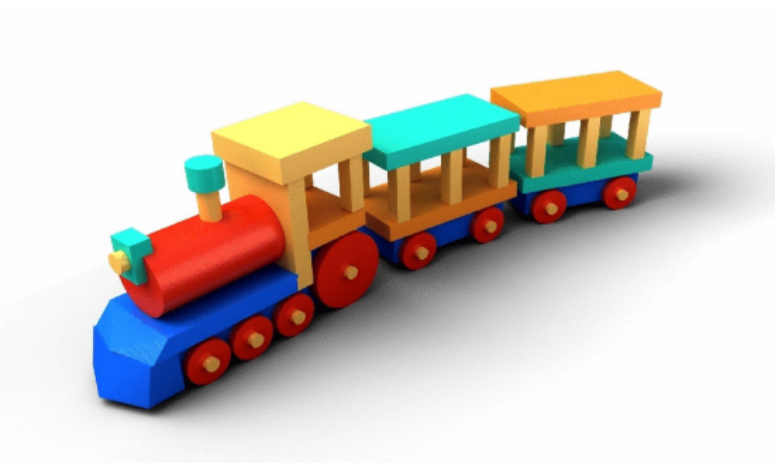
State-Owned North Coast Railroad Asserts its Right to Ignore State Law

HANK SIMS / TODAY @ 11:01 A.M. / RAILROAD

On Friday, the publicly owned North Coast Railroad Authority – owner of the long-dead tracks through Humboldt County – fired back against two local environmental groups who have taken their long-running beef against the authority to the California Supreme Court.

In an "answer brief" filed with the court, the North Coast Railroad Authority and its private contractor, the Northwestern Pacific Railroad Company, argue that the local groups – Friends of the Eel (FOER) and the Californians for Alternatives to Toxics (CATs) – have no standing to force the railroad to abide by the California Environmental Quality Act. More, they assert that California has no right to demand environmental standards from railroads, even from those railroads that they own.



Background: Back in 2006, when it was seeking state money to repair the southern portion of its wrecked railroad line, the North Coast Railroad Authority agreed, pursuant to state environmental law, to perform an environmental impact report on the project. FOER and CATs sued, arguing that the EIR the agency came up with was inadequate, in that did not take the entirety of the line into account. Rather than fight it out on the specifics, the railroad authority declared that it did not matter whether its EIR was adequate or not, since it was not bound by state law in the first place. This was contrary to what it had initially acknowledged, back when it was seeking state funds, but its thinking on the matter had since evolved.

So FOER and CATs proceeded to challenge not the specifics of the railroad's authority, as it had originally intended, but the NCRA's assertion that it was not bound by state law in the first place. The environmental groups lost at the trial court and appellate level, but were able, last year, to get the state Supreme Court to hear the case a third time. The environmental groups filed their first written argument in the court back in February. (The *Outpost* covered it here.)

Now comes the response from the railroad agency and its operator. Much of their present case, as it has been in the past, is built around the idea that the federal government, through the Department of Transportation's Surface Transportation Board, holds the exclusive right to regulate railroad construction and operation. No state in the union has a right to impede trains through any means, even if that train travels only within that state's borders, because the Constitution's interstate commerce clause gives all power in such matters to the federal government. This is a position supported by much Supreme Court case law.

But what about railroad owned by the state? Doesn't the state have a right to place conditions on projects it owns, projects it is paying for? This is the nut of the environmental groups' case against the railroad – the idea that the state, as a "market participant," has the right to choose the terms through which it wishes to participate in the market. It can choose to buy fuel-efficient cars for its own fleet, for example. If it chooses to run a railroad it can choose to run it on its own terms, and the California Environmental Quality Act explicitly demands that all state agencies comply with the law (with a few exceptions, of which the railroad authority is not one). This is a "proprietary" power – the power of the owner of a business to operate it on her own terms.

But the railroad authority rejects this argument almost entirely: Once the state chooses to own or fund a railroad, it says, it may not then require that railroad to abide by state environmental law, because federal law supersedes even that power. The environmental quality act, when applied to the state's own agencies and operations, still amounts to regulation, rather than proprietary business decisions, and only the feds can regulate railroads. If CEQA is not regulation, the railroad people wonder, how is it that third parties from the public (such as FOER and CATs) can sue to force the railroad to comply with state law? Why is state government not suing the railroad authority itself, or simply shutting it down?

(There's a practical, non-legal answer to that question — the administration of Gov. Jerry Brown is backing the idea that publicly owned trains don't have to comply with state environmental law, due to issues arising from his pet high-speed rail project. A contradictory appellate court ruling on the

high-speed rail project is the very reason that the state Supreme Court agreed to hear the North Coast's railroad case.)

So that's the case from both sides, as it stands currently. It presents interesting constitutional issues. Chris Neary, Willits-based attorney for the North Coast Railroad Authority, told the *Outpost* yesterday that no matter who prevails in the current appeal, the case has a decent chance of continuing on up the line to the final station: The U.S. Supreme Court. The high court doesn't have to agree to hear the case, Neary noted, but the unusual interchange between federal and state law presented in his client's struggle with environmental groups is just the sort of thing that the current crop of Supremes loves to tackle.

If it turns out that way, then the fight is bound to stretch on way past 2018 – the 20th anniversary of the last train to pass through Humboldt County.