

North Coast Rail Authority clears Court of Appeal

Ruling could open future service to Willits

By Michael Mott

The North Coast Rail Authority (NCRA) won their case at the Court of Appeal in San Francisco last month, which could allow the return of rail service to Willits. The lawsuit being appealed was originally filed in July 2011 by Friends of the Eel River and Californians for Alternatives to Toxics (CATs) and a Marin County judge ruled in NCRA's favor in June 2013.

The railroad, which currently is operational only between Napa and Windsor, has a project in the works to extend as far north as Cloverdale, said Chris Neary, counsel for NCRA. Eventually though, Neary said one of the primary goals of NCRA would be to restore the railroad to Willits, a "logical place for a reload facility for the Humboldt County lumber mills."

The case, brought by environmental groups in 2011, contended NCRA's Environmental Impact Report (EIR) for the project was inadequate. The California Environmental Quality Act (CEQA) has required EIRs since 1970 for any project with potential environmental impacts.

First District Appellate Justices Needham, Jones and Bruiniers upheld a prior Marin County trial court's decision in the case, agreeing that NCRA, as a government entity, was preempted, or displaced, from the state's environmental regulations. An organization like NCRA is governed primarily by the federal Surface Transportation Board.

As Justice Needham cited from a case from 2009, federal law often trumps state law in areas Congress decides: "Congress has exercised 'broad regulatory authority' over railroads for more than a century."

Neary said the EIR was originally intended as a way to develop operating guidelines associated with the environment, including mitigation measures, for NCRA's freight operator Northwest Pacific Railroad Company. "The 'project' as described in the EIRs...is the resumption of freight rail service, as well as the rehabilitation, construction and repair activities to upgrade the track, along the 142-mile segment of the Northwestern Pacific Railroad from Willits...to Lombard in Napa County," according to court documents.

"These mitigation measures were applied to our operators as a series of 'Thou shalt', and the EIR was a systematic way to arrive at those mitigation measures," Neary said.

The plaintiffs say the case was complicated by NCRA's use of state funds, among other things. They argued the EIR, filed in 2011 and paid for with state funds, allowed state regulations to govern the project, not just federal statutes.

Executive Director of Friends of the Eel River, Scott Greacen, said in an email the funding was conditioned on and directed to performing a CEQA analysis. The EIR, they argued in the appeal, didn't describe the line in its entirety, nor explain what work was needed to restore the whole line, "identify existing environmental contaminations" or disclose potential environmental impacts, according to the court's decision.

A key issue of the appeal was the "Market Participation Doctrine," a concept that originated in the Supreme Court to give government agencies "the same freedom to protect their interests as do private individuals and entities" when entering markets as buyer or seller, court documents said.

The positive ruling for NCRA was in part due to the First District Court's view that whatever contract NCRA entered into with the state was not contestable by other groups, such as the plaintiffs. In other words, the groups filing the suit against the NCRA had no standing in the case.

The NCRA decision differed from a July ruling in Third District Court on a similar case involving the High Speed Rail Authority and the city of Atherton. In that case, the Third District Court determined the California High-Speed Rail Authority could not exempt itself from CEQA, seemingly the opposite of the NCRA case.

For now, Friends of the Eel River and CATs have filed a petition for a rehearing, in which the appeals court can alter its decision before making it final. After that, the environmental groups may file for a petition for review, to request the California Supreme Court hear the case.

The last rail service to Willits shut down in late 1998. The rail service north to Eureka shut down after the major storms of January 1995. The scope of repairs required to restore rail from Willits to Eureka has never been determined.

Greacen declined to comment on whether they would go to the Supreme Court, but said it would be based on Atherton's definition of the "Market Participation Doctrine.

"We think the court of appeal got it completely wrong, and the City of Atherton's challenge — they got the law right. If we do go to the Supreme Court, that's going to be the essence of it.