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## **California Supreme Court to Review North Coast Railroad Lawsuit**

### **Conflicting appellate court decisions create uncertainty regarding environmental assessments required of High Speed Rail and other publicly owned railroads**

The state's highest court on Wednesday agreed to review an appeal of a lower court's decision that would exempt publicly owned railroads from having to comply with California's Environmental Quality Act (CEQA).

An appellate court had found that the federal Interstate Commerce Commission Termination Act pre-empted all state laws managing or governing railroads, including CEQA. But the case—brought by Friends of the Eel River (FOER) and Californians for Alternatives to Toxics (CATs)—concerns California's state-owned railroad, the North Coast Railroad Authority (NCRA), which meant California would be forbidden to control the railroad it had bought and paid for with public funds.

A different court of appeals reached the opposite conclusion in a case involving California's High Speed Rail Authority (HSRA). That court found that where the state is acting as an owner, not a regulator, federal preemption does not shield the state-owned rail line from having to comply with CEQA as a condition of its state funding.

The North Coast Rail Authority cases present substantially identical facts. The plaintiff environmental groups had argued that the split between the courts of appeals should move the Supreme Court to take the case, as it has now done.

CATs and FOER had challenged the NCRA's 2011 Environmental Impact Report (EIR) on its plan to reopen a southern portion of the failed rail line. Once sued, NCRA claimed it was not legally bound to conduct the study – after spending millions of taxpayer dollars on the EIR, and tens of millions more provided by the state on the condition the project complied with CEQA.

“Like any other actor in the marketplace, California has the right to analyze the cost and effect of its plans before deciding to undertake projects and it chooses to do this through the CEQA process,” said Patty Clary, Executive Director of CATs. “Federal law does not interfere with this right nor with California citizens' right, as provided by state law, to challenge the adequacy of this environmental review. We look forward to arguing these fundamental issues before California's Supreme Court.”

Scott Greacen, Executive Director of FOER, welcomed the news. “Fundamentally, our system of justice depends on citizens being able to hold our government accountable. It cannot be correct that we will allow state agencies to renege on their promises, and to fly blind with the public's money and the public's property, without regard to the potential risks to public trust treasures like the wild and scenic Eel River and its threatened salmon and steelhead.”

Californians for Alternatives to Toxics is represented by East Bay attorney Sharon Duggan, Helen Kang of the Environmental Law and Justice Clinic of the Golden Gate University School of Law, William Verick of the Klamath Environmental Law Center, and Deborah Sivas of the Environmental Law Clinic, Mills Legal Clinic at Stanford Law School. Friends of the Eel River are represented by Amy Bricker, Edward T. Schexnayder, and Ellison Folk of Shute, Mihaly & Weinberger.

CATs and FOER are based in the Humboldt Bay area. The membership of each organization is from throughout northwestern California.