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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

MENDOCINO RAILWAY, a California corporation,
Plaintiff

v.

JACK AINSWORTH, in his official capacity as
Executive Director of the California Coastal
Commission; CITY OF FORT BRAGG, a California
municipal corporation; and DOES 1 through 20,
inclusive,
Defendants.

Case No.: 4:22-cv-04597-JST

Assigned for all purposes to: Hon. John S. Tigar, Ctrm. 6

**PLAINTIFF’S ADMINISTRATIVE
MOTION FOR CONSIDERATION
WHETHER TWO PENDING CASES
SHOULD BE RELATED (L.R. 3-12)**

Hearing Date: January 26, 2023
Hearing Time: 2:00 p.m.
Dept.: Courtroom 6
Judge: Hon. Jon S. Tigar

Complaint Filed: August 9, 2022

NOTICE OF MOTION AND MOTION

TO THE COURT AND ALL COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on January 26, 2022, at 2:00 p.m., at the United States District Court, Northern District of California, United States Courthouse, 1301 Clay Street, Oakland, California 94612, Plaintiff Mendocino Railway will and hereby does move the Court for consideration whether *California Coastal Commission, et al. v. Mendocino Railway* (No. 1:22-cv-06317), removed to this Court (Eureka) on October 20, 2022, should be related to this action.

Under Local Rule 3-12(a), the two cases may be related because (1) they concern “the same parties, property, transaction, or event,” and (2) “[i]t appears likely that there will be an undue burdensome duplication of labor and expense or conflicting results if the cases are conducted before different Judges.” A party that learns two actions may be related is required to bring an Administrative Motion for the Court’s determination of relatedness. Local Rule 3-12(b).

This Motion is based on this Notice of Motion and Motion; the accompanying Memorandum of Points and Authorities; the Request for Judicial Notice; all pleadings and papers on file in this action; and such other matters as the Court may deem appropriate.

DATED: October 31, 2022

FISHERBROYLES LLP

s/ Paul Beard II

Attorneys for Plaintiff MENDOCINO RAILWAY

MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION**

1
2
3 Plaintiff Mendocino Railway (“MR”) filed this federal action in early August to establish—once
4 and for all—that federal law preempts agencies like Defendants from subjecting MR’s rail-related
5 activities to state and local land-use control. MR’s suit came on the heels of Defendants’ repeated
6 repudiation of MR’s unequivocal status as a common-carrier railroad subject to the exclusive
7 jurisdiction of the federal Surface Transportation Board (“STB”). This action turns exclusively on
8 federal questions arising under the Interstate Commerce Commission Termination Act of 1995
9 (“ICCTA”)—which governs railroads like MR—and the Supremacy Clause of the United States
10 Constitution.

11 Unhappy with MR’s choice of this forum to resolve these important federal questions, the
12 California Coastal Commission tried to forum-shop its way into state court through belated participation
13 in an action that Defendant City of Fort Bragg had filed in Mendocino County Superior Court. The City
14 pleads one cause of action against MR: MR is not a “public utility” under California law. While the
15 City’s claim does not directly challenge MR’s status as a federal railroad under ICCTA, the City seeks
16 an open-ended injunction requiring MR to submit to the City’s unfettered land-use permit authority,
17 thereby implicating the same federal-preemption issues present in this action.

18 Almost a month after *this* federal action was filed, the Coastal Commission moved to intervene
19 in the City’s action, where its principal claim is that MR is not a federally regulated railroad under the
20 STB’s jurisdiction and that, as a result, the Commission is not federally preempted from imposing land-
21 use requirements on the railroad. The Commission’s strategy was to secure dismissal of this federal
22 action in light of its participation in the state case. Over MR’s opposition, the Superior Court allowed
23 the Commission—and its predominating federal claim—into the City’s action.

24 Once the Commission, with its federal claim, became a party to the state-court action, MR
25 promptly removed the action to federal court (Eureka Division) on the basis of federal-question
26 jurisdiction. The removed action and this case are “related” under Local Rule 3-12(a). They involve the
27 same parties, and they both turn substantially on the same federal questions concerning the preemptive
28 effect of MR’s federal-railroad status on the Commission’s and City’s purported power to oversee MR’s

1 rail-related activities. Further, there is a risk of conflicting outcomes if the two federal cases are decided
2 by different Judges.

3 For these reasons, the Court should grant this motion and relate the two federal cases.

4 **II. FACTUAL AND PROCEDURAL BACKGROUND**

5 **A. Mendocino Railway’s Status As a Federal Railroad Under the Exclusive Jurisdiction of the** 6 **Surface Transportation Board**

7 MR is a Class III, common-carrier railroad corporation with facilities, equipment and operations
8 located partly in California’s coastal zone, including in the City of Fort Bragg. Complaint, ¶ 2. MR owns
9 and operates a line that runs 40 miles, from its main station in Fort Bragg to its eastern depot in Willits
10 (“Willits Depot”).¹ *Id.* ¶ 20. Mendocino Railway’s Fort Bragg station is fully developed as a rail facility,
11 with, among other things, passenger coaches and freight cars, an engine house, and a dry shed for
12 storage of railroad equipment. *Id.* Since acquiring the line in 2004 and up through the present, MR has
13 operated tourist and non-tourist passenger services, as well as freight services. *Id.*

14 MR’s Fort Bragg-Willits line connects to the national rail system via the Northwestern Pacific
15 Railroad (“NWP”). *Id.* ¶ 22. While the NWP segment connected to MR has been temporarily embargoed
16 pending track repairs, that segment has not been abandoned and remains a part of the national rail
17 system. *Id.* Given the line’s connection to the national rail system, MR has been and continues to be
18 under the exclusive jurisdiction of the STB, pursuant to ICCTA (49 U.S.C. § 10501(b)) and the
19 Supremacy Clause of the United States Constitution. *Id.* Thus, state and local land-use permitting and
20 preclearance regulation of MR’s rail-related activities are categorically preempted. U.S. Const. art. VI,
21 cl. 2 (Supremacy Clause); 49 U.S.C. § 10501(b) (ICCTA “preempt[s] the remedies provided under
22 Federal or State law”); *City of Auburn v. United States*, 154 F.3d 1025, 1030-31 (9th Cir. 1998) (The
23 ICCTA’s preemptive scope is “broad.”); *Friends of Eel River v. North Coast R.R.*, 3 Cal. 5th 677, 703
24 (2017) (holding that “state environmental permitting or preclearance regulation that would have the
25 effect of halting a private railroad project pending environmental compliance would be categorically
26 preempted”).

27 _____
28 ¹ The Fort Bragg-Willits line—known as the “California Western Railroad” line—is not the only
line that MR owns and operates. MR has operations in other parts of the State, as well.

1 In furtherance of its freight operations, MR has pursued and continues to pursue a variety of
 2 much-needed rail-related activities on property and facilities located in the State’s coastal zone. *Id.* ¶ 23.
 3 These activities have included, without limitation: (a) improvements to side tracks; (b) repair and
 4 maintenance work on its rail station and engine house; (c) clean-up work in and around a dry shed and
 5 elsewhere on railroad property; (d) improvements to the dry shed in order to provide space for the
 6 storage of rail cars and other railroad equipment, such as tires for steam locomotives, railcar axles, and
 7 other parts and components for steam and diesel locomotives; (e) a lot-line adjustment related to the
 8 railroad’s acquisition of historically rail-related property from Georgia-Pacific LLC; and (f)
 9 development of the recently acquired land for rail-related uses. *Id.*

10 MR’s acquisition of the Georgia-Pacific land provides an important backdrop to the current
 11 dispute, particularly as it relates to the City of Fort Bragg’s claim. Approximately 77 acres of the land
 12 adjacent to the main rail station in Fort Bragg were previously used for more than a century to conduct
 13 and support freight and passenger operations. In 2019, after 15 years of discussions, MR acquired those
 14 77 acres from Georgia-Pacific to further MR’s efforts to fully restore freight and passenger services.
 15 Subsequently, MR acquired another approximately 220 acres from GP at the mill site, another 70 acres
 16 of pudding Creek, and 14 acres from another entity (Harvest Market). In total, MR acquired
 17 approximately 300 acres of the former mill site. Complaint ¶ 21.

18 Because MR is within the STB’s exclusive jurisdiction, and on the basis of federal preemption,
 19 MR has not applied for land-use permits from any state or local land-use authority for any of its rail-
 20 related activities. *Id.*; see also *City of Auburn*, 154 F.3d at 1030-31 (The ICCTA’s preemptive scope is
 21 “broad.”); *Friends of Eel River*, 3 Cal. 5th at 703 (holding that “state environmental permitting or
 22 preclearance regulation that would have the effect of halting a private railroad project pending
 23 environmental compliance would be categorically preempted”).

24 **B. The Coastal Commission and City Unlawfully Seek To Assert Total Land-Use Control Over**
 25 **MR’s Rail-Related Activities**

26 The Coastal Commission is a state land-use agency with permit jurisdiction over development in
 27 the State’s coastal zone. Complaint ¶ 3. Through its land-use permitting authority, the Commission
 28 seeks to tightly control and shape land use within its jurisdiction. In that vein and for several years, the

1 Coastal Commission has argued to MR that it has land-use authority over its rail operations and
 2 activities, on the (mistaken) notion that MR is not a railroad within the STB’s exclusive jurisdiction. *Id.*
 3 ¶ 27. For years, the Commission sat on its claim of “oversight” authority over MR. But the threat of
 4 formal action loomed large and, with it, the disruption of MR’s railroad operations and projects, as well
 5 as the uncertainty generated by the Commission’s assertions of plenary land-use permit jurisdiction.
 6 Complaint ¶ 34.

7 As for the City of Fort Bragg, in October 2021, it filed a lawsuit against MR in Mendocino
 8 County Superior Court. In its complaint, the City pleads a single cause of action challenging MR’s status
 9 as a *public utility* under *California law*. While superficially cloaked in allegations about the MR’s past
 10 refusal to submit to the City’s land-use inspection and permit requirements, the City’s complaint is
 11 nothing more than a misguided vendetta against MR for purportedly employing its eminent domain
 12 power (as a public utility²) to acquire the Georgia-Pacific land. *See* Request for Judicial Notice (“RJN”),
 13 Exh. A (City complaint).

14 City officials were interested in acquiring and controlling the 300 acres purchased by MR from
 15 Georgia-Pacific, but they failed. The City claims that the railroad somehow stole that opportunity from
 16 the City. With its lawsuit, the City hopes to deflect public criticism for its failures and to gain substantial
 17 development control over the acquired property—through land-use permit oversight—without having to
 18 purchase it. While the City directly challenges only MR’s “public utility” status, the City seeks an
 19 injunction compelling the railroad to submit to the City’s unfettered land-use authority, thereby
 20 implicating serious federal questions under ICCTA and the Supremacy Clause. Complaint ¶ 25; see also
 21 RJN, Exh. A (Prayer).

22 **C. MR Files This Action Against the Executive Director of the Coastal Commission and the City**
 23 **To Establish Definitively That Land-Use Permit Control Over MR’s Rail-Related Activities Is**
 24 **Categorically Preempted by Federal Law**

25 MR filed this action on August 9, 2022. MR seeks a declaration that “the actions of the
 26 Commission and the City to regulate Mendocino Railway’s operations, practices and facilities are

27 ² *See* Cal. Pub. Res. Code § 611 (allowing railroad public utilities to “condemn any property
 28 necessary for the construction and maintenance of its railroad”).

1 preempted under 49 U.S.C. §10501(b),” that “Mendocino Railway’s activities are subject to the STB’s
2 exclusive jurisdiction,” and that “Mendocino Railway has the right under the ICCTA to undertake any
3 and all rail-related activities within the coastal zone, including within the City’s boundaries without
4 preclearance or approval from the Commission or the City.” Complaint, Prayer, ¶ 1. Relatedly, MR
5 seeks “an injunction prohibiting [the Commission and City] from taking any action that would
6 materially interfere with Mendocino Railway’s operation of its railroad as a federally regulated common
7 carrier, including by imposing and enforcing any land-use permitting or other preclearance requirement
8 as the pre-condition of any rail-related development on Mendocino Railway’s property or facilities.” *Id.*,
9 Prayer, ¶ 2.

10 After sitting for years on its alleged concerns about compliance with its land-use permit
11 requirements—***and in a blatant attempt at forum-shopping***—the Coastal Commission reacted to MR’s
12 federal action by moving to intervene in the City’s ***state-court*** action on September 8 (nearly one month
13 after MR filed this federal action). RJN, Exh. B (Coastal Commission Complaint). The Coastal
14 Commission’s primary claim is a mirror image of MR’s claim in this action. The Commission seeks to
15 establish that MR is not a federally regulated railroad subject to the STB’s exclusive jurisdiction and
16 therefore is subject to the plenary land-use authority of the Commission. The Commission also pleads an
17 ancillary claim—dependent entirely on the merits of its first (federal-law) claim—concerning alleged
18 violations of state and local land-use laws. RJN, Exh. B (Prayer). In an effort to facilitate intervention in
19 the City’s state case by replicating the City’s “public utility” cause of action, the Commission further
20 purports to challenge MR’s “public utility” status under California law. *Id.* Over MR’s opposition, the
21 Superior Court granted the Commission’s intervention on October 20, thereby making the Commission a
22 party to the state action and infusing that state action with federal questions. *See* Declaration of Paul
23 Beard, ¶ 2.

24 That same day, on October 20, MR removed the state-court action to federal court (hereinafter,
25 referred to as the “Removed Action”). RJN, Exh. C (Notice of Removal). The Removed Action is
26 pending before Judge Robert M. Illman. RJN, Exh. D (Removed Action docket). MR removed the
27 action based on federal-question jurisdiction. Specifically, the Removed Action turns on substantial
28 federal questions arising under 49 U.S.C. section 1051, et seq. and the Supremacy Clause of the United

1 States Constitution.

2 **III. ARGUMENT**

3 Under Local Rule 3-12, cases are related if: “(1) The actions concern substantially the same
4 parties, property, transaction, or event; and (2) It appears likely that there will be an unduly burdensome
5 duplication of labor and expense or conflicting results if the cases are conducted before different
6 Judges.” The two pending matters appear to satisfy the “related cases” criteria. Whenever a party learns
7 that two cases in this District are or may be related, the party must file in the lowest-numbered case an
8 Administrative Motion to Consider Whether Cases Should Be Related pursuant to Local Rule 7-11.

9 The Removed Action and this case concern substantially the same parties, property, transaction
10 or event. They both involve MR, the Coastal Commission and its Executive Director, and the City. And
11 they both turn principally on federal questions arising under statutory and constitutional law concerning
12 the preemptive effect of MR’s status as a federal railroad within the STB’s exclusive jurisdiction.

13 Further, litigation of these two cases before different Judges may result in burdensome
14 duplication of labor and expense and conflicting results. Indeed, because both cases present substantially
15 the same facts and federal questions, the risk of conflicting results is significant.

16 In light of the foregoing, the Removed Action and this case are “related,” as that term is defined
17 under Local Rule 3-12.

18 **IV. CONCLUSION**

19 For the foregoing reasons, the Court should grant MR’s motion and relate this case and the
20 Removed Action.

21
22 DATED: October 31, 2022

FISHERBROYLES LLP

23 /s/ Paul Beard II

24 Paul Beard II
25 Attorneys for Plaintiff MENDOCINO RAILWAY