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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

SACRAMENTO DIVISION

ASSOCIATION OF AMERICAN RAILROADS, UNION PACIFIC RAILROAD COMPANY, AND BNSF RAILWAY COMPANY, Plaintiffs, v. CALIFORNIA OFFICE OF SPILL PREVENTION AND RESPONSE, THOMAS M. CULLEN, JR., CALIFORNIA ADMINISTRATOR FOR OIL SPILL RESPONSE, in his official capacity, AND KAMALA D. HARRIS, ATTORNEY GENERAL OF THE STATE OF CALIFORNIA, in her official capacity, Defendants.	CASE NO. _____ COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

NATURE OF PLAINTIFFS' CLAIMS

1. Plaintiffs Union Pacific Railroad Company ("UP"), BNSF Railway Company ("BNSF"), and the Association of American Railroads ("AAR") bring this lawsuit to enjoin enforcement of a recently enacted California statute that is preempted by federal law. In correspondence and meetings with UP and BNSF, State officials have conceded that significant portions of the new regime are invalid. But they persist in threatening enforcement of related provisions—which are in reality no less unlawful—imposing a variety of logistical and other requirements related to rail delivery of crude oil. The purpose of this action is to vindicate Plaintiffs' rights under federal law, so that they can discharge their federally mandated common carrier duties free of interference from a patchwork of 50 divergent, sometimes conflicting, State regulatory regimes.

2. The United States government regulates railroads' transportation of petroleum through a sweeping set of intricate federal statutes and regulations. The Pipeline and Hazardous Materials Safety Administration ("PHMSA") and the Federal Railroad Administration ("FRA"), both agencies of the U.S. Department of Transportation ("DOT"), have promulgated dozens of rules, occupying hundreds of pages of the Code of Federal Regulations, dictating the processes and procedures required for carrying oil and other potentially dangerous substances via train. These and related regulations prescribe elaborate safety standards governing matters such as the design and operation of rail cars; precisely how much oil (of which types) on board triggers additional, detailed, mandatory safety precautions; the necessity for, and content of, a written plan to prevent and respond to accidental spills; and numerous other protocols to meet the critical challenge of transporting sensitive cargo over the Nation's railroad tracks. As the PHMSA recently explained, "[t]hrough FRA and PHMSA, DOT comprehensively and intentionally regulates the subject matter of the transportation of hazardous materials by rail." *Hazardous Materials: Improving the Safety of Railroad Tank Car Transportation of Hazardous Materials*, 74 Fed. Reg. 1770, 1790 (Jan. 13, 2009). This "system-wide, comprehensive approach to the risks posed by the bulk transport of hazardous materials by rail . . . includes both preventative and mitigating measures." *Hazardous Materials: Enhanced Tank*

Car Standards and Operational Controls for High-Hazard Flammable Trains, 79 Fed. Reg. 45016, 45026 (Aug. 1, 2014).

3. Congress has also determined that the regulation of rail safety in the United States should primarily be a federal responsibility. The Federal Railroad Safety Act ("FRSA") declares that "[l]aws, regulations, and orders related to railroad safety . . . shall be nationally uniform to the extent practicable," and includes an express preemption provision prohibiting State regulation wherever DOT "prescribes a regulation or issues an order covering the subject matter of the State requirement." Other federal laws, such as the Locomotive Inspection Act and the ICC Termination Act ("ICCTA"), govern related aspects of railroad operations—including the design of rail safety devices, and the financial solvency of carriers—and have long been held to preempt State rules touching those areas.

4. In June 2014, the State of California passed a law, S.B. 861, imposing a variety of regulations for the transportation of oil by rail that squarely overlap with existing federal rules. The new State law requires railroads to take a broad range of steps to prevent and respond to oil spills, on top of their myriad federal obligations concerning precisely the same subject matter. UP, BNSF, and other members of AAR will be barred from operating within California unless a California regulator approves oil spill prevention and response plans that they will have to create, pursuant to a panoply of California-specific requirements. The railroads will also be required to obtain a "certificate of financial responsibility" from the State, issuable only upon a showing that they are sufficiently capitalized (in the opinion of a California regulator) to cover damages resulting from an oil spill. Failure to comply with the new State rules will expose employees of UP, BNSF, and other railroads to the threat of jail time, and the railroads themselves to civil and criminal fines of hundreds of thousands of dollars per day.

5. Federal law preempts this entire regime. Existing DOT regulations and orders "cover[] the subject matter" of the new State provisions, and thus preempt the California law under the FRSA. And in a variety of additional respects, S.B. 861 requires State-level scrutiny of railroad operations and safety procedures that federal law prohibits, including *inter alia* several "pre-clearance" requirements—*i.e.*, obligations for railroads to comply with a

regulatory regime as a condition of operating in a State—that ICCTA categorically precludes. The Supremacy Clause in Article VI of the U.S. Constitution leaves no doubt that in the event of such conflicts, federal law trumps.

6. As common carrier railroads, UP, BNSF and other members of the AAR are legally *obligated* to accept hazardous material like oil as cargo, and to deliver it wherever their tracks run, which includes California. The corollary to that federal obligation is a longstanding Congressional mandate that the safety of railroad operations remain substantially free of State-specific legal duties, except within prescribed federal limits. The new California law exceeds those limits by a wide margin. Plaintiffs thus seek a declaration that portions of S.B. 861 are preempted by federal law, and an injunction preventing the relevant California regulators from enforcing those preempted provisions.

JURISDICTION

7. This Court has jurisdiction to resolve this case pursuant to 28 U.S.C. section 1331 and 28 U.S.C. section 2201.

8. There is an actual controversy between the parties, as hereinafter alleged, directly concerning federal questions.

VENUE

9. Venue is proper in the Eastern District of California under 28 U.S.C. section 1391(b)(1) because all defendants are residents of California and at least one defendant resides in the Eastern District of California.

10. Venue is also proper in the Eastern District of California under 28 U.S.C. section 1391(b)(2) because Plaintiffs' assets and operations within the Eastern District of California, as hereinafter alleged, are and will be substantially affected by the provisions of S.B. 861 challenged herein.

11. Assignment of this action to the Sacramento Division is proper because Plaintiffs' assets and operations in the counties of Placer, Plumas, and Sacramento, among others, as hereinafter alleged, are and will be substantially affected by the provisions of S.B. 861 challenged herein.

12. Assignment of this action to the Sacramento Division is also proper because the action arises from events in Sacramento county, as hereinafter alleged.

PARTIES

13. Plaintiff UP is a Delaware corporation with its principal place of business in Omaha, Nebraska. It is a common carrier railroad operating in numerous States, including California. UP's California operations include facilities, routes, employees, and other assets in counties comprising the Sacramento Division of the Eastern District of California. In order to continue operating in California, UP must take a variety of steps to comply with the provisions of S.B. 861 challenged herein, including without limitation compiling and filing for State review the oil spill response and prevention plan discussed below, adapting operations in accordance with that plan, and submitting to the State financial certification requirements discussed below.

14. Plaintiff BNSF is a Delaware corporation with its principal place of business in Fort Worth, Texas. It is a common carrier railroad operating in numerous States, including California. BNSF's California operations include facilities, routes, employees, and other assets in counties comprising the Sacramento Division of the Eastern District of California. In order to continue operating in California, BNSF must take a variety of steps to comply with the provisions of S.B. 861 challenged herein, including without limitation compiling and filing for State review the oil spill response and prevention plans discussed below, adapting operations in accordance with such plans, and submitting to the State financial certification requirements discussed below.

15. Plaintiff AAR is a nonprofit trade association that represents all of the nation's major freight railroads, including UP and BNSF. Its members carry more than 90 percent of the nation's rail freight by revenue and employ more than 90 percent of rail employees. AAR appears regularly on behalf of the railroad industry before Congress, regulatory agencies, and the courts, including in cases involving federal preemption of state and local requirements.

16. Defendant California Office of Spill Prevention and Response is a division of the State of California's Department of Fish and Wildlife. It is headed by the administrator

for oil spill response, and is responsible for enforcing some or all of the State law provisions challenged in this action.

17. Defendant Thomas M. Cullen, Jr. is the State of California's administrator for oil spill response (the "Administrator"), a position created by Cal. Gov. Code section 8670.4. He serves as head of the California Office of Spill Prevention and Response.

18. Defendant Kamala Harris is the Attorney General of the State of California. Attorney General Harris is responsible for enforcing some of the State law provisions challenged in this action.

FEDERAL STATUTORY, REGULATORY, AND CONSTITUTIONAL BACKGROUND

Preemption Under the Federal Railroad Safety Act

19. The regulation of railroad safety in the United States is predominantly and ultimately a federal responsibility. Congress has empowered the U.S. Secretary of Transportation with the authority—and the duty—to "prescribe regulations and issue orders for every area of railroad safety." 49 U.S.C. § 20103(a). And the FRSA explicitly establishes a preference against balkanized, State-by-State regulation, in favor comprehensive national policies. It declares, in 49 U.S.C. section 20106(a):

> NATIONAL UNIFORMITY OF REGULATION.—(1) Laws, regulations, and orders related to railroad safety . . . shall be nationally uniform to the extent practicable.

20. To implement that mandate for "nationally uniform" rail safety laws, the FRSA includes an express preemption clause, which precludes independent State regulation of any relevant subject matter covered by a DOT regulation. Specifically, 49 U.S.C. section 20106(a)(2) provides that:

> A State may adopt or continue in force a law, regulation, or order related to railroad safety . . . until the Secretary of Transportation . . . prescribes a regulation or issues an order covering the subject matter of the State requirement.

Section 20106 also contains limited exceptions for State laws concerning local safety hazards and private tort actions, neither of which applies to the present dispute over S.B. 861's state-wide, public regulatory regime. In a case such as this one, the operative rule is that if DOT has a

rail-safety-related regulation or order "covering" a particular "subject matter," then States are generally preempted from imposing their own, divergent rules touching the same area.

21. DOT has in fact promulgated hundreds of rules and orders concerning rail safety, including a sweeping set of regulations specifically governing the "subject matter" of transportation of hazardous materials. Most pertinently for the purpose of this Complaint, 49 C.F.R. Part 130 consists of a comprehensive set of regulations, duly issued by DOT, governing "Oil Spill Prevention and Response Plans." Originally promulgated in 1996, Part 130 "adopts requirements for packaging, communication, spill response planning and response plan implementation ***intended to prevent and contain spills of oil*** during transportation." 61 Fed. Reg. 30533, 30533 (June 17, 1996) (emphasis added). On July 23, 2014, DOT publicly announced its intention to further refine those regulations, as it periodically does, through an Advance Notice of Proposed Rulemaking regarding "Oil Spill Response Plans for High-Hazard Flammable Trains" (Docket No. PHMSA-201400105 (HM-251B) (published at 79 Fed. Reg. 45079 (Aug. 1, 2014)); *see also* Department of Transportation, Notice of Proposed Rulemaking, *Hazardous Materials: Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains*, Docket No. PHMSA-2012-0082 (HM-251) (July 23, 2014) (published at 79 Fed. Reg. 45016 (Aug. 1, 2014)).

22. DOT has also promulgated numerous other regulations and orders prescribing detailed safety requirements for virtually all other aspects of the process of delivering oil by rail. 49 C.F.R. Part 172, for example, consists of over 100 separate provisions imposing distinct obligations on "[e]ach carrier by . . . rail . . . who transports a hazardous material." *See* 49 C.F.R. § 172.3. These rules supplement related requirements, all issued under DOT's auspices, in 49 C.F.R. Part 174 ("Subchapter C: Hazardous Materials Regulations; Part 174: Carriage by Rail"); in 49 C.F.R. sections 200-272 (generally governing rail safety and related matters); in 49 C.F.R. Part 171 (requiring *inter alia* notice of accidents involving hazardous materials to the National Response Center); in a litany of orders DOT has issued over the years (*e.g.*, Emergency Order, *Petroleum Crude Oil Railroad Carriers*, Docket No. DOT-OST-201400067 (May 7, 2014)); and elsewhere. In short, DOT regulations and orders "covering the

subject matter" of oil delivery by rail are intricate and comprehensive, leaving little or no room for overlapping State requirements.

23. In fact, DOT itself has addressed the preemptive effect of federal regulation in these areas, in several rules that directly assert the preemption of State laws concerning rail safety and rail transportation of hazardous materials. 49 C.F.R. section 172.822, for example, expressly provides that "[a] law, order, or other directive of a state . . . that designates, limits, or prohibits the use of a rail line . . . for the transportation of hazardous materials . . . is preempted." That provision, like the analogous one at 49 C.F.R. section 174.2, reflects the preemptive effect of relevant federal regulations under both the FRSA and a related statute, the Hazardous Materials Transportation Act, whose express preemption clause appears in 49 U.S.C. section 5125.

Preemption Under ICCTA

24. ICCTA vests exclusive jurisdiction over "transportation by rail carriers . . . with respect to rates, classifications, rules . . ., practices, routes, services, and facilities of such carriers" and over "the construction, acquisition, operation, abandonment, or discontinuance of [certain types of tracks] or facilities" in the federal Surface Transportation Board ("STB"). 49 U.S.C. § 10501(b). The remedies authorized by ICCTA "with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law." *Id.*

25. The purpose of ICCTA's broad preemption provision is to protect the railroad industry from a patchwork of State and local regulations that would interfere with interstate commerce. As the Senate noted when it enacted ICCTA in 1995:

> The hundreds of rail carriers that comprise the railroad industry rely on a nationally uniform system of economic regulation. Subjecting rail carriers to regulatory requirements that vary among the States would greatly undermine the industry's ability to provide the "seamless" service that is essential to its shippers and would weaken the industry's efficiency and competitive viability.

S. REP. NO. 104–176, at 6 (1995), U.S. Code Cong. & Admin. News 1995, p. 793.

26. The "nationally uniform system of economic regulation" that Congress has prescribed for railroads includes a statutory common carrier obligation owed to shippers and

passengers under 49 U.S.C. section 11101. This federally mandated duty includes, *inter alia*, the requirement to provide rail service, at a customer's reasonable request, for the transportation of any commodities that have not been exempted under a separate provision of the statute, 49 U.S.C. section 10502. The transportation of crude oil has not been exempted under section 10502, and so railroads *must* accept it for delivery (subject, of course, to compliance with the blanket federal safety regulations described above) wherever they operate.

27. In light of STB's exclusive jurisdiction and railroads' common carrier obligations, courts have repeatedly held that ICCTA prohibits State and local authorities from imposing permitting or "pre-clearance" requirements (*i.e.*, requirements to procure State regulatory approval as a condition of operating in a State) on railroads. Such regulations are categorically preempted because they can be used to block a railroad's ability to conduct federally *required* operations or to engage in practices that STB has authorized. ICCTA thus precludes all State or local laws that could prevent a railroad from operating in a particular jurisdiction, including building permit requirements, zoning ordinances, and environmental and land use permitting obligations.

28. Courts have likewise reasoned that, by assigning STB exclusive jurisdiction within its field, ICCTA necessarily preempts state requirements in areas already regulated by STB. The heart of STB's regulatory purview—and thus ICCTA's preemptive scope—is economic regulation, including not only the rates charged by railroads but their financial fitness to provide continued services. Accordingly, every court to have confronted the question has held that State economic regulation of railroads is preempted. Under prevailing Ninth Circuit doctrine, that category includes State environmental regulations under which a carrier can in practice be prevented from operating any rail line.

Preemption Under Other Federal Laws

29. Additional federal laws with relevant preemptive effect include the Locomotive Inspection Act, codified at 49 U.S.C. section 20701 *et seq.*, and the Safety Appliance Act, codified at 49 U.S.C. section 20301 *et seq.* These statutes allow railroads to use certain critical components of trains only when their parts are in proper condition, are safe to

operate, have been inspected in accordance with federal law, and are able to withstand a litany of tests prescribed by DOT. Federal regulations under these two laws further occupy the field of railroad safety equipment, generally preempting State regulation of that broad subject matter.

Interstate Commerce Clause Limitations

30. The Interstate Commerce Clause of the U.S. Constitution, art. I, § 8, cl. 3, imposes certain implicit limitations on State power, significantly restricting the States' ability to regulate or otherwise burden interstate commerce. Courts have repeatedly held that a State may not impose ostensibly local regulations on railroads that will have the effect of forcing modifications to a train's makeup and equipment whenever it enters the State, or of forcing railroads to adhere to such rules enacted by one State during their operations in another.

The Remaining Role of State Regulation

31. States are not altogether excluded from regulating in the field of rail safety. The express preemption clause in the FRSA allows certain State laws in this domain if DOT has no rules "covering" the relevant "subject matter," or if the State regulation addresses "an essentially local safety or security hazard" that cannot be adequately addressed through regulations of nation-wide scope. It also, in 49 U.S.C. section 20106(b), permits States to impose tort liability for failures "to comply with the Federal standard of care established by a regulation or order issued by the Secretary of Transportation"; in other words, States cannot use tort law to create new State standards governing rail safety subjects covered by federal law, but are permitted to use State tort law to award private damages for violations of safety standards established by DOT.

32. In addition, the primary role that Congress envisioned for States in this field is enforcement of federal standards in coordination with DOT through the State Rail Safety Participation Program. *See* 49 U.S.C. § 20105. Under that program, which is implemented through 49 C.F.R. Part 212, States perform inspections and investigations to ensure that railroads are adhering to federally prescribed rail safety standards. The FRA may delegate indefinitely all or part of its investigative and surveillance authority to a state agency, *see* 49 C.F.R. § 212.105(a), and may reimburse the States for up to half of their program expenditures, *see* 49

U.S.C. § 20105(e). The federal government, however, retains authority to establish the pertinent regulatory standards and to decide whether to initiate an enforcement action when a State identifies a violation. *See* 49 U.S.C. § 20113.

33. Apart from the States' role in identifying violations of federal standards, however, DOT's extensive regulation of rail safety leaves little room under the FRSA and related statutes for State laws purporting to govern the same subjects—including hazardous material transportation by rail generally, and oil spill response and prevention plans specifically.

THE PREEMPTED STATE LAW: CALIFORNIA S.B. 861

34. On June 20, 2014, Governor Jerry Brown signed S.B. 861 into law, amending California Government Code sections 8670.1 *et seq*. Following the bill's enactment, State officials touted California as "the first state to implement 'crude by rail' safety regulations."[1]

35. Specifically, S.B. 861 imposes a range of State-specific obligations on railroads concerning written plans for preventing and responding to oil spills. First, the statute creates a new State law requirement for railroads to prepare and adhere to such plans *inter alia* for their moving trains. Second, it prescribes in painstaking detail what the plans are to include; more precisely, it prescribes substantive requirements for State regulations governing the content of the plans, to be promulgated by the Administrator on behalf of the California Office of Spill Prevention and Response. Third, the new law precludes a railroad's operation in California absent approval of its State-mandated plan by a State regulator. In addition, S.B. 861 asserts State oversight of carriers' financial condition—ostensibly for the purpose of ensuring adequate reserves to pay for damages from an oil spill—and precludes a railroad's operation in California unless and until it obtains a "certificate of financial responsibility" from the State.

36. In the weeks following passage of S.B. 861, railroad representatives explained to State officials (as they had prior to the law's enactment as well) that, while they share the State's commitment to ensuring the safe transportation of oil by rail within California,

[1] *See* Kern Golden Empire, "State discusses new oil train regulations" (July 30, 2014) (available at http://www.kerngoldenempire.com/story/d/story/state-discusses-new-oil-train-regulations/35217/BWzRSTgD9E2nE5sDl4oWfA).

California's new approach to accomplishing that objective violates federal law. The Legislature responded by drafting and considering a second bill, A.B. 2678, to amend S.B. 861. The primary change envisioned by A.B. 2678 was a strengthening of the existing statute's severability provision, which in its new form would have declared that "[i]f any provision is declared by a court to be . . . preempted by federal law . . ., all of the other provisions of this chapter are intended to, and shall remain, fully effective." A.B. 2678 would also have declared it "the intent of the Legislature that this chapter be interpreted and implemented so as not to conflict with federal law with respect to the design, construction, integrity testing, or operation of a vessel or facility,"[2] and that "this chapter be interpreted and implemented so as not to prevent a train that meets the requirements of federal law from entering the state contingent upon meeting the requirements of this chapter." A.B. 2678 (proposed amendments to Cal. Gov. Code § 8670.95(a)). The bill, however, ultimately died in committee.

37. S.B. 861 thus remains entirely in effect, as originally enacted in June 2014.

The Oil Spill Contingency Planning Requirements of S.B. 861

38. The core of the challenged law is its mandate that railroads have a written oil spill prevention and response plan in place and approved by the Administrator pursuant to California-specific regulations. This requirement is codified at Cal. Gov. Code section 8670.29(a). The Administrator's authority to review each plan for compliance with those regulations appears in Cal. Gov. Code sections 8670.19, 8670.29(g), 8670.30.5, and 8670.31(a)-(f). Public review and comment are also required. Cal. Gov. Code § 8670.28(b). As discussed below, if the Administrator does not ultimately approve a railroad's spill prevention and response plan (which the statute calls a "contingency plan") following this process, the railroad is barred from continuing its operations within the State.

39. According to the statute, the Administrator must issue a suite of regulations prescribing the content of these mandatory plans. And the regulations, in turn, are

[2] The statute defines "facility" to include "a railroad that transports oil as cargo." Cal. Gov. Code § 8670.3(g)(1)(D).

required to impose a heightened duty of care on railroads with respect to spill prevention and response. More precisely, S.B. 861 requires that the Administrator's rules obligate railroads to file contingency plans that "provide for the best achievable protection of waters and natural resources of the state," defined as "the highest level of protection that can be achieved through both the use of the best achievable technology and those manpower levels, training procedures, and operational methods that provide the greatest degree of protection achievable." This requirement is codified at Cal. Gov. Code sections 8670.28(a), 8670.29(h), and 8670.3(b)(1). Related provisions require railroads to "maintain a level of readiness that will allow effective implementation of the applicable contingency plans," and to carry out cleanup operations in accordance with an approved plan in the event of a spill. These requirements are codified at Cal. Gov. Code sections 8670.28.5, 8670.8670.25, and 8670.27(a).[3]

40. S.B. 861 also dictates the content of the new State-mandated plans in a variety of other respects. Provisions codified at Cal. Gov. Code sections 8670.28(a)(1)-(11), (b)-(d) and Cal. Gov. Code sections 8670.29(b), (d)-(f), (i), for example, specify a broad set of further requirements concerning, *inter alia*, certain business relationships railroads must enter, training exercises they must undertake, and environmental studies their plans must include.

41. One such provision mandates that "[e]ach oil spill contingency plan provid[e] for appropriate financial or contractual arrangements for all necessary equipment and services for the response, containment, and cleanup of a reasonable worst case oil spill scenario for each area the plan addresses." Cal. Gov. Code § 8670.28(a)(4). By comparison, DOT's own oil spill contingency plan regulations include a similar requirement, codified at 49 C.F.R. section 130.31(b)(4). But DOT considered and—unlike the State of California—rejected a version of this requirement that would apply to all trains with oil tank cars, irrespective of how much hazardous material they carry. *See* 61 Fed. Reg. 30533, 30537-38 (June 17, 1996)

[3] Publicly available sources, including the news article cited in footnote 1 above, indicate that the State intends for the rules to go into effect no later than January 1, 2015. A July 2, 2014 letter from Office of Spill Prevention and Response Administrator Thomas Cullen asserted that "OSPR will draft emergency regulations which will be targeted for completion by fall of 2014," adding that "adopted requirements will require that industry have 90 calendar days to comply with all new requirements, except for environmentally sensitive sites, before enforcement actions may be taken."

(discussing threshold volumes of oil triggering obligation to file "basic" or "comprehensive" plan).

42. Another provision of the new California law requires that each railroad's plan "[p]rovide for training and drills on elements of the plan at least annually, with all elements of the plan subject to drill at least once every three years." Cal. Gov. Code § 8670.29(b)(9); *see also* Cal. Gov. Code § 8670.10 (requiring "announced and unannounced drills"). As it happens, DOT similarly requires certain carriers engaged in the transportation of oil to draft, file, and implement contingency plans that describe the training and unannounced drills to be conducted under prevailing regulations. *See* 49 C.F.R. § 130.31(b)(5). Unlike the California law, however, the DOT rule deliberately exempts other carriers from practice-drill obligations (including railroads such as UP and BNSF, who presently transport oil in volumes too low to trigger application of the "comprehensive" federal plan obligations in 49 C.F.R. Part 130), and eschews the imposition of any particular training regimen even when drills are required.

43. A third section of the California statute requires that railroads' oil spill contingency plans include "[p]rovisions detailing . . . locations of environmentally sensitive areas requiring special protection." Cal. Gov. Code § 8670.29(d)(4). This State mandate directly conflicts with the prevailing federal policy, which by design spares railroads from the obligation to include location-specific analysis in their spill prevention and response plans. As DOT explained when promulgating its own "contingency plan" rules:

> Neither [of the two forms of mandatory federal plans] is required to address response on a vehicle- or location-specific basis. A nationwide, regional or other generic plan is acceptable, provided it covers the range of spill scenarios that the owner or operator foreseeably could encounter.

61 Fed. Reg. 30533, 30538 (June 17, 1996).

44. In sum, the California oil spill prevention and response plan requirements in S.B. 861 address a subject matter already covered by extensive DOT regulations, and impose obligations that substantially diverge from their federal analogues.

The Financial Responsibility Requirements of S.B. 861

45. S.B. 861 also requires railroads, as a condition of lawful operation in

California, to demonstrate to the satisfaction of the Administrator that they would able to pay any damages that might arise from an oil spill into State waters. This requirement is codified at Cal. Gov. Code sections 8670.37.51(d), 8670.37.53(c), and 8670.37.55. Railroads carrying oil near waterways—which is to say, all railroads transporting oil in California—are barred as a matter of State law from performing their federal common carrier obligations without a "certificate of financial responsibility" granted by the State Administrator.

The Enforcement Provisions of S.B. 861

46. S.B. 861 imposes criminal liability for a railroad's failure to secure State approval of its State-specific oil spill contingency plan. Any person who continues railroad operations without an approved contingency plan (once the operative regulations go into effect) commits a criminal offense punishable by up to a year in the county jail and a fine of up to $250,000. Each day of continued operations constitutes a separate offense. These criminal sanctions are codified at Cal. Gov. Code section 8670.64(c). Similar penalties apply to spill response efforts that diverge from a plan satisfying State standards. This criminal liability is codified at Cal. Gov. Code sections 8670.64(a)(4) and 8670.64(b). Other provisions authorize substantial civil fines in the same circumstances. Those provisions are codified at Cal. Gov. Code sections 8670.66(a)(4), 8670.67(a)(1), and 8670.67(a)(4).

47. The State's tools for enforcing S.B. 861's financial fitness mandate are similarly potent. A person who continues railroad operations in the State without a certificate of financial responsibility granted by the Administrator is subject to imprisonment in a county jail for up to a year and a fine of up to $50,000. This criminal liability is codified at Cal. Gov. Code section 8670.65.

48. Finally, as a result of S.B. 861, the Administrator may on his own authority issue a cease and desist letter to any railroad operating within the State without an approved contingency plan or certificate of financial responsibility. That provision is codified at Cal. Gov. Code section 8670.69.4. In substance, it authorizes the Administrator to prevent any railroad from discharging its federal common carrier obligations in California.

PLAINTIFFS' CLAIMS

49. The provisions of California law discussed above are all preempted by federal law.

50. DOT regulations in 49 C.F.R. Part 130 "cover[] the subject matter" of oil spill prevention and response plans in whole or in relevant part, and thus preclude analogous State laws under the FRSA's express preemption clause in 49 U.S.C. section 20106(a)(2). On this basis alone, all of S.B. 861's requirements for railroads concerning spill contingency plans are preempted.

51. Other DOT regulations governing hazardous materials transportation and accompanying rail safety concerns—including without limitation 49 C.F.R. Parts 172, 174, 217, and 240—"cover[]" in whole or in relevant part the "subject matter[s]" of techniques, training, equipment, processes and procedures for delivering such cargo by rail. Under 49 U.S.C. section 20106(a)(2), these federal regulations thus preempt the portions of S.B. 861 that would impose State-law obligations on railroads with respect to the care they must take in preventing and responding to oil spills and related matters.

52. The Locomotive Inspection Act, the Safety Appliance Act, and the Constitution's Interstate Commerce Clause similarly preempt provisions of S.B. 861 that would impose a State-law-based standard of care with respect to the use of rail technologies.

53. ICCTA categorically preempts all portions of S.B. 861 that would block or impede a railroad's ability to discharge its federally mandated common carrier obligations. Under the U.S. Constitution's Supremacy Clause, a California law may not frustrate or interfere with those federal responsibilities.

54. ICCTA also preempts all of the express and *de facto* pre-clearance requirements in S.B. 861, including those that condition a railroad's lawful operation in California on State approval of the carrier's contingency plans and financial fitness. Licensing railroad operations falls within the exclusive jurisdiction of the STB, and under longstanding doctrine, ICCTA categorically preempts all State permitting obligations.

55. The FRSA and ICCTA collectively preempt all of the enforcement provisions in S.B. 861 that would impose penalties or other sanctions for failure to comply with the statute's contingency plan and financial responsibility requirements. The FRSA and accompanying regulations "cover[] the subject matter" of spill prevention and response plans and related matters concerning the safe transportation of hazardous material by rail, and thus preclude State penalties, fines, and orders for violation of preempted State standards. ICCTA preempts State authority to order railroads to "cease and desist" from operating in California. And ICCTA also preempts penalties or sanctions for failure to comply with the State's financial certification regime, because ICCTA grants the STB exclusive jurisdiction over railroad licensing and financial fitness.

COUNT I

The Oil Spill Contingency Plan Requirements of S.B. 861 Are Preempted by the FRSA and Thus Violate the Supremacy Clause

56. Plaintiffs reallege and incorporate by reference Paragraphs 1-55.

57. All oil spill contingency plan requirements, and the related obligations described above imposed on railroads by S.B. 861, violate the Supremacy Clause in the U.S. Constitution (art. VI, cl. 2), because they are preempted by the FRSA and accompanying regulations, including without limitation regulations in 49 C.F.R. Part 130, 49 C.F.R. Part 172, 49 C.F.R. Part 174, 49 C.F.R. Part 217, and 49 C.F.R. Part 240.

COUNT II

The Express and *De Facto* Oil Spill Contingency Plan Permitting and Pre-Clearance Requirements in S.B. 861 Are Preempted by ICCTA, and Thus Violate the Supremacy Clause

58. Plaintiffs reallege and incorporate by reference paragraphs 1-55.

59. All express and *de facto* oil spill contingency plan permitting and pre-clearance requirements imposed on railroads by S.B. 861 violate the Supremacy Clause in the U.S. Constitution (art. VI, cl. 2), because they are preempted by ICCTA.

COUNT III

The "Best Achievable Technology" Requirement in S.B. 861 Is Preempted by the FRSA, The Locomotive Inspection Act, and the Safety Appliance Act, and Thus Violates the Supremacy Clause

60. Plaintiffs reallege and incorporate by reference paragraphs 1-55.

61. S.B. 861's requirement that contingency plans mandate use of the "best achievable technology" in preventing and responding to oil spills violates the Supremacy Clause in the U.S. Constitution (art. VI, cl. 2), because it is preempted by: (a) the Locomotive Inspection Act; (b) the Safety Appliance Act; and (c) the FRSA and accompanying regulations, including without limitation regulations in 49 C.F.R. Part 130, 49 C.F.R. Part 172, and 49 C.F.R. Part 174.

COUNT IV

The "Best Achievable Technology" Requirement in S.B. 861 Violates the Interstate Commerce Clause

62. Plaintiffs reallege and incorporate by reference paragraphs 1-55.

63. The "best achievable technology" requirement in S.B. 861 violates the Interstate Commerce Clause in the U.S. Constitution (art. I, § 8, cl. 3) because it substantially burdens interstate commerce and discriminates against out-of-state commerce.

COUNT V

The Financial Responsibility Requirements of S.B. 861 Are Preempted by ICCTA and Thus Violate the Supremacy Clause

64. Plaintiffs reallege and incorporate by reference Paragraphs 1-55.

65. All financial responsibility and related requirements of S.B. 861 violate the Supremacy Clause in the U.S. Constitution (art. VI, cl. 2), because they are preempted by ICCTA.

COUNT VI

The "Cease and Desist" Provision of S.B. 861 Is Preempted Under ICCTA and Thus Violates the Supremacy Clause

66. Plaintiffs reallege and incorporate by reference Paragraphs 1-55.

67. The enforcement provision of S.B. 861 authorizing the Administrator to order a railroad to cease and desist its operations within the State violates the Supremacy Clause

in the U.S. Constitution (art. VI, cl. 2), because it is preempted by ICCTA.

RELIEF REQUESTED

Plaintiffs UP, BNSF, and AAR pray:

103. That this Court find and conclude and declare that the Government of the United States, acting through the Secretary of Transportation and/or the Surface Transportation Board, has preempted State regulation covering the subjects of oil spill contingency plans and financial fitness of railroads.

104. That this Court find and conclude and declare that the oil spill contingency plan requirements imposed on railroads by S.B. 861, codified at Cal. Gov. Code sections 8670.10(a)(1)-(3), (b), 8670.19, 8670.25(b), 8670.27(a), 8670.28(a)-(d), 8670.28.5, 8670.29(a)-(b), (d)-(i), 8670.30.5, 8670.31(a)-(f), and 8670.36, are invalid and unenforceable.

107. That this Court find and conclude and declare that the financial responsibility requirements imposed on railroads by S.B. 861, codified at Cal. Gov. Code sections 8670.37.51(d), 8670.37.53(c), and 8670.37.55, are invalid and unenforceable.

108. That this Court find and conclude and declare that the enforcement provisions made applicable to railroads by S.B. 861, codified at Cal. Gov. Code sections 8670.64(a)(4), 8670.64(b), 8670.64(c)(2)(C)-(D), 8670.66(a)(4), 8670.67(a)(1), 8670.67(a)(4), and 8670.69.4, are invalid and unenforceable.

109. That the Office of Spill Prevention and Response, the Administrator for oil spill response, the Attorney General of the State of California, and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them, be preliminarily and permanently enjoined from enforcing against the railroad operations of UP, BNSF, and other members of AAR the provisions codified at Cal. Gov. Code sections 8670.10(a)(1)-(3), (b), 8670.19, 8670.25(b), 8670.27(a), 8670.28(a)-(d), 8670.28.5, 8670.29(a)-(b), (d)-(i), 8670.30.5, 8670.31(a)-(f), 8670.36, 8670.37.51(d), 8670.37.53(c), 8670.37.55, 8670.64(a)(4), 8670.64(b), 8670.64(c)(2)(C)-(D), 8670.66(a)(4), 8670.67(a)(1), 8670.67(a)(4), and 8670.69.4.

112. That Plaintiffs be awarded their costs and reasonable attorneys' fees; and

113. For such other and further relief as the Court may deem just and proper.

Dated: October 7, 2014

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