SUPERIOR COURT OF CALIFORNIA

COUNTY OF MARIN

CALIFORNIANS FOR ALTERNATIVES TO TOXICS,

Petitioner,

v.

NORTH COAST RAILROAD AUTHORITY,

Respondent.

NORTHWESTERN PACIFIC RAILROAD COMPANY,

Real Party in Interest.

Case No. CIV 1103591

FRIENDS OF THE EEL RIVER,

Petitioner,

v.

NORTH COAST RAILROAD AUTHORITY,

Respondent.

NORTHWESTERN PACIFIC RAILROAD COMPANY,

Real Party in Interest.

Case No. CIV 1103605

ORDER GRANTING ATTORNEY FEES

INTRODUCTION

These actions are back before the court following the California Supreme Court's decision in *Friends of the Eel River v. North Coast Railroad Authority* (2017) 3 Cal.5th 677 ("*Friends*") which reversed the previous dismissals of CEQA petitions brought by Friends of the Eel River ("FOER") and Californians for Alternatives to Toxics ("CATs")(collectively "Petitioners"). After the actions returned to the trial court, Real Party in Interest Northwestern Pacific Railroad Company ("NWP Co.") moved for dismissal. Following a hearing held on August 21, 2018, the court issued a written order dismissing NWP Co. from these proceedings.

Before the court now are separate motions brought by FOER and CATs seeking interim attorney fees under Section 1021.5 of the Code of Civil Procedure. Both Respondent North Coast Railroad Authority ("NCRA") and NWP Co. oppose the motions. On October 7, 2018, the court ordered appearances on the motions and requested argument on specific topics.[1]

The court held a hearing on the fee motions on October 8, 2018. Sharon E. Duggan, Esq. and William Verick, Esq. appeared on behalf of Petitioner CATs. Edward T. Schexnayder, Esq. and Amy J. Bricker, Esq. appeared on behalf of Petitioner FOER. Christopher J. Neary, Esq. appeared on behalf of Respondent NCRA. Andrew B. Sabey, Esq. appeared on behalf of Real Party in Interest NWP Co. At the conclusion of the hearing the court took the motions under submission.

Having considered the briefs submitted by the parties and the arguments of counsel, the court now issues its decision.

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[1] The court's written tentative required appearances and sought argument on the following issues: "1. On what basis, consistent with the court's determination that Northwestern Pacific Railroad Company ("NWP Co.") was improperly joined as a real party-in-interest, could the court hold nonetheless hold NWP Co. responsible for attorney's fees? 2. Whether (or in what manner) should the court consider the time spent by Petitioners advancing their unsuccessful argument that CEQA could be applied against NWP Co. in fashioning an interim fee award? 3. On what basis is it appropriate to award attorney's fees to multiple Petitioners for advancing the same arguments in litigation? Put another way, how is the public interest served by having multiple parties filing separate petitions seeking the same relief? 4. Based on the submissions provided, how can the court differentiate between attorney time spent on successful and unsuccessful arguments in the litigation? 5. On what basis it appropriate to award a multiplier as part of an interim fee award where Petitioners were only partially successful?" (Tentative Order dated Oct. 7, 2018.)

I. PRIVATE ATTORNEY GENERAL FEES

Section 1021.5 of the Code of Civil Procedure codifies the private attorney general doctrine and acts as an incentive to pursue "public-interest litigation that might otherwise have been too costly to bring." (*Save Our Heritage Organization v. City of San Diego* (2017) 11 Cal.App.5th 154, 159, internal citations omitted.) The statute[2] authorizes an award attorney fees when (1) the movant is a "successful" party; (2) the action has resulted in the enforcement of an important right affecting the public interest; (3) the action has conferred a significant benefit on the general public; and (4) an award is appropriate in light of the necessity and financial burden of private enforcement. (*Id.*) The decision to award attorney fees under this provision is a matter within the discretion of the trial court. (*Wallace v. Consumers Cooperative of Berkeley, Inc.* (1985) 170 Cal.App.3d 836, 845.) As set forth below, Petitioners meet these standards.

A. Successful Party

"[T]o qualify for fees under section 1021.5 Petitioners must first establish they are 'successful parties.'" (*Urbaniak v. Newton* (1993) 19 Cal.App.4th 1837, 1842.) For purposes of §1021.5 a "successful" party is synonymous with a "prevailing" party. (*Protect Our Water v. County of Merced* (2005) 130 Cal.App. 4th 488, 493.) A party is '"successful" when it has "succeeded on any significant issue in the litigation which achieves some of the benefit the parties sought in bringing suit." (*Bowman v. City of Berkeley* (2005) 131 Cal.App. 4th 173, 177; *see also Harbor v. Deukmejian*

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[2] Section 1021.5 provides: "Upon motion, a court may award attorneys' fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement, or of enforcement by one public entity against another public entity, are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any. With respect to actions involving public entities, this section applies to allowances against, but not in favor of, public entities, and no claim shall be required to be filed therefor, unless one or more successful parties and one or more opposing parties are public entities, in which case no claim shall be required to be filed therefor under Part 3 (commencing with Section 900) of Division 3.6 of Title 1 of the Government Code."

(1987) 43 Cal.3d 1078, 1103[successful party is the one who "vindicate[s] the principle upon which [it] brought th[e] action"].) Thus, to establish success the movant must demonstrate "a causal connection between the lawsuit and the relief obtained." (*Wallace, supra,* 170 Cal.App.3d at 844.)

In deciding a motion for fees, the court takes "a broad, pragmatic view of what constitutes a 'successful party'" (*Graham v. Daimler Chrysler Corp.* (2004) 34 Cal. 4th 553, 566) and determines "from a practical perspective, whether or not the action served to vindicate an important right so as to justify an attorney fee award under section 1021.5." (*Folsom v. Butte County Assn. of Governments* (1982) 32 Cal. 3d 668, 685.) As explained in *La Mirada Avenue Neighborhood Association of Hollywood v. City of Los Angeles* (2018) 22 Cal.App.5th 1149:

> To be the successful party, a party need not obtain final judgment in its favor. It need not succeed on all of its claims. And it need not "personally benefit[ ]" from its success. Indeed, because the "critical fact" to success "is the impact of the action, not the manner of its resolution," the party need not "win" the lawsuit at all. It is enough to show that the lawsuit was a "catalyst" that motivated the defendant to alter its behavior, be it through voluntary action growing out of a settlement or otherwise.

(*Id.* at 1157 internal citations omitted.)

By successfully overcoming a federal preemption defense, Petitioners have obtained a final ruling from the state's highest court that holds that the state agency (NCRA) is subject to regulation under CEQA. As a result, CEQA regulations and remedies can now be applied to NCRA decisions regarding matters such as "track repair" and the "level of freight service," notwithstanding the existence of federal jurisdiction and a federal agency overseeing the activity. (*Friends, supra,* 3 Cal.5th at 691.) Accordingly, Petitioners' actions have "caused" NCRA to alter its conduct and comply with CEQA before reopening the Northwestern rail line. Applying a "broad, pragmatic view," the court finds that Petitioners qualify as "successful parties" under section1021.5.

This "success," however, was not complete. Although Petitioners prevailed against NCRA, the Supreme Court ruled against Petitioner when it held that the application of CEQA to the activities of the private rail carrier, NWP Co., was preempted. (*Id.* at pp. 714-716.) The court stated that

> state environmental permitting or preclearance regulation that would have the effect of halting a private railroad project pending environmental compliance would be categorically preempted. In the ordinary regulatory setting in which a state seeks to govern private economic conduct, requiring CEQA compliance as a condition of state permission to go forward with railroad operations would be preempted.

(*Id.* at 716.) Based on this portion of the ruling, this court granted NWP Co.'s request for dismissal from the action.

NWP Co. argues that because dismissals have been entered in its favor, it is the "prevailing" party in these actions. (Code Civ. Proc. § 1032(a)(4).) Petitioners contend otherwise. Relying on decisions such as *Friends of the Trails v. Blasius* (2000) 78 Cal.App.4th 810, 836, they note that success must be measured by the impact of the litigation, not the manner of its resolution. Petitioners argue that they achieved their primary goal against the railroad, which was to defeat the claim of complete preemption, and obtain CEQA review prior to reopening of the railroad.

Petitioners are correct that the dismissal does not automatically preclude an award of fees against NWP Co. (*See e.g. Harbor v. Deukmejian, supra,* 43 Cal.3d at 1103 [fees awarded under section 1021.5 even though no relief awarded in the litigation].) Nevertheless, applying the same "broad, pragmatic view of what constitutes a successful party" (*Graham v. Daimler, supra,* 34 Cal.4th at 566), the court concludes that Petitioners were not successful against NWP Co. The railroad was involuntarily brought into this litigation and at every stage of these lengthy proceedings it defended by asserting that, as a private railroad, federal preemption prevented the application of CEQA to its activities. Every court, including the California Supreme Court, agreed with its position. Petitioners will not obtain any judicial relief against the railroad, nor has the litigation acted as "catalyst" for a

change in NWP Co.'s activities. NWP Co. remains subject to the exclusive jurisdiction of a federal agency. While it is true that Supreme Court's ruling "may have some impact on the private party" (*Friends* at 691), it is also plain that NWP Co. prevailed as a litigant. Therefore to the extent any award of attorney fees is granted, that award shall not be enforceable against NWP Co.

B. Important Right

The fact that Petitioners were only partially successful does not mean that they failed to vindicate important rights. Both NCRA and NWP Co. asserted that the application of CEQA to this railroad project was preempted by the Interstate Commerce Commission Termination Act (ICCTA), which established the Surface Transportation Board ("STB") (49 U.S.C. § 701), and gave the STB exclusive jurisdiction over the railroad transportation at issue. (49 U.S.C. § 10501(b).) In *Friends,* the California Supreme Court determined that the relevant federal statutes do not categorically preempt a state from applying its environmental laws to the state's own subsidiary agencies:

> [A]pplying CEQA to NCRA's decisions on the project appears not to be regulation by the state but instead self-governance by the owner. As we will explain, because we see no indication in the language of the ICCTA that Congress intended to preempt such self-governance in that field, we will conclude that application of CEQA to NCRA in the present case is not preempted.

(*Friends, supra,* 3 Cal.5th at 704.)

The high court's decision addressed an important feature of federalism and reaffirmed the state's right to self-governance, and in particular, the state's interest in "governing how state and local agencies will go about exercising the governmental discretion that is vested in them over land use decisions." (*Id.* 3 Cal.5th at p. 712.) Under CEQA's statutory scheme, the review of the project's potential environmental impacts is undertaken by a lead agency, whose "function in the environmental review process is so important that it cannot be delegated to another body. [Citation.]" (*Friends, supra,* 3 Cal.5th at pp. 712-713.) By obtaining a ruling that federal laws applicable to rail operations

do not categorically preempt enforcement of CEQA to NCRA's public works rail project, Petitioners' action has resulted in the enforcement of an "important right affecting the public interest."

C. Significant Public Benefit

" '[T]he "significant benefit" that will justify an attorney fee award need not represent a "tangible" asset or a "concrete" gain but, in some cases, may be recognized simply from the effectuation of a fundamental constitutional or statutory policy.' [Citation.]" (*Environmental Protection Information Center v. Department of Forestry & Fire Protection* (2010) 190 Cal.App.4th 217, 233.) CEQA "embod[ies] California's strong public policy of protecting the environment. 'The basic purposes of CEQA are to: [¶] (1) Inform governmental decision makers and the public about the potential, significant environmental effects of proposed activities. [¶] (2) Identify ways that environmental damage can be avoided or significantly reduced. [¶] (3) Prevent significant, avoidable damage to the environment by requiring changes in projects through the use of alternatives or mitigation measures when the governmental agency finds the changes to be feasible. [¶] (4) Disclose to the public the reasons why a governmental agency approved the project in the manner the agency chose if significant environmental effects are involved.'(Cal.Code Regs., tit. 14, § 15002.)" (*Tomlinson v. County of Alameda* (2012) 54 Cal.4th 281, 285–286.) "[T]he EIR protects not only the environment but also informed self-government. To this end, public participation is an essential part of the CEQA process." (*Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1123, internal citations omitted.)

In this context, Petitioners' litigation success in *Friends* conferred a significant benefit on the public because it "effectuated a fundamental policy" by requiring the state agency to consider the

environmental consequences before commencing operations on the rail project.[3] This is true even though the *Friends* court upheld NWP Co.'s preemption defense. Viewing Petitioners' success "from a practical perspective" (*Folsom, supra,* 32 Cal. 3d at p. 685), the adverse component of the high court ruling does not diminish the significance of the relief that was obtained. Petitioners were able to halt the rail project until the NCRA demonstrates compliance with CEQA.[4]

In opposition, NCRA argues that Petitioners did not achieve meaningful relief. It contends that that there is no significant impact from the *Friends* decision "because even if petitioner prevails on the merits . . . the order for NCRA to prepare a new EIR could be a futile paper exercise because no different or additional mitigation measures could be imposed without NWP Co.'s contractual assent." (NCRA Oppo. to FOEL, p. 6.) The court is not persuaded by this argument. Petitioners succeeded on the primary issue that NCRA, as a state entity, had a legal obligation to comply with CEQA. Petitioners need not obtain a favorable judgment to be considered a "successful party." (See *La Mirada Ave., supra,* 22 Cal.App.5th at p. 1157.) Nor does the court believe it accurate to assert that NCRA is contractually precluded from adopting different or additional mitigation measures. In the lease and operations agreement, NWPCo. agreed to be bound by CEQA.[5]

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[3] Put another way, the legal victory transcends Petitioners' personal or pecuniary interests. (See *RiverWatch v. County of San Diego Dept. of Environmental Health* (2009) 175 Cal.App.4th 768, 776 ["'The idea is that the litigation for which fees are claimed must *transcend* one's interests, whether pecuniary or not. [Citation.]".) Petitioners' own economic and property rights are not involved here.

[4] NCRA contended at oral argument (and in a supplemental opposition) that recent legislation has effectively rendered any achievement moot. Whatever the merits of this argument (and it is not properly before the court), the court finds that it would not detract from the benefit conferred on the public by the *Friends* decision.

[5] NCRA also contends that the *Friends* decision had no practical impact on Petitioners' case since the "only open approval subject to CEQA review is the approval for the remedial storm damage projects referenced in the EIR." (NCRA Oppo. p. 6.) The court does not read the *Friends* decision as limiting CEQA review to this narrow issue. However, even if it did, the limitation would not diminish Petitioners' success in obtaining a ruling affirming California right's to require compliance with CEQA from its state agencies.

NCRA also argues that it is premature to award fees because there has not yet been a final determination on the categorical federal preemption issue and federal courts may weigh in on the issue. (NCRA Oppo. to FOEL, pp. 7-10). Whether such preemption issues will be litigated in the future in federal court (and what outcome may follow), is a matter of speculation. The court must "consider the "substantial benefit" criterion in the context of the outcome of the current litigation, *and not on speculative future events*." (*Center for Biological Diversity v. County of San Bernardino* (2010) 185 Cal.App.4th 866, 895 (emphasis added).) This court is bound to follow California Supreme Court's decision on the matter as it is indisputably now final following the U.S. Supreme Court's rejection of the petition for certiorari. [6]

D. Private Enforcement

Private enforcement is necessary when a CEQA action is brought against public officials and agencies. " 'In such situations private citizens alone must guard the guardians and the disparity in legal resources is likely to be greatest.' [Citation.]" (*City of Sacramento v. Drew* (1989) 207 Cal.App.3d 1287, 1299, internal citations omitted.) The doctrine underlying an award of private attorney general fees pursuant to § 1021.5 "itself rests upon the recognition that privately initiated lawsuits are often essential to the effectuation of fundamental public policies embodied in constitutional or statutory provisions, and that, without some mechanism authorizing the award of fees, private actions to enforce such important policies will, as a practical matter, frequently be

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[6] NCRA also notes that Petitioners minimized the significance of the *Friends* decision in other briefs, characterizing it as an "intermediary ruling" and a "narrow fact-bound" decision. (NCRA Oppo. to FOEL, p. 11.) The court recognizes that there is disagreement over the precedential significance of the *Friends* decision (and also that Petitioners have varied their stance at times), but this does not detract from the court's own "pragmatic" review of the circumstances surrounding the relief obtained by the Petitioners in *Friends*. (See *La Mirada Ave., supra,* 22 Cal.App.5th at p. 1158 [in determining whether there has been a substantial benefit conferred on the public courts are to realistically assess the lawsuit's gains in light of all the pertinent circumstances].)

infeasible. [Citation.]" (*Bouvia v. County of Los Angeles* (1987) 195 Cal.App.3d 1075, 1082–1083, internal citations omitted.)

Private attorney general fees are routinely awarded in environmental litigation to citizen groups (like Petitioners) who do not have the financial resources to pay for the legal expertise needed to litigate these specialized and often complex actions. (See *Center for Bio. Diversity, supra,* 185 Cal.App.4th at 894 [" 'Thus, successful CEQA actions often lead to fee awards under section 1021.5' on the ground they satisfy the substantial benefit criterion.' [Citation.]"].) These cases fall within this category. This litigation is already seven years old and has involved extensive proceedings in both state and federal courts, including an appeal to the California Supreme Court, before the merits have even been addressed. The financial burden to enforce the CEQA statutes for the public's benefit is manifest in these circumstances and justifies an award of attorney's fees to successful parties.

II. THE AVAILABLILITY OF INTERIM FEES

NCRA and NWP Co. dispute the propriety of a fee award in the absence of a final adjudication of the merits.[7] The court acknowledges that an interim award under section 1021.5 is an exception to the usual practice of waiting until a final judgment to determine the prevailing party. Nonetheless, case law supports an award of interim fees to a party who vindicates a substantial public right that is "secure." (See *Urbaniak v. Newton* (1993) 19 Cal.App.4th 1837, 1844 ["Although a case need not be completely final prior to an award of section 1021.5 fees, the benefit obtained must be

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[7] Citing to *Frog Creek Partners, LLC v. Vance Brown, Inc.* (2012) 206 Cal.App.4th 515, NCRA and NWP Co. argue that the term "action" should be defined consistent with section 22 of the Code of Civil Procedure to mean the whole of the lawsuit and "not to discrete proceedings within a lawsuit." The decision in *Frog Creek Partners* is not controlling because it was premised on the reciprocal attorney fees provisions contained in Civil Code section 1717. The *Frog Creek Partners* court held that section 1717 only permitted one prevailing party on a distinct contract claim and thus success in defeating an intermediate motion to compel arbitration did not establish that the party had recovered greater relief in the action on the contract. Here, we are not dealing with the specific language in Civ. Code § 1717 defining the party prevailing on a contract. Instead, based on decisions such as *Bouvia, supra,* 195 Cal.App.3d 1075, the court concludes that in a proper case, § 1021.5 authorizes the award of interim attorney fees before the final judgment on the merits.

'secure' before the fees may be awarded"].) "[S]uccess for purposes of section 1021.5 does not require a showing that the successful party put the entire dispute to rest for once and all. To the contrary, section 1021.5 contemplates 'interim attorney fee awards' for successes conferring a significant benefit before the matter is finally litigated. (*Bell v. Farmers Ins. Exchange* (2001) 87 Cal.App.4th 805, 832-833.) As long as an interim benefit is complete, regardless of subsequent proceedings, a court may recognize that benefit by awarding fees. (*Bouvia, supra,* 195 Cal.App.3d at 1086; *Ciani v. San Diego Trust & Savings Bank* (1994) 25 Cal.App.4th 563, 576; *La Mirada Ave., supra,* 22 Cal.App.5th at 1159–1160.)

NWP Co and NCRA contend that at this stage of the litigation the court cannot evaluate the "net success" of the parties. For example, citing *Union Pacific R. Co. v. Chicago Transit Authority* (7th Cir. 2011) 647 F.3d 675, NCRA argues that although the *Friends* court rejected NCRA's contention of categorical preemption, this court must still decide another key preemption issue: whether the application of CEQA rules and remedies will support an "as applied" preemption on the facts of this case. (*See e.g. Union Pacific R. Co., supra,* 647 F.3d at p. 679 ["If an action is not categorically preempted, it may be preempted "as applied" based on the degree of interference that the particular action has on railroad transportation—this occurs when the facts show that the action 'would have the effect of preventing or unreasonably interfering with railroad transportation.' [citation omitted]"].)

The possibility that Petitioners may ultimately lose their case on other grounds should not automatically disqualify them from recovering interim fees as successful parties. Petitioners are not required to show they have prevailed in obtaining the primary relief they are seeking. (*Lyons v. Chinese Hospital* (2006) 136 Cal.App.4th 1331, 1349.) Here, the result Petitioners obtained in *Friends* – requiring NCRA to begin the CEQA review process for this public rail project – will not

be undone by a later factual determination should this court (or another court) find that "as applied" case-specific CEQA obligations and remedies have the effect of interfering with railroad transportation. (*Union Pacific, supra,* 647 F.3d at p. 679.) Moreover, the *Friends* court has already held that on the facts of this case the application of CEQA to NCRA will *not* run afoul of the "as applied" federal preemption:

> We acknowledge that CEQA actions might cross the line into preempted regulation if the review process imposes unreasonable burdens outside the particular market in which the state is the owner and developer of a railroad enterprise. But in the context of addressing the competing federal and state interests in governing state-owned rail lines that are before us in this case, *such a line is not crossed by recognizing CEQA causes of action brought against NCRA to enforce environmental rules of decision that the state has imposed on itself for its own development projects.*

(*Friends,* 3 Cal.5th at p. 731, emphasis added.)

The court concludes that Petitioners prevailed on an important issue that resulted in a significant public benefit and that this legal victory is now "secure." After the issuance of the *Friends* decision, Respondent and Real Party in Interest sought certiorari to the U.S. Supreme Court. The petition was denied and the *Friends* decision is final. Interim private attorney general fees may therefore be properly awarded in these circumstances.

III. DETERMINING THE AMOUNT OF AN INTERIM FEE AWARD

Petitioners each have made separate requests for an award of interim fees based on the time spent on the litigation and enhancements. FOER seeks attorney fees in the amount of $1,000,350 (excluding fees for this motion), with an enhancement of $500,175, for a total of $1,500,525.[8] CATs seeks fees in the amount of $1,000,068.75, with an enhancement of $555,593.75, for a total of

[8] See FOER Reply at 12.

$1,555,662.50.[9] Collectively, Petitioners seek attorney fees in excess of $3 million. For the reasons set forth below, the court grants each set of Petitioners a reduced award of fees.

A. Standards

The party seeking attorney fees has the burden of proving that the litigation warranted an award of attorney fees and that the hours expended and the fees sought were reasonable. (*Save Our Uniquely Rural Community Environment v. County of San Bernardino* (2015) 235 Cal.App.4th 1179, 1184.) Once the court has found (as it has in this case) that the litigation conferred a public benefit warranting an award of attorney fees, the amount of fees to be awarded under section 1021.5 is within the trial court's discretion. (*Id.*)

Setting fees by applying the "lodestar" method is presumed to be reasonable. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1096-1097.) The "lodestar" figure is arrived at by: (1) multiplying the hours reasonably spent by the reasonable hourly rate for each attorney as reflected the reasonable market value of the services in the community, keeping in mind the applicable rates charged by private attorneys of comparable skill, reputation and experience; and (2) determining the application, if any, of a fee multiplier, based on a number of factors, including: (a) the contingent nature of any fee recovery; (b) the fact that any fee will go to public interest organizations for future representation; (c) the results achieved; and (d) the importance of the case to the clients and the public. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131-1138.)

B. Fee Rates

Petitioners both fielded teams of experienced professionals to handle this litigation. FOER requests compensation for the work of *six* attorneys supported by a paralegal and law clerks. The hourly rates sought as part of FOER's lodestar range from $650 for the senior partner, $550 for a

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[9] See CATS Reply Memorandum, Revised Appendix. A.

junior partner, $300 to $450 for associates depending on seniority,[10] and $150 for the work of law clerks and a paralegal. Based on the submissions of the parties and the court's own knowledge of the market for comparable services, the court is satisfied that the hourly attorney rates are reasonable.

CATs seeks compensation for the work of *eight* different attorneys, as well as for law students from clinics run by universities. As part of its lodestar, CATs seeks hourly rates of $850, $650 and $630 for its five most experienced attorneys, $400 and $325 for two of its less-experienced attorneys, and a rate of $125 for the clinic students. The court finds that the hourly attorney rates are reasonable and consistent with the level of skill and experience of these professionals.

C. Reasonable Hours

Having determined that the requested hourly rates are reasonable, the court must consider whether the number of hours Petitioners spent on the litigation were reasonable. As a general matter, hours are reasonable if they were "reasonably expended in pursuit of the ultimate result achieved in the same manner that an attorney traditionally is compensated by a fee-paying client for all time reasonably expended on a matter." (*Hensley v. Eckerhart* (1983) 461 U.S. 424, 431.) Put another way, the court must determine whether in the same circumstances "the time could reasonably have been billed to a private client[.]" (*Moreno v City of Sacramento* (9th Cir 2008) 534 F3d 1106, 1111.)

Determining the reasonable hours in this case is a daunting task, particularly since this court was only recently assigned to the case after it returned from the California Supreme Court. The litigation has been ongoing for seven years and has included proceedings in both state and federal trial courts, proceedings before the California Court of Appeal and the California Supreme Court, and briefing in connection with a petition for certiorari to the U.S. Supreme Court. The time records

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[10] As can be expected in litigation that unfolds over the course of years, the billing rates for some of these attorneys increased over time as they gained experience and seniority within the law firm.

submitted in connection with the request for fees are voluminous and this court has devoted substantial time and effort to their review. Petitioners collectively seek compensation for more than 4,600 hours of professional services for the litigation to date. The court has reviewed and considered the submissions and determines that some reductions in the amount of compensable time are appropriate.

1. Limited Success

Both NCRA and NWP Co. contend that any award should be reduced (or denied altogether) because Petitioners only achieved a limited success. As noted earlier, although Petitioners overcame a federal preemption defense, the ruling was limited to the state agency. As to the private railroad, the court ruled that complete federal preemption applied (*Friends,* 3 Cal.5th 714-716) and NWP Co. has now been dismissed from the litigation. As to NWP Co., Petitioners were not successful parties.

"[T]he extent of a party's success is a key factor in determining the reasonable amount of attorney fees to be awarded under section 1021.5." (*Save Our Uniquely Rural Comm., supra,* 235 Cal.App.4th at 1185, internal citations omitted.) A successful party may be awarded all the attorney fees it incurred even if it did not prevail on every issue or theory asserted. For example, "[w]here a lawsuit consists of related claims, and the plaintiff has won substantial relief, a trial court has discretion to award all or substantially all of the plaintiff's fees even if the court did not adopt each contention raised. [Citations.]" (*Downey Cares v. Downey Community Dev. Comm'n.* (1987) 196 Cal.App.3d 983, 997.) On the other hand, the fee may be reduced if the success is only partial, or the party fails to prevail on distinct, unrelated claims. (*See e.g. Boquilon v. Beckwith* (1996) 49 Cal.App.4th 1697, 1722-1723 [50% deduction of attorney fees spent on theory determined to be unnecessary to prove claim of violation of statute].) "'There is no precise rule or formula for making these determinations. The [trial] court may attempt to identify specific hours that should be eliminated, or it may simply reduce the award to account for the limited success. The court necessarily has

discretion in making this equitable judgment.' " (*Sokolow v. County of San Mateo* (1989) 213 Cal.App.3d 231, 248, internal citations omitted.)

Although it was not a complete victory, Petitioners' success in defeating NCRA's defense of federal preemption was "related" to its unsuccessful claim against NWP Co. In such circumstances, the court's task is to "'evaluate the significance of the overall relief obtained by the plaintiff in relation to the hours expended on the litigation' " and "reduce the lodestar calculation 'if the relief, however significant, is limited in comparison to the scope of the litigation as a whole.' " (*Envtl. Prot. Info. Ctr.,supra,* 190 Cal.App.4th at 239 internal citations omitted.)

The relief Petitioners achieved as a result of the *Friends* was "significant," but it was also "limited in comparison to the scope of the litigation as a whole." The California Supreme Court held that CEQA claims advanced against NWP Co. were preempted by federal law and this adverse ruling precludes Petitioners from achieving any direct relief against the railroad.[11] While it may be true that CEQA compliance on the part of the state agency may have a derivative impact on the railroad, it cannot fairly be maintained that this derivative effect is equivalent to judicial relief. In these circumstances, some reduction to the lodestar for limited success is appropriate.

Reducing the lodestar by the amount of time spent litigating against NWP Co. is not feasible because the preemption arguments were for the most part jointly briefed and argued at the various proceedings. Apportionment is not required when claims for relief are so intertwined that it would be impracticable, if not impossible, to separate the attorney's time into compensable and noncompensable units. (*Akins v. Enterprise Rent-A-Car Co. of San Francisco* (2000) 79 Cal.App.4th 11127, 1133.) In the court's view, a percentage across-the-board reduction is appropriate. (See *e.g. Boquilon, supra,* 49

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[11]As summarized in the *Friends* opinion, FOER sought a "stay and preliminary and permanent injunctions preventing NCRA and its agents from 'taking any action to implement, or further improve, or construct the Project, pending full

Cal.App.4th at 1722-1723 [employing 50% deduction].) In balancing Petitioners' success against NCRA against their loss of claims against the railroad, the court concludes that a reduction of 25% should be applied to any lodestar.

2. Excessive/Duplicative Fees

NCRA and NWP Co. also contend that the amount of time spent by Petitioners on the litigation was excessive. In the face of detailed and comprehensive billing records, it is incumbent on a party opposing an attorney fee motion to provide some explanation why the efforts of counsel were inefficient or duplicative. (*Christian Research Inst. v Alnor* (2008) 165 CA4th 1315, 1321.) Here NCRA and NWP Co. have focused on two assertions. First, they argue that the litigation was overstaffed. Second, they assert that much of the work of Petitioners was duplicative or inefficient.

Having reviewed the voluminous submissions in connection with these motions, the court shares some of these concerns. The current status of the litigation is important for purposes of review. The request here is for an award of *interim* fees – *before any trial has even taken place*. To date the parties have litigated *threshold* legal issues concerning whether these actions are properly in state (as opposed to federal) court and whether doctrines of federal preemption preclude the application of state CEQA requirements to the activities at issue.

The Petitioners have filed separate actions but are advancing essentially the same public interest. Although they frequently file separate briefs, Petitioners have pursued a unified strategy in the courts and their legal arguments have been (for the most part) indistinguishable. Certainly in the context of the success at issue on this motion, the Supreme Court's decision in *Friends*, Petitioners filed joint briefs and collectively achieved a threshold victory on an issue of law that applied equally to

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compliance with the requirements of CEQA," and CATs "sought to enjoin NCRA and NWPCo. 'from engaging in any activity pursuant to the Russian River Division Freight Rail Project'" until it complied with CEQA. (3 Cal.5th at 827.)

their respective constituents and the public. Petitioners' objectives may benefit the public but it is nonetheless fair to ask whether two large and separate teams of lawyers are "reasonably necessary" to vindicate the public interests at stake.

FOER fielded a team of six lawyers and CAT's fielded a team of eight lawyers. Collectively these citizen groups dedicated more than 4,600 hours of attorney time to litigating these threshold issues. The proceedings have required briefing and argument before trial and appellate courts. While the legal issues were certainly hard, they did not require extensive fact-finding or evidentiary proceedings. This is not, for example, a situation where a team of lawyers was necessary to track down and interview witnesses or to prepare them for testimony. The claimed lodestar of more than $1 million for *each* Petitioner, in a case that has yet to even go to trial, appears inordinate.

Petitioners have described the expertise of their attorneys and have submitted billing records for the time spent on these matters. They have not, however, provided a persuasive rationale as to why *so many* experienced attorneys were necessary to pursue these threshold legal issues.[12] The court raises this concern because over-staffing often leads to inefficiencies and unnecessarily duplicative work. The more lawyers assigned to a proceeding, for example, the more time is spent reading and reviewing drafts and conferencing with other attorneys.

The staffing in connection with proceedings before the California Supreme Court highlights staffing issues. Petitioners jointly petitioned the high court for review and then filed joint briefs. The record was settled (and in any event no trial had taken place) and the legal issues had been briefed and argued in the trial court and at the Court of Appeal. Nevertheless, time records reflect that *numerous* experienced attorneys dedicated a remarkable number of hours to this single proceeding. CATs *alone*

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[12] The court recognizes that in prolonged litigation it is not unusual to have different lawyers leave or join a case, but this does not appear to have been the case here. There has been admirable consistency in the composition of the legal teams over the course of the litigation.

had five experienced attorneys (ranging from 29 to 40 years of practice experience) working on the appeal (in addition to 3 or more attorneys FOER assigned to the task) and spent more than 750 hours on their *share* of the joint briefing and preparation.[13] Indeed, more than $418,000 of the lodestar of CATs is attributable to this contribution to the shared appeal to the Supreme Court. In the court's own experience, it is unlikely that this same level of staffing and attorney time "could reasonably have been billed" to a private client in the same circumstances. (*Moreno, supra,* 534 F.3d at 1113.)

NCRA and NWP Co. contend Petitioner's time records indicate unreasonable duplication of effort. "[I]t is the burden of the challenging party to point to the specific items challenged, with a sufficient argument and citations to the evidence. General arguments that fees claimed are excessive, duplicative, or unrelated do not suffice." (*Lunada Biomedical v. Nunez* (2014) 230 Cal.App.4th 459, 488, quoting *Premier Medical Management Systems, Inc. v. California Ins. Guarantee Assn.* (2008) 163 Cal.App.4th 550, 564.) NCRA and NWP Co. have met this burden.

In opposition to the fee motions, NCRA and NWP Co. submit declarations identifying billing entries they challenge as unreasonable. NCRA identifies $72,815 worth of time in FOER's records where the word "strategize" was used and $54,217.50 attributed to FOER's coordination with CATs. (Neary Decl., Exhs. A & B.) NCRA's exhibits, however, are of limited utility because the actual description of services for the allotted time is not included in the summary. This has made it difficult for the court to undertake an independent review. In contrast, NWP Co. documents its objections with a more comprehensive analysis. NWP Co. provides a declaration that summarizes suspect time entries and includes not only the dollar value of the time note, but also the date, description of the service that was provided, and the identity of the timekeeper. (See Klein Decl., Exhs. 1& 2.)

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[13] They also had more than 120 hours of time from Stanford law students.

NWP Co.'s first summary exhibit indicates that Petitioners collectively billed 234.2 hours, at a cost $115,410, for (at least in part) "reviewing" briefs. (Klein Decl., Exh. 1.) While other tasks are also included in the descriptions, it is frequently difficult for the court to determine how the time was allotted between various (sometimes vaguely worded) tasks. Based on the court's analysis, roughly 70% of the identified time was billed by attorneys representing FOER with the remainder from attorneys for CATs.

NWP Co.'s second summary exhibit is "a list of tasks and the hours claimed by Petitioners' attorneys for what appear to be internal discussions of the case based on entries that include the words 'strategy,' 'telephone conference,' and 'email.'" (Klein Decl. ¶ 5.) This summary shows Petitioners collectively billed 1,580.05 hours for these tasks (among other things), at a cost of $878,617. The court has conducted its own (time-consuming) analysis and determines that 85% the time was spent by attorneys for FOER with the remaining attributable to CATs.

It is not simply the amount of time assigned to generic tasks that the court finds problematic. The entries by attorneys for FOER are troublesome because the time is recorded in large increments, a variation of the discredited "block billing" approach to accounting for time.[14] The court has identified at least 84 entries in these summaries where an attorney representing FOER made a billing entry for 6 or more hours. Although these entries are accompanied by a general description of the service provided, the information was not sufficient to allow for meaningful review. Combining generic and vague descriptions such as "*review response brief; consider arguments for reply brief; supervise*

[14] "Block billing is the time-keeping method by which each lawyer and legal assistant enters the total daily time spent working on a case, rather than itemizing the time expended on specific tasks." *Welch v. Met. Life Ins. Co.*, 480 F.3d 942, 945 n. 2 (9th Cir.2007) (internal quotation marks omitted). While not necessarily objectionable per se, block-billing can prevent an independent review for reasonableness by obscuring the nature of the attorney's activities.

research re same; e-mails" and entering 7.5 hours,[15] effectively obscures the time spent on specific tasks. It may be reasonable to spend an hour reviewing and responding to emails during the course of work day; it may be unreasonable to dedicate six hours to the same task. The court has no way to make an independent assessment based on the information provided. There are *numerous* such entries in the records.

The objections by the opposing parties also highlight the concern for inefficiencies and excessive time. To consider one example, the court reviewed time billed for preparation for argument before the California Supreme Court. As a preliminary matter, the court appreciates that a high court argument involves significant preparation and may require the involvement of multiple attorneys, particularly when (as is the case here) more than one party shares responsibility for the appeal. Nonetheless, a review of records for April and May of 2017 reveals that one single attorney for FOER (Bricker) appears to have spent no less than 15 *full days* - billing at least 6.5 hours (and generally more) each day – for services that are simply described as "*prepare for oral argument*" and "*e-mails.*" (See Klein Decl., Exh. 2, pp. 39-40.) And this attorney was by no means the sole person preparing for the argument, not even for FOER.[16] Given that the appeal focused on pure issues of law and that parties had been briefing and arguing these issues for some time in both the trial and appellate courts, the court cannot help but conclude some of the time spent "preparing" was excessive.

The court accepts that "by and large, the court should defer to the winning lawyer's professional judgment as to how much time he was required to spend on the case; after all, he won, and might not

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[15] See Klein Dec., Exh. 1, p. 2 (entry for 2/10/14).

[16] The court recognizes that part of this time was for moot court proceedings. Another FOER attorney has an entry for 3.5 hours described as "*Stanford moot court; strategize re oral argument.*" (Klein Dec., Exh. 2, p. 39 (entry for 4/19/17).) Attorney Bricker has an entry for 8.2 hours on 4/20/17 that reads "*Attend moot court; meet with co-counsel at Golden Gate University; prepare for oral argument; e-mails.*" (Id. (entry for 4/20/17).) According to CATs, the Petitioners conducted three moot court arguments in all, one at Stanford University and two at Golden Gate University. (Duggan Decl. ¶ 48.)

have, had he been more of a slacker." (*Moreno, supra,* 534 F3d at 1111.) Nevertheless, this court must also ensure that any fees awarded are reasonable. (See *Ketchum, supra,* 24 Cal.4th at 1132 ["In referring to '*reasonable* '" compensation, we indicated that trial courts must carefully review attorney documentation of hours expended; "padding" in the form of inefficient or duplicative efforts is not subject to compensation"].) Based on the court's independent review, some of the time was either improperly documented or excessive.

Petitioners both acknowledge that there is the potential for unreasonable duplication of effort with so many attorneys involved in the case. FOER represents that it reduced its lodestar by 20% to "account for potential inefficiencies and duplications in efforts" between the two sets of Petitioners. (Folk Decl.¶ 21.) CATs indicates that it applied an across-the-board reduction of 10% to its lodestar. (Duggan Decl. ¶ 57.) This exercise in billing judgment is appropriate and is expected when billing to a private client. Based on the record before the court, however, it is not sufficient. The court finds that the showing by the objecting parties is sufficiently persuasive for the court impose an additional across-the-board deduction to the lodestar for each Petitioner in order to account for inefficiencies, excessive staffing, or duplicative efforts. (See *Id.* at 1138 [" [t]o the extent a trial court is concerned that a particular award is excessive, it has broad discretion to adjust the fee downward or deny an unreasonable fee altogether'"].)

FOER's documentation made it difficult for the court to determine the reasonableness of the time spent on litigation tasks. The court does not question the good faith of its counsel, but based on the frequency of vague billing entries and the excessive time attributed to some of the services provided, the court believes that it should exercise its discretion to reduce FOER's claimed lodestar by an additional 5%. (*See e.g. Sorenson v. Mink* (9th Cir. 2001) 239 F.3d 1140, 1145 ["Courts need not attempt to portray the discretionary analyses that lead[ ] to their numerical conclusions as

elaborate mathematical equations, but they must provide sufficient insight into their exercises of discretion to enable us to discharge our reviewing function. [Citation]."

CATs provided more informative records and the number of questioned entries are far fewer than those of its colleagues. Nonetheless, the court is concerned that the sheer number of experienced attorneys utilized by CATs has unnecessarily increased the time spent to such matters as reviewing briefs and coordinating strategies and that a modest reduction is appropriate. The court will apply an across-the-board reduction of **2%** to the lodestar of CATs.

Both Petitioners request compensation for the participants in law clinics (whether students or graduates) at Golden Gate University and Stanford University. The court has reviewed the supporting documentation and is not persuaded that either the billing rate ($150 per hour) or the number of hours contributed in the context of this specific litigation, qualifies as reasonable and compensable. Petitioners were both represented by team of experienced lawyers who are being compensated at prevailing market rates; they have billed an extraordinary amount of time. This is not a situation where a sole practitioner had to rely on the resources of a law clinic in order to litigate a complex or unfamiliar piece of litigation. The participation of legal clinics in this type of litigation may beneficial to the legal profession as a whole, but the court is not satisfied that it was sufficiently necessary to warrant compensation under section 1021.5. Accordingly, these amounts will be deducted from the Petitioners' respective lodestars.

3. Amount of Lodestar

Based on the foregoing, the court calculates the lodestars as follows. Excluding time attributable to law clerks,[17] FOER requests a lodestar of $988,350. The court reduces this amount by

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[17] FOER claims $12,000 for law clerks. (See FOER MPA at 17).

25% to account for limited success and a further 5% to account for excessive or duplicative time. This results in a final lodestar of **$701,845**.

Excluding time attributable to law clerks (or clinic participants),[18] CATs requests a lodestar of $978,821.25. The court reduces this amount by 25% to account for limited success and a further 2% to account for excessive or duplicative time. This results in a final lodestar of **$714,539.52.**

D. Enhancements

Both Petitioners request that the court enhance their fee awards with a multiplier. Although Petitioners make passing reference to the complexity of the litigation and the specialized skill of their attorneys, their principal arguments in support of an enhancement focus on the risk of non-payment.

A court is not required to include a fee enhancement to the basic lodestar but has discretion to do so in appropriate circumstances. (*Ketchum, supra,* 24 Cal.4th at 1138; *Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714, 741.) "[F]or the most part, the difficulty of a legal question and the quality of representation are already encompassed in the lodestar." (*Ketchum, supra,* 24 Cal.4th at 1138.) Instead, the purpose of an enhancement is "'primarily to compensate the attorney for the prevailing party at a rate reflecting the risk of nonpayment in contingency cases as a class.' " (*Center for Biological Diversity v. County of San Bernardino* (2010) 188 Cal.App.4th 603, 623 quoting *Ketchum, supra,* 24 Cal.4th at 1138.)

Petitioners have no direct financial interest in the outcome of this case and are instead pursuing the matter because they believe it to be in the public interest. It is not surprisingly that they lack sufficient resources to fund this type of litigation on their own. Citizen groups like Petitioners depend on experienced public interest attorneys who are willing to undertake litigation on a contingent basis.

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[18] CATs claims $21,247.50 for university law clinic participants. (CATs Reply, Revised Appendix A.)

The attorneys representing Petitioners agreed to the representation on a partial[19] contingency basis; for most of the litigation, the attorneys agreed to defer payment for their services and obtain full compensation only upon obtaining a fee award as a successful party. In so doing, the attorneys were facing dual contingencies. In order to be fully compensated for their services they had to prevail in the litigation and then persuade the court to grant them the full measure of their fees.

The circumstances warrant the discretionary award of an enhancement. The contingent risk of the litigation and the public interests at stake satisfy both the economic and policy rationales involved in enhancing fee awards. (See *Ketchum, supra,* 24 Cal.4th at 1132-1133.) The appropriate amount of the enhancement, however, is not easily fixed. Petitioners each request a "multiplier" of 1.5, that is, an enhancement to the loadstar of 50% to compensate for contingent risk. They do not provide a specific reason for the size of the multiplier, but they do identify other litigation where similar (or higher) multipliers have been awarded.

The court is not persuaded that the requested multiplier is appropriate. Although counsel for Petitioners faced risk, they did not proceed on a full contingency basis. Both Petitioners and their attorneys were able to mitigate the risk of non-payment by with an agreement to pay some (albeit modest) amount of the loadstar. (See *Ketchum, supra,* 24 Cal.4th at 1138.) In addition, the court has granted a lodestar which in part encompasses some of this risk. The marketplace for skilled and experienced attorneys in CEQA matters is based in part on the recognition of the contingencies of this litigation. In other words, part of the reason attorneys of this caliber can command the hourly rates that they do is that the marketplace recognizes that CEQA litigation is often protracted, difficult, and

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[19] CATs agreed to pay its attorneys a non-deferred and greatly reduced rate of $75 per hour for services. However, once the matter went on appeal, CATs was no longer to pay this amount and its attorneys continued entirely on a contingency with all fees deferred. (Duggan Decl. ¶ 11.) FOER's attorneys agreed to take the case on a partial-contingent basis with a fee cap and the understanding that they would receive full compensation only in the event it succeeded in the litigation. (Folk Decl. ¶ 27.)

accompanied by risk. With this understanding, the court exercises its discretion to enhance the fee award to Petitioners by 25% (a multiplier of 1.25) to fairly compensate the attorneys for the contingent risk of non-payment. Accordingly, the court awards FOER an enhancement to its loadstar in the amount of **$175,461.25**. CATs is awarded an enhancement of **$178,634.88** to its loadstar.

E. Fee Motion

A prevailing party may recover its attorney fees incurred for post-trial work, including fees incurred to establish and defend the fee claim. (*Ketchum, supra,* 24 Cal.4th at p. 1141.) Petitioners each request compensation for the time spent preparing and litigating their motion for attorney fees. FOER requests $56,883.51 in fees and expenses.[20] (Supp. Folk Decl. Exh. C.) The court has reviewed the time records submitted by FOER and finds that the attorney hourly rates and the amount of time spent on the motion by attorneys are both reasonable. However, the court is again excluding time spent by law clerks, as the court is not persuaded that their assistance was necessary or reasonable in light of the four attorneys involved in the preparation of the motion. Accordingly, the court determines that a reasonable fee of $54,895 should be awarded for litigating the motion for an interim fee award. Accordingly, combined with the lodestar and enhancement, the court awards a total of **$932,201.25** in attorney fees to FOER.

CATs' request for compensation in connection with the motion for an award of interim fees is substantially greater than that of FOER. CATs seeks compensation for the time spent by four experienced attorneys whose billing rates range from $630 to $850 per hours, and who collectively spent 199.9 hours in connection with the motion. As a result, CATs requests compensation in the amount of $143,287 for the fee motion alone.

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[20] The request for expenses in connection with the fee motion is not explained. There has been no final adjudication in this case and FOER is not a prevailing party for purposes of the cost statute. The court is excluding expenses from the award.

One significant difference between the fee motions brought by Petitioners is that CATs hired a new team member, attorney Richard M. Pearl, to be responsible for the motion. Mr. Pearl is a senior attorney who concentrates on litigating, mediating, and acting as an expert witness in fee disputes. (Pearl Decl. 2.) Along with three other attorneys, Mr. Pearl assisted in the preparation of motion papers and submitted a lengthy declaration providing information about attorney rates and fee awards in other cases. Although Mr. Pearl indicates he was not hired as a "neutral expert" in this case, he nonetheless provides extensive background information regarding his expertise and experience in this area, including a catalogue of court decisions that have considered his expert testimony on fee awards. Although not specifically styled as expert "opinion" testimony, Mr. Pearl's declaration is presented in the same form as would be an expert declaration. CATs requests that Mr. Pearl be compensated at an hourly rate of $850, and $58,777.50 of the compensation sought is for his time.

The court questions the necessity of adding another highly-compensated attorney simply to litigate this fee motion. It is true that Mr. Pearl is often recognized as an expert in this area, but expert testimony on the reasonableness of the fees is not required. (See e.g. *PLCM Group, supra,* 22 Cal.4th at 1096 ["It is well established that the determination of what constitutes reasonable attorney fees is committed to the discretion of the trial court .... [Citations.] The value of legal services performed in a case is a matter in which the trial court has its own expertise. [Citation.] The trial court may make its own determination of the value of the services contrary to, or without the necessity for, expert testimony. [Citations.]"].) There is no indication that the team of experienced lawyers representing CATs was otherwise unavailable or lacked the expertise to handle the motion. To the contrary, three other lawyers for CATs, with a combined 96 years of practice experience, spent substantial time on the motion. The lead attorney for CATs, Sharon Duggan, herself spent more than 81 hours on the request

for fees. According to Ms. Duggan's declaration, she has litigated these types of cases for over thirty years and presumably has extensive experience in seeking such awards.

The request for $143,287 for the fee motion is unreasonable. Petitioners could have presented their motions in a consolidated brief (since they make essentially the same arguments) and included separate exhibits to document their time. They chose to file separately and the court accepts this strategic decision. This approach, however, does not make the retention of additional counsel sufficiently reasonable to justify compensation in an amount double that requested by FOER. The court declines to award CATs compensation for the work of Mr. Pearl and reduces the reasonable fee motion and awards $84,509.50. Combined with the lodestar and enhancement, the court awards a total of **$977,683.90** in attorney fees to CATs.

F. Expenses and Costs

CATs requests costs on appeal in the amount of $2,686.3. It filed its cost memorandum on February 28, 2018 and provided a line item explanation. No party has filed a motion to tax or strike costs and therefore these costs are granted. FOER has also made a request for reimbursement of expenses in connection with the fee motion. The request is not explained, but it does not appear the expenses qualify as costs on appeal. FOER has not prevailed in the litigation for costs purposes and its request is premature. Accordingly, FOER's request for expenses is denied without prejudice to re-submission should it prevail in the litigation.

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CONCLUSION

Accordingly, for the reasons set forth in this order, the motions of FOER and CATs for an award of interim fees is granted in part and denied in part as follows:

1. To the extent FOER and CATs seek an order awarding fees against NWP Co, the motions are denied.
2. FOER is granted interim attorney fees in the amount of 932,201.25 against NCRA.
3. CATs is granted interim attorney fees in the amount of $977,683.90 against NCRA.
4. CATs is granted $2,686.30 in costs on appeal against NCRA and NWP Co. joint and severally.

Dated: December 21, 2018

STEPHEN P. FRECCERO
Judge of the Superior Court

MARIN COUNTY SUPERIOR COURT
3501 Civic Center Drive
P.O. Box 4988
San Rafael, CA 94913-4988

IN RE: CALIFORNIANS FOR ALTERNATIVES TO TOXICS and NORTH COAST RAILROAD AUTHORITY, ET AL	CASE NO. **CIV1103591** **CIV1103605** **PROOF OF SERVICE BY FIRST CLASS MAIL** ***Code of Civil Procedure Sections 1013a and 2015.5***
IN RE: FRIENDS OF THE EEL RIVER AND NORTH COAST RAILROAD AUTHORITY, ET AL	

I am an employee of the Marin County Superior Court. I am over the age of 18 years and not a party to this action. My business address is 3501 Civic Center Drive, Hall of Justice, San Rafael, California.

On December 21, 2018, I served the following document(s): **ORDER GRANTING ATTORNEY FEES** in said action to all interested parties, by placing the envelope for collection and mailing on the date shown thereon, so as to cause it to be mailed on that date following standard court practices. I am readily familiar with the court's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

SHARON E. DUGGAN, ESQ.
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at San Rafael, California

JAMES M. KIM
Court Executive Officer

By: V. Orea
DEPUTY