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BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36868

MENDOCINO RAILWAY –

PETITION FOR DECLARATORY ORDER

REPLY OF THE CALIFORNIA COASTAL COMMISSION

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PRELIMINARY STATEMENT

Mendocino Railway, a northern California tourist excursion operation, seeks a declaratory order from this Board that it is "a common carrier subject to the Board's jurisdiction entitled to any protections of applicable federal preemption." (Mendocino Railway's Petition for Declaratory Order (July 2, 2025) ("Petition"), p. 13.) However, since it acquired the subject line more than 20 years ago, Mendocino Railway has not operated as a common carrier and its tourist excursion rail line is not connected to the interstate rail network, thus, it is not entitled to the unusual declaratory order it seeks, and this Board should dismiss its petition in its entirety.

THE PARTIES

Mendocino Railway is a private company and wholly-owned subsidiary of Sierra Railroad Company. (Petition, p. 2, n. 1.) Mendocino Railway's relevant operations are limited to Mendocino County, California and are located primarily in the City of Fort Bragg, and within the California "coastal zone."

The California Coastal Commission ("Commission") is a state agency created by California Public Resources Code section 30300, as part of the California Coastal Act of 1976. ("Coastal Act") Cal. Pub. Res. Code §§ 30000-30900. The Commission has the authority and responsibility pursuant to Public Resources Code section 30330 to take any action necessary to carry out the provisions of the Coastal Act. *Id.* The Commission is charged with administering the Coastal Act in order to promote its policies, including by implementing a permitting system for any proposed development in the "coastal zone." Cal. Pub. Res. Code § 30600.

BACKGROUND AND STATEMENT OF THE CASE

At issue in Mendocino Railway's petition is its claim, without any factual support, that it has been a common carrier subject to the Board's jurisdiction since 2004, and that it fulfilled its common carrier obligations via the operations of its affiliate, Sierra Northern Railway, until 2022, at which time Mendocino Railway purportedly took over responsibility for freight service over its line. See Petition, p. 6. Mendocino Railway makes broad, unsubstantiated claims that it is facilitating freight and common carrier passenger service over its rail lines. Petition, p. 2. The Railway even alleges that its freight service frequency increased in 2020/2021 (in the middle of the pandemic) and that since 2008, it has been transporting non-excursion passengers along its line. See Petition, p. 6 & n. 10.

However, the Railway has provided no actual evidence that it has carried any freight over its lines or transported any non-excursion or non-local passengers in the more than 20 years it has owned the subject rail line and its attendant tourist excursion operation, or that it is even possible for its tourist excursion line to connect with interstate commerce. And, pointedly, the Mendocino County Superior Court ruled in 2023 that Mendocino Railway is not a public utility under state law, explaining that "[t]here is no dispute that the only evidence of railroad income [by the Railway] . . . was and is earned from the excursion services only." See Decision after Trial, *Mendocino Railway v. John Meyer*, 2023 CA Super. Ct. (Case No. SCUK-CVED-2020-74939) (April 19, 2023), attached hereto as

Exhibit 1, p. 5.[1] As such, the Railway is simply a tourist excursion operation that operates entirely within one state and, like the Napa Valley Wine Train, is not subject to the jurisdiction of this Board.

Moreover, since acquiring its line, Mendocino Railway has provided minimal, if any, common carrier services over its entirely *intrastate* rail line, and provides no transportation over the *interstate* rail network that would justify the Board asserting its jurisdiction over this tourist excursion operation.

ARGUMENT

MENDOCINO RAILWAY IS AN ENTIRELY INTRASTATE TOURIST EXCURSION OPERATION AND NOT A BOARD-REGULATED COMMON CARRIER

Mendocino Railway's argument that it is an "Class III common carrier subject to the Board's jurisdiction" is unsupported by the record. Petition, p. 2. The Railway's operations function entirely within the State of California. See Mendocino Railway's Protest and Comments to GRTA Adverse Abandonment Application ("Railway Comments"), *Great Redwood Trail Agency - Adverse Abandonment - Mendocino Ry. in Mendocino Cnty., Ca*, STB No. AB-1305_1[2] (June 17, 2024), at p. 27. And its single connection to another railroad and the interstate rail network has been embargoed and inoperative for more than 25

[1] In that same Decision After Trial, Judge Nadel cited to Mendocino Railway's CEO Jason Pinoli's admission that the Railway did not actually perform common carrier services between its acquisition of the subject line in 2004 through at least 2022. See Exhibit 1, p. 4.

[2] STB matter AB-1305_1 is an ongoing abandonment action initiated by the Great Redwood Trail Agency (GRTA) in early 2023 and pertaining to property owned by Mendocino Railway. Hereafter, this will be referred to as "GRTA STB Action."

years. *Id.*; see also Great Redwood Trail Agency's Rebuttal, GRTA STB Action (November 29, 2024), at p. 8. As such, the Railway is not connected to the interstate rail network, is not subject to regulation by the Board, and is not a common carrier under federal law. See *Napa Valley Wine Train, Inc. Petition for Declaratory Ord.*, 7 I.C.C.2d 954, 968 (I.C.C. July 18, 1991) [where passenger service is essentially local and freight operations are minimal, the train's service is not "an interstate operation in any respect."]; see also *Friends of the Eel River v. N. Coast R.R. Auth.*, 3 Cal. 5th 677, 707 (2017) ["The STB's jurisdiction applies even to intrastate transportation *so long as it is 'part of the interstate rail network*.'" (emphasis added, quoting 49 U.S.C. § 10501, subd. (a)(2)(A).)].

The Railway admits that its only potential connection to the interstate rail network is via the Middle Segment at Willits, which is controlled by the North Coast Railroad Authority (NCRA). Railway Comments, GRTA STB Action, at pp. 23, 37. Yet, that connecting NCRA line has been embargoed by the Federal Railroad Administration since 1998, six years before the Railway purchased the former California Western Railroad's (CWR) assets.[3] See GRTA's Application

[3] The Railway fails to acknowledge the existence of the embargo in its petition, relying on an amicus brief from the American Short Line and Regional Railroad Association (ASLRRA) to do so. Petition, pp. 25, 44 (Amicus Brief, pp. 3, 23.) ASLRRA provides multiple hypotheticals regarding the common carrier obligations for the owner of an embargoed line, presumably in recognition of the fact that the NCRA line is, in fact, embargoed, and in an attempt to argue, by implication, that the unusable NCRA line is still subject to the Board's jurisdiction, but provides no authority or evidence, if true, that such jurisdiction would automatically be conferred on the Railway. *Id.* In fact, this Board has found that the mere use of another railroad's section of rail physically connected to the interstate rail network is not sufficient to confer STB jurisdiction on a wholly intrastate railway. *All Aboard Florida F Operations LLC & All Aboard Florida –*

(continued…)

for Adverse Abandonment, GRTA STB Action (April 12, 2024), at pp. 3, 6-7, 35-36. Incredibly, however, the Railway makes broad claims in its petition that "it continues to move freight both in the intrastate and interstate markets," but provides no evidence of such interstate freight service, or the ability to accomplish such service. Petition, p. 11.

The Railway's own statements and its lack of any substantiating evidence lead to one conclusion: since its purchase of the CWR in 2004, the Railway has not been "a part of the interstate rail network" and not subject to the Board's jurisdiction.[4] See *Cuyahoga Falls & Hudson Ry. Co. v. Vill. of Silver Lake*, 122 F. App'x 845, 848 (6th Cir. 2005) ["Nothing within [49 U.S.C. § 10501] suggests that purely intrastate transportation that has no bearing on interstate transportation falls within the federal government's exclusive jurisdiction"]; see also *RLTD Ry. Corp. v. Surface Transp. Bd.*, 166 F.3d 808, 814 (6th Cir. 1999) [agreeing with the Board that it "loses jurisdiction over a line once it becomes severed from the interstate rail system"].

Even if the Railway was able to show some nominal freight movement over its lines in the past 20 years, and even acknowledging the existence of the Railway's published freight tariffs, as with the Napa Valley Wine Train, these minimal "freight operations do not provide a sufficient nexus to interstate

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Stations – Construction & Operation Exemption – in Miami, Fla. & Orlando, Fla. (Dec. 21, 2012) 2012 WL 6659923 (S.T.B.) at p. *3.

[4] Because Mendocino Railway disclaims any request that the Board make "any determinations with regard to the preemptive effects of any federal law or regulation," this reply does not address any aspect of potential preemption, and the Commission would seek a further opportunity to reply if the Board were to consider that separate issue sua sponte. (Petition, p. 3, fn. 5.)

commerce" to permit regulation by the Board. *Napa Valley Wine Train, Inc. Petition for Declaratory Ord.*, 7 I.C.C.2d 954, 967-68.

Similarly, the Railway makes sweeping pronouncements that it is facilitating passenger services and has been transporting non-excursion passengers since at least 2008, and further alleges that it publishes a passenger tariff for these non-excursion passengers. Petition, pp. 2; 6, n. 10; 10, n. 16. However, it provides no evidence or receipts from such non-excursion passengers and the passenger tariff it publishes provides that "Tickets and fares may only be sold to residents (of the line) or guests thereof," and includes a short list of residents who are the only individuals and businesses who might travel one-way on the Railway's line. See https://www.skunktrain.com/wp-content/uploads/2022/02/Commute-Fares-2022.1-FINAL.pdf. Again, similar to the Napa Wine Train, the Railway provides no evidence of a connection to Amtrak or any other interstate passenger service and its actual operations and marketing "are more a local tourist excursion than a conveyance for the through movement of passengers," as evidenced by the very limited applicability of its passenger tariff. *Napa Valley Wine Train, Inc. Petition for Declaratory Ord.*, 7 I.C.C.2d 954, 965.

Finally, the Railway's argument that the Board's approval of its purchase of CWR's assets out of bankruptcy more than 21 years ago confers common carrier status on it, irrespective of how it has operated its rail line or how minimal its involvement in interstate commerce has been, is misguided. Petition, pp. 6, 7. This Board's predecessor, the Interstate Commerce Commission (ICC), in

reviewing a similar petition from the Napa Valley Wine Train, acknowledged that the Wine Train's predecessor Southern Pacific Transportation Company (SP) used its line for freight operations, but, similar to Mendocino Railway, the Wine Train acquired the rail line primarily to conduct a passenger excursion service. *Napa Valley Wine Train, Inc. Petition for Declaratory Ord.*, 7 I.C.C.2d 954, 954-55. The Wine Train even made a similar argument to Mendocino Railway's, that because it acquired SP's line under federal law, it is an interstate carrier and "is the successor-in-interest to SP's rights and obligations on the line." *Id.* at p. 968. The ICC was not swayed by this argument, nor even the fact that, (unlike Mendocino Railway), the Wine Train maintained a direct connection to SP's interstate freight line, and the ICC determined that the Wine Train's passenger and freight operations were not subject to its federal jurisdiction. *Id.* at p. 968-69.

In its Petition, Mendocino Railway focuses on a 2013 Board decision that resolved a question regarding the specific operations of one small railroad when it acquired rail lines from an existing rail carrier. See Petition, p. 8, citing *Middletown & New Jersey Railroad, LLC* – Lease and Operation Exemption – Norfolk Southern Railway Company, FD 35412, slip op. at 4-5 (STB served March 27, 2013) ("*Middletown*"). However, in that *Middletown* decision, the Board was only addressing whether that small Middletown & New Jersey railroad was deemed a rail carrier at the time of its acquisition of a former rail carrier's line. *Middletown*, pp. 4-5. The Board found that it was, but also explained that, pursuant to 49 U.S.C. sections 10902, 10501, and 10102, its jurisdiction over a "rail carrier" is predicated on that rail carrier providing "common carrier railroad

transportation for compensation." *Id*, p. 4. Unlike Mendocino Railway, Middletown and New Jersey railroad actually fulfilled its common carrier obligations, beginning its common carrier service before it even acquired the former rail carrier's line, so there was not a question whether that small railroad was subject to the Board's jurisdiction, just when that jurisdiction took effect. *Id.*, pp 4-5. Because Mendocino Railway has not provided any common carrier services (or extremely limited services) over the past 20 years, and is not connected to interstate commerce, it is not necessary for this Board to assert its jurisdiction over this tourist excursion operation "to carry out [federal] transportation policy." 49 U.S.C.A. § 10502, subd. (a); see also *Cuyahoga Falls & Hudson Ry. Co. v. Vill. of Silver Lake*, 122 F. App'x 845, 847 (6th Cir. 2005) [The Board's jurisdiction "is not limitless, but rather extends only to 'rail carriers' who engage in transportation over the 'interstate rail network.'"]

Here, for more than two decades, Mendocino Railway has operated only a small, tourist excursion operation, entirely within one county in the state of California, with no connection to interstate commerce and no provision of common carrier services, and has provided no evidence to the contrary. Therefore, it is not a common carrier subject to this Board's jurisdiction and its petition for declaratory order must be denied.

CONCLUSION

For the foregoing reasons, the Commission requests that the Board decline to issue a declaratory order on Mendocino Railway's unusual and unsupported petition.

Dated: August 11, 2025

Respectfully submitted,

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EXHIBIT 1

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MENDOCINO

MENDOCINO RAILWAY **Plaintiff,** **v** **JOHN MEYER; MARYELLEN SHEPPARD; REDWOOD EMPIRE TITLE COMPANY OF MENDOCINO COUNTY; SHEPPARD INVESTMENTS; MENDOCINO COUNTY TREASURER-TAX COLLECTOR; all other persons unknown claiming and interest in the property; and DOES 1 through 100 inclusive.** **Defendants.**	**Case Nos.: SCUK-CVED-2020-74939** Decision After Trial Trial Dates: 8/23,24,24,29 and 11/10/22

This matter came on regularly for trial on August 23, 2022, and after a short delay concluded on 11/10/22. Plaintiff Mendocino Railway ("MR") was present through its President Robert Pinoli ("Pinoli") and represented by Glenn L. Block. Stephen Johnson appeared on behalf of John Meyer ("Meyer") who was also present. No other Defendant was required to appear. After trial, the parties were granted the opportunity to submit written closing briefs and reply briefs. The matter was submitted on February 8, 2022. In this case, Plaintiff seeks to acquire through eminent domain a 20-acre parcel owned by Meyer. The property is located west of the town of Willits and abuts Highway 20. It is known as 1401 West Highway 20 and Mendocino County Assessor Parcel Number 038-180-53. ("Property"). It is alleged by MR that it wants the property to construct and maintain a rail facility related to its ongoing and future freight and passenger rail operations.

Relevant Facts

Robert Pinoli, the President, and Chief Executive Officer of MR was the only witness who testified at trial. He testified that MR is a privately held corporation that owns and operates a railroad line commonly known as the "California Western Railroad" ("CWR") which is also most known as the "Skunk Train." In 2002, CWR filed a petition in Bankruptcy Court under Subchapter IV (Railroad Reorganization) of Chapter 11 of the Bankruptcy Code. Sierra Railroad Company (SRC), a holding company without carrier status was the successful bidder for the assets of CWR. SRC then formed Mendocino Railway, also a non-carrier, as a holding company to acquire the assets of CWR. The Articles of Incorporation for MR do not reflect the intent to operate as a

railroad. Rather, the Articles simply state that *"The purpose of the corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California…":* According to Pinoli, MR was a holding company and a "non-carrier" intending to initially operate CWR with the help of its affiliated entities, Sierra Northern Railway (a class III carrier) (SNR) , Midland Railroad Enterprises Corporation (a railroad construction and track maintenance company) (MREC) and Sierra Entertainment (a tourism entertainment and passenger operations company) (SE), all subsidiaries of SRC. MR certified that its projected revenues would not exceed revenue regulations that would render a designation other than a Class III rail carrier. A class III carrier is one that is a small or midsized railroad company that operates over a relatively short distance. (See Surface Transportation Board Notice of Exemption. (EX21). There was no designation of MR's status by the STB offered by MR. MR acquired CWR in 2004 when it purchased its assets through bankruptcy and operated it as a non-carrier.

The railroad line is approximately 40 miles in length and runs from its main station in the City of Fort Bragg to its eastern depot in the City of Willits. According to Pinoli the Fort Bragg Station is developed as a rail facility, with spur and siding tracks, a depot building, locomotives, passenger and freight cars, an engine house and storage facilities for its equipment. Presently, MR contends that it does not have adequate maintenance, repair and freight rail facilities to serve its ongoing operations at the Willits end of the line. MR contends that the acquisition of the Meyer property which is on the rail line will allow MR to fully operate its freight rail services with storage yards, maintenance, and repair shops, transload facilities, rail car storage capacity and a passenger depot.

In 2015, there was a landslide in "Tunnel No.1" that has prevented the trains from running the full length of the line since that date. No transportation between Fort Bragg and Willits has occurred since the tunnel was closed. It will take considerable funds to repair the tunnel so that it can function and there is no specified time frame for its completion.

MR concedes that currently its main function is the operation of a popular excursion train known as the Skunk Train for sightseeing purposes on the line through the redwoods. At present, the Skunk Train can leave the Willits station and travel west approximately 7.5 miles before turning around and traveling back to Willits. From Ft. Bragg, due to the tunnel collapse, the train can only travel east for 3.5 miles before it turns around and returns to Ft. Bragg. MR also operates motorized train bikes, and trail walks along the tracks. The excursion service generates ninety percent of MR's income. The other ten percent of MR's income is from leases and easement revenue.

In 1998, the California Public Utilities Commission made findings regarding MR's predecessor, CWRR regarding its status as a public entity. [1] The CPUC found that "[I]n providing its excursion service, CWRR is not functioning as a public utility, ….we conclude that CWRR's excursion service should not be regulated by

[1] The court takes judicial notice of the decision pursuant to Evidence Code Section 451(a)

the CPUC." (1988 Ca. PUC LEXIS 189 (1998). The CPUC through its counsel in 2022, concluded that MR is subject to inspections of railroad property as part of the Commission's obligation to ensure the safe operation of all railroads in California. (Pub. Util. Code §309.7) MR is designated as a Class III Commission regulated railroad. The Class III designation relates to the safety regulations and does not mean that it advances MR's status to public entity. MR does not dispute the 1998 findings and agrees that the term "transportation" for purposes of the public utility analysis excludes excursion services. Instead, according to Pinoli, MR is a public utility because it is a common carrier.

Analysis

1. Public Utility Status

Article 1, Section 19 of the California Constitution and CCP§1240.010 specify that private property can be taken by eminent domain for public use. The power of eminent domain by a public entity or utility is balanced with its constitutional obligation to pay "just compensation" to the owner of the property interest being acquired. This power is clearly defined and limited to certain circumstances by statute. The appropriate entity's right to take property must meet both constitutional and statutory limitations, to ensure the property owner of his or her right to be justly compensated for such taking. "The power of eminent domain may be exercised to acquire property for a particular use only by a person authorized by statute to exercise the power of eminent domain to acquire such property for that use." (CCP§1240.020.)

MR claims that it is entitled to avail itself of the eminent domain statute because it is a railroad corporation, a common carrier and through its activities it qualifies as a public utility.

Eminent Domain proceedings in the utility sector are permitted so long as the utility is a corporation or person that is a public entity. Public Utilities Code §610. A railroad corporation may condemn any property necessary for the construction and maintenance of its railroad. Public Utility Code §611. A railroad corporation includes every corporation or person owning, controlling, operating, or managing any railroad for compensation with this state. (See §230). PUC §229 provides that a "railroad" includes every commercial, interurban, and other railway…. owned, controlled, operated, or managed for public use in the transportation of persons or property." By definition a "common carrier" means every person and corporation providing transportation for compensation to or for the public or any portion thereof, including every railroad corporation providing transportation for compensation. (See §211). The central issue in this case is whether MR can be deemed a public utility for purposes of this eminent domain proceeding.

As stated above, MR operates a popular excursion train for sightseeing purposes on the line through the redwoods. MR also operates motorized train bikes and trail walks along its tract. Courts have defined and the parties do not dispute that "transportation" in the public utility context means "the taking up of persons or property at some point and putting them down at another." *City of St. Helena v Public Utilities Com. (2004) 119 Cal. App. 4th 793,902 (Quoting Golden Gate Scenic S.S. Lines, Inc. v Public Utilities Com. (1962) 57 Cal. 2d*

373). Round trip excursions do not qualify as "transportation" under Section 211 of the Public Utilities Code. (*City of St. Helena, supra).* As stated above, MR does not dispute the 1998 findings of the CPUC and agrees that the term "transportation" for purposes of the public utility analysis excludes excursion services.

Counsel for MR argues that "transportation" is not the only qualifier, but that the court should also interpret the term "provide" as it is stated Public Utilities Code §211. MR contends that to "provide" a service is to offer it by making the service available. In other words, MR should not be penalized simply because it is not transporting freight or passengers, it is the availability of the services that matters. MR argues that the "volume of service actually accepted by the public or a portion thereof is not relevant to whether the provider is a common carrier or any other kind of public utility." Addressing the participation of the affiliate entities, MR alleges a further distinction between providing the service and performance of the service. MR argues that even though it was not a common carrier it made the service available and its affiliate entities which may have been recognized as common carriers performed the service until at least 2022 when MR took over the operations of SNR. Assuming the court accepts this distinction, the testimony demonstrates otherwise.

A common carrier is a private or public utility that transports goods or people from one place to another for a fee. Unlike a private carrier, a public utility carrier makes no distinction in its customers as it is available to anyone willing to pay its fee. Pinoli testified that in addition to the excursion service, MR operates commuter passenger and freight services between Ft. Bragg and Willits and has been doing so since it purchased CWR in 2004. This testimony was later amended by Pinoli to reflect it was the affiliate entities SNR, MREC and Sierra Entertainment that performed the services through its own employees. Except for the excursion services, freight and passenger were minimal. This clarification came after Meyer discovered a Decision of the Railroad Retirement Act (45 U.S.C.§231 et seq.) and the Railroad Unemployment Insurance Act (45 U.S.C.§351 et seq.). MR had requested the Board to re-consider whether it, along with Sierra Entertainment, would be required to pay into the respective funds when they were not employers as defined under the act. (CWRR had been terminated as an employer effective September 30, 2003.) MR was merely a holding company and had no employees and Sierra Entertainment only provided excursion services. The Board found that MR was not a carrier performing freight and passenger services between the time of its acquisition in 2004 when it took over operations from Sierra Northern Railway in 2022 and to date. The Board further advised that their opinion could change upon proof of MR's carrier status. Pinoli agreed with this finding.

Pinoli clearly testified that 90% of the railroad revenue comes from the excursion train activities. The other 10% of its revenue comes from leases and revenue. When questioned, Pinoli finally clarified that MR did not actually perform common carrier services between the time it purchased the assets of California Western Railroad in 2004 through 2022 when it took over operations from Sierra Northern Railway. Those services were allegedly performed by the affiliate companies. No evidence was submitted to support this allegation. MR did not offer evidence in the form of contracts with the affiliated entities, operating agreements, ledgers, receipts, payments etc. The court can infer that such agreements would be appropriate to address at least compensation for services, liability, and indemnification, if in fact, the services were provided. MR is the

Plaintiff in this action and has the burden of proof to establish its legal status as a public utility. There is no dispute that the only evidence of railroad income during the relevant time was and is earned from the excursion services only. MR concedes that the excursion service does not fall under the category of "transportation" and does not qualify MR as a public utility.

Despite agreeing with the findings made by the Retirement Board, Pinoli testified that MR as the successor to CWR is doing today what CWR has been doing for 137 years of existence. Pinoli testified that besides hauling approximately 100 loads of aggregate and steel for two environmental restoration projects along the line, it hauls a very limited amount of freight at present. [2] He offered into evidence various letters from local businesses that have expressed an interest in obtaining freight services once they become available. Pinoli also acknowledged that any freight service from Ft. Bragg to Willits cannot happen until "Tunnel No. 1" is repaired. There was no specified time frame for completion of the repairs. In addition, it was not clear as to whether MR had the available funds to complete the necessary repairs anytime soon. The letters were purposely solicited by MR in connection with a grant application to obtain funds from the federal government to improve its line for freight services. The letters are no more than letters of a possible interest in services should they become available. The court gives little weight to the letters of support.

Pinoli also testified that over the years passenger service was provided to residents of the various cabins along the route between Fort Bragg and Willits. Despite the court's comments that Pinoli appeared to be a credible and knowledgeable witness, the best evidence would have been written documentation in the form of ticket receipts, ledgers evidencing income, contracts with Mendocino Transit Authority, and contracts for freight transportation. When given the opportunity by the court, MR was unable to provide any documentary evidence of MR's claim for the freight or passenger services it allegedly provided either through MR or its affiliates. The court therefore gives little weight to Pinoli's testimony regarding the abundant array of services provided. (CACI 203.) The court ultimately was not persuaded by Pinoli's testimony alone.

Pinoli testified that when MR assumed control of SNR services in 2022, it planned to expand freight and passenger services with equipment and new business opportunities. While the efforts were noted, the intention to provide services in the future is not sufficient to establish the railway as a public utility. (*See City of St. Helena v. Public Utilities Commission (2004) 119 Cal. App. 4th 793)* Through its enhanced efforts MR may be able to obtain public utility status in the future but court is not convinced that such status is appropriate at this time based on the evidence provided by MR at trial.

2. Eminent Domain

[2] No documents, including but not limited to contracts, invoices, receipts were produced regarding this alleged " freight transportation" with Trout Unlimited. The oral testimony reflected a contract with Trout Unlimited and all funding was from state or federal funds. The work appeared to this court to be a combined project to benefit the environment including the rail line.

Assuming for purposes of this opinion that MR has public utility status, it still needs to meet the statutory requirements of the eminent domain law. As stated above, a railroad company is entitled to condemn property that is necessary for the construction and maintenance of its railroad. (See Public Util. Code §611). "The power of eminent domain may be exercised to acquire property for a proposed project only if all of the following are established: (a) the public interest and necessity require the project.; (b) the project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury; (c) the property sought to be acquired is necessary for the project." CCP§1240.30. The power to take property under eminent domain is not unlimited. Such power "[M]ay be exercised to acquire property only for public use." *(CCP §1240.010; City of Oakland v. Oakland Raiders (1982) 32 Cal. 3d 60,69.)* "The statutory authorization to utilize the power of eminent domain for a given "use, purpose, object, or function' constitutes a legislative declaration that the exercise is a 'public use.'" (*City of Oakland.*)

Acquisition of the 20-acre site would enhance the operations of MR's excursion service that admittedly does not fall within the definition of transportation. MR cannot exercise the power of eminent domain to carry on its private business activities. In *City & County of San Francisco v. Ross (1955) 44 Cal 2d 52,54*, the City sought to acquire by eminent domain a site that would subsequently be leased to private individuals who were planning to build and operate a parking structure and other facilities including private commercial retail. The court stated, "[w]hile it might be argued in the present case that the percentage area to be used for other commercial activity is small enough to be merely an incident to the parking activity and not in itself enough to invalidate the whole plan, nevertheless it aids in characterizing the whole operation as a private one for private gain." "The Constitution does not contemplate that the exercise of the power of eminent domain shall secure to private activities the means to carry on a private business whose primary objective and purpose is private gain and not public need." *(Council of San Benito County Governments v. Hollister Inn, Inc. (2012) 209 Cal. App. 4th 473,494 (citations omitted.)* As stated previously, the income generated from the Skunk Train excursion service is 90% of MR's revenue. The court can easily find that MR's primary objective is to obtain the property to serve the excursion service. No explanation was offered to distinguish the private operations from the "proposed" freight and passenger enhancements.

Notwithstanding the above, MR's proposed use of the property conflicts with the statutory requirements of public use and least private injury. At trial, approximately seven months of internal MR emails were admitted into evidence. Pinoli conceded the emails revealed that the original conception of the MR project reflected a train station, campground, and RV park. He also testified that his boss was known to brainstorm ideas and concepts for the acquisition and use of property acquired by MR, but those ideas were not always fully vetted. The only conceptual drawing for the Meyer property prepared by MR at the time it filed its complaint however, depicted a station/store, campground, and long-term RV rental park. It wasn't until June 2022, approximately 18 months after the eminent domain action was filed that a preliminary site plan was prepared. The site plan offered at trial is one that generally depicts maintenance/repair facilities, a yard, vehicle parking, a rail transloading facility, dept offices, a platform and a natural habitat preserve. The site plan is considerably different from the original conceptual drawing.

Pinoli admitted that the use of the property for a private campground was not consistent with the operation of a railroad and could not be the basis for eminent domain. Instead, he said that the current purpose is to develop the necessary maintenance and depot facilities on the Willits side of the line and to create a transload facility. The transload facility would not be operational or even necessary until "Tunnel No. 1" was usable. In addition to the original drawing utilized at the time the case was filed, the site drawing was the only evidence offered to address the use of the property. There was no evidence of an actual plan for development or funding for the project. "[A]n adequate project description is essential to the three findings of necessity that are required to be made in all condemnation cases. Only by ascertaining what the project is can the governing body made those findings." *(City of Stockton v. Marina Towers LLC (2009)171 Cal. App. 4th 93,113.)* While the plan in the City of Stockton case was severely lacking in detail, which arguably differs from the instant case, the principle that a property owner is entitled to know what is being planned for the land remains the same. The court questions the credibility of the late hour evidence of a site drawing presented in the instant case. Particularly so, when a transload facility was added with MR's knowledge that freight transportation could not happen until "Tunnel No. 1" was available. No evidence was presented to establish whether or when the tunnel would be available for use.

The credibility of the testimony is also questionable when the initial plan prepared at the time the complaint was filed included a campground. Following the initial plan, in preparation for trial, MR develops a new site plan that eliminates the initial concept. This was done presumably to satisfy the requirements of the statute. Also lacking is an analysis from MR as to the impact the maintenance and transload facility would have on the residents (including Meyer) living directly adjacent to the proposed 20 acre site. The court finds that Pinoli's testimony that there would be no real impact on the residents is simply insufficient. Without such information the court is unable to determine if the project would impose a greater injury to the residents. The court finds that MR did not meet its burden to establish that the current site plan supports a project that is planned or located in the matter that will be most compatible with the greatest public good and least private injury which is required by statute and case law. *(See CCP §1240.030 and SFPP v. Burlington Northern & Santa Fe Ry. Co. (2004) 121 Cal. App. 4th 452.)*

The court concludes that MR has failed to meet its burden of establishing that its attempt to acquire Meyer's property through eminent domain is supported by constitutional and statutory powers. The court finds in favor of Meyer.

Dated: 4/19/2023

Hon. Jeanine B. Nadel
Judge of the Superior Court

CERTIFICATE OF SERVICE

In accordance with 49 C.F.R Section 1104.12, I hereby certify that I have this day served copies of the California Coastal Commission's Reply to Mendocino Railway's Petition for Declaratory Order in Docket No. FD 36868 ("Reply") upon all parties of record in this proceeding. Service was accomplished by email service of the Request on August 11th, 2025. I also served both parties by U.S. mail on August 11th, 2025 at the following addresses:

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Executed in Oakland, California on August 11, 2025.

Patrick Tuck