

# Judge to dismiss suit against North Coast rail service

By [SEAN SCULLY](#)

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Environmental groups cannot use state law to block the resumption of freight rail service on the North Coast, a Marin County judge tentatively ruled Tuesday.

Judge Roy O. Chernus said that federal law preempts state law in matters relating to railroads, so environmental groups could not sue the North Coast Railroad Authority over deficiencies in an environmental impact report that it prepared under state law using state money.

The state law "mandates a time-consuming review which may result in indefinite delays and unduly interfere with exclusive federal jurisdiction over rail transportation" by giving local officials power to block operations on environmental grounds, the judge wrote.

NCRA is trying to restore North Coast freight rail service from Napa to Humboldt County. In 2011, it released an environmental impact report on the first phase, from Napa to Willits, a study funded by nearly \$3 million from the state.

Two groups, the Friends of the Eel River and Californians for Alternatives to Toxics, sued, arguing that the EIR was insufficient, failing to consider issues such as hazardous materials that might be stirred up by construction and train operations. They also said the report should have covered the whole 316 miles of track, not just the 142 miles in the southern end up to Willits.

The judge, however, agreed with NCRA when it argued that federal law preempts state law and that it had never intended to subject itself to state environmental review by preparing an EIR.

Spokesmen for the environmental groups did not return calls for comment Tuesday afternoon.

Chernus is expected to hear arguments from the two groups Wednesday morning in San Rafael before making his ruling final. Assuming he does not change his mind, the ruling is a major victory for the rail agency, which has had trouble making its case in court.

The judge "finally said what we had been saying for a very long time," NCRA Executive Director Mitch Stogner said.

While the NCRA has long argued that it was governed by federal not state law, the issue has taken a confusing path to this point. In accepting about \$50 million in state funding to upgrade the rail line between Napa and Windsor, the only portion now in operation, the agency agreed to prepare an environmental report under terms spelled out by state law. Later, the authority

reached a settlement with officials in Novato, who had sued saying the EIR had not sufficiently considered the effects on that city.

The environmental groups argued that NCRA had, with those two agreements, implicitly bound itself to state law and that the agency couldn't have it both ways by later claiming to be exempt. An earlier ruling by the Marin County courts agreed, saying NCRA had gone too far under state law to change its mind.

In response, the NCRA board voted last month to make a retroactive wording change to the 2011 resolution accepting the final EIR, a change that members said highlighted its insistence that it was not bowing to state law.

That change didn't seem to impress Chernus particularly. Instead, he concluded that the two environmental groups didn't have the legal standing to try to force NCRA to live by its earlier implicit acceptance of state law, since those actions came in negotiations with officials of the state and city of Novato, talks in which the environmental groups played no part.

Without being able to make that argument, he ruled, the environmental groups had no basis to say that federal law did not trump state law.

NCRA says it has no current plans to extend its service north of Willits, although it owns the tracks and has the authority from the state legislature to do so. Stogner said has concluded that extending the service north to Humboldt County would be too expensive and require too much environmental review to make it practical for the foreseeable future.

Should the authority attempt to restore the northern end of the rail line, he said, it probably would require an environmental report conducted under state law because the work could extend beyond the boundaries of the railroad right-of-way.

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