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

16 MENDOCINO RAILWAY,

17 Plaintiff,

18 v.

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

26 Defendants.

Case No. SCUK-CVED-2020-74939

[APN 038-180-53]

(Assigned to Hon. Jeanine B. Nadel)

**PLAINTIFF MENDOCINO RAILWAY'S  
REPLY TO DEFENDANT MEYER'S  
CLOSING TRIAL BRIEF**

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## I. INTRODUCTION

In his Closing Trial Brief, Defendant John Meyer fails entirely to address the question of whether a low volume of common carrier rail services (i.e., freight and non-excursion passenger services) provided by Plaintiff Mendocino Railway is sufficient to maintain Mendocino Railway's public utility status. In other words, Mr. Meyer has not offered a single citation to any case or statute to support his argument that a railroad's public utility status can be taken away if it doesn't perform a particular volume of common carrier rail services. Nor can he, because, as set forth in Mendocino Railway's Closing Brief, the weight of legal authority holds that even a low volume of common carrier services does not diminish or change the fact that Mendocino Railway is a public utility railroad.

Beyond failing to provide any legal support for his argument, Mr. Meyer argues—incorrectly—that Mendocino Railway “merely and solely” provides excursion/tourist passenger rail service. Yet this argument ignores entirely the uncontroverted evidence presented by Mendocino Railway at trial about the nature and extent of freight and non-excursion passenger rail services Mendocino Railway historically *provided* continuously, that it currently *provides*, and that it plans to *provide* in the future.

Mr. Meyer's other arguments are similarly without either legal or factual support. For example, contrary to Mr. Meyer's improper personal attack, Mr. Pinoli's testimony was truthful and consistent.<sup>1</sup> At the beginning of trial, Mr. Pinoli testified accurately describing the rail services *provided* by Mendocino Railway—*performed* by Mendocino Railway's sister companies—following Mendocino Railway's 2004 purchase of the California Western Railroad. Mr. Pinoli's testimony was entirely consistent with the 2006 Railroad Board Decision (“RRB Decision”) Mr. Meyer references.

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<sup>1</sup> Mendocino Railway takes issue with Mr. Meyer's improper—and baseless—statements that Mr. Pinoli, “lied regarding material issues throughout his trial testimony” and that, “MR's and Pinoli's deceitful and duplicitous testimony represent a fraud on the court.” Meyer's Closing Brief, p. 1, lines 11 – 14. Mr. Meyer's emotional and impassioned litigation of this matter is no excuse for grossly mischaracterizing Mr. Pinoli's testimony and lodging disparaging personal attacks against him. Contradicting Mr. Meyer's attack, the Court offered an entirely different and more accurate characterization, “**I find him [Mr. Pinoli] to be very credible, articulate, and very knowledgeable...**” TR4, 44:1-2; emphasis added.

1 Moreover, Mendocino Railway presented testimony and other evidence establishing that it seeks to  
2 acquire the Subject Property for its rail project, and not a campground as suggested by Mr. Meyer,  
3 and that it complied with all legal requirements to do so.

4 At trial, Mendocino Railway clearly established—well beyond a preponderance of the  
5 evidence—that:

- 6 (i) Mendocino Railway is a common carrier public utility railroad entitled to exercise  
7 eminent domain to acquire private property for its railroad;
- 8 (ii) The public interest and necessity require Mendocino Railway’s rail project;
- 9 (iii) Mendocino Railway’s rail project is planned and located in the manner consistent  
10 with the greatest public good and least private injury; and
- 11 (iv) Mr. Meyer’s property is necessary for the rail project.

12 Accordingly, under Cal. Code Civ. Proc. §1260.120(b), the Court should enter an Order determining  
13 that Mendocino Railway has established its right to acquire Mr. Meyer’s property by eminent domain  
14 for railroad purposes.

15 **II. ARGUMENT**

16 **A. Mendocino Railway is a Common Carrier Public Utility Railroad. Mr. Meyer’s**  
17 **Arguments Suggesting Otherwise are Without Merit.**

18 **1. Mr. Meyer Did Not Address the Question of Whether Mendocino Railway’s**  
19 **Volume of Common Carrier Services Affects Its Public Utility Railroad Status.**

20 Mr. Meyer does not address the question of whether the volume of Mendocino Railway’s  
21 common carrier rail services affects its public utility railroad status. Mendocino Railway, however,  
22 has presented clear legal authority supporting findings that—based on the evidence presented at  
23 trial—Mendocino Railway is a common carrier public utility railroad corporation; and that a low  
24 volume of common carrier rail services does not change or affect that status. Though there are a  
25 dearth of cases addressing this issue, the cases that exist clearly establish that a low volume of service  
26 is of no consequence. “[A] utility that has dedicated its property to public use is a public utility even  
27 though it may serve only one or a few customers.” *Richfield Oil Corp. v. Public Utilities Com.* (1960)  
28 54 Cal.2d 419, 431. And, a public utility remains a public utility “no matter how the number of

1 consumers” for its services may “dwindle[, even if it dwindle[s] to none at all.” *Van Hoosear v.*  
2 *Railroad Com. of California* (1920) 184 Cal. 553, 557.

3 In its Closing Trial Brief, Mendocino Railway identifies and describes the uncontroverted  
4 testimony and documentary evidence presented at trial establishing the nature and extent of  
5 Mendocino Railway’s common carrier public utility rail services since it acquired the California  
6 Western Railroad (“CWR”) in 2004. This includes Mendocino Railway having established that the  
7 services it has *provided*—and continues to *provide*—are consistent with—and a continuation of—the  
8 passenger and freight rail transportation services *provided* by its predecessors for more than 130  
9 years. This also includes Mendocino Railway having identified the Surface Transportation Board’s  
10 2004 Notice of Exemption acknowledging Mendocino Railway’s common carrier railroad status and  
11 its plans to *provide* common carrier services following its acquisition of the CWR. And this includes  
12 Mendocino Railway having identified the three 1998 California Public Utilities Commission  
13 Decisions, each of which acknowledged the common carrier services *provided* by—and public utility  
14 status of—Mendocino Railway’s predecessor operator of the CWR. Mr. Meyer is fully aware of all  
15 three decisions but discusses—and mischaracterizes—only the *first* of the decisions in a blatant effort  
16 to paint a false picture of the CPUC’s view at the time.

17 Despite this extensive evidence and legal authority, Mr. Meyer baselessly contends—citing  
18 the *City of St. Helena v. California Public Utilities Commission* (2004) 119 Cal.App.4<sup>th</sup> 793 (the  
19 “*Wine Train Case*”)—that because Mendocino Railway operates an excursion/tourist service, it is not  
20 a public utility.<sup>2</sup> While the *Wine Train Case* holds that the Napa Wine Train’s excursion rail services  
21 were not “transportation,” and that the Napa Wine Train was thus not a public utility, the situation  
22 here is different. Here, it is uncontroverted that Mendocino Railway historically *provided*, currently  
23 *provides*, and intends to continue to *provide* freight and non-excursion rail services to the public into  
24 the future.

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27 <sup>2</sup> In discussing the Skunk Train, the 2004 *Wine Train Case* only refers to the excursion/tourist rail  
28 service on the line. The *Wine Train Case* does not reference the Skunk Train’s freight or non-  
excursion passenger rail transportation services taking place at that time, as acknowledged in the  
STB’s Notice of Exemption and the three 1998 CPUC Decisions, and as described in Mr. Pinoli’s  
testimony and the other evidence presented by Mendocino Railway at trial.

1 Here, it is also uncontroverted that Mendocino Railway has dedicated its railroad—the  
2 CWR—to public use by continuing, since its acquisition of the line in 2004, the line’s 130+ year  
3 history of *providing* freight and passenger (both excursion and non-excursion) rail services to the  
4 public. In fact, Mr. Pinoli offered extensive testimony at trial describing both the historical and  
5 ongoing freight and non-excursion passenger rail transportation services *provided* by Mendocino  
6 Railway. TR1, 102:24-107:25, 115:3-117:18, 118:15-120:8, 122:2-13, 145:6-20; TR2, 18:16-21:9,  
7 106:2-109:9; TR6, 16:20 – 32:3; Exhibits 5, 6, 7, 8, 9, 10 & 38. Moreover, Mr. Pinoli testified  
8 regarding various current requests and anticipated future requests for these freight and non-excursion  
9 passenger rail transportation services. TR2, 31:6-32:10, 43:13-47:15; TR6, 6:4-11:23, 42:16-43:13,  
10 46:9-22; and Exhibit Nos. 30, 39 and 40.

11 Thus, there is ample factual and legal support establishing that Mendocino Railway has been,  
12 and remains, a common carrier railroad public utility.

13 **2. Mr. Meyer’s Arguments Relating to the 2006 Railroad Retirement Board**  
14 **Decision Are Much Ado About Nothing.**

15 Mr. Meyer makes much of the RRB Decision arguing that it somehow impeaches or  
16 contradicts Mr. Pinoli’s testimony. But as with Mr. Meyer’s contentions above, Mr. Meyer is simply  
17 wrong; Mr. Pinoli’s testimony was entirely truthful and consistent.

18 First, Mendocino Railway presented at trial both documentary evidence and Mr. Pinoli’s  
19 testimony that Mendocino Railway’s initial rail operations on the CWR were *performed* by its sister  
20 companies, Sierra Entertainment (excursion and non-excursion passenger service) and Sierra  
21 Northern Railway (freight service). TR1, 154:18 – 157:10; and Exhibit 20. This testimony and  
22 evidence is consistent with the Railroad Retirement Board’s description of Mendocino Railway’s  
23 operations in the RRB Decision (Exhibit AA). This is also consistent with Mendocino Railway’s rail  
24 counsel’s subsequent January 2021 correspondence to the Railroad Retirement Board (Exhibit BB).

25 Second, Mr. Pinoli’s initial testimony is consistent with Mr. Pinoli’s further testimony, on re-  
26 direct and re-cross, cited by Mr. Meyer: that Sierra Entertainment between 2004 and 2008 *performed*  
27 the common carrier and excursion passenger services on the CWR on Mendocino Railway’s behalf,  
28 and that Sierra Northern Railway between 2004 and 2021 *performed* the common carrier freight

1 services on the CWR on Mendocino Railway's behalf. TR5, 64:13 – 65:6; TR6, 17:11 – 18:5, 19:4 –  
2 15, 30:13 – 32:3; and Exhibit 8 (Mendocino Railway's January 1, 2008 Freight Tariff stating "Freight  
3 Operations by Sierra Northern Railway."). Mr. Pinoli's initial testimony is also consistent with his  
4 further testimony clarifying the RRB Decision, confirming that Mendocino Railway's sister  
5 company—Sierra Northern Railway—was subject to the Railroad Retirement Board's employer  
6 requirements because it was the entity *performing* freight rail transportation services on behalf of  
7 Mendocino Railway on the CWR between 2004 and 2021. TR6, 29:2- 30:12.

8 Further substantiating his earlier testimony that Mendocino Railway *provided* freight rail  
9 transportation services on the CWR, Mr. Pinoli testified that Mendocino Railway's freight  
10 transportation services between 2004 and 2014—and continuing to the present—include delivering  
11 packages for private carriers such as Federal Express, UPS, DHL, and others, as well as delivering  
12 equipment for logging and utility companies. TR6, 20:20 – 21:15, 22:16 – 16, 22:23 – 9. And, further  
13 substantiating his earlier testimony that Mendocino Railway *provided* non-excursion passenger rail  
14 services, Mr. Pinoli also testified—elaborating on the nature and extent of non-excursion passenger  
15 rail transportation services prior to the 2013 tunnel collapse—that Mendocino Railway *provided* non-  
16 excursion passenger service in conjunction with the Mendocino Transportation Authority. TR6, 23:10  
17 – 24:24, 24:25 – 26:7.

18 Mr. Pinoli also testified regarding Ms. Zorbaugh's April 27, 2022 letter to the Railroad  
19 Retirement Board, on Mendocino Railway's behalf, in which she advised the Board of a change in  
20 circumstances as of January 1, 2022 and requested reconsideration of the prior 2006 RRB Decision to  
21 determine that Mendocino Railway is a "carrier" and subject to the Railroad Retirement Act. Mr.  
22 Pinoli testified that Ms. Zorbaugh's letter is consistent with his prior trial testimony regarding  
23 Mendocino Railway's freight rail transportation services, as *performed* by Sierra Northern Railway  
24 on Mendocino Railway's behalf between 2004 and 2021, and Mr. Pinoli also identified a couple of  
25 errors in dates in the letter. TR6, 32:10 – 36:11.

26 In his Closing Trial Brief, Mr. Meyer clearly cherry-picks portions of Mr. Pinoli's responses  
27 to cross-examination questions, mischaracterizing his testimony and completely ignoring all of Mr.  
28 Pinoli's other testimony directly contradicting Mr. Meyer's arguments.

1 Summarizing his prior testimony, Mr. Pinoli decisively testified that Mendocino Railway's  
2 passenger and freight tariffs identify and describe the rail transportation services "provided by"  
3 Mendocino Railway "to the public" and that Mendocino Railway provided these services prior to,  
4 and continuously since, 2004. TR2, 106:2 - 109:9; and Exhibit Nos. 6, 7, 8, 9 & 10. Mendocino  
5 Railway has thus met its burden of establishing that it *provided*, and continues to *provide*, common  
6 carrier railroad transportation services and, as such, is a public utility common carrier railroad.  
7 Nothing in the 2006 RRB Decision, or any other documents, supports Mr. Meyer's hollow  
8 counterarguments.

9 **B. Mendocino Railway Rail Project is a Public Use. Mr. Meyer's Arguments Suggesting**  
10 **Otherwise are Without Merit.**

11 **1. Contrary to Mr. Meyer's Vehement Argument, Mendocino Railway Never**  
12 **Intended to Construct a Campground and Will Not Construct a Campground.**

13 Mr. Meyer argues in his Closing Brief that Mendocino Railway plans to construct a  
14 campground rather than the rail Project Mendocino Railway identified and described in its  
15 Complaint. As sole support for its argument, Mr. Meyer references email correspondence between  
16 Mendocino Railway's management and executives considering acquisition of the nearby KOA  
17 campground, its potential suitability for the Project, and Mr. Hart's conceptual drawing of a  
18 campground on Mr. Meyer's property.

19 But Mr. Pinoli testified on both direct and cross-examination that the KOA property was not  
20 suitable for Mendocino Railway's Project and that the discussion was merely an exploration of  
21 another one of Mr. Hart's extraneous ideas that occasionally arise – and the discussion was a waste of  
22 resources. Most importantly, Mr. Pinoli—Mendocino Railway's President and CEO—testified that  
23 Mendocino Railway did not seriously consider operating or constructing a campground and has no  
24 intention to construct a campground as part of the Project. Moreover, Mr. Pinoli confirmed that  
25 Mendocino Railway does not have authority to acquire the Subject Property for a campground and  
26 that Mendocino Railway would not be constructing a campground as part of the Project. TR2, 101:7  
27 – 102:17; TR2 164:12 – 116:3; TR3, 224:14 – 24, 230:10 – 231:17, 237:11- 238:11, 239:27- 240:21,  
28 276:24 – 277:26.

1 As Mr. Pinoli testified:

2 “I serve as the president and chief executive officer of our company. And while I do  
3 have board members and colleagues that I work with and collaborate with, the  
4 decisions of the company stop with me. I grew up in this community. I’m four  
5 generations into this community, and I’ve spent 30 years – I have spent my entire  
6 career dedicated to the preservation of a railroad that was founded in 1885. I’m  
7 entrusted with this legacy operation. I’m not going to say something today and do  
8 something different tomorrow. *We will not be building a campground.*”

9 TR2, 102:7-17.

10 **2. Mendocino Railway’s Project Requires Acquisition of the Entire Subject**  
11 **Property (20 acres) and Mendocino Railway Provided a Proper Description of Its**  
12 **Project. Mr. Meyer’s Arguments Suggesting Otherwise are Without Merit.**

13 Mr. Meyer argues in his Closing Brief that Mendocino Railway does not need to acquire the  
14 entire 20-acre Subject Property and that Mendocino Railway has not properly described its Project.  
15 As set forth in Mr. Pinoli’s testimony and accompanying exhibits, the entire 20-acre Subject Property  
16 is required for Mendocino Railway’s Project in order to construct the rail facilities necessary for its  
17 ongoing and future common carrier freight and passenger transportation services. TR2, 57:13-61:20,  
18 62:14-63:15, 63:22-67:2; TR3, 281:9-22. Moreover, Mendocino Railway has fully complied with all  
19 legal requirements in identifying and describing its Project and the public use related thereto.  
20 Mendocino Railway’s Complaint (December 22, 2020), Para. 2. Though Mendocino Railway has  
21 prepared a conceptual plan for the Project, this is not a legal requirement.

22 Mr. Pinoli testified in detail identifying and describing Mendocino Railway’s needs for its  
23 Project, including its deficient and disjointed rail facilities in Willits and its operational requirements.  
24 TR1, 81:11-86:23; TR2, 13:20-14:17, 21:10-22:3, 25:27-27:8; TR3, 281:9-22. Mr. Pinoli also  
25 testified specifically as to the facilities to be constructed on the Subject Property as part of the  
26 Project, including a maintenance and repair shop, transload facilities, sidings and storage tracks, a  
27 wye track, and other facilities. TR2, 21:10-32:6. A conceptual plan for Mendocino Railway’s Project  
28 was also provided. TR2, 64:6-67:2; Exhibit 4. Mr. Pinoli also testified explaining that the Project

1 would encompass the entire 20-acre Subject Property (except for the sensitive natural habitat portion  
2 of the Subject Property at the east end, with its protected trees and streams, etc.). TR2, 64:6-67:2  
3 TR3, 285:20-288:2. Thus, the preponderance of the evidence clearly establishes Mendocino  
4 Railway's use of, and need to acquire, the entire 20-acre Subject Property.

5 Mr. Meyer also argues that Mendocino Railway did not properly describe its Project in its  
6 Complaint and suggests other legal deficiencies. But these arguments are also without merit. In its  
7 Complaint, Mendocino Railway properly described the Project and its public use, stating: "The  
8 project ("Project") for which Plaintiff seeks to acquire the below described property consists of  
9 construction and maintenance of rail facilities related to Plaintiff's ongoing and future freight and  
10 passenger rail operations and all uses necessary and convenient thereto." Mendocino Railway's  
11 Complaint (December 22, 2020), Para. 2. The Eminent Domain Law merely requires the Plaintiff to  
12 include "[a] general Statement of the public use for which the property is to be taken." Cal. Code Civ.  
13 Proc. §1250.310(d)(1). Mendocino Railway's description in the Complaint has clearly met that legal  
14 requirement.

15 Moreover, Mendocino Railway's project description is also sufficiently specific. It is nothing  
16 like the City of Stockton's vague description complained of by the Court of Appeals to be deficient  
17 and improper: "the Proposed Project consists of the acquisition of additional land in conjunction with  
18 potential development on the North Shore of the Stockton Deep [W]ater Channel." *City of Stockton*  
19 *in Stockton v. Marina Towers, LLC* (2009) 171 Cal.App.4<sup>th</sup> 93, 110. Thus, Mendocino Railway's  
20 description is proper and fully complies with the applicable legal requirements. Lastly, and again  
21 contrary to Mr. Meyer's contention (without, again, any citation by him to any legal authority), there  
22 is no requirement for Mendocino Railway to prepare and provide a project plan prior to initiating its  
23 eminent domain action. The testimony and documentary evidence presented at trial is more than  
24 sufficient to identify and describe Mendocino Railway's project and its public use.

### 25 **III. CONCLUSION**

26 Mendocino Railway clearly established at trial that it is a common-carrier public utility  
27 railroad that *provides* freight and non-excursion passenger rail transportation services. Mendocino  
28 Railway is thus authorized to exercise eminent domain to acquire Mr. Meyer's property for its rail

1 Project. Cal. Pub. Util. Code §611. The volume of Mendocino Railway's freight and non-excursion  
2 passenger rail transportation services is immaterial to the question of Mendocino Railway's common-  
3 carrier public utility status.

4 Moreover, Mendocino Railway clearly established—well beyond a preponderance of the  
5 evidence—each of the elements required to exercise eminent domain to acquire Mr. Meyer's property  
6 for Mendocino Railway's rail Project:

- 7 (i) The public interest and necessity require the Project to ensure Mendocino  
8 Railway properly and adequately continues to *provide* the public with freight  
9 and non-excursion rail transportation on the CWR now and in the future;
- 10 (ii) The Project is planned and located in the manner most compatible with the  
11 greatest public good and least private injury because the Subject Property is the  
12 only suitable location for the Project; and
- 13 (iii) As such, the entire 20-acre Subject Property is necessary for the Project.

14 The Court should accordingly enter an Order determining that Mendocino Railway has  
15 established its right to acquire Mr. Meyer's property by eminent domain for railroad purposes.

16  
17 Dated: February 8, 2023

CALIFORNIA EMINENT DOMAIN LAW GROUP,  
a Professional Corporation

18  
19  
20 By  \_\_\_\_\_  
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Attorneys for Plaintiff MENDOCINO RAILWAY

**PROOF OF SERVICE**

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

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 3429 Ocean View Boulevard, Suite L, Glendale, CA 91208. On February 8, 2023, I served the within document(s):

**PLAINTIFF MENDOCINO RAILWAY'S REPLY TO DEFENDANT MEYER'S CLOSING TRIAL BRIEF**

- ELECTRONIC MAIL:** By transmitting via e-mail the document listed above to the e-mail address set forth below.
- BY MAIL:** By placing a true copy of the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Glendale, California addressed as set forth in the attached service list
- OVERNIGHT DELIVERY:** By overnight delivery, I placed such document(s) listed above in a sealed envelope, for deposit in the designated box or other facility regularly maintained by United Parcel Service for overnight delivery and caused such envelope to be delivered to the office of the addressee via overnight delivery pursuant to C.C.P. §1013(c), with delivery fees fully prepaid or provided for.
- PERSONAL SERVICE:** By personally delivering the document(s) listed above to the person(s) listed below at the address indicated.

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

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

Executed on February 8, 2023, in Glendale, California.

  
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**SERVICE LIST**

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

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