



CEQA Key to Holding Railroad Authority Accountable

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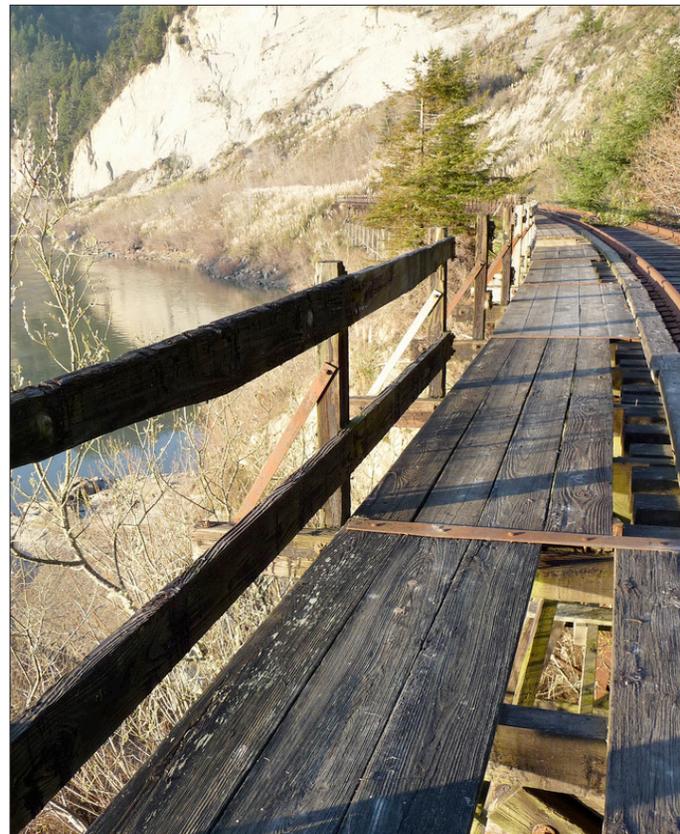
Court-Held North Coast Railroad "Reaped Substantial Public Benefits" by Agreeing to Environmental Review, Can't "Take Opposite Position" to Avoid Court Scrutiny

As California Governor Jerry Brown is renewing his campaign to 'reform' the California Environmental Quality Act (CEQA), it's worth considering the importance of the state's flagship environmental law—particularly in light of an actual CEQA lawsuit now underway. Our long-delayed case challenging the North Coast Railroad Authority's failure to comply with CEQA in rebuilding the failed rail line from Humboldt Bay to the Bay Area shows how crucial CEQA is to protecting California's natural assets—and also how difficult it can be to force the wealthy and powerful to follow the law.

Business interests blame environmentalists' love of litigation for protracted, expensive lawsuits over big projects, but it may often be the case that it's actually the project proponents who are creating endless delays and driving up litigation costs. CEQA attorneys say they often confront such defensive strategies to avoid trial and exhaust the small citizens' groups who often bring environmental cases, suggesting it may sometimes just be cheaper to stonewall and bankrupt opponents than to mitigate significant environmental impacts.

That has certainly been our experience. More than a year and a half has elapsed since Friends of the Eel River and Californians for Alternatives to Toxics (CATs) sought court review of the Environmental Impact Report (EIR) the NCRA filed in June of 2011. At every stage in the process, the NCRA and its operator, the Northwestern Pacific Railroad Company (NWP Co.)—the defendants—have gone down every possible legal rabbit hole in their efforts to stall the case, drive up costs and avoid trial. In their latest, last-ditch move, the NCRA and NWP Co. have again delayed the case by going to the state Court of Appeals to challenge the state court's recent ruling allowing the case to move forward. These efforts to sidetrack the case don't suggest that the defense is confident in its CEQA compliance.

"The NCRA has dragged this lawsuit through federal court, state court and to the court of appeal, and tried again with its current tactic, and has lost every time, all to avoid delivering on its promise to California taxpayers to show them what the environmental impacts of reopening this derelict railroad would be," said Patty Clary, spokesperson



The Eel River Canyon features some of the planet's most unstable geology, and the tracks carving along the steep, winding hillsides have suffered extensive damage from storms, quakes and floods over the years. The line was oppressively expensive to maintain and repair, and was officially closed by the Federal Railroad Authority in 1998. Photo: ^allisun^, flickr.com CC BY-NC-SA 2.0.

for CATs. "It's tough seeing a state agency act with such disregard for state law."

Another claim would-be CEQA reformers make is that for all the trouble it causes business, the law doesn't do much to protect the environment. The NCRA case suggests the opposite—that CEQA is a critical bulwark against irreversible harms to the state's ecosystems and well-being.

Under CEQA, major projects must analyze, disclose, minimize and mitigate potentially significant environmental impacts. It not only ensures communities are informed about potential harms, but affirmatively requires state agencies to choose less harmful courses of action where practicable. To effectively control impacts, CEQA requires that projects be reviewed in a

single analysis. Pulling small pieces of a larger project—a classic technique for minimizing harms while building momentum to press forward with a project, called "piecemealing" or "segmentation"—is not allowed.

But that is exactly what the NCRA appears to be doing. After repeatedly promising to conduct full environmental review of the entire line before rebuilding any part of it, the NCRA's EIR only analyzed the potential impacts of operating trains on the southern end of the line—the so-called Russian River Division. They completely ignored the potential harms to the Eel River watershed and its vitally important salmonids—three remaining species (chinook, coho, and steelhead) that are at real risk of extinction. Negative impacts are certain if the northern rail line through the Eel River Canyon were to be rebuilt cheaply, as the NCRA plans to do.

What's more, when we challenged the adequacy of the EIR, the NCRA argued they have no legal obligation to follow CEQA at all—despite the fact that the NCRA is a California state agency. So though they promised to conduct full environmental review on the entire line, they actually only did as little review as they thought they could get away with, on just a fraction of their overall line. It seems apparent they have no intention of doing any further meaningful environmental review at all.

Were it not for the fact that the NCRA took millions of California taxpayer's dollars under a promise to do environmental review, the agency could probably have skipped considering impacts altogether. But because the NCRA took the money, Judge Faye D'Opal refused to allow the NCRA to take the opposite position in court.

The judge quoted an appellate court case, *Torch Energy Services*, that emphasizes the need for courts "to protect parties from opponents' unfair strategies," to "preclude litigants from playing 'fast and loose' with the courts, and prohibit 'parties from deliberately changing positions according to exigencies of the moment.'" It is this ruling that the NCRA's appealing. Apparently, they're not yet done playing fast and loose with the courts.

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