

1 ELLISON FOLK (State Bar No. 149232)
2 AMY J. BRICKER (State Bar No. 227073)
3 SHUTE, MIHALY & WEINBERGER LLP
396 Hayes Street
4 San Francisco, CA 94102
Telephone: (415) 552-7272
5 Facsimile: (415) 552-5816
Folk@smwlaw.com
Bricker @smwlaw.com

6 Attorneys for
7 FRIENDS OF THE EEL RIVER
8
9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF MARIN

12 FRIENDS OF THE EEL RIVER,

13 Petitioner,

14 v.

15 NORTH COAST RAILROAD
16 AUTHORITY, BOARD OF DIRECTORS
17 OF NORTH COAST RAILROAD
AUTHORITY, and DOES 1-10,

18 Respondents.

19 NORTHWESTERN PACIFIC RAILROAD
20 COMPANY, SONOMA-MARIN AREA
21 RAIL TRANSIT DISTRICT, and DOES 11-
50,

22 Real Parties in Interest.
23
24
25
26
27
28

Case No.

**VERIFIED PETITION FOR WRIT OF
MANDATE**

[CCP § 1085 (§ 1094.5); California
Environmental Quality Act "CEQA"]

INTRODUCTION

1. On June 20, 2011, the North Coast Railroad Authority ("NCRA") approved the resumption of operations of the North Coast Pacific Railroad ("the Railroad") to allow freight traffic from Willits to Lombard, California ("the Project"). The Railroad, which formerly operated from Lombard north through to Humboldt Bay, was closed in 2001 due to storm damage and NCRA's inability to maintain the line. Since that time NCRA has embarked on a campaign to reopen the Railroad, including the approval of contracts and the initiation of repairs and construction on the Railroad, much of which occurred without any review under the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000 et seq. When it finally completed an environmental impact report ("EIR"), NCRA failed to evaluate the full scope of the project. For example, it limited its review of the environmental impacts of re-opening the Railroad to those impacts associated only with re-opening the Russian River Division of the Railroad. NCRA did this despite years of evidence indicating that that it intends to re-open the entire Railroad, and in fact, that re-opening of the Russian River Division is not economically viable unless the entire Railroad is re-opened through the Eel River Canyon. As a result, NCRA has done what thirty years of case law says a public agency absolutely may not do: it has chopped the larger project into bite-sized pieces for the purpose of avoiding environmental review. Therefore, Friends of the Eel River respectfully requests that approval of the Project and certification of the EIR be set aside as detailed below.

PARTIES

2. Petitioner Friends of the Eel River is a grass-roots, non-profit, 501(c)(3) corporation organized pursuant to the laws of the state of California. FOER has more than 2,500 members, working to restore the Eel River and its tributaries to a state of natural abundance. Friends of the Eel River has worked to curtail water diversions and other practices harming the Eel River watershed and its threatened salmon and steelhead fisheries. Friends of the Eel River is especially concerned with environmental degradation that could result from reopening the Northwestern Pacific Railroad through the Eel River Canyon, including a proposal to open a massive quarry adjacent to the rail line at Island Mountain. For many years, Friends of the Eel

1 River has worked to maintain a neutral stance on the railroad, while simultaneously attempting
2 to ensure that any proposal to revive the railroad will be protective of the Eel River and the
3 natural environment. Respondent's failure to comply with CEQA has deprived Friends of the
4 Eel River and its members of their ability to analyze and comment on the environmental impacts
5 of, and possible alternatives to, reopening the Northwestern Pacific Railroad.

6 3. Respondent North Coast Railroad Authority (NCRA) was formed in 1989 by the
7 California Legislature under the North Coast Railroad Authority Act, Government Code
8 Sections 93000, et seq. As set forth on its website, NCRA's mission is to provide a unified rail
9 infrastructure to facilitate freight transportation. The seven-member Board of Directors of
10 NCRA is composed of 2 members each from Sonoma and Marin Counties, one member each
11 from Humboldt and Mendocino Counties and a member who represents the cities in NCRA's
12 jurisdiction. NCRA and its Board of Directors are responsible for compliance with the
13 requirements of CEQA.

14 4. Real Party in Interest Northwestern Pacific Railroad Company ("NWP Co.") was
15 incorporated in California in 2006 to lease, manage, and operate trains on the NWP line. On
16 September 13, 2006, NWP Co. entered into the lease agreement governing its contractual
17 relationship with NCRA to provide train service. This agreement has an initial term of 5 years
18 with options to extend the term under the same terms and conditions. NWP Co. is the operator
19 of freight service on the Railroad and is the beneficiary of NCRA's decision to resume
20 operations of the Railroad.

21 5. Real Party in Interest Sonoma-Marin Area Rail Transit District ("SMART") is a
22 joint powers authority that has an ownership interest in the Healdsburg and Lombard segments
23 of the Railroad. Pursuant to an operating agreement between SMART's predecessor in interest
24 and NCRA, NCRA has an easement for freight service over the Healdsburg and Lombard
25 segments of the Railroad. SMART has also acquired an easement for passenger service over the
26 Willits segment of the Railroad. FOER is informed and believed and on that basis alleges that
27 SMART has an interest in the reopening of the Railroad that may be affected by this litigation.

1 By this action, FOER does not seek to stop future operation of the SMART rail line for
2 passenger service.

3 6. Petitioners do not know the true names and capacities, whether individual,
4 corporate, associate or otherwise, of Respondents and Real Parties in Interest DOE 1 through
5 DOE 50, inclusive, and therefore sues said Respondents under fictional names. Petitioners
6 allege, upon information and belief, that each fictionally named Respondent and/or Real Party is
7 responsible in some manner for committing the acts upon which this action is based. Petitioners
8 will amend this Petition to show their true names and capacities if and when the same have been
9 ascertained.

10 JURISDICTION AND VENUE

11 7. This Court has jurisdiction over the matters alleged in this Petition pursuant to
12 Code of Civil Procedure section 1085 (alternatively section 1094.5) and Public Resources Code
13 sections 21168.5 (alternatively section 21168) and 21168.9.

14 8. Venue is proper in this Court because the Railroad runs through this County and
15 impacts related to its operation and NCRA's failure to comply with CEQA will be felt in this
16 County. As such, the claim that NCRA violated the requirements of CEQA as alleged in this
17 Petition arose in Marin County.

18 9. Petitioners have complied with the requirements of Public Resources Code section
19 21167.5 by serving a written notice of Petitioners' intention to commence this action on NCRA
20 and its Board of Directors on July 18, 2011. Copies of the written notices and proofs of service
21 are attached hereto as Exhibit A.

22 10. Petitioners will comply with the requirements of Public Resources Code section
23 21167.6 by concurrently filing a notice of their election to prepare the record of administrative
24 proceedings relating to this action.

25 11. Petitioners are complying with the requirements of Public Resources Code section
26 21167.7 by sending a copy of this Petition to the California Attorney General on July 20, 2011.
27 A copy of the letter transmitting this Petition is attached hereto as Exhibit B.

12. Petitioners have performed any and all conditions precedent to filing this instant action and have exhausted any and all available administrative remedies to the extent required by law.

13. Petitioners have no plain, speedy or adequate remedy in the course of ordinary law unless this Court grants the requested writ of mandate to require Respondents to set aside their approval of the Project. In the absence of such remedies, Respondents' approval will remain in effect in violation of state law.

14. NCRA filed a Notice of Determination regarding its approval of the Project in Marin County on June 28, 2011.

FACTUAL BACKGROUND

Statement of Facts

Project Background – The Eel River Canyon

15. The Eel River canyon is composed of one of the Earth's most geologically unstable formations, the Franciscan melange. Thanks to rapid uplift in this tectonically active area and very substantial rainfall, slopes are often very steep, subject to very substantial landslides from rainfall, earthquakes, and other disturbances. Indeed, the first train to run on NCRA line through the Eel River canyon, nearly a century ago, was blocked by a landslide, just as the area's primary corridor today, Highway 101, was blocked for several days by a large landslide in the spring of 2011. The northwestern portion of California often receives very high amounts of rainfall in the winter, and the steep and rugged Eel River watershed amplifies flooding. In the Eel River canyon, NCRA rail line is generally located just above the Eel River, often cutting through the 'toe' portion of unstable landforms. Thus, the rail line is not only subject to serious damage from both landslides and floods, but may also trigger earth flows by its location and operation. Such events have in the past swept portions of the railroad, rail cars, and even engines into the Eel River. Indeed, the line through the Eel River canyon was severely damaged by floods in the winter of 1996-97, following which the Federal Railroad Administration closed the entire line for safety reasons under Emergency Order 21, issued

1 November 25, 1998. The Federal Emergency Management Agency estimated reconstruction
2 costs in the Eel River Canyon at more than \$400 million in 1999.

3 16. The Eel River is designated in various reaches as a “wild”, “scenic,” and
4 “recreational” river under both the California (Public Resources Code § 5093.50 et seq.) and
5 federal Wild and Scenic Rivers Acts (16 U.S.C. § 1271 et. seq.). Of the three species of
6 salmonid populations that still survive in the Eel River watershed, steelhead and Chinook
7 salmon are listed as ‘threatened’ under the federal Endangered Species Act, while Coho salmon
8 are listed as ‘threatened’ under both the federal (16 U.S.C. § 1531 et seq.) and California (Fish
9 and Game Code § 2050 et seq.) Endangered Species Acts. Salmonids, including Coho and
10 Chinook salmon as well as steelhead, are also listed in the Russian River watershed.

11 17. If the entire NCRA rail line were reconstructed from Humboldt Bay to the national
12 system railhead, it is very likely that the impacts in the Eel River canyon and on the Wild and
13 Scenic Eel River would be by far the most serious and difficult to mitigate.

14 18. California agencies charged with the protection of the state’s natural resources,
15 including the Department of Fish and Game, Department of Toxic Substances Control, and
16 Regional Water Quality Control Board, brought an action against NCRA alleging numerous
17 violations of the Fish and Game Code, the Health and Safety Code, and the Water Code which
18 was resulted in a 1999 Consent Decree and Stipulated Judgment signed by NCRA. The consent
19 decree requires NCRA to take a number of specific actions to address numerous serious and
20 continuing harms to natural resources, particularly within the Eel River canyon. These include
21 toxic chemicals deposited in numerous sites; blocked, modified, and degraded watercourses
22 impairing salmonid passage and water quality; and even the mangled remains of trains and
23 bridges abandoned in the river itself.

24 19. Although the consent decree specifies that some actions are to be taken within six
25 months, more than a decade later NCRA has yet to undertake most of the actions specified in the
26 1999 consent decree. The agency has suggested that it would meet its obligations under the
27 consent decree both in the course of reconstructing the rail line through the Eel Canyon, and by
28

1 using the facilities of the rebuilt line. NCRA has not made public any plans to address the
2 consent decree issues other than by rebuilding the Eel River Division of the Railroad.

3 **Environmental Review for the Railroad**

4 20. Although the EIR only evaluates the impacts of re-opening the Russian River
5 Division of the Railroad, since its inception, NCRA has indicated that re-opening of the entire
6 line is essential to the economic viability of the Railroad and to its mission as an agency. NCRA
7 was formed by the California legislature to prevent the abandonment of the rail line that runs
8 from Humboldt Bay through the Eel River canyon to Sonoma and Marin counties. NCRA
9 secured title to the line, previously held as separate segments by different entities, in order to
10 restore rail service to the entire line. NCRA's staff and directors have continually reaffirmed
11 their commitment to restoring rail service along the entire rail line even as the agency denies in
12 its current EIR for Russian River operations that it plans to reconstruct the rail line through the
13 Eel Canyon.

14 21. In 2001, NCRA adopted a policy announcing that "its fundamental goal is the re-
15 establishment" of freight railroad service throughout the entire NWP line: from the Humboldt
16 Bay Region to Lombard (Lombard is the only interchange connecting the NWP line to the
17 national rail system). In furtherance of that policy, NCRA commissioned a study of all the
18 capital improvements and work necessary to restore freight train service to the entire NWP and
19 comply with EO 21. That study produced a report completed in 2002 and called the Capital
20 Assessment Report (2002 CAR). In the 2002 CAR, it was expressly stated that in order to
21 accomplish the work identified in that document, an environmental impact report (EIR) under
22 CEQA and an environmental impact statement (EIS) under the National Environmental Policy
23 Act would first have to be prepared and approved. No such EIR/EIS for the whole rail line has
24 ever been prepared by NCRA.

25 22. In its February 23, 2006 Strategic Plan, NCRA reaffirmed that "NCRA's Strategic
26 Plan calls for the eventual reopening of the entire line." Similarly, in the Strategic Plan Update
27 NCRA issued on February 15, 2007, the agency stated that the "NCRA has adopted a policy of
28 reopening the entire Northwestern Pacific Railroad Line from Lombard to Arcata/Somoa."

1 23. Part of NCRA's mission has been to facilitate rehabilitation of Humboldt Bay's
2 maritime shipping industry. *The Long Term Financial Feasibility of the Northwestern Pacific*
3 *Railroad*, a 2002 study by the reputable firm PB Ports and Marine, was commissioned by the
4 Humboldt Bay Harbor, Recreation and Conservation District (Harbor District) to clarify the
5 requirements for an economically viable railroad along NCRA rail line. The study considered in
6 exhaustive detail a great deal of empirical data concerning the various factors it identified as
7 relevant to operation of freight rail service along NCRA line under several scenarios. The study
8 concluded that only through operation of the entire rail line, and even then only under the most
9 optimistic projections of the amount of cargo that could be hauled, would freight operations on
10 NCRA line conceivably run a profit.

11 24. In January 2006, following the bankruptcy of its first operator, NCRA renewed its
12 efforts to reopen the rail line with a Request for Proposals which explicitly stated that the
13 "NCRA's vision is to open the entire railroad from Somoa in the North to the point of
14 interchange with the National Railroad System at Lombard. As an overarching criterion,
15 preference will be given to credible proposals to reopen both the Russian River Division and the
16 Eel River Division". The proposal approved, that submitted by NWP Co., proposed to operate
17 on the entire rail line.

18 25. NCRA negotiated a 2006 lease agreement with the NWP Co. in a process that
19 involved no public participation and no public oversight, which appears to have been designed
20 to obscure the details of the agreement between NCRA and NWP Co.

21 26. The agreement, announced to the public in 2006 as granting a five-year lease to
22 the NWP Co., in fact also grants the company options to assert subsequent 99-year lease terms
23 on the Russian, Eel, and Humboldt Bay portions of NCRA line. The lease guarantees NWP Co.
24 a five million dollar annual profit as a condition precedent to any payment under the lease to
25 NCRA. The NWP Co.'s 2006 business plan, in its simplest form, appears to be to secure
26 sufficient public financing to reach the Island Mountain mine, and then to use the proceeds of
27 the mine to pay to operate the train through the Eel River canyon.

1 27. NWP Co.'s 2006 filings, like NCRA's policy statements, state unequivocally that
2 NCRA and NWP Co. plan to rebuild the entire rail line through the Eel River canyon. The 2006
3 business plan is clear that development of the planned Island Mountain Mine is a central
4 element in the financial feasibility of NWP Co.'s plans. The mine is estimated to contain high-
5 grade, very hard construction-grade rock in sufficient quantities to supply well in excess of 2
6 million tons per year, as well as quantities of precious metals.

7 28. The proposed Island Mountain mine lies within an especially remote portion of the
8 rugged and inaccessible Eel River canyon and could only practicably be operated by use of a
9 reconstructed NCRA rail line. Development of the Island Mountain mine, a 350 acre open-pit
10 mine constructed immediately adjacent to the Wild and Scenic Eel River, would be certain to
11 create a number of very significant environmental impacts. Similarly, development of the rail
12 line through the Eel River canyon is also likely to lead to a number of severe environmental
13 impacts including harms to the Eel River, its water quality, aquatic habitat, and fisheries.

14 29. By granting a series of loans to NCRA which have allowed the agency to continue
15 to function with paid staff and to complete its track repairs, NWP Co.'s principals have both
16 secured a reliable stream of interest income, and helped to insure that NCRA will continue to
17 support actions to secure public financing for reconstruction and maintenance of the rail line that
18 NWP Co. will operate for private profit. The Eel River Canyon line has proven the most
19 expensive stretch of rail in the US to maintain. Estimates of the cost to reconstruct the rail line
20 through the Eel River canyon begin at hundreds of millions of dollars.

21 30. NCRA originally issued an Initial Study for the present EIR in May 2007, which
22 identified cumulative impacts to the Eel River as a reasonably foreseeable impact of the Project.
23 It then issued a second Initial Study and a Notice of Preparation in June 2007 which restricted
24 the scope of the environmental review to the Russian River Division exclusively, excluding any
25 consideration of potential impacts in the Eel River canyon.

26 31. In June, 2007, NCRA also issued a Notice of Exemption for reconstruction of the
27 rail line from Windsor to Lombard. The City of Novato brought a civil action, challenging
28 NCRA's failure to fully comply with the provisions of CEQA, including segmentation of the

1 overall rail line reconstruction project into smaller pieces to obscure the potentially significant
2 cumulative impacts of the project. NCRA argued in response that it was not obligated to comply
3 with CEQA under the doctrine of federal preemption of railroad operations, but had conducted
4 some CEQA review to comply with the conditions placed on its funding by the California
5 Transportation Commission. The Marin County Superior Court ruled NCRA was judicially
6 estopped from asserting that compliance with CEQA was preempted by federal law. Ultimately,
7 the City of Novato and NCRA reached a settlement that resulted in the preparation of another
8 consent decree. Without consulting with the state agencies to which it owed prior duties under
9 the terms of the 1999 consent decree, NCRA agreed with Novato that the 2009 consent decree
10 would be satisfied first.

11 32. Friends of the Eel River commented on NCRA's June 2007 Notice of Preparation
12 on August 23, 2007, pointing out the contradiction between the limited scope of review planned
13 for the EIR and NCRA's regular statements regarding its intent to reopen the entire rail line. "It
14 is clear, however, that NCRA plans to extend service along the 'entire 316 miles from the
15 connection to the national rail system East of Novato all the way North to Humboldt Bay.' *CTC*
16 *Approves Rail Repair Funds*, NCRA Press Release, Nov. 9 2006 (statement of Alan Hemphill)." FOER
17 also pointed out that the Russian River Division Project would not be financially viable,
18 and could not be implemented as a stand-alone project. FOER requested that the NOP be
19 withdrawn and NCRA prepare a comprehensive analysis of its plans for the whole of NCRA rail
20 line.

21 33. Nonetheless, NCRA proceeded with its limited EIR, publishing a Draft EIR on
22 March 9, 2009. Confronted with comments pointing out numerous inadequacies and
23 contradictions in the DEIR, NCRA then revised and recirculated the Draft EIR, publishing a
24 second DEIR on November 5, 2009. FOER provided extensive comments on both versions of
25 the DEIR, on May 28, 2009 and January 12, 2010. FOER's comments included, but were not
26 limited to, the following:
27
28

1 a. NCRA failed to comply with the National Environmental Policy Act
2 (NEPA) by preparing an EIS for the Project, though NCRA has stated that federal funding will
3 be necessary to complete the present Project, and having sought federal funding at every
4 opportunity.
5

6 b. The Draft EIR failed to describe the Project adequately and completely.

7 c. The Draft EIR improperly segmented analysis of the Project, by failing to
8 analyze, disclose, and propose mitigation for the Project's reasonably foreseeable impacts on the
9 Eel River Canyon and by improperly segmenting rehabilitation activities from the Project.
10

11 d. The Draft EIR failed to adequately disclose and analyze the Project's
12 significant environmental impacts, including, but not limited to, impacts on air quality,
13 biological resources, those related to hazardous materials, on traffic and transportation, and
14 cumulative impacts.
15

16 e. The Draft EIR improperly analyzed and/or improperly deferred
17 development of mitigation measures, including, but not limited to, measures to address impacts
18 on air quality, biological resources, those related to hazardous materials, on traffic and
19 transportation, and cumulative impacts.
20

21 f. The Draft EIR failed to describe and analyze a reasonable range of
22 alternatives to the Project.

23 g. The Draft EIR was so fundamentally flawed as to preclude meaningful
24 public review, and thus should have been revised and recirculated.
25

26 34. Attached to FOER's comments were a number of documents (Exhibits A – W)
27 substantiating these comments. These documents, largely drawn from the files of NCRA and
28 the agencies it communicates with, were submitted as evidence that the DEIR's analysis and

disclosure of the Project's impacts were irredeemably flawed, particularly by its failure to consider impacts on the Eel River Canyon.

35. NCRA did not recirculate an additional revised DEIR to address impacts on the Eel River canyon. Instead, it prepared responses to comments. However, it delayed release of the Final EIR for an additional year. The FEIR document was printed and signed on March 23, 2011, but was not released until May 2011. The FEIR was certified by NCRA Board of Directors on June 20, 2011.

36. The FEIR primarily consisted of responses to comments on the revised DEIR. However, of the 224 pages of 25 letters reviewed, the FEIR conceded only minor corrections, including nine typographical errors, nine date changes related to a single minor issue, and five other relatively insignificant changes. Even then, the FEIR failed to incorporate a response to comments on the Draft EIR timely submitted by NCRA Director Bernard Meyers on January 13, 2010. An Addendum to the FEIR, containing a response to Director Meyers' comments, was released on May 31, 2011.

37. On June 20, 2011, NCRA held a meeting to consider certification of the FEIR and approval of the Project, along with modifications to the Novato Consent Decree, and amendment to the 2006 NWP Co. lease, and an operating agreement with SMART. Members of FOER and others appeared at the hearing and objected to approval of the Project. Over these objections, NCRA voted to certify the EIR and approve the Project.

38. NCRA filed a notice of determination with respect to its approval of the Project in Marin County on June 28, 2011.

FIRST CAUSE OF ACTION (VIOLATIONS OF CEQA)

39. Petitioner hereby reincorporates the allegations of paragraphs 1 through 38 as if fully set forth herein.

40. CEQA requires the lead agency for a project to prepare an EIR that complies with the requirements of the statute. The lead agency also must provide for public review and comment on the project and associated environmental documentation. An EIR must provide

1 sufficient environmental analysis such that decision-makers can intelligently consider
2 environmental consequences when acting on proposed projects.

3 41. Respondents violated CEQA by certifying an EIR for the Project that is inadequate
4 and fails to comply with CEQA and the CEQA Guidelines, Title 14, California Code of
5 Regulations Section 1500 et seq.. Among other things, Respondents:

6 a. Failed to provide a stable and consistent description of the Project;

7 b. Failed to evaluate the impacts of the entire Project, including, but not
8 limited to, rehabilitation work and the re-opening of the entire Railroad from Lombard to
9 Humboldt Bay;

10 c. Failed to adopt a consistent and appropriate environmental "baseline" for
11 analysis of the Project's environmental impacts and improperly assumed that the Project would
12 reduce impacts as a result of the displacement of truck traffic;

13 d. Failed to adequately disclose or analyze the Project's significant impacts on
14 the environment, including, but not limited to, the Project's impacts on hydrology, water quality,
15 water supply, groundwater flow and recharge, biological resources (including threatened,
16 endangered, and sensitive species), geology, traffic and circulation, noise, air quality, aesthetics,
17 and hazardous materials;

18 e. Failed to analyze significant cumulative and growth-inducing impacts
19 resulting from the re-opening of the entire Railroad, including from reasonably foreseeable
20 projects in the Eel River Canyon, including but not limited to the Island Mountain Mine;

21 f. Improperly deferred impact analysis and mitigation measures, failed to
22 ensure that Project impacts would be mitigated, and failed to adopt a legally adequate mitigation
23 monitoring plan; and

24 g. Failed to consider a reasonable range of alternatives.

25 42. Respondents also violated CEQA by failing to adequately respond to comments on
26 the EIR, including, but not limited to, ignoring or dismissing in a cursory fashion requests for
27 additional information and suggestions of feasible mitigation measures and alternatives for
28 consideration by NCRA.

43. Respondents further violated CEQA by failing to recirculate the EIR in response to (a) significant new information regarding changes in the Project, and (b) significant new information regarding the Project's impacts and mitigation.

44. As a result of the foregoing defects, Respondents prejudicially abused their discretion by certifying an EIR that does not comply with CEQA and by approving the Project in reliance thereon. Accordingly, Respondents' certification of the EIR and approval of the Project must be set aside.

SECOND CAUSE OF ACTION

(Violations of CEQA; Inadequate Findings)

45. Petitioner hereby realleges and incorporates paragraphs 1 through 44, inclusive.

46. CEQA requires that a lead agency's findings for the approval of a project be supported by substantial evidence in the administrative record. CEQA further requires that a lead agency provide an explanation of how evidence in the record supports the conclusions it has reached.

47. Respondents violated CEQA by adopting findings that are inadequate as a matter of law in that they are not supported by substantial evidence in the record, including, but not limited to, the determination that the Russian River division has independent economic utility and that NCRA has no plans to re-open the line through the Eel River Canyon, that certain impacts would be less than significant, that adopted mitigation measures would avoid or lessen the Project's significant effects on the environment, that certain mitigation measures or alternatives are infeasible or do not meet Project objectives, and that certain overriding conditions exist to support the agency's decision to approve the Project.

48. As a result of the foregoing defects, Respondents prejudicially abused their discretion by adopting findings that do not comply with the requirements of CEQA and approving the Project in reliance thereon. Accordingly, Respondents' certification of the FEIR and approval of the Project must be set aside.

11

11

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Petitioner prays for judgment as follows:

3 a. For alternative and peremptory writs of mandate directing Respondents to
4 vacate and set aside their certification of the EIR, and approval of the Project;

5 b. For alternative and peremptory writs of mandate directing Respondents to
6 comply with CEQA and the CEQA Guidelines, and to take any other action as required by
7 Public Resources Code section 21168.9;

8 c. For a temporary stay, temporary restraining order, and preliminary and
9 permanent injunctions restraining Respondents and their agents, servants, and employees, and
10 all others acting in concert with Respondents on their behalf, from taking any action to
11 implement, or further approve, or construct the Project, pending full compliance with the
12 requirements of CEQA and the CEQA Guidelines;

13 d. For a temporary stay, temporary restraining order, and preliminary and
14 permanent injunctions restraining Real Parties in Interest and their agents, servants, and
15 employees, and all others acting in concert with Real Parties in Interest on their behalf, from
16 taking any action to implement or construct the Project, pending full compliance with the
17 requirements of CEQA and the CEQA Guidelines;

18 e. For costs of the suit;

19 f. For attorneys' fees as authorized by Code of Civil Procedure section 1021.5
20 and other provisions of law; and

21 g. For such other and future relief as the Court deems just and proper.

22 DATED: July 20, 2011

SHUTE, MIHALY & WEINBERGER LLP

23
24 By: 
25

AMYJ. BRICKER

26 Attorneys for
27 FRIENDS OF THE EEL RIVER

28 P:\FOER\RAIL\CEQA Petition\final petition.doc

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERIFICATION

I, Patricia Hamilton, am the Executive Director of Friends of the Eel River, petitioner in this action. I have read the foregoing Petition for Writ of Mandate ("Petition"). I am familiar with the contents of the Petition. All facts alleged in the above Petition, not otherwise supported by exhibits or other documents, are true of my own knowledge, except as to matters stated on information and belief, and as to those matters I believe them to be true. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed at Sausalito, California on July 18, 2011.

Patricia Hamilton

EXHIBIT A

SHUTE MIHALY
& WEINBERGER LLP

396 HAYES STREET, SAN FRANCISCO, CA 94102
T: 415 552-7272 F: 415 552-5816
www.smwlaw.com

AMY J. BRICKER
Attorney
bricker@smwlaw.com

July 18, 2011

Via U.S. Mail & Facsimile

Christopher Neary
Legal Counsel
North Coast Railroad Authority
110 South Main Street, Suite C
Willits, CA 95490

Re: Friends of the Eel River v. North Coast Railroad Authority

Dear Mr. Neary:

This letter is to notify you that the Friends of the Eel River will file suit against the North Coast Railroad Authority ("NCRA") for failure to observe the requirements of the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000 et seq., and the CEQA Guidelines, Title 14, California Code of Regulations section 15000 et seq., in the administrative process that culminated in NCRA's June 20, 2011 decision to approve a Project resuming freight rail service from Willits to Lombard in the Russian River Division, including making findings, certifying an Environmental Impact Report, and adopting a Statement of Overriding Considerations. This notice is given pursuant to Public Resources Code section 21167.5.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Amy J. Bricker

Enclosure

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

Friends of Eel River v. North Coast Railroad Authority, et al.
Superior Court of California County of Marin

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the City and County of San Francisco, State of California. My business address is 396 Hayes Street, San Francisco, California 94102.

On July 18, 2011, I served true copies of the following document(s) described as:

**LETTER TO NORTH COAST RAILROAD AUTHORITY RE: NOTICE OF INTENT
TO SUE PURSUANT TO PUBLIC RESOURCES CODE SECTION 21167.5**

on the parties in this action as follows:

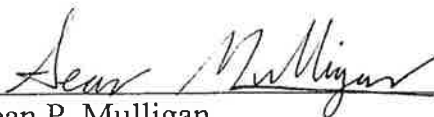
SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Shute, Mihaly & Weinberger LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

BY FAX TRANSMISSION: I faxed a copy of the document(s) to the persons at the fax numbers listed in the Service List. The telephone number of the sending facsimile machine was (415) 552-5816. No error was reported by the fax machine that I used.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 18, 2011, at San Francisco, California.



Sean P. Mulligan

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SERVICE LIST

Friends of Eel River v. North Coast Railroad Authority, et al.
Superior Court of California County of Marin

Christopher Neary
Legal Counsel

North Coast Railroad Authority
110 South Main Street, Suite C
Willits, CA 95490

Agent for Service of Process of Respondent
NORTH COAST RAILROAD AUTHORITY

P:\FOER\RAIL\CEQA Petition\POS Notice of Petition to Public Agency.doc

SHUTE MIHALY
& WEINBERGER LLP

396 HAYES STREET, SAN FRANCISCO, CA 94102
T: 415 552-7272 F: 415 552-5816
www.smwlaw.com

AMY J. BRICKER
Attorney
bricker@smwlaw.com

July 18, 2011

Via U.S. Mail & Facsimile

Chairman Wagenet
Board of Directors of North Coast Railroad
Authority
419 Talmage Road . Suite M .
Ukiah CA 95482

Re: Friends of the Eel River v. North Coast Railroad Authority

Dear Chairman Wagenet and Members of the Board:

This letter is to notify you that the Friends of the Eel River will file suit against the Board of Directors of the North Coast Railroad Authority ("NCRA") for failure to observe the requirements of the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000 et seq., and the CEQA Guidelines, Title 14, California Code of Regulations section 15000 et seq., in the administrative process that culminated in the Board and NCRA's June 20, 2011 decision to approve a Project resuming freight rail service from Willits to Lombard in the Russian River Division, including making findings, certifying an Environmental Impact Report, and adopting a Statement of Overriding Considerations. This notice is given pursuant to Public Resources Code section 21167.5.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP


Amy J. Bricker

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SERVICE LIST

Friends of Eel River v. North Coast Railroad Authority, et al.
Superior Court of California County of Marin

Chairman Wagenet
Board of Directors of North Coast Railroad
Authority
419 Talmage Road . Suite M .
Ukiah CA 95482

Agent for Service of Process of Respondent
NORTH COAST RAILROAD AUTHORITY

P:\FOER\RAIL\CEQA Petition\POS Notice of Petition to Public Agency [Board of Directors].doc

1 **SUPPLEMENTAL PROOF OF SERVICE**

2 *Friends of Eel River v. North Coast Railroad Authority, et al.*
3 *Superior Court of California County of Marin*

4 At the time of service, I was over 18 years of age and **not a party to this action**. I am
employed in the City and County of San Francisco, State of California. My business address is
396 Hayes Street, San Francisco, California 94102.

5 On July 19, 2011, I served true copies of the following document(s) described as:

6 **LETTER TO BOARD OF DIRECTORS OF THE NORTH COAST RAILROAD**
7 **AUTHORITY RE: NOTICE OF INTENT TO SUE PURSUANT TO PUBLIC**
8 **RESOURCES CODE SECTION 21167.5**

on the parties in this action as follows:

9 Chairman Wagenet
10 Board of Directors of North Coast Railroad
11 Authority
419 Talmage Road, Suite M
12 Ukiah, CA 95482
Email: ncra.heather@sbcglobal.net

13
14 **BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the
15 document(s) to be sent from e-mail address Mulligan@smwlaw.com to the persons at the e-mail
16 addresses listed in the Service List. I did not receive, within a reasonable time after the
transmission, any electronic message or other indication that the transmission was unsuccessful.

17 I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct.

18 Executed on July 20, 2011, at San Francisco, California.

19
20 
21 Sean P. Mulligan

EXHIBIT B

SHUTE, MIHALY
& WEINBERGER LLP

396 HAYES STREET, SAN FRANCISCO, CA 94102
T: 415 552-7272 F: 415 552-5816
www.smwlaw.com

AMY J. BRICKER
Attorney
bricker@smwlaw.com

July 20, 2011

Kamala D. Harris
Attorney General's Office California
Department of Justice
1300 "I" Street
Sacramento, CA 95814

Re: Friends of the Eel River v. North Coast Railroad Authority et al.

Dear Attorney General Harris:

Enclosed please find a copy of the Petition for Writ of Mandate in the above-captioned action. The petition is provided to you in compliance with Public Resources Code section 21167.7 and Code of Civil Procedure section 388. Please acknowledge receipt in the enclosed prepaid, self-addressed envelope. Thank you.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Amy J. Bricker

ACKNOWLEDGMENT OF RECEIPT:

Kamala D. Harris
Attorney General's Office California

Enclosure