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7 Attorneys for Plaintiffs,  
 8 SIERRA NORTHERN RAILWAY and MENDOCINO RAILWAY

9  
 10 **UNITED STATES DISTRICT COURT**  
 11 **NORTHERN DISTRICT OF CALIFORNIA**

12 SIERRA NORTHERN RAILWAY, a  
 California corporation, and MENDOCINO  
 13 RAILWAY, a California corporation,

14 Plaintiffs,

15 vs.

16 CITY OF FORT BRAGG, and DOES 1  
 17 through 25, inclusive,

18 Defendants.

Case No.:

**COMPLAINT FOR:**

- 19 **(1) FIFTH AMENDMENT TAKING**
- 20 **(2) DECLARATORY RELIEF**
- 21 **(3) CONTRIBUTION & INDEMNITY**
- 22 **(4) NUISANCE**
- 23 **(5) TRESPASS**
- 24 **(6) INVERSE CONDEMNATION**

25 DEMAND FOR JURY TRIAL

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1 Plaintiffs Sierra Northern Railway (“SNR”) and Mendocino Railway (“MRY”), collectively  
2 referred to herein as “Plaintiffs,” bring this Complaint against Defendant City of Fort Bragg  
3 (“Defendant” or “the City”), alleging as follows:

4 **INTRODUCTION**

5 1. SNR currently owns a parcel of real property located at 90 West Redwood Avenue, in  
6 Fort Bragg, Mendocino County, California (the “Property”). MRY, an affiliate of SNR, previously  
7 owned and currently operates the Property, and therefore has suffered and continues to suffer injury  
8 as a result of the City’s conduct, as alleged herein.

9 2. The Property includes a body of water, approximately eight (8) acres in size, known  
10 as the “Mill Pond,” and sometimes also referred to as “Pond 8.” Mill Pond has received stormwater  
11 on an on-going basis from two catchments located within and controlled by the City of Fort Bragg,  
12 which drain into Mill Pond through the culverted Maple and Alder Creeks. This stormwater, running  
13 unabated into Mill Pond, has been tested for the presence of hazardous substances. Two such  
14 substances have been found in concentrations that exceed applicable water quality standards by one  
15 to two orders of magnitude: dioxins and furans. Stormwater entering Mill Pond leaves through a dam  
16 spillway that discharges to the Pacific Ocean at Fort Bragg Landing. Thus, the City’s stormwater has  
17 a direct connection to navigable waters of the U.S.

18 3. The City’s ongoing contamination of Mill Pond has resulted in a taking under the  
19 Takings Clause of the Fifth Amendment to the United States Constitution. Namely, the City’s  
20 misfeasance and malfeasance have caused damage to the Property in that it has been invaded by  
21 contaminated stormwater, as the direct and proximate result of the City’s authorized customs, policies,  
22 and practices. In so doing, the City has caused Plaintiffs to suffer a taking of its property without just  
23 compensation. Further, the City is receiving a benefit in that it is using Mill Pond as a stormwater  
24 treatment facility and catchment at the expense of Plaintiffs. Because the pollution is ongoing and  
25 unabated, Plaintiffs’ right to enjoy its property is not merely an injury that reduces its value, but is a  
26 deprivation of Plaintiffs’ rights over an extended period of time, with no end in sight.

27 4. The City’s taking deprives Plaintiffs of Mill Pond’s use and value without cessation.  
28 The continued occupation of Mill Pond by pollutants deposited there by the City constitutes and

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1 effects a Fifth Amendment taking for which Plaintiffs are entitled to relief and recovery.

2 5. Plaintiffs have also suffered monetary damages based on the City’s actions and  
3 omissions. Remediation and removal of the dioxins and furans is estimated to cost anywhere from \$8  
4 million to \$50 million dollars.

5 **THE PARTIES**

6 6. SNR is a California corporation headquartered in West Sacramento, California, that  
7 provides rail and intermodal freight transportation and transloading across Northern and Central  
8 California. MRY is a Class III common carrier that operates in Northern California. Among other  
9 things, it operates the historic “Skunk Train,” which traces its history back to the early 1880s.

10 7. The City is a municipality located in the County of Mendocino that has been named  
11 as Defendant on the basis that its stormwater leaves City catchments which drain through the  
12 culverted Maple and Alder Creeks and runs into the private property of Plaintiffs, contributing  
13 hazardous substances onto the Property and Mill Pond.

14 8. The true names, identities and capacities of the Defendants, named as DOES 1  
15 through 10 inclusive, and sued herein only as to Plaintiffs’ state law claims, are currently unknown  
16 to Plaintiffs. Plaintiffs are informed and believe and thereon allege that each said fictitiously named  
17 Defendants is in some manner responsible for and liable for the damages complained of herein.  
18 Plaintiffs pray leave to amend the state law claims alleged in this Complaint to include the true  
19 names, identities and capacities of said fictitiously named Defendants when such names, identities  
20 and capacities become known.

21 **JURISDICTION AND VENUE**

22 9. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, and  
23 supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

24 10. Additionally, this Court has authority to issue a declaratory judgment concerning the  
25 rights and liabilities of the parties pursuant to 28 U.S.C. §§ 2201 and 2202.

26 11. The claims presentation requirements of California’s Government Claims Act are  
27 inapplicable to (i) claims for non-monetary relief brought under state law, and (ii) claims seeking  
28 monetary or non-monetary relief under 42 U.S.C. § 1983.

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1 12. As to all other claims alleged herein, Plaintiffs have complied with the Government  
 2 Claims Act. On January 22, 2024, Plaintiffs submitted a Claim for Money or Damages Against the  
 3 City of Fort Bragg describing the damages alleged herein (“Government Claim”) as well as other  
 4 claims. By letter, dated January 28, 2024, the City’s claims administrator, George Hills,  
 5 acknowledged receipt of Plaintiffs’ Government Claim, assigning it a George Hills Claim Number:  
 6 GHC0067337. By letter, dated February 9, 2024, George Hills sent Plaintiffs a document labeled  
 7 “Notice of Return of Late Claim,” confirming that Plaintiffs had submitted the Government Claim  
 8 on January 22, 2024, and stating that “no action was taken on the claim.” On or around April 24,  
 9 2024, Plaintiffs sent a letter to the City Manager of Fort Bragg, which detailed the contamination and  
 10 encouraged meaningful discussion. The City did not respond. On or around June 20, 2024, Plaintiffs  
 11 filed an “Amended Claim for Money or Damages Against the City of Fort Bragg,” pursuant to  
 12 California’s Government Code. To date, the City has not responded to the Amended Claim. Despite  
 13 filing a government claim and sending a letter to the City to resolve the matter, the City has refused  
 14 to take any remedial action, and continues to allow its stormwater to pollute the Property. Plaintiffs  
 15 were forced to bring this Complaint as a result.

16 13. Divisional Assignment. Pursuant to Civil L.R. 3-2(c), this action is brought before the  
 17 U.S. District Court, Northern District of California based upon the location of the Property and the  
 18 injuries alleged herein.

## FACTUAL ALLEGATIONS

### **A. The Property and Mill Pond**

20 14. SNR owns the Property, which contains the water body commonly known as “Mill  
 21 Pond,” and also referred to as “Pond 8.” MRY previously owned the Property and continues to operate  
 22 on and around Mill Pond. Mill Pond is approximately 7.8 acres in size and is the largest surface water  
 23 body on site. Attached hereto and incorporated herein as **Exhibit 1** is a true and correct copy of a  
 24 map showing Mill Pond’s location.  
 25

26 15. Mill Pond has for years received stormwater that enters the pond via sheet flow and  
 27 via the Alder Creek and Maple Creek outfalls, located in the eastern section of the pond. These two  
 28 outfalls are referred to as “Station D” and “Station CE” on **Exhibit 1** hereto. These outfalls consist

1 of the ends of two pipelines that convey surface waters that originate from City locations that are  
2 upgradient from the Property. Station D represents what is known as “Alder Creek” and Station CE  
3 represents what is known as “Maple Creek.”

4 **B. Dioxin and Furan Are Found in Mill Pond**

5 16. The City has, on a continuing and on-going basis, discharged, and continues to  
6 discharge municipal stormwater into Mill Pond with no end in sight. The Department of Toxic  
7 Substances Control (“DTSC”) has issued a Site Investigation and Remediation Order for Mill Pond.

8 17. Stormwater quality within the Mill Pond drainage basin has been further evaluated  
9 over multiple sampling efforts. A sampling effort was conducted in 2011 to support the design of an  
10 alternate surface water conveyance feature for Mill Pond. The results of this evaluation were  
11 summarized in reports prepared by a professional engineer with Arcadis U.S., Inc., and more recent  
12 reports were prepared by Kennedy Jenks, a water and industrial engineering firm.

13 18. The reports show, among other things, that (1) stormwater entering Mill Pond contains  
14 dioxins and furans at concentrations that exceeded applicable water quality standards by one to two  
15 orders of magnitude; (2) a significant majority of the pollutants (80 to 95 percent) entering Mill Pond  
16 via stormwater are from drainage areas outside the Property and; (3) approximately 54.5 percent of  
17 Mill Pond drainage flows from the City, through stations D and CE.

18 19. Based on these findings, Plaintiffs allege upon information and belief that the City is,  
19 has been, and continues to use Mill Pond as a detention basin for the storage and treatment of its  
20 toxic, hazardous, and contaminated stormwater discharges. Attempts to resolve this with the City  
21 without litigation have been unavailing.

22 **C. Injury to Plaintiffs**

23 20. The City’s discharge of dioxins and furans into Mill Pond is a continued occupation  
24 and taking under the Fifth Amendment for which Plaintiffs are entitled to relief and recovery. The  
25 City’s actions and physical damage to Mill Pond in the form of contaminated stormwater invade  
26 Plaintiffs’ protected property interest and is a direct result of the City’s malfeasance and misfeasance.

27 21. Further, the City is receiving a free benefit in that it is using Mill Pond as a stormwater  
28 treatment facility and detention basin at the expense of Plaintiffs. Plaintiffs continue to suffer property

1 loss and injury without just compensation.

2 22. The pollution of Mill Pond is ongoing and unabated, and the City has shown no  
3 intention of taking or funding remedial action. Thus, Plaintiffs’ right to enjoy the Property is not a  
4 discrete injury; rather, without judicial intervention, it is a permanent deprivation of Plaintiffs’ rights.

5 23. As a result of the City’s acts and omissions, Plaintiffs have faced and will face  
6 additional, currently incalculable costs for future investigation and contamination clean-up. These  
7 costs have been estimated to range from \$8 million to \$50 million dollars, depending on the manner  
8 and method of remediation, to be proven at trial.

9 24. Further, as a result of the contamination, Plaintiffs have incurred legal fees and costs  
10 and will face additional legal fees and costs.

11 WHEREFORE, Plaintiffs pray for judgment as set forth below.

12 **FIRST CLAIM FOR RELIEF**

13 (42 U.S.C. § 1983 – Unlawful Taking – Against the City)

14 25. Plaintiffs hereby incorporate by reference and re-state the allegations of the preceding  
15 paragraphs of this Complaint as though set forth in full at this place.

16 26. The City is a municipality, and is a state actor within the meaning of 42 U.S.C. §  
17 1983. Section 1983 states, in part, that “[e]very person who, under color of any statute, ordinance,  
18 regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes  
19 to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the  
20 deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be  
21 liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress...”  
22 42 USCS § 1983, Part 1 of 16.

23 27. Section 1983 applies to people or entities acting under “color of state law,” commonly  
24 called “state actors.” For purposes of section 1983, political subdivisions of a state, including cities,  
25 are state actors.

26 28. The Due Process Clause of the Fifth and Fourteenth Amendments to the U.S.  
27 Constitution protects against state actors taking private property without just compensation. Federal  
28 courts have for generations construed 42 U.S.C. § 1983 to allow courts to enjoin state actors from

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1 engaging in conduct that deprives parties of rights afforded under the Due Process Clause of the  
2 Fifth and Fourteenth Amendments to the U.S. Constitution.

3 29. As alleged herein, the City, acting under color of state law, has substantially  
4 interfered with Plaintiffs’ ownership, operation, and enjoyment of its property for years, including  
5 by depriving Plaintiffs of their use and enjoyment of Mill Pond, thereby depriving Plaintiffs of  
6 legally-cognizable property interests, and constitutional rights, all of which wrongful conduct  
7 violates Plaintiffs’ rights under 42 U.S.C. § 1983 and the U.S. Constitution.

8 30. Plaintiffs have suffered property losses compensable as a taking, both while MRY  
9 was owner and continuing thereafter, because the City has intended to invade and intends to continue  
10 invading the Property with polluted stormwater. Even without the City’s intent, such invasion is the  
11 direct, natural, or probable result of its authorized activity.

12 31. The City’s invasion of Mill Pond has appropriated a benefit to the City at the expense  
13 of Plaintiffs, and, in the least, interfered with their rights to use, enjoy, and operate the Property and  
14 Mill Pond without being burdened and injured by the invasion of the City’s polluted stormwater.

15 32. As a direct and proximate result of the City’s wrongful conduct, as alleged herein,  
16 Plaintiffs have been damaged, and are also suffering on-going irreparable harm.

17 33. Plaintiffs are entitled to recover attorneys’ fees under 42 U.S.C. § 1988.

18 WHEREFORE, Plaintiffs pray for judgment as set forth below.

19 **SECOND CLAIM FOR RELIEF**

20 (Declaratory Judgment - 28 U.S.C. §§ 2201 and 2202 – Against the City)

21 34. Plaintiffs hereby incorporate by reference and re-state the allegations of the preceding  
22 paragraphs of this Complaint as though set forth in full at this place.

23 35. Plaintiffs are entitled to a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and  
24 2202 that all future costs of removal or remedial action incurred by it in response to releases caused  
25 by the City are costs for which the City must reimburse Plaintiffs.

26 36. Pursuant to 28 U.S.C. § 2201, there is an actual controversy between the parties  
27 regarding their duties and obligations with respect to the investigation, response, and remediation  
28 costs that have been incurred and will continue to be incurred in connection with the release and

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1 threatened release of hazardous substances from City catchments and culverts onto the Property and  
2 into Mill Pond.

3 37. The declaratory relief sought herein is necessary and appropriate, and in the interest  
4 of justice, because it will obviate the need for multiple lawsuits and should provide complete  
5 resolution of the dispute between the parties.

6 WHEREFORE, Plaintiffs pray for judgment as set forth below.

7 **THIRD CLAIM FOR RELIEF**

8 (Contribution and Indemnity – Against All Defendants)

9 38. Plaintiffs hereby incorporate by reference and re-state the allegations of the preceding  
10 paragraphs of this Complaint as though set forth in full at this place.

11 39. Plaintiffs have a right of contribution and indemnity against the City to recover  
12 investigation, remediation, and response costs that Plaintiffs have already incurred and will incur in  
13 the future regarding the investigation and clean-up of releases of hazardous substances at the Property  
14 and Mill Pond.

15 40. Alternatively, to the extent that the City is not liable for contribution to the  
16 investigation and remediation costs Plaintiffs have incurred and will continue to incur in connection  
17 with the release and threatened release of hazardous substances from City-controlled catchments and  
18 culverts into Mill Pond, Plaintiffs are entitled to recover from all other defendants amounts in excess  
19 of Plaintiffs’ fair and equitable share of such remediation and clean-up costs.

20 WHEREFORE, Plaintiffs pray for judgment as set forth below.

21 **FOURTH CLAIM FOR RELIEF**

22 (Continuing Nuisance – Against All Defendants)

23 41. Plaintiffs hereby incorporate by reference and re-state the allegations of the preceding  
24 paragraphs of this Complaint as though set forth in full at this place.

25 42. The City-created conditions at the Property and within Mill Pond constitute a  
26 continuing nuisance as a result of the City’s release of hazardous substances from City catchments.  
27 In addition, the City failed to initiate investigation, monitoring, remediation, or abatement of  
28 nuisance, all in violation of California Civil Code § 3479.



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1 43. Upon information and belief, the contamination is actually and practicably abatable  
2 by reasonable measures and without unreasonable cost.

3 44. The contamination constitutes a nuisance and has interfered with, and continues to  
4 interfere with, Plaintiffs' use and enjoyment of Mill Pond and the Property, and has created a risk to  
5 human health and the environment.

6 45. As a direct and proximate result of the City's activities, Plaintiffs have incurred and  
7 will continue to incur damages in an amount according to proof at trial, including but not limited to,  
8 costs of the investigation, assessment, monitoring, and remediation of the nuisance; loss of property  
9 value; costs to repair and restore Mill Pond to a proper condition; statutory costs; and other damages  
10 as a result of the continuing nuisance for which the City is responsible.

11 WHEREFORE, Plaintiffs pray for judgment as set forth below.

12 **FIFTH CLAIM FOR RELIEF**

13 (Continuing Trespass – Against All Defendants)

14 46. Plaintiffs hereby incorporate by reference and re-state the allegations of the preceding  
15 paragraphs of this Complaint as though set forth in full at this place.

16 47. As a result of the control, maintenance, and use of City catchments and culverts,  
17 dioxins and furans in stormwater were caused to migrate and continue to migrate onto the Property  
18 and into Mill Pond without Plaintiffs' consent.

19 48. The existence of the ongoing and unabated contamination has unlawfully interfered,  
20 and continues to interfere, with Plaintiffs' possession, use and enjoyment of the Property and Mill  
21 Pond.

22 49. The contamination has been released, and continues to be released, as a result of the  
23 City's malfeasance and misfeasance, which stormwater contaminates the Property and Mill Pond  
24 with hazardous substances.

25 50. Upon information and belief, the release of hazardous substances is actually and  
26 practicably abatable by reasonable measures and without unreasonable cost.

27 51. As a direct and proximate result of the City's on-going and continuing trespass,  
28 Plaintiffs have incurred and will continue to incur damages including, but not limited to, costs of the

1 investigation and remediation of the trespass; loss of property value during the existence of the  
2 trespass; losses associated with the contamination; costs to repair and restore the Property and Mill  
3 Pond to proper condition; statutory costs; attorney’s fees and costs; and other damages as a result of  
4 the continuing trespass for which the City is responsible.

5 WHEREFORE, Plaintiffs pray for judgment as set forth below.

6 **SIXTH CLAIM FOR RELIEF**

7 (Inverse Condemnation – Against the City)

8 52. Plaintiffs hereby incorporate by reference and re-state the allegations of the preceding  
9 paragraphs of this Complaint as though set forth in full at this place.

10 53. As alleged herein, Mill Pond is situated in and upon the Property, which is currently  
11 owned by SNR and was previously owned by MRY. Article I, Section 19 of the California  
12 Constitution provides the basis for recovery against government entities under a theory of inverse  
13 condemnation. That section requires that just compensation be paid when private property is taken  
14 or damaged for a public use. The policy underlying the concept of inverse condemnation is that the  
15 costs of a public use benefiting the community should be spread among those receiving the benefit,  
16 as opposed to being allocated to a single person within a community.

17 54. The United States Supreme Court has indicated that by denying just compensation, a  
18 governmental action may be both unconstitutional as well as tortious.

19 55. At times relevant herein, Plaintiffs have held a protectable property interest in the  
20 Property and Mill Pond.

21 56. The City is responsible for the release of stormwater from its catchments and culverts  
22 which carry contaminated stormwater onto the Property and into Mill Pond.

23 57. Plaintiffs are informed and believe and thereon allege that, due to the City’s acts and  
24 omissions, Plaintiffs’ real property will continue to be contaminated by the release of hazardous  
25 substances.

26 58. On or around April 24, 2024, Plaintiffs sent a letter to the City Manager of Fort Bragg,  
27 demanding that the City cease and desist from discharging contaminated stormwater onto the  
28 Property. To date, the City has not responded to that letter.

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1 4. Damages equal to the diminution in the value of the Property, or alternatively,  
2 damages in an amount according to proof at trial, for the continued investigation, removal and/or  
3 other mitigation or remediation of the contamination to the Property and Mill Pond caused by the  
4 City;

5 5. All other forms of monetary damages and relief available for the City’s continuing  
6 trespass and ongoing nuisance;

7 6. Attorney’s fees on the First Claim for Relief under 42 U.S.C. § 1988; and

8 7. Attorney’s fees and costs awardable on the Sixth Claim for Relief under section 1036  
9 of the Code of Civil Procedure.

10 8. For such further and other relief as the Court deems just and equitable.

11 **JURY DEMAND**

12 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs demand a trial by jury  
13 on all claims and issues so triable.

14  
15 Dated: August 7, 2024

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LAW CORPORATION

16  
17 By: /s/ David A. Diepenbrock  
18 David A. Diepenbrock  
19 Attorneys for Plaintiffs  
20 SIERRA NORTHERN RAILWAY and  
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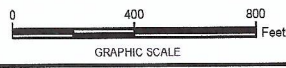
**Exhibit 1**





**LEGEND**

- ISCO SAMPLER
  - FLOW DIRECTION
  - PIPE LOCATION (APPROX.)
  - CONTOURS
  - SUBCATCHMENT BOUNDARY
  - PONDS
- NOTE: PIPE LOCATIONS ARE APPROXIMATE AND NOT ALL SURFACE WATER FLOW PATHS ARE SHOWN



FORMER GEORGIA-PACIFIC WOOD PRODUCTS FACILITY  
FORT BRAGG, CALIFORNIA  
Mill Pond Storm Water Sampling Report

**SITE HYDROLOGY AND SUBCATCHMENTS**



FIGURE 1-2