**No. 23-15857**

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**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE NINTH CIRCUIT**

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MENDOCINO RAILWAY,

*Plaintiff-Appellant*,

v.

JACK AINSWORTH, ET AL.

*Defendants-Appellees*.

On Appeal from the United States District Court
for the Northern District of California
No. 22-cv-04597-JST
Hon. Jon S. Tigar

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# APPELLANT'S OPENING BRIEF

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## DISCLOSURE STATEMENT

Sierra Railroad Company owns 100% of the stock of Appellant Mendocino Railway.

Date: September 6, 2023

Respectfully submitted,

s/ Paul Beard II

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# TABLE OF CONTENTS

Page

I. INTRODUCTION ........ 1

II. JURISDICTIONAL STATEMENT ........ 4

III. STATEMENT OF ISSUES PRESENTED ........ 5

IV. STATEMENT OF THE CASE ........ 5

A. Mendocino Railway, the ICCTA, and the STB ........ 5

B. Efforts To Impose Permitting and Other Pre-Clearance Requirements on Its Rail-Related Activities Lead Mendocino Railway To File This Action ........ 8

1. The City Sues Mendocino Railway Over Its "Public Utility" Status under California Law ........ 8

2. Mendocino Railway Sues To Confirm Its "Federal Preemption" Rights Against Permitting and Other Pre-Clearance Overreach ........ 9

3. After the Federal Action Is Filed, the Commission Intervenes in the State Action to Partially Challenge the Railway's "Federal Preemption" Rights ........ 11

C. Mendocino Railway Removes the State Action, But the Federal District Court Remands It, Then Grants the Commission's and City's Motions to Dismiss The Federal Action ........ 14

V. SUMMARY OF THE ARGUMENT ........ 17

VI. STANDARD OF REVIEW ........ 21

VII. ARGUMENT ........ 22

A. *Colorado River* Does Not Support a Stay or Dismissal ........ 22

1. *Colorado River* Provides an Exceedingly Rare Exception to Federal Jurisdiction ........ 22

2. Together, the Eight Factors Weigh In Favor of Jurisdiction ....................24

B. *Younger* Does Not Justify Abstention ....................41

1. *Younger* Abstention Law ....................41

2. No Parallel State Proceeding Existed When the Federal Action Was Filed ....................43

3. The State Action Is Not a Criminal or Quasi-Criminal Prosecution, So *Younger* Does Not Apply....................43

VIII. CONCLUSION....................52

# TABLE OF AUTHORITIES

**<u>Cases</u>** | **Page(s)**

*Allen v. City of Sacramento*
234 Cal. App. 4th 41 (2015) .......... 23

*Am. Family Life Ins. Co. v. Biles*
714 F.3d 887 (5th Cir. 2013) .......... 34, 37, 38

*Ankenbrandt v. Richards*
504 U.S. 689 (1992) .......... 29

*Applied Underwriters, Inc. v. Lara*
37 F.4th 579 (9th Cir. 2022) .......... 28, 31

*Benavidez v. Eu*
34 F.3d 825 (9th Cir. 1994) .......... 17-18

*Bushansky v. Armacost*
2012 U.S. Dist. LEXIS 112315 (N.D. Cal. Aug. 9, 2012) .......... 27

*City and County of San Francisco v. Sainez*
77 Cal. App. 4th 1302 (2000) .......... 30

*City of Auburn v. United States*
154 F.3d 1025 (9th Cir. 1988) .......... 36

*City of Encinitas v. N. San Diego County Transit Dev. Bd.*
2002 U.S. Dist. LEXIS 28531 (S.D. Cal. Jan. 14, 2002) .......... 32

*Colorado River Water Conserv. Dist. v. United States*
424 U.S. 800 (1976) .......... *passim*

*Corner Edge Interactive LLC v. Johnson*
2020 U.S. Dist. LEXIS 105386 (D. Ariz. 2020) .................................................37

*County of Del Norte v. City of Crescent City*
71 Cal. App. 4th 965 (1999) ............................................................................29

*Dana Innovations v. Trends Elecs. Int'l Inc.*
2023 U.S. Dist. LEXIS 70203 (C.D. Cal. Apr. 21, 2023) ....................................17

*Ernest Bock, LLC v. Steelman*
2023 U.S. App. LEXIS 20045 (9th Cir. Aug. 3, 2023) .......................................35

*Evanston Ins. Co. v. Jimco, Inc.*
844 F.2d 1185 (5th Cir. 1988) ..........................................................................23

*Friends of Eel River v. North Coast R.R.*
3 Cal. 5th 677, 716 (2017). ..............................................................................18

*Gulfstream Aerospace Corp. v. Mayacamas Corp.*
485 U.S. 217 (1988).........................................................................................18

*H. Cone Mem'l Hosp. v. Mercury Const. Corp.*
460 U.S. 11 (1983)..................................................................................... 37-38

*Hale v. Morgan*
22 Cal. 3d 388 (1978) ................................................................................. 37-38

*Herzog Transit Servs. v. United States RRB*
624 F.3d 467 (7th Cir. 2010) ............................................................................21

*Hudson v. United States*
522 U.S. 93 (1977)...........................................................................................29

*Huffman v. Pursue Ltd.*
420 U.S. 592 (1975)....................................29

*Humanitarian Law Project v. United States Treasury Dep't*
578 F.3d 1133 (9th Cir. 2009)....................................29

*In re Alva*
33 Cal. 4th 254 (2004)....................................29

*Intel Corp. v. Advanced Micro Devices, Inc.*
12 F.3d 908 (9th Cir. 1993)....................................37

*Kitchens v. Bowen*
825 F.2d 1337 (9th Cir. 1987)....................................28, 30

*Kizer v. County of San Mateo*
53 Cal. 3d 139 (1991)....................................31

*Leite v. Crane Co.*
749 F.3d 1117 (9th Cir. 2014)....................................28, 30

*Lent v. California Coastal Com.*
62 Cal. App. 5th 812 (2021).................................... 37-38

*McDonald v. Gurson*
2017 U.S. Dist. LEXIS 131762 (W.D. Wa. Aug. 17, 2017)....................................28-29, 31

*Meyer v. Sprint Spectrum L.P.*
45 Cal. 4th 634 (2009)....................................29

*Middlesex County Ethics Comm. v. Garden State Bar Ass'n*
457 U.S. 423 (1982)....................................29

*Montanore Minerals Corp. v. Bakie*
867 F.3d 1160 (9th Cir. 2017) ........................................................... 29

*Moore v. Sims*
442 U.S. 415 (1979) ........................................................... 38

*Neuchatel Swiss Gen. Ins. Co. v. Lufthansa Airlines*
925 F.2d 1193 (9th Cir. 1991) ........................................................... 29

*Noonan South, Inc. v. County of Volusia*
841 F.2d 380 (11th Cir. 1988) ........................................................... 29

*Ohio Civ. Rights Comm'n v. Dayton Christian Schools, Inc.*
477 U.S. 619 (1986) ........................................................... 21

*Ojavan Investors v. Cal. Coastal Com.*
54 Cal. App. 4th 373 (1997) ........................................................... 21

*Padgett v. STB*
804 F.3d 103 (1st Cir. 2015) ........................................................... 29

*PaineWebber, Inc. v. Cohen*
276 F.3d 197 (6th Cir. 2001) ........................................................... 29

*People v. Super. Ct.*
12 Cal. 3d 421 (1974) ........................................................... 29

*People v. Toomey*
157 Cal. App. 3d 1 (1984) ........................................................... 29

*Poniktera v. Seiler*
181 Cal. App. 4th 121 (2010) ........................................................... 29

*ReadyLink Healthcare, Inc. v. State Compensation Ins. Fund*
754 F.3d 754 (9th Cir. 2014) ....................29

*R.R. Street & Co. v. Transp. Ins. Co.*
656 F.3d 966 (9th Cir. 2011) ....................37

*Ryan v. Johnson*
115 F.3d 193 (3d Cir. 1997) ....................37

*Rynearson v. Ferguson*
903 F.3d 920, 924 (9th Cir. 2018) ....................29

*SiRNA Therapeutics, Inc. v. Protiva Biotherapeutics, Inc.*
2006 U.S. Dist. LEXIS 90773 (E.D. Cal. Dec. 1, 2006) ....................35

*Starr Indemn. & Liab. Co. v. Avenatti*
2019 U.S. Dist. LEXIS 230988 (C.D. Cal. Dec. 30, 2019) ....................35

*Stockman-San v. McKnight*
2013 U.S. Dist. LEXIS 187245 (C.D. Cal. Mar. 25, 2013) ....................35

*S. Natural Res. v. Nations Energy Solutions*
2021 U.S. Dist. LEXIS 171477 (S.D. Cal. May 6, 2021) ....................35

*Seneca Ins. Co., Inc. v. Strange Land, Inc.*
862 F.3d 835 (9th Cir. 2017) ....................22

*Spring Communs., Inc. v. Jacobs*
571 U.S. 69 (2013) ....................29

*Trainor v. Hernandez*
431 U.S. 434 (1977) ....................38

*Travelers Indem. Co. v. Madonna*
914 F.3d 1364 (9th Cir. 1990) ........................................................ 22-23

*United States v. Morros*
268 F.3d 695 (9th Cir. 2001) ........................................................ 18

*United States v. State Water Res. Control Bd.*
988 F.3d 1194 (9th Cir. 2021) ........................................................ 38

*Younger v. Harris*
401 U.S. 37 (1971) ........................................................ 21

**<u>CONSTITUTIONAL PROVISIONS</u>**

U.S. Const., Art. IV, cl. 2 ........................................................ 22

**<u>FEDERAL STATUTES</u>**

16 U.S.C. § 1451, *et seq.* ........................................................ 3

16 U.S.C. § 1456(c)(3)(A). ........................................................ 3

16 U.S.C. § 1456(d). ........................................................ 3

28 U.S.C. § 1291 ........................................................ 3

28 U.S.C. § 1331 ........................................................ 3

28 U.S.C. § 1343 ........................................................ 3

28 U.S.C. § 2201 ........................................................ 31

49 U.S.C. § 10102 ........................................................ 3, 22

49 U.S.C. § 10102(9) ........................................................ 3, 22

49 U.S.C. § 10501 ........................................................ 3, 22

49 U.S.C. § 10501(b) ........................................................ 3, 22

**FEDERAL REGULATIONS**

49 C.F.R. § 1150.31. .......... 20

69 Fed. Reg. 18999 (April 9, 2004) .......... 20

**FEDERAL RULES**

Fed. R. App. Proc., Rule 4(a)(1)(A) .......... 20

Fed. R. Civ. Proc., Rule 12(b)(1) .......... 20

Fed. R. Civ. Proc., Rule 12(b)(6) .......... 20

Fed. R. Civ. Proc., Rule 57 .......... 20

**STATE STATUTES**

Cal. Pub. Res. Code § 30200(a) .......... 22

Cal. Pub. Res. Code § 30600 .......... 22

Cal. Pub. Res. Code § 30600(a) .......... 22

Cal. Pub. Res. Code § 30800 .......... 22

Cal. Pub. Res. Code § 30820 .......... 22

Cal. Pub. Res. Code § 30820(b) .......... 22

Cal. Pub. Res. Code § 30821 .......... 22

Cal. Pub. Res. Code § 30822 .......... 22

Cal. Pub. Util. Code § 701 .......... 22

Cal. Pub. Util. Code § 1759(a) .......... 22

# I. INTRODUCTION

This is an appeal from the district court's dismissal of Plaintiff Mendocino Railway's federal action against Defendants California Coastal Commission ("Commission") and City of Fort Bragg ("City"), under *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800 (1976). The Railway filed the action in response to the Commission's and City's relentless efforts to impose land-use permitting and other pre-clearance requirements on the Railway's railroad-related operations in Fort Bragg. As detailed in the Railway's complaint, those requirements fly in the face of the Railway's status as a federal railroad within the exclusive jurisdiction of the Surface Transportation Board ("STB")—a status that renders ***all*** such state and local interference with railroad-related operations federally preempted under the Interstate Commerce Commission Termination Act of 1995 ("ICCTA"). Despite there being no comparable state proceeding that can definitively resolve the Railway's federal claims, and in light of other factors weighing decisively against dismissal, the district court erroneously invoked *Colorado River*'s "exceptional circumstances" to dismiss the case. The Railway seeks reversal and reinstatement of its action.

The parties' dispute began soon after the Railway, in its capacity as a California public utility with eminent-domain power, acquired 300 acres in Fort Bragg that the City desired for itself. In a clear effort to cast doubt on that purchase, impede future land acquisitions, and control how the Railway developed its railroad property, the City sued the Railway for a declaration that it is not a

public utility. Significantly, the City's lawsuit—filed in October 2021—had no cause of action regarding the Railway's "federal railroad" status or "federal preemption" rights.

During this time, the Railway also faced threats and demands by the Commission concerning certain repairs and other rail-related activities the Railway was undertaking at its property in the City. The Commission repeatedly ordered the Railway to submit to its land-use permitting authority on pain of an enforcement action, which the Railway resisted based on federal preemption. Eventually, the dispute came to a head, and, in August 2022, the Railway was forced to file this federal action for declaratory and injunctive relief to put an end to the unlawful assertion of permitting and pre-clearance authority over the Railway's railroad-related activities.

When the Railway filed this action, no party had asserted any claim regarding the Railway's "federal railroad" status or "federal preemption" rights. The only pending state action consisted of the City's claim for a declaration that the Railway is not a California public utility. It was only ***after*** the Railway filed this action that the Commission rushed to intervene in the City's case, asserting a declaratory relief claim that tried to mirror the Railway's federal claims, but only partially did. Whereas the Railway seeks relief comprehensively enjoining ***all*** Commission efforts to enforce land-use permitting requirements or to pre-clear the Railway's railroad-related activities—whatever the claimed source of authority for doing so—the Commission seeks a declaration only that its permitting authority under the Coastal Act and the City's Local Coastal Program (the City's rules for

coastal development within its jurisdiction) is not federally preempted. As for the City, it has never had, and still does not have, a cause of action concerning the Railway's "federal railroad" status or "federal preemption" rights.

As soon as the Commission intervened in the state case with its "federal preemption" claim, the Railway removed it to federal court. But the district court remanded the action. The day after its remand order, the district court granted the Commission's and City's abstention motions. The Commission moved for abstention under *Younger v. Harris*, 401 U.S. 37 (1971). The City 's motion was also based largely on *Younger*, though it also cited *Colorado River*. The district court ultimately dismissed this case on *Colorado River* grounds only.

The court's reliance on *Colorado River* was misplaced, principally because there is no sufficiently-parallel state action that will undoubtedly and completely resolve the claims in this federal action. For example, as noted above, the "federal preemption" claim in the state case reaches only part of the Commission's purported authority over the Railway—i.e., its permitting authority under the Coastal Act and the LCP. It doesn't reach the Commission's authority under the federal Coastal Zone Management Act (16 U.S.C. § 1451, *et seq.*) to ***pre-clear*** federally-funded or federally-licensed projects that the Railway proposes. As for the City, its state-law "public utility" claim cannot resolve the Railway's "federal preemption" claims. Because there is "substantial doubt" that the state case can dispose of the Railway's federal claims, this factor is "sufficient to preclude a *Colorado River* stay" or dismissal without recourse to the remaining factors.

*Ernest Bock, LLC v. Steelman*, 2023 U.S. App. LEXIS 20045, at *20 (9th Cir. Aug. 3, 2023).

But even if a sufficiently-parallel state action existed, the remaining factors on balance weigh against a stay or dismissal. Those factors are: "(1) which court first assumed jurisdiction over any property at stake; (2) the inconvenience of the federal forum; (3) the desire to avoid piecemeal litigation; (4) the order in which the forums obtained jurisdiction; (5) whether federal law or state law provides the rule of decision on the merits; (6) whether the state court proceedings can adequately protect the rights of the federal litigants; (7) the desire to avoid forum shopping." *Seneca Ins. Co., Inc. v. Strange Land, Inc.*, 862 F.3d 835, 841 (9th Cir. 2017). Properly applied, none of them weigh against jurisdiction, and at least one—the fact that federal law provides the rule of decision for the Railway's claims—strongly favors jurisdiction.

Finally, *Younger* abstention is improper, which may explain why the district court disregarded it. At the time the Railway filed this federal action, there was no parallel state proceeding with a "federal preemption" claim. Further, *Younger* applies only to criminal and quasi-criminal state proceedings, but the state case concerns the power to impose land-use permitting authority and civil penalties on the Railway. It is not a criminal or quasi-criminal proceeding.

The Court should reverse the district court's dismissal, with instructions to reinstate this case.

## II. JURISDICTIONAL STATEMENT

The district court has original jurisdiction over Mendocino Railway's claim

under 28 U.S.C. sections 1331 and 2201, and FRCP 57, because the claim arises under the laws of the United States, and the district court has the power to grant a declaratory judgment. 28 U.S.C. § 1343. This Court has jurisdiction pursuant to 28 U.S.C. § 1291, because the district court dismissed the Railway's claim.

The district court dismissed the case and entered judgment on May 12, 2023. The Railway filed a notice of appeal on June 8, 2023. The appeal is timely under FRAP 4(a)(1)(A).

## III. STATEMENT OF ISSUES PRESENTED

1. Did the district court err in dismissing this action pursuant to *Colorado River*, 424 U.S. 800, in deference to a pending state action, where the state and federal actions are insufficiently parallel, and the *Colorado River* factors weigh decisively against a stay or dismissal?

2. Is abstention appropriate under *Younger*, 401 U.S. 37, where no relevant state action was pending at the time of this action's filing, and the state action is not a criminal or quasi-criminal prosecution?

## IV. STATEMENT OF THE CASE

### A. Mendocino Railway, the ICCTA, and the STB

Mendocino Railway is a Class III common-carrier railroad with facilities, equipment and operations located partly in California's coastal zone, including the City. ER-105 (Mendocino Railway's Complaint ("Federal Complaint"), ¶ 2). Mendocino Railway's specific railroad line at issue—one of several lines that it owns and operates in California—runs 40 miles, from its main station in Fort

Bragg to its eastern station in Willits. ER-106, 109-10 (Federal Complaint, ¶¶ 9, 17, 20). The Fort Bragg station is fully developed as a railroad facility, with, among other things, passenger coaches and freight cars, an engine house, and a dry shed for storage of railroad equipment. *Id.* Since acquiring the line in 2004, the Railway has operated tourist and non-tourist passenger services, as well as freight services, consistent with its common-carrier obligations. *Id.*

The Railway line at issue connects to the Northwestern Pacific Railroad line, which in turn connects to the rest of the national rail system. ER-110 (Federal Complaint, ¶ 22). Thus, though Mendocino Railway is an ***intrastate*** railway, it is part of the ***interstate*** rail network. As such, it is a federal railroad under the ICCTA and within the exclusive jurisdiction of the STB. The STB itself has acknowledged the Railway's "federal railroad" status under its exclusive jurisdiction when, for example, it oversaw the Railway's 2004 acquisition of the line under 49 C.F.R. section 1150.31. *Id.* ¶ 19 (citing 69 Fed. Reg. 18999 (April 9, 2004)). As explained below, Mendocino Railway's status means that state and local land-use permitting and other pre-clearance requirements imposed on its railroad-related activities are federally preempted.[1]

[1] As the Federal Complaint shows, the Railway claims federal preemption only of its ***railroad***-related activities. Non-railroaded-related activities remain subject to state and local regulation.

Under the ICCTA, the STB has exclusive jurisdiction over (1) "transportation by rail carriers" and (2) "the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State." 49 U.S.C. § 10501(b). The ICCTA broadly defines "transportation." It includes "(A) a locomotive, car, vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, by rail, regardless of ownership or an agreement concerning use; and (B) services related to that movement, including receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, and interchange of passengers and property." *Id.* § 10102(9). Further, the ICCTA defines a "rail carrier" is "a person providing common carrier railroad transportation for compensation." The ICCTA does not define "common carrier," but "courts have assumed that the term should be given the same meaning as it is given in the common law: an entity that holds itself out to the public as offering transportation services to all who are willing to pay its tariff." *Herzog Transit Servs. v. United States RRB*, 624 F.3d 467, 473 (7th Cir. 2010). A railroad offering common-carrier transportation remains a "rail carrier" for purposes of the ICCTA even if the railroad also provides, say, commuter or excursion services. *City of Encinitas v. N. San Diego County Transit Dev. Bd.*, 2002 U.S. Dist. LEXIS 28531, at *11. As noted above, Mendocino Railway qualifies as a common carrier railroad because it provides transportation. ER-110 (Federal Complaint, ¶ 20).

The STB's jurisdiction over Mendocino Railway is "exclusive." *Id.*; see also 49 U.S.C. § 10501(b) ("[T]he remedies provided [by that statute] with respect to regulation of rail transportation are ***exclusive*** and ***preempt*** the remedies provided under Federal or State law." (emphasis added)). Therefore, state and local efforts to impose permitting and other environmental pre-clearance requirements on any of the Railway's railroad-related activities are preempted. *Id.* (ICCTA "preempt[s] the remedies provided under Federal or State law"); *City of Auburn v. United States*, 154 F.3d 1025, 1030-31 (9th Cir. 1998) (holding that the ICCTA's preemptive scope is "broad."); *Friends of Eel River v. North Coast R.R.*, 3 Cal. 5th 677, 716 (2017) (holding that "state environmental permitting or preclearance regulation that would have the effect of halting a private railroad project pending environmental compliance would be categorically preempted"); *Padgett v. STB*, 804 F.3d 103, 105 (1st Cir. 2015) (ICCTA preempts state law governing "regulation of rail transportation").

## B. Efforts To Impose Permitting and Other Pre-Clearance Requirements on Its Rail-Related Activities Lead Mendocino Railway To File This Action

### 1. The City Sues Mendocino Railway Over Its "Public Utility" Status under California Law

For years, the City repeatedly acknowledged Mendocino Railway's status as a common-carrier railroad. ER-111 (Federal Complaint, ¶ 25). But after Mendocino Railway acquired some 300 acres of land that the City was vying for, the political winds changed, and the City abruptly reversed course. *Id.*

Starting two years ago, the City began waging an unprecedented campaign to impede and control the Railway's development of its railroad land. Then, in October 2021, it filed a court action against Mendocino Railway in the Mendocino County Superior Court ("State Action"), wherein it pleads a single cause of action for a declaration that the Railway is not a California public utility. ER-111 (Federal Complaint, ¶ 26); ER-31 (City Complaint, Prayer, ¶ 1). Based on that "public utility" cause of action, the City seeks an injunction requiring the Railway to submit entirely to its laws and authority. ER-111 (Federal Complaint, ¶ 26); ER-31 (City Complaint, Prayer, ¶ 2).

#### 2. Mendocino Railway Sues To Confirm Its "Federal Preemption" Rights Against Permitting and Other Pre-Clearance Overreach

While the City's "public utility" case was pending, Mendocino Railway filed a complaint in the federal court on August 9, 2022 ( "Federal Action"). That filing was prompted by a series of threats and demands against the Railway by the Commission, which insisted it had plenary permitting and pre-clearance authority over the Railway's rail-related operations in the coastal zone. ER-105, 111 (Federal Complaint, ¶¶ 3, 27). The utter uncertainty and disruption that the Commission's threats and demands caused the Railway, as well as similar acts by the City, compelled the Railway to file this federal action. ER-105-06, 113 (Federal Complaint, ¶¶ 5, 34).

Given its status as a federal railroad within the STB's exclusive jurisdiction, Mendocino Railway claims that the Commission's and the City's "efforts to

impose land-use permitting and preclearance requirements" are "in blatant violation of federal preemption principles" under the ICCTA. ER-105 (Federal Complaint, ¶¶ 1-2). The Federal Action is not premised on the Railway's "public utility" status, though it continues to defend that status in the State Action. The Federal Action concerns only the Railway's status as a federal railroad within the STB's exclusive jurisdiction.

Specifically, Mendocino Railway seeks a declaration "that the actions of the Commission and the City to regulate [its] operations, practices and facilities are preempted under 49 U.S.C. § 10501(b) and that [its] activities are subject to the STB's exclusive jurisdiction." ER-105 (Federal Complaint, ¶ 1). The Railway further seeks a declaration of its "right under the ICCTA to undertake any and all rail-related activities within the coastal zone, including within the City's boundaries without preclearance or approval from the Commission or the City." *Id.* Finally, Mendocino Railway seeks "[a]n injunction prohibiting Defendants from taking any action that would materially interfere with Mendocino Railway's operation of its railroad as a federally regulated common carrier, including by imposing and enforcing any land-use permitting or other preclearance requirement as the pre-condition of any rail-related development on [its] property or facilities." *Id.* ¶ 2.

Mendocino Railway seeks a complete resolution of the full scope of its "federal preemption" rights as against the Commission and the City. In the Railway's view, the agencies have no authority whatsoever—under the Coastal

Act, the LCP, or any other law or pretense— to impose any permitting or other pre-clearance requirement on Mendocino Railway's railroad-related activities.

#### 3. After the Federal Action Is Filed, the Commission Intervenes in the State Action to Partially Challenge the Railway's "Federal Preemption" Rights

The Commission repudiated Mendocino Railway's choice of forum—federal court—for resolving their dispute over the Railway's "federal preemption" rights. So, after the Federal Action was filed on August 9, 2022, the Commission filed a motion to intervene in the State Action on September 8, 2022, which was granted on October 20, 2022. Motion for Judicial Notice ("MJN"), Exh. 1 (Docket in State Action). The Commission filed its complaint-in-intervention a week later, on October 27. *Id.*; ER-36 (Commission Complaint).

Denying any preemption of its permitting authority, the Commission bases its complaint on Mendocino Railway's alleged violations of the California Coastal Act and the City's Local Coastal Program ("LCP"). By way of background, the Coastal Act is a state statute that generally requires a landowner to obtain a land-use permit—known as a "Coastal Development Permit" ("CDP")—before undertaking "development" in the coastal zone. Cal. Pub. Res. Code § 30600(a). Development is evaluated against certain environmental and land-use policies contained in Chapter 3 of the Act. *Id.* § 30200(a).

The Commission is charged with administering the Coastal Act and its policies, including a permitting system for any development in the coastal zone. *Id.*

§ 30600. Further, the Commission has original permitting authority, but local governments in the coastal zone are required to develop their own LCPs to implement the Coastal Act. Once the Commission certifies an LCP, the local government reviews development applications, and issues or denies CDPs. *Id.* §§ 30600(d), 30500, 30519. Even where there's an LCP, the Commission retains limited jurisdiction to review local CDP approvals. *Id.* § 30603. In addition, the Commission is authorized to enforce the land-use requirements of an LCP and any applicable provisions of the Coastal Act. *Id.* § 30800, *et seq.* (Chapter 9).

As noted above, the Commission's complaint concerns only its permitting authority under the Coastal Act and the City's LCP. The Commission seeks a declaration that (1) "the Coastal Act and the City's LCP apply to the Railway's actions in the coastal zone of the City that constitute development under the Coastal Act and the City's LCP," and (2) "the application of the Coastal Act and the City's LCP to the Railway's actions in the coastal zone of the City that constitute development under the Coastal Act and the City's LCP are not preempted by any state or federal law, including, but not limited to, Public Utilities Code sections 701 and 1759, subdivision (a); sections 10102 and 10501, subdivision (b) of Title 49 of the United States Code; and clause 2 of Article VI of the United States Constitution." ER-42 (Commission Complaint, Prayer, ¶¶ 2). Disregarding federal preemption of its authority, the Commission also seeks civil penalties and exemplary damages associated with purported "past and ongoing violations of the Coastal Act." *Id.* Prayer, ¶¶ 3, 5. Further, the Commission seeks injunctive relief "requiring the Railway to: (a) cease all actions taken by the

Railway without a coastal development permit in the coastal zone of the City that constitute development under the Coastal Act and the City's LCP; submit an application to the City and obtain a permit or other authorization under the City's LCP before commencing or resuming any such development; and (c) comply with any other applicable requirements in the Coastal Act and the LCP, including but not limited to mitigation of the unauthorized development." *Id.*, Prayer, ¶ 4.

There are important differences between the Commission's "federal preemption" argument in the State Action and Mendocino Railway's claims in this Federal Action. For example, the Commission seeks resolution only of the question whether its ***permitting*** authority under the Coastal Act and LCP is federally preempted. *Id.* By contrast, Mendocino Railway more broadly seeks resolution of the question whether ***any*** effort by the Commission to exercise land-use control over the Railway's railroad activities is federally preempted—irrespective of the purported legal basis for doing so. ER-113 (Federal Complaint, Prayer, ¶¶ 1-2). As explained in greater detail below, one important area of land-use control that the Commission regularly exercises its pre-clearance authority over federally-licensed or federally-funded projects that have purported impacts in the coastal zone. Such pre-clearance authority rests, not on the Coastal Act or the City's LCP, but on the federal Coastal Zone Management Act ("CZMA"). That pre-clearance is at issue in this Federal Action, but not in the State Action.

To summarize, the chronology of court actions filed by the various parties in this case is as follows:

- **October 21, 2021**: The City files a state-law claim in state court, challenging Mendocino Railway's "public utility" status under California law. ER-26, 31 (City Complaint, p. 1 & Prayer, ¶ 1).
- **August 9, 2022**: Mendocino Railway files broad claims in federal district court to establish its "federal preemption" rights against any and all actions by the Commission and City to impose their permitting and preclearance authority over the Railway's railroad-related activities. ER-113 (Federal Complaint, ¶¶ 1-2).
- **October 27, 2022**: The Commission intervenes and files a complaint in the State Action, seeking limited resolution of its permitting authority under the Coastal Act and the City's LCP is federally preempted. ER-42 (Commission Complaint, Prayer, ¶ 2).

### C. Mendocino Railway Removes the State Action, But the Federal District Court Remands It, Then Grants the Commission's and City's Motions to Dismiss The Federal Action

After the state court granted the Commission's motion to intervene, Mendocino Railway removed the entire State Action to federal court given the limited federal issue raised in the Commission's complaint. On May 11, 2023, the district court granted the Commission's and the City's motions to remand. MJN, Exh. 1 (Docket in State Action).

The following day, on May 12, the district court also granted the Commission's and the City's motions to dismiss Mendocino Railway's Federal

Action. ER-3 (Dismissal Order). In its motion and reply brief, the Commission urged the court to dismiss based exclusively on *Younger* abstention. Dkt. No. 15, 28.[2] For its part, the City also relied almost exclusively on *Younger* abstention. Dkt. 16, 29. But buried in the City's motion was a half-page argument about *Colorado River*. Dkt. 16, pp. 21-22.

The district court seized on the City's reference and dismissed the Federal Action under *Colorado River*. Having remanded the State Action back to state court just the day before, the court was able to create "the predicate existence of concurrent state and federal court proceedings" required by *Colorado River*. ER-4, 6 (Dismissal Order, pp. 2:25-26, 4:19-20). Thus, the court proceeded to consider the eight *Colorado River* factors.

The court held that the first factor—which court first assumed jurisdiction over any property—was "irrelevant," since this action does not involve a specific piece of property. *Id.* at 4:20-21. The court concluded that the second factor—the inconvenience of the federal forum—was "neutral" given that the state court in Fort Bragg and the federal district court in Oakland were only 150 miles apart. *Id.* at 4:21-24. In the court's view, the third factor—the desire to avoid piecemeal litigation—favored dismissal, because "the issue of federal preemption under the

[2] "Dkt. No." refers to the number on the District Court's docket in this case.

ICCTA is squarely before the state court." *Id.* at 5:6-8. Here, the court misapplied the relevant standard governing this factor, which looks to whether there is a federal policy or preference for state-court resolution of an issue; a general desire to avoid piecemeal litigation is not enough. *United States v. Morros*, 268 F.3d 695, 706-07 (9th Cir. 2001).

The court held that the fourth factor—the order in which the forums obtained jurisdiction and how far the state action has progressed—weighed in favor of dismissal. The court noted that, "[b]ecause the state forum gained jurisdiction first, and because the state court action has progressed further than the federal court action, the fourth factor weighs in favor of dismissal." *Id.* at 5:25-27. But the court did not consider the fact that the state court gained jurisdiction first only over a ***state-law claim***, and that it was only after the Railway filed this Federal Action that the Commission forum-shopped its limited "federal preemption" argument into the State Action. Thus, the state court gained jurisdiction over a ***relevant*** claim—a "federal preemption" claim—only after the federal district court did. Further, the district court overstated the substantive progress that had been made in the State Action compared to this action.

The court correctly held that the fifth factor—whether federal or state law provides the rule of decision on the merits—weighed against dismissal, given that Mendocino Railway's complaint in this case is governed entirely by federal law. *Id.* at 5:5, 5:15-16. As for the sixth factor—whether the state court can enforce federal rights—the court concluded it weighed in favor of dismissal because the state court can theoretically adjudicate the Railway's federal claims. *Id.* at 6:17-28.

But as explained below, the district court should have characterized this factor as "neutral"—not as one weighing in favor of dismissal.

The court stated that the seventh factor—the desire to avoid forum shopping—weighed in favor of dismissal. *Id.* at 7:1-21. The court mistakenly concluded that the Railway's Federal Action was somehow motivated by unfavorable rulings on its demurrer to and motion to strike the City's state-law claim—rulings that did not pass on any foundation issues or on the merits of Mendocino Railway's "federal preemption" argument. The record simply does not bear out any improper forum-shopping by the Railway. On the other hand, the district court did not take into account the Commission's strategic decision to file a limited "federal preemption" claim in the State Action ***after*** the Railway this case.

Finally, the court held that the eighth factor—whether the State Action will completely dispose of the Federal Action—weighed in favor of dismissal. The court reasoned that the state court will adjudicate, in its entirety, the very claims at issue in the Federal Action. *Id.* at 7:22-8:6. But the court did not consider that Mendocino Railway's "federal preemption" claims seek much broader relief, or that the State Action carries potential outcomes that decidedly will ***not*** result in the complete disposition of the Federal Action.

## V. SUMMARY OF THE ARGUMENT

Through this Federal Action, the Railway seeks to establish the full breadth of its "federal preemption" rights against the purported land-use permitting and pre-clearance authority of two agencies: the Commission and City. When the Railway filed this action in federal court in August 2022, there was no parallel

state proceeding in which a party was seeking declaratory or injunctive relief based on the Railway's "federal railroad" status or "federal preemption" rights. There was only the City's cause of action in state court regarding the Railway's "public utility" status under California law. Even after the Railway filed this case—when the Commission forum-shopped a more limited "federal preemption" argument against the Railway into the City's "public utility" case—substantial doubt remained (and remains) about whether the state case can completely resolve the Railway's more expansive "federal preemption" claims in this case.

Nevertheless, the district court erroneously invoked *Colorado River* to dismiss this action. The court misanalyzed *Colorado River*'s eight factors, concluding that "only the fifth factor weighs against dismissal, and the remaining factors weigh in favor of dismissal." ER-10 (Dismissal Order, p. 8).

In this Court, the eighth factor—whether the state court proceedings will resolve all issues before the federal court—"should be addressed as a preliminary matter" before the other factors. *United States v. State Water Res. Control Bd.*, 988 F.3d 1194, 1203 (9th Cir. 2021). That threshold factor weighs dispositively in favor of federal jurisdiction.

As this Court recently reaffirmed, "[w]hen one possible outcome of parallel state court proceedings is continued federal litigation, we find a 'substantial doubt' that the state court action will provide a 'complete and prompt resolution of the issues,' because the federal court may well have something further to do.'" *Ernest Bock*, 2023 U.S. App. LEXIS 2004, at *22 (quoting *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp. ("Cone Mem'l Hosp.")*, 460 U.S. 11, 28 (1983)). Here,

one outcome of the City's state claim is a ruling that the Railway is a public utility under California law. But that ruling would not address, let alone dispose of, the Railway's "federal preemption" claims, which are governed by federal law.

Similarly, one outcome of the Commission's claims is a state-court ruling that its ***permitting*** authority under the ***Coastal Act*** and ***City's LCP*** is federally preempted. But that disposition would not resolve the additional question raised in the Railway's claims in this case—namely, whether the Commission's ***pre-clearance*** authority under the CZMA, pursuant to which it reviews federally-licensed or federally-funded projects proposed and carried out by the Railway, is also federally preempted. Further, it is possible the state court decides the Railway is a public utility, and on that basis alone, finds state preemption of the City's and Commission's permitting authority. Again, that outcome would not dispose of the Federal Action. Because there are outcomes that cast substantial doubt on the State Action's ability to completely resolve the Federal Action, this factor weighs heavily in favor of federal jurisdiction.

The other seven factors are either neutral or favorable to federal jurisdiction. The first factor is inapplicable, given there's no "property at stake." The second factor is neutral because the distance between the two courts (150 miles) "is not sufficiently great that this factor points toward abstention." *Travelers Indem. Co. v. Madonna*, 914 F.3d 1364, 1368 (9th Cir. 1990). The third factor concerning piecemeal litigation is neutral because there is no "strong federal policy that all [federal preemption] claims should be tried in the state courts." *Morros*, 268 F.3d

at 706-07. A "general preference for avoiding piecemeal litigation is insufficient" as a matter of law "to warrant a stay or dismissal." *Seneca*, 862 F.3d at 842-43.

The fourth factor is neutral, as the relative progress of the State and Federal Actions was substantially the same at the time of the district court's review of the abstention motions, and neither court had resolved any "foundational legal claims"—a fact weighing against a stay or dismissal. *Seneca*, 862 F.3d at 843. The fifth factor weighs in favor of federal jurisdiction, as federal law clearly provides the rule of decision on the merits of the Federal Action. *Cone Mem'l Hosp.*, 460 U.S. at 2. The sixth factor is neutral, as there is no bar to state-adjudication of "federal preemption" claims. *Id.* at 26-27.

Finally, the seventh factor concerning forum-shopping is neutral, if not favorable to jurisdiction. When the Federal Action was filed, no party had asserted a cause of action in favor of or against the Railway's "federal preemption" rights. In choosing a federal forum for its previously unasserted "federal preemption" claims, the Railway simply acted within its rights as a plaintiff. *Seneca*, 862 F.3d at 846. On the other hand, ***after*** the Railway filed its "federal preemption" claims in federal court, the Commission strategically brought its own limited version of the same in state court—knowing full well that the federal court could and would fully resolve the "federal preemption" dispute between the parties. If any party engaged in improper forum shopping under this factor, it was the Commission.

In sum, the balance of all eight factors weighs emphatically against a *Colorado River* stay or dismissal and in favor of retaining federal jurisdiction.

The same is true of *Younger* abstention, which was the focal point of the underlying abstention motions, but not addressed by the district court. Among other things, *Younger* requires, at the time of the federal action's filing, the existence of a parallel criminal or quasi-criminal proceeding in state court. Neither condition was met to justify *Younger* abstention.

The Court should reverse the district court and require it to reinstate this federal action.

## VI. STANDARD OF REVIEW

The underlying motions to dismiss are a facial attack on Mendocino Railway's federal complaint. Whether brought as a motion under Federal Rule of Civil Procedure 12(b)(1) or 12(b)(6), a facial attack accepts the "the truth of the plaintiff's allegations," but asserts that they are "insufficient on their face to invoke federal jurisdiction." *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014) (internal quotation marks and citation omitted); *see also S. Natural Res. v. Nations Energy Solutions*, 2021 U.S. Dist. LEXIS 171477, at *7 (S.D. Cal. May 6, 2021).

The only reviewable order is the district court's order dismissing the case under *Colorado River.* The court did not address *Younger* abstention in that order. Nevertheless, Mendocino Railway closes this Opening Brief with its argument as to why *Younger* abstention does not apply, in the event the Court reaches that issue.

Review of the district court's order under *Colorado River* proceeds in two steps. The "first task is to review *de novo* whether, in light of the eight factors enumerated above, the facts here conform to the requirements for a *Colorado River*

stay" or dismissal. *Ernest Bock*, 2023 U.S. App. LEXIS 20045, at *13. "If [the Court] conclude[s] that the *Colorado River* requirements have been met," then, in the second step, the Court "review[s] for abuse of discretion the district court's decision to stay or dismiss the action." *Seneca*, 862 F.3d at 840. However, "this standard is stricter than the flexible abuse of discretion standard used in other areas of law because discretion must be exercised within the narrow and specific limits prescribed by the *Colorado River* doctrine." *R.R. Street & Co. Inc. v. Transp. Ins. Co. (R.R. Street)*, 656 F.3d 966, 973 (9th Cir. 2011) (internal citation and quotation marks omitted).

The Court need not reach the second step and determine if the district court abused its discretion if it "conclude[s] that the district's error in applying the *Colorado River* factors is dispositive." *Ernest Bock*, 2023 U.S. App. LEXIS 20045, at *23 n.22.

## VII. ARGUMENT

### A. *Colorado River* Does Not Support a Stay or Dismissal

#### 1. *Colorado River* Provides an Exceedingly Rare Exception to Federal Jurisdiction

"Generally, as between state and federal courts, the rule is that the pendency of an action in the state court is no bar to proceedings concerning the same matter in the Federal court having jurisdiction." *Colorado River*, 424 U.S. at 817 (internal citation and quotation marks omitted). However, in "exceptional circumstances," "'considerations of wise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation'" can "support a stay

of federal litigation in favor of parallel state proceedings." *Ernest Bock*, 2023 U.S. App. LEXIS 20045, at *10-11 (quoting *Colorado River*, 424 U.S. at 813, 817). "Only the clearest of justifications will warrant dismissal." *Colorado River*, 424 U.S. at 819.

If concurrent state and federal court proceedings exist, then the Court weighs the following eight factors to determine whether exceptional circumstances justify abdicating federal jurisdiction:

> "(1) which court first assumed jurisdiction over any property at stake; (2) the inconvenience of the federal forum; (3) the desire to avoid piecemeal litigation; (4) the order in which the forums obtained jurisdiction; (5) whether federal law or state law provides the rule of decision on the merits; (6) whether the state court proceedings can adequately protect the rights of the federal litigants; (7) the desire to avoid forum shopping; and (8) whether the state court proceedings will resolve all issues before the federal court."

*Ernest Bock*, 2023 U.S. App. LEXIS 20045, at *12.

The eighth factor is actually a "threshold" factor that "should be addressed as a preliminary matter" before the other factors. *State Water*, 988 F.3d at 1203; *Dana Innovations v. Trends Elecs. Int'l Inc.*, 2023 U.S. Dist. LEXIS 70203, at *11 (C.D. Cal. Apr. 21 2023) ("Because the parallel actions must be substantially similar' to justify a stay or dismissal under *Colorado River*, courts often consider the eighth factor as a threshold, and potentially dispositive, matter.").

The factors "are not a mechanical checklist" and must instead be applied "in a pragmatic, flexible manner with a view to the realities of the case at hand." *State Water*, 988 F.3d at 1203. Further, the "weight to be given to any one factor may

vary greatly from case to case." *Id.* Some factors may "not apply in some cases" and, in others, "a single factor"—such as the eighth factor—"may decide whether a stay" or dismissal "is permissible. *Id.* (cleaned up). "The underlying principle guiding this review is a ***strong presumption*** against federal abstention," and "***any*** doubt as to whether a factor exists should be resolved against a stay" or dismissal, "not in favor of one." *Id.* at **12-13 (emphasis added) (cleaned up). After all, a stay or dismissal "of federal litigation in favor of state court proceedings 'is the exception, not the rule.'" *Ernest Bock*, 2023 U.S. App. LEXIS 20045, at *11 (quoting *Colorado River*, 424 U.S. at 813). "The court's task in [*Colorado River*] cases . . . is not to find some substantial reason for the exercise of federal jurisdiction by the district court; rather, the task is to ascertain whether there exist 'exceptional' circumstances, the 'clearest of justifications,' that can suffice under *Colorado River* to justify the surrender of that jurisdiction." *State Water*, 988 F.3d at 1203 (quoting *Cone Mem'l Hosp.*, 460 U.S. 11).

Some of this Court's precedents characterize *Colorado River* as an "abstention" doctrine. However, "*Colorado River* is not an abstention doctrine." *State Water*, 988 F.3d at 1202. "The instances in which a court can stay an action pursuant *to Colorado River* 'are considerably more limited than the circumstances appropriate for abstention.'" *Id.* (quoting *Colorado River*, 424 U.S. at 818).

### 2. Together, the Eight Factors Weigh In Favor of Jurisdiction

#### a. Insufficient Parallelism (Factor 8)

Mendocino Railway analyzes the eighth factor—whether the state court proceedings will resolve all issues before the federal court—first. That factor is

dispositive and dispenses with the need to weigh the other seven factors. *State Water*, 988 F.3d at 1203; *Ernest Bock*, 2023 U.S. App. LEXIS 20045, at *20 (holding that "substantial doubt" on this factor is "sufficient to preclude a *Colorado River* stay" or dismissal).

Under this factor, "[w]hen ***one possible outcome*** of parallel state court proceedings is continued federal litigation, we find a substantial doubt that the state court action will provide a complete and prompt resolution of the issues, because the federal court may well have something further to do." *Ernest Bock*, 2023 U.S. App. LEXIS 20045, at *22-23 (emphasis added). "[T]he existence of a substantial doubt as to whether the state proceedings will resolve the federal action precludes the granting of a stay" or dismissal, and "[s]uch doubt is a significant countervailing consideration that can be dispositive." *State Water*, 988 F.3d at 1203 (internal citation and quotation marks omitted). Indeed, "a district court may enter a *Colorado River* stay [or dismissal] order only if it has 'full confidence' that the parallel state proceeding will end the litigation." *Intel Corp. v. Advanced Micro Devices, Inc.*, 12 F.3d 908, 913 (9th Cir. 1993) (quoting *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 277 (1988)). "If there is any substantial doubt as to whether the parallel state-court litigation will be an adequate vehicle for the complete and prompt resolution of the issues between the parties . . . it would be a serious abuse of discretion to grant the stay or dismissal at all." *State Water*, 988 F.3d at 1203 (internal citation and quotation marks omitted). All "contingencies"—all potential outcomes in the state-court action—inform whether a "substantial doubt" precludes a *Colorado River* stay or dismissal. *Intel Corp.*, 12

F.3d at 913. Further, "[t]his factor is more relevant when it counsels against abstention, because while . . . insufficient parallelism may preclude abstention, the alternatives never compel abstention." *Id.* (internal citation and quotation marks omitted).

It is substantially doubtful that resolution of the State Action would completely resolve this Federal Action. The Commission's and City's claims in the State Action are analyzed in turn.

**The Commission's Claims**: The Commission seeks a declaration that (1) "the Coastal Act and the City's LCP apply to the Railway's actions in the coastal zone of the City that constitute development under the Coastal Act and the City's LCP," and (2) "the application of the Coastal Act and the City's LCP to the Railway's actions in the coastal zone of the City that constitute development under the Coastal Act and the City's LCP are not preempted by any state or federal law, including, but not limited to, Public Utilities Code sections 701 and 1759, subdivision (a); sections 10102 and 10501, subdivision (b) of Title 49 of the United States Code; and clause 2 of Article VI of the United States Constitution." ER-42 (Commission Complaint, Prayer, ¶ 2). The Commission also seeks civil penalties and exemplary damages associated with purported "past and ongoing violations of the Coastal Act." *Id.*, Prayer, ¶¶ 3, 5. Further, the Commission seeks injunctive relief "requiring the Railway to: (a) cease all actions taken by the Railway without a coastal development permit in the coastal zone of the City that constitute development under the Coastal Act and the City's LCP; (b) submit an application to the City and obtain a permit or other authorization under the City's

LCP before commencing or resuming any such development; and (c) comply with any other applicable requirements in the Coastal Act and the LCP, including but not limited to mitigation of the unauthorized development." *Id.*, Prayer, ¶ 4.

One outcome is that the state court rules in Mendocino Railway's favor, holding that the ICCTA preempts the Commission's permitting authority under the Coastal Act and the City's LCP. But that would leave open the question whether the Commission could interfere in the Railway's railroad-related activities under another law: the CZMA.

The CZMA generally authorizes the Commission to pre-clear federally-licensed or federally-funded projects proposed and/or undertaken by private parties, like Mendocino Railway, that the Commission deems may impact coastal zone resources. *See, e.g.*, 16 U.S.C. § 1456(c)(3)(A) (pre-clearance process for federally licensed/permitted projects); *id.* § 1456(d) (pre-clearance process for projects with federal assistance). For instance, if the Railway applies for a permit from the federal STB to undertake railroad construction in the coastal zone, the Commission will insist upon review of the project before the federal permit is issued. *Id.* § 1456(c)(3)(A). After review of the project, the Commission typically will either communicate concurrence that the project meets certain land-use and environmental standards, or object to the project. *Id.* Significantly, "[n]o license or permit shall be granted by the Federal agency"—in this example, the STB—"until the state or its designated agency [the Commission] has concurred with the applicant's certification or until, by the state's failure to act, the concurrence is conclusively presumed, unless the Secretary [of Commerce], on his own initiative

or upon appeal by the applicant, finds, after providing a reasonable opportunity for detailed comments from the Federal agency involved and from the state, that the activity is consistent with the objectives of this chapter or is otherwise necessary in the interest of national security." *Id.* In other words, while it would not have any CDP authority, the Commission would insist on a kind of pre-clearance power—a power that inevitably would delay and potentially stop a railroad-related project.

The Commission already has a track record of inserting itself into Mendocino Railway's projects through its purported pre-clearance authority under the CZMA. MJN, Exh. 2 (December 3, 2019 Letter from Commission to Mendocino Railway). The Railway's claims seek to put an end, not just to the Commission's permitting authority under the Coastal Act and the City's LCP, but also to the Commission's pre-clearance authority over railroad-related projects proposed by the Railway that are federally-funded or federally-licensed by such federal agencies as the Department of Transportation and the STB.

The Commission's claims in the State Action do not reach the question whether such pre-clearance authority is federally preempted. But the Railway's Federal Action clearly does. Mendocino Railway seeks a comprehensive declaration that "Mendocino Railway has the right under the ICCTA to undertake any and all rail-related activities within the coastal zone . . . without ***preclearance or approval*** from the Commission." ER-113 (Federal Complaint, Prayer, ¶ 1) (emphasis added). Moreover, Mendocino Railway seeks a comprehensive injunction prohibiting the Commission from "taking ***any*** action that would materially interfere with Mendocino Railway's operation of its railroad as a

federally regulated common carrier, including by imposing and enforcing any land-use permitting ***or other preclearance requirement*** as the pre-condition of any rail-related development on Mendocino Railway's property or facilities. ER-113 (Federal Complaint, Prayer, ¶ 2) (emphasis added). Those claims are not limited to the Commission's authority under the Coastal Act and the City's LCP. Thus, even if the state court decided that the Commission's permitting authority under the Coastal Act and LCP were preempted, the federal court still would need to decide whether the Commission's authority to pre-clear railroad projects under the CZMA is ***also*** preempted.

Another outcome of the Commission's claims is that the state court rules that the Railway is a California public utility under California law and, on that basis, state law preempts the Commission's permitting authority under the Coastal Act and LCP. The Commission's own claim for declaratory relief contemplates that outcome. ER-42 (Commission Complaint, Prayer, ¶ 2 (citing Cal. Pub. Util. Code). In that scenario, the state court could conclude it is unnecessary to reach whether the Railway is also a federal railroad under the STB's exclusive jurisdiction since such a finding "would have little practical effect in terms of altering parties' behavior" given the "public utility" finding. *Meyer v. Sprint Spectrum L.P.*, 45 Cal. 4th 634, 648 (2009); *Poniktera v. Seiler*, 181 Cal. App. 4th 121, 139 (2010) ("A trial court's decision to grant or deny declaratory relief is reviewable for abuse of discretion. Courts have considerable discretion to deny declaratory relief when resolution of the controversy would have little practical effect in terms of altering parties' behavior."). If the state court were to limit its

decision to the parties' "public utility" claims, "the federal court may well have something further to do" with respect to the Railway's "federal preemption" claims, thereby precluding a *Colorado River* stay or dismissal. *Ernest Bock*, 2023 U.S. App. LEXIS 20045, at *22-23.

**The City's Claim**: Similarly, resolution of the City's state-law claim cannot resolve the Railway's "federal preemption" claims. In the State Action, the City pleads a single cause of action "[f]or a declaration that the Mendocino Railway is not subject to regulation as a public utility because it does not qualify as a common carrier providing 'transportation'" under California law. ER-31 (City Complaint, Prayer ¶ 1). Based on its claim that the Railway is not a public utility, the City seeks an injunction "commanding" the railroad "to comply with all City ordinances, regulations, and lawfully adopted codes, jurisdiction and authority, as applicable." ER-31 (City Complaint, Prayer ¶ 2). An "injunction is an equitable remedy, not a cause of action, and thus it is attendant to an underlying cause of action." *County of Del Norte v. City of Crescent City*, 71 Cal. App. 4th 965, 973 (1999). "A cause of action must exist before a court may grant a request for injunctive relief." *Allen v. City of Sacramento*, 234 Cal. App. 4th 41, 65 (2015). Thus, if the City's "public utility" claim falls, so too does its request for an injunction.

One outcome is for the state court to deny the City's cause of action, finding that Mendocino Railway ***is*** a public utility. In that case, the City's request for an injunction—attendant to its "public utility" claim—would fall. Consequently, the

state court would not reach the question whether the ICCTA federally preempts the City's land-use authority and laws, as applied to Mendocino Railway.

As this Court recently has held, "[w]hen one possible outcome of parallel state court proceedings is continued federal litigation, we find a substantial doubt that the state court action will provide a complete and prompt resolution of the issues, because the federal court may well have something further to do." *Ernest Bock*, 2023 U.S. App. LEXIS 20045, at *22-23. Given the above-described contingencies that would result in continued federal litigation, this factor weighs dispositively against a stay or dismissal. But even a finding that this factor establishes sufficient parallelism between the State and Federal Actions does not compel a stay or dismissal; it means only that the remaining seven factors must be weighed. *Intel Corp.*, 12 F.3d at 913 ("[W]hile . . . insufficient parallelism may preclude abstention, the alternatives never compel abstention."). That flows from the fundamental principle articulated in *Colorado River* that "the pendency of an action in the state court is no bar to proceedings concerning the same matter in the Federal court having jurisdiction." *Colorado River*, 424 U.S. at 817.

**b. First Factor**

The first factor—which court first assumed jurisdiction over any property at stake—is inapplicable. As the district court correctly found (ER-6 (Dismissal Order)), "the dispute does not involve a specific piece of property." *R.R. Street*, 656 F.3d at 979.

**c. Second Factor**

The second factor—the inconvenience of the federal forum—does not weigh against jurisdiction. As the district court concluded, "the state proceedings are in the Mendocino County Superior Court in Fort Bragg, California, and the federal proceeding is in the Northern District of California in Oakland, California, which are approximately 150 miles apart." ER-6 (Dismissal Order). This Court has concluded that a distance of 200 miles "is not sufficiently great that this factor points toward abstention." *Travelers*, 914 F.3d at 1368*; see also Montanore Minerals Corp v. Bakie*, 867 F.3d 1160, 1167 (9th Cir. 2017) (holding, where state and federal courts were 200 miles apart, that factor was "neutral").

**d. Third Factor**

The third factor—the issue of piecemeal litigation—does not weigh against jurisdiction. "Piecemeal litigation occurs when different tribunals consider the same issue, thereby duplicating efforts and possibly reaching different results." *Seneca*, 862 F.3d at 842 (citation and quotation omitted). But a "general preference for avoiding piecemeal litigation is insufficient to warrant abstention," because "[a]ny case in which *Colorado River* is implicated will inevitably involve the possibility of conflicting results, piecemeal litigation, and some duplication of judicial efforts." *Id.* at 842-43. Such is the "unavoidable price of preserving access to . . . federal relief." *Neuchatel Swiss Gen. Ins. Co. v. Lufthansa Airlines*, 925 F.2d 1193, 1195 (9th Cir. 1991).

Instead, this factor considers whether there is a "***special concern*** counseling in favor of federal abstention, such as a ***clear federal policy*** of avoiding piecemeal

adjudication." *Seneca*, 862 F.3d at 842 (emphasis added). "*Colorado River* does not say that every time it is possible for a state court to obviate the need for federal review by deciding factual issues in a particular way, the federal court should abstain." *Morros*, 268 F.3d at 706. "Rather, *Colorado River* stands for the proposition that when Congress has passed a law expressing a preference for unified state adjudication, courts should respect that preference." *Id.* "[I]t is evident that the avoidance of piecemeal litigation factor is met, as it was in … *Colorado River* itself, ***only*** when there is evidence of a ***strong federal policy*** that all claims should be tried in the state courts." *Id.* at 706-07 (quoting *Ryan v. Johnson*, 115 F.3d 193, 197-98 (3d Cir. 1997)) (emphasis added); *see also Seneca*, 862 F.3d at 843 (holding this factor weighs in favor of a stay or dismissal when there is a "special or important rationale or legislative preference for resolving [all] issues in a single proceeding"); *Travelers*, 914 F.2d at 1369 ("A correct evaluation of this factor involves considering whether exceptional circumstances exist which justify special concern about piecemeal litigation," such as "federal legislation evincing a federal policy to avoid piecemeal litigation").

Here, no federal policy or preference embodies the requisite "special concern" for resolving the Railway's claims in state court. Certainly, the district court identified no such federal policy or preference. Instead, the court relied on a general preference for avoiding potential piecemeal litigation, which is categorically "insufficient to warrant abstention." *Seneca*, 862 F.3d at 842-43. This factor is neutral.

**e. Fourth Factor**

The fourth factor—the order in which the forums obtained jurisdiction—does not weigh against jurisdiction. Under this factor, the Court analyzes, not just the order in which the state and federal cases were filed, but "how much progress has been made in the two actions." *Cone Mem'l Hosp.*, 460 U.S. at 21.

The State and Federal Actions are parallel only insofar as the Commission's and the Railway's claims concern, to a lesser or greater extent, the Railway's "federal preemption" rights. The first party to assert a "federal preemption" claim was Mendocino Railway, when it filed this case in August 2022. ER-104 (Federal Complaint). Two months later, the Coastal Commission filed its own, more limited "federal preemption" claims against the Railway. ER-42 (Commission Complaint, Prayer, ¶ 2). Thus, the state court took jurisdiction over the relevant "federal preemption" claim only after the federal court had done so. Before the Railway filed this case, there was only the City's cause of action for a declaration that the Railway is not a public utility under California law—a claim that has no parallel here. ER-26, 31 (City Complaint, p. 1 & Prayer, ¶ 1).

Further, neither the State nor the Federal Action saw significant activity by the time the district court reviewed the underlying abstention motions. In the State Action, the state court had denied Mendocino Railway's demurrer to and motion to strike ***the City's complaint***—which, again, consists only of a cause of action challenging Mendocino Railway's "public utility" status under California law. ER-72 (Demurrer Ruling). The state court did not take jurisdiction over any "federal preemption" claim until the Commission filed its complaint in October 2022—

***after*** this Federal Action was filed. At the time the federal district court reviewed the abstention motions, no progress whatsoever had been made on the Commission's complaint—the only complaint asserting any kind of "federal preemption" claim. The Railway had not yet even responded to it. MJN, Exh. 1 (Docket in State Action).

In sum, the relative progress of the State and Federal Actions was substantially the same at the time of the district court's review of the abstention motions, and "[n]either court had resolved any foundational legal claims"—a fact that causes this factor to weigh against a stay or dismissal. *Seneca*, 862 F.3d at 843.

Even if the Court evaluates the fourth factor in light of the relative status of the two cases today, the result remains the same. The State Action is still in its infancy. No dispositive motions have been filed, and no trial date has been set; the trial date that the district court's order states was set was vacated weeks before the dismissal order even issued. MJN, Exh. 1 (Docket in State Action). This factor thus does not weigh against jurisdiction.

#### f. Fifth Factor

The fifth factor—whether federal or state law provides the rule of decision on the merits—weighs heavily in favor of jurisdiction. The "presence of federal-law issues must always be a major consideration weighing ***against*** surrender" of federal jurisdiction." *Cone Mem'l Hosp.*, 460 U.S. at 26 (emphasis added). As one federal district court put it, "while the presence of federal-law issues weighs heavily in the court's abstention calculus, only 'in some rare circumstances' does the presence of state-law issues tip the scales in favor of surrender." *Corner Edge*

*Interactive LLC v. Johnson*, 2020 U.S. Dist. LEXIS 105386, at *14 (D. Ariz. 2020) (quoting *Cone Mem'l Hosp.*, 460 U.S. at 26). Indeed, even in cases where state law has provided the rules of decision, the Court has concluded this factor does not defeat federal jurisdiction. *See, e.g., R.R. Street*, 656 F.3d at 980-81.

There's no dispute that Mendocino Railway's case turns entirely on federal law. Whether Mendocino Railway is a federal railroad subject the STB's exclusive jurisdiction, and whether federal preemption precludes state and local efforts to subject railroad-related activities to permitting and other pre-clearance requirements, all rest on federal law. The case implicates no state-law issues. Thus, this factor also weighs strongly in favor of jurisdiction.

**g. Sixth Factor**

The sixth factor—whether the state court proceedings are inadequate to protect Mendocino Railway's federal rights—is neutral. "A district court may not stay or dismiss the federal proceeding if the state proceeding cannot adequately protect the rights of the federal litigants." *R.R. Street*, 656 F.3d at 981. "This factor is most often employed, and is most important, where there are exclusively federal claims that could not be brought as part of the state-court action." *Bushansky v. Armacost*, 2012 U.S. Dist. LEXIS 112315 (N.D. Cal. Aug. 9, 2012).

Mendocino Railway does not dispute that a "federal preemption" claim can be adjudicated by a state court, making this factor is neutral. *Dana Innovations*, 2023 U.S. Dist. LEXIS 70203, at *25-26 (finding sixth factor "neutral" where different forums are capable of protecting litigant's rights); *McDonald v. Gurson*, 2017 U.S. Dist. LEXIS 131762, at *20 (W.D. Wa. Aug. 17, 2017) (same);

*Stockman-San v. McKnight*, 2013 U.S. Dist. LEXIS 187245, at *14 (C.D. Cal. Mar. 25, 2013) (same); *SiRNA Therapeutics, Inc. v. Protiva Biotherapeutics, Inc.*, 2006 U.S. Dist. LEXIS 90773, at *10 (E.D. Cal. Dec. 1, 2006) (same).

The district court concluded that, because the state court can adjudicate Mendocino Railway's "federal preemption" claim, this factor "weighs in favor of dismissal." ER-8 (Dismissal Order at 6:27-28). But the far better view is that this factor can never weight in ***favor*** of a stay or dismissal; it can only be neutral, or weigh ***against*** a stay or dismissal. The Supreme Court in *Cone Mem'l Hosp.*, 460 U.S. at 26-27, first "introduced this factor, and it is clear from its nature that it can only be a neutral factor or one that weighs against, not for, abstention. A party who could find adequate protection in state court is not thereby deprived of its right to the federal forum, and may still pursue the action there since there is no ban on parallel proceedings." *Evanston Ins. Co. v. Jimco, Inc.*, 844 F.2d 1185, 1193 (5th Cir. 1988); *see also Starr Indem. & Liab. Co. v. Avenatti*, 2019 U.S. Dist. LEXIS 230988, at *11-12 (C.D. Cal. Dec. 30, 2019) (agreeing that "the Ninth Circuit has never applied this factor *against* the exercise of jurisdiction only in favor of it" and finding this factor to be "neutral" where "the state court can protect the rights of all parties").

It does not appear this Court has directly addressed whether the sixth factor can ever weigh in favor of a stay or dismissal. But it has held that "the possibility that the state court proceeding might adequately protect the interests of the parties is not enough to justify the district court's deference to the state action." *Travelers*, 914 F.2d at 1370. The rule that this factor can only be neutral or weigh against a

stay or dismissal has been adopted by the Fifth and Eleventh Circuit Courts of Appeals, as well. *Noonan South, Inc. v. County of Volusia*, 841 F.2d 380, 383 (11th Cir. 1988) ("The fact that both forums are adequate to protect the parties' rights merely renders this factor neutral on the question of whether the federal action should be dismissed."); *Am. Family Life Assur. Co. v. Biles*, 714 F.3d 887 (5th Cir. 2013) (holding that "the sixth factor, by its very nature, does not weigh in favor of abstention," and is "either a neutral factor or one that weighs against abstention"); *but see PaineWebber, Inc. v. Cohen*, 276 F.3d 197, 208 (6th Cir. 2001) (the sixth factor weighs in favor of "abstaining, because the state court action is adequate to protect PaineWebber's interests").

**h. Seventh Factor**

The "forum shopping" factor is neutral, if not favorable to jurisdiction. "When evaluating forum shopping under *Colorado River*, we consider whether either party improperly sought more favorable rules in its choice of forum or pursued suit in a new forum after facing setbacks in the original proceeding." *Seneca*, 862 F.3d at 846. "Forum shopping weighs in favor of a stay when the party opposing the stay seeks to avoid adverse rulings made by the state court or to gain a tactical advantage from the application of federal court rules." *Travelers*, 914 F.2d at 1371 (cleaned up). "It typically does not constitute forum shopping where a party acted within his rights in filing a suit in the forum of his choice, even where the chronology of events suggests that both parties took a somewhat opportunistic approach to the litigation." *Id.* (cleaned up) (internal citations and quotation marks omitted). The Court is especially "cautious about labeling as

'forum shopping' a plaintiff's desire to bring previously unasserted claims in federal court." *R.R. Street*, 656 F.3d at 982.

Mendocino Railway did not engage in forum shopping when it filed this lawsuit. At the time of the Federal Action's filing, only the City's ***state-law*** claim was pending in state court. The State Action consisted of a single claim for declaratory relief that Mendocino Railway was not a public utility under California law, coupled with a request for injunctive relief. ER-31 (City Complaint, Prayer, ¶ 1-2). The City did not plead any claim concerning Mendocino Railway's status as a federal railroad under federal law, and there was no cross-claim raising "federal preemption." When Mendocino Railway filed this lawsuit, it represented the first time a "federal preemption" claim was asserted. "[T]he presence of the exclusively federal claim gives Plaintiff a legitimate reason to come to federal court." *Stockman-San*, 2013 U.S. Dist. LEXIS 187245, at *15.

The Commission and City may argue that, prior to filing this Federal Action, the Railway made a "federal preemption" ***argument*** in its demurrer and motion to strike the City's complaint, as well as in an affirmative defense contained in its subsequent answer to the same. ER-1, 91 (Answer to City Complaint). Arguing an issue defensively is not the equivalent of pleading a claim for affirmative relief. In any event, while the state court may have overruled the demurrer and denied the motion to strike, it did not adversely decide the merits of Mendocino Railway's "federal preemption" argument; it held only that the argument did not require dismissal of the City's complaint or the striking of its broad injunctive-relief allegations. ER-72 (Demurrer Ruling). There is no evidence in the record that

Mendocino Railway filed this case to "avoid adverse rulings made by the state court or to gain a tactical advantage from the application of federal court rules." *Travelers*, 914 F.2d at 1371.

On the other hand, after Mendocino Railway sued the Commission in federal court, the Commission responded by intervening in the State Action with its own version of a "federal preemption" claim, presumably in hopes of finding a better forum in state versus federal court. ER-42 (Commission Complaint, Prayer, ¶ 2). Thus, if any party engaged in forum shopping, it was the Commission. In fact, forum-shopping is the only reasonable explanation for the Commission's decision to raise its limited "federal preemption" claim in state court, when Mendocino Railway's broader "federal preemption" claims were already pending in federal court. As for Mendocino Railway, it simply "acted within [its] rights in filing a suit in the forum of [its] choice" on an "unasserted claim[]." *Seneca*, 862 F.3d at 846; *R.R. Street*, 656 F.3d at 982 (emphasis added).

**The Balance of Factors**: "To determine whether a [*Colorado River*] stay [or dismissal] is warranted, the relevant factors must be balanced, with the balance ***heavily*** weighted in favor of the exercise of jurisdiction." *Travelers*, 914 F.2d at 1372 (emphasis added). If the eighth factor does not conclusively establish—without more—that a *Colorado River* stay or dismissal is impermissible, then the balance of the other seven factors certainly does. All of them are either neutral or weigh decisively in favor of jurisdiction. The district court therefore erred in dismissing this case under *Colorado River*.

### B. *Younger* Does Not Justify Abstention

#### 1. *Younger* Abstention Law

In the underlying motions to dismiss, the Commission and City argued for abstention under *Younger*, 401 U.S. 37. *Younger* abstention is rooted in "the basic doctrine of equity jurisprudence that courts of equity should not act . . . to restrain a criminal prosecution, when the moving party has an adequate remedy at law and will not suffer irreparable injury if denied equitable relief." *Younger*, 401 U.S. at 43-44. Following a period of continuous expansion, the Supreme Court limited the doctrine to "three exceptional categories" of cases: "(1) parallel, pending state criminal proceedings, (2) state civil proceedings that are akin to criminal prosecutions, and (3) state civil proceedings that implicate a State's interest in enforcing the orders and judgments of its courts." *ReadyLink Healthcare, Inc. v. State Compensation Insurance Fund*, 754 F.3d 754, 759 (9th Cir. 2014) (internal citation and quotation marks omitted) (cleaned up).

"If a state proceeding falls into one of those three categories, *Younger* abstention is applicable, but only if the three additional factors laid out in *Middlesex County Ethics Committee v. Garden State Bar Association*, 457 U.S. 423, 432 (1982) are also met: that the state proceeding is 1) 'ongoing'; 2) 'implicate[s] important state interests'; and 3) 'provide[s] adequate opportunity . . . to raise constitutional challenges.'" *Applied Underwriters, Inc. v. Lara*, 37 F.4th 579, 588 (9th Cir. 2022) (quoting *Middlesex*, 457 U.S. at 432) (emphasis added). Thus, the necessary predicate for *Younger* abstention is that there be a pending and relevant state proceeding. "Absent any pending proceeding in state tribunals, . . .

application by the lower courts of *Younger* abstention [is] clearly erroneous." *Ankenbrandt v. Richards*, 504 U.S. 689, 705 (1992). The "critical question is not whether the state proceedings are still ongoing, but whether the state proceedings were underway before initiation of the federal proceedings." *Kitchens v. Bowen*, 825 F.2d 1337, 1341 (9th Cir. 1987) (internal citation and quotation marks omitted).

As these and other applicable cases reveal, the grounds for abstaining based on a parallel state proceeding are narrow. If not a criminal action, the state proceeding must at least be "akin to a criminal prosecution" in "important respects." *Sprint Communs., Inc. v. Jacobs*, 571 U.S. 69, 79 (2013) (cleaned up). A quasi-criminal prosecution is the "hallmark of the civil enforcement proceeding category for *Younger* purposes." *Applied Underwriters*, 37 F.4th at 588. Accordingly, the proceeding must be either "in aid of and closely related to criminal statutes," or "aimed at punishing some wrongful act through a penalty or sanction." *Id.* at 589 (citing *Huffman v. Pursue Ltd.*, 420 U.S. 592, 607 (1975) and *Ohio Civ. Rights Comm'n v. Dayton Christian Schools, Inc.*, 477 U.S. 619, 629 (1986)). In *Applied Underwriters*, this Court indicated that, where the overriding purpose of a state proceeding is "to rehabilitate, to deter, or to protect the public," the proceeding lacks the quasi-criminal quality needed for *Younger* abstention. *Applied Underwriters*, 37 F.4th at 601 (Nguyen, J., concurring).

"*Younger* abstention is not jurisdictional, but reflects a court's prudential decision not to exercise jurisdiction which it in fact possesses." *Benavidez v. Eu*, 34 F.3d 825, 829 (9th Cir. 1994). Thus, the Supreme Court cautions that "even in

the presence of parallel state proceedings, abstention from the exercise of federal jurisdiction is the exception, not the rule." *Sprint*, 571 U.S. at 82.

The Court "conduct[s] the *Younger* analysis in light of the facts and circumstances existing at the time the federal action was filed." *Rynearson v. Ferguson*, 903 F.3d 920, 924 (9th Cir. 2018).

### 2. No Parallel State Proceeding Existed When the Federal Action Was Filed

As explained above, when this Federal Action was filed in August 2022, no parallel state proceeding was pending. The City and Commission pointed to the State Action, which, at the time, consisted only of the City's claim for a declaration that the Railway is not a California public utility. ER-31 (City Complaint, Prayer, ¶ 1). But that claim was (and is) not "parallel" to the Railway's federal claims, which center on the Railway's "federal railroad" status and "federal preemption" rights.

Thus, the predicate of *Younger* abstention—the existence of a parallel state proceeding—did not exist at the filing of the Federal Action. Without a parallel state proceeding, the district court could not abstain under *Younger*. *Ankenbrandt*, 504 U.S. at 705 ("Absent any pending proceeding in state tribunals, . . . application by the lower courts of *Younger* abstention [is] clearly erroneous.").

### 3. The State Action Is Not a Criminal or Quasi-Criminal Prosecution, So *Younger* Does Not Apply

There is an independent reason why *Younger* abstention does not apply: The State Action is not among the narrow categories of cases that can justify abstention

under *Younger*. That is because neither the City's claim nor the Commission's claims resemble quasi-criminal prosecutions.

The City's complaint is aimed at establishing the City's authority over Mendocino Railway and compelling it to comply with land use laws. The City's complaint is "not intended to punish or criminalize" anyone. *Ojavan Investors v. Cal. Coastal Com.*, 54 Cal. App. 4th 373, 393 (1997) (rejecting argument that injunction compelling compliance with land-use laws is intended to punish or criminalize the property owner). Nor is the City's complaint "in aid of and closely related to [any] criminal statute." *Applied Underwriters*, 37 F.4th at 588; *cf. Dayton Christian Schools*, 477 U.S. at 629 (state-initiated administrative proceedings to enforce state civil rights laws, noting "potential sanctions for the alleged sex discrimination"); *Middlesex*, 457 U.S. at 427, 433-34 (state-initiated disciplinary proceedings against lawyer for violation of state ethics rules, noting the availability of "private reprimand" and "disbarment or suspension for more than one year"); *Moore v. Sims*, 442 U.S. 415, 419-20 (1979) (state-initiated proceeding to gain custody of children allegedly abused by their parents, noting the action was "in aid of and closely related to criminal statutes"); *Trainor v. Hernandez*, 431 U.S. 434, 435 (1977) (civil proceeding "brought by the State in its sovereign capacity" to recover welfare payments defendants had allegedly obtained by fraud, "a crime under Illinois law"); *Huffman*, 420 U.S. at 596-98 (state-initiated proceeding to enforce public nuisance laws, which provided for "closure for up to a year of any place determined to be a nuisance," "preliminary injunctions

pending final determination of status as a nuisance," and "sale of all personal property used in conducting the nuisance").

The same holds for the Commission's claims, which do resemble a quasi-criminal prosecution. The Commission's first and primary cause of action is for a declaration concerning whether its permitting authority under the Coastal Act and LCP is preempted. ER-42 (Commission Complaint, Prayer, ¶¶ 1-2). Like the City's complaint, the chief purpose of the Commission's first claim is evident—to establish the Commission's land-use permitting authority over the Railway, a federally regulated railroad. The first cause of action is not "in aid of and closely related to [any] criminal statute," and does not aim to "punish[]" Mendocino Railway. *Applied Underwriters*, 37 F.4th at 588.

The Commission's second cause of action (falsely) alleges violations of state and City land-use laws, including the Coastal Act. ER-43 (Commission Complaint, Prayer, ¶¶ 3-5). The alleged violations are based exclusively on the Commission's mistaken notion that Mendocino Railway was required to, but did not, obtain land-use permits before repairing its railroad roundhouse and storage shed, and completing a lot-line adjustment on railroad parcels it owned. ER-38 (Commission Complaint, ¶ 4). The Commission also seeks an injunction requiring Mendocino Railway to (a) cease "all" work (even rail-related work) on railroad property located in the coastal zone, (b) undo its rail improvements and/or apply to the Commission for land-use permits to regularize past work and perform future work, and (c) pay fines associated with the alleged violations. Commission Complaint, p. 8.

An injunction compelling compliance with land-use laws like the Coastal Act and LCP is "not intended to punish or criminalize" Mendocino Railway. *Ojavan*, 54 Cal. App. 4th at 393. "Rather, the purpose of the injunction [is] to protect the public from violations of the Coastal Act" and the related LCP. *Id*. (rejecting argument that permanent injunction enjoining violations of the Coastal Act constituted punishment).

The Commission argued below that the "civil liability" and "exemplary damages" authorized by sections 30820(b) and 30822 of the Public Resources Code convert its civil action into a criminal prosecution. Not so. The provisions are not "in aid of and closely related to [any] criminal statute," or even "aimed at punishing" Mendocino Railway. *Applied Underwriters*, 37 F.4th at 588. The Commission never identified a relevant criminal statute, because no such statute exists.

Moreover, the Commission's pursuit of a monetary exaction under sections 30820 and 30822 is not aimed at punishing the Railway. As the complaint shows, it is aimed at securing compliance with the Coastal Act. ER-42-43 (Commission Complaint, Prayer). Even if particular "civil penalties may have a punitive or deterrent aspect, their primary purpose"—their ultimate aim—"is to secure obedience to statutes and regulations imposed to assure important public policy objectives." *Kizer v. County of San Mateo*, 53 Cal. 3d 139, 147-148 (1991); *City and County of San Francisco v. Sainez*, 77 Cal. App. 4th 1302, 1315 (2000) (same); *see also Hale v. Morgan*, 22 Cal. 3d 388, 398 (1978) (observing that state-law penalties serve "as a means of securing obedience to statutes"). The ICCTA

federally preempts the Commission's efforts to subject a federally regulated railroad to unfettered state and local land-use permitting and pre-clearance authority. But whatever the demerits of the Commission's claims, the State Action unequivocally evinces the primary objective of compelling Mendocino Railway to submit to the Commission's land-use authority under the Coastal Act and LCP, including through the tool of imposing monetary liability.

The California Court of Appeal recently addressed the nature and purpose of a similar Coastal Act provision—section 30821 of the Public Resources Code, which authorizes monetary liability against individuals. *Lent v. California Coastal Com.*, 62 Cal. App. 5th 812 (2021). Section 30821 authorizes the imposition of a so-called "administrative civil penalty" against an individual who violates the Coastal Act's "public access" policies. Cal. Pub. Res. Code § 30821. Section 30820 (at issue in this case) differs from section 30821 in terms of who can impose liability. Under section 30820, only a court may impose monetary liability; on the other hand, section 30821 allows the Commission to unilaterally impose a penalty at an administrative hearing. *Compare* Cal. Pub. Res. Code § 30820 *with id.* § 30821. Otherwise, the two statutes are substantially the same for purposes of this analysis.

In *Lent*, property owners challenged the facial constitutionality of section 30821. *Lent*, 62 Cal. App. 5th at 843-849. The owners argued that, because section 30821 imposes a "quasi-criminal penalty" that "is more serious than a purely civil remedy," the statute has insufficient due process protections for those facing such a

penalty. *Id*. at 849. The Court of Appeal rejected the owners' characterization of the penalty statute, explaining:

> [T]he Lents assert that, by definition, a quasi-criminal penalty is more serious than a purely civil remedy, and that point is appropriately considered in the balancing-factor analysis under procedural due process. But the Legislature has characterized the penalty imposed under section 30821 as an "administrative ***civil*** penalty" (§ 30821, subd. (a)), not a "***criminal***" penalty or fine. Like the civil penalty the Supreme Court considered in [*People v. Super. Ct. ("Kaufman")*, 12 Cal. 3d 421 (1974)], a penalty imposed under section 30821 does not expose the defendant to the stigma of a criminal conviction.

*Id.* (cleaned up) (emphasis added).

Simply put, even a section 30821 "penalty" does not bear the hallmarks of a criminal or quasi-criminal sanction. It is fundamentally "civil" in nature, as the Legislature itself labeled it. The same is true of sections 30820 and 30822, neither of which even refers to the monetary liability they authorize as "penalties." Section 30820 authorizes a monetary "civil liability." Cal. Pub. Res. Code § 30820. Section 30822 authorizes "exemplary damages" and focuses on the objective of "deter[ring] further violations." *Id.* § 30822; *see also Ojavan*, 54 Cal. App. 4th at 383 (noting that the superior court denied "the Commission's request for exemplary damages under section 30822 on the ground such damages were unnecessary to deter further violations in light of the fines imposed" under section 30820).

In *People v. Toomey*, 157 Cal. App. 3d 1 (1984), both the Attorney General and the District Attorney (on behalf of "the People") prosecuted a business owner

for engaging in unfair business practices against his customers. *Id.* at 7. The People sought an injunction and substantial "civil penalties" under the California Business & Professions Code ("BPC"). The superior court ruled against the owner, entering a permanent injunction, ordering him to pay $300,000 in civil penalties, and requiring him to make refunds and restitution to former customers. *Id*. at 10. The owner appealed the judgment, including on the grounds that he was deprived of due process in what he characterized as a "quasi-criminal case" against him. *Id.* at 17.

The Court of Appeal disagreed with the owner's characterization of the proceedings. *Id.* "[T]he case against appellant was not criminal or quasi-criminal in nature." *Id.* As a result, the Court concluded that the constitutional safeguards required in criminal and quasi-criminal cases did not apply: "[I]t is now firmly established that an action brought pursuant to the unfair business practices act seeks only civil penalties, and accordingly the due process rights which apply in criminal actions, including the right to a jury trial, need not be provided." *Id.*; *see also In re Alva*, 33 Cal. 4th 254, 286 (2004).

Likewise, in *Humanitarian Law Project v. United States Treasury Dep't*, 578 F.3d 1133 (9th Cir. 2009), this Court considered whether certain "civil penalties" at issue there imposed "quasi-criminal" punishment. *Id.* at 1149. As the Court framed the inquiry, "[e]ven in those cases where the legislature has indicated an intention to establish a civil penalty, we inquire further whether the statutory scheme was so punitive either in purpose or effect, as to transform what was clearly intended as a civil remedy into a criminal penalty." *Id.* (cleaned up). The

Court balanced the factors set forth in *Hudson v. United States*, 522 U.S. 93 (1997): "(1) whether the sanction involves an affirmative disability or restraint; (2) whether it has historically been regarded as a punishment; (3) whether it comes into play only on a finding of scienter; (4) whether its operation will promote the traditional aims of punishment—retribution and deterrence; (5) whether the behavior to which it applies is already a crime; (6) whether an alternative purpose to which it may be rationally connected may be assignable for it; and (7) whether it appears excessive in relation to the alternative purpose assigned." *Humanitarian Law*, 578 F.3d at 1149 (quoting *Hudson*, 522 U.S. at 99-100). Observing that the penalties were legislatively labeled as "civil" versus "criminal," and weighing the *Hudson* factors, the Court concluded that the civil penalties did not rise to the level of quasi-criminal punishment:

> The *Hudson* factors do not indicate that the civil penalties are really criminal. IEEPA's civil penalties are monetary, with no other affirmative disability or restraint. Such monetary penalties have not historically been regarded as punishment. . . . [T]he civil penalty provision . . . has [no] *mens rea* requirement, weighing against finding that these are criminal penalties. While civil fines . . . have a deterrent effect, the mere presence of this purpose is insufficient to render a sanction criminal. Finally, the same conduct may be punished both civilly and criminally, but this alone does not render all the penalties criminally punitive.

*Humanitarian Law*, 578 F.3d at 1150.

Applying the same analysis to sections 30820 and 30822 yields the same conclusion. The provisions relied on by the Commission to pursue a monetary exaction against Mendocino Railway do contain a *mens rea* requirement. Pub. Res.

Code §§ 30820(b), 30822. But all the other *Hudson* factors weigh decisively against characterizing such liability as quasi-criminal punishment. Both provisions authorize what the Legislature specifically labeled as "civil"—not "criminal"—liability. Both provisions impose only monetary liability, not any other affirmative disability or restraint. And while both provisions may have a deterrent effect, they are employed primarily to secure an alleged violator's compliance with certain laws and regulations, not to punish him. *Ojavan*, 54 Cal. App. 4th at 393; *see also Humanitarian Law*, 578 F.3d at 1150 ("While civil fines . . . have a deterrent effect, the mere presence of this purpose is insufficient to render a sanction criminal." (cleaned up)). Where pursuit of monetary liability "serves an alternative function other than punishment"—such as compelling legal compliance—it cannot be deemed akin to a criminal prosecution. *Id.* Finally, the conduct complained of—alleged failure to obtain land-use permits—cannot be punished both civilly and criminally. *Humanitarian Law*, 578 F.3d at 1150 ("Finally, the same conduct may be punished both civilly and criminally, but this alone does not render all the penalties criminally punitive."). Sections 30820 and 30822 are not criminally punitive and do not convert the State Action into one of the narrow categories of state proceedings that can justify *Younger* abstention.

In sum, the chief purpose of the Commission's complaint is to establish permitting authority over Mendocino Railway's operations in Fort Bragg. Such an action cannot fairly be characterized as a criminal or quasi-criminal prosecution. It is not a claim in aid of or related to any criminal statute. Nor does it purport to

punish the Railway. *Applied Underwriters*, 37 F.4th at 588. Like the City's complaint, the Commission's complaint does not support *Younger* abstention.

## VIII. CONCLUSION

Neither *Colorado River* nor *Younger* supports a stay or dismissal. Among other reasons, the State Action is insufficiently parallel to this case for *Colorado River* purposes, and the State Action is not a criminal or quasi-criminal proceeding justifying abstention under *Younger*. There are no exceptional circumstances warranting a departure from the federal court's virtually unflagging obligation to hear and decide the Railway's federal claims.

The Court should reverse the judgment, with instructions to reinstate the Federal Action.

Date: September 6, 2023

Respectfully submitted,

s/ Paul Beard II

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## CERTIFICATE OF COMPLIANCE

I am the attorney of record in this case. **This brief contains 13,515 words,** excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6). I certify that this brief complies with the word limit of Cir. R. 32-1.

Date: September 6, 2023

Respectfully submitted,

s/ Paul Beard II

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