



The North Coast Railroad Authority Goes Rogue

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By Scott Greacen

Will the NCRA bail out entirely on environmental accountability?



The tunnel immediately south of the Woodman Creek crossing has collapsed and been partially filled by one of many landslides exacerbated by the defunct rail line in the Eel River canyon. Photo: Scott Greacen.

Our last column discussed the series of maneuvers the North Coast Railroad Authority (NCRA) has used to avoid trial over its failure to comply with the California Environmental Quality Act (CEQA). (*CEQA Key to Holding Railroad Authority Accountable*, Feb/Mar 2013 EcoNews). Unfortunately, NCRA's maneuvering to escape environmental accountability does not appear to be ending anytime soon.

In July of 2011, Californians for Alternatives to Toxics (CATs) and Friends of the Eel River (FOER) brought legal challenges in California state court against the NCRA, after their Environmental Impact Report (EIR) failed to identify and mitigate the significant environmental harms that could be caused by rebuilding the failed rail line on the cheap—particularly in the beautiful but unstable Eel River Canyon.

But over the last couple of months, the NCRA and their codefendant, the Northwestern Pacific Co. (NWP Co.), have come up with two more gambits to avoid trial in the case.

First, NWP Co. brought another 'extraordinary appeal' (so called because they are taken out of normal sequence). The Court of Appeals' summary denial of NWP Co.'s appeal suggests the higher court takes seriously the district court's concern that the NCRA and NWP Co. have tried to play "fast and loose with the courts." The First District Court of Appeals wrote "(u)nder the unique circumstances of this case, the court declines to intervene," rejecting the NWP Co.'s claim it and the NCRA are preempted from being held to their promises to comply with CEQA.

The second move, announced in a hearing on March 21, by NCRA counsel, Ukiah attorney Chris Neary, underscores how desperate the NCRA and NWP Co. are to avoid trial. Neary announced "that on April 10, 2013, the NCRA will consider whether to rescind the approval that is challenged in this action. If the Board votes to rescind the approval, NCRA will move to dismiss this action as moot."

Neary's filings point to a March 13, 2013 letter from NWP Co. general counsel and investor Doug Bosco demanding NCRA rescind its project approval and certification of the EIR, claiming "NCRA was under no legal obligation to prepare an EIR."

Now one of the publishers of the Santa Rosa Press Democrat, Bosco is a Democratic Party kingmaker who helped fund Jerry Brown's successful campaign to return to the Governor's office. A former Democratic Congressman, Bosco was defeated in 1990 by Republican Frank Riggs. NCRA Executive Director Mitch Stogner served as Bosco's chief of staff in Washington, D.C. and in the California Assembly.

The NCRA awarded NWP Co. a lease that could give the company control of the line for more than a century without paying a cent to the public. After the NCRA—with Bosco's help—obtained more than \$3 million in California taxpayer funds to address the potentially significant environmental impacts of rebuilding the rail line, the NCRA and NWP Co. argued the EIR cannot be reviewed by California courts.

In defending its failure to look at impacts on the Eel River and its fisheries, the NCRA has suggested it has no plans to enter the unstable canyon. But the NCRA and NWP Co.'s repeated statements and actions show the opposite is true. Both the agency and the company remain committed to the vision of rebuilding the entire rail line from Humboldt Bay through the Eel River canyon, down through Willits and Ukiah to Windsor, the northernmost portion of the line that has been made operable to date.

Recent examples that indicate this intent are particularly telling. In February, NWP Co. President John Williams demanded the NCRA board reject a fish passage restoration project at Woodman Creek until CalTrout—the project's sponsor—not only figures out how to restore steelhead access that the railroad blocked a century ago, but also comes up with \$7-10 million for a new bridge for the NWP Co.

The mouth of Woodman Creek is about five miles north of Dos Rios in the Eel River

Canyon, and is immediately downstream from one of many failed tunnels on the line. This requested new bridge would be a bridge to and from nowhere—unless the NCRA and

NWP Co. are in fact planning to rebuild the rail line through the canyon. The board duly refused to support the project, which may well have cost CalTrout its chance at funding—despite having been informed that this is the Department of Fish and Wildlife's highest priority fish passage project in the region.

The move to dump the EIR supports our theory that the NCRA does intend to reopen the Eel River Canyon using the cheapest methods possible. NCRA Executive Director Stogner offered further confirmation in an interview published March 15 in the Pacific Sun. "As soon as funds are available and we can make the requisite repairs, we will do so."

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