

g. spanos 9163272247
m. nice 472-1298
n. o'donnell 956-6457

d. bosco 707 542 4752
k. brady 552-5816

MARIN SUPERIOR COURT

DATE: 06/17/08 TIME: 9:00 A.M. DEPT: E CASE NO: CV074645

PRESIDING: HON. JAMES R. RITCHIE

REPORTER: MARGARET COLLINS

CLERK: PATTY OKUBO

PLAINTIFF: CITY OF NOVATO

vs.

DEFENDANT: NORTH COAST RAILROAD AUTHORITY

j. walton 707 996 9603
c. neary 707 459-3018
c. schz 703 5480
l. baca 904 2333

NATURE OF PROCEEDINGS: 1) HEARING ON DEMURRER - TO THIRD AMENDED PETITION [RESP] NORTH COAST RAILROAD AUTHORITY
2) MOTION - FOR SEPARATE TRIAL [PETR] CITY OF NOVATO

RULING

THE DEMURRER BY RESPONDENT NORTH COAST RAILROAD AUTHORITY ("NCRA") TO THE THIRD AMENDED PETITION ("TAP") IS OVERRULED. THE JOINDER BY REAL PARTY IN INTEREST NORTHWESTERN PACIFIC RAILROAD COMPANY TO THE DEMURRER IS GRANTED. THE REQUESTS FOR JUDICIAL NOTICE BY NCRA AND THE CITY OF NOVATO ARE GRANTED.

NCRA ARGUES STRENUOUSLY THAT THE PETITION FOR WRIT OF MANDATE IS PREEMPTED BY THE INTERSTATE COMMERCE COMMISSION TERMINATION ACT OF 1995 (49 U.S.C. §10500 et seq.). 49 U.S.C. §10501(b)(2). WITHOUT CONCEDING THAT POINT, THE COURT FINDS THAT NCRA IS JUDICIALLY ESTOPPED FROM CLAIMING FEDERAL PREEMPTION, BASED ON NCRA'S REPEATED AND CONSISTENT REPRESENTATIONS THAT THIS PROJECT IS SUBJECT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (PUB. RES. CODE §21000 et seq.). PEOPLE ex rel. SNEDDON v. TORCH ENERGY SERVICES, INC. (2002) 102 CAL.APP.4th 181, 188-190. (SEE, e.g., ADMINISTRATIVE RECORD ("AR") AT I AR 034; II AR 611, 624-625; IV AR 976-978; AND III AR 739.)

THE ALLEGATIONS REGARDING VIOLATIONS OF THE RALPH M. BROWN ACT (GOV. CODE §54950 et seq.) ARE SUFFICIENT. (SEE, e.g., TAP ¶¶ 37-42.) THE CITY IS NOT SEEKING AN ADVISORY OPINION, BECAUSE AN ACTUAL CONTROVERSY IS ALLEGED ("...PAST ACTIONS AND VIOLATIONS THAT ARE RELATED TO PRESENT OR FUTURE ONES..."). SHAPIRO v. SAN DIEGO CITY COUNCIL (2002) 96 CAL.APP.4th 904, 916.

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**THE CITY'S UNOPPOSED MOTION FOR SEPARATE TRIAL OF THE ALLEGED
BROWN ACT VIOLATIONS IS GRANTED. CCP §§ 598, 1048(b).**