



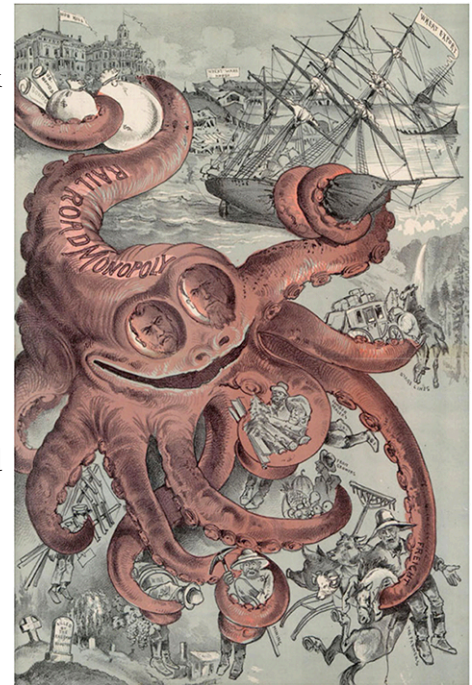
GrassRoots Institute

Progressive Solutions for the Common Good

HOW SIERRA COMPANIES TREAT OTHER COMMUNITIES A preview of what Fort Bragg can expect from Mendocino Railway?

Mendocino Railway (MR) is a subsidiary of Sierra Railroad Company (SRC).¹ MR operates two tourist trains: the Skunk Train in Fort Bragg, California and the River Fox Train in West Sacramento.² SRC provides freight railroad services through its subsidiary Sierra Northern Railway (SNR) and is attempting to develop renewable zero-emission energy and fuels through its subsidiary Sierra Energy (SE).³

SRC is run by Michael Hart, Torgny Nilsson and David Magaw, who hold both executive and board positions in the company: Hart, Nilsson and Magaw are CEO, general counsel and CFO, respectively, and they sit on the board of SRC alongside Christopher Hart and Michael Buck; Nilsson is board secretary.⁴ Michael Hart, Nilsson and Magaw also hold leadership roles in SRC's subsidiaries. Michael Hart is a director of MR, Nilsson is general counsel and secretary, and Magaw is CFO. Robert Pinoli is president and CEO. Chris Hart is vice president of SRC and the project manager for MR's Noyo Headlands Project (the mill site development).



Like MR has done locally, MR's parent and sister companies have used claims about common-carrier status and legal technicalities to disregard concerns of government agencies, residents and businesses in other parts of California. For example:



SNR allegedly would not sign permits, refused to agree to not be a nuisance, and claimed right to store noxious railroad ties on property it had not leased: In June 2022, after months of negotiations, the City of Fillmore declined to lease city property to SNR for freight storage and other uses. The city alleged that a) SNR insisted that, as a common carrier railroad, it was not subject to local regulation, could not sign state or local permits, and should have its development plans rubber-stamped by the city regardless of safety, drainage, or code-compliance issues; b) SNR refused to promise to not be a nuisance to neighbors; c) SNR insisted that, despite complaints of neighbors, it had a right to store noxious-smelling creosote ties on city property that SNR had not actually leased and had no legal right to use.⁵



“Intentional misrepresentation” and unpermitted “nuisance” in eminent domain: In 2020, SNR allegedly told the Burchell Nursery of Oakdale, California that SNR needed to relocate its Woodland, California railyard to a 76-acre section of Burchell’s 116-acre property, but that Burchell could retain the remaining 40 acres for nursery operations.⁶ Believing itself under threat of an eminent-domain action from SNR, Burchell agreed in July 2020 to allow SNR to immediately begin constructing rail facilities on the 76 acres while a final purchase price was negotiated. SNR built a “transload” station on the 76 acres to offload, store and load livestock-feed grain into semi trucks. The station was built “without local permits because of exemptions for railroads under federal railroad law.” Neighbors complained of crop-damaging dust, loud noise, heavy truck traffic, and snarled traffic. Then in April 2021, SNR filed an eminent-domain lawsuit against Burchell, claiming they needed the entire 116-acre property. In August 2021, Burchell filed a cross-complaint, alleging that SNR misled them, including by claiming SNR needed the nursery’s parcel to continue rail operations while “simultaneously making contradictory representations to the federal Surface Transportation Board.” Burchell further claimed that SNR threatened to destroy Burchell’s almond crop if the nursery did not harvest early; that SNR violated agreements with Burchell including by using a well and an electrical panel that SNR had no right to access; that 80-100 trucks per day, with no regard for the speed limit, used a road without permission; and that SNR was in fact conducting a grain transfer business and not a railyard on the property, and had “not yet constructed the ... facility it purported to need without delay.” The lawsuit is ongoing.

Biodiesel greenwashing: In February 2000, an SRC locomotive leaked up to 400 gallons of diesel fuel in Chinese Station, California.⁷ Prosecutors forgave a \$25,000 fine on the condition that SRC convert five locomotives to biodiesel by July 2003. SRC made these conversions, and SRC and Mike Hart were named “environmental heroes” by the U.S. EPA,⁸ but by the end of 2002, the trains “were back on diesel.” In June 2005, Tuolumne County filed a motion to force SRC to pay the \$25,000 fine. SRC’s Mike Hart countered that SRC had only agreed to “convert the locomotives to being able” to run on biodiesel, but had not promised to actually use the cleaner fuel, which was too expensive. In July 2005, the judge ruled that it was too late to make SRC pay the fine. Today, Hart’s bio on the SE website says, “His railroad was the first in the U.S. to run on 100% biodiesel.”⁹

1 <https://www.skunktrain.com/wp-content/uploads/2022/03/Mendocino-Railway-completes-acquisition-of-former-millsite-from-Georgia-Pacific-Press-Release-FINAL-A.pdf>

2 https://issuu.com/skunktrain/docs/little_stinker_-_fall_2021_-_volume_1_issue_1

3 MR’s Fall 2021 “Little Stinker” newsletter says SRC “provides ... renewable zero-emission energy and fuels through Sierra Energy.” As SE CEO, Mike Hart told Inc., for a May 2022 article, that SE “plans to issue its first commercial licenses this year.” In fact, no information has been found to confirm that SE truly produces commercially viable zero-emission energy or fuels yet; it appears they are still testing their gasification technology. See e.g. Monterey County Health Department inspection reports for SE’s prototype gasification plant at the Fort Hunter Liggett (“FHL”) army base (<https://www2.calrecycle.ca.gov/SolidWaste/Site/Summary/5335>) and SE’s January 2020 report for the U.S. Department of Defense

(https://serdp-estcp-storage.s3.us-gov-west-1.amazonaws.com/s3fs-public/project_documents/EW-20133

4%2BFinal%2BReport.pdf?VersionId=NEewyDzSlr9f71l8SYaycKX476tQ8iqn). SE does not tout any FastOx



plants on its website other than Fort Hunter Liggett. The Inc. article can be found at <https://www.inc.com/magazine/202205/peter-keating/sierra-energy-gasification-mike-hart.html>.

4 Sources for Sierra leadership roles include company websites, corporate filings with the California Secretary of State, MR's STB filings in AB-1305X, LinkedIn profiles, correspondence by the individuals and companies that is available online, and public comments by company officials.

5 <https://www.fillmoreca.com/home/showpublisheddocument/7078/637897783539530000>, <https://www.vcstar.com/story/news/local/communities/fillmore/2022/06/27/santa-paula-branch-line-train-operator-sierra-northern-railway-ousted-fillmore-california-railyard/7700388001/>

6 Stanislaus County Superior Court public portal: <https://stanportal.stanct.org/>; case # CV-21-002157. See SNR's April 21, 2021 complaint and Burchell Nursery's January 10, 2022 amended cross-complaint. Also see Carlson, Ken, "Railroad project stirs up dust, anger from Oakdale neighbors," Modesto Bee, July 18, 2021, <https://www.modbee.com/news/business/article252730643.html>.

7 Turner, Melanie, "A Burning Desire to Clean Up the Air – Sierra Railroad Owners Turns to Biodiesel to Run His Train, Has Big Plans for State Power Supply," Modesto Bee, February 14, 2002; <https://www.trainorders.com/discussion/read.php?1,261509>; Miller, Inga, "Tuolumne Wants Sierra RR to Pay \$25K Fine – Oakdale Operations Says Biodiesel Fuel Switch Coming in Time," Modesto Bee, June 25, 2005; Miller, Inga, "Tuolumne Wants Sierra RR to Pay \$25K Fine – Oakdale Operations Says Biodiesel Fuel Switch Coming in Time," Modesto Bee, June 25, 2005; Miller, Inga, "Judge: Too Late to Get a Fine from Sierra Railroad," Modesto Bee, July 19, 2005, https://www.valleyair.org/recent_news/News_Clippings/2005/In%20the%20News%20--%20July%2019%202005.pdf.
8 https://archive.epa.gov/epapages/newsroom_archive/newsreleases/8b13057e99827be1852570d8005e14a0.html

9 <https://sierraenergy.com/company/leadership/>

