

Rail case heading to state Supreme Court



Trains located on the lines owned by the North Coast Railroad Association. Northwest Pacific Railroad Company operates the lines. The railroad currently runs between Napa and Windsor. Photo by Michael Mott - TWN.

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After two decisions at trial and appellate-level courts, the Supreme Court of California will review a court case between the North Coast Railroad Authority (NCRA) and two environmental groups.

The announcement, filed Dec. 10, came after a Court of Appeal in San Francisco upheld the original trial court's decision in 2011, agreeing that federal law preempts, or displaces, state environmental regulation of the California Environmental Quality Act (CEQA).

"It's very unusual for a review to be granted," counsel for NCRA Chris Neary said. "They only take 30-35 cases a year, and this was one of them."

The case marks an issue that may have an area of impact bigger than just rail along the north coast. The Court of Appeal, which filed its decision in September, disagreed with another case that was issued in Sacramento a few weeks before concerning the California High-Speed Rail Authority. That appellate court ruled that federal law governing railroads did not take precedence over state law.

The environmental groups, Friends of the Eel River and Californians for Alternatives to Toxins, contended NCRA's initial Environmental Impact Report (EIR) was inadequate, not describing the line in its entirety, identifying "existing environmental contaminations" and more. CEQA has required EIRs since 1970 for any project with potential environmental impacts; the case was further complicated by NCRA's being paid with \$3 million in state funds. NCRA contends it was not required to follow CEQA, and the EIR was done only as a way to develop operating guidelines for the railroad.

At the same time as the announcement by the state Supreme Court, a ruling from the Surface Transportation Board, which regulates railroads, concluded that CEQA was preempted from the High Speed Rail Authority case. This is in line with the San Francisco Court of Appeal's decision, in favor of NCRA. The Sacramento appellate court ruled that the high speed rail must be compliant with CEQA, since it was planned to be funded with a voter-approved bond measure.

"Our position hasn't changed," said Scott Greacen, Executive Director of Friends of the Eel River. "The question, I think, is how should our environmental laws and planning laws work? How do we figure out what we want to spend our money on as a public?"

Neary and Greacen contested whether or not preemption applies. The Supreme Court of California may make its decision toward the end of the year, however the case may go to federal court, depending on whether it agrees with the Surface Transportation Board, which is housed within the U.S. Department of Transportation.

Next steps, the environmental groups of the case will submit their brief, or argument, which NCRA will then follow.