

No. 23-15857

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

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

**APPELLANT'S CORRECTED SECOND SUPPLEMENTAL MOTION
FOR JUDICIAL NOTICE; DECLARATIONS OF
CRYSTAL ZORBAUGH AND PAUL BEARD II IN SUPPORT THEREOF**

Paul J. Beard II
FISHERBROYLES LLP
453 S. Spring St., Suite 400-1458
Los Angeles, CA 90013
Telephone No.: 818-216-3988
Email: paul.beard@fisherbroyles.com

Attorney for Appellant MENDOCINO RAILWAY

Pursuant to Federal Rule of Appellate Procedure 27, Circuit Rule 27-1, and Federal Rule of Evidence 201, Appellant Mendocino Railway (“MRY”) requests that the Court take judicial notice of the following documents. The documents are important to correcting a material misstatement by the California Coastal Commission in its Answering Brief.

EXHIBIT 5: January and February 2024 emails between Appellee California Coastal Commission and the Federal Railroad Administration (“FRA”), an agency of the United States Department of Transportation (“DOT”), in which the Commission asserts review authority over one of MRY’s railroad projects that DOT has agreed to fund, pursuant to the Coastal Zone Management Act.

EXHIBIT 6: MRY’s February 23, 2024 email to the Commission, with a copy to the same FRA officials, stating MRY’s objection to the Commission’s purported authority under the CZMA to review the railroad project.

The Commission and Appellee City of Fort Bragg have indicated that they likely will oppose this Motion.

ARGUMENT

“[A]t any stage of the proceeding,” the Court “may judicially notice a fact that is not subject to a reasonable dispute because it . . . can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. Fed. R. Evid. 201. “However, public records are subject to judicial notice only to prove their existence and content, but not for the truth of the matters asserted therein.” *Mililani Grp., Inc. v. O’Reilly Automotive, Inc., No.*, 2:12-cv-00891 JAM-

CKD, 2012 U.S. Dist. LEXIS 168262, 2012 WL 5932980, at *1 (E.D. Cal. Nov. 27, 2012).

Correspondence to and from government entities and officials are matters of public record that may be judicially noticed. *Mills v. City of Covina*, 2017 U.S. Dist. LEXIS 112709, *7 (C.D. Cal. 2017) (taking judicial notice of letter from private citizen to clerk of a city, as well as a letter from the city to said citizen); *Hill St. Health Servs. LLC v. County of L.A.*, 2016 U.S. Dist. LEXIS 192359, **6-7 (C.D. Cal. Nov. 16, 2016) (taking judicial notice of city letter to plaintiff); *Davenport v. Bd. of Trs. of State Ctr. Cmty. Coll. Dist.*, No. 1:07-cv-00494 OWW SMS, 2008 U.S. Dist. LEXIS 6479, 2008 WL 170876, at *3 (E.D. Cal. Jan. 18, 2008) (taking judicial notice of letter from California state agency).

As noted above, **Exhibit 5** consists of a true and correct copy of an email chain between state and federal government officials, dated from January to February 2024. In it, the Commission asserts its authority under the CZMA to review a railroad project that MRY seeks to undertake, with the financial assistance of the Department of Transportation. MRY was not copied on any of the emails contained in Exhibit 5 and was not otherwise aware of the Commission's emails until one of the federal officials in the email chain forwarded it to MRY's railroad-transportation counsel on or about February 21, 2024. Declaration of Crystal Zorbaugh, ¶ 3.

Exhibit 6 is a true and correct copy of a February 23, 2024, email that MRY's counsel in this matter sent to the same state and federal government officials identified in the email chain at Exhibit 5. The email states MRY's

objection, on the basis of federal preemption, to the Commission’s interference with MRY’s railroad project via the Commission’s “review” authority under the CZMA. Declaration of Paul Beard II, ¶ 3.

MRY seeks judicial notice of the existence and content of the emails in Exhibits 5 and 6, not the truth of the matters asserted in those emails. Specifically, MRY seeks judicial notice that, as recently as this month, the Commission has expressed its view that it has CZMA authority over MRY, which MRY vigorously disputes. The purpose of the Exhibits is to refute the Commission’s false assertion in its briefing that “there is no actual controversy between the parties regarding the application of the CZMA to the Railway’s activities.” CCC Answering Br. at 31. The existence of such an ongoing dispute goes to the eighth factor under the *Colorado River* doctrine—i.e., whether the State Action (which does not implicate the Coastal Commission’s CZMA power) can definitively resolve the Federal Action (which does).

Exhibits 5 and 6 were not before the district court, principally because the emails were created in January and February 2024. Further, the parties in the district court focused their briefing on *Younger* abstention, not the *Colorado River* doctrine. Indeed, the Commission did not the *Colorado River* doctrine at all in its motion to dismiss below, let alone the eighth *Colorado River* factor. So, there was no occasion for MRY to establish the ongoing dispute between the parties over the Commission’s CZMA authority. The district court dismissed this action based on a paragraph in the *City’s* motion that didn’t even apply the factors to the facts of this case.

For these reasons, Mendocino Railway requests that Exhibits 5 and 6 be judicially noticed.

Date: February 27, 2024

Respectfully submitted,

s/ Paul Beard II

Attorney for Appellant
MENDOCINO RAIWAY

DECLARATION OF CRYSTAL ZORBAUGH

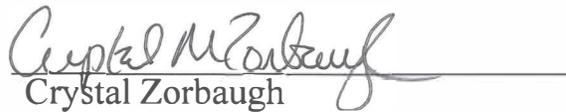
I, Crystal Zorbaugh, declare as follows:

1. I am an attorney with the Washington D.C. law firm of Mullins Law Group and am railroad-transportation counsel for Mendocino Railroad. I have personal knowledge of the facts stated herein. If called upon to testify, I could and would testify competently thereto.

2. **EXHIBIT 5** is a true and correct copy of January and February 2024 emails between Appellee California Coastal Commission and the Federal Railroad Administration, an agency of the United States Department of Transportation. When I learned of the correspondence and after a request for the information and threat of a FOIA request, Faris Mohammed, an attorney for the Federal Railroad Administrative, forwarded me the correspondence.

3. I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct.

DATED: February 28, 2024


Crystal Zorbaugh

DECLARATION OF PAUL BEARD II

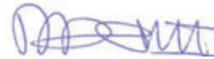
I, Paul Beard II, declare as follows:

1. I am counsel of record for Appellant Mendocino Railway in this appeal. I have personal knowledge of the facts stated herein. If called upon to testify, I could and would testify competently thereto.

2. **EXHIBIT 6** is a true and correct copy of an email I sent on February 23, 2024 to the state and federal government officials identified therein.

3. I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct.

DATED: February 28, 2024



Paul Beard II

EXHIBIT 5

From: [Teufel, Cassidy@Coastal](mailto:Teufel,Cassidy@Coastal)
To: [McAdams, Lauren \(OST\)](mailto:McAdams,Lauren@Coastal)
Cc: [Christen, Matthew@Coastal](mailto:Christen,Matthew@Coastal); [Helperin, Alex@Coastal](mailto:Helperin,Alex@Coastal); [Mohammed, Faris \(FRA\)](mailto:Mohammed,Faris@Coastal); [Larkin, Jamie \(FRA\)](mailto:Larkin,Jamie@Coastal); [Rimol, Kaitlyn \(Volpe\)](mailto:Rimol,Kaitlyn@Coastal); [Cabrera, Jase \(FHWA\)](mailto:Cabrera,Jase@FHWA); [Rothermel, Eric \(FRA\)](mailto:Rothermel,Eric@Coastal)
Subject: Re: Follow up
Date: Friday, January 26, 2024 11:04:00 AM

CAUTION: This email originated from outside of the Department of Transportation (DOT). Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Hi Lauren –

It looks like Eric is out of the office so I'm sending this to you.

When we last spoke on our conference call last week, Commission staff's understanding was that all the agencies involved in the RRIF loan to Mendocino Railway committed to doing a better job of communicating and collectively coordinating on Coastal Zone Management Act (CZMA) matters. We were therefore disappointed by Eric's email rebuffing our request to meet, as we believe it would be beneficial to promptly schedule a follow-up with you to discuss what appears to be your refusal to comply with required CZMA review of Build America Bureau's (BAB) loan to Mendocino Railway.

The CZMA is clear that once a federal agency activity is identified as being subject to the CZMA, "Federal agencies shall provide State agencies with consistency determinations for all Federal agency activities affecting any coastal use or resource." (Title 15 CFR section 930.34(a).) We explained in a letter in 2021 how this project affects coastal resources, and you agreed to submit a consistency determination for this activity at that time. Our letter identified that this loan has reasonably foreseeable effects on coastal resources, and those effects are not limited to the specific development that was originally proposed in the coastal zone and later removed from the project.

While we will provide additional information on those coastal resource effects, I would note that under the CZMA, it is not the state that has the burden of proving effects but rather the federal agency's obligation to demonstrate to the state a lack of effects. (Title 15 CFR section 930.35(a)). While we continue to believe that a consistency determination is necessary, at a minimum, BAB is required to submit a negative determination to the Commission. (Id.) The Commission put BAB on notice in 2021 that it believed the activity would have coastal effects, and we have not changed that position. Both for this reason and due to the consistency assessment and findings on coastal effects included in BAB's NEPA document, Section 930.35(a) applies in this situation, and a negative determination is required.

Although we understand that the loan has been approved, you still have an opportunity to meet your CZMA obligations and resolve this situation by submitting a consistency determination (or, at minimum, a negative determination) and allowing the Coastal Commission to complete its required review before any funds are dispersed.

We would very much like to resolve this situation with you cooperatively. I sincerely hope you share that objective and accept the path forward laid out above.

Regards,
Cassidy

From: Rothermel, Eric (FRA) <eric.rothermel@dot.gov>
Sent: Thursday, January 25, 2024 1:31 PM
To: Teufel, Cassidy@Coastal <Cassidy.Teufel@coastal.ca.gov>
Cc: Christen, Matthew@Coastal <matthew.christen@coastal.ca.gov>; Helperin, Alex@Coastal <Alex.Helperin@coastal.ca.gov>; Mohammed, Faris (FRA) <faris.mohammed@dot.gov>; Larkin, Jamie (FRA) <jamie.larkin@dot.gov>; Rimol, Kaitlyn (Volpe) <Kaitlyn.Rimol@dot.gov>; Cabrera, Jase (FHWA) <jase.cabrera@dot.gov>; McAdams, Lauren (OST) <lauren.mcadams@dot.gov>
Subject: RE: Follow up

Cassidy-

At this time because we do not have any additional information describing how the project would affect coastal resources or uses with references to the applicable enforceable policies, we do not feel a meeting is necessary at this time. When our office receives that information, we will review the information and welcome another meeting.

Eric

Eric Rothermel

Environmental Protection Specialist
Environmental Review Division
Office of Environmental Program Management
Office of Railroad Development
Federal Railroad Administration
Cell: [804-638-5210](tel:804-638-5210)

From: Teufel, Cassidy@Coastal <Cassidy.Teufel@coastal.ca.gov>
Sent: Thursday, January 25, 2024 2:39 PM
To: Rothermel, Eric (FRA) <eric.rothermel@dot.gov>
Cc: Christen, Matthew@Coastal <matthew.christen@coastal.ca.gov>; Helperin, Alex@Coastal

<Alex.Helperin@coastal.ca.gov>; Mohammed, Faris (FRA) <faris.mohammed@dot.gov>; Larkin, Jamie (FRA) <jamie.larkin@dot.gov>; Rimol, Kaitlyn (Volpe) <Kaitlyn.Rimol@dot.gov>; Cabrera, Jase (FHWA) <jase.cabrera@dot.gov>; McAdams, Lauren (OST) <lauren.mcadams@dot.gov>

Subject: RE: Follow up

CAUTION: This email originated from outside of the Department of Transportation (DOT). Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Hi Eric –

I understand your position but think this warrants further discussion. Are you not willing to meet with us this week to continue talking?

-Cassidy

From: Rothermel, Eric (FRA) <eric.rothermel@dot.gov>

Sent: Thursday, January 25, 2024 11:11 AM

To: Teufel, Cassidy@Coastal <Cassidy.Teufel@coastal.ca.gov>

Cc: Christen, Matthew@Coastal <matthew.christen@coastal.ca.gov>; Helperin, Alex@Coastal <Alex.Helperin@coastal.ca.gov>; Mohammed, Faris (FRA) <faris.mohammed@dot.gov>; Larkin, Jamie (FRA) <jamie.larkin@dot.gov>; Rimol, Kaitlyn (Volpe) <Kaitlyn.Rimol@dot.gov>; Cabrera, Jase (FHWA) <jase.cabrera@dot.gov>; McAdams, Lauren (OST) <lauren.mcadams@dot.gov>

Subject: RE: Follow up

Cassidy-

Thanks for the follow up and discussing with your team. As we discussed on the phone, FRA has determined that effects on coastal resources or uses would be avoided. Additionally, as indicated in our last meeting, the Commission may submit additional information to FRA describing how the project would affect coastal resources or uses with references to the applicable enforceable policies described in the relevant coastal management plan. FRA will review additional information provided by the Commission. Currently, we do not have additional information from the Commission or anything to follow up on.

Eric

Eric Rothermel

Environmental Protection Specialist
Environmental Review Division
Office of Environmental Program Management
Office of Railroad Development
Federal Railroad Administration
Cell: [804-638-5210](tel:804-638-5210)

From: Teufel, Cassidy@Coastal <Cassidy.Teufel@coastal.ca.gov>
Sent: Wednesday, January 24, 2024 7:46 PM
To: Rothermel, Eric (FRA) <eric.rothermel@dot.gov>
Cc: Christen, Matthew@Coastal <matthew.christen@coastal.ca.gov>; Helperin, Alex@Coastal <Alex.Helperin@coastal.ca.gov>
Subject: Follow up

CAUTION: This email originated from outside of the Department of Transportation (DOT). Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Hi Eric –

Hopefully you've had a chance to circle up with your team on this and are available for a follow up call with us on Thursday or Friday to discuss a path forward. We maintain the position that federal consistency review is required for this loan and that a consistency determination (or, at least, negative determination) needs to be submitted and Commission concurrence obtained before any funding is provided to Mendocino Railway.

Thanks,

Cassidy

Cassidy Teufel

Director

Energy, Ocean Resources,

Federal Consistency and

Technical Services Divisions

California Coastal Commission

455 Market Street, Suite 228

San Francisco, CA 94105

<http://www.coastal.ca.gov/>

From: [Teufel, Cassidy@Coastal](mailto:Teufel,Cassidy@Coastal)
To: [Larkin, Jamie \(FRA\)](mailto:Larkin,Jamie(FRA))
Cc: [Mohammed, Faris \(FRA\)](mailto:Mohammed,Faris(FRA)); [McAdams, Lauren \(OST\)](mailto:McAdams,Lauren(OST)); [Helperin, Alex@Coastal](mailto:Helperin,Alex@Coastal); [Christen, Matthew@Coastal](mailto:Christen,Matthew@Coastal)
Subject: RE: Check in
Date: Tuesday, February 13, 2024 1:49:16 AM

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Hi Jamie –

Thank you for circling back on this and we're in agreement with the points you've outlined below and will proceed with considering and reviewing the CE worksheet as a Negative Determination submittal. I do want to note, however, that our preference would be to consider the date of your email, Feb. 8, as the submittal date so as to avoid losing half of the already expedited review period. Hopefully, this is a change you can accommodate. If not, we'll do our best with the remaining time available and circle back in a couple weeks if our review is not able to be completed so quickly and we need to discuss additional time.

Thanks again,

Cassidy

Cassidy Teufel

Director

Energy, Ocean Resources,

Federal Consistency and

Technical Services Divisions

California Coastal Commission

455 Market Street, Suite 228

San Francisco, CA 94105

<http://www.coastal.ca.gov/>

From: Larkin, Jamie (FRA) <jamie.larkin@dot.gov>
Sent: Thursday, February 8, 2024 4:09 PM
To: Teufel, Cassidy@Coastal <Cassidy.Teufel@coastal.ca.gov>
Cc: Mohammed, Faris (FRA) <faris.mohammed@dot.gov>; McAdams, Lauren (OST) <lauren.mcadams@dot.gov>
Subject: RE: Check in

Good afternoon Cassidy,

We appreciate your patience while we considered your position on the Mendocino Railway Railroad Rehabilitation Project (Project). As you know, the Build America Bureau (Bureau) recently approved a loan for the Project under the Railroad Rehabilitation and Improvement Financing (RRIF) program. The Federal Railroad Administration (FRA) maintains its position that the Project will not result in effects to coastal resources of the coastal zone, and a negative determination was not required for approval of the RRIF loan.

However, in response to the Commission's assertion that it believes the Project will result in

reasonably foreseeable effects on coastal resources, FRA is amenable to additional coordination with the Commission, if the Commission agrees to the following:

- FRA and the Commission agree that although the loan has been approved, no disbursements on the project have been made to date. The Bureau will withhold disbursements on the Project during the Commission's review of FRA's negative determination. FRA will notify the borrower that construction activities may not commence until FRA has given notice to proceed. This agreement between FRA and the Commission constitutes an alternative notification schedule.
- FRA and the Commission agree that FRA's CE worksheet submitted to the Commission on January 12, 2024, constitutes FRA's negative determination for purposes of 15 CFR § 930.35.
- FRA and the Commission agree that the Commission will review FRA's negative determination within 60 days from receipt (January 12, 2024). Upon request, FRA will approve one extension of the Commission's review period, not to exceed 15 days.
- FRA and the Commission agree that if the Commission objects to FRA's negative determination, the Commission will explain the basis for its objection in writing.
- FRA and the Commission agree that if the Commission objects to FRA's negative determination, FRA and the Commission will convene a meeting to resolve the disagreement, unless FRA concurs with the Commission's objection, then FRA will coordinate with the Commission to complete the consistency process, in accordance with 15 CFR §§ 930.35(c), 930.34.

If the Commission cannot agree to these terms, the Commission may elevate its concerns as it deems appropriate. Please confirm whether the Commission would like to engage in further coordination with FRA by February 13. If you require additional time to consider this request, please let me know as soon as possible.

Sincerely,

Jamie Larkin (she/her)
Environmental Protection Specialist, Acting Supervisory
Federal Railroad Administration
Jamie.Larkin@dot.gov

From: Teufel, Cassidy@Coastal <Cassidy.Teufel@coastal.ca.gov>
Sent: Friday, February 2, 2024 4:13 PM
To: Larkin, Jamie (FRA) <jamie.larkin@dot.gov>
Cc: Rothermel, Eric (FRA) <eric.rothermel@dot.gov>; Mohammed, Faris (FRA) <faris.mohammed@dot.gov>; McAdams, Lauren (OST) <lauren.mcadams@dot.gov>
Subject: RE: Check in

CAUTION: This email originated from outside of the Department of Transportation (DOT). Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Hi Jamie –

Thank you for reaching out on this, I missed your email when I came in but Eric directed me to it today. I'll assume you've been briefed and are up to speed so I'll reiterate the message I provided to your colleagues - please let me know when we can expect to receive the response you referenced and confirm that DOT will not be dispersing any funds until this situation has been resolved.

I'd also appreciate it if you could provide the contact information for your supervisor and a back-up contact. Between DOT staff not being available and not responding, having a single point of contact is not working.

Thank you,

Cassidy

Cassidy Teufel

Director

Energy, Ocean Resources,

Federal Consistency and

Technical Services Divisions

California Coastal Commission

455 Market Street, Suite 228

San Francisco, CA 94105

<http://www.coastal.ca.gov/>

From: Larkin, Jamie (FRA) <jamie.larkin@dot.gov>

Sent: Wednesday, January 31, 2024 12:39 PM

To: Teufel, Cassidy@Coastal <Cassidy.Teufel@coastal.ca.gov>

Cc: Rothermel, Eric (FRA) <eric.rothermel@dot.gov>; Mohammed, Faris (FRA)

<faris.mohammed@dot.gov>; McAdams, Lauren (OST) <lauren.mcadams@dot.gov>

Subject: RE: Check in

Good afternoon Cassidy,

Thanks for reaching out. I will be the new point of contact for this Project moving forward, as I am taking over duties for Eric as Acting Supervisory Environmental Protection Specialist. At the moment, we are working internally with the Build America Bureau on a response and will be in touch soon.

Thanks again,

Jamie

Jamie Larkin (she/her)

Environmental Protection Specialist, Acting Supervisory

Federal Railroad Administration

Jamie.Larkin@dot.gov

Teufel, Cassidy@Coastal <Cassidy.Teufel@coastal.ca.gov>

Sent: Wednesday, January 31, 2024 3:01 PM

To: McAdams, Lauren (OST) <lauren.mcadams@dot.gov>; Rothermel, Eric (FRA) <eric.rothermel@dot.gov>

Subject: RE: Check in

CAUTION: This email originated from outside of the Department of Transportation (DOT). Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Hi Lauren and Eric –

It's been a couple days without a response to my email and voicemail so I wanted to reach out again to see when I can expect responses to my emails from Friday and Monday and to again request a call back.

Thanks,
Cassidy

From: Teufel, Cassidy@Coastal

Sent: Monday, January 29, 2024 1:02 PM

To: McAdams, Lauren (OST) <lauren.mcadams@dot.gov>; Rothermel, Eric (FRA) <eric.rothermel@dot.gov>

Subject: RE: Check in

Hi Lauren –

Thank you for the quick response and confirmation. Do you have an estimate for when we can expect that response? Also, can you confirm that no funding will be provided to the railroad before we receive the response and can discuss it with you all?

Thanks again,
Cassidy

From: McAdams, Lauren (OST) <lauren.mcadams@dot.gov>

Sent: Monday, January 29, 2024 12:50 PM

To: Teufel, Cassidy@Coastal <Cassidy.Teufel@coastal.ca.gov>; Rothermel, Eric (FRA) <eric.rothermel@dot.gov>

Subject: RE: Check in

Hi Cassidy,

I can't speak for Eric, but I received the email you sent on Friday. The Build America Bureau is working on a response.

Lauren

Lauren McAdams (she/her/hers)

Attorney-Advisor

Office of the General Counsel

US Department of Transportation

1200 New Jersey Avenue SE

Washington, DC 20590

202.366.5375

From: Teufel, Cassidy@Coastal <Cassidy.Teufel@coastal.ca.gov>

Sent: Monday, January 29, 2024 12:30 PM

To: McAdams, Lauren (OST) <lauren.mcadams@dot.gov>; Rothermel, Eric (FRA)

<eric.rothermel@dot.gov>

Subject: Check in

CAUTION: This email originated from outside of the Department of Transportation (DOT). Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Hi Eric and Lauren –

I just wanted to check in quickly to confirm you received my email on Friday and can expect a response.

Thanks,

Cassidy

EXHIBIT 6

Paul Beard

From: Paul Beard
Sent: Wednesday, February 21, 2024 2:07 PM
To: Cassidy.Teufel@coastal.ca.gov
Cc: jamie.larkin@dot.gov; faris.mohammed@dot.gov; lauren.mcadams@dot.gov; Alex.Helperin@coastal.ca.gov; matthew.christen@coastal.ca.gov
Subject: Objection to Review of Mendocino Railway's RRIF Express Loan

Good afternoon, Cassidy:

We are California counsel for Mendocino Railway. It has come to our attention that the California Coastal Commission has asserted CZMA authority to review a railroad project that was already approved for federal funding (and completed National Environmental Policy Act review) under the Build America Bureau's RRIF Express loan program. While the Federal Railroad Administration ("FRA") has determined that the project will not affect coastal resources and maintains its position that the Project will not result in effects to coastal resources of the coastal zone and a negative determination was not required for approval of the RRIF loan, we understand that the FRA has graciously (and conditionally) agreed to additional consultation with the California Coastal Commission. As we understand it, the California Coastal Commission has been given until March 12 to comment further (and may be granted one 15-day extension if necessary).

Mendocino Railway strongly objects to the Commission's after-the-fact review of the project under the CZMA. The FRA already has determined that the project will have no impact on coastal resources and approved the loan under federal laws and policies. Further, because Mendocino Railway is a rail carrier within the exclusive jurisdiction of the federal Surface Transportation Board, the Commission is preempted by the ICCTA from objecting to or otherwise delaying the railroad's project on any state- or local-law basis, including policies set forth in the Coastal Act.

Nothing herein shall constitute any waiver or concession concerning the Commission's lack of authority to insert itself into the funding and execution of Mendocino Railway's project.

Paul Beard II

Partner / CERTIFIED SPECIALIST IN APPELLATE LAW*

FISHERBROYLES, LLP

453 S. Spring St., Ste 400-1458

Los Angeles, CA 90013

Direct: 818-216-3988

paul.beard@fisherbroyles.com

*CERTIFIED BY THE STATE BAR OF CALIFORNIA

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