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FILED
2011 AUG 19 P 3:41
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

5 Attorney for Respondents/Defendants,
6 NORTH COAST RAILROAD AUTHORITY,
7 BOARD OF DIRECTORS OF NORTH COAST
8 RAILROAD AUTHORITY

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

NJV

11 FRIENDS OF THE EEL RIVER,
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CV 11 4103
Case No.

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far

15 v.
16 NORTH COAST RAILROAD AUTHORITY,
17 BOARD OF DIRECTORS OF NORTH
18 COAST RAILROAD AUTHORITY; and
19 DOES 1-10,
20 Respondents/Defendants.

) NOTICE OF REMOVAL OF ACTION
) PURSUANT TO 28 U.S.C. §1441(b)
) [FEDERAL QUESTION]

22 PLEASE TAKE NOTICE that Defendant NORTH COAST RAILROAD AUTHORITY,
23 hereby removes to this Court the State Court action entitled *Friends of the Eel River, v. North*
24 *Coast Railroad Authority; Board of Directors of North Coast Railroad Authority; and DOES 1-10;*
25 *Superior Court of the State of California in and for the County of Marin, Case No. CIV-11-03605.*

26 A copy of the State Court Complaint and all other pleadings and papers served on Defendant are
27 attached to the Notice as Exhibits 1 through 6.
28

1 Respondent/Defendant NORTH COAST RAILROAD AUTHORITY ("NCRA") is a
2 governmental entity created by the California Legislature to own and operate the Northwestern
3 Pacific Railroad in Humboldt, Trinity, Mendocino, Sonoma, Marin and Napa counties. As owner
4 of an active railroad line NCRA has the right and obligation to provide common carrier freight
5 railroad service in accord with federal law. Respondent/Defendant Board of Directors of the
6 NCRA governs the NCRA. The NCRA and its Board of Directors administer railroad operations
7 by and through a lease with the Northwestern Pacific Railroad Company.
8

9 Removal of this action to the United States District for the Northern District of California
10 is proper under 28 United States Code Section 1331, which provides that District Courts have
11 original jurisdiction over all civil actions arising under the laws of the United States, 28 United
12 States Code Section 1336, which provides that the District Court has jurisdiction to enforce any
13 order of the Surface Transportation Board, and 28 United States Code Section 1441(b) which
14 provides that any civil action over which a Federal District Court has original jurisdiction shall be
15 removable.
16

17 Petitioner/Plaintiff seeks by its action to cause the termination of ongoing common carrier
18 railroad operations.

19 Although the Petitioner/Plaintiff's Complaint attempts to allege only state law claims, these
20 claims are preempted by the Interstate Commerce Commission Termination Act ("ICCTA"), 49
21 United States Codes Section 10101 et seq.. The preemptive force of the ICCTA is so complete
22 that it displaces any potential state law cause of action and leaves room only for federal claims.
23 See, *Parino v. FHP Inc.* 146F.3d 699, 703, (9th Cir. 1998), ["A Plaintiff cannot avoid complete
24 preemption... by artfully pleading a complaint so as to omit facts that include Federal
25 jurisdiction."]. In other words, what the Petitioner/Plaintiff tried to plead as state-law claims
26 must be re-characterized as Federal claims, and as such, the action is removable to federal court.
27 Specifically Section 10501(b) of the ICCTA provides as follows:
28

1 “The jurisdiction of the [Surface Transportation] Board over. . . (2)
2 the construction, acquisition, operation, abandonment, or
3 discontinuance of spur, industrial, team, switching, or side tracks,
4 or facilities, even if the tracks are located, or intended to be located
5 entirely in one state, is exclusive. Except as otherwise provided in
6 this part, the remedies provided under this part with respect to
7 regulation of rail transportation are exclusive and preempt the
8 remedies provided in Federal or State Law.”

9 49 U.S.C. § 10501(b) (emphasis added).

10 As acknowledged by the Ninth Circuit Court of Appeals in, *City of Auburn v. United*
11 *States Government*, “It is difficult to imagine a broader statement of Congress’ intent to preempt
12 State regulatory authority over railroad operations.” *City of Auburn v. United States Government*,
13 154 F.3d 1025, 1030 (9th Cir. 1998).

14 Moreover, even if the Petitioner/Plaintiff’s claims are not completely preempted by the
15 ICCTA, removal is still required because its claims are necessarily federal in character and the
16 resolution of these claims depend upon the resolution of substantial federal questions. Among
17 other matters the basis of the Petitioner/Plaintiff’s claim and the relief sought by it can only be
18 addressed by reference to federal laws that require federal jurisdiction.

19 In this case, Petitioner/Plaintiff alleges that Defendant North Coast Railroad Authority and
20 its Board of Directors failed to adequately evaluate environmental conditions under the California
21 Environmental Quality Act “CEQA” and on such basis seeks a Writ of Mandate to set aside the
22 authorization of its Operator to reinstitute operations on the Russian River Division and further for
23 interlocutory and permanent injunctive relief in joining Defendants and real parties in interest, and
24 each of them from approving in any activity to implement the Russian River Division freight rail
25 project, which project is the operation of freight rail service. Consequently, the Petition on its
26 face will necessarily regulate interstate rail commerce which is preempted by federal law. The
27 Petition challenges prior rulings of the Surface Transportation Board created pursuant to the
28 ICCTA including, specifically the rulings of the Surface Transportation Board granting authority
 to the Defendant, North Coast Railroad Authority to acquire a permanent freight rail easement

1 (STB Finance Docket # 33115, STB served September 27, 1996); and the ruling to establish the
2 defendant's designated operator by reason of contract, the right and obligation to conduct freight
3 rail activities; (Federal Register: August 24, 2007 (Vol. 72, Number 164) Notices, [Page 48729-
4 48730], STB Finance Docket # 35073 and Denial of Motion for Revocation Filed by Friends of
5 the Eel River, STB Finance Docket #35073 served and published on August 24, 2007 (72 FR
6 48729) as corrected and published on August 30, 2007 (72 FR 50161) (Notice) decided by the
7 Surface Transportation Board on January 31, 2008 and served February 1, 2008).

8
9 Petitioner/Plaintiff attempts to relitigate environmental issues in a state court which has no
10 jurisdiction to address the environmental matters after the Surface Transportation Board, which
11 has exclusive jurisdiction, ruled against Petitioner/Plaintiff's environmental concerns as evidenced
12 by the order in STB Finance Docket # 35073 decided January 31, 2008 and served February 1,
13 2008.

14 Petitioner/Plaintiff artfully pleads to state a state cause of action by ignoring an adverse
15 STB Order. Its exclusive remedy is to challenge the project based on the ICCTA, not preempted
16 state laws and its allegations must be re-characterized as purported violations of ICCTA. See
17 *Friends of the Acguifer*, STB Finance Docket No. 33966 at fn. 8 (STB Served 8/15/01) [State and
18 local environmental requirements are preempted because by their nature, they interfere with
19 interstate commerce.] Accordingly the action is properly removed to federal court and the federal
20 court should direct Petitioner/Plaintiff to amend its Petition/Complaint to properly allege any
21 pertinent federal claims.
22

23 The relief sought by Petitioner/Plaintiff specifically an order to prevent operations upon an
24 active rail line under federal jurisdiction depends on the resolution of a substantial disputed federal
25 question.

26 To the extent that the Court determines it lacks independent federal jurisdiction over any
27 one of the claims raised by the Petitioner/Plaintiff, the Court should exercise its supplemental
28 jurisdiction under 28 United States Code Section 1376(a) because all the claims are related to the

1 claims within this Court's original jurisdiction such that they perform part of the same case or
2 controversy under Article III of the United States Constitution. Among other things, all of the
3 Petitioner/Plaintiff's claims are related to Defendant's approval of freight rail operations on the
4 Russian River Division of the Northwestern Pacific Railroad.
5

6 The United States District Court for the Northern District of California is the proper Court
7 for removal because it is located in the District where the State Court action was initiated. 28
8 United States Code § 1446(a) further this Notice of Removal is timely because the Complaint was
9 served on the Defendant no sooner than July 20, 2011. Finally, all named Defendants have joined
10 in this removal. The approval of the real parties in interest for removal is unnecessary, including
11 those named as sham real parties in interest but nonetheless the undersigned upon information and
12 belief asserts that no named Real Party in Interest opposes removal.
13
14

15 Dated: August 17, 2011

16 CHRISTOPHER J. NEARY
17 Attorney for Defendant,
18 NORTH COAST RAILROAD AUTHORITY;
19 BOARD OF DIRECTORS OF NORTH COAST
20 RAILROAD AUTHORITY, Respondents
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EXHIBIT 1

CIVIL CASE COVER SHEET

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): ELLISON FOLK (SBN 149232) AMY J. BRICKER (SBN 22703) SHUTE MIHALY & WEINBERGER LLP 396 HAYES STREET SAN FRANCISCO, CA 94114 TELEPHONE NO: 415-552-7272 FAX NO: 415-552-5816 ATTORNEY FOR (Name): Friends of Eel River		FOR COURT USE ONLY <div style="border: 2px solid black; padding: 10px; width: fit-content; margin: auto;"> Received JUL 29 2011 C.J. Neary </div>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Marin STREET ADDRESS: 3501 Civic Center Drive, Room 113 MAILING ADDRESS: CITY AND ZIP CODE: San Rafael, CA 94903 BRANCH NAME: Civil Division		
CASE NAME: Friends of the Eel River v. North Coast Railroad Authority, et al.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER: JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).

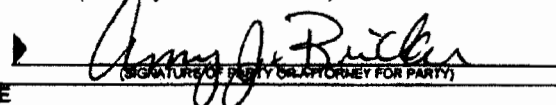
1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (26) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input checked="" type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary* b. nonmonetary, declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): Two (CEQA) *Attorney's fees
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: July 20, 2011
 Amy J. Bricker

(TYPE OR PRINT NAME)


 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

CM-010

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

<p>Auto Tort Auto (22)—Personal Injury/Property Damage/Wrongful Death Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto) Other P/PPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort Asbestos (04) Asbestos Property Damage Asbestos Personal Injury/Wrongful Death Product Liability (not asbestos or toxic/environmental) (24) Medical Malpractice (46) Medical Malpractice—Physicians & Surgeons Other Professional Health Care Malpractice Other P/PPD/WD (23) Premises Liability (e.g., slip and fall) Intentional Bodily Injury/PPD/WD (e.g., assault, vandalism) Intentional Infliction of Emotional Distress Negligent Infliction of Emotional Distress Other P/PPD/WD Non-P/PPD/WD (Other) Tort Business Tort/Unfair Business Practices (07) Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08) Defamation (e.g., slander, libel) (15) Fraud (16) Intellectual Property (19) Professional Negligence (25) Legal Malpractice Other Professional Malpractice (not medical or legal) Other Non-P/PPD/WD Tort (35) Employment Wrongful Termination (38) Other Employment (15)</p>	<p>Contract Breach of Contract/Warranty (06) Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction) Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence) Negligent Breach of Contract/Warranty Other Breach of Contract/Warranty Collections (e.g., money owed, open book accounts) (09) Collection Case—Seller Plaintiff Other Promissory Note/Collections Case Insurance Coverage (not provisionally complex) (18) Auto Subrogation Other Coverage Other Contract (37) Contractual Fraud Other Contract Dispute Real Property Eminent Domain/Inverse Condemnation (14) Wrongful Eviction (33) Other Real Property (e.g., quiet title) (26) Writ of Possession of Real Property Mortgage Foreclosure Quiet Title Other Real Property (not eminent domain, landlord/tenant, or foreclosure) Unlawful Detainer Commercial (31) Residential (32) Drugs (36) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential) Judicial Review Asset Forfeiture (05) Petition Re: Arbitration Award (11) Writ of Mandate (02) Writ—Administrative Mandamus Writ—Mandamus on Limited Court Case Matter Writ—Other Limited Court Case Review Other Judicial Review (36) Review of Health Officer Order Notice of Appeal—Labor Commissioner Appeals</p>	<p>Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403) Antitrust/Trade Regulation (03) Construction Defect (10) Claims Involving Mass Tort (40) Securities Litigation (28) Environmental/Toxic Tort (30) Insurance Coverage Claims (arising from provisionally complex case type listed above) (41) Enforcement of Judgment Enforcement of Judgment (20) Abstract of Judgment (Out of County) Confession of Judgment (non-domestic relations) Sister State Judgment Administrative Agency Award (not unpaid taxes) Petition/Certification of Entry of Judgment on Unpaid Taxes Other Enforcement of Judgment Case Miscellaneous Civil Complaint RiCO (27) Other Complaint (not specified above) (42) Declaratory Relief Only Injunctive Relief Only (non-harassment) Mechanics Lien Other Commercial Complaint Case (non-tort/non-complex) Other Civil Complaint (non-tort/non-complex) Miscellaneous Civil Petition Partnership and Corporate Governance (21) Other Petition (not specified above) (43) Civil Harassment Workplace Violence Elder/Dependent Adult Abuse Election Contest Petition for Name Change Petition for Relief From Late Claim Other Civil Petition</p>
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EXHIBIT 2

VERIFIED PETITION FOR WRIT OF MANDATE

1 ELLISON FOLK (State Bar No. 149232)
2 AMY J. BRICKER (State Bar No. 227073)
3 SHUTE, MIHALY & WEINBERGER LLP
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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

14 Petitioner,
15

16 v.
17

18 NORTH COAST RAILROAD
19 AUTHORITY, BOARD OF DIRECTORS
20 OF NORTH COAST RAILROAD
21 AUTHORITY, and DOES 1-10,
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23 Respondents.
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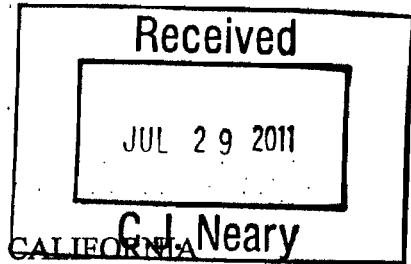
29 NORTHWESTERN PACIFIC RAILROAD
30 COMPANY, SONOMA-MARIN AREA
31 RAIL TRANSIT DISTRICT, and DOES 11-
32 50,
33

34 Real Parties in Interest.
35
36
37
38

FILED

JUL 20 2011

KIM TURNER
Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: C. Lucchesi, Deputy



Case No. CIV 1103605

VERIFIED PETITION FOR WRIT OF MANDATE

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

BY FAX

INTRODUCTION

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

PARTIES

20
21 2. Petitioner Friends of the Eel River is a grass-roots, non-profit, 501(c)(3)
22 corporation organized pursuant to the laws of the state of California. FOER has more than 2,500
23 members, working to restore the Eel River and its tributaries to a state of natural abundance.
24 Friends of the Eel River has worked to curtail water diversions and other practices harming the
25 Eel River watershed and its threatened salmon and steelhead fisheries. Friends of the Eel River
26 is especially concerned with environmental degradation that could result from reopening the
27 Northwestern Pacific Railroad through the Eel River Canyon, including a proposal to open a
28 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.
28

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.

28

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

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

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

10 **FACTUAL BACKGROUND**

11 **Statement of Facts**

12 **Project Background – The Eel River Canyon**

13 15. The Eel River canyon is composed of one of the Earth's most geologically
14 unstable formations, the Franciscan melange. Thanks to rapid uplift in this tectonically active
15 area and very substantial rainfall, slopes are often very steep, subject to very substantial
16 landslides from rainfall, earthquakes, and other disturbances. Indeed, the first train to run on
17 NCRA line through the Eel River canyon, nearly a century ago, was blocked by a landslide, just
18 as the area's primary corridor today, Highway 101, was blocked for several days by a large
19 landslide in the spring of 2011. The northwestern portion of California often receives very high
20 amounts of rainfall in the winter, and the steep and rugged Eel River watershed amplifies
21 flooding. In the Eel River canyon, NCRA rail line is generally located just above the Eel River,
22 often cutting through the 'toe' portion of unstable landforms. Thus, the rail line is not only
23 subject to serious damage from both landslides and floods, but may also trigger earth flows by
24 its location and operation. Such events have in the past swept portions of the railroad, rail cars,
25 and even engines into the Eel River. Indeed, the line through the Eel River canyon was severely
26 damaged by floods in the winter of 1996-97, following which the Federal Railroad
27 Administration closed the entire line for safety reasons under Emergency Order 21, issued
28

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.

28

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)."
17 FOER 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

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

3 35. NCRA did not recirculate an additional revised DEIR to address impacts on the
4 Eel River canyon. Instead, it prepared responses to comments. However, it delayed release of
5 the Final EIR for an additional year. The FEIR document was printed and signed on March 23,
6 2011, but was not released until May 2011. The FEIR was certified by NCRA Board of
7 Directors on June 20, 2011.

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

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

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

22 **FIRST CAUSE OF ACTION**
23 **(VIOLATIONS OF CEQA)**

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

26 40. CEQA requires the lead agency for a project to prepare an EIR that complies with
27 the requirements of the statute. The lead agency also must provide for public review and
28 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.

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

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

8 **SECOND CAUSE OF ACTION**

9 **(Violations of CEQA; Inadequate Findings)**

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

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

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

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

27 //

28 //

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays for judgment as follows:

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

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

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

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

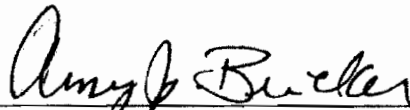
e. For costs of the suit;

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

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

DATED: July 20, 2011

SHUTE, MIHALY & WEINBERGER LLP

By: 
AMYJ. BRICKER

Attorneys for
FRIENDS OF THE EEL RIVER

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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.

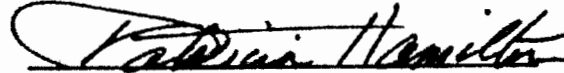


EXHIBIT A

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

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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:

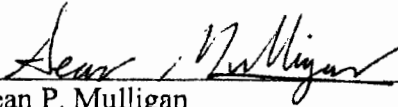
SEE ATTACHED SERVICE LIST

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

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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

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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

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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 BOARD OF DIRECTORS OF THE 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

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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

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

**LETTER TO BOARD OF DIRECTORS OF THE 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:

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

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address Mulligan@smwlaw.com to the persons at the e-mail 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.

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

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



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

EXHIBIT 3

NOTICE RE PREPARATION OF RECORD OF ADMINISTRATIVE PROCEEDINGS

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

6 Attorneys for FRIENDS OF THE EEL RIVER

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF MARIN

10
11 FRIENDS OF THE EEL RIVER,
12 Petitioner,
13 v.

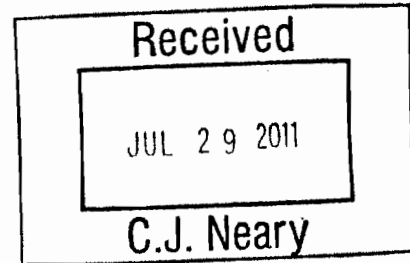
14 NORTH COAST RAILROAD
AUTHORITY, BOARD OF DIRECTORS
15 OF NORTH COAST RAILROAD
AUTHORITY, and DOES 1-10,
16 Respondents.

17
18 NORTHWESTERN PACIFIC RAILROAD
COMPANY, SONOMA-MARIN AREA
19 RAIL TRANSIT DISTRICT, and DOES 11-
20 50,
21 Real Parties in Interest.

Case No.

**NOTICE RE PREPARATION OF
RECORD OF ADMINISTRATIVE
PROCEEDINGS**

[Public Resources Code § 21167.6]



1 TO THE NORTH COAST RAILROAD AUTHORITY AND ITS BOARD OF DIRECTORS:

2 PLEASE TAKE NOTE that pursuant to Public Resources Code section 21167.6,
3 Petitioner Friends of the Eel River requests that Respondents North Coast Railroad Authority
4 and Board of Directors of the North Coast Railroad Authority (collectively, "NCRA") certify the
5 record of administrative proceedings before NCRA concerning its June 20, 2011 decision to
6 approve a Project resuming freight rail service from Willits to Lombard in the Russian River
7 Division, including making findings, certifying an Environmental Impact Report, and adopting a
8 Statement of Overriding Considerations.

9 Pursuant to Public Resources Code section 21167.6(b)(2), Petitioner elects to prepare the
10 record of administrative proceedings subject to certification by NCRA.

11
12
13 DATED: July 20, 2011

SHUTE, MIHALY & WEINBERGER LLP

14
15 By: 
16 AMY J. BRICKER

17 Attorneys for Friends of the Eel River
18

19 P:\FOER\RAIL\CEQA Petition\Notice RE Prep Record of AR.doc
20
21
22
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24
25
26
27
28

EXHIBIT 4

NOTICE OF CASE ASSIGNMENT

Received
JUL 29 2011
C.J. Neary

MARIN COUNTY SUPERIOR COURT
P.O. Box 4988
San Rafael, CA 94913-4988
FILED

FRIENDS of the EEL RIVER

PLAINTIFF(S)

North Coast Railroad

DEFENDANT(S)

JUL 20 2011

KIM TURNER
Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: C. Lucchesi, Deputy

NOTICE OF CASE ASSIGNMENT

- NON FAST TRACK
- FAST TRACK

CASE NO. CIV 1103605

This case is hereby assigned for all purposes to Judge/Commissioner CHERNUS

This notice shall be served at the same time the complaint is served on all parties.

CV041

Case Mgmt Hearing
12-12-11
at 8:30 A.M.

Rev. 5/06

EXHIBIT 5

NOTICE OF RELATED CASE

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): ELLISON FOLK (SBN 14923) AMY J. BRICKER (SBN 22703) SHUTE MIHALY & WEINBERGER LLP 396 HAYES STREET SAN FRANCISCO, CA 94114 TELEPHONE NO: 415-552-7272 FAX NO. (Optional): 415-552-5816 E-MAIL ADDRESS (Optional): bricker@smwlaw.com ATTORNEY FOR (Name): Friends of the Eel River	CM-015 Received <div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;"> JUL 20 2011 </div> C.J. Neary
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Marin STREET ADDRESS: 3501 Civic Center Drive, Room 113 MAILING ADDRESS: CITY AND ZIP CODE: San Rafael, CA 94903 BRANCH NAME: Civil Division	
PLAINTIFF/PETITIONER: Friends of the Eel River	CASE NUMBER:
DEFENDANT/RESPONDENT: North Coast Railroad Authority, et al.	JUDICIAL OFFICER:
NOTICE OF RELATED CASE	DEPT.:

Identify, in chronological order according to date of filing, all cases related to the case referenced above.

1.
 - a. Title: **City of Novato v. North Coast Railroad Authority, et al.**
 - b. Case number: **CV074645**
 - c. Court: same as above
 other state or federal court (name and address):
 - d. Department: **E**
 - e. Case type: limited civil unlimited civil probate family law other (specify):
 - f. Filing date: **9/28/07**
 - g. Has this case been designated or determined as "complex?" Yes No
 - h. Relationship of this case to the case referenced above (check all that apply):
 - involves the same parties and is based on the same or similar claims. (same respondent)
 - arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
 - Involves claims against, title to, possession of, or damages to the same property.
 - is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
 - Additional explanation is attached in attachment 1h
 - i. Status of case:
 - pending
 - dismissed with without prejudice
 - disposed of by judgment (entering consent decree)

2.
 - a. Title:
 - b. Case number:
 - c. Court: same as above
 other state or federal court (name and address):
 - d. Department:

CM-015

PLAINTIFF/PETITIONER: Friends of the Eel River	CASE NUMBER:
DEFENDANT/RESPONDENT: North Coast Railroad Authority, et al.	

2. (continued)

- e. Case type: limited civil unlimited civil probate family law other (specify):
- f. Filing date:
- g. Has this case been designated or determined as "complex?" Yes No
- h. Relationship of this case to the case referenced above (check all that apply):
 - involves the same parties and is based on the same or similar claims.
 - arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
 - involves claims against, title to, possession of, or damages to the same property.
 - is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
 - Additional explanation is attached in attachment 2h
- i. Status of case:
 - pending
 - dismissed with without prejudice
 - disposed of by judgment

3. a. Title:

- b. Case number:
- c. Court: same as above
 other state or federal court (name and address):
- d. Department:
- e. Case type: limited civil unlimited civil probate family law other (specify):
- f. Filing date:
- g. Has this case been designated or determined as "complex?" Yes No
- h. Relationship of this case to the case referenced above (check all that apply):
 - involves the same parties and is based on the same or similar claims.
 - arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
 - involves claims against, title to, possession of, or damages to the same property.
 - is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
 - Additional explanation is attached in attachment 3h
- i. Status of case:
 - pending
 - dismissed with without prejudice
 - disposed of by judgment

4. Additional related cases are described in Attachment 4. Number of pages attached: _____

Date: July 30 2011

Amy J. Bricker
(TYPE OR PRINT NAME OF PARTY OR ATTORNEY)


(SIGNATURE OF PARTY OR ATTORNEY)

CM-015

PLAINTIFF/PETITIONER: Friends of the Eel River	CASE NUMBER:
DEFENDANT/RESPONDENT: North Coast Railroad Authority, et al.	

**PROOF OF SERVICE BY FIRST-CLASS MAIL
NOTICE OF RELATED CASE**

(NOTE: You cannot serve the Notice of Related Case if you are a party in the action. The person who served the notice must complete this proof of service. The notice must be served on all known parties in each related action or proceeding.)

1. I am at least 18 years old and **not a party to this action**. I am a resident of or employed in the county where the mailing took place, and my residence or business address is (*specify*):

Shute, Mihaly & Weinberger LLP
396 Hayes Street, San Francisco, CA 94102

2. I served a copy of the *Notice of Related Case* by enclosing it in a sealed envelope with first-class postage fully prepaid and (*check one*):
- deposited the sealed envelope with the United States Postal Service.
 - placed the sealed envelope for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.
3. The *Notice of Related Case* was mailed:
- on (*date*): July 20, 2011
 - from (*city and state*): San Francisco, CA

4. The envelope was addressed and mailed as follows:

- a. Name of person served:

Street address:

City:

State and zip code:

- c. Name of person served:

Street address:

City:

State and zip code:

- b. Name of person served:

Street address:

City:

State and zip code:

- d. Name of person served:

Street address:

City:

State and zip code:

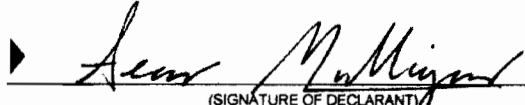
Names and addresses of additional persons served are attached. (*You may use form POS-030(P).*)

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

Date: July 20, 2011

Sean Mulligan

(TYPE OR PRINT NAME OF DECLARANT)


(SIGNATURE OF DECLARANT)

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

Attachment to Part 4 of Proof of Service

John H. Williams
250 Cambridge Avenue, Suite 104
Palo Alto, CA 94306

*Agent for Service of Process of Real Party in
Interest Northwestern Pacific Railroad
Company*

Christopher Neary
110 South Main Street, Suite C
Willits, CA 95490
Tel: 707.459.5551
Fax: 707.459.3018

*Agent for Service of Process of Respondents
North Coast Railroad Authority and Board of
Directors of North Coast Railroad Authority*

George Spanos
1300 "I" Street
P.O. Box 944255
Sacramento, CA 94244-2550
Tel: 916.324.9812
Fax: 916.327.2247

*Attorney for California Transportation
Commission*

Douglas H. Bosco
Law Office of Douglas H. Bosco
37 Old Courthouse Square, Suite 200
Santa Rosa, CA 95404
Tel: 707.525.8999
Fax: 707.542.4752

Attorney for Northwestern Pacific Railroad Co.

Farhad Mansourian
SMART District Office
750 Lindaro Street, Suite 200
San Rafael, CA 94901
Tel: 707.521.0715
Fax: 415.226.0881

*Agent for Service of Process of Real Party in
Interest Sonoma-Marin Area Rail Transit
District*

Jeffrey A. Walter
Walter & Pistole
670 W. Napa Street, Suite F
Sonoma, CA 95476
Tel: 707.996.9690
Fax: 707.996.9603

Attorney for Petitioner City of Novato

Charles Getz
Office of the Attorney General
455 Golden Gate Avenue, # 11000
San Francisco, CA 94102
Tel: 415.703.5480
Fax: 415.703.5480

*Attorney for California Department of Fish &
Game*

Dennis Reinholtsen
Francis Greenleaf
730 Fifth Street
P.O. Box 105
Eureka, CA 95502
Tel: 707.445.2071
Fax: 707.445.8305

Attorneys for Kernan Construction

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CalTrans Legal
P.O. Box 744
San Francisco, CA 94120
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Fax: 415.904.2333

*Attorney for California Department of
Transportation*

Rosa B. Fua
1515 Clay Street, Suite 2000
Oakland, CA 94612
Tel: 510.622.2162
Fax: 510.622.2272

*Special Counsel re Consent Decree for DTSC
and DF&G*

Steve Sawyer
Office of Spill Prevention and Response
P.O. Box 94429
Sacramento, CA 94244
Tel: 916.324.9812
Fax: 916.324.5662

DF&G In-House Counsel

Neil H. O'Donnell
Michelle Baker
Rogers Joseph O'Donnell
311 California Street
San Francisco, CA 94104
Tel: 415.956.2828
Fax: 415.956.6457

Attorney for Mass. Electric Construction Co.

Copper Crane & Rigging, Inc.
c/o Patrick McNeil
555 Professional Center Parkway
San Rafael, CA 94903
Tel: 415.472.3434
Fax: 415.472.1297

*Agent for Service of Process for Cooper
Crane & Rigging, Inc.*

Ghilotti Bros., Inc.
c/o Michael M. Ghilotti
525 Jacoby Street
San Francisco, CA 94901
Tel: 415.454.7011
Fax: 415.454.8376

*Agent for Service of Process Ghilotti Bros.
Inc.*

EXHIBIT 6

NOTICE OF RELATED CASE

CM-015

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) ELLISON FOLK (SBN 14923) AMY J. BRICKER (SBN 22703) SHUTE MIHALY & WEINBERGER LLP 396 HAYES STREET SAN FRANCISCO, CA 94114 TELEPHONE NO. 415-552-7272 FAX NO. (Optional) 415-552-5816 E-MAIL ADDRESS (Optional) bricker@smwlaw.com ATTORNEY FOR (Name) Friends of the Eel River	FOR COURT USE ONLY <div style="border: 2px solid black; padding: 10px; text-align: center;"> <p>Received</p> <p>JUL 28 2011</p> <p>C.J. Neary</p> </div>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Marin STREET ADDRESS 3501 Civic Center Drive, Room 113 MAILING ADDRESS CITY AND ZIP CODE San Rafael, CA 94903 BRANCH NAME Civil Division	
PLAINTIFF/PETITIONER: Friends of the Eel River	CASE NUMBER: CIV 1103605
DEFENDANT/RESPONDENT: North Coast Railroad Authority, et al.	JUDICIAL OFFICER:
NOTICE OF RELATED CASE	

Identify, in chronological order according to date of filing, all cases related to the case referenced above.

1. a. Title: **Californians For Alternatives To Toxics v. North Coast Railroad Authority, et al.**
 b. Case number: **CIV 1103591**
 c. Court: same as above
 other state or federal court (name and address):
 d. Department:
 e. Case type: limited civil unlimited civil probate family law other (specify):
 f. Filing date: **July 20, 2011**
 g. Has this case been designated or determined as "complex?" Yes No
 h. Relationship of this case to the case referenced above (check all that apply):
 involves the same parties and is based on the same or similar claims. (Same Respondents and Real Parties in Interest)
 arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
 involves claims against, title to, possession of, or damages to the same property.
 is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
 Additional explanation is attached in attachment 1h
 i. Status of case:
 pending
 dismissed with without prejudice
 disposed of by judgment
2. a. Title:
 b. Case number:
 c. Court: same as above
 other state or federal court (name and address):
 d. Department:

CM-015

PLAINTIFF/PETITIONER: Friends of the Eel River	CASE NUMBER:
DEFENDANT/RESPONDENT: North Coast Railroad Authority, et al.	CIV 1103605

2. (continued)

- e. Case type: limited civil unlimited civil probate family law other (specify):
- f. Filing date:
- g. Has this case been designated or determined as "complex?" Yes No
- h. Relationship of this case to the case referenced above (check all that apply):
 - involves the same parties and is based on the same or similar claims.
 - arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
 - involves claims against, title to, possession of, or damages to the same property.
 - is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
 - Additional explanation is attached in attachment 2h
- i. Status of case:
 - pending
 - dismissed with without prejudice
 - disposed of by judgment

3. a. Title:

b. Case number:

- c. Court: same as above
- other state or federal court (name and address):

d. Department:

- e. Case type: limited civil unlimited civil probate family law other (specify):

f. Filing date:

- g. Has this case been designated or determined as "complex?" Yes No

h. Relationship of this case to the case referenced above (check all that apply):

- involves the same parties and is based on the same or similar claims.
- arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
- involves claims against, title to, possession of, or damages to the same property.
- is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
- Additional explanation is attached in attachment 3h

i. Status of case:


- pending
- dismissed with without prejudice
- disposed of by judgment

4. Additional related cases are described in Attachment 4. Number of pages attached: _____

Date: July 26, 2011

Amy J. Bricker

(TYPE OR PRINT NAME OF PARTY OR ATTORNEY)


 (SIGNATURE OF PARTY OR ATTORNEY)

CM-015

PLAINTIFF/PETITIONER: Friends of the Eel River	CASE NUMBER:
DEFENDANT/RESPONDENT: North Coast Railroad Authority, et al.	CIV 1103605

**PROOF OF SERVICE BY FIRST-CLASS MAIL
NOTICE OF RELATED CASE**

(NOTE: You cannot serve the Notice of Related Case if you are a party in the action. The person who served the notice must complete this proof of service. The notice must be served on all known parties in each related action or proceeding.)

1. I am at least 18 years old and **not a party to this action**. I am a resident of or employed in the county where the mailing took place, and my residence or business address is (*specify*):

Shute, Mihaly & Weinberger LLP
396 Hayes Street, San Francisco, CA 94102

2. I served a copy of the *Notice of Related Case* by enclosing it in a sealed envelope with first-class postage fully prepaid and (*check one*):

- a. deposited the sealed envelope with the United States Postal Service.
- b. placed the sealed envelope for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

3. The *Notice of Related Case* was mailed:

- a. on (*date*): July 26, 2011
- b. from (*city and state*): San Francisco, CA

4. The envelope was addressed and mailed as follows:

a. Name of person served:

Street address:
City:
State and zip code:

c. Name of person served:

Street address:
City:
State and zip code:

b. Name of person served:

Street address:
City:
State and zip code:

d. Name of person served:

Street address:
City:
State and zip code:


Names and addresses of additional persons served are attached. (*You may use form POS-030(P).*)

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

Date: July 26, 2011

Sean P. Mulligan

(TYPE OR PRINT NAME OF DECLARANT)



(SIGNATURE OF DECLARANT)

Friends of the Eel River v. North Coast Railroad Authority, et al.
Superior Court of California County of Marin
Case No. CIV 1103605

Attachment to Part 4 of Proof of Service

John H. Williams
250 Cambridge Avenue, Suite 104
Palo Alto, CA 94306

*Agent for Service of Process of Real Party in
Interest Northwestern Pacific Railroad
Company*

Christopher Neary
110 South Main Street, Suite C
Willits, CA 95490
Tel: 707.459.5551
Fax: 707.459.3018

*Agent for Service of Process of Respondents
North Coast Railroad Authority and Board of
Directors of North Coast Railroad Authority*

William Verick
Klamath Environmental Law Center
424 First Street
Eureka, CA 95501
Tel: 707-268-8900
Fax: 707-268-8901

*Attorney for Petitioner Californians for
Alternatives to Toxics, a California Non-Profit
Corporation*

Farhad Mansourian
SMART District Office
750 Lindaro Street, Suite 200
San Rafael, CA 94901
Tel: 707.521.0715
Fax: 415.226.0881

*Agent for Service of Process of Real Party in
Interest Sonoma-Marín Area Rail Transit
District*

Sharon E. Duggan
Attorney at Law
370 Grand Avenue, Suite 5
Oakland, CA 94610
Tel: 510-271-0825
Fax: 510-271-0829

*Attorney for Petitioner Californians for
Alternatives to Toxics, a California Non-
Profit Corporation*

99 Eureka

CIVIL COVER SHEET

JS 44 (Rev. 12/07) (CAND Rev 1/10)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

<p>I. (a) PLAINTIFFS</p> <p>Californians for Alternatives to Toxics</p>	<p>DEFENDANTS</p> <p>North Coast Railroad Authority Board of Directors of North Coast Railroad Authority</p>
<p>(b) County of Residence of First Listed Plaintiff Humboldt (EXCEPT IN U.S. PLAINTIFF CASES)</p>	<p>County of Residence of First Listed Defendant Mendocino (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.</p>
<p>(c) Attorney's (Firm Name, Address, and Telephone Number)</p> <p>Sharon E. Duggan 370 Grand Ave., Ste. 5 Oakland, CA 94610</p>	<p>Attorneys (If Known)</p> <p>Christopher J. Neary 110 S. Main St., Ste. C Willits, CA 95490</p>

*11-4103
NJV*

<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <p>(For Diversity Cases Only)</p> <table style="width:100%;"> <tr> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DEF</td> <td></td> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DEF</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Citizen of This State</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 4</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 4</td> </tr> <tr> <td colspan="2"></td> <td style="text-align: center;">Incorporated or Principal Place of Business In This State</td> <td colspan="2"></td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td colspan="2"></td> <td style="text-align: center;">Incorporated and Principal Place of Business In Another State</td> <td colspan="2"></td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> <tr> <td colspan="2"></td> <td style="text-align: center;">Foreign Nation</td> <td colspan="2"></td> </tr> </table>	PTF	DEF		PTF	DEF	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Citizen of This State	<input checked="" type="checkbox"/> 4	<input checked="" type="checkbox"/> 4			Incorporated or Principal Place of Business In This State			<input type="checkbox"/> 2	<input type="checkbox"/> 2	Citizen of Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5			Incorporated and Principal Place of Business In Another State			<input type="checkbox"/> 3	<input type="checkbox"/> 3	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 6	<input type="checkbox"/> 6			Foreign Nation		
PTF	DEF		PTF	DEF																																
<input type="checkbox"/> 1	<input type="checkbox"/> 1	Citizen of This State	<input checked="" type="checkbox"/> 4	<input checked="" type="checkbox"/> 4																																
		Incorporated or Principal Place of Business In This State																																		
<input type="checkbox"/> 2	<input type="checkbox"/> 2	Citizen of Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5																																
		Incorporated and Principal Place of Business In Another State																																		
<input type="checkbox"/> 3	<input type="checkbox"/> 3	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 6	<input type="checkbox"/> 6																																
		Foreign Nation																																		

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<p>PERSONAL INJURY</p> <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <p>LABOR</p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations & Disclosure Act <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <p>IMMIGRATION</p> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus—Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <p>PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <p>SOCIAL SECURITY</p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XV <input type="checkbox"/> 865 RSI (405(g)) <p>FEDERAL TAX SUITS</p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input checked="" type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<p>REAL PROPERTY</p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p>CIVIL RIGHTS</p> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities—Employment <input type="checkbox"/> 446 Amer. w/Disabilities—Other <input type="checkbox"/> 440 Other Civil Rights	<p>PRISONER PETITIONS</p> <input type="checkbox"/> 510 Motions to Vacate Sentence <p>Habeas Corpus:</p> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

V. ORIGIN (Place an "X" in One Box Only)

<input type="checkbox"/> 1 Original Proceeding	<input checked="" type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment
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VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 28 USC Section 1441(b)

Brief description of cause:
 Injunctive Relief to redress alleged deficiencies in Environmental Impact Report

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ _____

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)

SAN FRANCISCO/OAKLAND SAN JOSE EUREKA

DATE: August 18, 2011

SIGNATURE OF ATTORNEY OF RECORD: *[Signature]*