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April 7, 2025

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Via Electronic Filing

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

**RE: Oakland Global Rail Enterprise—Petition for Exemption—Authority to
Operate a Rail Line in Oakland, California—Finance Docket No. 36312—
STATUS UPDATE**

Dear Ms. Brown,

Pursuant to the Board's March 26, 2025, Decision, I am providing an update on behalf of Oakland Global Rail Enterprise, LLC ("OGRE") regarding the legal dispute between OGRE and Oakland Bulk & Oversized Terminal, LLC ("OBOT") on the one hand, and the City of Oakland ("City") on the other hand.

On January 23, 2024, the Superior Court of California issued a judgment in favor of OBOT and OGRE, finding that the City's November 22, 2018, termination of the Ground Lease (along with its corresponding termination of the Development Agreement with respect to the West Gateway property)—the reason used by the City to request a stay of these proceedings—was unlawful and invalid, and is therefore void. A copy of the Judgement is attached hereto as Appendix A.

The City subsequently appealed the decision to the California Court of Appeal.¹ The appeal has been fully briefed, but the date for oral argument has not been set. On July 30, 2024, the Superior Court issued an Order finding that its judgement is automatically stayed pending appeal and that, therefore, the parties are prohibited from irreversibly altering the West Gateway while the Court of Appeal considers the merits of the City's appeal. A copy of that Order is attached hereto as Appendix B.

Because the City's appeal precludes OGRE/OBOT from moving forward with the project, OGRE requests that the Board continue to hold these proceedings in abeyance until the appeal is resolved.

¹¹ *City of Oakland v. Oakland Bulk & Oversized Terminal*, Case No. A169585.

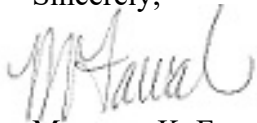
Ms. Cynthia T. Brown
Surface Transportation Board
April 7, 2025
Page 2

OGRE also requests that Kathryn K. Floyd be removed as its counsel of record in this proceeding. My contact information is as follows:

Margaret K. Fawal
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Please do not hesitate to contact me if you have any questions.

Sincerely,



Margaret K. Fawal

*Counsel for Oakland Global
Rail Enterprise*

cc: Parties of Record

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this April 7, 2025, I caused a copy of the foregoing Status Update to be served on all parties of record by email or first- class mail, postage prepaid.

/s/ Margaret K. Fawal
Margaret K. Fawal

Appendix A

FILED
ALAMEDA COUNTY

JAN 23 2024

CLERK OF THE SUPERIOR COURT

By Nicole Hall

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA
RENÉ C. DAVIDSON COURTHOUSE

Oakland Bulk & Oversized Terminal,
LLC, et al.,

Plaintiff,

v.

City of Oakland,

Defendant.

Nos.: RG18930929, RG20062473

JUDGMENT

City of Oakland,

Counter-Plaintiff,

v.

Oakland Bulk & Oversized Terminal,
LLC, et al.,

Counter-
Defendant.

This action came on regularly for trial in Department 514 of the Superior Court of California, the Honorable Noël Wise, Judge, presiding. The Court bifurcated the issue of liability and held a bench trial that began on July 10, 2023, and concluded on October 11, 2023. On November 22, 2023, the Court issued its Statement of Decision on liability in which the Court found in favor of Oakland Bulk and Oversized Terminal, LLC and Oakland Global Rail Enterprise LLC. The Court then held a bench trial on the issue of damages that began on November 28, 2023, and concluded on December 1, 2023. On

1 December 22, 2023, the Court issued its Statement of Decision on damages awarding
2 Oakland Bulk and Oversized Terminal and Oakland Global Rail Enterprise either an
3 equitable or legal remedy.

4 On January 5, 2025, Oakland Bulk and Oversized Terminal and Oakland Global
5 Rail Enterprise elected the equitable remedy awarding specific performance and
6 declaratory relief.

7 Accordingly, as to Oakland Bulk and Oversized Terminal and Oakland Global Rail
8 Enterprise's complaint, and the City of Oakland's complaint, the Court enters judgment
9 for Oakland Bulk and Oversized Terminal and Oakland Global Rail Enterprise, and
10 against the City of Oakland as follows:

- 11 • The Court finds and orders that Oakland Bulk and Oversized Terminal is not in
12 default of the Army Base Gateway Redevelopment Project Ground Lease for West
13 Gateway dated February 16, 2016, for failure to meet the Initial Milestone deadline
14 of August 14, 2018.
- 15 • The Court finds and orders that the City of Oakland's termination of the Ground
16 Lease on November 22, 2018, was unlawful and invalid, and is therefore void.
- 17 • The Court finds and orders that the City of Oakland's corresponding termination of
18 the Development Agreement dated July 16, 2013, with respect to the West Gateway
19 property is also, therefore, void.
- 20 • The Court finds and orders that Section 6.1.1.1 (the "Initial Milestone Date") of the
21 Ground Lease is extended, due to events of Force Majeure, by a period of two years
22 and six months from the date of entry of judgment under section 664 of the Code of
23 Civil Procedure.

1 The Court orders that any party may file a memorandum of costs and motion for
2 attorneys' fees as allowed by law and the Parties' contracts. (Code Civ. Proc. § 1032;
3 Cal. R. Ct. 3.1700, 3.1702.)

4 The Clerk will enter this judgment. The Clerk is directed to serve notice of entry of
5 the judgment to the Parties.

6 IT IS SO ORDERED.

7
8 Dated: January 23, 2024



Noël Wise
Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA	Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Rene C. Davidson Courthouse 1225 Fallon Street, Oakland, CA 94612	FILED Superior Court of California County of Alameda 01/23/2024
PLAINTIFF/PETITIONER: Oakland Bulk And Oversized Terminal, LLC et al	Chad Finke, Executive Officer / Clerk of the Court By: <u>Nicole Hall</u> Deputy
DEFENDANT/RESPONDENT: City of Oakland et al	N. Hall
CERTIFICATE OF ELECTRONIC SERVICE CODE OF CIVIL PROCEDURE 1010.6	CASE NUMBER: RG18930929

I, the below named Executive Officer/Clerk of Court of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served one copy of the Judgment entered herein upon each party or counsel of record in the above entitled action, by electronically serving the document(s) from my place of business, in accordance with standard court practices.

Barry W. Lee
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Justin Jones Rodriguez
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Dated: 01/23/2024

Chad Finke, Executive Officer / Clerk of the Court

By:

Nicole Hall

N. Hall, Deputy Clerk

Appendix B

FILED
Superior Court of California
County of Alameda
07/30/2024
Clad Fluke, Executive Officer / Clerk of the Court
By: Nicole Hall Deputy
N. Hall

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA
RENÉ C. DAVIDSON COURTHOUSE

Oakland Bulk & Oversized Terminal,
LLC,

Plaintiff,

v.

City of Oakland,

Defendant.

Nos.: RG18930929, RG20062473

**ORDER RE OAKLAND BULK & OVERSIZED
TERMINAL, LLC & OAKLAND GLOBAL
RAIL ENTERPRISE, LLC'S MOTION FOR
ORDER TO SHOW CAUSE RE CONTEMPT**

City of Oakland,

Counter-Plaintiff,

v.

Oakland Bulk & Oversized Terminal,
LLC, et al.,

Counter-

Defendant.

OBOT's motion for an order to show cause why Oakland should not be held in
contempt of the judgment is DENIED.

I. BACKGROUND

Following a bifurcated trial that began on July 10 and concluded on December 1,
2023, this Court entered a judgment for Oakland Bulk and Oversized Terminal (OBOT)

1 and Oakland Global Rail Enterprise (OGRE),¹ and against the City of Oakland.
2 (Judgment, Jan. 23, 2024.) In its judgment, the Court: (1) declared that OBOT was not in
3 default of the Army Base Gateway Redevelopment Project Ground Lease for the West
4 Gateway for failure to meet the Initial Milestone deadline of August 14, 2018; (2) declared
5 that the City’s termination of the Ground Lease (along with the corresponding termination
6 of the Development Agreement with respect to the West Gateway property) on November
7 22, 2018, was void; and (3) extended the Initial Milestone Date of the Ground Lease by two
8 years and six months. (*See id.* 2:7–23.)

9 The parties immediately disputed the effect of the judgment during the pendency of
10 the appeal, particularly regarding whether OBOT may proceed with construction of the
11 bulk commodity marine terminal that is the subject of the Ground Lease. This dispute
12 culminated in the motion now before this Court, in which OBOT sought an order to show
13 cause why the City should not be held in contempt. (Mot., May 22, 2024.) OBOT’s motion
14 is premised on its contention that the City’s appeal should have no impact on the
15 judgment. (*Id.* 6:3–9:18, 13:3–20.) The City opposed, arguing that the judgment is
16 mandatory, and it therefore automatically serves as a stay until the Court of Appeal issues
17 its decision in the appeal. (Opp’n Mem., July 2, 2024.)

18 19 II. DISCUSSION

20 At its core, the parties’ disagreement is about whether the Court’s judgment is
21 prohibitory or mandatory. The Court resolves this disagreement before determining the
22 merits of OBOT’s motion.

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28 ¹ As it did in the statements of decision addressing liability and damages, the Court refers to OBOT
and OGRE collectively as OBOT. (*See* Statement of Decision re Liability 1, n.3, Nov. 22, 2023; *see also*
Statement of Decision re Liability 1, n.3, Dec. 22, 2023.)

1 **A. Is the Judgment Prohibitory or Mandatory?**

2 “An injunction that requires no action and merely preserves the status quo (a so-
3 called prohibitory injunction) ordinarily takes effect immediately, while an injunction
4 requiring the defendant to take affirmative action (a so-called mandatory injunction) is
5 automatically stayed during the pendency of the appeal.” (*Daly v. San Bernardino Cnty.*
6 *Bd. of Supervisors* (2021) 11 Cal. 5th 1030, 1035.) “As [*Dewey v. Super. Ct.* (1889) 81 Cal.
7 64] told the story, the core rationale underlying the mandatory-prohibitory distinction was
8 based on an abiding concern with preserving the status quo pending appeal.” (*Id.* at
9 1041.)

10 “The idea was that a prohibitory injunction is exempt from stay because such an
11 injunction, by its nature, operates to preserve the status quo; by definition such an
12 injunction *prevents the defendant from taking actions* that would alter the parties’
13 respective provisions. To stay enforcement of such an order pending appeal would not
14 preserve the status quo but instead invite its destruction; a stay would leave the parties
15 free to alter conditions during the appeal, with sometimes irreversible consequences.” (*Id.*
16 (emphasis added).)

17 The opposite is true for an “injunction that mandates the performance of an
18 affirmative act—the so-called mandatory injunction.” (*Id.*) “[B]y definition, [a mandatory
19 injunction] *commands some change in the parties’ positions*. The cases hold that before
20 such orders are executed and the defendant must detrimentally alter its position, the
21 defendant is entitled to know whether the order is correct.” (*Id.* (emphasis added).)

22 The parties have relied on two California Supreme Court cases: *Daly*, where the
23 Supreme Court found a mandatory injunction; and *United Railroads of San Francisco v.*
24 *Superior Court* ((1916) 172 Cal. 80, 87), where the Supreme Court found a prohibitory
25 injunction. Each is addressed separately below.
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1 ***Daly v. San Bernardino***

2 In *Daly*, the San Bernardino County Board of Supervisors selected a new supervisor
3 to fill a vacancy. (11 Cal. 5th at 1035–1036.) The plaintiff challenged the board’s
4 nomination process on the basis it violated the Ralph A. Brown Act and that the new
5 supervisor’s appointment was void. (*Id.* at 1036–37.) The plaintiffs sued for “an order
6 requiring the Board to rescind the appointment[.]” (*Id.* at 1037.) The trial court issued a
7 writ of mandate, found that the appointment was “null and void,” and ordered the board to
8 “[r]escind the appointment” and “[i]mmediately seat any person duly appointed to the
9 position of Third District Supervisor by the Governor.” (*Id.*) The board appealed. (*Id.*)
10 The Court of Appeal declined to stay the order pending appeal, finding that the mandatory
11 aspects of the orders were “merely incidental,” and that the injunction was prohibitory in
12 nature. (*Id.* at 1038.)

13 The California Supreme Court reversed the appellate court’s order finding that the
14 injunction was mandatory, not prohibitory. The plaintiffs argued that “because Rowe’s
15 appointment was declared void by the superior court, she never lawfully held the seat, and
16 the order that her appointment be rescinded made no change to the status quo.” (*Id.* at
17 1050.) Relying on *Clute v. Superior Court* ((1908) 155 Cal. 15), the Court rejected the
18 plaintiffs’ argument that the injunction was prohibitory stating it “ignore[d] that the
19 central points in dispute in the superior court and on appeal concern the validity of Rowe’s
20 appointment and the superior court’s power to nullify it in this action,” and that “[t]he goal
21 of a stay is to preserve the status quo while a court determines the merits of the appeal.”
22 (*Id.* at 1050–51.) The Court found the order was unambiguously mandatory: “What the
23 order says on its face is also what it does in practice: namely, require the Board to perform
24 affirmative acts that, once performed, will change the relative position of the parties by
25 ousting Rowe from her position so that a replacement can be seated.” (*Id.* at 1047.)
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1 ***United Railroads of San Francisco v. Superior Court***

2 In *United Railroads*, San Francisco and Union Railroads had a contract that
3 permitted San Francisco to operate a certain number of electric street cars on portions of
4 Union Railroads' tracks and terminal loops. (172 Cal. at 81–82.) Over Union Railroads'
5 protest, San Francisco began operating an excess number of street cars on Union
6 Railroads' track and loops. (*Id.* at 82, 87.) Union Railroads sued and the trial court issued
7 an injunction "requiring [San Francisco] to desist and refrain from operating this excess
8 number of cars upon the tracks and around the loops." (*Id.* at 81-82.) San Francisco
9 appealed and while the appeal was pending it continued operating an excess number of
10 street cars on Union Railroads' track and loops. (*Id.*) United Railroads moved for an order
11 finding San Francisco in contempt. (*Id.*) The trial court denied the motion finding the
12 injunction was automatically stayed pending appeal. (*Id.*)

13 The California Supreme Court reversed the trial court's order after finding that the
14 injunction was prohibitory, not mandatory. To assess the character of the injunction, the
15 Court considered the equities and noted that each time San Francisco operated an excess
16 streetcar on Union Railroads' track and loops, San Francisco invaded Union Railroads'
17 property, wore down its tracks, caused congestion, hampered Union Railroads' traffic, and
18 caused Union Railroads to lose customers to competitors. (*See id.* at 82–83.) Against this,
19 the Court found that the injunction simply prohibited San Francisco from operating an
20 excess number of streetcars. (*Id.* at 84.)

21 The Supreme Court rejected San Francisco's argument that the injunction was
22 effectively mandatory. San Francisco had argued that measuring the status quo from the
23 moment before the injunction was issued, San Francisco "had been . . . for several months
24 operating its excess cars over these tracks, under claim of right, and had not been at any
25 time actually prevented by Union Railroad [*sic*] from doing so" and that it "was in legal
26 possession of the [real property] interest claimed." (*Id.* at 86.) As such, San Francisco
27 concluded, "the injunction, though prohibitory in form, requiring it merely to cease
28 operating such cars, is, in effect, an order directing the city to relinquish its possession of

1 the incorporeal hereditament, and therefore [the injunction is] mandatory in character.”
2 (*Id.*) The Court was unpersuaded, noting that San Francisco’s *actual* use of the tracks and
3 loops was not *lawful*. (*Id.*) By measuring the status quo from “the last actual peaceable,
4 uncontested status which preceded the pending controversy,” the Court demonstrated the
5 effects of the injunction: “What essentially are the features of this injunction? The
6 defendant is not compelled to surrender any possession. It retains its possession. But *it is*
7 *forbidden from making what the court has determined to be an illegal and improper use of*
8 *that possession.*” (*Id.* at 88 (emphasis added); *see also id.* at 89 (“It thus conclusively
9 appears that in its essence this injunction is prohibitive and *restrains continuous acts of*
10 *trespass upon [Union Railroads] property.*”) (emphasis added).)

11 12 **Oakland Bulk & Oversized Terminal, LLC v. City of Oakland**

13 In this case, the status quo is measured at the moment this Court entered its
14 judgment.² (*See id.* at 1044 (“In each case, the court considered whether the order was
15 mandatory by reference to the position of the parties at the time the injunction was
16 entered”).) Years before this Court issued its judgment, the City terminated the
17 Ground Lease and the Development Agreement; in doing so, the City prevented OBOT

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21 ² OBOT argued the Court should go back to the time before the City terminated the Ground Lease on
22 November 22, 2018, as the last “actual peaceable, uncontested status which preceded the pending
23 controversy.” (*Id.* at 1045 (quoting *United R.R. v. Super. Ct.* (1916) 172 Cal. 80, 87).) This alternate
24 standard of measurement articulated in *United Railroads* is available in those cases where “an injunction
25 that is essentially prohibitory in nature may involve some adjustment of the parties’ respective rights to
26 ensure the defendant desists from a pattern of unlawful conduct.” (*Id.*) “The *United Railroads* decision
27 makes clear that an injunction preventing the defendant from committing additional violations of the law
28 may not be recharacterized as mandatory merely because it requires the defendant to abandon a course of
repeated conduct as to which the defendant asserts a right of some sort. In such cases, the essentially
prohibitory character of the order can be seen more clearly by measuring the status quo from the time before
the contested conduct began.” (*Id.*)

27 This case is unlike the situation contemplated in *United Railroads*. Here the last time the parties
28 agreed about their respective rights vis-à-vis the Ground Lease was no later than November 22, 2018, if
then. In addition, the Court’s judgment makes no orders regarding what if anything the City must do, or
refrain from doing, now or in the future regarding the Project, the Ground Lease, or the Development
Agreement.

1 from proceeding with any further construction of the Project. In the judgment, this Court
2 (1) declared that OBOT was not in default of the Army Base Gateway Redevelopment
3 Project Ground Lease for the West Gateway for failure to meet the Initial Milestone
4 deadline of August 14, 2018; (2) declared that the City's November 22, 2018 termination of
5 the Ground Lease (along with the corresponding termination of the Development
6 Agreement with respect to the West Gateway property) was void; and (3) extended the
7 Initial Milestone Date of the Ground Lease by two years and six months. (*See* Judgment
8 2:7–23.)

9 The Court finds that the effect of the judgment is mandatory in substance. The
10 Court must look not just to the words, but more importantly to the effect of its judgment in
11 this case. Through that lens, the character of the judgment is clear: The judgment
12 compels the City to disregard its November 22, 2018 termination, and to perform its
13 contractual obligations under the Ground Lease and the Development Agreement.

14 In reaching this conclusion, the Court is guided by the underlying principle that the
15 parties should not irreversibly alter the West Gateway while the Court of Appeal
16 considers the merits of the City's appeal. If OBOT were permitted to resume construction
17 of the highly technical, complex, and expensive bulk commodity marine terminal and the
18 Court of Appeal or the Supreme Court found this Court erred in its judgment, the parties
19 would find themselves in the difficult, if not impossible position of having to spend
20 enormous amounts of time and money to try to reverse changes or improvements OBOT
21 made to the West Gateway (both to the land and the appurtenant marine areas). The City
22 is entitled to know whether this Court's judgment is correct before the West Gateway is
23 altered.

24 25 **B. OBOT's Motion for Order to Show Cause**

26 As the judgment was automatically stayed, OBOT's argument that the City is in
27 contempt of its judgment necessarily fails.
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1 **III. ORDER**

2 The motion is DENIED.

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4 Dated: 07/30/2024



5 Noël Wise
6 Judge of the Superior Court
Noël Wise / Judge

SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA	Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Rene C. Davidson Courthouse 1225 Fallon Street, Oakland, CA 94612	FILED Superior Court of California County of Alameda 07/30/2024
PLAINTIFF/PETITIONER: Oakland Bulk And Oversized Terminal, LLC et al	Chad Finke, Executive Officer / Clerk of the Court By: <u>Nicole Hall</u> Deputy N. Hall
DEFENDANT/RESPONDENT: City of Oakland et al	
CERTIFICATE OF ELECTRONIC SERVICE CODE OF CIVIL PROCEDURE 1010.6	CASE NUMBER: RG18930929

I, the below named Executive Officer/Clerk of Court of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served one copy of the ORDER RE OAKLAND BULK & OVERSIZED TERMINAL, LLC & OAKLAND GLOBAL RAIL ENTERPRISE, LLC'S MOTION FOR ORDER TO SHOW CAUSE RE CONTEMPT entered herein upon each party or counsel of record in the above entitled action, by electronically serving the document(s) from my place of business, in accordance with standard court practices.

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Dated: 07/30/2024

Chad Finke, Executive Officer / Clerk of the Court

By:

Nicole Hall

N. Hall, Deputy Clerk