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Superior Court of California
County of Mendocino

By: 
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7 CITY OF FORT BRAGG

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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF MENDOCINO**

12 CITY OF FORT BRAGG,

13 Plaintiff,

14 v.

15 MENDOCINO RAILWAY,

16 Defendants

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18
19
20 **CALIFORNIA COASTAL COMMISSION,**

21 Intervenor.

Case No. 21CV00850

*Assigned for all purposes to:
Hon. Clayton Brennan, Dept.: TM*

**CITY'S OPPOSITION TO MOTION
FOR STAY OF PROCEEDINGS**

Action Filed: October 28, 2021

DATE: October 19, 2023
TIME: 2:00 p.m.
DEPT: TM

22 Plaintiff City of Fort Bragg ("City") submits the following in Opposition to the Motion for
23 Stay of Proceedings ("Motion") brought by Defendant Mendocino Railway ("MR"):

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EXEMPT FROM FILING FEES
PURSUANT TO GOVERNMENT CODE SECTION 6103



1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION.**

3 The Motion is just the last in a long line of attempts by MR to avoid this Court and the
4 within action by the City against MR. For nearly *two years*, MR has held the City hostage to
5 MR’s procedural machinations, and MR has thereby avoided having this action proceed against it,
6 in effect staying the matter already, without requesting any stay from this Court. MR’s Motion
7 asserts that “the parties haven’t commenced discovery, no dispositive motions have been filed,
8 and no trial date has been set.” (Motion, p. 3.) However, these facts are *all* due to MR’s myriad
9 attempts to thwart this action in every way possible: MR challenged the action by Demurrer and
10 Motion to Strike, which were denied; MR unsuccessfully challenged those denials to the Court of
11 Appeal and the California Supreme Court by way of writ of mandate, which were also denied;
12 MR unsuccessfully sought to have this matter related to the already-pending eminent domain
13 action it filed against John Meyer in *Mendocino Railway v. Meyer*, SCUJ-CVED-2020-74939,
14 Court of Appeal Case No. A168497; MR also sought to have the assigned judge in this Court
15 disqualified, which was also denied; MR removed this action to the Northern District federal
16 court, which was remanded back to this Court; and the separate action MR filed in federal court
17 against the Executive Director of the California Coastal Commission and the City of Fort Bragg
18 was dismissed, *Mendocino Railway v. Ainsworth & City of Fort Bragg*, Case No. 4:22-CV-
19 04597-JST; 9th Circuit Case No. 23-15857. Based on all of these circumstances, and the
20 significant delay already had in this matter, the Motion should be denied in the interests of justice
21 and in judicial economy as to this case being able to diligently proceed forward – finally.

22 **II. STATEMENT OF FACTS.**

23 City hereby joins in, and hereby incorporates by reference, the Background Facts set forth in
24 Intervenor California Coastal Commission’s Opposition to the Motion for Stay of Proceedings.

25 **III. STANDARD OF REVIEW.**

26 As MR acknowledges in its Motion for Stay of Proceedings, this Court is not required to
27 grant any stay of proceedings, but “has broad discretion” to decide whether doing so is “in the
28 interests of justice” or would “promote judicial efficiency.” (Motion, at p. 7.) Also, as MR

1 admits, a stay may be justified when there are parallel proceedings in another court “involving the
2 *same parties.*” None of these standards are met here, and there is no basis for any stay,
3 particularly at this juncture, when MR’s chances on appeals in two actions – both of which it *lost*
4 at the lower court level, are entirely *speculative*, and the appeals are only at their early stages,
5 with many months or even years before any appreciable substantive matters would be decided by
6 any other court. There is no justice or judicial efficiency in making the City wait more than the
7 *two years* it has already waited, to proceed with its valid action in this Court.

8 **IV. MR’S APPEAL OF THE DISMISSAL OF ITS IMPROPER FEDERAL ACTION**
9 **PROVIDES NO PROPER GROUND FOR A COMPLETE STAY.**

10 MR claims that this action – which has been pending against MR for nearly *two years*,
11 should be stayed in its entirety, because MR filed a federal action against the Coastal Commission
12 and the City about *one year* ago, which was *dismissed* and is now on appeal to the Ninth Circuit,
13 is yet the latest in MR’s repeated attempts in delaying its accountability before *this Court* and
14 avoiding the City’s suit against MR. MR asserts that a complete stay is somehow warranted
15 because its alleged “federal preemption rights” *may* be decided in its dismissed action in federal
16 court, after an appeal. As this Court has already found, even *assuming* MR’s claims to federal
17 preemption as an allegedly federally-regulated railroad were to apply:

18 Not all state and local regulations that affect railroads are preempted. State and
19 local regulation is permissible where it does not interfere with interstate rail
20 operations. Local authorities, such as cities and/or counties, retain certain police
powers to protect public health and safety.

21 Ruling on the Demurrer to the Complaint, filed April 28, 2022, p. 11. In fact, this Court
22 concluded that the nature of any alleged preemption – assuming it were applicable, “is necessarily
23 a ‘fact-bound’ question.” Ruling on the Demurrer to the Complaint, filed April 28, 2022, p. 12.
24 This fact-bound question remains subject to determination by this Court. And, this very question
25 has been hampered in being answered in this matter thus far because of MR’s own campaign of
26 delay – trying at every turn and in every way possible to get this case *out of this Court*. *See supra*
27 Part II.

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1 As the Court of Appeal has recognized as to justification for a stay, “the court should
2 consider among other things which court can best determine the matter because of the nature of
3 the subject matter, the availability of witnesses, or the stage to which the proceedings have
4 already advanced.” *Leeds v. Superior Court of Los Angeles County*, 231 Cal. App. 2d 723, 724
5 (1965). In particular, the subject matter of the City’s action may only be determined by this
6 Court, and is only at issue in *this* action. Further, a stay is properly denied when “the parties are
7 not the same nor is the scope of the relief which can be granted by either court.” *Christensen v.*
8 *Superior Court*, 32 Cal. App. 3d 749, 752 (1973).

9 At issue in the City’s Complaint is the nature of MR’s status as a “public utility” regulated
10 by the California Public Utilities Commission, pursuant to *State law*, which is a completely
11 separate and distinct issue from MR’s claims of purported federal preemption and regulation
12 under *federal law*. (Complaint, ¶¶ 6-7.) In addition, the City’s claims also relate to certain
13 nuisance conditions on MR’s properties, including dilapidated structures that do not meet
14 California Building Codes, or other codes and/or health and safety requirements; noise and
15 unpermitted special events; and other conditions and/or violations of local law, which have
16 nothing whatsoever to do with MR’s asserted “rail-related” activities. (Complaint, ¶¶ 12-13, 15-
17 16.) These factual issues, and the nature of MR’s alleged violations of local law and authorities
18 are not at all likely to be determined in MR’s federal action on its alleged “federal preemption”
19 status – assuming MR were even eventually successful on its appeal in a year’s time, or that MR
20 were then subsequently able to proceed in the District Court to a resolution of its claims.
21 Notably, MR inflates its ability to even be able to eventually proceed in federal court. Not only
22 does MR overstate its purported odds of obtaining a reversal by the Ninth Circuit Court of
23 Appeals, but MR neglects to acknowledge that the *Colorado River* abstention issue decided by
24 the District Court was *not* the only challenge made to MR’s improper, forum-shopping “federal
25 preemption” federal lawsuit. Importantly, the City also raised in its Motion to Dismiss the federal
26 action the fact that the Court lacked subject matter jurisdiction, as MR’s claim for Declaratory
27 Judgment pursuant to Fed. Rules Civ. Proc. 57 and 28 U.S.C. § 2201 provided an insufficient and
28 improper basis for federal subject matter jurisdiction as to merely a claimed federal preemption

1 defense. *See, e.g., Bacon v. Neer*, 631 F.3d 875, 880 (8th Cir. 2011) (change in original) (quoting
2 *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667, 673 (1950) (“The Declaratory Judgment
3 Act is procedural; it does not expand federal court jurisdiction. Federal-question jurisdiction may
4 not be created by a declaratory-judgment plaintiff’s ‘artful pleading [that] anticipates a defense
5 based on federal law.’”). *See also, Stillaguamish Tribe of Indians v. Washington*, 913 F.3d 1116,
6 1118 (9th Cir. 2019) (“Tribe’s anticipatory defense to a state court lawsuit does not net federal
7 jurisdiction.”). Contrary to MR’s assertions, it has little hope of success overturning the dismissal
8 of its action in federal court, and even assuming *arguendo* such reversal, MR has little hope of
9 proceeding with its federal action premised only on its vague assertion of a “federal preemption”
10 *defense*. The extraordinary delay in awaiting a ruling from the Ninth Circuit, a remand to the
11 District Court, if any, and some determination by the District Court on the merits *if any* – some
12 anticipated *years* down the road, certainly does not support a stay in the interests of justice, or
13 MR’s unsupported claim that the City is not *severely prejudiced* in its ability to move forward
14 with its *two-year old* action against MR.

15 A stay is not appropriate when “all the issues in the present action are not involved in the
16 [other] action.” *Farmland Irrigation Co. v. Dopplmaier*, 48 Cal.2d 208, 216 (1957). A stay is
17 improper when such “[a] stay of the present proceedings would therefore not only bring these
18 issues no closer to determination, but would compel plaintiff to await a judgment that cannot
19 respond to its need.” Even assuming *arguendo* that the District Court – several years down the
20 road, determined that MR’s railroad-related activities were federally preempted, this would *not*
21 resolve any issues in the City’s action relating to, for instance as noted above, *non-rail-related*
22 activities, nuisance activities not affecting rail operations, or other uses of valid regulatory and
23 police power authority of the City over MR. *See, e.g., In re Vermont Ry.*, 171 Vt., 496, 503, 769
24 A.2d 648 (2000) (the ICCTA did not preempt a city’s zoning conditions for a railway’s salt-shed
25 facility); *Franks Inv. Co. v. Union Pac. R.R.*, 593 F.3d 404, 410 (5th Cir. 2010) (“only laws that
26 have the effect of managing or governing rail transportation will be expressly preempted”)
27 (quotations and changes omitted); *Borough of Riverdale Petition for Decl. Order the New York*
28 *Susquehanna and Wester Railway Corp.*, STB Finance Docket 33466, 1999 STB LEXIS 531, 4

1 S.T.B. 380 (1999) (preemption does not apply “to state or local actions under their retained police
2 powers so long as they do not interfere with railroad operations or the Board’s regulatory
3 programs”); *Fayard v. Ne. Vehicle Servs.*, 533 F.3d 42, 48 (1st Cir. 2008) (acknowledging state
4 nuisance claims could be subject to preemption *defense* in *state* court proceedings); *Friends of the*
5 *Eel River v. N. Coast R.R. Auth.*, 230 Cal.App.4th 85, 105 (2014) (“ICCTA likely would not
6 preempt local laws that prohibit the dumping of harmful substances or wastes, because such a
7 generally applicable regulation would not constitute an unreasonable burden on interstate
8 commerce. [Citations.]”) (citing *Association of American Railroads v. South Coast Air Quality*
9 *Management Dist.* 622 F.3d 1094, 1097 (9th Cir. 2010)).

10 **V. MR’S APPEAL OF ITS LOSS IN THE MEYER EMINENT DOMAIN ACTION**
11 **PROVIDES NO PROPER GROUND FOR A COMPLETE STAY.**

12 This Court – The Honorable Jeanine Nadel presiding, already found that it did not see that
13 “the issues are the same in the two cases” -- as between the *Meyer* eminent domain action tried
14 before Judge Nadel in the Ukiah Courthouse, and this action. Indeed, they are not. In fact, MR
15 claims that MR’s status as a “public utility” is at issue in both actions. However, the primary
16 issue in the City’s within action, as noted above, is MR’s obligation to comply with valid City
17 authority and regulations, particularly its police power authority, within the City limits of the City
18 of Fort Bragg. Even the “public utility” status of MR to take private property in another City, the
19 City of Willits, for a purportedly public purpose, may have little to do with MR’s claimed “public
20 utility” status and its alleged exclusive regulation and control by the California Public Utilities
21 Commission, in relation to the nuisance and regulatory issues in this action. Further, the Decision
22 After Trial of Judge Nadel on MR’s eminent domain complaint in the *Meyer* action relied, at least
23 in significant part, on an analysis of whether MR met its burden to show that its planned use of
24 the specific property at issue would be the most compatible with the greatest public good and
25 least private injury. MR makes a giant leap in assuming that the Court of Appeal would not
26 merely affirm the Court’s ruling on this highly factual issue, *without deciding at all*, the purported
27 “public utility” status of MR. In any event, any such substantive decision by the Court of Appeal,
28 assuming *arguendo* it were even made, would be a long time coming as to a final decision on an

1 appeal that is not even ready for briefing yet, *and* any decision by the Court may be limited to
2 MR's public utility status for purposes of eminent domain, and *not* as to its ability to avoid local
3 regulation within the City of Fort Bragg. Plainly, the authority of the California Public Utilities
4 Commission to supervise and regulate public utilities within the State is *not* the same issue as
5 whether a purported public utility can properly exercise eminent domain authority as to a
6 particular piece of property for a particular use. *Compare* Cal. Pub. Util. Code §§ 701, et seq. and
7 Cal. Const., art. 1, § 19; Cal. Civ. Proc. Code § 1240.030. There is no basis for delaying this
8 action -- which has been on hiatus for nearly two years while MR has tried every procedure
9 imaginable to avoid this action proceeding -- only to wait what will likely be at least a year for an
10 appeal that has just begun in the *Meyer* eminent domain action, that MR *lost*, is unlikely to prevail
11 on as to the appeal, for which the City and the Commission are *not parties*, and which involves
12 very different issues. Even assuming *arguendo* some significant overlap in any final decision by
13 the Court of Appeal in the *Meyer* action, there is no valid basis for the significant and wholesale
14 delay that MR now seeks, on the mere chance of such purported overlap. The City has waited
15 long enough, and is entitled to move forward with its action, and to obtain information regarding
16 the nature and scope of MR's activities, and its violations of law, and harms to the public, health
17 and safety, and the environment and coast line, alleged in this action.

18 **VI. CONCLUSION.**

19 This Court should exercise is broad discretion to deny the requested stay of all
20 proceedings in this matter. There is no valid basis, on pure conjecture about some potential
21 outcomes in appeals still with distant, unknown finalities, to order a complete stay in this matter.
22 For all the foregoing reasons, the City joins Intervenor California Coastal Commission in
23 opposing MR's Motion to Stay All Proceedings, which this Court should deny.

24 Dated: October 6, 2023

JONES MAYER

25
26 By: 

Krista MacNevin Jee
Attorneys for Defendant,
CITY OF FORT BRAGG

3 **PROOF OF SERVICE**

4 **STATE OF CALIFORNIA**)
5 **COUNTY OF ORANGE**) ss.

6 I am employed in the County of Orange, State of California. I am over the age of 18
7 and not a party to the within action. My business address is 3777 N. Harbor Bl. Fullerton,
8 CA 92835. On October 6, 2023, I served the foregoing document described as **CITY'S**
9 **OPPOSITION TO MOTION FOR STAY OF PROCEEDINGS**, on each interested
10 party **listed below**/on the attached service list.

11 Paul J. Beard, II
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27 XX (VIA OVERNIGHT DELIVERY) I caused the above-referenced documents to be
28 delivered by an overnight delivery carrier to the parties in this action. I enclosed the
documents in an envelope or package and placed it for collection and overnight
delivery following the ordinary business practices.

XX (VIA ELECTRONIC SERVICE) By electronically transmitting the document(s)
listed above to the e-mail address(es) of the person(s) set forth above. The
transmission was reported as complete and without error. See Rules of Court,
Rule 2.251.

I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct. Executed on October 6, 2023 at Citrus Heights, California.

20 
21 _____
22 Wendy A. Gardea