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Railroad to Abandon Environmental Review?

After six attempts to avoid defending an environmental report in state court, the North Coast Railroad Authority (NCRA) is preparing to withdraw approval of its rail project at its April 10 meeting in Eureka. The move appears to be a last-ditch effort to avoid a May 8 trial over whether the analysis complies with California environmental law. Californians for Alternatives to Toxics (CATs) and Friends of the Eel River (FOER) sued to demand the NCRA provide an accurate accounting of harm to the environment.

“The NCRA has repeatedly promised to assess the risks of rebuilding the line and cleaning up the toxic waste left behind by previous operators,” said Scott Greacen, director of Friends of the Eel River. “If the NCRA bows to the demands of its private operator and abandons this years-long effort to do environmental review, the next step will be to rebuild the failed line through the unstable Eel River Canyon without considering the impacts.”

Patty Clary, executive director of CATs, said it raises larger questions. “If a state agency can put out a completely inadequate document, then change it just before they face a court, how can the public hold them accountable? If the NCRA tries go back on the decision they made two years ago – while proceeding full steam ahead with their project – they’ll only make an even bigger mess, on the tracks and in the courts.”

FOER’s Greacen also pointed to the railroad’s attempts to keep the cases from going to trial. “If the NCRA Board takes this unprecedented step, they are as much as admitting their EIR is inadequate and they have just wasted the courts’ resources and the public’s time and money trying to avoid trial.”

The NCRA and NWP Co.’s six unsuccessful maneuvers to avoid trial:

- 1) NCRA removed both cases to federal court Aug 19, 2011, claiming federal preemption. On May 8, 2012, the federal court sent the cases back to state court without a hearing.
- 2) On May 31, 2012, NCRA tried to transfer the cases, claiming it faced prejudice in Marin County. The motion was denied August 21, 2012.
- 3) NCRA asked the Court of Appeal to overturn the denial of their motion to transfer. The Court of Appeal summarily denied the writ on September 12, 2012.
- 4) NWP Co. and the NCRA formally objected, claiming – as in previous litigation with Novato – that the California Environmental Quality Act (CEQA) is preempted by federal railroad law. Just as the court in the Novato case had, the court noted the railroad had promised to comply with CEQA to receive tens of millions of taxpayer dollars. On December 14, 2012, the court refused to allow the railroad to “play fast and loose with the courts” by “deliberately changing positions according to the exigencies of the moment.”
- 5) On January 31, 2013, NWP Co. asked the Court of Appeals to reverse the court’s ruling. The petition was denied by the Court of Appeals on February 27, 2013.
- 6) The NCRA unveiled its last-ditch strategy in a March 20 motion to postpone trial, based on a March 13 letter from NWP general counsel Doug Bosco. The motion was denied.