

ELECTRONICALLY FILED
8/11/2022 12:51 PM
Superior Court of California
County of Mendocino

1 Glenn L. Block (SB#208017)
2 Christopher G. Washington (SB#307804)
3 CALIFORNIA EMINENT DOMAIN LAW GROUP, APC
4 3429 Ocean View Blvd., Suite L
5 Glendale, CA 91208
6 Telephone: (818) 957-0477
7 Facsimile: (818) 957-3477

By:
John Lozano
Deputy Clerk



Attorneys for Plaintiff MENDOCINO RAILWAY

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

MENDOCINO RAILWAY,

Plaintiff,

v.

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

Defendants.

Case No. SCUK-CVED-2020-74939

[APN 038-180-53]

(Assigned to Hon. Jeanine B. Nadel)

**PLAINTIFF MENDOCINO RAILWAY'S
OPPOSITION TO MOTION TO QUASH
SUBPOENA BY WITNESS FRED
HARRIS AND CALIFORNIA PUBLIC
UTILITIES COMMISSION;
DECLARATION OF GLENN L. BLOCK
IN SUPPORT THEREOF**

Date: August 19, 2022

Time: 9:30 a.m.

Dept.: E

INTRODUCTION

This case concerns Plaintiff Mendocino Railway's efforts to acquire, by eminent domain, certain property owned by Defendant John Meyer in Willits. Meyer opposes the railroad's acquisition, including on the ground that Mendocino Railway is not actually a "railroad" with eminent domain power under the California Public Utilities Code. To refute that claim, Mendocino Railway needs to show that it is, in fact, a railroad fully regulated by the California Public Utilities Commission ("CPUC) and possessing the right to condemn private property for public use.

A key piece of evidence is a record created and maintained by the CPUC, which lists Mendocino Railway as a CPUC-regulated railroad. The record appears on the CPUC's website. To

1 ensure its admissibility, and to minimize any burden on CPUC staff, Mendocino Railway asked the
2 CPUC to authenticate the web page and its contents. The CPUC flatly refused, making a trial
3 subpoena necessary. The subpoena only asks the CPUC’s custodian of record to appear at trial,
4 produce the record listing CPUC-regulated railroads, and testify as to its truth and authenticity. Once
5 again, the CPUC has refused to cooperate and has instead moved to quash.

6 The Court should deny the motion. Mendocino Railway has no reasonable alternative to
7 establish the fact it seeks from the CPUC. The CPUC’s record—the web page listing Mendocino
8 Railway as a CPUC-regulated railroad—is likely not judicially noticeable because it is subject to
9 dispute by Meyer. Indeed, when asked, Meyer refused to stipulate the authenticity of the web page
10 and its contents. Nor is the subpoena’s requirement burdensome to the CPUC or its custodian-of-
11 record, especially when viewed in light of the facts that (1) the CPUC was offered—and rejected—a
12 far less onerous option for substantiating the web page, and (2) the CPUC will be compensated for its
13 employee’s court attendance.

14 There is good cause for the record and testimony that Mendocino Railway seeks. It goes to the
15 heart of one of Meyer’s defenses. Further, the CPUC has failed to meet its burden of establishing that
16 the subpoena should be quashed. The CPUC’s mere preference to avoid any and all involvement in
17 litigation, even when its testimony is required, is not a sufficient basis for denying Mendocino
18 Railway the evidence it needs. The motion should be denied.

19
20 **LEGAL AND FACTUAL BACKGROUND**

21 Mendocino Railway seeks to acquire Meyer’s property for public use. (Complaint, p. 2, ¶ 2.)
22 Mendocino Railway intends to use the property for construction and maintenance of rail facilities
23 related to its ongoing and future freight and passenger rail operations. (*Id.*) Mendocino bases its right
24 to acquire the property on the fact that it is a CPUC-regulated railroad corporation, which “may
25 condemn any property necessary for the construction and maintenance of its railroad.” (Pub. Util
26 Code §§ 229-30 and 611.)

27 One of Meyer’s defenses is that Mendocino Railway is somehow “not a railroad corporation
28 authorized to take property by eminent domain,” and is not a “common carrier.” (*See, e.g.*, Answer at

1 5:14-15; Declaration of Glenn Block, ¶ 3.) To help disprove that allegation, Mendocino Railway
2 seeks to adduce evidence at trial that, among other things, it has been and continues to be a CPUC-
3 regulated railroad.

4 The CPUC maintains a web page unequivocally establishing that it regulates Mendocino
5 Railway as a Class III railroad. (*See* Block Decl., Exh. 1 (CPUC web page).) The page states that the
6 “CPUC regulates all railroads in California.” (*Id.*) The page and its contents are highly relevant,
7 because they tend to prove that Mendocino Railway is a CPUC-regulated “railroad” under the Public
8 Utilities Code.¹ The CPUC considers its regulation of Mendocino Railway an “indisputable” fact.
9 (Block Decl., Exh. 2 (7/6/22 Email from Kevin Wheelwright to Block).)

10 Before serving the disputed subpoena on the CPUC’s custodian of record, Fred Harris,
11 Mendocino Railway tried to reach an informal resolution with the CPUC to obtain the much-needed
12 authentication of the CPUC’s “regulated railroads” page and its contents. (Block Decl., ¶ 7.) In lieu
13 of his having to testify at trial, Mendocino Railway offered to just have Harris sign a declaration
14 authenticating the web page and its contents. (*Id.*, ¶ 8 & Exh. 3 (proposed declaration).) To eliminate
15 any objection, Mendocino Railway drafted the proposed declaration in the same terms as an earlier
16 “custodian of records” declaration that Harris had drafted and executed with respect to other CPUC
17 documents. (*Id.*, ¶ 9 also attached to Exh. 3.) But to Mendocino Railway’s surprise, the CPUC
18 rejected that far less onerous option. (*Id.*, ¶ 10.)

19 Given the CPUC’s refusal to cooperate, Mendocino Railway was left with no choice but to
20 serve a trial subpoena on Harris. The subpoena asks Harris to appear at trial with the desired
21 document (i.e., the “regulated railroads” web page) and, as custodian of recorded, be prepared to
22 testify as to its authenticity. (*See* Exh. A to Motion to Quash).

23
24
25
26
27 ¹ It is true, as the CPUC notes, that the web page does not say that Mendocino Railway has the power of eminent domain.
28 CPUC assert that it is a legal question that it cannot testify about; Mendocino Railway disagrees with that assertion.
Regardless, as the subpoena plainly shows, all Mendocino Railway seeks is authentication of the web page and its
contents—nothing more, and nothing less.

1 **ARGUMENT**

2 **A. Harris’s Testimony Is Necessary, Because Judicial Notice of the CPUC Web Page and**
3 **Its Contents Is Not an Adequate Substitute for Such Testimony.**

4 The CPUC argues that Harris’s testimony is not necessary. It claims that “the contents of the
5 Commission’s webpage”—establishing that Mendocino Railway is a CPUC-regulated railroad—“are
6 not reasonably subject to dispute and are capable of immediate and accurate determination.” Mot. at
7 2:15-18. Therefore, the CPUC reasons, its web page and contents are judicially noticeable, making
8 Harris’s testimony unnecessary. *Id.* The CPUC errs.

9 It is true that government web pages and statements contained therein ***that are not reasonably***
10 ***subject to dispute*** are judicially noticeable. But “if the information on the Web site is reasonably
11 disputed by the parties, it is not subject to judicial notice.” (*Scott v. JPMorgan Chase Bank, N.A.*
12 (2013) 214 Cal.App.4th 743, 760; *see also Jolley v. Chase Home Finance, LLC* (2013) 213
13 Cal.App.4th 872, 889 (holding that “we know of no ‘official Web site’ provision for judicial notice in
14 California”).) Here, CPUC’s web page and contents are very much subject to dispute by Defendant
15 Meyer. Meyer claims that Mendocino Railway is ***not*** a CPUC-regulated railroad, contrary to what the
16 CPUC’s web page states. Indeed, when asked to stipulate to the authenticity and truth of the CPUC’s
17 web page and contents, Defendant Meyer outright refused. (Block Decl., ¶ 10.) Thus, if the web page
18 is offered as evidence at trial, Meyer can be expected to object.

19 Meyer’s dispute over the web page’s contents may be unreasonable. But, given a dispute
20 actually exists, the authenticity and truth of the web page and its contents would need to be litigated.
21 And Mendocino Railway cannot predict whether the Court would rule in favor of the document’s
22 judicial noticeability. Harris’s testimony is necessary to remove all doubts about the CPUC’s web
23 page and contents.

24 **B. Requiring Harris’s Testimony Will Not Unduly Burden Harris or the CPUC.**

25 The subpoena requires Harris’s personal attendance and testimony at trial, at 9:00 a.m. on
26 August 23, 2022. Citing a declaration by Harris, which the CPUC neglected to file and serve, the
27 CPUC claims his attendance and testimony will unduly burdens both Harris and the agency. The
28

1 CPUC cites the loss of Harris’s services for the time he would be absent at trial. Mot. at 3. Again, the
2 CPUC seriously errs.

3 First, the CPUC has produced no declaration or other evidence to support its motion. It has
4 failed to substantiate any of its allegations of hardship associated with the subpoena. On this ground
5 alone, the motion fails.

6 Second, any burden created by the subpoena’s demands is of the CPUC’s own making.
7 Mendocino Railway offered the CPUC an easy way to provide the evidence needed at trial, by way of
8 a declaration executed by its custodian of records. The CPUC unreasonably chose to reject that
9 offer—and, in doing so, precipitated the allegedly subpoena that is now the subject of its motion to
10 quash.

11 Third, the CPUC ironically bemoans the loss of Harris’s services for the time he would be
12 absent. The CPUC ignores that its own refusal to cooperate voluntarily with Mendocino Railway to
13 provide it the evidence it lawfully needs and deserves would have avoided the loss of three of its
14 attorneys’ time drafting and litigating a motion to quash. The CPUC’s concern for expenditures of its
15 resources, including its staff’s time, is questionable.

16 Fourth, the CPUC notes that a check for Harris’s appearance was not attached to the
17 subpoena. That oversight has been corrected. A check for \$275, as required by section 68097.2 of the
18 Government Code, has been delivered to the CPUC. (Block Decl., ¶ 11 & Exh 4 (cover letter and
19 copy of check).).

20
21 **C. The Subpoena Is Clear.**

22 Desperate to avoid any involvement in this matter, the CPUC manufactures a final reason for
23 quashing the subpoena: the subpoena is vague. Except that it’s not. The subpoena specifies the *exact*
24 record it seeks from Harris—the CPUC webpage listing all regulated railroads. The subpoena even
25 provides the web page address. The subpoena specifies that it is a business record within the CPUC’s
26 files, and that the CPUC is the only entity with access and ability to authenticate this document. *The*
27 *CPUC does not deny this.*
28

1 The CPUC highlights the subpoena’s characterization of the web page as being relevant to
2 Mendocino Railway’s “status as a regulated common carrier railroad public utility with the power to
3 exercise eminent document to acquire property for public use.” (See Exh. A to Motion to Quash.)
4 But, as the prompt for that statement makes clear, Mendocino Railway is not seeking testimony from
5 the CPUC regarding Mendocino Railway’s status as a public utility or its eminent domain authority.
6 Rather, the statement is made to establish to the CPUC—and the Court—*why* the information may be
7 relevant to the issues involved in the case. The statement does not render the subpoena or what it seek
8 in any way unclear.

9 **CONCLUSION**

10 For all these reasons, the Court should deny the CPUC’s motion.

11
12 DATED: August 11, 2022

CALIFORNIA EMINENT DOMAIN LAW GROUP,
a Professional Corporation

13
14
15 By:  _____
16 Glenn L. Block
Attorneys for Plaintiff MENDOCINO RAILWAY

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

DECLARATION OF GLENN L. BLOCK

I, Glenn L. Block, declare and state that:

1. I am an attorney licensed to practice law in the state of California and am a partner of California Eminent Domain Law Group, counsel of record to Plaintiff MENDOCINO RAILWAY in the above-entitled action now pending in Mendocino Superior Court. As such, I have personal knowledge of the matters set forth herein and could and would competently testify thereto if called as a witness.

2. Mendocino Railway seeks to acquire Meyer’s property for public use. Mendocino Railway intends to use the property for construction and maintenance of rail facilities related to its ongoing and future freight and passenger rail operations. Mendocino bases its right to acquire the property on the fact that it is a CPUC-regulated railroad corporation, which “may condemn any property necessary for the construction and maintenance of its railroad.”

3. One of Meyer’s defenses, set forth in his Amended Answer, paragraph 3, is that Mendocino Railway is somehow “not a railroad corporation authorized to take property by eminent domain,” and is not a “common carrier.”

4. The CPUC maintains a web page unequivocally establishing that it regulates Mendocino Railway as a Class III railroad. Attached hereto as Exhibit 1 is a true and correct copy of the page of CPUC’s website at: <https://www.cpuc.ca.gov/industries-and-topics/rail-safety/railroad-operations-and-safety/regulated-california-railroads>.

5. The page states that the “CPUC regulates all railroads in California.” The page and its contents are highly relevant, because they tend to prove that Mendocino Railway is a CPUC-regulated “railroad” under the Public Utilities Code. The CPUC considers its regulation of Mendocino Railway as “undisputed.”

6. In response to an earlier subpoena served on the CPUC, the CPUC’s attorney, Kevin Wheelwright sent an email to me on July 6, 2022 to meet & confer. In his email, Mr. Wheelwright states that the CPUC’s regulation of Mendocino Railway is an “indisputable” fact. Attached hereto as Exhibit 2 is a true and correct copy of the July 6, 2022 email from Kevin Wheelwright to me.

EXHIBIT 1



Search example: How can I reduce my bill?

SEARCH

[Home](#) › [Industries and Topics](#) › [Rail Safety](#) › [Railroad Operations and Safety](#) › [Regulated California Railroads](#)

Regulated California Railroads

Class I

[Union Pacific \(UP\)](#)

[BNSF](#)

Class III

California Northern Railroad (CFNR)
Central Oregon & Pacific Railroad (CORP)
San Diego & Arizona Eastern Railway (SDAE)
San Diego & Imperial Valley Railroad (SDIY)
Central California Traction (CCT)
Los Angeles Junction Railway (LAJ)
Mendocino Railway
Modesto & Empire Traction (MET)
Oakland Terminal Railway (OTR)
Pacific Harbor Line (PHL)
Pacific Sun Railroad (PSRR)
Quincy Railroad (QRR)
Richmond Pacific Railroad (RPRC)
Sacramento Valley Railroad (SAV)
Santa Cruz, Big Trees & Pacific Railway (SCBG)
Santa Maria Valley Railroad (SMV)
San Joaquin Valley Railroad (SJVR)
Sierra Northern Railway (SERA)
Stockton Terminal & Eastern Railroad (STE)
Trona Railway (TRC)
Tulare Valley Railroad (TVRR)
Ventura County Railroad (VCRR)
West Isle Line (WFS)
Yreka Western Railroad (YW)

Commuter Rail

Altamont Commuter Express (ACEX)
Amtrak (ATK)
Caltrain (PCJX)
Metrolink (SCAX)
North County Transit District Coaster (NCTD)

California High-Speed Rail

California HSR Authority

CPUC regulates all railroads in California. The above list does not limit the jurisdiction of CPUC regulation.

HOW CAN WE HELP?

Emergency? **Call 911**

[File a Complaint](#)

[Late Bill Assistance](#)

[Power Outage Map](#)

[Financial Assistance](#)

[Consumer Programs and Services](#)

[Website Feedback](#)

MORE INFORMATION

[Consumer Support](#)

[Regulatory Services](#)

[Industries and Topics](#)

[News and Updates](#)

[Events and Meetings](#)

[Proceedings and Rulemaking](#)

[Public Advocates Office](#)

[About CPUC](#)

[Careers](#)

CALIFORNIA STATE CAMPAIGNS

[Register to Vote](#)

[Save our Water](#)

[Flex Alert](#)

[Back to Top](#)

[Conditions of Use](#)

[Privacy Policy](#)

[Accessibility](#)

[Contact us](#)

[Employees](#)

[Twitter](#)

[Facebook](#)

[Instagram](#)

[YouTube](#)

[Linked In](#)

Copyright © 2021 State of California

EXHIBIT 2

From: Wheelwright, Kevin <Kevin.Wheelwright@cpuc.ca.gov>
Sent: Wednesday, July 6, 2022 9:55 AM
To: Glenn L. Block <glb@caledlaw.com>
Cc: steve@mkjlex.com; curtisc@mendocinocounty.org; sheppard@mcn.org
Subject: Mendocino Railway v. Meyers

Mr. Block,

I am the attorney in the California Public Utilities Commission (CPUC) Legal Division assigned to represent CPUC employees who are subpoenaed to testify in person at depositions or trials. The personal appearance subpoena you served in this matter is impermissibly vague because it does not identify a specific individual, and therefore it cannot be determined whether the subpoena exceeds the mileage limitation established by CA Penal Code 1330. In addition, no CPUC employee can testify to the legal conclusion that the Railway is subject to CPUC jurisdiction because that is a matter of law for the court to decide. It would also be extremely inconvenient and disruptive to have a CPUC employee travel to the Mendocino Superior Court in Ukiah to testify at the trial in this matter.

Moreover, the personal testimony of any CPUC employee is entirely unnecessary. As I assume you are aware, entering the terms "Regulated California Railroads" into the search function of the CPUC website leads to a list of Class III regulated railroads in California and Mendocino Railway is included on that list. The CPUC Public Records team will respond separately to the subpoena duces tecum served in this matter, but attached hereto is a PDF copy of the signed letter dated 12-07-2018 from CPUC employee David Stewart that is specifically mentioned in the subpoena duces tecum.

We suggest that you ask the trial court to take judicial notice of the appropriate pages of the CPUC website, and Mr. Stewart's letter of 12-07-2018, to establish that Mendocino Railway is regulated by the CPUC. The personal testimony of any CPUC employee is not necessary to establish those indisputable facts. In addition, possible alternatives to a personal appearance at trial include a signed declaration from Mr. Stewart, or a remote video deposition prior to the trial.

Kindly review the attached letter and the CPUC website, and contact me by email or the cell phone number below to discuss how a personal appearance at trial by a CPUC employee can be avoided or to coordinate an acceptable alternative arrangement. Thank you for your cooperation.

Kevin.

Kevin Wheelwright
Staff Attorney
California Public Utilities Commission
Legal Division
(415) 696-7346 (office)
(925) 548-7225 (cell)

This communication may contain information that was erroneously sent, or is legally privileged, confidential or exempt from disclosure. If you received this email or an attachment in error or are not the intended recipient, please note that any dissemination, distribution, or copying of this communication is strictly prohibited. Anyone who receives this message in error should notify the sender immediately via telephone or e-mail and delete it from his or her computer.

EXHIBIT 3

From: Glenn L. Block
Sent: Friday, July 8, 2022 4:27 PM
To: Wheelwright, Kevin
Cc: Paul Beard; Hill, Roderick; Debi S. Carbon
Subject: RE: [EXTERNAL] RE: Mendocino Railway v. Meyers
Attachments: P SRC-MEYER - [proposed] CPUC Declaration 7.8.22.docx; SUB 22-334 Signed Declaration of Custodia of Records.pdf

Hi Kevin,

Following our discussion this morning and your suggestion, Paul and I drafted the attached proposed Declaration for your review and consideration.

The attached proposed declaration mirrors paragraph 3 of Mr. Harris' Declaration as the Commission's Custodian of Records provided with the documents recently produced in response to Mendocino Railway's subpoena (excerpted below, and attached hereto):

3. Commission records responsive to the Subpoena are attached.

The accompanying records were obtained by, and/or generated by, the Commission's Safety and Enforcement Division in the regular course of business during its regulation of the operations and practices of Mendocino Railway, pursuant to its regulatory oversight and safety-related responsibilities under the Cal. Public Utilities Code, primarily, Cal. Public Utilities Code Sections 211, 216, 229, 230, 309.7, 315, 611, 701, 761, 765, and 768.

7 As a Qualified Witness of Records, I testify to the records' identity and method of preparation. The source of the information and method of preparation were such as to indicate trustworthiness;

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

CPUC File Number: SUB 22-334

EXECUTED ON: July 6, 2022

EXECUTED AT: 890 Patricia Way, San Rafael, CA 94903

SIGNED BY: Fred Harris
(Signature of Custodian of Records or Other Qualified Witness)

PRINT NAME: Fred Harris

We believe the proposed declaration sufficiently addresses the "public utility" issue pending in the Mendocino Railway v. John Meyer eminent domain case, as well as the declaratory relief lawsuit filed by the City of Fort Bragg against Mendocino Railway. Thus, the CPUC's declaration would be in lieu of the need for Mendocino Railway to subpoena the personal appearance of a CPUC representative at deposition and/or trial of these matters.

To avoid the need for Mendocino Railway to issue a new subpoena for personal attendance, we'd appreciate if you could confirm to us by Tuesday afternoon (7/12/22) that the CPUC will provide the requested Declaration.

Thank you,
Glenn



Glenn L. Block, Esq.
California Eminent Domain Law Group, APC
3429 Ocean View Blvd., Suite L
Glendale, CA 91208

Phone: (818) 957-6577
Fax: (818) 957-3477
E-mail: glb@caledlaw.com

This electronic mail transmission may contain privileged and/or confidential information only for use by the intended recipients. Any usage, distribution, copying or disclosure by any other person, other than the intended recipient is strictly prohibited and may be subject to civil action and/or criminal penalties. If you received this transmission in error, please notify the sender by reply e-mail or by telephone and delete the transmission.

From: Glenn L. Block
Sent: Friday, July 8, 2022 10:11 AM
To: Wheelwright, Kevin <Kevin.Wheelwright@cpuc.ca.gov>
Cc: Paul Beard <Paul.Beard@fisherbroyles.com>; Hill, Roderick <Roderick.Hill@cpuc.ca.gov>; Debi S. Carbon <dsc@caledlaw.com>
Subject: RE: [EXTERNAL] RE: Mendocino Railway v. Meyers

Hi Kevin,

Following our call earlier this week, this correspondence confirms that Mendocino Railway is withdrawing the personal appearance trial subpoena for the CPUC.

Paul & I look forward to speaking with you at 11:30am today regarding this matter.

Thank you,
Glenn

From: Wheelwright, Kevin <Kevin.Wheelwright@cpuc.ca.gov>
Sent: Wednesday, July 6, 2022 11:34 AM
To: Glenn L. Block <glb@caledlaw.com>
Cc: Paul Beard <Paul.Beard@fisherbroyles.com>; Hill, Roderick <Roderick.Hill@cpuc.ca.gov>
Subject: RE: [EXTERNAL] RE: Mendocino Railway v. Meyers

Glen: I am aware that you and Rod Hill discussed this matter, I have also spoken to him and others here. CPUC Legal would prefer that I conduct these discussions/negotiations going forward. I will consult with Rod as is necessary.

I am available to discuss this matter any time today before 5:00 p.m. Let me know when it is convenient for you and/or Paul Beard.

Kevin.

Kevin Wheelwright
(415) 696-7346 (office)
(925) 548-7225 (cell)

This communication may contain information that was erroneously sent, or is legally privileged, confidential or exempt from disclosure. If you received this email or an attachment in error or are not the intended recipient, please note that any dissemination, distribution, or copying of this communication is strictly prohibited. Anyone who receives this message in error should notify the sender immediately via telephone or e-mail and delete it from his or her computer.

From: Glenn L. Block <glb@caledlaw.com>
Sent: Wednesday, July 6, 2022 11:22 AM
To: Wheelwright, Kevin <Kevin.Wheelwright@cpuc.ca.gov>
Cc: Paul Beard <Paul.Beard@fisherbroyles.com>
Subject: [EXTERNAL] RE: Mendocino Railway v. Meyers

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Kevin,

Thank you for reaching out. I'm not sure if you're aware, but last week I spoke with Rod Hill of your office about this matter.

We would be happy to speak with you (and Rod, if appropriate) about possible alternatives to personal appearance, etc. We certainly understand the inconvenience, etc. and would like to accommodate CPUC's concerns to the extent possible.

Please let me know when would be a good time to schedule a call later today or tomorrow. I've copied Paul Beard, another attorney representing Mendocino Railway.

Thank you,
Glenn



Glenn L. Block, Esq.
California Eminent Domain Law Group, APC
3429 Ocean View Blvd., Suite L
Glendale, CA 91208

Phone: (818) 957-6577
Fax: (818) 957-3477
E-mail: gjb@caledlaw.com

This electronic mail transmission may contain privileged and/or confidential information only for use by the intended recipients. Any usage, distribution, copying or disclosure by any other person, other than the intended recipient is strictly prohibited and may be subject to civil action and/or criminal penalties. If you received this transmission in error, please notify the sender by reply e-mail or by telephone and delete the transmission.

From: Wheelwright, Kevin <Kevin.Wheelwright@cpuc.ca.gov>
Sent: Wednesday, July 6, 2022 9:55 AM
To: Glenn L. Block <gjb@caledlaw.com>
Cc: steve@mkjlex.com; curtisc@mendocinocounty.org; sheppard@mcn.org
Subject: Mendocino Railway v. Meyers

Mr. Block,

I am the attorney in the California Public Utilities Commission (CPUC) Legal Division assigned to represent CPUC employees who are subpoenaed to testify in person at depositions or trials. The personal appearance subpoena you served in this matter is impermissibly vague because it does not identify a specific individual, and therefore it cannot be determined whether the subpoena exceeds the mileage limitation established by CA Penal Code 1330. In addition, no CPUC employee can testify to the legal conclusion that the Railway is subject to CPUC jurisdiction because that is a matter of law for the court to decide. It would also be extremely inconvenient and disruptive to have a CPUC employee travel to the Mendocino Superior Court in Ukiah to testify at the trial in this matter.

Moreover, the personal testimony of any CPUC employee is entirely unnecessary. As I assume you are aware, entering the terms "Regulated California Railroads" into the search function of the CPUC website leads to a list of Class III regulated railroads in California and Mendocino Railway is included on that list. The CPUC Public Records team will respond separately to the subpoena duces tecum served in this matter, but attached hereto is a PDF copy of the signed letter dated 12-07-2018 from CPUC employee David Stewart that is specifically mentioned in the subpoena duces tecum.

We suggest that you ask the trial court to take judicial notice of the appropriate pages of the CPUC website, and Mr. Stewart's letter of 12-07-2018, to establish that Mendocino Railway is regulated by the CPUC. The personal testimony of any CPUC employee is not necessary to establish those indisputable facts. In addition, possible alternatives to a personal appearance at trial include a signed declaration from Mr. Stewart, or a remote video deposition prior to the trial.

Kindly review the attached letter and the CPUC website, and contact me by email or the cell phone number below to discuss how a personal appearance at trial by a CPUC employee can be avoided or to coordinate an acceptable alternative arrangement. Thank you for your cooperation.

Kevin.

Kevin Wheelwright
Staff Attorney
California Public Utilities Commission
Legal Division
(415) 696-7346 (office)
(925) 548-7225 (cell)

This communication may contain information that was erroneously sent, or is legally privileged, confidential or exempt from disclosure. If you received this email or an attachment in error or are not the intended recipient, please note that any dissemination, distribution, or copying of this communication is strictly prohibited. Anyone who receives this message in error should notify the sender immediately via telephone or e-mail and delete it from his or her computer.

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

DECLARATION OF

I, _____, declare and state that:

1. I am the _____ of the California Public Utility Commission. As such, I have personal knowledge of the matters set forth herein and could and would competently testify thereto if called as a witness.

2. The California Public Utility Commission regulates the operations and practices of Mendocino Railway pursuant to its regulatory oversight and safety-related responsibilities under the Cal. Public Utilities Code, primarily, Cal. Public Utilities Code Sections 211, 216, 229, 230, 309.7, 315, 611, 701, 761, 7652 and 768.

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

Executed this __ day of July 2022 at _____, California.

PUBLIC UTILITIES COMMISSION

LEGAL DIVISION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298
ID 94-3031353



**DECLARATION OF CUSTODIAN OF RECORDS
OR OTHER QUALIFIED WITNESS
PURSUANT TO EVIDENCE CODE §§ 1560-1561**

I HEREBY DECLARE, under penalty of perjury, that the following statements are true to the best of my knowledge and belief.

I am an Other Qualified Witness of Records for:

CALIFORNIA PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CALIFORNIA 94102-3298

With personal knowledge of the facts set forth below, and authority to verify said records, do hereby attest to the following facts:

1. I am an employee of the organization listed above and have personal knowledge of the procedures and practices reflected in these records;
2. On June 21, 2022, the California Public Utilities Commission ("Commission") received a deposition subpoena (hereinafter "Subpoena") from Glenn Block, attorney for Mendocino Railway in *Mendocino Railway v. John Meyer, et al.*, Superior Court of California, County of Mendocino, Case No.: SCUK -CVED-20-74939.

The Subpoena seeks:

1. All correspondence between Mendocino Railway and CPUC since January 1, 2012, including without limitation the December 7, 2018 letter from David Stewart to Robert Jason Pinoli.
2. All documents identifying Mendocino Railway (formerly known as California Western Railroad) as a Regulated California Railroad including without limitation the CPUC webpage at: <https://www.cpuc.ca.gov/industries-and->

topics/rail-safclly/railroad-opcrations-and-safclly/regulated-california-railroads.

3. All documents identifying or referencing Mendocino Railway (formerly known as California Western Railroad) as a common carrier or public utility regulated by the California Public Utilities Commission pursuant to CPUC §§ 211, 216, 229, 230, 610, and/or 611

3. Commission records responsive to the Subpoena are attached.

The accompanying records were obtained by, and/or generated by, the Commission's Safety and Enforcement Division in the regular course of business during its regulation of the operations and practices of Mendocino Railway, pursuant to its regulatory oversight and safety-related responsibilities under the Cal. Public Utilities Code, primarily, Cal. Public Utilities Code Sections 211, 216, 229, 230, 309.7, 315, 611, 701, 761, 765, and 768.

- 7 As a Qualified Witness of Records, I testify to the records' identity and method of preparation. The source of the information and method of preparation were such as to indicate trustworthiness;

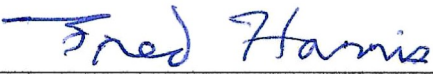
I hereby declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

CPUC File Number: SUB 22-334

EXECUTED ON: July 6, 2022

EXECUTED AT: 890 Patricia Way, San Rafael, CA 94903

SIGNED BY:



(Signature of Custodian of Records or Other
Qualified Witness)

PRINT NAME:

Fred Harris

EXHIBIT 4

GLENN L. BLOCK
GLB@CALEDLAW.COM
DIRECT DIAL – 818-957-6577

August 10, 2022

VIA PERSONAL SERVICE

Fred Harris, Custodian of Records
CPUC – California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Re: Mendocino Railway v. John Meyer, et al.
Mendocino County Superior Court Case No. SCUJ-CVED-2020-74939
Re: Civil Subpoena (Duces Tecum)

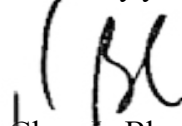
Dear Mr. Harris:

On July 22, 2022 this office had a *Civil Subpoena (Duces Tecum)* served on you via a registered process server on behalf of our client Mendocino Railway. It has come to our attention that the process server did not pay the \$275.00 witness fees upon service of the *Civil Subpoena*.

To remedy this error, please find a check in the amount of \$275.00 made payable to the California Public Utilities Commission.

Thank you.

Very truly yours,

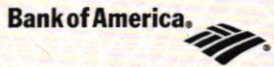


Glenn L. Block
California Eminent Domain Law Group,
a Professional Corporation

HOLD TO LIGHT TO VIEW TRUE WATERMARK IN PAPER HEAT SENSITIVE RED LOCK DISAPPEARS WHEN HEATED

SPECIALIZED LEGAL SERVICES, INC.

FEE ADVANCE
P.O. BOX 77141 415-357-0500
SAN FRANCISCO, CA 94107



61875

11-35/1210



DATE 8.10.22

PAY
TO THE
ORDER OF

CALIFORNIA PUBLIC UTILITIES COMMISSION

\$ 275.00

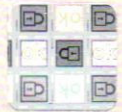
TWO HUNDRED SEVENTY FIVE & 100/100

DOLLARS

FOR ABP195606



[Handwritten Signature]



⑈061875⑈ ⑆121000358⑆ 001209508984⑈

Details on back

Security Features

PROOF OF SERVICE

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

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 3429 Ocean View Boulevard, Suite L, Glendale, CA 91208. On August 11, 2022, I served the within document(s):

PLAINTIFF MENDOCINO RAILWAY’S OPPOSITION TO MOTION TO QUASH SUBPOENA BY WITNESS FRED HARRIS AND CALIFORNIA PUBLIC UTILITIES COMMISSION; DECLARATION OF GLENN L. BLOCK IN SUPPORT THEREOF

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

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

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

Executed on August 11, 2022, in Glendale, California.


Debi Carbon

1
2 **SERVICE LIST**

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

5 Stephen F. Johnson
6 Mannon, King, Johnson & Wipf, LLP
7 200 North School Street, Suite 304
8 Post Office Box 419
9 Ukiah, California 95482
10 steve@mkjlex.com

Attorneys for Defendant John Meyer

9 Christian Curtis
10 Brina Blanton
11 Office of the County Counsel
12 County of Mendocino-Administration Center
13 501 Low Gap road, Room 1030
14 Ukiah, California 95482
15 curtisc@mendocinocounty.org
16 blantonb@mendocinocounty.org
17 cocosupport@mendocinocounty.org

Attorneys for Defendant Mendocino
County Treasurer-Tax Collector

14 Maryellen Sheppard
15 27200 North Highway 1
16 Fort Bragg, CA 95437
17 sheppard@mcn.org

In Pro Per

17 Kevin Wheelwright
18 California Public Utilities Commission
19 505 Van Ness Avenue
20 San Francisco, CA 94102-3298
21 Kevin.wheelwright@cpuc.ca.gov

Attorneys for the California Public
Utilities Commission