

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## IN THE UNITED STATES DISTRICT COURT

## FOR THE NORTHERN DISTRICT OF CALIFORNIA

HUMBOLDT BAYKEEPER and  
ECOLOGICAL RIGHTS FOUNDATION,

Plaintiffs,

v.

UNION PACIFIC RAILROAD COMPANY  
and NORTH COAST RAILROAD  
AUTHORITY,Defendants.  
\_\_\_\_\_ /

No. C 06-02560 JSW

**ORDER DENYING  
DEFENDANTS' MOTION TO  
DISMISS**

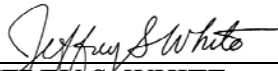
Now before the Court is Defendants' motion to dismiss for failure to join an indispensable party. On June 1, 2009, this Court issued an Order denying Defendants' motion for leave to amend their answer. The Court found that the State was at most a necessary party to this action, but would not be indispensable because, pursuant to the *Ex parte Young* doctrine, the State may be sued for violations of federal law in which the plaintiffs merely seek prospective, injunctive relief. Moreover, the Court found that Defendants waived the defense of failure to join a necessary party. Based on this ruling, Defendants have indicated that although they are not willing to withdraw their motion to dismiss, they do not intend to file any further briefs in support of their motion. Accordingly, this motion is now fully briefed and ripe for decision. The Court finds that this matter is appropriate for disposition without oral argument and the matter is deemed submitted. *See* N.D. Civ. L.R. 7-1(b). Accordingly, the hearing set for July 17, 2009 on Defendants' motion to dismiss for failure to join an indispensable party is

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

VACATED. The Court further finds that based upon the reasoning set forth in the Order denying Defendants' motion for leave to amend their answer, the Court DENIES Defendants' motion to dismiss for failure to join an indispensable party.

**IT IS SO ORDERED.**

Dated: July 19, 2009

  
\_\_\_\_\_  
JEFFREY S. WHITE  
UNITED STATES DISTRICT JUDGE