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May 11, 2017

Ms. Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E. Street, S.W.
Washington, D.C. 20423-0001

By electronic filing

**Re: STB FINANCE DOCKET NO. 36117
LRY, LLC D.B.A. LAKE RAILWAY-- PETITION FOR DECLARATORY
ORDER — RAIL LINE IN LAKE COUNTY, OR AND MODOC COUNTY, CA**

Dear Ms. Brown:

I am enclosing a temporary restraining order (“TRO”) issued May 1, 2017 by the U.S. District Court in Medford, Oregon enjoining Lake County from terminating LRY’s lease in the within matter which is the subject of the Verified Petition for entry of a Declaratory Order in the within proceeding. A preliminary injunction hearing is scheduled for May 12, 2017 in the Federal District Court matter.

If there are any questions about this matter, please contact me directly, either by telephone (908) 361-7097 or by email jsavagelaw@aim.com.

Respectfully submitted,

S/ James H. M. Savage
by electronic signature

James H. M. Savage
Counsel for LRY, LLC

Enc.

cc: James E. Bailey, III (by electronic service)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
MEDFORD DIVISION

LRY, LLC dba LAKE RAILWAY,
an Oregon LLC,

Civ. No. 1:17-cv-00675-MC

Plaintiff,

ORDER

v.

LAKE COUNTY, a political subdivision
of the State of Oregon,

Defendant.

McSHANE, District Judge.

This matter comes before me on Plaintiff LRY, LLC's Motion for Temporary Restraining Order ("TRO"), filed April 28, 2017. ECF No. 2. LRY seeks (1) to enjoin Defendant Lake County ("the County") from terminating LRY's leasehold interest until LRY's motion for preliminary injunction can be heard; and (2) a preliminary injunction enjoining the County from terminating LRY's lease pending final resolution of this matter on the merits. Pursuant to the Local Rules, the County's counsel was notified of this motion during the conferral process.

LEGAL STANDARDS

In deciding whether to grant a motion for a temporary restraining order, courts look to substantially the same factors that apply to a court's decision on whether to issue a preliminary injunction. *See Stuhlberg Int'l Sales Co., Inc. v. John D. Brush & Co., Inc.*, 240 F.3d 832, 839

n.7 (9th Cir. 2001). A preliminary injunction is an “extraordinary remedy to may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 22 (2008). A plaintiff seeking a preliminary injunction generally must show that: (1) the plaintiff is likely to succeed on the merits; (2) the plaintiff is likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in favor of the plaintiff; and (4) an injunction is in the public interest. *Id.* at 20.

The Supreme Court’s decision in *Winter*, however, did not disturb the Ninth Circuit’s alternative “serious questions” test. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131-32 (9th Cir. 2011). Under this test, “‘serious questions going to the merits’ and a hardship balance that tips sharply toward the plaintiff can support issuance of an injunction, assuming the other two elements of the *Winter* test are also met.” *Id.* at 1132. Thus, a preliminary injunction may be granted “if there is a likelihood of irreparable injury to plaintiff; there are serious questions going to the merits; the balance of hardships tops sharply in favor of the plaintiff; and the injunction is in the public interest.” *M.R. v. Dreyfus*, 697 F.3d 706, 725 (9th Cir. 2012) (citing *Cottrell*).

Finally, a temporary restraining order is necessarily of a shorter and more limited duration than a preliminary injunction. Thus, the application of the relevant factors may differ, depending on whether the court is considering a temporary restraining order or a preliminary injunction. Indeed, the two factors most likely to be affected by whether the motion at issue is for a TRO or a preliminary injunction are the “balancing of the equities among the parties” and “the public interest.”

Pac. Kidney & Hypertension, LLC v. Kassakian, 156 F. Supp.3d 1219, 1222-23 (D. Or. 2016).

DISCUSSION

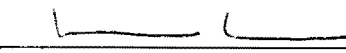
Having reviewed and considered the Complaint, Motion for TRO, and the supporting documents, I find that LRY has shown at least serious questions going to the merits of LRY’s

claims. LRY has also demonstrated a likelihood of irreparable injury stemming from the threatened disruption of its right to operate on the leased railway lines. On this record, an injunction is in the public interest and the balance of equities sharply favors an injunction to maintain the pre-termination *status quo* between the parties. A temporary restraining order is necessary to prevent the irreparable injury alleged in the Complaint, the Motion, and the supporting declaration and exhibits.

Accordingly, LRY's Motion for a TRO, ECF No. 2, is GRANTED. From the date and time of this order, Lake County is hereby enjoined from directly or indirectly terminating the Lake Railway Lease & Operating Agreement and its Amendments, or otherwise unlawfully interfering with LRY's railroad operations for fourteen (14) days. The parties shall adhere to the Lease & Operating Agreement and its Amendments, as performed prior to the County's purported termination of the Agreement. Pursuant to Federal Rule of Civil Procedure 65(c), LRY shall provide security in the amount of \$25,000. LRY shall serve Defendant Lake County with a copy of this Order and provide proof of service to the Court.

On May 12, 2017, at 1:00 p.m., the parties are directed to appear at a preliminary injunction hearing in Medford, Oregon, to determine whether this injunction should continue until final resolution of LRY's claims. If the parties wish to hold the preliminary injunction hearing at a different date or time, they should confer on a new date acceptable to both parties and submit the new date and time to my Courtroom Deputy, Charlene Pew. The parties may appear by telephone at the preliminary injunction hearing.

It is so ORDERED and DATED this 1 day of May, 2017 at 4:00 p.m.


 MICHAEL McSHANE
 United States District Judge