

## **Port MacKenzie Rail Extension Litigation: Frequently Asked Questions**

In November 2011, the federal Surface Transportation Board approved a plan proposed by Alaska Railroad and the Mat-Su Borough to construct a new rail line connecting Port MacKenzie to the railroad's main line near Houston, Alaska.

On January 20, 2012, three groups filed a legal challenge to the Board's decision in the United States Court of Appeals for the Ninth Circuit. This document answers several common questions about that pending legal challenge.

### **What is a “petition for review”?**

The legal challenge in the Ninth Circuit is entitled “Petition for Review.” It is essentially a request that the court review the Surface Transportation Board's decision to approve the proposed new rail line.

### **Who are the petitioners?**

There are three petitioners: Alaska Survival, Sierra Club and Cook Inletkeeper. Each of these petitioners is a non-profit entity.

### **Who are the respondents?**

The parties named as respondents in the Petition for Review are the Surface Transportation Board and the United States of America. This is because the petition is challenging a decision made by the Surface Transportation Board, which is a part of the U.S. government.

### **Will the Alaska Railroad or the Mat-Su Borough be involved in the litigation?**

Parties with a direct interest in the Surface Transportation Board's decision, such as the Alaska Railroad and the Mat-Su Borough, can request to participate in the litigation. If that request is granted, those parties would become “intervenor” with full rights to participate in the case.

The Railroad and the Borough are both filing to intervene. Representing the Borough in this appeal will be the joint counsel who has been representing the Borough and Railroad through the entire permitting process.

### **Will the State of Alaska government be involved in the litigation?**

The State of Alaska will make its own decision whether to participate in the litigation and in what capacity.

## **Why was the petition filed in the Court of Appeals, instead of a trial court in Alaska?**

A federal statute known as the Hobbs Act requires legal challenges to the decisions of certain agencies, including the Surface Transportation Board, to be filed in a Court of Appeals, rather than in a trial court.

## **How do Court of Appeals cases like this usually proceed?**

When a Petition for Review of agency action is filed in a Court of Appeals, the agency first has to provide the court with all of the documents and records that support its decision. After that, the petitioners will file a written legal argument explaining exactly what aspects of the decision they are challenging. Then the agency, along with any intervenors, will prepare their own written legal argument in support of the decision. When that brief is filed, the petitioners will have one final opportunity to argue their case in writing.

Once all of the written arguments have been transmitted to the court, a date for oral argument will be set. On that date, the petitioners, agency and any intervenors will argue in person before three judges from the Court of Appeals. These arguments will focus on legal issues; there will not be any witnesses, and there is no jury.

Based on the written and oral arguments, the three judges will decide whether to uphold the agency's decision, and they will explain that decision in writing.

## **What are the legal issues in the case?**

The precise nature of the petitioners' legal challenge will not be known until they file their first written argument with the Court of Appeals. Based on the Petition for Review, it appears the petitioners intend to argue that the Board failed to comply with the National Environmental Policy Act before it approved the project.

However, before it approved the project, the agency spent approximately three years reviewing the potential environmental impacts of the rail extension, and explained its findings in a 650-page Environmental Impact Statement.

## **Does the rail extension project have funding?**

Yes, there is adequate funding to proceed with construction of the rail extension. Construction is expected to proceed in phases.

## **Will construction of the project proceed while the legal challenge is pending?**

The legal challenge does not request the court to delay plans to construct the project. If the petitioners choose to make such a request, the railroad and the Borough would likely oppose it.

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