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9
10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**

12
13 SIERRA NORTHERN RAILWAY, a
California corporation, and MENDOCINO
14 RAILWAY, a California corporation,

15 Plaintiffs,

16 vs.

17 CITY OF FORT BRAGG, and DOES 1
18 through 25, inclusive,

19 Defendants.
20
21

Case No.: 4:24-cv-04810

SECOND AMENDED COMPLAINT FOR:

- (1) **CERCLA RESPONSE COSTS**
- (2) **DECLARATORY RELIEF**
- (3) **CONTRIBUTION UNDER CERCLA**
- (4) **FIFTH AMENDMENT TAKING**
- (5) **CONTRIBUTION (STATE LAW)**
- (6) **CONTINUING NUISANCE**
- (7) **INVERSE CONDEMNATION**
- (8) **NEGLIGENCE**
- (9) **CONTINUING TRESPASS**
- (10) **DECLARATORY RELIEF**

22 DEMAND FOR JURY TRIAL
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1 Plaintiffs Sierra Northern Railway (“SNR”) and Mendocino Railway (“MRY”), collectively
2 referred to herein as “Plaintiffs,” bring this Second Amended Complaint (“Complaint”) against
3 Defendant City of Fort Bragg (“Defendant” or “the City”), alleging as follows:

4 **INTRODUCTION**

5 1. SNR currently owns a parcel of real property located at 90 West Redwood Avenue, in
6 Fort Bragg, Mendocino County, California (the “Property”). MRY, an affiliate of SNR, previously
7 owned and currently operates the Property, and therefore has suffered and continues to suffer injury
8 as a result of the City’s conduct, as alleged herein.

9 2. The Property includes a body of water, approximately eight (8) acres in size, known
10 as the “Mill Pond,” and sometimes also referred to as “Pond 8.” Mill Pond has received untreated
11 municipal stormwater from the City of Fort Bragg on an on-going basis from two catchments located
12 within and controlled by the City of Fort Bragg, which drain into Mill Pond through the culverted
13 Maple and Alder Creeks. This untreated stormwater, running unabated into Mill Pond, has been tested
14 for the presence of hazardous substances. At least two such substances have been found in
15 concentrations that exceed applicable water quality standards: dioxins and furans. The City’s
16 untreated municipal stormwater entering Mill Pond leaves through a dam spillway that discharges
17 directly to the Pacific Ocean at Fort Bragg Landing. Thus, the City’s stormwater has a direct
18 connection to navigable waters of the U.S. Importantly, prior to leaving Mill Pond, the City’s
19 contaminated stormwater has precipitated out contaminated sediment, which has accumulated in Mill
20 Pond in significant quantities, and requires response actions per the California Department of Toxic
21 Substances Control (DTSC) through an Order that names both SNR and MRY.

22 3. The City’s ongoing contamination of Mill Pond with hazardous substances gives rise
23 to liability under the Comprehensive Environmental Response, Compensation and Liability Act
24 (“CERCLA”), 42 U.S.C. §§ 9601-9675 for costs of response and declaratory and other relief. In
25 addition to the recovery of response costs, SNR seeks declaratory relief with respect to the City’s
26 liabilities and continuing obligations related to the contamination as well as damages and other
27 supplemental claims arising from the release of contaminants at its Property.

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1 4. Additionally, the City's ongoing contamination has resulted in a taking under the
 2 Takings Clause of the Fifth Amendment to the United States Constitution. Namely, the City's
 3 misfeasance and malfeasance have caused damage to the Property in that it has been invaded by
 4 contaminated stormwater, as the direct and proximate result of the City's authorized customs, policies,
 5 and practices. In so doing, the City has caused Plaintiffs to suffer a taking of its property without just
 6 compensation. Further, the City is receiving a benefit in that it is using Mill Pond as a stormwater
 7 treatment facility and catchment at the expense of Plaintiffs. Both the precipitation of contaminated
 8 sediment into Mill Pond, as well as existing vegetation in Mill Pond, function to treat the City's
 9 contaminated municipal stormwater prior to it being discharged into the Pacific Ocean. Because the
 10 discharge of contaminants in the City's untreated municipal stormwater into Mill Pond is ongoing
 11 and unabated, Plaintiffs' right to enjoy its property is not merely an injury that reduces its value, but
 12 is a deprivation of Plaintiffs' rights over an extended period of time, with no end in sight.

13 5. The City's taking deprives Plaintiffs of Mill Pond's use and value without cessation.
 14 Moreover, the surrounding property, including a dam, is effectively prohibited from any other use
 15 than containing the contaminated sediment resulting from the discharge of the City's untreated and
 16 contaminated stormwater on to Plaintiffs' Property. Thus, the continued occupation of Mill Pond by
 17 pollutants deposited there by the City constitutes and effects a Fifth Amendment taking for which
 18 Plaintiffs are entitled to relief and recovery.

19 6. Plaintiffs have incurred and will continue to incur monetary damages based on the
 20 City's actions and omissions within the limitations periods applicable to the claims alleged herein.
 21 To be clear, Plaintiffs do *not* seek to recover under any claims that may be barred by the release by
 22 Georgia-Pacific LLC under that certain Stipulation and Mutual Dismissal entered into by and between
 23 the City and Georgia-Pacific LLC, dated October 9, 2014.

THE PARTIES

25 7. SNR is headquartered in West Sacramento, California, providing rail and intermodal
 26 freight transportation and transloading spanning from Northern to Southern California. MRY is
 27 headquartered in Fort Bragg, California with rail operations spanning from Mendocino County to
 28 Ventura County. Both SNR and MRY are California corporations and Class III common carriers.

2024, Plaintiffs sent a letter to the City Manager of Fort Bragg, which detailed the contamination and encouraged meaningful discussion. The City did not respond. On or around June 20, 2024, Plaintiffs filed an “Amended Claim for Money or Damages Against the City of Fort Bragg,” pursuant to California’s Government Code. The City did not respond to the Amended Claim before Plaintiffs initiated this action. Despite filing a government claim and sending a letter to the City to resolve the matter, the City has refused to take any remedial action, and continues to allow its stormwater to pollute the Property. Plaintiffs were forced to bring this Complaint as a result.

14. Divisional Assignment. Pursuant to Civil L.R. 3-2(c), this action is brought before the U.S. District Court, Northern District of California based upon the location of the Property and the injuries alleged herein.

FACTUAL ALLEGATIONS

A. The Property

15. The Property is the former site of a sawmill, which Union Lumber Company began operating in 1885. On information and belief, Union Lumber Company merged with Boise Cascade Corporation in 1968, which owned and operated the Property until 1973, when it sold the Property to Georgia-Pacific. On information and belief, Georgia-Pacific ceased operations on the Property on August 8, 2002, such that by May of 2012, most of the structures and equipment associated with lumber production had been removed and the Property was unoccupied and unused except for a small office maintained by Georgia-Pacific and a wastewater treatment plant owned and operated by the City of Fort Bragg.

16. In 2004, Georgia-Pacific voluntarily began investigating alleged environmental concerns at the Property. The Regional Water Quality Control Board, North Coast Region oversaw investigation activities until the California Environmental Protection Agency, Department of Toxic Substances Control (“DTSC”) assumed the role of lead regulatory agency in August 2006. On information and belief Georgia-Pacific expended approximately \$31,400,000 in response costs at the Property through December 31, 2011.

B. The Mill Pond

17. The Property contains a water body commonly known as the “Mill Pond,” and also

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1 referred to as “Pond 8.” Mill Pond is approximately eight (8) acres in size and is the largest surface
2 water body on the Property. Attached hereto and incorporated herein as **Exhibit 1** is a true and correct
3 copy of a map showing Mill Pond’s location.

4 18. The Mill Pond has for years received the City’s untreated municipal stormwater that
5 enters the pond via sheet flow and via the Alder Creek and Maple Creek outfalls controlled by the
6 City, located in the eastern section of the pond. These two outfalls are referred to as “Station D” and
7 “Station CE” on **Exhibit 1** hereto. These outfalls consist of the ends of two pipelines that convey
8 untreated municipal stormwater that originates from City locations that are upgradient from the
9 Property. Station D represents what is known as “Alder Creek” and Station CE represents what is
10 known as “Maple Creek.” The Mill Pond has continued to receive the City’s untreated and
11 contaminated stormwater runoff, even after all commercial lumber and paper-processing activities
12 ceased at the Property.

13 **C. Dioxin and Furan Are Found in Mill Pond**

14 19. The City has, on a continuing and on-going basis, discharged, and continues to
15 discharge municipal stormwater into Mill Pond with no end in sight. The Department of Toxic
16 Substances Control (“DTSC”) has issued a Site Investigation and Remediation Order for Mill Pond
17 (“the Order”). DTSC has authority delegated by the United States Environmental Protection Agency
18 for its hazardous waste program under which the Order was issued.

19 20. Stormwater quality within the Mill Pond drainage basin has been further evaluated
20 over multiple sampling efforts performed under the supervision of licensed Professional Engineers
21 and Registered Geologists. A sampling effort was conducted in 2011 to support the design of an
22 alternate surface water conveyance feature for Mill Pond. The results of this evaluation were
23 summarized in reports prepared by a professional engineer with Arcadis U.S., Inc., and more recent
24 reports were prepared by Kennedy Jenks, a water and industrial engineering firm.

25 21. The reports show, among other things, that (1) stormwater entering Mill Pond contains
26 dioxins and furans at concentrations that significantly exceeded applicable water quality standards;
27 (2) a significant majority of the pollutants (80 to 95 percent) entering Mill Pond via stormwater are
28 from untreated municipal stormwater discharged by the City onto the Property and; (3) approximately

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1 54.5 percent of water received by Mill Pond is untreated municipal stormwater discharged onto the
2 Property by the City, through stations D and CE.

3 22. Based on these findings, Plaintiffs allege upon information and belief that the City is,
4 has been, and continues to use Mill Pond as a detention basin and treatment facility for the storage
5 and treatment of its toxic, hazardous, and contaminated stormwater discharges.

6 23. Plaintiffs are informed and believe and thereon allege that the City's continuing
7 deposit of untreated and contaminated stormwater, containing hazardous substances, has and will
8 increase the response and remediation costs Plaintiffs have incurred and will incur because the City
9 continues to increase the levels of hazardous substances in the Mill Pond notwithstanding the
10 cessation of commercial activity on the Property over 20 years ago.

11 **D. Injury to Plaintiffs**

12 24. The City's discharge of dioxins and furans and other hazardous substances into Mill
13 Pond (1) invokes strict liability under CERCLA for the ongoing hazardous substance contamination
14 of Mill Pond and (2) is a continued occupation and taking under the Fifth Amendment for which
15 Plaintiffs are entitled to relief and recovery. The City's actions and physical damage to Mill Pond in
16 the form of untreated and hazardous substance-contaminated stormwater invade Plaintiffs' protected
17 property interest and is a direct result of the City's malfeasance and misfeasance.

18 25. Further, the City is receiving a free benefit in that it is using Mill Pond as a stormwater
19 treatment facility and detention basin to precipitate out hazardous substances that remain in Mill Pond
20 in the form of sediment at the expense of Plaintiffs. Plaintiffs continue to suffer property loss and
21 injury without just compensation.

22 26. The pollution of Mill Pond is ongoing and unabated, and the City has shown no
23 intention of taking or funding remedial action. Thus, Plaintiffs' right to enjoy the Property is not a
24 discrete injury; rather, without judicial intervention, it is a permanent deprivation of Plaintiffs'
25 property rights.

26 27. As a result of the City's acts and omissions, Plaintiffs have faced and will face
27 additional, currently incalculable costs for future investigation, remediation, and contamination
28 clean-up for which the City is strictly liable. These costs have been estimated to range from \$10

1 million to \$50 million dollars, depending on the manner and method of remediation, to be proven at
2 trial.

3 28. As a result of the contamination, Plaintiffs have incurred legal fees and response costs
4 and will face additional legal fees and response costs.

5 WHEREFORE, Plaintiffs pray for judgment as set forth below.

6 **FIRST CLAIM FOR RELIEF**

7 (CERCLA Response Costs)

8 29. Plaintiffs hereby incorporate by reference and re-state the allegations of the preceding
9 paragraphs of this Complaint as though set forth in full at this place.

10 30. The City is a “person” as that term is defined in 42 U.S.C. § 9601(21).¹

11 31. The City-controlled outfalls at Alder Creek and Maple Creek are each a “facility” as
12 that term is defined in 42 U.S.C. § 9601(9). Further, Mill Pond is a “facility” within subsection (B)
13 of the definition, because the hazardous substances come to be located in Mill Pond.

14 32. The City was, at all the times when hazardous substances have been disposed of at the
15 Property, the “owner” and/or “operator” of Alder and Maple Creeks within the meaning of 42 U.S.C.
16 § 9601(20)(a) at or during the time of the acts or omissions which resulted in the release of hazardous
17 substances at or around the Creeks, and these substances migrated and threaten to continue to migrate
18 onto the Property and into Mill Pond.

19 33. Plaintiffs are informed and believe and thereon allege that the City’s activities or
20 omissions by discharging onto Plaintiff’s Property untreated municipal stormwater contaminated
21 with hazardous substances through City-controlled outfalls Alder and Maple Creeks have resulted in
22 and continue to result in the “release” of “hazardous substances” at the facility within the meaning of
23 42 U.S.C. §§ 9601(14) and (22).

24 34. Plaintiffs have incurred, and will incur, response costs in the amount of approximately
25 \$10 million to \$50 million dollars plus attorneys’ fees and may continue to incur response costs within
26 the meaning of 42 U.S.C. § 9601(25), consistent with the National Contingency Plan under CERCLA

27 ¹ All citations to 42 U.S.C. §§ 9601-9675 refer to the Comprehensive Environmental Response, Compensation and
28 Liability Act (“CERCLA”), as enacted by the 96th United States Congress on December 11, 1980, including amendments
thereto, 40 CFR Part 307.

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1 (see 40 CFR §§ 300.64, 300.66), to abate the releases or threatened releases of hazardous substances
2 onto the Property and Mill Pond. These response costs include, without limitation, costs of analysis,
3 litigation expenses, and such removal or remedial action as Plaintiffs take or authorities may dictate.

4 35. The City is absolutely and strictly liable as an owner and/or operator, and is thus a
5 responsible party, under 42 U.S.C. § 9607(a), for response costs, including of “removal” or “remedial
6 action” incurred and/or to be incurred by Plaintiffs consistent with the National Contingency Plan in
7 response to the releases at the Property and into Mill Pond.

8 36. There has been a release or threatened release of hazardous substances as defined in
9 42 U.S.C. § 9601(22) at and from the City-controlled outfalls at Alder and Maple Creeks and onto
10 the Property and into Mill Pond.

11 37. Plaintiffs are entitled to reimbursement from the City, which on information and belief
12 is strictly and jointly liable for those response costs under CERCLA.

13 **SECOND CLAIM FOR RELIEF**

14 (Declaratory Relief Under CERCLA– Against the City)

15 38. Plaintiffs hereby incorporate by reference and re-state the allegations of the preceding
16 paragraphs of this Complaint as though set forth in full at this place.

17 39. Plaintiffs are entitled to a declaratory judgment under 42 U.S.C. § 9613(g)(2) that all
18 future costs of “removal” or “remedial action” incurred by it in response to releases caused by the
19 City are costs for which the City must reimburse Plaintiffs.

20 40. Plaintiffs are informed and believe and thereon allege that there is an actual
21 controversy between the parties regarding their duties and obligations with respect to the
22 investigation, response, and remediation costs that have been incurred and will continue to be incurred
23 in connection with the release and threatened release of hazardous substances from City catchments
24 and culverts onto the Property and into Mill Pond.

25 41. The declaratory relief sought herein is necessary and appropriate, and in the interest
26 of justice, because it will obviate the need for multiple lawsuits and should provide complete
27 resolution of the dispute between the parties.

28 WHEREFORE, Plaintiffs pray for judgment as set forth below.

THIRD CLAIM FOR RELIEF

(Contribution Under CERCLA – Against All Defendants)

42. Plaintiffs hereby incorporate by reference and re-state the allegations of the preceding paragraphs of this Complaint as though set forth in full at this place.

43. The California Department of Toxic Substances Control (“DTSC”) issued a Site Investigation and Remediation Order (“Order”) relating to the Property in 2007. On June 9, 2022, DTSC issued a First Amendment to Order. On June 9, 2022, DTSC issued a First Amendment to the Order, which among other things, added Mendocino Railway as an additional Respondent. On December 4, 2024, DTSC issued a Second Amendment to the Order to add Sierra Northern Railway as an additional Respondent. Plaintiffs have incurred “response” costs within the meaning of § 101(25) of CERCLA.

44. Plaintiffs are informed and believe and thereon allege that they possess rights to require contribution from the City under § 107(a) or §113(f) of CERCLA. Section 107(a) creates a right of action for parties to recover environmental cleanup costs from “Potentially Responsible Parties” (PRPs), while Section 113(f) creates a right of action for a PRP forced to pay more than its fair share to require contribution from other PRPs towards a common CERCLA liability. A PRP may recover under § 107(a) those response costs not required by a judgment, settlement agreement, or administrative order imposing CERCLA liability.

45. To the extent that the City is not liable for contribution to the response costs Plaintiffs have incurred and will incur in connection with the release and threatened release of hazardous substances from City-controlled catchments and culverts into Mill Pond, Plaintiffs are entitled to recover from all other defendants amounts in excess of Plaintiffs’ fair and equitable share of such remediation and clean-up costs.

WHEREFORE, Plaintiffs pray for judgment as set forth below.

FOURTH CLAIM FOR RELIEF

(42 U.S.C. § 1983 – Unlawful Taking – Against the City)

46. Plaintiffs hereby incorporate by reference and re-state the allegations of the preceding paragraphs of this Complaint as though set forth in full at this place.

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1 47. The City is a municipality, and is a state actor within the meaning of 42 U.S.C. § 1983.
2 Section 1983 states, in part, that “[e]very person who, under color of any statute, ordinance,
3 regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes
4 to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the
5 deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be
6 liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress...”
7 42 USCS § 1983, Part 1 of 16.

8 48. Section 1983 applies to people or entities acting under “color of state law,” commonly
9 called “state actors.” For purposes of section 1983, political subdivisions of a state, including cities,
10 are state actors.

11 49. The Due Process Clause of the Fifth and Fourteenth Amendments to the U.S.
12 Constitution protects against state actors taking private property without just compensation. Federal
13 courts have for generations construed 42 U.S.C. § 1983 to allow courts to enjoin state actors from
14 engaging in conduct that deprives parties of rights afforded under the Due Process Clause of the
15 Fifth and Fourteenth Amendments to the U.S. Constitution.

16 50. As alleged herein, the City, acting under color of state law, has substantially
17 interfered with Plaintiffs’ ownership, operation, and enjoyment of its property for years, including
18 by depriving Plaintiffs of their use and enjoyment of Mill Pond, thereby depriving Plaintiffs of
19 legally-cognizable property interests, and constitutional rights, all of which wrongful conduct
20 violates Plaintiffs’ rights under 42 U.S.C. § 1983 and the U.S. Constitution.

21 51. Plaintiffs have suffered property losses compensable as a taking, both while MRY
22 was owner and continuing thereafter, because the City has intended to invade and intends to continue
23 invading the Property with polluted stormwater. Even without the City’s intent, such invasion is the
24 direct, natural, or probable result of its authorized activity.

25 52. The City’s invasion of Mill Pond has appropriated a benefit to the City at the expense
26 of Plaintiffs, and, in the least, interfered with their rights to use, enjoy, and operate the Property and
27 Mill Pond without being burdened and injured by the invasion of the City’s polluted stormwater.

28 53. As a direct and proximate result of the City’s wrongful conduct, as alleged herein,

1 Plaintiffs have been damaged, and are also suffering on-going irreparable harm.

2 54. Plaintiffs are entitled to recover attorneys’ fees under 42 U.S.C. § 1988.

3 WHEREFORE, Plaintiffs pray for judgment as set forth below.

4 **FIFTH CLAIM FOR RELIEF**

5 (Contribution and Indemnity Under State Law– Against All Defendants)

6 55. Plaintiffs hereby incorporate by reference and re-state the allegations of the preceding
7 paragraphs of this Complaint as though set forth in full at this place.

8 56. Plaintiffs bring this claim as an alternative theory of recovery to the extent this Court
9 finds them ineligible for contribution under CERCLA. Plaintiffs are informed and believe and thereon
10 allege that CERCLA does not diminish the rights of any person to bring an action for contribution in
11 the absence of contribution liability under CERCLA.

12 57. Plaintiffs have a right of contribution and/or partial indemnity under California law,
13 against the City to recover investigation, remediation, and response costs that Plaintiffs have already
14 incurred and/or will incur in the future regarding the investigation and remediation of hazardous
15 substances at the Property and Mill Pond.

16 58. Alternatively, to the extent that the City is not liable for contribution to the
17 investigation and remediation costs Plaintiffs have incurred and will continue to incur in connection
18 with the release and threatened release of hazardous substances from City-controlled catchments and
19 culverts into Mill Pond, Plaintiffs are entitled to recover from all other defendants amounts in excess
20 of Plaintiffs’ fair and equitable share of such remediation and clean-up costs.

21 WHEREFORE, Plaintiffs pray for judgment as set forth below.

22 **SIXTH CLAIM FOR RELIEF**

23 (Continuing Nuisance – Against All Defendants)

24 59. Plaintiffs hereby incorporate by reference and re-state the allegations of the preceding
25 paragraphs of this Complaint as though set forth in full at this place.

26 60. The City-created conditions at the Property and within Mill Pond constitute a
27 continuing nuisance as a result of the City’s release of hazardous substances from City catchments.
28 In addition, the City failed to initiate investigation, monitoring, remediation, or abatement of the

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1 nuisance, all in violation of California Civil Code § 3479.

2 61. Upon information and belief, the contamination is actually and practicably abatable
3 by reasonable measures and without unreasonable cost.

4 62. The contamination caused by the City’s untreated and contaminated stormwater
5 constitutes a nuisance and has substantially and unreasonably interfered with, and continues to
6 interfere with, Plaintiffs’ use and enjoyment of Mill Pond and the Property, and has created an
7 unreasonable risk to human health and the environment.

8 63. As a direct and proximate result of the City’s activities, Plaintiffs have incurred and
9 will continue to incur damages in an amount according to proof at trial, including but not limited to,
10 costs of the investigation, assessment, monitoring, and remediation of the nuisance; loss of property
11 value; costs to repair and restore Mill Pond to a proper condition; statutory costs; and other damages
12 as a result of the continuing nuisance for which the City is responsible.

13 WHEREFORE, Plaintiffs pray for judgment as set forth below.

14 **SEVENTH CLAIM FOR RELIEF**

15 (Inverse Condemnation – Against the City)

16 64. Plaintiffs hereby incorporate by reference and re-state the allegations of the preceding
17 paragraphs of this Complaint as though set forth in full at this place.

18 65. Article I, Section 19 of the California Constitution provides the basis for recovery
19 against government entities under a theory of inverse condemnation. That section requires that just
20 compensation be paid when private property is taken or damaged for a public use. The policy
21 underlying the concept of inverse condemnation is that the costs of a public use benefiting the
22 community should be spread among those receiving the benefit, as opposed to being allocated to a
23 single person within a community.

24 66. The United States Supreme Court has instructed that by denying just compensation, a
25 governmental action may be both unconstitutional as well as tortious.

26 67. At times relevant herein, Plaintiffs have held a protectable property interest in the
27 Property and Mill Pond.

28 68. The Mill Pond functions as an integral part of the City’s stormwater system, which the

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1 City has deliberately designed. Plaintiffs are informed and believe and thereon allege that the City
2 designed, constructed, and has maintained all of the physical elements of its stormwater system
3 leading to the point where the stormwater is deposited into Pond 8.

4 69. The City is responsible for the release of untreated stormwater from its catchments
5 and culverts that carry contaminated stormwater onto the Property and into Mill Pond. The City’s use
6 of the Mill Pond as a detention basin and treatment facility for its untreated and contaminated
7 stormwater constitutes a public project, and constitutes a public use of private property without
8 payment of just compensation in violation of Article I, Section 19 of the California Constitution.

9 70. The City’s release of its untreated and contaminated stormwater onto the Property has
10 constituted a deliberate action undertaken by the City in furtherance of public purposes, which include
11 saving the City from having to incur the cost of treating its stormwater runoff before it reaches the
12 Property.

13 71. Plaintiffs are informed and believe and thereon allege that, due to the City’s acts and
14 omissions, the Property will continue to be contaminated by the City’s release of untreated and
15 contaminated stormwater onto the Property.

16 72. On or around April 24, 2024, Plaintiffs sent a letter to the City Manager of Fort Bragg,
17 demanding that the City cease and desist from discharging contaminated stormwater onto the
18 Property. The City’s release of contaminated stormwater onto the Property continues unabated.

19 73. Plaintiffs are informed and believe and thereon allege that the City has knowingly and
20 deliberately allowed its untreated and contaminated stormwater, containing hazardous substances, to
21 enter upon the Property and into Mill Pond.

22 74. The intrusion of the City’s untreated and contaminated stormwater onto the Property
23 and into Mill Pond has made the Property less marketable and has proximately and substantially
24 caused its value to decrease by an amount to be proven at trial. Plaintiffs are informed and believe
25 and thereon allege that the continuing intrusion of the City’s contaminated stormwater onto the
26 Property will increase Plaintiffs’ “cost-to-cure” the contamination.

27 75. The City’s acts and omissions in furtherance of a public purpose, as alleged herein,
28 substantially and proximately caused the Property to suffer a direct, substantial, and peculiar burden.

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1 The Property has borne and continues to bear a unique burden based on its location, and the City’s
2 willingness to allow the continued release of its untreated and contaminated stormwater onto the
3 Property and into the Mill Pond. Plaintiffs and the Property have borne and continue to bear a
4 disproportionate amount of the burden associated with the City’s polluted stormwater runoff.

5 76. The damage to Plaintiffs’ Property, as alleged herein, is substantially caused by an
6 inherent risk presented by the deliberate design, construction, or maintenance of the City’s
7 stormwater system.

8 77. Plaintiffs have incurred and will incur attorney’s, appraisal, and other expert fees
9 because of this proceeding. Such amounts cannot yet be ascertained, but are recoverable in this action
10 under section 1036 of the Code of Civil Procedure.

11 WHEREFORE, Plaintiffs pray for judgment as set forth below.

12 **EIGHTH CLAIM FOR RELIEF**

13 (Negligence – Against the City)

14 78. Plaintiffs hereby incorporate by reference and re-state the allegations of the preceding
15 paragraphs of this Complaint as though set forth in full at this place.

16 79. The City may be held vicariously liable for the acts or omissions of its employees
17 under section 815.2 of the Government Code. Plaintiffs hereby seek to hold the City vicariously liable
18 for the negligent conduct of its Director of Public Works, David Goble, who on information and
19 belief, is and has been responsible for managing the City’s stormwater system.

20 80. David Goble, as the Director of City’s Department of Public Works, owed to Plaintiffs
21 a duty of care to take reasonable steps to avoid causing unreasonable harm to the Property. Plaintiffs
22 are informed and believe that the City and David Goble have each been aware that the City’s untreated
23 stormwater is contaminated. For example, the City has publicized the problem through its annual
24 Storm Water Awareness Week since at least 2021. For example, City-sponsored messages,
25 distributed by its Public Works Department have warned that “Rain washes paint and other household
26 chemicals into storm drains, which lead straight to our streams, local waterbodies, and the ocean.”

27 81. Plaintiffs are informed and believe and thereon allege that the Department of Public
28 Works’ educational messages and mitigation efforts have been focused on stormwater runoff to

1 streams that run *around* the Property, to the exclusion of stormwater that flows into Pond 8.

2 82. Plaintiffs therefore allege, on information and belief, that David Goble breached the
3 duty of care he owed to Plaintiffs, and was negligent.

4 83. Plaintiffs have been harmed by David Goble’s negligence.

5 84. David Goble’s negligence was a substantial factor in causing Plaintiffs’ harm.

6 85. The City is vicariously liable for David Goble’s negligence and the resulting harm to
7 Plaintiffs.

8 WHEREFORE, Plaintiffs pray for judgment as set forth below.

9 **NINTH CLAIM FOR RELIEF**

10 (Continuing Trespass – Against All Defendants)

11 86. Plaintiffs hereby incorporate by reference and re-state the allegations of the preceding
12 paragraphs of this Complaint as though set forth in full at this place.

13 87. The City may be held vicariously liable for the acts or omissions of its employees
14 under section 815.2 of the Government Code. Plaintiffs hereby seek to hold the City liable for the
15 conduct of its Director of Public Works, David Goble, who on information and belief, is responsible
16 for causing the City’s stormwater system to deposit hazardous substances onto the Property, without
17 Plaintiffs’ consent.

18 88. As a result of the control, maintenance, and use of City catchments and culverts,
19 dioxins and furans in stormwater were caused to migrate and continue to migrate onto the Property
20 and into Mill Pond without Plaintiffs’ consent.

21 89. The ongoing and unabated contamination has unlawfully interfered, and continues to
22 interfere, with Plaintiffs’ possession, use and enjoyment of the Property and Mill Pond.

23 90. The contamination has been released, and continues to be released, as a result of the
24 malfeasance and misfeasance of David Goble, which stormwater contaminates the Property and Mill
25 Pond with hazardous substances.

26 91. Upon information and belief, the release of hazardous substances is actually and
27 practicably abatable by reasonable measures and without unreasonable cost.

28 92. As a direct and proximate result of the on-going and continuing trespass alleged

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1 herein, Plaintiffs have incurred and will continue to incur damages including, but not limited to, costs
2 of the investigation and remediation of the trespass; loss of property value during the existence of the
3 trespass; losses associated with the contamination; costs to repair and restore the Property and Mill
4 Pond to proper condition; statutory costs; attorney’s fees and costs; and other damages as a result of
5 the continuing trespass for which the City is liable under the facts alleged herein.

6 WHEREFORE, Plaintiffs pray for judgment as set forth below.

7 **TENTH CLAIM FOR RELIEF**

8 (Declaratory Relief Under State Law– Against the City)

9 1. Plaintiffs hereby incorporate by reference and re-state the allegations of the preceding
10 paragraphs of this Complaint as though set forth in full at this place.

11 2. The City has, on a continuing and on-going basis, discharged, and continues to
12 discharge municipal stormwater into Mill Pond with no end in sight. The City’s actions and physical
13 damage to Mill Pond in the form of contaminated stormwater invade Plaintiffs’ protected property
14 interest in and to the Property.

15 3. Plaintiffs have incurred, and will incur, response costs relating to the aforesaid releases
16 or threatened releases of hazardous substances onto the Property and Mill Pond. These response costs
17 include, without limitation, costs of analysis, litigation expenses, and such removal or remedial action
18 as Plaintiffs take or DTSC may dictate.

19 4. The City holds certain authority to approve development of the Property, and to
20 impose reasonable and proportional conditions on such development. Plaintiffs are informed and
21 believe and thereon allege that the City will condition development of the Property on the response
22 and remediation of Pond 8. Plaintiffs are informed and believe that remediation of the dioxins and
23 furans in Pond 8 in a manner consistent with the National Contingency Plan could be accomplished
24 without the removal and off-site disposal of the contaminated sediments in Pond 8. Plaintiffs are
25 informed and believe and thereon allege that remedial actions that reduce the volume, toxicity or
26 mobility of hazardous substances are preferred over remedial actions that simply require the offsite
27 transport and disposal of hazardous substances or contaminated materials.

28 5. Plaintiffs are informed and believe that physical removal of the contaminated

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1 sediments in Pond 8 is unnecessary, is not cost effective, and is economically infeasible, as it would
2 involve transporting the sediment to a distant landfill; Plaintiffs are informed and believe that the cost
3 to “truck and dump” the sediment to a landfill licensed to receive and dispose of the contaminated
4 sediment would be *at least* two or three times the cost of the NCP-consistent on-site remediation
5 method.

6 6. Plaintiffs are informed and believe and thereon allege that there is an actual
7 controversy between the parties regarding their rights and obligations with respect to the response
8 costs that will be incurred in connection with remediation of Pond 8, and the appropriate NCP-
9 consistent methods to be used for that remediation.

10 7. Plaintiffs are informed and believe that the City contends that Plaintiffs would be
11 liable for the entire cost of the “truck and dump” remediation, whereas Plaintiffs hold a contrary view.

12 8. Plaintiffs hereby seek a declaration that their proposed remediation plan, which
13 provides for leaving Pond 8 sediments in place, is consistent with the NCP.

14 9. Plaintiffs hereby seek a further declaration that, to the extent the City conditions
15 development of the Property on the physical removal of sediments in Pond 8 to a distant landfill, then
16 the City would be imposing an unreasonable condition and exaction upon Plaintiffs, such that as a
17 consequence, Plaintiffs’ liability for the entire additional cost of that “truck and dump” remediation
18 method would be purely secondary, imputed, vicarious, or technical, with primary liability attaching
19 to the City for the additional costs involved in the “truck and dump” remediation method.

20 WHEREFORE, Plaintiffs pray for judgment as set forth below.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiffs pray that judgment be entered in its favor for the following relief:

23 1. Monetary damages for costs incurred or to be incurred for the investigation, removal,
24 remediation and/or other mitigation of the contamination or damage to the Property and Mill Pond in
25 an amount according to proof at trial;

26 2. An order requiring the City to take such action as may be necessary to correct the
27 violation, and/or to remediate and/or to remove any and all contamination at the Property and Mill
28 Pond caused or conveyed by the City;

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1 3. An order enjoining the City, as well as all persons and entities action in concert with
2 it, from taking any action(s) that would materially interfere with Plaintiffs’ use and enjoyment of the
3 Property and/or Mill Pond, including to cease and desist from continuing to discharge contaminated
4 and polluted stormwater onto the Property and Mill Pond;

5 4. Compensatory damages for the unlawful taking of the Property and Mill Pond in
6 violation of Plaintiffs’ legally-cognizable property interests and constitutional rights;

7 5. A declaratory judgment under CERCLA § 113(g)(2), 28 U.S.C. §§ 2201 and 2202,
8 and/or state law that some or all future costs of removal and/or remedial action incurred by Plaintiffs
9 in response to releases caused by the City are costs for which the City must reimburse Plaintiffs,
10 including the entire incremental cost of any City-mandated “truck and dump” remediation method,
11 and that Plaintiffs’ proposed remediation plan for Pond 8 is consistent with the NCP;

12 6. Monetary damages equal to the diminution in the value of the Property, or
13 alternatively, damages in an amount according to proof at trial, for the continued investigation,
14 removal and/or other mitigation or remediation of the contamination to the Property and Mill Pond
15 caused by the City;

16 7. Monetary damages and relief available for the City’s continuing trespass;

17 8. Monetary damages and relief available for the City’s continuing nuisance;

18 9. Monetary damages and relief available for the City’s negligence;

19 10. Attorney’s fees on the Fourth Claim for Relief under 42 U.S.C. § 1988;

20 11. Attorney’s fees and costs awardable on the Eighth Claim for Relief under section 1036
21 of the Code of Civil Procedure; and

22 12. For such further and other relief as the Court deems just and equitable.

24 Dated: December 20, 2024

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LAW CORPORATION

26 By: /s/ David A. Diepenbrock
27 David A. Diepenbrock
28 Attorneys for Plaintiffs
SIERRA NORTHERN RAILWAY and
MENDOCINO RAILWAY

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs demand a trial by jury on all claims and issues so triable.

Dated: December 20, 2024

weintraub tobin chediak coleman grodin
LAW CORPORATION

By: /s/ David A. Diepenbrock
David A. Diepenbrock
Attorneys for Plaintiffs
SIERRA NORTHERN RAILWAY and
MENDOCINO RAILWAY







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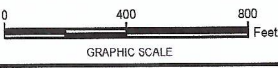
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Exhibit 1



LEGEND

-  ISCO SAMPLER
 -  FLOW DIRECTION
 -  PIPE LOCATION (APPROX.)
 -  CONTOURS
 -  SUBCATCHMENT BOUNDARY
 -  PONDS
- NOTE: PIPE LOCATIONS ARE APPROXIMATE AND NOT ALL SURFACE WATER FLOW PATHS ARE SHOWN



FORMER GEORGIA-PACIFIC WOOD PRODUCTS FACILITY
FORT BRAGG, CALIFORNIA
Mill Pond Storm Water Sampling Report

SITE HYDROLOGY AND SUBCATCHMENTS



FIGURE 1-2