North Coast Railroad Authority unsure if it will appeal California Supreme Court ruling

by Angela Underwood
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SAN FRANCISCO – The California Supreme Court has ended a conflict regarding a railroad authority and the application of a 22-year old act.

Once the California judges ruled in *Friends of the Eel River v. the North Coast Railroad Authority* that the Interstate Commerce Commission Termination Act of 1995 (ICCTA) preempts the California Environmental Quality Act (CEQA) in a July 27 ruling, NCRA attorney Christopher J. Neary said he is unsure if the authority will appeal.

“For a variety of reasons, I have not had time to consult with the board of directors,” Neary said in an email to the *Northern California Record*. “The decision is not final and the time to seek a writ of certiorari or to file a direct appeal would be 90 days after that.”

Speaking to concurring Judge Leondra Krueger’s agreement that CEQA is not categorically preempted as a ―regulation of rail transportation‖ within the meaning of the ICCTA in the context of the activities of a public rail authority, Neary said “Justice Kruger noted CEQA could still be preempted 'as applied.' Theoretically, a state CEQA remedy could unreasonably interfere with federally licensed rail transportation and be preempted as-applied, instead of being preempted categorically."

According to the ruling, the Court of Appeals said, “The application of state law to govern the functioning of subdivisions of the state does not necessarily constitute regulation of a private conglomerate that owns a subsidiary railroad company,” but "can make the decision based on its own corporate guidelines, and require its rail company to do the same.”

Dissenting Judge Carol Corrigan wrote, "There is no difference in CEQA procedures as they apply to projects undertaken by public agencies, as opposed to private projects over which an agency has power of approval."

Neary said because CEQA is enforced by injunction. “If the CEQA remedy of injunction is categorically preempted against a private rail carrier, and preempted as-applied against the public entity lessor to the public entity on an as-applied basis it does not make any difference in the final analysis as to basis of the preemption.”

Lastly, while Krueger also noted that the ruling paves the way lower courts below to start deliberating “the merits of plaintiffs‘ CEQA claims, which the courts had previously found to be preempted by the ICCTA as a categorical matter," Neary said “the decision could result in the matter to be heard on the merits in the superior court where, undoubtedly, as-applied preemption would be an issue unless the petitioners are seeking abstract remedies.”