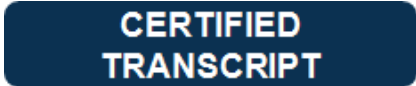


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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MENDOCINO
HONORABLE JEANINE NADEL, PRESIDING

. . .

MENDOCINO RAILWAY,)
)
Plaintiff,)
)
vs.)
)
JOHN MEYER, et al.,)
)
Defendants.)



Case No.
SCUJ-CVED-2020-74939

REPORTER'S TRANSCRIPT OF COURT TRIAL - DAY 5

NOVEMBER 3, 2022

. . .

For Plaintiff: CALIFORNIA EMINENT DOMAIN LAW GROUP
BY: GLENN L. BLOCK
Attorney at Law
3429 Ocean View Blvd., Suite L
Glendale, California 91208

For Defendant: MANNON, KING, JOHNSON & WIPF, LLP
BY: STEPHEN F. JOHNSON
Attorney at Law
200 N. School Street, Suite 304
Ukiah, California 95482

CHRISTINE JONES
Official Court Reporter
CSR License No. 12920

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24
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26
27
28

SESSIONS

PAGE

THURSDAY, NOVEMBER 3, 2022

AFTERNOON SESSION
COURT TRIAL - DAY 5

4

INDEX OF EXAMINATIONS

CHRONOLOGICAL

WITNESSES:

PAGE

ROBERT PINOLI

Further Recross-Examination by Mr. Johnson
Examination by The Court
Further Recross-Examination by Mr. Johnson
Further Redirect Examination by Mr. Block

5
74
75
79

ALPHA

WITNESSES:

PAGE

ROBERT PINOLI

Further Recross-Examination by Mr. Johnson
Examination by The Court
Further Recross-Examination by Mr. Johnson
Further Redirect Examination by Mr. Block

5
74
75
79

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INDEX OF EXHIBITS

Plaintiff

NO.	DESCRIPTION	ID	EV	WD
37	Letter dated 2/6/20 - Mendocino Railway to Mitch Stogner, NCRA	79	91	

Defendant

NO.	DESCRIPTION	ID	EV	WD
AA	Employer Status Determination - 9/28/06	4	26	
BB	Letter dated 4/27/22 - Baker & Miller to Shirley Moore	4	32	
CC	Fall 2021 Mendocino Railway newsletter - "The Little Stinker"	4	41	
DD	Letter dated 5/31/22 - Baker & Miller to Cynthia Brown	4	45 *	
EE	GRTA Certification of Filing and Service of Info dated 9/15/22 from Charles Montange	4	61 **	

* Exhibit DD received contingent upon receipt of exhibits identified in document.

** Exhibit EE received contingent upon receipt of attachments referenced in document.

1
2
3
4
5
6
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8
9
10
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THURSDAY, NOVEMBER 3, 2022

AFTERNOON SESSION

. . .

THE COURT: Let's go on the record in the matter of Mendocino Railway versus John Meyer, and we're on today -- on October 7th I granted Defendant Meyer's motion to reopen the case to add some additional evidence and that's why we're here.

So counsel, please state your appearances for the record.

MR. BLOCK: Good afternoon, Your Honor. Glenn Block for Plaintiff Mendocino Railway.

MR. JOHNSON: Good afternoon, Your Honor. Stephen Johnson appearing on behalf of Defendant John Meyer.

THE COURT: Okay. And you're waiting on exhibits before you start?

MR. JOHNSON: Yes, Your Honor.

THE COURT: Okay.

THE CLERK: How many exhibits do you have?

MR. JOHNSON: I have five.

THE CLERK: They're premarked.

MR. JOHNSON: Thank you.

(Whereupon, Defendant's Exhibits AA through EE were marked for identification.)

THE COURT: Are you going to call Mr. Pinoli?

MR. JOHNSON: Yes, Your Honor. Call Mr. Pinoli to the stand.

1 THE COURT: Mr. Pinoli, you were on the stand
2 for I think four days so you understand what you need
3 to do.

4 MR. PINOLI: Yes.

5 THE COURT: Please raise your right hand and
6 face the clerk.

7 ROBERT PINOLI,
8 having been duly sworn,
9 testified as follows:

10 THE WITNESS: I do.

11 THE CLERK: Thank you.

12 THE COURT: All right. You may proceed.

13 FURTHER RECROSS-EXAMINATION

14 BY MR. JOHNSON:

15 Q. Good afternoon, Mr. Pinoli.

16 A. Good afternoon.

17 A. I'm going to approach you with a
18 document that's been marked Exhibit AA.

19 Mr. Pinoli, this is a document that's been
20 marked Exhibit AA. It states it's an "Employer Status
21 Determination", and referenced on there, on this
22 document on the top left it's B.C.D. 06-42. It's
23 dated September 28th, 2006.

24 Are you familiar with this document,
25 Mr. Pinoli?

26 A. I am.

27 Q. Okay. And if you look at the first
28 paragraph of this document, it says, "This is the

1 determination of the Railroad Retirement Board
2 concerning the status of Sierra Entertainment and
3 Mendocino Railway, as employers under the Railroad
4 Retirement Act and the Railroad Unemployment Insurance
5 Act; is that correct?

6 A. That is correct.

7 Q. All right. And is it your understanding
8 that this is a decision that was handed down by the
9 Railroad Retirement Board as it relates to Sierra
10 Entertainment and Mendocino Railway?

11 A. Yes.

12 Q. If you look at the -- if you look at the
13 third paragraph on the first page, it states that,
14 "Information regarding these companies" -- and those
15 companies it refers to are Mendocino Railway and
16 Sierra Entertainment -- "was provided by Thomas
17 Lawrence III, Weiner Brodsky Sidman Kider PC, outside
18 counsel for Sierra Railroad Company"; is that correct?

19 A. That's what it says, yes.

20 Q. Okay. Are you familiar with Thomas
21 Lawrence III?

22 A. I am not.

23 Q. Okay. And are you familiar with the
24 referenced law firm?

25 A. I am not.

26 Q. Okay. Were you -- were you involved
27 with Mendocino Railway in September of 2006?

28 A. I was, and I was involved at the

1 parent-company level.

2 Q. Can you repeat that? I didn't hear you.

3 A. And I was involved at the parent-company
4 level.

5 Q. Okay. And the parent company would be
6 Sierra Railroad Company?

7 A. That is correct.

8 Q. Okay. So do you know if information was
9 provided to the Retirement -- Railroad Retirement
10 Board by Thomas Lawrence III related to this decision,
11 as referenced in the third paragraph?

12 A. I have no -- again, I don't know
13 Mr. Lawrence so I don't know what he would have
14 provided to the Railroad Retirement Board.

15 Q. Okay. Do you have any reason to believe
16 that the statement that we just referenced in the
17 third paragraph is not correct?

18 A. No, I have no reason to believe that.

19 Q. Okay. If you go down, in the third
20 paragraph, you skip a sentence and it states, "Its
21 excursion trains include (1) the Skunk Train, which
22 operates a round-trip excursion train from Fort Bragg
23 to Northspur, and from Willits to Crowley", and in
24 parenthesis it says, "Northspur and Crowley are
25 turning points."

26 And then, "(2) the Sacramento RiverTrain,
27 which operates a round-trip excursion train from
28 Woodland, California, to a turning point; and (3) the

1 Oakdale Dinner Train, which operates a round-trip
2 dinner/excursion train from Oakdale, California, to a
3 turning point 14 miles out. Sierra Entertainment owns
4 its own equipment and employs its staff, but does not
5 own any rail lines?"

6 Do you see that?

7 A. I do.

8 Q. Okay. And those trains that are being
9 referred to, the Skunk Train, the Sacramento
10 RiverTrain, and the Oakdale Dinner Train, are those
11 all trains that are somehow affiliated with Sierra
12 Railroad Company?

13 A. They are.

14 Q. The sentence that I just mentioned where
15 it talks about the Skunk Train, it says, "The Skunk
16 Train, which operates a round-trip excursion train
17 from Fort Bragg to Northspur." Would it be correct to
18 say that the Skunk Train is an excursion train, in
19 your opinion?

20 A. The name Skunk Train, as I testified
21 before, originated in 1925 and so that was a nickname
22 that was given to the railroad. The whole time the
23 railroad -- in its 137 years of service, nothing about
24 what the railroad is doing today is different than
25 what it was doing in 1925.

26 And so the railroad is commonly referred to
27 or known as the Skunk Train. If you went out on the
28 street and said California Western Railroad to

1 somebody, they wouldn't necessarily know what that
2 meant. But if you said Skunk Train, they would know
3 what it meant.

4 Q. Okay. But the focus I have here or the
5 question I'm asking is related to the reference that
6 was made as to the Skunk Train as an excursion train.
7 Is that a correct reference in your opinion, it's an
8 excursion train?

9 A. Well, I don't -- I think it's
10 referencing -- well, it is referencing the Skunk
11 Train, which operates round trip excursions. That's
12 the definition that is listed here in the opinion of
13 the Railroad Retirement Board.

14 Q. Okay. So it appears that the Retirement
15 Board did not refer to it as a commuter train or a
16 freight train, but it referred to it as an excursion
17 train; is that correct?

18 A. Well, they were referring to an
19 operation of Sierra Entertainment, and so Sierra
20 Entertainment at the time sole focus was on the
21 excursion side.

22 Q. Okay. But effectively Sierra -- this
23 decision involved Sierra Entertainment and also
24 Mendocino Railway; is that correct?

25 A. It does.

26 Q. And those are distinct companies; is
27 that correct, different companies?

28 A. Distinctly different.

1 Q. Yes. And the Skunk Train is owned by
2 Mendocino Railway, correct?

3 A. The Skunk Train is an operation that is
4 owned by Mendocino Railway.

5 Q. Okay. Sierra Entertainment does not own
6 the Skunk Train; is that correct?

7 A. That is correct.

8 Q. If you go down to the fourth paragraph,
9 it states in the first sentence, "Mendocino was
10 created" -- and I believe that's probably related to
11 Mendocino Railway.

12 It says, "Mendocino was created in 2004 to
13 acquire the assets of the former California Western
14 Railroad (a covered employer under the Acts; B.A. No.
15 2782), a 40-mile rail line in Mendocino County." And
16 my question to you is do you know what's being
17 referred to when it says "covered employer"?

18 A. So at the time, then California Western
19 Railroad paid in to the United States Railroad
20 Retirement System.

21 Q. Okay. So it would be correct to say
22 that you believe -- or would it be correct to state
23 that a "covered employer" means that it would be an
24 employer that pays into the federal retirement system;
25 is that correct?

26 A. Yes.

27 Q. So your predecessor or the predecessor
28 of Mendocino Railway was a covered employer and paid

1 into the federal retirement system for railroads; is
2 that right?

3 A. Yes.

4 Q. All right. If you continue -- if we
5 continue with this same paragraph, it states in the
6 third sentence, "Mendocino's line runs between Fort
7 Bragg and Willits, California, and connects to another
8 railway line over which there has been no service for
9 approximately ten years." Is it your understanding
10 that that rail line that they're referring to would be
11 the NCRA line?

12 A. Yes.

13 Q. And that would be the line that runs
14 north and south from -- say from Ukiah all the way up
15 to Eureka; is that correct?

16 A. And beyond.

17 Q. And beyond. Yes?

18 A. Yes.

19 Q. So at the time this document was
20 created, which was 2006, would it be correct to say
21 that there was no service on that line for
22 approximately ten years?

23 A. On the NCRA line?

24 Q. Yes.

25 A. It was less than ten years.

26 Q. Do you know about how many years it was?

27 A. Well, there actually still is service on
28 the NCRA line in the southern portion. But the last

1 -- as I testified back in August, the last freight
2 train interchange by the California Western to the
3 then Northwestern Pacific or NCRA would have been
4 Thanksgiving Eve of 1998.

5 Q. Okay. Thank you.

6 And then the next sentence in this document
7 says, "Structural problems and bridge problems on the
8 line will prevent service for some time to come." Do
9 you see that?

10 A. I do.

11 Q. And at this particular time that's still
12 the case, right? There's no service on the NCRA line;
13 is that right?

14 A. That is not correct. There is service
15 over portions of the NCRA line.

16 Q. Okay. But I would say that -- let me
17 rephrase that.

18 There's no service over the portions of the
19 NCRA line in and around the town of Willits; is that
20 correct?

21 A. That is not correct. We operate through
22 a trackage rights agreement over the NCRA line in
23 Willits.

24 Q. And how much -- approximately how much
25 rail do you use for your operation, NCRA line rail?

26 A. In total about -- well, I would say a
27 couple of miles.

28 Q. Okay. Besides those couple of miles, is

1 the remainder of the NCRA line around Willits out of
2 service?

3 A. It's presently not used.

4 Q. Okay. The next sentence provides,
5 "Since Mendocino Railway's only access to the railroad
6 system is over this line, that access is currently
7 unusable." Based on your understanding, is that the
8 case; is that a true statement?

9 MR. BLOCK: Objection, vague as to time.

10 THE COURT: Mr. Johnson, are you referencing

11 --

12 MR. JOHNSON: Yeah, as of -- I'll reference
13 as of 2006.

14 THE WITNESS: I'm sorry. As of 2006?

15 BY MR. JOHNSON:

16 Q. Yes.

17 A. Is the NCRA line not passable; is that
18 your question?

19 Q. I'm just asking that as of 2006, the
20 last sentence in this document, AA, that we're
21 referring to, it states, "Since Mendocino Railway's
22 only access to the railroad system is over this line,
23 that access is currently unusable." And then my
24 question is as of 2006, do you believe that's a true
25 statement?

26 A. Connecting -- if you're looking at it
27 from connecting a railroad to a railroad without rail
28 cars moving in another fashion, then yes.

1 Q. So my question, though, as of 2006, is
2 it your understanding that that's a true statement,
3 that sentence referenced in this decision?

4 A. Yes.

5 Q. Go to the next page, page two of this
6 document. In this decision, on the first paragraph of
7 the second page it states, "Mendocino's ability to
8 perform common carrier service is thus limited to the
9 movement of goods between points on its own line, a
10 service it does not perform." Do you see that?

11 A. I do.

12 Q. And as of 2006, do you believe that is a
13 true statement?

14 A. That's -- yes.

15 Q. Okay. So it would be true that as of
16 2006, Mendocino Railway was not performing common
17 carrier services; is that correct?

18 A. That's correct, and that's also
19 consistent with the testimony I provided in August.
20 Mendocino Railway was a holding company, if you will,
21 and its freight services were provided by its sister
22 company.

23 Q. Okay. And this document -- this
24 statement also states that Mendocino Railway did not
25 move goods between points on its own line; is that a
26 true statement as well, as of 2006?

27 A. That's correct.

28 Q. And would it be correct to say that

1 Mendocino Railway has not performed common carrier
2 services from its inception in 2004, through January
3 1, 2022?

4 A. I'm sorry. Would you repeat that
5 question, please?

6 Q. Would it be correct to state that
7 Mendocino Railway has not performed common carrier
8 services between the timeframe of 2004 when it
9 purchased the railroad, the California Western
10 Railroad, and January 1st, 2022?

11 A. That is correct.

12 Q. And when I'm referring to -- would it be
13 correct to say that when the reference to common
14 carrier services in this document, this decision, that
15 would generally -- and this is a general statement and
16 I'm asking you for your opinion -- that generally
17 refers to the transportation of goods or passengers,
18 that reflects what a common carrier service is; is
19 that right?

20 A. Yes.

21 Q. So if someone was referencing the fact
22 that the Mendocino Railway does not perform common
23 carrier services, inherent with that statement would
24 be the basic understanding that Mendocino Railway is
25 also not transporting passengers; is that correct?

26 A. Mendocino Railway is transporting
27 passengers now.

28 Q. I know, but I'm talking about --

1 A. In 2006?

2 Q. Yes.

3 A. That is correct.

4 Q. And during the timeframe that we
5 discussed of 2004 through January 1st of 2022, if
6 Mendocino Railway wasn't performing common carrier
7 services then they also at that timeframe were not
8 transporting passengers, correct?

9 A. No, Mendocino Railway was transporting
10 passengers after 2008.

11 Q. Okay. So in 2008, Mendocino Railway
12 started transporting passengers?

13 A. That's correct.

14 Q. So the timeframe between -- and based on
15 your testimony it would be correct to state that
16 between 2004 and 2008, common carrier services for
17 passengers did not occur at Mendocino Railway; is that
18 right?

19 A. Those would have been services that
20 would have been handled through the Sierra side, not
21 the Mendocino side.

22 Q. So it's your testimony then today that
23 since 2008, Mendocino Railway has been transporting
24 passengers?

25 A. Yes, that's correct. Since 2008,
26 Mendocino Railway has been transporting passengers.

27 Q. And then if that was the case, would you
28 then be required -- or is it your understanding that

1 you should be required to pay into the retirement
2 system since 2008?

3 A. No, that's not correct.

4 Q. And why is that not correct?

5 A. Because Mendocino Railway --
6 transportation of passengers and freight are
7 dynamically different, and so when Sierra Northern
8 Railway stopped its obligation over the line in 2021,
9 Mendocino took over January 1, 2022, and as such the
10 railroad petitioned the United States Railroad
11 Retirement Board to begin becoming a railroad
12 retirement payee.

13 Q. But my question is if you were
14 transporting passengers based on your statements in
15 2008, why didn't you petition the Retirement Board in
16 2008?

17 A. It's not required.

18 Q. And is it not required because you
19 weren't a common carrier; is that correct?

20 A. It's not required -- no, Mendocino
21 Railway was a common carrier, and that was recognized
22 by the STB in 2004 in its notice of exemption when it
23 acquired the California Western Railroad.

24 Q. Okay. Well, if it was a common carrier
25 then why wasn't it paying money into the railroad
26 retirement fund?

27 A. It's not required for passenger service.

28 Q. Okay. So if you look at the bottom of

1 page two of this document, there's a reference to the
2 last paragraph. It states, "The Railroad Retirement
3 Act and the Railroad Unemployment Insurance Act also
4 define the term 'employer' to include," and then it
5 has subparagraph two, "any company which is directly
6 or indirectly owned or controlled by, or under common
7 control with one or more employers as defined in
8 paragraph (i) of this subdivision, and which operates
9 any equipment or facility or performs any service
10 (except trucking service, casual service, and the
11 casual operation of equipment or facilities) in
12 connection with the transportation of passengers or
13 property by railroad, or the receipt, delivery,
14 elevation, transfer in transit, refrigeration or
15 icing, storage, or handling of property transported by
16 railroad."

17 Do you see that paragraph?

18 A. I do.

19 Q. So wouldn't it -- based on the
20 definition in here which states that an employer would
21 be anyone in connection with transportation of
22 passengers, wouldn't under that definition Mendocino
23 Railway would have been required to petition the
24 Retirement Board in 2008?

25 A. No.

26 Q. Why is that?

27 A. Well, because the Board's previous --
28 the Board's decision which says that Mendocino Railway

1 does not need to be a payee.

2 Q. Okay. If you go to the next page, page
3 three, and you go down to the first large paragraph,
4 it starts with "Sierra Entertainment is under common
5 control". Do you see that paragraph?

6 A. Yes.

7 Q. Okay. Then it states the second
8 sentence, "Therefore, if Sierra Entertainment provides
9 a service in connection with the transportation of
10 passengers or property by railroad it is an employer
11 under the Acts."

12 Do you see that?

13 A. I do.

14 Q. Okay. Do you think that if that's the
15 case for Sierra Entertainment, would it also be the
16 case for Mendocino Railway, if they transported
17 passengers or property by railroad it would be an
18 employer under the Acts?

19 A. Potentially.

20 Q. Okay. Mendocino Railway did not
21 petition the Railroad Board to be an employer under
22 the Act in 2008 when it allegedly started transporting
23 passengers; is that correct?

24 A. It did not.

25 Q. Okay. If you go to the next page, page
26 four of document AA, at the paragraph on this top of
27 page four it says, "Since Mendocino reportedly does
28 not and cannot now operate in interstate commerce, the

1 Board finds that it is not currently an employer under
2 the Acts. If Mendocino commences operations, the
3 Board will revisit this decision."

4 Do you see that?

5 A. I do.

6 Q. The first portion of the sentence says,
7 "Since Mendocino reportedly does not and cannot now
8 operate in interstate commerce." Is it a correct
9 statement that -- is that a true statement as of the
10 date of this decision in 2006?

11 A. Yes. Again, Mendocino Railway wasn't
12 engaged in operations.

13 Q. Okay. So as of 2006, Mendocino Railway
14 could not operate in interstate commerce; is that
15 correct?

16 A. That's correct.

17 Q. And that's also the case as of today; is
18 that correct?

19 A. Mendocino Railway could operate in
20 interstate commerce today.

21 Q. And what's transpired since 2006 to now
22 make that statement that Mendocino Railway can operate
23 in interstate commerce?

24 A. Well, Mendocino Railway could get goods
25 or services in via transload, so trucks that could
26 come in from another area, and that freight could be
27 delivered to any intermediate station on its line.

28 Q. So what you're saying is that trucks can

1 pick up freight from the railroad, Mendocino Railway's
2 line, and deliver those goods to some other station
3 and then that would effectively make Mendocino Railway
4 part of the interstate commerce?

5 A. Well, it is part of the interstate
6 commerce system because of its connection to the NCRA

7 Q. But according to this document, the NCRA
8 was not functional -- functionally part of the
9 interstate commerce system in 2006, and I think based
10 on your testimony it's still not part of the
11 interstate commerce; is that correct?

12 A. It's still a functioning railroad and
13 still recognized as a railroad, if you will,
14 regardless of if there's operation happening over the
15 NCRA or not.

16 Q. Okay. But that seems to be inconsistent
17 with the decision that was made here because
18 effectively it appears based on the decision that the
19 Retirement Board made the conclusion that Mendocino
20 Railway was not connected to interstate commerce and
21 it's for that particular purpose or reason that it did
22 not require Mendocino Railway to pay funds into the
23 Retirement Board; is that correct?

24 A. Well, in 2006, Mendocino Railway had no
25 employees either. Again, it was a holding company.

26 Q. But I have a very specific question. My
27 question is it appears that the decision was made in
28 2006 that Mendocino Railway did not have to pay into

1 the retirement fund largely because Mendocino Railway
2 was not part of the interstate commerce system; is
3 that correct?

4 MR. BLOCK: Objection, vague. Misstates the
5 document.

6 THE COURT: Do you understand the question?

7 THE WITNESS: I think I understand what
8 Mr. Johnson's trying to get at, Your Honor, but
9 it's -- perhaps, Mr. Johnson, if you wouldn't mind
10 re-asking the question or restating it?

11 MR. JOHNSON: Let me restate it.

12 BY MR. JOHNSON:

13 Q. Okay. In 2006, if you look at page
14 number four, it says, "Since Mendocino reportedly does
15 not and cannot now operate in interstate commerce, the
16 Board finds that it is not currently an employer under
17 the Acts."

18 Do you see that statement?

19 A. I do.

20 Q. I believe you testified in 2006 that was
21 a correct statement; is that correct?

22 A. Based on how -- if you're asking me if
23 what is written here is correct, meaning I'm agreeing
24 with how it's written -- if you're asking me if I'm
25 agreeing with how it's written, that may be different
26 than if it's -- as you've read it, if it's correct.

27 Q. Well, I believe you testified that you
28 thought that was a true statement, that that sentence

1 was a true statement in 2006 --

2 A. Yes.

3 Q. -- is that correct?

4 A. Yes.

5 Q. Has something changed with Mendocino
6 Railway since 2006 that now makes that inapplicable to
7 Mendocino Railway?

8 A. The fact that Sierra Northern Railway is
9 no longer providing services, Mendocino Railway would
10 now be compelled to be a payee.

11 Q. Well, it appears that this statement
12 seems to revolve around the fact that in 2006
13 Mendocino does not and cannot now operate in
14 interstate commerce. That was the key issue. Not --
15 the key issue appeared to be interstate commerce
16 connection, and my question to you is has your ability
17 to interact with the interstate commerce system
18 changed since 2006?

19 A. I think that -- I think that -- so for
20 2006, again, Mendocino Railway was not engaged in
21 operations and so the statement is correct. Has
22 something changed today? Yes.

23 Q. What's changed?

24 A. Well, Mendocino Railway is able -- is
25 now compelled -- because Sierra Northern is no longer
26 providing service, so Mendocino Railway is now
27 compelled to provide those services.

28 Q. Okay. So it's your testimony today that

1 your railroad, Mendocino Railway's railroad, is
2 connected to the interstate commerce system?

3 A. That is correct.

4 Q. And it's your testimony that that
5 interstate -- that railroad system or Mendocino
6 Railway's lines have been connected to the interstate
7 commerce system since you purchased it; is that
8 correct?

9 A. Yes, there's nothing that's ever severed
10 the connection. Regardless of their ability to
11 operate a railroad or not, the connection is still
12 there. Or I believe the connection is still there.

13 Q. All right. So the statement in here
14 that "Mendocino reportedly does not and cannot now
15 operate in interstate commerce," it's your position
16 that that's an incorrect statement?

17 A. I wouldn't say that. I would -- again,
18 Mendocino Railway was a holding company, if you will,
19 that held the assets. It had no employees. So for it
20 to engage in something that it couldn't do without
21 employees or equipment at the time doesn't make any
22 sense.

23 Q. Okay. It's your understanding that the
24 representations that were made to the Retirement Board
25 came from Sierra Railroad Company's attorney; is that
26 correct?

27 A. That's Mr. Lawrence that you referred to
28 earlier?

1 Q. Yes.

2 A. I believe so. And again, I don't -- I
3 had no knowledge of Mr. Lawrence at the time and only
4 learned about him through this process.

5 Q. If Mendocino Railway was found to be an
6 employer under the Act, what would it be required to
7 do?

8 A. Pay its employees under the Tier 2
9 system.

10 Q. Pay its employees' retirement?

11 A. Yes, so it would be paying into the
12 United States Railroad Retirement Act.

13 Q. Okay. And is Mendocino Railway doing
14 that right now?

15 A. Mendocino Railway has made application
16 or petition to the United States Railroad Retirement
17 Board effective January 1, 2022, to pay in to the
18 Retirement Act.

19 Q. So is Mendocino Railway paying into the
20 Retirement Act as of January 1, 2022?

21 A. Once the Board grants it, then yes, it
22 will be paying into it, and it will retro pay into the
23 Act for all employees.

24 Q. At this particular time it's not paying;
25 is that correct?

26 A. That's correct, because the Board has
27 not rendered a decision.

28 Q. Okay. And the revisiting of this

1 decision occurred after the filing of the action
2 against John Meyer; is that correct?

3 A. Yes, the action was filed in December of
4 '20.

5 MR. JOHNSON: Your Honor, I'd move this
6 document, AA, into evidence.

7 THE COURT: Any objection?

8 MR. BLOCK: No objection, Your Honor.

9 THE COURT: Exhibit AA will be received.
10 (Whereupon, Defendant's Exhibit AA was
11 received.)

12 MR. JOHNSON: Thank you.

13 BY MR. JOHNSON:

14 Q. Mr. Pinoli, this is a document that's
15 been marked Exhibit BB. If you'd take a look at it.

16 A. Okay.

17 Q. This is a document dated April 27th,
18 2022. It's a letter to Shirley C. Moore, Coverage
19 Specialist of Railroad Retirement Board in Chicago,
20 Illinois, and it's written by Crystal M. Zorbaugh,
21 attorney for Mendocino Railway.

22 Have you seen this document before,
23 Mr. Pinoli?

24 A. I have seen the letter, yes.

25 Q. And was this letter submitted to the
26 Railroad Retirement Board to your knowledge?

27 A. It was.

28 Q. Okay. And is it correct to say that

1 this is the letter that was written in which Mendocino
2 Railway requests that the Railroad Retirement Board
3 revisit a prior coverage decision based on a change of
4 circumstances, specifically relating to the decision
5 referenced as Exhibit AA that we just reviewed?

6 A. Yes.

7 Q. And so that decision or this letter
8 basically started that process of reviewing that
9 decision and it was submitted to the Railroad
10 Retirement Board on or around April 27th of 2022; is
11 that correct?

12 A. That is correct.

13 Q. If you look at -- if you look at the
14 second page of the document and you look at the second
15 paragraph on the second page, if you look at the
16 second paragraph in the second sentence it says, "Due
17 to these opportunities and other changes," -- then it
18 references a footnote -- "effective January 1, 2022,
19 Mendocino Railway took over direct operating
20 responsibility from Sierra Northern Railway for
21 freight service over its rail line."

22 Is that a true statement?

23 A. That is correct.

24 Q. Then it goes on to say, "Based on these
25 changes in circumstances, and in light of the RRB's
26 B.C.D. 06-42.1 decision, Mendocino Railway becomes" --
27 or, excuse me, "Mendocino Railway believes that it has
28 become a 'carrier'" -- carrier is in quotation marks

1 -- "under the Act effective January 1, 2022."

2 Based on your knowledge, is that a true
3 statement?

4 A. Yes.

5 Q. So based on that statement it would seem
6 to infer that prior to January 1, 2022, Mendocino
7 Railway did not believe it was a carrier under the
8 Act; is that correct?

9 A. That's -- yes, that's what it would
10 infer.

11 Q. Okay. If you look at page four, there's
12 -- or Exhibit A; Exhibit A's attached to this letter.
13 And look at page number four of this letter, there's a
14 reference to a Subsection 8 which states -- and this
15 effectively appears to be questions that are being
16 responded to as part of this application.

17 It says "(8), Provide a detailed explanation
18 of Mendocino Railway's entire operations to include
19 its annual expected volume of freight traffic."

20 And then the answer appears to be, "From 2016
21 to 2019, SNR fulfilled Mendocino's common carrier
22 obligation by providing service to shippers/receivers
23 located along the Line on average three times a year."

24 Do you see that?

25 A. I do.

26 Q. Is that a true statement?

27 A. The exhibit that you're referencing,
28 Exhibit A, today actually was the first time that I

1 had seen the exhibit, and I believe the 2016 is an
2 error. As we were going over the letter, I noticed
3 another error and that is on page two of the letter,
4 and that is in the second --

5 Q. Well, I --

6 MR. JOHNSON: Your Honor, I'd just object to
7 this.

8 THE COURT: Yeah, let's finish the first
9 question first. He's just asking you the one question
10 regarding that statement.

11 THE WITNESS: I believe that the -- that
12 there is an error in the date.

13 BY MR. JOHNSON:

14 Q. Okay. What do you believe is the error?

15 A. Well, it says 2016 and, rather, that
16 should be an earlier date.

17 Q. Okay. Do you have any idea why you're
18 making that statement?

19 A. Again, today was the first time that I
20 had seen the exhibit. I did see the letter and
21 approve the letter, but today is the first time I have
22 seen -- saw the exhibit, and so that's -- I do believe
23 that that 2016 is in error.

24 Q. Okay. What about the reference to -- it
25 states that, "From 2016 to 2019, SNR" -- that's Sierra
26 Northern Railroad; is that correct?

27 A. That's correct.

28 Q. "Fulfilled Mendocino's common carrier

1 obligations by providing service to shippers/receivers
2 located along the Line on average three times a year."

3 The reference to three times a year, do you
4 believe that's a true statement?

5 A. Yes.

6 THE COURT: Mr. Johnson, can you hold on one
7 moment?

8 (Brief pause in the proceedings.)

9 THE COURT: All right. Sorry for the
10 interruption. Go ahead.

11 MR. JOHNSON: Okay. Thank you.

12 BY MR. JOHNSON:

13 Q. If you look at page three of Exhibit A
14 -- or Exhibit A, page three of the letter I think it's
15 referring to. There's a -- at the bottom, paragraph
16 number six, it says, "The name of the railroad with
17 which Mendocino Railway will interchange."

18 And then the answer is, "Mendocino Railway
19 connects to North Coast Railroad Authority ("NCRA") at
20 Willits, California. The NCRA line is currently
21 inactive but remains subject to the STB's
22 jurisdiction. Mendocino Railway is taking over direct
23 responsibility for fulfilling its common carrier
24 obligation and for conducting transload services from
25 its affiliate SNR over Mendocino Railway's 40-mile
26 line from Fort Bragg, California to Willits,
27 California."

28 Do you see that?

1 A. I do.

2 Q. And is it a true statement that the NCRA
3 line is currently inactive?

4 A. In certain portions, yes.

5 Q. So is that a true statement?

6 A. Yes.

7 Q. Okay. So also number six, we just
8 referred to this last sentence here. It says,
9 "Mendocino Railway is taking over direct
10 responsibility for fulfilling its common carrier
11 obligation and for conducting transload services from
12 its affiliate SNR over Mendocino Railway's 40-mile
13 line from Fort Bragg, California to Willits."

14 Do you see that?

15 A. I do.

16 Q. And isn't it true that in fact Mendocino
17 Railway cannot conduct transloading services the full
18 length of the 40-mile line from Fort Bragg to Willits
19 due to this tunnel problem?

20 A. That's not what this says. It says that
21 Mendocino Railway is taking over direct responsibility
22 for fulfilling its common carrier obligation and for
23 conducting transloading services from its affiliate
24 SNR over Mendocino Railway's 40-mile line. Just
25 because the line is severed by an 1122-foot tunnel
26 doesn't mean that it's any less than 40-feet long --
27 excuse me, 40-miles long.

28 Q. Okay. Well, it seems to infer -- it

1 says from Fort Bragg to California -- or, excuse me,
2 Fort Bragg, California, to Willits, California.

3 Doesn't that statement seem to infer that
4 transloading is occurring along or the carrying of
5 freight is occurring between Fort Bragg and Willits,
6 California?

7 A. I don't think it does.

8 Q. Okay.

9 MR. JOHNSON: Your Honor, I'd move document
10 BB into evidence.

11 THE COURT: Any objection?

12 MR. BLOCK: No objection, Your Honor.

13 THE COURT: Exhibit BB will be received.

14 (Whereupon, Defendant's Exhibit BB was
15 received.)

16 MR. JOHNSON: Thank you.

17 BY MR. JOHNSON:

18 Q. Mr. Pinoli, this is a document that's
19 been marked exhibit -- is that the one that has the --
20 I might have given the wrong one here.

21 This document's been marked Exhibit CC. Are
22 you familiar with this document?

23 A. I am.

24 Q. Okay. This is a document that is
25 referenced on your website; is that correct?

26 A. I believe there is a link to this on the
27 railroad's website.

28 Q. Okay. And if you look on the first page

1 on the top left, below the train, picture of the
2 train, it says Fall 2021, Volume 1, Issue 1; do you
3 see that?

4 A. I do.

5 Q. Is it your understanding that that's
6 when this document was prepared?

7 A. Yes.

8 Q. And do you know, did Mendocino Railway
9 prepare this document?

10 A. It did.

11 Q. Can you give us a general understanding
12 of what this document is?

13 A. So it's a newsletter. It's entitled
14 "The Little Stinker", and it is a multipage newsletter
15 that was a newspaper, periodical if you will, that was
16 produced by the railroad to inform folks on various
17 projects that the railroad was and is working on.

18 Q. Okay. All right. Thank you.

19 If you go to the second page of this document
20 it states -- it looks like it states that the title of
21 it is "A New Dawn", and then in the top there where
22 the photographs are it says, "A visionary reimagining
23 of the defunct Fort Bragg Mill Site to meet the needs
24 of a new millennium." Do you see that?

25 A. I do.

26 Q. Can you explain or are you aware of what
27 this portion of the newsletter is addressing?

28 A. It's talking about the railroad's plans

1 for the northern portion of the mill site, which it
2 acquired in 2019, 77 acres.

3 Q. Okay. And if you go to the next page,
4 page three, it says -- on the top up here, on the top
5 of the page, it says, "Two phases of development.
6 Phase One of the proposed development will create 500
7 units, as well as extensive open space to retain the
8 beauty of the area. Phase Two adds a beautiful
9 southern park and a connection point to the Noyo
10 Headlands Coastal Trail."

11 Is that a general overview of what's proposed
12 for the property in Fort Bragg that Mendocino Railway
13 owns?

14 A. Based on the map that's here on page
15 three, yes.

16 Q. So the map here reflects generally what
17 the preliminary site drawing for the development would
18 be?

19 A. For the 77 acres, yes.

20 Q. Okay. And it appears that it's a -- it
21 would be a hotel? Or can you give us an idea of what
22 the proposed development consists of?

23 A. So when Mendocino Railway acquired the
24 property in 2019, there was a community planning
25 process already well underway, many meetings that my
26 colleagues and I had attended throughout the entire
27 planning process, and when we acquired the northern
28 portion of this land from Georgia-Pacific, it was not

1 with the intent of having housing. It was to be
2 visitor-serving rail facilities, a hotel.

3 But through the community development and
4 community planning process, housing was one of the
5 critical needs for the area, and so the housing
6 element that's here -- well, actually, everything
7 that's conveyed here in this map is as a result of a
8 collaborative planning process whereby the railroad,
9 the community, and city leadership got together and
10 met and worked things out where things would be.

11 Q. Okay. So it would be correct to say
12 that this plan generally relates to the proposed
13 development of residential houses and also
14 tourist-related and hotel-related infrastructure; is
15 that correct?

16 A. Yes.

17 Q. Is there any reference to any type of
18 freight activities on this plan?

19 A. Dry Shed Number 4, which would be used
20 for railroad purposes, that's between --- that's in
21 the -- in the map, it's in the lower section of the
22 map. It's a very large building and it's denoted over
23 in the right margin as "Dry Shed Number 4". Dry Shed
24 Number 4 is to the west of Railroad Square and the
25 railroad's depot. Dry Shed 4 would be used for
26 railroad purposes.

27 Q. Okay. If you'd go to page number five
28 of this document?

1 A. Yes.

2 Q. If you look at -- it says at the top,
3 "Restoring natural habitat. Working paw-in-hand with
4 Trout Unlimited, the Skunk is doing its part to ensure
5 that vital salmon habitat is restored and maintained
6 for the next generation."

7 Can you generally explain what the Skunk did
8 with Trout Unlimited?

9 A. Sure, and I think I touched on this in
10 my testimony in August. The railroad works with a
11 variety of agencies, Trout Unlimited being one of
12 them, but Trout Unlimited really was the grant-funding
13 applicant and it was really a collaborative effort
14 between Fish and Wildlife, NOAA, and a variety of
15 other state and federal agencies to replace undersized
16 culverts that exist in the Noyo Watershed.

17 In addition, it sought the funds sought to
18 restore streambeds back to a more native or natural
19 state. Sleeving the culvert in is not conducive to
20 good fish passage, and so having a more natural creek
21 bed or bottom that has rocks and woody debris and such
22 is far more conducive. And so the culverts, which are
23 cylindrical, in many cases were removed -- or square
24 -- they were removed and arch bridge-like structures
25 were constructed and put in place.

26 Q. Okay. And these culverts that were
27 removed were actually culverts that were under the
28 existing railroad line; is that correct?

1 A. Some were. Although, upstream from
2 Milepost 26, that was on neighboring -- a neighboring
3 property owner's land and so it was not on the
4 railroad's property.

5 Q. Okay. Well, if you look at the -- on
6 the left side of this article, go down to the last
7 paragraph on the left side. It says, "The first site
8 is located at the Upper Noyo, just east of Burbeck,
9 and the first place the railroad tracks cross the Noyo
10 River after salmon spawn at the headwaters."

11 Do you see that?

12 A. I do.

13 Q. And at that particular site it appears
14 that the culvert that was removed was removed
15 underneath the railroad tracks; is that right?

16 A. That's correct.

17 Q. And then the second -- if you go to the
18 top of the right side of this article, it says, "The
19 second site, Gulch C, is in and surrounding Shake
20 City. The existing infrastructure here was historic
21 and beautiful, but once again was not conducive to
22 fish habitat. The exterior was a typical concrete
23 construction, and the interior was redwood. Here we
24 also replaced the infrastructure to restore the
25 natural streambed. At the personal direction of Mike
26 Hart, Gulch C has been permanently renamed 'Pinoli
27 Gulch' in recognition of the years of work that
28 Mendocino Railway CEO Robert Pinoli has invested in

1 this project."

2 And my question is, did you -- did Mendocino
3 Railway replace the infrastructure?

4 A. Both Mendocino Railway and contractors
5 replaced the infrastructure.

6 Q. Okay. And when you testified earlier in
7 this trial about Mendocino Railway delivering
8 approximately a hundred carloads of aggregate for the
9 Trout Unlimited project, would that be for this
10 project that is referenced in this article?

11 A. Some of it was for, but a good deal -- I
12 believe I also testified to a bridge coming in, steel
13 structures, and that was for the neighboring property
14 owner.

15 Q. Okay. But a large portion of that
16 aggregate was used for these projects referenced here;
17 is that correct?

18 A. Some of the aggregate was used. I don't
19 know that I would say a large portion because some of
20 it came in via truck on a logging road for the
21 railroad's portion.

22 Q. And so would it be correct to say that
23 the hundred carloads that were referenced in your
24 prior testimony, a portion of those were used for this
25 project involving the removal of existing pipes from
26 underneath the railroad; is that correct?

27 A. Sure. Yes.

28 Q. And it appears that if you look at the

1 left-hand side of the -- on the left-hand side in kind
2 of the second or third paragraph down, it says, "These
3 projects would not have been possible without the
4 amazing partnership of Trout Unlimited, the Mendocino
5 Land Trust, the California Fish Passage Forum, the
6 National Fish and Wildlife Foundation, NOAA Fisheries,
7 the California Department of Fish and Wildlife, the
8 Nature Conservancy, the Salmonid Restoration Project,
9 Michael Love and Associates, Granite Construction, and
10 AECOM. Together the project costs \$3.5 million, and
11 we are grateful to the many funders Trout Unlimited
12 brought to make it a reality."

13 Do you see that?

14 A. I do.

15 Q. And would it be correct to say that the
16 entities and people referenced in this article donated
17 in some form either money or other supplies or labor
18 to this project; is that right?

19 A. Money came from either state or federal
20 funds that are available specific to restoration
21 projects. And Mike Love and Associates, they are some
22 of the folks that you mentioned that were not hired by
23 the railroad; rather, they were hired as a sort of
24 checks and balance to the work that Trout Unlimited
25 was doing.

26 Q. Okay. And so when you had testified
27 earlier that you were -- the railroad was paid for
28 transloading this hundred carloads of aggregate, would

1 it be correct to say then that the federal or state
2 government paid for the fees related to the delivery
3 of aggregate to these job sites?

4 A. Yes, federal and/or state funds were
5 used for the entire project.

6 Q. Okay. And were those the -- the costs
7 related to the delivery of such aggregate, that was
8 based on a contract that you had with the government
9 entities; is that correct?

10 A. No. The contract that the railroad had
11 was with Trout Unlimited, and Trout Unlimited is
12 responsible for the contracts with all of the
13 agencies.

14 Q. Okay. And was that based on a
15 contractual rate or was that based on your tariff
16 rates that we've reviewed earlier in this trial?

17 A. The allocation, I believe, was based on
18 a contractual rate.

19 Q. So you didn't charge -- Mendocino
20 Railway did not charge Trout Unlimited based on the
21 freight tariffs that it has in the documents in the
22 exhibits that we've reviewed in the last trial; is
23 that right?

24 A. I don't have the Trout Unlimited
25 documents in front of me, so I don't want to comment
26 yes or no and be incorrect.

27 Q. All right.

28 THE COURT: Did you want to move CC in?

1 MR. JOHNSON: Yes, Your Honor, I'd move CC
2 into evidence.

3 THE COURT: Any objection?

4 MR. BLOCK: No objection.

5 THE COURT: All right. Exhibit CC will be
6 received.

7 (Whereupon, Defendant's Exhibit CC was
8 received.)

9 MR. JOHNSON: Thank you.

10 BY MR. JOHNSON:

11 Q. This is a document that's been marked
12 Exhibit DD. It's a letter dated May 31, 2022, to
13 Cynthia T. Brown, Chief of the Section of
14 Administration, Office of Proceedings, Surface
15 Transportation Board in Washington D.C., and it
16 appears to be written by Attorney William A. Mullins.

17 Are you familiar with this document?

18 A. I am.

19 Q. And is Mr. Mullins an attorney for the
20 Mendocino Railway?

21 A. Yes, he's outside counsel.

22 Q. Okay. And was this document submitted
23 to the Surface Transportation Board?

24 A. It was.

25 Q. All right. And that was related to the
26 North Coast Railroad Authority's abandonment exemption
27 in Mendocino, Trinity, and Humboldt Counties,
28 California, AB-1305X?

1 A. That is correct.

2 Q. And this document was submitted by
3 Mendocino Railway in relation to the process of
4 evaluating the abandonment exemption in front of the
5 Surface and Transportation Board; is that correct?

6 A. That is correct.

7 Q. And if you look at the exhibit here,
8 there's Exhibit E, which is referenced -- the actual
9 Exhibit E is referenced on the second page of the
10 letter. It says, "(5) The liability insurance of MR
11 enclosed as Exhibit E." And Exhibit E says, "Proof of
12 Insurance".

13 Are you familiar with this proof of
14 insurance?

15 A. Yes.

16 Q. And is this -- was this proof of
17 insurance provided to the Surface and Transportation
18 Board as part of this process, abandonment process?

19 A. It was.

20 Q. And if you look on the first page of the
21 proof of insurance it says, "Named insured: Sierra
22 Railroad Company and Mendocino Railway."

23 Do you see that?

24 A. Yes.

25 Q. All right. So would this insurance
26 relate to Mendocino Railway?

27 A. Yes.

28 Q. And then if you go down to Item 2, it

1 states, "Effective date: 8/31/2021. Expiration date:
2 8/31/2022."

3 Do you see that?

4 A. I do.

5 Q. And then if you go to the next page, it
6 says, "Item 5. Premium. Classification or
7 Locations", and it says, "Tourist/Excursion Railroad."

8 Do you see that?

9 A. I do.

10 Q. And so it would be correct to say that
11 as far as insurance policies are concerned, Mendocino
12 Railway would be considered a tourist/excursion
13 railroad?

14 A. Well, the policy has been updated.

15 Q. Well, as of at least through the time of
16 filing this, which was sometime in May of 2022, at
17 that particular time the classification for Mendocino
18 Railway was a tourist/excursion railroad; is that
19 correct?

20 A. That's what's listed here.

21 Q. And based on looking at this policy, it
22 doesn't appear that there's any type of a limit or
23 insurance for any freight; is that correct?

24 A. I'm sorry. Say that again?

25 Q. It doesn't appear that this insurance
26 policy covers any freight that may be carried by
27 Mendocino Railway; is that right?

28 A. I think that's a wrong assumption.

1 You're just seeing a simple two-page document. The
2 actual policy is close to a hundred pages long.

3 Q. Okay. Do you see any reference on this
4 insurance statement relating to a limit for covering
5 freight?

6 A. No.

7 MR. JOHNSON: Your Honor, I'd move Exhibit DD
8 into evidence.

9 THE COURT: Any objection?

10 MR. BLOCK: Well, Your Honor, there's other
11 exhibits that are referenced here. It shows an
12 incomplete document.

13 THE COURT: Mr. Johnson, do you have the
14 other exhibits, A, B, and C?

15 MR. JOHNSON: I could obtain them. They've
16 all been filed with the Surface and Transportation
17 Board. I did not attach them because they're
18 significant in size and I don't think they're really
19 relevant to the issue that we're discussing, but I
20 don't mind providing it if it's desired.

21 MR. BLOCK: I would like to see the full
22 document. I've not seen this, so just if we could
23 hold it open so I can --

24 THE COURT: I'll receive it contingent upon
25 receipt of the entirety of the document.

26 MR. BLOCK: Thank you, Your Honor.

27 MR. JOHNSON: Thank you.

28 THE COURT: Holding it open means maybe

1 another court session.

2 (Whereupon, Defendant's Exhibit DD was
3 received contingent upon receipt of
4 sub-exhibits referenced within.)

5 By MR. JOHNSON:

6 Q. Mr. Pinoli, this is a document that's
7 been marked Exhibit EE, if you want to take a look at
8 it, please. This is a document that -- if you look at
9 the last page, it's a document submitted by Charles H.
10 Montange, M-o-n-t-a-n-g-e. It appears to be from the
11 Law Offices of Charles H. Montange, Rail counsel for
12 NCRA/GRTA, and it was submitted to the Surface
13 Transportation Board related to the abandonment
14 exemption AB-1305X in Mendocino, Trinity, and Humboldt
15 Counties, California.

16 MR. BLOCK: And Your Honor, this is the first
17 time I'm seeing this document. Can I have a few
18 minutes to review the full thing?

19 THE COURT: Yes, absolutely. My staff has
20 been going since 1:15 so I'd like to give them their
21 break.

22 MR. BLOCK: Okay.

23 THE COURT: So can we return at 3:20?

24 MR. JOHNSON: Sure.

25 MR. BLOCK: Yes.

26 (Recess taken.)

27 THE COURT: We're back on the record.

28 MR. BLOCK: Your Honor, I've had the

1 opportunity to review this. We object on the grounds
2 of hearsay, foundation, and authenticity.

3 I'd also -- you know, I don't know what the
4 relevance is. There's no offer of proof. It's a
5 statement of a third party in another proceeding. I
6 don't know how this relates to our case, whether it's
7 relevant or probative to --

8 THE COURT: Well, he's not asking to move it
9 into evidence yet. I'm going to go ahead and let him
10 ask some questions and maybe he can lay the
11 appropriate foundation.

12 MR. BLOCK: Can we get an offer of proof?

13 THE COURT: Mr. Johnson, what's the purpose
14 of this document?

15 MR. JOHNSON: Well, Your Honor, my intent
16 here is to ask him some questions that related to
17 issues that are referenced in this document and, you
18 know, I haven't submitted a request that it be placed
19 into evidence. It's basically there are issues that
20 were raised in this document relating to the operation
21 of Mendocino Railway that are directly relevant to
22 what the issues are in this case and that's what I
23 intend to ask him about.

24 THE COURT: Okay. I'm going to go ahead and
25 allow you to ask the questions.

26 MR. JOHNSON: Thank you.

27 THE COURT: And it's without prejudice to
28 your objection, obviously.

1 MR. BLOCK: Thank you, Your Honor.

2 BY MR. JOHNSON:

3 Q. So Mr. Pinoli, this is a document which
4 I referenced earlier and it states that -- in the
5 first sentence here on the first page it says,
6 "Mendocino Railway ('M.R.') filed a 'notice of intent
7 to file an offer of financial assistance' for Milepost
8 139.5 (Commercial Street in Willits) to M.P. 152.5 a
9 location in 'Longvale' in the above-captioned two-year
10 out-of-service abandonment proceeding."

11 Can you explain what a "notice of intent to
12 file an offer of financial assistance" is, generally?

13 A. So an offer of financial assistance can
14 only be made by a railroad company, a railroad, that
15 is recognized as a common carrier to acquire the
16 operating rights over the track, so to acquire the
17 property, of a railroad that is currently not
18 operating.

19 Q. Okay. And so would it be correct to say
20 that Mendocino Railway filed a "notice of intent to
21 file an offer of financial assistance" as it relates
22 to the milepost references that I mentioned and that's
23 on the NCRA line; is that correct?

24 A. That is correct.

25 Q. And that's a -- those mileposts are
26 basically located from Willits, north of Willits, to
27 Longvale; is that right?

28 A. That is correct.

1 Q. And then this document is a document
2 that was filed by NCRA in the Surface and
3 Transportation Board proceedings in response to
4 Mendocino Railway's "notice of intent to file an offer
5 of financial assistance"; is that correct?

6 A. That's correct.

7 Q. If you go to page four of this document
8 and you go to the bottom of page four, there's a
9 paragraph that says, "Combined system financial
10 responsibility"?

11 A. Yes.

12 Q. And it states, "If MR bases its case on
13 through freight service from MP 152.5 through Willits
14 to Fort Bragg, then it must show the financial
15 responsibility to rehabilitate the Fort Bragg to
16 Willits line in addition to the MP 152.5 to 139.5
17 segment. MR's most recent estimate (2022) for the
18 rehabilitation of Fort Bragg to Willits is
19 \$31,300,000."

20 Do you see that?

21 A. I do.

22 Q. And is that a correct statement that as
23 of 2022, the estimated cost for rehabilitating the
24 Mendocino Railway line from Fort Bragg to Willits is
25 \$31,300,000?

26 A. It is not.

27 Q. That's an incorrect statement?

28 A. It absolutely is.

1 Q. What's your estimate; do you have an
2 estimate?

3 A. We do have an estimate. This -- the
4 \$31 million was also a number that was parroted by our
5 state senator as a cost to rebuild Tunnel Number 1,
6 and that is factually incorrect. Mendocino Railway
7 has a proposal from an outside contractor that is
8 exponentially less than the \$31 million listed here.

9 The railroad between Fort Bragg and Willits,
10 but for Tunnel Number 1, is in operating condition,
11 meaning that it meets a class standard. We talked
12 about that in August. And so the entire railroad is
13 passable.

14 To take the railroad to a next level, a
15 significant investment would be needed and that is
16 something that the railroad is working on, but
17 \$31 million is a number that GRTA and NCRA simply
18 pulled out of the sky.

19 Q. Okay. So you think that that's just a
20 fabricated number?

21 A. Think? I know.

22 Q. All right. Thank you.

23 If you go to the next page, page five, it
24 says on the top paragraph -- it's underlined -- it
25 says, "Tourism/excursion train use does not justify
26 eminent domain."

27 If you go down to the second sentence, it
28 says, "Although MR frequently intimates otherwise, it

1 has never operated the Willits to Fort Bragg line for
2 freight."

3 And then it references a footnote which
4 states that, "MR is understood to be a subsidiary of
5 Sierra Railroad Company, believed to be a non-carrier
6 holding company. Another Sierra Railroad Company
7 subsidiary d/b/a Sierra Northern Railway may
8 apparently provide freight rail services, but not in
9 Mendocino County (although it professes to do so on
10 its website)?"

11 Is it your understanding that that statement
12 and the footnote is a true statement?

13 A. I wouldn't say that.

14 Q. Why do you say that that's not true?

15 A. Well, this entire document and most of
16 the claims represented by Mr. Montange on behalf of
17 his clients are simply false.

18 Q. So it's your testimony that the
19 NCRA/Great Redwood Trail organization falsely
20 misrepresented the facts in this document to the
21 Surface and Transportation Board?

22 A. Yes.

23 Q. And is that -- is the Great Redwood
24 Trail and North Coast Railroad Authority, is that a
25 California State entity?

26 A. Yes.

27 Q. If you look at the -- this page five, if
28 you go down to -- skip one sentence and go down to the

1 sentence that says, "Consistent therewith, MR
2 represented to the Railroad Retirement Board (RRB)
3 that it had no freight traffic and was a purely
4 tourist excursion operation, and therefore was
5 entitled to an exemption from rail labor retirement
6 taxation."

7 Is that a true statement?

8 MR. BLOCK: Objection, Your Honor. We just
9 spent a half-hour or so going through the actual
10 document, the Railroad Retirement Board decision, and
11 Mr. Pinoli answered all of the questions. Why are we
12 revisiting this, and what difference does it make what
13 Great Redwood Trail says?

14 THE COURT: I'm going to allow him to answer
15 it. I think you've already answered it, but you can
16 restate it.

17 THE WITNESS: So what they're referencing, I
18 believe, is the 2006 decision, and we've already
19 covered that. 2006, Mendocino Railway was not an
20 employer.

21 BY MR. JOHNSON:

22 Q. Okay. So would it be correct to say
23 that that -- that the sentence that I just read is a
24 true statement?

25 MR. BLOCK: Objection, vague.

26 THE COURT: Overruled.

27 THE WITNESS: Yes.

28 ///

1 BY MR. JOHNSON:

2 Q. If you look at page eight, there's a
3 sentence on the top of page eight. It says, "Perhaps
4 fueled by its successful threat of eminent domain in
5 Fort Bragg, MR recently initiated eminent domain
6 proceedings to secure a tourist site along Highway 20
7 at Willits (it evidently belatedly added a freight
8 transload as an additional reason for the proceeding
9 in order to combat claims it was using eminent domain
10 purely for tourism)."

11 And then it references a footnote, and in the
12 footnote in the second -- well, references this case,
13 and then in the second sentence it says, "Michael
14 Hart, apparent owner of MR, is on record recommending
15 that entrepreneurs buy railroads because (he felt)
16 railroads not only could use eminent domain but also
17 claim exemption from land use regulations, and thus
18 acquire a kind of 'monopoly power'."

19 Do you see that?

20 A. I do.

21 Q. And it references a YouTube website. Do
22 you -- have you ever looked at this YouTube website
23 where Mr. Hart discusses this issue?

24 A. I think I've seen it once.

25 Q. Okay. And does the website reference or
26 recommend that entrepreneurs buy railroads because
27 railroads not only can use eminent domain but also
28 claim exemption from land use regulations, and thus

1 acquire a kind of monopoly power?

2 A. I don't recall.

3 Q. If you look at the next sentence after
4 the reference to footnote ten, the one I just read, it
5 states, "It is hard to understand how a transload at
6 Willits on Highway 20 makes any economic sense if MR
7 intends to pursue an OFA from Willits (where it would
8 acquire the Willits Yard roughly a mile away from its
9 proposed Highway 20 facility) all the way to Longvale
10 at MP 152.5, where yet another transload would
11 presumably be necessary if MR intends to maintain the
12 pretense of actual freight rail service."

13 Do you believe that it makes sense to have a
14 transload facility at Willits on Highway 20?

15 A. I do.

16 Q. Why do you believe that it makes
17 economic sense to have such a transload facility
18 there?

19 A. It's to meet the needs and requests that
20 we've received for service. And as I testified back
21 in August, there are a variety of issues related to
22 the current facilities that we have and, as such,
23 consolidating those facilities into one location makes
24 the best sense.

25 Q. So you've had numerous requests for
26 service?

27 A. We have.

28 Q. And are those active requests right now?

1 A. They -- I know that the railroad's
2 general manager is working on a request right now.

3 Q. One request?

4 A. One that I'm familiar with.

5 Q. So you believe that it makes sense to
6 put a transload facility on effectively a -- what is,
7 as the crow flies, 30 miles between Fort Bragg and
8 Willits?

9 A. As I testified in August, yes.

10 Q. And do you believe that that type of
11 facility can -- and that type of freight operation
12 that you plan on or propose using this transload
13 facility for is going to be competitive with trucking
14 rates?

15 A. I think it will be far more competitive.

16 Q. Okay. Why do you think that?

17 A. The efficiencies of railroads that I
18 testified to in August can move over a ton of freight
19 -- one ton of freight over 400 miles on less than one
20 gallon of diesel fuel. The efficiency is three or
21 four to one, meaning three or four trucks to one
22 railcar load, and that speaks volumes.

23 Q. So if someone were to use this railroad,
24 first of all, we'd have to fix Tunnel 1 of the
25 railroad if the freight was going to go from Fort
26 Bragg to Willits, correct?

27 A. And that's something we are working on.

28 Q. And secondarily, if the tunnel was

1 repaired and operational, the process would be
2 effectively -- if some company wanted to use your
3 facility and your freight operations, they would
4 effectively then take I would expect a truckload of
5 material to or goods to your facility in Fort Bragg,
6 for example, and then unload it, and then it would be
7 then subsequently loaded on a train, the train would
8 then drive to Willits or the Highway 20 site, unload
9 that material, and then put it back on a truck; is
10 that correct, if it was going to go somewhere else
11 other than the Highway 20 site?

12 A. That is a potential use.

13 Q. Is that generally how it would work?

14 A. In some cases, yes.

15 Q. In most cases, would that be the way it
16 would work do you think?

17 A. Potentially, yes.

18 Q. So the NCRA did not think that that was
19 a very functional economic plan, but you seem to think
20 that it is; is that correct?

21 A. Well, you're talking about an
22 organization that has failed every step of the way to
23 have a functioning railroad.

24 Q. And do you think that failure was in any
25 way related to the economic conditions and the lack of
26 freight available in this particular area?

27 A. Absolutely not. The amount of freight
28 that's available in this area is rather significant.

1 Mendocino County is an industrious county. It's an
2 enterprising county. And if you look at a state rail
3 map that we reviewed in August, this remote region has
4 little to no rail service, and if you have the
5 opportunity to bring goods or services from even
6 neighboring counties and get them onto rail, the
7 amount of environmental benefit that is created by
8 doing that is huge.

9 Q. Okay. So the next sentence down in this
10 document says, "A fact-based and consistent
11 explanation for why a tourist operation now finds it
12 necessary to rely on state and federal eminent domain
13 remedies to acquire three transload sites (and a line
14 between two of them) over a distance of roughly
15 15 miles for currently non-existent freight operations
16 on currently dilapidated lines which have no
17 functioning connection to the interstate rail network
18 (or even to any town in California other than Willits,
19 population 4998 at the 2020 census), has yet to be
20 delivered by MR."

21 Do you disagree with that statement?

22 A. I disagree with the majority of what's
23 written in this document because it's factually
24 incorrect.

25 Q. So it's your belief that Mendocino
26 Railway is going to make a lot of money carrying
27 freight from Willits to Fort Bragg and from Fort Bragg
28 to Willits; is that correct?

1 A. This isn't necessarily about making a
2 lot of money, as I testified in August. This is about
3 a railroad that has existed for 137 years, and as a
4 result of that, has been providing service the entire
5 time, and as such, it's about providing a service for
6 the greater community more so than it is about lining
7 the pockets of a company.

8 Every business needs to make money, there's
9 no question about it, but this isn't a get-rich-quick
10 scheme. This is an opportunity to reduce the amount
11 of trucks that are traveling on our highway system,
12 which it baffles me why people think that's a great
13 idea. Reduce the amount of trucks, increase rail
14 traffic, and use infrastructure that's already there
15 and existing.

16 Q. But isn't the problem with your
17 situation is that your -- Mendocino Railway is not
18 connected to any infrastructure other than its own so
19 it thereby limits its ability to use that
20 infrastructure except between Willits and Fort Bragg?

21 A. Mendocino Railway is connected to other
22 infrastructure. Whether there's operations happening
23 over that other infrastructure or not, that's a
24 separate matter. Mendocino Railway is absolutely
25 connected to other infrastructure.

26 Q. Okay. It's connected to other
27 infrastructure, but that's non-functional
28 infrastructure at this point and for the last

1 24 years, correct?

2 A. Not all of it. Some of it.

3 Q. If you look at the bottom of page nine,
4 it states in the last paragraph of page nine, "It is
5 very hard to see how MR can show the required freight
6 rail need. This line has had no shippers since the
7 United States government embargoed it in 1998, only
8 two years after NCRA completed acquiring it."

9 Is that line -- that line would be
10 referencing the NCRA line; is that correct?

11 A. That line would be referencing the NCRA
12 line. That is correct.

13 Q. And then it goes on to say, "No party
14 has approached NCRA/GRTA for relevant service. MR
15 also confronts the inherent 'problem' faced by all
16 rail lines along or serving the northern California
17 coast: Any such line must traverse difficult
18 mountainous terrain."

19 So it appears based on this representation
20 made by NCRA's attorney that they have not been
21 approached by any shippers for relevant service. But
22 it's your testimony that you've been approached by
23 numerous shippers for service?

24 A. That is correct. And I would call out
25 that it is absolutely untrue that -- their statement
26 that they've not been approached is just an absolute
27 lie.

28 Q. Okay.

1 A. We have a letter that we served on NCRA
2 as a request for service. It was sent certified,
3 signed for, and received.

4 Q. All right. If you go down to page ten,
5 right above the portion at the bottom that says,
6 "Request for voluntary withdrawal of notice of intent
7 to OFA", the two sentences above that it says, "The
8 costs are currently simply too great to provide rail
9 service at a price rail consumers are prepared to pay.
10 The problem is especially acute for short distance
11 freight haulage, which MR is proposing."

12 Do you agree with that statement?

13 A. I do not.

14 Q. And then a reference above that
15 references the fact that "Southern Pacific pulled out;
16 Eureka Southern and California Western went bankrupt;
17 and NCRA's former operator Rail-Ways (owned by John
18 Darling) went bankrupt."

19 Is it your belief that that -- do you have
20 some understanding as to why they went bankrupt or do
21 you know?

22 MR. BLOCK: Objection, calls for speculation.

23 THE COURT: Pardon?

24 MR. BLOCK: Calls for speculation.

25 THE COURT: Well, he's just asking for his
26 understanding.

27 Do you have any understanding?

28 THE WITNESS: I do. It was misappropriation

1 of funds.

2 MR. JOHNSON: Okay.

3 Your Honor, I'd move Exhibit EE into
4 evidence.

5 MR. BLOCK: Reiterate our objections.

6 THE COURT: The problem I have is it doesn't
7 have the attachments again, once again to it, so it's
8 not a complete document.

9 And I have a question because it references
10 Attachment B, which is Mendocino Railway's estimate of
11 31 million which was supplied to the U.S. Department
12 of Transportation. I certainly would want to see that
13 document if it was attached to this.

14 MR. JOHNSON: Right. Well, Your Honor, I --

15 THE COURT: And I don't know -- is this
16 something that was filed or -- I'm not real clear as
17 to where this...

18 By MR. JOHNSON:

19 Q. Mr. Pinoli, is it your understanding
20 that this document with the attachments was filed with
21 the Surface and Transportation Board?

22 A. It is. And may I clarify something with
23 respect to exhibit -- what was referenced as Exhibit
24 --

25 THE COURT: B.

26 THE WITNESS: -- B? So the information that
27 they pulled down is a request for a federal loan that
28 not only includes tunnel work, but ties and bridges

1 and rail equipment and a variety of other items. It
2 isn't specific to one item or that the line needs
3 \$31 million in repair or else. Because, as I
4 testified in August and true today, the line is in
5 Class I standard across the entire railroad.

6 THE COURT: And that's why I would need the
7 exhibits.

8 MR. JOHNSON: Your Honor, I would be happy to
9 provide the exhibits.

10 THE COURT: Okay. All right. Well, I would
11 receive this and give it whatever weight I deem
12 necessary here, given the comments made by Mr. Pinoli
13 with respect to some of the legitimacy of the
14 statements made. But I'll receive it contingent upon
15 receiving the attachments.

16 (Whereupon, Defendant's Exhibit EE was
17 received, contingent upon receipt of
18 attachments referenced in document.)

19 MR. JOHNSON: Your Honor, I can submit the
20 attachments tomorrow.

21 THE COURT: That's fine.

22 MR. JOHNSON: I don't know how that would
23 work. Would I submit them to the clerk downstairs?

24 THE COURT: Yeah. Are you going to have to
25 e-file them? I mean, are they lengthy?

26 MR. JOHNSON: I could e-file them. Whatever
27 you'd like.

28 THE COURT: Yeah.

1 MR. JOHNSON: All right. We'll e-file them.

2 THE COURT: That's fine. Or if you have them
3 bound up already, you could just submit them to the
4 clerk.

5 MR. JOHNSON: Okay. Well, either way.

6 THE COURT: But you need to give counsel a
7 copy as well.

8 MR. JOHNSON: Yes.

9 MR. BLOCK: And then we may have more
10 examination on it.

11 THE COURT: I don't know that, you know...

12 MR. BLOCK: Well, I mean, Mr. Pinoli has an
13 explanation for what Exhibit B is. There may be other
14 documents in the STB proceedings that relate to this
15 or counter this. So we're --

16 THE COURT: That's the only exhibit that
17 really relates to Mendocino Railway. The rest is all
18 issues relating to the condition of the NCRA, which
19 he's already testified that it's, you know...

20 MR. JOHNSON: Your Honor, I mean, if
21 Mr. Block has questions today anyway, I don't know if
22 we're going to finish today anyway.

23 THE COURT: Okay.

24 MR. JOHNSON: I mean, I'm almost done here,
25 but I --

26 THE COURT: All right. And I'm available on
27 Monday -- next week. My jury trial went away for
28 Monday. Okay.

1 MR. JOHNSON: All right. Thank you, Your
2 Honor.

3 We have exhibits that were already accepted
4 by the Court, and I would like to present them or go
5 over a few of them with Mr. Pinoli. I don't know if
6 the Court has the binders for the witness.

7 THE COURT: I do.

8 MR. JOHNSON: Do you have one for the
9 witness?

10 THE CLERK: No, I'd have to go get them out
11 of storage.

12 THE COURT: Yeah, they're down in storage.
13 He can use my binder I suppose.

14 MR. JOHNSON: Okay.

15 THE COURT: Which -- that's Plaintiff's.
16 This binder --

17 MR. JOHNSON: No, no, the bigger one. The
18 bigger one, exhibits by number.

19 THE COURT: Okay. Let me just make sure.

20 THE WITNESS: And Your Honor, if it's easier
21 I can just quickly gander at them. I think I'm mostly
22 familiar.

23 THE COURT: I think you are too. I'm just
24 trying to see if I wrote any notes.

25 MR. JOHNSON: There aren't going to be that
26 many references.

27 THE COURT: Like the color of your bowtie or
28 something else I might have written a note. I don't

1 want that in there.

2 THE WITNESS: If I see a note, I'll hand the
3 binder back.

4 THE COURT: Okay.

5 BY MR. JOHNSON:

6 Q. Mr. Pinoli, you have the documents in
7 front of you. I'd refer you to Exhibit 8, the
8 document.

9 A. Yes.

10 Q. Okay. Exhibit 8, the first page there,
11 it states, "Mendocino Railway Freight Tariff."

12 A. That's right.

13 Q. And then it says, "Effective January 1,
14 2008."

15 Is it your understanding -- or I believe you
16 testified earlier that this document was in effect
17 from January 1, 2008, through December 31, 2021; is
18 that correct?

19 A. That's correct.

20 Q. And if you look at the tariff or
21 underneath the tariff, it says, "Local and interchange
22 charges applying between/and at stations on the
23 Mendocino Railway (CWR) (Freight operations by Sierra
24 Northern Railway-SERA)."

25 Do you see that?

26 A. I do.

27 Q. So is this document then stating that
28 freight operations were handled by Sierra Northern

1 Railway?

2 A. Yes.

3 Q. Okay. So all freight operations would
4 have been handled by Sierra Northern Railway and not
5 Mendocino Railway; is that correct?

6 A. That's correct.

7 Q. If you look at Exhibit 10.

8 A. Purple bowtie.

9 Q. It's a document on the first page, 10-1.
10 It says, "Commute fares." Do you see that?

11 A. Yes, sir.

12 Q. And this document would have been the
13 commute fares that are in place -- at least 10-1
14 through 10-8 -- would have been the fares that were in
15 place from July of 2014, until the next update which
16 appears to be to go to -- 10-10 would have been
17 updated July 16, 2016; is that correct?

18 A. I see that, yes.

19 Q. All right. So I'm going to go -- just
20 to make it easier, I'll just start with 2014, and it
21 says -- 10-2 says there's this letter "To all
22 concerned" from Robert Jason Pinoli regarding commute
23 fares, and it's on the third paragraph it says, "There
24 is a significant difference now, the 10 round-trip
25 tickets are only good for the person who is named on
26 the front, and this rule will be strictly enforced."

27 Is that correct?

28 A. That's what it says, yes.

1 Q. All right. And then if you go to 10-5,
2 page 10-5 through 10-7, are those the referenced on
3 the right here -- there's the stations referenced on
4 the left, and then on the right it appears that there
5 are names. Those would be the people or the families
6 that are entitled to potentially purchase commute fare
7 tickets; is that right?

8 A. Those are the folks that are residents
9 at the intermediate stations along the route.

10 Q. All right. And they are the ones that
11 can -- they're the only ones that can buy commute fare
12 tickets?

13 A. They can buy tickets. Somebody
14 traveling to -- a guest of theirs traveling to their
15 property could purchase a ticket.

16 Q. Okay. So if you go to -- if you go to
17 10-8, down at the bottom here it says, "Tickets may
18 not be sold to non-residents (of the line) or guests
19 thereof, and are defined by the preceding list."

20 Is that a true statement?

21 A. I do see that.

22 Q. Okay. Is that a correct statement;
23 that's the way they worked?

24 A. Well, guests that were visiting could
25 purchase a ticket to go out there.

26 Q. And then it says -- below that it says,
27 "The '1 Round-Trip Tickets' are meant to be used for
28 people who are just going out and back;" is that

1 correct?

2 A. Yes.

3 Q. And these tickets were sold as
4 round-trip tickets; is that correct?

5 A. So on the front of the -- in the front
6 of the binder, Exhibit 10-3, there is an image of the
7 ten punch-style commute card that the railroad uses,
8 and on Exhibit 10-4 is the single round-trip commute
9 ticket that would be for a guest of somebody's going
10 to one of the intermediate stations.

11 Q. Okay. But generally these -- I mean,
12 the tickets were sold as round-trip tickets; is that
13 correct? They didn't have one-way tickets?

14 A. It was up -- I mean, there are -- the
15 tickets were sold as-is. Not every ticket was used as
16 round-trip. There's no indication on the ticket, on
17 10-3, that it's eastbound or westbound direction.
18 When all 20 punches were used, all 20 punches were
19 used.

20 Q. Okay.

21 A. There's no requirement for the conductor
22 to punch the line where it says on 10-3 "going" and
23 below that it says "return". It doesn't designate
24 eastbound or westbound.

25 Q. Okay. But they're all referenced and
26 sold as round-trip tickets; that's what it says,
27 correct?

28 A. That's what it says.

1 Q. If you look at Exhibit 6, please. This
2 is a Mendocino Railway freight tariff issued
3 January 1, 2022, effective January 1, 2022. Is this
4 the freight tariff that's in place or controlling at
5 this point?

6 A. It is.

7 Q. All right. If you look at Exhibit 6-7?

8 A. Yes.

9 Q. 6-7 is a -- says, "Section 2, Switching
10 charges (Charges in dollars and cents per car, except
11 as otherwise noted.)"

12 Do these generally reflect the charges that
13 are in play for freight tariffs?

14 A. Those are the published rates for the
15 freight tariff.

16 Q. Okay.

17 A. A railroad doesn't have to adhere to the
18 freight rates if it has a contract with a customer for
19 a lesser amount. So if you have a volume customer and
20 you're going to give a discount, you can do that
21 outside of the tariff because it's not more than what
22 the tariff states. You can't exceed the amount that's
23 in the tariff.

24 Q. Okay. But generally aren't these
25 tariffs created to establish the rates for shipping
26 freight on a line?

27 A. Yes.

28 Q. If I had a need to ship freight on the

1 line, would I be necessarily charged a freight tariff?

2 A. You would be directed to this tariff and
3 depending upon the commodity that you're shipping and
4 the volume and the frequency, there would be an
5 opportunity to negotiate a better rate. That's common
6 practice.

7 Q. All right. So I was looking at this
8 document. If you look at Item 2000, between Willits
9 and Fort Bragg, California, that's the second line, it
10 says "Commodity - All Other, FAK (Note 1)."

11 What does that mean, "All other, FAK (Note
12 1)"?

13 A. So no other -- it does not apply -- this
14 rate does not apply to anything -- does not apply to
15 hazardous material. That has its own -- that has its
16 own --

17 Q. Charge?

18 A. Has its own separate line item.

19 Q. Okay. So this would apply to freight
20 other than hazardous material?

21 A. Absolutely. It would apply to any
22 commodity, a boxcar, a load of logs, a load of lumber.

23 Q. Okay. So from Willits to Fort Bragg,
24 the cost here for that type of freight other than
25 hazardous materials would be \$1440 per car; is that
26 correct?

27 A. Yes.

28 Q. So what's your understanding of how far

1 it is to go by highway from Fort Bragg to Willits?

2 A. 33 miles.

3 Q. So if you were to divide \$1440 by
4 33 miles, it comes out to a cost per mile of \$43.64
5 approximately per mile. And is it your understanding
6 that that type of rate would be competitive with the
7 existing trucking rates in the area?

8 A. The problem with the math is that you're
9 not accounting for one truckload is not one
10 freight-car load. It's a four-to-one efficiency. So
11 if you take that number and divide it by four, that
12 would be a more accurate number.

13 Q. Okay. So if we divide that number by
14 four, you come out with \$4.36 per mile.

15 THE COURT: It should be --

16 THE WITNESS: It should be about 10.90.

17 BY MR. JOHNSON:

18 Q. Yeah, I did it wrong. I'm sorry. 1440
19 divided by 33 equals 43.63, divided by four, equals
20 ten --

21 A. 10.90.

22 Q. \$10.91 per mile.

23 THE COURT: So there's -- let me just see, so
24 there's four truckloads to a rail car?

25 THE WITNESS: Approximately.

26 THE COURT: Okay.

27 THE WITNESS: And it depends on the
28 commodity, but it's three to four -- generally

1 four-to-one efficiency.

2 BY MR. JOHNSON:

3 Q. So using the number four, say that you
4 can fit four truckloads on one rail car, it comes out
5 to a price per mile of \$10.91 per mile. Do you
6 believe that that's a rate that is competitive with
7 existing trucking rates in the area?

8 A. Again, the rates that are here are the
9 ceiling, if you will. So you can come down from the
10 ceiling if there's a need to be competitive, and given
11 the current price of diesel and the fuel efficiency of
12 a diesel truck, plus your overhead for the truck, yes,
13 it is a competitive rate.

14 Q. Do you know how long it takes to go
15 through this process if you're a shipper, to drop off
16 your material at your site in Fort Bragg and then
17 subsequently transfer it to a train, put it on a
18 train, and then take it to Willits, take it off a
19 train, pick it back up with a truck; do you know how
20 long that takes?

21 A. Depends on the commodity that you're
22 handling, but in many cases transload facilities can
23 have an entire railcar loaded in half an hour. And
24 again, it depends on the commodity that you're
25 loading.

26 Q. And you specifically don't know for
27 yourself because at this particular time you're not in
28 a position to do transloading from Willits to Fort

1 Bragg or Fort Bragg to Willits; is that correct?

2 A. At this particular time, to do trans --
3 we would not be able to do transloading from Willits
4 to Fort Bragg.

5 THE COURT: Or vice versa, Fort Bragg to
6 Willits.

7 THE WITNESS: Yes.

8 BY MR. JOHNSON:

9 Q. So it's your understanding that
10 potentially with four trucks per railcar you could
11 unload one railcar and get it on the road in a half an
12 hour generally?

13 A. Absolutely, particularly with the size
14 of equipment that's being used.

15 Q. And so at this point in time how many
16 potential shippers are you aware of that want to use
17 your facility to transport freight from Willits to
18 Fort Bragg or Fort Bragg to Willits; do you know?

19 A. I believe I testified to this in August
20 and there's about a half a dozen.

21 Q. And those were shippers that were --
22 that wrote letters on your behalf to obtain a grant;
23 is that correct?

24 A. Yes.

25 Q. And that grant request was done in -- do
26 you recall what year that was done?

27 A. '19, '20, and '21.

28 THE COURT: 20.

1 MR. BLOCK: You said 19.

2 MR. JOHNSON: 2020?

3 THE WITNESS: No, 2019, 2020, and 2021.

4 Thank you.

5 By MR. JOHNSON:

6 Q. So based on those six potential
7 shippers, you believe that you're in a position to
8 have a functional freight operation?

9 A. Absolutely.

10 Q. The last time we were here we reviewed
11 the letter from the California Public Utilities
12 Commission to Mr. Hart dated August 12, 2022; do you
13 recall that letter?

14 A. I do.

15 Q. Has Mendocino Railway received any
16 additional letters from the California Public
17 Utilities Commission since that time or that letter?

18 A. We have not.

19 MR. JOHNSON: I don't have anything further
20 at this time, Your Honor.

21 THE WITNESS: Your Honor, may I hand you your
22 binder?

23 THE COURT: Just hang on to it for a second.

24 THE WITNESS: Yes.

25 THE COURT: Can I just ask one question, just
26 a follow-up to yours?

27 MR. JOHNSON: Of course.

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EXAMINATION

BY THE COURT:

Q. So how would the freight operation work with your successful excursion service that you say is about 90 percent of the operations of Mendocino Railway; if freight service got combined with the excursion service, would the excursion service drop off?

A. No. Historically the railroad has run its freights outside of the excursion window. And so back in the '90s, and certainly when I started with the company, we would run freights in between excursions, meaning there are sidings and spurs for freight trains to yield the right of way or vice versa depending on length and the timing of the meet, and so it would be integrated as a part of the existing operation.

Right now, the existing operation has multiple trains on the same track heading at each other at the same time and that's all controlled through our dispatch center.

THE COURT: Okay.

MR. JOHNSON: Your Honor, can I follow up on that question?

THE COURT: Yes, go ahead.

MR. JOHNSON: Thank you.

///
///

1 excursion services?

2 A. Approximately.

3 Q. Okay. And at the time of 2020, you had
4 testified today that Mendocino Railway was not
5 conducting any freight operations, so would it be
6 correct to say that Mendocino Railway's revenue from
7 freight at that particular time was zero?

8 A. In 2019?

9 Q. 2020.

10 A. Yes.

11 Q. Okay. So in the remaining ten percent
12 that wasn't due to excursions, where did that revenue
13 come from?

14 A. Leases and easements.

15 Q. Can you explain what that means, "leases
16 and easements"?

17 A. So there are public utilities that have
18 longstanding agreements with the railroad to have
19 their infrastructure on the railroad's property, and
20 as a result of that, they pay a fee for that.

21 Q. Okay. So that would effectively be the
22 remaining ten percent of the revenue that you -- or
23 Mendocino Railway received in approximately 2020?

24 A. And there also may be other income.
25 There would be other income from the lease of real
26 property, so leasing of buildings, et cetera.

27 Q. Okay. So in 2020, effectively what
28 you're saying is that in 2020 zero income was received

1 from Mendocino Railway for freight and zero income was
2 received for commuter services in 2020; is that
3 correct?

4 A. Again, I don't have a P&L in front of me
5 so I don't want to speculate. I'm happy to give you
6 generalizations as I've done, but I really -- I'm not
7 going to be able to opine or comment any further
8 simply because guesswork is not something I take pride
9 in.

10 Q. Okay. So in 2020, it would be correct
11 to say then based on the representations you just
12 made, 90 percent of the income or revenue was received
13 from the excursion services of the Skunk Railroad or
14 the California Western Railroad and approximately ten
15 percent was received from leases and easements; is
16 that correct?

17 A. Sure.

18 Q. Okay. And that would also generally --
19 those numbers would generally apply relatively to the
20 last ten years; is that correct?

21 A. Again, I'm not going to comment on the
22 financials of the company given that I don't have them
23 in front of me.

24 Q. Okay. You do have financials at
25 Mendocino Railways?

26 A. Absolutely we do.

27 Q. All right. Is there a reason why they
28 weren't presented at this hearing?

1 A. We weren't asked.

2 Q. Okay. Do you think it's your
3 responsibility to have a discussion with the Court and
4 the parties regarding what percentage of your revenue
5 comes from excursion services and what percentage of
6 your revenue comes from other type of services?

7 A. If the Court felt it were necessary,
8 then we would be happy to provide that information.

9 Q. Okay.

10 MR. JOHNSON: I have no further questions.

11 THE COURT: Did you have questions?

12 MR. BLOCK: I do.

13 THE COURT: Do you want a break?

14 MR. BLOCK: Well, we're at 4:10. I can go
15 through a few questions now and then we can come back,
16 figure out a time to come back.

17 THE COURT: Okay.

18 MR. BLOCK: Because I certainly have more
19 than 20 minutes of questions.

20 Can I grab the lectern?

21 THE COURT: Sure.

22 MR. BLOCK: If I've tracked it accurately, I
23 think Plaintiff's next in order is 37?

24 THE COURT: Is that correct, Christy?

25 THE CLERK: Correct.

26 MR. BLOCK: I'd like to mark Exhibit 37.

27 THE CLERK: Actually, I need to mark that
28 exhibit. Thank you.

1 (Whereupon, Plaintiff's Exhibit 37 was marked
2 for identification.)

3 MR. BLOCK: Thank you.

4 FURTHER REDIRECT EXAMINATION

5 BY MR. BLOCK:

6 Q. All right. Mr. Pinoli, can you tell me
7 what Exhibit 37 is?

8 A. It's a letter dated 6 February, 2020,
9 and it's to Mitch Stogner, the then-executive director
10 of the North Coast Railroad Authority, requesting that
11 service be provided, connecting service.

12 Q. Is this the letter that you were
13 referencing earlier today when Mr. Johnson was asking
14 you questions about Exhibit EE, the Great Redwood
15 Trail Authority filing with the STB?

16 A. Yes.

17 Q. And what's the significance of
18 Exhibit 37?

19 A. The significance is that Mendocino
20 Railway continues to receive requests to provide
21 freight service, and as such, we are looking to have
22 the NCRA get their act together and reopen their
23 railroad.

24 Q. What prompted Mendocino Railway or you
25 to prepare and send this letter on February 6th, 2020,
26 Exhibit 37?

27 A. My continuing commitment to the
28 institution that is now 137 years old. It was a

1 railroad that was built to serve its communities, it's
2 something that I'm absolutely passionate about, and I
3 want to see the railroad function in a capacity that
4 does more; that is, bringing goods and services into
5 Mendocino County in a way that is responsible and
6 beneficial to the environment.

7 Q. In the first paragraph here on page one
8 of Exhibit 37, you reference, "I am writing to
9 formally request that the North Coast Railroad
10 Authority restore rail service on its rail line
11 extending south from Willits, California so that we
12 can provide freight service for our shippers who seek
13 rail transportation services on the national rail
14 network."

15 That's your statement?

16 A. Yes.

17 Q. And was there a particular shipper that
18 you're referencing here in paragraph one of page -- of
19 Exhibit 37?

20 A. Any of the shippers that I had testified
21 to previously in August that provided letters of
22 support in 2019, '20, and '21, would be candidates for
23 national rail network shipping.

24 Q. Okay. And so take a look in your
25 notebook at Exhibit 30. There's several letters
26 there.

27 A. Yes.

28 Q. The first one is actually dated July 9th

1 -- or the first few are dated 2018?

2 A. Yes.

3 Q. So does that refresh your recollection
4 of the time period in which shippers had been
5 identified that were interested in utilizing --

6 A. Yes.

7 Q. -- Mendocino Railway?

8 A. Yes.

9 Q. Okay. So instead of 2019, '20, and '21,
10 it should be from 2018 forward?

11 A. Correct. Thank you.

12 Q. And so these shippers included FloBeds,
13 that's 30-1, correct?

14 A. Yes.

15 Q. And FloBeds is a manufacturer of
16 mattresses in Fort Bragg?

17 A. That's correct.

18 Q. And so, if I remember your testimony
19 correctly, this would be a shipper that would receive
20 raw materials via rail from the national rail network,
21 through Willits, out to Fort Bragg, correct?

22 A. That's correct.

23 Q. And it is also a shipper that would then
24 ship out finished goods from Fort Bragg, through
25 Willits, onto the national rail network, correct?

26 A. Yes, correct.

27 Q. And is this a shipper that you believe
28 would utilize Mendocino Railway to ship raw materials

1 westward and finished materials eastward if the
2 national rail network connection, the NCRA connection,
3 was operational and connected south?

4 A. It is one of many shippers, yes.

5 Q. And is it a shipper that in this time
6 period would ship via rail westward towards Fort Bragg
7 and eastward towards Willits if there was no
8 connection but you had a transload facility at the
9 subject property?

10 A. I believe so, yes.

11 Q. And then the way the shipments would
12 connect to the national rail network if the NCRA was
13 not operational would be via truck to some interchange
14 south?

15 A. That's correct.

16 Q. Or east?

17 A. Correct.

18 Q. Okay. Similarly, Exhibit 30-3, this is
19 Lyme Redwood. They own timberland along Mendocino
20 Railway's line, correct?

21 A. That is correct.

22 Q. And -- well, predecessors to the -- a
23 predecessor to Lyme Redwood Company actually created
24 Mendocino Railway, correct?

25 A. Yes.

26 Q. Going back 137 years?

27 A. That's correct.

28 Q. The original line. And so Lyme Timber

1 is a successor that harvests timber along the Noyo
2 River Valley and the land bordering Mendocino
3 Railway's line, correct?

4 A. That is correct.

5 Q. And historically they have shipped
6 timber out from -- harvested timber out from the
7 forest out to Fort Bragg, correct?

8 A. That is correct.

9 Q. And did they ship timber eastward to
10 Willits also or just westward?

11 A. In some -- when the mill existed in Fort
12 Bragg, rarely did logs travel east. But in some cases
13 logs could have traveled east to another -- you know,
14 if they were being sold to another lumber mill that
15 was on the other side of the hill. So there is the
16 potential for that.

17 Q. And historically when timber, logs, left
18 the forest on the railroad and went west to the mill,
19 would finished lumber processed at the mill then
20 travel from Fort Bragg east to Willits?

21 A. Yes.

22 Q. And then connect to the national rail
23 network?

24 A. Yes.

25 Q. Okay. And is that an operation that --
26 well, is it your understanding that Lyme Redwood
27 Forest Company, the company identified in
28 Exhibit 30-3, expressed an interest in utilizing

1 Mendocino Railway for freight rail services along the
2 railroad?

3 A. Yes.

4 Q. And do you know whether that was
5 eastbound or westbound or both; what was contemplated?

6 A. I believe eastbound.

7 Q. And would that eastbound traffic have --
8 is it your understanding that Lyme Redwood Company
9 would utilize Mendocino Railway's freight rail service
10 heading eastbound towards Willits if it connected to
11 an operating NCRA line?

12 A. Not necessarily. Because Lyme owns -- a
13 significant amount of redwood holdings are east of
14 Tunnel Number 1, and Tunnel Number 1 is three and a
15 half rail miles east of Fort Bragg. There are very
16 few redwoods between Fort Bragg and Tunnel Number 1.
17 They just -- they don't grow naturally right adjacent
18 to the coast

19 And so their holdings are east of Tunnel
20 Number 1, and so what's being explored and what has
21 been explored is rather than the installation of new
22 logging roads every season is yarding the logs down to
23 a landing that is adjacent to the railroad tracks,
24 loading them onto railroad cars, and shipping those
25 out, those rail cars out, east towards Willits where
26 they can be transloaded.

27 Q. And those are discussions that Mendocino
28 Railway had with Lyme Timber?

1 A. Has had, continues to have, and with
2 also additional timber companies.

3 Q. What other timber companies?

4 A. Mendocino Redwood Company.

5 Q. And traveling eastbound, that timber
6 would be transloaded at the transload facility at the
7 subject property, the project in this case?

8 A. Yes.

9 Q. Exhibit 30-5 is North Coast Brewing
10 Company. Is this another -- this is another shipper,
11 correct, that was interested in utilizing Mendocino
12 Railway's freight rail services?

13 A. That is correct.

14 Q. And would they be shipping eastbound or
15 westbound?

16 A. Both.

17 Q. And would they -- so they would be
18 shipping raw materials westbound and finished goods
19 eastbound?

20 A. That is correct.

21 Q. And not just raw -- well, raw materials
22 to make their products, but also glass and packaging
23 materials, correct?

24 A. Yes, that is correct.

25 Q. And would they utilize -- is it your
26 understanding that North Coast Brewing Company would
27 utilize Mendocino Railway's freight rail services if
28 the NCRA connection or interchange was not

1 operational?

2 A. They would.

3 Q. They would utilize the transload
4 facility at the subject property?

5 A. Yes.

6 Q. Okay. If Tunnel Number 1 was open on
7 December 21st, 2020, the date that this eminent domain
8 action was filed, would you expect North Coast Brewing
9 Company to utilize Mendocino Railway's freight
10 shipping services once the project was complete?

11 A. I would.

12 Q. And what about the other shippers that
13 are identified in Exhibit 30?

14 A. Yes.

15 Q. You mentioned Mendocino Redwood as
16 another timber shipper, correct?

17 A. That is correct.

18 Q. And in Exhibit 30-7, there's a
19 reference -- there's a letter from Willits Redwood
20 Company. Is that another -- a third timber company?

21 A. Willits Redwood Company is a processing
22 mill on the Willits side of the line, and they would
23 be the most likely candidate to receive a majority of
24 the logs, particular those from Lyme.

25 Q. And would they utilize the transload
26 facility at the subject property?

27 A. In the instances of where Willits
28 Redwood Company -- the logs are going to Willits

1 Redwood Company, those would go in directly to their
2 spur or siding until they had reached a capacity.

3 They also have a facility that is offsite so
4 it's not adjacent to the railroad's -- CWR's -- main
5 line corridor in Willits and they do truck material to
6 that facility as well.

7 Q. And where is the siding or the spur for
8 Willits Redwood Company in Willits?

9 A. It is to the east of the subject
10 property and to the west of Main Street or the old
11 Highway 101.

12 Q. Okay. So --

13 A. In the area of Blosser Lane,
14 specifically.

15 Q. Okay. And so in this instance the
16 timber coming from the forest to the west would travel
17 eastbound, it would pass the subject property
18 transload facility, and go directly to Willits Redwood
19 Company?

20 A. If the logs were being sold to them,
21 yes.

22 Q. Exhibit 30-9, this is Wylatti
23 Enterprises doing business as Geo Aggregates?

24 A. Yes.

25 Q. And this is another shipper that was
26 interested -- is interested in utilizing Mendocino
27 Railway's freight rail services?

28 A. That is correct.

1 Q. Where are they located?

2 A. They're located in Fort Bragg.

3 Q. And so would they be shipping eastbound,
4 westbound, or both?

5 A. In this letter, I believe the
6 contemplation was shipping westbound, aggregates into
7 their batch plant facility in Fort Bragg.

8 Q. And where would those aggregates be
9 coming from to reach Willits?

10 A. They have quarries in a variety of
11 different locations, one of them is located on the Eel
12 River or in the Eel River drainage, and they would be
13 transloaded.

14 Q. And so the aggregate would be mined --

15 A. That's correct.

16 Q. -- by the Eel River, trucked into
17 Willits, and then shipped by rail to Fort Bragg?

18 A. That's correct.

19 Q. And is there a rail connection, a direct
20 rail connection, a spur, from Mendocino Railways rail
21 line into Geo Aggregates?

22 A. There is not.

23 Q. So would it be transloaded from the Fort
24 Bragg facility to Geo Aggregates' facility or
25 something else?

26 A. Yes, it would be transloaded.

27 Q. Okay. Now Geo Aggregates, is that the
28 shipper that was interested in utilizing a

1 reconnection to the NCRA line north about 13 miles?

2 A. It was.

3 Q. Can you explain or can you describe that
4 situation, how that came about?

5 A. They approached the railroad. They have
6 a permit --

7 Q. Which railroad?

8 A. Mendocino Railway.

9 Q. When?

10 A. It's -- the principal of that company
11 has done work for Mendocino Railway, and in various
12 conversations that I've had with the principal, I'm
13 always being asked, "When can I ship rock to Fort
14 Bragg?" "I want to get rid" -- "I want to get out of
15 trucking so much." And those conversations have
16 happened for several years, up to and including the
17 present.

18 Q. How far back do those conversations go;
19 approximately when did those conversations start
20 taking place?

21 A. Well, at -- certainly in 2018 and
22 before, which was the first time that we made
23 application for the BUILD grant.

24 MR. BLOCK: Your Honor, it's 4:30. Are we
25 going to go until --

26 THE COURT: We can stop now.

27 THE WITNESS: May I make a clarification to
28 the dates of the '19, '20, and '21 dates whereas it

1 was '18, '19, and '20?

2 THE COURT: Go ahead.

3 THE WITNESS: As I testified earlier in
4 August, we -- the railroad, made application to the
5 BUILD grant process in '18, '19, and '20. In '21, we
6 made application under a different program known as
7 CRISI. So there's many programs and dates strung
8 together.

9 MR. BLOCK: Okay.

10 THE COURT: Okay. Thank you.

11 All right, folks. I have Monday through
12 Wednesday next week and I have the 10th. I have the
13 morning -- oh, no, I don't. I have a civil prove-up
14 at 10:00. I have the afternoon. And Friday's a
15 holiday. Unless you want to go into a different week.

16 MR. BLOCK: Well, so that I don't have to
17 move everything, Thursday would be the best date for
18 me, the 10th.

19 THE COURT: Okay. So in the afternoon, 1:30?
20 Or we can -- yeah, the civil prove-up hearing, I have
21 it set for 10:00, right, Christy?

22 THE CLERK: I think so.

23 THE COURT: And that would probably take
24 maybe an hour, if that.

25 MR. BLOCK: So we can be here at...

26 THE COURT: 10:30, 11:00.

27 MR. BLOCK: Yeah.

28 THE COURT: And then I'd have the whole

1 afternoon as well because I don't have any LPS on next
2 Thursday.

3 MR. BLOCK: Okay.

4 THE CLERK: I show you have one, Your Honor,
5 the one we continued from today.

6 THE COURT: It's just the one?

7 THE CLERK: Yeah.

8 THE COURT: Right. Let's go off the record.

9 (Discussion held off the record.)

10 THE COURT: November 10th at 9:00 a.m., so
11 you'll have all day.

12 Are you moving in Exhibit 37; can we just
13 take care of that today?

14 MR. BLOCK: Yes.

15 THE COURT: Any objection?

16 MR. JOHNSON: No.

17 THE COURT: Okay. Exhibit 37 will be
18 received so we'll have all exhibits in.

19 (Whereupon, Plaintiff's Exhibit 37 was
20 received.)

21 THE COURT: Christy, you can make a new list.

22 THE CLERK: Okay.

23 THE COURT: Great. Thank you.

24 MR. JOHNSON: Thank you, Your Honor.

25 MR. BLOCK: Thank you, Your Honor.

26 MR. PINOLI: Thank you.

27 (Whereupon, the proceedings concluded.)

28

1 STATE OF CALIFORNIA)
) ss.
2 COUNTY OF MENDOCINO)

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CERTIFICATE OF REPORTER

I, CHRISTINE JONES, an Official Court Reporter of Superior Court of the State of California, County of Mendocino, do hereby certify that I correctly reported the within-entitled matter and that the foregoing is a full, true and correct transcription of my shorthand notes of the testimony and other oral proceedings had in the said matter.

Dated this 23rd day of November, 2022.

Christine Jones

CHRISTINE JONES, CSR No. 12920

SESSIONS	EXHIBIT EE - GRTA Certification of Filing ID 4
11/3/2022	EXHIBIT EE - GRTA Certification of Filing EV 61
THURSDAY, NOVEMBER 3, 2022	
Afternoon Session	4
Court Trial - Day	5
EXAMINATIONS - CHRONOLOGICAL	
11/3/2022	
ROBERT PINOLI	
Further Recross-Examination by Mr. Johnson	5
Examination by The Court	74
Further Recross-Examination by Mr. Johnson	75
Further Redirect Examination by Mr. Block	79
ROBERT PINOLI	
Further Recross-Examination by Mr. Johnson	5
Examination by The Court	74
Further Recross-Examination by Mr. Johnson	75
Further Redirect Examination by Mr. Block	79
EXAMINATIONS - ALPHABETICAL	
PINOLI, ROBERT	
Further Recross-Examination by Mr. Johnson	5
Examination by The Court	74
Further Recross-Examination by Mr. Johnson	75
Further Redirect Examination by Mr. Block	79
Further Recross-Examination by Mr. Johnson	5
Examination by The Court	74
Further Recross-Examination by Mr. Johnson	75
Further Redirect Examination by Mr. Block	79
EXHIBITS	
EXHIBIT 37 - Letter dated 2/6/20 -	ID 79
EXHIBIT 37 - Letter dated 2/6/20 -	EV 91
EXHIBIT AA - Employer Status	ID 4
Determination	
EXHIBIT AA - Employer Status	EV 26
Determination	
EXHIBIT BB - Letter dated 4/27/22 -	EV 32
Baker 4	
EXHIBIT CC - Fall 2021 Mendocino	ID 4
Railway	
EXHIBIT CC - Fall 2021 Mendocino	EV 41
Railway	
EXHIBIT DD - Letter dated 5/31/22 - Baker	ID 4
EXHIBIT DD - Letter dated 5/31/22 - Baker	EV 45

<hr/>	10-4 67:8	2000 69:8	30-5 85:9
<hr/> "	10-5 66:1,2	2004 10:12 15:2,8 16:5, 16 17:22	30-7 86:18
<hr/> "NCRA 30:19	10-7 66:2	2006 5:23 6:27 11:20 13:13,14,19,24 14:1,12, 16,26 16:1 20:10,13,21 21:9,24,28 22:13,20 23:1,6,12,18,20 51:18, 19	30-9 87:22
<hr/> \$	10-8 65:14 66:17	2008 16:10,11,16,23,25 17:2,15,16 18:24 19:22 64:14,17	31 41:12 60:11 64:17
<hr/> \$10.91 70:22 71:5	10.90 70:16,21	2014 65:15,20	32 3:10
<hr/> \$1440 69:25 70:3	101 87:11	2016 28:20 29:1,15,23, 25 65:17	33 70:2,4,19
<hr/> \$3.5 39:10	10:00 90:14,21	2018 81:1,10 89:21	37 3:4 78:23,26 79:1,7, 18,26 80:8,19 91:12,17, 19
<hr/> \$31 49:4,8,17 61:3	10:30 90:26	2019 28:21 29:25 34:2, 24 73:3 76:8 80:22 81:9	3:20 45:23
<hr/> \$31,300,000 48:19,25	10th 90:12,18 91:10	2020 56:19 73:2,3 75:15,26 76:3,9,23,27, 28 77:2,10 79:8,25 86:7	<hr/> 4
<hr/> \$4.36 70:14	1122-foot 31:25	2021 3:12 17:8 33:2 64:17 73:3	<hr/> 4 2:4 3:9,10,12,14,15 35:19,23,24,25
<hr/> \$43.64 70:4	11:00 90:26	2022 2:3 4:1 15:3,10 16:5 17:9 25:17,20 26:18 27:10,18 28:1,6 41:12 43:16 48:23 68:3 73:12	<hr/> 4/27/22 3:10
<hr/> (12 73:12	21 72:27 80:22 81:9 89:28 90:5	<hr/> 40-feet 31:26
<hr/> (1) 7:21	13 89:1	21st 86:7	<hr/> 40-mile 10:15 30:25 31:12,18,24
<hr/> (2) 7:26	137 8:23 57:3 79:28 82:26	24 58:1	<hr/> 40-miles 31:27
<hr/> (2022) 48:17	139.5 47:8 48:16	26 3:9 37:2	<hr/> 400 54:19
<hr/> (3) 7:28	14 8:3	2782 10:15	<hr/> 41 3:12
<hr/> (5) 42:10	1440 70:18	27th 26:17 27:10	<hr/> 43.63 70:19
<hr/> (8) 28:17	15 56:15	28th 5:23	<hr/> 45 3:14
<hr/> (i) 18:8	152.5 47:8 48:13,16 53:10	<hr/> 3	<hr/> 4998 56:19
<hr/> 0	16 65:17	3 2:3 4:1	<hr/> 4:10 78:14
<hr/> 06-42 5:22	18 90:1,5	30 54:7 80:25 86:13	<hr/> 4:30 89:24
<hr/> 06-42.1 27:26	19 72:27 73:1 89:28 90:1,5	30-1 81:13	<hr/> 5
<hr/> 1	1925 8:21,25	30-3 82:18 83:28	<hr/> 5 2:4,10,17 43:6
<hr/> 1 15:3 17:9 25:17,20 27:18 28:1,6 33:2 49:5, 10 54:24 64:13,17 66:27 68:3 69:10,12 84:14,16,20 86:6	1998 12:4 58:7		<hr/> 5/31/22 3:14
<hr/> 10 65:7,24	1:15 45:20		<hr/> 500 34:6
<hr/> 10-1 65:9,13	1:30 90:19		<hr/> 6
<hr/> 10-10 65:16	1st 15:10 16:5		<hr/> 6 68:1 79:8
<hr/> 10-2 65:21	<hr/> 2		<hr/> 6-7 68:7,9
<hr/> 10-3 67:6,17,22	2 25:8 42:28 68:9		<hr/> 61 3:15
	2/6/20 3:4		<hr/> 6th 79:25
	20 26:4 52:6 53:6,9,14 55:8,11 67:18 72:27,28 78:19 80:22 81:9 89:28 90:1,5		

<hr/> <p style="text-align: center;">7</p> <hr/> <p>74 2:11,17</p> <p>75 2:11,18</p> <p>77 34:2,19</p> <p>79 2:12,18 3:4</p> <p>7th 4:6</p> <hr/>	<p>accepted 63:3</p> <p>access 13:5,6,22,23</p> <p>accounting 70:9</p> <p>accurate 70:12</p> <p>accurately 78:22</p> <p>acquire 10:13 47:15,16 52:18 53:1,8 56:13</p> <p>acquired 17:23 34:2, 23,27</p> <p>acquiring 58:8</p> <p>acres 34:2,19</p> <p>act 6:4,5 18:3 19:22 25:6,12,18,20,23 28:1,8 79:22</p> <p>action 26:1,3 86:8</p> <p>active 53:28</p> <p>activities 35:18</p> <p>Acts 10:14 19:11,18 20:2 22:17</p> <p>actual 42:8 44:2 51:9 53:12</p> <p>acute 59:10</p> <p>add 4:7</p> <p>added 52:7</p> <p>addition 36:17 48:16</p> <p>additional 4:8 52:8 73:16 85:2</p> <p>addressing 33:27</p> <p>adds 34:8</p> <p>adhere 68:17</p> <p>adjacent 84:17,23 87:4</p> <p>Administration 41:14</p> <p>AECOM 39:10</p> <p>affiliate 30:25 31:12,23</p> <p>affiliated 8:11</p> <p>afternoon 2:4 4:2,11, 13 5:15,16 90:14,19 91:1</p> <p>agencies 36:11,15 40:13</p>	<p>aggregate 38:8,16,18 39:28 40:3,7 88:14</p> <p>aggregates 87:23 88:6,8,21,27</p> <p>Aggregates' 88:24</p> <p>agree 59:12</p> <p>agreed 75:9,10</p> <p>agreeing 22:23,25</p> <p>agreement 12:22</p> <p>agreements 76:18</p> <p>ahead 30:10 46:9,24 74:25 90:2</p> <p>allegedly 19:22</p> <p>allocation 40:17</p> <p>ALPHA 2:14</p> <p>amazing 39:4</p> <p>amount 55:27 56:7 57:10,13 68:19,22 84:13</p> <p>and/or 40:4</p> <p>annual 28:19</p> <p>apparent 52:14</p> <p>apparently 50:8</p> <p>appearances 4:9</p> <p>appeared 23:15</p> <p>appearing 4:14</p> <p>appears 9:14 21:18,27 23:11 28:15,20 34:20 37:13 38:28 41:16 45:10 58:19 65:16 66:4</p> <p>applicant 36:13</p> <p>application 25:15 28:16 89:23 90:4,6</p> <p>apply 69:13,14,19,21 77:19</p> <p>applying 64:22</p> <p>approach 5:17</p> <p>approached 58:14,21, 22,26 89:5</p> <p>approve 29:21</p>	<p>approximately 11:9, 22 12:24 38:8 70:5,25 75:27 76:2,23 77:14 89:19</p> <p>April 26:17 27:10</p> <p>arch 36:24</p> <p>area 20:26 34:8 35:5 55:26,28 70:7 71:7 87:13</p> <p>article 37:6,18 38:10 39:16</p> <p>as-is 67:15</p> <p>assets 10:13 24:19</p> <p>assistance 47:12,13, 21 48:5</p> <p>assistance' 47:7</p> <p>Associates 39:9,21</p> <p>assumption 43:28</p> <p>attach 44:17</p> <p>attached 28:12 60:13</p> <p>Attachment 60:10</p> <p>attachments 3:22 60:7,20 61:15,18,20</p> <p>attended 34:26</p> <p>attorney 24:25 26:21 41:16,19 58:20</p> <p>August 12:1 14:19 36:10 49:12 53:21 54:9, 18 56:3 57:2 61:4 72:19 73:12 75:19 80:21 90:4</p> <p>authenticity 46:2</p> <p>Authority 30:19 50:24 79:10,15 80:10</p> <p>Authority's 41:26</p> <p>average 28:23 30:2</p> <p>aware 33:26 72:16</p> <hr/> <p style="text-align: center;">B</p> <hr/> <p>B.A. 10:14</p> <p>B.C.D. 5:22 27:26</p> <p>back 12:1 36:18 45:27</p>
---	---	--	--

<p>53:20 55:9 64:3 66:28 71:19 74:11 78:15,16 82:26 89:18</p> <p>baffles 57:12</p> <p>Baker 3:10,14</p> <p>balance 39:24</p> <p>bankrupt 59:16,18,20</p> <p>based 13:7 16:14 17:14 18:19 21:9,18 22:22 27:3,24 28:2,5 34:14 40:8,14,15,17,20 43:21 58:19 73:6 77:11</p> <p>bases 48:12</p> <p>basic 15:24</p> <p>basically 27:8 46:19 47:26</p> <p>batch 88:7</p> <p>BB 3:10 26:15 32:10,13, 14</p> <p>beautiful 34:8 37:21</p> <p>beauty 34:8</p> <p>bed 36:21</p> <p>begin 17:11</p> <p>behalf 4:14 50:16 72:22</p> <p>belatedly 52:7</p> <p>belief 56:25 59:19</p> <p>believed 50:5</p> <p>believes 27:27</p> <p>beneficial 80:6</p> <p>benefit 56:7</p> <p>between/and 64:22</p> <p>bigger 63:17,18</p> <p>binder 63:13,16 64:3 67:6 73:22</p> <p>binders 63:6</p> <p>Block 2:12,18 4:11,12 13:9 22:4 26:8 32:12 41:4 44:10,21,26 45:16, 22,25,28 46:12 47:1 51:8,25 59:22,24 60:5 62:9,12,21 73:1 78:12, 14,18,22,26 79:3,5</p>	<p>89:24 90:9,16,25,27 91:3,14,25</p> <p>Blosser 87:13</p> <p>Board 6:1,9 7:10,14 9:13,15 17:11,15 18:24 19:21 20:1,3 21:19,23 22:16 24:24 25:17,21, 26 26:19,26 27:2,10 41:15,23 42:5,18 44:17 45:13 48:3 50:21 51:2, 10 60:21</p> <p>Board's 18:27,28</p> <p>bordering 83:2</p> <p>bottom 17:28 30:15 36:21 48:8 58:3 59:5 66:17</p> <p>bound 62:3</p> <p>bowtie 63:27 65:8</p> <p>boxcar 69:22</p> <p>Bragg 7:22 8:17 11:7 30:26 31:13,18 32:1,2,5 33:23 34:12 48:14,15, 18,24 49:9 50:1 52:5 54:7,26 55:5 56:27 57:20 69:9,23 70:1 71:16 72:1,4,5,18 81:16,21,24 82:6 83:7, 12,20 84:15,16 88:2,7, 17,24 89:14</p> <p>break 45:21 78:13</p> <p>Brewing 85:9,26 86:8</p> <p>bridge 12:7 38:12</p> <p>bridge-like 36:24</p> <p>bridges 60:28</p> <p>bring 56:5</p> <p>bringing 80:4</p> <p>Brodsky 6:17</p> <p>brought 39:12</p> <p>Brown 3:14 41:13</p> <p>BUILD 89:23 90:5</p> <p>building 35:22</p> <p>buildings 76:26</p> <p>built 80:1</p>	<p>Burbeck 37:8</p> <p>business 57:8 87:23</p> <p>buy 52:15,26 66:11,13</p> <hr/> <p style="text-align: center;">C</p> <hr/> <p>California 7:28 8:2,28 10:13,18 11:7 12:2 15:9 17:23 30:20,26,27 31:13 32:1,2,6 39:5,7 41:28 45:15 50:25 56:18 58:16 59:16 69:9 73:11,16 77:14 80:11</p> <p>call 4:26,27 58:24</p> <p>calls 59:22,24</p> <p>candidate 86:23</p> <p>candidates 80:22</p> <p>capacity 80:3 87:2</p> <p>car 68:10 69:25 70:24 71:4</p> <p>card 67:7</p> <p>care 91:13</p> <p>carloads 38:8,23 39:28</p> <p>carried 43:26</p> <p>carrier 14:8,17 15:1,7, 14,18,23 16:6,16 17:19, 21,24 27:28 28:7,21 29:28 30:23 31:10,22 47:15</p> <p>carrier' 27:28</p> <p>carrying 32:4 56:26</p> <p>cars 13:28 84:24,25</p> <p>case 4:7 12:12 13:8 16:27 19:15,16 20:17 46:6,22 48:12 52:12 85:7</p> <p>cases 36:23 55:14,15 71:22 83:12</p> <p>casual 18:10,11</p> <p>ceiling 71:9,10</p> <p>census 56:19</p> <p>center 74:21</p>	<p>cents 68:10</p> <p>CEO 37:28</p> <p>Certification 3:15</p> <p>certified 59:2</p> <p>cetera 76:26</p> <p>change 27:3</p> <p>changed 23:5,18,22,23</p> <p>charge 40:19,20 69:17</p> <p>charged 69:1</p> <p>charges 64:22 68:10, 12</p> <p>Charles 3:16 45:9,11</p> <p>checks 39:24</p> <p>Chicago 26:19</p> <p>Chief 41:13</p> <p>Christy 78:24 90:21 91:21</p> <p>CHRONOLOGICAL 2:7</p> <p>circumstances 27:4, 25</p> <p>city 35:9 37:20</p> <p>civil 90:13,20</p> <p>claim 52:17,28</p> <p>claims 50:16 52:9</p> <p>clarification 89:27</p> <p>clarify 60:22</p> <p>class 49:11 61:5</p> <p>classification 43:6,17</p> <p>clear 60:16</p> <p>clerk 4:20,22 5:6,11 61:23 62:4 63:10 78:25, 27 90:22 91:4,7,22</p> <p>clients 50:17</p> <p>close 44:2</p> <p>coast 30:19 41:26 50:24 58:17 79:10 80:9 84:18 85:9,26 86:8</p> <p>Coastal 34:10</p>
--	--	---	---

<p>collaborative 35:8 36:13</p> <p>colleagues 34:26</p> <p>color 63:27</p> <p>combat 52:9</p> <p>combined 48:9 74:6</p> <p>commences 20:2</p> <p>comment 40:25 75:6,7 77:7,21</p> <p>comments 61:12</p> <p>commerce 19:28 20:8, 14,20,23 21:4,6,9,11,20 22:2,15 23:14,15,17 24:2,7,15</p> <p>commercial 47:8</p> <p>Commission 73:12,17</p> <p>commitment 79:27</p> <p>commodity 69:3,10,22 70:28 71:21,24</p> <p>common 14:8,16 15:1, 7,13,18,22 16:6,16 17:19,21,24 18:6 19:4 28:21 29:28 30:23 31:10,22 47:15 69:5</p> <p>commonly 8:26</p> <p>communities 80:1</p> <p>community 34:24 35:3,4,9 57:6</p> <p>commute 65:10,13,22 66:6,11 67:7,8</p> <p>commuter 9:15 77:2</p> <p>companies 6:14,15 9:26,27 85:2,3</p> <p>company 6:18 7:5,6 8:12 14:20,22 18:5 21:25 24:18 42:22 47:14 50:5,6 55:2 57:7 74:12 77:22 82:23 83:27 84:8 85:4,10,26 86:9,20,21,28 87:1,8,19 89:10</p> <p>Company's 24:25</p> <p>compelled 23:10,25,27</p>	<p>competitive 54:13,15 70:6 71:6,10,13</p> <p>complete 60:8 86:10</p> <p>completed 58:8</p> <p>concerned 43:11 65:22</p> <p>concluded 91:27</p> <p>conclusion 21:19</p> <p>concrete 37:22</p> <p>condition 49:10 62:18</p> <p>conditions 55:25</p> <p>conductive 36:19,22 37:21</p> <p>conduct 31:17</p> <p>conducting 30:24 31:11,23 76:5</p> <p>conductor 67:21</p> <p>confronts 58:15</p> <p>connect 82:12 83:22</p> <p>connected 21:20 24:2, 6 57:18,21,25,26 82:3 84:10</p> <p>connecting 13:26,27 79:11</p> <p>connection 18:12,21 19:9 21:6 23:16 24:10, 11,12 34:9 56:17 82:2,8 85:28 88:19,20</p> <p>connects 11:7 30:19</p> <p>Conservancy 39:8</p> <p>considered 43:12</p> <p>consistent 14:19 51:1 56:10</p> <p>consists 34:22</p> <p>consolidating 53:23</p> <p>constructed 36:25</p> <p>construction 37:23 39:9</p> <p>consumers 59:9</p> <p>contemplated 84:5</p> <p>contemplation 88:6</p>	<p>contingent 3:19,21 44:24 45:3 61:14,17</p> <p>continue 11:4,5</p> <p>continued 91:5</p> <p>continues 79:20 85:1</p> <p>continuing 79:27</p> <p>contract 40:8,10 68:18</p> <p>contractor 49:7</p> <p>contractors 38:4</p> <p>contracts 40:12</p> <p>contractual 40:15,18</p> <p>control 18:7 19:5</p> <p>controlled 18:6 74:20</p> <p>controlling 68:4</p> <p>conversations 89:12, 15,18,19</p> <p>conveyed 35:7</p> <p>copy 62:7</p> <p>correct 6:5,6,18 7:7,17 8:17 9:7,17,24,27 10:2, 6,7,21,22,25 11:15,20 12:14,20,21 14:17,18, 27,28 15:6,11,13,25 16:3,8,13,15,25 17:3,4, 19 19:23 20:8,15,16,18 21:11,23 22:3,21,23,26 23:3,21 24:3,8,26 25:25,26 26:2,28 27:11, 12,23 28:8 29:26,27 32:25 35:11,15 36:28 37:16 38:17,22,26 39:15 40:1,9 42:1,5,6 43:10,19,23 47:19,23, 24,28 48:5,6,22 51:22 54:26 55:10,20 56:28 58:1,10,12,24 64:18,19 65:5,6,17,27 66:22 67:1,4,13,27 69:26 72:1,23 75:10 76:6 77:3,10,16,20 78:24,25 81:11,13,17,21,22,25, 26 82:15,17,20,21,24, 27 83:3,4,7,8 85:11,13, 20,23,24 86:16,17 87:28 88:15,18</p> <p>correctly 81:19</p>	<p>corridor 87:5</p> <p>cost 48:23 49:5 69:24 70:4</p> <p>costs 39:10 40:6 59:8</p> <p>couldn't 24:20</p> <p>counsel 4:9 6:18 41:21 45:11 62:6</p> <p>counter 62:15</p> <p>counties 41:27 45:15 56:6</p> <p>county 10:15 50:9 56:1,2 80:5</p> <p>couple 12:27,28</p> <p>court 2:4,11,17 4:4,16, 19,26 5:1,5,12 13:10 22:6 26:7,9 29:8 30:6,9 32:11,13 40:28 41:3,5 44:9,13,24,28 45:1,19, 23,27 46:8,13,24,27 51:14,26 59:23,25 60:6, 15,25 61:6,10,21,24,28 62:2,6,11,16,23,26 63:4,6,7,12,15,19,23,27 64:4 70:15,23,26 72:5, 28 73:23,25 74:2,22,25 75:9 78:3,7,11,13,17, 21,24 89:26 90:2,10,19, 23,26,28 91:6,8,10,15, 17,21,23</p> <p>coverage 26:18 27:3</p> <p>covered 10:14,17,23, 28 51:19</p> <p>covering 44:4</p> <p>covers 43:26</p> <p>CPUC 75:8</p> <p>create 34:6</p> <p>created 10:10,12 11:20 56:7 68:25 82:23</p> <p>creek 36:20</p> <p>CRISI 90:7</p> <p>critical 35:5</p> <p>cross 37:9</p> <p>crow 54:7</p> <p>Crowley 7:23,24</p>
--	--	---	--

<p>Crystal 26:20</p> <p>culvert 36:19 37:14</p> <p>culverts 36:16,22,26, 27</p> <p>current 53:22 71:11</p> <p>customer 68:18,19</p> <p>CWR 64:23</p> <p>CWR's 87:4</p> <p>cylindrical 36:23</p> <p>Cynthia 3:14 41:13</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>D.C. 41:15</p> <p>d/b/a 50:7</p> <p>Darling 59:18</p> <p>date 20:10 29:12,16 43:1 86:7 90:17</p> <p>dated 3:4,10,14,16 5:23 26:17 41:12 73:12 79:8 80:28 81:1</p> <p>dates 89:28 90:7</p> <p>Dawn 33:21</p> <p>day 2:4 91:11</p> <p>days 5:2</p> <p>DD 3:14,19 41:12 44:7 45:2</p> <p>deal 38:11</p> <p>debris 36:21</p> <p>December 26:3 64:17 86:7</p> <p>decision 6:8 7:10 9:23 14:3,6 15:14 18:28 20:3,10 21:17,18,27 25:27 26:1 27:3,4,7,9, 26 51:10,18</p> <p>deem 61:11</p> <p>Defendant 3:7 4:6,14</p> <p>Defendant's 4:24 26:10 32:14 41:7 45:2 61:16</p>	<p>define 18:4</p> <p>defined 18:7 66:19</p> <p>definition 9:12 18:20, 22</p> <p>defunct 33:23</p> <p>deliver 21:2</p> <p>delivered 20:27 56:20</p> <p>delivering 38:7</p> <p>delivery 18:13 40:2,7</p> <p>denoted 35:22</p> <p>Department 39:7 60:11</p> <p>depending 69:3 74:15</p> <p>depends 70:27 71:21, 24</p> <p>depot 35:25</p> <p>describe 89:3</p> <p>DESCRIPTION 3:3,8</p> <p>designate 67:23</p> <p>desired 44:20</p> <p>detailed 28:17</p> <p>determination 3:9 5:21 6:1</p> <p>development 34:5,6, 17,22 35:3,13</p> <p>diesel 54:20 71:11,12</p> <p>difference 51:12 65:24</p> <p>difficult 58:17</p> <p>dilapidated 56:16</p> <p>Dinner 8:1,10</p> <p>dinner/excursion 8:2</p> <p>direct 27:19 30:22 31:9, 21 88:19</p> <p>directed 69:2</p> <p>direction 37:25 67:17</p> <p>directly 18:5 46:21 87:1,18</p> <p>director 79:9</p> <p>disagree 56:21,22</p>	<p>discount 68:20</p> <p>discussed 16:5</p> <p>discusses 52:23</p> <p>discussing 44:19</p> <p>discussion 78:3 91:9</p> <p>discussions 84:27</p> <p>dispatch 74:21</p> <p>distance 56:14 59:10</p> <p>distinct 9:26</p> <p>Distinctly 9:28</p> <p>divide 70:3,11,13</p> <p>divided 70:19</p> <p>document 3:20,22 5:18,19,22,24,28 11:19 12:6 13:20 14:6,23 15:14 18:1 19:26 21:7 22:5 26:6,14,17,22 27:14 32:9,18,22,24 33:6,9,12,19 35:28 41:11,17,22 42:2 44:1, 12,22,25 45:6,8,9,17 46:14,17,20 47:3 48:1,7 50:15,20 51:10 56:10, 23 60:8,13,20 61:18 64:8,16,27 65:9,12 69:8</p> <p>document's 32:21</p> <p>documents 40:21,25 62:14 64:6</p> <p>dollars 68:10</p> <p>domain 49:26 52:4,5,9, 16,27 56:12 86:7</p> <p>donated 39:16</p> <p>downstairs 61:23</p> <p>dozen 72:20</p> <p>drainage 88:12</p> <p>drawing 34:17</p> <p>drive 55:8</p> <p>drop 71:15 74:7</p> <p>Dry 35:19,23,25</p> <p>due 27:16 31:19 75:16, 28 76:12</p> <p>duly 5:8</p>	<p>dynamically 17:7</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>e-file 61:25,26 62:1</p> <p>earlier 24:28 29:16 38:6 39:27 40:16 47:4 64:16 79:13 90:3</p> <p>earned 75:16</p> <p>easements 76:14,16 77:15</p> <p>easier 63:20 65:20</p> <p>east 37:8 82:16 83:12, 13,20 84:13,15,19,25 87:9</p> <p>eastbound 67:17,24 84:5,6,7,10 85:5,14,19 87:17 88:3</p> <p>eastward 82:1,7 83:9</p> <p>economic 53:6,17 55:19,25</p> <p>EE 3:15,21 4:25 45:7 60:3 61:16 79:14</p> <p>Eel 88:11,12,16</p> <p>effect 64:16</p> <p>effective 25:17 27:18 28:1 43:1 64:13 68:3</p> <p>effectively 9:22 21:3, 18 28:15 54:6 55:2,4 76:21,27</p> <p>efficiencies 54:17</p> <p>efficiency 54:20 70:10 71:1,11</p> <p>effort 36:13</p> <p>element 35:6</p> <p>elevation 18:14</p> <p>embargoed 58:7</p> <p>eminent 49:26 52:4,5, 9,16,27 56:12 86:7</p> <p>employees 21:25 24:19,21 25:8,23</p> <p>employees' 25:10</p>
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<p>employer 3:9 5:20 10:14,17,23,24,28 18:4, 20 19:10,18,21 20:1 22:16 25:6 51:20</p> <p>employers 6:3 18:7</p> <p>employs 8:4</p> <p>enclosed 42:11</p> <p>enforced 65:26</p> <p>engage 24:20</p> <p>engaged 20:12 23:20</p> <p>ensure 36:4</p> <p>Enterprises 87:23</p> <p>enterprising 56:2</p> <p>Entertainment 6:2,10, 16 8:3 9:19,20,23 10:5 19:4,8,15</p> <p>entire 28:18 34:26 40:5 49:12 50:15 57:4 61:5 71:23</p> <p>entirety 44:25</p> <p>entities 39:16 40:9</p> <p>entitled 33:13 51:5 66:6</p> <p>entity 50:25</p> <p>entrepreneurs 52:15, 26</p> <p>environment 80:6</p> <p>environmental 56:7</p> <p>equals 70:19</p> <p>equipment 8:4 18:9,11 24:21 61:1 72:14</p> <p>error 29:2,3,12,14,23</p> <p>establish 68:25</p> <p>estimate 48:17 49:1,2, 3 60:10 75:22</p> <p>estimated 48:23</p> <p>Eureka 11:15 59:16</p> <p>EV 3:3,8</p> <p>evaluating 42:4</p> <p>Eve 12:4</p>	<p>evidence 4:8 26:6 32:10 41:2 44:8 46:9,19 60:4</p> <p>evidently 52:7</p> <p>examination 2:11,12, 17,18 62:10 74:1 79:4</p> <p>EXAMINATIONS 2:6</p> <p>exceed 68:22</p> <p>excursion 7:21,22,27 8:16,18 9:6,8,16,21 51:4 74:4,7,10 75:4,16 76:1 77:13 78:5</p> <p>excursions 9:11 74:13 76:12</p> <p>excuse 27:27 31:27 32:1</p> <p>exemption 17:22 41:26 42:4 45:14 51:5 52:17,28</p> <p>exhibit 3:19,21 5:18,20 26:9,10,15 27:5 28:12, 27,28 29:1,20,22 30:13, 14 32:13,14,19,21 41:5, 7,12 42:7,8,9,11 44:7 45:2,7 60:3,23 61:16 62:13,16 64:7,10 65:7 67:6,8 68:1,7 78:26,28 79:1,7,14,18,26 80:8, 19,25 82:18 83:28 85:9 86:13,18 87:22 91:12, 17,19</p> <p>exhibits 3:1,20 4:17, 20,24 40:22 44:11,14 61:7,9 63:3,18 91:18</p> <p>exist 36:16</p> <p>existed 57:3 83:11</p> <p>existing 36:28 37:20 38:25 57:15 70:7 71:7 74:16,18</p> <p>expect 55:4 86:8</p> <p>expected 28:19</p> <p>Expiration 43:1</p> <p>explain 33:26 36:7 47:11 76:15 89:3</p> <p>explanation 28:17 56:11 62:13</p>	<p>explored 84:20,21</p> <p>exponentially 49:8</p> <p>expressed 83:28</p> <p>extending 80:11</p> <p>extensive 34:7</p> <p>exterior 37:22</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>fabricated 49:20</p> <p>face 5:6</p> <p>faced 58:15</p> <p>facilities 18:11 35:2 53:22,23 71:22</p> <p>facility 18:9 53:9,14,17 54:6,11,13 55:3,5 72:17 82:8 85:6 86:4,26 87:3, 6,18 88:7,24</p> <p>fact 15:21 23:8,12 31:16 59:15</p> <p>fact-based 56:10</p> <p>facts 50:20</p> <p>factually 49:6 56:23</p> <p>failed 55:22</p> <p>failure 55:24</p> <p>FAK 69:10,11</p> <p>Fall 3:12 33:2</p> <p>false 50:17</p> <p>falsely 50:19</p> <p>familiar 5:24 6:20,23 32:22 41:17 42:13 54:4 63:22</p> <p>families 66:5</p> <p>fare 66:6,11</p> <p>fares 65:10,13,14,23</p> <p>fashion 13:28</p> <p>February 79:8,25</p> <p>federal 10:24 11:1 36:15 39:19 40:1,4 56:12 60:27</p>	<p>fee 76:20</p> <p>fees 40:2</p> <p>felt 52:15 78:7</p> <p>figure 78:16</p> <p>file 47:7,12,21 48:4</p> <p>filed 26:3 44:16 47:6,20 48:2 60:16,20 86:8</p> <p>filing 3:15 26:1 43:16 75:14 79:15</p> <p>filings 75:8</p> <p>financial 47:7,12,13,21 48:5,9,14</p> <p>financials 77:22,24</p> <p>finds 20:1 22:16 56:11</p> <p>fine 61:21 62:2</p> <p>finish 29:8 62:22</p> <p>finished 81:24 82:1 83:19 85:18</p> <p>firm 6:24</p> <p>fish 36:14,20 37:22 39:5,6,7</p> <p>Fisheries 39:6</p> <p>fit 71:4</p> <p>fix 54:24</p> <p>flies 54:7</p> <p>Flobeds 81:12,15</p> <p>focus 9:4,20</p> <p>folks 33:16 39:22 66:8 90:11</p> <p>follow 74:23 75:11</p> <p>follow-up 73:26</p> <p>footnote 27:18 50:3,12 52:11,12 53:4</p> <p>forest 83:7,18,27 87:16</p> <p>form 39:17</p> <p>formally 80:9</p> <p>Fort 7:22 8:17 11:6 30:26 31:13,18 32:1,2,5 33:23 34:12 48:14,15, 18,24 49:9 50:1 52:5 54:7,25 55:5 56:27</p>
--	--	---	--

<p>57:20 69:9,23 70:1 71:16,28 72:1,4,5,18 81:16,21,24 82:6 83:7, 11,20 84:15,16 88:2,7, 17,23 89:13</p> <p>Forum 39:5</p> <p>forward 81:10</p> <p>found 25:5</p> <p>foundation 39:6 46:2, 11</p> <p>four-to-one 70:10 71:1</p> <p>fourth 10:8</p> <p>freight 9:16 12:1 14:21 17:6 20:26 21:1 27:21 28:19 32:5 35:18 40:21 43:23,26 44:5 48:13 50:2,8 51:3 52:7 53:12 54:11,18,19,25 55:3,26, 27 56:15,27 58:5 59:11 64:11,23,28 65:3 68:2, 4,13,15,18,26,28 69:1, 19,24 72:17 73:8 74:3, 6,14 76:5,7 77:1 79:21 80:12 84:1,9 85:12,27 86:9 87:27</p> <p>freight-car 70:10</p> <p>freights 74:10,12</p> <p>frequency 69:4</p> <p>frequently 49:28</p> <p>Friday's 90:14</p> <p>front 40:25 42:4 64:7 65:26 67:5 75:20 77:4, 23</p> <p>fuel 54:20 71:11</p> <p>fueled 52:4</p> <p>fulfilled 28:21 29:28</p> <p>fulfilling 30:23 31:10, 22</p> <p>full 31:17 44:21 45:18</p> <p>function 80:3</p> <p>functional 21:8 55:19 73:8</p> <p>functionally 21:8</p> <p>functioning 21:12</p>	<p>55:23 56:17</p> <p>fund 17:26 22:1</p> <p>funders 39:11</p> <p>funds 21:22 36:17 39:20 40:4 60:1</p> <hr/> <p style="text-align: center;">G</p> <hr/> <p>gallon 54:20</p> <p>gander 63:21</p> <p>general 15:15 33:11 34:11 54:2</p> <p>generalizations 77:6</p> <p>generally 15:15,16 34:16 35:12 36:7 47:12 55:13 67:11 68:12,24 70:28 72:12 77:18,19</p> <p>generation 36:6</p> <p>Geo 87:23 88:21,24,27</p> <p>Georgia-pacific 34:28</p> <p>get-rich-quick 57:9</p> <p>give 33:11 34:21 45:20 61:11 62:6 68:20 77:5</p> <p>glass 85:22</p> <p>Glenn 4:12</p> <p>good 4:11,13 5:15,16 36:20 38:11 65:25</p> <p>goods 14:9,25 15:17 20:24 21:2 55:5 56:5 80:4 81:24 85:18</p> <p>government 40:2,8 58:7</p> <p>grab 78:20</p> <p>Granite 39:9</p> <p>grant 72:22,25 89:23 90:5</p> <p>grant-funding 36:12</p> <p>granted 4:6</p> <p>grants 25:21</p> <p>grateful 39:11</p> <p>great 50:23 51:13 57:12 59:8 79:14 91:23</p>	<p>greater 57:6</p> <p>grounds 46:1</p> <p>grow 84:17</p> <p>GRTA 3:15 49:17</p> <p>guesswork 77:8</p> <p>guest 66:14 67:9</p> <p>guests 66:18,24</p> <p>Gulch 37:19,26</p> <p>Gulch' 37:27</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>habitat 36:3,5 37:22</p> <p>half 71:23 72:11,20 84:15</p> <p>half-hour 51:9</p> <p>hand 5:5 64:2 73:21</p> <p>handed 6:8</p> <p>handled 16:20 64:28 65:4</p> <p>handling 18:15 71:22</p> <p>hang 73:23</p> <p>happened 89:16</p> <p>happening 21:14 57:22</p> <p>happy 61:8 77:5 78:8</p> <p>hard 53:5 58:5</p> <p>Hart 37:26 52:14,23 73:12</p> <p>harvested 83:6</p> <p>harvests 83:1</p> <p>haulage 59:11</p> <p>hazardous 69:15,20, 25</p> <p>heading 74:19 84:10</p> <p>Headlands 34:10</p> <p>headwaters 37:10</p> <p>hear 7:2</p> <p>hearing 77:28 90:20</p>	<p>hearsay 46:2</p> <p>held 24:19 91:9</p> <p>highway 52:6 53:6,9, 14 55:8,11 57:11 70:1 87:11</p> <p>hill 83:15</p> <p>hired 39:22,23</p> <p>historic 37:20</p> <p>historically 74:9 83:5, 17</p> <p>hold 30:6 44:23</p> <p>holding 14:20 21:25 24:18 44:28 50:6</p> <p>holdings 84:13,19</p> <p>holiday 90:15</p> <p>Honor 4:11,13,18,27 22:8 26:5,8 29:6 32:9, 12 41:1 44:7,10,26 45:16,28 46:15 47:1 51:8 60:3,14 61:8,19 62:20 63:2,20 73:20,21 74:23 75:24 89:24 91:4, 24,25</p> <p>hotel 34:21 35:2</p> <p>hotel-related 35:14</p> <p>hour 71:23 72:12 90:24</p> <p>houses 35:13</p> <p>housing 35:1,4,5</p> <p>huge 56:8</p> <p>Humboldt 41:27 45:14</p> <p>hundred 38:8,23 39:28 44:2</p> <hr/> <p style="text-align: center;">I</p> <hr/> <p>icing 18:15</p> <p>ID 3:3,8</p> <p>idea 29:17 34:21 57:13</p> <p>identification 4:25 79:2</p> <p>identified 3:20 81:5 83:27 86:13</p>
---	---	---	--

<p>Ill 6:17,21 7:10</p> <p>Illinois 26:20</p> <p>image 67:6</p> <p>inactive 30:21 31:3</p> <p>inapplicable 23:6</p> <p>inception 15:2</p> <p>include 7:21 18:4 28:18</p> <p>included 81:12</p> <p>includes 60:28</p> <p>including 89:16</p> <p>income 76:24,25,28 77:1,12</p> <p>incomplete 44:12</p> <p>inconsistent 21:16</p> <p>incorrect 24:16 40:26 48:27 49:6 56:24</p> <p>increase 57:13</p> <p>INDEX 2:6 3:1</p> <p>indication 67:16</p> <p>indirectly 18:6</p> <p>industrious 56:1</p> <p>infer 28:6,10 31:28 32:3</p> <p>Info 3:16</p> <p>inform 33:16</p> <p>information 6:14 7:8 60:26 78:8</p> <p>infrastructure 35:14 37:20,24 38:3,5 57:14, 18,20,22,23,25,27,28 76:19</p> <p>inherent 15:23 58:15</p> <p>initiated 52:5</p> <p>installation 84:21</p> <p>instance 87:15</p> <p>instances 86:27</p> <p>institution 79:28</p> <p>insurance 6:4 18:3 42:10,12,14,17,21,25 43:11,23,25 44:4</p>	<p>insured 42:21</p> <p>integrated 74:16</p> <p>intend 46:23</p> <p>intends 53:7,11</p> <p>intent 35:1 46:15 47:6, 11,20 48:4 59:6</p> <p>interact 23:17</p> <p>interchange 12:2 30:17 64:21 82:13 85:28</p> <p>interest 83:28</p> <p>interested 81:5 85:11 87:26 88:28</p> <p>interior 37:23</p> <p>intermediate 20:27 66:9 67:10</p> <p>interruption 30:10</p> <p>interstate 19:28 20:8, 14,20,23 21:4,5,9,11,20 22:2,15 23:14,15,17 24:2,5,6,15 56:17</p> <p>intimates 49:28</p> <p>invested 37:28</p> <p>investment 49:15</p> <p>involved 6:26,28 7:3 9:23</p> <p>involving 38:25</p> <p>issue 23:14,15 33:2 44:19 52:23</p> <p>issued 68:2</p> <p>issues 46:17,19,22 53:21 62:18</p> <p>item 42:28 43:6 61:2 69:8,18</p> <p>items 61:1</p> <hr/> <p style="text-align: center;">J</p> <hr/> <p>January 15:2,10 16:5 17:9 25:17,20 27:18 28:1,6 64:13,17 68:3</p> <p>Jason 65:22</p>	<p>job 40:3</p> <p>John 4:5,14 26:2 59:17</p> <p>Johnson 2:10,11,17,18 4:13,14,18,21,23,27 5:14 13:10,12,15 22:9, 11,12 26:5,12,13 29:6, 13 30:6,11,12 32:9,16, 17 41:1,9,10 44:7,13, 15,27 45:5,24 46:13,15, 26 47:2 51:21 52:1 60:2,14,18 61:8,19,22, 26 62:1,5,8,20,24 63:1, 8,14,17,25 64:5 70:17 71:2 72:8 73:2,5,19,27 74:23,26 75:2,11,13 78:10 79:13 91:16,24</p> <p>Johnson's 22:8</p> <p>July 65:15,17 80:28</p> <p>jurisdiction 30:22</p> <p>jury 62:27</p> <p>justify 49:25</p> <hr/> <p style="text-align: center;">K</p> <hr/> <p>key 23:14,15</p> <p>Kider 6:17</p> <p>kind 39:1 52:18 53:1</p> <p>knowledge 25:3 26:26 28:2</p> <hr/> <p style="text-align: center;">L</p> <hr/> <p>labor 39:17 51:5</p> <p>lack 55:25</p> <p>land 34:28 37:3 39:5 52:17,28 83:2</p> <p>landing 84:23</p> <p>Lane 87:13</p> <p>large 19:3 35:22 38:15, 19</p> <p>largely 22:1</p> <p>law 6:24 45:11</p> <p>Lawrence 6:17,21 7:10,13 24:27 25:3</p>	<p>lawsuit 75:15</p> <p>lay 46:10</p> <p>leadership 35:9</p> <p>learned 25:4</p> <p>lease 76:25</p> <p>leases 76:14,15 77:15</p> <p>leasing 76:26</p> <p>lectern 78:20</p> <p>left 5:22 33:1 37:6,7 66:4 83:17</p> <p>left-hand 39:1</p> <p>legitimacy 61:13</p> <p>length 31:18 74:15</p> <p>lengthy 61:25</p> <p>lesser 68:19</p> <p>letter 3:4,10,14 26:18, 24,25 27:1,7 28:12,13 29:2,3,20,21 30:14 41:12 42:10 59:1 65:21 73:11,13,17 79:8,12,25 86:19 88:5</p> <p>letters 72:22 73:16 80:21,25</p> <p>level 7:1,4 49:14</p> <p>liability 42:10</p> <p>lie 58:27</p> <p>light 27:25</p> <p>limit 43:22 44:4</p> <p>limited 14:8</p> <p>limits 57:19</p> <p>lines 8:5 24:6 56:16 58:16</p> <p>lining 57:6</p> <p>link 32:26</p> <p>list 66:19 91:21</p> <p>listed 9:12 43:20 49:8</p> <p>load 54:22 69:22 70:10</p> <p>loaded 55:7 71:23</p> <p>loading 71:25 84:24</p>
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<p>loan 60:27</p> <p>Local 64:21</p> <p>located 28:23 30:2 37:8 47:26 88:1,2,11</p> <p>location 47:9 53:23</p> <p>locations 43:7 88:11</p> <p>logging 38:20 84:22</p> <p>logs 69:22 83:12,13,17 84:22 86:24,28 87:20</p> <p>long 31:26,27 44:2 71:14,20</p> <p>longer 23:9,25</p> <p>longstanding 76:18</p> <p>Longvale 47:9,27 53:9</p> <p>looked 52:22</p> <p>lot 56:26 57:2</p> <p>Love 39:9,21</p> <p>lower 35:21</p> <p>LPS 91:1</p> <p>lumber 69:22 83:14,19</p> <p>Lyme 82:19,23,28 83:26 84:8,12,28 86:24</p> <hr/> <p style="text-align: center;">M</p> <hr/> <p>M-O-N-T-A-N-G-E 45:10</p> <p>M.P. 47:8</p> <p>M.r.' 47:6</p> <p>made 9:6 21:17,19,27 24:24 25:15 47:14 58:20 61:12,14 75:8 77:12 89:22 90:4,6</p> <p>main 87:4,10</p> <p>maintain 53:11</p> <p>maintained 36:5</p> <p>majority 56:22 86:23</p> <p>make 20:22 21:3 24:21 39:12 51:12 56:26 57:8 63:19 65:20 75:6,22 85:22 89:27 91:21</p>	<p>makes 23:6 53:6,13,16, 23 54:5</p> <p>making 29:18 57:1</p> <p>manager 54:2</p> <p>manufacturer 81:15</p> <p>map 34:14,16 35:7,21, 22 56:3</p> <p>margin 35:23</p> <p>mark 78:26,27</p> <p>marked 4:25 5:18,20 26:15 32:19,21 41:11 45:7 79:1</p> <p>marks 27:28</p> <p>material 55:5,9 69:15, 20 71:16 87:5</p> <p>materials 69:25 81:20, 28 82:1 85:18,21,23</p> <p>math 70:8</p> <p>matter 4:5 57:24</p> <p>mattresses 81:16</p> <p>meaning 22:23 49:11 54:21 74:13</p> <p>means 10:23 44:28 76:15</p> <p>meant 9:2,3 66:27</p> <p>meet 33:23 53:19 74:15</p> <p>meetings 34:25</p> <p>meets 49:11</p> <p>Mendocino 3:4,12 4:5, 12 6:3,10,15,27 9:24 10:2,4,9,11,12,15,28 13:5,21 14:16,20,24 15:1,7,22,24,26 16:6,9, 11,17,21,23,26 17:5,9, 20 18:22,28 19:16,20, 27 20:2,7,11,13,19,22, 24 21:1,3,19,22,24,28 22:1,14 23:5,7,9,13,20, 24,26 24:1,5,14,18 25:5,13,15,19 26:21 27:1,19,26,27 28:6,18 30:17,18,22,25 31:9,12, 16,21,24 33:8 34:12,23 37:28 38:2,4,7 39:4 40:19 41:20,27 42:3,22,</p>	<p>26 43:11,17,27 45:14 46:21 47:6,20 48:4,24 49:6 50:9 51:19 56:1,25 57:17,21,24 60:10 62:17 64:11,23 65:5 68:2 73:15 74:5 75:5, 16,28 76:4,6,23 77:1,25 79:19,24 80:5 81:7,28 82:19,24 83:2 84:1,9,27 85:4,11,27 86:9,15 87:26 88:20 89:8,11</p> <p>Mendocino's 11:6 14:7 28:21 29:28</p> <p>mentioned 8:14 39:22 47:22 86:15</p> <p>met 35:10</p> <p>Meyer 4:5,15 26:2</p> <p>Meyer's 4:7</p> <p>Michael 39:9 52:13</p> <p>Mike 37:25 39:21</p> <p>mile 53:8 70:4,5,14,22 71:5</p> <p>milepost 37:2 47:7,22</p> <p>mileposts 47:25</p> <p>miles 8:3 12:27,28 54:7,19 56:15 70:2,4 84:15 89:1</p> <p>mill 33:23 34:1 83:11, 14,18,19 86:22</p> <p>millennium 33:24</p> <p>Miller 3:11,14</p> <p>million 39:10 49:4,8,17 60:11 61:3</p> <p>mind 22:9 44:20</p> <p>mined 88:14</p> <p>minutes 45:18 78:19</p> <p>misappropriation 59:28</p> <p>misrepresented 50:20</p> <p>Misstates 22:4</p> <p>Mitch 3:4 79:9</p> <p>moment 30:7</p> <p>Monday 62:27,28</p>	<p>90:11</p> <p>money 17:25 39:17,19 56:26 57:2,8</p> <p>monopoly 52:18 53:1</p> <p>Montage 3:16 45:10, 11 50:16</p> <p>Moore 3:11 26:18</p> <p>morning 90:13</p> <p>motion 4:7</p> <p>mountainous 58:18</p> <p>move 14:25 26:5 32:9 40:28 41:1 44:7 46:8 54:18 60:3 90:17</p> <p>movement 14:9</p> <p>moving 13:28 91:12</p> <p>MP 48:13,16 53:10</p> <p>MR's 48:17</p> <p>Mullins 41:16,19</p> <p>multipage 33:14</p> <p>multiple 74:19</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>named 42:21 65:25</p> <p>names 66:5</p> <p>national 39:6 80:13,23 81:20,25 82:2,12 83:22</p> <p>native 36:18</p> <p>natural 36:3,18,20 37:25</p> <p>naturally 84:17</p> <p>Nature 39:8</p> <p>NCRA 3:5 11:11,23,28 12:3,12,15,19,22,25 13:1,17 21:6,7,15 30:20 31:2 47:23 48:2 49:17 55:18 58:8,10,11 59:1 62:18 79:22 82:2,12 84:11 85:28 89:1</p> <p>NCRA's 58:20 59:17</p> <p>NCRA/GREAT 50:19</p>
--	--	---	---

<p>NCRA/GRTA 45:12 58:14</p> <p>necessarily 9:1 57:1 69:1 84:12</p> <p>needed 49:15</p> <p>negotiate 69:5</p> <p>neighboring 37:2 38:13 56:6</p> <p>network 56:17 80:14, 23 81:20,25 82:2,12 83:23</p> <p>newsletter 3:12 33:13, 14,27</p> <p>newspaper 33:15</p> <p>nickname 8:21</p> <p>NOAA 36:14 39:6</p> <p>non-carrier 50:5</p> <p>non-existent 56:15</p> <p>non-functional 57:27</p> <p>non-residents 66:18</p> <p>north 11:14 30:19 41:26 47:26 50:24 79:10 80:9 85:9,26 86:8 89:1</p> <p>northern 17:7 23:8,25 27:20 29:26 34:1,27 50:7 58:16 64:24,28 65:4</p> <p>Northspur 7:23,24 8:17</p> <p>Northwestern 12:3</p> <p>note 63:28 64:2 69:10, 11</p> <p>notebook 80:25</p> <p>noted 68:11</p> <p>notes 63:24</p> <p>notice 17:22 47:6,11,20 48:4 59:6</p> <p>noticed 29:2</p> <p>November 2:3 4:1 91:10</p> <p>Noyo 34:9 36:16 37:8,9 83:1</p>	<p>number 22:14 28:13 30:16 31:7 35:19,23,24, 27 49:4,5,10,17,20 63:18 70:11,12,13 71:3 75:10,25 84:14,16,20 86:6</p> <p>numbers 75:20 77:19</p> <p>numerous 53:25 58:23</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>Oakdale 8:1,2,10</p> <p>object 29:6 46:1</p> <p>objection 13:9 22:4 26:7,8 32:11,12 41:3,4 44:9 46:28 51:8,25 59:22 91:15</p> <p>objections 60:5</p> <p>obligation 17:8 28:22 30:24 31:11,22</p> <p>obligations 30:1</p> <p>obtain 44:15 72:22</p> <p>occur 16:17</p> <p>occurred 26:1</p> <p>occurring 32:4,5</p> <p>October 4:6</p> <p>OFA 53:7 59:7</p> <p>offer 46:4,12 47:7,12, 13,21 48:4</p> <p>Office 41:14</p> <p>Offices 45:11</p> <p>offsite 87:3</p> <p>one-way 67:13</p> <p>open 34:7 44:23,28 86:6</p> <p>operate 12:21 19:28 20:8,14,19,22 22:15 23:13 24:11,15</p> <p>operated 50:1</p> <p>operates 7:22,27 8:1, 16 9:11 18:8</p> <p>operating 27:19 47:16, 18 49:10 84:11</p>	<p>operation 9:19 10:3 12:25 18:11 21:14 46:20 51:4 54:11 56:11 73:8 74:3,17,18 75:17 83:25</p> <p>operational 55:1 82:3, 13 86:1</p> <p>operations 20:2,12 23:21 28:18 55:3 56:15 57:22 64:23,28 65:3 74:5 76:5</p> <p>operator 59:17</p> <p>opine 77:7</p> <p>opinion 8:19 9:7,12 15:16</p> <p>opportunities 27:17</p> <p>opportunity 46:1 56:5 57:10 69:5</p> <p>order 52:9 78:23</p> <p>organization 50:19 55:22</p> <p>original 82:28</p> <p>originated 8:21</p> <p>out-of-service 47:10</p> <p>overhead 71:12</p> <p>Overruled 51:26</p> <p>overview 34:11</p> <p>owned 10:1,4 18:6 59:17</p> <p>owner 38:14 52:14</p> <p>owner's 37:3</p> <p>owns 8:3 34:13 84:12</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>P&I 75:20 77:4</p> <p>Pacific 12:3 59:15</p> <p>packaging 85:22</p> <p>pages 44:2</p> <p>paid 10:19,28 39:27 40:2</p> <p>paragraph 5:28 6:13</p>	<p>7:11,17,20 10:8 11:5 14:6 18:2,8,17 19:3,5, 26 27:15,16 30:15 37:7 39:2 48:9 49:24 58:4 65:23 80:7,18</p> <p>Pardon 59:23</p> <p>parent 7:5</p> <p>parent-company 7:1, 3</p> <p>parenthesis 7:24</p> <p>park 34:9</p> <p>parroted 49:4</p> <p>part 21:4,5,8,10 22:2 28:16 36:4 42:18 74:16</p> <p>parties 78:4</p> <p>partnership 39:4</p> <p>party 46:5 58:13</p> <p>pass 87:17</p> <p>passable 13:17 49:13</p> <p>passage 36:20 39:5</p> <p>passenger 17:27</p> <p>passengers 15:17,25, 27 16:8,10,12,17,24,26 17:6,14 18:12,22 19:10, 17,23</p> <p>passionate 80:2</p> <p>pause 30:8</p> <p>paw-in-hand 36:3</p> <p>pay 17:1 21:22,28 25:8, 10,17,22 59:9 76:20</p> <p>payee 17:12 19:1 23:10</p> <p>paying 17:25 25:11,19, 22,24</p> <p>pays 10:24</p> <p>PC 6:17</p> <p>people 39:16 57:12 66:5,28</p> <p>percent 74:5 75:4,25, 27 76:11,22 77:12,15</p> <p>percentage 75:10,15, 23 78:4,5</p>
--	---	--	--

<p>perform 14:8,10 15:22</p> <p>performed 15:1,7</p> <p>performing 14:16 16:6</p> <p>performs 18:9</p> <p>period 81:4 82:6</p> <p>periodical 33:15</p> <p>permanently 37:26</p> <p>permit 89:6</p> <p>person 65:25</p> <p>personal 37:25</p> <p>petition 17:15 18:23 19:21 25:16</p> <p>petitioned 17:10</p> <p>Phase 34:6,8</p> <p>phases 34:5</p> <p>photographs 33:22</p> <p>pick 21:1 71:19</p> <p>picture 33:1</p> <p>Pinoli 2:10,16 4:26,28 5:1,4,7,15,19,25 26:14, 23 32:18 37:26,28 45:6 47:3 51:11 60:19 61:12 62:12 63:5 64:6 65:22 79:6 91:26</p> <p>pipes 38:25</p> <p>place 36:25 37:9 65:13, 15 68:4 89:20</p> <p>Plaintiff 3:2 4:12</p> <p>Plaintiff's 63:15 78:23 79:1 91:19</p> <p>plan 35:12,18 54:12 55:19</p> <p>planning 34:24,27 35:4,8</p> <p>plans 33:28</p> <p>plant 88:7</p> <p>play 68:13</p> <p>pockets 57:7</p> <p>point 7:28 8:3 34:9 57:28 68:5 72:15</p>	<p>points 7:25 14:9,25</p> <p>policies 43:11</p> <p>policy 43:14,21,26 44:2</p> <p>population 56:19</p> <p>portion 11:28 20:6 33:27 34:1,28 38:15,19, 21,24 59:5 75:17</p> <p>portions 12:15,18 31:4</p> <p>position 24:15 71:28 73:7</p> <p>potential 55:12 72:16 73:6 83:16</p> <p>potentially 19:19 55:17 66:6 72:10</p> <p>power 53:1</p> <p>power' 52:18</p> <p>practice 69:6</p> <p>preceding 66:19</p> <p>predecessor 10:27 82:23</p> <p>predecessors 82:22</p> <p>prejudice 46:27</p> <p>preliminary 34:17</p> <p>premarked 4:22</p> <p>Premium 43:6</p> <p>prepare 33:9 79:25</p> <p>prepared 33:6 59:9</p> <p>present 63:4 89:17</p> <p>presented 77:28</p> <p>presently 13:3</p> <p>pretense 53:12</p> <p>prevent 12:8</p> <p>previous 18:27</p> <p>previously 80:21</p> <p>price 59:9 71:5,11</p> <p>pride 77:8</p> <p>principal 89:10,12</p> <p>prior 27:3 28:6 38:24</p>	<p>probative 46:7</p> <p>problem 31:19 57:16 58:15 59:10 60:6 70:8</p> <p>problems 12:7</p> <p>proceed 5:12</p> <p>proceeding 46:5 47:10 52:8</p> <p>proceedings 30:8 41:14 48:3 52:6 62:14 91:27</p> <p>process 25:4 27:8 34:25,27 35:4,8 42:3,18 55:1 71:15 90:5</p> <p>processed 83:19</p> <p>processing 86:21</p> <p>produced 33:16</p> <p>products 85:22</p> <p>professes 50:9</p> <p>program 90:6</p> <p>programs 90:7</p> <p>project 38:1,9,10,25 39:8,10,18 40:5 85:7 86:10</p> <p>projects 33:17 38:16 39:3,21</p> <p>prompted 79:24</p> <p>proof 42:11,13,16,21 46:4,12</p> <p>property 18:13,15 19:10,17 34:12,24 37:3, 4 38:13 47:17 66:15 76:19,26 82:9 85:7 86:4,26 87:10,17</p> <p>proposal 49:7</p> <p>propose 54:12</p> <p>proposed 34:6,11,22 35:12 53:9</p> <p>proposing 59:11</p> <p>prove-up 90:13,20</p> <p>provide 23:27 28:17 50:8 59:8 61:9 78:8 79:20 80:12</p>	<p>provided 6:16 7:9,14 14:19,21 42:17 79:11 80:21</p> <p>providing 23:9,26 28:22 30:1 44:20 57:4,5</p> <p>public 73:11,16 76:17</p> <p>published 68:14</p> <p>pulled 49:18 59:15 60:27</p> <p>punch 67:22</p> <p>punch-style 67:7</p> <p>punches 67:18</p> <p>purchase 66:6,15,25</p> <p>purchased 15:9 24:7</p> <p>purely 51:3 52:10</p> <p>Purple 65:8</p> <p>purpose 21:21 46:13</p> <p>purposes 35:20,26</p> <p>pursue 53:7</p> <p>put 36:25 54:6 55:9 71:17</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>quarries 88:10</p> <p>question 9:5 10:16 13:18,24 14:1 15:5 17:13 21:26,27 22:6,10 23:16 29:9 38:2 57:9 60:9 73:25 74:24</p> <p>questions 28:15 46:10, 16,25 51:11 62:21 78:10,11,15,19 79:14</p> <p>quickly 63:21</p> <p>quotation 27:28</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>rail 8:5 10:15 11:10 12:25 13:27 27:21 35:2 45:11 50:8 51:5 53:12 56:2,4,6,17 57:13 58:6, 16 59:8,9 61:1 70:24 71:4 80:10,13,23 81:20,</p>
---	--	--	--

<p>25 82:2,6,12 83:22 84:1,9,15,25 85:12,27 87:27 88:17,19,20</p> <p>Rail-ways 59:17</p> <p>railcar 54:22 71:23 72:10,11</p> <p>railroad 6:1,3,4,9,18 7:6,9,14 8:12,22,23,24, 26,28 9:13 10:14,19 13:5,22,27 15:9,10 17:10,11,23,25 18:2,3, 13,16 19:10,17,21 21:1, 12,13 24:1,5,11,25 25:12,16 26:19,26 27:2, 9 29:26 30:16,19 33:16, 17 35:8,20,24,26 36:10, 28 37:9,15 38:26 39:23, 27 40:10 41:26 42:22 43:7,13,18 47:14,17 49:9,12,14,16 50:5,6,24 51:2,10 54:23,25 55:23 57:3 61:5 67:7 68:17 74:9 76:18 77:13,14 79:10,23 80:1,3,9 83:18 84:2,23,24 89:5,7 90:4</p> <p>railroad's 32:27 33:28 35:25 37:4 38:21 54:1 76:19 87:4</p> <p>railroads 11:1 52:15, 16,26,27 54:17</p> <p>railway 3:4,12 4:5,12 6:3,10,15,27 9:24 10:2, 4,11,28 11:8 14:16,20, 24 15:1,7,22,24,26 16:6,9,11,17,23,26 17:5,8,21 18:23,28 19:16,20 20:11,13,19, 22,24 21:3,20,22,24,28 22:1 23:6,7,8,9,20,24, 26 24:18 25:5,13,15,19 26:21 27:2,19,20,26,27 28:7 30:17,18,22 31:9, 17,21 33:8 34:12,23 37:28 38:3,4,7 40:20 41:20 42:3,22,26 43:12, 18,27 46:21 47:6,20 48:24 49:6 50:7 51:19 56:26 57:17,21,24 62:17 64:11,23 65:1,4,5 68:2 73:15 74:6 75:16, 28 76:4,23 77:1 79:20, 24 81:7,28 82:24 84:1, 28 89:8,11</p>	<p>Railway's 13:5,21 21:1 24:1,6 28:18 30:25 31:12,24 48:4 60:10 75:5 76:6 82:20 83:3 84:9 85:12,27 86:9 87:27</p> <p>Railway-sera 64:24</p> <p>Railways 77:25 88:20</p> <p>raise 5:5</p> <p>raised 46:20</p> <p>rarely 83:12</p> <p>rate 40:15,18 69:5,14 70:6 71:6,13</p> <p>rates 40:16 54:14 68:14,18,25 70:7 71:7,8</p> <p>raw 81:20,28 85:18,21</p> <p>re-asking 22:10</p> <p>reach 88:9</p> <p>reached 87:2</p> <p>read 22:26 51:23 53:4</p> <p>real 60:16 76:25</p> <p>reality 39:12</p> <p>reason 7:15,18 21:21 52:8 77:27</p> <p>rebuild 49:5</p> <p>recall 53:2 72:26 73:13 75:19</p> <p>receipt 3:19,22 18:13 44:25 45:3 61:17</p> <p>receive 44:24 61:11,14 79:20 81:19 86:23</p> <p>received 3:19,21 26:9, 11 32:13,15 41:6,8 45:3 53:20 59:3 61:17 73:15 75:28 76:23,28 77:2,12, 15 91:18,20</p> <p>receiving 61:15</p> <p>recent 48:17</p> <p>recently 52:5</p> <p>recess 45:26</p> <p>recognition 37:27</p> <p>recognized 17:21</p>	<p>21:13 47:15</p> <p>recollection 81:3</p> <p>recommend 52:26</p> <p>recommending 52:14</p> <p>reconnection 89:1</p> <p>record 4:4,10 45:27 52:14 91:8,9</p> <p>Recross-examination 2:10,11,17,18 5:13 75:1</p> <p>Redirect 2:12,18 79:4</p> <p>reduce 57:10,13</p> <p>redwood 37:23 50:19, 23 51:13 79:14 82:19, 23 83:26 84:8,13 85:4 86:15,19,21,28 87:1,8, 18</p> <p>redwoods 84:16</p> <p>refer 9:15 64:7</p> <p>reference 9:5,7 13:12 15:13 18:1 28:14 29:24 30:3 35:17 44:3 52:25 53:4 59:14 80:8 86:19</p> <p>referenced 3:22 5:21 6:24 7:11,16 14:3 27:5 32:25 38:10,16,23 39:16 42:8,9 44:11 45:4 46:17 47:4 60:23 61:18 66:2,3 67:25</p> <p>references 27:18 47:22 50:3 52:11,12,21 59:15 60:9 63:26</p> <p>referencing 9:10 13:10 15:21 28:27 51:17 58:10,11 79:13 80:18</p> <p>referred 8:9,26 9:16 10:17 24:27 31:8</p> <p>referring 9:18 11:10 13:21 15:12 30:15</p> <p>refers 6:15 15:17</p> <p>reflect 68:12</p> <p>reflects 15:18 34:16</p> <p>refresh 81:3</p> <p>refrigeration 18:14</p>	<p>region 56:3</p> <p>regulations 52:17,28</p> <p>rehabilitate 48:15</p> <p>rehabilitating 48:23</p> <p>rehabilitation 48:18</p> <p>reimagining 33:22</p> <p>Reiterate 60:5</p> <p>relate 42:26 62:14</p> <p>related 7:10 9:5 10:10 40:2,7 41:25 45:13 46:16 53:21 55:25</p> <p>relates 6:9 35:12 46:6 47:21 62:17</p> <p>relating 27:4 44:4 46:20 62:18</p> <p>relation 42:3</p> <p>relevance 46:4</p> <p>relevant 44:19 46:7,21 58:14,21</p> <p>rely 56:12</p> <p>remainder 13:1</p> <p>remaining 76:11,22</p> <p>remains 30:21</p> <p>remedies 56:13</p> <p>remember 81:18</p> <p>remote 56:3</p> <p>removal 38:25</p> <p>removed 36:23,24,27 37:14</p> <p>renamed 37:26</p> <p>rendered 25:27</p> <p>reopen 4:7 79:22</p> <p>repair 61:3</p> <p>repaired 55:1</p> <p>repeat 7:2 15:4</p> <p>rephrase 12:17</p> <p>replace 36:15 38:3</p> <p>replaced 37:24 38:5</p>
--	---	---	---

reportedly 19:27 20:7 22:14 24:14	24:24 25:10,12,16,18, 20 26:19,26 27:2,10 51:2,5,10	salmon 36:5 37:10	set 90:21
representation 58:19	retro 25:22	Salmonid 39:8	severed 24:9 31:25
representations 24:24 77:11	return 45:23 67:23	scheme 57:10	Shake 37:19
represented 50:16 51:2	revenue 75:5,15,28 76:6,12,22 77:12 78:4,6	season 84:22	Shed 35:19,23,25
request 46:18 54:2,3 59:2,6 60:27 72:25 80:9	review 45:18 46:1	secondarily 54:28	ship 68:28 81:24,28 82:6 83:9 89:13
requesting 79:10	reviewed 27:5 40:16, 22 56:3 73:10	section 35:21 41:13 68:9	shipments 82:11
requests 27:2 53:19, 25,28 79:20	reviewing 27:8	secure 52:6	shipped 83:5 88:17
require 21:22	revisit 20:3 27:3	seek 80:12	shipper 71:15 80:17 81:19,23,27 82:5 85:10 86:16 87:25 88:28
required 16:28 17:1, 17,18,20,27 18:23 25:6 58:5	revisiting 25:28 51:12	segment 48:17	shippers 58:6,21,23 72:16,21 73:7 80:12,20 81:4,12 82:4 86:12
requirement 67:21	revolve 23:12	senator 49:5	shippers/receivers 28:22 30:1
residential 35:13	rid 89:14	send 79:25	shipping 68:25 69:3 80:23 84:24 85:14,18 86:10 88:3,6
residents 66:8	rights 12:22 47:16	sense 24:22 53:6,13, 17,24 54:5	Shirley 3:11 26:18
respect 60:23 61:13	River 37:10 83:2 88:12, 16	sentence 7:20 8:14 10:9 11:6 12:6 13:4,20 14:3 19:8 20:6 22:28 27:16 31:8 47:5 49:27 50:28 51:1,23 52:3,13 53:3 56:9	short 59:10
responded 28:16	Rivertrain 7:26 8:10	sentences 59:7	show 48:14 58:5 91:4
response 48:3	road 38:20 72:11	separate 57:24 69:18	shows 44:11
responsibility 27:20 30:23 31:10,21 48:10, 15 78:3	roads 84:22	September 5:23 6:27	side 9:21 16:20,21 37:6,7,18 39:1 83:15 86:22
responsible 40:12 80:5	Robert 2:10,16 5:7 37:28 65:22	serve 80:1	siding 87:2,7
rest 62:17	rock 89:13	served 59:1	sidings 74:13
restate 22:11 51:16	rocks 36:21	service 3:16 8:23 11:8, 21,27 12:8,12,14,18 13:2 14:8,10 15:18 17:27 18:9,10 19:9 23:26 27:21 28:22 30:1 48:13 53:12,20,26 56:4 57:4,5 58:14,21,23 59:2,9 74:4,6,7 75:4 79:11,21 80:10,12 84:9	Sidman 6:17
restated 75:25	roughly 53:8 56:14	services 14:17,21 15:2,8,14,23 16:7,16,19 20:25 23:9,27 30:24 31:11,17,23 50:8 56:5 76:1 77:2,13 78:5,6 80:4,13 84:1 85:12,27 86:10 87:27	Sierra 6:2,9,16,18 7:6 8:3,11 9:19,22,23 10:5 16:20 17:7 19:4,8,15 23:8,25 24:25 27:20 29:25 42:21 50:5,6,7 64:23,28 65:4
restating 22:10	round 9:11	signing 59:3	signed 59:3
restoration 39:8,20	round-trip 7:22,27 8:1, 16 65:24 66:27 67:4,8, 12,16,26	significance 79:17,19	significance 79:17,19
restore 36:18 37:24 80:10	route 66:9	significant 44:18 49:15 55:28 65:24 84:13	significantly 82:18
restored 36:5	RRB 51:2	similarly 82:18	simple 44:1
Restoring 36:3	RRB's 27:25		
result 35:7 57:4 76:20	rule 65:26		
retain 34:7	run 74:9,12		
retirement 6:1,4,9 7:9, 14 9:13,14 10:20,24 11:1 17:1,11,12,15,26 18:2,24 21:19,23 22:1	runs 11:6,13		
	S	serving 58:16	
		session 2:4 4:2 45:1	
	Sacramento 7:26 8:9	SESSIONS 2:1	

<p>simply 49:17 50:17 59:8 77:8</p> <p>single 67:8</p> <p>sir 65:11</p> <p>sister 14:21</p> <p>site 33:23 34:1,17 37:7, 13,19 52:6 55:8,11 71:16</p> <p>sites 40:3 56:13</p> <p>sitting 75:20</p> <p>situation 57:17 89:4</p> <p>size 44:18 72:13</p> <p>skip 7:20 50:28</p> <p>Skunk 7:21 8:9,15,18, 20,27 9:2,6,10 10:1,3,6 36:4,7 77:13</p> <p>sky 49:18</p> <p>Sleeving 36:19</p> <p>SNR 28:21 29:25 30:25 31:12,24</p> <p>sold 66:18 67:3,12,15, 26 83:14 87:20</p> <p>sole 9:20</p> <p>somebody's 67:9</p> <p>sort 39:23</p> <p>sought 36:17</p> <p>south 11:14 80:11 82:3, 14</p> <p>southern 11:28 34:9 59:15,16</p> <p>space 34:7</p> <p>spawn 37:10</p> <p>speaks 54:22</p> <p>Specialist 26:19</p> <p>specific 21:26 39:20 61:2</p> <p>specifically 27:4 71:26 87:14</p> <p>speculate 77:5</p> <p>speculation 59:22,24</p>	<p>spent 51:9</p> <p>spur 87:2,7 88:20</p> <p>spurs 74:13</p> <p>square 35:24 36:23</p> <p>staff 8:4 45:19</p> <p>stand 4:28 5:1</p> <p>standard 49:11 61:5</p> <p>start 4:17 65:20 89:19</p> <p>started 16:12 19:22 27:8 74:11</p> <p>starts 19:4</p> <p>state 4:9 10:22 15:6 16:15 36:15,19 39:19 40:1,4 49:5 50:25 56:2, 12</p> <p>statement 7:16 13:8,25 14:2,13,24,26 15:15,23 20:9,22 22:18,21,28 23:1,11,21 24:13,16 27:22 28:3,5,26 29:10, 18 30:4 31:2,5 32:3 44:4 46:5 48:22,27 50:11,12 51:7,24 56:21 58:25 59:12 66:20,22 80:15</p> <p>statements 17:14 61:14</p> <p>states 5:20 6:13 7:20 10:9,19 11:5 13:21 14:7,24 17:10 18:2,20 19:7 25:12,16 28:14 29:25 33:20 43:1 47:4 48:12 50:4 53:5 58:4,7 64:11 68:22</p> <p>stating 64:27</p> <p>station 20:27 21:2</p> <p>stations 64:22 66:3,9 67:10</p> <p>status 3:9 5:20 6:2</p> <p>STB 17:22 62:14 79:15</p> <p>STB's 30:21</p> <p>steel 38:12</p> <p>step 55:22</p> <p>Stephen 4:14</p>	<p>Stinker 3:13 33:14</p> <p>Stogner 3:5 79:9</p> <p>stop 89:26</p> <p>stopped 17:8</p> <p>storage 18:15 63:11,12</p> <p>streambed 37:25</p> <p>streambeds 36:18</p> <p>street 8:28 47:8 87:10</p> <p>strictly 65:26</p> <p>Structural 12:7</p> <p>structures 36:24 38:13</p> <p>strung 90:7</p> <p>sub-exhibits 45:4</p> <p>subdivision 18:8</p> <p>subject 30:21 82:9 85:7 86:4,26 87:9,17</p> <p>submit 61:19,23 62:3</p> <p>submitted 26:25 27:9 41:22 42:2 45:9,12 46:18</p> <p>subparagraph 18:5</p> <p>Subsection 28:14</p> <p>subsequently 55:7 71:17</p> <p>subsidiary 50:4,7</p> <p>successful 52:4 74:4</p> <p>successor 83:1</p> <p>supplied 60:11</p> <p>supplies 39:17</p> <p>support 80:22</p> <p>suppose 63:13</p> <p>Surface 41:14,23 42:5, 17 44:16 45:12 48:2 50:21 60:21</p> <p>surrounding 37:19</p> <p>Switching 68:9</p> <p>sworn 5:8</p> <p>system 10:20,24 11:1 13:6,22 17:2 21:6,9</p>	<p>22:2 23:17 24:2,5,7 25:9 48:9 57:11</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>takes 71:14,20</p> <p>taking 30:22 31:9,21 89:20</p> <p>talked 49:11</p> <p>talking 15:28 33:28 55:21</p> <p>talks 8:15</p> <p>tariff 40:15 64:11,20,21 68:2,4,15,21,22,23 69:1,2</p> <p>tariffs 40:21 68:13,25</p> <p>taxation 51:6</p> <p>ten 11:9,22,25 53:4 59:4 67:7 70:20 76:11, 22 77:14,20</p> <p>term 18:4</p> <p>terrain 58:18</p> <p>testified 5:9 8:20 12:1 22:20,27 38:6,12 39:26 53:20 54:9,18 57:2 61:4 62:19 64:16 72:19 75:4, 18 76:4 80:20 90:3</p> <p>testimony 14:19 16:15, 22 21:10 23:28 24:4 36:10 38:24 50:18 58:22 81:18</p> <p>Thanksgiving 12:4</p> <p>then-executive 79:9</p> <p>thereof 66:19</p> <p>therewith 51:1</p> <p>thing 45:18</p> <p>things 35:10</p> <p>Thomas 6:16,20 7:10</p> <p>thought 22:28</p> <p>threat 52:4</p> <p>Thursday 2:3 4:1 90:17 91:2</p>
--	---	--	--

ticket 66:15,25 67:9,15,16	track 47:16 74:19	trial 2:4 38:7 40:16,22 62:27	16:28 24:23 33:5,11 50:11 59:20,26,27 60:19 64:15 69:28 70:5 72:9 75:26 83:26 84:8 85:26
tickets 65:25 66:7,12,13,17,27 67:3,4,12,13,15,26	trackage 12:22	Trinity 41:27 45:14	understood 50:4
Tier 25:8	tracked 78:22	trip 9:11	underway 34:25
ties 60:28	tracks 37:9,15 84:23	Trout 36:4,8,11,12 38:9 39:4,11,24 40:11,20,24	Unemployment 6:4 18:3
timber 82:28 83:1,6,9,17 84:28 85:2,3,5 86:16,20 87:16	traffic 28:19 51:3 57:14 84:7	truck 38:20 55:9 71:12,19 82:13 87:5	United 10:19 17:10 25:12,16 58:7
timberland 82:19	Trail 34:10 50:19,24 51:13 79:15	trucked 88:16	units 34:7
time 8:22 9:20 10:18 11:19 12:8,11 13:9 24:21 25:3,24 28:28 29:19,21 43:15,17 45:17 57:5 71:27 72:2,15 73:10,17,20 74:20 75:14 76:3,7 78:16 81:4 82:5 89:22	train 7:21,22,27 8:1,2,9,10,15,16,18,20,27 9:2,6,8,11,15,16,17 10:1,3,6 12:2 33:1,2 49:25 55:7 71:17,18,19	trucking 18:10 54:13 70:7 71:7 89:15	Unlimited 36:4,8,11,12 38:9 39:4,11,24 40:11,20,24
timeframe 15:8 16:4,7,14	trains 7:21 8:8,11 74:14,19	truckload 55:4 70:9	unload 55:6,8 72:11
times 28:23 30:2,3	trans 72:2	truckloads 70:24 71:4	untrue 58:25
timing 74:15	transfer 18:14 71:17	trucks 20:25,28 54:21 57:11,13 72:10	unusable 13:7,23
title 33:20	transit 18:14	true 13:8,24 14:2,13,15,26 20:9 22:28 23:1 27:22 28:2,26 30:4 31:2,5,16 50:12,14 51:7,24 61:4 66:20 75:5	update 65:15
today 4:6 8:24 16:22 20:17,20 23:22,28 28:28 29:19,21 61:4 62:21,22 76:4 79:13 91:5,13	transload 20:25 30:24 31:11 52:8 53:5,10,14,17 54:6,12 56:13 71:22 82:8 85:6 86:3,25 87:18	Trust 39:5	updated 43:14 65:17
tomorrow 61:20	transloaded 84:26 85:6 88:13,23,26	tunnel 31:19,25 49:5,10 54:24,28 60:28 84:14,16,19 86:6	Upper 37:8
ton 54:18,19	transloading 31:17,23 32:4 39:28 71:28 72:3	turning 7:25,28 8:3	upstream 37:1
top 5:22 19:26 33:1,21 34:4 36:2 37:18 49:24 52:3	transpired 20:21	two-page 44:1	utilities 73:11,17 76:17
total 12:26	transport 72:17	two-year 47:9	utilize 81:28 84:9 85:25,27 86:3,9,25
touched 36:9	transportation 15:17 17:6 18:12,21 19:9 41:15,23 42:5,17 44:16 45:13 48:3 50:21 60:12,21 80:13	type 35:17 43:22 54:10,11 69:24 70:6 78:6	utilizing 81:5 83:28 85:11 87:26 88:28
tourism 52:10	transported 18:15 19:16	typical 37:22	<hr/> V <hr/>
Tourism/excursion 49:25	transporting 15:25,26 16:8,9,12,23,26 17:14 19:22	<hr/> U <hr/>	vague 13:9 22:4 51:25
tourist 51:4 52:6 56:11	travel 83:12,20 87:16	U.S. 60:11	Valley 83:2
tourist-related 35:14	traveled 83:13	Ukiah 11:14	variety 36:11,14 53:21 61:1 88:10
tourist/excursion 43:7,12,18	traveling 57:11 66:14 85:5	underlined 49:24	versa 72:5 74:14
town 12:19 56:18	traverse 58:17	underneath 37:15 38:26 64:21	versus 4:5
		undersized 36:15	vice 72:5 74:14
		understand 5:2 22:6,7 53:5	visionary 33:22
		understanding 6:7 11:9 13:7 14:2 15:24	visiting 66:24
			visitor-serving 35:2
			vital 36:5

volume 28:19 33:2
68:19 69:4

volumes 54:22

voluntary 59:6

W

waiting 4:16

wanted 55:2

Washington 41:15

wasn't 16:6 20:11

Watershed 36:16

WD 3:3,8

website 32:25,27 50:10
52:21,22,25

Wednesday 90:12

week 62:27 90:12,15

weight 61:11

Weiner 6:17

west 35:24 83:18 87:10,
16

westbound 67:17,24
84:5 85:15,18 88:4,6

Western 8:28 10:13,18
12:2 15:9 17:23 59:16
77:14

westward 82:1,6 83:10

Wildlife 36:14 39:6,7

William 41:16

Willits 7:23 11:7 12:19,
23 13:1 30:20,26 31:13,
18 32:2,5 47:8,26
48:13,16,18,24 49:9
50:1 52:7 53:6,7,8,14
54:8,26 55:8 56:18,27,
28 57:20 69:8,23 70:1
71:18,28 72:1,3,6,17,18
80:11 81:21,25 82:7
83:10,20 84:10,25
86:19,21,22,27,28 87:5,
8,18 88:9,17

window 74:10

withdrawal 59:6

WITNESSES 2:8,15

Woodland 7:28

woody 36:21

work 37:27 39:24
55:13,16 60:28 61:23
74:3 89:11

worked 35:10 66:23

working 33:17 36:3
49:16 54:2,27

works 36:10

wouldn't 9:1 18:22
24:17 50:13

writing 80:8

written 22:23,24,25
26:20 27:1 41:16 56:23
63:28

wrong 32:20 43:28
70:18

wrote 63:24 72:22

Wylatti 87:22

Y

Yard 53:8

yarding 84:22

year 28:23 30:2,3 72:26

years 8:23 11:9,22,25,
26 37:27 57:3 58:1,8
77:20 79:28 82:26
89:16

yield 74:14

Youtube 52:21,22

Z

Zorbaugh 26:20