IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT, DIVISION ONE

A168497 & A168959

MENDOCINO RAILWAY
Plaintiff–Appellant,

v.

JOHN MEYER
Defendant-Respondent.

On Appeal from the Superior Court of California,
County of Mendocino
(Case No. SCUKCVED202074939, Hon. Jeanine Nadel)

APPELLANT'S REPLY BRIEF

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I. INTRODUCTION

Respondent's Brief ("RB") mischaracterizes the record, grossly misstates or misunderstands the applicable law, and misrepresents the issues and arguments on appeal. Properly understood within the correct federal and state legal frameworks governing common-carrier railroads, the record easily establishes that Mendocino has always been and continues to be a public utility with the power of eminent domain. And, with respect to the specific project at issue, Mendocino established all the criteria justifying condemnation.

The Court should reverse the trial court's decision, and hold that (1) Mendocino is a public utility, and (2) the project justifies condemnation of Respondent's property.

II. ARGUMENT

A. Mendocino Has the Power of Eminent Domain Because It Is a Public-Utility Railroad

1. The STB Recognizes Mendocino As a Common-Carrier Railroad

As explained in the Opening Brief (pp. 12-18), the law and the evidence in the record establish that Mendocino has always been and continues to be an STB-regulated common-carrier railroad. 49 U.S.C. § 11101. Mendocino provides an overview of the law and evidence here, and rebuts contrary arguments that Meyer makes in his brief.

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a. Mendocino's Predecessor, CWRR, Was an STB-Regulated Common Carrier

Meyer disputes that the CWRR—Mendocino's predecessor—was a common carrier on the CWR line. Meyer is simply wrong.

Mendocino acquired the CWR line following CWRR's filing of "a petition under Subchapter IV (Railroad Reorganization) of Chapter 11 of the Bankruptcy Code on December 3, 2002." CT 1332; *see also* 11 U.S.C. §§ 1161-1174 (Subchapter IV). CWRR's bankruptcy was governed by the "Railroad Reorganization" provisions of the Bankruptcy Code precisely because CWRR was a common-carrier railroad. The term "railroad" is defined under the Bankruptcy Code as, in relevant part, a "common carrier . . . engaged in the transportation of individuals or property," and "common carrier" has been judicially defined as:

> "one who holds himself out to the public as engaged in the business of transportation of persons or property from place to place for compensation, offering his services to the public generally. The distinctive characteristic of a common carrier is that he undertakes to carry for all people indifferently, and hence is regarded in some respects as a public servant."

2 Collier on Bankruptcy P 101.44; *Lone Star Steel Co. v. McGee*, 380 F.2d 640, 643 (5th Cir. 1967) (same).

Significantly, "[a] railroad reorganization case will not be permitted to proceed . . . if the debtor railroad is not actually serving as a common carrier, and there is no reasonable likelihood that it would perform such services." 2 Collier on Bankruptcy P 101.44. Put differently, if a railroad reorganization case is

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permitted to proceed, it is because the debtor (here, CWRR) is a common-carrier railroad. Thus, the facts that CWRR petitioned for bankruptcy under the Bankruptcy Code's "Railroad Reorganization" provisions *and* that the United States Bankruptcy Court presided over and decided CWRR's bankruptcy case under those provisions, constitute evidence that CWRR was, in fact, a common-carrier railroad at the time Mendocino purchased the CWR line. CT 1332 (Bankruptcy Court's "Memorandum on Confirmation of Plan or Sale of Assets" pursuant to the Railroad Reorganization provisions).

Moreover, railroads undergoing reorganization under Subchapter IV are not exempt from the ICCTA or orders of the STB otherwise applicable to STB-regulated common carriers. Subchapter IV unequivocally states that, with exceptions not applicable here,[1] "the trustee and the debtor [in railroad bankruptcy] are subject to the provisions of subtitle IV of title 49 [49 USCS §§ 10101 et seq.] that are applicable to railroads"—i.e., they are subject to the ICCTA. 11 U.S.C. § 1166. As the Bankruptcy Court found, while the CWR line runs between two points in California, the line is part of the ***interstate*** rail network through its "connect[ion] to the Union Pacific Railroad mainline." *Meyer v. Capital Crossing Bank (In re Cal. W. R.R.)* 303 B.R. 201, 203 (2003) (available at CT 1332-33) (emphasis added). That

[1] Exceptions exist for "abandonment under section 1170 of this title [11 USCS § 1170], or merger, modification of the financial structure of the debtor, or issuance or sale of securities under a plan." 11 U.S.C. § 1166.

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makes the owner and operator of the CWR line—formerly CWRR and, since 2004, Mendocino—an STB-regulated common-carrier railroad. 49 U.S.C. § 10501(a)(1), (a)(2)(A), & (b) (giving the STB exclusive jurisdiction over "transportation by rail carrier . . . in the United States between a place in . . . a State and a place in the same . . . as part of the interstate rail network"); *see also Or. Coast Scenic R.R., LLC v. Or. Dep't of State Lands*, 841 F.3d 1069, 1074-76 (9th Cir. 2016) (describing how intrastate line connected to "main line" was part of STB-regulated "interstate rail network").

Because the CWR line was within the STB's exclusive jurisdiction, the CWR's sale to Mendocino required STB pre-approval. That's why the Bankruptcy Court mandated that "Surface Transportation Board approval" be "promptly" secured "to acquire the railroad assets of the Debtor," CWRR . CT 1328-29; *see also* 49 U.S.C. 10901 ("A person may . . . acquire a railroad line . . . only if the Board issues a certificate authorizing such activity . . . ."); 11 U.S.C. § 1166 (requiring reorganizing railroad debtors within the STB's jurisdiction, like CWRR, to submit to the ICCTA's requirements). Consistent with the Bankruptcy Court's order, Mendocino secured the STB's approval prior to consummating the purchase of the CWR. CT 1321, 1341; *see also* 49 CFR §§ 1150.32, 1150.33 (authorizing streamlined approval process via filing of notice of exemption with STB). Meyer himself concedes that "the sale was approved by the STB" (RB at 29)—never, of course,

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explaining why STB approval would be necessary unless CWR was, in fact, an STB-regulated rail line.

Finally, Meyer ignores the testimony of the trial's sole witness: Mendocino's President, Robert Pinoli. He testified as to the CWRR's historic provision of freight and passenger services on the line, confirming CWRR's status as a common carrier. RT 68:20—69:7 (reciting personal knowledge of CWRR's operations give his work history there).

Against all the evidence described above, Meyer claims that CWRR—Mendocino's predecessor—was not a common-carrier railroad, because none of the filings associated with Mendocino's 2004 acquisition of the CWR line expressly state that it was. RB at 29-30. But, as explained above, the various filings, decisions, and orders described above only proceeded as they did ***because*** CWRR was recognized as a common carrier. To accept Meyer's contrary argument is to believe that CWRR, CWRR's creditors, the bidders for the CWR assets,[2] the Bankruptcy Court, the STB, the CPUC, and Mr. Pinoli were all wrong about CWRR's common-carrier status, including the need to go through the "Railroad Reorganization" process and the need for the STB to authorize the line's sale. That the Bankruptcy Court and STB filings described above don't specifically call out CWRR as an STB-regulated common carrier doesn't refute its status as such, and Meyer has

[2] Those other parties included John and Sandra Mayfield, WestAmerica Bank, Economic Development Corporation, Old 45, Pacific Cascade, and Sierra.

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pointed to no evidence in the record—let alone substantial evidence—that the CWRR was anything but.

b. Mendocino Assumed CWRR's Common-Carrier Obligations and Thereby Became an STB-Regulated Common Carrier

i. A Non-Carrier Who Purchases an STB-Regulated Rail Line Becomes a Carrier Over That Line

As noted above, the Bankruptcy Court required STB approval before the CWR line could be acquired. CT 1328-29. That's because, under the ICCTA, the STB ***must*** approve such a transaction when a person seeks to purchase an STB-regulated rail line. 49 U.S.C. 10901 ("A person may . . . acquire a railroad line . . . only if the Board issues a certificate authorizing such activity . . . ."); *see also id.* § 10501(b) (STB has jurisdiction over intrastate rail line only to extent it is located in "a State and a place in the same . . . State as part of the interstate rail network"). As explained in the Opening Brief (p. 13-14), the STB's approval was obtained by way of the streamlined certification process authorized by federal law: Mendocino filed a Notice of Exemption with the STB, who subsequently published it in the Federal Register. *See* 49 C.F.R. § 1150.32(a)-(b). The published notice constituting STB certification authorizing the purchase of the CWR line became effective 30 days after Mendocino's filing of its Notice of Exemption. *Id.* § 1150.32(b). The STB's notice states that "[i]f the verified notice [filed by Mendocino] contains false or misleading information, the exemption"—including the STB's

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authorization of Mendocino's purchase of the CWR—"is void *ab initio*," and that "[p]etitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time." CT 1341. It's been 21 years since the STB's certification of Mendocino's purchase of the CWR line, and no such petition for revocation—even by Meyer—has ever been filed to revoke such approval.

The "acquisition of an active rail line" regulated by the STB necessarily entails the assumption of "corresponding common carrier obligations" over that line. *Bhd. Of Maint. Of Way Employees Div. v. Burlington N. Santa Fe Ry. Co.*, 596 F.3d 1217, 1220 (10th Cir. 2010);[3] *see also Wisconsin Dep't of Transp.—Petition for Declaratory Order*, STB Finance Docket No. 34764, 2005 STB LEXIS 589, *3 (S.T.B. Dec. 2, 2005) (holding that "the common carrier obligation . . . goes with" the "acquisition of an active rail line"). Even if the acquiring entity "did not intend to operate the line itself, it assumed responsibility for contracting

[3] Meyer argues that *Burlington* is "not applicable here" because "there is no evidence that establishes that [CWRR] was an interstate railroad or common-carrier when its assets were sold to MR, or that MR was, or subsequently became, an STB regulated common carrier." RB at 30-31. This is incorrect, especially when viewed in light of how the ICCTA regulates STB-regulated rail lines and their acquisitions. In addition to the CPUC's 1998 decisions and Mr. Pinoli's unrebutted testimony, the Bankruptcy Court and STB-related filings all establish that CWRR was, and Mendocino became, an STB-regulated common carrier. *Burlington* is on point and shows that an entity—even a non-carrier—that acquires an STB-regulated rail line with STB approval ***becomes*** an STB-regulated carrier with all the common-carrier obligations attached to the purchased line. By contrast, there is no evidence in the record refuting CWRR's and Mendocino's status as STB-regulated common carriers, especially when one understands federal railroad law.

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with, and ensuring continued service by, a rail operator" because "acquiring full ownership of an active rail line" means "assum[ing] a common carrier obligation." *Groome & Assoc., Inc. & Lee K. Groome v. Greenville Cty. Economic Develop. Corp.*, STB Docket No. 42087, 2005 STB LEXIS 676, *25 (S.T.B. July 27, 2005). "If a line of rail track has not been abandoned or embargoed, there is an ***absolute duty*** to provide rates and service over the [l]ine upon reasonable request, and a failure to perform that duty [is] a violation of section 11101" of 49 U.S.C. *Riffin v. Surface Transp. Bd.*, 733 F.3d 340, 347 (D.C. Cir. 2013) (internal citations and quotation marks omitted) (emphasis added); *Groome*, STB Docket No. 42087, 2005 STB LEXIS 676, *13 (holding that "a common carrier obligation attaches when someone acquires an active, unabandoned rail line"). "A rail carrier providing transportation or service subject to the jurisdiction of the Board under this part [49 USCS §§ 10101 et seq.] shall provide the transportation or service on reasonable request." 49 U.S.C. § 11101.

Here, of course, there is no evidence that the CWR line has ever been discontinued, abandoned, or embargoed, either before or during Mendocino's ownership of the line. Quite the contrary. In Mendocino's notice to the STB regarding its proposed purchase of the CWR, Mendocino expressly confirmed its intent to pursue "the acquisition for ***continued rail operations***." CT 1325 (Mendocino's notice) (emphasis added); *see also* CT 1332 (Bankruptcy Court finding that the CWR "was originally built as

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a logging railroad, but has also provided significant passenger service since 1912" and "remains a vital link between Willits," where it "connects to the Union Pacific Railroad mainline" through "Amtrak," and "the coastal communities").

The moment the STB certified Mendocino's purchase of the CWR, Mendocino assumed CWRR's common-carrier obligation over the line—namely, the "absolute duty to publish rates and provide passenger and freight transportation on the line upon reason request." *Riffin*, 733 F.3d at 347; *see also Groome*, 2005 STB STB Docket No. 42087, 2005 STB LEXIS 676, *13 (holding that "a common carrier obligation attaches when someone acquires an active, unabandoned rail line"). Mendocino has continuously discharged that absolute duty by publishing tariffs containing rates for its freight and passenger services. CT 1162 (2022-present Freight Tariff), 1171 (2022-present Passenger Tariff), 1180 (2008-2021 Freight Tariff), 1223 (1993-2021 Passenger Tariff); 1233 (2014 Commute Fares), 1241 (2016 Commute Fares), 1249 (2017-2021 Commute Fares). And, over the last two decades, Mendocino has continued to honor all reasonable requests for freight and passenger services—just as its predecessor, CWRR, did. See, e.g., RT 695:24—697-9. There is no substantial evidence in the record that refutes that fact.

ii. Meyer's Argument That the Acquisition Documents Refer to Mendocino As a "Non-Carrier" Reflects a Basic Misunderstanding of STB Law

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Similar to his comments about the CWRR, Meyer seizes on the fact that the Bankruptcy Court's and STB-related filings associated with Mendocino's purchase of the CWR expressly describe Mendocino as a "non-carrier." RB at 29-30. Based largely on that observation, Meyer concludes "[t]he STB does not recognize MR as a common carrier." RB 29 (subheading (i)). But, again, Meyer misunderstands how the ICCTA regulates the purchase of STB-regulated rail lines.

With the STB's pre-approval, ***any*** person can acquire an STB-regulated rail line—even one who is not a common carrier at the time of the acquisition, as Mendocino was when it filed its March 12, 2004, Notice of Exemption. Federal law confirms this. The ICCTA provides that "[a] person ***other than a rail carrier***"[4] may "acquire a railroad line" (of course, following the STB's issuance of a certificate authorizing such acquisition). 49 U.S.C. § 10901(a)(4) (emphasis added). Federal regulations similarly confirm that "***[n]oncarriers*** require [Surface Transportation] Board approval under section 10901 to construct, acquire or operate a rail line in interstate commerce," making clear that noncarriers can, in fact, acquire STB-regulated rail lines. 49 C.F.R. § 1150.01(a). Thus, it is not uncommon for a non-carrier entity to be created for the specific purpose of acquiring and operating an STB-regulated rail line. *See, e.g.*, *City of Ottumwa v. Surface*

[4] A "rail carrier" is defined as "a person providing common carrier railroad transportation for compensation." 49 U.S.C. § 10102(5).

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Transp. Bd., 153 F.3d 879, 882 (8th Cir. 1998) (noting that "[a]cquisitions of rail lines by a non-carrier are subject to the regulatory requirements of 49 U.S.C. § 10901" and upholding the purchase of a STB-regulated rail line by "a non-carrier corporation" that was "created" for that purpose).[5] It is only ***after*** the STB approves the acquisition that the non-carrier becomes a common carrier impressed with the duty to provide transportation on the acquired line. *Burlington,* 596 F.3d at 1220 ("[T]he acquisition of an active rail[road] line and the corresponding transfer of common carrier obligations ordinarily requires prior STB approval, even if the acquiring entity is not presently a common carrier.").

Consider, for example, the acquisition of an STB-regulated rail line by a non-carrier in *Groome*, STB Docket No. 42087, 2005 STB LEXIS 676. There, a local government created a non-carrier entity—Greenville County Economic Development Corporation ("GCEDC")—to acquire an STB-regulated rail line. *Id.* at *6. The line was "in a state of disrepair" with "only two potential shippers remain[ing] on the line," and "the line had not been operated by the prior owner for 18 months" (unlike the CWR line, which was operational at the time of its acquisition by Mendocino). *Id.* at *7. Like Mendocino, the GCEDC filed, and the STB published, a notice

[5] Subsection (c) of 49 U.S.C section 10901 mandates that, once a person applies to the STB for such a certificate, the STB "shall" issue it unless the activity in question—e.g., acquisition of an STB-regulated line—is "inconsistent with the public convenience and necessity." Id. § 10901(c).

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of exemption that confirmed the STB's approval of GCEDC's purchase. *Greenville County Economic Development Corporation—Acquisition Exemption—South Carolina Central Railroad Company, Inc. Carolina Piedmont Division*, STB Finance Docket No. 33752 (STB served June 3, 1999); 63 Fed. Reg. 29942 (June 3, 1999). In its published notice, the STB referred to the GCEDC as a "noncarrier," just as the STB did with respect to Mendocino. 63 Fed. Reg. 29942. The notice also made clear that another entity (CPDR) would "continue to be the operator" of one of the line's segments—just as the notice in Mendocino's case indicated that Mendocino's affiliates would physically perform the services on the CWR. *Id.*

A company requiring the GCEDC's rail service filed a complaint for damages with the STB, alleging that GCEDC "violated its common carrier obligation by failing to provide service upon reasonable request over the line. *Groome*, STB Docket No. 42087, 2005 STB LEXIS 676, *1-2. GCEDC defended on the grounds that "it [was] not and never was a rail common carrier," because "it never proposed to operate the line and never held itself out as providing common carrier service for compensation over the line, nor was it authorized to do so." *Id.* at *24. GCED noted that "its exemption petition only sought authority to acquire the line, and that it expressly indicated in the exemption petition that it would procure an operator that would apply for its own operating authority." *Id.* In the GCED's view, "the common carrier obligation

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remained with the seller, . . . until a new operator obtained operating authority over the line." *Id.* at *25.

The STB categorically rejected the GCED's defense. It held that "the line, when GCEDC acquired it, was an active line of railroad" because it was not "subject to a pending abandonment proceeding or to a petition to discontinue operations." *Id.* "By acquiring full ownership of an active rail line, GCEDC assumed a common carrier obligation." *Id.* "Even though it did not intend to operate the line itself, it assumed responsibility for contracting with, and ensuring continued service by, a rail operator." *Id.* Thus, the STB concluded, "whether GCEDC meant to hold itself out as a common carrier [was] not dispositive." *Id.*

As, under these circumstances, the STB deemed that the purchase of the line by the GCEDC (a non-carrier at the time of its purchase) automatically rendered the GCEDC an STB-regulated common carrier, then *a fortiori* Mendocino must be, as well. Like GCEDC, it was created as a noncarrier for the purpose of acquiring an STB-regulated line. And, like GCEDC, Mendocino assumed CWRR's common-carrier obligation. But unlike GCEDC, Mendocino always intended to continue its predecessor's historic operations, including freight and passenger service. And it has dutifully and continuously offered freight and passenger transportation to the public upon reasonable request, pursuant to published tariffs. The CWR has never been abandoned, and operations have never been discontinued. Correctly applying

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ICCTA's legal framework, Mendocino was and is an STB-regulated common carrier.

Given the foregoing, it is clear that no legal significance attaches to the fact that Mendocino's Notice of Exemption (CT 1322) stated that Mendocino was a non-carrier. Prior to the STB's authorization of its purchase of the CWR, Mendocino ***was*** a noncarrier, created for the very purpose of acquiring and operating the CWR. CT 1341 & n.1. Mendocino became a common carrier only after it completed the STB-approval process. For the same reason—i.e., a noncarrier acquiring an STB-regulated line becomes a carrier only after the STB-approval process is complete— no legal significance attaches to the fact that the STB's notice (CT 1341) also referred to Mendocino as a "noncarrier." CT 1341. Mendocino's and the STB's notices did nothing more than report Mendocino's pre-STB-approval status as a non-carrier.[6]

iii. The Argument That No Documentary Evidence Supports Mendocino's Common-Carrier Status Ignores the Record

Meyer argues that both Mr. Pinoli's testimony and Mendocino's claim generally that Mendocino is an STB-regulated common carrier "is not supported with any documentary evidence." RB at 30. Contrary to what Meyer or the trial court appear to

[6] At one point in his brief, Meyer argues that no "documentary evidence" supports Mendocino's claim to being an STB-regulated common carrier. RB at 30. Mendocino's citations to, *inter alia*, CPUC decisions, Bankruptcy Court filings, STB-related filings, and published tariffs dating back to 1993 put the lie to Meyer's argument.

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believe, the STB does not issue a certificate declaring that a rail line has STB-regulated, common-carrier status. Nor does the STB maintain lists of those common carriers within its jurisdiction. But contrary to Meyer's assertion, Mendocino ***has*** made numerous "references to evidence in the record" (RB 30) supporting its STB-regulated, common-carrier status, as shown above.

Meyer also points to the trial court's statement in its decision that Mendocino "did not offer evidence in the form of contracts with affiliated entities, operating agreements, ledgers, receipts, payments etc." RB 30 (quoting decision at CT 2039). As explained at great length in the Opening Brief (pp. 52-56), the trial court improperly relied on the absence of such documents as justification to ignore the unrefuted testimony of the sole witness at trial, Mr. Pinoli, over the course of six days. CT 2040 (trial court decision). Meyer fails to address ***any*** of the trial-court errors noted in the Opening Brief.

To summarize, the trial court cited just two authorities, neither of which Meyer discusses in his brief: (1) the so-called "best evidence" rule (now the "secondary evidence" rule, codified at Evidence Code section 1523) and (2) CACI No. 203, which is based on Evidence Code section 412. CT 2040. Neither authority remotely justified the trial court's disregard of Mr. Pinoli's testimony. First, the "best" or "secondary evidence" rule under section 1523 generally renders "inadmissible" any "oral testimony to prove the content of a writing." Evid. Code § 1523(a). But the

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purpose of Mr. Pinoli's testimony was not to prove the content of any particular writing. Rather, it was to establish, from personal knowledge, the nature of his railroad's operations (namely, that it offered and performed freight and passenger transportation). As important, the trial court did not invoke section 1523 to render Mr. Pinoli's testimony ***inadmissible***. Instead, the trial court relied on section 1523 to draw an inference from ***admitted*** testimony—something that section 1523 does not contemplate.

Second, the trial court's reliance on CACI No. 203 (Evidence Code section 412) is misplaced. Section 412 provides: "If weaker and less satisfactory evidence is offered when it was within the power of the party to produce stronger and more satisfactory evidence, the evidence offered should be viewed with distrust." Significantly, "Section 412 only applies when it can be shown that a party is in fact in possession of or has access to better and stronger evidence than was presented." *People v. Taylor*, 67 Cal.App.3d 403, 412 (1977). Here, the court used section 412 to improperly disregard or discount Mr. Pinoli's testimony.

The trial court's decision states, in relevant part, that "[w]hen given the opportunity by the court, MR was unable to provide any documentary evidence of MR's claim for the freight or passenger services." CT 2040. The trial court requested only one document: any contract between Mendocino and Mendocino Transit Authority ("MTA") pursuant to which MTA compensated the railroad for taking "passengers from either Fort Bragg or

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Willits to the opposite end one way without restriction." RT 538:11-27, 539:18-24. It is true that, after a search of the company's archives, Mr. Pinoli was unable to find ***that*** document, and neither Meyer nor the trial court impugned Mr. Pinoli's truthfulness in that regard. RT 977:17—978:7. This is the sole instance of Mendocino being unable to produce a particular document "when given the opportunity by the court." CT 2040.

But this hardly is a basis for disregarding Mr. Pinoli's unrefuted testimony that Mendocino transported non-excursion passengers for MTA. And it hardly warrants application of section 412's inference, which paradigmatically applies when "a party ***has*** documentation of an event, but instead offers oral testimony by a potentially biased witness." *Orange County Water Dist. v. Alcoa Global Fasteners, Inc.*, 12 Cal.App.5th 252, 363 (2017) (emphasis added). Here, the record shows that Mendocino was ***not*** "in fact in possession of or ha[d] access to" the MTA contract that the Court asked Mr. Pinoli to search for, so section 412's inference is not justified. RT 977:17—978:7. *Taylor*, 67 Cal.App. 3d at 412.

Nor does the record establish that Mendocino was, in fact, in possession of or had access to the documents cited in the trial court's decision: "contracts with affiliated entities," "operating agreements," "ledgers," and "contracts for freight transportation." CT 2039-40. At no point were these documents requested, either by Meyer or the trial court, so Mendocino had no occasion to determine which of them, if any, existed. While some or even all of

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these documents ***may*** have existed, the trial court did not, in invoking section 412, explain why such documents would be "stronger and more satisfactory" than Mr. Pinoli's clear recollection and testimony that Mendocino has continually offered and performed freight and transportation on the CWR—a witness that the trial court, four days into the six-day trial, deemed to be "very credible, articulate, and very knowledgeable." RT 693:13-17.

Finally, the trial court's emphasis on documents that ***might*** have been produced (if they existed and had been requested) disregards other admitted or judicially noticeable documents and that ***do*** support Mr. Pinoli's testimony regarding Mendocino's continuous offering and performance of common-carrier services on the CWR, especially its published tariffs for freight and passenger transportation, showing Mendocino making itself available as a common carrier on the CWR. CT 1162 (2022-present Freight Tariff), 1171 (2022-present Passenger Tariff), 1180 (2008-2021 Freight Tariff), 1223 (1993-2021 Passenger Tariff); 1233 (2014 Commute Fares), 1241 (2016 Commute Fares), 1249 (2017-2021 Commute Fares); *see also* MJN, Exh. 2 (Federal Railroad Administration letter acknowledging Mendocino as "Class III Surface Transportation Board licensed carrier"); *see* Supp. MJN, Exh. 3 (RRB determination holding Mendocino to be common carrier).

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2. The Railroad Retirement Board Recognizes Mendocino As a Common Carrier

Pointing to a 2006 determination of the Railroad Retirement Board ("RRB"), Meyer argues that the RRB does not recognize Mendocino's common-carrier status. RB at 32 (quoting CT 1917-20 (RRB letter)). Meyer is wrong for all the reasons stated in Mendocino's Opening Brief (pp. 23-24, 43-46), none of which Meyer addresses.

In addition, Meyer misstates what the 2006 determination actually says. He claims that the determination "unequivocally established" that Mendocino "is neither a 'common carrier,' a 'public utility,' nor a 'railroad,' because it does not transport freight or passengers on its line, and its line is not connected to the interstate railway system." RB 32. That's not what the 2006 determination says. Nowhere does it even assert that Mendocino is not a common carrier, public utility, or railroad; the term "public utility" appears nowhere in the decision. Also, contrary to Meyer's characterization, the 2006 determination correctly recognizes that the CWR line "connects to another railway line,"[7] albeit one that (at the time) had "no service for ten years." CT 1917; 49 U.S.C. § 10903(d) (STB-regulated line remains within STB jurisdiction—and part of national rail network—unless and until the STB

[7] As noted in the Opening Brief, CWR's connection is to the Northwestern Pacific Railroad ("NWP") line and the National Railroad Passenger Corporation (Amtrak), which is the national passenger railroad company of the United States. CT 1155, 1717; RT 41:8-17, 284:2-4, 702:19—703:8.

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approves the line's abandonment); *see also Hayfield N.R. Co. v. Chi. & N.W. Transp. Co.* (1984) 467 U.S. 622, 628, 633 (holding that "authorization of an abandonment" is what "brings [the STB's] regulatory mission to an end" and "terminates [its] jurisdiction").

To the extent that the 2006 determination can be interpreted to say that Mendocino was not a common carrier during the time that its affiliates (Sierra Northern Railway and Sierra Entertainment) were physically performing freight and passenger transportation on the CWR, such a conclusion would be wrong as a matter of law. And that's why the RRB corrected itself when it issued a May 2023 determination clarifying its earlier 2006 decision.

In that 2023 determination, the RRB made clear that "until January 1, 2022"—when Mendocino took over the ***performance*** of all common-carrier services on the line—"Mendocino ***was*** meeting its common carrier obligation through affiliate arrangements with Sierra Northern." CT 2100 (emphasis added). The 2023 determination reflects the principle that an STB-regulated common-carrier railroad does not lose its common-carrier status simply because an agent performs the transportation work on the carrier's behalf; rather, the owner of the line (here, Mendocino) remains the common carrier even if affiliates (Sierra Northern and Sierra Entertainment) perform the work on Mendocino's behalf.

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A case in point is the STB's decision in *Groome*, discussed at length above. To recap, a non-carrier entity (GCEDC) was created to purchase an STB-regulated rail line. GCEDC had no intention of performing any of the common-carrier services on the line and, on that basis, disavowed all common-carrier obligations resulting from the line's purchase. The STB rejected the entity's argument, holding that, as a common carrier—and even if it didn't intend to perform the transportation services itself—GCEDC had to at least contract with a third party to perform the required common-carrier services:

> "GCEDC argues that it is not and never was a rail common carrier for purposes of 49 U.S.C. 11101, because it never proposed to operate the line and never held itself out as providing common carrier service for compensation over the line, nor was it authorized to do so. . . . Under these circumstances, GCEDC suggests, the common carrier obligation remained with the seller, SCCR, until a new operator obtained operating authority over the line. . . . By acquiring full ownership of an active rail line, GCEDC assumed a common carrier obligation. ***Even though it did not intend to operate the line itself, it assumed responsibility for contracting with, and ensuring continued service by, a rail operator***."

Groome, STB Docket No. 42087, 2005 STB LEXIS 676, *24-25 (emphasis added).

Here, Mendocino arranged with two of its affiliates to ***perform***, on its behalf, freight and passenger services on the CWR. Sierra Northern performed freight transportation from 2004 until the end of 2008, and Sierra Entertainment performed passenger transportation from 2004 until the end of 2021. RT 160:5—161:1. Despite this affiliate arrangement, Mendocino—as CWR's owner—

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remained the common carrier under the legal obligation to ensure that such transportation was continuously made available to the public upon reasonable request. *Groome*, STB Docket No. 42087, 2005 STB LEXIS 676, *24-25. That's why the published tariffs from 2004 through the present all show ***Mendocino***, not its affiliates, as the common carrier. CT 1162 (2022-present Freight Tariff), 1171 (2022-present Passenger Tariff), 1180 (2008-2021 Freight Tariff), 1223 (1993-2021 Passenger Tariff); 1233 (2014 Commute Fares), 1241 (2016 Commute Fares), 1249 (2017-2021 Commute Fares).

The trial court's decision seems to rest, at least in part, on the notion that, to be a common carrier, the entity must physically ***perform*** the common-carrier services. CT 2039-40 (repeatedly referencing the "performance" issue). But that notion is wrong as a matter of law for the reasons described above. That Mendocino's affiliates performed its common-carrier obligation through the end of 2008 (for freight service) and 2021 (for passenger service) does not in any way alter the fact that Mendocino remained, and continues to be, a common carrier.

Meyer also points to a letter that Mendocino's counsel wrote to the RRB in April 2022. RB at 33 (quoting CT 1921-22). The letter requests that the RRB change Mendocino's status from a non-employer to "employer" for purposes of the Railroad Retirement Act. CT 1921-22. The letter states that Mendocino "has become a 'carrier' ***under the Act*** effective January 1, 2022," insofar as it had

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taken over the performance of transportation services over the line. CT 1922 (emphasis added). The "Act" is defined, collectively, as the Railroad Retirement Act and the Railroad Unemployment Insurance Act. CT 1921.

As the letter states, Mendocino was a common carrier—but not a common carrier ***subject*** to the Act. The Act only covers employees who perform common carrier activities. As Sierra Northern's employees were the ones performing the freight service for Mendocino, it was Sierra Northern that was subject to the Act—even though Mendocino was still the common carrier on the CWR. Further, the letter goes to great lengths to emphasize that Mendocino has always been an STB-regulated common carrier. *See, e.g.*, CT 1921 ("Mendocino Railway . . . was at the time of the [RRB's 2006] decision a federally licensed common carrier," but not a "'carrier' for purposes of the Railroad Retirement Act."); CT 1921, ft. 1 ("Mendicino was at the time [in 2006], and remains, a common carrier subject to the exclusive jurisdiction of the STB."); CT 1922 (Mendocino "fulfill[ed] CWR's common carrier obligation with the help of Mendocino's affiliated entity, now known as Sierra Northern Railway"). Read contextually, the letter concedes nothing and does not support Meyer's argument against Mendocino's common-carrier status.

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3. <u>The CPUC Recognizes Mendocino As a Common Carrier</u>

As noted in Mendocino's Opening Brief, the California Public Utilities Commission ("CPUC") recognized, in ***three separate decisions***, that the CWR was a public utility. OB at 46-50. In one decision, the CPUC found that "CWRR transports passengers and freight between Fort Bragg and Willits"—undisputedly public-utility functions. CT 47, 49. In a subsequent decision, the CPUC reiterated its view that, "[i]n addition" to its excursion service, CWRR "transports passengers and freight between Fort Bragg and Willits," and "serves a few communities" in between—again, undisputedly public-utility functions. CT 52-53. In yet another decision, the CPUC declared that CWRR "is a public utility within the meaning of Section 216(a) of the PU Code," describing it as "a common carrier railroad engaged in interstate commerce," through its "passenger and freight services." CT 61-62.

Tellingly, Meyer completely ignores these decisions' findings and conclusions indubitably establishing the CPUC's position that the CWRR was a common-carrier public utility. Meyer has no answer to the CPUC decisions' clear statements that CWRR ***remained*** a public utility because of its continued freight-and-passenger offerings, even if CWRR also operated excursions. Significantly, the CPUC has never issued a decision denying CWRR's or Mendocino's status as a common-carrier public utility.[8]

[8] The trial court similarly failed to address the findings and conclusions establishing CWRR's continued status as a common-carrier public utility expressly made in all three CPUC decisions

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Instead, Meyer cherry-picks, then mischaracterizes, language from one of the CPUC's decisions to the effect that, ***"'[i]n providing its excursion service***, CWRR is not ***functioning*** as a public utility.'" RB at 35 (quoting CT 46, 49 (January 21, 1998, decision)) (emphasis added). Meyer's point is a red herring. Mendocino doesn't dispute that excursions are not a public-utility "function[]." CT 49. But, as the CPUC's decisions establish, a public-utility railroad can perform excursions without losing its public-utility ***status***. The sole CPUC decision relied on by Meyer in his brief doesn't come close to saying what he claims it says; the CPUC did not say that CWRR was not a public utility, but that one of the railroad's offerings (excursions) was not a public-utility ***function***.

Meyer's reliance on *City of St. Helena v. Public Utilities Com.* (2004) 119 Cal.App.4th 793 is similarly misplaced. That case involved the Napa Valley Wine Train, which offered only roundtrips excursions on its line. There was no evidence of any freight or non-excursion passenger operations. Thus, this Court easily held that the Wine Train was not a public utility. The Court briefly discussed the same CPUC decision relied on by Meyer in its

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discussed above. Like Meyer, the trial court cherrypicked and mischaracterized language from the first CPUC decision (from January 1998) that concluded that excursions are not public utility ***function***. But the trial court ultimately ignored the rest of that decision, as well as the May and August 1998 decisions, clearly establishing CWRR's status as a common-carrier public utility. This, despite the trial court's repeated emphasis on the importance of "all three of these decisions." See, e.g., RT 697:23-24; RT 697:14-15 (seeking assurance from counsel that court had "all three of them").

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brief (CT 46 (January 21, 1998, decision)) as an example of an excursion service not qualifying as a public-utility function. *See id.* at 798. But the Court did not purport to hold that CWRR was not a public utility; indeed, that question was not even before the Court. *City of St. Helena* does not stand for the proposition that CWRR, let alone Mendocino, is not a public-utility railroad.

Meyer also cites a 2022 letter by an attorney at the CPUC, purporting to disclaim Mendocino's public-utility status. RB at 37 (quoting CT 1836 (letter)). As explained in Mendocino's Opening Brief (p. 49 n.6), the letter provides no support for Meyer's argument.

First, the attorney considered only the first CPUC decision referenced above (dated January 1998) and completely ignored the latter two decisions that affirm and reaffirm CWRR's status a common-carrier public utility. Even as to the first CPUC decision, the attorney made inconsistent observations. Initially, he acknowledged that, in its decision, the CPUC "determined that CWRR did not constitute a public utility ***to the extent that it provides excursion rail service***." CT 1836 (emphasis added). In other words, the attorney seems to have acknowledged that the question before the CPUC in January 1998 was narrow—namely, whether "CWRR's ***excursion service*** constitute[s] transportation" within the meaning of the PUC and therefore, in providing said service, "functions as a public utility." CT 48 (emphasis added). Despite that, the attorney concluded that Mendocino "is not a

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public utility"—without so much as considering the CPUC's finding in its January 1998 decision that CWRR also "transports passengers and freight"—a quintessentially public-utility function. CT 46. And, to make matters worse, the CPUC attorney disregarded the May and August decisions of the CPUC that expressly acknowledge CWRR's continued public-utility status.

Second, a staff attorney's opinion does not bind the government entity that employs him. *See People v. Chacon*, 40 Cal.4th 558, 571-72 (2007) ("Legal advice regarding the application of a statute must be distinguished from the authority to bind the government. Any lawyer may be asked to provide an opinion as to the meaning of a statute. However, only certain government authorities are empowered to administer or enforce particular statutes.").[9] And a staff attorney at the CPUC cannot alter the public-utility status of an entity; within the CPUC, only the ***Commission*** sitting as a body—not individual employees—can do that. Pub. Util. Code § 701 ("The commission may supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power

[9] Not even the attorney general's opinions about the meaning of a statute are binding authority; they are, at most, persuasive. And that's only because of a "general judicial presumption that "the Legislature is aware of the Attorney General's construction and would take corrective action if they believed the legislative intent had been misstated." *Southern Pac. Pipe Lines, Inc. v. State Bd. of Equalization*, 14 Cal.App.4th 42, 54 (1993) (internal citation omitted). No such judicial presumption exists with respect to other government attorneys' pronouncements.

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and jurisdiction."); *Investigation on the Commission's Own Motion into the Adequacy and Status of San Gabriel Water Company's Water Supply*, CPUC Investigation No. 90-05-034, 1990 Cal. PUC LEXIS 304, *2-3 (May 22, 1990) (holding that "questions of jurisdiction," including "utility status," "are within the purview of this Commission" and instituting an investigation as to subject entity's "public utility status"). Indeed, the CPUC attorney's letter doesn't purport to be a "decision" of the CPUC as a body concerning CWRR's or Mendocino's status; at most, the letter provides a (mis)interpretation of the CPUC's January 1998 decision concerning whether CWRR's excursion service was a public-utility function—nothing more, nothing less.

The CPUC attorney's letter does acknowledge that "the 1998 determination is still applicable law with regard to Mendocino Railway's status." CT 1836. In this, Mendocino can agree: The CPUC's January 1998 determination—***as well as the CPUC's May and August 1998 decisions***—are still "good" law in the sense that their findings affirming CWRR's status as a common-carrier public utility have never been reversed, modified, or even revisited. As explained above and in the Opening Brief, Mendocino assumed CWRR's common-carrier obligation and operations in 2004, with no material change.

In his brief, Meyer fails to address of the fatal deficiencies in the CPUC attorneys' letter. He provides no contrary authority establishing that a staff attorney letter binds the CPUC. And he

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provides no authority establishing that a staff attorney has the authority to decide who is and is not a public utility. The CPUC attorneys' letter provides no support for Meyer's argument.

4. Mendocino Proved It Received Revenue from Freight or Passengers

Meyer contends that Mendocino failed to prove "revenue" from freight and passengers. RB at 34-35. None of Meyer's arguments holds water.

First, Meyer argues that Mendocino "did not perform common carrier services . . . between 2004 when it purchased the railroad and January 1, 2022." RB at 34. But, as explained above, that is relevant. Mendocino carried out its common-carrier obligations through affiliate arrangement, which is a well-established and authorized practice under federal law. That arrangement does not refute that Mendocino has always been the common carrier.

Second, Meyer argues that no non-excursion revenue was generated in 2020. He points out that Pinoli could not specify the amount of revenue generated from freight and nonexcursion passenger transportation for each of the prior 10 years, because he did not have the financials in front of him. RB at 34 (quoting RT 928:18-23). But these facts do not establish the absence of proof of revenues from freight and passenger transportation. Mr. Pinoli testified that Mendocino ***did*** receive compensation for freight and passenger services that it rendered to the public. *See, e.g.*, RT

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110:4-16. Neither California nor federal law define an railroad's common-carrier status in terms of the ***amount*** of revenue earned for transporting freight and persons. Meyer points to no contrary authority.

More fundamentally, what defines a railroad's common-carrier status is not the ***performance*** of transportation services. It is the ***offering*** of such services to the public. A railroad's making oneself available for freight and passenger transportation to the public, upon reasonable request and at published tariffs, is what makes a railroad like Mendocino a common carrier.

B. Mendocino Satisfied the Criteria for Acquiring Mr. Meyer's Property by Eminent Domain

1. Mendocino's Intent for the Meyer Property Is To Build Rail Facilities

A defendant may object to the right to take if "plaintiff does not intend to devote the property described in the complaint to the stated purpose." Code of Civ. Proc. § 1250.360(c). Meyer invokes this provision to argue that Mendocino never intended to condemn his property for railroad purposes—a legitimate public use—but rather for the private purposes of a "pool, campground and a recreational vehicle camping area." RB at 41. The trial court agreed. CT 2041-42. This was error.

Section 1250.360(c) is concerned with the intent of "[t]he ***plaintiff***"—in this case, Mendocino Railway. Code of Civ. Proc. § 1250.360(c) (emphasis added). The evidence of Mendocino's intent for the Meyer property is consistent throughout the record.

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Mendocino's Complaint describes the project as entailing the "construction and maintenance of rail facilities related to [its] ongoing and future freight and passenger rail operations and all uses necessary and convenient thereto"—a use that is undisputably public. RB at 41 (quoting CT 15 (Complaint)). Mendocino's "preliminary site plan" for the Meyer property, developed in June 2022, depicts railroad-related infrastructure. RB at 42 (citing CT 1156).

Mendocino's Complaint was preceded by its letter to Meyer, dated October 7, 2020, offering to purchase his property. CT 1692. In it, Mendocino states its intent to "acquire the . . . property . . . in connection with its ongoing and future freight and passenger rail operations." *Id.* The letter was signed by Mr. Pinoli. CT 1695.

In addition, Mendocino's history reflects a singular focus on railroad-related development, including at Willits. Mendocino has had plans for a Willits relocation of its station/depot, a maintenance yard, and freight operations going back to before 2015. RT 220:24—222:19. For example, in May 2015, Mendocino entered into an agreement to purchase the Remco site in Willits (CT 1527), and it had drawings/plans prepared for development of freight/passenger improvements on the Remco property (CT1524-1526). *See also* RT 268:8-21. Ultimately, the Remco owner decided to sell the property to another party. RT 273:9-22.

Further, Mendocino's existing property at Fort Bragg and Willits are developed with railroad-related infrastructure and

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other improvements. CT 1155 (photo depicting Willits station assets); CT 1157-1160 (railroad assets at Fort Bragg and Willits stations); CT 1332-33 (bankruptcy court memorandum describing Willits railroad assets), RT 79:11—80:7, 84:24—85:10, 166:25—167:2, 226-27.

On the other hand, there's no evidence that Mendocino ever has developed its property—in Fort Bragg, Willits, or anywhere in between—with a campground or an RV park. As Mendocino's president, Mr. Pinoli, testified at the trial: "the notion of a campground and an RV park is something we are not in the business of doing"; "our business is a railroad." RT 468:4-6.

Taken together, the foregoing evidence supports the conclusion that ***Mendocino*** intends to devote the Meyer property to its stated purpose: railroad-related development.

Against that evidence stands a handful of internal emails, cited by Meyer, discussing ***one person***'s—not the company's—unconventional idea of operating a pool, campground, and/or RV park in Willits (in addition to a train station and maintenance area). RB at 41. The idea was briefly floated by Mike Hart, a board member of Mendocino. CT 1660, 1666-68, 1685-90. The emails cited by Meyer span from July to August 2020. *Id.* Mr. Hart's idea never advanced beyond emails, because it was never endorsed or adopted by Mr. Pinoli as the president and CEO of Mendocino—an action that would certainly have been contrary to the railroad's

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history, operations, and ongoing efforts to build railroad-related infrastructure in Willits. As Mr. Pinoli explained at trial:

> "I serve as the president and chief executive officer of our company. And while I do have board members and colleagues that I work with and collaborate with, the decisions of the company stop with me. I grew up in this community. I'm four generations into this community, and I have spent my entire career dedicated to the preservation of a railroad that was founded in 1885. I am entrusted with this legacy operation. I'm not going to say something today, and do something different tomorrow. We will not be building a campground."

RT 307:4-17.

Mr. Hart's idea never came close to becoming Mendocino's intent for the Meyer property. And it is the intent of ***Mendocino***, as the plaintiff proposing condemnation, that matters. Code of Civ. Proc. § 1250.360(c).

Finally, Meyer takes issue with the timing of the June 2020 preliminary site plan that depicted the railroad infrastructure that Mendocino planned for the site, as it was prepared about 18 months after the filing of the Complaint. RB at 42. The trial court expressed the same objection. CT 2041. But Mr. Pinoli testified that Mendocino "had it laid out in our minds long before" June 2020. RT 265:27—266:20. In any event, the eminent domain statute does not require a detailed site plan as the condition of condemnation, let alone dictate the timing of its preparation. Neither Meyer nor the trial court's decision cites any contrary authority.

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2. Mendocino Satisfies the Remaining Eminent Domain Requirements

A public-utility railroad, like Mendocino, that seeks to exercise its eminent domain power to acquire property for railroad use must satisfy the following criteria: "(a) the public interest and necessity require the project; (b) the project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury; (c) the property sought to be acquired is necessary for the project." Civ. Proc. Code § 1240.030.

Meyer argues that Mendocino does not meet the first criterion, because its Complaint is insufficiently pled insofar as it "fails to describe or specify why the Property is necessary for MR's construction and maintenance of its alleged railroad, as required by Public Utilities Code § 611." RB at 43. Section 611 does not set forth any pleading standard. It simply states that a railroad "may condemn property necessary for construction and maintenance of its railroad." Pub. Util. Code § 611. In any event, Meyer's criticism might be the basis for a demurrer to the Complaint; but it does nothing to undercut the evidence presented at trial establishing that the "public interest" and "necessity" elements are met. *Rakestraw v. California Physicians' Service*, 81 Cal.App.4th 39, 42 (2000) ("A demurrer tests the legal sufficiency of factual allegations in a complaint."). In addition, the law requires a plaintiff to include "[a] ***general*** statement of the public use for

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which the property is to be taken"—which is precisely what the Complaint provides. Code of Civ. Proc. §1250.310(d)(1) (emphasis).

Next, Meyer argues that Mendocino doesn't meet the second criterion. RB at 44-46. Citing government-condemnation cases, Meyer again protests that the Complaint did not contain an adequate "project description" and faults Mendocino for presenting more specific details of its plans for the property during the trial. RB at 45-46. But this is not a government-condemnation case, where the government agency first adopts a resolution of necessity, with a detailed project description, prior to filing its condemnation action. *See, e.g., Cincinnati v. Vester*, 281 U.S. 439 (1930) (involving city resolution of necessity); *City of Stockton v. Marina Towers LLC*, 171 Cal.App.4th 93 (2009) (same). Those cases do not apply to a public utility, which does not have a "resolution of necessity" process prior to filing suit.

As to the second criterion, Meyer also argues that there was no evidence at trial that the project was planned or located in the manner that would be most compatible with the greatest public good and the least private injury. Mendocino addressed this very issue at length in its Opening Brief, at pages 60-62. Suffice it to say that Mendocino undertook an extensive search, investigation, and analysis of several potentially suitable locations for a railroad-related project. *See, e.g.*, RT 404-420 (discussing multiple properties).

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Finally, Meyer argues that Mendocino does not satisfy the third criterion because, (1) again, the Complaint purportedly is not sufficiently pled to describe the project, and (2) Mendocino does not need the Natural Habitat Preserve, rendering its proposed taking of all 20 acres an "abuse of discretion." The first point, which may have supported a demurrer, does not defeat Mendocino's claim on the merits. The trial testimony established that there are several key site requirements for construction of the project, including that the property be approximately 20 acres in size, relatively level, located along Mendocino's rail line, near Willits, and adjacent to highways. RT 259:27—260:5, 264:24—265:9, 267:23—268:7. And Meyer's property is the only property that Mendocino identified as having these features and being suitable for the Project. *Id.* Nothing more was required. *City of Hawthorne v. Peebles* (1959) 166 Cal.App.2d 758, 763 ("[N]ecessity . . . merely requires that the land be reasonably suitable and useful for the improvement."). Meyer's second point—that a portion of Meyer's land committed to a Natural Habitat Preserve may not be needed for Mendocino's railroad purposes—also fails. As Mr. Pinoli testified, the entire 20 acres is necessary, and the Natural Habitat Preserve represents "natural barriers"—including "threes . . . and the creek that runs through there." RT 271:18-19. Significantly, Meyer presented no evidence, under section 1240.410 of the Code of Civil Procedure, that the Natural Habitat Preserve is of such a size, shape, or condition as to be of anything but minimal market value.

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III. CONCLUSION

The Court should reverse the judgment below with instructions for the trial court to enter an order (1) affirming Mendocino's status as a public utility, and (2) determining that Mendocino has established its right to acquire Mr. Meyer's property by eminent domain for its project. It should also reverse the trial court's order awarding Mr. Meyer's trial-court attorneys' fees. And it should award Mendocino's costs on appeal.

DATED: January 14, 2025.

/s/ PAUL J. BEARD II
By: ______________________________
Attorneys for Appellant
Mendocino Railway

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Certificate of Compliance

I hereby certify that the foregoing APPELLANT'S REPLY BRIEF is proportionately spaced, has a typeface of 13 points or more, and contains 8,769 words.

DATED: January 14, 2025 /s/ PAUL J. BEARD II

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