Farm Bureaus jump into Supreme Court high-speed rail case

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A case before the California Supreme Court over a freight railroad in the northwestern reaches of the state has drawn the attention of agricultural organizations in the central San Joaquin Valley, but not because they have a particular stake in trains running through Santa Rosa, Ukiah and Eureka.

The Farm Bureaus in Madera and Merced counties last week filed an amicus curiae, or "friend of the court," brief in the case, Friends of Eel River v. North Coast Railroad Authority. Their interest comes because the high court's decision could ultimately have far-reaching effects on plans for a statewide network of high-speed trains through the Valley.

The issue to be decided by the Supreme Court is whether federal jurisdiction over railroads by the U.S. Surface Transportation Board supercedes or pre-empts requirements for public railroads in the state to comply with the California Environmental Quality Act.

Representatives of the Farm Bureau groups say they're relying on CEQA compliance to make sure the California High-Speed Rail Authority lives up to its commitments to make up for the environmental effects of construction and operation of the bullet-train line. They fear that if the Supreme Court rules that federal law trumps the more stringent state environmental regulations, the decision "would allow the authority to evade the environmental and political accountability that form the very core of CEQA's purposes," states the legal brief filed by Oakland attorney Jason Holder, representing the Farm Bureaus.

The Supreme Court is being asked to settle a question to which two different California appeals courts have given two different answers.

Last September, the 1st District Court of Appeal ruled in the Friends of Eel River that federal jurisdiction does indeed pre-empt CEQA for rehabilitating and operating the North Coast freight railroad line.

But a few months earlier, in a lawsuit by the Bay Area town of Atherton against the California High-Speed Rail Authority, the 3rd District Court of Appeal determined that rather than acting as a regulatory agency, the rail authority was acting as an owner of a rail line. That distinction created a "market participation" exception to federal nullification of CEQA rules, and the justices said there was no need to rule on the broader question of federal pre-emption of the state law.

The Atherton lawsuit challenged the state rail authority's environmental approval of a broad high-speed rail corridor running down the San Francisco Peninsula through San Jose and Gilroy and over the Pacheco Pass into the San Joaquin Valley, instead of a more northerly route over the Altamont Pass, avoiding the Peninsula. While the appellate justices rejected the rail authority's arguments over federal pre-emption, the court allowed the agency's approval of the Peninsula/Pacheco Pass corridor to stand.

The federal Surface Transportation Board — a three-member panel of presidential appointees that oversees the nation's interstate rail system — issued a declaration in December that because the agency has jurisdiction over California's high-speed rail project, federal law supersedes CEQA in regulating the Fresno-Bakersfield portion of the statewide rail line that was approved last year.

The declaration raised the prospect that CEQA requirements could be sidelined in favor of the federal National Environmental Policy Act — generally seen as weaker than CEQA — as other sections of the high-speed train project move through environmental analysis and approval.

The game being played here has the highest of stakes, because it involves a statewide project that will affect all Californians, especially those within the (high-speed rail) project's (right of way), for decades to come.

Attorney Jason Holder, in a legal brief to the California Supreme Court

The two Farm Bureaus were among a handful of plaintiffs who, in 2012, sued the rail authority under CEQA over the agency's approval of its Merced-Fresno route. The lawsuits alleged that the authority failed to adequately address the environmental effects of the project and did not provide adequate measures to make up for those effects. All of those lawsuits were eventually settled before reaching trial. The farm organizations credited CEQA's compliance rules with helping them negotiate for improved environmental protection.

"This project is already having major impacts on agriculture in Madera and Merced counties," said Anja Raudabaugh, executive director of the Madera County Farm Bureau. "Dozens of parcels will be bifurcated … irrigation systems will be severed and rural roads permanently closed. We can't afford not to have CEQA in place to protect our members, other businesses and residents in both counties from these major impacts."

The Farm Bureaus aren't the only high-speed rail combatants taking an interest in the Friends of Eel River case. Stuart Flashman, an Oakland attorney representing Kings County in its lawsuit against the high-speed rail authority over its statewide rail plan, filed an amicus brief this week on behalf of the town of Atherton and other Bay Area interests. Flashman's brief urges the Supreme Court to apply the market participation doctrine to the Friends of Eel River case as well as to the Atherton case and find that federal law does not pre-empt the state environmental regulations.

In his brief, Flashman argues that fairness, constitutional principles and state responsibility "all indicate that a state is not precluded from controlling its own rail project and, in this case, requiring CEQA compliance."

The California High-Speed Rail Authority last week asked the Supreme Court for an extension to July 1 to file its own amicus brief in the Friends of Eel River case.

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