 A It's an excerpt from the federal register.

13 (Plaintiff's Exhibit 21 was identified.)

14 Q (BY MR. BLOCK) What's the significance of
15 Exhibit 21 to Mendocino Railway?

16 A It's the publishing of -- by the Surface
17 Transportation Board in the federal register that
18 recognizes Mendocino Railway's acquisition exemption,
19 assets of the California Western Railroad, and that it
20 has filed a verified notice of exemption under the
21 appropriate CFR section.

22 Q Is Exhibit 21 a true and accurate copy of the
23 federal register that's reflected in Exhibit 21?

24 A Yes.

25 MR. BLOCK: I'd like to offer Exhibit 21 into

1 evidence.

2 MR. JOHNSON: No objection.

3 THE COURT: Exhibit 21 will be received.

4 (Plaintiff's Exhibit 21 received in evidence.)

5 Q (BY MR. BLOCK) Now back to where we started,
6 Exhibit 12. Why did you request this letter from
7 Mr. Stewart that's reflected in Exhibit 12?

8 A Because the then community development
9 director, the City of Fort Bragg, was making some noise
10 about Mendocino Railway not being a common carrier of
11 public utility.

12 THE COURT: Can you repeat that answer?

13 THE WITNESS: Yes. The then community
14 development director, the City of Fort Bragg, was making
15 some noise about Mendocino Railway not being a common
16 carrier of public utility.

17 Q (BY MR. BLOCK) Did you provide Exhibit 12 to
18 that community development director?

19 A Yes.

20 Q And what was that person's name?

21 A Marie Jones.

22 Q Did Exhibit 12 resolve Ms. Jones' concerns?

23 A I don't know that it fully resolved Ms. Jones'
24 concerns, but it certainly led to the city's counsel --
25 legal staff to issue an opinion letter that affirmed

1 that Mendocino Railway was a common carrier and public
2 utility.

3 Q What letter is that?

4 A It's a letter that the city attorney penned at
5 the request of Mendocino Railway. Mendocino Railway
6 requested that they make a determination.

7 Q Why?

8 A It had to do with Mendocino Railway doing some
9 work on one of its buildings in Fort Bragg known as the
10 Speeder Shed. Speeder, S-P-E-E-D-E-R.

11 Q Do you recall the approximate date of this
12 letter from the city attorney?

13 A I do not.

14 Q Do you know the name of the city attorney that
15 wrote the letter?

16 A I believe it was Russell Hildebrand.

17 Q Do you have a copy of that letter?

18 A I do believe so.

19 Q Okay. Would you provide that to me and bring
20 it with you tomorrow?

21 A Sure.

22 Q Is Exhibit 12 -- well, Exhibit 12 represent --
23 refers to a website of the Public Utilities Commission;
24 do you see that in Exhibit 12?

25 A I'm sorry, I'm making a note.

1 Yes, it refers to a website, yes.

2 Q I'd like you to take a look at Exhibit 11. Is
3 Exhibit 11 the website that's reflected in the letter
4 that's Exhibit 12?

5 A This is the Public Utilities website, so if you
6 were to go there today, this is what you would see.

7 (Plaintiff's Exhibit 11 was identified.)

8 MR. BLOCK: I'd like to offer Exhibit 11 and 12
9 into evidence.

10 MR. JOHNSON: Your Honor, I object to both
11 documents being hearsay.

12 MR. BLOCK: We have filed a request for
13 judicial notice of both these documents, and as to the
14 letter that's reflected in Exhibit 12, we received a
15 response to our subpoena from the California Public
16 Utilities Commission. It is set forth in this sealed
17 envelope, so I don't know if the Court wants to open it.

18 THE COURT: Sure.

19 Well, in any event, I'm going to overrule your
20 objections and receive Exhibit 11 and 12.

21 MR. JOHNSON: Your Honor, before we do that,
22 I'd still like to file my objection. I have a
23 request -- objection to the request for judicial notice
24 I'd like to file with the Court on this issue.

25 THE COURT: So you're objecting to the judicial

1 notice of a document from the California --

2 MR. JOHNSON: Yes, Your Honor.

3 THE COURT: -- website?

4 MR. JOHNSON: Yes.

5 MR. BLOCK: I have not seen this objection,
6 I'll take a look right now.

7 MR. JOHNSON: So if I can argue the issue, Your
8 Honor, before you rule on it?

9 THE COURT: Okay. Go ahead.

10 MR. JOHNSON: The Court may take judicial
11 notice of official acts of legislative, of executive,
12 and judicial departments of the United States and of any
13 state of the United States -- that's California Evidence
14 Code Section 452(c).

15 The taking of judicial notice of official acts
16 of government entity does not in and of itself require
17 acceptance of the truth of the factual matters which
18 might be deducted therefrom since in many instances what
19 is being noticed and thereby establishes no more than
20 the existence of such acts, and not without supportive
21 evidence what might factually be associated with the
22 flow therefrom.

23 The matter ordinarily is subject to judicial
24 notice only if the matter is reasonably beyond dispute;
25 for example, in "Mangini versus R.J. Reynolds Tobacco

1 Company," 7 Cal 4th 1057 and 1063-1065, the Supreme
2 Court ruled that it could not take judicial notice of
3 the truth of conclusions within a report from the United
4 States Surgeon General regarding the health effects of
5 smoking.

6 Although the existence of the document may be
7 judicially noticeable, the truth of the statements
8 contained in the document and its proper interpretation
9 are not subject to judicial notice if those matters are
10 reasonably disputable. When judicial notice is taken of
11 a document, however, the truthfulness and the proper
12 interpretation of the document are disputable.

13 And this would apply, Your Honor, to the
14 website and also the interpretation of the letter that
15 is written on December 7th, 2018, from the Public
16 Utilities Commission.

17 THE COURT: Counsel, you have a response?

18 MR. BLOCK: I think judicial notice is
19 appropriate here. They are official acts of these
20 agencies. The custodian of record certainly
21 acknowledged that fact in his declaration with respect
22 to the letter. With respect to the website, I don't
23 think it's subject to -- to dispute. Mr. Johnson has
24 not expressed how it is subject to reasonable dispute,
25 but notwithstanding that, the Court can give whatever

1 interpretation that it feels is appropriate.

2 THE COURT: Right. So I'm going to take
3 judicial notice and receive Exhibits 11 and 12, and I'll
4 give it whatever weight or interpretation it deems
5 necessary based on the evidence that is going to be --
6 continue to be presented.

7 MR. JOHNSON: Thank you.

8 THE COURT: Uh-huh.

9 (Plaintiff's Exhibits 11 & 12 received in evidence.)

10 Q (BY MR. BLOCK) Mr. Pinoli, can you take a look
11 at Exhibit 13, please.

12 A Okay.

13 Q What is Exhibit 13?

14 A A CPUC Railroad Safety Inspection Report.

15 (Plaintiff's Exhibit 13 was identified.)

16 Q (BY MR. BLOCK) How are you familiar with
17 Exhibit 13?

18 A Well, in my entire history of railroading, I
19 have three decades now, inspections by regulatory
20 agencies like the California Public Utilities
21 Commission, Transportation Security Administration, and
22 the Federal Railroad Administration take place
23 regularly, and they, as a result of their inspections,
24 produce reports.

25 Those reports are given to the railroad and if

1 there are items that they'd like to see corrected, they
2 will issue a report to the effect.

3 Q What's the date of the inspection?

4 A 14 May 2019.

5 Q And is that the same date of the report; it's
6 not clear to me?

7 A The date of the report -- it says printed and
8 its lasted edit was on the 15th of May 2019, so one day
9 later.

10 Q How are the inspection reports transmitted or
11 conveyed to Mendocino Railway?

12 A Now electronically via e-mail.

13 Q Is Exhibit 13 fairly representative of
14 inspection reports that Mendocino Railway routinely
15 receives?

16 A The -- the documents look a little different.
17 They've changed their format, but, yes, they -- the
18 inspection reports -- yes, it's generally very minimal.
19 Rarely are -- does the CPUC recommend remedial action or
20 never an escalation to an FRA violation, and they are
21 mostly corrective in nature.

22 Q When did you first become familiar with
23 inspection reports of the railroad by regulatory
24 agencies?

25 A I would say it was probably in 1995, '96 as I

1 was ascending and just through the ranks -- by the way,
2 had no idea I was going to spend 30 years in the
3 railroading business, but I had promoted to what we call
4 uniform service in the industry and that is a brakeman,
5 conductor, fireman, or engineer.

6 I also had and was performing dispatcher duties
7 where you're managing and controlling the movement of
8 trains on the railroad. At the time we used a different
9 system for dispatching than we do today, and I became
10 keenly aware of inspections as a part of the training
11 that I received and continue to receive.

12 I still maintain my certifications. And if an
13 inspector wishes to come on property or to board a train
14 to inspect, to, you know, check out your paperwork, your
15 certification cards, the blue card on the locomotive,
16 which is sort of its registration, meaning that it's
17 been maintained in appropriate 92-day intervals, all of
18 those things; track safety, track maintenance standards,
19 an inspector will arrive, present their credentials --
20 assuming you don't know them, present their credentials,
21 and -- and ask to -- to sort of open the hood, if you
22 will, and -- and see what's going on.

23 So early on is when I became available -- very
24 familiar with what the regulatory agencies do.

25 Q And in speaking generally since you first

1 became aware of the inspection process, which by -- by
2 whichever regulatory agency, has the process changed
3 substantively since 1995, '96 through today?

4 A No.

5 Q And you have -- have you participated in
6 inspections by all three regulatory agencies that you
7 identified, the Transportation Safety Agency, Federal
8 Rail Administration, and the CPUC?

9 A Yes. And then some.

10 Q Such as?

11 A Local county department of environmental health
12 for various permits, whether it be a food safety permit
13 for onboard concession operations, whether it be for a
14 hazardous waste management plan. So the CAPUT
15 [phonetic] division of the county; so...

16 Q Let's -- let's break these down one by one.
17 The Transportation Safety -- is it Board or
18 Administration?

19 A The Federal Railroad Administration is a
20 division of the Department of Transportation.

21 Q Okay. So let's talk about the FRA. Has the
22 FRA changed substantively the nature of its inspections,
23 how it does the inspections, what it inspects, the
24 reports that it has issued between 1995 or '96 and, say,
25 today?

1 immediately in a 30-year span that has changed because
2 it's one area that they now pay attention to.

3 Q Is the -- the 286 standard applicable to both
4 passenger and freight rail operations?

5 A Absolute -- well, the bridge standards are
6 applicable to railroads as a whole. 286 standard does
7 not apply to passenger railroads because you don't have
8 equipment cars, passenger cars that exceed 286,000
9 pounds.

10 Q Well, 286 is the standard, so you can run a
11 railcar in excess of 286,000 pounds on that bridge?

12 A You could so long as your bridge meets those
13 standards.

14 Q Okay. What -- what would be the weight for a
15 passenger train going along the California Western
16 Railroad in comparison?

17 A About 80, 80,000 pounds. They're
18 lighter-weight cars. Some of the cars that are on the
19 list of equipment are -- were built by the Southern
20 Pacific Company, and those cars were used as interurban
21 or commute cars. So they're much lighter-weight cars;
22 they're not heavyweight cars.

23 Even the cars that are being built today by
24 major manufacturers, Sieman's, Bombardier's, those cars
25 aren't much heavier. They're using much lighter

1 product, aluminum, and they still have to meet the crash
2 test standards.

3 So steel infrastructure is still there, but
4 instead of putting it steel on steel, they are able to
5 put, you know, things like aluminum and -- they're much
6 improvements.

7 Q Okay. But that capacity between 80,000 pounds
8 or so up to the 286,000 or beyond really relates to
9 freight operations?

10 A That's right.

11 Q Okay. With respect to the California Public
12 Utilities Commission, the CPUC, has their inspection --
13 inspections, inspection reports, the nature of their
14 inspections, has that changed in substance between 1995
15 or '96 and today?

16 A No, it has not.

17 Q So just as an example, and we won't do this
18 beyond this particular report, Exhibit 13, what -- what
19 does this report find? What's the substance that we're
20 looking at here?

21 A Item No. 1, it's at milepost 39.95, and the
22 Activity Code is: 118-A, which is the inspection on
23 walkways, and the Defect Code is: 103, debris of
24 various types in the walkway creates a tripping hazard.

25 And so those are railroad ties that were

1 removed, they weren't removed timely, meaning disposed
2 of, and so -- you know, it could have been something
3 that they had just been recently changed and the
4 inspector came out the next day type of a thing and as a
5 result of them being there and the tie still being there
6 and the crew having not had an opportunity to go back
7 and cleanup, just because their hours ran out for the
8 day, they noted it and so they're asking that the --
9 that this be fixed.

10 Q And is it your understanding that it was fixed?

11 A Yes. So the rules require that when an
12 inspection report is issued either by the FRA or the
13 CPUC, that -- that the corrective action is taken within
14 a 30-day window of time.

15 Q And does the inspector come back out, do you
16 send pictures; how does that work?

17 A It has varied over the years. It depends on --
18 because the inspectors have changed, some inspectors
19 have asked to see photos, some inspectors have made
20 surprise visits back out on day 31, and many inspectors
21 have, depending upon the rapport that they have with the
22 railroad, it's on the honor system. But the
23 understanding is, on day 31, whatever that -- whatever
24 they took exception with better be corrected.

25 Q And since you have been with Mendocino -- or

1 with operations on the CWR since '95 or '96 has there
2 ever been an instant when -- instance when the railroad
3 did not resolve any inspection, any violations?

4 A Boy, to my knowledge absolutely not.

5 Q Now, on page 13-2 there's a reference to
6 something regarding a whistle post sign?

7 A Uh-huh.

8 Q What is a whistle post sign?

9 A Okay. So this is at milepost 38.9, so this is
10 in advance of a crossing. And in advance of a crossing
11 you have to have a sign that is mounted so that the
12 engineer can see it, and it denotes that you're
13 approaching a crossing and that you must begin signaling
14 the whistle at that time.

15 Q And was this resolved, was the post -- sign
16 post put back up?

17 A Yes.

18 Q Looks like "13-4" is another inspection report.
19 This one has the federal rail administration note. This
20 is a different inspection, page 13-4?

21 A It is. It's for the date of 7 July '21 and
22 it's the same inspector as the -- the 2019 report we
23 just reviewed and it's on an FRA form.

24 Q Any violations here?

25 A No -- violations, no.

1 Q What does it say toward the bottom?

2 A Number 2: "Cross ties not effectively
3 distributed to support a 39-foot segment of track.
4 Starting to get some marginal tie conditions just east
5 of Bush Street. No violation recommended and no
6 remedial action recommended."

7 Q So why was it noted?

8 A The inspector wanted to see an increase in tie
9 change-outs. So seeing -- in order to have a Class I
10 ties -- or a Class I railroad designation from a
11 maintenance standpoint, every eighth tie basically has
12 to be a good, competent tie -- doesn't have to be a new
13 tie, just has to be competent -- and -- and so this is
14 requesting that more tie change-outs happen.

15 Q And did more tie change-outs happen subsequent
16 to this report?

17 A Yes.

18 Q Now, I noticed that where it's referring to the
19 railroad subdivision it's different on the CPUC report,
20 Exhibit 13-1, than it is on the FRA Form 13-4.

21 On "13-1" it references CWR, California Western
22 Railroad, and the division or line is called Skunk Train
23 and then in the FRA Form 13-4 it references SERA,
24 S-E-R-A, and the subdivision: Mendocino. Do you know
25 why?

1 A I believe the FRA hadn't updated their system
2 yet to reflect the appropriate information. I don't
3 know the exact answer, but I believe that that's what it
4 related to.

5 Q And then it references Sierra -- Sierra
6 Northern Railway in the upper left as the railroad
7 company which is different than the railroad name on
8 "13-1" of California Western Railroad; it is --

9 A Yes, that's -- that's correct.

10 Q And so that's just a matter of them updating
11 their system?

12 A I believe that that's what it -- it comes down
13 to.

14 Q But both of them are referring to the same
15 railroad company and the same railroad; correct?

16 A Yes. Because the address on Exhibit 13-4, the
17 inspector arrived at 299 East Commercial Street in
18 Willits, California, and it shows that the subdivision
19 is Mendocino and that the line is between Fort Bragg to
20 Willits.

21 Q And then if you wouldn't mind taking a look at
22 Exhibit 14-1 and tell us what that is just briefly.

23 A An inspection report by CPUC. It's dated 7
24 December '21 and it appears that this is on the Fort
25 Bragg subdivision, so the Fort Bragg side of the

1 railroad.

2 (Plaintiff's Exhibit 14 was identified.)

3 Q (BY MR. BLOCK) And it notes a couple of
4 issues?

5 A Yeah. It noted that the -- there were some
6 impaired side -- side clearances on the bridge
7 structures and asked for those to be fixed.

8 Q Have those issues been resolved?

9 A It was resolved with the general order.

10 So there are opportunities for railroads to
11 deviate, if you will, from the -- what the clearance
12 setbacks may be, and the -- the one thing that you can't
13 deviate from is the Code of Federal Regulations.
14 Congress is only permitted to change those.

15 Below that is the General Code of Operating
16 Rules, and we refer to it as GCOR, G-C-O-R, and then the
17 railroad has a timetable and special instructions and
18 that is as permanent, if you will, as GCOR.

19 And if you need to make a temporary change or
20 adjustment to your operation, you do so via a general
21 order. So a general order was issued -- the concern is,
22 is that because it may be too close to the rail that a
23 crew member on the side of a railcar, freight or
24 passenger, could become struck by the impaired side
25 clearance -- even though the distance here is greater.

1 I mean, you -- you -- you couldn't even extend your body
2 fully, but it was still short of the required distance.

3 And so the way to mitigate that is to simply
4 put a general order in place that says, in this area
5 where there is impaired side clearances, there is -- the
6 riding on the sides of railcars is prohibited, and
7 that's the way you fix it.

8 Because, for instance, you may have a natural
9 feature, a tree, a Redwood tree, half the size of this
10 room, or a rock wall. Well, you can't move that in
11 order to meet what the standards say, so what you do is
12 you put a general order in place that says that from
13 this milepost to this milepost there are impaired side
14 clearances and as such no crew members are permitted to
15 ride on the side of railcars.

16 That's the temporary fix until you update your
17 timetable. When you update your timetable and special
18 instructions, you -- you give that -- that rule or that
19 requirement a permanence by publishing it in your
20 timetable and special instructions.

21 Q And is the California Public Utilities
22 Commission involved with the publication of that
23 timetable and special instructions?

24 A They are not, nor is the FRA. You provide a
25 copy to them, however when they come out to make an

1 inspection, that's generally when a new copy is provided
2 to them.

3 They will in -- because safety is everything
4 that we do -- trains are very unforgiving in nature --
5 and it -- each day before a crew starts work, the crew
6 is required to have a job briefing and during that job
7 briefing you discuss a variety of things.

8 In our instance, we add an extra layer and we
9 actually require that the crew members open their rule
10 books, which is about as thick as this binder up here,
11 and that they actually read the rule of the day. So the
12 rule of the day may be "1.5," and when you turn to your
13 GCOR and you look at Rule 1.5, the crew members are
14 required to read it aloud and then they have their job
15 briefing, they go over their track work.

16 When an inspector comes onsite, the same thing
17 happens. One of the rules in GCOR is when you are
18 adding to your crew, meaning you're adding a person from
19 the outside into your crew, doesn't matter if it's an
20 outside contractor, if it's an inspector, they become a
21 part of that crew and their safety is now in your hands.
22 And so as a result of that, you hold a new job briefing.

23 So before you -- before they get to work and
24 inspect, you've gone through the pleasantries, the
25 introductions, what have you, you hold a job briefing;

1 you say, this is what we're doing today. We're going to
2 walk the track between Fort Bragg and milepost 2, we --
3 and we're going to walk back. As a result of that, we
4 do have this piece of equipment or there is no equipment
5 out there and the track is all ours. So you talk about
6 what's going on, what the lineup is, and -- and such.

7 Q And that's you will under the auspices of the
8 CPUC or the Federal Rail Administration?

9 A Yes.

10 MR. BLOCK: I'd like to offer into evidence
11 Exhibits 13 and 14.

12 MR. JOHNSON: No objection, Your Honor.

13 THE COURT: Exhibit 13 and 14 will be received.

14 (Plaintiff's Exhibits 13 & 14 received in evidence.)

15 MR. BLOCK: With respect to Exhibit 15, which
16 was in our request for judicial notice, it's the
17 declaration of the CPUC custodian of records which I
18 believe a copy was included in the -- the sealed package
19 I provided to, Your Honor, I'd like that admitted into
20 evidence, please.

21 (Plaintiff's Exhibit 15 was identified.)

22 MR. JOHNSON: Your Honor --

23 THE COURT: Have you seen these records yet?

24 MR. JOHNSON: No, I've never seen them.

25 THE COURT: Okay. So we'll have to make an

1 opportunity for you to either --

2 MR. JOHNSON: I mean, I may have seen them, but
3 I don't know what came from the CPUC. I was not
4 provided any documents --

5 THE COURT: Right.

6 MR. JOHNSON: -- from the CPUC.

7 MR. BLOCK: I will -- I will provide you
8 another copy of the e-mail by which you were provided
9 it. It's obviously been produced as Exhibit 15, so --
10 but we'll -- we can manage that after hours.

11 MR. JOHNSON: I would -- I haven't -- Exhibit
12 15 does not include all the documents you were provided
13 I don't believe, so -- were you only provided one
14 document in that packet?

15 THE COURT: No. I have all this (indicating.)

16 MR. JOHNSON: Yeah. So --

17 MR. BLOCK: And that was provided to you in an
18 e-mail a month or a month --

19 MR. JOHNSON: Okay. I'm not disagreeing with
20 Mr. Block. I would like to look at the documents.

21 MR. BLOCK: Of course.

22 THE COURT: Let's wait until tomorrow. We can
23 wait until tomorrow. You'll have some time tomorrow
24 morning to look at this.

25 MR. BLOCK: Thank you. Fair enough. Thank

1 you, Your Honor.

2 THE COURT: Uh-huh.

3 Q (BY MR. BLOCK) Is Mendocino Railway required
4 to obtain a business license to operate in either Fort
5 Bragg or Willits?

6 A Generally speaking railroads are preempted from
7 that type of an activity. Mendocino Railway through its
8 general counsel in 2008-2009 reached an agreement with
9 the City of Fort Bragg whereby it would obtain a
10 business license for -- for two things; one, for its
11 retail sales business side of its business and, two, as
12 a -- as a common carrier.

13 Q I'd like you to take a look at Exhibit 23,
14 please.

15 A Okay.

16 Q What is Exhibit 23?

17 A It's a copy of the City of Fort Bragg's
18 business license to Mendocino Railway, issued -- I'm
19 sorry. The expiration date is 12/31/2022.

20 (Plaintiff's Exhibit 23 was identified.)

21 Q (BY MR. BLOCK) So this is the business license
22 that -- that you just referred to for the current period
23 of time --

24 A That's right.

25 Q -- correct?

1 2022.

2 And under Type of Business what does it say?

3 A Common carrier.

4 Q And this was a business license issued to
5 Mendocino Railway by the City of Fort Bragg?

6 A Yes.

7 Q I'd like you to take a look at the pages of
8 Exhibit 24-1 through 24-14; what are -- what are those?

9 A Those are business licenses from previous
10 years; all issued to Mendocino Railway, and in many
11 years they are listed as -- they're all listed as common
12 carrier with the exception in -- must have had a change
13 in their coding because it still says common carrier,
14 but it says utility company/common carrier. That was
15 2011, 2010, and in 2009 it said common carrier, so there
16 must have -- software, but they all say common carrier.

17 (Plaintiff's Exhibit 24 was identified.)

18 Q (BY MR. BLOCK) And these are in color, Exhibit
19 14 -- or 24 is in color; it's just a color version of
20 the same business license that's in black and white in
21 Exhibit 23?

22 A Yes. Every year they issue them on various
23 colors and the colors that are in this book represent
24 the colors that they're issued on.

25 MR. BLOCK: I'd like to offer into evidence

1 Exhibits 23 and 24.

2 MR. JOHNSON: Your Honor, I object as far as
3 the documents being accepted into evidence for the truth
4 of the statements contained in the document because its
5 proper interpretation are not subject to judicial notice
6 if those matters are reasonably disputable, and I would
7 say that the -- the statement that they're -- that
8 Mendocino Railway Skunk Train is a type of business,
9 it's a common carrier, is reasonably disputable.

10 THE COURT: Okay. Well, I'll receive it and
11 give it whatever -- again, whatever weight or
12 interpretation based on the evidence that will be
13 provided.

14 (Plaintiff's Exhibits 23 & 24 received in evidence.)

15 MR. BLOCK: Thank you, Your Honor.

16 These are all also included within our requests
17 for judicial notice.

18 THE COURT: Right.

19 MR. BLOCK: Thank you.

20 MR. JOHNSON: So was that simply "23"?

21 MR. BLOCK: Twenty-three and "24."

22 Q (BY MR. BLOCK) I'd like to point you
23 Mr. Pinoli, to Exhibit 28.

24 A Okay.

25 Q What is Exhibit 28?

1 A The California State Rail Plan.

2 (Plaintiff's Exhibit 28 was identified.)

3 Q (BY MR. BLOCK) Have you seen this document
4 before today?

5 A I have.

6 Q When did you first see it?

7 A Well, I saw this document when it was
8 published. That's when I first saw it.

9 Q How did you come to see it?

10 A It was -- I believe an e-mail notice was sent
11 out alerting railroads who are members at CSLRA that
12 this was available for viewing.

13 Q CSLRA being the?

14 A California State Short Line Railroad
15 Association.

16 Q Was this document discussed at -- at meetings
17 of the short line association?

18 A It was.

19 Q Were there presentations by the State of
20 California to the short line association regarding this
21 report?

22 A Yes. I believe so, yes, uh-huh.

23 Q And you were present at those meetings?

24 A At some of the meetings, yes.

25 Q I'd like you to take a look at page 28-134.

1 It's a map, Exhibit 2.6.

2 A Okay.

3 Q And this is under a chapter entitled "Existing
4 Rail System"?

5 A Yes.

6 Q Now, this -- this report -- the subject is The
7 Entire Rail System in the State of California?

8 A That is correct.

9 Q And it does have some sections which relate to
10 short line or freight -- short line serve -- rail
11 service; correct?

12 A Yes.

13 Q But the majority of it is not related to
14 freight rail; is that fair to say?

15 A That's correct.

16 Q All right. Exhibit -- or "28-134," the map
17 there, what -- what is depicted in that map?

18 A Various rail lines. It's specifically showing
19 short line and switching/terminal freight railroads that
20 are throughout the State of California.

21 Q What -- what is it -- those distinctions, short
22 line, switching, terminal, freight railroads?

23 A Those are the railroads that frankly in the
24 railroading business -- you know, short line railroads
25 are extremely integral.

1 Your railroads like Union Pacific or Burlington
2 Northern Santa Fe are the Class I's and they're the ones
3 that are traveling thousands of -- transporting cargo
4 thousands of miles across the country over multiple
5 states.

6 Short line railroads are extremely integral in
7 that they often times carry what we call the first mile
8 and the last mile. Now, it may be more than one mile,
9 but the idea is, is that they're taking something from a
10 manufacturer, putting it onto the national rail network,
11 and at the other end, receiving it and carrying it that
12 last mile. So short lines are extremely important.

13 As the larger Class I railroads began -- or
14 started selling off a lot of their real estate, that's
15 how a lot of short lines were born because they didn't
16 want to manage a 30-mile branch line of track in this
17 remote area, so the opportunity to sell it off and allow
18 somebody to come in with different economies of scale,
19 be an operator, make sense.

20 And so this is depicting the short line
21 railroads, the terminal railroads that manage ports or
22 what have you. This is -- this map is showing those
23 operators.

24 Q Now, Mendocino Railway was not a sell-off of a
25 portion of a Class I line, was it?

1 A It was not.

2 Q But it's still called the short line?

3 A It is.

4 Q There's no distinction?

5 A There is not.

6 Q Okay. And Mendocino Railway -- is Mendocino
7 Railway, the CWR, reflected in the map on page --
8 Exhibit -- Exhibit 28, page 134?

9 A It is. It is listed as S-E-R-A, which are the
10 reporting marks for Sierra Northern Railway.

11 Q And in this is -- it doesn't show Fort Bragg or
12 Willits, those aren't labeled, but it's labeled S-E-R-A
13 and the label is just under NWP?

14 A That's correct.

15 Q And that's the NCRA line?

16 A NWP stands for Northern -- Northwestern Pacific
17 Railroad. It's their reporting marks that runs on the
18 NCRA line.

19 Q Do you know why this report does not have CWR
20 or Mendocino Railway's reporting mark and instead uses
21 SERA?

22 A Mendocino and Sierra Northern are sister
23 companies that are wholly owned by Sierra Railroad
24 Company. So the use of the S-E-R-A mark versus it being
25 displayed as MRY or -- or whatever -- or CWR -- I don't

1 know why, but they're, you know --

2 Q Interchangeable?

3 A Interchangeable.

4 Q And it looks to me that Mendocino Railway or
5 the CWR provides the only east-west connection between
6 the coast and the National Rail Network north of San
7 Francisco until -- right?

8 A That is correct.

9 Q And then the only connection to the coast north
10 of Mendocino Railway's line would be the NWP in Eureka;
11 is that right?

12 A That is correct.

13 Q Is there any significance as -- as a railroad
14 industry person to that east-west connection north of
15 San Francisco?

16 A It's -- it's huge. It's huge from the
17 standpoint that, you know, this is -- you have to keep
18 in mind that, you know, what started out as a logging
19 railroad quickly transformed. This was a railroad --
20 most logging railroads were built as narrow gauge, so
21 the track width was less than that of standard gauge.

22 The CWR was constructed in 1885 as a
23 standard-gauge railroad.

24 Q Let me just pause you there. Just the
25 significance between standard gauge or -- why does it

1 matter whether it's narrow gauge or standard gauge?

2 A Standard gauge is the American system. So all
3 of the common carrier public utility railroads that are
4 a part of the National Rail Network are standard-gauge
5 railroads. The -- the dis -- the difference is of
6 course the width of the track. Standard gauge is four
7 feet, eight and a half inches or 56 and a half inches
8 and narrow gauge, of course, is anything less than that,
9 but more commonly was 36 inches.

10 Logging railroads in -- in this area and in
11 this state, and certainly other states north of us,
12 logging railroads were often times narrow gauge. There
13 was less cost of infrastructure when you were putting a
14 railroad in, which was to be seen as very temporary in
15 nature; right, go in, get the trees, cut them down,
16 bring them back, when you're done doing that, pull up
17 the railroad and walk away.

18 That wasn't the case here. The railroad's
19 founder had a vision and that vision was to connect a
20 very remote area of the California north coast to the
21 National Rail Network, and as such did it or was either
22 convinced to build what was his railroad as a
23 standard-gauge railroad.

24 Q And what's the significance of it being a
25 standard-gauge railroad connecting the coast inland to

1 the National Rail Network north of California within
2 the -- the general California rail transportation
3 system?

4 A Well, there's an immense amount of opportunity.
5 There's opportunity for the development of commerce and
6 getting goods and services in and out of remote regions.
7 You know, if you have a remote region like Mendocino
8 County, we are one good winter storm away from having
9 roads, you know, impassable by a winter storm.

10 Similarly, it could happen to a railroad, but
11 it also -- it allows for another mode of transportation
12 to allow product and/or people to move and for it to
13 move freely, meaning that there doesn't have to be -- if
14 this were a narrow-gauge railroad -- and I'm not certain
15 of any examples.

16 There's certainly no modern-day examples of
17 where you had a narrow-gauge railroad connecting to a
18 standard-gauge railroad and you in essence moved the --
19 the commodity from one freight car to another freight
20 car so that it could be transported on the national
21 system, but there's certainly nothing like that today,
22 but it allows the goods and services to move freely
23 across the country.

24 Q On page 28-135 and continuing on to page 25
25 dash -- 28-136, there are three sections relating to

1 short lines, Class III railroads, can you summarize what
2 this report is -- is -- what information it's conveying
3 in these sections?

4 MR. JOHNSON: Your Honor, I object to that
5 request. It -- the document can speak for itself.

6 THE COURT: Yeah. I'm not sure where you're
7 going with this anyway.

8 MR. BLOCK: Okay. I'll move -- I'll move on.

9 Q (BY MR. BLOCK) Does -- does Exhibit 28
10 describe the general benefits of short line railroads as
11 part of the California Transportation Infrastructure
12 Network?

13 A It does.

14 Q And does chapter five, starting on Exhibit
15 28-213, reflect goals or plans for improving freight
16 rail infrastructure within the state of California,
17 including short line railroads?

18 A It does.

19 MR. BLOCK: I'd like to offer Exhibit 28 into
20 evidence.

21 MR. JOHNSON: Your Honor, I object. First of
22 all, this is hearsay. Second of all, it hasn't been
23 established that this is an official report by Caltrans,
24 and it's definitely not reasonably beyond dispute.
25 There's also no testimony regarding whether or not it's

1 the proper report in place today.

2 Additionally, the taking of judicial notice of
3 the official acts of governmental entity does not in and
4 of itself require the acceptance of the truth of the
5 factual matters which might be deducted therefrom since
6 in many instances what is being noticed and thereby
7 established is no more than the existence of such acts
8 and not without supporting evidence what might factually
9 be associated with or flow therefrom.

10 Additionally, this is a 541-page document and
11 Mr. Block and the witness, Mr. Pinoli, have discussed
12 effectively three pages. So, you know, I object to the
13 taking of a notice -- judicial notice of a 541-page
14 report that hasn't been discussed, and I also object to
15 the document being accepted as an official record
16 subject to judicial notice because I think it is subject
17 to dispute. And I also request that the Court, if it
18 does take judicial notice of this document, that it does
19 not take judicial notice of its contents.

20 THE COURT: Counsel.

21 MR. BLOCK: Yes. A couple of things.

22 Well, I can certainly authenticate the document
23 through Mr. Pinoli's testimony, that it's -- as far as
24 he knows, it's true -- a true and accurate depiction.

25 But in addition to that -- or -- on page 28 --

1 Exhibit 28-27, it says explicitly "California State Rail
2 Plan, Caltrans, Prepared for the Department of
3 Transportation." Continuing on the next two pages, 28
4 and 29, it lists all the public and private participants
5 in this, including on page 29 under Freight Rail, the
6 California Short Line Railroad Association.

7 And Mr. Beard certainly could help answer some
8 of the questions or objections that Mr. Johnson has
9 raised as president of the short line association, his
10 participation and involvement with the drafting of this
11 document, his participation in -- in the presentation of
12 this document to the short line association and
13 otherwise.

14 THE COURT: Well, what -- I mean, what is it
15 being offered for? I mean, am I going to have to read
16 this entire report to find out what you're trying to
17 prove here --

18 MR. BLOCK: No.

19 THE COURT: -- or is it just being offered to
20 demonstrate -- or substantiate his opinions that short
21 line railroads are important to the system?

22 MR. BLOCK: It addresses two key legal issues;
23 number one is the public use. I'm not sure that the
24 public use is -- is really at issue because the
25 authority to acquire for rail purposes as a legislative

1 act is -- is substantiated under the eminent domain code
2 as a public use in and of itself, but this aids in -- in
3 establishing the public use of the project here,
4 generally, as a passenger and freight rail project and,
5 specifically, as to the project that Mendocino Railway
6 is -- is intending to construct.

7 So it's within that context, but it's -- it's
8 public use and -- generally, and the public interest and
9 necessity requiring the project element under
10 1240.030(a), and I think Mendocino Railway should have
11 every opportunity to present all the evidence that is
12 available to it to establish those elements.

13 THE COURT: Anything further?

14 MR. JOHNSON: Well, Your Honor, I would just
15 say that public use was not addressed in any way in my
16 opinion based on the discussions we had -- or that
17 Mr. Block had with Mr. Pinoli, the questions that were
18 asked, nor were there specific sections in this
19 documentation that established that it relates in any
20 way to public use.

21 I mean, the fact of the matter is that if --
22 if -- I think that if the Court wants to take judicial
23 notice of this document, then it should take judicial
24 notice of the pages that were discussed and -- which
25 were three pages, and -- and I still question whether or

1 not it's a document that's subject to official -- is an
2 official report.

3 And that's why they have judicial notice that
4 requires a documentation that is not subject to dispute
5 because this is the exact situation we're in. Is this
6 an official document or not?

7 You've received official documents from the
8 CPUC. This document, we have no idea where it came
9 from -- I don't know where it came from. I don't know
10 if it's an official report. I don't know if there's an
11 official report that came out in 2022, and so the fact
12 of the matter is that's why the court system and the
13 statutory laws limit acceptance of documents to
14 judicial -- to documentation that are not subject to
15 dispute.

16 MR. BLOCK: There's -- there's points and
17 authorities and cases that -- that support the admission
18 of this under judicial notice and I'm happy to brief
19 that. Again, Mr. Beard with personal knowledge and
20 information regarding the preparation and participation
21 in this report could help answer these questions.

22 As to the number of pages that were referenced,
23 I -- I did ask about a few particular pages specifically
24 and then generally we discussed other sections of this.
25 It is a document, I will represent, that was pulled off

1 of the Caltrans website, and I would be happy to provide
2 the -- the URL for that.

3 And as to the '22 report, it is currently being
4 drafted.

5 THE COURT: Well, I'll go ahead and take
6 judicial notice of it, but at this point I'm not going
7 to give it very much weight, and I don't know how it
8 really helps your public use argument as it relates to
9 Mendocino Railway and the current project.

10 I'll leave it at that.

11 MR. BLOCK: Thank you, Your Honor.

12 MR. JOHNSON: Thank you, Your Honor.

13 THE COURT: Uh-huh.

14 Q (BY MR. BLOCK) Mr. Pinoli, I'd like you to
15 take a look at page 29 -- or Exhibit 29.

16 THE COURT: Are we starting to get into a
17 different area?

18 MR. BLOCK: It's -- it's a different report.
19 It's the same -- this gets a little more -- or a lot
20 more specific because it relates to short line railroads
21 and particularly infrastructure or facilities that are
22 part of Mendocino Railway's project in this action.

23 THE COURT: So why don't we start tomorrow
24 morning with this then --

25 MR. BLOCK: Fair enough.

1 THE COURT: -- if you're going to spend a lot
2 of time on this -- given the time.

3 So do you want to start at 9:00 or 9:30?

4 MR. JOHNSON: My preference would be to start
5 as early as possible.

6 THE COURT: Is 9:00 --

7 MR. BLOCK: I agree.

8 THE COURT: You're going to be here, you're not
9 traveling back and forth?

10 So let's start at 9:00 o'clock tomorrow.

11 We're in recess.

12 MR. BLOCK: Thank you, Your Honor.

13 MR. JOHNSON: Thank you, Your Honor.

14 (Proceedings adjourned at 4:30 p.m.)

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REPORTER'S CERTIFICATE

I hereby certify that the above transcript of proceedings was taken down, as stated in the caption, and that the foregoing 147 pages represent a complete, true and correct transcript of the proceedings had thereon.

DATED: August 30, 2022.

Trisha R. Hathaway-Link

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