

Calif. High Court Rules CEQA Not Preempted In Rail Row

By [Melissa Daniels](#)

Law360, Los Angeles (July 27, 2017, 8:59 PM EDT) -- The California Supreme Court handed down a meaty opinion Thursday that ruled the state's California Environmental Quality Act is not preempted by federal law in a challenge to a state-owned railroad entity's plans to further revive a line in Northern California.

The challenge to halt the redevelopment of a North Coast Railroad Authority line came in two separate actions that have been before the high court since 2014: one from Friends of the Eel River, which snakes through the region, and one from Californians for Alternatives to Toxics. The groups argued the authority was required to conduct further CEQA review. But the NCRA said the federal Interstate Commerce Commission Termination Act, which handles rail matters, includes a preemption provision that trumps the state law.

In a 69-page, 6-1 decision authored by Chief Justice Tani Cantil-Sakauye, the court said the ICCTA doesn't explicitly include language that says it preempts state environmental processes. While the state, like a private owner, cannot impede or conflict with federal regulations, the federal law leaves room for environmental decisions like track repair or freight service levels to be left up to the owners, which in this case is the state.

"Preempting the state's ability, through its laws, to adopt general precepts governing its own development schemes in the sphere in which private owners would have freedom of action would leave the state, as owner, without the tools necessary to govern its own subdivision," the decision says. "Such preemption could deprive the state of the ability to make decisions that would carry out the goals the state embraced concerning development projects, including undertaking environmental mitigation or deciding not to undertake a project at all because of its environmental hazards."

Similarly, the California legislature didn't give the NCRA a CEQA exemption when it created the entity, the court said.

The decision reversed a court of appeals decision that agreed with the NCRA that the ICCTA did preempt state law, and remanded it for further consideration, though the opinion didn't specify whether it would be at the Court of Appeal or the trial court.

Amy Bricker, an attorney with Shute Mihaly & Weinberger LLP who represents Friends of the Eel River, told Law360 they were pleased the court agreed with its arguments that Congress never intended to preempt state affairs with the ICCTA.

"This gives us what we need to go back and get a decision on the merits," she said. Jason Holder of Holder Law Group filed an amicus brief on behalf of agriculture groups that were interested in

the outcome as it could pertain to the state's ambitious high-speed rail project, which itself has been challenged over environmental impact reviews.

"We wanted to make sure that mitigation requirements would still continue to apply on the high-speed rail project," he said. "This case still does that for us."

The NCRA issued a statement from Director Mitch Stogner that underscored how the decision upholds lower court findings that the CEQA can't be used to halt or limit existing rail operations. Christopher Neary, who represents the NCRA and its board of directors in the action, said the opinion didn't shut down the potential for future NCRA operations, he said, as the rail line at issue is only partly operational at this time.

"The court affirmed what we have been saying all along — that CEQA cannot be used to stop railroad operations," Neary told Law360 in an email. "That is what the plaintiffs were seeking. Unless they seek relief in federal court, today's decision will stand and it will prevent the Plaintiffs from seeking an order that the railroad be shut down until the CEQA process reaches its final conclusion."

The line in question is owned by the NCRA, which was created by the state in 1989 with the intention of reviving rail in the northern portion of the state, where lines had been abandoned. At least \$60 million in state funds were directed to redevelop the line, according to the court's history of the case. Northwestern Pacific Railroad, a private entity that is a real party in interest in the case, is charged with handling freight operations, which so far occur in a reopened southern section dubbed the Russian River portion.

Friends of the Eel River and Californians for Alternatives to Toxics sued the NCRA in July 2011 over an initial environmental impact report on the line done under the CEQA. A Court of Appeals decision agreed with the NCRA that the state environmental law was preempted by the ICCTA, but the environmental groups in November 2014 appealed to the state's high court.

In deciding the preemption issue, Justice Cantil-Sakauye said that requiring CEQA compliance as a condition of state permission to move ahead with rail operations would be preempted, as the ICCTA includes a preemption provision. But the Court of Appeal decision is still "overbroad and incorrect," as the preemption language doesn't entirely do away with states' powers, the opinion said.

The opinion then dove into relevant [U.S. Supreme Court](#) case law about state sovereignty from *Nixon v. Missouri Municipal League* and *Gregory v. Ashcroft*.

"Those decisions hold that an interpretation of a federal statute that would infringe on state sovereignty should not be adopted absent unmistakably clear language of intent to achieve that result — language we believe is missing from the ICCTA's preemption clause," the opinion said. Justice Leondra R. Kruger issued a concurring opinion to express additional thoughts about how the case might be handled on remand, while Justice Carol Corrigan issued a terse five-paragraph dissent, saying the majority's opinion seems to conclude that while the state's decision to join the railroad business subjects it to the same federal regulations as private carriers, it apparently has a different conclusion with respect to the ICCTA.

David Pettit, an attorney with the National Resources Defense Council who filed an amicus brief supporting the plaintiffs' arguments on a standing-related matter, told Law360 that he sees the opinion as offering "a little something for everybody." But the preemption issue could resurface on remand given some vagaries in the court's opinion, he said.

"The court seems to be saying there are some remedies under CEQA, there are some remedies that would be preempted by ICCTA, but they don't say what those are," he said. "I see this case as going all the way."

Friends of the Eel River is represented by Ellison Folk, Amy Bricker, Edward Terry Schexnayder and Laura D. Beaton of [Shute Mihaly & Weinberger LLP](#).

Californians for Alternatives to Toxics is represented by Sharon E. Duggan of the Law Offices of Sharon E. Duggan, William Verick of the Klamath Environmental Law Center, Helen H. Kang of the Environmental Law and Justice Clinic at Golden Gate University School of Law, and Deborah A. Sivas of the Environmental Law Clinic and Mills Legal Clinic at Stanford Law School.

The North Coast Railroad Authority and its board of directors are represented by Christopher J. Neary of Neary & O'Brien.

Northwestern Pacific is represented by R. Chad Hales, Andrew B. Sabey, Linda C. Klein and Stephanie R. Straka of [Cox Castle & Nicholson LLP](#), and Douglas H. Bosco of the Law Office of Douglas H. Bosco.

The case is Friends of the Eel River v. North Coast Railroad Authority et al., case number S222472, in the California Supreme Court.

--Editing by Breda Lund.

Insights On Calif. High Court's CEQA Opinion In Rail Row

The California Supreme Court's recent decision in *Friends of the Eel River v. North Coast Railroad Authority* avoids stating a broad bright-line legal rule. Rather, it resolves a narrow legal issue regarding state entity-owned lines and projects, while leaving other issues about the scope of federal preemption of the California Environmental Quality Act unanswered, says Arthur Coon of Miller Starr Regalia.

CEQA's Continuing Saga In California Supreme Court

Jan 07, 2016

As is apparent from its past California Environmental Quality Control Act decisions and docket of pending cases, the California Supreme Court has played and continues to play an extremely active role in clarifying and shaping the state's signature environmental law, says Arthur Coon at Miller Starr Regalia.

Calif. Seems Set To Solve Split On Oil Rail Shipments

Feb 04, 2015

While controversy over the transportation of crude oil by rail continues nationwide, the California Supreme Court has decided to resolve a split among lower state courts in *Friends of the Eel River v. North Coast Railroad Authority* over whether state law regulating such transportation is preempted by federal law, says Thomas Henry of Stoel Rives LLP.

Federal Preemption May Be The Key For Calif. Railroads

Nov 17, 2014

Friends of the Eel River v. North Coast Railroad Authority suggests that lawsuits claiming California railroads have not complied with state environmental review statutes as they expand operations to meet the growing demand for frac sands may face a significant hurdle — federal preemption, say Donald Sobelman and Nicole Martin of Barg Coffin Lewis & Trapp LLP.